
ADMISSIBILITY OF THE EVIDENCE IN THE RAPE CASES

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ABSTRACT

Rape cases are one of the most heinous crimes in the world. Especially in India, one girl is raped every sixteen minutes¹. As per the Annual Report of the National Crime Records Bureau (NCRB) in the year 2022, the crimes against women have surged 4% compared to the previous year. The offenses related to the Assault on Women with an intent to outrage her modesty and Rape are 18.7% and 7.1% respectively. Further, this percentage is exclusive of unreported cases, if included the percentage will soar up exponentially. In such heinous crimes like rape, evidence plays an important role and more so admissibility of such evidence is pivotal in adjudicating such cases.

While there are remedies available for rape victims in India, most of the cases go unreported due to lack of acumen. Therefore, it is important to create awareness to curb the taboo present around the rape victims. The main aim of this article is to analyze the admissibility of evidence in rape cases which aids in the conviction of the accused. This article includes the basic meaning and definition of rape, punishments that are prescribed for rape and seeks to determine the admissibility of evidence in rape cases. The paper also aims to shed light on legal remedies available to rape victims in India. Furthermore, it signifies different types of evidence in rape cases and their admissibility in courts using legal provisions and precedents.

Keywords: Rape, Evidence, Admissibility, legal remedies, Offences.

¹ Report on National Bureau of Crime Records, 2020

Introduction:

Crime against the women has become a serious concern and a present problem in the society. As per the Annual Report of the National Crime Records Bureau (NCRB) in the year 2022, the crimes against women have surged 4% compared to the previous year. The offenses related to the Assault on Women with an intent to outrage her modesty and Rape are 18.7% and 7.1% respectively². Whereas, if the unreported cases must be included then the percentage would be high. Rape is an offense which is considered to be heinous in nature. Rape is one of the most prevailing crimes against women. Despite the Government trying to curb the crimes with the utmost efficiency in policing, the rapes are being increased enormously. Rapes must be curtailed to safeguard the women and children in the Country. The Indian Penal Code, 1860 under **Section-375**³ defines rape committed by a man against a woman without her consent or such consent obtained by causing fear of harm or death, unsoundness, fraud or intoxication, against her will or if she is under 18 years of age. It penalizes all penetrative forms of sexual intercourse such as oral, vaginal, anal, finger, and object penetration.

Punishment for rape:

The punishment for rape under IPC is imprisonment for ten years to life imprisonment, along with a fine.

When the survivor is below 16 years, the punishment is imprisonment for twenty years to imprisonment for the rest of the perpetrator's life, along with a fine.

If the survivor is below 12 years, the perpetrator can be given capital punishment i.e. death penalty. The fine should be just and reasonable to meet the medical expenses and rehabilitation of the survivor. The fine should be paid to the survivor.

Definition of Gang Rape and its punishment

Section- 376 (D) ⁴of the Indian Penal Code gives the punishment for Gang rape which refers to the rape of a woman by a group of people acting together with the common intention to commit the rape. Gang rape is more culpable and every person involved in the act is guilty of the crime. The punishment for gang rape is imprisonment for 20 years to imprisonment for the rest of the perpetrator's life. If the survivor is below 16 years, the punishment is imprisonment

²Annual Reports on Crime by National Bureau of Crime Records, 2022

<https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>

³ Section-375 of Indian Penal Code- Rape

⁴ Section- 376 (D) of Indian Penal Code- Gang Rape

for the rest of the perpetrator's life. If the survivor is below 12 years, the perpetrators are also punished with the death penalty. The perpetrators must also pay a fine which is just and reasonable to bear the medical expenses and rehabilitation of the survivor.

In case a rape leads to an injury that causes a woman's death or puts her in a persistent vegetative state, the perpetrator is punishable with imprisonment for 20 years to imprisonment for the rest of their life, or with death.

