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Fidelity of forensic evidence and reports in criminal trial of India

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Abstract

The criminal trial is requiring an increased use of physical evidence and expert testimony regarding the information obtained from crime scene and its examination in labs. It is no longer sufficient for an officer to determine that a crime has been committed and to simply identify and arrest a suspect. The police officer must be able to recreate the circumstances involved in the crime scene and utilizing physical evidence from the individuals involved in crime. The evidence must be supported the criminal charges. It is therefore dependent upon the police officer to make intelligent and effective use of the forensic laboratory as an investigative aid. Accordingly, with the courts placing greater emphasis than ever on physical evidence. The chain of evidence and the integrity of the evidence is being carefully examined and often challenged in court. Therefore use of proper methods is extremely essential in collecting, marking and preserving, evidence.

It is observed that use of forensic science has definitely helped in increased conviction rate in India and non-use of forensic has resulted in increased acquittal rate and cause gross injustice. Moreover, the role of forensic evidence is found inadequate and the gaps need to be filled by seriously considering the reality.

Keywords: Forensic evidence, criminal trial

Introduction

The forensic science technologies have made dramatic scientific breakthroughs in the decision making process of cases but research was required to analyze the impact of forensic evidence in determining the rate of conviction and acquittal in India. It was also required to assess in what kind of crime, which kind of forensic evidence could be collected. Forensic Evidence is what kind of evidence i.e. is it treated as substantive evidence or corroborative evidence? In what circumstances the court accepted the forensic evidence? Which type of forensic evidence is accepted, does it always lead to conviction or acquittal. In this context, the views of Supreme court and different High-courts, regarding forensic evidence have been studied while referring such evidence in the decision making process of criminal cases.

It has been bitter truth that successful criminal investigation is practically impossible by the traditional method of eye-witness oriented investigation in India. This method of criminal investigation lowers the quality of criminal justice system. It is difficult for the judges to decide a criminal matter or corroborate the fact-in-issue only on the sole basis of evidence of eye witnesses who might lie or are not credible or he is not directly seen crime only hear form others. Moreover, by scrutinizing the examinations in-chief or in cross examination, the judges fail to reach to a definite conclusion regarding the crime. Nowadays witnesses refuse to come and appear before the court in spite of knowing the truth or witnessing the truth because of fear criminals or threats which is given by that criminal, many a time are life taking incident happened. Many a time offence are committed in such a condition or situation or in a way that where it is not possible even to get a single eye witness. In such cases the decision is depends on circumstantial evidence, DNA evidence, report of the ballistic expert, fingerprints or report of chemical examination or Serology or Hand writing.

Existing Indian Laws

Section 45 of the Indian Evidence Act, 1872, deals with 'opinion of expert, when relevant'. But the opinion of expert is admissible by evidence only after its comes within the ambit of Article 21 and Article 20(3) of the Constitution of India and section 161(2) of Code of Criminal Procedure, 1973.

Section 293 of Code of Criminal Procedure, 1973, specifies under what circumstances certain reports of Government scientific experts may be used in any evidence. Sections 53 and 53A of Code of Criminal Procedure 1973, is also very much useful for DNA profiling of the accused in case of rape. The law relating to 'fingerprints' is specifically covered by different sections of the Identification of Prisoners Act, 1920, Section 73 of the Indian Evidence Act, 1872 and section 293 of the Code of Criminal Procedure, 1973 along with the general laws applicable to other forensic techniques. The laws relating to toxicology is specifically dealt under certain sections along with the general laws. Section 284 of the Indian Penal Code, levies the punishment for 'negligent conduct with respect to poisonous substance'. Sale of Poisons Act, 1919, prohibits the sale of poisonous substance except under a licence, the import of any specified poison and may by rule regulate the grant of licences. Narcotic Drugs and Psychotropic Substances are also a certain category of poison and dealt by the provisions of The Narcotic Drugs and Psychotropic Substances Act, 1985.

Every substance in existence could become evidences. Any sequence of object that can establish a crime has been committed or can provide a link between a crime and its victim or provided a link between crime and its perpetrators. Anything can be physical evidence which can connect the crime to criminal. Forensic evidence can also be used to support or refute witness testimony and to establish the cause of death in cases of homicide. The use of forensic evidence in criminal trials has been crucial in ensuring that the guilty or innocence of a suspect.

