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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-I, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been

awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ROLE OF A PROSECUTION COUNSEL IN TRIALS WITH REFERENCE TO FORENSIC SCIENCE

AUTHORED BY - GURMEHAR RANDHAWA

BBA LLB (2020-25)

Email id – gurmeharraandhawa10@gmail.com

Symbiosis Law School, Hyderabad

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Table of contents

CHAPTER – I

1. Introduction.....
2. Research Objectives.....
3. Research Methodology.....
4. Research question.....
5. Literature review.....

CHAPTER – II

1. Role of prosecution in trials
2. Utilizing forensic evidence while building a case in the eyes of the prosecution counsel.....
3. Understanding the reliability and validity of evidences based on forensic science.....
4. Challenges faced by prosecution counsel when using forensic evidence.....
5. Ensuring that the forensic evidence is reliable and admissible.....
6. Role of expert witnesses play in trials involving forensic evidence.....
7. Determining the role of prosecution with regards to forensic evidence in the outcome of a trial.....

CHAPTER – III

1. Conclusion.....

CHAPTER -I

Introduction

The criminal justice system is divided into four primary components. The prosecution, the court, the investigating unit, and the correctional wing. It is the prosecutor's job as a court officer to provide a true image to the Court. The fundamental job of the prosecutor is to assist the court in discovering the truth and administering justice to the people and the accused in line with the law and impartial norms. The major purpose of the Prosecution wing is to prosecute cases in court. The author would thereby study the role of the prosecution counsel in trials utilizing forensic scientific evidence, which involves choosing, evaluating, and presenting the evidence in a clear and persuasive manner to demonstrate the guilt of the accused. The ability of the prosecution counsel to successfully present the forensic evidence might be important to obtaining a conviction. A prosecution counsel's function in forensic science cases is to submit evidence to the court that supports the prosecution's case. Forensic science is an important part of many criminal prosecutions, and prosecutors frequently rely on it to establish their argument past any reasonable doubt. Prosecutors may collaborate closely with forensic scientists and experts to collect and analyze evidence, and they may also summon expert witnesses to testify on forensic issues.

In the case of *State of Maharashtra v. Dr. Praful Desai*¹, the Bombay High Court held that the prosecution counsel has a duty to ensure that the evidence produced in court is reliable and can be accepted as proof of the facts in issue, including forensic evidence. They must follow established protocols for handling and presenting forensic evidence, as well as be aware of any potential objections to the evidence's admissibility.

Research objectives

The following are some research objectives for the concerned topic -

1. To examine how forensic science may be utilised as evidence in criminal cases, as well as the problems that prosecutors have in properly presenting this evidence.
2. To examine how the use of forensic scientific evidence might affect the result of criminal cases, as well as to identify factors that could impact the perceived credibility of this evidence.
3. To evaluate the role of scientific experts and prosecutors in the presenting of forensic science

¹ State of Maharashtra v. Dr. Praful Desai, 2003 Latest Caselaw 205 SC, (India)

evidence in the trials of criminal cases

4. Identifying practices when employing forensic scientific evidence in criminal cases, as well as developing guidelines for prosecution counsel to ensure that this evidence is presented fairly and accurately.
5. To assess the efficacy of present legislative and regulatory frameworks for the use of forensic scientific evidence in trials, as well as to suggest possible areas for change or improvement.
6. To carry on a case study on Keith Harward's and Harold Shipman's case

Research Methodology

The author attempted to include doctrinal research methods in a descriptive manner and performed this study using secondary sources such as numerous judgments, publications, and provisions from relevant acts and legislatures. Numerous web sources, including SCC, Manupatra, Hein Online, and Jstor, were used.

Research questions

1. How does a prosecution counsel use forensic evidence to develop a case in a criminal trial?
2. What are the difficulties that prosecution counsel faces when using forensic evidence during a court proceeding, and how may these difficulties be overcome?
3. How can the prosecutor guarantee that the evidence so provided are trustworthy and admissible?
4. How important is forensic evidence in influencing the outcome of a trial, and how does the prosecution counsel balance it with other types of evidence?
5. What role do expert witnesses play in cases involving forensic science?

