

**Presentation of paper on the topic of Appreciation of expert's evidence**

The general principle of the law of evidence is that every witness is a witness of fact and not of opinion. This means that a person who appears before a Court is entitled to tell the Court only the facts of which he has personal knowledge, and not his opinion about the facts.

Explaining the reason for the principle of exclusion, it is observed in Cross:

“An artist’s views concerning the components of a chemical compound or the law of a South American State, would not assist the English Court in coming to the conclusion with regard to these matters for the simple reason that they do not warrant an inference to the probable existence of the facts to which he deposes.<sup>1</sup>

Statements of opinion are not merely superfluous, they may also mislead the Court, because the judge may happen to trust the opinion of the witness far too much. For example, in a case of defamation, a witness who had overheard a conversation was not permitted to tell the Court what he understood by it, for the words have to be given their ordinary meaning and the only thing that the witness could be asked about was whether there was anything to prevent the ordinary meaning from being conveyed.<sup>2</sup>

The rule is further illustrated by the following passage in the judgment of Goddard, L.J., in the decision of the Court of Appeal in *Hollington v. Hewthorn*<sup>3</sup> where in a Civil proceeding the judgment of a criminal Court on the same facts was dismissed as irrelevant being only the opinion of the criminal Court.<sup>4</sup>

It frequently happens that a bystander has a full and complete view of an accident. It is beyond question that while he may inform the Court of everything that he saw, he may not express any opinion on whether either or both of the parties were negligent. The reason commonly assigned is that this is the precise question the Court has to decide, but in truth, it is because his opinion, is not relevant. Any fact that he can prove is relevant but his opinion is not.

The Honourable Supreme Court of India in “*Mobarik Ali Ahmed v. The State of Bombay*”<sup>5</sup> has preferred to rely upon this reason that if a witness were permitted to express his opinion, it would amount to delegation of judicial function. The function of drawing inference is a judicial function and must be performed by the Court.<sup>6</sup>

There are exceptions to the general rule.

**EXCEPTIONS**

While this is the general rule, it will have to be admitted that it operates within narrow limits. The exceptions to the rule are more prominent than the rule itself. Indeed, the Evidence Act, without stating any such rule, states only the circumstances in which evidence of opinion is relevant, though of course, it amounts to a tacit acknowledgement that in other cases opinion is not relevant. The reason why the rule has often to be relaxed is that in many matters of technical nature opinion of experts does help the Court to arrive at a satisfactory conclusion and in many cases facts and opinion are indistinguishable. The following observation of an American Judge is pertinent: <sup>7</sup>

It is a good general rule that a witness is not to give his impressions, but to state the facts from which he received them, and thus leave the jury to draw his own conclusions. But every man must judge of external objects according to the impressions they make on his sense; and after all, when we come to speak of the most simple fact which we have witnessed, we are necessarily guided by our impressions. There are cases where single impressions is made by induction from a number of others as, where we judge whether a man is actuated by passion, we are determined by the expression of his countenance, the tone of his voice, his gestures and a variety of other matters; yet a witness speaking of such a subject of inquiry would be permitted directly to say whether the man was angry or not. 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.

The exceptions may now be noted one after the other.

#### **S.45. Opinion of Experts.**

*When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions the opinions upon that point of persons specially skilled in such foreign law, science or art or in questions as to identity of handwriting or finger impressions, are relevant facts. Such persons are called experts.*

#### **Expert Opinion**

“The Courts have been accustomed to act on the opinion of experts from early time.” <sup>8</sup> The reason is obvious. There are many matters which require professional or specialized knowledge which the Court may not possess and may therefore, rely on those who possess it. For example, when the Court has to determine the cause of a ship-wreck or an air-crash, there may be many technical causes behind it and, therefore, the Court will need the assistance of

technicians, they being better acquainted with such causes. *Folkes v. Chadd*<sup>9</sup> is an early authority on this aspect.

A bank was erected for the purpose of preventing the sea overflowing certain meadows and the question arose whether it contributed to the choking and decay of a harbor. A celebrated engineer was allowed to express his opinion on the matter.

