

IMPORTANT LEGAL DECISIONS IN THE MATTER OF HANDWRITING EXPERTS' REPORT

Handwriting Expert-Who is?

An expert really means a person who by reason of his training or experience is qualified to express an opinion whereas an ordinary witness is not competent to do so. His evidence is only opinion evidence which is based on his special skill or experience. In view of the language of Section 45 of Evidence Act it is necessary that before a person can be characterized as an expert, there must be some material on the record to show that he is one who is skilled in that particular science and is possessed of peculiar knowledge concerning the same. He must have made special study of the subject or acquired special experience therein. Thus before the testimony of a witness becomes admissible, 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. Apart from the question that the report of a handwriting expert may be read in evidence, what is necessary is that the expert should be subjected to cross-examination because an expert like any other witness is fallible and the value of his evidence consists in the rightful inferences which he draws from what he merely surmises. The expert's evidence is only a piece of evidence and the weight to be given to it has to be judged along with other evidence as evidence of this nature is ordinarily not conclusive. Such evidence, therefore, cannot be taken as substantive piece of evidence but is there to corroborate the other evidence.

-Balkrishna Das v. Radha Devi AIR 1989 All 133.

Expert not Examined- his report not admissible:

Report of the Handwriting Experts would not be admissible in evidence in absence of formal proof and examining the experts :

-Balkrishna Das v. Radha Devi Air 1989 All 133.

No importance can be attached to the report of handwriting expert regarding forged signatures, unless he is examined.

-*Susil Kr. Adhya v. Rangalal Patwari*. AIR 1983 Orissa 256;(1983) 56 Cut LT 332.

Weight to be attached to opinion of expert has to depend on its reasonableness and scientific quality and not on length of practice of expert.

- *Ram Prasad v. Shyamlal*. AIR 1984 NOC 77 (Allahabad).

Expert evidence-Science of handwriting and signature -The science of handwriting was not an exact science unlike the science of finger-prints. Even experts tend to commit errors in giving their opinions on the genuineness of the signatures and handwriting. Sometimes it would be difficult for an expert to examine even the genuineness of different writings, each having its own individuality. It requires intelligent comparison to differentiate the genuine signature from the forged one. Great care and caution should be exercised especially when the court was not assisted of the evidence of an expert in determining the genuineness of a signature or handwriting. Even while calling expert, that if one cannot get a competent man, it was better not to adduce any expert evidence at all. -*Vandavasi Karthikeya alias Krishnamurthy v. S. Kamamma* AIR 1994 AP 102 at 114.

Expert evidence – Relationship between expert and party rendering expert’s evidence inadmissible- Where the claimant brought proceedings for professional negligence against G, a barrister specialising in tax. At trial, G wished to rely on the expert evidence of F, another tax barrister in the same set of chambers. Held that where it was demonstrated that a proposed expert witness had a relationship with the party calling him which a reasonable observer might think was capable of affecting the expert’s view so as to make them unduly favourable to that party, his evidence should not be admitted however unbiased his conclusions might probably be. The question was one of fact, namely the extent and nature of the relationship between the proposed

witness and the party. In the instant case, F's admission made him unsuitable to be called as an expert witness on the public policy ground that justice had to be seen to be done as well as done.

-LRCA Trustees V. Goldberg (Ne.2),(2001) 4 ALL ER 950 (ch D).

Evidence of Handwriting Expert:

A handwriting expert is a competent witness whose opinion evidence is recognized as relevant under the provisions of the Evidence Act and has not been equated to the class of evidence of an accomplice, It would, therefore, not be fair to approach the opinion evidence with suspicion but the correct approach would be to weight the reason on which it was based. The equality of his opinion would depend on the soundness of the reasons on which it was founded. No hard and fast rule can be laid down in that behalf, but the court has to decide in each case on its own merits what weight it should attach to the opinion of the expert. -*State of Maharashtra v. Sukhdeo Singh* ;Air 1992 SC 2100(2116): (1992) 3SCJ 330.

The opinion of a Handwriting Expert is Relevant Under Section 45 of the Evidence Act. - *Baru Ram v. Smt. Prasanni*, AIR 1959 SC 93.

The evidence must be given by the expert in the court. Mere report without examining the expert is not relevant.

-*B. Poornaish v. Union of India*, AIR 1967 AP 338;

The science of handwriting expert is not perfect. 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. His duty is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his independent judgment:

-*State v. Kandhu Caharan Barik*, 1983 Cri LJ 133.

Handwriting Expert– Evidence- Corroboration

The opinion of the handwriting expert is admissible under Section 45 of the Evidence Act and what is required is only a corroboration of the opinion by other evidence in the case. In the absence of any other corroborating evidence, it will not be safe to rest a conclusion merely on the opinion of a handwriting expert :

Joseph v. Aleyamma; (1990) 2 KLT 68 (SN)

In case of handwriting of deceased lady, the defence was unable to establish that the expert lacks either qualifications or the skill expected of such an expert. Such evidence of handwriting expert to be relied on.

