

# FIVE DECADES OF CRIMINAL PROCEDURE CODE AND ITS INFLUENCE ON APPRECIATION OF FORENSIC EVIDENCE IN INDIA

**Rakesh P. S**

Research Scholar, School Of Legal Studies, Cusat

**Dr. Harigovind P. C**

Assistant Professor & Director, School Of Legal Studies, Cusat

**ABSTRACT:** Justice has always been a standpoint of debate for the very reason of its complexity in understanding and defining the term. It has however been concluded that it is purely contextual. What seems justice in one sense may not be just in another. The complexity further touches its zenith, when it comes to 'criminal justice'. For a fun sake, it can also be understood as criminal's justice. However, this view cannot be completely disregarded. The adversarial criminal justice system has always given primacy to the rights of the accused especially in a criminal trial which has led to some serious damage to the justice as whole. A crime involves multiple stakeholders including the accused and the victim. Similarly, a criminal process involves numerous steps, of which the most important one finding the answers to the five classical questions involved in a crime; who, why, where, when and how. Advancement in science and technology has played a significant role in uncovering these complex questions pertaining to a crime scientifically with maximum precision.

A robust law governing criminal procedure is fundamental in channeling an effective criminal investigation. The Criminal Procedure Code, 1973 has been a guiding source for effective investigation for the past five decades. The code, through several amendments have catered the need of the modern times in adapting to scientific investigation and conclude a case with strong forensic evidences. Indian courts, unlike other jurisdictional courts was reluctant to go by the forensic evidences from the very beginning of use of forensic tools in investigation. However, over the years a passive deviation from the earlier rigid view can be observed. This paper tries to establish that Indian judiciary is passively turning in favour of forensic based evidences. Nevertheless, it is high time to deduce what actually caused such a re- think. For that purpose, the authors will examine landmark judgments relating to homicides and sexual offences, over the last five decades. Further, the paper will also discuss the pros and cons relating to the appreciation of the forensic evidences by the Indian courts.

**Keywords:** Forensic evidences, Corroboration, Expert Evidence, Examination, Criminal Justice

## INTRODUCTION

The conventional notion of crime revolves around as a nodus to particular society. However, crime can be seen as constitutive to understand the social, cultural, political and economic situations of a country.<sup>1</sup> Combating crime is the quintessential function of the state by means of criminal law. Criminal law unveils the aspect of social order of a particular society

at a particular point of time.<sup>2</sup> This perception plays a vital role in understanding the crime and crime investigation in modern era. Time has witnessed that, the criminals have favoured from advancement in science and technology. This has opened a large opportunity for the criminals to do experiments and come up with

<sup>1</sup> Hee-Jong Joo, "Crime and Crime Control" 62/63 Social Indicators Research (2003) 239

<sup>2</sup> Sandria B. Freitag, "Crime in Social Order of Colonial North India" 2 Modern Asian Studies 25 (1991) 227.

the best *modus operandi*.<sup>3</sup> The aim for which is to escape from the hands of criminal process. However, growth is not one-sided. The changing paradigm of crime has necessitated the policing to evolve accordingly. With the changing notion of crime and criminal behaviour, crime has been categorised into three heads- ordinary crimes, adaptive crimes and new crimes. Conventional crimes are brought under the category of ordinary crimes. Examples are theft, burglary and robbery. The basis of such classification is that, the statute already defines the crime, there would be case laws to refer and there exists a robust system to actively prevent, investigate and prosecute such crimes. On the other hand, adaptive crime is nothing but the science or technology infused ordinary crimes. Since the essence remains the same the system for combating ordinary crimes is used in this type of crime as well. However, precision and success will be varying for the reason that the law and precedence governing ordinary crimes may not sufficiently address the technologically adaptive version of the same crime. New crimes, as the name indicates deals with those acts or omissions which was never seen as a crime until the first instance. The offence relating to social abuse using technology is an apt example for the same.

Use of forensic evidence may have patent and latent impact on criminal justice administration. Evidently it can bring better analysis and conclusion to a criminal trial. Apart from the pieces of circumstantial evidence, forensic evidence can bring solid reasons for the conclusion of trial. It will expedite the criminal process and justice can be assured in a speedy manner. Impliedly the use of forensic evidence will result in fair trial and promise the principles of natural justice. Above all the criminal justice system can have a better result in settling litigation. It is also crucial to observe that introduction of fair use of forensic evidence in criminal trial can ensure a balance accused-victim rights. Abuse of power by investigators, prosecutors and unwelcoming assumptions by a judge can be controlled through the use of forensic tools. Hence, the system should not be ignorant or prejudiced in improving the legal

mechanism for incorporating forensic tools in criminal justice administration.