Meaning of Evidence is "one or more reasons for believing that something is or is not true"

Evidence under the Indian Evidence Act 1872 means and includes: All the statements which the court permits which were made by the witness relating to the matters of fact is known as Oral Evidence.

All the documents including electronic record as an evidence for the courts is known as Documentary Evidence According to *Sir Blackstone*, the word "Evidence" means which makes clear, detects, reveals or exhibits the reality of the viewpoints or facts with subject to one or either side. (Blackstone, 2009)

According to *Sir Taylor*, to uphold or contradict any matter of fact by the means of argumentation is the law of Evidence. The truth of which is submitted to judicial investigation.

There are many types of evidences defined in The Indian Evidence Act, 1872.

Oral evidence means "All those statements which the court permits or expects the witnesses to make in his presence regarding the truth of the facts are called Oral Evidence."

Documentary evidence means (Section 3 of The Indian Evidence Act, 1872) all those documents which are presented in the court for inspection such documents are called documentary evidences. (Stephen, 2016)

Circumstantial evidence or indirect evidence means The circumstantial or indirect evidence are the terms used for the evidences, which try to prove the truths of the incident and are able to provide the certainty of the matter by the another incidence of other facts which is a chain of incident happened or its part of same transaction.

The circumstantial evidence is the compilation of proofs, when taken into consideration together, are useful for

inferring an essence about something which is unknown. It is used in the support of theory of a chain of incidents. The summation of multiple corroborative evidences, each part being circumstantial itself, constructs a proper logic for supporting the occurrence of any event. In civil and criminal investigations, corroboration is often supplied by one or more expert witnesses who provide forensic evidence. The statement before the police only is called circumstantial evidence of, complicity and not direct evidence in the strict Sense^[1].

Expert witness: An expert witness is one who has devoted time and study to a special branch of learning and thus he is specially skilled on those points on which he is asked to state his opinion.

In case of *State of Himachal Pradesh v. Jailal*^[2] and others Court held that a person can qualify as a witness if they have undertaken a special study of the subject or acquired a special experience or skill. The Court also held that an expert is not a witness of fact and their evidence of advisory character. It is the duty of an expert to provide the judge with necessary scientific criteria to test the accuracy of their expert conclusion, and enable the judge to form an independent judgment. The credibility of the expert depends on the reasons stated in their reports and the material which forms the basis of their conclusions. As the Horticulture Officer had not conducted any research in assessing the productivity of apple trees in Himachal Pradesh, the Court held that he did not qualify as an expert under section 45 of the Indian Evidence Act, 1872.

In case of *Ramesh Chandra Agrawal vs Regency Hospital Ltd. & Ors*^[3] Supreme Court stated that the law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

1. That the expert must be within a recognized field of expertise
2. That the evidence must be based on reliable principles, and
3. That the expert must be qualified in that discipline. [See *Errors, Medicine and the Law*, Alan Merry and Alexander McCall Smith, 2001 ed., Cambridge University Press, p.178]

Section 45 of the Indian Evidence Act speaks of expert evidence. It reads as under: "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 hand writing or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger

