



International Journal of Advanced Academic Studies

E-ISSN: 2706-8927

P-ISSN: 2706-8919

www.allstudyjournal.com

IJAAS 2022; 4(4): 205-208

Received: 27-10-2022

Accepted: 03-12-2022

Chaurasiya AK

Research Scholar,
Department of Agad Tantra,
Faculty of Ayurveda, Institute
of Medical Sciences, Banaras
Hindu University, Varanasi,
Uttar Pradesh, India

Mehra S

Assistant Professor,
Faculty of Law, Banaras
Hindu University, Varanasi,
Uttar Pradesh, India

Bhat S

Professor, Department of Agad
Tantra, Faculty of Ayurveda,
Institute of Medical Sciences,
Banaras Hindu University,
Varanasi, Uttar Pradesh, India

Corresponding Author:

Chaurasiya AK

Research Scholar,
Department of Agad Tantra,
Faculty of Ayurveda, Institute
of Medical Sciences, Banaras
Hindu University, Varanasi,
Uttar Pradesh, India

Critical analysis of admissibility of forensic evidence and reports in the criminal justice system of India

Chaurasiya AK, Mehra S and Bhat S

DOI: <https://doi.org/10.33545/27068919.2022.v4.i4c.957>

Abstract

We have needs to use scientific methods in investigation for collection of evidence and to ensure that evidence is collected and retained without being contaminated and altered, packed and sent in a scientific and safe manner to the lab is challenge before the investigating agency where the advance techniques are used and applied to extract evidence that will link the evidence to the scene of crime and finally identify criminal so that he or she may be successfully behind the bar of justice. In spite of the increased attention paid to forensic evidence over the past decade, there is published empirical data identifying the types of evidence routinely collected, and the extent to which this evidence is submitted to and examined in forensic crime laboratories. There is even less research that describes the role and impact of such evidence on criminal justice outcomes. While the current study shows that forensic evidence can affect case processing decisions, it is not uniform across all crimes and all evidence types; The effects of evidence vary depending upon criminal offense, variety of forensic evidence, the criminal decision level, and other characteristics of the case.

Keywords: Forensic evidence, criminal justice system of India, investigation

Introductions

The responsibilities of police in a country like India are priceless. With such an immense breadth and diversity in culture and heritage lies a great responsibility on the shoulders of police organizations. Though India is one of the biggest democracies having the largest police organization, still heinous crimes like sexual assault, murder, rape, robbery, etc. are increasing day by day. Duty of police is to collect the evidence at crime scene. Police officer shall follow the procedure to collect the evidences. Therefor evidences reach up to court of law, and its reliable. Credibility of evidence is not in question. If evidence is not temper or contaminated then it shall be admissible in court of law. Evidences due to unreliability shall not allowed by court. India is second largest population and when a crime is done then the crime scene is not secure to collection of evidence number of people randomly visit the crime scene so that number of forensic evidence like foot print, finger print etc. are contaminated or destroyed and court shall not really over that evidence. Police use logical devices and procedures to recognize a crime, recreate the crime scene, distinguish the supposed wrongdoer and build up essential connections; the courts, on the other, assess these physical confirmations, in any case trustworthy, and decide with improved precision the innocence or guilty of the party. Some place, the proficiency and viability of the Criminal justice working has become entwined with the degree of utilization of innovative devices in crime examination. It has been experienced that successful criminal investigation is practically impossible by the traditional method of eye-witness oriented criminal justice system. This method of criminal investigation lowers the quality of criminal justice system. It becomes difficult for the judges to decide a criminal matter or corroborate the fact-in-issue only on the sole basis of evidence of witnesses who might lie or are not dependable (because witnesses fail to appear on the dates fixed by the courts or might not be subject to the process of the court, which delays justice). Moreover, by scrutinizing the examinations in-chief and cross examination, the judges fail to reach to a definite conclusion regarding the incident. Nowadays witnesses refuse to come and appear before the court in spite of knowing the truth or witnessing the truth because of fear of becoming preys to criminals or threats which many a time are life taking. Many a time offences are committed in such a condition or situation where it is impossible even to get a single witness. In such cases the decision making process of criminal cases totally depends on circumstantial evidence like DNA evidence, report of the ballistic expert, fingerprints or report of chemical examination.

