

*Women's Resources Centre vs. Commissioner of Police*, (1990) 1 SCC 422 (Ind SC) referred to).

From the above we can safely conclude that the Supreme Court in its activism has done every thing possible to protect human dignity and honour and gave life to the Human Rights philosophy by going to the extend of drafting a law till the legislature wake up from its slumber and legislate different laws in commitment to the United Nations Covenants.

It will be apt to recall the opinion expressed in the article "A CRIME BY A CRUDE KHAKI CROWD" by Justice V.R.Krishna Iyer published in the Hindu dated 02, July 2001.

Justice Krishna Iyer in his sculptured words

said that "The issue at stake before on billion Indian humans is whether he or she has the right to life and liberty and other basic values writ in print (or water) by the founding fathers. Is the rule of law a teasing illusion or promise of unreality? **Is torture police culture?** If not, in the absence of the slightest suspicious of escape, can the police commit housebreak, inflict mayhem a gerontic gentleman in his sleep? The reputed Tamil Nadu police, I suspect, by their strange conduct, has spoiled India's human rights reputation in the comity of nations.

So I write this piece.....

"Mark Twain comes to mind. It is by the goodness of God that in our country we have these three unspeakably precious things; freedom of speech; freedom conscience, and the prudence never to practice either of them.

## OPINIONS OF EXPERTS, WHEN RELEVANT

By

—P. SHIVA LEELA MADHURI, L.L.B.,  
L.L.M. in Mercantile Law,  
Advocate, HYDERABAD, A.P.

### *Meaning of Opinion:*

"What a person thinks in respect of the existence or non-existence of a fact is opinion, and whatever is presented to the senses of a witness and of which he receives direct knowledge, without any process of thinking and reasoning is not opinion".

### *Opinion of third person when relevant:*

As a general rule the opinion or belief of third person is irrelevant, and therefore, inadmissible. The witnesses are allowed to State facts and facts alone, *i.e.* what they themselves saw or heard. *Sitaram Srigopal v. Daulati Devi*, AIR 1979 SC 1225. It is the

duty of the Judge to form his own conclusion or opinion on the facts Stated. However the cases in which the Court is not in a position to form a correct opinion, *i.e.* when the question involved is beyond the range of common experience or common knowledge, or when special study of a subject or special experience therein is necessary. The question is whether 'A' died of poisoning, generally, a Judge or a Magistrate by examining the dead body of 'A' cannot form any correct opinion about the matter in issue. In such a case, the help of an expert is necessary.

In these cases, the rule is relaxed and expert evidence is admitted to enable a Court to come to a proper decision.

### **Meaning of Expert:**

An expert is one who is skilled in any particular art or trade, or profession, being possessed of particular knowledge concerning the same. According to Russel “any person who is skilled or has adequate knowledge in a particular calling is an expert”. Thus, if a person who has acquired any special experience or special training in a particular subject to which the Court’s enquiry relates, such person can be considered as an expert. According to Section 45 of Indian Evidence Act, 1872 an expert is one who has acquired special knowledge, skill or experience in any Science, art, trade or profession, such knowledge may have been acquired by practice, observation or careful studies.

An expert in order to be competent as a witness need not have acquired his knowledge professionally. It is sufficient, so far as the admissibility of the evidence goes, if he has acquired a special experience therein – *Collector, Jabalpur v. A.Y. Jahangir Khan*, AIR 1971 MP 32.

### **Requisites of expert evidence:**

In order to rely upon expert evidence, two things must be proved namely (1) the subject is such that expert testimony is necessary (2) that the witness in question is really an expert – *Pparat v. Bissessar*, ICR 39 Cal 245.

Before the opinion of a person is admitted in evidence it must be proved that the witness is competent enough to give his evidence – *Raj Kishore v. State*, AIR 1969 Cal 321, and before the evidence of an expert is admitted it has to be seen that the fact to be proved is a point of science or art of which the witness is an expert – *Kalidas v. S.K. Monda*, AIR 1957 Cal 660 at 664.

### **Scientific and Expert Evidence:**

Modern Scientific developments have made a serious impact on the law of evidence.

