

Evidentiary Value of Expert Opinion



* Prof. (Dr.) B.P. Tiwari

* Former HOD/Principal, Govt. State Law College, Bhopal



December, 2012

ABSTRACT

An expert is one, who has acquired special knowledge, skill and experience in any science, art, trade or profession. Therefore the evidence of a witness as opinion of an expert, it must be shown that he has made a special training of the subject or acquired special knowledge (having experiences) therein or in other words he has skill and other knowledge in the concerning subject.

Keywords: Evidentiary Value, Expert, Finger impression, Experts examination, substantially Corroborated

Introduction:

The opinion of an expert is admissible as relevancy fact under section 45 of the evidence act. The provision incorporated in section 45 is that the court, in order to form an opinion upon a point of foreign law, or of science or art, or as to identity of disputed handwriting or finger impression, can treat the opinion of persons specially skilled in such foreign law, science or arts to identity of disputed handwriting, or finger impression as relevant facts on that particular issue. Thus the opinion of persons, especially skilled in foreign law, science or art as to the identity of handwriting or finger impression, called expert are relevant facts.

Expert Opinion

The expression as "science" or art as used in section 45 as of wide import and should not be attributed a narrow meaning. The term of "science" and "art" therefore, have to be construed widely to include health in their ambit the opinion of an expert in each of such branch.¹

In state of A.P. v/s Madige Boosenu², Supreme Court held that an excise inspector's opinion, deposing about the nature of liquor only on the basis of smell can't be expected as opinion evidence of expert under section 45 of the evidence act.

An expert is not a witness of fact and his evidence is of supplementary or advisory nature. Expert opinion evidence must be examined by following way:-

1. The scientific criteria that has been applied;
2. The reasons given in support of such opinion and
3. The data and materials used

Thus, the expert is required to furnish before the court the necessary scientific criteria for examine or testing and arriving at result so as to enable the judge to form his independent judgment by the application of that situation to given facts. The credibility of an expert witness depends on the reasons and stated in support of conclusion and the tool technique and materials, which from the bases of such conclusion³.

Handwriting:-

The fact that disputed documents has been written or signed by a specific person can be proved under section 47 of the evidence act by a person who is acquainted with the handwriting of the person by whom it is supposed to be written or signed under section 73. The court is also empowered to compare the writing, signature or seal ascertain whether a specific disputed signatory writing or seal is that of a person by whom it purports have been made.

Section 73 of the evidence act empowers the court conducting trial or inquiry to direct an accused person to give his samples writing to enable the same to be compared by a handwriting expert chosen or approved by the court⁴. In the above issues it is also worthy of observation that section 45 and section 73 are complementary to each other and irrespective of an opinion of the handwriting expert the court can compare the admitted writing with the disputed writing and come on its own conclusion. Such exercise of comparison is permissible under section 73 of the Evidence Act.⁵ Whenever there is dispute about handwriting, both parties to the case almost unchangeable, put before the court their own experts, who make themselves available on hire to swear in favour of the client paying for them professional fee. This creates very confusing circumstances. In such a situation, the court must examine the conflicting opinion in the light of objectivity and probability and should not abdicate its duty to decide which of the opinion correct.

In Delhi Administration v/s Paharancase⁶ SC laid down that the handwriting a person can be proved in following way:

1. By an admission of the person who wrote it.
 2. By the evidence of some person who saw it written.
- The above are the best methods to proof of disputed handwriting. Further there are three other methods of proof by opinion.

1. By the evidence of a handwriting expert.
2. By the evidence of a witness acquainted with the handwriting of the person, who is said to have written the writing is disputed.⁶
3. The opinion formed by the court on comparison made by itself.

The SC held that the above three cognate modes of proof involve a process of comparison to be made by handwriting expert or by person familiar with the handwriting of the person concerned or by the court. State of Maharashtra v/s Suchdeo Singh and another case⁶, SC held that before a court can act regarding the opinion of handwriting expert following to content must be proved beyond reasonable doubt.

1. The genuineness of the specimen of the admitted handwriting of the concerned accused and,
2. That the handwriting expert as a competent, reliable and dependable witness whose evidence inspires confidence.

Opinion of Finger Prints:-

The science of identification of finger prints no doubt, has developed to the state of exactitude but the main thing to be scrutinized by court write appreciating evidence related thereto is whether the experts examination is thorough, complete and scientific. In regard to this issue Supreme Court held in Murarilal v/ s State of M.P⁷, the risk of an incorrect opinion is practically non-existent.

Where the finger prints are clear, the court must verify the evidence of the expert by applying its own mind to similarities and dissimilarities afforded by the finger prints before coming to the conclusion on way or other. As held in Mohanlal and Another v/s Ajit Singh and another⁸, the SC explained a majority of finger prints found at crime scenes or on crime article is particularly smudge and it is for the experienced and skilled finger print expert to say whether a mark is usable as finger print evidence. Similarly it is for a

qualified technician to examine and give his opinion whether the identity can be done on eight or even less identical characteristics in an appropriate case.

Evidentiary value:-

An expert witness is not wholly reliable. His evidence of an advisory nature regarding evidentiary value of opinion evidence of handwriting expert it has been observed by the SC in Murarilal v/s state of M.P⁹, that generally it is said that it has hazardous to base a conviction solely on the opinion of an expert. An opinion of experts in general are unreliable but because human judgment is liable to error and one expert may go wrong because of some defect observations, some error of premises or honest mistake or conclusion. It is unfair and inferior type of witness. Again the above view adopted by the SC in case of Alamgir v/s state (NCT Delhi)¹⁰, saw that the science of identification of handwriting has attained more or less a state of perfection and the risk of an incorrect opinion is practically non-existent. The court went on further to record that there is no rule of law, nor any rule of prudence which has crystallized in a rule of law that opinion evidence of handwriting expert must never be acted upon, unless substantially corroborated.

Conclusion:

In many cases where both parties call experts and conflicting views are heard on the same point. Again there may be cases where neither side calls an expert being unable to afford one. In all such circumstances it becomes a plain duty of the court to compare the writing and give its own views. The duty can't be avoided by taking recourse to the reasoning that the court is to the reasoning that the court is not an expert. Where there is opinion of experts, that well and the court, where there is none, the court will have to seek guidance from the authorities, text books and the court's own experience and knowledge. But the court should discharge its duty.

REFERENCE

1. State through CBI New Delhi v. S J Choudhary, AIR 1996 SC 1491
2. State of Himachal Pradesh v. Jailal and others, (1999)
3. Ibid
4. Delhi Administration v. Paliram, AIR 1979 Sc 14
5. Lalit popli v. Canara Bank and others, (2003)3 S.C.6 583
6. (1992)3 SCC 700
7. AIR 1980 sc 531
8. AIR 1978 SC 1183
9. AIR 1980 SC 531
10. 2003 SCC 21