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MEDICAL EVIDENCE AND ITS USE IN TRIAL OF CASES

M.L. Slnghal[•]
H.J.S.
Director,
J.T.R.I. U.P.

In every trial for manslaughter or for the offence of causing hurt to human body, opinions of medical officers are Invited to ascertain the cause of death, injuries, whether the injuries are anti-mortem or post-mortem, the probable weapon used, the effect of injuries, medicines, poisons, the consequences of wounds whether they are sufficient in the ordinary course of nature to cause death, the duration of injuries and the probable time of death. In such trials sometimes the plea of unsoundness of mind or minority is taken by the accused. In trials for offences of kidnapping and rape, the question invariably in dispute is the age of the person kidnapped or of the girl raped. In all such cases the medical opinion is adduced to establish insanity and minority. I n rape cases apart from showing the minority of the girl, the medical opinion is tendered to establish the offence of rape.

The medical evidence adduced by prosecution has great corroborative value. It proves that the injuries could have been caused in the manner alleged and the death could have been caused by the injuries so that the prosecution case being consistent with matters verifiable by medical science, there is no reason why the eye-witnesses should not be believed. The use, which the defence can make of medical evidence, is to prove by it that the Injuries could not possibly have been caused in the manner alleged or death could not possibly have been caused in the manner alleged by the prosecution and if it can do so, it discredits the eyewitnesses. Their Lordships of the Supreme Court in Solanki Chimanbhai Ukabhai v. State of Gujarat, (AIR 1983 SC 484: 1983 Cr. L. 822) observed:-

> "Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use, which the defence can make of the medical evidence, is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. Unless, however, the medical evidence in its turn goes so far that it completely rules out all 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

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ground of alleged inconsistency between it and the medical evidence. "

A medical witness who performs a post-mortem examination of examination of the injuries is also witness of fact though he also gives an opinion on certain aspects of the case. The value of a medical witness is not merely a check upon the testimony of eyewitnesses, is also independent testimony because it may establish certain facts quite apart from the other oral evidence. If a person is shot at the close range, the mark of tattooing found by the medical witness would draw that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wound would show the nature of the weapon used. It is wrong to say that It is only opinion evidence, It is often direct evidence of the facts found upon the victim's person (Smt. Majindra Bala Mehra v. Sunil Chandra Roy, AIR 1960 SC 706).

The medical evidence is usually opinion evidence (Duraipandi Thevar v. State of Tamil Nadu, AIR 1973 SC 659: 1973 Cr. L.J. 602). The medical opinion by *itself,* however, *does not* prove or *disprove the prosecution* case, *it is merely of advisory character. (Stephen Seneviratne v. Kind, AIR 1936 P.C.* 289 *at p. 298.* 299 : (1936) 37 *Cr.L.J.* 963 *Anant Chintaman Lagu* v. *State* of *Bombay, AIR* 1960 C 500 *at p. 523:* 1960 *Cr.L.J.* 682). *In Mayur* v. *State* of *Gujarat. AIR* 1983 SC 5: 1982 Cr.L.J. 1972), their Lordships of the Supreme Court observed:

"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 irrebuttable presumption that a doctor is always a witness of truth "

In an another case Awadhesh v. State of M.P. (AIR 1988 SC 1158: 1988 Cr.LJ. 1154 (Para 10) again their Lordships of the Supreme Court observed :

“Medical expert’s opinion is not always final and binding.”

In an appropriate case on a consideration of the nature of the injuries and other relevant evidence, the Court can come to its own conclusion, if the medical evidence is deficient. (Brij Bhukhan v. State of U.P., AIR 1957 SC 474: 1957 Cr.L.J. 591. Where the opinion of a medical witness is contradicted by another medical witness both of whom are equally competent to form an opinion, the court should normally accept the evidence of the medical witness whose evidence is corroborated by direct evidence. (Piara Singh v. State of Punjab, AIR 1977 SC 2274: 1977 Cr.L.J. 1941), and whose testimony accords with the prosecution version (Makhan v. State of Gujarat, AIR 1971 SC 1797: 1971 Cr.L.J. 1310)

Where there is a glaring inconsistency between the direct evidence and the medical evidence in respect of the entire prosecution case, that is a manifest

defect in the prosecution case. (Piara Singh v. State of Punjab, AIR 1977 SC 2274: 1977 Cr. L.J. 1941). In the instant case the prosecution evidence showed at three separate blows were given to the deceased. The medical officer who informed the post-mortem examination found only one wound and noted the nature and dimensions of the wound. He opined that the wound found by him could not be the result of two simultaneous blows. It was found that in the ordinary course of human events and experience also, it was extremely improbable, if not altogether impossible that three blows simultaneously given by three different persons from different directions with sharp edged weapons would land with such precision and exactitude so as to cause a single wound of such a clear cut margins and such dimensions and other characteristics as those of the external wound found by medical officer on the head of the deceased. The Supreme Court held that the version of the prosecution witnesses with regard to this vital fact was inherently improbable and intrinsically incredible. The ocular account of the occurrence was falsified by the medical evidence. The accused were acquitted. (Purshottom v. State of M.P., AIR 1980 SC 1873: 1980 Cr. L.J. 1298: 1980 Cr. L.R. (SC) 668.

