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RESEARCH PAPER ON **RELEVANCY OF MEDICO-LEGAL EVIDENCE** **IN CRIMINAL TRIALS**

Under the Guidance :

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INTRODUCTION

This research paper deals with the relevancy and admissibility of medical evidence in Indian court of law. The medical evidences play a huge part in proving the guilt of the accused and lead the investigating authorities to the truth. There are experts needed in every field, to study in the field of cases they are specialised in, expert skill or knowledge in a particular field is necessary to prove an evidence valid and the same way experts are needed to prove the evidence and to study facts right in criminal cases also so that medical evidence need to prove right and justified. In Indian judicial system, expert opinion leads to administration of justice. Medical evidence is categorised as evidence of opinion which is relevant under section 45 of Indian Evidence Act, 1872. Question relating to the fact of injuries, whether the injuries are antemortem or postmortem, the probable weapon used in causing injuries, the effect and outcome of injuries, consequences of injuries, whether they are sufficient in the ordinary course of nature to cause death of a person, the duration of injuries, the no. of stabs and the probable time of death, cause of death, plea of unsoundness of mind, determination of Age etc. Further, it has been held by the court of law that “a certification by the doctor is essentially a rule of caution.”

MEANING, DEFINITION & OBJECT OF **MEDICAL EVIDENCE**

MEANING –

The person who prepares an evidence report by gathering the required information from the statements, facts and other basic knowledge of the field of the said evidence is called an “Expert”.

A medical professional witness who carries out a post – mortem study or inspect the study of the injuries is also “witness of fact” though he also “gives an opinion” on certain aspects of the case. The value of a medical witness is not entirely to keep a check upon the testimony of eye – witnesses, but it is also an independent testimony because it may signify certain facts quite apart from the other oral evidence.

DEFINITION –

Sec 45 of Indian Evidence Act, 1872 states that, “When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identify of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or in questions as to identify of handwriting or finger impressions, are relevant facts.” Such persons are called experts.

An expert is a person who is instructed by experience is called “expert”. Witnesses are ordinarily not to say what they thought or believed to be and therefore their opinions are irrelevant in a judicial enquiry, but in certain special matters requiring special skill in the

subject concerned, opinions of persons having special study, training or experience are accepted as evidence. Expert evidence in a criminal trial would be just a fraction of the totality of the evidence on the appreciation of which the judge takes decision. An expert witness isn't an observer of reality. His proof is truly of an advisory character. The obligation of a specialist witness is to outfit the judge with the essential logical criteria for testing the precision of the conclusions in order to empower the judge to frame his autonomous judgment by the utilization of such criteria to the realities demonstrated by the confirmation of the case.

“Medical evidence” means a proof given by medical expert, which is based on his scientific knowledge, skill, expertise and personal experience. Medical evidence has a “decisive role” to play in criminal cases and experts’ opinion ought to be upheld and supported by reasonable justification.

The Supreme Court in the case of **Selvi v. State of Karnataka AIR 2010 SC 1974** held that if the report of a medical expert is “slipshod and cryptic”, his opinion on the case is of no value and it also breaks the important links of prosecution evidence. A medical witness who performs a post-mortem examination is a witness of fact though he also gives an opinion on various facts and aspects of the case

OBJECT –

The object of this paper is to make a study on importance of medical evidence in India. To understand the value of evidence given

by medical expert. To find out development of medical evidence through judicial decisions.

RELEVANCY & IMPORTANCE OF MEDICAL EVIDENCE

The medical evidence is usually opinion evidence. The medical opinion alone, however, does not prove or disprove the prosecution case, it is of advisory nature.

In the case of *Awadhesh v. State of M.P. AIR 1988 SC 1158*, the Supreme Court observed that “Even where a doctor has deposed in Court, his evidence has got to be appreciated and valued just like the evidence of any other witness and there is no irrebuttable presumption that a doctor is always a witness of truth.” & “medical expert's opinion is not always final and binding.”

If a person is shot at the close range, the mark of tattooing found by the medical witness would draw that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wound would help identify the right weapon used. It is wrong to say that it is only opinion evidence, it is often direct evidence of the facts discovered upon the victim's person.