LORD MANSFIELD C.J, proceeded as follows:

Mr. Smeaton (the engineer) is called. It is objected that Mr. Smeaton is going to speak, not as to facts, but as to opinion. That opinion, however, is deduced from facts, which are not disputed—the situation of banks, the course of tides and of winds and the shifting of sands. His opinion deduced from all these facts, it that, mathematically speaking, the bank may contribute to the mischief but not sensibly Mr. Smeaton understands the construction of harbours, the causes of their destruction, and how remedied. In matters of science no other witness can be called. I cannot believe that where the question is, whether a defect arises from a natural or an artificial cause, the opinions of men of science are not received. Handwriting is proved everyday by opinion and for false evidence on such question a man may be indicted for perjury.

#### **Who is an Expert:**

The section permits only the opinion of an expert to be cited in evidence. The only guidance in the section is that he should be a person “specially skilled” on the matter.

In such case, “the question is: is he peritus? Is he skilled? Has he adequate knowledge?”. The question of competency or fitness of a witness an expert is to be decided by the judge.

Thus no formal qualifications are necessary to qualify a witness as an expert. An instructive illustration is to be found in the decision of the Mysore High Court in *Abdul Rahman v. State of Mysore*,<sup>10</sup> where the opinion of a professional goldsmith as to the purity of the gold in question was held to be relevant as the opinion of an expert, though he had no formal qualifications, his only qualification being his experience.

Similarly, it has been held that an experienced police officer may be permitted to give “expert” evidence as to how an accident may have occurred.<sup>11</sup> In a conviction for causing death by dangerous driving there was no eyewitness and the accused himself had no recollection of the accident. The prosecution called a policeman from the traffic division with considerable experience and a

qualification in accident investigation, to give evidence of his findings at the scene and his conclusions as to the cause of the fatal collision. The Court allowed it provided that it was kept within the sphere of "expertise". The principal of a school of deaf and dumb has been held to be an expert for the purpose of certifying the disability.<sup>12</sup> Whenever a Court has to decide a question of foreign law, the Court can seek the help of those who are experts on the particular foreign law. A law which is in force in India is not foreign law even if it is of foreign origin. Pointing out this in *Aziz Bano v. Mohamad Ibrahim Hussain*<sup>13</sup> the Honourable High Court of Allahabad observed that:

The Shia law on marriage is the law of the land and in force in India. It can by no means be called foreign law, nor is such law a science or art within the meaning of section 45. It is the duty of the Courts themselves to interpret the law of the land and apply it and not to depend on the opinion of witness howsoever learned they may be. It would be dangerous to delegate their duty to witness produced by either party. Foreign law, on the other hand, is a question of fact with which the Courts in India are not supposed to be conversant. Opinions of experts on foreign law are, therefore, allowed to be admitted.

Expert opinion is relevant on all questions on points of science or art.

The word "science" does not merely mean subjects of science study or "art" subjects of fine arts. "The words 'science, or 'art' include all subjects on which the course of special study or experience is necessary to the formation of opinion."<sup>14</sup> FIELD in his oft quoted passage, says:

The words 'science' or 'art' are to be broadly construed, the term 'science' not being limited to higher sciences, and the term 'art' not being limited to fine arts but having its original sense of handicraft, trade, profession and skill in work which, with the advance of culture has been carried beyond the sphere of the common pursuits of life into that of artistic and scientific action.<sup>15</sup>

No expert can be permitted to speak on a matter with which the judge may be supposed to be equally well acquainted.

When the Court has to decide upon the identity of the handwriting of a certain person or the identity of a certain person's finger impression, the Court may receive the evidence of a person who has acquired an expertise on the matter. Apart from persons possessing professional qualification on the subject, the Court may receive the evidence of a person who is otherwise acquainted with the subject.

The Honourable Supreme Court has laid down in quite a few cases that the evidence of an expert as to handwriting is only in the nature of an opinion and it can rarely, if ever, take the place of substantive evidence. It should be corroborated either by clear direct evidence or by circumstantial evidence. Such evidence cannot be conclusive by itself. The evidence of handwriting expert unlike that of a fingerprint expert, is generally of a frail character and the Court should be wary to give too much weight to it.<sup>16</sup> Following these observations the Honourable High Court of Allahabad rejected the opinion of an expert that a marriage certificate was not forged as against the opinion of the experts of the Government Forensic Laboratory,<sup>17</sup> that it was forged.

Other Technical Matters.

