



# **Hon'ble Supreme Court's Judgments – Forensic Science as a tool for Justice Delivery**

**DIGEST FOR STUDENTS**

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LNJN NATIONAL INSTITUTE OF CRIMINOLOGY & FORENSIC SCIENCE  
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**CRIME HURTS: Control it through scientific study**

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## INTRODUCTION

Forensic Science as a tool for assisting in the detection of crime and helping the Criminal Justice System in bringing the culprit the book, appears to be finally coming of age in India. Recently, the Hon'ble Supreme Court while passing orders in a writ petition on "Speedy Trial of under Trial Prisoners" has recorded its concern about the large number of trial held up due to delays in Forensic Science Laboratories.

02. Forensic Science is a multi-disciplinary subject which borrows from disciplines is diverse as Physics, Chemistry, Biology, Computer Science, Psychology and Phonetics. Through a combination of scientific applications in these areas of knowledge, Forensic Scientists aspire to find methods and solutions for recovery and collection of evidence from scenes of crime, so as to ensure that criminal evidence is recovered and retained without being contaminated and altered, packed and sent in a scientific and safe manner to the lab where the latest techniques are deployed and applied to extract prosecutable evidence that will link the evidence to the scene of crime and finally to the criminal so that he or she may be successfully prosecuted. As society moves towards more scientific response to solving crime that is more in sync with the human rights environment today, Forensic Scientists will continue to increasingly become an important part of the process to dispense justice. Forensic Scientists have to regularly face a more tech savvy criminal and a more well informed and equipped defense. Over the last many years, the work and opinion of the Forensic Scientists has been used to develop new laws and jurisprudence by courts in the country.

03. This compilation discusses the few cases wherein the Hon'ble Supreme Court has discussed the applications and scope of Forensic Science.

## DIGITAL FORENSIC

With the advancement of Information Communication Technology and the good amount of knowledge shared through internet has encouraged the techno Savoy young generation to indulge in cyber-crime. This Cyber Space and its IT infrastructure are very much vulnerable to a wide range of risk stemming from both physical and cyber threats and hazards. As the cyber-crime is borderless and very fragile to handle, it needs special tools and technology in-order to collect and preserve digital evidence without any kind of damage. For the admissibility of the evidence in the court, the evidence must be handled to ensure that it hasn't been changed. In doing so, the investigators and forensic analysts should be aware of the principles and methodologies of Cyber Forensics.

### Importance

Cyber Forensics, which is the science of collecting, analyzing and examination of the digital evidences is extremely essential for preventing cyber-crimes from occurring repeatedly. The collection and examination of various evidences provides an insight into the availability of hidden digital evidence stored in the computer or mobile device and reveals details about the attacker. The use of proper and established procedures in cyber forensics, at the same time abiding with the principles will help investigators and forensic scientists to examine and analyze the evidences properly, preserve them. Therefore, it is important for Criminal Justice Functionaries to be aware of techniques of collection of digital evidences and use of forensic tools for acquisition and analysis of digital files.

The Supreme Court in **Tomaso Bruno and Anr. V. State of Uttar Pradesh,(2015) 7 SCC 178**, has observed that advancement of information technology and scientific temper must pervade the method of investigation as scientific and electronic evidence can be a great help to an investigating agency so is Electronic evidence relevant to establish facts. Electronic evidence was held to be admissible subject to safeguards adopted by the Court about the authenticity of the same.

**Find mentioned few judgements passed by Supreme Court wherein scope, application and admissibility of electronic evidence were discussed.**

**CASE- R.M. Malkani vs State Of Maharashtra  
AIR 1973 SC 157**

**The question was whether tape recorded conversation is admissible in evidence.**

**Background--** In this case, the prosecution case was based solely on the tape recorded conversation, which proved the appellant's intention to obtain a bribe. On the other hand, the appellant contended that such conversation cannot be admitted as evidence as per the provisions of Indian Evidence Act, as it was 'unlawful'.

**Observation--** Tape recorded conversation is admissible, provided first the conversation is relevant to the matters in issue, secondly, there is identification of the voice and thirdly, the accuracy of the tape-recorded conversation is proved by eliminating the possibility of deletion, alteration or manipulation. The tape-recorded conversation is, therefore, a relevant fact under section 8 of the Evidence Act and is admissible under s. 7 of the Evidence Act.

**CASE- Ziyauddin Burhanuddin Bukhari vs Brijmohan Ramdas Mehta  
AIR 1975 SC 1788.**

**Background—**The importance of having transcript of tape recorded conversation discussed.

**Observation--**held that the tape recorded conversation similar to other documents are primary and direct evidence and when the Court allows the tape recorded conversation to be played in the Court it cannot be confined to the utility of corroboration only but can also be proved as substantive evidence in absence of any tampering subject to the provisions of the Indian Evidence Act, 1872.

**CASE- Ram Singh vs Col Ram Singh.  
1985 (Supp) SCC 611**

**Background—** a case arising from an election trial, the Court examined the question of admissibility of tape recorded conversations under the relevant provisions of the Indian Evidence Act.

**Observation -** that it will be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved. It was further observed that such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case.

The apex court in this case laid down following principles regarding admissibility of tape recordings:

- The voice of the person, against whom such recording is being produced as evidence, must be duly identified by the person who is producing such recording as evidence.
- The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence, either direct or circumstantial.
- Every possibility of tampering with either whole or any part of the tape-recorded statement must be ruled out; otherwise, it may render the said statement out of context and, therefore,
- The statement must be relevant according to the rules of the Indian Evidence Act.
- The recorded cassette must be carefully sealed and kept in safe or official custody.
- The voice of the person should be clearly audible and not lost or distorted by other sounds or disturbances..

**(This observation further affirmed in case R.K. Anand Vs. Registrar, Delhi High Court 2009 INSC 1422, Nilesh Dinkar Paradkar vs State of Maharashtra 2011 INSC 0324 wherein admissibility of a tape-recorded statement were reiterated**



**CASE-- State (NCT of Delhi) v. Navjot Sandhu  
(AIR 2005 SC 3820)**

**(The case dealt with the proof and admissibility of the mobile telephone call records.)**

**Background-----**While considering the appeal against the accused for attacking the Parliament, a submission was made on behalf of the accused that no reliance could be placed on the mobile telephone call records, because the prosecution had failed to produce the relevant certificate under sec 65-B (4) of the Evidence Act.

**Observation----**The SC concluded that a cross examination of the competent witness acquainted with the functioning of the computer during the relevant time and the manner in which the printouts of the call records were taken was sufficient to prove the call records.

**Note—{Judgement overruled by Anwar P V. v. P. K. Basheer and Others (2014) 10 SCC 473 (Cited ahead)}**

**CASE---- Tukaram S Dighole vs Manik rao shivaji Kokate  
2010 4 SCC 329**

**Background----** Reliability of the piece of evidence is a matter to be determined in the facts and circumstances of a fact situation. However, threshold admissibility of an electronic evidence cannot be ruled out on any technicality if the same was relevant.

**Observation---** it was again observed by the Apex Court that new techniques and devices are order of the day and it will be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, Though such devices are susceptible to tampering, no exhaustive rule could be laid down by which the admission of such evidence may be judged. Standard of proof of its authenticity and accuracy has to be more stringent than other documentary evidence.

The Supreme Court has opined that the courts ought to be vigilant while appreciating electronic evidence.

**CASE— Tomaso Bruno and Anr. vs State of Uttar Pradesh  
(2015) 7 SCC 178**

**Background---**The case concerned an appeal wherein appellant convicted for the murder of an Italian national during visit to Varanasi. The defence counsel relied on the absence of several pieces of digital evidence such as CCTV footage and SIM card details to argue that prosecution failed to prove case beyond reasonable doubt.

**Observation---** Supreme Court has observed that advancement of information technology and scientific temper must pervade the method of investigation as scientific and electronic evidence can be a great help to an investigating agency so is Electronic evidence relevant to establish facts. Electronic evidence was held to be admissible subject to safeguards adopted by the Court about the authenticity of the same.

**CASE--- Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke  
MANU/SC/0040/2015**

**Background---** In this case the admissibility of transcription of recorded conversation was considered. Wherein the recording had been translated.

**Observation---** the Supreme Court held that as the voice recorder had itself not subjected to analysis, there is no point in placing reliance on the translated version. Without source, there is no authenticity for the translation. Source and authenticity are the two key factors for electronic evidence.

**CASE-- Anwar P V. v. P. K. Basheer and Others  
(2014) 10 SCC 473**

**Background—**In this case, importance, and admissibility of electronic evidence was discussed

**Observation-** The court overruled the judgement of **Navjot Sandhu case (2005)** and specifically observed that the judgement of Navjot Sandhu, to the extent, the statement of the law on admissibility

of electronic evidence pertaining to electronic record of this court, does not lay down correct position and is required to be **overruled**.

