

Review Article

Rape: Corroborative Value of Medical Evidence in India

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ABSTRACT

Rape is one of the most heinous crimes against women. The offence of rape in its simplest term is “the ravishment of a woman, without her consent, by force, fear or fraud”, or as “the carnal knowledge of a woman by force against her will”¹). In spite of strict laws against rape and the consequent punishment, it still remains a serious problem. In India, it is extremely difficult to prove the charges of rape against a person in a court of law. Generally, in any criminal trial, independent corroboration may be necessary before establishing guilt. But, in case of rape if the statement of victim found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the victim. However, a lot of weightage is given to forensic evidence and therefore such evidence can help to convict the guilty. Thus, a doctor can help in providing the necessary corroborative medical evidence to prove a case of rape. A doctor’s opinion is independent and scientific and therefore it not only corroborates the crime but may also help an innocent person who has been wrongly implicated.

Keywords: Rape, Medical Evidence, Medical Examination, Corroboration.

INTRODUCTION

Crimes against women are on the rise. It is ironical to note that while we are celebrating women’s rights in all spheres, we show little or no concern for their honour. It is a sad to note the indifference that the society shows towards victims of sexual crimes. One of these crimes is rape. A rapist not only violates the victim’s privacy and personal integrity, but invariably also causes serious physical as well as psychological harm. Rape is not merely a physical assault but it often destroys the victim’s entire personality. A murderer destroys the physical body of his victim, whereas a rapist degrades the very soul of the helpless female. It is a serious threat to the basic human rights one is entitled to and a clear violation of the Right to Life guaranteed under Article 21 of the Constitution of India. To truly understand and analyse the laws relating to rape, identify the glaring loopholes if any, and deliberate on the desired changes in the law, we need to treat rape as a crime against the entire society and not solely against the women. Women, regardless of their age and social status form an integral part of society and protecting them

from sexual humiliation and degradation is the responsibility of the society and the legal system within which it operates. This heinous crime challenges the sanctity and very essence of human values. Thus, the fast sweeping changes which have been brought under the law on rape in India reflect the legislative intent to curb this crime with an iron hand.

Against this background, the main purpose of this article is to explore the concept of rape in India and to ascertain the corroborative value of the medical evidences and their application to investigation in rape cases. The other underlying objective is to construe such evidences serve the purpose of providing a fool’s-proof mechanism of detecting the crime and deciding the punishment. The discussion will be based on judgments and opinion of medical jurists.

RAPE AND MEDICAL EXAMINATION: STATUTORY PROVISIONS

Section 375 of Indian Penal Code, 1860, lays down the meaning of rape as follows:

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A man is said to commit "rape" who, except in the case here in after excepted, has sexual intercourse with a woman under circumstances falling under any of the six descriptions: firstly, against her will; secondly, without her consent; thirdly, with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt; fourthly, with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; fifthly, with her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent; sixthly, with or without her consent, when she is under sixteen years of age. Explanation of section 375 offers a clarification and it states that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception of this section states that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

In simple words rape means sexual intercourse with a female (other than his wife who is not younger than 15 years of age) by a person when: (i) the female is not willing (even when the female is prostitute or is habituated to sex); (ii) the consent is obtained by threat; (iii) the consent is obtained by deceit or misrepresentation (posing as her husband or misrepresenting the act as medical treatment); (iv) when the victim is mentally deficient: imbecile, idiot; (v) when the victim is under the influence of drugs or liquor; (vi) when the person is unconscious; (vii) when the victim is young - below the age specified in law - (16 years), even with her consent and (viii) penetration of male organ into the female parts incurs the offence. *Encyclopaedia of Crime and Justice* states that "... even slight penetration is sufficient and emission is unnecessary". Modi¹ also stated that: "Thus to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the *Labia majora* or the vulva or pudenda with or without emission of semen or

even an attempt at penetration is quite sufficient for the law". In *Halsbury's Statutes of England and Wales*, it is stated that even the slightest degree of penetration is sufficient to prove sexual intercourse. It is violation, with violence, of the private person of a woman, an outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order."²

However, the aforesaid provisions are of no help if relevant evidences are not presented/proved in a court of law. It is easy to level a charge of rape against a person but difficult to prove. The usual absence of eye witness due to the nature of this crime makes it imperative for the police and the prosecution to rely upon circumstantial evidence in their efforts to nab the guilty. Both the victim and the culprit carry important evidences. Scientific evidence also becomes important here. Examination of the victim is mandatory in case of a rape therefore, it should be carried out at the earliest.

