**Title:** Indian courts’ view on the medical examination reports of victims of penetrative sexual assault

**Short Title:** Courts’ view on victim examination reports

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**Abstract**

Medical examination of a victim of sexual assault is mandatory by Indian law under 164a CrPC. The examining doctor is very particular about the examination findings and the opinion as these are the most important parts of the report. This study was undertaken to know how the law interprets the medical report of a sexual assault victim. For the study, Delhi district courts’ judgment on penetrative sexual assault cases delivered in the year 2015 and 2016 were analyzed. The study concludes that the courts analyze all the parts of the report be it particulars of the victim, history of the incident, examination findings or the opinion of the examining doctor. Presence of injuries on the person of the victim increases the chances of the conviction of the accused. However, courts weigh all these findings with respect to the circumstances of the incident.

**Keywords:** bodily injury; genital injury; hostile victim; legal analysis; medical examiner; oral deposition.

**Introduction**

Medical examination of the victim in a case of sexual assault is important. Usually, there is no eyewitness of the incident and in that scenario, the victim, as well as the accused, presents only their side of history hiding incriminating facts. Medical evidence is one of the important ways to find out the true fact (1).

Medical examination of the victim of a sexual assault case is mandatory under 164a CrPC of Indian law which also laid down the direction for the doctor conducting medical examination (2). The examination should be done only with the consent of the victim. The report should contain particulars of the victim, history of the incident as told by the victim, examination findings including bodily and genital injury and opinion of the doctor. The doctor examines the victim and submits the report to the police who in turn submits the same to the court. The court analyzes the report and if it thinks necessary, summons the doctor for the oral deposition regarding the report prepared by him.

This study was undertaken to understand how the courts analyze the medical examination report and what effect it has on the judgment delivered by the court.

**Material and methods**

For this study, Delhi district courts (trial courts) judgments on alleged penetrative sexual assault (rape under 375 IPC, sexual assault under 3 & 5 POCSO Act) for the year 2015 and 2016 were analyzed. Non-penetrative sexual assault cases were not included as in those cases the medical evidence has less corroborative value and the court depends more on circumstantial evidence as compared to cases of penetrative sexual assault cases. These judgments are available online in the public domain at http://judis.nic.in/DDC/dtquery\_new.asp (3). One can visit the site and put the dates to go through the judgments of the cases decided on those dates. These judgments have all the important evidence put forward to the court, their examination & cross-examination findings, courts view on these pieces of evidence, an argument between the state and the accused, the conclusion drawn by the courts and judgment of the courts about acquittal or conviction of the accused.

These judgments were analyzed to see whether medical evidence was taken into consideration at the time of declaration of the judgment; how the court interpreted victim’s declination for medical examination; how it analyzed the wrong history given to the doctor and the presence or absence of injury at the time of the medical examination; and the role played by the medical evidence in the court’s decision of acquittal or conviction of the accused.

**Result**

Total 625 judgments have been found on penetrative sexual assault cases during the year 2015 and 2016 on the public website of district courts of Delhi. In 60 judgments (9.6%), the courts didn’t point out whether the medical examination of the victim was carried out or not. In 88 judgments (14.0%), the court observed that the victim had not consented to her medical examination. In 291 judgments (46.5%), though medical examination of the victim was conducted, courts did not elaborate on the medical examination finding. Out of remaining 186 judgments (29.9%) in which courts elaborated the medical examination findings, genital and/or bodily injuries on the victims were present in 90 cases (48.4%; 14.4% of total judgments) while in the rest of the cases, no injury was present, the difference was not significant (p=0.267) (FIG. 1). The findings of the medical examination and forensic science laboratory (FSL) results, whether positive or negative, were legally analyzed in 165 judgments (26.4%).

Accused were convicted in 67 judgments (10.7%). Out of these, in 55 judgments (82.1%) the medical evidence was legally analyzed during the announcement of the verdict and in 37 judgments (55%) injuries were present on the body and genitalia of victims. Accused were acquitted in the rest of the 558 cases (89.3%). Out of these, in 110 judgments (19.7%), medical evidence was legally analyzed and in 63 cases (11.3%) there were injuries on the body and genitalia of victims (FIG. 2). This suggests that the presence of injury plays a significant role (p<0.001) in determining conviction in penetrative sexual assault cases. However, the presence of injury does not always lead to a conviction.

