

Whispers of Injustice: Revealing the Silent Struggle of Men Wrongfully Accused of Gender-Based Violence and Other Crimes, Convicted in South Africa

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Abstract

In South Africa, wrongful accusations of Gender-Based Violence (GBV) and other crimes against men have become a significant societal concern, exposing intricacies within the justice system. Despite ongoing efforts to combat GBV, reported cases of men being wrongfully accused underscore the necessity for a nuanced approach to address this form of injustice. This qualitative study employs a non-empirical research design, specifically a systematic review, utilizing indirect observation schedules to identify and describe existing literature. Through inductive textual content analysis, the study explores the social, legal, and emotional implications of false accusations against men. The key findings reveal a disturbing trend in the South African criminal justice system, where wrongfully accused men, even upon being found not guilty, experience a profound lack of support and face challenges post-release. The absence of tailored programs within both the criminal justice system and governmental initiatives highlights a critical oversight. To address these shortcomings, the researcher recommends a multifaceted approach, emphasizing the need for proactive steps by the South African criminal justice system and the government to mitigate the challenges faced by wrongfully accused men after their release.

Keywords: wrongful accusations, gender-based violence, conviction, men victims, justice failure.

Introduction

Men Wrongfully Accused of Gender-Based Violence and Other Crimes and subsequently Convicted occur across the world and are not unique to South Africa. Any system designed by humans is inherently flawed and even in some of the best-resourced legal systems in the world, there are numerous cases of wrongful accusations and convictions (Geldenhuys, 2022). In 2019, the BBC reported that between 2007 and 2017, 84 men were wrongly convicted in Northern Ireland alone, with charges ranging from gender-based violence, murder to rape, with several of those wrongly convicted sentenced to life. Of those 84 men, half were incarcerated and when combined they spent more than 100 years behind bars (McCracken, 2019).

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In 2018, the US National Registry of Exonerations (NRE) revealed that they had recorded more than 2270, men's wrongful convictions since their establishment in 1989 (Raphaely, 2018). According to the US Innocence Project, which is powered by the belief that if DNA could prove people guilty, it could also prove people innocent, 375 men have been cleared based on DNA evidence since the first case in 1989. This includes 21 men who spent time on death row Innocence Project. (2022). The NRE also recorded 35 wrongfully convicted men who each spent more than 30 years behind bars. One of them was Richard Phillips, who was released in 2017 at the age of 71 after spending 45 years in prison (Raphaely, 2018).

In the Netherlands, a case where two boys were sexually assaulted before one was stabbed to death in a park in Schiedam in June 2000 drew substantial attention. A known pedophile, who previously harassed the son of a police official, was arrested and later convicted. When his defense pointed out that his DNA was not found at the crime scene, the courts accepted the police and prosecution's explanation that he could have removed his DNA from the scene. Four years later, another man spontaneously came forward and confessed to the crime. This high-profile case led to introspection and ultimately to the establishment of the Commission Evaluation Finalised Criminal Cases (CEAS) in 2006. The members of the Commission were retired judges, prosecutors, legal experts, and police officials whose main focus was to analyze the police investigation and prosecution to assess whether any mistakes or omissions could have informed the assessment by the judiciary. Between 2006 and 2010, the CEAS received 63 applications, and several convictions were later overturned (Geldenhuys, 2022).

In South Africa, there is a notable absence of records on wrongful convictions maintained by either the National Prosecuting Authority (NPA) or the Department of Justice and Correctional Services. The Wits Justice Project contends that the issue is more pervasive than commonly acknowledged (Raphaely, 2018). Despite this, in 2013, the NPA asserted that wrongful convictions were highly uncommon, attributing this rarity to the criminal justice system's emphasis on the State's responsibility to establish guilt beyond a reasonable doubt. Bulelwa Makeke, the NPA spokesperson at the time, emphasized a preference for erring on the side of releasing a potentially guilty person rather than convicting an innocent one. Nevertheless, evidence suggests that such instances are not as infrequent as claimed by (Godsey, 2013).