Typewriting could have been regarded as a matter of “science of art” just as the evidence of ballistic experts is admissible as a matter of “Science or art.” It has been held by the Honourable Supreme Court in a number of cases that a “ballistic expert can give evidence to assist the Court to establish (1) the kind of weapon used; (2) the distance from which the shot was fired; (3) the direction of the fire and the relative position of the victim and the assailant; (4) whether it was a case of accident, suicide or murder and (5) the identification of the weapon used”.<sup>18</sup> Evidence of dog tracking should also be admissible as a scientific evidence.<sup>19</sup>

### **Value of Expert opinion**

The weight that ought to be attached to the opinion of an expert is a different matter from its relevancy. The act only provides about the relevancy of expert opinion, but gives no guidance as to its value. The value of expert opinion has to be viewed in the light of many adverse factors. Firstly, there is the danger of error or deliberate falsehood. “These privileged persons might be half blind, incompetent or even corrupt.”<sup>20</sup> Secondly, his evidence is after all opinion and “human judgment is fallible. Human knowledge is limited and imperfect.”<sup>21</sup> No man ever mastered all the knowledge on any of the sciences.”<sup>22</sup> Thirdly, it must be borne in mind that an expert witness, however impartial he may wish to be, is likely to be unconsciously prejudiced in favour of the side which calls him”.<sup>23</sup> It is on the basis of these factors that it has been remarked of an expert that “the witnesses now in worst repute are called expert witnesses-that is, witnesses retained and paid to support by their evidence a certain view on a scientific or technical question.”<sup>24</sup>

These factors seriously reduce the probative value of expert evidence.<sup>25</sup> The reliability of such evidence has, therefore, to be tested the same way in which any other piece of evidence is tested. The Court should, therefore, call upon the expert to explain the reasons for his opinion and then form its own

opinion whether or not the expert opinion is satisfactory.<sup>26</sup> The court should not surrender its own opinion to that of the expert.<sup>27</sup>

The value of technical evidence, like that of medical evidence, also depends upon the circumstances of the case. There is no rule of law that it is unsafe to base a conviction on the uncorroborated testimony of a finger-print expert, but even so the Court should not take his opinion for granted.<sup>28</sup> So it is true of evidence of foot prints.<sup>29</sup> In *Ram Narain v. State of Uttar Pradesh*<sup>30</sup> the Honourable Supreme Court upheld the conviction of the accused on a charge of kidnapping on the basis of the evidence of an expert that the letter by which ransom for the child was demanded was in the handwriting of the accused. Dua J., himself compared the handwriting in question with a proven handwriting of the accused and satisfied himself and held that no further corroboration was necessary.<sup>31</sup>

### **Corroboration not necessary**

The Honourable Supreme Court upheld the conviction to life imprisonment on the evidence that the piece of writing left behind by the murderer in the room of the deceased was testified by a handwriting expert to be in the handwriting of the accused.<sup>32</sup> The murder was at night. One of the murderers left behind a note showing frustration with graduate unemployment. The accused was detected after several months and in connection with some other case. A wrist watch stolen from the room of the deceased was recovered from his place. This recovery and the expert testimony as to handwriting brought about the conviction which the Honourable Supreme Court upheld.

The approach of a Court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.

After reviewing all the earlier Honourable Supreme Court decisions, the learned judge concluded:<sup>33</sup>

We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallized into a rule of law, that the opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases corroboration must be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of a handwriting expert may be accepted.

In another case<sup>34</sup> the Honourable Supreme Court laid down that it was not possible for the Court to reject the evidence of an expert who had categorically stated that he had compared the land groove markings on the bullets under a comparison microscope, simply because he did not consider it necessary to take a photograph.<sup>35</sup>

#### **Facts bearing upon Expert Opinion**

The effect of the provision is that when the opinion of an expert is relevant and has been cited, any fact which will either support his opinion or contradict it will also become relevant.

Thus where the question was whether the embankment of a part of a sea had caused the choking and decay of a harbor and the opinion of a celebrated engineer was admitted, the fact that other harbours on the same sea had also begun to choke although there were no embankments there was held to be relevant as it supported the opinion of the expert.<sup>36</sup> In support of expert evidence it is open to the party to produce statements from outstanding books or from experiments or other acts upon which the opinion of the expert is based. The opposite party may produce other experts holding opposite or different view.