In several areas such as (1) blood stains (2) blood groups (3) alcohol and breath tests in case of traffic accidents (4) tape recording (5) automatic photographs (6) computers (7) identification of fibres including human hairs (8) arson investigation (9) truth drugs and lie-detectors (10) Finger and foot prints and (11) even hypnotism. The law of evidence tries to keep pace with scientific knowledge and utilize its result to arrive at the truth.

A doctor’s opinion as to age of a person based on his or her height, weight and teeth, does not amount to legal proof of the age of that person. But such evidence is relevant in a charge of kidnapping and rape, the age of the victim was in question.

In a rape case, when the evidence of the doctor was conflicting the evidence of witnesses which supported direct evidence should be accepted. *Sam Antony Danasekaran v. The State*, 1992 Cr. LJ 474 (487) (Mad).

Where the opinion of a Medical witness examined by the prosecution is contradicted by another Medical witness both of whom are equally competent to form an opinion the opinion of that expert should be accepted which supports the direct evidence – *Piare Singh v. State of Punjab*, AIR 1977 SC 2274 = 1977 CrLJ 1941 = 1977 ACC 374 = (1978) 1 SCJ 200.

When the medical evidence on the side of the prosecution to prove the guilt of the accused and that evidence adduced by the accused to prove his innocence is more or less equally balanced, benefit of doubt must be given to the accused – *State (Delhi Administration) v. Guljari Lal*, AIR 1979 SC 1382 = 1979 CrLJ 1057 = (1979) 2 SCJ 484.

### **Scope of Section 45:**

The following are the matters in respect of which expert evidence according to Section 45 is relevant.

- (1) Foreign law
- (2) Science or Art
- (3) Identify of hand-writing
- (4) Finger prints

1. *Opinion on Foreign Law:* When the Court has to form an opinion as regards the law of a foreign Country and expert in law may be called upon to State to the Court what the law of a foreign Country on that particular point is – Khoday – *Gangadara v. Swaminadha Mudali*, AIR 1926 Mad 218. In India such law may be proved under Section 38 by the production of book printed under authority of the foreign Government. An expert may be called to State where it is laid down in a code of that Country, it is the duty of a Court in this Country to interpret it as best as it can. The Judgment of the highest tribunal of the Country is the best evidence – *Sugan Chand Bhikan Chand v. Mangi Bai*, AIR 1942 Bom 185.

2. *Opinion on Science or Art:* The word 'Science' is not just confined only to physical sciences or Biological Sciences. Similarly the word 'Art' is not just confined to Fine Arts having its original sense of handicraft, trade, profession and skill in works. Any matter for the purpose of forming an opinion which requires some special skill, special training or special study is regarded as a science.

The Expert opinion is made admissible in the sciences of—

- (1) Medical
- (2) Handwriting
- (3) Finger – prints
- (4) Fire – arms
- (5) Poroscopy
- (6) D.N.A. finger printing *etc.*,

3. *Opinion on Identity of Hand-Writing:* In a broad sense, hand-writing means making of

any mark upon any surface by a direct human agency, as the means of communicating information to fellow men.

Very often a hand-writing expert is required to give his opinion in the cases of forgery. These are two methods of committing forgery (1) Tracing Method and (2) Free hand Method. These two methods of forgery can be detected by a hand writing expert by paying attention to the various kinds of movements, shading, connections, pen hold *etc.* The opinion of hand writing expert is admissible there is nothing in law to debar the Court from recording the conviction of the accused. – *Man Mohan Singh v. State*, AIR 1969 Punj 225; 1969 CrLj 932.

4. *Finger Prints:* The Science of comparison of finger-prints has developed to a stage of exactitude. The Science of Finger-prints is known as Dactylography or Galten's details. The significance of this science is that the pattern made by one finger never tallies with the pattern made by another finger.

There is no rule of law that a conviction cannot be based on the sole testimony of a finger – print expert. The *State v. Karu Gope*, AIR 1954 Pat 131 = 1954 CrLj 201. The evidence given by a finger-print expert need not necessarily be corroborated, but the Court must satisfy itself as to the value of the evidence of the expert in the same way as it must satisfy of the value of other evidence.

#### ***Palm Impression:***

Under this section the reasons as well as the opinion given by a finger-print expert as to the identity of a palm impression are admissible in evidence where the identity of hand writing is in question.