This article delves into the often overlooked and significant issue of men who have been wrongly accused of gender-based violence and other crimes, as well as those who have been wrongfully convicted. The focus is on shedding light on the silent struggle faced by these men, emphasizing the need for increased awareness regarding the profound impact on their lives.

Factors leading to the Wrongful Conviction of men

In 2019, the World Bank's research revealed a staggering statistic: 1 in 3 women globally, equivalent to 35%, is impacted by gender-based violence (GBV). This distressing reality highlights the prevalence of physical or sexual abuse endured by women at the hands of their partners or other male perpetrators throughout their lifetimes. These include, but are not limited to, false allegations, errors in eyewitness identification, instances of false confessions, and the provision of incorrect expert testimony. These contributing elements highlight the multifaceted nature of the issues surrounding wrongful convictions of men and underscore the need for a comprehensive understanding of the factors at play in the criminal justice system.

However, it is crucial to acknowledge the complexity of this issue. Cases have been documented where women make false GBV allegations without facing any repercussions. According to Khumalo (2022), the co-executive director of Sonke Gender Justice, these false accusations are often targeted at specific individuals (men). This phenomenon raises important questions about the need for a balanced approach in addressing GBV, ensuring justice for victims while also safeguarding against the misuse of accusations. Striking this balance is essential for fostering trust and integrity within efforts to combat gender-based violence.

The motivations behind false accusations in cases of gender-based violence are intricate. Often, these accusations arise from strained relationships, where partners, having fallen out, employ false allegations as a means to retaliate against one another. In these situations, women may fabricate stories to tarnish and assassinate the character of men (Khumalo, 2022). This complexity in motives adds a layer of nuance to the issue of false Gender Based Violence accusations, emphasizing the need for a comprehensive understanding of the factors involved. Just as in the context of wrongful convictions, addressing these complexities requires a multifaceted approach that considers the intricate dynamics at play within relationships and legal proceedings.

Extortion emerges as yet another motive behind the fabrication of gender-based violence (GBV) allegations. Instances on social media have illustrated scenarios where a man, having picked up a woman from a club after a night of revelry, faces a demand for money. In some cases, when the man is unable or unwilling to provide the requested amount, the woman resorts to falsely crying rape as a means of coercing compliance. This disturbing trend underscores the diverse and complex motivations that can drive the misuse of GBV accusations, extending beyond relationship dynamics to include elements of financial coercion and manipulation. Addressing such cases requires a careful examination of the various motives and circumstances surrounding false GBV allegations to ensure a nuanced and effective response (Tshoane, 2022).

It's disheartening to witness how some public figures can find themselves mired in gender-based violence (GBV) allegations made by their former partners. The

court of public opinion often hastily delivers a guilty verdict before these individuals can present their defense. Due to their prominence, these figures face heightened risks of losing their livelihoods and enduring social humiliation. Society tends to engage in a form of collective cancellation, and the negative buzz surrounding their names often leads affiliated brands to distance themselves (Tshabalala, 2022).

The case of Johnny Depp in 2018 brought to light the severe consequences public figures can face due to gender-based violence (GBV) allegations. The actor, renowned for his role in "Pirates of the Caribbean," was dropped from the "Fantastic Beasts" movie franchise following allegations made by his ex-wife, Amber Heard. An opinion piece published by The Washington Post, authored by Heard, implied that she was a victim of domestic violence. The case of Katlego Maboe in South Africa serves as another poignant example of the profound impact gender-based violence (GBV) allegations can have on a public figure's life. In 2020, Maboe faced accusations of Gender-Based Violence from his ex-girlfriend, Monique Muller, which had far-reaching consequences for his personal and professional life (Tshabalala, 2022).

The award-winning television host experienced significant reputational damage as a result of these allegations. He was removed as the ambassador for OUTsurance Holdings, a prominent South African insurance and investment company established in 1998. Additionally, Maboe faced suspension from his role on the SABC 3 weekday morning show, *Expresso*, highlighting the swift and tangible repercussions that can occur in the wake of such allegations.