It is seen that there has always existed a tussle between the medical evidence and ocular evidence. Over the period of time, various courts have applied different logic and took recourse of either of the evidences in order to give the final judgement. The interaction between

Medicine and the Law has played the vital role in the recent years. Medical science gives key as to how the death of the person, how the injury, was caused, while the law prosecutes a person for killing and injuring other. The postmortem report, examination of wounds, chemical analysis, the expert reports are admissible in the Court as an evidence according to our legal system. The importance of Medical Evidence at present is an increasing tendency. The medical evidence includes doctor's report of examination, chemical analysis report, serologist, DNA etc. The expert evidence given by a medical person comes to the help of the Court in deciding various matters.

Particularly, in case of death of a person, medical evidence is inevitable. Ordinarily medical evidence is corroborative evidence. Expert evidence alone will not convince the Court beyond reasonable doubt that a particular person is guilty of a crime. When a medical person is called as an expert, he is not to witness the facts, because his evidence is not direct evidence of how an injury in question was done. He gives his opinion only on how that, in all probability was caused. The value of such evidence lies only to the extent it supports and lends weight to direct evidence of eye-witnesses or contradicts evidence and removes the possibility of the injury in question and could take the manner alleged by the witness.

JUDICIAL APPROACH AS TO MEDICAL EVIDENCE

The famous latin maxim the Latin maxim “*cullibet in sua arte est credendum*” enumerates – someone with special knowledge, talent, skill and expertise in his field must be trusted and relied upon by the court on a specific point related to the field and sphere of study.

In the case of **Vineet Kumar Chauhan v. State of Uttar Pradesh**, the Supreme court held that it cannot be ordered down as a general rule that any expertise is required for the prosecution case no matter the standard of an unimpeachable nature and the other evidence are in Constance with direct evidence, expert opinion might not be essential component.

But the Supreme Court had advised against lead of logical tests of the idea of giving blood samples with the end goal of DNA testing in a standard way however did not by and large boycott their direct upon outsider.

In **Rohit Shekhar v. Narayan Dutt Tiwari and Anr**, wherein, the issue of paternity was concerned and the Delhi High Court requested the respondent to experience a DNA test, as the petitioner could deliver DNA evidence which avoided the likelihood that his legitimate father was his organic father and the judgment of the High Court was maintained in the Apex Court.

Presently, if in the event of any contention between eye evidence and the medical evidence, the court should pass by the evidence which

motivates more certainty. In the event of logical inconsistency between medical evidence and visual evidence, medical evidence isn't to be given supremacy.

In **Piara Singh v. Territory of Punjab AIR 1977 SC 2274**, the Supreme Court held that, the evidence of an eye-witness is not to be disposed of on quality of a medical opinion. Where the opinion of a medical witness is repudiated by another medical witness both of whom are similarly equipped to frame an opinion, the court ought to ordinarily acknowledge the evidence of the medical witness whose evidence is corroborated by coordinate evidence and whose testimony agrees with the prosecution version.

In **B.V. Danny Mao v. State, 1989 Cr LJ 226 (Gauh)**, the Supreme Court held that, where the medical evidence is clear, inability to create weapon of offense would not negate the medical evidence.

In **Slam Pratap v. State, 1967 All. W.R. (H.C.)**, the Supreme Court held that, the damage report or the post-mortem report given by a doctor isn't substantive evidence and is forbidden in evidence unless he is inspected. Assuming, however, the doctor is dead or isn't available for examination in Court, the situation being what it is said in Section 32 of the Evidence Act, the damage report or the post-mortem is acceptable and relevant. It might be proved by the another doctor or the compounder available.

In **Gofur Sheik v. State, 1984 Cr.L.J. 559 (Cal)**, the Supreme Court held that, Where the medical officer who led the post-mortem

examination isn't analysed in court nor the post-mortem report is offered in evidence, the same can't be utilized as substantive evidence.

In **Nallapati Sivaiah vs Sub-Divisional Officer, Guntur, A.P., 2007**, the Supreme Court held that, in passing upon admissibility of an alleged dying declaration, all attendant circumstances should be considered, including weapon which injured the victim, nature and extent of injuries, victim's physical condition, his conduct, and what was said to and by him.

In **Slam Narain v. Province of Punjab AIR 1975 SC 1727**, the Supreme Court held that, in the event that the evidence of the observer for the prosecution is absolutely conflicting with the medical evidence, this is a most major imperfection in the prosecution case and unless sensibly clarified, it is adequate to dishonor the whole case.

