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A CRITICAL ANALYSIS OF ADMISSIBILITY OF MEDICAL EVIDENCE

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ABSTRACT

This paper deals with the admissibility of medical evidence in Indian cases. The medical evidences play a huge part in proving the guilt of the accused and lead the investigating authorities to the truth. They are the evidence given by an expert u/s 54 of the Indian Evidence Act. The expression "evidence" means "oral or documentary or circumstantial proof of the allegations in issue between the parties in a legal proceeding". "Medical evidence" means a proof given by medical expert, which is based on his scientific knowledge skill and personal experience. These evidences are corroborative in nature and do not necessarily prevail over testimony of an eye-witness, unless such testimony is invalidated. However, in case of an inconsistency between the two, the court shall take the medical evidence into account. So, the testimony of a witness carries its own weight. Medical evidences are often necessary, especially in rape cases to prove the guilt of the offender. It can often expose through post-mortem or autopsy, what was invisible to the plain eye. The bodies of the injured or dead person are clear proofs of the offence, when examined properly. Thus, medical evidences, though corroborative in nature, are accepted in Indian Law. This paper shall further contain various types of medical evidences and their nature and admissibility for the purpose under the Act.

Keywords: Medical Evidence, Indian Evidence Act, Expert, Witness, Corroborative, Admissibility

HYPOTHESIS

Medical evidences are rational conclusions arrived at by medical experts based on established scientific principles and are hence conclusive evidences.

RESEARCH QUESTION

Whether, through a comparison of the medical evidences and their importance, the expert evidence given u/s 45 of the Indian Evidence Act may be given a conclusive status rather than a corroborative one?

MATERIALS AND METHODS

This paper is a doctrinal research done mainly with the help of secondary sources. These include research papers and textbooks.

CHAPTERISATION

1. Introduction
2. Chapter I - Current status of medical evidences in India
3. Chapter II - Case analysis of Admissibility of Medical Evidence
4. Chapter III - Importance of Medical Evidence in Rape Cases
5. Suggestions and Recommendations
6. Conclusion

INTRODUCTION

Medical evidence is a specialised form of knowledge not known to the layman. Expert evidence is given by a medical person especially when a person dies, for a court proceeding. It is obtained from the post-mortem report , the burden of proof being on the prosecution to prove the guilt of the accused. Supreme Court has held that medical evidence is admissible and that there is no hard and fast rule against it. Rules of medical evidence include:

1. Expert must be with a recognised field of expertise
2. Evidence must be based on reliable principles
3. Expert must be qualified in the discipline

Medical evidence is given by a medical expert as an expert evidence u/s 45 of the Indian Evidence Act.

The main objects of this paper include :To analyse the role of medical evidence through various case analysis and judicial precedents; To discuss the current legal position of medical evidence; To understand its importance in rape cases.

CHAPTER I - CURRENT STATUS OF MEDICAL EVIDENCES IN INDIA

The term evidence has diverse implications in law and medicine. In law, evidence is material or testimony which is permissible to the court. In medicine, it alludes to information got through logical examination. The nature of such evidence is characterized by the logical approach utilized in the examination. In law, complex tenets confine the sort of evidence that might be exhibited to the court. These principles intend to bar evidence which might be temperamental, superfluous or misdirecting and incorporate evidence which has the most extreme likelihood of being reality. Medical evidence causes the courts to make intelligent inferences from the certainties exhibited. The evidence displayed by medical experts depends on their suppositions inferred by their specific abilities gained by study and experience. Medical experts are routinely associated with the organization of equity especially in criminal courts. In India, usually medical evidence in conceded just when the expert gives oral evidence under oath in the courts of law expect under unique conditions like:

i. At the point when evidence has just been conceded in a lower court;
ii. Expert suppositions communicated in a treatise;
iii. Evidence given in a past judicial continuing;
iv. Expert can't be called as witness; and
v. Clinic records like confirmation/release enlist, birth/passing certificates and so on.

Judges are accepted to have information and experience of general fields of human undertaking and experience. Experts may not give evidence with respect to issues of 'basic information'. There are a few zones of medicine which cross with everyday life and along these lines summon the basic learning standard. An expert need not be requested to number the fingers on the hand. (Krishna Kumari and Kumari 2007)

The expert witness may just testify inside his or her specialized topic. It is left to the legal to govern on whether a territory of logical or medical learning speaks to a specialized topic. Faultfinders call attention to that judges with restricted medical information may not be the most proper 'gate keepers' of logical evidence in connection to the court. The Frye test decides that with a specific end goal to be named a subject matter, the territory must be adequately settled to have increased general acknowledgment in the specific field to which it has a place. The Daubert administering has additionally indicated the criteria to decide the acceptability of logical evidence. The expert must have the capacity to unmistakably

legitimize his feeling based on certainties utilizing his expertise, portraying how he could reach at the sentiment utilizing any records, books, photographs and so forth.
The courts have regarded medical evidence as an essential bit of evidence. DNA is one of the vital medical blood test, where the paternity is a debated question, the court hosts adequate energy to guide gatherings to experience medical tests or give test of blood for DNA to choose the paternity. (Sharma 2003)

