

Attempted rape

A man rapes a woman if

- (a) he intentionally penetrates her vagina, anus or mouth with his penis;
- (b) at the time when he penetrated her, she did not consent to the penetration;
and
- (c) at that time, he did not reasonably believe that she was consenting.

So, if a woman does not consent and the man does not reasonably believe that she is consenting, as a matter of law, forced oral sex is just as much rape as a man putting his penis into a woman's vagina.

But in this case, D** is not charged with rape. He is charged with attempted rape.

Before you can convict the defendant of attempted rape you must be sure:

- (1) that he intended to rape C** – that is he intended to put his penis into her mouth without her consent and without reasonably believing that she was consenting; and
- (2) that, with that intention, he did something which was more than mere preparation for committing that offence.

I said that you have to be sure that he intended to rape her. Defendants very rarely say out loud that they intend to commit a crime. So how do you decide what someone intends? The answer is that you can infer someone's intention by looking at all the circumstances, and in particular what he did.

I have used the word "consent". "Consent" means "agree". A woman consents to sexual activity only if she agrees by choice and has the freedom and capacity to make that choice. Mere submission to something that a woman does not want to happen does not amount to consent.

The prosecution say that D** **
The defendant denies that. He says that **

So, the key questions for you to answer in relation to Count *, having regard to all the evidence are these

Did D** place his erect penis close to C**'s face and get on top of her?

Did he intend to place his penis in her mouth, without her consent?

At that time, did he reasonably believe that she was consenting?

If you are sure that the answers to the first two questions are "yes", and the answer to the third question is "no", the defendant is guilty. If the answer to either of the first two questions may be "no", or the answer to the third question may be "yes", he is not guilty.