In **Nirbhaya's case, Mukesh and Another vs State for NCT of Delhi and Others (2012)**, famously known as **Delhi gang rape case** was a landmark case in India. After this case there was an amendment on criminal law regarding heinous crime of rape. In this case the value of medical evidence is highly grown up. There was no ocular evidence. The medical evidence/expert evidence stood for proving the guilt of the accused persons.

In **Kathua rape and murder case (2018)**, an 8-year-old girl was raped and murdered allegedly kept captive in a small village temple in Katha district for a week. There was no direct evidence to find out the guilt of the accused and she was brutally raped. So the court immediately issued an order for the forensic test of the victims body.

The post-mortem revealed the presence of clonazepam in the body of the dead girl. The examination by the doctors found that the girl had been drugged with a sedative before she was raped and murdered. Strands of hair recovered from the temple matched those taken from the girl. The forensic examination stated that victim had been raped and that she had been strangled to death, as well as hit in the head with a heavy stone. Delhi Forensic Science Laboratory analysed 14 packets of evidence containing vaginal swabs, hair strands, blood samples of four accused, viscera of the deceased girl, the girl's frock and salwar, simple clay, and blood-stained clay. Vaginal swabs matched with the DNA of the accused as did some other samples. Hair strands found in the temple where prosecutrix was raped matched that of the girl and the accused. Based on medical evidence 8 people were arrested and charged for the crime. So in case of certain offences against women especially rape cases, the medical evidence plays a corroborative value.

In **Noida double murder case(2008)**, this case refers to the unsolved murders of 13-year-old girl **Aarushi Talwar** and 45-year-old Hemraj Banjade, a live-in domestic worker, employed by her family in Noida, India. The two were killed on the night of 15–16 May 2008 at Aarushi's home. The sensational media coverage, which included salacious allegations against Aarushi and the suspects, was criticized by many as a trial by media. When Aarushi's body was discovered, the missing servant Hemraj was considered as the main suspect. However, the next day, his partially decomposed body was discovered on the terrace. The police suspected her parents. The case was then transferred

to the CBI, which exonerated the parents and suspected the Talwars' assistant. Based on the 'narco' interrogation conducted on the three men, the CBI suspected that they had killed Aarushi after an attempted sexual assault, and Hemraj for being a witness.

CHHATTISGARH HIGH COURT
ON RELEVANCY OF MEDICO-LEGAL EVIDENCE
IN CRIMINAL TRIALS

Dilesh Nishad v. State of Chhattisgarh Criminal Appeal No. 1266 of 2019 & Rupal Yadav v. State of Chhattisgarh Criminal Appeal No. 1400 of 2019 Dated 17th August, 2023

Background – In a gang rape matter, the question of DNA test was raised in order to ascertain the paternity of the victim's child.

Observation – It was held that, ascertaining the paternity of the victim's child was not at all required to be determined and directing for DNA test of the baby of the victim would violate the right to privacy of the infant which is constitutionality protected right as declared by their lordships of the Supreme Court in **K.S. Puttaswamy v. Union of India**

Kishanlal aka Champa Yadav v. State of Chhattisgarh Criminal Appeal No. 565 of 2022

Background – The question was whether collection of blood sample for DNA profiling was properly done.

Observation – The prosecution has to establish that appropriate and proper procedure has been followed for collection of blood sample for DNA profiling by leading evidence/material on record.

THE CONSTITUTION AND **MEDICAL EVIDENCE**

The Constitution has provided its citizens with a number of rights so as to protect them against the possible atrocities of the state. The rights of individuals with regard to use of medical evidence in a criminal trial are as follows:

Article 20(3) of the Indian Constitution talks about self-incrimination and provides that “*no person accused of any offence shall be compelled to be a witness against himself.*” This provision is based on the Latin maxim “*nemo tenetur prodere accusarese ipsum*” meaning no man is bound to accuse himself.

Now, Section 27 of the Indian Evidence Act, provides that when some fact was discovered in consequence of the information given by the accused, the information to the extent it relates to facts discovered may be proved and it is immaterial whether that information amounts to confession or not.

Therefore, there seems to be a prima facie conflict between section 27 of Indian Evidence Act and article 20(3) of the Indian Constitution.

