

Appreciation of evidence of Expert Witness, Deaf and Dumb witnesses and Prosecutrix in rape case.

A. Appreciation of evidence of deaf and dumb witnesses;

1. Section 118 of the Indian Evidence Act 1872 describe competency of a person to testify. Section includes all persons in the category of a competent to testify. Unless the Court before whom the evidence is going to be led considers that a person presented as a witness is prevented from understanding questions put to him or from giving rational answers to the questions.

1. because of teen age, 2. extreme old age, 3. disease, whether of body or mind or any of the case of the same kind.

A specific provision is laid in the Evidence Act under S. 119 about dumb witnesses. As per this provision a witness, who is unable to speak may give his evidence in any other manner in which he can make intelligible, for example, by writing or by signs. The section requires that such writing must be written and such signs must be made in open Court. The evidence of dumb witness is brought in category of oral evidence by this section, though he may have answered the questions put to him in writing.

2. The Court has to exercise due care and caution while recording statement of dumb or deaf witness or of the witness suffering from both the elements. First the Court has to ascertain before examining such person that he possesses the requisite amount of intelligence, and that he understand the nature of an oath. If the Judge recording evidence is satisfied that the witness possesses requisite amount of intelligence and understands nature of an oath, the Judge may sworn the witness and record his evidence. The Judge has to see that an interpreter, who understand alphabets of signs of deaf and dumb, must be appointed for communicating with deaf and dumb witness. This practice will assist the Court only if the witness is acquainted with alphabets of signs of the language of deaf and dumb. If the witness is able to communicate his narration perfectly by writing, the mode of writing be adopted as it is more satisfactory than the expression by signs. Once the evidence of deaf and dumb witness is recorded in the above said manner, his evidence is required to be appreciated by applying the rules of appreciation applicable to the evidence of any other witness.

B. Appreciation of evidence of expert;

3. The general rule of evidence laid down under S. 80 of the Evidence Act that oral evidence must, in all cases whatever, be direct. The Evidence Act thus excludes in general opinions of third person from the category of evidence exception to this general rule is carved under S. 45 to 51 of the Evidence Act. These provisions specify the circumstances in which opinions of third person are relevant. S. 45 speaks about relevancy of opinions of expert. As per S. 45 when the Court has to form an opinion upon (1) a point of Foreign Law or (2) on Science or (3) Art or (4) As to identity of hand-writing or finger impressions. The Court can treat the opinions upon that point of persons specially skilled in such Foreign Law, Science or Arts or in questions as to identity of hand-writing or finger impressions relevant.

4. While appreciating the evidence of expert the basic fact which is required to be proved is that the person expressing opinion is specially skilled in the subject about which he is expressing his opinion. The evidence adduced by the expert does not by itself proves the prosecution case. Its value is only corroborative. When the prosecution comes with direct evidence as well as opinion of an expert, the positive evidence in the case is that of eye-witnesses. The evidence of an expert is merely an opinion which may lend corroboration to the direct evidence. If there is conflict between the account of incident given by eye-witnesses and the opinion of an expert, so medico-legal evidence coming from the mouth of medico legal expert, who examined the victim is contrary the evidence can be appreciated in two ways; (1) Account given by the eye-witness creates confidence, then the oral testimony be relied and exception the conflict between oral evidence and medico-legal evidence. The other method is to rely upon the medico-legal evidence and appreciate the oral evidence with caution. The latter approach is more safe and judicious way of appreciating the evidence of an expert.

5. If the opinions of equally competent expert witnesses are in conflict on a particular point the Court should accept the opinion which corroborates the direct evidence. Similar rule of appreciation will not be applicable in case of all the experts. While appreciating evidence of hand-writing and finger print experts, the Court is required to be cautious and careful because identity of finger prints and hand-writing rest on number of observations of similarity and differences between the finger prints or hand-writing in question. In modern days the signs of identifying finger prints is recognized as an exact science. So, while appreciating the evidence of a finger expert considerable weight is required to be given to such evidence. The report of an expert is not admissible unless he has not been examined as a witness and the opposite party had an opportunity of cross-examining him. The opinion of an expert would carry little value unless it is supported

by clear statement of the expert as to what he noticed and on what basis he formed the opinion. The expert has to put before Court all the data which induced him to come to conclusion of opinion that expressed by him, so that the Court although not expert may form its judgment on the material examined and relied by the expert. In the case of Dhanna Chaudhry and others V. State of Bihar (AIR 1985 Supreme Court 1688) Hon'ble Apex Court while appreciating the evidence of the Doctor, who examined injuries on the person of victim found the medical evidence about the weapon of offence confusing. Medical Officer opined that one of the injury was caused by Bhala, which a sharp cutting weapon and is like a Lathi. Considering this confusing medical evidence Hon'ble Apex Court found it unsafe to uphold the conviction based on medical evidence.

6. In the case of State of Himachal Pradesh Vs. Jai Lal and others (AIR 1999 Supreme Court 3318) Hon'ble Apex Court while appreciating the evidence of an expert observed that in order to bring the evidence of a witness of that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words, that he is skilled and has adequate knowledge of the subject. As per Their Lordships, evidence of an expert is of an advisory character. Their Lordships ruled that the duty of an expert is to furnish Judge with necessary scientific criteria for testing accuracy of conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. In the case Before Their Lordships evidence of Officer of a Horticulture Department of Himachal Pradesh was for appreciation. Their Lordships were considering the question of assessing the fruit bearing capacity of apple trees. Their Lordships found that the witness had not made any scientific study or research in assessing activity of apple trees in the State of Himachal Pradesh either in respect of question of orchards or in respect of any other orchard in the State in the past. Considering this aspect, Their Lordships ruled that evidence of such witness cannot be treated as an expert evidence.

