

Relevance of Medical Finding in Rape Cases Post 2013 Amendment of the Indian Penal Code

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Abstract

Although corroborative in nature, medical evidence plays a very crucial role in rape cases. The glaring inconsistency between direct evidence and medical evidence is considered as defect in the prosecution case. The paper studied the implications of medical findings in two phases – Prior to 2013 amendment and Post-Amendment. Prior to the amendment, rape was defined as an act of sexual intercourse between man and woman without the consent of latter. The law has been amended to include penetrative as well as non-penetrative rape, consisting of sixteen different types of acts. Therefore, the focus of medical examination was to determine penetration by mainly assessing the private organ of victim, tracking seminal fluid and injuries. However, with the broadening of the definition of rape, it is important to make necessary changes for tracing medico-legal aspects of certain findings. Certain medical factors which were important no longer carry the same weightage such as capacity of the accused to cohabit as penetration is not required for the commission of an offence. On the other hand, certain factors which were not very important may play decisive today such as saliva of the accused or traces of object found in the private part of victim. The paper highlights various medical findings relating to physical aspect of rape and its legal implications. It is divided into three sections. The first section analyses the medico-legal aspects of three important findings namely; condition of private part of victim, presence of certain fluid, and recording of injury mark. The second section discusses the impact of amendment on the evidentiary value of certain medical findings such as presence of seminal discharge, saliva, traces of object and evidence suggesting manipulation of body. Finally, the paper makes certain recommendations for better application of medical evidence.

Keywords: Rape Law in India, Medical Evidence, Evidence in Rape Cases, Amendment in Rape Law, Medico-legal aspects of rape, Evidentiary Value of Medical Opinion

1. Introduction

The findings of a medical professional, being an expert evidence, is advisory or recommendatory in nature². Therefore, it need not be adduced in every case if direct evidence like oral testimony of eye witness is sufficient to decide a matter. In other words, medical opinion cannot override the statement of eyewitness³. Nevertheless, medical evidence plays a very important role in cases like rape due to non-availability of witness among

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² Indian Evidence Act (1872), s. 45

³ Nagindra Bala vs. Sunil Chandra, AIR 1960 SC 706; Solanki vs. State of Gujarat, AIR 1983 SC 484

other things. Moreover, even if a matter can be decided by non-medical substantive evidence, it is the general practice of court to corroborate it with medical opinion. The glaring inconsistency between direct evidence and medical evidence is considered as defect in the prosecution case⁴. In fact, it is difficult to imagine rape case without medical professional appearing in the trial. Some of the issues which are generally addressed by medical professionals are: Whether rape took place? Who committed the rape? How many accused persons were involved? What kind of injuries were present in body of the victim? Whether the rape was penetrative or non-penetrative? Whether victim was virgin or habituated to sexual intercourse? Whether it was single assault or continuous act? In the recent past, scholars and judges have even tried to explore the option of imposing conviction predominantly on the basis of medical evidence even if the victim⁵ or witness turns hostile⁶.

Prior to the 2013 amendment [Hereinafter the amendment] of the Indian Penal Code [IPC], rape was an act of sexual intercourse between man and woman without the consent of latter⁷. Thus, only penetration (penile-vaginal) was considered as rape⁸. Now, rape may be either penetrative or non-penetrative, and as many as sixteen types of conducts qualify for the commission of an offence⁹. Consequently, the primary objective of medical examination was to find out whether sexual intercourse took place as rape was only penile-vaginal but with the broadening of the definition, we have to ponder over the necessary changes to be made in the protocol of medical examination and its implications for tracing evidences suggesting rape.

This paper highlights various medical findings relating to physical aspect of rape and its legal implications. It doesn't cover other ingredients of the offence of rape including determination of consent. The paper has been

⁴ Piara Singh & Ors. vs. State of Punjab, AIR 1977 SC 2274

⁵ Hemudan Nanbha Gadhi vs State of Gujarat, 2018 SCC OnLine SC 1688

⁶ Mohd. Iqbal and Anr. vs State of Jharkhand 2013 SCC OnLine SC 654

⁷ "A man is said to commit "rape" who, except case hereinafter excepted, has sexual intercourse with a woman in circumstances falling under any of the six following descriptions..."

