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EDITORIAL NOTE

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This quarterly issue of the journal would like to encourage and welcome more and more writers to get their work published. The papers will be selected by our editorial board that would rely upon the vibrant skills and knowledge immersed in the paper.

Needless to say, any papers that you wish to submit, either individually or collaboratively, are much appreciated and will make a substantial contribution to the early development and success of the journal. Best wishes and thank you in advance for your contribution to the Lexkhoj Research Journal of Law and Socio-Economic Issues.

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EVIDENTIARY VALUE OF MEDICAL WITNESS

**Saunak Rajguru*

ABSTRACT

A common witness is one who testifies only to the facts observed by him; his evidence requires only common intelligence and knowledge. He is not capable of forming of opinion or drawing conclusions from the facts observed by him. This principle is known as firsthand knowledge. Section 45 of Indian Evidence Act deals with opinion of experts. An expert witness, or skilled witness, is one who is skilled in scientific, technical, or professional matters, and who on account of his professional training, experience, and ability, is capable of forming opinions, or drawing inferences an expert witness is especially skilled in Forensic Medicine, science or law, or art. Medico-legal expert, when mentions the nature of injuries and whether they were caused during life or after death, is an expert witness. Personally, the doctor abhors the vicious cross examination of some few trial counsels who resort to degrading the expert medico legal witness when no other means are available to reduce the impact of his direct medical testimony. The author herein examines the evidentiary value of the Expert Testimonies by analyzing as to who is an expert testimony vide the statutory laws and goes on to explain the relationship between Expert testimony and Direct evidence.

INTRODUCTION

As a general rule, the opinions, inferences, beliefs and mere speculations of witnesses are inadmissible before a Court of law.[1] It means that such types of evidence do not merit consideration. Hence they are excluded as inadmissible in the law of Evidence. Witnesses are considered as fact reporting agents of the legal machinery and their role in the adjudicating process is to inform the court of facts. 'Facts' means and contain; only facts and not opinions or inferences. Witness must testify only what he had perceived with one of his five senses.[2]

[1] See, Phipson. Evidence (10'"d. 1983), p.475. This is based on the 'Best Evidence Rule'. It is the cardinal principle of the law of evidence that best evidence should be adduced before a court of law. Best evidence means the evidence collected through the direct source. Derivative or second hand evidence shall be excluded.

[2] It is also the general rule of 'hearsay' that evidence, which is outside the direct knowledge of a person, shall bt: excluded due to its infirmity. Simply, hearsay evidence means evidence of an unexamined person. Taylor defined it as "evidence which does not derive its value solely from the credit given to the witness himself, but which rests also in part on the veracity and competence of some other person".

Therefore, it is worthwhile to know the meaning of opinion and its distinction from fact. In the law of evidence. 'opinion' means any inference from observed facts.[3] However, in some situations it will be difficult to distinguish between fact and opinion because there are borderline cases in which the evidence of fact is mingled with evidence of opinion. For example, statements relating to the speed of a particular thing, identity of persons etc. are mingled with fact and inference. In such cases, the law permits witnesses to state their opinion, without which the fact finder cannot come to a correct conclusion. In some other cases, the line, which differentiates facts from opinion, may be delicate. Ordinary lay witness cannot identify certain facts with his prudence., Such facts may be obscure or invisible to him. But a witness having a particular skill or training may be able to perceive such facts.[4]

NOTION OF EXPERT WITNESS

Under S. 45[5], opinions of experts are relevant on questions of foreign law, science, art, identity, handwriting or finger impressions. Expert testimony is admissible on the principle of necessity.[6] The help of experts is necessary when the question involved is beyond the range of common experience[7] or common knowledge or where the special study of a subject or special training or skill or special experience is called for.[8] No man is omniscient; in fact, perfection is an attribute of divinity only.[9]

Witnesses are ordinarily not to say what they thought or believed to be and therefore their opinions are irrelevant in a judicial enquiry, but in certain special matters requiring special skill in the subject concerned, opinions of persons having special study, training or experience are accepted as evidence.[10]

CORROBORATIVE NATURE OF EXPERT TESTIMONY

[3] For example, a statement that a truck was being driven on the left side only one of fact, while the assertion that a particular piece of driving was negligent IS a matter of inference from observed facts.

