

# **A CRITICAL ANALYSIS OF THE RELEVANCE OF FORENSIC EVIDENCE IN INDIA**

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## **INTRODUCTION**

Forensic science is the use of science in the service of the law. Sciences used in forensics include any discipline that can aid in the collection, preservation and analysis of evidence such as chemistry (for the identification of explosives), engineering (for examination of structural design) or biology (for DNA identification or matching). A forensic scientist is expert in any technical field and can provide an analysis of the evidence, witness testimony on examination results, technical support and even training in his or her specialized area.

Analysis of forensic evidence is used in the investigation and prosecution of civil and criminal proceedings. Often, it can help to establish the guilt or innocence of possible suspects. Forensic evidence is also used to link crimes that are thought to be related to one another.

## **NEED OR RELEVANCE OF FORENSIC EVIDENCE**

Right to fair trial is the right of the accused and the party to the proceedings. It is their human right, which has also been recognized under the International law. Article 10 of Universal Declaration on Human Rights, Article 14 of International Covenant on Civil and Political Rights, Article 6 of European Convention on Human Rights, Article 7 of African Charter on Human Rights, Article 8 of American Convention on Human Rights, etc. provides for fair trial as a human right.

Oral and documentary evidence cannot always be sufficient for proving the guilt of the accused beyond reasonable doubt. We cannot ensure justice in all cases only with the help of oral evidences. Depending on the facts and circumstances of the case, we need assistance,

corroboration from other alternatives of collecting evidences, and one of the alternatives can be forensic evidence.

There are many provision under the Indian Evidence Act, Criminal Procedure Code which provides for assistance by way of forensic evidence, so that evidences could be collected which could promote fair justice, and help the court establish the guilt or innocence of the accused beyond reasonable doubt on the basis of actual facts and evidence.

Forensic evidence needs to be collaborated with oral evidence to prove the guilt beyond reasonable doubt. In this way, it also ensures fair investigation and to an extent eliminate the chances of unfair means for extraction or collection of evidences (For example, using third degree to extract the information or evidences from an accused person or person connected with the accused).

## **STATUTORY RECOGNITION**

Forensic evidence has been recognized under –

- 1) Section 9 of IEA – makes all the facts which helps in explaining the fact in issue or introducing the fact-in-issue/relevant fact as relevant. So, if forensic evidence helps in explaining or introducing the fact in issue, then it is relevant.  
For example, whether a person has committed rape on the prosecutrix or not, the forensic report would explain the fact-in-issue – like forensic report shows that accused is medically incapable to have sexual intercourse, then it would be a relevant fact.
- 2) Section 45 of IEA – which talks about expert opinion in the area of foreign law, science, art, handwriting and finger impression.
- 3) Section 51 of IEA – which provides that opinion as well as the grounds on which the expert forms the opinion is also relevant.
- 4) Section 112 of IEA – if the opinion is regarding legitimacy of the child and if the child is born within subsistence of marriage or 280 days thereafter, then it is a conclusive proof that the child is the legitimate child of the husband of the wife; unless there is a non-access between the parties. In this also forensic evidence is relevant to prove the non-access.

- 5) Section 114 of IEA – This provides that court may presume the existence of certain facts, which it thinks likely to have happened.

Court can give the direction for DNA test, but the wife (mother of the child) has right to privacy which is a fundamental right. So, she cannot be compelled to undergo such DNA test, but as accused person also has a right which needs to be taken care of. Therefore, if wife refuses DNA test, negative inference can be drawn under Section 114.

- 6) Section 46 of IEA – when court has taken assistance from an expert to form an opinion on specified subjects, then facts bearing upon opinion of experts are also relevant (if the opinion of expert can be contradicted with the facts).

For example, an expert conducts medical examination on deceased and comes to the conclusion that he has died of consuming certain type of poison. The fact that some other person died of consuming similar nature of poison shows different symptoms while dying, it would be a relevant fact to contradict the opinion of the expert.

- 7) Section 53 and 53A of CrPC – It provides for compulsory medical test. It authorizes the investigating officer to get the medical examination of the accused person (which can be in the nature of DNA test also) and reasonable force can also be used if the accused person resists. Section 53A is about medical examination of person accused of rape.

- 8) Section 293 of CrPC – talks about DNA expert who may be specified as Government scientific expert and may be notified as such under Section 293(4) (g). So, DNA test needs to be done only in recognized laboratory by recognized expert. There are certain procedural requirements in conducting DNA test which needs to be followed.

In *Dharam Deo Yadav v State of U.P.*<sup>1</sup>, the Supreme Court said that we have been relying for years on oral evidences of the witnesses but we cannot say that witnesses are always right, and they cannot be manipulated or tutored. So, this affects the administration of justice. Therefore, time has come that ocular evidences need assistance from the forensic evidence to promote fair justice. But forensic sample can also be tampered with, so the safeguarding provision is the procedural requirement and guidelines of the court that needs to be followed while conducting the test. The court further said that, if the ocular evidence is not at all trust worthy and it has been ensured that forensic test is properly conducted, then the court can go to the extent of convicting the accused without any corroboration.