⁸ Slightest penetration was sufficient [Explanation of Sec. 375]; Aman Kumar vs State of Haryana, 2004 Cri LJ 1399 (SC); Madan Gopal Kakkad vs Naval Dubey, 1992 (2) Crimes 168 (SC); Bheru Lal vs State of Rajasthan, 2004 Cri LJ 1677 (Raj)

⁹ Indian Penal Code (1860), s. 375 [after 2013 criminal law amendment]: The following conducts qualify for rape: i) penile-vaginal ii) penile-oral iii) penile-urethral iv) penile-anal v) insertion of object into vagina vi) insertion of object into urethra vii) insertion of object into anus viii) insertion of any part of body other than penis into vagina ix) insertion of any part of body other than penis into urethra x) insertion of any part of body other than penis into anus xi) manipulation of any part of the body so as to cause penetration into vagina xii) manipulation of any part of the body so as to cause penetration into urethra xiii) manipulation of any part of the body so as to cause penetration into anus xiv) application of mouth to vagina xv) application of mouth to anus and xvi) application of mouth to urethra.

divided into three sections. The first section analyses the medico-legal aspects of typical medical findings in rape cases. The second section proposes the evidentiary value of certain medical findings in the light of 2013 amendment. Finally, the paper makes certain recommendations.

2. Medical Findings and Their Implications Prior to 2013 Amendment

Apart from noting the general details such as medical history, height, weight, age of victim and condition of clothes, the medical examination was mainly about analysis of the condition of private part of victim, presence of certain fluid, and recording of injury mark.

i. Condition of Private Organ

A very important and corroborative medical factor which gives a strong evidence of rape is the condition of the hymen and vagina after the alleged act of forceful intercourse.

Hymen: Rupture or tearing of hymen gives a very reliable clue of intercourse. The fact that the woman was bleeding and hymen was torn gives a clear evidence of penetration¹⁰. Tearing hymen and laceration on the posterior vaginal wall speaks of partial penetration¹¹. In *Akash vs the State of Maharashtra*¹², the doctor having found that the hymen was ruptured having 0.5 x 0.5 fresh abrasion. (by fresh, it was meant to be within 24 hours), opined that the said injury is possible due to forcible intercourse. Special attention is required in case of minor victim. In cases of rape on very young children, the hymen is deeply situated and the vagina is less capacious. As a result, it is impossible for penetration of the penis to take place. However, in cases of great violence, the penis may be introduced thereby causing a rupture of the vaginal vault and associated visceral injuries¹³. Further penetration forces the penis backwards (symphysis pubis prevents its anterior movement) and the hymen is torn posteriorly¹⁴. The redness of hymen coupled with laceration and congestion is also indicative of rape. Where there is digital penetration of the infant vagina, there is frequently some scratching, laceration or bruising of the labia, hymen and fourchette and injury to the cervix¹⁵. In certain cases the status of hymen is not relevant as it may get ruptured due to various factors other than sexual

¹⁰ *Om Prakash vs State*, 1987 (1) Crimes 645 (Del)

¹¹ *Datta vs State of Maharashtra* (2013) 14 SCC 588

¹² 2018 SCC OnLine Bom 5424

¹³ D. K. Parikh, *Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology* (CBS Distributors, New Delhi, 6th edn., 1999).

¹⁴ G. Biswas, *Review of forensic medicine and toxicology including clinical and pathology aspects* (Jaypee Brother Medical (P), New Delhi, 4th edn., 2015). New Delhi:

¹⁵ K. Reddy and O. Murty, *Essentials of Forensic Medicine* (Jaypee Brother Medical (P), New Delhi, 34th ed., 2017).

intercourse such as cycling, exercise, riding, masturbation, victim habituated to intercourse or victim being a married woman.