- The Supreme Court has settled the controversies arising from the various conflicting judgments as well as the practices being followed in the various High Courts and the Trial Courts as to the admissibility of the Electronic Evidences. The Court has interpreted the Section 22A, 45A, 59, 65A & 65B of the Evidence Act and held that secondary data in CD/DVD/Pen Drive are not admissible without a certificate U/s 65 B(4) of Evidence Act.
- It has been elucidated that electronic evidence without certificate U/s 65B cannot be proved by oral evidence and also the opinion of the expert U/s 45A Evidence Act cannot be resorted to make such electronic evidence admissible.
- The Court has held that Section 65B of the Evidence Act being a 'not obstante clause' would override the general law on secondary evidence under Section 63 and 65 of the Evidence Act. The Section 63 and Section 65 of the Evidence Act have no application to the secondary evidence of the electronic evidence and same shall be wholly governed by the Section 65A and 65B of the Evidence Act.
- The only options to prove the electronic record/evidence is by producing the original electronic media as Primary Evidence court or it's copy by way secondary evidence U/s 65A/65B of Evidence Act. Thus, in the case of CD, DVD, Memory Card etc. containing secondary evidence, the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

**CASE- Shafi Mohammad vs. State of Himachal Pradesh  
(Criminal Appellate Jurisdiction SLP(Crl)No 2302 of 2017)**

**Background--**The Supreme Court, in this path breaking judgment has rationalized the law relating to the admissibility of the electronic evidence **The key issue considered was whether a video recording of the scene of crime during investigation should be necessary to inspire confidence in the evidence collected and in the given context, what would be the scope of applicability of the procedural requirements under Section 65(B)(4) of the Act for furnishing a certificate in case of electronic evidence produced by a person not in custody of the device generating such evidence?**

**Observation--**The Apex Court observed that-

- Electronic evidence is admissible under the Act. Section 65A and 65B are clarificatory and procedural in nature and cannot be held to be a complete code on the subject.
- If the electronic evidence so produced is authentic and relevant, it can certainly be admitted subject to the court being satisfied of its authenticity. The procedure for its admissibility may depend on the facts such as whether the person producing the said evidence is in a position to furnish a certificate under Section 65B (4).
- The applicability of the procedural requirement under Section 65B(4) of the Act of furnishing a certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such a certificate being in control of the said device and not of the opposite party.
- In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Act cannot be held to be excluded. In such cases, procedure under the said provisions cannot be held to be excluded.
- **A person who is in possession of authentic evidence but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure, will lead to denial of justice.**
- A party who is not in possession of a device from which the document is produced cannot be required to produce a certificate under Section 65B (4) of the Act. Thus, **the requirement of certificate under Section 65B is not always mandatory.**

**CASE- Arjun Panditrao khotkar vs kailash kishanrao Gorantyal  
( Civil appeal no 20825-20826 of 2017)**

**Background---**Order pertains to need for more elaborate legal interpretation of Section 65 B (4) of I.T Act.

**Observation-----**The Supreme court held that- We are of the considered opinion that in view of Anvar P.V. (supra), the pronouncement of this Court in Shafhi Mohammad (supra) needs reconsideration.

With the passage of time, reliance on electronic records during investigation is bound to increase. The law therefore needs to be laid down in this regard with certainty. We, therefore, consider it appropriate to refer this matter to a larger Bench.”

**CASE-- Ritesh Sinha v. State of Uttar Pradesh  
CRIMINAL APPEAL NO.1190 OF 2019 decide on 2nd August 2019  
[Arising out of SLP (Criminal) No.3272 of 2018)**

**Background-** There was a split in verdict on the point whether the magistrate had implied powers to direct the accused to give voice samples. The validity of the order for summoning the appellant to the Court for recording his voice sample before the Investigating Officer was discussed.

**Observation-** In a significant ruling, the Supreme Court held that a judicial magistrate can direct an accused to provide his voice samples during investigation without his consent. The three-judges bench settled the confusion which arose out of the split verdict in the 2012 verdict by a two judges bench in Ritesh Sinha v State of UP.

The court further observed that until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime. Such power has to be conferred on a Magistrate by a process of judicial interpretation and in exercise of jurisdiction vested in this Court under Article 142 of the Constitution of India.

**CASE- SHERYA SINGHAL v/s. UNION OF INDIA  
AIR 2015 SC 1523**

**Background-** In this case, constitutionality of Section 66 A of Information Technology Act discussed in length. So, the judgment is important for forensic cyber law point of view. Hence, the details are cited below.

**Observation--**The Supreme Court struck down Section 66A of the Information Technology Act, 2000, relating to restrictions on online speech, as unconstitutional being violative of Article 19(1)(a) and not saved under Article 19(2).

Section 69A and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules 2009 are constitutionally valid.

(The matter of admissibility of electronic evidence was also discussed in Amar Singh vs U O I(2011)7 SCC 69, Ratan Tata vs UOI Writ petition(civil)398 of 2010)

**FORENSIC SCIENCE AND RIGHT TO PRIVACY**

- Right to privacy declared as an integral component of the right to life and dignity in Justice Puttaswamy case.
- Privacy and informed consent are intertwined concepts and both are to assist a magistrate to decide for directing the subject for tendering bodily samples for forensic examination.
- The apex court observed that fingerprints, DNA profile and cellular samples constitute personal data.
- The judicial interpretation to expand the scope of privacy as fundamental right has direct bearing on forensic sampling, search and seizure, disposal of residual samples.etc.
- The law enforcement agencies must observe due process of law in addition to the standard protocol while dealing with various aspects of forensics.



**APPLICATION OF CERTAIN SCIENTIFIC TECHNIQUES- Narcoanalysis, Polygraph Examination And The Brain Electrical Activation Profile (Beap) Test For The Purpose Of Improving Investigation Efforts In Criminal Cases.**

**CASE- SELVI & OTHER V/S STATE OF KARNATAKA  
2010(7) SCC 263**

**Background**—The Apex court had examined legal question relates to the involuntary administration of certain scientific techniques, namely narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) test for the purpose of improving investigation efforts in criminal cases.

**Observation**-- Narco-analysis, brain-mapping and Lie-detector tests cannot be conducted on accused without his consent, else it would violate Article 21 of the Constitution. No individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place.

**CASE--- Lilu @ Rajesh and anr v. State of Haryana  
(2013)14SCC643**

**Background**—The Validity of Two finger test was discussed.

**Observation**----- The Supreme Court ruled that the two-finger test is unconstitutional. It violates the right of rape survivors to privacy, physical and mental integrity and dignity. Virginity test violates right to privacy under article 21.

**CASE-- Shrda v.Dharampal  
AIR 2003SC 3450**

**Background**---The Supreme Court dealt with the core question of whether a party to a divorce proceeding can be compelled to a medical examination and blood test ? Does it amount to violation of Article 21 of the constitution.? The court held that :

**Observation**---- A matrimonial court has the power to order a person to undergo a medical test. Passing of such an order by the court would not be in violation of the right to personal liberty or the right to privacy under Art.21 of the Constitution. It is significant to note that though no person can be compelled to give a sample of blood against him for this refusal, in case of divorce proceeding before a matrimonial court, the court can order an individual to submit himself to medical examination and in case of refusal, can draw an adverse inference from his refusal.

**CASE---- Justice K.S. Puttaswamy (Retd.) and Anr. v Union of India and Ors  
( Decided in 26th Sept 2018 )**

**Background**-- The Supreme Court assessed whether the provisions of the Aadhaar Act ,were contrary to the right to privacy ?

**Observation**----The Aadhaar Act was held to be constitutional to the extent it allowed for Aadhaar number-based authentication for establishing the identity of an individual for receipt of a subsidy, benefit or service given by the Central or State Government funded from the Consolidated Fund of India.

However, the Supreme Court disallowed the use of individual Aadhaar numbers by any private entities for establishing the identity of the individual concerned for any purpose pursuant to a contract, on the basis that it was contrary to the fundamental right to Privacy.

## **FORENSIC DNA**

Forensic DNA profiling uses the uniqueness of DNA of individuals for identification purposes in investigation. DNA evidence help link an individual to an object or a scene of crime based on the biological components left on them. Every nucleated cell in the body is a source of DNA, therefore any biological fluid, skin or viscera can provide DNA for analysis purposes. 0.1% of the DNA among individuals is unique and is utilized for individualization purposes; this however has its limitations for monozygotic twins. Sir Alec Jeffreys developed techniques in DNA profiling that were used in forensic investigation. DNA profiling is used in criminal cases and genetic relatedness. The pattern of inheritance of genetic material among biological relatives, allow the use of DNA profiles to establish relations among individuals during investigation. DNA analysis is performed through variable number tandem repeats (VNTRs), short tandem repeats (STRs), single nucleotide polymorphism (SNP), etc. These markers are unique and are distinguished for identification and profiling purposes. Based on distinguished markers in the DNA, profiles are generated, which are unique to an individual. These profiles are generated from the biological evidences and matched with those stored in databases. Databases for forensic markers are maintained by investigation agencies around the world and are unique in their organization and utility. The use of species-specific markers allows the use of DNA analysis in species identification in wildlife crime investigation. DNA profiling involves identification and collection of biological evidences, DNA extraction, and quantification, and qualitative analysis, amplification using PCR (Polymerase chain reaction), STR analysis and analysis of results. There are other DNA profiling techniques such as mitochondrial and Y chromosome analysis which are used specifically for maternal and paternal inheritance, respectively.

The Combined DNA Identification System or CODIS is the database of FBI, which store STR based DNA profiles of individuals and compared for identification. There are about different numbers of STR marker used in a DNA profile in different systems. There are various databases maintained by different countries and agencies and are shared for solving international crimes.

DNA profiling technique has innumerable applications in the investigation system. DNA evidences have been used in criminal cases, paternity issue, mass disasters, genocides, cold cases, etc. The wide applications and reliability of DNA evidences have make them an essential part of forensic investigation around the world.

### **Herein mentioned few judgements wherein scope , application of DNA discussed-**

**CASE-**

**Dharam deo yadav v. State of U.P.**

**(2014) 5 SCC 509**

**(Identification by DNA test - Meaning and importance thereof - Sources from which DNA can be taken and reliability of DNA test discussed)**

**Background** –A 22 years old tourist namely Diana from New Zealand was murdered in Varanasi. DNA sample from the skeleton matched with her father blood sample. On the basis of circumstantial evidence accused was convicted

**Observation**---- The Supreme Court before pronouncing judgment has explained the crime scene management and the importance of forensic science. The court in the judgment has emphasized the need to adopt scientific methods in crime detection to save the judicial system from low conviction rates. Further highlighted a **need to strengthen forensic science for crime detection** .

It said as far as the present case was concerned, the DNA sample from the skeleton matched with the blood sample of the father of the deceased. All the sampling and testing was done by experts whose scientific knowledge and experience were not doubted in these proceedings. It was of the opinion that therefore, the prosecution succeeded in showing that the skeleton recovered from the house of the accused was that of Diana.