Evidence and its vitality in determining the truth

According to the Indian Evidence Act, of 1872 the term "Evidence" falls under the Ambit of **Section 3**⁵ of the Act, which means and includes:

All Statements that the Hon'ble Court allows or requires to be submitted before it by witnesses, concerning the matters of fact under inquiry, such statements are called oral evidence.

All documents comprising electronic records produced for the inspection of the Court, such documents are called documentary evidence.

Admissibility of Forensic Science Evidence

According to the Principle of Exchange which was laid down by Locard, "Every contact leaves a trace" and similarly in the case of committing a rape, the perpetrator would also leave a trace at the crime scene. One important thing that the investigation officer or the forensic personnel should remember is such traces would get contaminated over time. Upon receiving the Complaint, the Station House Officer shall register the First Information Report (FIR) under the Section 154⁶ of the Criminal Procedure Code, 1973. After the due filing of the FIR, the concerned authority will proceed to the crime scene for investigation. It is on the police officials and forensic personnel to prevent and protect the contamination of the crime scene.

The Crime Laboratory Ultimate Evidence System (CLUES) will collect the physical evidence and examine it at the State Forensic Science Laboratory for forensic examination. In case of the survival of the Prosecutrix, the SHO will send the survivor for the medical examination, this helps in the determining of the truth and the Accused's guilt.

The most frequently used forensic procedures in any criminal investigation is Forensic DNA Analysis, Forensic Odontology, Forensic Biology, Digital Forensics, Forensic Chemistry and

⁵ Section 3 of Indian Evidence Act- Interpretation Clause

⁶ Section- 154 of Criminal Procedure Code- First Information Report

Forensic Dactyloscopy etc. These departments adopt various tests for the examination of the samples. According to the Principle of Individuality, no two things in the universe are alike, similarly, every single individual possess 0.1% of unique DNA except identical twins. The DNA is primarily found in hair, skin, blood, semen, cells, tissues, mucus, saliva, finger nails and bones etc.

One of the techniques that is used in forensics is Forensic DNA profiling, which is used to match human DNA samples for identification purposes during the course of a criminal investigation. It is frequently analysed by using 2 methods:

- i) Restriction fragment length polymorphisms (RFLP): Various solvents are used to extract DNA from the samples, after the extraction the DNA is broken down into various fragment lengths with the help of restriction enzymes. The said enzymes cut the DNA whenever a particular sequence of bases takes place, birthing several different DNA fragments of varying lengths. Although, forensic DNA analysis with the aid of VNTR segments contains few limitations DNA samples degrade over time because of the elongating exposure to sunlight. Ambiguity in determining whether the same banding types arose from one individual or more than one individual
- ii) One more method is the PCR test which is very usually used when the quantity is available in smaller amounts is present. The test augments DNA into small fragments short tandem recurs. It is much more accurate than the different types of other DNA techniques and helps in providing swift results.

In the case of **Sandeep alias Deepu v. NCT Delhi** ⁷(**Nirbhaya gang rape and murder case**), a 23-year-old girl was barbarously gang raped by a group of men on 16-12-2012. The incident had taken place in a moving bus in Delhi. One among the six accused is a Minor. As the victim was continuously resisting during the heinous act, the accused inserted an iron rod into her genitals which led to the tearing of the intestines. The victim survived for 11 days and later passed away. Further, the accused were produced before the fast-track court for Trial. The Court had given the death penalty to four accused, one of the accused had committed suicide and another accused was tried before the Children's Court and was upheld by the Hon'ble Delhi High Court. The accused had come before the Apex Court for his rescue by an appeal. The

⁷ NO. 2486 OF 2009

Accused questioned the validity of the bite mark analysis which was declined by the Hon'ble Court and upheld the death penalty. The Supreme Court of India in its judgment held that "Forensic Odontology has emerged itself as a vital and crucial science in case of medico-legal issues and expert evidence by various reports which numerous courts have taken as a help in the administering of the justice. In the case in point, the report is fully credible due to the matching bite marks with the tooth structure of the accused people, and there is no ground to view the same with any conjecture."

