



CREDIBILITY OF PROSECUTRIX AS A WITNESS

Richa Gupta

4th Year Law Student**ABSTRACT**

A witness who makes different statement at different times has no regard for what is the truth. His/her evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to the same. The court should be slow to act on the testimony of such a witness and normally, it should look for corroboration of his/her evidence. While the concept of credibility seems like an intuitive one, research has indicated that there is no consistent definition of this construct and that credibility may, in fact, be multidimensional. This article is to review how the measurement of credibility in sexual assault cases has been conducted, with the view to improve how credibility is psychometrically measured. The findings indicate credibility has been measured using a great variety of constructs such as believability, honesty, truthfulness, suggestibility, accuracy, and reliability. A more nuanced and consistent definition of credibility will be needed to facilitate meaningful applications of the research literature. The author in this essay will be discussing in detail with regards to the credibility of the prosecutrix witness with the help of relevant provisions and case laws.

KEYWORDS : Witness, credibility, prosecutrix, assault**INTRODUCTION**

Sexual violence against women is widely recognized as a universal phenomenon. Over the last 150 years, feminist and human rights movements have strived to introduce and strengthen anti-rape laws, and called for greater support and justice for victims. Debates about the importance of the symbolic value of the law in protecting women and girls, are juxtaposed alongside feminist discourses that express doubt about the ability of patriarchal structures to implement laws in a fair and just fashion.

Complainant credibility is a key theoretical notion at the heart of patriarchal legal structures and processes that deal with rape cases. This paper advances the notion of complainant/witness credibility by focusing on the Indian judiciary, through an examination of High Court and Supreme Court judgments.

The argument that patriarchal legal frameworks serve to regulate women's sexuality, and enforce social control rather than offer protection and support from sexual violence, is reflected in the notion of complainant's/ prosecutrix as a witness credibility. Complainant credibility is defined here as a narrative that attests to the veracity of the crime of rape in ways that are consistent with the perspectives of the criminal justice system. The police, lawyers, judges and medical profession may be viewed as those who are, in effect, in a position to comment on the evidence, and therefore on the credibility of a rape victim's testimony. Generally speaking, relevant evidence comprises the victim's testimony of the incident, but also other factors such as whether she can demonstrate having sustained a physical injury during the incident, whether she reported the event in a timely manner and whether it can be proved she provided 'consent' to the crime. Intertwined with such factors are, of course, a myriad of rape myths, which serve as powerful societal beliefs. Examples of such pervasive myths include the belief that a victim's clothing at the time of the rape has a bearing on the veracity of her claim, whereas others place importance on where the crime took place, the time of the day the rape took place and her previous sexual history. Such myths wield an enormous amount of power, serving to discredit the rape victim and undermine the truth of her allegations.

Constructions of complainant credibility in rape court trials are at the heart of the decision-making process regarding guilt and conviction. In India, women's rights activists have expressed concern about Indian police's misuse of authority and lack of accountability (Human Rights Watch 2009). It

would appear that such patriarchal structures fail to give recognition to rape victim's narratives and result in re-trauma, as well as leading to the reproduction of male-dominated power.

Here, although complainant credibility and veracity are inevitably under scrutiny in adversarial structures and processes, it is significant to understand that such notions do not operate in a vacuum, but rather, are influenced by gender relations, power and patriarchal ideology.

The reading of the rape trial literature and the Indian jurisdiction led to the formulation of prosecutrix's credibility as a witness, which comprised five key components. These were identified as 'false allegations', 'consent', 'delays in reporting', 'medical evidence' and 'victim's testimony'. Research evidence shows that police and medical records are crucial in rape cases. In the High Courts in India, in addition to such evidence, the construction of reality by the diverse actors (including the defence counsel, the state and the victim) paints a picture, which is interpreted and understood by the judge. The notion of prosecutrix's credibility and judicial interpretations lay at the heart of this process.

ANALYSIS & CASE LAWS

The law relating to different aspects of trial and punishment of the offence of rape has undergone a sea change in our country due to the consistent efforts of the courts. The case-law is replete with decisions in which the traditional approach of insisting on corroboration of the statement of the victim and of absence of her consent has been categorically abandoned by the courts. The Supreme Court has now added a new dimension to the law by implicitly admitting that rape is not simply a physical assault but a psychological violence.

Courts used to take the position that if there were no proof of physical assault there would be no rape. The presumption that if no physical injury is evident on the victim, no sexual intercourse has taken place or rape has not been committed, ignores the fact that rape is not only an offence involving physical violence, but also psychological violence. This too when existing laws recognize mental agony and psychological violence as offences against the body. The victim of rape besides being physically ravished is psychologically wounded. It is the feeling of having been exploited and violated more than anything else which leaves lifelong scars on the mind of the victim. Perhaps this trauma has been recognized in a case where it was held that the absence of injuries on private parts of the prosecutrix would not rule out her being subjected to rape. Justice Krishna Iyer,

who is famous for his humanistic approach towards law, observed in Rafiq case, that the court cannot cling to a fossil formula and insist on corroborative evidence and Judicial response to human rights cannot be blunted by legal prejudice.

Also, in the Sheikh Zakir case, it was held that, the absence of any injuries on the person of the complainant may not by itself discredit the statement of the complainant. She cannot be disbelieved merely because she is a helpless victim, who was by force prevented from offering serious physical resistance.

In the case of State of Maharashtra v. Chandraprakash Kewalchand Jain, it was observed that, the High Court took the view that except in the 'rarest of rare cases' where the testimony of the prosecutrix is found to be so trustworthy, truthful and reliable that no corroboration is necessary, the court should ordinarily look for corroboration. But the Supreme Court, observed that, "A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of injured complainant or witness and no more."