If direct evidence of the witnesses to the occurrence is satisfactory and reliable, it cannot be rejected on hypothetical medical evidence. (Solanki Chimanbhai Ukabhai v. State of Gujarat, AIR 1983 SC 484: 1983 Cr. L.J. 822: (1983) 1 Crimes 625 (SC); Punjab Singh v. State of Haryana. AIR 1984 SC 1233: 1984 Cr. L.J. 921: 1984 (1) Crimes 859; see also Arjun v. State of Rajasthan, 1995 Cr. L.J. 410 (SC): AIR 1995 SC 2507).

Ordinarily when a witness says that such and such person assaulted the victim with a spear, then it is to be understood that the spear was used to pierce or puncture the body of the victim. (Mayappa Dhondanna Padeade v. State of Maharashtra, 1961 SCC (Cri.) 790: AIR 1981 SC 173) Hallu v. State of MP, AIR 1974 SC 1936: 1974 Cr. L.J. 1385). When witnesses depose only about the use of weapon, such as sword, spade or Gandasi, normal presumption is that the sharp side of the weapon was deployed. But when the witness testifies that the blunt side of the weapon was used, there would be no question of assuming that sharp side was used. In the instant case, the accused was alleged to have assaulted with Gandasi, in post-mortem examination, an abrasion was found. Normally the resultant injury ought to have been incised wound. But the prosecution witness deposed that the accused used the blunt side of the Gandasi. The prosecution version was believed and the accused was convicted on the charge of murder (vide Gurmej Singh v. State of Punjab, AIR 1992 SC 214).

It has been repeatedly held by the Supreme Court that whenever it is intended to place reliance on a particular view taken by authors of book of Medical-jurisprudence, the said view must be put to the doctor to assess how far the view taken by the experts apply to the facts of the particular case. (Kusa v. State of Orissa, AIR 1980 SC 559; 1980 Cr.L.J. 408, Bhagwandas v. State of

Rajasthan, AIR 1957 SC 589; 1957 Cr.L.J. 889, Sunder Lal v. State of M.P., AIR 1954 SC 28, 1954 Cr.L.J. 257, Pratap Misra v. State of Orissa, AIR 1977 SC 1307: 1977 Cr.L.J. 817). Exceptional cases referred to in the textbooks of Medical Jurisprudence cannot be relied against positive and clear evidence of the case before the Court. (Baldev Raj v. Smt. Urmila Kumari Miglani, AIR 1979 SC 879: 1979 SCC (Cri) 875).

Where conflicting views have been expressed in different books on Medical Jurisprudence, the conflict can be resolved by preferring the more specialised book on the subject. (Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati, AIR 1965 SC 364 at p. 380).

The Court in appraisal of medical evidence has power to refer to articles, Journals and books by authors acquainted with such matters (Mamjee Pandey v. State of Bihar, 1989 Cr.L.J. (NOC) 186 (Pat.)(OB), (AIR 1978 Pat. 172 (FB) followed) .:

If the evidence of the witness for the prosecution is totally inconsistent with the medical evidence, this is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case. (Ram Narain v. State of Punjab. AIR 1975 SC 1727: 1975 Cr.L.J. 1500: 1975 SCC (Cri) 571; Amar Singh v. State of Punjab. AIR 1987 SC 826: (1987) 1 SCC 679: 1987 Cr.L.J. 706). Where the prosecution witness stated that all the accused persons were armed with deadly weapons viz. Sua Barchi. Kulhari (axe), Dang (Cudgel) and Kirpan, and gave repeated blows with their respective weapons to the deceased and many of the blows fell on the ribs, and abdomen of the deceased, but in the post-mortem examination no injury was found on the ribs and abdomen of the deceased, not a single incised wound was found on the body of the deceased, and only abrasions, confusions and fractures were found, it was held that if the oral evidence were to be accepted there would be incised wounds all over the body of the deceased. Thus, there was apparent irreconcible inconsistency between the oral and the medical evidence. The Supreme Court acquitted all the accused persons charged for murder. (Amar Singh v. State of Punjab, AIR 1987 SC 826: 1987 Cr.L.J. 706: (1987) 1 SCC 679). Where there is glaring conflict between medical and oral evidence, the prosecution case must fail. (Awadhesh v. State of M.P., AIR 1988 SC 1158: 1988 Cr.L.J. 1154, Mohd. Habib v. State, 1988 CC Cases 401 (HC)(DB).

