



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Relevancy of Medical Evidence in Murder Trials

Poulami Das^aAgniva Mandal^b

^aThe West Bengal National University of Juridical Sciences, Kolkata, India ^bThe West Bengal National University of Juridical Sciences, Kolkata, India

Received 27 December 2021; *Accepted* 09 January 2022; *Published* 13 January 2022

With the improvements in the field of science and technology over the years, there has been an increase in the demand for associating science with the law especially during the conduction of murder trials. With a great history of the success of medical evidence investigating conducting murder or homicide around the world, Indian courts started using medical evidence while conducting trials in various cases since the pre-independence era. The British had even set up a laboratory in Calcutta for doing research on fingerprints. In India, medical evidence is generally used to confirm or recheck the physical evidence and the opinion of a medical/forensic expert opinion is only advisory, and it is up to the Court to take that into consideration. Medical evidence has also been used in various cases such as the Aarushi Talwar murder case, Nithari killings, etc. for determining whether the murders involved mens rea or not. Although there are no laws in India regarding accepting or rejecting medical opinions from experts, visual or oral evidence has a greater weight than medical evidence until in the particular case the judge wants the other one around. There have also been demands about keeping medical evidence at par with physical evidence but due to various instances of evidence tampering and different type of conclusions derived by forensic psychologists in the same case, no such steps have been taken till now.

Keywords: *forensic, evidence, murder.*

INTRODUCTION

Around the globe, advancements in science have had a tremendous influence on crime-solving. In the field of forensic science, collecting people's biometrics to make a dead body speak through various tests and diagnoses has become an important job for a medical/forensic expert.¹ This type of assistance entails a variety of other factors such as trained personnel, forensic experts, trained police personnel who can handle documents with care and caution, and, most importantly, adequate funds and supplies to facilitate such processes.² Murder, in its most literal sense, means causing the death of one person by another person with the intent of killing him with the proper application of mind. Sometimes, Murder is not always a crime in a court of law. For example, cases where a person is killed in self-defense by another person, or in cases where the suspect was killed in the encounter while being chased by the police. In many, if not most, murder cases, medical/forensic experts are required to determine what evidence-based on medical-scientific must be produced before the Court. Medical experts also assist courts in understanding the working of human anatomy.³

In India, the concept of Murder has been discussed under Section 300 of the Indian Penal Code, 1860.⁴ Also, Section 45 of the Indian Evidence Act, 1872, discusses the opinion of experts in the Court of Law.⁵ It states that when there is a point in the Court of law to form an opinion on science, foreign law, the identification of handwriting, fingerprints, or the art, the opinions of people skilled in these things are of great importance. People skilled in these things are known as experts.⁶ The authors have highlighted the history of how medical opinion in murder cases becomes a part of the legal system, how means of murdering are inspected by medical experts, and how medical opinion helps in determining the Mens Rea of an accused. Along

¹ M.L. Singhal, 'Medical Evidence and Its Use in Trial of Cases' (*IJTR*, 1995) <<http://ijtr.nic.in/articles/art28.pdf>> accessed 22 December 2021

² Abanti Bose, 'Medical evidence in sexual offences' (*Ipleaders*, 06 August 2021) <<https://blog.ipleaders.in/medical-evidence-sexual-offences/>> accessed 23 December 2021

³ *Ibid*

⁴ Indian Penal Code 1860, s 300

⁵ Indian Evidence Act 1872, s 45

⁶ *Ibid*

with this, specific discussions have been made on what difference does medical opinion makes and the conflict between the admissibility of physical evidence and medical opinion.

HISTORY ABOUT RELEVANCY OF MEDICAL OPINION IN MURDER CASES

Medicine has been a part of the law for a long time. It has been said in various religious books that faith, superstition, and magic were what kept them together.⁷ Physicians were taught their duties, socioeconomic status, and privileges around the 7th century.⁸ The training provided them with in-depth knowledge of the poisons and how to administer treatment. Earlier, when the Manusmriti established various laws in the 4th century in India, it also recognized the point of mental incapacity of a person due to various reasons such as unsoundness, intoxication, age, and so on.⁹ In the legal system, knowledge in the scientific-medical fields was also applied to obtain justice. The first recorded murder case where medical evidence was taken into account occurred in the year 1302.¹⁰ It was carried out in Italy to aid in the investigation of a deceased individual who died in China. As a result of this event, in 1507, it became mandatory in various legal cases in Germany to produce medical evidence before the Court of law.¹¹ Following that, the requirement of medical evidence came into existence in the laws of almost every country. In India, medical evidence was used for the first time to decide the case of *Benoyendra Chandra Pandey v Emperor*.¹² in the year 1936.

