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Medical Examination of Victim of Rape: Section 164-A of The Code of Criminal Procedure, 1973

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ABSTRACT

The Purpose of this paper was to review the purpose and procedure of medical examination of victim of rape according to section 164A of the code of criminal procedure, 1973. The paper described the procedure of medical examination of rape victim and evidentiary value of that medical examination. On the behalf of this study, it's concluded that medical examination of rape victim is a greater value to prove the guilt of an accused, offence like Rape is heinous and horrible crime which left so many marks and spot on the society as well as on the mind, reputation and memories of the victim. On the behalf of this study, we can suggest that the medical examination o victim of rape is an essential procedure which can lead the medical evidences to establish the prosecution or corroborate the prosecution story.

INTRODUCTION

According to National Crime Record Bureaus crime report of 2016 total of 38497 rape cases were reported in 2016, which means over 105 rapes in one day i.e. almost four rapes in one hour and these are only the number of cases reported, rest remains a scary mystery. In order to ensure availability of proper evidence in rape cases it is now provided in section 164-A {Vide Cr.P.C. (Amendment)Act, 2005} for medical examination of the victim of rape. It is true that even before Section 164-A has been incorporated in the code, investigating agency used to send the rape victim, for medical examination. But Section 164-A has necessitated to streamline the said medical examination by making the details of such examination by a registered medical practitioner and making a statutory provision for examination within 24 hours of the report of such incident and making it incumbent on the medical practitioner to submit such report to the investigating officer and the investigating officer has the obligation to sent such report to the Magistrate as part of the report to be submitted while submitting charge sheet under section 173 of Cr.P.C. 1973 .

Section 164-A Medical examination of the victim of rape –

- 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.
- The registered medical practitioner, to whom such woman is sent shall, without delay, examine her person and person and prepare a report of his examination giving the following particulars, namely
    - The name and address of the woman and of the person by whom she was brought;
    - The age of the woman;
    - The description of material taken from the person of the woman for DNA profiling;
    - Marks of injury, if any, on the person of the woman;
    - General mental condition of the woman; and
    - Other material particulars in reasonable details.
- The report shall state precisely the reasons for each conclusion ar- rived at.
- 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.
- The exact time of commencement and completion of the examination shall also be noted in the report.
- The registered medical practitioner shall, without delay forward the report to the investigation 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.
- 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.

Objective of the Study

The objective is to study the Medical examination of Rape victim according to Section 164-A of Criminal procedure code, 1973.

Research Methodology

In the study the following research methodology is used:

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Research Design
To investigate the Medical Examination of Rape victim according to Section 164A of Criminal Procedure code, 1973 is a case study which was described the procedure and evidential value of Medical examination of Rape victim.

Data Collection
The required secondary data will be collected through published material i.e. books, pamphlets, articles, newspapers and reports etc.

DISCUSSION
Section 164-A , Cr.P.C. 1973 Says

(1) The woman against whom the offence of rape has been committed shall be sent for medical examination within 24 hours of receiving complaint.

(2) The medical examination shall be conducted with the consent of the victim or with the consent of a competent person on her behalf. In Samira Kohli vs. Dr. Prabha Manchanda and another, Supreme Court held that the person giving the consent must be competent to give consent and it must be voluntary and based on adequate information provided by the doctor , like nature of treatment , all the risk involved etc.

(3) Consent is the key to proceed for further examination, if the consent is not obtained, the examination shall not be deemed to be lawful .

Medico legal examination of accused, consent of accused is not required accused arrested in a rape case and his Medico legal Examination conducted, contention that consent of accused was not taken, therefore medico legal examination was of no consequence, contention not tenable held- Section 53 and 53A of Cr.P.C. permits the investigation Officer to arrest the accused and if he finds that some evidence could be made available from the body of the accused then he could get him medico-legally examined.

Non Production of Medical Evidence:-
The non-production of medical report is not fatal if the other evidence in the case is found believable. In the case before the Supreme Court of India, the complainant and her husband belonged to a backward com- munity and came from a remote area. The complainant even had taken bath and washed her clothes after rape. The Supreme Court held that the complainant and her husband came from a backward community and could not be expected to know that they should rush to the doctor for medical examination. The non-production of medical evidence was of no effect as other evidence was found reliable. The accused was convicted on charge of rape.