In **Priyadarshini Mattoo Case**⁸, the DNA from the seminal discharge of the wrongdoer which was present on the undergarments of the victim and her lady parts was compared with the DNA of the wrongdoer and it was matched beyond a reasonable doubt.

The Constitutional bench in the case of **Selvi v. State of Karnataka**⁹ held that "the comparison of the DNA samples has started to emerge as an important mode for connecting individuals to a specific criminal act".

Admissibility of the testimony of the victim and the witnesses

Testimony is oral or written evidence that is given by the victim and the witness under oath, affidavit, or deposition while a trial or other legal procedures are going on.

Any victim of a crime and other people who are well aware about the execution of a crime, and are meant to testify the same at a Trial before the Hon'ble Court. The Indian Judicial System cannot operate without the role of the victims and witnesses. Utmost cooperation and the authentic testimony of all the witnesses and victims are important to the finding of the guilt or innocence of a person accused of an offense.

In many cases, crime victims and witnesses are filled with confusion, fear, frustration, and anger, in such a case, eminent legal experts can shed some light on the rights given by the law to the victims and witnesses.

In the case of **State of Punjab v. Gurmit Singh and Others**¹⁰(1996), it highlighted the vitality of the victim's testimony as substantial evidence in rape cases, even if the corroborative evidence is not present.

⁸ (2010) 9 SCC 747

⁹ No. 1267 of 2004

¹⁰ 1996 SCC (2) 384

In the case of **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**¹¹(1983), it implemented the principle that in the cases of sexual assault or rape, the victim's testimony can be trusted even in the absence of corroborative evidence, if it is found to be reliable, consistent and truthful.

In the case of **Mohammed Ali v. State of Karnataka**¹², the Hon'ble Supreme Court laid down medical evidence is not always essential to prove rape. The conviction can be granted by the Court purely on the testimony of the victim if it is found to be reliable and credible.

Admissibility of the Circumstantial Evidence

The known fact is that while delivering the judgments most jurists give top priority to direct evidence such as eyewitness testimony and confessions, but the least priority is given to indirect evidence like DNA and forensic sciences. The legal reality is even if the circumstantial evidence has much power, substance, or validity; it won't be able to prove the Defendant's culpability beyond any reasonable doubt. The reason behind circumstantial evidence is probabilistic. As per Edmund Burke, "Concurrence of thoroughly certified circumstances compose an additional ground of assurance, occurrences cannot lie". The appraisal of circumstantial forensic evidence's probative is more than a reliability value which is one of the core concerns with this class of evidence. The "Last Seen" theory is important in establishing the Defendant's punishment. The Court may rebuke the accused based on the theory alongside the circumstantial evidence and the case facts. The burden of proof here lies on the Defendant, the evidence should be relevant and consistent.

In the case of "**Reena Hazarika v. State of Assam**¹³", where the Hon'ble Supreme Court established a chain of incidents resulting in the inescapable conclusion, the concept of the last seen theory was so vitally defined. Adding more, the Hon'ble Supreme Court upheld the judgment of the trial judge and the High Court in the case of "**Machhi Singh v. State of Punjab**¹⁴" where the intention of a "balance between aggravating factors and mitigating circumstances" was applied to determine the guilt of the Accused with the sexual assault and coldblooded murder of a young girl. A set of rules for determining whether to charge for the death penalty was also established in the case.

¹¹ 1983 SCR (3) 280

¹² No.807/2017

¹³ NO.1330 OF 2018

¹⁴ 1983 SCR (3) 413

Admissibility of the Accused's character in determining the guilt

The character of the Accused also holds an evidentiary value in determining the guilt of the Accused in rape cases if it particularly speaks about the tendency for sexual violence or their credibility as a witness. But the character evidence should be evaluated carefully and it must not mislead the Court. Moreover, its primary duty is to focus on the facts and circumstances of the specific case instead of generalizing the accused's character.

