
WHEN ATTEMPT MASKS PENETRATION: RETHINKING FORENSIC PROOF IN INDIAN RAPE LAW

Akash Kumar, Jamia Hamdard

Introduction

Can an intact hymen negate rape in modern Indian law? This question lies at the heart of the Chhattisgarh High Court's ruling in *Vasudeo Gond v. State of Chhattisgarh*, where a conviction for rape was reduced to attempt on the ground that penetration was not conclusively established. The decision foregrounds a critical medico-legal concern, whether reliance on visible anatomical indicators can justifiably outweigh cumulative forensic evidence in determining the occurrence of sexual violation. It argues that reliance on hymenal integrity and visible injury reflects outdated anatomical assumptions inconsistent with contemporary forensic science. Drawing on medical literature and doctrinal interpretation of Section 375 IPC, the study demonstrates that penetration may occur without observable trauma. Situating the case within the tensions between legal formalism and probabilistic forensic reasoning, the article advocates a cumulative evidentiary approach that integrates biological, clinical, and testimonial evidence to strengthen the adjudication of sexual offences.

The Chhattisgarh High Court's decision in *Vasudeo Gond v. State of Chhattisgarh* represents a significant moment in the medico-legal debate on penetration and evidentiary standards. Arising from a 2004 incident involving forcible confinement and sexual conduct culminating in ejaculation, the trial court's rape conviction was reduced to attempt on the ground that penetration was not proved beyond a reasonable doubt under the pre-2013 Section 375 IPC framework. The Court relied on the survivor's later account of external ejaculation, an intact hymen, and absence of internal injury, despite clinical signs suggesting partial penetration. This reasoning exposes a deeper tension between anatomical indicators and cumulative forensic evidence in sexual assault adjudication.

The presence of spermatozoa and DNA-linked ejaculatory material constitutes the central pillar of the forensic record. Although the Court acknowledged ejaculation, it treated the evidence as equally compatible with external contact. Such an approach fragments the evidentiary narrative by isolating biological findings from the clinical context within which they acquire probative meaning. Forensic science does not operate through the dissection of facts into convenient

silos; it proceeds through synthesis. Ejaculatory evidence establishes intimate genital proximity, physical capacity, and conduct that has progressed beyond preparatory intent. When ejaculation coincides with documented genital irritation, the evidentiary inquiry shifts from the realm of conjecture to that of physical consummation. Biological traces, therefore, do not merely record events; they illuminate them.

The reasoning adopted by the High Court reflects a persistent reliance on visible anatomical disruption as a surrogate marker for penetration. While the judgment correctly affirms that penetration, not ejaculation, defines rape, its analytical method implicitly demands demonstrable internal injury or unequivocal anatomical testimony. Such reasoning risks reviving a long-discredited forensic assumption: that sexual assault must manifest through dramatic physical rupture. Contemporary medico-legal science rejects this premise.¹ The elasticity of post-pubertal hymenal tissue allows penetration to occur without rupture, bleeding, or scarring. An intact hymen thus neither negates penetration nor diminishes circumstantial biological indicators. By elevating hymenal status to decisive evidentiary significance, the Court arguably narrowed its analytical lens and discounted the cumulative force of contextual forensic evidence.²

An undue emphasis on testimonial inconsistency compounds this evidentiary contraction. Survivors often employ imprecise anatomical language shaped by trauma and distress; forensic evaluation must assess compatibility with physical findings rather than linguistic exactitude. The medical examination recorded genital pain, vulval erythema, and white discharge; the Court deemed these findings insufficient in isolation. Yet forensic medicine does not privilege isolation. Pain indicates mechanical irritation, erythema signals an inflammatory response at the labial margins, and discharge may reflect a physiological reaction or admixture with seminal fluid. When read cumulatively alongside ejaculatory proof and testimony describing sustained genital positioning, these findings construct a coherent biomechanical narrative. The evidence thus points not to mere external contact, but to conduct consistent with slight labial penetration.

One of the most persistent medico-legal misconceptions in sexual assault adjudication is the expectation that penetration must be accompanied by hymenal rupture. Contemporary medical

¹ R.K. Jain et al., “Hymenal Morphology in Sexual Assault Examination,” NCBI; <https://pmc.ncbi.nlm.nih.gov/articles/PMC6547601/>

² Cleveland Clinic, “Hymen: Anatomy and Variability”; <https://my.clevelandclinic.org/health/body/22718-hymen>

literature establishes that hymenal morphology varies widely and that post-pubertal tissue possesses sufficient elasticity to permit penetration without permanent alteration.³ The doctor's finding that the hymen remained intact and admitted only the tip of a finger does not negate penetration; rather, it reflects a constricted anatomical opening compatible with transient or limited entry.

Although the High Court acknowledged the possibility of partial penetration, it ultimately diminished its legal consequence. This analytical posture exposes a tension between doctrinal caution and scientific reality. If the law recognises that even slight penetration within the labial folds suffices, then medical evidence consistent with limited entry cannot be disregarded merely because it lacks conspicuous anatomical disruption.⁴ Indian jurisprudence has long clarified that penetration need not extend deep into the vaginal canal. By expanding the statutory meaning of "vagina" to include the labia majora, the explanation to Section 375 IPC deliberately lowers the anatomical threshold required to establish rape. The Court itself reiterated this principle, yet its reasoning appears to impose a more exacting evidentiary demand.

