# Medical Negligence & Defences of Doctors

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1. **History of medico-legal concept in India :** The history of medico-legal concept in India can be traced to the following ancient works :

   (i) Atharva Veda (three thousand BC)
   (ii) Charaka Samhita (composed in about 7th century BC)
   (iii) Shusruta Samhita (composed between 200--300 AD)
   (iv) Kautilya's Arthashastra (about 400 BC)
   (v) Bagbhata (7th century AD)
   (vi) Madhabakar (7th century AD)

2. **Origin of forensic sciences & medical ethics :** Medical methods to cure poisoning, burns, wounds, insanity and snack bites etc. have been described in Atharva Veda and dissection of bodies of dead animals were done during this period for the sake of knowledge. The matters relating to duties and privileges of the physicians and their training etc. in the system of medicines are for the first time found in Charak Samhita. Charak Samhita is said to be the origin of medical ethics. Charak Samhita provides descriptions of various poisons, symptoms, signs and treatment of poisoning etc. Shusruta was the composer of 'Shusruta Samhita' which describes forensic medicines and provides details on toxicology.

3. **Laws applicable to medical experts :** Various laws applicable to the medical experts and medical professionals are as under :

   1. The Indian Medical Degrees Act, 1916

2. United Provinces (now called "Uttar Pradesh") Indian Medicine Act, 1939
3. The Indian Medical Council Act, 1956
4. The Dentists Act, 1948
5. The Indian Nursing Council Act, 1947
6. The Indian Medicine Central Council Act, 1970
7. The Homeopathy Central Council Act, 1973
8. Pharmacy Act, 1948.
9. Uttar Pradesh Medicare Service Persons & Medicare Service Institutions (Prevention of Violence & Damage to Property) Act, 2013.
10. Practitioners of Indian Medicines (Standards of Professional Conduct, Etiquette & Code of Ethics) Regulations, 1982
11. Indian Medical Council (Professional Conduct, Etiquette And Ethics) Regulations, 2002 as amended upto 01.02.2016
12. Pre-Conception And Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

**4.01.** **Only registered medical practitioner enrolled as per Section 15(2)(C) of the Indian Medical Council Act, 1956 is entitled to give evidence in courts :** Only registered medical practitioner enrolled as per Section 15(2)(C) of the Indian Medical Council Act, 1956 is entitled to give evidence in courts as an expert u/s 45 of the Indian Evidence Act, 1872 on any matter relating to medicines etc.

**4.02** **Author's opinions in text books & their evidentiary value :** Though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the Court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a Court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value cannot always be considered to be authoritatively binding, even to dispense with the actual proof otherwise

reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or placed on higher pedestal than the opinion of an expert examined in Court and the weight ordinarily to which it may be entitled to or deserves to be given. See : **State of M.P. Vs. Sanjay Rai, AIR 2004 SC 2174.**

**5.01.** **Role of medical witnesses in courts of law** : A medical witness plays very important role in courts and helps the courts in deciding the **innocence or guilt** of an accused in a criminal case. A medical witness is supposed to be an expert in forensic medicines and should have a fair knowledge of all the branches of medical and ancillary sciences taught to a medical student in the course of studies. An expert medical witness has often to attend the courts for purposes of depositions and he must be aware of the general procedures of the court system and the manner of responding to the questions put to him by the cross-examiners and counsels.

**5.02.** **A medical witness is neither a prosecution witness nor a defence witness but only an expert witness u/s 45 of the Evidence Act, 1872 :** A medical witness is neither a prosecution witness nor a defense witness but only an expert witness u/s 45 of the Evidence Act, 1872 even though he frequently appears on the prosecution side. Medical witness is to be tendered within the limits of science to assist the court in determining the truth, so it may or may not favour the prosecution or the party calling him.

**6.01.** **Guidelines for the medical witnesses while attending the court for purposes of depositions :**

(i) While attending the court, the medical practitioner should be well-dressed and preferably wear the white apron since it helps the Judge to identify him in the court room.

(ii) The Judge cannot, however, compel the medical practitioners to wear a white apron when they come to the Court to give evidence.

(iii) When a doctor attends the Court, he should address the Judge by his proper title. A High Court Judge is addressed as 'Your Honour' and a District Court/Session Judge as 'Sir'.

(iv) His evidence should be relevant, reliable, clear, honest and impartial. As far as possible, he should give a definite opinion with reasons and avoid sitting on the fence. Dogmatism, however, is not necessary.

(v) He should speak slowly, distinctly and audibly to enable the Judge and counsel to hear him to take notes of his evidence. He should use plain and simple language avoiding all technicalities.

(vi) His answer should be to the point, brief and precise.

(vii) He should remember that the lawyer has practically unlimited license and latitude in putting questions to the witness in cross-examination, even attempting to browbeat or giving a rough cross-examination. Consequently, he should never lose his temper, and should appear cool and courteous, even though questions of an irritable nature are put to him.

(viii) Proper preparation before giving evidence is essential.

(ix) The medical expert should give fair and unbiased grounds for his opinion. See : At page 54 & 55 of the 24th edition, 2011 of the text book on 'Medical Jurisprudence & Toxicology' by Dr. Jaising P. Modi.

(x) If the cross examiner counsel quotes any passage from any text book etc. favorable to his case, the medical witness should first go through the entire passage and only then should make a reply.

(xi) A medical witness should not volunteer any statement on his own.

**6.02.** **Precautions to be exercised by medical witnesses while attending the courts for depositions :** Before attending the court to be subjected to examination-in-chief and cross-examination, the medical witness must go through the medico legal reports etc. prepared by him so that he may not commit mistakes during his cross examination. Even during his examination in chief or cross examination, the medical expert, as a witness of the court, has right to refresh his memory under Section 159 of the Evidence Act and where ever required, the medical witness must refresh his memory by perusing the relevant reports etc. prepared by him.

**6.03.** **Oath or affirmation to medical witness before his deposition** : According to provisions of the Oaths Act, 1969, like any other witness, a medical witness has also to subscribe oath or affirmation before his depositions being recorded in the court.

**7.01.** **Evidence given by a medical expert is only of an advisory character :** Evidence given by a medical expert is only of an advisory character. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. See :

**(i) Vishnu Vs. State of Maharashtra, (2006) 1 SCC 217.**

**(ii) State of Haryana Vs. Bhagirath, AIR 1999 SC 2005.**

**7.02.** **Court not bound by the opinion of medical expert :** If the opinion given by one Doctor is bereft of logic or objectivity or is not consistent with probability, the court has no liability to go by that opinion merely because it is said by a doctor. The opinion given by a medical witness need not be the last word on the subject and such an opinion shall be tested by the Court. See : **State of Haryana Vs Bhagirath, AIR 1999 SC 2005.**

**7.03.** **Doctor's opinion as medical expert u/s 45 Evidence Act & its evidentiary value? :** As per Sec. 45 of the Evidence Act, a doctor is a medical expert. It is well settled that medical evidence is only an evidence of opinion and it is not conclusive and when oral evidence is found to be inconsistent with medical opinion, the question of relying upon one or the other would depend upon the facts and circumstances of each case. See : **Mahmood Vs State of U.P., AIR 2008 515**

**7.04.** **Courts should give due regard to the expert opinion u/s 45 of the Evidence Act but not bound by it :** The courts normally would look at expert evidence with a greater sense of acceptability but the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory and unsustainable. The purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion but such report is not a conclusive one. The court is expected to analyze the report, read it in conjunction with the other evidence on record and form its final opinion as to whether such report is worthy of reliance or not. See : **Tomaso Bruno & Another Vs State of Uttar Pradesh, (2015) 7 SCC 178 (Three-Judge Bench)** *(para 40)*.

**7.05.** **Medical evidence when showing two possibilities** : Where medical evidence shows two possibilities, the one consistent with the reliable

direct evidence should be accepted. See : **Anil Rai Vs State of Bihar, (2001) 7 SCC 318.**

**7.06.** **Variance between medical and prosecution evidence not to necessarily lead to rejection of the prosecution's case** : Mere variance of prosecution story with the medical evidence, in all cases, should not lead to conclusion inevitably to reject the prosecution story. Court should make out efforts within judicial sphere to know the truth. See : **Mohan Singh Vs. State of Madhya Pradesh, AIR 1999 SC 883 : 1999 (2) SCC 428.**

**7.07.** **Conflict between ocular and medical evidence—How to reconcile? :** If the direct testimony of eye witnesses is reliable, the same cannot be rejected on hypothetical medical evidence and the ocular evidence, if reliable, should be preferred over medical evidence. Opinion given by a medical witness (doctor) need not be the last word on the subject. It is of only advisory character. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. If one doctor forms one opinion and another doctor forms a different opinion on the same fact, it is open to the Judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent with the probability, the court has no liability to go by the opinion merely because it is said by the doctor. Of course, due weight must be given to the opinions given by persons who are experts in the particular subject. See :

1. **Abdul Sayeed Vs State of M.P, (2010) 10 SCC 259**
2. **Chhotanney Vs State of U.P., AIR 2009 SC 2013**
3. **Mallappa Siddappa Vs State of Karnataka, 2009 (66) ACC 725 (SC)**
4. **Mahmood Vs State of U.P., AIR 2008 SC 515**
5. **Vishnu Vs State of Maharashtra, 2006 (54) ACC 554 (SC)**
6. **State of Punjab Vs Hakam Singh, (2005) 7 SCC 408**
7. **Anwarul Haq Vs State of U.P., 2005 (4) SCJ 516**
8. **Anil Rai Vs State of Bihar, (2001) 7 SCC 318**

9. **State of Haryana Vs Bhagirath & others, (1999) 5 SCC 96**
10. **Adya Singh Vs State of Bihar, 1998 (37) ACC 527 (SC)**
11. **State of U.P. Vs Harban Sahai, 1998 (37) ACC 14 (SC)**

**7.08.** **Conflict between ocular & medical evidence :** Ocular evidence would have primacy unless established to be totally irreconcilable with the medical evidence. Testimony of ocular witness has greater evidentiary value. See. **Rakesh Vs State of UP, 2012 (76) ACC 264 (SC)**

**7.09.** Where the eye witnesses of the murder had stated that the injuries from the firing of the pistol were on leg of the deceased but the post mortem report indicated the injury on the part slightly higher than the thigh and there was nothing on record to impeach the testimony of the eye witnesses, it has been held that in the absence of ballistic experts opinion and contradictions regarding the position of injuries, it would not be sufficient to discard the trustworthy testimony of the eye witnesses. See : **Ajay Singh Vs State of Bihar, (2000) 9 SCC 730.**

**7.1o.** **When PW & PMR contrary on number of gun shots fired & gun shot injuries :** Where the PW had stated that only single shot from double barreled gun was fired but medical evidence was clearly showing that the deceased had suffered multiple gun shot injuries, it has been held that a single shot can cause multiple injuries & in such cases there can be no inconsistency between the medical evidence and the ocular evidence See : **Om Pal Singh Vs State of UP, AIR 2011 SC 1562.**

**7.11.** **When ocular & medical evidence contrary on "wounds & weapons" :** The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which is possible by the weapon of assault, but the size

and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eye witnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third categories no such inference can straight away be drawn. The manner and method of assault, the position of victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony. (See : **Thaman Kumar Vs State of Union Territory of Chandigarh, (2003) 6 SCC 380).**

**7.12.** **<u>When medical opinion suggesting alternative possibilities than ocular testimony---How to reconcile?</u>** : The ocular evidence being cogent, credible and trustworthy, minor variance, if any, with the medical evidence are not of any consequence. It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant'. It is trite that where the eye witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Eye-witnesses account would require a careful independent assessment and evaluation

for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy: consistency with the undisputed facts the 'credit' of the witnesses: their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation. See : **Krishnan Vs State, AIR 2003 SC 2978.**

**7.13.** **Location of injuries & difference between ocular & medical evidence :** Where according to the FIR, the injury was inflicted on the nose of the deceased but all the witnesses had deposed in the court that the injury was caused on the body of the deceased from behind near the right shoulder and the force with which it was caused resulted in the cutting of the vital inner parts of her body, it has been held by the Supreme Court that such difference between the statement of the eye witnesses and the FIR would not affect the prosecution case when all the witnesses had deposed the position of the said injury consistently in the court. See : **Keshavlal Vs State of M.P., (2002) 3 SCC 254.**

**7.14.** **Case of conflicting ocular & medical evidence on sharp-cutting weapon or blunt object as source of injuries :** In this murder trial, testimony of eye-witnesses was that the deceased and injured were assaulted with sharp cutting weapons but their testimony was not corroborated with medical evidence showing deceased having been injured by blunt object (weapon) only. Post Mortem Report showing that the deceased had no injury which could be caused by a sharp cutting weapon and, indeed, he

had sustained only one injury which could be caused, according to the doctor by a blunt weapon only. Keeping in view the sharp contrast in between the ocular testimony and the medical evidence, the Supreme Court set aside the conviction of the accused persons. See : **Niranjan Prasad Vs State of M.P., 1996 CrLJ 1987 (SC).**

**7.15.** **Bamboo sticks or lathis whether dealday weapons?- :** Bamboo sticks or lathis are not enough to make the weapons lethal or deadly to cause grievous hurt as is required u/s. 397 IPC. See : **Dhanai Mahato Vs State of Bihar, 2000 (41) ACC 675 (SC).**

**7.16.** **When weapon told by witness not mentioned in FIR or medical report as source of injuries :** There was no mention of "*Kanta*" in FIR and the deceased had one **incised wound** on right side chest. Eye witness deposed about *"Kanta*" in court. Discrepancy in between medical and oral evidence held to be insignificant as use of kanta was not ruled out. The Supreme Court held that testimony of an eye-witness cannot be discarded simply on opinion of medical expert. See : **State of U.P. Vs Harban Sahai, 1998 (37) ACC 14 (Supreme Court) (Three -Judge Bench)**

**7.17.** **When PMR & medical examination/injury report are contrary : how to reconcile? :** When there is conflict between injury report and Post Mortem Report, the Post Mortem Report should be preferred over the injury report. See :

1. **Uma Shankar Chaurasia Vs State of U.P., 2004 (50) ACC 152 (All… LB) (DB)**
2. **State Govt. of NCT of Delhi Vs Sunil, (2001)1 SCC 652**

**7.18.** **When No. of injuries noted in medical examination report & PMR are different? :** Where the injuries noted in the PMR were more than the injuries noted in the medical examination report of the deceased but the conclusion of both doctors as to cause of death and the fatal injuries was

the same, it has been held that such discrepancy was not material. See : **Prahalad Patel Vs State of M.P, 2011 CrLJ 1474 (SC)**

**7.19.** **Contrary opinions of two Doctors :** Correctness of PMR cannot be doubted merely because it did not conform to the noting made in medico-legal injuries certificate by the Doctor who had initially checked up the deceased in the hospital without making any detailed examination and had pronounced her dead. See : **State Govt. of NCT of Delhi Vs Sunil, (2001) 1 SCC 652**

**7.20.** **How to reconcile the conflicting opinions of two doctors ? :** When there is conflicting opinion by two doctors, it is the right of the court to act on testimony of one doctor rather than on the testimony of another. Court can prefer to act on the testimony of the doctor whose evidence accords with the prosecution versions. See :

**(i) Piara Singh Vs. State of Punjab, AIR 2001 SC 2939**
**(ii) Makan Jivan Vs. State of Gujarat, AIR 1971 SC 1797**
**(iii) State Govt. of NCT of Delhi Vs. Sunil, (2001) 1 SCC 652**