The Accused's character can be established as evidence under certain circumstances. This evidence will include prior actions of sexual misconduct or violence, which could determine a pattern of behavior and denote a propensity for committing the crime in question. Such evidence may be admissible to show the Defendant's state of mind, motive, and opportunity, but its relevance and probative value must outweigh any potential prejudice to the Accused.

On the other hand, it is important to remember that character evidence should be carefully examined to make sure it meets the legal standards of relevance and reliability. Courts frequently impose stringent rules governing the admission of character evidence to forbid unfair prejudice or character assassination. Furthermore, the Trial should constrain the facts and circumstances of the case rather than making opinions on the Accused's character.

There have been instances where the character of the Accused in rape Trials was allowed as evidence, typically to establish a pattern of behavior or motive. Here are a few examples:

Prior Sexual Misconduct: In cases where the Accused has a previous history of sexual misconduct or assault, Courts have sometimes entertained evidence of prior acts to be admitted to establish a pattern of behavior. For instance, if the Accused has been earlier convicted of sexual assault or has a documentary history of sexual harassment, this evidence will help to establish a propensity for performing the crime.

Prior False Allegations or Dishonesty: If the Accused has a history of making false allegations or has been ever convicted of crimes relating to dishonesty like perjury and fraud, this evidence may be pertinent to impeach their credibility as a witness. Courts might allow such evidence to be admitted to challenge the Accused's version of events or to cast uncertainty on their reliability.

Mental Health or Psychological History: In a few cases, the mental health or psychological history of the Accused may be important to their behavior or state of mind at the time of the happening of the alleged rape. For example, if the Accused had any mental illness or personality

disorders that could impact their ability to restrain their impulses or understand the nature of actions, this evidence may be admitted to give context for their behavior.

It is necessary to observe that the admission of character evidence in rape cases is subject to strict legal standards and must fulfill the criteria of relevance, reliability, and fairness. Courts carefully weigh the probative merit of such evidence against the risk of unfair prejudice to the Accused, and the decision to admit or scrap character evidence is ultimately at the discretion of the Judge

CONCLUSION

Indian Criminal Justice System relies on the admissibility of the evidence while convicting any accused for his guilty. To prove the admissibility of the evidence, establishing the chain of custody is the strongest and weakest factor that connects different dots of the Case. It is pertinent to remember that as per the fundamental principles of Indian Criminal Law Jurisprudence, the prosecution should prove the guilt of the Accused beyond all reasonable doubts which implies the burden of proof lies on the prosecution, whereas the Defence Counsel has to raise an iota of doubt which acquits the Accused. Further, the Criminal Law will also provide the Accused with various rights along with prescribing the punishment for rapes, substantially this leads to lengthy judicial remedies causing delays in the delivery of the Judgments. India is one such country where it has been reported that the conviction rate is very low as there are insufficient experts, first-line responders, investigative agencies, improper forensic reports, and the Prosecution's inefficiency to put forth strong arguments during the trial along with improper standards of recording evidence, particularly victim and eyewitness statement. Generally, in rape cases, the medical examination of the victim holds the highest value and this process gets delayed due to the negligence of the authorities.

The Indian Government is rendering its best efforts to advance infrastructure as well as the skilled experts, but accomplishing these needs is a major difficulty due to a proportionate escalation in crime rates. In 2020, the National Human Rights Commission and the Ministry of Home Affairs issued an SOP on the collection and processing of scientific forensic evidence in cases of sexual assault on women to ensure a swift and proper investigation which helps in building strong cogent evidence for the conviction leading to the speedy disposal of the matters. However, it has been not adhered to by the concerned authorities in various other rape cases.

The outcome of the topic

A holistic idea and an approach towards the feasibility and the right usage of the evidence in connection to the rapes. This will also help both lawmen and laymen to understand the complexities while finding the evidence, preserving and bringing them before the Court without getting it tampered. The topic also emphasizes the mental agony and grief of the victim. At times, if sufficient evidence is not produced before the Hon'ble Courts, the Courts wouldn't punish the perpetrator by taking the benefit of the doubt, the paper also helps in curbing any such situations.