

Medico-Legal Aspect of Death and Evidentiary Assessment of Post-Mortem Report in Criminal Investigation & Trial

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ABSTRACT

Medical science plays an important role in criminal justice system. It is very helpful in deciding the guilt of a suspected accused. It ascertains diverse facts in a case by scientifically testing various types of evidences collected during criminal investigation. A Prosecutor or a Judge is an expert in the field of law but may lack in-depth scientific or technical knowledge. Therefore, expert opinion of scientists and doctors are invited by the courts.

In many cases of death, the determination of time, cause and form of death are important. The postmortem examination report becomes a crucial as evidence on which the entire case is depended. As an evidentiary rule, the judicial approach is tented towards accepting medical evidence only in case of consistency with the prosecution case. If the fact is to be ascertained by medical examination like postmortem report, it must be inevitable evidence and must be accepted intact. The equivalent importance should be given to Medical Expert conducting autopsy and issuing post mortem report and the said report should have the same evidentiary assessment as in case of Government Scientific Experts.

KEYWORDS: Medico-Legal Studies, Forensic Justice, Scientific and Forensic Evidence, Civil and Legal Death, Postmortem Report, Criminal Investigation and Trial

As per the Encyclopedia Britannica “Medical Jurisprudence” sometime also called as “Legal Medicine” is a science that deals with the relation and application of medical facts to legal problems. Medical persons giving legal evidence may appear before court of law, administrative tribunals, inquests, licensing agencies, boards of inquiry or certification, or other investigative bodies. Medical science plays an important role in criminal justice system. It is very helpful in deciding the guilt of a suspected accused. It ascertains diverse facts in a case by scientifically testing various types of evidences collected during criminal investigation. A Prosecutor or a Judge is an expert in the field of law but may lack in-depth scientific or technical knowledge. Therefore, whenever evidences are scientifically examined an expert opinion of scientists and doctors are invited by the courts.

In foremost cases in which the death is caused, the determination of time of death, the

cause of death and the form of death are some of the crucial importance for Forensic Investigators in criminal cases. It is extremely important when the evidence may support or deny the affirmed actions of suspects. In these cases determination of time of death is skill of the medical examiner that uses several techniques and observations to make his estimate. Section 46 of IPC simply defined death as the death of a human being. Death is the irreversible cessation of life, insensibility, inability to move and permanent and complete stoppage of functions of vital organs of the body known as tripod of life: Brain, Heart and Lungs. The earliest criterion to declare death was stoppage of respiration for more than 5 minutes and stoppage of circulation for more than 5 minutes. However both the hypothesis proved to be inadequate to declare death. In suspended animation the faculties of life are at such low level that it is not possible to diagnose it by routine examination. Sometimes the vital functions return to normal by Cardio-respiratory resuscitation,

even after 50 minutes. Respiration and circulation can artificially be maintained on heart lung machine. The next criterion to declare death was of brain death, but even that definition became incomplete since the heart and the lungs keep working at this stage.

Post mortem examination is a procedure conducted after the death of an individual under suspicious and unusual circumstance pointing towards an unnatural reason of death or involvement of another person in the death of such individual. Such post mortem examination is conducted by medical expert. This examination of dead body is executed to prove the innocence or guilt of another person who may be suspected for the death of the person and hence, is useful in determination of crime under criminal justice system. There is no single factor that will accurately indicate the time of death, thus it is always a top estimate. It's all reflected in the postmortem examination report. Therefore the postmortem examination report becomes a crucial document as a piece of evidence on which the entire case is depended. As an evidentiary rule, the judicial approach is tented towards accepting medical evidence only in case of consistency with the prosecution case. Practically this medical evidence should be used without hesitation as corroborative evidence even if it is consistent or highly inconsistent with the other evidences.

Additionally, the doctor is medical expert witness of fact and an advisory character is given on the basis of the symptoms found on medical examination. When doctors appear in court merely to relate facts that they have observed, they are regulated by the common rules applicable to regular witness. They have to interpret those facts expert skill and they are expected to present their opinions fairly and without bias and not in favor of the prosecution or calling parties. Sometime such fair statement may drive against or in favor of parties calling them. If the fact is to be ascertained by medical examination like postmortem report, it must be inevitable evidence and must be accepted intact. Therefore, it's high time to change the law on medical evidence or to

change the judicial approach for scientific expert witnesses.

