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Case Report

Gang Rape of an Adolescent in Sri Lanka: Conviction Despite an Initial Medical Opinion Excluding Rape

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Abstract

Introduction: Sexual assault is known to result in serious consequences for the victim. Since most sexual assaults are unwitnessed, the forensic medical evaluation of the victim is extremely important. Sexual Assault Forensic Examination (SAFE) is a "high risk" medico-legal practice due to possibilities of serious errors. An alleged gang rape is reported from Sri Lanka where the conviction was based on a second medical opinion.

Case Report: An adolescent girl alleged gang rape by three men. The initial Forensic Medical Examiner (FME) "excluded rape" in his report to the police. The police sought a second opinion from a trained FME (tFME) who was on call on a rotational duty roster. Grazed abrasions over the buttocks, a bite mark of the breast and a recent tear of the hymen were detected which contradicted the initial medical findings. The second opinion was unchallenged during the trial. The accused were convicted of rape with a sentence of 12 years rigorous imprisonment for the leader of the gang.

Conclusion: An efficient on call system for tFME, timely action by the police and tFME, averted a miscarriage of justice and ensured a conviction in an alleged gang rape of an adolescent.

Recommendations: Victims of recent sexual assault should be considered as medico – legal emergencies. In recent rape incidents victims should be examined by a tFME. The rotational duty roster system of tFMEs should be strengthened. When relevant, second opinions should be sought by doctors and the police and guidelines prepared for referral.

Keywords: Gang rape; Adolescent; Referral; Conviction; Sexual assault forensic examination; Second medical opinion

Abbreviations

SAFE: Sexual Assault Forensic Examination; FME: Forensic Medical Examiner; tFME: Trained Forensic Medical Examiner; CSA: Child Sexual Abuse

Introduction

Rape is a crime where the perpetrator uses sex as an act of opportunity to target vulnerable populations [1] and is seldom a crime of passion [2]. It is the most violent form of sexual assault where the perpetrator invades a sensitive and intimate physical area of the body of the victim. The body is the sacrosanct precinct over which a person desires to have ultimate control; a control which is lost during the act of rape. Rape is known to give rise to many physical [3] psychological [4] health and social consequences for the victim. In spite of this, studies indicate that only 54% of the victims actually report the crime of being sexually assaulted [5] with adolescents being particularly reluctant to report [6]. In fact, "virgin" adolescents may take a longer time to report the crime than non-virgin victims [7].

Since most sexual assaults are unwitnessed, the forensic medical evaluation of the victim assumes greater importance than in other assaults [1]. In Sri Lanka, when a police complaint is made alleging sexual assault, after recording the victim's statement, the police bring the victim to the nearest government medical officer designated to perform a medico-legal examination.

Sexual Assault Forensic Examination (SAFE) in Sri Lanka is performed by two tiers of doctors. In the towns and cities SAFE is mainly performed by specialists in Forensic Medicine (SpFM) Board certified by the Postgraduate Institute of Medicine, University of Colombo [8] and in the rural hospitals SAFE is performed by medical officers who may or may not have been specially trained to perform SAFE. For the purposes of this paper all non specialist doctors in Sri Lanka performing SAFE will be addressed as Forensic Medical Examiners (FME).

SAFE according to Cunningham N (2012) is a specialized "high risk" medico-legal practice due to possibilities of serious errors [9]. As such, he likens it to high risk industries like aviation and surgery. These errors may result in the acquittal of the guilty or at times conviction of the innocent [9].

A gang rape of an adolescent in Sri Lanka is reported where there was an error by a non trained FME who gave an opinion excluding rape. However a second opinion obtained from a trained FME (tFME) indicated that recent vaginal penetration had taken place thereby resulting in error correction.

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History given by the victim to the tFME

One Saturday morning at about 3.20 a.m., three men forcibly entered the house of this 17 year old girl and dragged her at gun point to the backyard. She was forcibly laid and pinned down to a rough concrete slab. The leader of the gang had vaginal sexual intercourse with her and handed her over to the other two members of the party. The two of them also had vaginal sexual intercourse with her. She tried to shout in protest and resist but one aimed the gun at her mouth, and therefore she was frightened and did not resist to the act. The parents and sister had been chased away at gun point by the accused parties and were hidden in the jungle close by. They returned to the house only at 4.30 a.m. when the accused parties had left the house. This incident happened in a small town about 40 kilometers away from Colombo, the largest city in Sri Lanka.

That same morning, the parents reported this to the police. The investigating police officer produced the victim before the FME of the local Hospital 40 kilometers away from Colombo (FME 1). The FME1who did not have a special training on SAFE performed the examination in the hospital and issued a report stating that "there were no general body injuries in the victim. The hymen is intact. There is no evidence of rape". However, the police officer said he was not satisfied with this outcome as this appeared like a genuine complaint judging from the emotional reaction of the victim and parents and their consistent story. The following day, he held a consultation with his superior officer and they referred the victim to a Specialized Forensic Medicine unit in Colombo.

It being a Sunday evening, no doctor was on duty at the unit, but an on call duty roster system with trained FME (tFME) was in operation. The police officer duly brought the victim to the residence of the on call tFME at about4.00 p.m. which was around 37 hours after the incident. The tFME had 18 months' training on SAFE at a premiere medico legal centre in Colombo.