Due to lack of evidence or lack of proper evidence most of the heinous criminals are acquitted or goes scot free on a basis of even slightest doubt. Moreover the prosecution spends huge amount of money on the trials of criminal cases. Therefore through conventional investigations mostly public money is wasted and criminals get acquittal on the basis of benefit of doubt.

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 scrutinization under 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. The medical report should be prepared expeditiously and the Doctor should examine the victim of rape thoroughly and give his/her opinion with all possible angle e.g. opinion regarding the age taking into consideration the number of teeth, secondary sex characters, and radiological test, etc. Rape victim shall be examined by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner. The medical examiner, to whom the woman is sent, shall examine without any delay and shall prepare a report containing following information. Consent of the woman or the person competent to give consent on her behalf exact time of commencement and completion of the examination. Name and address of the woman and the person who brought her. Age of the woman, the description of material taken from the person of the woman for DNA profiling, marks of injury, mental condition of the woman. Any other information/ detail required, Reasons for arriving at the conclusion from point e.g-Consent is the key to proceed for further examination. If the consent is not obtained, the examination shall not be deemed to be lawful. 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 except under a licence, the import of any specified poison and may by rule regulate the grant of licences. Narcotic Drugs and Psychotropic Substances Act, are also a certain category of poison and dealt by the provisions of The Narcotic Drugs and Psychotropic Substances Act, 1985.

Admissibility of Forensic Evidence and Reports in Court of Law

In Nitish Katara murder case ^[1], From the evidence brought on record as well as the analysis made by the High Court, it is demonstrable about the criminal proclivity of the accused

persons, for they have neither the respect for human life nor did they have any concern for the dignity of a dead person. They had purposely comatosed the feeling that even in death a person has dignity and when one is dead deserves to be treated with dignity. That is the basic human right. The brutality that has been displayed by the accused persons clearly exposes the depraved state of mind the identification of the perished casualty was troublesome because of accessibility of just a little segment of one un-consumed palm with fingers. Here additionally, DNA profile helped in recognizing the body stays by coordinating DNA profile with guardians of the perished hitch helped the High Court of Delhi to maintain the conviction of the accused.

Sushil Mandal V. The State spoke to by CBI ^[2], the applicant, father of the perished kid, tested the discoveries of DNA profiling. The perished kid fell in the pre-adult cusp of shared fixation on a school young lady and guardians of both were exhorted by school organization for keeping beware of them. Afterward, the kid was found purportedly absent and, following seven days, a completely deteriorated unidentified body was angled out from a lake.[14] The candidate asserted of not recognizing the body remains and garments of his missing child. He favored habeas corpus request in the high court blaming the dad for the young lady and supplicating the high court for coordinating the examination by the Central Bureau of Investigation (CBI). The DNA trial of the body remains coordinated with the hereditary profiles of the guardians (the applicant and his significant other) of the expired. The skull super inconvenience test additionally settled connection between the expired and the recuperated body. In any case, candidate would not acknowledge reality uncovered by these logical tests on one guise or the other regardless of the way that DNA test was rehashed for his fulfillment.

The peak court put dependence on logical tests including DNA profiling for human recognizable proof and as needs be shut the issue The Bombay High Court in Anmolsingh Swarnsingh Jabbal V. The State of Maharashtra ^[3], maintained life term, depending upon DNA proof, notwithstanding different confirmations, for homicide of a youngster engineer by her partner for a situation of uneven love. For another situation of fierce assault and unnatural sexual act with a multi year old young lady youngster living in a ghetto staying was researched by Delhi police and DNA profiling was utilized to connect the culprit with the frightful demonstration of sexual viciousness. The court in the wake of having analyzed the point by point examination of the youngster's declaration and different techniques included in that endorsed the examination discoveries dependent on DNA reports and different confirmations and held the blamed blameworthy furthermore, put aside absolution request passed by the preliminary court ^[4].