One of the most important areas for courts to rule on was the assertion of a cause of death, i.e., whether it was natural or not. As a result of the evolution of medicolegal opinions in

⁷ Joshua J. Mark, 'The Vedas' (*World History Encyclopedia*, 09 June 2020)

<https://www.worldhistory.org/The_Vedas/> accessed 23 December 2021

⁸ Marjaana Lindeman & Annika M. Svedholm, 'What's in a Term? Paranormal, Superstitious, Magical and Supernatural Beliefs by Any Other Name Would Mean the Same' (*SAGE Journals*, 01 September 2012)

<<https://journals.sagepub.com/doi/10.1037/a0027158>> accessed 23 December 2021

⁹ Roshni Duhan, 'Forensic Medicine and Indian Criminal Laws: A Study of Relevancy with Legal Provisions' (*Innovare Journal of Medical Sciences*, 23 February 2016)

<<https://innovareacademics.in/journals/index.php/ijms/article/view/7179>> accessed 23 December 2021

¹⁰ Maude Campbell & Henry Robertson, 'The Entire History of the Autopsy' (*Popular Mechanics*, 11 November 2020) <<https://www.popularmechanics.com/science/health/a25633042/autopsy-history/>> accessed 23 December 2021

¹¹ Tae M. Choo & Young-Shik Cho, 'Historical Development of Forensic Pathology in the United States' (*Synapse Koreamed*, 10 May 2012) <<https://synapse.koreamed.org/upload/synapsedata/pdfdata/0018kijlm/kijlm-36-15.pdf>> accessed 23 December 2021

¹² *Benoyendra Chandra Pandey v Emperor* AIR 1936 Cal 73

murder/homicide cases, courts found it necessary to seek their opinions because the experts were taught and trained in the most disciplined manner to be a part of the criminal justice system. In today's world as well, courts in cases following the previous precedents seek the report of forensic experts in order to uphold the rule of law and bring justice in the most efficient manner possible.¹³

IMPORTANCE OF MEDICAL OPINION IN MURDER TRIALS IN INDIA

In India, the opinion of a medical/forensic expert is not admissible as a witness of fact in the Court. His/her opinion is only advisory, and it is up to the Court to take that into consideration.¹⁴ A medical expert is responsible for providing the judge with the necessary findings of the case so that the judge can reach a proper conclusion and make a correct judgment. Medical evidence is generally used to confirm or recheck the evidence available at hand. Simultaneously, medical evidence will not be able to convince the Court beyond a reasonable doubt. In cases where medical experts provide pieces of evidence or opinions that are corroborated by other admissible evidence, then only medical opinion can be relied on.¹⁵ According to Justice Monir's principles mentioned in the book '**Digest of the Law of Evidence**' by Sir James Fitzjames Stephen, "when the medico-person, who is known to be an expert, does not witness the facts because the opinions given by him are not direct evidence to what caused the crime, the opinion stated gives us all the probabilities that might have caused the certain crime".¹⁶

The opinions given by the medical expert in Court have value only to the extent that they corroborate with the eyewitnesses to support it, or if they are otherwise contrary to what is

¹³ 'DNA Evidence in the Legal System' (NCBI) <<https://www.ncbi.nlm.nih.gov/books/NBK232607/>> accessed 23 December 2021

¹⁴ *Awadhesh v State of M.P.* AIR 1988 SC 1158

¹⁵ Ayush Verma, 'Expert Evidence: Types, Constitutionality and Evidentiary Value- A Chronological Study' (*Ipleaders*, 06 July 2020) <<https://blog.ipleaders.in/expert-evidence-types-constitutionality-evidentiary-value-chronological-study/>> accessed 23 December 2021

¹⁶ 'Indian Evidence Act by Jonathan Fitzjames' (*Rest The Case*, 15 February 2021) <<https://restthecase.com/knowledge-bank/books/indian-evidence-act-by-jonathan-fitzjames-stephen>> accessed 23 December 2021

alleged and reduce the likelihood of crime has occurred.¹⁷ Even though the weightage of eyewitness evidence is taken into consideration in a more progressive manner, the relevance of the medical opinion also has a significant weightage in determining the Court's findings and is there to support those evidence of the eyewitness' statements.¹⁸ In a meticulous action, the prosecution side relies on on-hand medical opinion as well as eyewitnesses to account for the occurrence of crime. Furthermore, the opinion of a medical expert can be used to disqualify an eyewitness' statements when the crime could not have occurred as the witness claims.¹⁹