Literature review

1. **Role of forensic science in criminal investigation: Admissibility in Indian legal system and future²** - The research assisted the author in analysing the importance of forensic science in criminal investigation as well as its role in maintaining control over the law and

² Gowsia Farooq Khan & Sheeba Ahad, Role of Forensic Science in Criminal Investigation: Admissibility in Indian Legal System and Future Perspective, 7 International journal of advanced research in science and engineering 1-15 (2018).

order. This research also sheds insight on how forensic science serves as a link amid medicine and law.

2. **Scientific Experts: Making Their Testimony More Reliable by Marilee M Kapsa and Carl B Meyer³** - The article discusses evidentiary standards in order to make expert testimony more trustworthy in the United States Supreme Court throughout the 1990s. This essay investigates some of the underlying challenges and speculates on whether the endeavour will be successful.
3. **Reliability and validity of forensic science evidence by Hal S Stern and David Kaye⁴** - Using Keith Harward's case study, the article evaluates the validity and trustworthiness of forensic science in the investigation of evidence. It shown that when scientific evidence is assessed utilising forensic sciences, it may be extremely valuable to investigators.
4. **The role of forensic science in the trial of Harold Shipman by T.H. Henriques⁵** - The essay gave a case study of Harold Shipman's trial in order to appreciate the assessment of forensic science when investigating the prosecution's evidence.
5. **Towards coherent co-presentation of expert evidences in criminal trials: Experiences of communication between forensic scientists and legal practitioners by Loene Howes⁶** - The goal of this article is to report on research of lawyers and expert perspectives on expert evidence transmission in major cases. This article begins by describing forensic science and communicating about it as a endeavor before diving into some of the elements that influence forensic science communication success. The outcomes of the conclusion so drawn and their implications for improving cross-disciplinary tactics are then examined. It reveals the various agreement between lawyers and experts, meaning that they may be used to promote mutual agreements and cross-disciplinary tactics.

³ Marilee M Kapsa & Carl B Meyer, Scientific Experts: Making Their Testimony More Reliable, 35 *california western law review* 1-21 (1999).

⁴ Hal S Stern & David Kaye, Reliability and Validity of Forensic Science Evidence, 16 *Significance* 21-24 (2019).

⁵ T.H Henriques, The Role of Forensic Science in the Trial of Harold Shipman., 43 *Semantic scholar* 185-188 (2003).

⁶ Howes, L. (2015) "Towards coherent co-presentation of expert evidence in criminal trials: Experiences of communication between forensic scientists and legal practitioners," *Criminal Law Journal*, pp. 1–21.

CHAPTER – II

Role of prosecution counsel in trials

In forensic science cases, the Prosecution Counsel's responsibility is to offer evidence that supports the prosecution's case and refutes the defence's claims. Forensic evidence is an important part of many criminal prosecutions, and the prosecution counsel is responsible for ensuring that the evidence is presented to the jury accurately and convincingly.

To be effective in this function, the prosecution counsel must comprehend the scientific concepts behind forensic evidence and be able to express those ideas properly to the jury. They must also collaborate closely with forensic specialists to gain a comprehensive knowledge of the evidence and how it might be utilized to assist the prosecution's case. Prosecutors must also be able to foresee and respond to any objections to the admissibility or reliability of forensic evidence. This might involve having pre-trial hearings to assess the admissibility of evidence or cross-examining defence experts who may call the evidence's veracity or reliability into doubt. Ultimately, the prosecution counsel's objective is to employ forensic evidence to develop a convincing case that convinces the jury of the defendant's guilt beyond a reasonable doubt. Prosecution counsel can play a vital role in ensuring that justice is served in criminal cases by working closely with forensic specialists and employing their knowledge of the science underlying the evidence. Some of the specialised tasks of a prosecution attorney in forensic science proceedings may include:

1. **Forensic evidence collection:** The prosecution's counsel may collaborate with forensic experts to collect evidence such as DNA samples, fingerprints, or bloodstains.
2. **Forensic evidence analysis:** The prosecution counsel may also collaborate with forensic scientists to evaluate and explain the evidence acquired.
3. **Presenting forensic evidence in court:** Prosecutors must present forensic evidence in court in a straightforward and persuasive way.