#### **Opinion as to handwriting**

When the Court has to determine the question whether a document is written or signed by a certain person, the Court can admit the opinion of a person who is acquainted with that person's handwriting. The explanation attached to the section gives guidance as to who is considered to be acquainted with another's handwriting. It includes a person—

- (1) Who has seen that person write, or
- (2) Who has received documents written by that person in answer to documents written by himself or under his authority and addressed to that person or
- (3) Who has in the ordinary course of business, received documents written by that person or such documents are habitually submitted to him

In reference to the first point it has been held by the Supreme Court in *Fakhruddin v. State of Madhya Pradesh*<sup>37</sup> that handwriting may be proved by the evidence of a witness in whose presence the writing was done and this would be direct evidence and if it is available the evidence of any other kind is rendered unnecessary. Following this the Honourable Calcutta High Court held.<sup>38</sup> that where a witness deposed that the plaintiff had signed the requisition slip for a second cheque book in his presence that was sufficient proof of the plaintiff's signature.

Where the person whose handwriting is in question is a merchant, another merchant who has been receiving letters from him in reply to his own letters,

his opinion will be relevant. The opinion of a clerk who has to examine and file the merchant's correspondence is also relevant and so is the opinion of a professional man, like a broker, who receives the merchant's documents for the purpose of advising him. All such persons have repeated opportunities of getting acquainted with the handwriting in question.

**Modes of proving handwriting.**

Sections 45 and 47 put together recognize the following modes of proving handwriting:

*1. By the evidence of the writer himself*

The persons whose handwriting is in question may himself enlighten the Court on the point. If he denies his signature or handwriting, then only the question of resorting to other modes of proof arise.

*2. By the opinion of an Expert*

Hand writing can be proved with the help of the opinion of an expert. The Supreme Court considered the question of the value of the opinion of an expert in *Ram Narain v. State of Uttar Pradesh* <sup>39</sup>

A child was kidnapped. The parent of the child received a hand written postcard followed by an inland letter demanding Rs.1,000 and Rs.5,000 respectively as ransom for the child. The author of the letter was traced and a handwriting expert testified the letters to be in the handwriting of the accused. Solely on the basis of this evidence the accused convicted by three lower Courts before the case came before the Honourable Supreme Court. <sup>40</sup>

The conviction was upheld. The Court said : "Both under section 45 and section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observation. In either case, the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means is to apply its own observation to the admitted or proved writings, not to become a handwriting expert but to verify the opinion of the witness. This is not to say that the Court may play the role of an expert, but to say that the Court may accept the fact only when it has satisfied itself on its own observation that it is safe to accept the opinion of the expert or the other witness". <sup>41</sup>

*3. By the evidence of a person who is acquainted with the handwriting of the person in question*

A person gets opportunity to be acquainted with the handwriting of another person when he has often seen that person writing something or when he has been receiving papers written by that person in reply to his own drafts or for the purpose of typing or filing or advising. Naturally the opinion of such a person can be relied upon.

4. *Under section 73 by the Court itself comparing the handwriting in question with the proven handwriting*

Section 73 enables the Court to compare the handwriting in question with any handwriting which is admitted or proved to be the handwriting of the person in question. The section also empowers the Court to direct any person present in the Court to write any words or figures for the purpose of enabling the Court to compare them with the writing in question.

**48. Opinion as to existence of Right or Custom, when relevant**

When the Court has to determine the existence of any general custom or right, the opinion of any person who is likely to be aware of the existence of the custom, if it did exist is relevant.

**49 Opinion as to usages, Tenets etc. when relevant**

When the court has to form an opinion as to –

**Opinion as to usages, tenets etc.**

Thus when the Court has to form an opinion as to the usages and tenets of anybody of men or family; or as to the constitution of any government of a religious or charitable foundation; or as to the meaning of certain words or terms as used in a particular district or by any classes of people, the opinion of any person who has special means of knowledge on the matter in question is relevant.

**S. 50 Opinion on Relationship when Relevant**

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship of any person who as a member of the family or otherwise has special means of knowledge on the subject is relevant fact:

**S.51 Grounds of opinion when relevant**

Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

An expert may give an account of experiments performed by him for the purposes of forming his opinion.

An expert may give evidence of the experiments conducted by him for the purpose of forming his opinion. By looking at the grounds the Court can determine the soundness and credibility of the opinion and, therefore, from this point of view the grounds are specially important, and as such, relevant.

by

Sri K.Krishna Satya Latha,

Junior Civil Judge,  
Palasa

1. Rupert Cross Evidence, 328 (1958)
2. Daines v. Hartly (1848) 3 Exch. 200.
3. (1943) K.B.507 at p.595 C.A.
4. This has been described to be a revolutionary extension of the rule which has been traditionally confined to opinion of witnesses. Cowen and Charter. ESSAYS ON THE LAW OF EVIDENCE, p.169.
5. (1958) S.C.R.328.
6. (1958) S.C.R 328 at p.342.
  