The aim of this paper is to explain the importance of postmortem report as a evidence and to understand the medico legal aspects of death and its practical implication in the court of justice. This paper will give an overview as to what are the modes of death, what is post-mortem appearance of death by asphyxia, causes of asphyxia death, postmortem report, legal process and evidentiary value of postmortem report in investigations and trials. In this paper, the concept of post mortem examination is understood in detail. The procedure of post mortem examination under a criminal justice system is analyzed and the necessary precautions to be maintained in due course have been highlighted. The importance of death scene investigation prior to the post mortem examination has been inferred to smoothen the process of the examination. The aspect of post mortem examination under criminal justice system has been examined and the credibility of the post mortem report has been analyzed by referring the authorities case laws. The statement given by medical or forensic expert in court has been discussed. The legal perspective of the post mortem examination has been considered in the paper. Under the criminal justice system, evidence is essential for determination of guilt of the accused. The paper throws light upon the circumstances in which the post mortem examination report shall be considered as evidence in court and judicial approach is critically assessed. The value of the post mortem examination in court proceedings has been determined through this research paper.

MEDICO LEGAL ASPECTS OF DEATH

Introduction

Medical science plays an important role in criminal justice system. It is very helpful in deciding the guilt of a suspected accused. It ascertains diverse facts in a case by scientifically testing various types of evidences collected during criminal investigation. A Prosecutor or a Judge is an expert in the field of law but may lack in-depth scientific or technical knowledge. Therefore, expert opinion of scientists and

doctors are invited by the courts whenever evidences are scientifically examined.

The death of a human being is neither as simple, or as final, a phenomenon as it might seem. The development of highly sophisticated artificial life support systems which can maintain organ function indefinitely, has blurred the medical and common sense line between life and death. It is theoretically possible to maintain organ function in victims of nearly every imaginable illness and injury possible at least, to the extent function could be maintained if there was some justification for expending the vast amount of resources that such extension would require. At the same time, the refinement and growing use of organ transplant techniques has undermined the traditional belief in death's finality.

Every suspicious death in India is investigated, with one of the objectives being determining the manner of death. The autopsy is an integral part of the death investigation. Death investigations are accomplished in the form of inquests, which are conducted and directed by the police or, in some cases, by a magistrate. The police and the autopsy physician generally share their findings before opinions are reached, and the courts rely on autopsy physician testimony. In general, the autopsy physician opines only on the cause of death. In the Indian legal and medico-legal systems, manner of death is determined by the police. Unlike in the United States, where the certifier of death must record a manner of death on the death certificate, in India the manner of death is largely a legal rather than medical determination.

According to Framingham Heart Study's sudden deaths are considered to occur within one hour of the onset of terminal symptoms in an apparently healthy subject or whose disease was not so severe as to predict an abrupt outcome. Sudden or unexpected death occurs from unnatural causes, such as violence or poison, as well as from natural causes. Unnatural deaths should be investigated by the police. A medical practitioner should not certify to the cause of death without holding a post-mortem

examination, even if there is strong evidence of disease. Primary concern of the medico-legal autopsy is to determine whether a cause of death is natural or unnatural. It is stressed that a full post-mortem examination, with the performance of histopathology should always be done.

Statutory Definition of Death

Death is finale termination of life. It is the complete cessation of all vital functions without possibility of resuscitation. Death is defined as irreversible cessation of life. It is classified as somatic and molecular. When the three tripods, brain, lung and heart stop completely, it is called somatic death. After approx. three to five hours of somatic death, molecular death occurs when the individual cells and tissues start dying and the decomposition signs start showing.

Legal death is the recognition under by law that a person is no longer alive. In many cases, a doctor's declaration of death is a legal requirement for such recognition. A person who has been continuously missing for seven years may be presumed or declared legally dead, usually by a court which is called civil death. When a death has been registered in a civil registry, a death certificate may be issued Such death certificate may be required in a number of legal situations, such as applying for probate, claiming some benefits or making an insurance claim, etc. Though, we have major concern about the death which is finale termination of life, still we will discuss all issues of legal death.

CATEGORIES OF DEATH

1. Legal Death

There are a few controversies surrounding the topic of legal death among health professionals and the general public. The main issues argued amongst bioethicist include but are not limited to; non-heart-beating organ donation, the criteria for determining death for adults versus infants, and whole-brain versus higher-brain versus brainstem death.

• **Non-heart-beating organ donation:** Non-heart-beating organ donation or NHBD is the procurement of organs after cardiac death. Cardiac death is determined after a

patient has suffered cardiac arrest for two to five minutes.

- **Whole-brain vs higher-brain vs brainstem criteria:** Deciding on which criteria to follow for determining brain death is still heavily debated today. Whole-brain criteria are the standard most countries follow including the United States. Under the whole-brain death criteria, all functions of the brain including the brainstem must be ceased. The brainstem criteria differ from the whole-brain formulation, in that only the brainstem function is ceased. The brainstem is responsible for breathing and carrying out somatic regulatory functions.
- **Brain Death:** When there is irreversible coma, absence of electrical brain activity and complete cessation of all the vital functions without possibility of resuscitation.
- **Cardio Respiratory Death:** It's a continuous and persistent cessation of heart action and respiration.
- **Somatic Death or Clinical Death:** It's a complete and irreversible cessation of vital function of brain followed by cessation of functions of heart and lungs.
- **Molecular or Cellular Death:** It happens three to four hours after somatic death when tissues and cell die.
- **Apparent Death or State of Suspended Animation:** It's a transient loss of consciousness or temporary cessation of vital functions of the body.