#### ***Evidentiary Value of Opinion of Hand Writing Expert:***

The opinion of the handwriting expert is admissible under Section 45 of the Evidence

Act and what is required is only a corroboration of the opinion by other evidence in the case. In the absence of any other corroborating evidence it will not be safe to rest a conclusion merely on the opinion of a handwriting expert – *Joseph v. Aleyamma*, (1990)2 KLT 68(SN). The evidence of expert of handwriting may not be substantial evidence unless it was corroborated either by clear and direct evidence or by circumstantial evidence. – *State of Karnataka v. Maruthi Rao (Pavar)*, (1989) 1 Kar LJ 273 (DB). The opinion of handwriting expert being a weak one and not conclusive no reliance can be placed on the report of handwriting expert unless there is some piece of corroborative evidence of either oral or circumstantial nature. – *State of Gujarat v. Shah Sanjay Kumar K.* 2001 (3) Crimes 69 (Guj).

As a rule it is imprudent to convict an accused solely on the basis of expert testimony. But it is merely a rule of caution not rule of law. If in a given case the evidence of the expert is materially, corroborated and confirmed by other evidence.

#### **Foot Prints:**

Much reliance cannot be placed on the opinion of experts in the Science of Foot-prints as this science is considered to be still in a rudimentary stage. The track evidence, however, can be relied upon as a circumstance which, along with other circumstances, would point to be identity of the culprit though by itself it would not be enough to carry conviction in the minds of the Court – *Pritham Singh v. State of Punjab*, AIR 1956 SC 415 = 1956 CrLJ 805 (SC).

#### **The Opinion of Expert Evidence on Type-Script:**

The Supreme Court held, that opinion of experts as to whether a matter was typed on a particular typewriter or that it was not typed on another is not covered by Section 45

of the Evidence Act and so was not admissible – *Hanumant v. State of Madhya Pradesh*, AIR 1952 SC 343 = 1953 CrLJ 129 (SC). The Supreme Court of India overruled its own earlier decision in *Hanumant's* case and held in *State v. S.J. Choudhury*, 1996 CrLJ 1713 (SC) = AIR 1996 SC 1491, that the subject of typewriting comes within the expression of science and hence opinion of a person specially skilled in this specialized subject would be relevant under Section 45 of Evidence Act. The opinion of a person specially skilled in the use of typewriters and having the Scientific knowledge of typewriter would be an expert in this science.

#### **Opinion of Expert Evidence on Dog Tracking:**

The Supreme Court has expressed the opinion that in the present State of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight. – *Abdul Razak v. State of Maharashtra*.

Its reliability depends upon acceptability testimony of persons who manned the dog and those who witnessed his movements and conduct. – *Bhadran v. State of Kerala*, 1995 CrLJ 676 (Ker).

#### **Opinion of Ballistic Expert:**

The report of ballistic expert was admissible in evidence without calling him as a witness. Where the ballistic expert was not examined, neither any request to cross-examine him was made by accused nor Court found it necessary to summon him, such report of ballistic expert was reliable. Scientific expert upon any matter or thing duly submitted to him for examination and report admissible in evidence without calling such expert as witness. – *Balak Ram v. State of Rajasthan*, 1994 CrLJ 2451 (2461) (Raj).

It cannot be laid down as a general proposition that in every case where a fire-arm is alleged to have been used by an

accused person, in addition to the direct evidence, prosecution must lead the evidence of a ballistic expert, however good the direct evidence may be and though on the record there may be no reason to doubt the said direct evidence. — *Ram Narayan v. Punjab*, AIR 1975 SC 1726.

### ***The Science of D.N.A. Finger-Printing:***

The latest and the most revolutionary science that has emerged in recent years is D.N.A technology that is DEOXYRIBO NUCLEIC ACID TEST. By this method it is possible to fix the paternity or maternity of a child with 100% certainty. And also where a crime has been committed and some blood is available at the scene of crime, from that blood it can be said to whom that blood belongs, with all certainty of course, we have a conventional blood test where one can say what is the group of that blood *etc.*, By virtue of D.N.A technology it can be said that the blood belongs to a particular person.

### ***Competency of the Expert Witnesses and the Evidentiary Value of Expert Evidence:***

The competency of the expert witness must be determined by the Court. In determining the competency of the expert, the Court may have to take the qualifications, experience, training and study possessed by the expert in the particular field to which the Court's enquiry pertains.