In *State of Bombay v Kathe Kalu* AIR 1961 SC 1808, the Supreme Court held that the two provisions have to be reconciled. The question which needs to be answered is whether or not the accused has been compelled to make the statements. If the information has been voluntarily received by the accused it will not be hit by article 20(3) and will be relevant under section 27. But if such information has been discovered by compulsion, that should be excluded from the evidence as it is contrary to Article 20(3).

Similarly, in *Selvi v State of Karnataka* AIR 2010 SC 1974 the Supreme Court held that narco-analysis, brain mapping and lie detector tests, without the consent of the accused, are violative of his right to life and personal liberty.

Right to privacy declared as an integral component of the right to life and dignity. Privacy and informed consent are intertwined concepts and both are to assist a magistrate to decide for directing the subject for tendering bodily samples for forensic examination. The apex court observed that fingerprints, DNA profile and cellular samples constitute personal data. The judicial interpretation to expand the scope of privacy as fundamental right has direct bearing on forensic sampling, search and seizer, disposal of residual samples, etc. The law enforcement agencies must observe due process of law in addition to the standard protocol while dealing with various aspect of forensics.

CASE STUDY ON APPLICATION OF
VARIOUS TYPES OF SCIENTIFIC TECHNIQUES
IN MEDICAL EVIDENCE

1. Narcoanalysis, Polygraph Examination and The Brain
Electrical Activation Profile (Beap) Test –

Selvi & Other v/s State of Karnataka 2010 (7) SCC 263

Background- The Apex court had examined legal question relates to the involuntary administration of certain scientific techniques, namely narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) test for the purpose of improving investigation efforts in criminal cases.

Observation- Nacro-analysis, brain-mapping and Lie-detector tests cannot be conducted on accused without his consent, else it would violate Article 21 of the Constitution. No individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place.

Lilu @ Rajesh and Anr v. State of Haryana (2013) 14 SCC 643

Background- The Validity of Two finger test was discussed.

Observation- The Supreme Court ruled that the two-finger test is unconstitutional. It violates the right of rape survivors to privacy, physical and mental integrity and dignity. Virginity test violates right to privacy under article 21.

Sharda v. Dharampal AIR 2003 SC 3450

Background- The Supreme Court dealt with the core question of whether a party to a divorce proceeding can be compelled to a medical examination and blood test ? Does it amount to violation of Article 21 of the constitution.?

Observation- A matrimonial court has the power to order a person to undergo a medical test. Passing of such an order by the court would not be in violation of the right to personal liberty or the right to privacy under Art.21 of the Constitution. It is significant to note that though no person can be compelled to give a sample of blood against him for this refusal, in case of divorce proceeding before a matrimonial court, the court can order an individual to submit himself to medical examination and in case of refusal, can draw an adverse inference from his refusal.

Nandlal Wasudeo Badwaik vs Lata Badwaik (2014) 2 SCC 576

Background- The petitioner filed a maintenance petition claiming maintenance for herself and her daughter. Her husband disputed the paternity of child and requested for DNA test.

Observation- The Apex Court held that the DNA test is an accurate test. Section 112 of the Evidence Act was enacted at a time when the

modern scientific advancement and DNA test were not even in contemplation of Legislature. When there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former. The husband plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and in the face of it, we cannot compel the appellant to bear the fatherhood of a child, when the scientific reports prove to the contrary. We are conscious that an innocent child may not be bastardized as the marriage between her mother and father was subsisting at the time of her birth, but in view of the DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth. Truth must triumph is the hallmark of justice.

Dipanwita Roy vs Ronobroto Roy (2015) 1 SCC 365

Background- In the present case, the husband has sought divorce from his wife due to alleged infidelity by her thereby making an application for DNA test to prove the paternity of the child.

Observation- Supreme Court explained the importance of DNA test by stating that DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. DNA test should also simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the husband. It was further held- the presumption of legitimacy as given under Section 112 of the Evidence

Act, 1872 will not be disturbed and that if the direction to hold such a test can be avoided, it should be so avoided as the legitimacy of the child should not be put to peril. It was further observed that the wife shall be given the liberty to comply with or disregard the order of DNA test and in case, she declines to undergo the said test, the Court shall draw presumption as per Illustration (h) of Section 114 of the Evidence Act, 1872.