**CASE-**

**Nandlal wasudeo badwaik vs Lata badwaik  
(2014) 2 SCC576**

**Background-** The petitioner filed a maintenance petition claiming maintenance for herself and her daughter. Her husband disputed the paternity of child and requested for DNA test.

**Observation-** The Apex Court held that the DNA test is an accurate test. Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of Legislature. When there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former. The husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and in the face of it, we cannot compel the appellant to bear the fatherhood of a child, when the scientific reports prove to the contrary. We are conscious that an innocent child may not be bastardized as the marriage between her mother and father was subsisting at the time of her birth, but in view of the DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth. Truth must triumph is the hallmark of justice.

**CASE-**

**Dipanwita Roy vs Ronobroto Roy  
(2015) 1 SCC 365**

**Background--** In the present case, the husband has sought divorce from his wife due to alleged infidelity by her thereby making an application for DNA test to prove the paternity of the child.

**Observation-**Supreme Court explained the importance of DNA test by stating that DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. DNA test should also simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the husband.

It was further held- the presumption of legitimacy as given under Section 112 of the Evidence Act, 1872 will not be disturbed and that if the direction to hold such a test can be avoided, it should be so avoided as the legitimacy of the child should not be put to peril. It was further observed that the wife shall be given the liberty to comply with or disregard the order of DNA test and in case, she declines to undergo the said test, the Court shall draw presumption as per Illustration (h) of Section 114 of the Evidence Act,1872.

**CASE-**

**Raj Kumar vs State of U P  
(2014) 5 SCC353**

**Background-**The present case relates to the rape and murder of young girl by her neighbor. The crime was witnessed by the younger brother. As per the post-mortem report, rape had been committed upon the deceased. The DNA report also confirmed the same and Supreme Court discussed about the importance of DNA.

**Observation—**The Supreme Court observed that the DNA report played an important role to reveal the identity of the accused involving in the rape of a minor girl and affirmed the finding of facts recorded by the court below.

**CASE- Anil Alias Anthony Arikswawy Joseph vs State of Maharashtra  
(2014) 4 SCC 69**

**Background-**The case is concerned with a gruesome murder of a minor boy aged 10 years. The blood sample of the accused, samples collected from the deceased during post-mortem and the clothes of the accused which contains semen stains were sent to Forensic Science Laboratory, Mumbai for DNA analysis. The DNA report matched. The Supreme Court discussed the importance of DNA analysis.

**Observation--** The Supreme Court before pronouncing its judgment analyzed the DNA report. In this case, the unnatural offence which was committed by the accused against the child had clearly been established by DNA evidence and Medical evidence

**CASE-****Sandeep vs State of UP  
(2012) 6 SCC 107**

**Background-**In this case, the accused forced the girl to abort the fetus but she disagreed, thus, murdered. The fetus recovered from the deceased womb was sent for DNA analysis. The DNA analysis confirmed that the accused is the biological father. The Supreme Court discussed about the importance of DNA test.

**Observation-** The Supreme Court relied upon the report of the DNA in having concluded that accused was the biological father of the recovered foetus. Here the DNA evidence plays an important role along with other evidences. Especially, it has been used to prove the motive for making such crime.

**CASE-****Goutham Kundu vs State of West Bengal  
AIR 1993 SC 2295**

**Background -** The father disputed paternity of child. the Supreme Court discussed the point of evidentiary value of blood group test in the case at hand and held the observation as under:

**Observation-** Where the purpose of the maintenance application was nothing more than to avoid payment of maintenance without making out any ground whatever to have recourse to the test, the application for blood test could not be accepted.

The Supreme Court further held-

- Courts in India cannot order blood test as a matter of course.
- Whenever applications are made for such prayers in order to have roving inquiry the prayer for blood test cannot be entertained.
- There must be a strong prima facie case in that the husband must establish non access in order to dispel the presumption arising under Section 112 of the Indian Evidence Act,1872.
- The Court must carefully examine as to what would be the consequence of ordering the blood test. Whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.
- No one can be compelled to give sample of blood for analysis Blood group test-
- Evidentiary value of-When can be ordered- courts must examine consequence of ordering blood group test. Blood group test is a useful test to determine the question of disputed paternity.
- It can be relied upon by courts as a circumstantial evidence which ultimately excludes a certain individual as a father of the child.

**CASE--****Sharda v.Dharampal  
AIR 2003 SC3450.**

**Back ground---**The Supreme Court dealt with the core question of whether a party to a divorce proceeding can be compelled to a medical examination and blood test ? wherein the court held that :

**Observation----** A matrimonial court has the power to order a person to undergo a medical test. Passing of such an order by the court would not be in violation of the right to personal liberty or the right to privacy under Art.21 of the Constitution. It is significant to note that though no person can be compelled to give a sample of blood against him for this refusal, in case of divorce proceeding before a matrimonial court, the court can order an individual to submit himself to medical examination and in case of refusal, can draw an adverse inference from his refusal.

**CASE-**

**Narayandutt Tiwari vs Rohit Shekher**

**(2012) 12 SCC 554**

**Background** - The question of paternity of respondent was in issue before the court as the respondent claimed the petitioner as his biological father which was disputed. Thus, DNA test was ordered. It was observed by court as under.

**Observation--**

- The Court observed that the DNA profiling is a modern scientific method which has been accepted in all jurisdictions for the purposes of conclusively identifying parents. Given the accuracy and value attached to DNA profiling, this test may either confirm an identity or shatter it.
- It was further observed that the medical examination of blood, semen, sputum, sweat, hair samples, and finger nails by the use of modern scientific techniques in binding DNA profiling may be directed

**CASE-**

**State of Tamil Nadu vs Nalini**

**(1999) 5 SCC253**

**Background--**This is famously known as Rajiv Gandhi Assassination case. Rajiv Gandhi, who was a former Prime Minister of India, was killed by a suicide bomber. The prime culprit was killed herself and consequently, most material evidences were destroyed in the massive explosion. Moreover, dead bodies of the victim as well as of the assassin were dismembered beyond recognition. DNA tests helped in matching dismembered parts of the bodies of the victim and assailant.

**DECISION-**In this case DNA evidence was used as one of the circumstantial evidence to link the criminal with a crime as well as to identify the victim and accused.

**CASE-**

**Santosh Kumar Singh vs State through CBI**

**(2010) 9 SCC 747**

**Background** -Priyadarshini a law student, found raped and murdered in her house. During investigation, the post- mortem got conducted and the samples were also sent for DNA analysis. The post-mortem report ruled out rape. But, the DNA test confirms the rape on victim.

**Observation--**Supreme Court observed that the DNA evidence plays a prominent role to convict the real culprit among other circumstantial evidences. In a rape and murder case if rape has been proved through DNA technology, the prosecution can easily prove the murder charge against the accused beyond any reasonable doubt.

**CASE-**

**Mohd Amir Kasab vs State of Maharashtra**

**(2012) 9 SCC 1**

**Background--** On 29.11.20 terrorists attacked Mumbai and killed one hundred. Terrorist Mohammed Amir Kasab was arrested. The articles seized from the boat which they used to land to Mumbai. Accused and his 5 accomplices were linked through DNA Profiling.

**Observation----**The Supreme Court observed that the DNA evidence played an important role for the identification and for the involvement of the accused in the incidence of waging war against the government of India. The DNA evidence played as one of the circumstantial evidences to prove the case.

**CASE-**

**Sushil Kumar vs State (N.C.T of Delhi )**

**(2014) 4 SCC 317**

**Background ----**In this case Sushil Sharma murdered his wife Naina by firing bullets and thereafter attempted to burn her body in a tandoor. Police recovered revolver and blood-stained clothes and sent them to forensic test. The blood sample of parents was taken. The DNA report confirmed that the charred body was of their daughter Naina Sahni

**Observation---**This case is based on circumstantial evidence alone. Here, the DNA evidence plays an important role in identifying the charred body of the deceased Naina Sahni. The Supreme Court discussed the importance of forensic experts report .

**CASE** **Surendra koli vs State of U.P.**  
**(2011) 4 SCC 80**

**Background-** known as Nithari case solved with the help of Forensic science. The forensic experts had to examine hundreds of bones and skeletal remains besides going for psycho-analysis tests to reconstruct the gory. In addition to DNA matching, Forensic experts conducted detailed psycho-analysis of accused Koli to understand his Necrophiliac, Pedophilia, and Paraphelic tendencies.

**Observation--**The Supreme Court held that the killings by the appellant Surendra Koli were horrifying and barbaric and thus fell within the category of rarest of rare case. The appeal was thus dismissed and death sentence awarded to Surendra Koli was upheld.

**CASE---** **State of Gujrat vs Kishanbhai**  
**(2014) 5 SCC108**

**Background—** In the instant case of rape and murder of 6 years old child, the trial court, High Court and Supreme Court had to give benefit of doubt to the accused due to serious lapses on the part of the investigation.

**Observation---**Supreme court made observations regarding use of scientific investigation tools as there has now been a great advancement in scientific investigation and held that scientific investigation would have unquestionably determined whether or not the accused was linked with the crime.

Additionally, DNA profiling of the blood found on the knife used in the commission of the crime (which the accused-respondent, Kishanbhai had allegedly stolen from Dinesh Karshanbhai Thakore PW6), would have uncontrovertibly determined, whether or not the said knife had been used for severing the legs of the victim Gomi, to remove her anklets.

In spite of so much advancement in the field of forensic science, the investigating agency seriously erred in carrying out an effective investigation to genuinely determine the culpability of the accused Kishanbhai.

{**Note----**Fairness in investigation is precursor to fair trial. Scientific aids, especially forensic tools enhance transparency, fidelity and accuracy to brace fairness in administration of justice. The aim of investigation is ultimately to search for truth and to bring offenders before law. **Manohar Lal Sharma v. Union of India (2014) 2SCC 532.** Blending of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation, which reduces dependence upon informers and custodial interrogation and concentrates upon skilled scanning of the crime scene for collection of physical evidence.