Mohan Singh vs State of Punjab ^[5] The court sorted the opinion of the ballistic expert whether the shots fired by the appellants killed the deceased and grievously hurt the lady in self-defense. Expert opined that Shots received in parcel 1 were fired from a L.G cartridge and shot received in parcel 2 was either an L.G shot or S.G shot. It was possibly a L.G shot (as indicated from the undamaged portion of the shot),

² 2014 SCC Online Mad 7362

³ 2014 SCC Online Bom 397

⁴<https://indiankanoon.org/doc/26906043/>

⁵ AIR 1975 SC 2161

¹ (2014) SCC Online Del. 1373,

but the expert was not categorical about it. The expert was sure that the shot received in parcel 2 was a factory made. From the photographs of the injuries inflicted on both the deceased and the lady, he reached the conclusion that the injuries on the deceased and the injured lady were probably caused by one gunfire only. But he was not categorical about it. "Most of the expert's answers are not categorical. He did not have an opportunity of seeing the injuries and exit wounds of the shots himself. He was mostly giving his answers based on observations made by others and measurements noted by them. A small difference in the measurements one way or the other might make all the difference to the result. The court think it would be unsafe to place implicit reliance on the evidence of the expert for the reasons we have already given.

Vineet Kumar Chauhan vs State of U.P.^[6] In this case, injured succumbed to the bullet injuries. During post-mortem examination a bullet was recovered from the spinal cord but was not sent for forensic examination rather distorted bullets from the scene of crime were sent for the expert opinion. Expert Opined that the distorted bullets from the alleged spot of crime were not in conformity with the sample bullets fired from the gun in question. It cannot be laid down as a general proposition that in every case where a firearm is allegedly used by an accused person, the prosecution must lead the evidence of a Ballistic Expert to prove the charge, irrespective of the quality of the direct evidence available on record. It needs little emphasis that where direct evidence is of such an unimpeachable character, and the nature of injuries, disclosed by post-mortem notes is consistent with the direct evidence, the examination of Ballistic Expert may not be regarded as essential. However, where direct evidence is not available or that there is some doubt as to whether the injuries could or could not have been caused by a particular weapon, examination of an expert would be desirable to cure an apparent inconsistency or for the purpose of corroboration of oral evidence".

Amarsingh vs Balwinder Singh & others^[7]

Supreme Court, however, repelled that contention and held that in a case where the investigation is found to be defective the Court has to be more circumspect in evaluating the evidence. But it would not be right to completely throw out the prosecution case on account of any such defects, for doing so would amount to playing in the hands of the investigating officer who may have kept the investigation designedly defective. This Court said: "It would have been certainly better if the investigating agency had sent the firearms and the empties to the Forensic Science Laboratory for comparison. However, the report of the ballistic expert would in any case be in the nature of an expert opinion and the same is not conclusive. The failure of the investigating officer in sending the firearms and the empties for comparison cannot completely throw out the prosecution case when the same is fully established from the testimony of eyewitnesses whose presence on the spot cannot be doubted as they all received gunshot injuries in the incident." The investigating agency had not sent the firearm and the empties to the forensic science laboratory for comparison. It was argued on behalf of the defence that

omission was a major flaw in the prosecution case sufficient to discredit prosecution version.

In *Kamaljit Singh vs State of Punjab*^[8] The Court, while dealing with point of application of forensic evidence made observation as how to deal in case where discrepancies are prevalent between ocular and forensic evidence. It is trite law that minor variations between forensic evidence and ocular evidence do not take away the primacy of the latter. Unless forensic 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. 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.

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^[9].

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^[10].