Even though medical opinions are advisory and not exclusively binding while delivering judgment, situations may arise in which a medico-scientific opinion is used to rule out all possibilities of a certain crime situation being said to have occurred by an eyewitness. According to the law, direct evidence is always admissible in a court of law; but nevertheless, if the direct eyewitnesses are doubtful due to the improbability of happening based on medical opinion's evidence, then those pieces of evidence must be discarded by the Court and the Court may not accept both of them.²⁰ In the case of, *Solanki Chimanbhai Ukabhai v the State Of Gujarat*²¹, it was held that the medical opinion, which has been proven by science, must always be consistent with the other pieces of evidence in a case.

The Supreme Court reached a similar conclusion in the case of *Milkiyat Singh v the State of Rajasthan*.²² The facts of the case were that Surjit Singh and his brothers Balbir Singh and Jagir Singh (Plaintiffs) were on their way to see Surjit's wife, who was ill, when they came across Milkiyat Singh and the other alleged perpetrators (Defendants). Following that, gunshots were fired from both sides. The plaintiffs alleged that the defendants fired bullet shots that killed Balbir Singh at the scene of the incident, whereas the defendant claimed that the complaints

¹⁷ Abhiraj Singh, 'Admissibility and Relevancy of Expert Evidence' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-1205-admissibility-and-relevancy-of-expert-evidence.html>> accessed 23 December 2021

¹⁸ *Ibid*

¹⁹ *Jai Karan v State of U.P.* 1990

²⁰ Priyansh Agarwal, 'Inspecting The Applicable of Medical Opinion In Adjudicating The Homicide Cases' (*Indian Review of Advanced Legal Research*, 11 January 2021) <<https://www.iralr.in/post/inspecting-the-applicability-of-medical-opinion-in-adjudicating-the-homicide-cases>> accessed 23 December 2021

²¹ *Solanki Chimanbhai Ukabhai v State of Gujarat* AIR 1983 SC 484

²² *Milkiyat Singh v State of Rajasthan* AIR 1981 SC 1579

fired at them first, because of which they fired in self-defense. But medical opinions were strongly against the allegations or evidence produced by the plaintiffs as a result of which the defendants have acquitted off all their charges.

In the case of *Vahula Bhushan v State of Tamil Nadu*²³, it was held that until and unless the medical opinion eliminates all possibilities of a situation alleged by the petitioners in a certain case, other eyewitnesses or direct pieces of evidence cannot be ruled out. It was also stated that if it can be understood that the direct witness is credible and can be relied on, then medical opinion directing towards various possible scenarios will not be accepted as evidence beyond doubt. In the case *Gofur Sheikh v State*²⁴, it was held that when the post-mortem reports of the deceased are not presented in Court to be considered as evidence. Even in cases where the medico-forensic expert who prepared the report is not presented before the Court, the said medical report/opinion can never be regarded as essential evidence in the case.

USING MEDICAL OPINION IN DETERMINATION OF *MENS REA*

The word *mens rea* refers to 'guilty mind' or 'criminal intent'.²⁵ When a crime involves a *mens rea*, a forensic psychologist can study the accused's state of mind at the moment the offence was committed and can aid the Court in determining whether the crime was intentional or not.²⁶ In the 2008 Aarushi Talwar murder case, the CBI hired a forensic psychologist, who concluded that the parents previously convicted of Murder were innocent.²⁷ During the assessment, the specialist used narco analysis, polygraph examination, and brain signature profiling.²⁸ Forensic psychologists were also involved in the investigations in the Sunanda

²³ *Vahula Bhushan v State of Tamil Nadu* AIR 1989 SC 236

²⁴ *Gofur Sheikh v State* 1984 CriLJ 559

²⁵ 'Mens Rea' (Cornell Law School) <https://www.law.cornell.edu/wex/mens_rea> accessed 23 December 2021