Unless the medical evidence completely rules out the prosecution story, the oral evidence if otherwise reliable cannot be rejected (Vahula Bhusan v. State of Tamil Nadu, (1989) 1 SCJ 255, State of U.P. v. Krishna Gopal, AIR 1988 SC 2154: 1989 Cr.L.J. 288; Thakur Singh v. State of Bihar, 1988 Pat. LOR 302 (DB); See also Dharamvir v. State, 1989 All. L.J. 454(OB); Awadhesh v. State of M.P. AIR 1988 SC 1158: 1988 Cr.L.J. 1154). Where the eye-witnesses account is found credible and trustworthy, medical opinion

pointing to alternative possibilities is not accepted as conclusive. Witnesses as Bantham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for their credibility, which should not be adversely prejudged making any other evidence, including medical evidence as the sole touchstone for the test of such credibility. The evidence must be tested for Its inherent consistency and the inherent improbabilities. (State of U.P. v. Krishna Gopal, AIR 1988 SC 2154). The medical officer stated that the injuries found on the body of the deceased could be the result of either two shots or even more than two shots, but the evidence of eyewitnesses clearly showed that there were two shots. The Supreme Court held that there was no inconsistency between the medical evidence and the ocular evidence and the inconsistency deposed by the medical officer was merely a probability and It was not fatal to the prosecution case. (Maghar Singh v. State: of Punjab, (1987) 2 SCC 642).

In a case where death is due to injuries or wounds caused by a lethal weapon, it is always the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. (Mohinder Singh v. State, AIR 1953 SC 415; 1953 Cr.L.J. 1761). In that case it was found doubtful whether the injuries which were attributed to the accused were caused by a gun or a rifle. It seemed more likely that they were caused by a rifle than a gun and yet the case of the prosecution was that the accused was armed with a gun and in his examination it was definitely put to him that he was armed with the gun. The Supreme Court held that it was only by the evidence of a duly qualified expert that it could have been ascertained whether the injuries attributed to the accused were caused by a gun or a rifle and such evidence alone could settle the controversy as to whether they could possibly have been caused by a fire arm used at such a close range as was suggested in the evidence. In Ishwar Singh v. State of U.P. (AIR 1976 SC 2423: 1976 Cr.L.J. 1883: 1976 SCC (Cri.) 629 See also Kartarey v. State of UP, AIR 1976 SC 76: 1976 Cr.L.J. 13), their Lordship of the Supreme Court again observed:

> "It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometimes, cause aberration In the course of justice."

In this case on the basis of evidence on the record, it was difficult to say whether the injury to the deceased was caused by the ballam or the bhala that were seized and whether it was accused l or II who was responsible for it even if

one believed that on the day of the occurrence the former carried a ballam and the latter a bhala. The weapons were not shown to the medical officer who could have deposed which injury was caused by which weapon. The conviction of the accused was set aside.

The principles laid down by the Hon'ble Supreme Court that the weapon of offence recovered in a case should be shown to an expert and he should be asked to say whether the injuries found on the deceased could be caused with that weapon has no application to cases where the alleged weapon of offence has not been recovered. (Jai Dev v. State of Punjab, AIR 1963 SC 612: 1963(1) Cr. L.J. 495). Where the medical evidence is clear, failure to produce weapon of offence would not negate the medical evidence (B.V. Danny Mao v. State, 1989 Cr LJ 226 (Gauh). In a recent case the Supreme Court has held that the mere omission to elicit opinion of the medical officer in the witness box whether a particular injury is possible by the weapon of offence by showing weapon to the witness does not make difference where ocular testimony is acceptable and further corroborated by the first information report. (Gurmej Singh v. State of Punjab, AIR 1992 SC 214 at p. 219: 1992 Cr.L.J. 293).

The Court is in error when it substitutes its own opinion resting on conjectural premises for that of the medical experts, regarding the nature of the inflicting weapon. (State of U.P. v. Shankar, AIR 1981 SC 897: 1981 Cr.L.J. 23: 1981 A.L.J. 9).

Where weapon could not be discovered, its nature can be assessed from the injuries caused. (Sakharam v. State of Maharashtra, (1969) 3 SCC 730 at p. 735 paragraph 1).

The serologist must mention in his report about the group of blood found on the article sent to him for examination. Where report of the serologist indicated that the shirt and dhoti of the accused were stained with human blood, but did not mention about the group of the blood, the Supreme Court held that in the absence of group of blood in the serologist report, it could not positively be connected with the deceased. The report and the evidence of the investigating officer did not also show the dimensions of the stains of blood. Few small blood-stains on the clothes of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood-stains with the deceased. The court refused to place reliance upon these circumstances. (Kansa Behera. v. State of Orissa. AIR 1987 SC 1507 at p. 1509, 1510).