## FORENSIC EVIDENCE AND CRIMINAL JUSTICE

The primary objective of any criminal justice system is to punish the guilty. While punishing the guilty the system shall also ensure that no innocent has been wrongly convicted. The function of criminal justice system starts with investigation. Robert L. Collins advances three qualities of a police officer aiding effective crime investigation- determination, intelligence and skills.<sup>4</sup> Once the investigator apprehends a suspect, then his all attempt would be to establish the guilt of that person. The police laboratories can be of great help in analysing the physical evidences for narrowing down the suspects and to trace the identity of the criminal. However, one fails to reach the desired outcome due to various restrictions including lack of proper legal framework governing scientific crime investigation. The failure may be also because of infrastructural shortcomings and ineffective communications.

Another major stumbling block in the area of scientific crime investigations would be its impact on constitutional and human rights of the accused or the suspect. The best example to this context would be impregnable right against self-incrimination or simply right to silence. Under Indian law right to silence begins from the very moment a person is considered as an accused in the eyes of law and permeates through out the criminal process including the trial.<sup>5</sup> To the contrary the English system mandates all the persons to answer the questions posed during investigation. In addition to that those custodial interviews are electronically recorded and they are admissible evidence before the court of law. However, these provisions were diluted at later point of time.<sup>6</sup> The invasive techniques used in scientific interrogations are further tested under the touchstone of *substantive due process* forming the inseparable element of Art. 21 of the Indian Constitution.<sup>7</sup> However, lenient approach has been taken by the Indian Supreme Court in the aspects of collections of finger-prints, blood

<sup>3</sup> Sam McQuade, "Technology- enabled Crime, Policing and Security" 1/2 The Journal of Technology Studies, 32 (2006) 32

<sup>4</sup> Robert L. Collins, "Improved Crime Scene Investigations" The Journal of Criminal Law, Criminology and Police Science, 52(4) (1961) 469

<sup>5</sup> K Sreedhar Rao, "Criminal Justice System- Required Reforms", Journal of Indian Law Institute, 43(2) (2001) 155

<sup>6</sup> Criminal Justice Public Order Act, 1994

<sup>7</sup> Selvi v. State of Karnataka, 2010 (7) SCC 263

samples, handwriting and signature samples for the purpose of identification.

An analysis into the role of the judiciary in shaping the provisions of the Criminal Procedure Code, 1973 over the last five decades in tune with advancement in forensic science is very much essential at this point of time. In the beginning a thorough introspection into the introspection into term 'examination' linked with medical examination of accused and the victim shall be made. Further, how the apex court has taken positive note as to the use of forensic techniques in criminal investigation will also be looked into. An exploration on how the judiciary has tried encompass the forensic evidence into the stream of circumstantial evidence is to be made so as to understand the creative part of the Indian judiciary.

## **NATURE AND SCOPE OF 'MEDICAL EXAMINATION' UNDER CRPC**

The Code deals with medical examination at four instances. First, where after the arrest of the person, if there is a reasonable belief that the medical examination of such person will help in procuring further evidence, then the police officer can request the registered medical practitioner for medical examination.<sup>8</sup> Second, where the person is accused of committing or attempt to commit rape, if reasonable grounds persist to believe that such examination will afford evidence, then the police officer can make a request a registered medical practitioner to conduct examination of the accused.<sup>9</sup> The difference in both these provisions is that, the latter gives specifications as to three things. It clearly mentions that the registered medical practitioner shall be of that of a Government hospital or a hospital run by a local authority. Exception has been made in the absence of such a medical practitioner within sixteen kilometres radius from the place of crime, then any registered medical practitioner can do the examination. Additionally, the provision also makes it clear by elaborately stating the requirements regarding the content of the examination report.<sup>10</sup> Furthermore, the registered medical practitioner is obliged to

forward the report to the investigating officer without causing much delay and it shall form part of final report under section 173(5) (a) of the Code.<sup>11</sup>