This might include summoning expert witnesses to testify about the findings of forensic analyses.

4. **Cross-examination of defence expert witnesses:** The prosecution may also cross-examine defence expert witnesses to contest their conclusions or interpretations of the

forensic evidence. The Supreme Court declared in *Pritam Singh Vs The State*⁷ that the prosecution counsel has a responsibility to cross-examine the defence witnesses, including expert witnesses, in order to extract the truth and ensure that the facts are presented in a clear and unambiguous way.

Utilizing forensic evidence while building a case in the eyes of the prosecution counsel

Forensic evidences are evidences based on forensic fundamental sciences such as chemistry, engineering, or biology for explosive detection, structure design studies, and DNA identification or matching. A forensic scientist is a technical expert that may provide evidence analysis, witness testimony on judgment results, technology assistance, and even building up his or her field.

- **DNA** - One of the most powerful pieces of forensic evidence accessible today is DNA extracted from biological specimens retrieved at a crime scene. The forensic analyst must determine if a suspect's DNA profile fits the DNA profile received from the crime scene segments while examining this type of evidence. They must next examine the importance of this agreement. In *Vasu v. Santha*,⁸ The court established guidelines for DNA testing and its admissibility in proving the alleged fact. The court should consider the implications of ordering DNA testing on the child and mother in circumstances governed by Section 112 of the Indian Evidence Act⁹. It was decided that no one should be compelled to give blood specimen for DNA testing, and that no negative consequences should be imposed for such refusal.

•**Trace evidence**-A trace evidence is a piece or sample of a larger object that was left behind after the crime. This type of evidence includes glass fragments from a smashed window, human hair, and fibres from clothing or carpet. The purpose here is to determine if a trace evidence sample taken at the crime scene matches a sample obtained from a suspect (or maybe from an object in the suspect's possession).

•**Pattern evidence**-Pattern evidence is evidence left at a crime scene as a result of a person's or item's impression. The forensic examiner must determine if the pattern of an analogous sample

⁷ Pritam Singh Vs The State, 1950 AIR 169, (India)

⁸ Vasu v. Santha, AIR 1986 MP 57 (India)

⁹ Indian evidence act I.E.A. § 112 (Gazette of I 1872).

acquired from the suspect or an object related with the suspect matches the pattern of the imprint found at the crime scene. Pattern evidence includes fingerprints, shoeprints, documents/handwriting, toolmarks, and weapon imprints.

- **Digital evidence** - In criminal and civil investigations, digital technology is becoming increasingly significant. Digital evidence is any information received from a device engaged in an inquiry. Images or texts discovered on a suspect's smartphone are examples. Because of the great range of evidence types that may be found on digital devices, digital evidence can be difficult to examine.

The prosecutor may employ forensic evidence in the following ways:

- **Identifying the perpetrator:** Forensic evidence can be utilized to determine the identity of a crime's perpetrator. For example, DNA evidence discovered at a crime scene can be compared to the DNA of a suspect to determine whether or not they were present at the scene.
- **Creating a chronology of events:** Forensic evidence may be utilized to create a timeline of events preceding and during the commission of a crime. Analysis of blood splatter patterns, for example, can aid in determining the sequence of events in a violent crime.
- **Determining the cause of death:** In circumstances when the person has been killed, forensic evidence can be utilized to ascertain the cause of death. A pathologist, for example, may utilize forensic evidence to establish whether the subject died as a result of a gunshot wound, a knife wound, or another cause.
- **Establishing motivation:** Forensic evidence can be utilised to back up a prosecutor's motive argument. A series of financial transactions, for example, might be used to show that the defendant had a financial incentive for committing a crime.
- **Countering the defense's case:** To contradict the defense's argument, forensic evidence might be employed. For example, forensic evidence like as DNA or fingerprint analysis may be used to dispute the defense's assertion that the defendant was not present at the scene of the crime.

