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EXPERT EVIDENCES IN THE COURTS OF LAW

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ABSTRACT

Evidence means distinctness and the expert evidence means distinct information given by experts. Forensic Experts are scientists, who have worked extensively in a specific branch of Forensic Science and have gathered extensive knowledge of a particular speciality, which comes through learning and experience. It is highly essential to conduct trainings of personnel for forensic examination of the scene of crime, laboratory protocols and report writing for the court of law and to face the testimony and proceedings in the court of law.

The present paper covers different aspects of expert evidence and its importance. The paper also dwells in the area of maintaining chain of custody, expert evidence and aspects of cross examination and fallacies/problems of expert evidence.

Keywords: Doctrine, Expert Evidence, Forensic Science, Modus Operandi, Chain of custody etc.

INTRODUCTION

Evidence is a Latin word, which means "distinctness". In other words, evidence means information and further expert evidence refers to information furnished by experts. "By one school of thought, an expert is stated to be a person, who has committed all those mistakes in his specialized field, which possibly can be committed".[1] This indicates that an expert is a person, who has experience of extensive working and in-depth study and research in his concerned field. There are different interpretations of an expert. But, most accepted interpretation of expert is given by Mr. Powell – a social scientist. In his words: **"An expert is one who has devoted time and study to a specific branch of learning and is especially skilled on the points in which he is asked to State his opinion".** [2] In the opinion of some other thinkers the expert must prove his expertise after bringing on record his basic qualifications, training, experience, research, publications, participation in professional meetings, seminars and symposia and the position held by him in responsible capacities. However, legal interpretation of the expert is given under Section –45 of the Indian Evidence Act – 1872 which reads, "When the court has to frame an opinion on any point of foreign law, science, arts and the questions of identity of handwriting or finger impressions, the opinions of the especially skilled persons are taken, who are called as 'experts". But this section of Indian Evidence Act does not describe any qualifications for such experts. These persons may be scientists, doctors, engineers, mechanics, surveyors, goldsmiths etc.[3]

Relevancy of such opinions is described in Section – 46 of the Indian Evidence Act – 1872 and that of opinion on handwriting in Section – 47. A person

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conversant with the handwriting of someone can also give opinion.

Further, it may be mentioned that court is not the place of lively music and is not bound to accept the opinion of an expert automatically, but the grounds on which he gives opinion would carry value to the evidence. Court is also vested with the inherent powers under Section 482 of the Criminal Procedure Code in India, to call for second report or opinion but these inherent powers have to be used in rarest of the rare cases. [4]

IMPORTANCE OF EXPERT EVIDENCE

Traditionally the process of crime investigation, trials and the dissemination of justice has been dependent on the eye witnesses. These witnesses have become unreliable in the materialistic world. They may forget or fabricate the evidence or may be biased. On the contrary the expert evidence is not biased, it gets rid of the practice of stock witnesses, approvers and third-degree methods. Further, scientific or expert evidence helps in the protection of human rights of the suspects, under-trials and the criminals.[5] The expert evidence assists the criminal justice system in many ways viz.

- To understand the corpus delicti (Body of Crime)
- Whether, the crime has actually been committed or not?
- It links or delinks criminal, victim of crime, weapon of offence and the place of occurrence with each other and vice-versa.
- It helps to understand the modus operandi of crime and also helps verifying the sequence of events and the facts.
- It is the real evidence, which is becoming indispensable in the dissemination of justice now a days.

FACTORS AFFECTING EXPERT EVIDENCE[6]

1. Expert or scientific evidence should be collected and preserved from the scene of crime, victim and the accused correctly and there should be scientific auditing at the time of collection and preservation.
2. It should immediately be forwarded for examination in the laboratory and the laboratory should examine the same without any delay. There should be scientific witnessing and auditing in the laboratory as well.
3. Appropriate quality control measures should be adopted in the laboratory and the results should be correct and reproducible.
4. As per modern concepts, Forensic Science Laboratories and the experts should be accredited with the appropriate organisations like ISO or NABL, which is third party certification for the quality working of these institutions.
5. The major responsibility for submitting credible and transparent reports in crime cases to the Court of Law is that of the expert though the onus partially also lies on the institution to which the expert belongs.
6. There should be a set of ethics and codes of conduct for the private as well as Government experts. The private experts, sometimes, lack expertise and depend upon their little knowledge, like quacks, which affects the credibility of the examinations in the Courts of Law.
7. Even if ten experts are called upon to examine a case the results should be reproducible. Whether there is majority opinion or minority opinion in such situations the cross examination of the experts shall prove, which results are tenable under the Court's scrutiny Dr. S.S. Kind, former President of the British Academy, speaking on expert evidence, in one of his presidential addresses has explained the terms Doctrine, Science, Belief and Evidence. As per his explanation Doctrine is a Latin word, which means teaching and learning. [6] Similarly, the word Science has also Latin roots, where it means Knowledge, Belief is an English word, which means trust or acceptance. Further, Evidence is also a Latin word, which means distinctness. [9] All these four aspects are applicable to the experts, including Forensic Experts and Expertise. On the preparation of Forensic Reports, it was stated that these should be based on scientific facts, should be objective and appropriate words should be used for the preparation of reports.[7] It was further elaborated for doctrine that we must have the teaching and training that our universities and laboratories should richly yield. For science we must have the questioning spirit for organised knowledge, even if this is in variance with the views furnished. For belief we must have that in which we personally have confidence. For evidence we must have that which is distinct and thus, useful. Requirements of police, prosecution, judiciary and defence must be known to us through time to time.[8,9]