[4] For example, from a murder scene a lay witness can give evidence regarding the fight between the deceased and the accused. stabbing and the death of the deceased. But he cannot give evidence about the identity of bloodstain found In the scene. But such evidence can be given by a forensic scientist who is trained in DNA technology or by a serologist. This type of evidence can also be termed as the evidence of fact, which was observed by an expert through his eye. But this cannot be strictly put in the group of direct testimony.

[5] S.45, Indian Evidence Act, 1892

[6] Government of Virgin Islands v. Knight. 989 F 2d 619 (3" Cir 1993)

[7] R v. Davies, [1962] 3 All ER 97.

[8] J.B. Mukerjee, *Forensic Medicine and Toxicology*, 4th ed. 2011, Edited by R.N. Karmarkar, Academic Publishers. Indian Legal System; pp.29.

[9] R v. O Sullivan [1969] 2 All ER 236.

[10] See, Scott Brewer. 'Scientific Expert Testimony and Intellectual Due Process". 107 Yale. L J. 1596.

It is a general rule that a witness is not to give his impressions, but to state the facts from which he received them and leave the judge to draw his own conclusions. But wherever the facts from which a witness received an impression are too evanescent in their nature to be recollected or are too complicated to be separately and distinctly narrated, his impressions from these facts become evidence[11].

Corroborative evidence is an evidence that concurs with another evidence[12] and it is submitted that medical evidence falls under corroborative evidence. Expert evidence in a criminal trial would be just a fraction of the totality of the evidence on the appreciation of which the judge takes decision.[13] The Court takes into account all the other evidence at hand along with the opinion of the scientific expert, which is just one piece of evidence required to be taken into consideration and appreciated for its evidentiary value. An expert witness is not a witness of fact. His evidence is really of an advisory character.[14] The duty of an expert witness is 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 such criteria to the facts proved by the evidence of the case.

The knowledge of the medical expert is always essential in the criminal justice system. The expert evidence given by a medical person comes to the help of the Court in deciding various matters. Particularly, in case of death of a person, medical evidence is inevitable.[15] Such evidence can be obtained through postmortem report. The importance of the post-mortem report is as a tool in the hands of the prosecution. It becomes useful to decide the guilt of the accused.

In a trial where injury or death is involved, or for an offence of causing hurt to a human body, the opinion of medical man is sought for ascertaining the cause of death or injury or to determine as to the injuries are anti-mortem or postmortem, probable weapon used, the effect of injuries, medicines, poisons, the effect and consequence of wound whether they are sufficient to cause death in the ordinary course, the duration of injuries and the probable time of death. In the same way while the offence or trial of kidnapping and rape the medical opinion is adduced to establish the fact that the girl is minor, whether rape was committed

[11] VII Wigmore p.12 and Cross, Evidence, 329 (1958) ; Dr. Avtar Singh, Principles of the law of Evidence, 18th Ed. 2010, Central Law Publications, Allahabad.
[12] S.8, Indian Evidence Act, 1872
[13] Lloyd L Rosenthai, *'The Development of the use of Expert Testimony*", 2 L & Contemp. probs. 401 (1 935)
[14] Queen v. Silverlock [1894] 2 Q.B. 766.
[15] R v. Shephard, [1993] 1 All ER 225.

under influence of liquor, medicine or intoxicant, threat by using weapon, to extent injury on private part of prosecutrix and that of accused, or if death is caused by excessive force used by the accused to the minor child.[16]

DUTY OF MEDICAL EXPERTS

When a medical person is called as an expert, he is not to witness the facts, because his evidence is not direct evidence of how an injury in question was done.[17] He gives his opinion only on how that, in all probability was caused. The value of such evidence lies only to the extent it supports and lends weight to direct evidence of eye-witnesses or contradicts evidence and removes the possibility of the injury in question and could take the manner alleged by the witness[18]. It becomes necessary in each and every case where the expert evidence is admitted to check and counter-check it by producing the expert witness before the court. Without examining the expert witness, his evidence may become inadmissible[19].