In Sri Lanka, no facilities for performing SAFE exists in the residence of FME, therefore, the usual practice in these instances is to admit the victim to hospital for SAFE the following morning. However, this tFME taking an out of the box attitude, decided to perform an urgent SAFE at the nearest rural hospital 02 kilometers away from the residence where facilities were available.

Examination of the victim revealed healing linear parallel grazed abrasions over the buttocks, a 2.5cm healing linear abrasion on the back of left thigh and an oval 2.5cmx 1.3cm contusion of the right breast slightly above and medial to the nipple, which was consistent with a bite mark. The second button of the shirt was missing. A fresh laceration extending down to the hymeneal ring was noted at 7 o' clock position of the hymen. The margins of the tear were reddened, swollen. On touching there was slight bleeding from the margins of the tear. There was a 0.5 cm tear of the posterior commissure. There were no anal injuries. A button similar to the buttons in the victim's shirt was discovered at the scene. Comment was made on the medico – legal examination form, "There is a fresh laceration of the hymen. There is evidence of recent penetration of the vagina".

At the High court trial the three accused were convicted of gang rape and the leader of the gang sentenced to 12 years rigorous imprisonment. The victim's story corroborated by the mother and sister, identification of the accused by the victim, the mother and the sister, other eye witness evidence, circumstantial evidence, and the medical evidence of the tFME were taken into account for the conviction. According to the Sri Lanka law reports the second opinion given by the tFME "had not been impugned or assailed at all at the trial" and the defence position was "that the prosecutrix may have been raped" [10]. Thus the report of FME1 was rejected at the trial and was not used by the defence to challenge the tFME.

Discussion

In this case of alleged rape, though reporting was done early, the significant errors committed were the missed general and genital injuries and an erroneous opinion "excluding rape" given by FME 1 without consulting a second opinion.

The reasons for not documenting the general and genital injuries by FME 1 could be a cursory superficial examination, a lack of awareness regarding a standard SAFE, or at the extreme, a deliberate attempt at hiding the examination findings. However, the opinion "rape can be excluded" is indicative of a lack of training on SAFE because "rape" is a legal definition and not an opinion that can be expressed by a medical witness.

Fortunately, suspecting an error and recognizing the expertise of a tFME, the investigating police officer referred to a specialized medico – legal unit for a second opinion. This initiative by the police facilitated error detection. On the other hand, it is the authors' observation that many FME in Sri Lanka refer victims of alleged sexual assault to specialized medico – legal centers when they are in doubt, unlike in this case. There are no guidelines for FME regarding the type of sexual assault victims that they have to refer to a specialized medico – legal unit. As such FME 1 cannot be penalized for non referral. In fact, doctors are said to display a wide range of referral behaviour [11] some referring to a consultant when relevant and others seldom doing so. This may be linked to unique "referral thresholds" of doctors which results in variation in their referral rates [12]. This further confirms that guidelines are a necessity.

The charges were filed by the police based on the second opinion and during the trial the second opinion was unchallenged by the defence leading to a conviction. However, the question arises "If there was no referral, and only the first medical opinion available, would there have been no charge of rape?"

Efficient functioning of a rotational duty roster on a Sunday evening enabled this rape victim to gain prompt access to a tFME. An exclusive rotational duty roster for sexual assault victims, separate from on call for other police work would enable a better service as exists in some countries [13]. The case was considered as a medico – legal emergency by the tFME and initiated an out of the box approach to perform SAFE at the nearest District Hospital and thereby minimized the delay between the incident and SAFE. This would have facilitated general and genital injury detection which is important for the progression of the case in the criminal justice process. In a study general body trauma was detected in 39.1% examined within 72 hours of sexual assault, but declined to as low as 6.3% when examined after 72 hours. Furthermore, genital trauma on colposcopy was found in 35.7% examined within 72 hours of sexual assault but only 19.5% examined after 72 hours,[14] thus highlighting

that great effort has to be made to perform SAFE with the minimum delay as possible. In addition, a study from Philippines on Child Sexual Abuse (CSA) victims from age 0 – 17 years, revealed that CSA victims evaluated within 72 hours of the assault were four times more likely to reach court [15].

This case amply illustrates the need for preventing errors in SAFE and to have a good system to detect and correct any errors thereby increasing the rate of prosecution in cases of alleged rape.

Conclusion

Timely error detection in SAFE by the police, prompt examination and error correction by a trained FME on an efficient rotational duty roster contributed to the progression and conviction of this case of adolescent gang rape where an initial faulty medical opinion excluding rape had been given. Thus a miscarriage of justice was averted.

Recommendations

1. A licensing system should be introduced where FME can perform SAFE only after a standard practical training. FME's periodic upgrading of knowledge and expertise on SAFE should be mandated. This is more so in CSA [16]. Guidelines need to be developed regarding referral of victims of sexual assault to specialized centers by FME, irrespective of whether there are positive or negative findings. Professional organizations related to medico - legal services should work towards an error detection system and rectification in SAFE.
2. SAFE reports especially in acute cases could be reviewed by a senior experienced police officer thus detecting possible errors. Police officers should be given a specialized training on relevant aspects of SAFE.
3. Rotational duty rosters should be strengthened, and initiatives provided to FME on the roster. FME on the medico – legal rosters should consider victims reporting recent rape as medico – legal emergencies.

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