**7.21.** **Doctor alone competent person to opine about cause of death** : Where the death of deceased wife was alleged to be due to drowning but the doctor had found hematoma on neck and considering external and internal injuries, the doctor had given definite opinion in the PMR that the death was due to pressing of rolling pin on the neck of the deceased and there was evidence that the accused husband was with the deceased wife in the night of occurrence and no explanation for the death of wife was given by the accused, the accused was liable to be convicted for murder. It has also been held that the cause of death opined by the doctor can be rejected only if his opinion is inherently defective. Otherwise doctor is the only competent person to opine about cause of death. See : . **Sahebrao Mohan Berad Vs State of Maharashtra, 2011 CrLJ 2157(SC)**

**7.22.** **<u>Object of preparing inquest report u/s. 174 CrPC</u> :** The whole purpose of preparing an inquest report u/s. 174 (1) CrPC is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating in what manner, or by what weapon or instrument, if any, such wounds appear to have been inflicted. In other words, for the purpose of holding the inquest it is neither necessary nor obligatory on the part of the Investigating Officer to investigate into or ascertain who were the persons responsible for the death. In dealing with S. 174, CrPC in **Podda Narayana Vs State of A.P.,** (1975)4 SCC 153; (AIR 1975 SC 1252), Supreme Court held that the object of the proceedings there under is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause. According to Supreme Court the question regarding the details how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of such proceedings. With the above observation Supreme Court held that the High Court was right (in that case) that the omissions in the inquest report were not sufficient to put the prosecution out of Court. See :

**(i)** **George Vs State of Kerala, AIR 1998 SC 1376**.

**(ii)** **CrLJ 2740 (SC)**

**7.23.** **<u>Inquest Report & Discrepancies or Omissions in Preparation Thereof--- Effect</u>? :** Argument advanced regarding omissions, discrepancies, overwriting, contradiction in inquest report should not be entertained unless attention of author thereof is drawn to the said fact and opportunity is given to him to explain when he is examined as a witness. Necessary contents of an inquest report prepared u/s. 174 CrPC and the investigation for that purpose is limited in scope and is confined to ascertainment of apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal, and in what manner or

by what weapon or instrument the injuries on the body appear to have been inflicted. Details of overt acts need not be recorded in inquest report. Question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who were the witnesses of the assault is foreign to the ambit and scope of proceedings u/s. 174 CrPC There is no requirement in law to mention details of FIR, names of accused or the names of eye-witnesses or the gist of their statements in inquest report, nor is the said report required to be signed by any eye witness. See : **Radha Mohan Singh alias Lal Saheb Vs State of U.P., 2006 (54) ACC 862 (Supreme Court) (Three-Judge Bench)**

**7.24.** **Effect of non-mentioning of injuries in PMR :** Where the double barrel gun fired injuries sustained by the deceased were not mentioned by the Doctor in the PMR but the eye witnesses and the Doctor concerned had stated about the same in their depositions, it has been held by the Supreme Court that the deposition of the Doctor cannot be disbelieved merely on account of non-mentioning of gun sought injuries in post mortem report particularly when the eye witnesses had stated in their depositions that the accused had fired at the deceased with double barrel gun. See : **State of Punjab Vs Jugraj Singh, AIR 2002 SC 1083.**

**7.25.** **Incised injury possible by lathi or stick** : Quoting the renowned author of the 'Medical Jurisprudence & Toxicology', it has been clarified by the Supreme Court that incised injury on occipital region/skull is possible by lathi or stick. Occasionally, on wounds produced by a blunt weapon or by a fall, the skin splits and may look like incised wounds when inflicted on tense structures covering the bones, such as the scalp, eyebrow, iliac crest, skin, perineum etc. A scalp wound by a blunt weapon may resemble an incised wound, hence the edges and ends of the wound must be carefully seen to make out a torn edge from a cut and also to distinguish a crushed hair bulb

from one cut or torn. See : **Dashrath Singh Vs State of U.P., (2004) 7 SCC 408.**

**8.01.** **Simple injuries :** A simple or slight injury is one which is neither extensive nor serious and which heals rapidly without leaving any permanent deformity or disfiguration**.**

**8.02.** **Grievous or dangerous hurts :** Grievous hurts as defined in Section 320 of the IPC are as under :

(1) emasculation
(2) permanent privation of the sight of either eye
(3) permanent privation of the hearing of either ear
(4) privation of any member or joint
(5) destruction or permanent impairing of the powers of any member or joint
(6) permanent disfiguration of the head or face
(7) fracture or dislocation of a bone or tooth
(8) any hurt, which endangers life or which causes the sufferer to be, during the space of 20 days, in severe bodily pain, or unable to follow his ordinary pursuits.

**8.03.** **Distinction between Ante-Mortem and Postmortem Wounds**

| | Ante-mortem Wounds | Post-mortem Wounds |
|---|---|---|
| 1. | haemorrhage, more or less copious and generally arterial. | 1. Haemorrhage, slight or none at all and always venous. |
| 2. | Marks of spouting of blood from arteries. | 2. No spouting of blood. |
| 3. | Clotted blood. | 3. Bood is not clotted; if at all it is a soft, clot--currant jelly of chicken fat clot. |
| 4. | Deep Staining of the edges and cellular tissues and this is not removed by washing. | 4. The edges and cellular tissues are not deeply stained. The staining can be removed by washing. |
| 5. | The edges gape owing to the normal stretched condition of the skin and muscle fibers. | 5. The edges do not gape, but are closely approximated to each other, unless the wound is caused within one or novo hours after |

| | | |
|---|---|---|
| | | death. |
| 6. | Inflammation and reparative processes. | 6. No inflammation or reparative processes. |
| 7. | Early enzyme reactions seen. | 7. Enzyme reactions absent. |

**8.04. Differences between suicidal and homicidal cuts**

| S. No. | Suicidal or Self-inflicted | Homicidal |
|---|---|---|
| 1. | Accessible and elective anatomical sites like wrist or neck | Anywhere in the body |
| 2. | Multiple, linear, parallel cuts | Their position and shape vary |
| 3. | Usually incised stab wound | Usually chop wounds. Stabs and lacerations may also be present |
| 4. | They are superficial at the commencement and end is deeper | They are deeper at the commencement and end is superficial |
| 5. | In right handed persons from left to right and from above downwards | Any direction |
| 6. | Defence or protection cuts absent | Defence or protection cuts present usually over the ulnar border of forearm |
| 7. | Hesitation cuts usually present | Hesitation cuts usually absent |
| 8. | Weapons are usually found grasped due to cadaveric spasm or found near body | Weapons are usually absent |
| 9. | Scene of crime is usually closed room. There are no disturbances of surroundings | Scene of crime is disturbed and signs of struggle may present |
| 10. | Clothes not damaged | Clothes may be damaged. |

**9.01.** **<u>Fresh injuries---what are?</u> :** Fresh injuries are injuries which are caused within **06 hours**. There may be variation of 02 hours on either side. Thus fresh injuries can be termed as injuries **within 04 to 08 hours** but not more than 08 hours. See : **State of UP Vs Guru Charan, (2010) SCC 721**

**9.02.** **<u>Timing of injuries or death—How to ascertain?</u> :** It is well settled that doctor can never be absolutely certain on point of time orduration of injuries. See **Ram Swaroop Vs State of U.P., 2000 (40) ACC 432 (SC).**

**9.03.** **<u>Rigor mortis how occurs</u> :** After death, the muscular tissues of the body pass through three stages viz. (i) primary relaxation of flaccidity, (ii) cadaveric rigidity or rigor mortis and (iii) secondary relaxation. Rigor mortis occurs in the following manner :

(i) rigor mortis generally occurs whilst the body is cooling.

(ii) in the heart it appears within an hour after death

(iii) it first occurs in the muscles of the eyelids, next in the muscles of the back of the neck and lower jaw then in those of the front of the neck, face, chest and upper extremities and lastly extends down words to the muscles of the abdomen and lower extremities. Last to be affected are the small muscles of the fingers and toes. It passes of in the same sequence.

**9.04.** **<u>Duration of rigor mortis</u> :** Duration of onset of rigor mortis in different situations is as under :

(i) average period of onset of rigor mortis is 03 to 06 hours after death in temperate climates and may take 02 to 03 hours to develop/

(ii) in India rigor mortis usually commences in 01 to 02 hours after death

(iii) in temperate regions, rigor mortis lasts for 02 to 03 days

(iv) in northern India, the duration of rigor mortis is 24 to 48 hours in winter and 18 to 36 hours in summer.

**9.05.** **<u>Medical science not perfect to declare exact timing of death</u> :** Medical science has not reached such perfection so as to enable a medical fractioned to categorically indicate the exact timing of death. (See : **Ramjee Rai Vs State of Bihar, 2007 (57) ACC 385 (SC).** In this case the prosecution version was that the occurrence resulting into the death of the deceased and injuries to two surviving injured took place in between 6-7 a.m. (morning) on

6.9.77. But the two doctors as PWs (doing autopsy and examining the remaining two injured) deposed in their examination-in-chief that death of the deceased was possible on 6.9.77 at 7-7 a.m. but in cross-examination they deposed "that it may be possible that the deceased died in the mid-night of 5/6.9.77". The Supreme Court has, under these facts, clarified that the doctor can never be absolutely certain on point of time so far as duration of injuries are concerned.

**10.01. <u>Report from medical board under rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 when to be sought</u> ? :** Rule 12 of 2007 JJ Rules describes four categories of evidence which have been provided in which reference has been given to school certificate over medical report. Medical opinion from medical board should be sought only when matriculation certificate or school certificate or any birth certificate issued by a corporation or by any panchayat or municipality is not available. Determination of age of juvenile only on the basis of medical opinion of medical board ignoring date of birth mentioned in marksheet and school certificate is not proper. See : **Shah Nawaz Vs. State of UP and another, AIR 2011 SC 3107.**

**10.02. <u>Report from medical board under rule 12 when to be sought</u> ? :** According to Rule 12(3)(b), the medical opinion from a duly constituted Medical Board will be obtained only when the proof mentioned under sub-clause (i), (ii) or (iii) of clause (a) to sub-rule (3) of Rule 12 is not available. Rule 12(3)(a) is as quoted below----

(a) **(i) the matriculation or equivalent certificates, if available; and in the absence whereof;**

**(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;**

**(iii) the birth certificate given by a corporation or a municipal authority or panchayat;**

According to Rule 12(3)(b), if the exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

In the cases noted below it has been held that while dealing with the question of determination of age of the accused for the purposes of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in border line cases. See---

1. **Ram Janam vs. State of U.P., 2003 (46) ACC 1150 (Allahabad)**
2. **Rajinder Chandra vs. State of Chhattisgarh, 2002(1) JIC 609 (SC).**

**10.03. <u>Medical expert's opinion based on the basis of ossification test to be treated as only of advisory character</u> :** Where in a rape case the statement of parents of prosecutrix was that she was below 16 years of age and this statement of parents was corroborated by two impeachable documents viz. birth register of municipal corporation and register of hospital where the prosecutrix was borne but the date of birth recorded in school certificate showing the prosecutrix above 16 years of age is belied by evidence of parents and the said unimpeachable school documents, it was held that consent of prosecutrix was immaterial. Medical experts opinion u/s. 45 Evidence Act based on the basis of ossification test was only of an advisory character and not binding on

witness of fact i.e. parents. See :**Vishnu vs. State of Maharashtra, AIR 2006 SC 508.**

**10.04.** **<u>Ossification test and radiological examination report & determination of age of juvenile</u> :** Though doctor's examination of age is only an opinion but where such opinion is based on scientific medical tests like ossification test and radiological examination, it will be treated as strong evidence having corroborative value while determining age of alleged juvenile accused. See : **Om Prakash Vs. State of Rajasthan & another, (2012) 5 SCC 201**

**10.05.** **<u>Conflict between radiological opinion & school certificate</u> :** Age determination--Conflict between radiological opinion and school certificate--Age of girl estimated by doctor to be about 19 years while High School Certificate mentioning her birth date as 25.05.1996. Margin of flexibility or margin o error cannot be lowered any further below 18 years--Where doctor observed that girl is above 18 years of age, it obviously means that girl is not less than 18 years of age--Such an obs Juvenile Justice-- Age determination--conflict between radiological opinion and school certificate --age of girl estimated by doctor to be about 19 years while High School certificate mentioning her birth date as 25.05.1996--Margin of flexibility or margin of error cannot be lowered any further below 18 years--Where doctor observed that girl is above 18 years of age, it obviously means that girl is not less than 18 years of age--Such an observation indicates lower most outer limit of flexibility bracket--Such kind of observation is made by doctors on basis of fusion of certain bones of body which cannot be completed before a person attains a particular age--Individual age variations of particular fusion are

not and cannot be stretched beyond certain limits--categorical opinion of doctor regarding age of girl completely and belies contradictory age shown in High School certificate--In view of statement of girl given before J.M. refuting all allegation of coercion exercised by petitioner No. 1--Showing her complete willingness and approval to her marital status with him--Giving due weight to irreconcilable conflict of age continuation of girl's detention in Nari Niketan not justified--Court directed to set at liberty with immediate effect--Impugned orders of lower Court quashed--Revision allowed. See : **Vivek Chandra Bhaskar Vs. State of UP, 2013 (82) ACC 707(All).**

**10.06. <u>School certificate to exclude medical evidence in determining age of juvenile</u> :** If school certificate is there, the same shall exclude medical evidence in determining age of juvenile. See : **Smt. Parwana Bano Vs. State of UP, 2015 (88) ACC 489 (All)(LB).**

**10.07. <u>Radiological examination for purpose of age & possibility of two years error</u>** : It is notorious and one can take judicial notice that the margin of error in ascertaining the age of a person by radiological examination is two years on either side. See---

**(i) Ram Suresh Singh vs. Prabhat Singh, AIR 2009 SC 2805**

**(ii) Jaya Mala vs. Home Secretary, Government of J & K, AIR 1982 SC 1297.**

**10.08. <u>Rule adding two years to the age determined by doctor not absolute</u> :** where the doctor on the basis of X-ray and physical examination of the prosecutrix of offense u/s 376 IPC had opined that prosecutrix was 17 years of age, reversing the order of the Hon'ble Allahabad High Court holding her to be 19 years of age , it has been held by the Supreme Court that there is no such rule much less absolute one that two years have to

be added to the age determined by doctor. See : **State of U.P. Vs. Chhotey Lal, AIR 2011 SC 697 (*Regarding age of prosecutrix u/s 376 IPC*).**

**10.09. <u>Physical appearance of accused can also be made basis for prima facie holding of juvenility</u>:** It must be appreciated by ever Magistrate that when an accused is produced before him, it is possible that the prosecution or the investigating officer may be under a mistaken impression that the accused is an adult. If the Magistrate has any iota of doubt about the juvenility of an accused produced before him, Rule 12 provides that a Magistrate may arrive at a prima facie conclusion on the juvenility, on the basis of his physical appearance. In our opinion, in such a case, this prima facie opinion should be recorded by the Magistrate. Thereafter, if custodial remand is necessary, the accused may be sent to jail or a juvenile may be sent to an Observation Home, as the case may be, and the Magistrate should simultaneously order an inquiry, if necessary, for determining the age of the accused. Apart from anything else, it must be appreciated that such an inquiry at the earliest possible time, would be in the best interests of the juvenile, since he would be kept away from adult under-trial prisoners and would not be subjected to a regimen in jail, which may not be conducive to his well being. As mentioned above, it would also be in the interests of better administration of criminal justice. It is, therefore, enjoined upon every Magistrate to take appropriate steps to ascertain the juvenility or otherwise of an accused person brought before him or her at the earliest possible point of time, preferably on first production. See : **Jitendra Singh @ Babboo Singh & Another Vs. State of UP, 2013 (83) ACC 651 (SC)**

**10.10. <u>Physical appearance & determination of age</u> :** Where the age of an accused recorded by the trial court on the basis of evidence produced

and also on his physical appearance was set aside by the High Court in exercise of its revisional power u/s 52 of the 2000 Act r/w Sec. 49, 4 & 7-A of that Act, it has been held by the Supreme Court that the revisional court (High Court) could not have reversed the findings of the trial court in exercise of its revisional powers. See : **Jabar Singh Vs. Dinesh, (2010) 3 SCC 757.**

**11.01.** **Death by Poisoning & Ingredients To Be Proved? :** In the case of death by poisoning, prosecution is required to prove following ingredients against the accused…

(1) that the death took place by poisoning

(2) that the accused had poison in his/their possession

(3) that the accused had an opportunity to administer the poison.