A medical witness is to be tendered within the limits of science to assist the court in determining the truth, so it may or may not favor the prosecution or the party calling him[20]. When the law has made a physician a witness, he should remain a man of science, he has no victim to avenge, no guilty person to convict and no innocent person to save. His evidence should be reliable, clear, reliable, clear, honest and impartial.

RELATION BETWEEN EXPERT TESTIMONY AND DIRECT EVIDENCE

As direct evidence is inevitable to prove the offence beyond reasonable doubt, opinion evidence gets secondary importance.[21] Both direct evidence and opinion evidence should go together, coordinate with each other, then only the care of the prosecution becomes stronger and the possibility of the conviction of the accused is increased. The medical evidence is always regarded as opinion evidence and has its importance as expert evidence. But, one cannot deny the value of direct evidence. Medical evidence should not go against the direct evidence. It does not mean that when there is a contradiction between direct evidence, e.g.

[16] Clark v. Ryan, (1960) 103 C.L.R. 486.
[17] Murphy v. R, (1989) 167 C.L.R. at 94.
[18] Principles and Digest of the Law of Evidence, Authored by Justice Monir
[19] Hanishi K. Thanawalla (1996) , "Development and Liberalization of Hearsay doctrine", Journal of the Indian Law Institute, Vol. 38.1
[20] Mathiharan K, Emergency Medicare: Its Ethical and Legal Aspects, National Medical Journal of India, Vol.17, No 1 January/February 2004, 31-35 at p 33.
[21] Basudeo Gir v. State, AIR 1959 Pat. 534.

evidence by an eye witness and medical evidence, the authenticity of medical evidence is questioned. The value of medical evidence is accepted as evidence by an expert, but the prosecution case when weakened; the Court may not be able to convict the accused.

Medical evidence is critical to prove that the injuries could have been caused in the manner alleged and nothing more. The use which the defense can make of medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless however, the medical evidence in turn goes so far that it completely rules out all the possibilities whatsoever of injuries taking place in the manner alleged by eye-witnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence[22].

If the evidence of the eye-witnesses is sought to be discredited on the basis of medical evidence, it is for the appellant to have this aspect specifically clarified from the evidence of the doctor[23]. The evidence of the eye-witnesses cannot be rendered untrustworthy because of its inconsistency with the medical evidence[24] and when the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence[25]. In view of glaring inconsistency between the oral and medical evidence, it will be extremely unsafe and hazardous to maintain the conviction of the accused basing upon such evidence[26].

There is always a tendency to over-emphasize discrepancies between the evidence of eye-witnesses and medical testimony[27]. The discrepancies should be treated and appraised just like other discrepancies in the statements of the witnesses. Naturally, therefore, the Courts may carefully examine the discrepancies and if it is reasonably open to arrive at a substantial and true version of the prosecution's case, the Courts should not adopt the easy course of throwing away the prosecution case on the alleged discrepancies between the medical evidence and the eye-testimony.

DUTY OF THE COURT OF LAW WHILE APPRECIATING EXPERT EVIDENCE

[22] Solanki Chimanbhai Ukabhai v. State of Gujarat, AIR 1983 SC 484
[23] Ghasi Ram v. State of Uttar Pradesh, AIR 1973 SC 211
[24] Bijwa v. State of Uttar Pradesh, AIR 1973 SC 1204
[25] Ram Narain v. State of Punjab, 1975 AIR 1727
[26] Mohar Singh v. State of Punjab, AIR 1981 SC 1578
[27] Mohan Lal v. State of Rajasthan, 1960 Raj LW 565

There is no irrebuttable presumption that a Doctor is always a witness of truth[28]. The evidence of a medical man, however eminent, as to what he thinks, may, or may not have taken place under a particular combination of circumstances, however confidently he may speak, is ordinarily a mere matter of opinion. The opinion given by a medical witness need not be the last word on the subject. Such an opinion must be tested by the Court[29]. Human judgment is fallible. Human knowledge is limited and imperfect. New and previously unobserved phenomena which, till they have been recorded are supposed to be impossible, constantly being noticed[30]. Henceforth, if the opinion of the doctor is not consistent with probability, the Hon'ble Court has no liability to go by that opinion merely because it is said by the doctor.