This case underscores the delicate balance between addressing the serious nature of Gender-Based Violence allegations and ensuring a fair and thorough examination of the facts. The rapid and impactful consequences faced by individuals like Katlego Maboe highlight the broader societal challenges in navigating the complexities of GBV accusations, especially when played out in the public domain.

The case of musician Jabulani "Sjava" Hadebe mirrors the challenges faced by public figures when confronted with accusations of gender-based violence. In 2020, his former girlfriend and fellow musician, Lady Zamar, accused him of rape, leading to significant consequences for Sjava.

The fallout from these allegations resulted in tangible professional setbacks for the musician. The DStv Mzansi Viewer's Choice withdrew his two nominations, and his concert was removed from the line-up at the 2020 Cape Town International Jazz Festival. These actions underscore the swift and impactful repercussions faced by public figures when confronted with serious allegations of gender-based violence (Tshabalala, 2022).

This case highlights the complex interplay between personal relationships, public perception, and professional repercussions in the context of GBV accusations involving individuals in the public eye. It serves as a poignant example of the

challenges faced by those accused and the broader societal implications that accompany such situations.

It's disheartening to see that, even after being cleared by the courts, public figures like Maboe and Sjava continue to bear the weight of irreparable reputational damage. The Cape Town High Court's declaration that the allegations against Maboe were unfounded and the acknowledgment by the police in Limpopo that there was insufficient evidence in Sjava's case should theoretically provide vindication.

However, the lasting impact of such accusations is undeniable. The court of public opinion, often fueled by sensationalism and swift judgments, can leave an indelible mark on individuals' reputations. Even in the absence of legal culpability, the scars of unfounded allegations can persist, affecting not only the personal lives of those involved but also their professional endeavours. The cases of Depp, Sjava, and Maboe highlight the need for a nuanced and fair approach to handling accusations of gender-based violence. While legal exoneration is a crucial step, addressing the broader societal perception and the lingering effects of reputational damage is equally vital. The complexities of navigating these situations underscore the challenges inherent in balancing justice and safeguarding the reputations of those falsely accused (Tshabalala, 2022).

The recourse for someone falsely accused of gender-based violence (GBV) or any other crime, according to the National Prosecuting Authority (NPA), is to lay perjury charges when the accuser is found guilty in a court of law. Perjury charges can lead to severe consequences for the accuser, including a potential 10-year jail sentence, a substantial fine, or probation. This study highlights a lack of accountability for individuals making false accusations. Throughout human history, crimes, particularly gender-based violent crimes, have been predominantly associated with men, perpetuating stereotypes of women as kind, polite, humble, dependent, and passive. The literature review demonstrates that violence involving women is complex and influenced by various factors. Patricia Pearson, a crime researcher (1997), observes that violence has historically been perceived as a male phenomenon, with men typically seen as the perpetrators and women and children as potential victims. In cases where women are the perpetrators of violence, it is often viewed as involuntary action (Pearson, 1997). Consequently, when a woman alleges being a victim of gender-based violence, the criminal justice system is inclined to believe her over a man, reflecting the historical biases highlighted by researchers, and this belief often occurs without a thorough investigation.

International perspective on wrongful convictions

Garrett (2008), and Huff (2004), underscore a global concern regarding wrongful convictions of men, revealing that various factors contribute to the occurrence

of such miscarriages of justice. An overview of wrongful convictions in Germany, as outlined by Leuschner (2020), reveals a pattern involving false allegations, eyewitness misidentification, false confessions, and incorrect expert testimony. Drawing parallels, the UK has taken proactive steps to address miscarriages of justice. Leuschner (2020), notes that concerns over wrongful convictions prompted the establishment of an independent statutory body the Criminal Cases Review Commission (CCRC) in 1997. This entity serves to investigate claims of miscarriages of justice, reflecting a commitment to rectifying errors in the legal system.