To prove the identify of the offender, establish the sequence of events, ascertain the cause of death, demonstrate motive, and rebut the defense's argument, the prosecution's counsel can employ forensic evidence. It is crucial to emphasise, however, that forensic evidence is only one type of evidence that may be produced in a criminal prosecution, and the judge and jury must determine how much weight to give to each piece of evidence given.

Understanding the reliability and validity of evidences based on forensic science

The reliability and validity of such evidence that is based on forensic science can be understood profoundly by understanding the case of Keith Harward¹⁰, Keith Harward, a US sailor, was accused in 1983 of trespassing into a married couple's home near the port in Newport News, Virginia, murdering the husband with a crowbar, and raping the wife mercilessly. The legs of the woman were additionally bitten, which became important in the later stage of the investigation. After the lady's claim that the assailant was dressed in a sailor's uniform, dentists examined the dental records and teeth of the personnel of the aircraft carrier docked near the couple's home. Harward was ruled out as the source of the markings by this dental investigation. Harward was listed as a suspect in the murder and rape months later after the wife accused him of biting her during an argument.

The police gave American Board of Forensic Odontology qualified dentists wax imprints and dental moulds of Harward's teeth. He was the source of the bite marks, they reasoned. Dr. Lowell Levine, a forensic dental specialist, testified that there was a "very high degree of chance" that someone else's teeth would have all of these features, but that it was a "practical impossibility." In order to get postconviction relief for Harward, Genetic evidence from the 1982 rape kit was analyzed in 2015. It discovered no traces of Harward's DNA. In reality, the sperm was traced back to another man on the same ship. The person had already died in prison while serving time for a variety of other crimes committed in the aftermath of the 1982 rape and murder. In 2016, the Virginia Supreme Court declared Harward innocent. Keith Harward, 60, was freed from a Virginia jail after spending 33 years.

There is no question that forensic science plays a vital role in assisting the justice system in the resolution of challenging criminal cases by employing a variety of scientific approaches that are outside the authority of judges. For trial judges, the most challenging challenge is determining the trustworthiness of scientific evidence. Trial judges will invariably be the major defenders of the scientific evidence offered to show guilt. When it comes to forensic evidence, the "gatekeeper duty" entrusted to trial judges may find its most essential function in verifying that presented evidence fulfills fundamental requirements of originality, appropriateness, and validity in the specific application of a scientific principle, rather than judging the dependability or universal

¹⁰ Hal S Stern & David Kaye, Reliability and Validity of Forensic Science Evidence, 16 Significance 21-24 (2019).

acceptance of a new scientific theory. In some cases, deficiencies in a single application may be deemed more relevant than competence in criminal prosecution. It is widely held that scientific proof is scant. This, however, may not be the case. Scientific evidence is preferred to oral evidence since it is objective, verifiable, unbiased, and verified. 13 The provided evidence, like other forensic science evidence, may nonetheless be contaminated as a consequence of errors or contamination in its acquisition, testing, or interpretation. As test technology and procedures advance, human mistakes may provide the most serious evidentiary hurdles for trial judges. Additionally, in *State of Kerala v. Kunjan Pillai*, the Kerala High Court declared that it is the prosecution counsel's responsibility to ensure that the scientific evidence is appropriately comprehended and accepted by the court and that expert testimony is used to help the court in reaching a just decision. The notion that scientific evidence is weak evidence arose as a result of poor handling of scientific data throughout its early phases of development. Furthermore, the so-called experts who supplied the material in the early days lacked competency. The great majority of them were little more than self-proclaimed specialists.

Challenges faced by prosecution counsel when using forensic evidence

In a criminal trial, forensic evidence may be extremely useful in assisting the prosecution in establishing guilt beyond a reasonable doubt. Yet, when employing forensic evidence in a trial, the prosecution counsel may confront a number of difficulties. Among these difficulties are:

- **Evidence complexity:** Forensic evidence can be very technical and sophisticated, making it difficult for a jury to grasp. This might lead to evidentiary misunderstanding and misinterpretation.
- **Evidence contamination:** If adequate protocols are not followed during collection, preservation, and analysis, forensic evidence can be readily tainted. This can lead to inaccurate results or conclusions.
- **Bias and error:** During analysis, forensic analysts may be biased or make errors, which can impair the credibility of the evidence.
- **Admissibility of evidence:** The defense may contest the admission of forensic evidence if they claim it was obtained unlawfully or does not meet scientific evidence standards.