The third instance where the code specifies about medical examination is with regard to the medical examination of a rape victim.<sup>12</sup> This provision is more or less similar to that of provision governing medical examination of rape accused. However, the medical examination of the victim is possible only if the victim or such other competent person give consent for the same.<sup>13</sup> The limitation of sixteen kilometres for considering any registered medical practitioner is absent in this provision and moreover, the medical examination shall commence within twenty-four hours from time of receiving the information.<sup>14</sup>

The last provision which deals with the examination is with respect to arrested person. According to this provision, there shall be a mandatory medical examination of the person arrested by a registered medical officer in the service of Central or State Government.<sup>15</sup> In absence of such medical officer, the examination may be conducted by any registered medical practitioner. Dissimilitude to the discussion of other provisions aforementioned, a copy of the report prepared by the medical officer under this section shall be given to the arrested person or to any person nominated on his behalf.<sup>16</sup>

## **SCRUTINISING THE TERM 'EXAMINATION'**

The explanation to the term examination was inserted in the code via amendment in 2005.<sup>17</sup> By virtue of which a registered medical practitioner can conduct any tests by using modern and scientific techniques that he deems necessary in a particular case, including DNA profiling.<sup>18</sup> The explanation given to the term 'examination' under section 53 of the Code is carried forward and for denoting the same meaning for the term examination used in sections 53A, 54 and 164A of the code.

'Examination' under CrPC vis-à-vis 'Measurements' under Criminal Procedure (Identification) Act, 2022

<sup>8</sup> Sec. 53 CrPC

<sup>9</sup> Sec. 53A CrPC

<sup>10</sup> Secs. 53A (2) (3) and (4) CrPC

<sup>11</sup> Sec. 53 A (5) CrPC

<sup>12</sup> Sec. 164 A CrPC

<sup>13</sup> Secs. 164 A (1) and (5)

<sup>14</sup> Sec. 164 A (1) CrPC

<sup>15</sup> Sec. 54 CrPC

<sup>16</sup> Sec. 54 (3) CrPC

<sup>17</sup> Sec. 8, The Code of Criminal Procedure (Amendment) Act, 2005 (Act No: 25 of 2005)

<sup>18</sup> Explanation to Sec. 53, CrPC

The scope of medical examination of the accused under the code is limited to an extent. This is because an examination under these provisions is made possible only upon the request of the investigating officer. The investigating may request for conducting such examination only if to the best of his reasoning such examination would fetch some evidence as to the commission of the offence. The language of the code suggests that, a police officer may request for the medical examination of the accused or the arrested person only if the result of the examination will be potentially incriminatory. Another aspect of limitation is that, the provisions speak only about the arrested person. The scope of medical examination under the code cannot be extended to a person prior to arrest.<sup>19</sup> A person cannot be forcibly subjected to such examination merely for a reason that he is a suspect or an accused. The pre- condition for invoking medical examination is the arrest of the person upon whom the examination is to be carried out.

The scope of examination under the provisions of the Code of Criminal Procedure has been broadened by Act of the parliament in 2022.<sup>20</sup> To strengthen the system of investigation, especially for the purpose of identification, the union government enacted a law authorising taking of measurements of convicts and other persons for the purposes of identification in criminal matters. The law further allows storage of these measurements in a database. The Act defines measurements and accordingly in-addition to the explanation provided for the term examination in the code, measurement includes impressions, photographs, physical and biological samples and their analysis. Furthermore, it includes behavioural attributes including signatures and handwriting.<sup>21</sup> The Act empowers a Magistrate to direct any person to give measurements.<sup>22</sup> The person cannot refuse to give such measurements and if the person does so, it shall be treated as an offence of obstructing public servant in discharge of public functions.<sup>23</sup> It further empowers the police officer or the prison officer as the case

may be to employ any such manner as prescribed by the Central Government to this effect<sup>24</sup> in case of resistance or refusal to give measurements by the person who is under an obligation to provide his measurements.<sup>25</sup>

## CONSTITUTIONAL IMPEDIMENTS ON SCIENTIFIC EXAMINATIONS

### Right against self- incrimination

The Indian Constitution guarantees every person accused of an offence shall not be forced to be the witness against himself.<sup>26</sup> This right has always been a central argument for those who rejects the usage of scientific examination. A better understanding on how the examinations holds a position in Indian laws is possible only through an in- depth analysis of cases of *M.P. Sharma*<sup>27</sup> and that of *Kathi Kalu Oghad*<sup>28</sup>

