

Evidentiary Value of Forensic Report in Criminal Liability in Jordanian Law

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Abstract

Forensic medicine is an important part of criminal justice, which the judiciary resort to, with the purpose of deciding on a number of cases. One of the most important of these cases, in which forensic medicine is the basis for determining criminal responsibility or not, is the case of allegation or suspicion of death by murder or unknown reasons that lead to suspicion of murder. This research will address the evidentiary value of the forensic physician's report, as it is a means of proof or a means of assessing evidence or an auxiliary procedure for the judge. It will also address the authority of the criminal judge in assessing the forensic report and the position of the Jordanian Court of Cassation on that. A number of findings and recommendations emerged, the most important of which is that the Jordanian legislator has set up the reports and medical committees system No. 13 of 2014 and its amendments. This system deals with many medical committees, including the forensic committee. The Jordan legislator has also defined the system of expertise before regular courts for 2018 and its amendments, according to Article 11 / c which states that *a forensic physician shall be appointed either from forensic physicians appointed in the Ministry of Health, the Royal Medical Services, official university hospitals, or from those retired among them*. I wish the Jordanian legislator will set up a legal system for forensic physicians, which shall be independent of the medical reports and committees system No. 13 of 2014 and its amendments and the expertise system before regular courts of 2018 and its amendments. The proposed system is the Judicial Committee system for forensic physicians, and the reason for this is because the experience of forensic physicians is often the source of the basis for the judge's ruling, especially in cases of murder for unknown and suspicious reasons.

Keywords: Forensic sciences, Criminal liability, Justice, Law study.

Introduction

Forensic medicine is a branch of medicine and it helps in many judicial issues in which the judge cannot decide on. The forensic report controls the fate of many people in different cases, the most important of which are the cases of murder for unknown or suspicious reasons, through the acquittal or conviction of the defendant.

Research problem:

Clarifying the evidentiary value of forensic report at the competent court, because the forensic physician is the one the judge relies on, as the report submitted by the forensic physician exempts the judge from feeling guilty when issuing his verdict, whether this ruling is acquittal or conviction, as the cases under consideration, such as murder cases, are dangerous and they are among

the most serious crimes that occur in society and their penalties impose the death penalty against the accused who is proven by the forensic report that he/ she committed this crime. Therefore, it is necessary to shed more light on this topic.

Research importance

The forensic report has importance for the victim whose heirs seek justice and retaliation against the perpetrator. This report is important for the defendant to prove his/ her innocence, as well as important for the judiciary that aims to achieve justice without bias for one party at the expense of the other.

Research questions

1- What is the evidentiary value of the forensic

report?

2- Is the forensic report considered a means of proof, a means of assessing evidence, or an auxiliary procedure for the judge?

3- What is the authority of the criminal judge in assessing the forensic report?

4- What is the position of the Jordanian Court of Cassation on the evidentiary value of the forensic report?

Research methodology

This is an analytical and descriptive study of the legal research and studies related to forensic medicine, the position of the Jordanian Penal Trials Code, and the Jordanian regulations and instructions related thereto.

Research plan

First section: What is forensic medicine?

Second section: The evidentiary value of the forensic report

First section:

What is forensic medicine?

Forensic medicine has an important role in the legal conditioning of facts. The basic rules in judgments are based on certainty, not on doubt and guesswork, because doubt is interpreted in favor of the accused, that's why the concept of forensic medicine and the role of forensic medicine in uncovering the crime shall be clarified.

First Topic:

What is forensic medicine?

Medicine is an autonomous science. However, and with the addition of the word 'forensic' thereto, it has become a common science with more legal nature. Therefore, forensic medicine consists of two words: 'medicine' which means medical science that is taught in medical schools, and which is known as pathology and the science of characteristics of the human body. In a more precise sense, it is the science of studying diseases and how to cure them^{1,2}

Forensic and Legal Medicine is defined as: Forensic medicine is a branch of medicine that is concerned with uncovering issues of interest to the judiciary, such as examining the dead body to determine the changes that occur to it after death and the causes underlying their occurrence in addition to determining how they occurred, the date of their occurrence, the tool causing these changes, time that has elapsed since death till the date of uncovering the dead body and whether death was accidental, criminal, or suicide^{3,4}.

Autopsy is adopted in the following cases⁵:

1- Cases of the deceased in a criminal accident, whether the crime was intentional or unintentional, unless it is possible in the latest to give a definitive decision of death due to mere apparent examination.

2- Cases in which unidentified or identified dead bodies are found, unless the investigation indicates facts of a criminal nature of death and is confirmed by the apparent examination.

3- Cases of the deceased by burning, unless it is proven by the investigation that the accident was a suicide or a natural death, and the apparent examination of the dead body did not indicate facts of a criminal nature of death.

4- All cases in which the investigation or examination of the dead body indicates facts of a criminal nature of death, as well as every case the public prosecutor deems from their circumstances the necessity of an autopsy to find out the cause of death or to indicate any other matter, even if the forensic physician decides that an autopsy is not required.