## SCOPE OF FORENSIC EVIDENCE

It can serve the following purpose –

- 1) Identification of the victim, if the dead body is disfigured.
- 2) Linking of the crime with the criminal. (For example, in case of rape, forensic test of accused can prove that he committed rape or not)

***Ram Kishan v. State of NCT of Delhi<sup>ii</sup>***, A person was arrested for ransom and 2-3 people who kidnapped the child for ransom were delivering the letter at the house of deceased. When the accused was dropping the 3<sup>rd</sup> letter at the deceased house he got arrested. When he was detained in custody, he shared the information with the police regarding the weapons which were used for the commission of the murder of the child who was kidnapped, and the weapon was discovered at that place. He also led to discovery of dead body.

The prosecution story was that the accused hit on the head of deceased with a large brick. The defence claimed that if it was believed to be true, there must be blood stains on the clothes of the accused and foot, but the DNA test of his clothes and his body found no trace of blood matching the blood of the kidnapped deceased.

Court convicted the accused based on his conduct, documentary evidence of letter, content of the letter, discovery statement and they ignored the forensic evidence and held that there is nothing incriminatory found in the forensic evidence.

If other evidences are proving beyond reasonable doubt the guilt of an accused person, it does not matter that there is nothing in the forensic evidence.

DNA test can also help in acquittal of the accused person when he has been wrongly implicated.

***Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh<sup>iii</sup>***, There was a girl who was raped and the allegation was against person who was found bringing the dead body of the girl and the dead body was wrapped in the shirt of the accused person. So, the only circumstantial evidence was that the accused was seen coming with the dead body out of the field. DNA test of the body of the accused was conducted and also of the dead body of the girl. It was found that the dead cell of the skin of the accused was found on the body of the deceased girl.

Court set aside the conviction of the accused person by stating that it may have happened as the story of the defence states that he found the girl in the field, he took her out of the field and

just to cover her body he wrapped the body with his own shirt, and when he was lifting the body of the girl after covering, some of the dead cell of skin of accused may have come in contact with the body of the deceased.

Let's take an illustration of rape case – Prosecutrix says that she has been raped, whereas DNA test of the accused says 'No'. DNA test of prosecutrix also says that there is nothing to show that rape has been committed by accused.

***Ved Prakash v. State of Haryana***<sup>iv</sup>, Prosecutrix alleged that that she had been raped while accused person who was blackmailing her with her nude photographs which were taken from the ventilator of the bathroom when she was bathing. The prosecutrix story was that accused was blackmailing her to make the photograph public and he kept on raping her on more than one occasion. But there was nothing in the DNA test to show that the accused raped her.

Investigation was faulty in the case in the sense that investigation authorities never saw the photographs. Accused says no photographs were taken. Prosecutrix said that she only saw the photograph and did not have custody of it.

Court acquitted the accused, reason being there was nothing in DNA report which could show that she was raped by accused person and other evidence which prosecutrix was trying to rely were photographs which were never produced before the court and were never brought on the file of the investigation agency. Also, as alleged that photograph was taken from ventilator of the bathroom of accused to ventilator of bathroom of victim, but on physical examination it was found that height of the bathroom of prosecutrix was more, so it was not possible to take photograph from the bathroom of the accused. Also, there was enmity between the two families, court said that it is important as it shows the motive behind the allegation.

When the prosecutrix complains that she has been raped, but later on turns hostile and the DNA report shows that there had been sexual relation between the two. Court in those cases can acquit the accused on the ground that it was consensual sex.

***Emarajan v. State***<sup>v</sup>, Allegation was that accused promised to marry the prosecutrix and consequently they indulged into sexual activity and she gave birth to a child, and the accused resisted to marry. But, during the trial prosecutrix turned hostile and said that she was not raped. Court concluded the case by giving it a name of consensual relation.



*State of Gujarat v. Mahadev Bhai Maghabhai Suthar*<sup>vi</sup>, Allegation of repeated rape by father-in-law, but later on during the trial prosecutrix turned hostile. Also, the DNA report proved the child born out of that alleged rape to be of father-in-law. As the prosecutrix turned hostile, mens rea cannot be proved. Therefore, Court gave it a name of consensual relation between the two, and father-in-law was acquitted.

**Impact of faulty investigation** – When the investigating authorities does not follow the guidelines relating to collection of sample, handing over of samples to recognised laboratories, etc., as prescribed under Section 293 of CrPC.

In *Shiney Suraj Ahuja v. State of Maharashtra*<sup>vii</sup>, where he was committing rape on domestic help, Shiney Ahuja alleged that samples which were collected were not handed over to the recognised laboratory. As the report is not of the recognised laboratory, it should not be relied upon. But, the court in this case refused to rely on the plea of Shiney Ahuja.