In some of the cases accused were acquitted in spite having positive medical examination findings on victims in the form of bodily and/or genital injury (63 cases) as well as pregnancy and/or delivery (13 cases). In these cases court observed that circumstantial evidence was not in favor of victims such as victims’ version was not trustworthy and/or inconsistent and/or false (30 cases), sexual intercourse was consensual (16 cases), victims married their accused in due course (7 cases), wrong history was given to the doctor (3 cases), victims turned hostile and only medicolegal report could not be the ground for conviction (3 cases), victims were untraceable (3 cases) or dead (1 case), genital injury could have been due to sexual relations with a third person and not necessarily with the accused as semen sample was of a third person (1 case), genital injury was self-inflicted (1 case), circumstance was doubtful (1 case) and victim failed to identify the accused (1 case). In six cases FSL evidence couldn’t connect the accused with victims. In three cases, the courts were of the view that ‘hymenal tear does not mean sexual intercourse’ and ‘hymenal tear does not mean sexual intercourse with the accused’.

On the other hand, courts had given conviction without any medical examination finding on the person of victims based on the circumstances. In seven cases there was no injury on victims’ body or genitalia and in four cases the victim declined her medical examination. However, courts observed that in all these cases, victims’ versions were consistent and trustworthy. They were of the view that if the prosecution version is ‘inspiring confidence’, injury on the victim’s body or genitalia is not needed to prove the penetration (4 cases), if the case is an old one there could be no finding (3 cases), declination of medical examination doesn’t weaken the prosecution case (2 cases) and a negative medical finding can’t falsify the eyewitness version if that is trustworthy (1 case). One case was of consensual intercourse with a female child of less than 18 years of age.

Courts have also analyzed the history given by victims to examining doctors during medical examination and in 20 cases (3.2%) victims gave altogether different history to the examining doctors. In all of the cases, accused were acquitted because of the different version of the incident coming forward to the court and victims were no more considered trustworthy. In one case, the victim furnished wrong particulars of her to the examining doctor which the court considered it as a try to hide her own identity by the victim and discredited her case. On the other hand, in seven cases, victims were confronted with the history given to the examining doctor whenever he/she turned hostile. Victims explained that they gave the history in the fit of rage, on the suggestions of well-wishers or on the instigation of the police (FIG. 3).

In 88 cases (14%), the victims had declined her medical examination and in most of the cases the sexual intercourse was consensual and accused were acquitted. In three of the cases, the medical examination was declined because of fear of further pain and injury to the genitalia. The courts accepted the explanation, did not take that declination as a negative point for the prosecution and convicted the accused. In the fourth case in which the medical examination was declined, though the sexual relationship was consensual, the accused was convicted as the victim was minor.

Overall, acquittal reasons were manifold in these judgments. False, doubtful and inconsistent version of victims about the incidents (270 cases), hostile victims (114 cases), consensual intercourse with the accused (88 cases), consensual marriage between the accused and the victim (47 cases), victim’s disappearance (16 cases), doubtful circumstances (5 cases) and victim’s inability to positively identify the accused (5 cases) were the reasons highlighted in those judgments acquitting the accused. Besides these circumstantial pieces of evidence, medical examination reports too played a role in acquittal. In 58 cases there was no medical evidence and in 20 cases the wrong history was given by the victims to the examining doctor.

Examinations of the accused of their ability to perform sexual intercourse were found positive in all of the cases and the bodily injury was present in two cases. However, the courts did not analyze these facts.

**Discussion**

The medical examination report usually contains the victim particulars, a brief history of the incident, and examination findings of the victim and the opinion of the doctor (4). Usually, the examining doctor stays very particular about the examination findings and the opinion part. However, as the finding of the study shows the court analyzes the whole reports viz. particulars of the victim, brief history provided by the victim, examination findings, and opinion.