⁸ 2004 Cri.LJ 28

⁹ Dayal singh others vs State of Uttaranchal Criminal appeal no.529 of 2010

¹⁰ State by the Inspector of Police v. Manoharan, 2015 Cri. LJ 1215

⁶ AIR 2008 SC 780

⁷ (2003)2 SCC 518

Ramdeo Chauhan alias Raj Nath vs State of Assam^[11] while dealing with the reliability of the ossification test, The Supreme court held as 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.

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^[12].

Raghunath, Ramkishan & Ors vs State of Haryana^[13] 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. 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.

Conclusion

The investigating officer (IO), they are the first responders of the crime and are the first to arrive at the crime scene. It is incumbent upon them to handle the crime scene with utmost sophistication and scientific expertise. These IOs are ill-equipped both in terms of scientific equipments and lack requisite training in collecting and preserving evidence from the crime scene. As the first responders of crime, these IOs must be informed as to what evidence must necessarily be picked up from a crime scene. For now, there are no guidelines available to the IOs which can guide them as to what are the necessary evidence which must be collected from a crime scene in order to secure successful

convictions. In light of lack of recommendatory guidelines for crime scene management, it is mainly done on an ad hoc basis where everything depends on the forensic temper of individual IOs. As has been seen majorly, there are quick arrests but those do not turn out in successful convictions by the court. 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.

Reference

1. Sharma BR. Forensic Science In Criminal Investigation & Trials (Universal Publication, New Delhi, 4th edn. 2008)
2. The Indian Evidence Act; c1872.
3. The Code Of Criminal Procedure, 1973 (Act No. 2 of 1974)
4. The Indian Penal Code (Act of 45 of 1860).
5. Dr. Mathiharan K, Dr. Amrit Patnaik K. (eds.), Modi's Medical Jurisprudence and Toxicology (LexisNexis Butterworths Wadhwa, Nagpur, 2005).
6. Dr. Chaubey RK. An Introduction to Cyber Crime and Cyber Law (Kamal Law House, Kolkata, 2008 edn., 2008).
7. Walls HJ. Forensic Science: An Introduction to Scientific Crime Detection (Universal Law Publishing Co. Pvt. Ltd., Delhi, 2nd edn., 2008).
8. Moitra, Kaushal. Medical Jurisprudence & Toxicology And Special Chapter On DNA, (Delight Law Publishers, Jodhpur, Rajasthan, 3rd edn. 2007).
9. All India Reports
10. www.ssconline.com
11. www.indiankanoon.com
12. Manupatra
13. Jane Campbell Moriarty, Michael J. Saks Forensic Science, Grand Goals, Tragic Flaws & Judicial Gatekeeping 44 Judges Journal 17, 2005.
14. Ministry of Home Affairs, National Crime Records Bureau, Crime in India 2021 Statistics, < <https://ncrb.gov.in/en/Crime-in-India-2021> >accessed on 26-10-2022.
15. National Crime Records Bureau under the Ministry of Home Affairs available at: <http://ncrb.gov.in/>
16. Oxford English Dictionary (6th ed.)
17. Ministry of Home Affairs, Committee on Reforms of Criminal Justice System Government of India, Malimath V.S. Justice. 2003;1.
18. Taylor's, Medical Jurisprudence, Tenth Edition, Vol. 1, at page 459.
19. Soderman Harry and O'connell John J. Modern Criminal Investigation 5th ed. Revised by CHARLES E. O'HARA.
20. <https://indiankanoon.org/doc/724201/>

¹¹ 2001 5 SCC 714

¹² Mukarrab & others vs State of U.P 2017(1) RCR (Criminal) 103, Ram Suresh Singh v. Prabhat Singh, (2009) 6 SCC 681. JyotiPrakashRai v. State of Bihar,(2008) 15 SCC 223,Mahadeo S/o

Kerba Maske Vs. State of Maharashtra and Anr(2013) 14 SCC 637)

¹³ Appeal (crl.) 73 of 2002