When blood stained weapon of assault is recovered from the possession of the accused but it is not shown that the blood-stains on the weapon were of the same group as the blood of the deceased. The recovery of blood stained weapon of assault from the possession of the accused is of no help to the prosecution. The accused was acquitted of the charge of murder (Surinder Singh

v. State of Punjab: 1989 SCC (Cri) 649: 1989 ACC 382 :(1989) Supp (2) SCC 21. The matching of the blood group on the wearing apparel of the accused and the wearing apparel of the deceased does corroborate the prosecution story that, however by itself is not conclusive proof of the culpability of the accused (Binder Munda v. State, 1992 Cr.L.J. 3508 Ori. (DB) (Case Law discussed)

It cannot be laid down a general proposition that in the absence of determination of blood group the find of human blood on the weapon or garment of the accused is of no consequence (Khujji v. State of M.P., 1991 Cr.L.J. 2653 (SC).

The injury report or the post-mortem report given by a doctor is not substantive evidence and is inadmissible in evidence unless he is examined. If, however, the doctor is dead or is not available for examination in Court, under the circumstances mentioned in Section 32 of the Evidence Act, the injury report or the post-mortem is admissible and relevant. It may be proved by the another doctor or the compounder available. (S.R. Singh v. State, (1976-77) 81 CWN 724 at pp. 726-727 (DB); Mohan Singh v. Emperor, AIR 1925 All. 413 (DB). State v. Rakshpal Singh, AIR 1953 All. 520; Ram Pratap v. State, 1967 All. W.R. (H.C.) 395; Ram Balak Singh v. State, AIR 1964 Pat. 62(DB); 1964(1) Cr.L.J. 214; See also Mellor v. Walnesley, 1905, 2Ch. 164 (CA); Hadi Kisani v. State, AIR 1966 Orissa 21: 1966 Cr.L.J. 45; but see Krushna v. State, 34 Cut. LT.494; In re Ramaswami, AIR 1938 Mad. 336:40 Cr.L.J.596).

Where the medical officer who conducted the post-mortem examination is not examined in court nor the post-mortem report is tendered in evidence, the same cannot be used as substantive evidence. (Gofur Sheikh v. State, 1984 Cr.L.J. 559 (Cal) (DB); Bhanda Gorh v. State of Assam, 1984 Cr.L.J.217 (Gau) (DB); Jagdeo Singh v. State, 1979 Cr.L.J.236 (All) (DB). See also K. Pratap Reddy v. State of A.P., 1985 Cr.L.J.1446 (A.P., 1985 Cr.L.J. 1446 (A.P.) (OB).

The report of the doctor must be filled in the Court. The contents of the report contained in the affidavit of another person are not admissible in evidence. (Mohd. lkram Hussain v. State of U.P., AIR 1964 SC 1625: 1964(2) Cr.L.J. 590 at p.598).

Where the case arose out of an acute faction and witness examined are all interested, the evidence of the witnesses has to be scrutinised with great care and caution and should be examined in the light of the earliest report, the medical evidence and other surrounding circumstances (Ladha Shamji Dhanani v. State of Gujarat, AIR 1992 SC 956).

From the discussions made above, the following propositions emerge-

1. The medical opinion has great bearing and is of great assistance in the trial of criminal cases. It greatly helps the prosecution in establishing its case by soliciting corroboration from it by showing that the injuries could have been

caused by the alleged weapon of offence by the accused persons in the manner alleged. The accused persons with the assistance of medical evidence try to demolish the prosecution story by showing that the injuries could not have been caused *by the alleged weapon* of *offence* or *the death could not have* occured in the manner alleged by the prosecution.

2. The medical opinion is merely of advisory nature. It is based on the observations made by the medical officer of the body of the injured and the corpse after the occurrence has taken place. In certain ways, medical opinion can be said to be direct evidence as by the colour of the injuries, the presence/absence of rigor mortis in the corpse, the presence of the tattooing marks, state of nature of the food digested/semi-digested/or undigested noted by the medical officer immediately after the incident. The time of the occurrence, is determined.

3. Since witnesses are the eyes and ears of justice, the oral evidence has primacy over the medical evidence. If the oral testimony of the witnesses is found reliable, creditworthy and inspires confidence, the oral evidence has to be believed, it cannot be rejected on hypothetical medical evidence.

4. The medical opinion pointing to alternative possibilities cannot be accepted as conclusive. Unless the medical evidence completely rules out the prosecution story, the oral evidence if otherwise reliable cannot be rejected.

5. The medical officer being an expert witness, his testimony has to be assigned great importance. However, there is no irrebutable presumption that a medical officer is always a witness of truth, his testimony has to be evaluated and appreciated like the testimony of any other ordinary witness.

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