²⁶ Priyansh Agarwal, 'Inspecting The Applicable of Medical Opinion In Adjudicating The Homicide Cases' (*Indian Review of Advanced Legal Research*, 11 January 2021) <<https://www.iralr.in/post/inspecting-the-applicability-of-medical-opinion-in-adjudicating-the-homicide-cases>> accessed 23 December 2021

²⁷ Anjaly T.A., 'Decoding the Crime: The Role and Impact of Forensic Psychiatry in the Criminal Justice System' (*Jus Dicere*) <<https://www.jusdicere.in/decoding-the-crime-the-role-and-impact-of-forensic-psychiatry-in-the-criminal-justice-system/>> accessed 23 December 2021

²⁸ *Ibid*

Pushkar murder case in 2014, 2006 Nithari killings, and the Madhumita Shukla murder case in 2003.²⁹

Mens rea must be determined because it is an indirect method of proving whether a crime was committed intentionally or unintentionally. In fact, when using the defence of insanity, the Court must rely on medical opinions to determine whether the accused had any criminal intent or not. In the case of *Choteylal vs. State*³⁰, Section 302 of the IPC was utilised to charge the defendant. However, he pleaded for the defence of insanity, which was found with the help of medical opinions, and he was thus acquitted. Thus using medical opinion to determine *mens rea* helps the Court in determining murder trials in a proper manner. The opinions of medical experts can be forged, either intentionally or unintentionally, resulting in injustice. Hence the opinion of two or more forensic psychologists should positively be taken into account by the Court.

PHYSICAL EVIDENCE ADMISSIBILITY AGAINST MEDICAL OPINION

Biological material, latent fingerprints are examples of physical evidence. Any item that might link a victim or suspect to a crime scene is considered physical evidence. The presence of DNA in biological evidence is not always obvious to the human eye. The silent witness is a term used to describe physical evidence. Evidence can help an investigator recreate the crime scene and reconstruct the timeline of events. Physical evidence can back up the victim's, witness's, and suspect's claims. Physical evidence is objective and maybe the only method to accurately place or link someone to a crime scene if properly documented, gathered, and kept. When courts accept oral/physical evidence and medical views, as a matter of fact, there have been disagreements. In most of these disagreements, the oral/physical evidence wins out over the medical opinions, but courts have also ignored the ocular/oral evidence where the medical opinions line with the possibility of an incident stated by the prosecution witness.

As there is no rigid rule for accepting or rejecting a medical expert's view because it differs from what the eye witness states, the acceptance or rejection of a medical opinion is based on

²⁹ *Ibid*

³⁰ *Choteylal v State* 1956 CriLJ 1291

the sort of information provided by the eyewitness and the reliability of the medical opinions. As a result of this debate, we can see that visual or oral evidence has a greater weight than medical situations. When the two of them are so diverse, though, alternative scenarios are considered in order to come to a judgment.

CONCLUSION

Medical evidence can be used as the corroborative value of evidence in India, as defined by the Indian Evidence Act of 1872.³¹ Medical evidence, which is considered opinion evidence, is a significant and necessary aspect of the evidence, especially in situations involving crimes against women. In criminal trials, expert evidence is unavoidable. Thus the government has created laboratories and other organizations in the country that provide scientific services in the administration of criminal justice. Following the discussion above, we may conclude that the goal of medical expert views is to assist in the proper execution of cases; nevertheless, they can also cause unfairness in some circumstances. The importance of these perspectives in homicide cases, as we stated, is of considerable significance when combined with direct eyewitness testimony. Before adopting the physicians' advice, it is necessary to verify their proficiency in their respective specialties. The opinions are also utilized to figure out what influences the accused's thoughts. In other situations, we've discovered that medical views contradicted what the eyewitness reported.

The medical opinion is only meant to be used as a guide. It is based on the medical officer's observations of the injured person's body, and the corpse after the incident has occurred. The colour of the injuries, the presence/absence of rigour Mortis in the corpse, the existence of tattooing marks, and the condition of nature of the meal digested/semi-digested/or undigested noticed by the medical officer immediately after the occurrence can all be considered direct evidence. The occurrence's timing is determined. Alternative options cannot be considered definitive by medical opinion. Unless the medical evidence fully disproves the prosecution's account, oral testimony cannot be dismissed if it is otherwise trustworthy. Medical views can be made more effective if professionals are given stringent and thorough

³¹ Indian Evidence Act, 1872

training. However, in today's world, when instances involving wealthy and influential individuals are more likely to be tampered with or influenced by medical reports or presiding medical professionals investigating the subject.