Deoxyribonucleic Analysis (DNA): Each individual's genetic cosmetics contains DNA. This contrasts from individual to person. DNA can be gotten through blood, salivation, semen, or hair. This aides in distinguishing a man. In the event that a drop of blood or a strand of hair is found at a wrongdoing scene, it can be contrasted with a man's known DNA to check whether there is a match, consequently connecting the individual to the wrongdoing. An expert witness can give a supposition about the probability that the blood that was found at the wrongdoing scene originated from the person whose example was looked at. DNA analysis is likewise used to set up paternity. Experts trust that the capacity to interface the guilty party to the wrongdoing scene through his DNA prints is obvious as not at all like traditional fingerprints that can be carefully modified, DNA is found in each tissue and no known concoction mediation can transform it. To the extent paternity is concerned, now it has turned out to be extremely regular to coordinate the utilization of blood tests. Blood bunches as indicated by the researchers have a causative connection between the characteristic of the forebear and that of the descendants. As it were the blood typesetter of youngster might be of some evidence with regards to the tyke's paternity. The blood bunch tests are valuable just to prohibit the likelihood that a man is the father. Refined blood tests are currently being received which are so best in class as equipped for giving a high or low likelihood of paternity. Tests made of the DNA can give what can for all intents and purposes be viewed as assurance in paternity cases.

CHAPTER II - CASE ANALYSIS OF ADMISSIBILITY OF MEDICAL EVIDENCE

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 held that:
i. courts in India can't arrange blood test as expected result;
ii. wherever 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.

iii. There must be a solid at first 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. (Aggrawal)

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 analyzed 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)

CHAPTER III - IMPORTANCE OF MEDICAL EVIDENCE IN RAPE CASES

Medical evidences is ordinarily required to help a charge of rape however it is only sometimes more than corroborative. It is very uncommon that rape cases are attempted without Medical evidence medical evidence in the instances of rape might be from the accompanying sources-

(i) characteristics of violence on the individual of the victim or

(ii) the denounced, characteristics of violence close by the private parts

(iii) indications of venereal disease,

(iv) nearness of blood or fundamental stains on the materials of the prosecutrix of the blamed

(v) nearness of spermatozoa in vaginal emission

(vi) examination of denounced and

(vii) indications of loss of virginity.

In any case, when the doctor analyzes the victim following 14 to 16 hours, no signs of wounds in the situation can be found on him. Thus one might say that the arraign was consenting gathering. Where the young lady was analyzed following 20 hours after she has scrubbed down, the doctor found no wounds on her individual and the hymen was having old

burst and the vagina conceded two fingers effectively, no rape made out in the conditions. At the point when the victim was matured around 20 years and hymen was torn unpredictably and there were bleeding on the vagina mons pubis was red swollen, the vagina conceded pointer with trouble, it proved rape. Only on the grounds that the semen stains were found, without particular conditions demonstrating intercourse, the conviction can't be sustained.Thus, we may arrive at conclusion that the medical and logical evidences assume an imperative part in the approximization of criminal equity. (Singh 2012)

For every situation of rape medical evidence is corroborated by the victim of the rape in criminal trial at that point there is less opportunities to give profit of uncertainty to the blamed individual on the other on the off chance that it won't certify with victim evidence then the advantage goes to charged. This is the general inclination of the judicial choice of rape cases. In rape cases medical evidence demonstrates the minority of the age, the medical opinion is offered to set up the offense of rape. The medical evidence illustrated by the prosecution, has awesome value. It proves that the wounds could have been caused in the sexual piece of the body or different parts and furthermore passing could have been caused by the wounds, so the prosecution case being predictable with issues verifiable by medical science, there is no motivation behind why the eyewitnesses ought not be believed.

In Mayur v/s State of Gujarat, the Hon'ble Supreme Court observed - we think this isn't a case which ought to have been summarily dismissed by the educated single judge and moreover we don't think the scholarly judge was right in observing that our courts have constantly taken the doctors as observer of truth. Even where a doctor has dismissed in court, his evidence must be acknowledged like the evidence of some other witness and there is no irrefutable presumption that a doctor is dependably an observer of truth. The opinion of the doctor who is an expert must be bolstered by reasons and it is the reasons which are of significance in evaluating the value of the proposal and opinion. For this situation the opinion composed was as an answer to specific inquiries made by the sub inspector of police. The doctor report was dismissed as it didn't contain reasons. The medical evidence by the doctor must be continually keeping up the most astounding standard of their work and lead. For a situation the prosecution had analyzed medical legal scholar Dr. Subash Jain as PW 21 who opined over the span of his announcement on oath before the educated extra sessions judge that the damage no.l was not adequate in the conventional course of nature to cause passing of Kadir Mohammed, perished. The previously mentioned explanation of the doctor was just

an expert opinion and its testimonial value is subject to examination of this court, as envisaged under Section 45 read with Section 51 of the Indian Evidence Act. (Aggrawal)

