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Medical Evidence and it's Admissibility in Court

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ABSTRACT

"Innocent until proven guilty" – according to this statement an accused need to be proven guilty of his offences by proving valid evidences in 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.

Some facts are, Injuries, Whether the injuries are Anti – mortem or Post – mortem, the probable weapon used in causing injuries and hurt, 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 and therefore the voluntary and truthful nature of the declaration can be established otherwise" in any case of death declaration by victim himself.

This paper deals with the explanation of medical evidence and it's admissibility of medical evidence in Indian court of law.

Keywords: *Evidence, Slipshod, cullibet in sua arte est credendum.*

I. INTRODUCTION

(A) Evidence under Indian Evidence Act, 1872

Evidence". —"Evidence" means and includes — (1) all statements which the Court permits

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or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; (2) [all documents including electronic records produced for the inspection of the Court;] such documents are called documentary evidence.[2]

II. MEDICAL EVIDENCE AND IT'S ADMISSIBILITY IN COURT

"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 relating to offences against the human body and experts' opinion ought be upheld and supported by reasonable justification, the Supreme Court has said.[3]

The apex court said 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," the bench said.[4]

However, medical evidence is only corroborative evidence and cannot outweigh the oral evidence produced during the trial. This is because medical evidence is an evidence of opinion and not evidence of facts, rendered under Section 45 of Indian Evidence Act, 1872.

III. ROLE OF MEDICAL 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 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. 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.[5]

The medical evidence is usually opinion evidence.[6]

The medical opinion alone, however, does not prove or disprove the prosecution case, it is just

[2] Indian Evidence Act, 1872.
[3] https://indianexpress.com/article/india/medical-evidence-has-decisive-role-in-criminal-cases-supreme-court-4622906/
[4] Selvi v. State of Karnataka AIR 2010SC 1974.
[5] Smt. Malindra Bala Mehra v. Sunil Chandra Ray, AIR 1960 SC 706
[6] Duraipandi Thevar v. State of Tamil Nadu, AIR 1973 SC 659

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an of advisory statement. 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.[7]

IV. PROVISIONS PERTAINING TO MEDICAL EVIDENCE IN STATUTES AND JUDICIAL APPROACH

Section 45 of Indian Evidence Act, 1872 is read as:

Section 45. Opinions of experts. — When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting, 2 [or finger impressions], the opinions upon that point of persons especially skilled in such foreign law, science or art, 3 [or in questions as to identity of handwriting] 2 [or finger impressions] are relevant facts. Such persons are called experts[8].

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

The provision of admissibility of expert opinion is based upon the Latin maxim "*cullibet in sua arte est credendum"* i.e., 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

[7] Awadhesh v. state of M.P. (AIR 1988 SC 1158 : 1988 Cr.L.J. 1154
[8] Indian Evidence Act, 1872.

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sphere of study.

Supreme court just in case of *Vineet Kumar Chauhan v. state of Uttar Pradesh* held that it can not 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.

The Supreme Court in Goutam Kundu v. Territory of West Bengal set down rules governing the energy of courts to arrange blood tests. The court commanded that:

i. courts in India can't organise blood tests as expected result;

ii. where applications are made for such supplications keeping in mind the end goal to have roving request, the petition for blood test can't be engaged. International Journal of Pure and Applied Mathematics Special Issue

iii. There must be a solid at initial sight case in that the spouse must set up nonaccess to disperse the presumption emerging under Section 112 of the Evidence Act.

iv. The court should precisely inspect regarding what might be the result of requesting the blood test; regardless of whether it will have the impact of marking a tyke as a charlatan and the mother as an unchaste lady.

v. Nobody can be constrained to give sample of blood for analysis." 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. (Agrawal)

On account of 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.

i. 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.
ii. The evidence of an eye-witness 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. (Piara Singh v. Territory of Punjab, AIR 1977 SC 2274: 1977 Cr.L.J. 1941), and whose testimony agrees with the prosecution version (Makhan v. Territory of Gujarat, AIR 1971 SC 1797: 1971 Cr.L.J. 1310)

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. (Slam Narain v. Province of Punjab. AIR 1975 SC 1727.