2. Civil Death

In some cases, a person will be declared dead even without any remains or doctor's declaration. This is under one of two circumstances. First, if a person was known to be in mortal peril when last seen, they can often be declared dead shortly after. Examples would be the passengers of the Titanic that were not rescued after the ship sank. Second, if a person has not been seen for a certain period of time and there has been no evidence that they are alive.

Presumption generally means a process of ascertaining few facts on the basis of possibility or it is the consequence of some acts in general which strengthen the possibility and when such possibility has great

substantiate value then generally facts can be ascertained. A presumption in law means inferences which are concluded by the court with respect to the existence of certain facts. The inferences can either be affirmative or negative drawn from circumstance by using a process of best probable reasoning of such circumstances. The basic rule of presumption is when one fact of the case or circumstances are considered as primary facts and if they are proving the other facts related to it, then the facts can be presumed as if they are proved until disproved. Section 114 of Indian Evidence Act specifically deals with the concept that 'the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of (a) natural events, (b) human conduct, and (c) public and private business, in their relation to the facts of the particular case'.

Presumption of Civil Death: The presumption of death is explained under Section 107 and 108 of Indian Evidence Act which refers to a situation when a person has disappeared for many years, and after such situations the law presumes him to be dead. Section 108 of this Act describes the amount or the tenure i.e. 7 years, where, there should be no proof of the existence of the person in the society.

In *Balambal v. Kannammal*, the court held that the presumption of death could only be invoked if the death or inexistence of that person is proved when the presumption is raised in the court and no person can utilize such presumption for generating any type of death record of the called person. In *T.K Rathnam v. K. Varadarajulu*, the dissenting opinion of the learned judge explains in his judgment that the presumption of the existence of the person or death of the person is always rebuttable. He also observed that the accurate timing of death is not a matter of presumption rather it is a matter of evidence.

MODES OF DEATH

Coma, Syncope and Asphyxia are the three common modes of deaths.

a) Coma: In the form of death called "Coma", the death is resulted primarily from

the failures of the vital centres of the brain. In this mode of death, a person becomes unconscious and loses all reflexes and slowly, as a result of depression of vital centres, respiration and heart beat stop. In post-mortem examination, when the skull is opened, injuries to the brain can be identified. The following are the causes of coma:

- Compression of vital centres as a result of effusion of blood in cranial cavity due to injuries, or diseases like hypertension or rupture of aneurysm, etc.
- Depression of vital centres of brain as a result of centrally acting poisons as opium, barbiturates, alcohol, carbolic acid, etc.
- Vital centres of the brain may be affected in other conditions like epilepsy, uraemia, hepatic coma, heatstroke, hypothermia etc.

b) Syncope: When death occurs primarily as a result of heart failure, the mode of death is called syncope. It may be due to following reason:

- Blood loss as a result of sudden and excessive haemorrhages due to rupture of large blood vessel or internal organs like liver, heart, lungs, spleen, etc. It may be due to rupture of aortic aneurysm or varicose veins. The haemorrhage may be external when the blood flows outside the body or internal when blood accumulates in the body as in a rupture of an organ or fracture of long bones like femur, etc.
- When heart failure occurs as a result of power loss of the muscle of the heart as in myocardial infarction, myocarditis or cardiomyopathies, etc.
- Inhibition of heart action may be due to neurogenic shock precipitated by a sudden blow on the head, epigastrium, scrotum, etc. It may be due to sudden fright, embolism or sudden pressure on carotid sinuses. The heart may stop suddenly on drinking a large quantity of cold water in a heated condition. On clinical examination, there would be pallor on the face, the heart beat faster but weak and the respiratory rate higher but shallow. Slowly, the person becomes unconscious and dies.

On post-mortem examination, the body would be pale in colour. The heart would be

contracted and chambers empty. All the organs would be pale.

c) Asphyxia

When the respiratory function of lungs stops as a result of lack of oxygen, it causes failure of heart and brain as a result of oxygen deprivation. This mode of death is called asphyxia. Asphyxia can be due to mechanical obstruction to air passage like impaction of foreign bodies, bronchospasm, suffocation, drowning, etc. There may be external pressure to close air passages like hanging, strangulation, smothering, etc. It may be at higher altitude where oxygen is deficient. In poisoning as with cyanide, there is interference in utilisation of oxygen at cellular level. Some time, penetrating injuries of the chest which causes the collapse of lungs or chest muscles and pulmonary embolism, tetanus and cold causes asphyxia. Asphyxia can also be due to poisons such as strychnine, barbiturates and opium.