C. Appreciation of evidence of prosecutrix in rape case;

7. A victim of rape suffers physically, socially and mentally. The prosecutrix in a rape case, who has undergone such an agony has to narrate the incident before the Court which she do not even want to remember again the agony faced by the prosecutrix, set her apart from any other witness. Hon'ble Justice Krishna Iyer considered the agony of rape victim and thus laid down a rule of appreciation of evidence of prosecutrix and ruled that evidence of prosecutrix in rape cases is not required to be substantially corroborated. Hon'ble Justice Krishna Iyer speaking for Division Bench of Hon'ble Apex

Court observed in the case of Krishan Lal V. State of Haryana (AIR 1980 Supreme Court 1252) as follows;

“In rape cases, Courts must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's (prosecutrix) version. The inherent bashfulness, the innocent naivete and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication. The injury on the person of the victim, especially her private parts, has corroborative value. Her complaint to her parents and the presence of blood on her clothes are also testimony which warrants credence. To forsake these vital considerations and go by obsolescent demands for substantial corroboration is to sacrifice commonsense in favour of an artificial concoction called 'Judicial' probability.”

Even we bear in our mind the above mentioned difficulties faced by victim of sexual offence, we will be able to appreciate testimony of prosecutrix in rape cases more appropriately. In most of the cases, masculine and sexual aggression and the process of resistance by the victim leave its signs on the body of victim and accused but there are situations in which such signs may be absent. Hon'ble Apex Court in the case of State of Maharashtra V. Chandraprakash Kewalchand Jain (AIR 1990 Supreme Court 658) considered these circumstances. Further confirming rule of acceptability of sole testimony of prosecutrix to prove the offence of rape, the Hon'ble Apex Court held that the prosecutrix of a sex offence is a victim of crime. The evidence nowhere says that her evidence cannot be accepted unless it is corroborated on material particular. She is a competent witness under S. 118 of the Evidence Act and her evidence must receive the same weight as is attached to the injured in cases of physical violence. As per Their Lordships, the same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. As per Their Lordships, the Court must be alert and cautious of the fact that it is dealing with the evidence of a person, who is interested in the out-come of the charge levelled by her. Their Lordships held as under;

“To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the Western and European

countries. Our standard of decency and morality in public life is not the same as in those countries .It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different form, from lewd remarks to eve teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if the Courts deal strictly with those who violate the societal norms. The Standard of proof to be expected by the Court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.”

In this case while appreciating the evidence of victim of rape Their Lordships were dealing with special circumstances. The person who rubbished the prosecutrix was Police Officer, who had detained husband of the lady in police lock-up and mis-using his authority and power. He had sexual intercourse with the girl in the room of a Hotel where she was staying alone after arrest of her husband. Considering these circumstances, following words of Their Lordships provide guidelines for appreciation of evidence of a rape victim placed in particular circumstances;

“Provisions of Ss. 47(2), 53, 160 of Criminal P.C. Reflect the concern of the legislature to prevent harassment and exploitation of women and preserve their dignity. Notwithstanding this concern, if a police officer misuses his authority and power while dealing with a young helpless girl aged about 19 or 20 years, her conduct and behaviour must be judged in the back drop of the situation in which she was placed. The purpose and setting, the person and his position, the misuse or abuse of office and the despair of the victim which led to her surrender are all relevant factors which must be present in the mind of the Court while evaluating the conduct-evidence of the prosecutrix. A person in authority, such as a police officer, carries with him the awe of office which is bound to condition the behaviour of his victim. The Court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suffers on being molested or raped. She suffers a tremendous sense of shame and the fear of being shunned by society and her near relatives, including her husband. Instead of treating her with compassion and understanding as one who is an injured victim of a crime, she is, more often than not, treated as a sinner and shunned. It must, therefore, be realized that a woman who is subjected to sex-violence would always be slow and hesitant about disclosing her plight. The Court must, therefore, evaluate her evidence in the above background.”

In the case of State of Punjab Vs. Gurmit Singh and others (AIR 1996 Supreme Court 1393)

Hon'ble Apex Court in specific words ruled that the testimony of victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Court should find no difficulty to act on the testimony of a victim of sexual assault alone to convict the accused. As per Their Lordships, when the testimony of prosecutrix inspires confidence and found to be reliable seeking corroboration to her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. As per Their Lordships, The Court while appreciating the evidence of the prosecutrix may have some assurances of her satisfy judicial conscious, sense she is a witness, who is interested in the out-come of the charge levelled by her, but there is no requirements of law to insist upon corroboration of her statement to base conviction of an accused.

8. The above discussion, thus, bring me to conclusion that while appreciating evidence of victim of rape, her testimony should not be discarded or brushed aside only on the ground of delay in informing the incident or delay in lodging FIR. While considering her evidence the Court is required to be cautious of the circumstances in which the victim was placed while she was molested. The Court has to consider the situation in which the victim was placed, the position of accused , age of the victim, which increase or decrease possibility of injuries on private parts, conduct of the prosecutrix and the accused, reliability of the defence of false implication or the victim being consenting party while assessing reliability of the evidence of the prosecutrix.