Vagina: Next to hymen, the condition of vagina provides important clues. For the purpose of rape, vagina includes labia majora¹⁶. Labia majora is the first to be encountered by the male organ, which is subjected to blunt forceful blow, depending on the amount of force applied¹⁷. The medical examiner looks for redness and congestion which may be accompanied with inflammation and bruising of labia¹⁸. For example, in *Nirmal Kumar vs the State of Haryana*¹⁹, congestion and inflammation of labia majora and labia minora and redness on the inner side of the labia minora and vaginal mucosa suggested a clear case of penetration of penis. In *Ganesha vs State of Madhya Pradesh*²⁰, the doctor found swelling over the labia majora of the prosecutrix and pain between thighs on separation of legs was complained of. Also, a second degree perineal tear was found along with lacerated hymen. The doctor thus opined that all signs of vaginal penetration were present and that the accused had sexual intercourse with the victim without her consent. Similarly, torn vagina and hymen along with profuse bleeding from vagina was an obvious case of forceful intercourse on a minor victim²¹. Until 2013, the two-finger test was widely in practice amongst the doctors who examined the rape victims. This test was broadly conducted for two reasons. Firstly, to determine the virginity of the rape victim. If the hymen was found ruptured, the doctors would opine that the victim is not a virgin. However, we see that it is not so. Secondly, as per the practitioners of this test, if two fingers are easily admissible in the vagina of the victim, it was an indication that the victim was habitual to sexual intercourse. In *Lilu vs State of Haryana*²², the Supreme Court struck down this test on the grounds that it is unscientific²³, violates physical, mental integrity²⁴ and privacy of victim²⁵, and is humiliating and traumatising²⁶ for the victim.

¹⁶ Explanation 1 of Sec. 375, IPC

¹⁷ *Madan Gopal Kakkad vs Naval Dubey*, 1992 (2) Crimes 168 (SC); *Aman Kumar vs State of Haryana*, 2004 Cri LJ 1399 (SC).

¹⁸ *Das Bernard vs State*, 1974 Cri LJ 1098 (Goa)

¹⁹ 2002 Cri LJ 3352 (P&H)]

²⁰ 2006 Cri LJ 3604 (MP)

²¹ *Rakesh Kumar vs State of Punjab*, 2002 Cri LJ 2249 (P&H)

²² (2013) 14 SCC 643

²³ *Supra* Note 14 [Hymen is fleshy tissue situated just at the vaginal opening. Hymen may thin and stretchy or thick and rigid and in some cases it may even be absent. Moreover, some women are born without hymen or may get her hymen removed. Hymen can tear due to other factors (such as dancing, stretching, horse riding, running, jumping, masturbation etc.) as well apart from sexual intercourse. For all these reasons, the test is unscientific and unreliable as it presumes that in a case where a virgin has been raped, a one-time sexual intercourse will impart new tears to the hymen]

ii. Presence of Certain Fluid

Generally, where there is a forceful intercourse with the victim, traces of sperms are found in the vaginal swabs during medical examination. The nature of the discharge of woman is very important and such discharge must be other than that of menstruation or on account of abortion²⁷. The blood oozing out from the vagina of the victim and blood stains on her undergarments are taken as signs of forceful penetration²⁸. It is not necessary that in every rape case where there is a penetration, semen ought to be present in the vagina of victim²⁹. Further, if semen could not be detected in the vaginal swab or the clothes of the minor victim, it would not mean that there was no penetration from the male sex organ. It may be that before the accused ejaculated, the shrieks of the minor girl made him withdraw his penis from the vagina³⁰. Seminal stains may also be found on other parts of the body of the victim especially on the inner aspects of thighs or the labia³¹.

iii. Presence/Absence of Injury

Generally, injuries are found on the body of the victim including strangulation mark³², bite marks³³, injuries in private parts³⁴, abrasions on breast³⁵, scratches due to struggle³⁶, injuries on arms, thighs, face and neck³⁷,

²⁴ Id [It is argued that the test violates the victim's right to physical and mental integrity and that they are entitled to have the medical procedures conducted in a way that respects their consent]

²⁵ Two Finger Test – Unscientific, non-reliable, available at <http://mattersindia.com/2015/06/two-finger-test-unscientific-non-reliable/> (Visited on May 2, 2019) [It is argued by the opponents that a woman's past sexual experience should be irrelevant to the judiciary while deciding the case and probing into the sex life of a woman is a grave violation of her right to privacy]

²⁶ The incidence of rape is an attack on the honour and dignity of the victim. The test degrades and humiliates the victim (especially if the victim is a minor) by forcing her to undergo another penetrative act causing further trauma [Amit vs State of U.P.,(2012) 4 SCC 107]

²⁷ Siddharth Sawant vs State of Maharashtra, 2000 (3) Mah LJ 46 (Bom); Partap Mishra vs State of Orissa, AIR 1977 SC 1307; Manoj Giri vs State of Chhattisgarh, (2013) 5 SCC 798 [Five accused were convicted as the forensic reports of the clothes showed semen spots].