The weight that is to be given to the experts evidence is different from its relevancy. In the act there are no guidelines with regard to the evidentiary value of expert evidence. As regards the nature of experts evidence there is normal likelihood or error and there is scope for expert to act with bias. The opinion of an expert witness can also be contradicted and rebutted by showing that he gave a different opinion on other occasion in a similar matter or by producing a standard treatise relevant to the subject-matter of enquiry. The opinion of an expert witness

can also be contradicted by engaging another expert witness. It is not a universal principle supported by any authority that in all cases when there is variance between the account given by the eye-witnesses and the medical evidence, the evidence of eye witness must prevail ignoring the medical evidence.

Where direct evidence is found to be satisfactory and reliable, it cannot be rejected in view of hypothetical expert medical evidence. Also if there is conflict in the opinions of expert medical witnesses, opinion of that expert which supports the direct evidence is ordinarily to be accepted *Purna Palai v. State*, 1987 Cri.LJ 1406 (Orissa).

Therefore these draw backs reduce the probative value of the expert evidence just like any other piece of evidence has to stand the test of close scrutiny. There is a consistent opinion that is not safe exclusively to rely upon expert evidence, as such it requires corroboration either by direct or circumstantial evidence.

The expert must give the basis of his opinion. The expert should, if he expects his opinion to be accepted, put before the Court all the materials which induced him to come to the conclusion, so that the Court, although not an expert, may form its own judgment on those materials — *Tilli v. Alfred Rober Jone*, AIR 1934 All 273 = ILR 56 All 428 at 450; *A.S. Mehta v. Vasumati*, AIR 1969 Guj 98.

Like this the scope of Section 45 is very wide. It covers several other subjects concerning with the human life, particularly where special skill, special training or special study of such subject is called for. This section enables an expert witness to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this *criteria* to the facts proved by the evidence of the case.



In our Technological age nothing more primitive can be conceived of than denying the discoveries of the sciences as aids to crime suppression and nothing can retard forensic efficiency than swearing by traditional oral Evidence only thereby discouraging the liberal use of scientific research to prove guilt phenolphthalein test in corruption cases.

Despite the conceptual conservatism inherent in most of the rules of Evidence the Court in India, of late, have adopted progressive pragmatism in admitting certain modern scientific gadgets in collaboration with but not in suppression of the oral testimony to arrive at a just decision photographs even today do not go beyond physical evidence used to corroborate the testimony of the person on the stand received the opinion of experts.

Lie detector tests (polygraph tests), Television in Court, Video Cassettes, Scientific Laboratory evidence, reports of serologists, DNA Test, admissibility of Computer printouts, *etc.* are the result of liberal use of scientific methods. Our Courts to reduce the crime rate in our society. The list of these above mentioned scientific methods are not exhaustive, as the progress of Science and Technology increases, the list of scientific methods which are adopted by our Courts to give landmark judgments also increases.

This section gives a vast power to the Judges to show their "Judicial Activism" under this section, by applying scientific techniques, they are able to serve the poor and needy people effectively.

## INVESTIGATION AND RELATED MODES OF INQUIRY

By

**—Dr. SARFARAZUNNISA,**  
Principal Anwar-ul-loom College of Law  
for 12 years,  
Worked as Professor of Law Asmara  
University, Eritrea for 2 years,  
Presently working as Advocate and  
Part-time Lecturer

**Autopsy** :—Autopsy refers to the dissection of a dead body for the purpose of inquiring into the cause of death<sup>1</sup>. It is a post-mortem examination to determine the cause, seat or nature of a disease. This kind of examination is normally required by statute for deaths by violent or unnatural means.

The term autopsy came into use early in the history of modern medicine to distinguish the opening of the human body by human agents from the much commoner practice of dissecting animals.

Post-mortem examinations of some sort have probably been made since man first took rational interest in disease<sup>2</sup>.

Laws on autopsy differ from place to place, but in general an autopsy, in the civilized world of today, can be performed only with the permission of the next of kin and by qualified doctor of medicine who is well-trained in Pathology, a branch of medical science which is concerned with the structural and functional changes caused by disease.

The primary purpose of autopsy is to

1. *Black's Law Dictionary* (1979) Page 122.

2. *Colliers Encyclopaedia* vol 3 Page 352.