EVALUATION OF EXPERT EVIDENCE

Since, the expert evidence is highly scientific and technical in nature, sometimes, for proper presentation, cross examinations and the evaluation of such evidences, the investigators, prosecutors, defence lawyers and the judges must be provided the knowledge of the Forensic Science through teaching and training. Unfortunate part about expert evidence in India is that the non-scientists are the opinion makers on scientific evidences.[10] Hence, continuous study, at par with changing technical and scientific changes, are highly essential for an expert, police, investigator, defence lawyer and the presiding officers of the courts, for the proper presentation, appreciation and evaluation of expert evidence.[11]

CHAIN OF CUSTODY OF EVIDENCE

The expert evidence can only deliver the goods in the crime investigation and administration of justice, if the evidence is collected from the Crime Scene in situ, is sent for examination, properly sealed, such that there is no chance of tempering in custody or transport and during while examination in the laboratory. The same should be proved in the Courts of Law. The Police and Experts should put identification marks on the exhibits collected from the scene of crime, the victims or the accused.

Where material for comparison is not available with the evidence collected from the scene of crime, such evidences must be forwarded to Forensic Science Laboratories for safe custody and the material for comparison should be sent separately, whenever received on a later date.

CROSS EXAMINATION OF THE EXPERT

After Examination-in-Chief has been dictated by the expert, the Public Prosecutor and the Defence Counsel should be prepared for the cross examination of the expert not on flimsy grounds but in a scientific way. The experts should not be compelled to answer the questions in YES or NO. Elucidations must be accepted wherever necessary. The presiding officer of the Court should disallow hypothetical and ambiguous questions.[12]

Though scientific study of the subject enables the Prosecution as well as the Defence for proper cross-examination of the expert, it is not out of place to mention here an instance.[13] Mr. Fallon, a famous Lawyer carried out brilliant cross-examination of the Head of Gynaecology Department of Harvard University. At the end of the cross examination the Professor asked:

"Mr Fallon, may I ask a question"

"Certainly", replied the Lawyer.

Where and when did you study Gynaecology Mr. Fallon?

"Last Night in my Library" replied the Lawyer.

Hence, the proper study makes everybody an expert in the subject, which helps in investigation, trials and the dissemination of Justice.

FALLACIES/ PROBLEMS OF EXPERT EVIDENCE IN THE COURTS OF LAW

- Authenticity is always questioned based on the delayed reports given away in biological and serological samples found in poisoning cases. One of the hidden reasons could be the putrefaction of the exhibits which may result in alcohol production due to its examination after a long period has passed out, which may also not give any conclusive results.
- Forensic Science Laboratories have the equipments and expertise for the detection of micro level i.e. nanograms and picograms levels of poisons and environmental toxins / poisons from the viscera, in the absence of quantitative analysis and the report whether such poisons / toxins was sufficient to cause death or otherwise. The reports cause confusions in the Court of Law.
- The DNA evidence in the absence of scientific auditing at the scene of crime and in the laboratory can be misguiding.
- Minor variations in the peaks of the graphs received on instrumental analysis, for example, in the analysis of inks, drugs, dyes and other substances create doubts for a match or non-match. This type of variations should be clarified through the examination of standard scientific samples along with the questioned samples.
- Handwriting samples in different physical states cause variations. The quantum of variations shall justify the reports on proving in the court of law.
- Similarly, polygraph tests carried out after physical torture, when the person is not psychologically stable, create doubts in the court of law.
- Foot, Shoe and Tyre print or tool mark comparisons when on different sub strata are bound to have some variations though may be

similar characteristically

- Thus, examination of evidence also depends upon sampling procedures and testing methods, which should be uniform in different laboratories.

RECOMMENDATION

1. The Forensic Experts should be made to undergo appropriate trainings so as to keep pace with the developments in the science and technology.
2. The forensic experts should continuously remain in touch with the Police, Prosecution and Judiciary to know their requirements as per Law and legal procedures.
3. Training for courtroom presentations and preparation of reports are highly essential for the experts.
4. Orientation to Forensic Science courses are highly essential for the Police, Prosecution, Lawyers and Judiciary so as to keep pace with changes in science and technology for the betterment of criminal justice system.

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