The apex court in **Pooja Pal v. Union of India (2016)3 SCC 135** has described the object and scope of free, fair and proper investigation. The court has observed that the expression fair and proper investigation in criminal jurisprudence was held by this Court in **Vinay Tyagi v. Irshad Ali (2013) 5 SCC 762** to encompass two imperatives that the investigation must be unbiased, honest, just and in accordance with law and secondly, the entire emphasis should be on discovering the truth of the case before the court of competent jurisdiction }

## FORENSIC DOCUMENT EXAMINATION

In Forensic science, questioned document examination is the examination of documents potentially disputed in a court of law. Its primary purpose is to provide evidence about a suspicious or questionable document using scientific processes and methods. Questioned document examination is usually found in cases of forgery of documents of importance and financial documents e.g driving license, contracts, wills, voter registrations, passports, petitions, threatening letters, suicide notes, counterfeiting, kidnapping, embezzlement, organized crime, white-collar crime, art crime, theft, robbery, burglary homicide, serial murder, psychological profiling, and deviant sex crimes, etc .and marks on unusual surfaces –doors, walls, windows ,or boards.

The work of a Forensic Document Examiner includes:-

1. To establish genuineness or forgery, or to reveal alterations, additions or deletions;
2. To identify or eliminate persons as the source of handwriting;
3. To identify or eliminate the source of typewriting or other impression, marks, or relative evidence; and
4. To write reports or give testimony, when needed, to aid the users of the examiner's services in understanding the examiner's findings.

### Handwriting examinations

There are three stages in the process of examination. In brief, they are:

- 1-Analysis: The questioned and the known items are analyzed and broken down to directly perceptible characteristics.
- 2-Comparison: The characteristics of the questioned item are then compared against the known standard.
- 3-Evaluation: Similarities and differences in the compared properties are evaluated and this determines which ones are valuable for a conclusion. This depends on the uniqueness and frequency of occurrence in the items.

Optionally, the procedure may involve a fourth step consisting of verification/validation or peer review. The evidence of a Document Examiner is admissible in the court of law under Section 45 of Indian Evidence Act and under Section 292 &293 Cr PC

## Admissibility of Document expert report

**CASE--**

**S. Gopal Reddy vs State of Andhara Pradesh**

**AIR 1996 SC 2184**

**Background--.** Various letters written by one of the accused were sent for handwriting expert report. The Supreme Court gave observation about scope and admissibility of document expert report and observed as under-

**Observation--**

- Expert Evidence is weak, not safe without seeking independent and reliable corroboration.
- One can only compare like with like i.e. signatures with signatures and writings with writings and not a signature with writing.

**CASE--**

**State of U.P vs Boota Singh**

**AIR 1978 SC 1770**

**Background---**Does asking accused to give specimen signature during investigation violate Article 20(3) of the constitution?

**Observation---**The Apex Court held that if directions are issued to the accused to give his specimen signatures and handwriting that does not amount to testimonial compulsion similar is the case with scientific evidence because accused is just directed to undergo a test not to give a specific statement. It

can be termed as a search of the person being conducted by experts and in India search and seizures are not held violative of Article 20(3) because it is not an act of the accused but a third person is doing that act i.e. the police officer or an expert.

**CASE- State of Maharashtra vs Sukhdev  
AIR 1992 SC2100**

**Background-** Popularly known as General Vidya murder case. Herein the points of appreciation of evidence regarding the identity of author of document, reliability of comparing documents and identification of the accused and further evidentiary value of expert opinion were discussed.

**Observation---**The court has to decide in each case on merit what weight it should attach to the opinion of the expert. The identity of the person has to be established by comparing the said handwriting with the undisputed/established handwriting of the person.

**CASE- Murari Lal vs State of M.P  
1980 SCR (2) 249**

**Background-**The appellant, was convicted under section 302 IPC after relying upon a note found by the side of the deceased. In appeal the admissibility of note and expert opinion was disputed .

**Observation--**The Supreme Court dismissed the appeal and observed that---

there is no justification for condemning the opinion-evidence of an expert to the same class of evidence as that of an accomplice and insist upon corroboration.

- The view occasionally expressed that it would be hazardous to base a conviction solely on the opinion of an expert-handwriting because all human judgment is fallible.
- The science of identification of hand writing unlike the science of identification of finger prints which has attained near-perfection is not quite perfect and the risk is, therefore, higher.
- The opinion maybe backed by the soundest of reasons.
- An expert's duty is to furnish the judge with the necessary scientific criteria so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence.
- Having due regard to the imperfect nature of the science of handwriting, the approach should be one of caution.
- 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 cases where both sides call experts it becomes the plain duty of the court to compare the writings and come to its conclusion.
- Where there is experts opinion they will aid the court. Where there is none the court will have to seek guidance from some authoritative textbook and the court's own experience and knowledge.

**CASE- State (through CBI) vs J.S. Choudhary  
1996 AIR 1491**

**Background-** In this case the prosecution wanted to examine a typewriter expert for proof of certain incriminating facts against the respondent based on the identity of a typewriter on which a material document was alleged to have been typed. An objection was taken to the admissibility of the opinion evidence of the typewriter expert under section 45 of the Indian Evidence Act.

**Observation-**The Supreme Court had observed:

- The word 'science' occurring independently and in addition to the word 'handwriting' in section 45 is sufficient to indicate that the opinion of a person specially skilled in the use of typewriters and having the scientific knowledge of typewriters would be an expert in this science; and his opinion about the identity of typewriting for the purpose of identifying the particular typewriter on which the writing is typed is a relevant fact under Section 45 of the Evidence Act.



- It is clear from the meaning of the word 'science' that the skill or technique of the study of the peculiar features of a typewriter and the comparison of the disputed typewriting with the admitted typewriting on a particular typewriter to determine whether the disputed typewriting was done on the same typewriter is based on a science study of the two type writing's with reference to the peculiarities therein; and the opinion formed by an expert is based on recognized principles resulting the scientific study.

**CASE-**

**State (Delhi Administration) vs Paliram  
AIR 1979 SC 14**

**Background**—In this case the validity of the order passed by Magistrate directing the accused to give his specimen writing during trial was discussed

**Observation**-The Supreme Court had observed:

- The two paragraphs of section 73 are not mutually exclusive, but complementary to each other. The sample writing taken by the Court under the second paragraph of a section 73 is the same thing as “admitted writing” within the purview of the first paragraph of section 73.
- In the matter of comparing the handwriting the judge should not take upon himself the task of comparing the admitted writing with the disputed one. A prudent course is obtain the opinion and assistance of an expert.
- So far as the handwriting expert is concerned his real function is to put before the court all the materials together with the reasons which induce him to come to a conclusion. It is for the Court and the jury to form a judgment by their own observation of the materials. On receiving expert evidence the court should compare the handwriting with its own eyes for a proper assessment of the value of the total evidence.
- Even where no expert is cited or examined by either party, the court may in the interests of justice call an expert witness, allow him to compare the sample writing with the alleged writing and thus give his expert assistance to enable the court to compare the two writing and arrive at a proper conclusion.

**CASE---**

**S.P.S. Rathore vs. CBI & Anothers  
(2017) 5 SCC 817**

**Background---**In this case one of the alleged point was that signature of deceased Ruchika was forged by accused so the hand wring expert opinion was sought. The scope and evidentiary value of hand writing expert opinion was discussed.

**Observation---****The court observed**-Expert evidence as to handwriting is only opinion evidence and it can never be conclusive. The sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not.

- A court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings.
- It may not be safe for a court to record a finding about a person's writing in a certain document merely on the basis of expert comparison, but a court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard.
- The opinion of a handwriting expert is also relevant in view of Section 45 of the Evidence Act, but that too is not conclusive. It has also been held by this Court in a catena of cases that the sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not.
- It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing.
- It is opinion evidence and it can rarely, if ever, take the place of substantive evidence.
- Before acting on such evidence, it is usual to see if it is corroborated either by clear, direct evidence or by circumstantial evidence.”

## **FORENSIC BALLISTICS**

Forensic ballistics is a specialized branch of forensic science that deals with the motion, behaviour, dynamics, angular movement and effects of projectiles, such as bullets, rockets, missiles, bombs etc. These projectiles are often be fired from firearms and frequently involved in committing heinous crimes such as murders, attempted murders, accidental shootings, suicides, dacoities, robberies, rioting, police firings and police encounters.

### **SIGNIFICANCE OF FORENSIC BALLISTICS IN CRIMINAL INVESTIGATION-**

There are many applications of ballistics within a criminal investigation. Bullets that are fired at the scene of a crime will be examined using basic principles of forensic science in the hopes of discovering several pieces of information.

- The actual bullets can identify what type of gun the criminal used and whether the firearm is connected to any other crime.
- The amount of damage a bullet has sustained upon hitting a hard surface can help determine approximately the range of firing and the angle of firing .
- Gunshot residue on the hands or any other body part of the suspect can be studied which can help in determining whether the gun was fired by the suspect or not. This information helps researchers uncover the identity of the shooter.
- When bullets are not recovered from the scene of crime or the victim, the particles around the gunshot hole or injury can still led investigators to ascertain what kind of the bullet has been used in commission of the crime, and therefore the type of gun as well.

Studying the markings found on a bullet and fired cartridge cases investigators can establish exactly which gun the criminal used. Every firearm produces a slightly different and unique pattern on the cartridge cases and the bullets, which are highly individual for that firearm only. Once experts have identified these markings, they can easily match them to the appropriate firearm.

There are many experts deeply involved in this study, and they are frequently called upon to help solve crimes. Ballistics details are also commonly input into a large database that can be accessed by law enforcement agencies across the country. When someone enters new data, the computer locates any relevant data from previous investigations. This information can lead to the discovery of the owner of a particular weapon and assist in tracking down the guilty party who fired the gun.