(See : **Moinuddin Vs State of U.P., 2004 (50) ACC 244 (Allahabad—D.B.)**

**Note:** In this case the poison (powder) recovered by police at the instance of the accused while in police custody was described as "Potash" but an analysis by chemical examiner was found to be "Sodium Cyanide". Conviction recorded by trial court was, therefore, set aside by High Court.

**11.02.** **Doctor giving poisonous injection to his mother-in-law under pretext to cure her from AIDS convicted for murder on circumstantial evidence alone :** Where accused doctor made his father-in-law and mother-in-law and their 3 minor children believe that they were suffering from AIDS when it was not so and killed them in order to grab their property by giving poisonous injection under pretext of giving treatment, he was convicted for murder on the basis of circumstantial evidence. See : **Reddy Sampath Kumar Vs State of AP, AIR 2005 SC 3478.**

**11.03.** **Accused convicted for murder on circumstantial evidence even when medical evidence as to the death by poisoning was negative :** Where the medical evidence as to the death by poisoning was negative but there was

over whelming circumstantial evidence available against the accused, it was held by the Supreme Court that the offence of murder by poisoning can still be proved by circumstantial evidence. The Supreme Court further held that to rely upon the findings of the medical man who had conducted the post mortem and of the chemical analyzer as decisive of the matter is to render the other evidence entirely fruitless. While the circumstances often speak with unerring certainty, the autopsy and the chemical analysis taken by themselves may be most misleading. No doubt, due weight must given to the negative findings at such examinations. But bearing in mind the difficult task is the man of medicine performs and the limitations under which he works, his failure should not be taken as the end of the case for on good and probative circumstances and irresistible inference of guilt can be drawn. See : **Anant Chintaman Lagu Vs. State of Bombay, AIR 1960 SC 500**.

**11.04.** **Disciplinary action against Doctor conducting post mortem and not preserving viscera** : A Doctor conducting post mortem on the dead body is expected to state cause of death. Where the Doctor conducting the post-mortem had not recorded the cause of death and had also not preserved the viscera for chemical examination in laboratory, it has been held by the Hon'ble Supreme Court that the Doctor had failed to discharge his professional obligation and had attempted to help the accused. The Director General of Health Services was directed to initiate disciplinary action against the Doctor. See : **Sahabuddin Vs State of Assam, 2013 (80) ACC 1002 (SC).**

**11.05.** **Directions of the Supreme Court to the Prosecuting Agencies regarding viscera report :** Having noticed that in several cases where poisoning is suspected, the prosecuting agencies are not taking steps to obtain viscera report, it is necessary to issue certain direction s in that behalf. Hence, it is directed, that in cases where poisoning is suspected,

immediately after the post-mortem, the viscera should be sent to the FSL. The prosecuting agencies should ensure that the viscera is, in fact, sent to the FSL for examination and FSL should ensure that the viscera is examined immediately and report is sent to the investigating agencies/courts post-haste. If the viscera report is not received, the court concerned must ask for an explanation and must summon the officer concerned of the FSL to give an explanation as to why the viscera report is not forwarded to the investigating agency/court. The criminal court must ensure that it is brought on record. See : **Joshinder Yadav Vs State of Bihar, (2014) 4 SCC 42.** *(para 26).*

**11.06.** **<u>IO, Prosecutor, Magistrate & the Sessions Judge deprecated by the Supreme Court for not securing viscera report from forensic lab</u> :** Where in the case of dowry death u/s 304-B IPC, viscera report was not secured by the Investigating Officer from forensic lab, public prosecutor had also not discharged his responsibility to guide the IO in that regard, Magistrate committing the case to sessions court had also not procured the viscera report and the sessions judge had also not ensured its availability, the Hon'ble Supreme Court deprecated their conduct and observed that callousness on their part is bound to shake the faith of society in the system of administration of criminal justice. See : **Chhotan Sao Vs State of Bihar, (2014) 4 SCC 54.**

**11.07.** **<u>Value of text books on medical jurisprudence & toxicology for determination of age</u> :** The statement of the doctor is no more than an opinion. The court has to base its conclusions upon all the facts and circumstances disclosed on examination of the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available. 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 text books, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitude, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform. See : **Ram Deo Chauhan Vs. State of Assam, AIR 2001 SC 2231 (Three-Judge Bench).**

**12.01. <u>When direction of bullet changes inside of body on being hit to bones</u> :** Where according to medical evidence the shot had hit the head of the hummers that got punctured and the signs of the wound were medically towards inside and slightly towards below and it was from the right to left and there was difference in the ocular & medical evidence regarding the direction of the gun shot injuries/pellets, it has been held by the Hon'ble Supreme Court that once pellets hit a hard substance like hummers bone they can get deflected in any direction and it cannot be said that there is any inconsistency between medical and ocular evidence. See : **Lallan Chaubey Vs State of UP, AIR 2011 SC 241= 2011 CrLJ 280 (SC).**

**12.02.<u>Distance of gun firing</u> :** Where the wound was caused from gun fire, blackening could be found only when the shot was fired from a distance of about 3 to 4 feet and not beyond the same. See :

**(i) Budh Singh Vs State of MP, AIR 2007 SC (Suppl.) 267**
**(ii) Swaran Singh Vs State of Punjab, AIR 2000 SC 2017**

**12.03. <u>Blackening, Tattooing & Scorching</u> :** The absence of scorching, blackening and tattooing injuries will not discredit eye witness account

in the absence of positive opinions from doctor and testimony on distance of firing. See : **Bharat Singh Vs State of UP, AIR 1999 SC 717.**

**12.04.** **Distance and fire arm injury :** Where the witnesses had testified the use of assortment of modern fire arms from a distance of 1 to 2 feet and the defence had argued that only shot guns were used and the medical evidence was to the effect that all the entry wounds showed signs of charring ad tattooing and had different dimensions, it has been held that the medical evidence was not inconsistent with the ocular evidence as to the use of different fire arms. See. : **Sarvesh Narain Shukla Vs Daroga Singh, AIR 2008 SC 320.**

**12.05.** **Single gun shot can cause multiple fire arm injuries** : A single shot fired from double barreled gun can cause multiple injuries. See : **Om Pal Singh Vs State of UP, AIR 2011 SC 1562.**

**12.06.** Testimony of eye witnesses should be preferred unless medical evidence is so conclusive as to rule out even the possibility of eye witnesses' version to be true. See : **State of U.P. Vs Harban Sahai, (1998) 6 SCC 50 (Three-Judge Bench).**

**13.01.** **Dr. Modi's Medical Jurisprudence on digestive capacity :** In the case of **Suresh Chandra Bahri Vs State of Bihar, JT 1994 (4) SC 309** the Supreme Court referred **"Modi's Medical Jurisprudence & Toxicology,** which reads as under :

> **"Digestive conditions vary in individuals upto 2.5-6 hours** depending upon healthy state of body, consistency of food motility of the stomach, osmotic pressure of the stomach contents, quantity of food in the duodenum, surroundings in which food is taken, emotional factors and residual variations and only very approximate time of death can be given."

**13.02.<u>Contents of stomach not safe guide for determining the time of the death/occurrence</u> :** The medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerized or mathematical fashion so as to be accurate to the last second. The state of contents of the stomach found at the time of medical examination is not a safe guide for determining the time of the occurrence because that would be a matter of speculation, in the absence of reliable evidence on the question as to when the deceased had his last meal and what that meal consisted of. The presence of faecal matter in the intestine is not conclusive as the deceased might be suffering from constipation where there is positive direct evidence about the time of occurrence it is not open to the court to speculate about the time of occurrence by the presence of faecal matter in the intestines. The question of time of death of the victim should not be decided only by taking into consideration the state of food in the stomach. That may be a factor which should be considered along with other evidence, but that fact alone cannot be decisive. See :

**(i) AIR 1985 SC 1715**
**(ii) Masjit Tato Rawool Vs. State of Maharashtra, AIR 1971 SC 2119**
**(iii) Sheo Dershan Vs. State of Uttar Pradesh, AIR 1971 SC 1794**
**(iv) R. PrakashVs. State of Uttar Pradesh, (1969) 1 SCC 48, 50.**

**13.03.<u>Quality of food, digestive capacity, empty stomach and timing of injuries or death</u> :** Where the deceased was a healthy young boy aged about 23 years and his stomach was found empty at the time of Post Mortem Examination, it was held by the Supreme Court that it was not unnatural as the deceased at the prime of his youth might have digested his food within two hours as his **power of digestion** must be quick and that could not be a

ground to create doubt as to the veracity of prosecution case. See : **State of U.P. Vs Sheo Sanehi, 2005 (52) ACC 113 (SC).**

**14.01.** **Asphyxia/Strangulation/Throttling/Hanging & Ligature Mark---How to judge medical evidence thereon?** : In the murder trial of **Thaman Kumar Vs State of Union Territory of Chandigarh, (2003) 6 SCC 380,** rope of cloth was alleged to have been used for strangulation of the throat of the deceased. Width of the ligature mark was not tallying with the diameter of the rope (rope formed by twisting the cloth). There was difference between the width of the ligature mark stated by the PW and the testimony of doctor. The width of the ligature mark would very depend upon the type of the cloth, how tightly and strongly it was rolled over and was converted into a rope and how soon it was removed. In the present case, the cotton cloth was used in strangulation and was removed immediately as witnesses reached the spot and caught hold of the assailants. In such circumstances, the ligature mark could be much smaller and need not tally with the diameter of the rope. If direct evidence (ocular testimony) is satisfactory and reliable, same cannot be rejected on hypothetical medical evidence. In this case **Modi's Medical Jurisprudences 22nd Edition, page 263** has been quoted in regard to "Deaths from Asphyxia, Strangulation, Ligature marks".

**14.02.** **Strangulation of neck by electric cord and ligature mark :** See : **Santosh Kumar Singh Vs State through CBI, (2010) 9 SCC 747.**

**14.03.** **Asphyxia / Strangulation / Throttling / Hanging & Ligature Mark :** See :

**(i)** **Ravirala Laxmaiah Vs State of AP, (2013) 9 SCC 283**

**(ii)** **Prithipal Singh Vs State of Punjab, (2012) 1 SCC 10**

**(iii)** **Ponnusamy Vs State of T.N., (2008) 5 SCC 587.**

**15.** **Certificate of Doctor regarding mental fitness of declarant of DD not required :** Certificate by doctor as to mental fitness of the deceased not necessary because certificate by doctor is only a rule of caution. Voluntary and truthful nature of the declaration can be established

otherwise also. See : **Laxman Vs. State of Maharashtra, (2002) 6 SCC 710 (Five-Judge Bench).**

16. **When ocular & medical evidence contrary on "wounds & weapons" :** The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eye witnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third categories no such inference can straight away be drawn. The manner and method of assault, the position of t victim, the resistance offered by him, the opportunity available to the witnesheses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony. See : **Thaman Kumar Vs. State of Union Territory of Chandigarh, (2003) 6 SCC 380.**

17.01. **Causing death by negligence (Section 304A IPC) :** Section 304A IPC reads thus : "whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment

of either description for a term which may extend to two years, or with fine, or with both."

**17.02.** **Surgeon performing open surgery, instead of laparoscopic surgery, of Bile Duct held not guilty of medical negligence :** In the instant case, allegations by the patient against a Doctor/Surgeon of J&K were leveled to the effect that the damage to the Bile Duct of the patient was caused due to medical negligence of the surgeon as he had, instead of doing Laparoscopic Surgery, performed general open surgery. It was further alleged by the patient that the surgeon had not followed the pre-operative protocol before performing the surgery. In cross-examination before the District Consumer Forum, the complainant patient had admitted the fact of signing of the consent paper for surgery by adopting method of open surgery. The complainant had failed to establish that the procedure adopted by the surgeon in performing the open surgery was wrong. No such damage to the Bile Duct as was alleged by the patient appeared in further tests conducted at Delhi after one year of the operation. Other expert senior doctors had opined that the said damage to the patient could be caused by many other reasons. Traditionally open surgery is prescribed for the disease suffered by the complainant patient. There was no evidence to establish that while performing the open surgery, the Doctor had not exercised reasonable degree of skill and knowledge. The Doctor was found not negligent in performing the open surgery. The High Court held that no liability for medical negligence can be imposed against the Doctor. See : **Dr. Yash Pal Gandotra Vs. Renu Gupta, AIR 2017 J & K 129 (DB)**

**17.03.** **Hakim held liable for negligent operation of eye :** Where a *hakim* (native physician) had performed an operation of the eye with an ordinary pair of scissors and sutured the wound with an ordinary thread and needle the instruments used were not disinfected and the complainant's eyesight was

permanently damaged, it was held that the *hakim* had acted rashly and negligently and was guilty u/s 337 by causing heart by act endangering life or personal safety of others. See : **Gulam Hyder Punjabi Vs. State, AIR 1915 Bombay 101.**

**17.04.** **Doctor performing operation of cataract held not liable for loss of eyesight** : Where a patient was operated on for cataract with her consent and the doctor had performed the operation in good faith for her benefit and according to the recognized method of treatment of cataract and the woman had lost her eyesight, it was held that the doctor was not negligent u/s 338 IPC because the grievous hurt or loss of eyesight was not caused due to any rash or negligent act on the part of the doctor. See **: Suraj Bali Vs. Emperor, 7 Criminal Law Journal 306 (Allahabad).**

**17.05.** **When can a person be held liable for negligence ? :** It is well known that if a particular danger could not reasonably have been anticipated, it cannot not be said that the person has acted negligently because a reasonable man does not take precautions against enforceable circumstances. See : **V. Krishnakumar Vs. State of T.N., (2015) 9 SCC 388.**

**17.06.** **Doctor permitted to terminate 20 weeks old pregnancy of minor rape victim :** In the instant case, the medical practitioner had opined that slight risk was involved in termination of pregnancy of minor rape victim. The minor had pregnancy of less than 20 weeks. Sections 3 & 5 of the Medical Termination of Pregnancy Act, 1971 were attracted to the case. The Supreme Court had in a similar case in 2010 (AIR 2010 SC 235) permitted the termination of pregnancy of minor victim of rape. Following the said precedent, the Gujarat High Court permitted the Doctor to terminate the pregnancy of the minor rape victim. See : Minor Rathod Ravinaben Vs. State of Gujarat, AIR 2017 (NOC) 1121 (Gujarat).

