

Seeking and Employing Forensic Evidence in Rape Cases in Thailand

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Abstract

This article is a part of the research project on “Forensic evidence in criminal justice proceedings of rape cases in Thailand”. Although forensic science has long been employed in Thai criminal justice proceedings, the lack of enough scientific knowledge among the legal professionals still remains especially in rape cases. In this study on rape cases, where the evidence of high probative value is required, it was found that the seeking of forensic evidence in the early stage of investigation and the use of the evidence in court trial are problematic. In many cases the late complaint about the case and the delay of medical examination of the victim were encountered. The unintentional contamination of crime scene and destroying valuable evidence were also found in some cases. Moreover, the problem of insufficient personnel in all areas of forensic science was also reported. In this work, the remedies to rectify the above-mentioned shortcomings are provided.

Keywords: forensic evidence, criminal case, rape

Introduction

Forensic science was firstly introduced to Thai criminal case in 1932, when Office of Police Forensic Science was established.¹ However, development in forensic science in criminal cases has remained halted mainly by insufficient knowledge. Discrepancies in forensic examination results from different institutes are also another obstacle. Presenting forensic results at the court is consequently found an issue about quality of the evidence when principles of each stage of evidence search as well as its tools are questionable. Unfortunately, some legal professionals do not consider forensic evidence a proof beyond a reasonable doubt², and eyewitness and other evidence are superior at trial. In some cases, especially rape and sexual assault, there is a slim or no chance to have plenty of eyewitness but the victim, who claims herself both the injured person and the witness.

In fact, the victims are overwhelmed by so many questions from both parties, starting from filing the complaint; history taking by the doctor during the medical examination; as well as inquiry and testimony at the court, that many even decided not to press criminal charge against the offender, while some do not overcome the testimony, which means the wrong doers are able to escape conviction.

This research, accordingly, aims to study seeking and employing forensic evidence in rape cases in Thailand as well as its problems and obstacles.

Methodology

This research aims to investigate problems and obstacles of forensic investigation and application in prove guilt in sexual assault cases. Academic journals, dissertations, laws, electronic media, judgements by Court of Justice Thailand, judgement by United

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States Courts, and relevant research in and out of the country were reviewed and surveyed by documentary research before the data was analysed by content analysis. The result was employed in determining the questions in in – depth interviews with 24 officials in criminal justice system, legal experts and personnels from a foundation for ending sexual abuse, and focus group discussion with 9 personnels in criminal justice system and legal experts. Finally, guidelines in forensic investigation and application in rape was proposed as the result.

Discussion

In seeking and employing forensic evidence as the element of the offence in a criminal proceeding has been studied as follows:

1. Rape laws and evidencelaw

As the element of the offence, the evidence searched shall be legally and theoretically obtained. The details are as follows:

1.1 Rape laws

Rape is an offense relating to sexuality according to Thai Criminal Code section 276 as follows:

Section 276, “Whoever has sexual intercourse with the other person, against his or her will, by threatening by any other means, by injury to person by taking advantage of the other person to mistake such person for another person, shall be punished with imprisonment of four to twenty years and fined of eight thousand to forty thousand Baht.”

Thereupon, the physical evidence shall prove the facts constituting the offence with respect to 3 questions proposed by Graeme Walker, (2015)³ as follows:

1. Was the sexual intercourse committed?
2. If so, who committed it?
3. Was it committed with or without consent?

1.2 Evidence Act

Evidence shall be applied on the basis of the best evidence rule and section 226 and 227 of Thai Criminal Procedure Code as follows:

Section 226, “Physical evidence, documentary evidence, or eyewitness as means of ascertaining

the guilt or innocence of the alleged offender shall be applied the evidence. The evidence shall not be obtained by lure, promise, threat, fraud, or other illegal actions and shall be testified by this section and other testimony acts.”

Section 227, “The court shall proceed the trial with all evidence and presumption of innocence.

Where any reasonable doubt exists as to whether or not the accused has committed the offence, the benefit of doubt shall be given to him.”

Evidence in trial has to be acquired and presented to the court in a legal manner. The court proceeds the trial by examining the evidence. If the alleged offender pleads guilty, he is convicted offender and the judge will pass sentence. Where any reasonable doubt exists as to whether or not the accused has committed the offence, the benefit of doubt shall be given to him, which causes dismissal of the case. Evidence in lawsuit shall prove liability of the offender beyond reasonable doubt.