²⁸ (2014) 2 SCC 592

²⁹ Narayanamma vs State, 1994 (5) SCC 728

³⁰ Saleem Qureshi vs State [2014 SCC OnLine Del 1776]

³¹ Radhakrishna Nagesh Vs State of Andhra Pradesh, 2012 SCC Online SC 1048

³² State of U.P. Munesh, 2012 SCC Online SC 860

³³ Mukesh vs State; Krishan Vs State of Haryana, (2014) 13 SCC 574

³⁴ Kanhaiyalal Vs State of Rajasthan, 2001 Cri LJ 2325 (Raj)

³⁵ Balwant Singh Vs State of Punjab, AIR 1987 SC 1080

³⁶ Vikram Singh vs State of H.P., 2018 SCC OnLine HP 356

³⁷ R. Jhala, R and V. Raju, MEDICAL JURISPRUDENCE (Eastern Book Company, Lucknow, 6th edn. 1997).

tear of frenulum or nail scratches on the penis³⁸ etc. A huge weightage may be attached to these kinds of injuries in non-penetrative rape and rape of married woman or victim habituated to sexual intercourse. However, there may be cases of rape even without a single injury such as submission due to fear of injury³⁹; force used to resist is insufficient to cause injury (as in the case of a minor victim)⁴⁰; bruises may not be noticed after 48 hours following the assault (delay in conducting medical examination)⁴¹; delay in reporting the incident results in minor injuries being healed or fade away⁴². Moreover, special weightage may be given to absence of injury in rape cases of minor and passive submission⁴³. In case of a child victim, there may be no signs or very few signs of general violence as the child may not have any idea as to the nature of the act and is unable to offer any resistance. Passive submission takes place when the accused person/s overpower the victim or put her in some fear, thereby causing the victim to comply with the commands of the accused. Thus, absence of injury is a very crucial piece of evidence in gang rape as well.

While examining, special attention should be given to any complaint of body aches in the victim's body. For example, in the case of State of H.P. vs Sanjay Kumar⁴⁴, the minor victim complained of continuous stomach ache. On being taken to a gynaecologist for treatment, the doctor opined that the victim had been sexually assaulted forcibly about 2-3 years ago since her hymen was ruptured and her external and internal sphincters were also torn. Similarly, in Balwant Singh vs State of Punjab⁴⁵, where the victim complained of pain in both legs and back of neck, it was held that these are indications of first sexual intercourse of a female. In addition to this, the gait of the victim should be carefully observed⁴⁶.

These apart, presence of venereal disease such as syphilis and gonorrhoea may be indicative of sexual intercourse. However, the tests that are taken when the victim goes to the hospital (after getting raped) cannot tell if the victim got venereal disease from the rapist. It only tells whether the victim had the disease before she got raped. In order to know whether the disease was contracted after rape, the victim has to go to the hospital and

³⁸ Bantu vs State of M.P., (2001) 9 SCC 615

³⁹ Radhakrishna Nagesh vs State of Andhra Pradesh, (2013) 11 SCC 688

⁴⁰ Vinod Kumar Vs State of M.P., 1987 Cri LJ 1541.

⁴¹ Supra Note 14

⁴² id

⁴³ State of U.P. vs Chhotey Lal, (2011) 2 SCC 550 [Where circumstances compel the victim to submit, then such act would not discredit her evidence].

⁴⁴ (2017) 2 Supreme Court Cases 51 : 2016 SCC OnLine SC 1473

⁴⁵ AIR 1987 SC 1080

⁴⁶ D. Hicks, "Rape Sexual Assault. Obstetrics & Gynaecology" Annual New York, Appleton-Century Croft, 1978, 447-465.

get those tests repeated. A rapist is likely to have disease, so it's important to follow up on the lab tests.