In the USA, Grounds (2004) highlights the significant role played by the Innocence Project, a non-profit organization dedicated to exonerating wrongfully convicted individuals through DNA testing. Since its inception in 1992, the Innocence Project reported in 2019 that 362 men in the USA, previously convicted of serious crimes, had been exonerated. According to the 2019 annual report by the National Registry of Exonerations, wrongful convictions statistics show that the percentage of wrongful convictions is somewhere between 2% and 10%. Keeping in mind that there are over 2.3 million incarcerated individuals in the United States, we can see that the number of innocent people behind bars is anywhere from 46,000 to 230,000.

Legislation dealing with wrongful convictions In South Africa

Section 327 of the Criminal Procedure Act 51 of 1977 deals with wrongful convictions after all legal remedies have been exhausted. "It provides for the option of a full pardon, which means that the criminal record will be expunged as if the conviction in question had never occurred. The provision outlines a legal route the applicant should take. This is that the Department of Justice should be petitioned with further evidence that has become available since the conviction. The Minister of Justice may then decide that the petition and relevant affidavits with the evidence are directed to a court in which the conviction occurred. The court will then assess the evidence and advise the President whether such evidence affects the conviction. The President has the power to decide if a full pardon will be provided" (Geldenhuys, 2022).

In South Africa, a person can apply for expungement of his or her criminal record in terms of the Criminal Procedure Act 51 of 1977, to the Director-General: Department of Justice and Constitutional Development on the following grounds:

- A period of ten years has passed after the date of the conviction for that offense;
- That person has not been convicted and sentenced to a period of incarceration without the option of a fine during those ten years;
- The sentence was corporal punishment; v the sentence was postponed or the person was cautioned and discharged;
- The sentence was a fine not exceeding R20 000;

- The sentence consisted of a period of incarceration with the option to pay a fine (not more than R20 000) instead of serving the period of incarceration;
- The sentence was correctional supervision in terms of section 276(1)(h) of the Criminal Procedure Act 51 of 1977;
- The sentence was incarceration in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977;
- The sentence was periodical incarceration in terms of section 276(1)(c) of the Criminal Procedure Act 51 of 1977;
- The sentence of incarceration was suspended wholly; and
- Proof is provided that the person's name has been removed from the National Register of Sex Offenders or the National Child Protection Register, if relevant (The South African Government, Nd).

Despite the presence of the aforementioned legal frameworks, precedents in court decisions, social media platforms, and reports from the Wits Justice Project highlight instances where individuals have been wrongfully convicted and sentenced to imprisonment, only to be later released after their convictions were overturned through appeal or review. Examples such as Khanye (37) and Moyo (35) serve as poignant illustrations of the human toll of judicial errors and underscore the vulnerability of an increasingly dysfunctional criminal justice system. This serves as evidence that incarceration is not exclusive to the guilty, particularly for those who lack financial resources.

Furthermore, within the South African legal context, perjury is defined as the act of making a false statement with the intent to influence the outcome of a legal proceeding. However, cases have emerged where women have made false allegations of gender-based violence (GBV) without facing legal consequences. A notable example is the case of award-winning television host Katlego Maboe, whose life underwent a substantial change when his ex-girlfriend, Monique Muller, accused him of GBV in 2020. This accusation resulted in significant damage to Maboe's reputation.

Unfounded allegations of gender-based violence against men and their repercussions.

The false GBV accusations are targeted at a particular individual, asserted by Bafana Khumalo, the co-executive director of Sonke Gender Justice. These allegations may leave the accused with more than reputational damage but also the loss of income, psychological health, and exclusion from society. Some of the sexual abuse cases turn out to be based on false accusations. According to Rumney (2006), who studied rates of false accusations across 20 different studies, the prevalence ranges between 1, 5% and 90%. Research conducted by Patterson, D. H. (1991), showed a prevalence

between two and ten percent. In a recent Meta-analyse, O'Donohue, W. T., & Cirlugea, O. (2016), showed a prevalence of circa five percent of false accusations of sexual abuse (Everson, & Boat, 1989 & Kendall-Tackett, 1991).

