Opinion of Handwriting Expert: A Judicial Approach

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A. Introduction

1. Introduce Scientific Evidence under Evidence Act

Evidence has been defined under the Indian Evidence Act, 1872 as statements made by witnesses as well as documents presented before the Court. The definition of a document under the Act finds in the illustration "a writing is a document". In other words, all instruments by which relevant facts are brought before court are included in the term 'evidence'. Further, an expert means a person who by cause of his training or experience is qualified to express an opinion which an ordinary witness is not competent to do so. His evidence is opinion evidence which is based on his special skill or acquired experience or special study of the subject. Under the law in force, for the testimony of expert witness to become admissible in the Court of Law, his competency as an expert must be shown may be by showing that he was possessed of necessary qualification or that he has acquired special skill therein by experience.

In the Court of law, if the Judges have to form an opinion as to the identity of a piece of handwriting, the Indian Evidence Act, 1872, has given the opinion of an expert as a relevant fact. Illustration to the Section 45 of the Indian Evidence Act regarding Opinion of Experts can be read to better understand the concept, it reads as under:

"(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant."

The law makes relevant two other modes which are as follows; a writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or comparison by the court with a writing made in the presence of the court or admitted or proved to be the writing of the person.

Addressing the issue, whether production of handwriting of the accused violates the right against self-incrimination, in People’s Union for Civil Liberties v. Union of India Supreme Court held that giving of any sort of identification as for instance impression of thumb or foot or palm or fingers or giving of specimen of hand-writing is not at all covered under Right against Self Incrimination.

B. Interpretation of Section 73 r/w Section 45

The Supreme Court of India, in as early as 1967, interpreted sections 45 and 73 of the Indian Evidence Act, 1980. The division bench comprising M. Hidayatullah, J in Fakhruddin vs. The State of Madhya Pradesh laid down the three modes of proof of document which are as under.

Firstly, by direct evidence,
Secondly, by expert evidence, and

Thirdly, by the court coming to a conclusion by comparison.\textsuperscript{10}

The appellant Fakhruddin in the instant case was convicted by the lower court. He was prosecuted for criminal conspiracy, forgery, cheating and personation. Fakhruddin along with seven other persons were alleged to forge applications for permits for corrugated and plain iron sheets in the name of non-existent persons.

The prosecution case depended upon the proof of forgery applications in the name of fictitious persons with a view to cheating and this necessarily involved the offence of personation. The evidence that led to the conviction of the Appellant was opinion of a handwriting expert which said that the writing on the applications and signatures on permit were made by the appellant.

The appellant proceeded before the Hon’ble High Court on the ground, Inter alia, the court having gone only on the testimony of the handwriting expert of whose testimony there was no corroboration, either direct or circumstantial.

The learned bench observed that, \textsuperscript{11}

"...the court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the court is to apply its own observation to the admitted or proved writings and to compare them with the disputed ones, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case."

It was further observed that this is not to say that the court must play the role of an expert but to say that the court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.

C. Application of Modes of Proof

This division has two sub-divisions; landmark judgments and the recent case laws. The paper traces the preferred mode of proof by the higher and apex judiciary over the years.

1. Landmark Judgments

The opinion of judiciary has been divided on whether the uncorroborated expert opinion only can be the reason of decision or corroboration of evidence and/or judicial comparison shall also be relied upon.

The Supreme Court in The State (Delhi Administration) vs. Pali Ram\textsuperscript{12} heard the question of law with regards to the scope of powers of Court under section 73 of the Act of 1980 to direct an accused to give his specimen writings.

Justice Sarkaria opined that:

*Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task.

\textsuperscript{11} Supra note 9, ¶ 11.
\textsuperscript{12} The State (Delhi Administration) vs. Pali Ram, A.I.R. 1979 S.C. 14.
of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert."

It can therefore be deduced that the Court gave more evidentiary value to the expert opinion in lieu of Court’s sole examination of the evidence.

An extension of Pali Ram (supra) is Shyam Sundar Chowkhani vs. Kajalkanti Biswas, wherein the Calcutta High Court relying on the said judgment held that it is not open for the court to compare handwriting of its own; the services of experts are liable to be taken for this purpose.

However, there persists a converse of the Pali Ram case. In 1971, the Orissa High Court in The State vs. Tribikram Bohidar opined that an opinion of handwriting expert is only made admissible; it is not the only method of proving handwriting.

Furthermore, in 1991, the Madras High Court in Venkatalakshmia vs. Venkatappa opined that to prove or disprove writing, it is not essential to examine the handwriting expert. The Court also can do the comparison of the disputed signatures and arrive at a decision in that regard. But the court can allow a party to establish his case by having the disputed handwriting examine by handwriting expert. However, the said view differs from the opinion of the Andhra Pradesh High Court as it held that the evidence must be given by the expert in the court. Mere report without examining the expert is not relevant. The High Court of Allahabad had the similar view as the latter in Balkrishna Das vs. Radha Devi.

Another Landmark Judgment of the Supreme Court is Murlilal vs. State of Madhya Pradesh observed which was delivered by a division bench comprising of R. S. Sarkaria and O. Chinnappa Reddy, JJ.

