

Two cases of alleged “Rape by Impersonation” in Sri Lanka

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Introduction

Section 363 of Penal code of Sri Lanka (sub section 1) states that “ A man said to commit ‘rape’ who has sexual intercourse with a woman with her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is lawfully married”[1]. Even though there is a legal concept, such allegations are very rare in practice. During last 21 years in my medicolegal career working in four district general hospitals as the forensic medicine specialist, only two such allegations were examined by me. These allegations seemed to be suspicious at the beginning but thorough history taking showed them possible and seemed genuine to the author.

Case history - one

A 28 years old married woman came back home from a funeral house with two children. Husband had said he would come late. So patient had kept the front door closed but unlocked and was in the bed. She fell asleep and felt “husband’s touch”. She thought that is her husband and allow sexual intercourse. After sexual intercourse husband went to bath room and did not return. She was suspicious, searched for husband in the house then in funeral house and found husband was talking with friends. Before this incident, in the funeral house a neighbor had asked “may I come to your house”, but she did not suspect any hidden message.

According to the husband that person was missing from the funeral house during the said time period and reappeared just before the patient revisited the funeral house. Patient suspected that person is the perpetrator.

Case history - two

26 years old married woman having 3 children was sleeping in the master bed and small daughter was sleeping in the next bed. At the midnight she felt sexual intercourse with her legs raised on to shoulders of the” husband”. As that is the usual time for sex she allowed sexual intercourse in unusual position. She felt alcohol smell form the man but she ignored as her husband also consumes alcohol occasionally. When she complained about pain in the left leg “husband” did not respond. After the sexual intercourse “husband” went off. She suddenly recalled that her husband had not consumed alcohol that day due to flue he was suffering. Immediately she went to the husband’s room and found he was asleep with the little son. When she shouted husband found the neighbor inside the house trying to escape from the window he had come in. Assailant is a known person from next village.

Discussion

Impersonation is reported infrequently in Sri Lanka in a form of one person appearing in the courts for another person or criminal lives under another name. Similarly rape by impersonation is a rare allegation in the world. Even though “Rape by Impersonation” is mentioned in the Penal Code of Sri Lanka, It is extremely rare to find such allegation in real medicolegal practice, probably one or two cases during the entire career of a forensic medicine practitioner. Even though such complaint could be made by a female, it is difficult to prove or disprove. Everybody tends to suspect the story as a fiction.

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Sometimes patients also give false histories to the medicolegal practitioners due to various reasons [2]. When consensual sexual intercourse is discovered by a third party, it is not unusual to describe the incident as a rape. But in genuine cases, when the detailed history is recorded by the medical officer, history become more valid in the court of law. To prove the case in the court, genuine and rational history should be presented to the court with circumstantial evidence.

Following issues make the history more reliable.

1. Why did not the victim suspect the rapist before allowing the sexual act? In both cases the time was usual time for practicing sex by the couple. Because of children usually they engage in sex secretly, silently in the dark. In one case victim was sleeping and in the other case victim was about to sleep.

2. Why did the victim suspect at the end? In both cases, accidentally victims suspected because of unusual happenings. In first case “husband” did not come back from the toilet raised the suspicion. In second case, when victim complained about the leg pain, “husband” ignored it and continued with sex. Then she felt the smell of alcohol and realized that husband had not consumed alcohol that day.

3. What is the behavior of the victim after realization? Both victims had immediately informed their husbands and searched for the perpetrator.

4. Was consensual sexual intercourse turned in to a case of rape because of the discovery? In both cases nobody had discovered the sex act. If it was a consensual sexual intercourse victim could hide it from husband. “Has anybody discovered the sexual act?” is one important issue should be addressed by the investigators and the defense.

In both cases investigations were done to find spermatozoa and DNA matching with said to be perpetrators. Victims’ behavior and husbands’ actions were the circumstantial evidence available. If investigators can find the behavior of accused prior to the action and soon after the action, it might help to prove or disprove the case. Since there are no injuries and it is a form of “consensual” sexual intercourse, rape by impersonation is a medico-legal challenge.

Detailed medicolegal history about the incident, reason for not suspecting the perpetrator, discovering of perpetrator and post – rape behavior of the victim are vital to prove the case. Scientific evidence such as finding of spermatozoa and DNA matching with the perpetrator is the most important medicolegal contribution.

The main possible defenses are false allegation and consensual intercourse turning in to an allegation of rape due to discovery by a third party. Even though rape by impersonation is a debatable scenario, such allegations were made rarely in Sri Lanka as well as in the world. (2) The segment of law related to “rape by impersonation” has protection only for married woman. Therefore, some countries have changed the law to protect the unmarried woman also [3].

There are reported cases in the world about men who pretended as police officers who committed rape and it is considered as “police impersonation” [4,5,6,7]. In Sri Lanka, similar to other countries children under 16 years pretend as adults and engage in sexual intercourse. If discovered they become victims of statutory rape. Such situation is considered as “adult impersonation” [8]. According to Sri Lankan culture virginity has a great value for marriage. Married men start love affairs with girls, pretending unmarried and engage in consensual sexual intercourse. In such a case the girl had given the consent to the man, believing that the man is unmarried and with a hope to marry later. But married man can’t marry another woman without a divorce. This is also a form of impersonation. There was another incident about a woman went to a hotel with a friend for consensual sexual intercourse. An unknown person performed sexual intercourse instead of the friend. Sri Lankan law needs developments in relation to sex assault with different impersonations and fraud [9,10] where consent was not given or consent was given to apparently another person.

Conclusion

Rape by impersonation is a very rare allegation in Sri Lanka. Responsibility of the medicolegal practitioner in such a debatable case is to collect proper history including details about the incident, reason for not suspecting the perpetrator before the sex, discovering of perpetrator and post sex behavior of the victim.

Finding of Spermatozoa and DNA matching is the only examination finding in such a case.

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