3. Implications of 2013 Amendment on Certain Medical Findings

The medical findings relating to tracking penetration and presence of fluid and injury as discussed above are relevant after the amendment as well. These apart, certain factors which were not very important could be very crucial under the present law, which may be classified under the following five headings:

3.1. Seminal Discharge in Parts of Body other than Vagina or Urethra

As per the present law, apart from the private organs, examination of other parts of body including mouth and anus are equally important. In cases of sodomy, anal findings give strong proof of sexual assault. The detection of spermatozoa around the anus and rectum must be carefully evaluated as these areas may be contaminated with semen during the vaginal intercourse⁴⁷.

In the context, clause (c) of Section 375 are relevant. Clause (c) states "*A man is said to commit rape if he... manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her do so with him or any other person*".

The phrase "anus or any part of the body of such woman" is important. There are two implications of this clause. First, unlike the old law, anal sex and penetration in any other part of the body such as fellatio [penetration into mouth] is considered as rape under the Amendment. Second, certain types of manipulation which is not penetration may also qualify for rape. There may be two types of scenarios in this regard:

First Scenario: Seminal fluid found in thigh, stomach, face and back portion of victim may indicate manipulation of body so as to cause penetration. The principle of proximity may be applied. There must be a reasonable nexus between the manipulation in question and penetration. It should not be too remote. In other words, the situation would be such that if the act of manipulation would have continued, it would have ended in penetration into the vagina, urethra, anus or any other part of the body. The seminal fluid in the part of the body mentioned above seems to fulfil the requirement of the nature of manipulation required in Clause (c) as there

⁴⁷ W. F. Enos and J. C. Beyer, "Spermatozoa in the Anal Canal and Rectum and in the Oral Cavity of Female Rape Victims", *Journal of Forensic Sciences*, 1978, 23(1), 231-233; *Rajesh vs State of M.P.*, 2016 SCC OnLine SC 1135 [The findings recorded that there was reddish discolouration internally along with some yellowish white deposition along with faecal matter which was suggestive of repeated sexual assault]

appear to be a direct nexus between manipulation and penetration. Thus, the presence of seminal fluid in any of these parts of the body itself may be considered as commission of rape if other conditions⁴⁸ are fulfilled unlike the old law where it would have been considered as preparation or attempt to commit rape or merely outraging of modesty.

Second Scenario: Seminal fluid found in any other part of the body – In this scenario, it is difficult to suggest rape or any nexus between manipulation and penetration. However, still it would be very crucial piece of evidence for corroborating other evidences found in a case suggesting rape or may be considered for attempt to commit rape.

Consider the case of *Madan Lal v. State of Jammu and Kashmir*⁴⁹, where teacher was charged for committing rape of minor student. The entire case centred around the following statement given by the prosecutrix in the cross examination: “first time when the accused entered his penis into her vagina, it went inside about one inch. So much, the witness exhibited her finger which comes to quarter of inch. The accused continued thrusting his penis some time into her vagina and sometime pulled it out. When the accused after having stood up his penis again started rubbing it against her vagina, which he conducted about two minutes, even then the penis might have gone in quarter to inch”. Further, the victim also mentioned that “something like hot water oozed out from his penis”. As per the medical opinion, there was no mark of violence on private part or any other part of the body of victim. The doctor opined definite answer could not be given regarding the attempt to sexual intercourse as hymen was intact and there was absence of sperm in vagina. However, semen was found in the salwar [lower garment] of the victim. The defence argued that the statement of the prosecutrix is not reliable because penetration into the vagina to a depth of quarter of an inch or one inch would led to rupture of hymen given that she was only 13 years old. The Sessions Court acquitted but the High Court convicted the accused for attempt to commit rape⁵⁰. The Supreme upheld the judgement of the High Court. The statement of the prosecutrix was corroborated by the statement of her mother narrated to her by the victim after the incident and statements of her classmates suggesting absence of accused and victim during certain hours.