There are three stages of asphyxia the first stage of inspiratory dyspnoea is when the person is not able to take air inside, causing anxiety, heaviness in head and ringing in ears. The lips become livid, eyes get prominent, blood pressure rises and consciousness is lost within one minute. Second stage of expiratory dyspnoea is caused by accumulation of carbon dioxide and lack of oxygen causing faster respiratory rate, convulsions and relaxation of sphincters. Hands and feet become cyanosed. As a result of increased capillary permeability, there is exudation of fluid in lungs and mouth. This stage lasts for one to two minutes and as a result of increased sympathetic and parasympathetic activity, there is increased salivation, increased heart rate and gastrointestinal motility. Urine, stool and semen may be passed out. Third stage of exhaustion and respiratory failure lasts for about two to three minutes. It is marked by failure of the respiratory and nervous centres, leading to brain damage. The respiratory action stops although the heart may beat for ten/fifteen minutes more. Finally, heart also stops.

CAUSES OF SUDDEN DEATH

The sudden death may occur due to both natural and unnatural causes. If a person has died of suspected unnatural causes, the case must be investigated by the police or magistrate and the medico legal autopsy should be conducted. In cases where the cause of sudden death is considered to be natural, still an autopsy is recommended to ascertain the definite cause of death because such deaths are not witnessed. The un-witnessed cases of sudden death lead to suspicion of a foul play. The death due to natural causes may be due to diverse reasons. Some of these may be coronary artery disease, myocarditis, cardiomyopathy can be detected at the time of post-mortem; however, there is also a possibility wherein the causes cannot be easily identified at autopsy. In many cases, a relevant history may be traced to find out the role of genetics in such deaths.

Approximately 80% of sudden natural deaths are cardiac in origin and of this the greater part is due to coronary atherosclerosis producing ischemic heart disease. Diagnosis of sudden cardiac death is the most important forensic aspect because of misdiagnosis of extrinsic death as sudden cardiac death. Coronary stenosis with abnormal myocardium is capable of causing sudden death and is a very important negative finding at autopsy.

The comparatively unusual conditions associated with sudden death may include ruptured ectopic pregnancy, electrolyte imbalance, instrumentation of uterine cavity, spontaneous rupture of urinary bladder due to prostatic hypertrophy. Some time it included sudden loss of large volumes of fluids from the major cavities of body like pericardial, pleural and peritoneal. Also various complicated inflammatory conditions including pyogenic meningitis, acute hemorrhagic pancreatitis, hypothermia, etc. are also found to be cause of sudden death. All violent deaths resulting primarily from asphyxia include death due to hanging, strangulation, suffocation and drowning.

Causes of Asphyxia Death

- Deaths caused by asphyxia are broadly classified as: Hanging, Strangulation, Suffocation and Drowning.

a) Hanging

Hanging is defined as death produced by suspending the body by the ligature tied around the neck. The constricting force producing asphyxia in this is the weight of the body, or sometimes only a part of the body like head.

Hanging is of two types:

- Typical Hanging:** When the body is suspended from a high point of suspension and feet are not touching the ground, it is called 'typical hanging'. In this, constricting force is the full weight of the body.
- Partial Hanging:** When some part of the body touches the ground like knees, feet, etc., it is called 'atypical' or 'partial hanging'
- Symptoms of Hanging:** Initial symptoms are loss of power and sensation like flashes of light, noise in ears followed by unconsciousness. In judicial hanging, convulsions may be seen. Since the onset of unconsciousness is very fast, hanging may be considered as a painless mode of death. Due to fast onset of unconsciousness, it may not be possible to save oneself in accidental or suicidal hanging. The heart continues to beat for 10–15 minutes after the respiration stops.

b) Strangulation

Strangulation is a violent form of death which occurs from constriction of the neck by means of ligature or by other means without suspending the body:

- Throttling:** It is defined when constriction of neck is produced by fingers or palms.
- Mugging:** When constriction of neck is done by a foot, knee, or bend of elbow it is called mugging.
- Bans-dola:** It was practised earlier in North India where one strong bamboo is put in front of neck and one on the back. These are tied by rope. The constriction is caused by squeezing. Sometimes, squeezing is done by foot pressure on bamboos.
- Garrotting:** It was earlier used by thugs while committing robberies. In this a rope or handkerchief is suddenly thrown from behind around victim's neck and pressure is

suddenly applied. Since unconsciousness develops suddenly, the victim is unable to fight back and dies silently.