Revisiting *M.P. Sharma* and *Kathi Kalu Oghad*  
The issue in *M.P. Sharma* was that whether procurement of evidences from the accused himself by way of search conducted as per the provision of the code<sup>29</sup> violates the right against self- incrimination. The crux of the issue is that whether the right against self- incrimination is merely restricted to oral evidence alone. The court categorically stated that the meaning of 'to be a witness' is nothing other than to 'to furnish evidence' and it would be inappropriate to hold a view that the constitutional guarantee is given only to the testimonial evidence. A person can furnish evidence in any form be it orally or even by way of producing a document or a thing. There can be two possible understanding on this aspect based on the tool used for the search. If a person himself is asked to produce the document or a thing by way of notice from the side of the police or by way summons issued by the competent court<sup>30</sup>, then such production can be equated as testimonial within the ambit of Art. 20(3). Whereas, if the document or things are obtained by the issuance of a search warrant, the court is directing a police officer to get the document and produce it before the court. Thus, in this case as the direction is not directed

<sup>19</sup> *Urmila Devi v. Yudhvir Singh* 2013 SCC 15 624

<sup>20</sup> The Criminal Procedure (Identification) Act, 2022

<sup>21</sup> Sec. 2(I) (b), The Criminal Procedure (Identification) Act, 2022

<sup>22</sup> Sec. 5, The Criminal Procedure (Identification) Act, 2022

<sup>23</sup> Sec. 6 (2), The Criminal Procedure (Identification) Act, 2022; also see Sec. 186 Indian Penal Code, 1860

<sup>24</sup> Sec. 8 (c), The Criminal Procedure (Identification) Act, 2022

<sup>25</sup> Sec. 6 (I), The Criminal Procedure (Identification) Act, 2022

<sup>26</sup> Art. 20(3), The Constitution of India 1950

<sup>27</sup> *M.P. Sharma v. Satish Chandra* AIR 1954 SC 300

<sup>28</sup> *State of Bombay v. Kathi Kalu Oghad* AIR 1961 SC 1808

<sup>29</sup> Sec. 96 CrPC, 1882 (Similar to Sec. 93 CrPC 1973)

<sup>30</sup> Sec. 94 CrPC 1882 (Similar to Sec. 91 CrPC, 1973)



towards the accused, it cannot be stated to be violative of Art. 20(3). Thus, search and seizure of documents or the things under the warrant cannot be treated as a measure inconsistent with the right against self-incrimination. Though, the case of *M.P. Sharma* does not involve any question of application scientific examination, the case finds an important place for marking that the right against self-incrimination is not merely confined to testimonial acts.

The court further observed that in order to be protected under the arms of the fundamental right against self-incrimination the nature of information that is being shared should of the nature of a 'personal testimony'. The testimony so made must by itself have a tendency to incriminate the person making it. However, when it comes to signatures, handwriting and finger impressions, these are not testimony, rather they may be treated as evidence in its wider amplitude. This is because they are unchangeable except in few rare case scenarios. They are neither oral evidence nor documentary evidence, but material evidences and hence cannot be equated to 'testimony'. Thus, compelling a person to give handwriting, signature, finger prints, voice samples<sup>31</sup>, blood samples for DNA profiling<sup>32</sup> cannot be treated as a violation of right against self-incrimination.

## **FORENSIC EVIDENCE AND ITS INFLUENCE IN FORMING THE UNBREAKABLE CHAIN OF CIRCUMSTANCES**

Bentham believed witnesses to be the eyes and ears of justice, however the time has proven that sight can be deceptive and the ears can be hollow. The Indian apex court has in several occasions criticised the tendency of witnesses to add flavours into his statements merely to make it more acceptable. Over the course of time, the credibility of the witnesses has always been a question of grave concern. Another, worst scenario is when the witness turns hostile by completely contradicting the statements given by him during the stage of investigation. Having dealt with both these situations, the worst-case

scenario would the absence of any witness to testify regarding the commission of a crime. These three factors have strongly been a reason for shifting the course of trial from a point of direct or ocular witness to the era of circumstantial evidence.