In the instant case, a copy was discovered in the house of the diseased. Page six of the copy ha the writing of the accused and hence indicated his presence in the house at the night of the murder and his participation in the commission of the offence.

The Court in Paragraph 10 opined resolutely as follows:

"...there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated…"

Chinnappa Reddy, J further opined that:

- The approach must be of caution
- Reasons for opinion must be carefully examined
- All other relevant evidence must be considered

Corroboration must be sought. However, in cases where reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of a handwriting expert may be accepted.

2. Recent Case Laws

At the down of the sixth millennium, in 2008, the Supreme Court in Janachaitanya Housing Ltd. vs. Divya Financiers emphasizing on the necessity of handwriting expert opinion held that no time could be fixed for

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13 Ibid., ¶ 30.
15 The State vs. Tribikram Bohidar, 37 1971 CLT 714.
16 Venkatalakshmia vs. Venkatappa, A.I.R. 1991 Mad 399 (pg. 3).
18 Supra note 4.
filing applications under section 45 of the Evidence Act for sending the disputed signature or writing to the handwriting expert for comparison and opinion of the court; for exercising such discretion when situation so demand, depending upon the facts and circumstances of each case.

Placing reliance on Ajay K. Paramar vs. State of Rajasthan, the power of and approach to be followed by a court were discussed. Court can compare writing sample given in its presence or admitted or proved to be writing of the person convicted and there is no legal bar on court for comparing handwriting or signature using its own eyes and it can make its own observations thereto. If situation so demands, court can take upon itself the task of comparison of signatures without sending for expert’s report. Though expert’s report can be fallible but it cannot be brushed aside as useless.

However, the bench cautioned that when court is comparing handwriting or signatures it cannot become expert and it must refrain from playing role of expert as opinion of court may not be conclusive. Therefore, court should be slow and hesitant to base its findings only on comparison made by it.

In 2017, the High Court of Madras in Sankara Narayan Pillai vs. Ignations Selvaraj placing reliance on previous decisions of the Supreme Court held that the court as a matter of prudence and caution, should be hesitant in giving its findings with regards to the identity of the disputed signature to determine whether the disputed signature agrees with the admitted signature. The prudent course is to obtain the opinion and assistance of an expert.

Further, in 2018 the Madras High Court in K. Palaniappan vs. C. Kandasamy stated that under section 73(3) of the Indian Evidence Act, there is a bar for the court to compare the signature and the court had to send the signature for verification by the experts.

It is thereby safe to interpret that the conspectus of cases favors the assistance of an expert to compare the disputed and admitted piece of handwriting, signature or seal.

D. Evidentiary Value of Handwriting Expert Opinion

The opinion of a handwriting expert has not been given high evidentiary value by the Courts in India. Although, the above section represents how there has been an inclination towards obtaining the opinion and assistance of an expert, the Apex Court in a catena of judgments have expounded on the nature of the evidentiary report and a need for corroboration by other evidence.

In 1964, a Constitution Bench of the Supreme Court, in the case of Shashi Kumar Banerjee vs. Subodh Kumar Banerjee held that the evidence of a handwriting expert is an opinion evidence and ‘it can rarely, if ever’, take place of a substantive evidence. The Apex Court further laid down that before acting on the evidence of a handwriting expert, it should be seen whether it is corroborated wither by direct or circumstantial evidence.

The worth and opinion of an expert can be tested by the reasons given by him in support of his opinion and not by bare conclusions of the experts. The Supreme Court in Ramesh Chandra Agrawal vs. Regency Hospital Ltd. held that the real function of the expert is to present before the Court all the materials, as well as with reasons in support of his conclusion. Thereafter, the Court, although not an expert, may form its own independent judgment. The Court held as under:

*The scientific opinion evidence, if intelligible, convincing and tested becomes as factor an often an important factor for consideration along with other evidence of the case. The credibility of such a witness

21 Ibid., ¶ 24-30.
26 2009 9 SCC 709; Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee, 2009 9 SCC 221.
depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions."

Therefore, the opinion of a handwriting expert has to be tested by the acceptability of the reasons given by him an expert deposes and not decides.²⁷

E. Conclusion and Suggestions

In light of the above discussion, it can be deduced that the judicial opinion is in favour of calling a handwriting expert; however, the same shall not be treated as conclusive evidence because of the inherent possibilities error and fallibility. That being said, it is pertinent to highlight that a catena of judgments have expressed the common view that in case where a judge takes upon him on deciding the veracity of the impugned handwriting in the document, the same must be done with due care and caution.

In view of the above, the following suggestions can be taken into account:

The Court must in all circumstances, as a rule of prudence, call for an expert. As laid down in T. Subbia vs. S.K.D. Ramaswamy Nadar²⁸, the words "for the purpose of enabling the Court" under Section 73 of the Evidence Act encompass the act of calling an expert to aid in comparison of the documents.

In order to address the issue that the evidence of a handwriting expert is suffers from lack of conclusively, the Court if it deems fit, call upon the evidence of at least two handwriting experts; to support or negate the veracity of one report. Further, the Court must always conduct an oral testimony of the expert.