Raj Kumar vs State of U P (2014) 5 SCC 353

Background-The present case relates to the rape and murder of young girl by her neighbor. The crime was witnessed by the younger brother. As per the post-mortem report, rape had been committed upon the deceased. The DNA report also confirmed the same and Supreme Court discussed about the importance of DNA.

Observation—The Supreme Court observed that the DNA report played an important role to reveal the identity of the accused involving in the rape of a minor girl and affirmed the finding of facts recorded by the court below.

Anil Alias Anthony Arikswawy Joseph vs State of Maharashtra (2014) 4 SCC 69

Background-The case is concerned with a gruesome murder of a minor boy aged 10 years. The blood sample of the accused, samples collected from the deceased during post-mortem and the clothes of the accused which contains semen stains were sent to Forensic Science Laboratory,

Mumbai for DNA analysis. The DNA report matched. The Supreme Court discussed the importance of DNA analysis.

Observation-- The Supreme Court before pronouncing its judgment analyzed the DNA report. In this case, the unnatural offence which was committed by the accused against the child had clearly been established by DNA evidence and Medical evidence

Sandeep vs State of UP (2012) 6 SCC 107

Background-In this case, the accused forced the girl to abort the fetus but she disagreed, thus, murdered. The fetus recovered from the deceased womb was sent for DNA analysis. The DNA analysis confirmed that the accused is the biological father. The Supreme Court discussed about the importance of DNA test.

Observation- The Supreme Court relied upon the report of the DNA in having concluded that accused was the biological father of the recovered foetus. Here the DNA evidence plays an important role along with other evidences. Especially, it has been used to prove the motive for making such crime.

Goutham Kundu vs State of West Bengal AIR 1993 SC 2295

Background - The father disputed paternity of child. the Supreme Court discussed the point of evidentiary value of blood group test in the case at hand.

Observation- Where the purpose of the maintenance application was nothing more than to avoid payment of maintenance without making

out any ground whatever to have recourse to the test, the application for blood test could not be accepted. The Supreme Court further held Courts in India cannot order blood test as a matter of course. Whenever applications are made for such prayers in order to have roving inquiry the prayer for blood test cannot be entertained. There must be a strong prima facie case in that the husband must establish non access in order to dispel the presumption arising under Section 112 of the Indian Evidence Act,1872. The Court must carefully examine as to what would be the consequence of ordering the blood test. Whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman. No one can be compelled to give sample of blood for analysis

2. Ossification Test –

Ramdeo Chauhan alias Raj Nath vs State of Assam (2001) 5 SCC 714 Background- While dealing with the reliability of the ossification test, The Supreme court held as follows: -

Observation- An **X-ray ossification test** may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon textbooks, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform."

Mukarrab Etc vs State of U.P 2017 (1) RCR (Criminal) 103

Background- A point on admissibility and reliability of medical opinion in age determination enquiry was discussed.

Observation- Age determination is essential to find out whether or not the person claiming to be a child is below the cut-off age prescribed for application of the Juvenile Justice Act. The issue of age determination is of utmost importance as very few children subjected to the provisions of the Juvenile Justice Act have a birth certificate. As juvenile in conflict with law usually do not have any documentary evidence, age determination, cannot be easily ascertained, specially in borderline cases. Medical examination leaves a margin of about two years on either side even if ossification test of multiple joints is conducted. Ossification test cannot be regarded as conclusive when it comes to ascertaining the age of a person.

State of Madhya Pradesh vs Anoop singh (2015) 7 SCC 773

Background- Scope of Ossification test was discussed

Observation- It was held that the ossification test is not the sole criteria for age determination.

3. Post Mortem Report Case –

State Of Himachal Pradesh vs Jai Chand (Cri appeal no.269 of 2007 decided on 3 July,2013) Supreme court had discussed the scope of Post-mortem report

Background- The respondent(herein) Jai Chand, along with two others were tried for offence punishable under Section 302 (r/w Section 34)IPC and Section 498-A IPC.The Post mortem report opined that the deceased died due to asphyxia caused by drowning and strangulation. Further mentioned that strangulation was not caused by suspending the body. The chances of dupatta as ligature mark in the case were minimum. **Drowning and strangulation** are possible in this case while putting the face/mouth of deceased in bucket filled with water and with pressure being applied.