Therefore, forensic medicine is arguably: a branch of accredited medicine that specializes in the application of medical sciences, and it helps in many judicial issues in which the judge cannot decide on.

Likewise, the forensic physician cannot, through his report, exceed what he was required to do, otherwise it is considered an interference in the judicial affairs. Therefore, the role of the forensic physician is a detector and not an originator.

Second Topic:

The Role of Forensic Medicine in Uncovering the Crime

Technical or scientific issues are submitted to the judge which he may not be aware of, especially with the scientific and technical development since the judge is not required to be familiar with all details of each science and art, but he has to have a broad awareness and strike a balance between matters. Accordingly, the Jordanian legislator that according to the Jordanian Criminal Procedures Law No. 9 of 1961, amended by Law No. 32 of 2017, in the following stipulations:

Article No. 39, stipulating: 1- If revealing the criminal act or its conditions is based on knowing some technical or professional issues, the public prosecutor shall take with him/her to the crime scene one or more of such experts.

2- The court may take urgent procedures to ascertain the health condition of the injured or the defendant or verify the validation of the medical reports submitted in the lawsuit, without summoning the litigants.

Article No. 40, stipulating: If someone is dead due to murder or for unknown reasons which leads to suspicions, in such case the public prosecutor shall use the assistant of one or more physicians in order to draft a report concerning the causes of death and the status of the diseased corps.

Article No. 41 stipulates: *1- Physicians and experts stipulated in articles (39 and 40) of this law shall take an oath before they start their duties which states that they will carry on the mission with honesty and dignity;*

2- The public prosecutor shall define a date for the expert in order to submit the his/her written report. If the expert did not submit such report at the defined date, the public prosecutor might decide to retrieve the all or part of the fees paid to the expert and to replace him/her with another one.

The system of expertise before regular courts of 2018 and its amendments, according to Article 11/c, has defined experts of forensic physicians as follows: If the expertise is related to forensic medicine, the courts are obligated to appoint the expert either from forensic

physicians appointed in the Ministry of Health, the Royal Medical Services, official university hospitals, or from those retired among them.

Consequently, the Jordanian legislator clarified that forensic physicians are assigned upon a request from the public prosecutor and the previous articles did not refer to the judiciary. However, the response to that is that the public prosecutor is a judge and that the criminal case is initiated by the public prosecutor starting through the investigation, then assigning the criminal offense and then referring it to the competent court. The law is that which gives the authority to appoint a forensic physician or more if the circumstances of the case needed that, as well as the power to submit the report of the expert (forensic physician), accepting or rejecting it, and to request another expert report, as the judge is the supreme expert.

Second section:

Evidentiary value of the forensic report

Forensic medicine is an important part of achieving justice. Forensic medicine progress helps in easy detection of crime and its perpetrator since criminal judgments are based on certainty not suspicion and speculation, so that the judge can issue his regulation with certainty by seeking assistance of experts in what he does not know. Therefore, expertise in forensic medicine has an impact on judgments and court regulations.

First Topic:

Medical Examination and Autopsy of the Judicial Mortality

When the case is considered a judicial mortality, the dead body shall be in the possession of the judicial authority until the procedures decided in its regard are completed, including medical examination, autopsy, issuance of the extradition decision of the dead body to its relatives and allowing the properly burial. Consequently, the judicial authority is the only entitled to select the physician it deems worthy of the task required to draft a report on the causes of death and the dead body case, provided that the therapist of the case before death and any physician who may be related to the deceased shall be completely excluded⁶.

Medical examination and autopsy is conducted through informing the assigned physician of the various circumstances of death and any information about the deceased due to its necessity to the physician and its equal importance and necessity that makes the physician awareness of the patient histories before examining and treating the patient a medical requirement decided by the origins of medicine. This involves informing the physician of the medical and therapeutic history, including previous medical diagnostic procedures such as lab and radiation tests and others⁷.

The assigned physician shall conduct medical examination, especially in cases of mysterious death and murders, and whenever the public prosecutor deems it necessary to examine the place of death or crime scene, and to make the initial forensics of the dead body before moving or transferring it, in order to achieve several matters, the most important of which are: A- the death diagnosis that means to indicate whether the person died or not; B- estimating the period that passed since the death in light of the reality of the situation and take advantage of the lividity changes in suspicion of certain causes of death and the status of the dead body through the extent of the stability of the postmortem lividity position and the difference in its position from the position in which the dead body was found; C- determining the type of injuries, if any, and their relationship to death with an indication of their number, positions, age, and type of tool caused them, comparing the tool or weapon, if any, to the injuries of the dead body; D- Investigating what can be inferred to the circumstances and causes of death in and around the dead body, such as poisoning or electric shock, etc. E- putting the clothes on the dead body in terms of their arrangement, the material and criminal prints they have, their conformity with the wounds and injuries on the dead body, and the position in which the clothes were on the dead body at the time of exposure to external pull; F- interpretation of the chain of events before death, such as the status of the deceased upon receiving the injuries, taking into account the blood spatter pattern, whether the location of the body is the place of the accident or crime and death, and identifying the relationship between the injuries and the place around which the death occurred or where the body was found, such as falling down stairs or hitting furniture, which may lead to injuries totally or partially; G- determining

the identity of the dead body if it is not possible to the eyewitnesses because of the decay and decomposition of the dead body. This requires investigation of the signs of age, gender, dead body length, teeth condition, and the dead body identifying marks, etc⁸.