In the case of State of Punjab v. Gurmit Singh, the prosecutrix, a young village girl below 16 years of age was raped by four persons. The trial court acquitted all the accused persons. On Appeal, the Supreme Court expressed that the grounds on which the trial court disbelieved the version of the prosecutrix were not at all sound and its findings rebelled against realism and lost their sanctity and credibility. The case of Madan Lal v. State of J&K, the accused subjected a girl to sexual harassment as he attempted to commit rape on her. The trial court acquitted the accused on the ground that the case hinges on the sole testimony of prosecutrix and statement of other two prosecution witnesses were brushed aside on the ground of animosity and partisan character. On appeal, the division bench of the High Court⁴² reversed the order of acquittal and convicted the accused under Section 376 read with Section 511, RPC for attempt to commit rape.

Lastly, in the case of In State of Rajasthan v. N.K, the accused raped the victim who was an underage girl, the Supreme court contrary to the High court's ruling observed, that mere absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case. A Judge of facts shall have to apply a common sense rule while testing the reasonability of the prosecution case. The prosecutrix on account of age of infirmity or overpowered by fear or force may have been incapable of offering any resistance. She might have sustained injuries, but on account of lapse of time the injuries might have healed and marks vanished.

SUGGESTIONS AND CONCLUSION

A key optimistic finding in all of the discussed case laws is a belief that the victim must be genuine because the associated shame and stigma is so powerful that it obviates false reports. Further optimism may be gleaned by the reluctance of judges to give undue weight to delays in the reporting of rape. Clearly, it is not possible to draw general conclusions regarding this, but further research in this area is needed. Given the low number of victim appeals in this study, and also the fact that since 2010, the Code of Criminal Procedure (Amendment) Act has allowed the victim the right to lodge an appeal against

acquittal of the accused, a study to explore the nature, extent and outcome of such appeals would be useful.

Of concern in this study, is the tendency of High Court judges to develop or imply a categorization of rape. My analysis of the judgment's points to an implicit categorization of rape and ultimately a 'pecking order'. This is demonstrated in the language of 'real' rape, 'technical' rape and 'love case'. Such categorization is problematic and runs the risk of undermining victims and their credibility, and ultimately appeals outcomes. The notion of 'love case' is particularly perplexing. Several judges have expressed their views that rape conviction charges would be higher if these cases were taken out of the equation. The apparent role of parents in these cases was also highlighted in the so-called labelling of such cases as rape. Given the high number of young victims in the article, further research is needed to understand the complexities of such love cases and particularly how sexual consent is understood.

Our findings identify a number of key concerns with policy and practice implications in other domains that impact the work of the courts namely policing and medical examinations. Principally, these concerns include the need for an improvement in the ways in which rape reporting and victim's testimony are recorded, and the need for timely and reliable medical evidence to avoid delays in the legal processing of court cases.

Although it is accepted that a fundamental tenet of the Indian judicial system is that, it is adversarial in nature, and that it is to be expected that complainant credibility will be under scrutiny, the research presented here outlines a framework that delineates the component parts to provide a useful analysis of Court judgments and the appeals process in rape trials. What is also clear is that there is an inter-dependency between these component parts. For example, consent is closely associated with medical evidence. Similarly, delays in reporting and victim testimony discrepancies are invariably linked with false allegations, namely the belief that the complainant would have made an immediate and prompt report, and with consistency, if the incident had really occurred. Such thinking fails to understand the complexity and trauma of rape.

This exploration of rape in the Indian jurisdiction has helped shed light on the appeals process to help understand how complainant credibility is constructed. Although the findings of this article may not be generalizable within or outside India, they reveal a picture that is consistent with previous literature from around the world. Moreover, the rich narrative accounts of the case laws help provide an understanding of the modern Indian judiciary about the notion of prosecutrix's credibility in a context of increasing reported incidents of rape.

REFERENCES

1. Lina Gonsalves, Women and Human Rights, p. 9 (2001) A.P.H. Publishing Corporation, New Delhi.
2. Ved Kumari, "Gender analysis of the Indian Penal Code", in Amita Dhandu and Archana Parashar (ed.) Engendering, Essays in Honour of Lotika Sarkar, p. 155 (1999) Eastern Book Company, Lucknow.
3. Justice M. Monir, Law of evidence (short edition), 6th edn, p.252.
4. Brownmiller, (1975), Against Our Will: Men, Women and Rape.
5. State of Punjab v. Gurmit Singh, AIR 1996 SC 1393 at 1396 para 1.
6. Madan Lal v. State of J&K, AIR 1998 SC 386.
7. State of Rajasthan v. N.K, AIR 2000 SC 1812.
8. Tukaram v. State of Maharashtra, (1979) 2 SCC 143; 1979 SCC (Cri) 38.
9. Rafiq v. State of U.P., (1980) 4 SCC 262; 1980 SCC (Cri) 947.
10. Sk. Zakir v. State of Bihar, (1983) 4 SCC 10; 1983 SCC (Cri) 761.
11. State of Maharashtra v. Chandraprakash Kewalchand Jain, AIR 1990 SC 658.
12. Comment, The Corroborative Rule and Crimes Accompanying Rape, supra note 3, at 462-63.
13. Amir, Victim Precipitated Rape, 58 J. CRIM. L.C. & P.S. 493, 500 Table I (1966).
14. Baxi, U., Dhagamwar, V., Kelkar, R. and Sarkar, L. (1979), 'An Open Letter to the Chief Justice of India', Supreme Court Cases, 4: 17-22.
15. Brereton D. (1997), 'How Different Are Rape Trials? A Comparison of the Cross-examination of Complainants in Rape and Assault Trials', British Journal of Criminology, 37: 242-61.