### **APPLICATION OF BALLISTIC EXPERT REPORT--**

**CASE- Ram Nathan vs State of Tamil Nadu  
1978 AIR 1204**

**Background—Accused was convicted for causing murder of two persons by shooting**

In appeal the point of rejection of ballistic report along with other grounds were discussed.

**Observation---**The Supreme Court held that it would not be justified in rejecting the opinion of an expert who has examined the markings under the comparison microscope simply for the reason that he has not thought it necessary to take the photographs.

**CASE- Kalua vs State of U.P  
1958 AIR 180**

**In the instant case, application of the opinion of ballistic expert is discussed.**

**Background-** A person was murdered by shooting with the help of a country made pistol. A cartridge case was found near the cot of the deceased and a country made pistol was produced by the accused. The opinion of the Ballistics expert was sorted as to whether the cartridge found from the crime scene was fired from the country made pistol or not?Ballistics Expert opined that the cartridge recovered from the scene of crime was fired from the recovered country made pistol and no other firearm.

**Observation-**The Apex court highlighted the importance of Ballistics expert opinion. It would be insufficient to convict the appellant of the crime without help of the circumstantial evidence based on the testimony of the eyewitnesses and IO.

*“The opinion of 'the fire-arms expert, based on the result of his tests, does not seem to have been challenged in cross-examination or before the High Court. If there is no reason to think that there is any room for error in matters of this kind and it is safe to accept the opinion of the expert, then clearly it is established that the cartridge found near the cot of Daya Ram, was fired from the pistol produced by the appellant”.* Hence, the appellant-accused was convicted u/s 302 and relevant sections of Arms Act

**CASE-**

**Mohan Singh vs State of Punjab**

**AIR 1975 SC 2161**

**Background** -The court sorted the opinion of the ballistic expert whether the shots fired by the appellant killed the deceased and grievously hurt the lady in self-defense. Expert opined that Shots received in parcel 1 were fired from a L.G cartridge and shot received in parcel 2 was either an L.G shot or S.G shot. It was possibly a L.G shot(as indicated from the undamaged portion of the shot), but the expert was not categorical about it. The expert was sure that the shot received in parcel 2 was a factory made. From the photographs of the injuries inflicted on both the deceased and the lady,he reached the conclusion that the injuries on the deceased and the injured lady were probably caused by one gunfire only. But he was not categorical about it.

**Observation of the Supreme Court-**

*“Most of the expert's answers are not categorical. He did not have an opportunity of seeing the injuries and exit wounds of the shots himself. He was mostly giving his answers based on observations made by others and measurements noted by them. A small difference in the measurements one way or the other might make all the difference to the result. The court think it would be unsafe to place implicit reliance on the evidence of the expert for the reasons we have already given .*

**CASE-**

**Gheru lal vs State of U.P**

**Criminal Appeal no-155 of 2006**

**Background--**In this case allegedly accused murdered a person and caused injuries to the other with the help of fire arms due to property dispute. The opinion of the Ballistics expert was sorted as to whether the shots fired from the firearm of the accused hit both the deceased and injured person in single fire or not. Expert Opined that- Experiments carried out with the questioned gun in accordance with the statements of the eyewitnesses and site plan it was opined that injuries (exit and entry wound) of the deceased were possible by the gun in question of the accused and injuries(entry and exit wound) of the injured person were only possible by another fire arm.The Ballistic Expert categorically stated that in cartridges of standard 12 bore shotguns, bullets from other rifles cannot be used with small and big pellets.

**Observation-**According to the opinions of the Ballistics Expert and findings by the medico-legal expert it was opined that the single shot could not have caused vertical injury to one person and horizontal injury to another. Thus, the injuries found on the injured person was not inflicted by the shots fired from the appellant’s gun and must be fired from another gun. It found the discrepancies in the prosecution’s version of the case and hence, acquitted the accused.

**CASE-**

**Vineet Kumar Chauhan vs State of U.P**

**AIR 2008 SC780**

**Background-**In this case, injured succumbed to the bullet injuries. During post-mortem examination a bullet was recovered from the spinal cord but was not sent for forensic examination rather distorted bullets from the scene of crime were sent for the expert opinion. Expert Opined that the distorted bullets from the alleged spot of crime were not in conformity with the sample bullets fired from the gun in question.

**Observations** - *“It cannot be laid down as a general proposition that in every case where a firearm is allegedly used by an accused person, the prosecution must lead the evidence of a Ballistic Expert to prove the charge, irrespective of the quality of the direct evidence available on record. It needs little emphasis that where direct evidence is of such an unimpeachable character, and the nature of injuries, disclosed by post-mortem notes is consistent with the direct evidence, the examination of Ballistic Expert may not be regarded as essential. However, where direct evidence is not available or that there is some doubt as to whether the injuries could or could not have been caused by a particular weapon, examination of an expert would be desirable to cure an apparent inconsistency or for the purpose of corroboration of oral evidence”.*

## **NON SUBMISSION OF SAMPLE**

**CASE- Surender Paswan vs State of Jharkhand  
(2003) 12 SCC 360**

**Background--**The bullet which was found embodied on the body of the deceased was extracted by the doctor and handed over to the police officials. The seized bullets were not sent for ballistic examination.

**Observation----**In that case the investigating officer had not sent the blood samples collected from the spot for chemical examination. This Court held that merely because the sample was not so sent may constitute a deficiency in the investigation but the same did not corrode the evidentiary value of the eye-witnesses.

**CASE- Amarsingh vs Balwinder Singh & others  
(2003)2 SCC 518**

**Background---**The investigating agency had not sent the firearm and the empties to the forensic science laboratory for comparison. It was argued on behalf of the defence that omission was a major flaw in the prosecution case sufficient to discredit prosecution version.

**Observation---**Supreme Court, however, repelled that contention and held that in a case where the investigation is found to be defective the Court has to be more circumspect in evaluating the evidence. But it would not be right to completely throw out the prosecution case on account of any such defects, for doing so would amount to playing in the hands of the investigating officer who may have kept the investigation designedly defective. This Court said:

"It would have been certainly better if the investigating agency had sent the firearms and the empties to the Forensic Science Laboratory for comparison. However, the report of the ballistic expert would in any case be in the nature of an expert opinion and the same is not conclusive. The failure of the investigating officer in sending the firearms and the empties for comparison cannot completely throw out the prosecution case when the same is fully established from the testimony of eyewitnesses whose presence on the spot cannot be doubted as they all received gunshot injuries in the incident."

{**Note-----**Such observation was also held by Supreme Court in other case— Sheoshanker Singh v/s state of Jharkhsnd & anothers (2011) Insc 132 }

## FORENSIC BIOLOGY

Forensic biology is the application of principles of biological sciences in the service of justice. Biological evidences can link an individual to the scene of crime or a object, whether they be a victim, suspect or bystanders. They play a major role in investigations for criminal and paternity cases.

Forensic biology covers a number of disciplines with a large number of applications and implications in forensic investigation. The major disciplines under forensic biology are Forensic DNA analysis, forensic serology, forensic anthropology, forensic odontology, forensic medicine, forensic entomology, forensic botany, diatom analysis, etc. The analyses of forensic biology samples help identify suspects and victims, blood grouping techniques were used for paternity testing, prior to DNA profiling.

The range of evidences analyzed in forensic biology includes body fluids, viscera samples, skeletal remains, hair, natural fibers, botanical evidences and water samples. Body fluids such as blood, semen and saliva have great significance as evidence in many criminal and paternity cases. Blood stain pattern analysis help in the reconstruction of the scene of crime.

Forensic biology analysis techniques have been utilized in crime scenes ranging from sexual assault and homicide to mass graves and disaster sites. There are various preliminary and confirmatory tests in forensic biology to identify body fluids and various anatomical features to examine skeletal remains and identify individuals. Hair, natural fibers, botanical evidences and diatoms are identified by their unique features and by comparison with reference samples. Forensic medicine techniques give details about cause, manner and mode of death of individual(s).

### FORENSIC BIOLOGY---APPLICATION AND VALUE OF MEDICAL EXPERT REPORT-

**CASE-**

#### **Dayal singh others vs State of Uttaranchal Criminal appeal no.529 of 2010**

**Background--**In case of conflict between ocular evidence and the medical evidence, what effect will it have on the case of the prosecution and what would be the manner in which the Court should appreciate such evidence?

**Observation—**Supreme Court observed that

- Possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused.
- The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution

**CASE---**

#### **In Kamaljit Singh vs State of Punjab [2004 Cri.LJ 28],**

**Background ---**The Court, while dealing with point of application of medical evidence made observation as how to deal in case where discrepancies are prevalent between ocular and medical evidence

**Observation---** “It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.”

- Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but that of the Court. Profitably, reference to the value of an expert in the eye of law can be assimilated as follows:
- "The essential principle governing expert evidence is that the expert is not only to provide reasons to support his opinion but the result should be directly demonstrable. The court is not to surrender its own judgment to that of the expert or delegate its authority to a third party, but should assess his evidence like any other evidence. If the report of an expert is slipshod, inadequate or cryptic and the information of similarities or dissimilarities is not available in his report and his evidence in the case, then his opinion is of no use.
- It is required of an expert whether a government expert or private, if he expects, his opinion to be accepted to put before the court the material which induces him to come to his conclusion so that the court though not an expert, may form its own judgment on that material. If the expert in his evidence as a witness does not place the whole lot of similarities or dissimilarities, etc., which influence his mind to lead him to a particular conclusion which hesitates in the court then he fails in his duty to take the court into confidence. The court is not to believe the ipse dixit of an expert. Indeed the value of the expert evidence consists mainly on the ability of the witness by reason of his special training and experience to point out the court such important facts as it otherwise might fail to observe and in so doing the court is enabled to exercise its own view or judgment respecting the cogency of reasons and the consequent value of the conclusions formed thereon. The opinion is required to be presented in a convenient manner and the reasons for a conclusion based on certain visible evidence, properly placed before the Court. In other words the value of expert evidence depends largely on the cogency of reasons on which it is based."
- We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the Court in arriving at a final conclusion. Such report is not binding upon the Court. The Court is expected to analyze the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not.