It is thus expected of the law courts that they would not surrender their will, independence or judgment to an expert and would in all cases in which evidence is adduced before it, after giving it such weight as they may think it deserves, make up their own mind upon an issue is respect of which the expert testimony has been given[31]. Even where a doctor has deposed in Court, his evidence has got to be appreciated like the evidence of any other witness and there is no irrefutable presumption that a doctor is always a witness of truth[32]. The doctors are expert in their own right and when they examine a person and give opinion, it does not normally mean that their opinion is not correct[33].

A glaring inconsistency between direct evidence and medical evidence in respect of the entire prosecution case is a defect in a prosecution case[34]. Notwithstanding the conflict between the ocular testimony and medical witness, it would be open to the court to accept the eye-witnesses account, if it is otherwise unshakable[35]. Where the medical evidence is in conflict with the other evidence, the advantage of the same goes to the accused by the Court[36]. Where the prosecution case was that the death was due to injuries inflicted by an aruval, but the medical witnesses negated its possibility, the accused was acquitted[37]. Where the medical

[28] Mayur Panabhai Shah v. State of Gujarat, AIR 1983 SCC 66
[29] State of Haryana v. Bhagirath, AIR 1999 SC 2005
[30] Queen v. Ahmed Ally, 11 Suth WR Cr 25
[31] Vinod Kumar v. State of Madhya Pradesh, 1987 Cr LJ 1541
[32] Mayur v. State of Gujarat, AIR 1983 SC 66
[33] State (Delhi Administration) v. Sube Singh 1985 Cr LJ 1190 (Del) (DB)
[34] Piara Singh v. State of Punjab, AIR 1977 SC 2274
[35] State of Maharashtra v. Vithal 1985 Cr LJ 664
[36] State v. Ratanjit Singh, Jivanji Vaghela 1984 (1) Cr LC 306; State of Gujarat v. Thakarad Mafaji Talaji Thakarda Ruberji Kethaji 1982 Cr LC 113 (Guj); Soundarapandi v. State 1982 LW (Cr) 92 (Mad).
[37] Soundarapandi v. State 1982 LW (Cr) 92 (Mad

evidence is such as to completely rule out the possibility that injuries had been caused in the manner as alleged by the prosecution, such medical evidence is a very important factor in assessing the testimony of the eye-witnesses and in determining whether the testimony of the eye-witnesses can be safely accepted[38] as it is difficult to convict when they contradict.

CONCLUSION

Thus, if the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, it is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case by the Court[39]. However, if direct evidence is satisfactory and reliable, the same cannot be rejected on hypothetical medical evidence[40]. If the apparent difference between ocular evidence and medical evidence is attributable to any acceptable reason which is capable of compromising the two apparently different versions, otherwise unacceptable ocular evidence should not usually be rejected[41]. And where the medical evidence on both sides is equally balanced, the benefit of doubt must be given to the accused[42].

[38] Re Mandivalappa AIR 1996 Mys 142

[39] Ram Narain v. State of Punjab, AIR 1975 SC 1727, Amar Singh v. State of Punjab, AIR 1987 SC 826, Ashim Das v. State of Assam, 1987 Cr LJ 1533 (Gau); Lakshman Debnath & Anr. v. State (1987) 2 Crimes 818 (Cal)

[40] Punjab Singh v. State of Haryana, 1984 Cr LJ 921 (SC); Arun Chand & Ors v. State of Himachal Pradesh 1985 (2) Crimes 251 (HP)

[41] Dason v. State of Kerala, 1987 Cr LJ 180

[42] State (Delhi Administration) v. Gulzari Lal AIR 1979 SC 1382