However, O'Donohue, & Cirlugea, (2016), showed that these numbers include statements that were later withdrawn. On the other hand, there most likely is a dark number of false accusations; there are false accusations that were never and will never be discovered. In addition to the dark number, there are also false accusations that do not fit the criteria of the crime and therefore are not seen by the police as a crime (Saunders, 2012). This causes some uncertainty about the prevalence of false accusations. Another reason for the diversity in prevalence could be the use of different definitions by researchers.

Impact of wrongful convictions on men

The impact of wrongful accusation and conviction is complex and long-lasting. It negatively impacts the victim's self-identity, reputation, psychological and physical health, relationships with others, attitudes towards the justice system, finances, and adjusting to life after their convictions have been overturned (Brooks, & Greenberg, 2021). Being wrongfully accused of criminal offenses can lead to serious negative consequences for those wrongfully accused and their families. This was clear in this month's crime series where Fred van der Vyver was wrongfully accused of the murder of his girlfriend, Inge Lotz. His parents contracted some of the best legal counsel South Africa has to offer and flew in countless international legal and forensic experts in an attempt to prove their son's innocence. This cost alone must have run into the millions as senior counsel and experts are expensive.

In addition to the great financial cost to the family, there was also the intense emotional toll on them, which can impact on a person's health and well-being. Although Fred could finally hold his head high and walk free, he will never shake off the stigma and the questions. He had to rebuild his life. And although he may not have an official criminal record, he has a record on the Internet and archived newsprint. Google alone returns thousands of page results for his name when combined with Inge Lotz's name. Fred managed to clear his name in court and was acquitted, but some people are not as lucky and spend years behind bars before their names are cleared. And even after their names have been cleared, they experience the stigma that comes with being accused of a crime (Brooks, & Greenberg, 2021).

Patrick Buthelezi, a teacher who was falsely accused of raping a nine-year-old child in November 2011, could testify to this. Even after he went back to teaching, some parents still brought up the charges. Although he continues to teach and has been appointed as a deputy principal and was the treasurer of an education center, he said that to a large extent, "it has scarred him for life". During his civil trial in August 2021,

Judge Mahendra Chetty said: "The stigma of having been arrested and tried for the rape of a minor remains as a permanent stain on his character, with his acquittal seemingly relegated to insignificance" (Broughton, 2021).

Wrongful convictions have an impact not only on individuals but also on their families and friends. Wrongful convictions and accusations result in the deterioration or complete loss of family ties. After having been incarcerated for a long time, these individuals return home only to discover they can no longer connect with their family or friends in the same way. Furthermore families and friends often no longer wish to associate with the wrongfully accused person or have long since cut their ties (Snell, 2019). Samuel Ntshavheni Ndwambi who was a carpenter and breadwinner for his wife and three children was wrongfully convicted for a murder he did not commit and was sentenced to life. After spending more than ten years being bars, the Supreme Court of Appeal (SCA) ordered his immediate release on 14 June 2018, saying that then Acting Judge Ephraim Makgoba had convicted Samuel on scant evidence.

The wrongful conviction of Marcus Mulaudzi had a devastating impact on his family life. After spending a decade behind bars for a murder he did not commit, Mulaudzi successfully appealed his case to the SCA, leading to his release in 2016. However, upon returning home, he discovered that his wife had left him and his child had discontinued schooling. Reflecting on the aftermath, Mulaudzi lamented, "After I left, things fell apart. The family just split. They didn't have any direction because they depended on me" (Jones, 2018).

The family members of individuals wrongfully convicted also face significant challenges. They must grapple with the consequences of the unjust conviction and endure the absence of support they would typically receive from their wrongly accused loved one. Additionally, if the wrongfully convicted family member is eventually released and returns home, the family often encounters difficulties in understanding and adapting to the emotional and personality changes that may have transpired during the period of wrongful imprisonment (Snell, 2019).