Age Related Evidences
According to section 375 clause sixth "*With or without her consent, when she is under **eighteen years** of age.*" And *Exception: -* "*Sexual intercourse by a man with his own wife, the wife not being under **fifteen years** of age, is not rape.*"But Supreme Court in Independent Thought vs. Union of India, held that sexual intercourse by a man with his wife who is below eighteen years of age is rape

Ossification Test-
The "Ossification Test" is relevant though solely by itself not conclusive the value to be given to such test depend on the facts of each case. The so-called "ossification test" refers to the radiographic (X-ray) examination of the bones of children and young people up to about the age of twenty, to assess their age by the appearance of ossification centers in the very young and the time of fusion of the epiphyses (separate centers of ossification at the ends of long bones and in parts of others) with the main body of the bone (metaphases). There is a general progression of such appearance and fusion, so that an approximate time- table can be constructed up to about the age of twenty.

The ossification test is comparatively a surer test, but certainly is not conclusive and a slight variation in that opinion is always possible. The only conclusive piece of evidence, as to the age of the girl, may be the birth certificate, but unfortunately, in this country such a document is not ordinarily available. The court has to base its conclusions upon all the facts and circumstances disclosed on examination of all the physical feathers of the person whose age is in question, in conjunction with such oral testimony as may be available.

A school certificate is not a conclusive evidence of the age of the prosecutrix and that the ossification test also is not sure test as to the age of the prosecutrix and it gives only an approximate age, which may vary by two years on either side. It was held that sometimes the medical evidence can even be ignored if there is any other reliable evidence contrary to that. In Delhi's case it was also observed that the medical opinion that the prosecutrix was below 16 years only gives approximation of the age. The ossification test provides much room for speculation. Although it is the best available test but is not a sure test. The opinion of the radiologist is not conclusive.

Where the opinion of the doctor was formed on judging by the teeth, appearance and voice, the court observed that a certificate based on it was worthless. The indication of age afforded by appearance of wisdom teeth is notoriously untrustworthy.

Failure of Ossification Test-
Having regard to the practical difficulties which attend the application of this test it cannot be said that ossification is an indispensable test for determining the age of the girl.[99] It is duty of the prosecution to elicit from the doctor the reason for the conclusion as to age. It is a serious lacuna if the prosecution does not do so. The court has also the same duty. The medical evidence has to be considered along with other evidence. If other evidence is reliable, but inconsistent with the med- ical evidence, the medical evidence would be rejected, if the medical evidence supports the conclusions drawn from other kinds of evidence, it is generally accepted. If the direct evidence is otherwise unreliable, medical evidence alone will not be sufficient to prove the case.

School certificate-
Certificate copies from school registers coupled with the affidavit of the father stating the date of birth and the statement of the girl herself about her own age, amounts to evidence under the Indian Evidence Act.

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The Head Master of the school, Umesh Narayan Singh, DW-2, stated in his evidence that Shiv Prakash Sharma was admitted to the school on 12.1.1972 in the sixth standard and his birth date was recorded as 22nd October, 1963. Even though one may assume that the Head Master of the school could have no personal knowledge regarding the correct date of birth of the student, the conclusion is inescapable that the student was admitted to the sixth standard on 12.1.1972. In so far as that part of the evidence is concerned, it is clearly based on personal knowledge of the Head Master because he himself had admitted the student to the sixth standard on 12.1.1972.

Medical-

The question of age of the prosecutors in the cases under sections 366 and 376 of the Indian Penal code is always of importance. It was particularly so in this case because according to the medical evidence the prosecutrix was found to have been used to sexual intercourse and the rupture of the hymen was old. The high Court acquitted the appellant for an offence under section 376 because the prosecutrix appeared to be a consenting party not only to the impugned act of sexual intercourse in question but even on earlier occasions, it was a fit case in which that court should have examined the question of her age more closely.

The prosecutrix herself and her parents deposed at the trial that her age was less than 16 years on the date of the occurrence. Their evidence is supported by the birth certificate. That apart, even according to the lady doctor PW-1, the clinical examination of the prosecutrix established that she was less than 16 years of the age on the date of occurrence. The birth certificate was not only supported by the oral testimony of Trilok Singh PW-6 and Gurdev kaur PW-7 but also by that the school leaving certificate. With a view to do complete justice, the Trial Court could have summoned the concerned official from the school to prove various entries in the school leaving certificate. From material on the record, we have come to unhesitating conclusion that the prosecutrix was less than 16 years of age when she was made a victim of the lust of the respondents in the manner deposed to by her against her will and without her consent.

Injuries on Prosecutrix (Victim)

The absence of injury marks of violation on the private parts or else- where on the person of the prosecutrix is of no consequence when the prosecutrix is minor and would be merely suggested want of violent resistance on the part of the prosecutrix.

Where serious violence was alleged to have been caused to the prosecutrix by the appellants, the injuries were not likely to have disap- peared before 2 or 3 days and the signs were bound to persist at least when she was examined by the doctor. The absence of injuries on the person of the appellants as also on the person of the prosecutrix is yet another factor to negative the allegation of rape and to show that the appellants had sexual intercourse with the prosecutrix with her tacit consent.