Observation- While it is true that the post-mortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the post-mortem can by no means be ascribed to be insignificant. The significance of the evidence of the doctor lies vis-à-vis the injuries appearing on the body of the deceased person and likely use of the weapon therefore and it would then be the prosecutor's duty and obligation to have the corroborative evidence available on record from the other prosecution witnesses.

Post-mortem report is prepared by the doctor, who held the post-mortem examination on the body of the deceased and his findings have been recorded therein. The document by itself is not a substantive evidence but it is the doctor's statement in Court, which has the credibility of a substantive evidence and not the report, which in normal circumstance ought to be used only for refreshing memory of the doctor witness or to contradict whatever he might say from the witness box.

In this the case, observation held by the court that all the findings given by High Court, rejecting the evidence of Dr. K.C. Chopra and other material witnesses are unsustainable, whereas those given by the Trial Court accepting the evidence of these witnesses were weighty and sound. Hence, allowed the appeal and set aside the impugned order of acquittal.

4. Blood Group Test –

Blood group test is a useful test to determine the question of disputed paternity. It can be relied upon by courts as a circumstantial evidence which ultimately excludes a certain individual as a father of the child.

Sharda v. Dharampal AIR 2003 SC 3450

Background---The Supreme Court dealt with the core question of whether a party to a divorce proceeding can be compelled to a medical examination and blood test ?

Observation- A matrimonial court has the power to order a person to undergo a medical test. Passing of such an order by the court would not be in violation of the right to personal liberty or the right to privacy under Art.21 of the Constitution. It is significant to note that though no person can be compelled to give a sample of blood against him for this refusal, in case of divorce proceeding before a matrimonial court, the court can order an individual to submit himself to medical examination and in case of refusal, can draw an adverse inference from his refusal.

Mohd Amir Kasab vs State of Maharashtra (2012) 9 SCC 1

Background- On 29.11.20 terrorists attacked Mumbai and killed one hundred. Terrorist Mohammed Amir Kasab was arrested. The articles seized from the boat which they used to land to Mumbai. Accused and his 5 accomplices were linked through DNA Profiling.

Observation- The Supreme Court observed that the DNA evidence played an important role for the identification and for the involvement of the accused in the incidence of waging war against the government of India. The DNA evidence played as one of the circumstantial evidences to prove the case.

Sushil Kumar vs State (N.C.T of Delhi) (2014) 4 SCC 317

Background- In this case Sushil Sharma murdered his wife Naina by firing bullets and thereafter attempted to burn her body in a tandoor. Police recovered revolver and blood-stained clothes and sent them to forensic test. The blood sample of parents was taken. The DNA report confirmed that the charred body was of their daughter Naina Sahni.

Observation- This case is based on circumstantial evidence alone. Here, the DNA evidence plays an important role in identifying the charred body of the deceased Naina Sahni. The Supreme Court discussed the importance of forensic experts report .

Surendra koli vs State of U.P. (2011) 4 SCC 80

Background- known as **Nithari case** solved with the help of Forensic science. The forensic experts had to examine hundreds of bones and skeletal remains besides going for psycho-analysis tests to reconstruct the gory. In addition to DNA matching, Forensic experts conducted detailed psychoanalysis of accused Koli to understand his Necrophiliac, Pedophilia, and Paraphelic tendencies.

Observation- The Supreme Court held that the killings by the appellant Surendra Koli were horrifying and barbaric and thus fell within the category of rarest of rare case. The appeal was thus dismissed and death sentence awarded to Surendra Koli was upheld.

Lillu @ Rajesh vs State of Haryana Criminal Appeal no 1226 of 2011 Decided on 11 April ,2013

Background-The court had discussed the validity of the two figure test on medical examination of sexually abused victim. In this case, guidelines for the doctor to provide medical treatment to victim are laid down.

Observation- The Supreme Court observed that rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. Proper measures should be taken to ensure their safety and there should

be no arbitrary or unlawful interference with his privacy. The Supreme Court observed that undoubtedly, the two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent.

Sri Sujit Biswas vs State of Assam Criminal Appeal No 1323 of 2011

Background- Sima Khatoon found missing and later she was found gasping, wrapped in a jute-sack. She breathed her last in the hospital. Accused was apprehended and convicted on the basis of circumstantial evidence.

