

# **Sexual Abuse of Minors: Comparison between the Medical Forensic Evidence and 1<sup>st</sup> Degree Sentences**

## **Research**

With this work it is intended to layout the research in the medical forensic field of sexual abuse of minors, to offer a framework perspective of the actual state of the problem, with the specific objective of verifying, if and in which terms, the gynecological consultation, proof from the medical forensic consultants, have incised within the legal proceedings which concern this type of offence.

The research was conducted taking into consideration 40 cases of abuse of minors within 2 to 18 years of age, of which 86% are female and 14% are male, objects of criminal proceedings conducted by the Prosecutor of the Republic taken from the Courts of Milan during the period between 1996 and 2000 concluding with first degree sentences.

From this very moment, it is possible to anticipate that while it could be possible to be led to think that a judge bases his or her decision essentially upon relevant data from the medical forensic consultants, in reality from the research conducted, it resulted that the eventual physical bruises revealed on the bodies of the minors through the medical examiners consultation, assume valiancy as integral elements, that positively co-validate suspects of abuse extracted from other sources. And, therefore, on the whole of single factors which, considered globally, lead the judge to a final decision.

## **Method**

On the basis of the research from records of single proceedings, a graph was prepared in advance based on judicial data, subdivided into six sections, which provide a summary of every single proceeding and in which diverse elements have been carried forward as use in the investigations: the base source of the crime, the information surrounding the victim of the crime, the relation between the aggressor and the victim, the judicial qualification of the committed crime, the typology and the results from the ascertainment shown during the course of the preliminary investigation with particular attention paid to the expert witness, the final outcome of the proceedings with the specific motivation from the single verdict.

## **Relevant Data**

a) The first significant data refers to the people that, in each case, had brought forth a suit and therefore had given way to the proceedings prompting the investigations.

In 44% of the cases the accuser is the mother of the victim, while the father has a role that is marginal or in many cases, it is he himself the perpetrator of the crime.

Other people that have ended up having a significant role, as supporters in the act of the investigation, are teachers (18%) and social workers (22%).

This first factor results in being of fundamental importance due to the fact that it reveals in which way, when, and in what context the information of abuse came forth for the first time.

It must in fact be underlined how the proof in this type of crime, concerning intimate personal relationships between the aggressor and the minor, can not be left out of the declaration on the part of the injured party and one of the reliable indications of these

declarations is constructed from the actual time and context with which the victim discloses the molestation suffered.

In general young children do not remember having suffered sexual abuse as do those who are adults, but only with time, with maturity and growth can they be capable of understanding the worthlessness and reprehensibility of these facts.

It seems, therefore, in line with the normalness of these testified cases the veracity of the facts in examination gradually emerge from the denial of abuse, to say nothing of the verbalization from those solicited on their own.

From the research conducted, the scholastic context results in being the typical protected setting in which the minor feels to have the ability to be believed and meanwhile has less inhibitions considering how much it could be in the family context, on which the shame and verdict of the parents is based.

In the context of the accusers it is interesting to note that out of 18 accusations brought forth by the mothers of the victims, 11 are brought against the ex-husband, nonetheless of the fathers of the minors; and this as well as the small amount of charges brought forth by the fathers of the victims are brought against the cohabitants of the mother. Out of 40 nuclear families considered, more than half live in situations of separation and within this situation the aggressor ends up being most frequently (68%) the father, followed by the cohabitant of the mother.

This places into evidence how the dysfunction of the family manifests itself in many forms, and sexual abuse often takes place as a response to the break-up that is developing between the parents, or as an ultimate incentive to total disruption.

**b)** The type of existing relations between the aggressor of the violence and its victim constitutes an extremely important variable to the understanding of how the violence itself is manifested and how it is reacted to by the diverse people involved.

From the analysis of this type of variable emerges that the violence committed by a stranger is different, and smaller (5%), than those committed by the incestuous father (55%) or by another relative (20%).

