"**Summary of Papers written by Judicial Officers on the subject Evidentiary value of Medical evidence, can medical evidence be relied on in conflict with oral evidence**":-

Introduction

1. Every judicial proceeding has for its purpose the ascertaining of some right or liability. If the proceeding is criminal the object is to ascertain the liability to punishment of the person accused. If the proceeding is civil the object is to ascertain some right of property or of status or the right of one party and the liability of other to some form of relief.

2. In majority of criminal cases, there is medical evidence. It is evidence of an expert. it is relevant U/s 45 of the Indian Evidence Act. Section 45 of the said Act reads that when the court has to form an opinion upon a foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art or in question as to identity of handwriting or finger impressions are relevant facts. Such persons are called as experts. Knowledge of medial field is the knowledge of science and therefore, medical evidence is relevant U/s. 45 of the said Act.

3) **Doctor as an expert and a common witness**:-

A medical witness acts both as a common as well as an expert wtness. Common witness is a witness

who testified to facts, which he has actually observed himself. When the medical witness is called upon to testify to facts observed by him, he acts as a common witness. A medical witness acts as a common witness when he testifies on the preamble of his report, which gives the date, time and place of examination, and the names of the individual, if any, who identify the person or dead body examined and the alleged history given. The medical man acts as an expert when he testifies on the observation and opinion given in his report.

4) **Medical opinion and its value**:-

The opinion of physician and surgeons may be admitted to show the physical condition of a person, the nature of a disease, whether temporary or permanent, the effect of disease or of physical injuries upon the body or mind, as well as in what manner or by what kind of instruments they were made, or at what time wounds or injuries of a given character might have been inflicted, whether they would probably be fatal, or actually did produce death, the cause, symptoms and peculiarities of a disease, and whether it would be likely to cause death, the probable future consequences of an injury, when consequences anticipated are such as in the ordinary course of events may be reasonably expected to happen, and are not merely speculative or possible. While it is improper to ask a physician how certain

wounds or injuries were actually given, as this would be trespassing upon the province of the jury, he may be asked by what kinds of weapons wounds of a given description might be caused, or whether wounds of a given character were caused before or after death.

5) A medical witness called in as an expert is not a witness of fact. His evidence is really of an advisoty character given on the facts submitted to him. Even where a doctor has deposed in Court, his evidence has got to be appreciated like the evidence of any other witness and there is no irrebuttable presumption that a doctor is always a witness of truth.

6) The Hon'ble Orisa High Court in case of ***Kedar Behara -v- State***, *1993 Cri.L.J.378 (Ori.)* observed as follows:

It is trite that where the eye-witnesses account is found credible and trustworthy, medical opinion pointed to alternative possibilities is not accepted as conclusive.

7) The Hon'ble Apex Court in case of **State of *U.P. -vs- Harban*** *1998 (3) JT 443 : (1998) 6 SCC 50*, observed as follows:

In a conflict between the eye-witness account and medical evidence, the testimony of the eye-witness has to be preferred unless the medical evidence is so conclusive as to rule out even the possibility of truth in the eye-witness version.

8) In the case reported in **Sthepen** ***Seneviratne -V- King,*** ***AIR 1936 PC 289 : 37 Cri LJ 963 at pages 298 and 299***, it is observed that:-

In order to discredit the positive evidence it should be clear and decisive. If the evidence of doctor is vague it cannot be used to discredit the positive evidence-

9) In the case reported in ***Thakur -V- State***, *AIR 1955 All 189 : 1955 Cri.L.J.473*, it is observed that:

When there is a conflict with medical evidence and the oral testimony of the witness the evidence can be assessed only in two ways. A court can either believe the witnesses unreservedly and explain away the conflict by holding that the witnesses have merely exaggerated the incident or rely upon the medical evidence and approach the oral testimony with caution testing it in the light of medical evidence. The first method can be applied only in those cases where the oral evidence is above approach and creates confidence. Where the evidence is not of that character and the medical evidence is not open to any doubt or suspiicon, the only safe and judicial method of assessing the evidence is the second method. (Injuries less and minor, accused many).

10. 13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothig more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye-witnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

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