To overcome these obstacles, the prosecutor might take many methods, including:

- **Clear and straightforward presentation of evidence:** The prosecution might engage specialists to explain the forensic evidence to the jury in an understandable manner.
- **Ensuring proper evidence collection, preservation, and analysis:** To prevent contamination, the prosecution counsel can ensure that proper protocols are followed during the collection, preservation, and

analysis of forensic evidence.

- **Conducting an independent review:** Prosecutors can have the forensic evidence reviewed by outside experts to ensure that there are no errors or biases in the analysis.
- **Proving the evidence's reliability:** The prosecution counsel can demonstrate the forensic evidence's credibility by giving proof of the methodology utilized and the credentials of the analyst who did the analysis.
- **Handling admissibility objections:** The prosecution counsel can address any challenges to the admission of forensic evidence by showing that the evidence was obtained legitimately and fulfills scientific evidence standards.

Ensuring that the forensic evidence is reliable and admissible

It is the job of the prosecution counsel to ensure that the forensic evidence produced in a trial is credible and admissible. To do this, the prosecutor can take many methods, including:

- **Determine the possible value of relevant forensic evidence:** The prosecution counsel should evaluate the potential value of relevant forensic evidence in showing guilt beyond a reasonable doubt.
- **Legally obtain the forensic evidence:** The prosecution must ensure that the forensic evidence was collected legally and does not violate any laws or the defendant's constitutional rights.
- **Create a chain of custody:** The prosecution should create a chain of custody to demonstrate that the forensic evidence was properly gathered, kept, and processed without tampering.
- **Assure adequate evidence handling and preservation:** Prosecutors should ensure that forensic evidence is handled and kept correctly to avoid contamination or degradation.
- **Have the evidence reviewed by experienced specialists:** The prosecution should have the forensic evidence analysed by qualified experts who have the requisite expertise and experience.
- **Verify that the evidence satisfies scientific criteria:** Prosecutors should make certain that the forensic evidence fulfils scientific standards for dependability and accuracy.
- **Handle any admissibility issues:** The prosecution should be prepared to answer any defence objections to the admission of forensic evidence. This may entail proving that the evidence was collected legally, that it is relevant to the case, and that it fulfils scientific evidence standards.

Following these processes allows the prosecution counsel to guarantee that the forensic evidence given in a trial is credible and admissible, which can aid in establishing guilt beyond a reasonable doubt.

Role of expert witnesses play in trials involving forensic evidence

*Section 45 of the Evidence Act*¹¹ deals with the Opinions of experts. It states that:

When the Court must develop a judgment on a point of foreign law, science, or art, or on the identification of handwriting or finger imprints, the opinions of people exceptionally trained in such foreign law, science, or art, or on the identity of handwriting or finger impressions, are relevant facts. These people are known as experts.

It goes on to say that an 'Expert' is someone who has special knowledge, skill, or experience in any of the following areas:

- Foreign law, • Science, • Art, • Handwriting, or • Fingerprint

There are two crucial requirements that must be met in order to evaluate expert testimony for Admitting an Expert Opinion:

- That the topic requires expert testimony; and
- That the witness in question is indeed an expert.

An expert's judgment must be corroborative to the facts and circumstances of the given situation. If the viewpoint contradicts unimpeachable eyewitness or documentary proof, it loses the advantage over direct evidence.

Further in *Sri Chand Batra vs. State of U.P.*¹², When an Excise Inspector searched a liquor store, he discovered drums of liquor. The Excise Inspector discovered that the liquid was illegal alcohol after completing a smell test on samples of spirits obtained from the drums housed within the establishment. He also used litmus paper, a hydrometer, and a thermometer to test the contents of the drums to ascertain the strength and composition of the liquid under composition. After such observations, he testified that the liquor store was involved in the sale of illicit liquor and produced a full report on the subject.