**17.07.** **Doctors of Govt. hospital held liable for blinding a female baby borne pre-maturely :** The baby in question, who was born premature, was prone to

a high risk of becoming a victim of a disease named Retinopathy of Prematurity (ROP). The doctors concerned did not conduct the mandatory screening of such baby between 2 to 4 weeks after her birth with respect to subsequent possibility of occurrence of disease of ROP to her. They also did not advise the baby's parents to get the baby screened for ROP. Due to the said act of the doctors, the child became blind. There is nothing to indicate that the disease of ROP and its occurrence was not known to the medical profession in the relevant year i.e. 1996. This is important because whether the consequences were foreseeable or not must be measured with reference to knowlede at the date of the alleged negligence, not with hindsight. Thus, in the present case, the onset of ROP was reasonably foreseeable to the respondent doctors. See : **V. Krishnakumar Vs. State of T.N., (2015) 9 SCC 388** *(paras 11, 3, 12, 9 &10 ).*

**17.08.** **<u>When can a doctor be held guilty for medical negligence</u> ?:** To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent. ... A doctor who administers a medicine known to or used in a particular branch of medical profession impliedly declares that he has knowledge of that branch of science and if he does not, in fact, possess that knowledge, he is prima facie acting with rashness or negligence. See : **Jacob Mathew Vs. State of Punjab, (2005) 6 SCC 1 (Three-Judge Bench)** *(paras 48 & 40).*

**17.09.01.** **<u>Medical care of patient delegated to junior or staff incapable of performing the needful amounts to gross medical negligence</u>** : A complaint petition was filed by minor Harjol Ahluwalia through his parents Mrs. Harpreet Ahluwalia and Mr. Kamaljit Singh Ahluwalia before the National

Consumer Disputes Redressal Commission, New Delhi, alleging therein that the minor was being treated at a Nursing Home in Noida in December, 1993. As there was no improvement in his health, the said minor was brought to M/S Spring Meadows Hospital, New Delhi. In the hospital, the patient was examined by the Senior Consultant Paediatrician Dr. Promila Bhutani and on the advice of the said doctor, the patient was admitted as an in-patient in the hospital. The doctor made the diagnosis that the patient was suffering from typhoid and intimated the parents that medicines have been prescribed for the treatment of the typhoid fever. On the 30th of December, 1993 at 9.00 a.m., Miss Bina Mathew, nurse of the hospital, asked the father of the minor patient to get the injection 'Inj Lariago' to be administered intravenously to the minor patient. The father of the minor child purchased the medicine which was written down by the nurse and gave it, whereupon the nurse injected the same to the minor patient. The patient immediately on being injected collapsed while still in the lap of his mother. It was further alleged that before administering the injection, the nurse had not made any sensitive test to find out whether there would be any adverse reaction on the patient. Seeing the minor child collapsed, the parents immediately called for help and the Resident Doctor Dr. Dhananjay attended the patient. Said Dr. Dhananjay told the parents that the child had suffered a cardiac arrest and then by manually pumping the chest, the Doctor attempted to revive the heartbeat. The hospital authorities then summoned an Anaesthetist Dr. Anil Mehta who arrived within half an hour and then started a procedure of manual respiration by applying the oxygen cylinder and manual Respirator. In the meantime, Dr. Promila Bhutani also reached the hospital and the minor child was kept on a device called manual Respirator. Though the child was kept alive on the manual ventilator but the condition of the child did not show any improvement. In course of treatment as the minor's platelets count fell, a blood transfusion was given but still no improvement could be seen. Dr. Mehta, therefore, intimated

the parents that the hospital does not have the necessary facilities to manage the minor child and he should be shifted to an intensive Care Unit equipped with an Auto Respirator. On the advice of Dr. Mehta the parents brought the child and admitted him in the Paediatric Intensive Care Unit of the All India Institute of Medical Sciences on 3rd January, 1994. In the Institute, the doctors examined the minor child thoroughly and informed the parents that the child is critical and even if he would survive, he would live only in a vegetative state as irreparable damage had been caused to his brain and there was no chance of revival of the damaged parts. The minor was then kept in the Paediatric Intensive Care Unit of the AIIMS till 24th of January, 1994 and was thereafter discharged after informing the parents that no useful purpose would be served by keeping the minor child there. Dr. Anil Mehta as well as Dr. Naresh Juneja, Chief Administrator of Spring Meadows Hospital, however, offered to admit the minor child at their hospital and to do whatever was possible to stabilise the condition of the child and accordingly the minor child was again admitted to the hospital. The complainant alleged that the child on account of negligence and deficiency on the part of the hospital authorities suffered irreparable damages and could survive only as a mere vegetative and accordingly claimed compensation to the tune of Rs. 28 lacs. The Supreme Court held that the relationship between the doctor and the patient is not always equally balanced. The attitude of a patient is poised between trust in the learning of another and the general distress of one who is in a state of uncertainty and such ambivalence naturally leads to a sense of inferiority and it is, therefore, the function of medical ethics to ensure that the superiority of the doctor is not abused in any manner. It is a great mistake to think that doctors and hospitals are easy targets for the dissatisfied patient. It is indeed very difficult to raise an action of negligence. Not only there are practical difficulties in linking the injury sustained with the medical treatment but also it is still more difficult to establish the standard of care in medical negligence

of which a complaint can be made. All these factors together with the sheer expense of bringing a legal action and the denial of legal aid to all but the poorest operate to limit medical litigation in this country. With the emergence of the Consumer Protection Act no doubt in some cases patients have been able to establish the negligence of the doctors rendering service and in taking compensation thereof but the same is very few in number. In recent days, there has been increasing pressure on hospital facilities, falling standard of professional competence and in addition to all the ever increasing complexity of therapeutic and diagnostic methods and all this together are responsible for the medical negligence. That apart, there has been a growing awareness in the public mind to bring the negligence of such professional doctors to light. Very often in a claim for compensation arising out of medical negligence, a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable but a mistake which would tantamount to negligence cannot be pardoned. In the former case, a Court can accept that ordinary human fallibility precludes the liability while in the latter the conduct of the doctor is considered to have gone beyond the bounds of what is expected of the reasonably skill of a competent doctor. Gross medical mistake will always result in a finding of negligence. Use of wrong drug or wrong gas during the course of anaesthetic will frequently lead to the imposition of liability and in some situations even the principle of res ipsa loquitur can be applied. Even delegation of responsibility to another may amount to negligence in certain circumstances. A consultant could be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing of his duties properly. See : **M/S Spring Meadows Hospital Vs. Harjol Ahluwalia through K. S. Ahluwalia & Another, AIR 1998 SC 1801 (paras 9 & 10)**

**17.10.02. <u>Doctor held not guilty u/s 304-A IPC for causing death by negligence but the hospital held responsible for tort</u> :** On 15.02.1995, Shri Jiwan

Lal Sharma, a cancer patient, was admitted in a private ward of CMC Hospital, Ludhiana. On 22.02.1995 at about 11.00 p.m., Shri Jiwan Lal Sharma felt difficulty in breathing. The son of Shri Jiwan Lal Sharma was present in the room contacted the duty nurse who in her turn called some doctor to attend the patient but no doctor turned up for about 20 to 25 minutes. Then, Dr. Jacob Mathew and Dr. Allen Joseph came to the room of patient. An oxygen cylinder was brought and connected to the mouth of the patient but the breathing problem increased further. The patient tried to get up but the medical staff asked him to remain in bed. The oxygen cylinder was found to be empty. There was no other gas cylinder available in the room. The patient's son went to the adjoining room and brought a gas cylinder there from. However, there was no arrangement to make the gas cylinder functional and in between 5 to 7 minutes were wasted. By this time, another doctor came who declared that the patient was dead. The patient's son lodged an FIR against the said doctors for the offence u/s 304-A/34 of the Indian Penal Code by alleging that the death of his father had occurred due to the carelessness of the doctors and nurses' and non-availability of oxygen cylinder and the empty cylinder was fixed on the mouth of his father and his breathing was totally stopped hence his father died. After completion of the investigation, a charge-sheet against the doctors and the nurses for the offence u/s 304-A/34 of the IPC was filed by the police in the court of Judicial Magistrate, First Class, Ludhiana who framed the charges against u/s 304A of the IPC against the two accused persons/doctors named above. Both the accused persons/doctors filed a revision in the court of Sessions Judge, Ludhiana by submitting that there was no ground for framing charge against them but the revision was dismissed.

The accused persons/doctors filed a petition in the High Court u/s 482 of the Code of Criminal Procedure for quashing the FIR and the charge-sheet but the same was also dismissed by the High Court. Feeling aggrieved by the said orders of the Sessions Judge and the High Court the accused persons/doctors filed SLP before the Supreme Court. The Supreme Court allowed the SLP by its judgment dated 05.08.2005, and quashed the prosecution of the accused persons/doctors u/s 304-A/34 of the IPC by observing that the patient was quite aged and was in advanced stage of terminal cancer and was experiencing breathing difficulties at about 11 p.m. at night and succumbing due to unavailability of oxygen cylinders with oxygen which was sought to be administered by the accused persons/doctors. The Supreme Court held that it was a case of non-availability of oxygen cylinders for which hospital may be liable in tort but the accused persons/doctors could not be proceeded against u/s 304-A of the IPC. See : **Jacob Mathew Vs. State of Punjab, (2005) 6 SCC 1 (Three-Judge Bench).**

**17.11.** **Negligence causing death & punishable u/s 304-A IPC must be 'gross' negligence** :The word 'gross' has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly". To impose criminal liability under Section 304-A, the Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *cause causans*; it is not enough that it may have been the *causa sine qua non*.

See : **Jacob Mathew Vs. State of Punjab, (2005) 6 SCC 1 (Three-Judge Bench).**

17.12. **Doctor not to be held liable for medical negligence if his opinion is established to be reasonable or responsible :** The applicant, V. went to the respondent Hospital on 03.02.1990, suspecting that she was pregnant. At the time she had a son, who was only about eight months old and who had been born after a caesarean operation. At the hospital V was informed by Dr S Respondent 2 that she had conceived again. In consultation with Dr. S, V decided to have the pregnancy terminated. For that purpose MTP was fixed on 10.02.1990. V went to the Hospital on 09.02.1990, on which date a "laminaria tent" was inserted. Early the next morning V was taken to the labour room. When V's husband and sister-in-law went to the Hospital, they were informed that V was bleeding profusely and that an operation had to be conducted; it was clearly stated that V's condition was serious. At about 4 p.m. V's family members were informed that she was better, but was under sedation. Dr S also told the husband that V had a cervical pregnancy and that her uterus had been removed. On 22.02.1990 V was discharged from the Hospital. ... V filed a complaint before the National Consumer Disputes Redressal Commission, New Delhi claiming compensation of Rs. 15 Lakh on the ground that her uterus had been removed as a result of negligence by the respondents. V submitted that due care and caution had not been shown by the respondents in diagnosing the problem, in acting to prevent complications and in the performance of their duties; that the Hospital did not have necessary facilities and infrastructure; that the dilation and curettage (D&C) procedure was unnecessarily performed on her and that as a result complications arose and she ended

up losing her uterus at a very young age. The commission dismissed V's claim finding that she had not established negligence on the part of the Doctor/Hospital. In appeal before the Supreme Court, V submitted that (i) she had a normal pregnancy and that MTP was not necessary (ii) that the MTP had been conducted without prior diagnosis by ultra sonogram, (iii) that the MTP was carried out negligently resulting in excessive bleeding bring about the need for hysterectomy and (iv) that the products of conception had not been sent for histopathological examination to confirm the diagnosis and for future follow up. Dismissing the appeal, the Supreme Court observed that V did not have any history from which presence of cervical pregnancy could have been suspected. The appellant had not complained of any significant bleeding or painless bleeding or bleeding with pain at any time. In the circumstances, the doctors could not have found that the appellant had cervical pregnancy and they cannot be held guilty or any negligence either in respect of diagnosis or in the matter of treatment administered. Hysterectomy was the only solution on account of profuse bleeding or severe vaginal or peritoneal bleeding. Since the ultrasound not has been used in the case of the appellant, therefore, it cannot be held that there was negligence on the part of the doctors. Whatever had been done by the doctors was part of the general practice available in the State of Kerala. So a doctor will not be guilty of negligence if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art and if he has acted in accordance with such practice then merely because there is a body of opinion that takes a contrary view will not make him liable for

negligence. See : **Vinitha Ashok (Smt.) Vs Lakshmi Hospital, (2001) 8 SCC 731.**

**17.12.01.** **Doctor not guilty of medical negligence if he had acted in accordance with the practice and acknowledge by the body of medical experts** : A doctor will not be guilty of negligence if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art and if he has acted in accordance with such practice merely because there is a body of opinion that takes as contrary view will not make him liable for negligence. This is standard of care required by a doctor. See : **Smt. Vinitha Ashok Vs. Lakshmi Hospital & Others, AIR 2001 SC 3914 (para 18).**

**17.13.** **Section 197 CrPC when attracted ?** : The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without rescannable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. But before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it

clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. Use of the expression, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. See : **Center for Public Interest Litigation & Another Vs. Union of India & Another, AIR 2005 SC 4413 (Three-Judge Bench).**

**17.14.** **Sanction u/s 197 CrPC required only when the offence committed is attributable to or has direct nexus with the official duty of the public servant :** Whereas an order of sanction in terms of Section 197 CrPC is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined. See : **Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294***para 33).*

**18.01.** **Two fingers test prohibited by the Supreme Court in rape cases :** In view of international Covenant on Economic, Social, and Cultural Rights, 1966 United Nations declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, 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 s should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure safety and there should be no arbitrary or unlawful interference with his privacy. See : **Lillu alias Rajesh & Another Vs. State of Haryana, AIR 2013 SC 1784.**

18.02. **Version of prosecutrix to be believed even when her hymen found non-rupture of her hymen** : No girl would put herself to disrepute and would go to support her parent to lodge false case of rape due to enmity between the accused and her parent. Even if medical evidence shows no rupture of hymen and does not support the prosecution case, keeping in view the provisions of Section 114-A of the Evidence Act, the court should give utmost weightage to the version of the prosecutrix as definition of rape also include attempt to rape. See : **Puranchand Vs State of H.P., 2014 (86) ACC 279 (SC).**

18.03. **Ascertaining timing when hymen was ruptured ?** : PW 1 (doctor who examined prosecutrix) opined that when hymen has been ruptured in last 24 hours, then on touching hymen, fresh blood must necessarily ooze out-- In saying so, she approved what is written in Modi's book on *Medical Jurisprudence*--- However, she testified, that when she touched hymen of prosecutrix, no fresh blood oozed out---However, allegedly, medical examination of prosecutrix was conducted within 12 hours of alleged incident of rape--- Had that been so, prosecutrix would have bled fresh during medical examination, but that did not happen---Hence, probably hymen was ruptured more than 24 hours back ---In fact, PW 1 in her cross-examination said, that

rupture of hymen was at least 2-3 days prior to medical examination---If such statement is correct, entire story of prosecution would fail---Therefore, medical evidence of PW 1, on analysis, is not wholly supportive of prosecution case ---Acquittal of respondent-accused on totality of circumstances, confirmed. See : **State of Madhya Pradesh Vs. Keshar Singh, (2015) 9 SCC 91** *(para 10)*

