

## “RELIABILITY OF A COMPLAINANT’S SOLE TESTIMONY IN A CASE OF RAPE”

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One of the central components of finding justice and truth in a criminal case begins with the witness. The witness in a criminal case is typically someone who is testifying in court because they have either victimized by a crime, observed a crime or event or have direct knowledge of a crime or event.

In a case of Rape, mostly the complainant would be the sole witness who alleged to have been victimized by the crime. Where only a single person is available to give evidence in support of a disputed fact, the court has to weight carefully on such a testimony and if the court satisfies that the evidence is reliable and credible, the court can act upon it.

Section 134 of the Evidence Ordinance lays down a specific rule that no particular number of witnesses shall in any case be required for the proof of any fact, thus attaching more importance to the quality of evidence rather than the quantity.

In Sumanasena V Attorney General<sup>1</sup> Jayasuriya J held that;

*“Evidence must not be counted but weighed and the evidence of a single witness if cogent and impressive could be acted upon by a court of law.”*

Therefore, it is completely at the discretion of the court to convict an accused on the basis of the single testimony and also in many cases, the court may acquit the accused even when it is not satisfied by the testimony of several witnesses.

### **Requirement of Corroboration**

Even though Law does not require a particular number of witnesses to prove a case and conviction may be based on the testimony of a solitary witness, a rule of prudence requires corroboration of such evidence.<sup>2</sup> Corroboration means evidence in support of principal evidence which confirms or strengthens the testimony of a witness as well as other circumstantial evidences.

Whenever there are circumstances of suspicion or the testimony of a witness is challenged by cross examination, or otherwise, corroboration may be necessary.

In the case of Wijepala Vs. The Attorney-General,<sup>3</sup> Fernando J held that;

*“The evidence of a single witness, if cogent and impressive, can be acted upon by a Court, but, whenever there are circumstances of suspicion in the testimony of such a witness or is challenged by the cross-examination or*

<sup>1</sup>[1999] 3 S.L.R. 137

<sup>2</sup>Muslimuddin and others Vs. The State 7 BLD (AD) 1.

<sup>3</sup>Sc Appeal No. 104/99, Sc/Spl/La 238/99, Ca 80/95, Hc Panadura 534/99.

*otherwise, and then corroboration may be necessary. The established rule of practice in such circumstances is to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”*

However in Gurcharan Singh V. State of Haryana<sup>4</sup>, the Indian Supreme Court held that, as a rule of prudence, however, court normally looks for some corroboration on her testimony so as to satisfy its conscience that the solitary witness (Complainant) is telling the truth and that the person accused of rape on her has not been falsely implicated.

It is the settled position of law in India that conviction under Section 376 (offence of Rape) of Indian Penal Code can be founded on the sole testimony of the prosecutrix, unless there are compelling reasons for seeking corroboration. The evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding.<sup>5</sup>

In Bhoginbhai Hirjibhai V. State of Gujarat<sup>6</sup> Indian Supreme Court stated that In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to Victim.

In State of Himachal Pradesh v. Asha Ram<sup>7</sup> Indian Supreme Court held that it is now well settled principle of law that conviction can be founded on the testimony of the

prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. Therefore, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.

Therefore, even in a case of Rape, the court may act upon the uncorroborated testimony of the complainant. The requirements for a plurality of witnesses, or for confirmation or corroboration, are only in exceptional cases. But the court is not bound to act on the evidence of one witness even though he has not been shaken in cross examination or discredited by his demeanour.<sup>8</sup>

### **Conviction basing on the uncorroborated sole testimony of a Complainant**

It could be observed that a conviction may be based on the sole testimony of a single witness, if believed, and mere interestedness is no ground to reject the testimony of a witness when it is found that his evidence is trustworthy and free from doubt. <sup>9</sup>

In Premasiri V. The Queen<sup>10</sup> Court of Criminal Appeal held that:

*"In a charge of rape, it is proper for a Jury to convict on the uncorroborated evidence of the complainant only when such evidence is of such character to*

<sup>4</sup>AIR [1972] S.C 2661

<sup>5</sup><https://www.livelaw.in/know-the-law/-sole-testimony-of-victim-in-rape-cases>

<sup>6</sup>[1983] AIR 753

<sup>7</sup>AIR [2006] SC 381 : 2006 SCC (Cri) 296 : 2005 (13) SCC 766

<sup>8</sup>Kumaraswamy, Law of Evidence Volume II, Book II, page 625

<sup>9</sup>Abu Taker Chowdhury and others Vs. The State 11 BLD (AD) 2.

<sup>10</sup>77 N.L.R 86

*convince the Jury that she is speaking the truth."*

In Sadashiv Ramrao Hadbe v. State of Maharashtra<sup>11</sup>, Indian Supreme Court reiterated that the sole testimony of the prosecutrix could be relied upon if it inspires the confidence of the Court:

*"It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the Court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belief, the Court shall not act on the sole testimony of the prosecutrix. But there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused."*

It could be seen that Sri Lankan judges also tend to convict the Accused based on the uncorroborated testimony of the Complainant when her evidence is consistent, cogent and reliable.

