An Expert and Expectations: A review on Medico-legal opinions in alleged sexual abuse victims

Original article

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Abstract

Introduction

An expert's role is to guide the courts in matters related to a particular speciality. In a case of alleged sexual assault an expert is expected to document the history, examination findings and collect available evidence in order to corroborate accounts of sexual assault for courts of law. However in many instances, the medico-legal evidence has shown its limitations and inconsistencies of expert evidence which are known to result in miscarriage of justice.

Objective

Find out the strengths and limitations that are encountered by an expert when giving opinions in relation to alleged sexual abuse victims

Methodology

Opinions stated in the Medico-Legal Reports (MLR) sent to courts by the authors during the last decade were analyzed. 20 reports from each age group (0-5,6-10, 11-16, above 16 years) were randomly selected and the allegations and the opinions were analysed according to a scale developed.

Results

Out of 80 reports analyzed majority were females (female to male 10.4: 1). The allegation in all age groups except primary schooling group was penetration of an orifice. In the age group less than 10 (preschool and primary schooling), the medico-legal opinion did not support the allegation in almost half the cases. (support: non support is 1.05:1). In the age group more than 10 years the opinion supported the allegation (4.9:1). There was a statistically significant difference between these two groups. (p:0.001).

Conclusion

When the examinee is less than 10 years of age difficulties arose for the medical expert to express an opinion. The law enforcement authorities and the judiciary should be aware of this limitation and it is important to find other corroborative evidence to support or disprove the given allegations.

Keywords: *sexual abuse, expert, medico-legal opinion*

Introduction

An expert, who by virtue of education, training, skill or experience is believed to have specialist knowledge in a particular subject beyond that of an average person. When called upon to give evidence in a court of law, he or she is expected to guide the courts in matters related to their particular field by giving an opinion or deducing inferences from the facts observed by him/herself or others [1]. In a case of alleged sexual assault an expert conducts a medico-legal examination where he/she will take a history, perform a bodily examination, collect forensic evidences and carry out investigations to enable him/her to prepare a comprehensive report to the court. In the report it is expected to include his conclusion and opinion regarding the allegation. Examination of an alleged sexual abuse victim and forming opinions to a court of law is a challenge to any medical expert especially when the facts on which the opinion is based is doubtful, scant or at times, even nonexistent [2]. However, the expectations of the society and the judiciary regarding expert evidence is very high especially in the era of DNA, where many believe that nailing of the "perpetrator" or exonerating an alleged is possible through science [3]. Although the expectations are very high and in fact determinative in many instances [4], expert evidence has at times shown its limitations and inconsistencies where judgments have been revoked in many parts of the world [5, 6, 7].

Police statistics on alleged sexual abuse in Sri Lanka has shown an upward trend during the last few years and more numbers are reported in children than adults [7]. According to the statistics released by the Ministry of Justice in latter part of 2009, out of approximately 15,000 trials currently pending nationwide, more than 4,000 (27 %) involved some form of violence towards a child especially alleged sexual abuse, while these proportions were higher (over 50%) in courts outside Colombo [8, 9]. In a Stakeholders' meeting at the Ministry of Justice to resolve issues of alleged sexual abuse cases pending indictment, the importance of having quality medico-legal opinions by the experts was highlighted [10]. Therefore, it is time to find out the strengths and limitations of medical opinions given by Sri Lankan experts if we are to improve the overall quality of imparting justice in alleged sexual abuse.

Objective

Find out the strengths and limitations that an expert encounters in giving opinions in alleged sexual abuse.

Methodology

Retrospective descriptive study based on case records maintained by the authors for past ten years on alleged sexual abuse victims were analyzed regarding the type of allegation, alleged person and the opinions stated in the Medico-Legal Reports (MLR) sent to the courts. A proforma was prepared to streamline the gathering of information to fulfill the objectives. The cases were grouped into four (4) depending on the age. The age groups were 0-5 years (pre-school), 6-10(schooling), 11-16 (teenage), above 16 (consenting age). 20 reports from each age group were randomly selected and the allegation and the opinions were analysed according to a scale developed. The data were analyzed using SPSS –version 16 statistical package and win-pepi using percentages and proportions.

Results

Out of 80 reports analyzed majority were females. Female to male ratio was 10.4: 1. (Table 1). Vaginal penetration was the commonest allegation in older age group (i.e. more than 10 years) while fingering was the commonest in less than 10 years. (Table 2) However, there was no statistical difference in both groups (Table 3). The alleged perpetrator was a non stranger in almost all the groups but

the ratio (non stranger to stranger) increased with age. (Table 1)

Analysis of the opinions supporting the allegation showed that in 50% of the consenting age group i.e. 16 years or more there was an indication of another offence/s as well as the said allegation at the medical examination. These included repeated abuse, involvement of combination of activities, such as penetration of multiple orifices(vagina/anus), presence of bodily injuries amounting to grievous hurt or injuries or conditions amounting to endangering life or fatal in the ordinary course of nature. However, in lesser age groups the medical opinion neither supports nor rejects the given allegation showing the limitation of the expertise. (Table 4). When the two groups are considered there was a significant difference regarding the support given by medical opinion to the given allegation (p: 0.003). (Table 5).