**18.04.<u>Extent of penetration & hymen found intact</u>** : Where in the case of rape on a girl aged between 14 to 16 years, the Dr. had opined that on medical examination there was no sign of injury on prosecutrix and hymen was found intact, it has been held by the Supreme Court that since there was penetration which had caused bleeding in private parts of the prosecutrix, therefore, the extent of penetration necessary to constitute the offence of rape as defined u/s 375 of the IPC was immaterial and the accused was rightly held guilty for the offence of rape u/s 376(1) of the IPC. See : **Parminder Vs State of Delhi, (2014) 2 SCC 592.**

**18.05.<u>Where no injuries found by the doctor on the person of rape victim</u> :** In the cases noted below, it has been clarified by the Supreme Court that even where no external or internal marks of injury on the private part of the victim of rape was found in medical examination, the testimony of the prosecutrix that she was raped by the accused cannot be discarded. Where observations recorded by doctor during medico-legal examination of prosecutrix clearly making out prosecutrix having been subjected to rape and the doctor as PW stating in response to a suggestion put to her by defence that injury of the nature found on the hymen of prosecutrix could be caused by a fall does not lead to court

anywhere. Why would the girl or her mother charge the accused (near relation) with rape if the injury was caused by the fall particularly when the Prosecutrix in her deposition had spoken of "penetration". Discovery of **SPERMATOZOA** in the private part of the victim is not a must to establish penetration. There are several factors which may negative the presence of spermatozoa. **Slightest penetration of penis into vagina without rupturing the hymen would constitute rape.** See :

1. **State of U.P Vs Chottey Lal, AIR 2011 SC 697**
2. **Rajinder Vs State of H.P., AIR 2009 SC 3022**
3. **Ahimuddin Vs State of U.P., 2006 (6) ALJ (NOC) 1360 (All)**
4. **State of Rajasthan Vs Om Prakash, 2002 (2) JIC 870 (SC)**
5. **State of H.P. Vs Gian Chand, 2001(2) JIC 305 (SC)**
6. **Arayanamma Vs State of Karnataka, (1994) 5 SCC 728**
7. **Madan Gopal Kakkad Vs Naval Dubey, (1992) 3 SCC 204**
8. **Harpal Singh Vs State of Himachal Pradesh, AIR 1981 SC 361**

In the case of **State of Tamil Nadu Vs Ravi alias Nehru, 2006(55) ACC 1005 (SC)** where a girl of 5 years old was raped and the opinion of the doctor was that penis would not have gone inside the girl's vagina, the Supreme Court held that the opinion of the doctor was irrational when hymen was found torn. Even a slight penetration of penis into vagina without rupturing hymen would constitute rape. Evidence of victim of sexual assault stands at par with the evidence of an injured witness. Conviction on her sole testimony without corroboration is justifiable.

**19.01. <u>Scientific tests generally applied for investigation of crimes etc.</u> :**

Scientific tests which are generally applied for the detection of crimes and criminals and determination of paternity etc. are as under :

(i) DNA (Deoxyribo Nucleic Acid)
(ii) RNA (Ribo Nucleic Acid)
(iii) Lie-Detector Test
(iv) Polygraph Test

(v) Brain-Mapping Test (P300)
(vi) Narco Analysis Test (Also known as Truth Serum Test)
(vii) Voice Analysis Test
(viii) Finger Print Test
(ix) Handwriting Test

**19.02.** **Article 20(3) of the constitution as bar against forced scientific tests like Narco-analysis & Polygraph etc. :** In view of the bar of the Constitution contained under Article 20(3), an accused person cannot be compelled to undergo scientific tests like Narco analysis, Polygraphy, Brainfinger Printing etc. as it amounts to self-incrimination of the accused. See : **Smt. Selvi Vs. State of Karnataka, AIR 2010 SC 1974 (Three-Judge Bench).**

**19.03.** **'DNA' & its meaning ?** : 'DNA' stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made-up of a double stranded structure consisting of a deoxyribose sugar and phosphate backbone, cross-lined with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. The most important role of DNA profile is in identification, such as an individual and his blood relations such as mother, father, brother, and so on. Successful identification of skeleton remains can also be performed by DNA profiling. DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones etc. See : **Dharam Deo Yadav Vs State of UP, (2014) 5 SCC 509.**

**19.04.** **'DNA' what is ?** : DNA is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a

tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with the DNA profile of the suspect, it can generally be concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory. See : **Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra, (2014) 4 SCC 69** **(para 18).**

**19.05.<u>'DNA' & its sources ?</u>** : DNA can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones etc. See : **Dharam Deo Yadav Vs. State of UP, (2014) 5 SCC 509.**

**19.06.<u>'DNA' & its sources ?</u>** : DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. See : **Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra, (2014) 4 SCC 69** (para 18).

**19.07. <u>'DNA' Test not violative of Art. 20(3) of the constitution</u> :** DNA profiling technique has been expressly included among the various forms of medical Examination in the amended explanation to Sections 53, 53-A and 54 of the CrPC DNA Profile is different from a DNA sample which can be obtained from bodily substances. The use of material samples such as finger prints for the purposes of comparison and identification does not amount to testimonial act or compulsion for the purpose of Article 20(3) of the constitution. Hence, the taking and retention of DNA Samples which are in the nature of physical evidence do not face constitutional hurdles in the Indian context. See : **Smt. Selvi Vs. State of Karnataka, AIR 2010 S.C. 1974 (Three-Judge Bench).**

**19.08. Delayed 'DNA' test not to vitiate its findings :** Where the accused was charged with having caused the death of his girl friend by hitting her with car tools like jack and spanner and cutting her with shaving blades and throwing acid on her as she had refused to abort and was found pregnant at the time of her death, the DNA report had linked the accused as biological father of foetus taken out from the body of the deceased, the sample was taken from the foetus on the date of post-mortem itself and was preserved into ice, some delay had taken place in conducting the DNA test on the sample of foetus, Junior Scientific Officer from Central Forensic Laboratory had conceded as witness that mishandling of sample could lead to wrong results but had categorically deposed that in the case on hand, result reported by him was not based on wrong facts, it has been held by the Hon'ble Supreme Court that the burden was on the accused to prove that prosecution case was vitiated because of delay in conducting test on the sample taken from the foetus and that the sample was improperly preserved. In the absence of the said burden being discharged by the accused, his conviction for the offences u/s 302/34 and 316/34 of the IPC was held proper. See : **Sandeep Vs. State of UP, (2012) 6 SCC 107.**

**19.09. <u>'DNA' test & effect of improper preservation of sample</u>** : Where the accused was charged with having caused the death of his girl friend who was found pregnant at the time of her death, the DNA report had linked the accused as biological father of foetus taken out from the body of the deceased, the sample was taken from the foetus on the date of post-mortem itself and was preserved into ice, some delay had taken place in conducting the DNA test on the sample of foetus, Junior Scientific Officer from Central Forensic Laboratory had conceded as witness that

mishandling of sample could lead to wrong results but had categorically deposed that in the case on hand, result reported by him was not based on wrong facts, it has been held by the Hon'ble Supreme Court that the burden was on the accused to prove that prosecution case was vitiated because of delay in conducting test on the sample taken from the foetus and that the sample was improperly preserved. In the absence of the said burden being discharged by the accused, his conviction for the offences u/s 302/34 and 316/34 of the IPC was held proper. See : **Sandeep Vs. State of UP, (2012) 6 SCC 107.**

**19.10.** **'DNA' reports may vary depending on the quality control & quality procedure in laboratory** : Variance in DNA report depends on the quality control & quality procedure in laboratory. See : **Anil Vs. State of Maharashtra, (2014) 4 SCC 69.**

**19.11.** **'DNA' & 'DNA' profile distinguished** : DNA profiling technique has been expressly included among various forms of medical examination in the amended Explanation to Sec. 53 CrPC. DNA Profile is different from DNA sample which can be obtained from bodily substances. A DNA profile is a record created on the basis of DNA samples made available to forensic experts. Creating and maintaining DNA profiles of offenders and suspects are useful practices since newly obtained DNA samples can be readily matched with existing profiles that are already in the possession of law enforcement agencies. Matching of DNA samples is emerging as a vital tool for linking suspects to specific criminal acts. See **: Selvi Vs. State of Karnataka,(2010) 7 SCC 263(Three-Judge Bench).**

**19.12.** **'DNA' profiling report of a person accused of rape to be prepared by registered Medical Practitioner examining him :** Section 53A(2)(iv) CrPC as inserted w.e.f. 23.06.2006 casts a duty on the Registered

Medical Practitioner examining an accused of offence of rape to prepare a report of his DNA profiling without delay.

**19.13. '<u>DNA' profiling report of a victim of rape to be prepared by registered Medical Practitioner examining the person of the victim of rape</u> :** Section 164A(2)(iii) CrPC as inserted w.e.f. 23.06.2006 casts a duty on the Registered Medical Practitioner examining the person of a victim of rape to prepare a report of her DNA profiling without delay.

**19.14. '<u>DNA' & other scientific tests when can be ordered by courts?</u> :** DNA Test is not to be directed as a matter of routine and only in deserving cases such direction can be given. See :

1. **Goutam Kundu vs. State of W.B., (1993) 3 SCC 418**
2. **Banarsi Dass vs. Teeku Dutta (Mrs.), (2005) 4 SCC 449**

**19.15. '<u>DNA' profiling test of the person of victim of rape (Sec. 164-A (2) (iii) CrPC w.e.f. 2006)</u> : (A)** An investigating officer, u/s. 164-A(2)(iii) CrPC, can get a victim of rape not only medically examined by a registered medical practitioner but can also get the material taken from the person of the woman (victim of rape) through a registered medical practitioner for DNA profiling. But according to the provisions under sub-sections (4) & (7) to Sec. 164-A Cr.P.C. the woman (victim of rape) cannot be subjected to DNA test without her consent and in case of the woman being minor or otherwise incompetent to give consent then with the consent of some person competent to give consent on her behalf.

**19.16. '<u>DNA' Test & precautions & procedure in conducting such tests</u>** : While conducting DNA test precautions are required to be taken to ensure preparation of high-molecular-weight, DNA complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate

control. See : **Pantangi Balarama Venkata Ganesh vs. State of A.P., 2009 (5) Supreme 506.**

**19.17.** **'DNA' test report & its evidentiary value :** Referring to the U.S. Supreme Court decision rendered in the case of R. vs. Watters, (2000) All.E.R. (D) 1469, the Supreme Court of India has ruled that the DNA evidence may have a great significance where there is supporting evidence, dependent of course, on the strength of that evidence. In every case one has to put the DNA evidence in the context of the rest of the evidence and decide whether taken as a whole, it does amount to a prima facie case. See : **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, 2005 CrLJ 2533 (SC)(Three-Judge Bench).**

**19.18.** **'DNA' test report & its evidentiary value :** From matching of DNA profile of sample at the scene of crime with that of the accused, it can generally be concluded that both samples are of same biological origin. DNA profile is valid and reliable but variance in a particular result depends on the quality control and quality procedure in the laboratory. See : **Anil Vs. State of Maharashtra, (2014) 4 SCC 69.**

**19.19.** **'DNA' test report & its evidentiary value :** Where DNA report, being the solitary piece of evidence against an accused of offence of rape, had gone negative, it has been held that the DNA report conclusively excludes possibility of involvement of the accused in the commission of offence of rape. See : **2009 ACC (Summary) 22 (Gujarat)**

**19.20.** **'DNA' report to be accepted as accurate & exact** : In the case of rape with murder, it has been held by the Hon'ble Supreme Court that DNA report must be accepted as scientifically accurate & an exact science. Interpreting the provisions of Sec 53 & 53-A CrPC, it has also been held that court cannot substitute its own opinion for that of an

expert specially in case of complex subject like DNA profiling. See **: Santosh Kumar Singh Vs. State through CBI, (2010) 9 SCC 747**

**19.21.** **'DNA' report in the face of other evidence** : Where in a murder trial the conviction of the accused was not based on expert evidence alone but on other evidence available on record as well, it has been held by the Supreme Court that the use of the word 'similar' and not 'identical' in his report by the DNA expert is not material. See : **Pantangi Balarama Venkata Ganesh vs. State of A.P., AIR 2009 SC 3129.**

**19.22.** **'DNA' Test to decide paternity when can be ordered by court? :** As regards the scientific test of blood or DNA Test for determining the paternity or legitimacy of a child, the Supreme Court has laid down following guidelines for the purpose :

(1) That courts in India cannot order blood test as a matter of course;

(2) Wherever applications are made with such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising u/s 112 of the Evidence Act.

(4) 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.

(5) No one can be compelled to give sample of blood for analysis. See :

**(i) Goutam Kundu vs. State of W.B., (1993) 3 SCC 418**

**(ii). Bhabani Prasad Jena Vs. Orissa State Commission for women, (2010) 8 SCC 633.**

**19.23. 'DNA' & 'RNA' Tests whether conclusive for determination of paternity etc.? :** Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements like **Deoxyribo Nucleic Acid (DNA)** as well as **Ribo Nucleic Acid (RNA)** tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Sec. 112 of the Evidence Act e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardized if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated herein. It is for the parties to place evidence in support of their respective claims (regarding paternity) and establish their stands. The view that the documents produced by the party regarding succession certificate (paternity) are not sufficient or relevant for the purpose of adjudication of paternity and **DNA Test is conclusive, is erroneous**. See :

**(i) Banarsi Dass vs. Teeku Dutta (Mrs.), (2005) 4 SCC 449**

**(ii) Kamti Devi vs. Poshi Ram, (2001) 5 SCC 311**

**19.24. 'DNA' Test Report denying biological paternity to repel presumption u/s 112, Evidence Act :** In the case noted below, the DNA Test Report stated that the husband was not the biological father of

the child. The husband's plea that he had no access to his wife when the child was begotten stood proved by the DNA Test Report. The child was born during the continuance of a valid marriage between the husband and the wife. Section 112 of the Evidence Act was enacted at a time when modern scientific advancement and DNA tests were not even in contemplation of the legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein, but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. When there is a conflict between a "conclusive proof" envisaged under law based on a presumption and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former. See : **Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik & Another, (2014) 2 SCC 576** *(para 17)*

**19.25.** **<u>'DNA' test can be ordered by Court to repel or establish infidelity and presumption u/s 112 of the Evidence Act</u>** : The Supreme Court in Nandlal Wasudeo Badwaik, (2014) 2 SCC 576, clearly opined that proof based on a DNA test would be sufficient to dislodge a presumption under Section 112 of the Evidence Act. Further, it is borne from the decisions rendered by the Supreme Court in Bhabni Prasad Jena, (2010) 8 SCC

633 and Nandlal Wasudeo Badwik case, that depending on the facts and circumstances of the case, it would be permissible for a court to direct the holding a DNA examination to determine the veracity of the allegation(s) which constitute one of the grounds, on which the party concerned would either succeed or lose. However, it is not disputed that if the direction to hold such a test can be avoided, it should be so avoided. The reason is that the legitimacy of a child should not be put to peril. .... In the instant case, the respondent husband has made clear and categorical assertions in the petition filed by him under Section 13 of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person who was the father of the male child born to the appellant wife. It is in the process of substantiating his allegation of infidelity that the respondent husband had made an application before the Family Court for conducting a DNA test which would establish whether or not he had fathered the male child born to the appellant wife. The respondent rightly feels that it is only possible for him to substantiate the allegations leveled by him (of the appellant wife's infidelity) through a DNA test. In the opinion of the Supreme Court, but for the DNA test, it would be impossible for the respondent husband to establish and confirm the assertions made in his pleadings. Hence, the direction issued by the High Court allowing the respondent's prayer for conducting a DNA test, was fully justified. DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the respondent husband, and to establish that she had not been unfaithful, adulterous or disloyal. If the appellant wife is right,

she shall be proved to be so. See : **Dipanwita Roy Vs. Ronobroto Roy, (2015) 1 SCC 365** ***(paras 16 & 17)***

**19.26.** 'DNA' report & directions therefor by Division Bench of the Hon'ble Allahabad High Court issued in its judgment & order dated 28.08.2014 passed in Capital Case No. 574/2013 Akhtar Vs. State of UP (Directing that 'DNA' report in the cases of rape & murder of minor girls must be obtained from the hair & clothes etc. of the victim of rape & accused) **:** Following directions in the case of Akhtar Vs. State of UP have been issued by the Hon'ble High Court :

(1) That in cases of rape and murder of minor girls, which are based on circumstantial evidence, as far as possible, material which is collected from the deceased or the accused for example hair or blood of the victim or the accused, which is found on the persons or clothes of the victim or the accused or at the spot, seminal stains of the accused on the clothes or body of the victim, seminal swabs which may be collected from the vaginal or other orifices of the victim and the blood and other materials extracted from the accused which constitutes the control sample should be sent for D.N.A. Analysis, for ensuring that forensic evidence for establishing the participation of the accused in the crime, is available.