A primary distinction concerns the violence, which occurs as an isolated event and that which continues over time. Examining this variable from the perspective of the “familiar/extraneous” dimension, one can ascertain that with the growth of the intensity of the relation with the aggressor augments the probability that the violence becomes a repetitive act (95%); on the other hand the committed violence by a stranger tends to assume the form of a sudden and isolated aggression.

It is extremely indicative that both the kind of coercion placed into act by the aggressor and the kind of reaction by the victim tends to be related to the type of relationship that exists between them.

With the growth of the extraneous increases also the tendency to place into act a coercive strategy and, at the same time, the inclination by the victim to try to escape the violence; when on the other hand the stronger the ties of familiarity the, lesser is the necessity, on the part of the aggressor, to resort to the use of force towards the victim who, in the majority of the cases, does not see any alternative other than to suffer the violence in silence.

c) It is from the legal qualification of the fact, resulting from the sentencing, that emerges the various cases in point which characterize the sexual act: committed with threats (48%), violence (95%), abuse of authority (57%) and abuse of the inferior physical and psychological conditions of the victim (90%).

d) Concerning the conclusion of cases taken under examination, it appears to be significant that upon 40 cases examined only 7 (18%) were concluded with a request for dismissal formulated by the prosecuting attorney and supported by the judge for the preliminary hearing, for not having sufficient evidence to support criminal legal action.

Of the cases that were sent to trial, for the most part (88%) received a sentencing which accepted the request for a sentencing by the prosecuting attorney even if modifying the terms of the edictal sentence, while the remainder of the cases (12%) were acquitted.

e) The sexual crimes concerned are structurally influenced, under the probative profile, by what emerges from the denouncement carried out by the injured party, which redress a fundamental importance in the reconstruction and ascertainment of the criminal facts, which, usually, take place in the absence of testimony.

- As is evidenced from the research conducted, central probative importance is recognized by the declarations given by the injured party (95%), even if the injured is a minor, are subjected to a careful assessment of intrinsic and extrinsic reliability on the basis of various evidential comparisons, in addition to the declarations from the person who was the first to be notified about the sexual abuse.

From the sentences examined one can extrapolate certain criteria, which attest above all to the intrinsic reliability of these declarations, such as coherence, homogeneousness of the story with a constant breakdown, absence or presence of internal contradiction, spontaneity.

As to the trustworthiness of the extrinsic there were individual probative elements of various natures, which considered all together, had positively confirmed the verdict of criminal responsibility charged against the defendants, which will be seen further on.

- A certain importance (28% of the cases) is attributed to the psychological comparison of the minor, which shows itself in the course of his or her revelation: in fact, the feeling of affection, the absence of any feelings of resentment towards the aggressor-parent accompanied at the same time by a manifest state of anguish, from the fear of seeing again are indications of a natural situation of ambiguity caused by the fact itself of finding oneself in such a position.

- Strictly connected to the psychological state of the victim are the complex manners with which the minor succeeds in revealing the acts suffered, characterized by coming undone of the slow and painful memories, crammed by partial retractions and by incongruent negations.

- Another element utilized, as a source of proof in some sentences (15%) is the strong erotic behavior given by the victim, in the course of his or her growth, combined with sexual knowledge incompatible with the private state of his or herself.

The judges consider these behaviors, referred to in the sexual sphere as a symptomatic element of a traumatic sexuality, impossible to invent at such a young age.

- To confirm the conviction, important information is also disclosed through phone tapping and search and seizures, to produce useful evidence in the course of the investigations, along with the rare (5%), but decisive, spontaneous declaration given by the aggressor himself.