The prosecutrix being a strong woman resists the accused and in the process sustained abrasions on her lumber region as well as elbow joints. It is not possible to believe that woman would suffer such abra- sions while having the sexual intercourse with her husband. The pres- ence of abrasions on her elbow joints and the lumber region supply evidence of struggle during the act. The evidence of PW-1 Dr. Soni, also shows that there were teeth marks near the nipple of one of her breasts lending corroboration to her testimony that the accused had violated her person.

If there had been any forcible sexual intercourse, the victim must have some strong resistance being a grownup lady and in the process, some injuries would have been found on the vagina/private parts of the body or some other parts indicative of any such use of force and it would be too much to assume that there would have been no injuries whatsoever on the body, on this account. Though injuries on the body is not always a must or sine quo non to prove a charge of rape, having regard to the case of the prosecution that the victim had been subjected to brutal rape and forced sexual intercourse, this aspect of the matter can- not be completely lost sight of. The deceased was stated to be of about 26 years of age, when she is the sister of the wife of the appellant. It is not as though they were shown earlier to be inimical terms. Anything possible might have happened and the facts found proved do not irresistibly lead to the only conclusion of the guilty of the appellant in respects of an offence under section 376 of Indian Penal Code.

Injuries on Female Private Parts Medical Evidence:-

The hymen of the prosecutrix was intact. The labia majora/minora, was normal and clitoris was also normal. The doctor observed that it will still possible that she may have been subjected to sexual intercourse. In the cross examination, however, he admitted that he is not certain if the prosecutrix was subjected to sexual intercourse or not. He further ad- mitted that the normally of labia majora and labia minora is consistent with the fact of virginity. It is true that in certain cases hymen may be intact though a girl may be subjected to sexual intercourse. But where the labia majora are separated and flabby the labia minora coetaneous in appearance and separated, the fourchette torn the vagina roomy and enlarged, it is a sign of rape.

There was no seminal stain or blood stain on the private part of the victim. There was no external injury in the form of bruises, scratch marks, laceration or swelling anywhere over the monspubia, labia majora and perineum. Hymen was found absent. There was neither redness nor bleeding or tear in the vagina. Hence the offence of rape, held not proved.

In a girl under 14 years the vagina orifice is usually small that it would hardly allow passages of the little finger. In cases of sexual intercourse the hymen may not remains intact if the vagina orifice is big enough to admit two fingers easily. In case of girl of less than 14 years of age the dispensability of the vagina orifice has to be taken into in view. If penetration takes place in case of girl of such an age then there can be expected to be wide-spread damage of the fourchette, hymen, labia majora, labia minora, vulva and vaginal canal. Doctor in the case did not notice any injury on the labia minora. In case of penetration these organs could not escaped injuries or at least the sign of violence.

Blood stains found on vagina pubic hair, nostril and the face of the deceased, injuries antimortem and homicidal, marks of violence upon whole body. Offence was fully established.

Two Finger Test :-

Two-Finger test also called per vaginum examination is a way to determine whether the hymen of the woman is intact or not, it is based on the assumption that hymen can rapture only when a female undergoes sexual intercourse. The method is unscientific , against

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human rights and has no bearing on determination of commission of rape. Supreme Court in Lillu @Rajesh and Another vs. State of Haryana, held that the the two finger test is unscientific and it violates womans right to privacy, physical and mental integrity and dignity. After the judgment, guidelines were passed by the Ministry of Health and Family Welfare in 2014 which also condemned the test and said it must not be performed.

Male Injury:-

If a girl of 10 or 12 years who is virgin and whose hymen is intact is subjected to rape by a fully developed man, there are likely to be injuries on the male organ of the man. No injury was, however, detected by doctor on the male organ of any of the two accused. The absence of such injuries on the male organs of the accused would thus points to their innocence.

Where serious violence was alleged to have been caused to the prosecutrix by the appellants, the injuries were not likely to have disappeared before 2 or 3 days and signs were bound to persist at least when she was examined by the doctor. The absence of injuries on the person of the appellants as also on the person of the prosecutrix is yet another factor to negative the allegation of rape and to show that the appellants had sexual intercourse with the prosecutrix with her tacit consent.

Conclusion:-

Medical examination of rape victim is an essential procedure which is very helpful in collecting of evidence ultimately which corroborate the prosecution story and established the guilt of accused or it may also help to defence when the accused is an innocence person. But in India there is no unique procedure to collect the medical evidence or to conduct the medical evidence. After the case of Nirbhaya, Ministry of Health and Family Welfare in 2014 gave certain guidelines and protocols for medico legal care for the victims of sexual violence, but very few states adopted them. The Indian legislature must have to make some effected law regarding to this.

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