In strangulation, if the air passages are occluded completely by ligature, the person is unable to shout and becomes unconscious immediately. If closure is partial, face may be seen cyanosed, hands may be clenched and convulsions may be seen. The cause of death in strangulation is asphyxia due to anoxic anoxia.

c) Suffocation

Suffocation is a form of death which results from the exclusion of air from the lungs by means other than compression of neck. The following are causes of suffocation:

- **Smothering:** It is defined as closure of mouth and nostrils. It is quite a common way to kill children as they offer less resistance. A small pillow may be used to apply forcibly to mouth and nostrils. Even old persons and women are killed as their physical strength is quite less than able-bodied men. Accidentally, small children can be smothered if they are overlaid by their mothers or they are hard pressed against breasts while feeding.
- **Choking:** It is defined as obstruction of air passages from within. It is mostly accidental due to impact of foreign bodies like fish bone, coin, button, roundworms, artificial teeth, etc. The foreign body induces laryngeal spasm, as a result of which the air passages are completely blocked. Even a small foreign body may induce laryngeal spasm killing the person. Certain diseases can also choke a person. Tumours may press on air passages. Vomitus may enter air passages and produce laryngeal spasm.
- **Traumatic Asphyxia:** When there is mechanical fixation of chest sufficient to cause death, it is called 'traumatic asphyxia'. It may occur in big crowds like in a fair where people may be trampled. Pressure on chest may occur in causing death suddenly in laborers. It may also occur in road traffic accidents, railway accidents, etc.
- **Inhalation of Irrespirable Gases:** Inhalation of irrespirable gases like carbon dioxide, smoke in building fire, hydrogen sulphide, methane in sewer workers may cause

suffocation. Suffocation may also occur if a lot of persons are confined in a small place.

- **Cafe Coronary:** It has been reported in many cases that a person sitting in café or bar may suddenly collapse and die. It looks like he had a massive heart attack. But on post-mortem examination, a small bolus of food or fish bone may be present in respiratory passages indicating that a person has died of asphyxia rather than coronary heart disease. The persons who are drunk are more liable to develop café coronary, as cough reflex is less due to alcohol. The cause of death in all suffocation cases is asphyxia. Death occurs in about 5–6 minutes.

d) Drowning

It is defined as a form of death which occurs when atmospheric air is prevented from entering lungs due to submersion of body in water or other fluids. To die from drowning, it is not essential that there should be a complete submersion. Even if only face is submerged, death can occur.

The various types of drowning are as follows:

- **Wet Drowning:** It may be in fresh water or sea water. The post-mortem findings are different in both cases.
- **Dry Drowning:** Sometimes, as water enters the air passages, it induces laryngeal spasm which leads to complete closure of air entry into lungs. As a result of this, water does not reach lungs. The characteristic features of drowning are absent.
- **Secondary Drowning:** It is when death occurs after sometimes when a person is rescued from being drowned. Death may occur due to aspiration, pneumonia or electrolyte imbalance.
- **Immersion Syndrome** (Cold water drowning): Sometimes when a person is dropped into cold water, skin receptors are activated immediately. Consequently, sudden dyspnea and sometimes vagal inhibition occurs. As a result of which heart stops immediately. The person dies suddenly and classical picture of drowning does not appear. However, in some cases, sudden ventricular fibrillation has also been reported.

Post-mortem appearance of Death by Asphyxia

Externally, the face is congested. The lips and nails are livid. Tongue is protruded and may be bitten. Saliva may be seen oozing out of the mouth. In hanging, cadaveric lividity is more marked. Internally, the mucous membranes of the trachea and larynx would be congested and may contain froth. The lungs would be dark and purple in color and, on cutting section, exude frothy blood. The right cavity of the heart is found to be full left cavity empty. The brain is congested and blood is dark colored. Numerous small petechial hemorrhages commonly called Tardieu's, spots are seen under the serous membranes of various organs, due to rupture of capillaries caused as a result of increased pressure in them. These are usually round, small, multiple and their size varies from pinhead to small pea. They are usually found under pleural viscera, pericardium, endocardium, thymus, meninges, conjunctivae and epiglottis. They are also seen in other conditions like bleeding disorders such as puerperal, bacterial endocarditis or coronary thrombosis.

LEGAL PROCESS

✓ Police Inquest

As per section 174 of Cr. P.C., the officer-in-charge, usually sub-inspector of a police station conducts the inquest. The police officer making the inquest is known as Investigation Officer (I.O.). When the officer in-charge of a police station receives information about fatal death, viz. suicide, or homicide, killed by an animal, accident, or has died under circumstances raising a reasonable suspicion he immediately gives intimation about it, to the nearest Executive Magistrate empowered to hold inquests. The Investigation Officer conducts an investigation under section 175 of Cr.P.C. should visit the crime scene or hospital and in presence of two or more witnesses draw up a report of the apparent cause of death. Then, he prepares a report includes the descriptions of wounds, bruises, fractures, and other marks of injury found on the body, and stating in what manner, or by what weapon or instrument, such injuries appear to have been inflicted.