Proving the guilt of a person purely on the basis of circumstantial evidence is tough nut to crack. The court has even formulated five golden rules for the appreciation of circumstantial evidence.<sup>33</sup> The bench mark is so high that all the circumstance which prosecution advances before the court shall point towards the guilt of the accused. The chain of events will cease if any of the circumstance leads to an alternative conclusion. Developments in forensic science especially fingerprinting and DNA profiling has significantly contributed in enhancing the credibility of the circumstantial evidence. The use of forensic techniques in criminal process is not of recent origin. It has been in practice globally even during the first half of the nineteenth century. Indian criminal justice system was also not alien to such developments as a major development in the fingerprint technology took place in India. However, one cannot disregard the approach of judiciary while appreciating these evidences. Indian courts were reluctant to convict a person purely on the basis of forensic evidence<sup>34</sup>, when convictions on the basis of forensic evidence were rampant in other jurisdictions.<sup>35</sup> Though, there was a decline to this wide acceptance of forensic evidence at a later point of time, it never lost its significance. The gradual decline in the primacy of forensic evidence was due to multiple reasons. The most important one being the failed forensics. There have been numerous instances where the persons convicted on the basis of forensic evidence at one point of time were found to be innocent at later point with the aid of more advanced scientific techniques.<sup>36</sup> Another major reason was the development of human rights, especially the rights of accused relating fair trial and right against self-incrimination. Thus, the judiciary felt burdened with finding a balance between use of forensic techniques and the rights of the accused.

<sup>31</sup> *Ritesh Sinha v Union of India*, (2019) 8 SCC 1

<sup>32</sup> Secs. 53, 53A, 54 and 164A CrPC, 1973 also 'Measurements' under Sec. 5 Criminal Procedure (Identification) Act, 2022

<sup>33</sup> *Sharad Birdhichand Sarda v State of Maharashtra*, (1984) 4 SCC 116

<sup>34</sup> Cyril John Polson, also see Ainsworth Mitchell, 'Science and the Investigation of Crime' Vol. 69 (3570) *Journal of*

*the Royal Society for the Encouragement of Arts, Manufactures and Commerce* (1922) pp. 353-364

<sup>35</sup> See *R v. Stratton* (1905), *People v. Jennings*, 252 Ill. 534, 96 N.E. 1077 (1911), *United States v. Ausby* (2019)

<sup>36</sup> Carrie; also see W. Jerry Chisum, Brent E. Turvey, *A History of Crime Scene Reconstruction*, In *Crime Reconstruction* (W. Jerry Chisum & Brent E. Turvey, Eds, 2007)

### Forensic Evidences in Indian Criminal Trial

Indian criminal justice system has always been not so welcoming with respect to any kind of evidences which were not traditionally part of a criminal trial. Forensic evidence was also not an exception to that. At this juncture it will be very interesting to note two contradictory approaches of the Indian judiciary with respect to appreciation forensic evidence. There have been several instances where the application of scientific techniques was challenged to be unconstitutional. It was advocated that; these procedures are direct attack on the constitutional guarantee of right against self-incrimination. However, the court finally concluded that, resorting into scientific techniques will not be detrimental to one's fundamental right. On the other hand, when it comes to the appreciation part, the court finds it hard to accept the forensic evidence. The tendency if the court is to reject the evidence on the ground of probative value. The probative value of the forensic technique is largely dependent on the quality of sample and the techniques used for the analysis of the samples. Thus, collection of the samples by an inexperienced person and storage of the same contrary to the prescribed manner would turn out to be fatal in the case of forensic evidence. However, despite of these short-coming forensic techniques has been widely used by the police officers during the course of investigation. And over the course of time, courts have also registered its significance by slightly moving from its earlier position which subserves the medical evidence over the ocular witness.

The changes in the criminal behavior, crime and the lack of trustworthy witnesses have forced the judiciary to rely on circumstantial evidence even in some gruesome crimes. Forensic evidence, especially DNA profiling has strengthened cases where the identity of the deceased was itself questioned. The infamous cases of the murder *Naina Sahni*,<sup>37</sup> *Neeraj Grover* and *Sandesh Mandal*<sup>38</sup> are the classic examples of successful use of DNA evidence in criminal trial. One of the prominent moves adopted by the defence for weakening the forensic evidence was to create a doubt upon the credibility of the scientific officer who conducted the relevant tests. The court affirmed that wherein the accused has the chance to demand for a fresh DNA analysis by obtaining

the samples from the deceased's parents, mudslinging on the competence of the expert cannot jeopardize the validity of the DNA report.