Where the medical evidence is clear, inability to create weapon of offense would not negate the medical evidence (B.V. Danny Mao v. State, 1989 Cr LJ 226 (Gauh).

Where the medical evidence is clear, inability to create weapon of offense would not negate the medical evidence (B.V. Danny Mao v. State, 1989 Cr LJ 226 (Gauh).

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. Slam Pratap v. State, 1967 All. W.R. (H.C.).

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. (Gofur Sheik v. State, 1984 Cr.L.J. 559 (Cal) (DBk).

In *Mukesh and Another vs State for NCT of Delhi and Others (2012)*[9], famously known as Delhi gang rape case. In this a 23-year-old paramedic student was brutally assaulted and raped by six persons in a moving bus in south Delhi and thrown out of the vehicle with her male friend on the night of December 16, 2012. She had died in a Singapore hospital on December 29 that year. It 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 will stand for prove the guilt of the accused. It plays a corroborative role.

In *Kathua rape and murder case (2018)* ([10]Anon n.d.), an 8-year-old girl was raped and murdered allegedly kept captive in a small village temple in Katha district for a week. There

[9] Mukesh and Another vs State for NCT of Delhi and Others AIR 2012
[10] Kathua rape and murder case, 2018

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is no direct evidence to find out the guilt of the accused and she was brutally raped. So the court immediately issued a 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. Forensic evidence suggested that she had been held for several days by Sanji Ram, one of the individuals accused of the crime. Strands of hair recovered from the temple matched those taken from the girl. The forensic examination stated that Bano had been raped multiple times by different men, 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 Asifa 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 , the medical evidence plays a corroborative value.

In case of *Nallapati Sivaiah vs Sub-Divisional Officer, Guntur, A.P., 2007*. It has been 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.

V. CONCLUSION

In India, it is a regular acknowledgment that piece of time and effort is needed to record proof and appropriately everything considered people from the clinical calling couldn't care less to be associated with medicolegal cases. A segment of the potential reasons put forth for this perception are excessive time usage; repeated suspensions; and nonappearance of work culture. A bit of the clarifications behind delays in proof are nonavailability of coordinating official in the court; issue of call by bungle; work suspended by legal counsellors; non-accessibility of a couple of records; suspension of the case before appearance of clinical observer, etc. It has been seen that by and large extra time is taken in holding up in courts and accepting portion than in genuine narrative of proof. The mean leeway time span between selection of first information report and time to appear under the watchful eye of courtroom to give proof by a clinical observer has been seen to be more than two years. There are various events where court decisions instead of notable well-qualified assessment on issues like bone cut, assault, devours, age, assent, passing on attestation, compos mentis, etc have been conveyed.

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The clinical proof referred to by arraignment has magnificent authenticating esteem. It demonstrates that the injuries might have been caused in the manner asserted and the destruction could have been brought about by the injuries so the indictment case being unsurprising with issues Worldwide Journal of Pure and Applied Mathematics Special Issue certain by clinical science, there is no inspiration driving why the onlookers should not be accepted. The usage, which the gatekeeper can make of clinical proof, is to demonstrate by it

that the injuries couldn't in any capacity whatsoever have been caused in the manner charged or passing couldn't in any capacity whatsoever have been caused in the manner confirmed by the arraignment and if it can do all things considered, it disrespects the observers.

Since witnesses are the eyes and ears of value, the oral proof has incomparability over the clinical proof. If the oral declaration of the observers is found dependable, monetarily solid and moves conviction, the oral proof should be accepted, it can't be excused on hypothetical clinical proof. The clinical official being a specialist witness, his declaration should be given out unprecedented importance. Be that as it may, there is no undeniable assumption that a clinical official is constantly an eyewitness of truth, his declaration should be assessed and recognized like the declaration of some other standard observer.

Thus, it is correct that the corroborative status of medical evidences is kept up, rather than giving it conclusive status since various circumstances have to be factored in.

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