(2) We also direct the Director General Medical Health U.P., Principal Secretary Health, U.P., and D.G.P., U.P. to mandate sending the accused for medical examination in each case for ascertaining whether he has any injuries caused by the resisting victim, or when he attempts to cause harm to her as is provided under section 53 A of the Code of Criminal Procedure, which was introduced by Act 25 of 2005, (w.e.f. 23.6.2006). In particular if the rape suspect is apprehended at an early date after the

crime, it should be made compulsory to take both dry and wet swabs from the penis, urinary tract, skin of scrotum or other hidden or visible regions, after thorough examination for ascertaining the presence of vaginal epithelia or other female discharges which are also a good source for isolating the victim's DNA and necessary specialized trainings be imparted to the examining forensic medical practitioners for this purpose.

(3) We direct the Principal Secretary (Health), U.P., Director General (Health and Medical Services) U.P. to prohibit conducting the finger insertion test on rape survivors, and to employ modern gadget based or other techniques for ascertaining whether the victim has been subjected to forcible or normal intercourse. These finger insertion tests in female orifices without the victim's consent have been held to be degrading, violative of her mental and physical integrity and dignity and right to privacy and are re-traumatizing for the rape victim. Relying on the International Covenant on Economic, Social, and Cultural Rights, 1966 and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 it was further held in **Lillu Vs. State of Haryana, (2013) 14 SCC 643** that no presumption of consent could be drawn ipso facto on the strength of an affirmative report based on the unwarranted two fingers test.

(4) We find that there is absence of an adequately equipped D.N.A. Laboratory in U.P. which has advanced mitochondrial DNA analysis facilities, comparable to the CDFD, Hyderabad, (from where we were able to obtain positive results in this case, after unsuccessful DNA matching in an earlier case [Criminal Capital Appeal (Jail) No. 2531 of 2010], Bhairo vs. State of U.P.(decided on 6.9.11) where this

Court had sent the sample of vaginal smear slides and swabs and appellant's underwear to the U.P. DNA laboratory, viz. Forensic Science Laboratory, Agra), and we direct that such a DNA centre comparable to the CDFD be established in the State of U.P. at the earliest so that Courts and investigating agencies are not compelled to send DNA samples at high costs to the specialized facility of the CDFD at Hyderabad.

(5) The Director General of Prosecution, U.P., the Director General of Police U.P. and Director General, Medical Health should ensure that blind cases of rape and murder of minor girls or other complicated cases are thoroughly investigated by efficient Investigating Officers. Effective steps should be taken for forensic investigations by collecting and promptly sending for DNA analysis all possible incriminating material collected from the deceased, victim, accused, and at the scene of the crime etc. which may give information about the identity of the accused and his involvement in the crime, after taking precautions for preventing the contamination of the material. This is necessary to prevent Courts being rendered helpless because the prosecution and investigating agency are lax in producing witnesses or because witnesses have been won over or are reluctant to depose in Court. Steps should also be taken for preventing witnesses from turning hostile, by prosecuting such witnesses, and even by cancelling bails of accused where they have secured bails where it is apparent that efforts are being made to win over witnesses and by providing witnesses with protection where ever necessary so that they can give evidence in Court without fear or pressure. In case there is reason to think that the Investigating Officers or medical officers or others have colluded with the accused, strict action be initiated against the colluding officials as was recommended in the

case of Dayal Singh vs. State of Uttaranchal (supra). It is necessary that policies and protocols be developed by the DGP, U.P., Principal Secretary Health, Director Medical Health U.P., Director of Prosecutions, U.P., for the aforesaid purposes.

Note : (1) Registry of the High Court was directed to forthwith forward the copies of the above judgment/directions to all the respondents to submit compliance report of the directions of the Hon'ble High Court within 4 weeks.

(2) Registry was also directed to circulate copies of the above judgment/directions to all the District Judges for ensuring compliance of the above directions.

**19.27.** <u>पड़वा और पड़िया का डीएनए टेस्ट</u> : गोसाईगंज थाना क्षेत्र में एक भैंस चर्चा का विषय बन गयी है । तमाम उपाय के बाद अब भैंस के असली दावेदार की पहचान के लिए पंचायत में पड़वा और पड़िया का डीएनए परीक्षण कराये जाने का फैसला लिया गया है । सीओ मोहनलाल गंज राकेश नायक के मुताबिक बीते दिनों गोसाईगंज के मुल्लाखेड़ा निवासी माता प्रसाद की भैंस चोरी हो गयी थी । अगले दिन भैंस मिली थी जिसके बाद गांव के ही गुदरू ने भी भैंस को लेकर अपनी दावेदारी पेश कर दी थी । पूर्व में भैंस को लेकर यह निर्णय लिया गया था कि भैंस को छोड़ दिया जाएगा । दोनों में जिसके दरवाजे पर भैंस पहुंचेगी, उसको सौंप दी जाएगी । जब भैंस छोड़ी गयी तो दोनों में से किसी के दरवाजे पर नहीं गयी थी । इसके बाद निर्णय हुआ कि दोनों दावेदारों में से जो भैंस को दुह लेगा उसको भैंस सौंप दी जाएगी लेकिन यह तरीका भी फेल हो गया । सीओ के मुताबिक माता प्रसाद के पास एक भैंस का पड़वा है, जबकि गुदरू के पास एक पड़िया है । अब पंचायत में फैसला हुआ है कि पड़वा और पड़िया का डीएनए टेस्ट कराया जाएगा ताकि भैंस के असली दावेदार का पता लगाया जा सको । सीओ ने बताया कि शुरूआती दौर में डीएनए टेस्ट में खर्च की जिम्मेदारी भैंस के दोनों दावेदारों की होगी और उनसे एडवांस में रूपये जमा कराये जायेंगे । अन्त में जिस दावेदार की भैंस नहीं निकलेगी, उसके द्वारा जमा रकम से खर्च लिया जाएगा ।

**स्रोत : दैनिक जागरण, लखनऊ संस्करण 26 फरवरी, 2015, पृष्ठ 8.**

**<u>DNA Test to determine buffalo's master</u> :** To settle an ownership dispute, Lucknow police is going in for DNA sampling of a buffalo to match with two calves. The scientific approach may be foolproof but the

method does not appear appropriate as DNA fingerprinting may cost far more than the buffalo in question. The incident relates to a controversy that began after two persons turned up last week to claim ownership of the buffalo that initially went missing but was later traced grazing outside the village. The matter landed up with the Mohanlalganj police. The cops first applied the 'desi methods' in which the bovine was left in the fields and villagers waited for it to walk back to the owner's house. But, it didn't. The police then asked the two contenders to milk and feed the buffalo. Both passed the tests with equal ease. Interestingly, the two claimants, Ram Bachan and Awadh Ram, are residents of Gangaganj village under Gosainganj police station and their buffalos had gone missing the same day, on February 19. Though it was Ram Bachan who informed police about the theft, Awadh Ram did not. It was only after the buffalo was traced that the latter came into the picture and the controversy began. Now, the two men are claiming ownership of the buffalo, which will undergo the test. **Source : Times of India, Lucknow Edition, Dated 05.03.2015.**

**19.28.** **<u>Opinion of an expert not to be relied on unless examined as witness in court</u>** : Unless the expert submitting his opinion is examined as witness in the court, no reliance can be placed on his opinion alone. See :

**(i) State of Maharashtra vs. Damu, AIR 2000 SC 1691**

**(ii) Keshav Dutt Vs. State of Haryana, (2010) 9 SCC 286**

**19.29.** **<u>Pre-conditions for the admissibility of scientific evidence</u> :** The admissibility of the result of a scientific test will depend upon its authenticity. Whether the Brain Mapping Test is so developed that the report will have a probative value so as to enable a court to place

reliance thereupon, is a matter which would require further consideration, if and when the materials in support thereof are placed before the court. Referring to the US Supreme Court decisions in the cases of Frye vs. United States, (293F1013 DCcir 1923) and Daubart vs. Merryll Dow Pharmaceuticals Inc., 113SCt. 2786 (1993), it has been ruled by the Supreme Court of India that the pre-conditions for the admissibility of the scientific evidence (u/s. 45 of the Evidence Act) are as under :

(i) Whether the principle or technique has been or can be reliably tested?

(ii) Whether it has been subject to peer review or publication?

(iii) It is known for potential rate of error?

(iv) Whether there are recognized standards that control the procedure of implementation of the technique?

(v) Whether it is generally accepted by the Community?

(vi) Whether the technique has been introduced or conducted independently of the litigation? See : **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, 2005 CrLJ 2533 (SC)(Three-Judge Bench)**

**19.30. Oral Evidence when to yield to electronic or forensic evidence ? :** Existence of serious discrepancy in oral evidence has to yield to conclusive scientific evidence like electronic records (Mobile call details) and other forensic evidence. See : **Gajraj Vs. State of NCT of Delhi , (2011) 10 SCC 675.**

**19.31. <u>History & method of Narco Analysis Test</u> :** Narco analysis test is also known as Truth Serum Test. Narco+Analysis=Narco-analysis means psycho analysis using drugs to induce a state akin to sleep. In narco

analysis test the drug like sodiumamytal is used as a truth drug on the suspect for determination of facts about the crime. It is called **"Amytal Interview"**. It is believed that if a person is administered a drug which suppresses his reasoning power without affecting memory and speech, he can be made to tell the truth. Some drugs have been found to create this 'twilight state' in some persons. These drugs are being administered in some countries including India. The term narcoanalysis was introduced in 1936 for the use of narcotics to induce a trance like state wherein the person is subjected to various queries. Under the influence of the drug, the subject talks freely and is purportedly deprived of his self-control and will- power to manipulate his answers. The underlying theory is that a person is able to lie by using his imagination. In the narcoanalysis test, the subject's imagination is neutralized and reasoning faculty affected by making him semi-conscious. The subject is not in a position to speak up on his own but can answer specific and simple questions. In this state it becomes difficult for him to lie and his answers would be restricted to facts he is already aware of. His answers are spontaneous as a semi-conscious person is unable to manipulate his answers. Truth Serums (or sera) are no serum at all. They are drugs sometimes used clinically. A few of the best known **drugs are Seconal, Hyoscine (scopolamine), Sodium Pentothal, Sodium Amytal, Phenobarbital**. Most commonly used drug for truth serum test is an anesthetic and sedative drug, Sodium Pentothal which when administered intravenously can make a person garrulous and confessional. Injected in continuous small dosages it has a hypnotizing effect on a person who responds loquaciously when questioned. The narcoanalysis test is conducted by mixing 3 grams of Sodium Pentothal

or Sodium Amytal dissolved in 3000 ml of distilled water. Depending on the person's sex, age, health and physical condition, this mixture is administered intravenously alongwith 10% of dextrose over a period of 3 hours with the help of an anesthetist. **Wrong dose can send the subject into coma or even result in death.** The rate of administration is controlled to drive the accused slowly into a hypnotic trance. The effect of the biomolecules on the bio-activity of an individual is evident as the drug depresses the central nervous system, lowers blood pressure and slows the heart rate, putting the subject into a hypnotic trance resulting in a lack of inhibition. The subject is then interrogated by the investigating agencies in the presence of the doctors. The revelations made during this stage are recorded both in video and audio cassettes. The report prepared by the experts is used in the process of collecting evidence. This procedure is conducted in government hospitals after a court order is passed instructing the doctors or hospital authorities to conduct the test. Personal consent of the subject is also required.

**19.32.** **Narco Analysis, Polygraph & BEAP tests not permissible to be conducted on accused u/s 53, 53-A, 54 CrPC :** Though conducting of certain medical tests on accused is permissible under Explanation (a) to Sec 53, 53-A & 54 CrPC, yet Narco Analysis, Polygraph & BEAP tests are not included in those tests. See : **Selvi Vs. State of Karnataka, (2010) 7 SCC 263 (Three-Judge Bench**).

**19.33.** **Power of court to order Narco Analysis or Brain Mapping tests etc.** : The discovery of the truth is the desideratum of investigation, and all efforts have to be made to find out the real culprit, because, a guilty person should not be allowed to escape from the liability of the guilt. Courts have, therefore, to adopt a helpful attitude, in all efforts, made by

the prosecution for discovery of the truth. If the Narco Analysis and Brain Mapping Test can be helpful in finding out the facts relating to the offence, it should be used and utilized and the Courts should not obstruct the conduct of the exercise. See :

1. **Abhay Singh vs. State of U.P., 2009 (65) ACC 507 (All)**
2. **Santokben vs. State of Gujarat, 2008 CrLJ 68 (Gujarat)**
3. **Dinesh Dalmia vs. State, 2006 CrLJ 2401 (Madras)**

**19.34.** **Drugs generally applied for tests like Narco-analysis & Polygraph etc. :** Following drugs are generally used on the subject for conducting the tests like Narco Analysis, Lie Detector and Polygraph etc. to extract truth or confession :

(i) Sodium Pentothal,
(ii) Seconal
(iii) Hyoscine (scopolamine)
(iv) Sodium Amytal
(v) Phenobarbital

**19.35.** **Admissibility of the Result of Narco-analysis Test Report :**The Supreme Court of India (in the case noted below), while dealing with the question of admissibility and reliability of the result of the narco-analysis test, has not given any conclusive opinion regarding the admissibility and the reliability of the result (report) of the narco-analysis test. See : **Ram Singh vs. Sonia, 2007 AIR SCW 1278**

**19.36.** **Plea of health hazard not tenable against the proposed scientific tests like Polygraph, Narco Analysis & Brain Mapping etc. :** Directing scientific tests like polygraph, narco-analysis or brain mapping of an accused is not violative of the provisions of Art. 20(3) of the Constitution. Such tests on accused to bring out clinching evidence by

extracting truth from him would not amount to breaking his silence by force and intrusion of his constitutional right to remain silent. Plea that such tests would cause health hazard to accused is also not tenable. Scientific tests like polygraph, narco-analysis and brain mapping etc. are **like taking MRI or CT Scan** of a person. Scientific value of such tests and credibility thereof can be evaluated only during course of trial. There is a hue and cry from public and human rights activists that the investigating sleuths adopt third degree methods to extract information from accused. But it is high time that the investigating agencies should take recourse to scientific methods of investigation. See :

**(i) Arun Gulab Gavali vs. State of Maharashtra, 2006 CrLJ 2615 (Bombay)(DB)**

**(ii) Dinesh Dalmia vs. State, 2006 CrLJ 2401 (Madras)**

**19.37. <u>History & Method of Polygraph Test</u> :** The polygraph test was invented by Robert House of the U.S.A. in 1922. The subject is applied sedative drugs and under its influence questioning of the subject is done by the expert. Under the influence of the drug administered to the subject, he cannot create a lie as he has no power to think or reason. Under the influence of such drugs the subject cannot innovate and he would be speaking only the truth.