- The most important probative element utilized (62%) along with the declaration by the injured party, to validate the final verdict is represented by the examination results of the victim reached by the expert gynecological witness. According to the literature by a well known American specialist, the clinical chart corresponded by the technical witnesses can be divided into 5 typologies, which corresponds to a medical forensic opinion: here, so on a clinical chart “normal” and “aspecific” correspond to a pure possibility, “suspect” a verdict of probability; “suggestive” a verdict of increased high probability; and finally “pathognomonic” a verdict of certainty. (See Table 1 & Table)

Starting from the cases (7%) in which the clinical medical chart resulted as “pathognomonic”, and the medical forensic opinion is expressed in terms of certainty of abuse, it is clear how, having found clear, referable evidence of sexual abuse, the assessment by the procuring judge resembles to that of the counselors, bringing forth a conviction.

But also in these cases of certainty the outcome of the technical counsel as a probative element is always supported by the proof constructed by the credible declaration from the injured party.

Also in the cases resulting as “suspect” (37%) and “suggestive” (20%) corresponding to the medical forensic opinion of the more or less high probability of abuse, the verdict is prevalingly a conviction, with the exception of 2 cases where a judgment of acquittal was given to the missing elements of integrative evidence.

In the presence of an “aspecific” (23%) medical chart, corresponding to the medical forensic opinion of the possibility of abuse, half the cases concluded in dismissal, not having found the initial suspicions confirmed either in the expert opinion or in the source of proof.

In the end, from the 6 victims resulting as “normal” according to the medical chart, translated then into a medical forensic opinion of the possibility of abuse, two trials were dismissed, while in three there was a sentencing, notwithstanding the results of normalcy from the experts exam, the verdict was based on other convincing factors obtained. In these cases, however, the experts had proved how the absence of unequivocal, recognizable traces of sexual abuse, where not proof enough to exclude any existence of violence of any kind.

**Table 1**

Medical Chart	Number of Victims	Dismissed	Convicted	Acquittal
Normal	6	2	3	1
Aspecific	10	5	3	2
Suspect	16		15	1
Suggestive	9		8	1
Pathognomonic	3		3	
<b>Total</b>	<b>44</b>	<b>7</b>	<b>32</b>	<b>5</b>

**Table 2**

Cases in which the technical counsel played a probational role in the trial

	Number of Victims	Yes	No
Condemned	32	26	6
Acquittal	5	3	2
Dismissed	7	3	4
<b>Total</b>	<b>44</b>	<b>32</b>	<b>12</b>

## Conclusion

In all the cases considered the expert witness had supplied a handful of hypotheses deductible from the elements verified and the judge had undertaken the function of the evaluator of these hypotheses, in the sense that the judge gives them a major or minor evidential consistence through the integration with other elements of proof acquired in the process.

Unfortunately the probability that the gynecological medical exam attains final justice, and therefore documents unequivocally the crime or explicitly excludes it, are however inferior to the communal expectations, and depend most of all on the amount of time past from the time of the crime.

Nonetheless, it is consolidated experience that the objective signs of sexual abuse can be revealed with the highest probability when the least amount of time has passed.

In fact, the effects of the trauma on the genitals resolve themselves rapidly in the major part of the cases, so much as proving difficult to be recognizable after weeks or months.

It must also be remembered that sexual abuse includes behavior from manipulation, oral relations to other forms of sexual molesting that do not cause permanent tissue damage: so that signs of existing trauma signify that force was used which provoked pain and bloodshed.

The problems of the quality of the medical forensic examination upon minors of sexual abuse are nowadays cause of debate, because there is no interpretation of diverse signs of trauma recognized on the body of a victim, which is unequivocally accepted. On the contrary, the border between one classification and another, appears extremely weak and, therefore, a diverse interpretation on the part of the expert witness could diversely influence the result of the entire proceeding.

From the research conducted, it can be stated that the cases that turn out to be the most diffused are the ones, in which the most relevant external evidence not related to the declaration of the victims, is represented by the results of the expert witness. These even if not being able to always furnish a certain confirmation of abuse, result and are considered fundamental instruments to objectively validate the declaration of the injured party; they cannot constitute the one and exclusive probative element on which to base the final decision.

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