The question here was whether the Excise Inspector could be regarded an expert whose judgement on the nature of the liquid discovered was admissible as opinion evidence under Section 45 of the Evidence Act. The Court ruled in this case that the Excise Inspector, who had deposed at the commencement of his testimony, had put in 21 years of duty as an Excise Inspector and had tested millions of samples of alcohol and illegal alcohol. Furthermore, he had used every feasible method

¹¹ Indian evidence act I.E.A. § 45 (Gazette of I 1872).

¹² Sri Chand Batra vs. State of U.P AIR 1974 SC 639 (India)

to analyse the samples of alcohol available at the time, which were evident tests of his logic and prudence. As a result, he qualifies as an expert witness.

A forensic expert witness is a witness who testifies in court regarding forensic science. They offer specific knowledge and skills to help the court understand difficult scientific and technical evidence, and their testimony can be convincing in assisting the jury in reaching a decision. Expert witnesses may be relied upon in forensic evidence proceedings to give analysis, interpretation, or explanation of the evidence. A forensic scientist, for example, may be relied upon to analyze Genetic evidence, or a ballistics expert may be called upon to explain the meaning of gunshot residue discovered at the site of a crime.

Prosecutors work closely with expert witnesses to ensure that their testimony is clear, accurate, and pertinent to the case. This may include examining studies or conclusions, preparing questions for testimony, and collaborating with the expert witness to provide visual aids or other materials to support their evidence. The prosecution may also call into question the testimony of expert witnesses called by the defense. This might include cross-examining the expert witness to identify discrepancies or deficiencies in their analysis or providing information from other experts that contradict the defense's expert witness' testimony. It is crucial to recognize that expert witness evidence is not always decisive, and their judgments may be challenged or disagreed with by other experts. The prosecution must offer a balanced case that combines several sources of evidence and addresses any potential flaws or contradictions in expert witness testimony. Generally, the prosecution works closely with expert witnesses to ensure that their testimony is accurate, dependable, and consistent with the other evidence in the case. The prosecution counsel can make a compelling and persuasive case to the jury by collaborating with expert witnesses.

Determining the role of prosecution with regard to forensic evidence in the outcome of a trial

Forensic evidence can be very important in determining the outcome of a trial, especially when there is physical evidence linking the defendant to the crime. The prosecution can utilize forensic evidence to build a compelling case against the defendant and show guilt beyond a reasonable doubt. It is crucial to emphasize, however, that forensic evidence is not always conclusive, and its relevance may vary depending on the facts of the case. In some circumstances, forensic evidence is the sole evidence tying the defendant to the crime, and in others, it is one of the multiple types

of evidence provided. To present a full and persuasive case to the jury, the prosecution counsel must balance forensic evidence with other types of evidence. Witness testimony, circumstantial evidence, and other types of physical evidence, such as fingerprints or Genetic evidence, may also be considered. In addition, the prosecution counsel must verify that the forensic evidence is consistent with the other evidence produced in the case. For example, if a witness delivers testimony that contradicts the forensic evidence, the prosecution counsel may be required to address and explain this discrepancy.

Finally, the weight accorded to forensic evidence in a trial will be determined by the facts of the case and the strength of the evidence provided. The prosecution must offer a balanced case that incorporates all relevant evidence and emphasizes the importance of forensic evidence in the context of the case.

CHAPTER - III

Conclusion and suggestions

This study sought to understand the function of prosecution attorneys and their viewpoints on the effectiveness of forensic science in the criminal justice system. It emphasised the importance of forensic evidence as a form of proof in criminal cases, as well as the prosecutor's duty to gather, examine, and present such evidence in court as well as its acceptability and trustworthiness. A sufficient pre-trial assessment of the presentation's subject matter and structure is required for such co-presentation. Concern for the jury, accountability for preparation, and the common disciplinary standard of coherence may serve as a bridge to better cross-disciplinary understanding between forensic scientists and legal practitioners. Multidisciplinary education is essential, and cross-disciplinary contact may be recognised and rewarded as part of forensic science and criminal law professional growth.