Observation-The Supreme Court has discussed the parameter of application of circumstantial evidence and relied on Forensic Science Laboratory Report of the blood group of the victim- Sima Khatoon and held that: The blood-stained jute-sack in which the Sima Khatoon had been found, the blood stained underwear of the appellant, as well as the apparel i.e., frock of Sima Khatoon were taken into custody. All the seized material objects were sent to the Forensic Science Laboratory, and the report received thereafter, revealed that the blood group of the blood found on underwear of the appellant, was the same as the blood group of the victim, Sima Khatoon.

Raghunath, Ramkishan & Ors vs State of Haryana Appeal (crl.) 73 of 2002

Background- Accused after having entered the house of victim inflicted injuries with the help of lathies etc and set their house on fire. Injured Kundan succumbed to the injuries. The blood stained earth, Muffler and lathis, said to have been taken in possession by the police in course of investigations, were sent for **F.S.L. study.**

Observation- "Forensic Science Laboratory report of the results of serological analysis of blood exhibit and origin group. There is no evidence on record to show that the blood stain sent for FSL bears a certificate that the blood is a human blood and it belongs to a particular group which is the same blood group of the deceased Kundan Lal. Therefore, the blood stain is a human blood is not conclusive evidence that it belongs to the blood group of deceased Kundan Lal.

5. Skull Superimposition -

Henry Westmuller Robert vs State 1985 SCC (3) 291

Background-- To extract ransom, a 9 years boy was kidnapped, who was later murdered. Accused was arrested. At his instance, the buried body of the deceased was recovered. The skeleton remains were sent to Forensic Science Laboratory for report which also obtained some photographs of victim with their negatives from the boy's family through the police.

Observation- After performing the superimposition test with enlarged photograph, the Scientific Officer of the Photography Section of that

laboratory, found the skull, and the photograph to be of the same person.

6. Forensic Toxicology/Poison –

Toxicology is the study of the adverse effects of chemicals on living organisms. Forensic toxicology takes it a step further, including a number of related disciplines such as analytical chemistry, pharmacology and clinical chemistry to assist in the detection and interpretation of drugs and poisons in medicolegal death investigations, human performance issues; e.g., driving under the influence, compliance and other related matters. In these investigations, the three main objectives (respectively) are to establish -

- if toxicants are present and capable of contributing to death
- if toxicants are present and capable of causing behavioral changes
- if substances are present and whether or not they represent legitimate use or exposure, such as prescribed medications or workplace exposures

Forensic toxicology applies analytical chemistry to the purposes of the law, and includes the analysis of a variety of fluids and tissue samples to determine the absence or presence of drugs and poisons. Once the analytical component is complete, the toxicologist has the equally challenging aspects of interpreting the findings. Toxicology testing can determine whether levels of toxic substances may have

contributed to this death, regardless how the individual died, How the evidence is collected? Specimens sent for toxicology testing are usually collected by the forensic pathologist who may also be an appointed medical examiner or coroner in some jurisdictions or mortuary technician during an autopsy. Specimens must be properly identified, labeled and sealed as soon as practicable after collection. All specimens pertaining to a case must be collected and bagged separately in tamper-proof containers. Unique numbered seals are used to track all evidence for each case. Like any other evidence, the chain of custody must be preserved at all times, from the mortuary through the laboratory testing, reporting and storage, for court purposes.

Bhupender Singh vs State of Punjab 1988 AIR 1011

Background- Appellant along with his parents, was tried for committing the murder Gian Kaur, by administering poison.

Observation- Supreme Court held that:

- (1) Section 293 of the Code of Criminal Procedure provides that the report of scientific experts may be used as evidence in any inquiry, trial or other proceedings of the Court.
- (2) No hard and fast rule can be laid down as regards the value to be attached to the report of the chemical examiner.
- (3) The chemical examiner does not, as a rule, give an opinion as to the cause of death but merely gives report of the chemical examination

Jaipal vs State Of Haryana 2002 (crl.) 705 of 2001

Background- Appellant convicted for murdering his wife by poisoning. The post mortem report opined that the deceased died because of (Celphos) poisoning but Forensic Scientific examination of several organs of the body of the deceased and the samples collected from the body exclude the presence of aluminium phosphide (celphos).