Section 53 of the Code of Criminal Procedure, 1973, lays down that:

1. When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting, at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and -under his direction, to make such all examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.
2. Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

Similarly, Section 164 A of the Criminal Procedure Code,³ lays down conditions for the medical examination of the victim of rape. They are as follows.

1. Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.
2. The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:- (i) the name and address of the woman and of the person by whom she was brought; (ii) the age of the woman; (iii) the description of material taken from the person of the woman for DNA profiling; (iv) marks of injury, if any, on the person of the woman; (v) general mental condition of the woman; and (vi) other material particulars in reasonable detail.

The report shall state precisely the reasons for each conclusion arrived at.
4. The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.
5. The exact time of commencement and completion of the examination shall also be noted in the report.
6. The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.
7. Nothing in this section shall be construed as rendering lawful any examination without the consent of the

woman or of any person competent to give such consent on her behalf.

Explanation- For the purposes of this section, “examination” and “registered medical practitioner” shall have the same meanings as in section 53.’

Further, Section 53- A of the Code of Criminal Procedure⁴ provides that it is mandatory to also examine the person accused of rape. Section 53-A of the Code of Criminal Procedure lays down that:

1. When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.
2. The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:- (i) the name and address of the accused and of the person by whom he was brought; (ii) the age of the accused; (iii) marks of injury, if any, on the person of the accused; (iv) the description of material taken from the person of the accused for DNA profiling, and (v) other material particulars in reasonable detail.
3. The report shall state precisely the reasons for each conclusion arrived at.
4. The exact time of commencement and completion of the examination shall also be noted in the report.
5. The registered medical practitioner shall, without

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Collection of medical evidence and its purpose (Table 1)

Evidence	Collection method	Purpose
Hair	Head and pubic hair combed or cut to examine for assailant's semen, saliva and hair, and fibers and debris	May identify assailant; provides strong corroboration that individual was at the crime scene; may help in identifying the body from which the hair came
Blood	Blood drawn for drug and alcohol analysis	May indicate narcosis and unwillingness
Urine	Urine taken for drug and alcohol analysis	May indicate narcosis and unwillingness
Semen and saliva	Skin swabbed for assailant's semen and saliva; mouth, vagina and anus swabbed for assailant's semen	May identify assailant; May indicate recent sexual contact; May indicate penetration
Extra-genital injury	Marks documented on the body such as bruises, lacerations and bite marks; photographs may be taken	May indicate use of force, resistance, and the circumstances of assault
Ano-genital injury	Injuries documented to areas such as the labia, clitoris, hymen, perineum and rectum; photographs may be taken	May indicate use of force and penetration
Emotional presentation	Emotional state observed and documented	May indicate recent victimization
Clothing	Clothing worn at the time of the assault collected and examined for tears, assailant's semen, saliva, blood and hair, and fibers and soil	May indicate use of force, identify assailant and link victim to crime scene or the assailant to the victim
Foreign debris	Foreign debris collected from pubic hair, under fingernails, vagina, rectum and clothing	May link victim to crime scene and identify the crime scene
Fingernail scrapings	Fingernail scrapings collected for traces of assailant's skin, blood and hair, and fibers	May identify assailant, indicate resistance and link assailant to victim

delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

If Medical examination is carried out at the earliest, then in cases of rape following are sources of medical evidence:

Signs of narcosis; must be rapidly looked for in cases she alleges administration of narcotic; her gait, pupils, manner of speech are noticed, chemical analysis of her blood and urine is done to detect the narcotic.