**CASE-**

**Umesh Singh vs State of Bihar**

**(Criminal appeal 43 of 2010 decided on 22 march 2013)**

**Background** –The scope and relevancy of medical evidence discussed.

**Observation**-where there are contradiction between medical evidence and ocular evidence ,it can be crystallized to the effect that though the evidentiary value of the witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the value of evidence. However where the medical evidence goes as far that completely rules out all the possibility of being ocular evidence being true,may be disbelieved.

## **FORENSIC BIOLOGY- RAPE CASES EXAMINATION—**

**CASE-**

**Dalip vs State of M.P**

**Criminal Appeal No. 1156 of 2010**

**Background**--In the instant case, Supreme Court opined that certain care has to be taken by the doctor who medically examine the victim of rape and laid down following guidelines-

**Observation**--- The victim of rape should generally be examined by a female doctor and should be provided the help of some psychiatric.

- The medical report should be prepared expeditiously and the Doctor should examine the victim of

rape thoroughly and give his/her opinion with all possible angle e.g. opinion regarding the age taking into consideration the number of teeth, secondary sex characters, and radiological test, etc.

- Rape victim shall be examined by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner.
- The medical examiner, to whom the woman is sent, shall examine without any delay and shall prepare a report containing following information:
- Consent of the woman or the person competent to give consent on her behalf exact time of commencement and completion of the examination.
- Name and address of the woman and the person who brought her. age of the woman, the description of material taken from the person of the woman for DNA profiling ,marks of injury, mental condition of the woman,
- Any other information/ detail required,
- Reasons for arriving at the conclusion from point e.g-Consent is the key to proceed for further examination.
- If the consent is not obtained, the examination shall not be deemed to be lawful.

CASE---- **Samira Kohli v. Dr. Prabha Manchanda and Another**  
**1(2008)CPJ 56 (SC)**

**Background**— The judgment has taken into consideration virtually all aspects of consent taking of the patient in India.

**Observation**---Supreme Court held that the person giving the consent must be competent to give consent and it must be voluntary and based on adequate information provided by the doctor, like nature of the treatment, all the risks involved etc.

CASE-- **Lillu @ Rajesh vs State of Haryana**  
**(Criminal Appeal no 1226 of 2011 Decided on 11 April ,2013)**

**Background**-The court had discussed the validity of the two figure test on medical examination of sexually abused victim. In this case, guidelines for the doctor to provide medical treatment to victim are laid down.

**Observation**- The Supreme Court observed that rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy.

**The Supreme Court observed that undoubtedly, the two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent.**

CASE- **Shri bodhisatwa gautam vs subhra charkraborty**  
**1996 SCC(1) 490**

**Background**-- involved was regarding systematic remedy in criminal complaint alleging sexual assault wherein complainant alleged of deceiving her by the accused with false assurance that he would marry her after receiving his parents consent and sexually abused her.

**Observation---** Supreme Court vide this landmark judgment recognized that rape amounts to a violation of a fundamental right as protected under Article 21, and issued a set of guidelines mandating legal, psychological and medical services be provided to rape victims in accordance with international human rights law.

## **OSSIFICATION TEST—**

**CASE- Ramdeo Chauhan alias Raj Nath vs State of Assam  
(2001) 5 SCC 714**

**Background----**while dealing with the reliability of the **ossification test** , The Supreme court held as follows: -

**Observation---**“An X-ray **ossification test** may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate a **test** as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon textbooks, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform.”

**CASE- Mukarrab Etc vs State of U.P  
2017(1) RCR (Criminal )103**

**Background---** A point on admissibility and reliability of medical opinion in age determination enquiry was discussed.

**Observation---**“Age determination is essential to find out whether or not the person claiming to be a child is below the cut-off age prescribed for application of the Juvenile Justice Act. The issue of age determination is of utmost importance as very few children subjected to the provisions of the Juvenile Justice Act have a birth certificate. As juvenile in conflict with law usually do not have any documentary evidence, age determination, cannot be easily ascertained, specially in borderline cases. Medical examination leaves a margin of about two years on either side even if **ossification test** of multiple joints is conducted.”

**Ossification test** cannot be regarded as conclusive when it comes to ascertaining the age of a person.

**CASE--- State of Madhya Pradesh vs Anoop singh  
(2015) 7 SCC 773**

**Background---** Scope of Ossification test was discussed

**Observation---**It was held that the **ossification test** is not the sole criteria for age determination (Admissibility and scope of Ossification test was also discussed in *Ram Suresh Singh v. Prabhat Singh*, (2009) 6 SCC 681 and *JyotiPrakashRai v. State of Bihar*, (2008) 15 SCC 223, *Mahadeo S/o Kerba Maske Vs. State of Maharashtra and Anr* (2013) 14 SCC 637)

## **POST MORTEM REPORT**

**CASE-- State Of Himachal Pradesh vs Jai Chand  
(Cri appeal no.269 of 2007 decided on 3 July,2013)  
(Supreme court had discussed the scope of Post-mortem report)**

**Background---** The respondent (herein) Jai Chand, along with two others were tried for offence punishable under Section 302 (r/w Section 34) IPC and Section 498-A IPC. The **Post mortem report** **opined that** the deceased died due to asphyxia caused by drowning and strangulation. Further mentioned that strangulation was not caused by suspending the body. The chances of dupatta as ligature mark in the case were minimum. Drowning and strangulation are possible in this case while putting the face/mouth of deceased in bucket filled with water and with pressure being applied.



## Observation

- While it is true that the **post-mortem report** by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the **post-mortem** can by no means be ascribed to be insignificant.
- The significance of the evidence of the doctor lies vis-à-vis the injuries appearing on the body of the deceased person and likely use of the weapon therefore and it would then be the prosecutor's duty and obligation to have the corroborative evidence available on record from the other prosecution witnesses."
- **Post-mortem report** is prepared by the doctor, who held the **post-mortem** examination on the body of the deceased and his findings have been recorded therein. The document by itself is not a substantive evidence but it is the doctor's statement in Court, which has the credibility of a substantive evidence and not the **report**, which in normal circumstance ought to be used only for refreshing memory of the doctor witness or to contradict whatever he might say from the witness box.
- In this the case, observation held by the court that all the findings given by High Court, rejecting the evidence of Dr. K.C. Chopra and other material witnesses are unsustainable, whereas those given by the Trial Court accepting the evidence of these witnesses were weighty and sound. Hence, allowed the appeal and set aside the impugned order of acquittal.

## CASE--- **kehar singh vs State( Delhi Administration)**

AIR 1988 SC 1883

**Background--The application of post mortem report was discussed**, exemplified in the celebrated murder case of Smt. Indira Gandhi late Prime Minister of India.

**Observation-----**The postmortem report is still reliable even if no x-ray was done. This is exemplified in the celebrated murder case of Smt. Indira Gandhi late Prime Minister of India, The Apex court stated in its judgment that undisputedly Smt. Indira Gandhi died as a result of the gun shot injuries inflicted by Beant Singh and Satwant Singh with their service revolver and carbine respectively. In view of such clear evidence about the cause of the death, the post .

## CASE-- **Chaman & Anr vs State Of Uttrakhand** **Criminal appeal no. 365 of 2013**

**Back ground-** A decomposed dead body of deceased Jagram recovered and the Post mortem report opined that the cause of death might be asphyxia.

**Observation---**In this case it is observed that the evidence of the doctor conducting the post-mortem examination that the cause of death is asphyxia. Breaking of bronchial tube is understandably a finding in endorsement of the above cause of death. Absence of visible injuries on the dead body, therefore as such, does not cast any doubt about the homicidal death of Jagram. This is also authenticated by the medical opinion that death had occurred between 12.6.1996 and 15.6.1996, i.e. during the interval between the abduction of the deceased and the detection of his dead body. On a anxious consideration of the entire gamut of the facts of the case and the principles of law evolved, we are, thus of the unhesitant opinion that the concurrent convictions and the sentences based thereon, as recorded by the trial court and the High Court, do not warrant any interference in the present appeals. The appeals are, thus dismissed

## CASE- **Rameshbhai Chandubhai Rathod vs State** **Criminal Appeal No 575 of 2007**

**Background –A case of murder was reported against the appellant.** Incriminating articles seized during the course of investigation were sent to Forensic Science Laboratory for analysis. The post-mortem examination of the body of the deceased indicated that the deceased was subjected to rape and was, thereafter, murdered. The appellant, who was arrested, was forwarded to Dr. Meghrekhaben Mehta for Medical Examination. Before Dr. Meghrekhaben Mehta, the appellant stated that he had sustained injuries while committing rape and murder.

**Observation**—The post-mortem report was relied upon and it was observed that human blood was found from T-shirt and no explanation was offered by the appellant as to how human blood was found on his T- shirt. The forensic expert report was rested upon.

## **BLOOD GROUP**

**CASE-**                    **State through CBI vs Dr Mahender Singh**  
                                  **(Criminal Appeal No 1360 of 2003)**  
                                  **(Landmark case wherein forensic expert opinion played vital role, as the body**  
**of the deceased was identified with the help of forensic experts)**

**Background**—Accused allegedly murdered his wife(Namita) and dismembered and mutilated her body and disposed her body parts at different places with the intention to destroy the evidence .The body parts discovered and identified to be those of Namita by reliable expert evidence and postmortem got conducted

**Observation**-This doctor had stated that it was evident that the dismemberment of the body-parts of the victim was committed by a professional doctor or a butcher, who knows the anatomy of the human body. This could be done with the aid of certain surgical instruments which could have been carried by the respondent with him as he was an Orthopedic Surgeon. The other possibility floated on behalf of the prosecution was that as the body parts had been simply disjointed at the various joints, it could be done by using a fork and a butter knife, which would be available to the respondent in the hotel room. The cloth recovered in the rubbish bin had been identified to be those of Namita. The blood group of the body stains found in the bathroom matches the blood group of Namita. The palm prints of the palm recovered from the rubbish bin match the palm print of Namita. The torso recovered has been identified to be that of Namita from Vergote lake which is only seventeen minutes walking distance from the hotel. Therefore, there is scientific evidence to establish the identity of the victim to be that of Namita.