7. GILBSON.J., cited VII, Wigmore.p.12 and Cross. Evidence, 329 (1958)
8. Cross, EVIDENCE, 322 (1958).
9. (1782) 3 Doug K.B.157 : 99 F.R. 589, 686,
10. The quotation is from R.v. Silverlock. (1874) 2 Q.B. 776. 771 per Lord RUSSEL OF KILLOWEN cited with approval in United States Shipping Board v. The Ship "St. Albans", (1931) P.C.189.
11. M.R. Zafer, Scientific Evidence. Expert Witnesses, (1962) J.I.L.I, Special issue at p.56, adopting from R.V.silver lock (1984) 2 Q.B.766.
  
12. (1972) Cr.L.J.407..
13. R.V.Oakley, (1979) K.T.R. 417
14. Kishan singh, v. N.Singh, A.I.R. 1853 P. & H. 373.
15. I.L.R (1975) 47 All.823.
  
16. Stephen's DIGEST OF THE LAW OF EVIDENCE, pp.67-68
17. Field, EVIDENCE, 2442 (9<sup>th</sup> ed.).
18. Sashi Kumar v.Subodh Kumar, A.I.R. 1964 S.C 529; Ishwari Pd. Mishra v. Md. Isa, A.I.R. 1963 S.C.1728; Bhagwan Ram v. M.K.Sharma, A.I.R. 1973 S.C.1346.
19. Altaf Hussain v. Nasreen Zahra, A.I.R. 1978 All. 515 at pp.521-522.
20. Hattu v. Emperor, AIR 1933 All 837
21. Norman J. In Queen –Empress v. Ahmad Alley, 11 W.R. Cr.25 at p.26.
22. State v. Walker 65 M.C.74
23. Ryan on CRIMINAL EVIDENCE IN BRITISH INDIA, 127 (192( cited with approval in Hari Singh v. Sardarni Lachmi Devi, AIR 1921 Lah. 126 at p. 127. This generally becomes true of all professions-see, Phirova Anklesaria, profession-The name is Trade, A.I.R (1982).
24. In re Srinivasulu Naicker, 68 Law Weekly, 61
25. Amallesh Chandra v. State, AIR, 1952 Cal.481
26. Crown Prosecutor V. Gopal A.I.R, 194 Mad.551
27. IN re U, an Advocate, A.I.R, 1935 Rang. 178 at p.180 per Page C.J
28. Harendra Nath Sen v. Emperor, AIR 1931 Cal.441
29. Pritam Singh Vs. State of Punjab AIR 1956 SC 415
30. AIR 1973 SC 2200
31. Punjab Singh v. State of Haryana, (1984)(Supp.) S.C.C.116. AIR. 1984 SC 1233.
32. Murarilal v. State of M.P., AIR 1980 S.C.531
33. Murari Lal v. State of M.P. AIR 1980 SC 531 at p. 536
34. Ramnathan v. State of Tamil Nadu, A.I.R, 1978 S.C.1204 at p.1213.
35. Harmony shipping Co. v. Davis, (1979) 3 All E.R. 177 (C.A)
36. Folkes v. Chadd, (1782) 3 Doug K.B. 157; 99 E.R. 589, 686
37. A..I.R 1967 S.C.1326
38. P.M.Das v. Central Bank, AIR, 1978 Cal at p.64
39. A.I.R. 1973 S.C.2200
40. Fakhruddin v. State of Madhya Pradesh, AIR 1967 SC 1326; Ram Chandra v. State of U.P., AIR 1957 SC 381, Ishwari Pd. Misra v. Md. Isa, AIR 1963 SC 1728; Sashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 429; State of Gujarat v. VAnaya Chandra (1967) 1 S.C.R 249; AIR 1967 SC 778
41. Lalta Pd. V. Emperor, (1910) 11 Cr. L.J. 114; in re Venkata Row, I.L.R (1913) 36 Mad. 159 at p. 165; Durga Prasad v. State, A.I.R 1952 Nag. 289; Kishore Chandra v. Ganesh Prasad, A.I.R, 1954 SC 316; Ram Chandra v. State of U.P A.I.R. 1957 SC 387