The tendency to undermine the DNA report stating the non-compliance of procedural requirements are very much common. It is to be noted that procedural non-compliance is not fatal to the reliability of the forensic evidence *per se*. However, the court is empowered to disregard the entire report if the such procedural non-compliance constitutes a direct attack on the principles of fair trial. The trial court in the case of *Neeraj Grover* murder case refused to accept the contention of the accused that the DNA report which establishes the identity of the deceased shall not be considered as the blood samples for the purpose of comparison was taken from the parents of the deceased with obtaining the signatures on the consent form. The trial judge was of the opinion that these procedural irregularities are not fatal to the trial as both the parents as well as the officers has deposited regarding the collection and analysis of the samples during the examination. Similarly in the case of *Anmolsigh Jabbal*, it was held that there need not be any doubt with regard to the reliability of Chemical Analyser's report and the DNA report merely because there is nothing to show on evidence that the samples were kept in sealed condition. Untill and unless there is something on record to show that the proper procedures were not complied with while taking, storing and transportation of the samples, the reports need not be considered as shady one.

Contamination of samples is quite a valid point of defence for the purpose discrediting the reliability of the DNA evidence. Contamination is possible as a natural process as well as due to the negligent act of the officer while collecting the samples. The improper way of packaging can also lead to cross-contamination of the samples. In the case of *Neeraj Grover*, it was stated by the court that while dealing with the question as to the contamination of the samples it has to be noted that, though it is very difficult to amplify and profile DNA from a contaminated sample, it is not impossible. DNA extraction is possible even from a degraded sample, provided six STR locus are intact.

Legitimising the Criminal Proceedings on the basis on DNA report

The legitimacy of the last seen theory was endorsed using DNA evidence and thus rightly

<sup>37</sup> *State v. Sushil Sharma*, 2007 CriLJ 4008

<sup>38</sup> *Sushil Mandal v State*, 2014 SCC ONLINE MAD 7362

upheld the operation of criminal law against the accused.<sup>39</sup> A regular man missing case turned out to be the most gruesome crime the country ever witnessed after the DNA analysis of the blood stains obtained from the car in which the deceased was last seen. The major question before the High Court of Bombay was with respect to the legitimacy of the criminal process initiated against the accused purely on the basis of DNA report. The court agreed to the point that the court need not be always guided by the expert report<sup>40</sup> and undoubtedly, once the court decides to go with the expert report then it has to undergo strict scrutiny.<sup>41</sup> The court observed that the DNA report need not be viewed in isolation, rather the CCTV footage, the conduct of the accused also strengthens the version of the prosecution. One cannot lay frivolous reasons to contest the very presence of blood in crime scene to be suspicious or foul play by the investigators to falsely incriminate the accused. Moreover, when all other circumstances points towards the involvement of the accused in the crime, the DNA report further establishes the prosecution's narration. This brings into the operation of burden upon the accused to show what happened to the deceased in the light of section 106 of the Indian Evidence Act, 1872. Wrongful Practice: The Fate of Forensic Justice The discussion on the role of forensic evidence in corroborating the circumstantial evidence will be incomplete without discussing the infamous *Arushi Talwar* murder case. The case of the prosecution was that the Arushi Talwar and Hemraj, a domestic helper was murdered by Arushi's parents Dr. Rajesh Talwar and Dr. Nupur Talwar as they have seen both Arushi and Hemraj in a compromising position. The entire suspected act took place at night in a closed house, thus there was no ocular witness to the alleged crime. The entire case was on the basis of circumstantial evidence predominantly on the basis of mischievous conduct of the parents after the death of their only daughter. Several blood samples and fingerprints were taken from the room where Arushi was found dead. However, none of the samples matched with that of Hemraj so that the prosecution version could stand. Infact, all the blood stains and the prints in the room was that of Arushi alone, which removes any scope of the presence

of Hemraj in the room and thus destroying the motive behind the alleged crime.