The inquest report in common parlance called as *panchanama* is then signed by the

investigating police officer and by the *panchas*. If no foul play is suspected, the dead body is handed over to the relatives for disposal after conducting the postmortem report. In cases of suspected foul play or doubt, the body is sent for postmortem examination to the nearest authorized Government doctor together with a requisition and a copy of the inquest. The report is forwarded to the Magistrate. Private medical institutions can undertake medico-legal examination and treatment of the living, but autopsies can be conducted only with the permission of the State Government.

✓ Magistrate's Inquest

This is conducted by a District Magistrate, Sub – divisional Magistrate, *Tahsildar* or any other Executive Magistrate (S.20 to 23 Cr. PC), especially empowered by the State Government (Executive Magistrates). It is done in case of death in police custody, and while under police interrogation, death due to police firing, death in prison, reformatories, Borstal school, death in a psychiatric hospital, dowry deaths, exhumation Any person dies or disappears or rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or any other custody authorized by the Court (S.174(4), S.176 and 176, 1A, Cr.P.C.). In any case of death, a Magistrate may conduct an inquest, instead of or in addition to the police inquest (S.176, Cr.P.C).

✓ Examination of Accused

As per Section 53 Code of Criminal Procedure, an accused may be examined by a medical practitioner at the request of a police officer using reasonably necessary force. Whenever the person of a female accused is to be examined, the examination shall be made only by or under the supervision of a female registered medical practitioner. An arrested person may be examined at his request by a medical practitioner to detect evidence in his favour.

✓ Post-mortem Examination & Report

Postmortem examination of a dead body is carried out to gain insight into the disease process as well as for forensic application of

medical knowledge. Although different specialists viz; pathologists and forensic medicine experts, carry out autopsy for these two purposes, on many occasions there may be overlap of these two fields of medicine. A comparative analysis of both these categories of autopsies, namely clinical autopsy and medico legal autopsy, is done in this article with the intention of equipping the specialists in these two fields of medicine with knowledge about the other.

Autopsy, literally meaning self-study of a dead body, is carried out for clinical as well as medico-legal purposes. Clinical autopsy, loosely termed as pathological autopsy, is carried out to diagnose the disease which has caused the mortality when ante-mortem efforts have failed. Many a times clinical autopsy is done despite the cause of death having been established ante mortem, to study the disease process in situ, thus enriching medical knowledge. Medico-legal (ML) autopsy is performed with the aim of providing answers to questions about the identity, cause of death, time of death, circumstances of death, etc, thus helping the law enforcing agencies to solve the crime. Although the procedure of both the autopsies is same, they differ from each other in many aspects. Usually the clinical autopsy is performed by the pathologist and ML autopsy by a forensic expert.

✓ **Clinical Autopsy**

The primary objective of clinical autopsy is to establish the nature of the disease this has caused death, when ante-mortem efforts have failed. Another objective is to study pathology of the disease this has caused death, even when the diagnosis has been established before death.

✓ **Medico Legal Autopsy**

Medico-legal autopsy is performed, as part of the inquest procedure, when ordered by the investigating authority in ML deaths. The inquesting authority is usually civil (Police/Magistrate) but military inquest is carried out in areas where civil administrative set up is not available to carry out inquest. Under Section 174, Cr PC the inquesting

authority can order any registered medical practitioner or medical graduate to carry out ML autopsy.

Aims and Objectives of Medico-Legal Autopsy is to determine exact cause and manner of death, to establish identity of the deceased, to determine time since death, to collect trace evidence and to do the reconstruction of the crime scene.

✓ **Documentary Pre-requisites in medico legal autopsy**

Before starting a medico-legal autopsy the medical officer must be in possession of the following documents:

- A letter from the Investigating Officer asking the medical officer to carry out the ML autopsy and authorizing him to collect any material from the body for further investigations, if necessary. Although the wordings of the letter may be in the form of a request, it is an order. The concerned medical officer can be punished under law if he refuses to carry out the autopsy.
- A copy of the “*Panchanama*” carried out by the Investigation Officer (IO) at the site of death. This document pictures the scene of death for the prosecutor. Thus it can be considered equivalent to the clinical case sheet provided to the pathologist performing a clinical autopsy.
- *Dead Body Challan*: Is a set of questions to be answered by the investigating officer pertaining to the death under investigation. This document provides background information to the prosecutor. A police constable accompanies the dead body along with these documents.
- If the commanding officer of the military hospital is ordering the ML autopsy, a letter to that effect will be issued to the prosecutor accompanied by the above documents.
- The clinical case sheet declaring the person dead initiated by the casualty medical officer/ward medical officer should be one of the accompaniments. Ideally, the IO while proceeding to the site of Medico-Legal (ML) death should take the medical officer with him. This enables the medical officer to make his own observations at the scene of death. This will be of great help to him while conducting the autopsy, especially in

recreating the scene of events. The “*Panchanama*” may be deficient in many aspects.