**CASE-**    **Sri Sujit Biswas vs State of Assam**  
  **Criminal Appeal No 1323 of 2011**

**Background-** Sima Khatoon found missing and later she was found gasping, wrapped in a jute-sack. She breathed her last in the hospital. Accused was apprehended and convicted on the basis of circumstantial evidence.

**Observation**-The Supreme Court has discussed the parameter of application of circumstantial evidence and relied on Forensic Science Laboratory Report of the blood group of the victim- Sima Khatoon and held that:

The blood-stained jute-sack in which the Sima Khatoon had been found, the blood stained underwear of the appellant, as well as the apparel i.e., frock of Sima Khatoon were taken into custody. All the seized material objects were sent to the Forensic Science Laboratory, and the report received thereafter, revealed that the blood group of the blood found on underwear of the appellant, was the same as the blood group of the victim, Sima Khatoon.

## **ORIGIN OF BLOOD GROUP-**

**CASE-**    **Sattatiya@Satish Rajanna vs State**  
  **Appeal (Crl.) 579 of 2005**

**Background---** In this case, the occurrence had taken place on 1.10.1994 and the accused was arrested on 3.10.1994. He had led to recovery of his blood stained clothes and that of the deceased and the weapon used in the crime and all the articles were sent for chemical examination. The clothes of the deceased were found having human blood of 'O' group.

**Observation**--As per the Chemical Examiners Report, the clothes of the deceased were having human blood of O group. The pant and shirt, allegedly recovered at the instance of the appellant also had blood stains, but it could not be established whether the same was human blood of O group. The stain on the blade was also said to be of human blood but its identity could not be established by the chemical examiner.

Since the blood group was not matched. This Court did not believe the recovery of the weapon due to various reasons. Further, it opined that though blood stains were found on the clothes and the weapon used, yet the same could not be linked with the blood of the deceased, and, therefore, there was serious lacuna that the human blood stains present on the clothes of the accused and the weapon were sufficient to link the accused with the murder.

**CASE- Jagroop Singh vs State of Punjab  
(Criminal Appeal no. 67 of 2008)**

**Background**-- Accused allegedly murdered Jagjit and buried his body After being arrested, accused led to the discovery of one 'Kassi' (spade) which was buried under the ground near the place wherefrom the dead body was recovered. The seized weapon was sent for chemical analysis examination in the forensic science laboratory. As per the report of Forensic Science Laboratory, the weapon used, spade, was found stained with human blood; and that the doctor who had conducted the post mortem had clearly stated that the injuries found on the body of the deceased could be caused by the seized weapon.

**Observation**--The accused have not given explanation how human blood could be found on the spade used for agriculture which was recovered at their instance. The court reproduced a passage from **John Pandian v. State Represented by Inspector of Police, Tamil Nadu [(2010) 14 SCC 12] :-**

“The discovery appears to be credible. It has been accepted by both the courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the forensic science laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case.”

The court thus viewed, that we do not find any substantial reason to disbelieve the disclosure statement and the recovery of the weapon used. It is apt to mention here that the doctor, who has conducted the post mortem, has clearly opined that the injuries on the person of the deceased could be caused by the weapon (blade of such spade) and the said opinion has gone un rebutted.

**CASE- Raghunath,Ramkishan & Ors vs State of Haryana  
Appeal (crl.) 73 of 2002**

**Background**---Accused after having entered the house of victim inflicted injuries with the help of lathies etc and set their house on fire.Injured kundun succumbed to the injuries.The blood stained earth, Muffler and lathis, said to have been taken in possession by the police in course of investigations ,were sent for F.S.L.

**Observation**---"Forensic Science Laboratory report of the results of serological analysis of blood exhibit and origin group.There is no evidence on record to show that the blood stain sent for FSL bears a certificate that the blood is a human blood and it belongs to a particular group which is the same blood group of the deceased KundanLal. Therefore, the blood stain is a human blood is not conclusive evidence that it belongs to the blood group of deceased Kundan Lal.

## **BLOOD ANALYSIS-**

### **CASE-**

#### **R. Shaji v. State of Kerala (Criminal Appeal No. 1774 of 2010)**

**BRIEF FACTS-**On 16.2.2005, a pair of human legs was found floating in the backwaters of the Vembanad lake at Kottayam,.On 18.2.2005, Pavithran lodged an FIR alleging that his son Praveen had gone missing.On 19.2.2005, a torso in a plastic bag, was seen floating on the eastern side of the lake and Pavithran identified the torso, to be that of his son. While the inquest of the torso was being conducted.The DNA and blood stains tested. Chopper was recovered.Forensic Surgeon deposed that the dismemberment of the body of the deceased could certainly have been possible with the said chopper.

Police officers collected samples of blood stains from the floor of the said vehicle and also some hair. The hair and blood stains recovered during the investigation, were compared with the hair collected by the Scientific Officer from the deceased, which established that the said hair did in fact, belong to Praveen (deceased), and thus, the use of the said vehicle in the crime stood proved. The recovery of the skull of Praveen (deceased) was made on the basis of the disclosure statement of the appellant.

**Observation----**The blood group of the blood stains found on the chopper could not be ascertained, the recovery of the said chopper cannot be relied upon. A failure by the serologist to detect the origin of the blood due to dis- integration of the serum, does not mean that the blood stuck on the axe could not have been human blood at all. Sometimes it is possible, either because the stain is insufficient in itself, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question. However, in such a case, unless the doubt is of a reasonable dimension, which a judicially conscientious mind may entertain with some objectivity, no benefit can be claimed by the accused in this regard. Once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood group (s) loses significance.

In view of the above, the Court finds that it is not possible to accept the submission that in the absence of a report regarding the origin of the blood, the accused cannot be convicted, for it is only because of the lapse of time, that the blood could not be classified successfully. Therefore, no advantage can be conferred upon the accused to enable him to claim any benefit, and the report of dis-integration of blood etc. cannot be termed as a missing link, on the basis of which the chain of circumstances may be presumed to be broken.

## **SKULL SUPERIMPOSITION**

### **CASE-**

#### **Henry Westmuller Robert vs State 1985 SCC(3)291**

**(In this case, the Supreme Court had discussed about the scientific evidence wherein the fact of skull superimposition was discussed)**

**Background--** To extract ransom, a 9 years boy was kidnapped, who was later murdered. Accused was arrested. At his instance, the buried body of the deceased was recovered. The skeleton remains were sent to Forensic Science Laboratory for report which also obtained some photographs of victim with their negatives from the boy's family through the police.

**Observation---** After performing the superimposition test with enlarged photograph, the Scientific Officer of the Photography Section of that laboratory, found the skull, and the photograph to be of the same person.

### **CASE-**

#### **Shanker@Gauri Shankar and others vs State of Tamil Nadu (1994) 4 SCC 478,**

**Background-** Accused Shankar was running illegal business. Six deceased persons incurred his wrath and were done away to death by him and his associates and their dead bodies were either buried or were caused to disappear. Matter was investigated wherein forensic expert opinion was sought.

**Observation--** Assistant Director of Forensic Science Department who did the **super-imposition test** in respect of skull and jaw recovered and gave the opinion that the skull and jaw belonged to D-3 with reference to M.O. 19,

**CASE- Mahesh Dhanaji Shinde vs State of Maharashtra  
(2014) 4 SCC 292**

**Background-----**On 20.12.2003 the Superintendent of Police, Sindhudurg received information that some unidentified dead bodies were lying dumped on the hillocks of village Nandos, District Sindhudurg. A search operation was organised in the course of which 7 dead bodies were recovered. Though all the dead bodies were sent for post-mortem examination the high level of decomposition rendered any post-autopsy opinion impossible. The dead bodies were therefore sent to a team of doctors who performed forensic chemical tests on the dead bodies. Some of the organs from the dead bodies were sent for DNA test and the skulls sent for super-imposition tests.

**Observation--** Accused were convicted as they committed a series of heinous, depraved and diabolical crimes resulting in death of innocent victims and assault on some of the victims were merciless and gruesome, some being hapless children.

## **FORENSIC TOXICOLOGY**

Toxicology is the study of the adverse effects of chemicals on living organisms. Forensic toxicology takes it a step further, including a number of related disciplines such as analytical chemistry, pharmacology and clinical chemistry to assist in the detection and interpretation of drugs and poisons in medicolegal death investigations, human performance issues; e.g., driving under the influence, compliance and other related matters. In these investigations, the three main objectives (respectively) are to:

- Establish if toxicants are present and capable of contributing to death
- Establish if toxicants are present and capable of causing behavioral changes
- Establish if substances are present and whether or not they represent legitimate use or exposure, such as prescribed medications or workplace exposures

Forensic toxicology applies analytical chemistry to the purposes of the law, and includes the analysis of a variety of fluids and tissue samples to determine the absence or presence of drugs and poisons. Once the analytical component is complete, the toxicologist has the equally challenging aspects of interpreting the findings.

Toxicology testing can determine whether levels of toxic substances may have contributed to this death, regardless how the individual died,

How the evidence is collected??

Specimens sent for toxicology testing are usually collected by the forensic pathologist (who may also be an appointed “medical examiner” or “coroner” in some jurisdictions) or mortuary technician during an autopsy. Specimens must be properly identified, labeled and sealed as soon as practicable after collection. All specimens pertaining to a case must be collected and bagged separately in tamper-proof containers. Unique numbered seals are used to track all evidence for each case. Like any other evidence, the chain of custody must be preserved at all times, from the mortuary through the laboratory testing, reporting and storage, for court purposes.