Observation- The SC stated that there is no probability of the poisoning of aluminium phosphide (celphos) thus failing to fasten the guilt on the accused leaving no room for doubt. The conviction of the accused under Section 302 IPC set aside.

DISCREPANCY IN OCULAR EVIDENCE **AND MEDICAL EVIDENCE**

The Supreme Court settled the dispute in relevancy of evidence in case of discrepancy ocular and medical evidence in various cases.

Dayal Singh others vs State of Uttaranchal Criminal appeal no. 529 of 2010

Background- In case of conflict between ocular evidence and the medical evidence, what effect will it have on the case of the prosecution and what would be the manner in which the Court should appreciate such evidence?

Observation—Supreme Court observed that o Possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. o The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution

Kamaljit Singh vs State of Punjab 2004 Cri.LJ 28

Background- The Court, while dealing with point of application of medical evidence made observation as how to deal in case where discrepancies are prevalent between ocular and medical evidence

Observation- It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.

Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be

accepted as conclusive. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but that of the Court. Profitably, reference to the value of an expert in the eye of law can be assimilated as follows:

The essential principle governing expert evidence is that the expert is not only to provide reasons to support his opinion but the result should be directly demonstrable. The court is not to surrender its own judgment to that of the expert or delegate its authority to a third party, but should assess his evidence like any other evidence. If the report of an expert is slipshod, inadequate or cryptic and the information of similarities or dissimilarities is not available in his report and his evidence in the case, then his opinion is of no use.

It is required of an expert whether a government expert or private, if he expects, his opinion to be accepted to put before the court the material which induces him to come to his conclusion so that the court though not an expert, may form its own judgment on that material. If the expert in his evidence as a witness does not place the whole lot of similarities or dissimilarities, etc., which influence his mind to lead him to a particular conclusion which hesitates in the court then he fails in his duty to take the court into confidence. The court is not to believe the

ipse dixit of an expert. Indeed the value of the expert evidence consists mainly on the ability of the witness by reason of his special training and experience to point out the court such important facts as it otherwise might fail to observe and in so doing the court is enabled to exercise its own view or judgment respecting the cogency of reasons and the consequent value of the conclusions formed thereon. The opinion is required to be presented in a convenient manner and the reasons for a conclusion based on certain visible evidence, properly placed before the Court. In other words the value of expert evidence depends largely on the cogency of reasons on which it is based.

We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the Court in arriving at a final conclusion. Such report is not binding upon the Court. The Court is expected to analyze the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not.

CONCLUSION

It is undisputed that, the witnesses are the eyes and ears of a judge. Oral testimony might be considered to take precedence over medical evidence. The principle of natural justice in criminal jurisprudence that “an accused is treated as innocent until proven guilty” is a guiding principle. If the witnesses' oral testimony is found to be trustworthy, factually reasonable, and establishes probability, the oral evidence must be accepted; it cannot be disregarded based on hypothetical medical evidence. Because the medical officer is an expert witness, his testimony must be given significance in a limited manner and not extraordinarily. However, because there is no incontrovertible assumption that a medical officer is a reliable spectator of truth, his testimony must be reviewed and accepted in the same way that any other ordinary witness' testimony would be. As a result, it is correct to maintain the corroborative position of medical evidence rather than granting it conclusive status, because many conditions must be considered.

BIBLIOGRAPHY

1. M.L.Singhal, “medical evidence and its use in trial of cases” published in J.T.R.I journal, 1995
2. S.P. Thyagi, “law of evidence” vinod publications, delhi, 2006, p.213
3. Dr. Avatar singh, “principles of law of evidence” central law publications, 18th edition, 2010
4. Hanish k.hanawalla, “developments and liberalization of hearsay doctrine, published on journal of the indian law institute, vol.38
5. Nirmal chopra, “contradiction between oral and medical evidence” eastern book company, oct 5, 2006
6. Elliot B.Oppenheim, “the offensive use of medical evidence in criminal cases” published on 2010.
7. Tanya singh, “importance of medical evidence in criminal cases, published in international journal of applied research, 2015, vol 1.
8. Jyotirmoy adhikary, “legislation on DNA evidence”, published on 2008
9. Michelle D. miranda, “the role of forensic science on sexual violence against women, ijca publication, 2017, vol. 41



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