

## SHORT NOTES ON JUVENILE RAPE

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### RAPE OF MINOR CHILD

It is not only the offence against a particular person but it is offence against the society. A child who has been raped or otherwise sexually assaulted can grow up to feel unsafe in the world, to feel that everyone is going to hurt it, to have little self-confidence, be fearful, isolated and angry. This child can feel powerless, fear losing control, and lack respect for and trust in authority.

The abuse breaks the normal bonds that hold society together, it transgresses boundaries. If there is family breakdown, no home stability and a lack of solid nurturing roots, such children are known to do less well at school because they are either not there or when they are there they can't concentrate.

The greatest jurist Mr. V. R. Krishna Iyer in his judgment rejecting the special leave petition in *Rafiq v. State of U.P.*<sup>1</sup> described rape against women as "...when a woman is ravished what is inflicted is not merely physical injury but '*the deep sense of some deathless shame.*'"

### DEFECT IN INVESTIGATION

Negligence of the investigating agency could not affect the credibility of the statements of the prosecutrix and it cannot be ground for discredit the testimony of prosecutrix as because the investigating agency is not under the control of the prosecutrix. [1) *Kasinath Mondal v. State of West Bengal*<sup>2</sup>, 2) *State of Punjab v. Gurmit Singh & Others*<sup>3</sup>]

### CORROBORATION & MINOR DISCREPANCIES

No ostensible reason has been suggested by the defense as to why the prosecutrix would falsely involve the accused for the commission of such a heinous crime. It is almost inconceivable that an unmarried girl and her parents would go to the extent of staking their reputation and future in order to falsely set up a case of rape to settle petty scores if any.

In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should consider. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts

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<sup>1</sup> 1981 AIR 559

<sup>2</sup> (2012) 7 SCC 699

<sup>3</sup> 1996 AIR 1393

should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases it amounts to adding insult to injury. Why should the evidence of a girl, who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. *The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable.* Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice.<sup>4</sup>

### INJURY IS NOT NECESSARY

It is not expected that every rape victim should have injuries on her body to prove her case as recently observed by Justice Deepak Mishra and N. V. Ramana in a case decided by Supreme Court on 16/305/14 in *Kishan v. State of Haryana*<sup>5</sup>.

### MEDICAL EVIDENCE v. OCULAR EVIDENCE

The medical evidence is usually opinion evidence *Duraipandi Thevar v. State of Tamil Nadu*<sup>6</sup>. The medical opinion by itself, however, does not prove or disprove the prosecution case; it is merely of advisory character. In *Mayur v. State of Gujarat*<sup>7</sup>, their Lordships of the Supreme Court observed:

*“Even where a doctor has deposed in Court, his evidence has got to be appreciated like the evidence of any other witness and there is no irrebuttable presumption that a doctor is always a witness of truth.”*

Their Lordships of the Supreme Court in *Solanki Chimanbhai Ukabhai v. State of Gujarat*<sup>8</sup>, observed:-

*“Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use, which the defense can make of the medical evidence, is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. Unless, however, the*

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<sup>4</sup> Ibid

<sup>5</sup> Available at: <http://indiankanoon.org/doc/126076734/> (Accessed on December 23, 2015 at 12:31)

<sup>6</sup> AIR 1973 SC 659

<sup>7</sup> (1982) 2 SCC 396

<sup>8</sup> 1983 CriLJ 822

*medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye witnesses, the testimony of the eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.”*