Similarly, Samuel Ndwambi shared the immense difficulty he encountered as his family was evicted from their residence during his incarceration, and he felt powerless to prevent it. Upon his return home to his wife and children, he faced further challenges, including the absence of carpentry tools and workshop space, leading to limited employment prospects. Despite the support from his working child, the family still lacks a stable residence. Ndwambi highlighted the significant obstacles he continues to face since his release (Jones, 2018).

As mentioned above, individuals accused of a crime can also become victims, underscoring the importance of considering the repercussions of false accusations. These consequences extend beyond psychological impacts and stigmatization, encompassing factors such as the loss of employment Contactgroep Onterechte

Beschuldigen (2005). Huff (2002) delved into the psychological effects of wrongful accusations leading to imprisonment. Those wrongly accused experienced fear, trauma, and anger during their time in prison. Some even fell victim to mistreatment by fellow inmates, particularly those accused of offenses like sexual abuse of minors (Huff, 2002). False accusations of any form of crime pose a significant challenge because people often interpret them as conclusive evidence of the accused individual's guilt (Veraart, 1997). Particularly in cases of alleged sexual abuse, the media tends to cover these crimes, resulting in societal agitation and fear. This heightened concern within society typically leads to a presumption of guilt for the accused (Peelman, 2010; Veraart, 1997). The belief in the alleged perpetrator's guilt contributes to a severe form of stigmatization that persists throughout the individual's life Peelman, A. (2010). Stigmatization, in this context, refers to the enduring negative feelings and thoughts such as considering the person as bad or blameworthy imposed by society (Finkelhor, & Brown, 1985).

This research illuminates significant cases, highlighting the lasting effects of wrongful convictions on individuals and their families. It emphasizes the imperative of understanding the enduring consequences of these miscarriages of justice on a broader societal level. Furthermore, the study underscores the importance of delving into the ongoing challenges faced by wrongfully convicted individuals and their families, emphasizing the need for a comprehensive exploration of these experiences.

Conclusion

Supporting wrongfully accused men in cases of gender-based violence involves a multi-faceted approach to address their legal, emotional, and social needs. Connect the individual with legal professionals experienced in wrongful convictions to review the case and explore legal options for appeal or exoneration. Collaborate with organizations specializing in wrongful convictions to provide guidance and resources for legal support. Offer psychological counseling and support services to help the wrongfully accused cope with the emotional impact of the false accusation and any traumatic experiences during legal proceedings.

Encourage participation in support groups where individuals facing similar situations can share experiences and coping strategies. Raise awareness about wrongful accusations in gender-based violence cases, emphasizing the importance of a fair and unbiased legal process. Advocate for reforms in the legal system to prevent and rectify wrongful convictions, ensuring a more just and transparent process. Facilitate programs to assist wrongfully accused individuals in reintegrating into their communities after exoneration. Collaborate with community organizations to promote understanding and empathy, reducing stigma and judgment associated with false accusations.

Provide educational resources to the community, law enforcement, and legal professionals about the complexities of wrongful accusations in gender-based violence cases. Conduct training sessions on unbiased investigation techniques to reduce the likelihood of wrongful accusations. Collaborate with employment agencies or organizations to assist wrongfully accused individuals in rebuilding their careers after exoneration. Advocate for policies that protect the employment rights of individuals with a history of wrongful accusations. Work with advocacy groups to influence policy changes that address the unique challenges faced by wrongfully accused individuals, ensuring their rights are protected and their cases are reviewed thoroughly.

Engage with media outlets to share stories of exoneration, highlighting the importance of fair and accurate reporting in gender-based violence cases. Encourage responsible reporting that emphasizes the presumption of innocence until proven guilty. The study emphasises that the specific needs of wrongfully accused individuals can vary, so a personalized and holistic approach is crucial. Collaborating with legal experts, mental health professionals, and community organizations can enhance the support network for these individuals.

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