Under Section 51 of EEA it unmistakably provides that whenever opinion of any living individual is relevant, the grounds on which such opinion is based are likewise relevant which implies an expert opinion is only a deduction which draws from specific facts and its testimonial value relies upon the grounds on which his opinion is based. For this situation, the medical law specialist was required to reveal grounds which prompts him to reach his decision that damage no.l caused to the expired was not adequate in the customary course of nature to cause passing of the perished in spite of the fact that the cut injury was caused on vital parts of the body of the perished by a blade. Without any reason given by the doctor in help of his aforementioned opinion, it isn't acceptable to us and it is held to be inconclusive. It was held for a situation that the medical evidence on the two sides is similarly adjusted; advantage of uncertainty must be given to the charged. In such a case the supreme court declined to meddle with the request of quittance recorded by the high court on the other of there is lacking in evidence than the court can arrive at its own decision. It was over and over held by supreme court as a rule that whenever it is expected to pace dependence on a specific view taken by medical experts and their law the said view must be put to the doctor to evaluate how far the view taken by the experts apply to the facts of the specific case.

SUGGESTIONS AND RECOMMENDATIONS

It can be proposed and suggested that the expert from the medical field ought to be urged to attempt medico-legal work. It has been seen above that the medical experts have assumed a very vital part as a guide to assist the Courts with arriving at a consistent and all around characterized conclusion. Furthermore, now, logical experts/scientific researchers are likewise assuming a vital part particularly in criminal issues and the testimonies of expert evidence have been depended upon by the Courts.

It is applicable to allude to the report of Dr. Equity V.S Malimath Committee, which recommended various changes in the criminal equity framework. The board of trustees proposed that scientific science ought to be utilized comprehensively in the investigation of wrongdoing. As per the Malimath Committee, the DNA experts ought to be considered and incorporated into the rundown of experts as given under section 293(4) of the Indian Code of Criminal Procedure (CrP.C), 1973.

Even in instances of reconsideration and alluded opinion cases, if there should arise an occurrence of any distinction of opinion from the underlying report, an unmistakable opinion with a supporting premise ought to be provided. Advance the courts may believe and depend on that opinion which is counting with the eyewitness record and dispose of the opinion of other expert on this ground alone.

Expert opinion ought to be considered in an indistinguishable light from clinical medicine and in that capacity subject to same principles of negligence. Statutes should be altered with the goal that ruptures of the expert's obligation of objectivity would constitute proficient wrongdoing.

Earlier instruction and preparing of the expert witnesses helps with comprehension the whys, hows and the procedures of the court, must be appropriately provided.

CONCLUSION

In India, it is a typical recognition that part of time and exertion is required to record evidence and accordingly all things considered individuals from the medical calling don't care to be involved in medicolegal cases. A portion of the possible reasons set forward for this observation are undue time utilization; rehashed suspensions; and absence of work culture. A portion of the explanations behind postponements in evidence are nonavailability of directing officer in the court; issue of summon by botch; work suspended by lawyers; non-availability of a few records; deferment of the case before arrival of medical witness, and so on. It has been observed that overall additional time is taken in holding up in courts and receiving installment than in actual chronicle of evidence. The mean slack time frame between enlistment of first data report and time to show up under the steady gaze of court of law to give evidence by a medical witness has been observed to be over two years. There are numerous occurrences where court choices as opposed to well known expert opinion on issues like bone cut, rape, consumes, age, consent, passing on affirmation, compos mentis, and so on have been delivered.

The medical evidence cited by prosecution has awesome corroborative value. It proves that the wounds could have been caused in the way claimed and the demise could have been caused by the wounds so the prosecution case being predictable with issues

verifiable by medical science, there is no motivation behind why the eye-witnesses ought not be believed. The utilization, which the guard can make of medical evidence, is to prove by it that the wounds couldn't in any way, shape or form have been caused in the way charged or passing couldn't in any way, shape or form have been caused in the way affirmed by the prosecution and on the off chance that it can do as such, it dishonors the eyewitnesses.

Since witnesses are the eyes and ears of equity, the oral evidence has supremacy over the medical evidence. On the off chance that the oral testimony of the witnesses is discovered reliable, financially sound and moves certainty, the oral evidence must be believed, it can't be dismissed on theoretical medical evidence. The medical officer being an expert witness, his testimony must be doled out extraordinary significance. However, there is no irrefutable presumption that a medical officer is dependably an observer of truth, his testimony must be evaluated and acknowledged like the testimony of some other customary witness.

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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