Signs of general violence-

- a. The victim's clothes may show tears and loss buttons;
 - b. The victim's hair may show disarrangement;
 - c. The victim's body may show nail abrasions and bruises around her mouth (to prevent her from shouting), on her wrists (to prevent her from resisting) and on the inner aspect of her thighs (to force them apart). The victim should have done all in her power to prevent the act-taking place.
3. Signs of local violence:
- a. Abrasions or bruises of the vulva caused by the assailant's fingers;

- b. Tears of the hymen (in virgin woman);
- c. Assailant's loose hair may be found on the victim's genitalia forming good evidence against him

4. Seminal stains examination: Semen may be present on the victim's clothing, on her pubic hair or inside her vagina (swabs must be taken).
5. Time of ejaculation: Vaginal secretion is examined under microscope. In the living, the body reaction tends to cleanse the vagina of foreign proteins, and as a result the spermatozoa undergo changes within the vagina. Motility is maintained for 1-6 hours after ejaculation into the vagina. Few motile sperms will be seen after about 6 hours. After motility has stop, spermatozoa remain intact for about 48 hours then separates into heads and tails. Identifiable portions of spermatozoa can be seen for up to 4 days. In rape murder, identifiable spermatozoa or portions of spermatozoa may be found for many days or weeks after ejaculation.
6. Examination for venereal diseases and tests for pregnancy.
7. Finger nail scrapings from her may be of value, if the woman alleges she has scratched her assailant.

JUDICIAL RESPONSE

There are many challenges in proving a case of rape in

India. Rape being a criminal offence, a proof beyond reasonable doubt is necessary before establishing guilt. In many instances, the offence is committed in the absence of any eyewitness. Owing to various reasons even other corroborative evidence is either lacking or absent. As a result, in many rape trials the court is in a dilemma. It is often caught between the testimony of the alleged victim and the suspect. The court, therefore, shoulders a great responsibility while trying an accused on charges of rape and must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the victim, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.⁵ In *Om Prakash v. State of Uttar Pradesh*⁶, the Supreme Court observed “It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor.” In theory, it is legally relevant but not essential. However, in practice, judges and the police give significant weight to forensic evidence, and it can influence whether a conviction is secured.

Medical examination of victim/accused mainly focuses upon physical examination. It tends to determine whether there was any physical assault, injury on private parts, presence of spermatozoa and smegma respectively, seminal stains on clothes etc. In majority of cases, the court looks for the presence of any form of physical violence on the victim to corroborate the allegation of rape. Injuries found on the victim as well as that of accused due to resistance offered may suggest that it was un-consensual rape. The Indian penal law on rape still retains the sub-section “against her will” in its legal definition under Section 375 of the Penal Code. The term “against her will” usually places the burden on the rape victim to show evidence of physical violence that could be considered as an act against her will. The injury on the person of the victim, especially her private parts, has corroborative value. In case no injuries are found on the victim’s private parts then it is considered that no rape was committed upon her or that the entire prosecution story is false. In *Balwant Singh v. State of Punjab*⁷, the

Court observed that, a victim is expected to offer resistance causing certain injuries on her body but it cannot be laid down as a rule that whenever resistance is offered, there must be some injuries. Thus, where a girl of about 19 years was raped by four persons, marks of violence on her body cannot be expected. If a victim is married and a grown up then in such circumstances, the absence of injuries on her private parts is not of much significance.⁸ The lack of semen stains on the undergarments is no basis to presume innocence of a rape accused. In case of a pre-planned assault on a woman, if the accused does not ejaculate or uses a condom, there would be no semen marks on his or the victim’s undergarments. Thus, partial penetration of the penis within the *Labia majora* of the vulva or pudendum with or without ejaculation of semen or even an attempt at penetration is quite sufficient for the purposes of the law. It is quite possible to commit the offence of rape without producing any injury to the genitals or leaving any seminal stains.⁹ In *Dalchand v. State*, it was held that the absence of injuries on the accused and particularly on the penis cannot be the sole ground for discarding the prosecution evidence.¹⁰ In the case of *Bidhia alias Bidhi Chand v. State of Himachal Pradesh*¹¹, the court considered the medical evidence and upheld conviction. In the medical report, it was found that there were bruises on the breasts and multiple abrasions on the left breasts and they were red in colour. External genitalia were normal; hymen was ruptured with no bleeding and there was no discharge from vagina and no laceration of vagina. Semen was found on the slide of vaginal smear and according to the doctor, the duration of injuries was six to twenty four hours. The doctor also said that she was not used for sexual intercourse since the vagina allowed two fingers with difficulty and that rupture of hymen was due to rape. The doctor who examined the victim found blood marks on her clothes and vulva and a tear mark on the perineum which bled on touch. The hymen was torn. Moreover, there were blood stains over her clothes and a tear on the perineum.