This internal contradiction constitutes the core medico-legal tension of the judgment. Where the legal threshold is minimal entry, forensic indicators of frictional trauma at the vulval margins, coupled with medical acknowledgment of possible partial penetration, ought to assume decisive relevance. The elasticity of genital tissue explains why such penetration may leave no tears or bleeding, rendering the absence of visible injury legally neutral rather than exculpatory.

A cumulative reconstruction grounded in forensic principles reveals a coherent evidentiary sequence: sustained genital contact culminating in ejaculation; clinical findings of irritation, pain, erythema, and discharge; an intact hymen compatible with limited penetration; and medical opinion recognising the plausibility of slight entry within the labia. Considered together, these elements depict more than an aborted attempt. They reflect conduct that plausibly satisfies the anatomical threshold of rape as defined by law.

The Supreme Court has consistently affirmed that penetration sufficient to constitute rape need not be extensive or accompanied by visible injury. In *State of Punjab v. Gurmit Singh*⁵, the

³ Ibid.

⁴ Criminal Appeal No. 281 of 1992, High Court of Punjab & Haryana; also at: https://www.highcourtchd.gov.in/landmark_judgments/HC/English/CRIMINAL%20APPEAL_281_1992.pdf

⁵ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384; also at: <https://indiankanoon.org/doc/1030337/>

Court underscored the evidentiary sufficiency of survivor testimony in the absence of corroborative medical findings. Similarly, *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*⁶ recognised that expectations of physical resistance or injury are often misplaced in the context of sexual assault. Later decisions, including *Narender Kumar v. State (NCT of Delhi)*⁷ and *Phool Singh v. State of Madhya Pradesh*⁸, reaffirmed that even slight penetration within the labial folds satisfies the statutory threshold.

This doctrinal trajectory reflects a shift from anatomical proof to experiential harm, culminating in the expanded statutory framework introduced by the Criminal Law (Amendment) Act, 2013⁹. Against this jurisprudential background, the reasoning in *Vasudeo Gond* appears to reintroduce evidentiary standards that the Supreme Court has progressively sought to dismantle.

By reclassifying the offence as an attempt to rape, the High Court foregrounded evidentiary caution as a judicial virtue. Yet such caution, when anchored in outdated forensic expectations, risks entrenching rather than resolving evidentiary uncertainty. The insistence on unequivocal proof of penetration produces a doctrinal paradox: the law acknowledges that even slight penetration suffices, while judicial reasoning appears to demand demonstrable injury or unimpeachable testimonial precision.

This dichotomy reveals a deeper jurisprudential tension between legal formalism and the evolving insights of medico-legal science. When adjudication privileges anatomical certainty over probabilistic forensic synthesis, it risks constricting the scope of accountability for sexual violations that are subtle in manifestation yet complete in legal consequence. The present case illustrates how an intact hymen and linguistic ambiguity can eclipse a substantial constellation of biological and clinical indicators. Penetration is seldom a theatrical anatomical rupture; more often, it is a transient biomechanical interaction, discernible only through contextual interpretation of forensic evidence and survivor testimony.

A justice system attuned to contemporary forensic understanding must therefore transcend the binary of rupture versus absence. The convergence of ejaculatory proof, genital irritation, and

⁶ *harwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217; also at: <https://indiankanoon.org/doc/1943918/>

⁷ *Narender Kumar v. State (NCT of Delhi)*, (2012) 7 SCC 171; also at: <https://indiankanoon.org/doc/1871564/>

⁸ *Phool Singh v. State of Madhya Pradesh*, (2022) 2 SCC 74; also at: <https://indiankanoon.org/doc/138561316/>

⁹ Criminal Law (Amendment) Act, 2013, No. 13 of 2013, Gazette of India; also at: <https://legislative.gov.in/sites/default/files/A2013-13.pdf>

medical acknowledgment of possible partial penetration constructs a coherent medico-legal narrative that challenges the reduction of such conduct to mere attempt. While the Court's reasoning reflects doctrinal restraint, it simultaneously exposes the enduring influence of anatomical myths. If jurisprudence continues to equate proof of rape with visible injury, it risks silencing the nuanced evidentiary language through which the body, in its biological complexity, communicates violation.

The reclassification of rape as attempt in *Vasudeo Gond* exposes a fundamental tension between doctrinal formalism and forensic reality. By privileging anatomical intactness over cumulative evidentiary synthesis, the judgment risks constricting the legal recognition of sexual violation and undermining the progressive evolution of Indian rape law. Contemporary forensic science confirms that penetration may occur without visible injury, rendering expectations of dramatic anatomical disruption scientifically flawed and legally regressive. A justice system committed to evidentiary integrity must adopt a contextual, probabilistic approach, recognising that biological traces, clinical findings, and survivor testimony together form a coherent medico-legal narrative of violation rather than isolated fragments of proof.