¹ *Tahsildar Singh And Another vs The State of Uttar Pradesh*, AIR 1959 SC 1012

² (1999) 7 SCC 280

³ (2009) 9 SCC 709

impressions, are relevant facts. Such person called experts. In case of *Dayal Singh and others v state of Uttaranchal* ^[4] the Court identified the purpose of expert testimony as providing the trier of fact with useful or relevant information. It noted that the report prepared by an expert is not binding on the Court and on analyzing the report and viewing it along with other evidence, the Court can finally decide on whether the report can be relied upon or not. The Court also cautioned against reports which are *ex facie* incorrect or distorted as in the case at hand. Dismissing the appeal, it held that in the absence of an authentic and correct post-mortem report, the truthfulness of the prosecution eyewitnesses could not be doubted. In case of *Machindra v. Sajjan Galfa Rankhamb and Others* ^[5], The Supreme Court, in upholding the High Court decision, discussed the medical evidence presented in the case. The Court noted that the doctor who conducted the post mortem did not mention the cause of injuries in his report nor his deposition. Reiterating the importance of the medical evidence on post mortem examination, the Court held that an expert's opinion should be demonstrative and supported by convincing reasons. The Court cannot surrender its own judgment and if the expert's report is inadequate, cryptic or information on similarities or dissimilarities is unavailable, then such an expert opinion has no value and is of no use to the Court. *Mukesh and Another v. State (NCT of Delhi) and Others* ^[6] The Court stated that India, like several other countries, is increasingly relying upon DNA evidence. It further emphasized on the importance of such evidence by referring to Sections 53A and 164A of Code of Criminal Procedure, 1973 which relate to examination of a person accused of rape and a victim of rape respectively to hold that DNA profiling is now a part of the statutory scheme. After referring to various precedents, the Court held that a DNA report deserves to be accepted unless it is absolutely dented. In case the DNA report is rejected, it must be established that there had been no quality control or quality assurance. A DNA report should be accepted if there is no error in sampling and no indication of tampering of samples. In case of *Santosh Kumar Singh v. State through CBI* ^[7] While discussing DNA evidence, The Court held that a judge cannot substitute their own opinion for that of an expert, particularly in a science such as DNA profiling. Two scientists had opined that the DNA from the semen stains on the underwear of the deceased and from the swabs and slides were "from a single source and that source was the appellant". By referring to a large number of textbooks, the Trial Court gave adverse findings on the accuracy of the DNA examination and ignored the complexity and technical nature of the subject. The Trial Court was not justified in rejecting the DNA report because nothing adverse could be pointed out against the two experts who had submitted it. Therefore, the Court accepted that the DNA report was "scientifically accurate and an exact science". *RAMANATHAN Vs. STATE OF TAMILNADU* ^[8]

Identification parades have been in common use for a very long time, for the object of placing a suspect in a line up

with other persons for identification is to find out whether he is the perpetrator of the crime. This is all the more necessary where the name of the offender is not mentioned by those who claim to be eye witnesses of the incident but they claim that although they did not know him earlier, they could recall his features in sufficient details and would be able to identify him if and when they happened to see him. The holding of a test identification in such cases is as much in the interest of the investigating agency or the prosecution as in the interest of the suspect or the accused. For while it enables the investigating officer to ascertain the correctness or otherwise of the claim of those witnesses who claim to have seen the perpetrator of the crime, and their capacity to identify him, and thereby fill the gap in the investigation regarding the identity of the culprit, it saves the suspect or the accused from the sudden risk of being identified in the dock by the self same witnesses during the course of the trial. The lineup of the suspect in a test identification parade is, therefore, a workable way of testing the memory and veracity of witnesses in such cases and has worked well in actual practice. The argument that the evidence regarding the holding of a test identification parade would be of no consequence and would suffer from a fatal defect if the prosecution has not led any evidence to prove that the appellant was kept "ba parda", is not correct. After referring to the decision in *Dhokal Singh and Anr. v. The State, I.L.R. (1953) 3 Raj. 762*, their Lordships approved of the view taken in *State of Rajasthan v. Ranjitha, A.I.R. 1962, Raj 78* in which the earlier decision in *Dhokal Singh's* case was adequately reexamined.

A comparison microscope is the most important and most-widely used scientific instrument in comparing the crime cartridge with the test cartridge, but there has been considerable difference of opinion amongst investigators regarding these photographs in a court for the purpose of illustrating the matching of the markings, and while it may be that microscopic photographs, when taken with the due care and in the best of conditions, may enable the evidence to be placed on the record in a visible form, a court would not be justified in rejecting the opinion of an expert who has examined the markings under the comparison microscope simply for the reason that he has not thought it necessary to take the photographs ^[9].

In case of *Kalua vs The State Of Uttar Pradesh* ^[10] SC held that, After dealing with the marks left by breech-block, firing pin impressions, marks from extractors and ejectors, marks due to expansion, magazine marks and loading mechanism marks, he states, "Summarizing, the cartridge or shell case usually carries markings which are quite distinctive of the gun in which the charge is fired, and can be used for positive identification of the latter. Those marks arise from a variety of contacts with various parts of the gun, an analysis of which is useful in, determining the type of weapon in case no suspected gun is available. Thus, the recovered shell or cartridge case is one of the most useful types of physical evidence which can be found in shooting cases."