Victim’s particulars were analyzed in only one of the case where the court observed that for an unknown reason the victim tried to hide her identity and ultimately acquitted the accused. In 20 cases, the courts found that the victims gave a different history to the examining doctor and held the victim non-trustworthy with the acquittal of the accused (FIG. 3). In seven cases, where the victims turned hostile and denied any charge of rape on the accused, they were confronted with the history given to the examining doctor. The victims had to explain the inconsistency in their versions of the incident to the court and of course, the judgment was the acquittal. These two facts suggest that victim particulars and a brief history of the incident as per the victims are as much important as other facts in the eye of law.

Studies from Australia and Canada have found that the bodily and/or genital injury on the person of victims is considered the most important fact in a case of penetrative sexual assault and presence of it is strongly associated with conviction of the accused (5,6). However, this study showed that this is not a fact. Chances of conviction are significantly more in cases with bodily and genital injuries compared to the cases where no injury is present over the person of the victim. However, the courts have analyzed these injuries in relation to the circumstances. In about one-tenth of the cases, the accused was acquitted despite having bodily and genital injuries on the victims because of various circumstances came forth to the court. The complainant was not trustworthy or the complaint was false in half of those cases. Among other circumstances leading to acquittal verdict was consensual intercourse, the consensual marriage of the victim with the accused and failure of FSL report of linking the accused with the crime. The wrong history to the examining doctor, declination of the victim of rape in the court, non-appearance of the victim in the court were the other reasons noted by the court for the acquittal of the accused. In a few cases, the courts were of the view that the genital injuries on the victims could be due to reasons other than sexual intercourse.

On the other hand, in about one-fifth of the conviction cases, there were no positive medical findings. In those cases, the court observed that if the prosecution version is trust worthy and consistent, medical corroboration is not needed. Courts further noted that in old cases, there could be no medical findings at all. These findings suggest that bodily and/or genital injuries are important in the conviction of the accused only in corroboration with the victims’ versions.

Medical examination of the victim is an important criminal procedure in Indian law. This is done only with the consent of the victim and even court cannot force the victim to get herself examination (7). In about one-seventh of the cases, the victims declined their medical examination. In most of those cases, the court observed that the sexual relations were consensual and acquitted the accused. This fact shows that in the cases of consensual sexual relationship the victim doesn’t want to submit herself for medical examination. However, in very few of the cases, the reasons for declination of medical examination were fear of pain and further injury which the courts accepted as valid reasons. This suggests that the law also scrutinizes whether the victim submits herself for the medical examination or not and if not, why.

**Limitation of the study**

The content of the study was taken from the judgment sheet of various courts. Some of the judgments did not mention anything about the medical examination of the victim. Courts did not give any reason for omitting medical examination findings. It could be that victims did not consent to the medical examination or that there was no positive medical finding or that the accused did not challenge the findings. There are chances, albeit rare, of some medical evidence put forward to the court, but not mentioned during the judgment delivery. The judgments did not mention the experience and qualification of the doctors and lawyers involved in those cases. These judgments were of trial courts and it is not known to the author how many cases were taken to the appellate court and what the court’s judgments were.

**Conclusion**

This study concludes that the court scrutinizes each and every part of the medical examination report of a sexual assault victim in a case of penetrative sexual assault. Victim’s particulars, brief history of the incident, examination findings, opinion and, whether the victim submits herself for the examination or not all are important facts in the eyes of the law (FIG. 3). Positive findings, especially the presence of injuries on the person of the victim increases the chances of the conviction of the accused. However, the courts always weigh the findings of the medical examination report in light of the circumstances of the incident. The examining doctor should keep these facts in mind while preparing the medical examination report of a sexual assault victim.

**Declaration of Conflicting Interests**

The Author declares that there is no conflict of interest.

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**Legends for the figures**

FIG. 1: Flowchart depicting total cases and the cases analyzed by the courts

FIG. 2: Flowchart depicting number of conviction and acquittal and presence of injuries over the person of the victims

FIG. 3: Flowchart depicting various parts of medical report examined by the court, the findings and number of acquittal/conviction based on the findings.