✓ **Autopsy Procedure**

The autopsy procedure is essentially the same as for clinical autopsy. All medico-legal autopsies are complete autopsies. Hence a thorough external and internal examination of all organs is carried out in all cases. Exceptions are the vertebral column and spinal cord. Since their examination is cumbersome and time consuming, it is resorted to only when necessary, like in head injury, hanging, vertebral column injury, etc. On most occasions the cause of death is established by a thorough gross external and internal examination on the autopsy table itself. Hence the forensic expert rarely resorts to his pathological examination to establish cause of death. However, he resorts to toxicological examination, by the State Forensic Science Laboratory, for qualitative and quantitative estimation of poisons in the body tissues. In such cases, opinion as to the cause of death is reserved till the results of post-mortem laboratory investigations are available for correlation and interpretation. Thus the prosecutor is dependent on other agencies on many occasions for giving opinion about the cause of death. As soon as the autopsy is over, the cause of death is intimated to the investigating officer in a sealed envelope through the police constable who had come along with the body. If opinion has been reserved, the same is conveyed with reasons for doing so. On receipt of the note from the prosecutor, the investigating officer hands over the body to the relatives with permission for cremation stating that the body is not required for further investigations.

EVIDENTIARY ASSESSMENT OF POST-MORTEM REPORT

Section 293 and 294(3) of Code of Criminal Procedure

As per section 293 of Code of Criminal Procedure the reports of certain government scientific experts or any document purporting to be a report under the hand of a Government scientific expert may be used as evidence in any inquiry, trial or other proceedings. This section is applied to limited scientific officers

and it does not cover the doctor conducting the autopsy of the dead body and issuing the report on the basis of examination or analysis.

As per Section 294(3) of The Code Of Criminal Procedure, 1973, Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion, require such signature to be proved. It can be received in evidence only on the establishment of its authenticity by the mode of its proof as provided under sections 67 to 71 of the Evidence Act.

Indian Evidence Act on Documentary Evidence

As per Section 61 and 62 the contents of documents may be proved either by primary or by secondary evidence and primary evidence means the document itself produced for the inspection of the Court. Under Section 64 the document must be proved by primary evidence, that is to say, by producing the document itself except in the cases mentioned in Section 65 thereof. Since the copy of the post-mortem report did not come within the purview of any of the clauses of Section 65 it was not admissible on this score also.

Judicial Approach on Post Mortem Report as Evidence

In *Sowam Kisku And Ors. vs The State Of Bihar*, on 18th August 1983 ten accused caused the death of deceased *Dugu Ram Das Kisku* by beating him with Lathi, Bhala, Farsa and *Tangi*. The learned trial Judge held guilty all the accused under Section 302 and sentenced each of them to undergo imprisonment for life. Accused filed an appeal before Jharkhand High Court against the said conviction. Judgment delivered on 5 January, 2006 by the Hon'ble High Court setting aside the conviction on the basis of deficiency in proving post-mortem report in trial court as the doctor who conducted the autopsy not appeared before the court.

In *Geeta Keshav Shankar @ vs The State Of Maharashtra* the, the Post-mortem Report not proved, that there was any injury on the body

of the deceased which resulted in his death and on the contrary, the cause of death stated in the Post-mortem Report does not support the case of the prosecution. The Hon'ble Court held that the post-mortem report itself cannot be used as substantive piece of evidence until and unless the doctor concerned has been examined in Court.

In *Vijender vs State of Delhi*, the court said that in view of Section 60 of the Evidence Act, the prosecution is bound to lead the best evidence available to prove a certain fact. It is of course true that in an exceptional case where any of the prerequisites of Section 32 of the Evidence Act is fulfilled a post-mortem report can be admitted in evidence as a relevant fact under sub-section (2) thereof by proving the same through some other competent witness. It shows that even under section 32 of the Evidence Act, the post mortem report though admissible would be relevant when a competent witness come and depose about the same otherwise it will shake the very edifice of criminal jurisprudence that if any prejudice is caused, the benefit would be given to the accused and not to the prosecution.

The post-mortem report is also a document as any other document. Primary evidence of such a document is the report itself. It is a contemporaneous record, prepared in the prescribed form, of what the doctor has noticed in the course of post-mortem of the dead body, while investigation the cause of the death. It being relevant, it can be proved by producing the same. But production is only a step towards proof of it. It can be received in evidence only on the establishment of its authenticity by the mode of its proof as provided under sections 67 to 71 of the Evidence Act.