A cooler panel was placed over the body of Hemraj in the terrace of the building, however the prosecution failed to pick up the finger prints on the panel, thus closing any chance for incriminating Talwars. Though, a torn and contaminated piece of bed sheet was recovered from the terrace, which was suspected to be the original bedsheet in Arushi's room, in which Hemraj was alleged to be concealed was of no use as no positive forensic tests could be conducted on it. Similarly, there were no blood stains on the golf club which was alleged to be the murder weapon. Thus, the court found no reason to hold both the parents accountable for the murder of Arushi and Hemraj. A timely intervention of the expert team and a scientific crime scene management along with timely collection of the samples would have avoided the obvious miscarriage of justice.

The Supreme Court, while dealing with the appeal in the case of *Soumya murder case* gave over emphasis on the testimony of the medical officer who conducted post- mortem of the deceased. She deposed that keeping the deceased in the supine position for the commission of sexual assault is the overbearing cause of the death. She further stated that, only a person having medical or para- medical training will have this specific knowledge. Hence, the court concluded that, the accused being a beggar and an illiterate person does not possess enough skill and knowledge to cause the death of the deceased. This particular conclusion was made, when the post- mortem report evidently stated that the head injury caused by smashing the head of the deceased on the walls of train by the accused, could also be a probable cause of death. This reading of the report would have sufficed the ingredients to convict the accused for the rape and murder of the deceased.<sup>42</sup> Unfortunately, reliance was given to later part and deposition of the medical expert with regard supine position being accelerating cause of death. Hence, without any sound reasoning the court commuted the death sentence awarded by the trial court by bringing down the offences into rape and culpable homicide not amounting to murder.

<sup>39</sup> *Khushi Ajay Sahjwani v State of Maharashtra*, 2019 SCC ONLINE BOM 5370

<sup>40</sup> *Tumaso Bruno v. State of U. P.*, (2015) 7 SCC 178

<sup>41</sup> *Prem Sagar Manocha v. State (NCT of Delhi)* (2016) 4 SCC 571

<sup>42</sup> Harigovind P. C and Prof (Dr.) K. N Chandrashekharan Pillai, A Cooment on *Govindaswamy v State of Kerala* Need for Reasoned Decisions from Apex Court, 2017 (2) KHC J57

## CONCLUSION

Appreciation and engaging of forensic evidence was favourably considered by the Indian Courts post- independence. The cases of *M. P Sharma* and *Kathi Kalu Oghad* decided during the initial years post- independence gives an assurance to this aspect. In the later years, courts were not even reluctant to invoke its inherent powers so as enable scientific analysis even in the absence of any expressed provisions in the law. But, when it comes to the part of appreciation of evidence, there is no uniform level of acceptance. This could be because of lack of uniform nation-wide standards for collection, preservation and analysis of the samples. Efforts have been made by the National Human Rights Commission, Directorate of Forensic Services to bring about uniform standards for the collection, storage and preservation of biological samples from the crime scene as well as from the person. It has also been noted that procedural irregularities, though not an issue *per se*, will undoubtedly become fatal to the prosecution if it violates the principles of fair trial. Serious caution has to be made for complying with the procedural formalities by the officers concerned.

The contention regarding the competency of the expert has always been one of the reason for the objection of the forensic evidence. A strict format as to assessing an expert should be made at the initial stage of criminal trial so as to avoid concerns in the future. Another important aspect that requires more focus is with regard to ethical standards of the expert. An expert is

always expected to guide the court in pursuit of justice. Over confidence in one's own findings and reluctance to seriously look into all the aspect of the case can be fatal to criminal justice. Nonetheless, one can evidently say that the Code of Criminal Procedure, 1973 in last five decades have fostered the advancement of science and technology in the realm of criminal justice and the Indian judiciary has from its traditional outlook shifted its focus in rhythm with forensic evidence.

It is to be realised that the use of rules of evidence based on the conventional notion still makes conflict with the implementation of scientific evidence in criminal trial. This need to addressed by a legal system for two prominent concerns. Firstly, the limits and bounds set by the conventional rules of evidence need to be re-appraised by the judiciary on a case to case manner. Which means, the use of forensic evidence, the kind of forensic evidence and the scientific stability of forensic evidence are prominent concerns comparing to adherence to convention evidentiary rules. In short, the conventional norms as well as the use of forensic evidence have a relative application in each case situations.

Secondly, the law of evidence need to be improved so as to accommodate the evolving scientific evidences in par with the basic rules of evidence in a criminal trial. Improvement is required at the level of appreciation of forensic evidence as well as to have an enabling legal framework for the use of forensic techniques in criminal process.