**19.38. <u>Polygraph or Lie Detector Test & its advantages</u> :** "Lie-detector" or "Polygraph" is a device which records tracings of several different pulsations as arterial and venous pulse waves and the apex beat of heart. "Lie-detector" or "Lie Detecting Machine" is an instrument for detecting physiological evidence of the tension that accompanies. Any device which records involuntary bodily responses associated with conscious lying is called lie detector machine. Polygraph is a combination of technologies. In Medieval England, truth was tested by putting a suspect

under water or throwing him in fire considering that if he is truthful God will save him. Another test was that the suspect would have to carry a red-hot iron bar for nine paces and if he was burnt he was deemed guilty and was immediately hanged. Sometimes the accused was tied with the sack of sand and thrown in the river. If he sank he was considered truthful and if he floated he was thought guilty and was then hanged. In both the cases the accused had to die. These practices of lie detection were banned by law in England in 1215. The earliest scientific method of detecting deceptions or lies was developed in 1895 by Cesare Lombroso, an Italian Criminologist, and in 1921 Dr. John A. Larson developed the earliest version of Polygraph. The test of Polygraph was for the first time judicially noticed in USA in 1923 in the case of Frye vs. United States. Polygraph instrument is stated to record with 100% accuracy the physiological changes in breathing, perspiration, blood pressure and pulse rate to determine a truth or a lie. If the instrument is faulty it will not record changes correctly. The polygraph test cannot take place of a thorough investigation. Before making request for polygraph test, the investigating officer must exhaust all avenues of investigation. The polygraphic test can check truthfulness of witnesses' statement, it can induce criminals to confess to crimes committed by them, it replaces third degree methods used during police interrogations, it can help in discriminating the innocent from the guilty and it can also be used to check honesty and integrity of employees or candidates to employment or persons subjected to the polygraph test.

**19.39.** **<u>Power of court to order Polygraph Test</u> :** Court can order an accused to be subjected to polygraph test. See : **Ram Chandra vs. State of Maharashtra, (2005) CCR 355 (Bombay) (DB)**

**19.40.** **Voluntary test of polygraph admissible in evidence** : If certain safeguards like the one recommended by the National Human Rights Commission in the case of polygraph test are observed, then such test results may be admissible in evidence for a limited purpose as indicated in Sec 27 of the Evidence Act. See : **Smt.Selvi Vs. State of Karnataka,(2010) 7 SCC 263 (Three-Judge Bench)**

**19.41.** **Brain Mapping Test (P300) & its History & Method :** The brain mapping test which is also known as P300 was for the first time developed in 1995 by famous neurologist Dr. Lawrence A. Farwell who was the Director & the Chief Scientist of "Brain Wave Science" IOWA says that in this method which is also called the **"Brain Wave Finger Printing"**; the accused is first interviewed and interrogated to find out whether he is concealing any information. Then sensors are attached to the subject's head and the person is seated before a computer monitor. He is then shown certain images or made to hear certain sounds. The sensors monitor electrical activity in the brain and register P300 waves, which are generated only if the subject has connection with the stimulus i.e. picture or sound. The subject is not asked any questions. Dr. Farwell has published that a MERMER (Memory and Encoding Related Multifaceted Electro Encephalographic Response) is initiated in the accused when his brain recognized noteworthy information pertaining to the crime. These stimuli are called the "target stimuli". In nutshell, Brain finger printing test matches information stored in the brain with information from the crime scene.

**19.42.** **Brain Mapping Test Report & its Reliability :** The admissibility of the result of a scientific test will depend upon its authenticity. Whether the brain mapping test is so developed that the report will have a

probative value so as to enable a court to place reliance thereupon, is a matter which would require further consideration, if and when the materials in support thereof are placed before the court. See : **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, 2005 CrLJ 2533 (SC) (Three-Judge Bench).**

**19.43. <u>Brain Fingerprinting Test</u> :** Central brain controls the outer brain parts. This control is disturbed by deception. An instrument called "Automatic Response Indicator" can record these disturbances. This device or system is known as "Automatic Response Indicator System". A device called Electroencephalograph (EEG) has been developed which can record cognitive process of recognition. For example, if weapon of an offence is recognized by the culprit the instrument would show the change in the brain wave patterns. This technique is also called Brain Printing or Brain Fingerprinting. EEG is also called BEAM, i.e., Brain Electrical Activity Mapping. It is a neurophysiologic measurement of electrical activity of brain. Electro-signals are called brain waves and it is recorded by EEG. The brain produces other electrical activities also such as responses to sound, light, touch etc. but Alpha, Beta, Delta and Theta are the standard bands of the frequency spectrum that constitute EEG activity. Electroencephalography is the science of recording and analyzing brain's electrical activity. Certain electrodes are attached to the scalp of the person. These electrodes are attached to EEG. EEG is an amplifier and converts electrical impulses into vertical moments of a pen over a sheet of paper. This recording is called electroencephalogram. Recording is made in different ways. For example, by coupling a simple electrode with an indifferent or neutral lead or between two areas of the brain through bipolar technique. The combination of recorded impulses

is called a montage. By recording in different ways the scientists have been able to detect and treat various diseases such as epilepsy, cerebral tumor, encephalitis and stroke and also fainting (syncope), sleep disorders, coma and brain death can be monitored and diagnosed with the help of EEG. This technique has proved beneficial in study of brain from various angles and in different conditions. It is also used for determining whether brain has dies or not. It is said to be non-invasive and can detect convert responses to stimuli. Even a change on a millisecond level is recorded by means of Electroencephalograph. It helps monitor clinical depression treatment. Other methods of brain mapping take minutes and seconds but by mean of EEG it is done is sub-milliseconds. This is the only method to record brain activity directly. Other methods rely on blood flow or metabolism.

**20.01. <u>Punishment for giving or fabricating false evidence (Section 193 IPC)</u> :** Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**20.02. <u>Certain other penal Sections in IPC regarding fabrication etc. of false evidence or certificates are as under</u> :**

Section 194 : Giving or fabricating false evidence with intent to procure conviction of capital offence.

Section 195 : Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.

Section 197 : Issuing or signing false certificate:

Section 201: Causing disappearance of evidence of offence, or giving false information to screen offender.

Section 203 : Giving false information respecting an offence committed.

Section 204 : Destruction of document to prevent its production as evidence.

Section 344(1) CrPC : Summary procedure for trial for giving false evidence

**20.03.** **<u>Section 195/340 CrPC when not attracted</u>** : Where forged document (sale deed) was produced in evidence before court and the same was relied on by the party for claiming title to property in question, it has been held by the Supreme Court that since the sale deed had not been forged while it was in custodial egis, therefore, bar in Section 195 CrPC against taking of cognizance of offences u/s 468, 471 of the IPC was not attracted. See : **C.P. Subhash Vs. Inspector of Police, Chennai, 2013 CrLJ 3684 (SC)**. Ruling relied upon (i) **Iqbal Singh Marwah vs. Minakshi Marwah, AIR 2005 SC 2119 (Constitution Bench)**.

**21.** **<u>State Government is bound to implement the order of the National Human Rights Commission awarding compensation to the dependents of the under trial prisoner having died due to medical negligence of the jail authorities</u> :** State Government is bound to implement the order of the National Human Rights Commission awarding compensation to the dependents of the under trial prisoner having died due to medical negligence of the jail authorities. See : **State of UP Vs. NHRC, 2016 (4) ALJ 98 (All)(DB).**

**22.** **<u>A patient or his authorized attendant and legal authorities can seek from the doctor copy of prescription</u> :** Indian Medical Council (Professional Conduct, Etiquette And Ethics) Regulations, 2002 as amended upto 01.02.2016 provides that a patient or his authorized

attendant and legal authorities can seek from the doctor copy of prescription. The relevant Regulations are as under :

"1.3.1. Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.

1.3.2. If any request is made for medical records either by the patients/authorized attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours.

1.3.3. A Registered medical practitioner shall maintain a Register of Medical Certificates giving full details of certificates issued. When issuing a medical certificate he/she shall always enter the identification marks of the patient and keep a copy of the certificate. He/ She shall not omit to record the signature and/or thumb mark, address and at least one identification mark of the patient on the medical certificates or report. The medical certificate shall be prepared as in Appendix 2.

1.3.4. Efforts shall be made to computerize medical records for quick retrieval."

**23. <u>Quiz Questions to ascertain cause of death based on cases decided by the Supreme Court</u> :**

**<u>Case No. 1</u> :** Satya Vani was a student of 10th standard. She was residing with her parents in the village Talluru (East Godawari District). Babu, a married youngman, was residing with his mother in their house situated near the house of the deceased. Satya Vani used to visit Babu a house to see television programmes as there was no television set available in her house. On the evening of 26.11.1991, Satya Vani was sent by her parents to the house where her grandparents lived with some errand. While returning from there she stopped into Babu's house for seeing the telecast programmes. As Satya Vani did not return home even after a long time her parents became panicky and they made hectic enquiries for her. When Babu's mother reached home by about 10 P.M.,

she found Satya Vani's dead body lying on the cot in her house, and she immediately conveyed the frightening news to her anxious parents.

Post mortem examination

Two finger pressure abrasions were present on the right as well as on the left side of the neck placed anteriorly, which continued up to the root level on the back of the neck.

A fresh vaginal tear on the inner vaginal walls posterior to *labia minora*, fracture of the right *hyoid bone* and extravagation of blood on both sides of the neck were found.

Both lungs were congested.

When the vaginal swabs collected from the deceased were examined under microscope, presence of dead non-motile spermatozoa were observed by the doctor.

**Question :** Postmortem report showed fracture in hyoid bone. Can it be caused during transportation of corpse ?

**Case No. 2 :** A female died in suspicious circumstances with postmortem report showing following injuries :

1. 3 bruises ¼ x ¼ cm on left *naso labial* area
2. 3 bruises ¼ x ¼ cm on left side just below angle of mouth
3. Semi circular curved bruise 2.5 x ½ inch obliquely placed along the face along rt. Malar bone to right angle of mouth.
4. 4 bruises ¼ x ¼ cm right side just below & lateral to angle of mandible.

   Pleura congested mucus membrane of trachea & larynx congested. Esophagus congested, stomach congested with pungent smell land contains greenish white thick fluid mixed with semi digested food. Chemical examination confirms poison.

**Question :** Give your opinion about time & cause of death .

**Case No. 3 :** A 7 yr old girl was alleged sexually assaulted on examination her hymen was intact, bruising was present at the edges of

the hymen which was tender, there was absence of semen and sperms from genital tract of girl.

**Question :** Could it be a case of penetrative sexual assault ?

**Case No. 4 :** Vaishali married with the accused no. 1 namely Vitthalrao in the year 2002 and after marriage she started residing with the accused persons at her matrimonial home. The accused no. 2 Dattarao is her father in law, whereas accused no. 3 Kausalya is her mother in law. It is alleged that the victim Vaishali was subjected to cruelty by the accused persons on account of non fulfillment of unlawful demand of Rs. 50,000/- made by them to her which resulted into committal of suicide by her by jumping into well on. It is also alleged that she was removed from the well, but she had died. Accordingly, postmortem was performed on the said dead body between 12.00 noon to 01.00 p.m. on the said day. On examination of the said dead body he found that there were no ante mortem injuries. He noticed following internal injuries : Brain and its coverings were congested. Larynx, Trachea and Bronchia were congested. Right and left lungs were congested, on dissection. Frothy secretion coming through dissection. Heart was congested. On dissection. Right Chamber of heart contains blood. On stomach, it was found congested on dissection 500 ml of partially food with liquid present. Mucosa was congested. No any organic smell found. liver, pancreas spleen, kidneys were found congested. Organs of generations: There was evidence of 28 weeks of pregnancy. On cut section of uterus found female baby still born, weight of 900 grams. Time of death and last meal according to contents of stomach, it was found before 6 hours of last meal.

**Question :** Comment on the cause and manner of death in the above case.

**Case No. 5 :** Shabab Khan aged around 20 years, was working as a driver of Crane Lift Machine with Shivam Fork Lift Services, Paschim Vihar, New Delhi, he was found dead in a pond in the premises of M/s APS Enterprises, Mandawali where he was working. On receiving this

information, petitioner along with her husband and the police officials reached to the spot and found the dead body of her son. It was alleged by her that her son had been murdered and had not died an accidental death due to drowning. The postmortem report of the deceased indicated that there were mild abrasions on the head and the forehead. Froth was noted coming out of nostrils, lungs were congested, trachea was congested.

**Question :** Comment on the cause of death. Could it be caused by head injury.

**Case No. 6 :** Post Mortem Report : Dr. Bhalinder Singh conducted the post-mortem examination on the dead body of Jaswinder Kaur @ Baljinder Kaur w/o Ranjit Singh @ Makhan Singh, R/o Roorke. The deceased was shown aged about 30 years.

Following injuries were found on the body of the deceased:

1. Abrasion on the right side of neck 1 x .25 cm in size 8 cm away from right angle of mouth 0.5 cm away from right ear. Horizontal in position.
2. Contusion on right side of neck measuring 5 x 1-1/2 cm, 1 cm below injury No. 1 and oblique in position.
3. Contusion on right side of neck measuring 5x1-1/2 cm below injury No. 2
4. Contusion on right side of neck measuring 4x 1-1/2 cm--1/2 below injury No. 3
5. Contusion on left side 3x2 cm in the middle.
6. Upper eye-lid of left eye was swollen and blushed. On dissection of neck soft tissue ecchymosed.

   He stated that Hyoid bone was fractured. Right lung and left were congested with punctiform hemorrhage. Right heart contained blood and left hear was empty. Pericardium was congested.

**Question** : Give your opinion about the cause of death**.**

**Case No. 7 : Post Mortem Report :** Dr. Arun Kumar Mandal did the post-mortem on the dead body of Bindula Devi. Following are his observations :

"1. (i) Epistaxis from both nostrils.
(ii) Blood mixed with froth from mouth.
(iii) Both eye balls congested, Cornea hazy.
(iv) Face congested and cyanosed.
(v) Skin of both hands and feet were corrugated.
2. On opening of skull all the blood vessels were congested in the mainiges and brain matter.
3. In the chest both the lungs were found congested, frothy and spongy and on cutting blood stains froth found in segments.
4. In the heart both chambers were found full.
5. In the stomach semi-digested food about 4 ounces with blood mixed.
6. In the small intestine-gas and solid facees.
7. In the large intestine-gas and solid facees.
8. In the case of kidneys both were found congested.
9. Liver and spleen were also found congested.
10. Uterus contained about full term dead male baby."