It has been pointed out by the Hon'ble Supreme Court in *Ganpat Raoji Suryavanshi vs State of Maharashtra* that the post-mortem report was not evidence and could only be used by the witness who conducted the post-mortem enquiry as an aid to memory. But a post-mortem report proves nothing. These propositions have already been stated in *Queen Empress v. Jadub Das*. Proceeding

further the learned Judges pointed out how the notes of post-mortem examination are nothing but contemporaneous record prepared by the medical officer while performing the postmortem examination on a dead body. The post-mortem report itself proves nothing, as they said, as it is not a substantive piece of evidence.

On the contrary, in *Meera vs. State of Rajasthan* it has been reviled that, the Doctor admitted that the medical papers on which he recorded, have been destroyed and there is no entry in the outdoor register about the deceased having been brought to the hospital. There is no reference in the outdoor ticket number in the postmortem report. In the said decision it was held that apart from oral statement of the Doctor, no documentary evidence had been produced to substantiate his claim. His original writings on which the treatment given to the patient was recorded, admittedly was destroyed by him, even though he knew it to be a medico legal case, as admitted by him. In one case notes of post-mortem examination are no evidence and, in another case, more importance is given to it is itself controversial.

Sowam Kisku And Ors. vs The State Of Bihar The Jharkhand High Court has set aside the conviction on the basis of deficiency in proving post-mortem report in trial court as the doctor who conducted the autopsy not appeared before the court.

In *Deepak Rai vs State Of Bihar*, the Doctor who conducted post mortem examination of the six deceased persons, has corroborated the prosecution case that the death occurred by 100% burn injuries. The post-mortem report corroborate the time and manner of the fateful incident, therefore the Hon'ble Supreme Court held that, the testimonies of the Doctors, post-mortem report, medical report are reliable one.

In *Shaikh Farid Hussinsab vs The State of Maharashtra*, the Hon'ble Supreme Court held that the post-mortem report also is receivable in evidence without the doctor's evidence and can still furnish corroborative

evidence to support other evidence in the case. in

CONCLUSION & SUGGESTION

The post-mortem report is an essential document on which the entire case is depended and it helps the investigating agencies and court to arrive at proper conclusion as to the mode, manner and cause of death. But as an evidentiary rule, the judicial approach is tented towards accepting medical evidence only in case of consistency with the prosecution case. On this point, the law also does not envisage the acceptance of postmortem report as substantive evidence when genuineness of the document is disputed. In absence of valid tender of the postmortem report to the defense and in view of raising objection by the defense the court is not holding post mortem report as substantive evidence. Practically this medical evidence should be used without hesitation as corroborative evidence even if it is consistent or highly inconsistent with the other evidences.

Additionally, the doctor is medical expert witness of fact and an advisory character is given on the basis of the symptoms found on medical examination. When doctors appear in court merely to relate facts that they have observed, they are regulated by the common rules applicable to regular witness. They have to interpret those facts expert skill and they are expected to present their opinions fairly and without bias and not in favor of the prosecution or calling parties. Sometime such fair statement may drive against or in favor of parties calling them. If the fact is to be ascertained by medical examination like postmortem report, it must be inevitable evidence and must be accepted intact. There is need to change the judicial approach for scientific expert witnesses. Also the judicial approach and interpretation of post mortem report should be as equal as Government Scientific Experts reports. The technical aspect of personal attendance of same medical officer who conducted the autopsy should be avoided except in some exceptional cases.

It's high time to change the law on medical evidence. Under section 293 of Code of Criminal Procedure, reports of very limited Government Scientific Experts like, Chemical Examiner or Assistant Chemical Examiner to Government, Chief Inspector of- Explosives, Director of the Finger Print Bureau, Director, *Haffkeine Institute, Bombay*, Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory, Serologist to the Government etc. are considered as substantive evidence and without further proof. Even if, in its discretion the court is calling such officer to examine any such expert as to the subject-matter of his report, he is allowed to depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf. This section does not cover the doctor conducting the autopsy of the dead body and issuing the postmortem report. Whereas the medical surgeon or doctor who is practically busy in conducting autopsy in many case on daily basis and it may not be possible to attend the court in every case. Even if he is coming to court for further proof, usually he will state the same what is written in PM report, at the most assumption he can give additionally in his cross examination which has no evidentiary value. Therefore, we think that why not they should be covered under section 293 of Cr.P.C.? We suggest an amendment of section 293 of Cr.P.C. for inclusion of medical expert conducting autopsy and issuing post mortem report and the said report should have the same evidentiary assessment as in case of Government Scientific Experts.

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