-State of Maha.v.Vasant Shankar Mhasane,(1994)1 Bom CR 84 at 91,92

The evidence of expert of handwriting (forming his opinion) may not be substantial evidence unless it was corroborated either by clear and direct evidence or by circumstantial evidence.

-State of Karnataka v. E. Maruthi Rao Pawar, (1989) 1 Kar LJ 273 (DB)

In order to constitute forgery, the first ingredient is that the accused should have forged the document, or a part of such document. In the absence of proof of this ingredient, a person cannot be made liable for offence under Section 466, RPC. That apart, it is also incumbent upon the prosecution to prove that it was forged by the accused with one of the intentions mentioned in the Act. In other words, in a charge, the burden is on the prosecution to prove that the document is forged one and it was the accused who forged it. But the forgery must be definitely proved.

-Mohd. Asadullah v. The State, 2003 Cri LJ 2355 ast 2359 (J&K).

Qualification of Handwriting Expert

“Demand for specialist in examination of documents is so small that comparatively few qualified men are even likely to be engaged in this work. No University, College of any standing either in Great Britain or America offers a course of study leading to degree and if such courses were contemplated it would be a difficult matter to provide either teachers or any thing like full employment for any substantial number of students when qualified.” The handwriting experts take training from leading experts and gain experience by practice and study. The value of the expert does not depend on his qualification rather it depends upon the soundness of the reasoning advanced by him.

-*Devi Prasad v. State*, AIR 1967 All 64 : 1967 Cri LJ 134.

Man having no diploma or degree is an expert, if he has specialised in the subject.

-In *reGovinda Reddy*, AIR 1958 Mys 150 : 1958 Cri LJ 1489.

Value of handwriting expert's evidence – The testimony of an expert is usually considered to be of light value. Since, they are proverbially biased in favour of the side which calls them. So evidence of an expert should be approached with considerable caution specially where much depends upon this evidence. The opinion of experts are not binding upon the Judge. The weights due to their testimony is a matter to be determined by the Judge and it will be proportionate to the soundness of the reasons. A Tribunal should not accept the mere untested opinions of experts in preference to direct and positive evidence as to facts. Evidence given by handwriting expert can never be conclusive because it is after all opinion evidence.

-*Ishawari Prasad v. Mohd. Isa*, AIR 1963 SC 1728;

-In *re Gadavarthy*, AIR 1960 AP 164 : 1960 Cri LJ 315;

-*Banarsi Store v. President of India*, AIR 1953 All 318.

The sworn testimony may be preferred to the expert evidence.

-Goverdhan v. Ahmadi Begum, AIR 1953 Hyderabad 181;

-Sashi Kumar v. Subodh Kumar, AIR 1964 SC 529.

A court comparing handwriting has not to depend on the opinion of an expert without any scrutiny.

-Abhaya Nand v. State of Bihar, AIR 1959 Pat 328 : 1959 Cri LJ 893.

Expert evidence as to handwriting is an opinion evidence and it can rarely, if ever take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear, direct evidence or by circumstantial evidence. If the probabilities are against the expert opinion it is of no value.

-Sashi Kumar v. Subodh Kumar, AIR 1964 SC 529.

It is well-settled that science of handwriting is not a perfect science. Therefore, evidence of a handwriting expert is received with great caution.

-Piara Singh v. Jagtar Singh, AIR 1987 Punj 93.

In order to rely on the evidence of an expert the court must be fully satisfied that he is a truthful witness and also reliable witness fully adept in the art of identification of handwriting. It is wholly unsafe to base conviction on the evidence of an expert.

-Kanchan Singh v. State of Guj., AIR 1979 SC 1011 : 1979 Cri LJ 889;

-Magan Behari Lal v. State of Pb., AIR 1977 SC 1091 : 1977 Cri LJ 711.

It may be hazardous to base a conviction solely on the opinion of the handwriting expert. If there are other material to prove that the signature of the accused (alleged) was put on the exhibit by himself, the opinion evidence can be sidelined, even though it is an expert opinion. -*V.S. Abdul Sattar Shah v. Supdt. of Police, CBI/SPE, Cochin*, 1987 Cri LJ 1670 (Ker) : (1987) 2 Ker LJ 19.

Handwriting expert basing his conclusion about identity of the accused who had written the questioned documents by comparing the same with the sample writing (which in his opinion appeared to be disguised) merely on the ground that there was some similarity in some of the letters and figures occurring in the sample handwritings here and there and similar letters and figures appearing in questioned documents. Such opinion of expert not corroborated by reliable evidence and hence cannot be relied upon. In absence of corroboration such evidence cannot be relied upon and prosecution case failed to be proved beyond reasonable doubts regarding identity of the accused.

-*State of U.P., v. Charles Gurmukh Sobhraj*, 1996 Cri LJ 3844 : (1996) 9 SCC 472 : 1996 SCC 1065.

It is also to be remembered that comparison of handwriting is an imperfect science and an expert would not be able to state with 100% certainty that a particular signature is that of the person who purportedly signed it. He can only state that there is high probability and this he has done in his report.

-*M.K. Usman Koya v. C.S. Santha*, AIR 2003 Ker 191 at 193.