**Question :** Give your opinion about the cause of death ?

**Case No. 8 :** Post Mortem Report : Dr. Pramod conducted the post-mortem examination of the dead body of deceased.
The following injuries were found on the body of deceased :

1. A bite mark seen over the sides of clavicular region and lateral and upper of right side of chest and flank and lateral side of abdomen. Both sides of inner aspect of upper SRD of both thighs, the inner and back of left knee, bleeding through left ear. Blood stained cut fluid oozed out from both nostrils;
2. Contusion over left neck measuring 3 cms. Below left mastoid process measuring 6x4 cms brownish in colour;
3. A laceration over outer aspect of the left ear-lobe and pinnae measuring 5.5 x 2.5 x 0.26 cms;

4. Bluish black contusion over right infra scapular region measuring 9 x 6 cms. and measuring 3 x 2 cms. over left scapular region;
5. Abrasion measuring 2x2 cm. over upper part of glutted region;
6. A contused abrasion over at the level of both sides of scapular region measuring 16 x5 cms.
7. Laceration over right side of posterior parital region measuring 2.4 x 0.25 x bone deep and it lies 4 cms. Above occipital protrudence and 28 cms. Above the glabilla swelling with contusion over both side of the neck;
8. Curved linear abrasion with contusion over external genitalia right side measuring 7.5 x 0.25 cms. and left side measuring 2.25 x 2.0 cms; O/D underlying tissue is contused;
9. Dark reddish brown abrasion over labia majora on both sides measuring 3 X 0.2 cms."

Post mortem report incomplete in respect of :

(i) sex of the deceased----Female (lobia majana is erect ..... of female ) evidence of sexual assault 8 & 9
(ii) if female, whether rape was committed or not
(iii) Death is unnatural & homicidal.

**Question :** Give your opinion about the cause of death ?

**Case No. 9 :** Post Mortem Report : The post-mortem on the body of the deceased was conducted jointly by Dr. A.S. Gill, Medical Officer and Dr. G. Dewan, Medical Officer, General Hospital, Lucknow. The following ante-mortem injury was found on the body of the deceased : "ligature mark brown-colored encircling whole of neck measuring 39 cm, all around the neck, ½ cm on the sides and back and 2 cm in the front of the neck interiorly placed on the thyroid cartilage horizontally, Margins were irregular, ecchymosed and base of ligature was dry and parchment-like and membranous. On cut section there multiple ecchymotic spots on subcutaneous tissue and muscles. Thyroid cartilage was broken, cricoids cartilage was also broken. Larynx and trachea-Mucosa of larynx of trachea were congested and showed multiple petechial spots. Both right and left lungs were congested. Stomach was empty and healthy."

Question : **Give your opinion about the cause of death ?**

**Case No. 10 :** Post Mortem Report : The injuries were : (1) 1½" cut mark over the right front parietal region. (2) 1½" cm cut mark over the back of right parietal region. There were some abrasion marks over the right ear and right knee. He also found that the right parietal bone was fractured. The membrane and brain matter were ruptured. There was a fracture of the right $6^{th}$ & $7^{th}$ ribs and a fracture of the lower end of right radius and dislocation of the right elbow joint.

**Question 1.** Give your opinion as to how the above injuries could have been caused ? Was it possible that the injury No. (1) & (2) could have been caused by contact with a hard & blunt weapon or even by fall ?

(Accidental injuries probably due to fall.)

Head injury as a result of accident due to fall.

## Answers to the cases No. 1 to 10

Case No. 1 : no, death was caused by throttling.

Case No. 2 : suspected case of poisoning. viscera to be preserved for forensic lab examination.

Case No. 3. : yes.

Case No. 4. : asphyxia as result of drowning.

Case No. 5 : asphyxia as a result of drowning
Head injury ? ..... No
viscera to be present to know the type of
food/ingested ? Alcohol

Case No. 6 : asphyxia by throttling

Case No. 7 : asphyxia by drowning

Case No. 8 : (a). female (labia majora is external genitalia of female)
(b). evidence of sexual assault point 8 & 9
(c). yes
death is due to head injury point No. 7 (bone deep injury on the skull)

Case No. 9 : strangulation

Case No. 10 : accidental injuries probably due to fall.

## 22. Questions generally put to the doctors by the defence lawyers during their cross examination in the courts :

1. Did the stomach of the deceased contain any food remains, doctor ?
2. Was there remains of any fruits in the stomach (or intestines) of the deceased person, doctor ?
3. Why did you not mention this fact in the statement to the police, during investigation. Do you have any explanation ? (to the other eyewitness)
4. I suggest that you did not know how many shots were fired at the deceased at the place of occurrence.
5. I suggest that you did not see the firing incident at all.
6. I suggest that you did not see the right hand of the deceased being kept on his chest by him at the time of the gun being fired.
7. In order to bring your statement in conformity with the deposition of the doctor, who deposed before the court just now, you have stated that the deceased kept his right hand on his chest at the time of the gun being fired.
8. Doctor, how many injuries did you find on the body of the deceased ?
9. Of the injuries found on the body of the deceased, how many were caused by firearm shots, in your opinion, doctor ?
10. Of the seven injuries, how many were caused by blunt weapons, in your opinion, doctor ?
11. Of the seven injuries, how many were caused by a sharp edged weapon such a gandasi, in your opinion, doctor ?
12. What is the nature of the weapon with which the injury on the neck of the deceased could have been inflicted, doctor ?
13. What is the manner with which the injury on the neck of the deceased could have been inflicted?
14. Can you say how the injury found on the neck of the deceased could have been caused whether by rasping with a sharp edged weapon on the neck or by delivering blows on the neck with a sharp edged weapon ?

**Questions on gunshot injuries :**

1. How many firearm injuries did you find on the body of deceased, doctor ?
2. Can one gun shot cause injuries nos. 1 to 4, doctor ?
3. How can one gun shot cause injuries nos. 1 to 4, doctor ?

**Questions on timing of death**

1. At what time did you conduct postmortem examination, doctor ?
2. Was the food in the stomach of the deceased digested when you examined, doctor ?
3. When the deceased might have taken his last food, doctor ?
4. How much time before his death the deceased might have taken his last food, doctor.
5. Did you find burnt margins on the wound of the entry of the bullet on the body of the deceased, doctor ?
6. How do burnt margins around the wound of entry of bullet are caused when the gun is fired, doctor ?
7. What should be the distance between the muzzle of the gun and the victim in order that the burnt margins be caused around wound of entry of the bullet, doctor ?
8. If the distance between the muzzle of the gun and the victim is more than a yard and a half, then the wound of entry of the bullet would not get the burnt margins. Is it not so ?
9. In the present case, what is the approximate distance, in your opinion, between the muzzle of the gun and victim, doctor ?

**Questions on the nature of weapon used in causing the injuries**

1. What kind of weapon can cause the injuries found on the body of the deceased, doctor ?

**Question on mental state of the deceased at the time of making dying declaration :**

1. You stated in the post mortem report that the vital organs, that is, peritoneum, stomach and spleen of the deceased were completely smashed. Was it not so, doctor ?
2. You stated in the post-mortem report that there were remote chances of his remaining conscious after having his spleen ruptured. Was it not so, doctor ?
3. Since the deceased was not in a conscious state, he could not have spoken to anybody after the occurrence. Was it not so, doctor ?
4. Since the deceased was unconscious, he could not have made any statement either. Was it not so, doctor ?
5. In the post mortem report it is stated that a good part of the brain of the deceased was burnt. Could the deceased have been conscious after his brain was so burnt ?
6. Why did you not state in the postmortem report categorically whether the deceased was conscious or not ?
7. Why did you not state in the post mortem report categorically whether the deceased could give any coherent statement ?
8. I suggest that the deceased was not conscious after having his brain burnt.

**Questions on burn injuries**

1. Just now you have stated (in the examination-in-chief) that the deceased had 100% burns over the body of the deceased. Is it not so, doctor.
2. Both the hands and fingers were also burnt. Were they not, doctor ?
3. What happens to the skin when it is burnt, doctor ?
4. The outer non-living layer of the skin, that is, epidermis becomes ash and separates from the real skin, that is, dermis. Is it not so ?
5. The thumbs of both the hands were also burnt. Weren't they, doctor ?
6. What happens to the ridges and curves of the palm and fingers including thumbs when they are burnt, doctor ?

7. The ridges and curves of the palm and fingers including thumbs disappear as a result of the burning of the skin. Is it not so, doctor ?
8. The ridges and curves of the palm and fingers including thumbs disappear as the burnt portion of the skin swells as a result of the collection of the serum underneath. Is it not so, doctor ?

**Questions to find out whether the deceased was able to speak after the occurrence :**

1. Where there any food particles in the mouth of the deceased when you examined the deceased, doctor ?
2. How much food particles did you find in the mouth of the deceased, doctor ?
3. Did you find full of food particles in the mouth of the deceased, doctor ?
4. Were there any food particles in the oesophagus of the deceased when you examined the deceased, doctor ?
5. How much of food particles did you find in the oesophagus of the deceased, doctor ?
6. Did you find full of food particles in the oesophagus of the deceased, doctor ?
7. Were thee any food particles in the pharynx of the deceased when you examined the deceased, doctor ?
8. How much of food particle did you find in the pharynx of the deceased, doctor ?
9. Did you find full of food particles in the pharynx of the deceased doctor ?
10. The mouth, oesophagus and pharynx of the deceased were all choked due to the presence of the food particles when you examined the deceased. Was it not so, doctor ?

**Questions to find out whether the deceased was kept under sedation at the time when she made dying declaration :**

1. What was the treatment given to the deceased by you, when the deceased was admitted in the hospital, doctor ?
2. What was the treatment given to the deceased by you on ..... ? (here mention the date on which the deceased allegedly made the dying declaration)
3. The deceased was undergoing immense pain due to the burn injuries. What medicines were administered to the deceased in order to relieve her of her pain due to the burn injuries?
4. What medicines were administered to the deceased to relieve her of the pain due to burn injuries on .... ? (here mention the date on which the deceased allegedly made her dying declaration.)
5. Did you give her pethidine injection?
6. How many pethidine injections were given to the deceased on .... (mention the date on which the deceased allegedly made the dying declaration)?
7. What was the time when you gave her the pethidine injection ?
8. Did you give her morphia injection ?
9. How many morphia injections were given to the deceased on ..... (mention the date on which the deceased allegedly made the dying declaration) ?
10. How the pethidine injection relieves the burnt patient of the pain due to the burn injuries, doctor ?
11. The pethidine injection causes sedation to the burnt patient and thereby relieves the patient of the sensation of the pain. Is it not.

**Miscellaneous questions put to doctors** :

1. What were the injuries sustained by the deceased due to the reason of being dragged by the scooter some distance ahead ?
2. What damage was caused to the scooter due to its falling down after being dragged ahead by momentum ?
3. The post mortem report does not mention any such injuries as might be caused by the dragging by the scooter.
4. Do you have explanation for the inherent contradiction between the post mortem report and your statement ?

5. The panchanama report does not mention any damage caused to the scooter due to falling down on the ground. Do you see it ?
6. Do you have explanation for the inherent contradiction between the panchanama report and your statement before the court ?
7. I suggest that the deceased was not shot when he was driving the scooter.
8. I suggest that the scooter did not fall down.
9. I suggest that the scooter was erect on its stands.
10. I suggest that you did not see the occurrence at all.
11. I suggest that you have falsely deposed against the accused persons at the instance of the interested parties.
12. Apart from the pistol shot injuries did you find any other injury on the body of the deceased, doctor ?
13. Were there any injuries of the nature that might have caused if the deceased was dragged to some distance after pistol shot injury ?
14. Was there at least abrasion of the nature that might be caused due to dragging of the deceased some distance ahead ?
15. How strongly the body of the deceased was built, doctor ?
16. How strong was the accused, doctor ?
17. Doctor, how many injuries did you find on the body of the deceased ?
18. Doctor, how many injuries did you find on the person of the accused ?

**Questions on contusions and abrasions** :

1. Doctor, did you notice any contusion, which could have been caused by the lathi alleged to have been held by the accused no. 2, on the body of the deceased, during post mortem examination ?
2. Doctor, did you noticed any contusion, which could have been caused by the lathi alleged to have been held by the accused no. 3 on the body of the deceased, during post mortem examination ?
3. Doctor, did you notice any abrasion, which could have been caused by the lathi alleged to have been held by the accused no. 1, on the body of the deceased, during post mortem examination ?

4. Doctor, did you notice any abrasion, which could have been caused by the lathi alleged to have been held by the accused no. 2, on the body of the deceased, during post mortem examination ?
5. Doctor, did you notice any abrasion; which could have been caused by the lathi alleged to have been held by the accused no. 3, on the body of the deceased, during post-mortem examination.
6. Doctor, did you notice any bruise, which could have been caused by the lathi alleged to have been held by the accused no. 1, on the body of the deceased, during post mortem examination.
7. Doctor, did you notice any bruise, which could have been caused by the lathi alleged to have been held by the accused no. 2, on the body of the deceased, during post mortem examination ?
8. Doctor, did you notice any bruise, which could have been caused by the lathi alleged to have been held by the accused no. 3 on the body of the deceased, during post mortem examination ?
9. Doctor, did you notice any ante-mortem injury, which could have been caused by the lathi alleged to have been held by the accused no. 1, on the body of the deceased, during the post mortem examination ?
10. Doctor, did you notice any ante-mortem injury, which could have been caused by the lathi alleged to have been held by the accused no. 2, on the body of the deceased, during the post mortem examination ?
11. Doctor, did you notice any ante-mortem injury, which could have been caused by the lathi alleged to have been held by the accused no. 3, on the body of the deceased, during the post-mortem examination ?

**Questions on ligature marks & asphyxia etc.**

1. The symptoms noticed by you in the course of your post-mortem examination of the body of the deceased were common both if death is caused due to asphyxia caused by poisoning and asphyxia caused due to strangulation. Weren't they ?

2. Thus, there is considerable doubt about the cause of death of the deceased. Is it not so, doctor?
3. You did not find any injury on the neck of the deceased. Did you, doctor ?
4. You did not find any injury on any other part of the body. Did you, doctor ?
5. you did not find any mark of ligature on the neck of the deceased. Did you, doctor ?
6. You did not find any mark of ligature on any other part of the body of the deceased. Did you, doctor ?
7. Doctor, by what means, in your opinion, the marks of ligature might have been caused to the deceased ?
8. Doctor, what was the effect of these marks of ligature on the cause of death of the deceased ?
9. Is it possible for a person to strangulate another who is at that time burning ?
10. If one person strangulates another while the another is burning, the person, who is strangulating, gets his hand burnt. Doesn't he doctor ?
11. If the accused had strangulated the deceased while the deceased was burning, the accused would have sustained burn injuries or at least signs of burns on his hands. Wouldn't he, doctor ?
12. Doctor, was there any marks of ligature on the neck of the deceased ?
13. When a person dies due to strangulation, there should be marks of ligature on his neck. Is it not so, doctor ?
14. In the absence of the marks of ligature on the neck of the deceased, what else can be the cause of the death of the deceased, doctor ?
15. In the absence of the marks of ligature on the neck of the deceased, what else can be the cause of the death of the deceased, doctor ?
16. You have also stated that possibility of death resulting from ligature strangulation as per police history cannot be ruled out. Do you see it ?

17. Do you have any basis for making such statement ?
18. Do you make statements even though you do not have any basis for your statements ?
19. I suggest that the deceased did not die due to strangulation.

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