In case of Sunil and Another V. Attorney General<sup>12</sup> Court held that;

*'It is very dangerous to act on the uncorroborated testimony of a woman victim of a sex offence but if her evidence is convincing, such evidence can be acted on even in the absence of corroboration,'*

In the recently decided Sri Lankan Court of Appeal judgment of Chandana Garusinghe V Attorney General<sup>13</sup>, where Justice Priyantha Fernando referring to the Indian case of Bhaginbhai Hirijibhai V State of Gujrat<sup>14</sup>, held that;

*"This observation is relevant to the Sri Lankan context as well. In the above premise, it is clear that an accused in a case of rape can be convicted on the uncorroborated testimony of the victim, provided her evidence is cogent acceptable, and if the Court is convinced that she is telling the truth."*

*"If the evidence of the alleged victim is cogent, acceptable, and if the victim is found to be trustworthy, then Court can act upon her evidence without corroboration. A victim in a case of rape cannot be treated as an accomplice to the crime. If her evidence is not acceptable or doubtful, then the Accused is entitled to get acquitted."*

When considering the credibility testing of women who allege to have been raped, one can argue that if a genuine sexual attack had occurred, the injured girl or woman would immediately raise a hue and cry to any listener at the first available opportunity. Delay in complaining would be due to social stigma and such other various reasons. In such situations, the trial judge has to consider the reasons for a delayed disclosure by the victim.

Just because a witness is a belated witness, Court ought not to reject his testimony on that score alone. Court must inquire into the reason for the delay, and if the reason for the delay is plausible and justifiable, the Court could act on the belated witness. <sup>15</sup>

The courts must evaluate the credibility of a victim's testimony through the circumstances as well as each incidental factor. In the above-mentioned Court of Appeal judgment of Chandana Garusinghe V

<sup>11</sup>[2006] (10) SCC 92 : 2007 (1) SCC (Cri) 161

<sup>12</sup>[1986] 1 Sri L.R 230

<sup>13</sup> CA HCC 116/15 [decided on 30.08.2019]

<sup>14</sup> [1983] AIR 753

<sup>15</sup> Sumanasena V. Attorney General [1999] 3 Sri L R 137

Attorney General, CA HCC 116/15<sup>16</sup>, it was clearly mentioned that;

*“Act of resistance for sexual intercourse defers from person to person. Some may physically resist, struggle, or even bite. Some may scream. Some may silently suffer after showing the disapproval because of she doesn't want to show the public what had happened. It is common knowledge that in our society most of the time the victim woman is also partly blamed by the society. Even after the act of sexual assault, women think twice before a complaint is made due to the social stigma the woman would have to undergo. Merely because she did not scream, she did not bite the accused, she did not run without clothes to the road looking for help, one cannot say that she consented to the sexual intercourse. Court will have to take all the evidence before take it into consideration when deciding whether the complainant consented or not.”*

It is unimaginable that a woman in our society would concoct an untruthful story and level charges of rape for the purposes of blackmail, animosity or revenge. The stigma that attaches to the victim of rape in our society ordinarily rules out the levelling of false accusations of rape. Ours is a conservative society, and therefore, a woman will not put her reputation at a risk by alleging falsely about Rape. Moreover, no parents would smear the image of their daughter in the society by making false allegation of rape against any person.

In such situation, Court should consider a victim's situation, understanding 'the social pressure and the stigma attached to the crime' and the 'circumstances in which the

victim is under fear or that she was in a trauma.

When the testimony of the sole eye witness is reliable, trustworthy and cogent, the evidence cannot be rejected on the grounds of some minor omissions considering the fact the examination of the evidence took place years after the occurrence of the incident.

In the recently decided court of Appeal Judgment of Matarage Sunil premawasantha V Attorney General<sup>17</sup>, Justice Priyantha Fernando, referring to the position of law in India, held that;

*“Discrepancies that do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all-important 'probabilities factor' echoes in favour of the version narrated by the witnesses. The reasons are; (1) by and large a witness cannot be expected to possess a photographic memory and recall the details of an incident. It is not as if a video tape is replayed on the mental screen; (2) ordinarily it so happens that a witness is overtaken by events. ...”*

As discussed above the factors that have to be considered by the Court when evaluating the credibility of the sole testimony of the complainant 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.

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<sup>16</sup> CA HCC 116/15 [decided on 30.08.2019]

<sup>17</sup>CA 2018/2017, decided on 10.09.2019

Even though, a woman's moral character, and evidence of physical resistance and injury continued to be given key prominence in rape trials, courts emphasized that the social repercussions of rape for a woman in our society were too grave for her to make false allegations of rape.

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Thus, it could be argued that in a case of rape, corroboration is not essential for conviction, as the victim of the rape cannot be considered as a partner in offence. As it was without her consent, therefore, no need to corroborate her testimony. In cases where circumstance requires for the corroboration than the testimony of victim needs to be corroborated for the satisfaction of the court, the court needs to be satisfied that the victim is telling the truth and accused was not falsely accused of the offence.

The only rule of law is that this rule of prudence must be present to the mind of the Judge as the case may be and be understood and appreciated by him. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.

Therefore a conviction of an accused can safely be based on the sole testimony of the complainant if she is found full, complete and self-contained. It may not receive corroboration from other witnesses but when it stands fully corroborated by the circumstances of the case and the medical evidence on record, the Court can safely rely on it.