Applying the findings of the appellate courts, today the accused will be simply convicted for commission of rape u/s 376 rather than mere attempt. The argument of the medical examiner which suggested that the hymen was intact is not relevant any more if other facts stated in the case are proved. It will be a classic case of commission of rape for manipulation of

⁴⁸ E.g; Absence of consent

⁴⁹ 1998 Cr LJ 667 (SC)

⁵⁰ Sec. 376 was read with Sec. 511

body under Clause (c) of Section 375 even assuming that the accused didn't penetrate and merely rubbed his penis in the private part of the victim.

3.2. Saliva

It may be found in private part or region near the private part of victim. The medical examination should be conducted as soon as possible otherwise it would be difficult to trace saliva. It may be classified into the following two scenarios:

First Scenario: The presence of saliva in the private part of the victim itself is sufficient to consider commission of an offence. In this regard, Clause (d) of Section 375 is relevant. It provides "*A man is said to commit rape if he...applies his mouth to the vagina, anus, urethra of a woman or makes her do so with him or any other person*".

Second Scenario: The presence of saliva near the region of private part of the victim could be considered as corroborative factor. Clause (c) may be applied in this scenario.

3.3. Traces of object in the private part of victim

Clause (b) of Section 375 states "*A man is said to commit rape if he...inserts, to any extent, any object...into vagina, urethra or anus of a woman or makes her do so with him or any other person*". Special emphasis to be provided if the traces are related to the materials which are used in sex toys or any other thing which may be used for the purpose of sexual pleasure or inflicting pain.

3.4. Evidence suggesting non-penile penetration including penetration by any part of the body

Again, Clause (b) of Section 375 is relevant "*A man is said to commit rape if he...inserts, to any extent, ... any part of the body, not being the penis, into vagina, urethra or anus of a woman or makes her do so with him or any other person*". Thus, sex by fingering may be considered as rape. So, mark of finger nail in the private part may be sufficient for constituting rape.

3.5. Evidence suggesting manipulation of body

Injury marks such as abrasion or contusion in arm or back of the victim which may imply that some sort of force was used for groping etc. are relevant under Clause (c). It may not conclusively suggest rape but due weightage shall be given for corroboration.

4. Recommendation and Conclusion

The nature of evidence may be broadly classified into substantive and corroborative. Substantive evidence includes the statement of

prosecutrix or eye witness. Corroborative evidence may be further classified into medical findings and non-medical findings. In fact, some of the medical factors which were important no longer carry the same weightage such as capacity of the accused to cohabit as penetration is not required for the commission of an offence. On the other hand, certain factors which were not very important often play decisive role such as saliva of the accused or traces of object found in the private part of victim. The paper makes the following recommendations to remain in tune with the present law on rape:

1. Shifting of focus from mere examination of private organ to other evidence

The focus of the medical findings, as discussed above, has been mainly to assess the possibility of sexual intercourse by examining the private parts of the victim, exploring typical injuries such as abrasion in certain part of the body of victim, and looking for seminal fluid. There is no doubt that these are important findings in cases of penetrative rape and other cases even after the amendment, especially if the victim complains of penile-vaginal intercourse. However, since various other types of conducts are included in the definition, it becomes imperative to adopt necessary changes in the examination process for tracing new types of findings as mentioned above under the section of “Implication of 2013 Amendment on Certain Medical Findings”

2. Emphasis on Non-Medical Corroborative Factors

Medical proof of insertion of penis/part of body/object or manipulation of body for causing penetration does not serve as a legal proof of rape because rape is a legal definition and not a medical diagnosis. Therefore, it is necessary for us to take an inter-disciplinary approach wherein medical evidences and non-medical evidences and should be read in consonance. This approach is more important in non-penetrative rape cases. Some of the non-medical factors which may be considered are act of accused prior to rape⁵¹, place of incident⁵², items recovered from the person

⁵¹ Acts done by the accused in order to prepare for the ultimate act (i.e. rape) serves as corroborative evidence. In the case of Radhakrishna Nagesh vs State of Andhra Pradesh (2013) 11 SCC 6888, where the accused bought bangles for the victim and lured her up to the storeroom, the acts were held to be in preparation of the incident of rape and that on facts, there was a direct link of the accused with the crime

⁵² Site plan plays an important role in corroborating the evidence of the prosecutrix as it reveals some signs of the incident. For example, where the victim was gang-raped in a wheat field, it was found that the crop was crushed and the same was in conformation with the site plan [Ramesh Kumar and Others vs State of Himachal Pradesh, 2013 SCC OnLine SC 623]

of the accused/place of incident⁵³, last-seen together⁵⁴, prompt lodging of FIR⁵⁵, state of victim⁵⁶ and subsequent conduct of the accused⁵⁷.