**CASE- Anant Chintaman Lagu vs State  
AIR 1960 SC 500**

**Background--**The appellant was charged for the murder of Laxmibai Karve by administering some unrecognised poison or drug.

**Observation--**The Supreme Court observed as under:-

”At the trial of a person for murder by alleged poisoning, the fact of death by poisoning is provable by

circumstantial evidence, notwithstanding that the autopsy as well as the chemical analysis fail to disclose any poison; though the cause of death may not appear to be established by direct evidence, the medical evidence of experts and the circumstances of the case may be sufficient to infer that the death must be the result of the administration to the victim of some unrecognised poison or drug which acts as a poison, and a conviction can be rested on circumstantial evidence provided that it is so decisive that the court can unhesitatingly hold that the death was not a natural one.”

The court stated in a case of poisoning, the prosecution must establish:

- That the death was caused due to poison;
- That the accused possessed the poison;
- That the accused had an opportunity to administer the poison to the deceased.

If these facts are proved and there is motive, the court may be able to draw the inference, that the poison was administered by the accused to the deceased resulting in his death.

**CASE- Bhupender Singh vs State of Punjab  
1988 AIR 1011**

**Background---**Appellant along with his parents, was tried for committing the murder Gian Kaur, by administering poison.

**Observation---** HELD: (1) Section 293 of the Code of Criminal Procedure provides that the report of scientific experts may be used as evidence in any inquiry, trial or other proceedings of the Court.

(2) No hard and fast rule can be laid down as regards the value to be attached to the report of the chemical examiner.

(3) The chemical examiner does not, as a rule, give an opinion as to the cause of death but merely gives report of the chemical examination. The report itself is not crucial. It is a piece of evidence. The only protection to it is that it does not require any formal proof. It is, however, open to the Court, if it thinks fit, to call the chemical examiner and examine him as to the subject matter of the report. The report should normally be forwarded to the doctor who conducted the autopsy.

(4) In poison murder cases, the accused are not acquitted solely on the failure of the prosecution to establish one or the other requirement. They are not to be acquitted solely on the ground that the prosecution has failed to prove that the accused had the poison in his possession, and are to be acquitted by the Court taking into account the totality of the circumstances including insufficient motive, weakness in the chain of circumstantial evidence and likelihood of the deceased committing suicide.

(5) Murder by poisoning is run like any other murder and the accused cannot have a better chance of being exempted from sanctions 411 than in other kinds of murders.

(6) The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be obvious very many facts and circumstances out of which the Court may be justified in drawing permissible inference that the accused was in possession of the poison in question.

(7) The insistence on proof of possession of poison with the accused invariably in every case is neither desirable nor permissible. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning.

(8) Murder by poison is invariably committed under the cover and cloak of secrecy. Nobody will administer poison to another in the presence of others. The person who administers poison to another in secrecy will not keep a portion of it for the investigating officer to come and collect it. The person who commits such murder would naturally take care to eliminate and destroy the evidence against him. In such case, it would be impossible for the prosecution to prove possession of poison with the accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The Court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of the poison with the accused.

**CASE--** **Jaipal vs State Of Haryana**  
**2002[(crl.) 705 of 2001]**

**Background---**Appellant convicted for murdering his wife by poisoning. The post mortem report opined that the deceased died because of (Celphos) poisoning but Forensic Scientific examination of several organs of the body of the deceased and the samples collected from the body exclude the presence of aluminium phosphide (celphos).

**Observation---**The SC stated that there is no probability of the poisoning of aluminium phosphide (celphos) thus failing to fasten the guilt on the accused leaving no room for doubt. The conviction of the accused under Section 302 IPC set aside.

**NDPS ACT-----**

**CASE-** **State of Rajasthan vs Jainudeen Sheikh**  
**(2016) 1 SCC 514**

**Background -** An intoxicant material was found from the possession of the accused without any license. An FIR was registered under NDPS Act. There was delay in obtaining the report from the Forensic Science Laboratory about the contraband article. The court held the custody of accused illegal and granted compensation.

**Observation-** The Supreme Court observed that the State Government has not established Forensic Science Laboratories despite the orders passed by this Court; that there has been delay in getting the seized articles tested.

The Supreme Court set aside the judgment of the trial court of granting compensation as There was no material whatsoever to show that the prosecution has deliberately roped in the accused persons.

**CASE-** **Vijay Singh Chandubha Jadeja vs State of Gujrat**  
**AIR 2011 SC 77**

**Background-**This case belongs to the application of the Section 50 of the NDPS Act under question. In view of the large number of cases coming under the provision of NDPS Act. The interpretation of section 50 of the Act requires the little more clarification as its applicability is quite frequent in many cases.

**Observation-**Supreme Court states that, *“We have no hesitation in holding that in so far as the obligation of the authorized officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is **mandatory** and requires a **strict compliance**. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision”.*

- The concept of '**substantial compliance**' has been erroneously read into Section 50 of the NDPS Act, do not lay down the correct proposition of law.
- The insertion of the two sub-sections [subsection (5) and (6) of Sec- 50] does not obliterate the mandate of sub-section (1) of Section 50 to inform the person, to be searched, of his right to be taken before a gazetted officer or a Magistrate.
- We are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimize the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate.

**CASE-** Arif Khan@Agah Khan vs State of Uttarakhand

**Criminal Appeal no 273 of 2007**

**Background-** Accused was charged for having 2.5 kg of charas in his possession. Later, he was acquitted due to noncompliance of section 50 of NDPS Act.

**Observation--**The Hon'ble Supreme Court observed that the search and recovery of the contraband was not made in accordance with the procedure prescribed under section 50 of NDPS act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer.

**CASE-** Ashok Dangra Jaiswal vs State of M.P

**AIR 2011 SC1335**

**Background-**In this case appellant was charge sheeted for possession and recovery of smack powder (heroin)

**Observation---**The Supreme Court set aside the conviction of the appellant and other two accused. It was observed, that during the examination of witnesses, they did not support the case of prosecution. There was unnecessary delay in submission of samples to the laboratory.

- There is no explanation where the seized substance was kept in the meanwhile.
- The alleged narcotic powder seized from the possession of the accused, including the appellant was never produced before the trial court as a material exhibit and once again there is no explanation for its nonproduction.

**CASE-** Narcotics central Bureau vs Sukh Dev Raj Sodhi

**AIR 2011 SC 1939**

**Background-** An Appeal was preferred against the order the High Court which had set aside the conviction of accused due to non compliance of Section 50 of NDPS Act.

**Observation-**The Supreme Court relied on the judgement of **Vijaysinh Chandubha Jadeja v. State of Gujarat (supra)** and held that requirement of Section 50 of the NDPS Act is a mandatory requirement and the provision of Section 50 must be very strictly construed. The requirement under Section 50 of the NDPS Act is not complied with by merely informing the accused of his option to be searched either in the presence of a gazetted officer or before a Magistrate. Thus dismissed the appeal.

**CASE-** KISHAN CHAND V. STATE OF HARYANA

**AIR 2013 SC 357**

**BRIEF FACTS-**

- In this case polythene bag containing opium is caught from the accused. The Trial Court convicts the accused under section 18 of the NDPS Act.
- The accused challenged the decision on the ground of non-compliance of section 42 of the Act. High Court upheld the decision of trial court stating that on receiving secret information the sub inspector did not write down because of the possibility that the accused may escape. Hence, non-compliance of section 42 of the Act in the present case is not fatal to the prosecution. Aggrieved by the decision, appeal was made to the Supreme Court

**DECISION-**

- Supreme Court set aside the judgment given by high court and trial court stating them to be erroneously.
- Supreme Court stated that these provisions are mandatory and total non-compliance of section 42 of the Act is incurable. These are the penal provision with harsh punishment and hence, should be construed strictly as they are for the protection of person falsely implicated.



**CASE-****SUKHDEV SINGH V. STATE OF HARYANA****AIR 2013 SC 953****BRIEF FACTS-**

- A received secret information about the accused engaged in the practice of selling - chura powder containing contraband.
- Aggrieved by the decision an appeal was made to the Supreme Court for vitiating the trial as there was non-compliance of section 42 of the Act.

**DECISION-**

- Supreme Court set aside the decision of trial court and high court.
- Section 42 of the Act can be divided into two parts- first power of entry, search seizure and arrest without warrant or authorization as mentioned under sub-section (1) of section 42 and second reporting of the information in writing and sending its copy to a higher officer as per sub-section (2) of the Act.

**CASE-****HARJIT SINGH V. STATE OF PUNJAB****AIR 2002 SC 3040****BRIEF FACTS-**

- In this case, opium was recovered from the appellant weighing 7.10 kg contained 0.8% morphine i.e 56.96 gm, the quantity was below the commercial quantity more than the minimum quantity prescribed under the notification issued in this respect.
- It will depend upon the morphine content and if this is less than the commercial quantity of morphine, the maximum sentence cannot be awarded.
- Chemical analysis of the contraband material is essential to prove a case against the accused under the NDPS Act.
- The notification also makes a distinction not only between opium and morphine but also between opium and opium derivatives.

**DECISION-**

- Supreme Court observed the fact that it does not relate to a mixture of narcotic drug and psychotropic substance with one or more substances. The material so recovered from the appellant is opium in terms of section 2(xv) of the NDPS act.
- In such fact situation, determination of the content of morphine in the opium becomes totally irrelevant for the purpose of deciding whether the substance would be small or commercial. An Appeal was preferred. An Appeal was preferred quantity.
- The entire substance has to be considered to be opium as the material recovered was not a mixture. Undoubtedly, the FSL report provided for potency of the opium giving particulars of morphine content. It goes without saying that opium would contain some morphine, which should not be less than the prescribed quantity, however the % of morphine is not a decisive factor for determination of the quantum of punishment, as the opium is to be dealt with under a distinct and separate entry from that of morphine.

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