2. Problems in seeking forensic evidence in rape cases

As a personal identification, DNA fingerprint is approved forensic evidence in rape cases.⁴ Likewise, fingerprint is also approved personal identification, which is in accordance with Michael Lynch, who has noted that both of them are accepted in crime investigation.⁵ This research also suggests that the two major resources which equally collect the most of physical evidence are human body and crime scene.

2.1 Seeking forensic evidence from human body

In sexual assault cases, evidence may be searched from both the victim and the rape accused as follows:

1) Evidence on body: Forensic examination helps to find the presence of semen, scratch, swelling, and bruise. Bodily injuries indicate struggle, which means that the victim did not consent. Z. Jakovskia et al. (2013) have examined genital examination and non – surgical autopsy and demonstrated that genital injuries as well as wounds and abrasions on breasts, thighs and neck indicate sexual violence with no consent, which involves fight.⁶

2) Forensic evidence on clothes: The clothes with the victim when the offence was committed may

link to the incident and the offender. Blood or semen found on clothing are collected for DNA analysis. Moreover, tears on the outfit may indicate fight. However, the evidence can be destroyed depending on temperature and characteristic of the fabric, hence it is important to collect evidence promptly.⁷

3) Problems on seeking for forensic evidence from human body: All of the above are evidence of high probative value due to the fact that it is conducted by scientific testing before presenting to the court. Reliability of the test result relies on condition that the evidence is collected instantly. However, the major obstacle in seeking forensic evidence from human body in Thailand is that the victims do not have the examination instantaneously after the incident, while the accusation forensic samples are required to be collected promptly. When the victims delay the accusation, it relatively causes overdue medical examination. Altered or destroyed evidence on the body and healed injuries create weak evidence. Consequently, it is mandatory that the victim go to the police and have medical examination immediately, hence the evidence contains high probative value and is proved beyond reasonable doubt.

2.2 Seeking for forensic evidence from crime scene

Crime scene is the bay of physical evidence, such as traces and substantial evidence: dead body, fingerprint, clue. Forensic evidence containing DNA - body fluids, such as blood, saliva and semen - may link to the offender, which Shichun Ling et al. (2021) have suggested that DNA is corroborative evidence which is more preminent than other forensic evidence. Moreover, weapons and crime scene tools found can also lead to the suspect.⁸ Crime scene is the heart of crime investigation, a resource of evidence. The criminal tends to leave clues.⁹ The quantity of evidence found depends on expertise and experience in searching and collecting evidence of the inquiry officials. However, valuable evidence may be unintentionally destroyed by people, such as local journalists, residents, and rescuers, who arrived at the crime scene before the officials.¹⁰

2.3 Insufficient personnels in forensic science

The in - depth interviews and focus group discussion have suggested that personnels in all areas, including first responding officers,

crime scene investigator, and forensic agent, are confronting understaffing problem, which causes fatigue in the staff and disregarding operation. ViraphongBoonyobhas et al. (2015) have pointed that understaffing puts excessive workload on the existing officers, who are overwhelmed by filing duty. Halted by the documents, the officers have to confront with destroyed evidence as they delay in crime scene investigation.¹¹

2.4 Lack of budget in seeking forensic evidence

Forensic science examinations require high budget. In rape cases, forensic evidence is collected from a wide variety of samples: the crime scene, the victim's body, and the suspected, which requires expensive budget. SakolkitAkejakrawan et. al. (2012) have stated, "In promoting policies and measures to develop forensic service in Thailand, budget for forensic science is prioritized for improving tools and knowledge of the officials."¹² Capital in forensic evidence, from collecting and preserving evidence to scientific analysis, must be investigated to arrange appropriate budget plan.

3. Problems in employing forensic evidence in rape cases

Forensic evidence plays a vital role in rape cases. In criminal justice system, the evidence is applied in four stages. First, the inquiry officer applies the evidence in filing a case before presenting to the state attorney. Second, the state attorney decides whether to file the criminal charge. Third, the defendant's attorney applies the evidence to defend innocence of the accused. The last is the most important stage when the court proceeds the trial by the evidence. If the accused is sentenced guilty, the evidence is applied in determining punishment. Problems in forensic evidence application are as follows:

3.1 Insufficient forensic knowledge among judicial officers

Training sessions for legal professionals together with forensic scientists are required to promote scientific knowledge in the profession. The in - depth interviews and the focus group discussion have suggested that only a few judicial officers have acquired appropriate knowledge of forensic science. State attorneys tend to believe corroboration from

forensic test in the inquiry by the inquiry officials. The court believes the expert court reports. Meanwhile, the defendant's attorney investigates and distorts the evidence by asking irrelevant questions, criticizes the victim with questions, uses confusing structure in the questions. This is in accordance with the study by Jessica Kennedy et al. who have stated that there were leading questions by the defendant's attorney to put the victim to testify against the forensic evidence as a means of obscuring the fact of evidence, which led to oral argument and probability of mistrial.¹³

3.2 Lack of guidelines

Currently, there is lack of protocols and guidelines on forensic evidence application. The practice depends on an individual judge in the criminal case. Waraporn Promwikorn et al. (2019) have proposed development in principles, document process, law, protocol, rule and court rules relating to presenting and hearing forensic evidence.² The author studied Koh Samui Provincial Court verdict decided case number 2459/ 2558 and found court prioritized eyewitness according to best evidence rule. If the eyewitness was not available, and it was proved not the victim's fault, other evidence, which was forensic evidence as circumstantial witness, was presented.

3.3 Absent of expert testimony

In Thai criminal justice, both parties tend to consent to examination result by experts, which means there is an absent of expert testimony and the court and both parties are deprived of benefit from expert evidence. The in-depth interview with a pathologist and focus group discussion have suggested that there are not many times when pathologists do expert testimony, which means both parties do not have direct examination of experts to examine the corroboration of the evidence. However, direct examination of experts proves the fact in court when proceeding with complicated scientific evidence, which might cause errors.¹⁴ Gabor Kovacs et al. (2022) have noted in many countries expert witness testimony influences the trial when corroboration of forensic evidence has been examined. Moreover, there are myths in rape and sexual assault.¹⁵ Kieran M. Kennedy (2013) has stated that there is misconception about genital injuries in sexual assault. The victim may or may not have genital injury after sexual

assault incident. Rape does not always cause vaginal laceration, while sexual activity with consent can cause vaginal cuts. It is the duty of forensic scientists in promoting knowledge among judicial officers.¹⁶

4. Methods of seeking and employing forensic evidence in rape cases

Corroborative forensic evidence must comply with laws and academic disciplines when it is investigated and applied in trial. There are two methodologies as follows:

4.1 Method of seeking forensic evidence

To solve problem about validity of the forensic evidence, specifically from the victim, suggestions for work process of relating officers, investigation and scientific examination tools are as follows:

1) Guidelines for victims: The problem initiates from delay of the victim's filing complaint and medical examination. Hence, the public should be educated with guidelines when experiencing serious sexual assault, forensic evidence preservation, as well as forensic test for rape.

2) Practice of officers in inquiry: Specialists in sexual assault should be established when cases which require appropriate knowledge and cases with no witness need long-experienced inquiry officials. Another significant problem and obstacles in evidence investigation is that understaffing. More vacancies, specifically inquiry officials, will ease work overload problem now and in the future.

3) Standard development in the department: Investigation tools should be compliance with universal standard.

4) Education for volunteer rescuers at crime scenes: The rescuers should be educated about protecting crime scenes when rescuing dead or serious injured victims in rape and sexual assault.

4.2 Forensic evidence application method

While forensic evidence is essential in trial, specifically in rape cases, it is considered secondary evidence in some courts. Guidelines for court and judicial officers should be established as follows:

1) Establish clear guidelines for court to standardize priority of forensic evidence.

2) Develop knowledge of forensic science among legal professionals. The knowledge will increase confidence in scientific examination.

3) Develop forensic experts witness for expert testimony in rape cases and cases with high penalty.

Conclusion and Suggestion

Thai criminal justice system needs official guidelines of forensic evidence application. It is recommended that technology as well as knowledge for forensic experts be regularly developed as follows:

1) Series of workshops for judges, state attorneys and lawyers with basic science knowledge should be arranged by forensic scientists and pathologists to promote expertise, which helps improve questions in cross examination and facilitate the trial.

2) The capital on investigating forensic evidence – beginning with crime scene investigation, collection, and scientific examination – should be analysed. When more forensic evidence is being required, it is important to analyse both expense in post – mortem examination and scientific examination for the future budget plan.

3) Knowledge of science and technology as well as competency for forensic scientists should be developed with the concern that forensic science is conducted for justice. Legal professionals and scientists should be educated to prevent loopholes in forensic evidence examination and forensic evidence roles in court trial.

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