However, the Delhi High Court in *Mohd. Habib v State*¹², allowed a accused to go scot-free merely because there were no marks of injury on his penis, which the High Court presumed was an indication of no resistance. The

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most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the High Court. Even the eye-witnesses could not sway the High Court's judgment.

In *Radhu v. State of Madhya Pradesh*¹³, which succinctly laid down the applicable principles thus: It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a 'rape', if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case."

As already mentioned, the absence of injuries does not necessarily mean that the woman was a willing partner. Owing to many reasons, a victim may not resist the accused and in that event, the chance of a physical attack by the accused is reduced. When victims are taken by surprise they may be too scared to resist. More importantly, in many instances, the rapist is an immediate family member, a close relative or a friend. Several cases

are actually incest and many more are statutory rapes where the victims are under the age of sixteen years. Therefore, under such situations it is very difficult to expect a accused to show evidence of resistance or any other physical violence.

In *Mahesh Kumar Bheru Lal Chawada v. State of Madhya Pradesh*, the victim's clothes were sent to a chemical examiner and stains of semen were found over the same. Merely because semen stains were found, in absence of specific circumstances showing sexual intercourse, the conviction cannot be sustained.

The identification of hair and seminal stains is frequently of great value in medico-legal practices. One of the primary aims of the forensic laboratory in such cases is to sample and examine smears or other biological material taken from the assailant or the victim or stains found on cloths or linen or any other evidence concerning the assault for the presence of semen, with the potential to link them.¹⁴ In *Maghar Singh v. State of Punjab*¹⁵, identification of the accused was made on the basis of scientific examination of the hair found in the weapon of offence which was accepted by the court. The court in *Mohanan Kani v. State of Kerala*¹⁶, had considered the evidentiary value of the report based on comparison of the hair and held that the scientific evidence was reliable. Therefore, presence of pubic hair of the respondent on the private parts of the deceased is definitely a satisfactory test to conclude that it was the respondent who committed the rape. Similarly, In *Priyadarshini Mattoo* case, the apex Court observed that the court cannot substitute its own opinion for that of an expert, more particularly in a science such as DNA profiling which is a recent development. Thus, the court accepts the identification of accused on the basis of the DNA report of the semen stains on the swabs and slides and the underwear of the deceased and the blood samples of the appellant.¹⁷

Limitations of Medical Examination

Delay in medical examination is the greatest setback to the possibility of establishing a case of rape. Semen and blood traces on clothes can be found only when the clothes are submitted to the examiner in the same condition they were in after the rape. If washed or spoiled, they are left

with no evidentiary value. Spermatozoa can be detected only within one and a half week while semen can be appropriately tested within just twenty four hours. Sometimes even their presence cannot constitute rape.

This uncertain nature of medical examination has prevented it from being a solution to numerous pending rape cases. Medical examination is a mandatory requirement since the enactment of the amended Code of Criminal Procedures in the year 1973, but the time taken by the victim to reach the doctor poses a hindrance. At the same time, the attitude of the Indian police with regard to proper compliance to medical examination of the rape victim is not satisfactory. The police is usually not serious in a rape case and provide full opportunity to the accused persons to tamper with the prime witness. In *Pramod Kumar and Ors. v. State*¹⁸, the hon'ble court observed that there is no doubt that there is no medical evidence in this case to corroborate the oral testimony of the victim, but the valuable evidence was deliberately washed out and the police refused to register an FIR and did not carry out any investigation. All scratches and minor injuries heal in six weeks time. Since the victim was a married woman, there would have been no other evidence available. Being married, she was used to intercourse and the only evidence which should have been available would have been her resistance which police did not collect and preserve.

CONCLUSION

Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Thus, it is hard to establish the crime by depending only on medical evidence. Whether the rape has occurred or not is a legal conclusion, not only a medical one. Therefore, the value of medical evidence in the case of rape is only corroborative. Medical examination is reliable only if it is carried out within twenty four hours of the incident, which is not the case in majority of such incidents. The delay of victim to reach doctor has posed the hindrance to explore medical evidence. At the same time attitude of Indian police with regard to proper statutory compliance of medical examination of rape victim is not satisfactory.

Thus, it may be concluded that if the victim of rape approaches to a doctor without any undue delay and police properly complies the statutory requirement of medical examination of rape victim then medical evidence can play vital role in procuring justice.

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