3. Standard of Medical Evidence

Medical opinion must prove the case beyond reasonable doubt⁵⁸ and should be subjected to the logic and objectivity of the judge⁵⁹. Where there is a conflict between the opinions of two experts, the Court should normally accept the evidence of the expert whose evidence is corroborated by direct evidence of the case which according to the court is reliable⁶⁰.

4. Medical Examination at the Earliest Possible Opportunity

The medical examination should be conducted at the earliest possible opportunity. The delay in examination would be fatal to the case of prosecutrix⁶¹ given that traces of saliva or object can make a huge difference in the outcome of a case. The law provides for conducting the examination within twenty four hours from the time of receiving the information relating to the commission of an offence⁶². The consent must be obtained of the victim or her guardian if she is under 12 years or unsound. A case usually commences with the lodging of an FIR⁶³, followed by an investigation, recording of statement by police⁶⁴ and Magistrate⁶⁵, and medical

⁵³ If any item(s) has been used to inflict injury on the victim/any belonging of the victim and the same is recovered from the accused without any valid justification, it would be counted as a corroborating factor favouring the case of the prosecutrix.

⁵⁴ Mahadeo S/O Kerba Maske Vs State of Maharashtra and Another (2013) 14 SCC 637

⁵⁵ The prosecution is expected to lodge an FIR as soon as possible after the incident and get the victim medically examined. A prompt FIR is generally indicative of the truthfulness of the prosecutrix. On the other hand, an inadequate delay without proper explanation weakened the case of the prosecution [Gopal Mahato vs State of Jharkhand, 2007 Cri LJ 464 (Jhr)]. However, delay may be condoned by the court if proper explanation is provided [State of U.P. vs Chhotey Lal (2011) 2 SCC 550]

⁵⁶ Victim's outward appearance may also corroborate her case: Torn clothes, traumatised mental state of the victim, attracting witnesses by raising alarm and procurement of broken bangles from the crime scene corroborates the prosecution [Srivalla Srinivasa Rao vs State of Andhra Pradesh, (2011) 8 SCC 113]

⁵⁷ E.g; the culprit's act of coolness showed no remorse. His act of washing the clothes of the deceased rape victim on the tap and taking care to hide things were all important factors which corroborated the prosecution case [Vasanat Sampat Dupare vs State of Maharashtra, 2017 SCC OnLine SC 524]

⁵⁸ Baburam vs. State of M.P. AIR 2002 SC 758

⁵⁹ State of Haryana vs. Bhagirath, AIR 1999 SC 2005

⁶⁰ Piara Singh & Ors. vs. State of Punjab, AIR 1977 SC 2274

⁶¹ See E.g; Rashid vs State of J&K [1991 (1) Crimes 675 (J&K).

⁶² The Code of Criminal Procedure (1973) s. 164A

⁶³ The Code of Criminal Procedure Act (1973) s. 154

⁶⁴ The police officer conducting investigation may orally examine any person who is acquainted with the facts and circumstances of the case. The person examined is bound to answer all questions truthfully except where the questions have a tendency of

examination of the victim. However, it is not necessary to follow the procedural steps in the chronology as mentioned; rather steps depend on expediency and urgency. Therefore, it is proposed that the first act of the investigative authority including police should be to take the victim for medical examination as soon as oral or written information is received and later on formality of writing FIR, examination of witness etc may take place.

exposing him to a criminal charge or a penalty. Any statement made during the examination may be recorded in writing by the police officer and in case where there are multiple persons being examined, the officer would have maintain a separate and true record of all the statements made. The 2013 amendment further provides that where there are cases of offences against women, the statement of the woman victim must be recorded by a woman police officer or any woman officer.

⁶⁵ The Code of Criminal Procedure Act (1973) s. 164