*Rajiv Singh v. State of Bihar*<sup>viii</sup>, Wife of the husband got missing. She was travelling with the husband in train and after that she got missing. Husband said that he does not know where the wife is. After some days, a dead body was recovered near the railway track and the police stated that the dead body is of the lady who is missing. Because the dead body was so decomposed, it was not possible to physically recognise from the appearance of the lady, therefore DNA test was conducted of the discovered body and samples were taken from the parents of the lady who was missing. The investigating agency did not follow the guidelines for collection, retention, handing over of samples, and gave it to lab which was not recognised by government. Court held that such report cannot be relied upon, as it did not follow the guidelines and procedures for conducting the forensic test.

**Impact of non-conducting of DNA test under Section 53A of CrPC:**

*State of Punjab v. Mohinder Singh*<sup>ix</sup>, in this case Court held that under Section 53A it is right of an accused to have his body examined when there is an allegation of rape against him. During the trial if the accused informs the court that such test has not been conducted (which can prove his innocence), and if from other evidences of the prosecution it has been proved beyond reasonable doubt that accused has committed the offence, there is no adverse impact on the case of the prosecution and the accused can still be convicted.

So, if test not conducted under Section 53A, benefit of doubt will not go in the favour of accused person for faulty investigation, if and only if his guilt has been proved beyond reasonable doubt.

Prosecution need not rely on all types of evidence; it is upon them to choose between available evidence and prove beyond reasonable doubt.

Accused can take the defence, but why did he not request the investigating officer or the magistrate to conduct the test during investigation.

**Impact of negative DNA finding of child paternity in rape cases** – If it is proved that child is not of accused, then due to lack of evidence (because after 280 days evidence of sexual intercourse cannot be found), the accused will get acquitted from the charges of rape also.

*State of Gujarat v. Jayantibhai Somabhai Khant*<sup>x</sup>, Minor prosecutrix alleged that father of her classmate forcibly raped her and threatened her to remain quiet, in consequence of which she got pregnant and delivered a child. DNA test of the child proved that the child is not the child of the father of the classmate. As there was time gap in the alleged act of the forced rape and the complaint before the court, DNA test of the prosecutrix could not give adequate evidences to prove the sexual intercourse by the father of her classmate. Court discharged the accused for both the charges of rape as well as paternity.

But, if DNA examination of child would have proved that the child is of the father of her classmate, then it could have impliedly proved the act of rape as well.

*Premjibhai Birjubhai Khasia v. State of Gujarat*<sup>xi</sup>, Court held that if the DNA evidence shows that the accused is not guilty, the person is entitled for the acquittal.

*Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik*<sup>xii</sup> and *Dipanwita Roy v. Ronobroto Roy*<sup>xiii</sup>, Supreme Court held that it can direct DNA test to prove the non-access, which would ultimately prove the paternity of the child. But, as the lady has right to privacy as fundamental right, she has every right to refuse to undergo such test. But, as accused also has right which needs to be honoured, so negative inference under Section 112 will go against her. (This is the position under Civil Cases).

In civil cases, parties cannot claim DNA test as a matter of right. Court will grant the direction depending upon the facts and circumstances of the case.

Under criminal cases, accused can be compelled to give DNA test under Section 53 and 53A of CrPC.

If prosecution refuses to undergo DNA test, the case of prosecution will fall. For example, if missing complaint filed by parents, and dead body is discovered. To identify, if the parent refuses DNA test, their case will drop down.

If prosecutrix *alleging rape refuses to undergo medical examination, her statement will not be relied upon. In Sujata Pradhan v. State of Jharkhand*<sup>xiv</sup>, prosecutrix alleged that accused indulged in forced sex, resulting into birth of the child, but she refused to undergo DNA test of the child born to her. As a result, her case was dropped out.

If the accused refused to undergo DNA test, then it will have no effect.

## CONCLUSION

There is a unanimity that medical and forensic evidence plays a crucial role in helping the courts of law to arrive at logical conclusions. Therefore, the expert medical professionals should be encouraged to undertake medico legal work and simultaneously the atmosphere in courts should be congenial to the medical witness. This attains utmost importance looking at the outcome of the case, since if good experts avoid court attendance, less objective professional will fill the gap, ultimately affecting the justice. The need to involve more and more professionals in expert testimony has been felt by different organizations.



## ENDNOTES

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- i (2014) 5 SCC 509
  - ii 2015 (3) Cri CC 456
  - iii (2009) 14 SCC 607
  - iv 2015(1) RCR (Cri) 807
  - v 2015 SCC OnLine Mad 6529
  - vi 2015 LawSuit(Guj) 2789
  - vii (2010) 0 ALL MR (Cri) 92
  - viii (2015) 16 SCC 369
  - ix 2008(3) R.C.R (Criminal) 226
  - x 2015 SCC OnLine Guj 6356
  - xi (2017) 4 SCC 52
  - xii (2014) 2 SCC 576
  - xiii (2015) 2 SCC 94
  - xiv 2015 SCC OnLine Jhar 380