Soderman and O'Connel in their book "Modern Criminal Investigation" also deal with the subject and they refer to the

⁴ (2012) 8 SCC 263

⁵ (2017) 13 SCC 491

⁶ (2017) 6 SCC 1

⁷ (2010) 9 SCC 747

⁸ AIR 1978 SC 1204

⁹ *The State of Gujarat v. Adam Fateh Mohmed Umative & Ors.*, [1971] 3 SCR 208,

¹⁰ AIR 1958 SC 180, 1957 SCR 187

marks from the fire pin, the extractor, the. Ejector and the breech-block. After referring to comparison being made of the cartridge or shell fired from a fire-arm for the purpose of test, they state at page 200, If they are in the same position in relation to one another and their general appearance is the same, one may conclude that they have been fired from a pistol of the same make. An absolute conclusion about the origin of the shells, however, can be reached only after a photomicrographic examination of the markings from the breech-block on the rear of the shell. Identification, with the aid of the enlargement, should not prove difficult. The characteristic scratches can be easily seen. A photograph of the incriminating shell and one of a comparison shell should be pasted side by side on cardboard, and the characteristic marks should be recorded with lines and ciphers, following the same method as that used in the' identification of fingerprints."

In Taylor's book on Medical Jurisprudence, Tenth Edition, Vol. 1, at page 459, it is stated, " It is never safe to say that a cartridge case was not fired from a given pistol unless the marks are quite different, and a case which bears no marks at all may quite well have been fired from the same pistol as one which leaves well-defined marks. In general, however, though it is unlikely that -all marks will be equally good, it is usually possible to obtain definite information from the marks of the firing-pin, extractor, ejector, or breech- block. on the base or rim, or from grooves or scratches on the surface. In weapons of the same manufacture, the marks are of the same general nature, but in each weapon there are individual differences which usually enable it to be definitely identified."

Murari Lal v. State of Madhya Pradesh ^[11] While analyzing the law on expert evidence, the Court first observed that the "expert is no accomplice". It further noted that the hazard in accepting the opinion of any expert is not because experts are unreliable witnesses but because "human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion." While noting that the more developed and perfect a science, the less the chance of an incorrect opinion, the Court observed that the science of identification of handwriting was not nearly as perfect as fingerprints. It clarified that the opinion of a handwriting expert cannot be disregarded as an invariable rule and held that courts must insist upon substantial corroboration in every case, even if the opinion is backed by the soundest of reasons. It is the duty of an expert to furnish necessary scientific criteria for testing the accuracy of their conclusion so as to enable the judge to form his independent judgment. Courts should proceed cautiously while considering the opinion of a handwriting expert and must probe the reasons for the opinion. The Court confirmed the Appellant's conviction on the basis his handwriting matched the note left on the deceased's table.

Conclusion

Role of various types of forensic evidence in different case is studied and its significance was observed through court judgment. Its show that on basis of forensic evidence court can easily decided the case and it also increase the

conviction rate. Certain forensic evidences get dropped due to witness turning hostile. Hence, the evidence collected in presence of such witness (pancha) becomes worthless. Though such evidences reach up to court of law, get withheld due to unreliability. Certainty of punishment acts as a deterrent to potential criminals and serial offenders. It can be achieved through qualitative scientific output. The statistical results of present study depicts that there is a positive and significant relation between the status of forensic evidence (appreciated/withheld by Court) and rate of conviction. In 77.29% cases wherein forensic evidences are appreciated, conviction is the final verdict. Whereas in cases where forensic evidences is withheld by court, only in 13.74% cases conviction is the final verdict. This shows that appreciation of forensic evidence tends to help the court in imparting conviction, whereas withholding of such evidence leads to lower down the conviction rate. There are at present 7 Central Forensic Science Laboratories (CFSL) and 28 State Forensic Science Laboratories (SFSL). The State labs are not well equipped and also both State and Central labs are lacks of man power. Both labs, are already overburdened with backlogs case. Statistics show that 7135 cases were sent to Delhi State Forensic Laboratory between the year 2006 to 2018 and all of them are pending. In Delhi 9000 DNA analysis cases were pending in the year 2017, whereas in Mumbai 1700 DNA cases were pending in 2017. The same is the case with almost all CFSL and SFSL, which lack trained personnel, staff, equipment and also have poor infrastructure which do not handle to huge of cases each year they create backlog.

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¹¹ (1980) 1 SCC 704