Table 01- The composite table of the results of the analysis

Item		0-5 years N-15	6-10 years N-24	11-16 years N -21	>16 years. N-20
Sex	Female	15	21	19	18
	male	00	03	02	02
Alleged perpetrator	Stranger	01	01	02	05
	Non stranger	14	23	19	15
Tyoe of Alleged abuse	Penetration of an orifice (oral, fingering, vaginal intercourse, anal intercourse, combination of the above)	14	14	17	19
	Non penetration (fondling, intra-crural)	01	10	04	01
Medical opinion	Supports allegation	6	14	16	18
	Does not support allegation	9	10	05	02

Table 2: Detailed analysis of the allegation according to age groups

Category	Type of allegation	0-5 years N-15	6-10 years N-24	11-16 years N-21	>16 years. N-20
Penetrating an orifice	Fingering	08	06	00	00
	Oral intercourse	02	02	00	00
	Vaginal intercourse	02	06	14	16
	Anal intercourse	00	00	02	01
	Combination of more than one orifice	01	02	01	02
Non penetrating	Fondling	02	01	02	00
	Intra-crural	00	05	01	01
	No activity	00	00	01	00

Table 3: Allegation according to the age group

	Less than 10 years N: 39	More than 10 years N:41	P Value
Penetrating an orifice	28	36	0.073
Non penetrating	11	05	

Table 4: Detailed analysis of the medical opinion Vs allegation according to the age

Item		0-5 years N-15	6-10 years N-24	11-16 years N -21	>16 years. N-20
Supports allegation	Medical opinion supports a lesser offence than alleged offence	00	00	02	01
	Medical opinion supports allegation	06	11	10	07
	Medical opinion supports another offence/s as well as the alleged offence	00	03	04	10
Does not support allegation	Medical opinion neither supports nor rejects the allegation	09	10	04	02
	Medical opinion does not support allegation/ reject	00	00	01	00

Table 5: Medical opinion according to age group <10 years Vs more than 10 years

	Less than 10 years N - 39	More than 10 years N - 41	P Value
Supports allegation	20	34	0.003
Does not support allegation	19	07	

Discussion

Medical literature on opinions given by experts on sexual abuse based on genital findings is scarce and limited to case reports or descriptive studies [12-22]. Even among the published studies, wide differences have existed between the rate of abnormal or supportive findings reported among children examined for suspected sexual abuse, from 50% to 90%,[14-17] to 15–20% in many reports in the 1990s,[18-20] to less than 4% in large series published since 2000 [21, 22]. In our study, a supportive medical opinion was found among 52% of children less than 10 years. It also showed that there was a significant difference of the medical opinion given by the expert related to the age of the examinee when one considers frequency with which the medical opinion supports the allegation. The older the examinee the allegation can be confirmed more with medical evidence.

The findings of our study are very plausible to any layman due to several facts. It is expected that a child's understanding about the nature of sexual acts increases with maturity hence the reliability of the allegation is high with advancing age in spite of socio-cultural differences encountered in different parts of the world. Therefore, the description by the examinee of what exactly happened during the incident becomes clearer and comprehension by another improves. Therefore it is possible to

have more compatibility of the allegation with a supportive medical opinion. The other reason is that children of less than 10 years do not have the vocabulary to explain the “sexual acts” that they allege. Therefore, the vagueness of the allegation can lead to diversity in the opinion among experts. The third factor is again related to poor comprehension and under recognition of a child sexual abuse resulting delays in informing parents or guardians. This can lead to healing of injuries where expert is unable to give an opinion. Experts should be impartial so as not to over interpret normal variants of genital anatomy as signs of sexual abuse and also not to exclude an alleged sexual act just because there are no injuries. According to Pillai in 2005 the following three questions must always be applied to evidence [23].

They are:

1. Is the expert’s opinion based upon scientifically reliable data and sound methodology?
2. Is the expert’s opinion supported by sound reasoning?
3. Does the scientific data relied on, apply in this case?

Although the principle of giving an expert opinion stated is very clear, the expert has to understand that there is a fundamental issue in science when it comes to sexual abuse. One of which is the absence of epidemiological and case control studies hindering the expert’s knowledge on normal variants of hymen. On the other hand, the theory of what believed as “true” today will “not be true anymore” due to advancement of science. The opinions regarding sexual abuse should be in agreement with the published literature or research and not represent a novel theory of causation or a personal theory of the expert. Therefore, updating the knowledge is a must for medical experts involved in forensic work in order to improve the quality of the opinion. In conclusion we would like to state that there are many limitations in forming an expert opinion with regards to sexual abuse. Revealing of our limitations to the law enforcement authorities and the judiciary will enable them to find other corroborative evidence to support or disprove the given allegations.

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Contribution of authors

Design to the study – PASE, IDGK
Analysis of the data-PASE
Interpretation of the results- PASE,IDGK
Writing the manuscript -PASE
Revising the manuscript-IDGK, PASE