Based on the forgoing, a full report is drafted and submitted to the competent judge to base his judgment on it according to the form stipulated in the Medical Reports and Committees Regulation No. 13 of 2014 and amended by Law No. 43 of 2019 in Article 16 / A + B + D: A- A committee of the relevant authorities shall be, upon a decision of the Minister, formed to prepare forms of medical reports of all kinds and to determine the data and information that shall be included therein. B - The Minister shall issue his decision to approve medical forms based on the recommendation of the committee referred thereto in Paragraph (A) of this Article. C- The physician who receives the judicial medical case is obligated to fill out the approved form of the forensic report and to ensure the accuracy of the information after the necessary examination and diagnosis of the patient and this shall be under penalty of prosecution.

Instructions for issuing Jordanian medico-legal reports for 2017: Among the most important articles are:

First: Article 3 states that: *It is not permissible to issue medico-legal reports, of both primary and final types, unless they are drafted as follows:*
A. *The injured person shall come to the hospital to be examined. Therefore, he/ she shall be examined and the necessary measures shall be taken.*

B. *The injured person's identity shall be verified and recorded, and the data contained in his/ her identity card shall be recorded through the identity document.*

C. *The physical observation by the hospital physician shall be proven in light of the actual examination.*

D. *An indication in the medico- legal report of the authority that sent the injured person or if the injured person had made a review on his/ her own.*

E. *A description of the medical procedures that were taken upon examination and diagnosis and recording the same.*

F. Filling in all the items mentioned in the forensic report in Arabic.

G. The physician is obligated to describe the injuries and determine their locations on the body, as well as the symptoms that accompanied the injury, and shall record the same in the medico-legal report.

H. The medical report shall be signed and stamped by those drafting it, shall be stamped and approved by the head of the department or the administrative representative, and shall be stamped by the hospital.

Second: Article 4 states that: *The report shall be drafted in four copies; a copy for the injured person, a copy for the authority that has did the examination, a copy to be sent to the National Center for Forensic Medicine or to the center or department affiliated thereto in the governorates or districts for examination and taking the necessary action, and a copy to be kept in the file.*

Third: Article 6 states that *the forensic physician is requested to examine the injured and assess their health conditions upon a request from the public prosecutor who is on duty around the clock, in the following cases:*

A. Gunshot wounds

B. Sexual assaults

C. Stab injuries

D. Traumatic injuries in which the general condition of the injured is moderate or severe

E. Facial injuries caused by sharp objects

F. Cases of poisoning due to criminal suspicion

G. Burns that exceed 20% of the body surface area

H. Injuries suspected to be fabricated

Any other cases that require the consultation of the forensic physician by the competent authority and / or the cases determined by the Minister of Health

Fourth: Article 9 states that *every hospital that issues a forensic medical report shall send a copy to the National Center for Forensic Medicine for all hospital admissions immediately after drafting them.*

Forensic directorates have been created based on the provisions of Article (11) of the Ministry of Health Administrative Organization System No. (47) for 2003, and based on the recommendation of the Planning Committee held on 05/24/2007, the following directorates decided to be created to be associated with the National Center for Forensic Medicine: The Forensic Medicine Directorate of the Central Region and its center is Amman, the Forensic Medicine Directorate of the Northern Region and its center is Irbid, and the Forensic Medicine Directorate of the Southern Region and its center is Al-Karak.

Based on the provisions of Article 10 / A of the Ministry of Health's Administrative Organization Regulation No. 36 of 2008, and based on the recommendation of the Planning Committee held on January 4 2012, it decided to create the following directorates in the hospital administration: Directorate of the National Center for Forensic Medicine and Directorate of Allied Health Professions.

Consequently, the Jordanian legislator has set up the reports and medical committees system No. 13 of 2014 and its amendments. This system deals with many medical committees, including the forensic committee. The Jordan legislator has also defined the system of expertise before regular courts for 2018 and its amendments, according to Article 11 / c which states that *a forensic physician shall be appointed either from forensic physicians appointed in the Ministry of Health, the Royal Medical Services, official university hospitals, or from those retired among them.*

I wish the Jordanian legislator will set up a legal system for forensic physicians, which shall be independent of the medical reports and committees system No. 13 of 2014 and its amendments and the expertise system before regular courts of 2018 and its amendments. The proposed system is the Judicial Committee system for forensic physicians, and the reason for this is because the experience of forensic physicians is often the source of the basis for the judge's ruling, especially in cases of murder for unknown and suspicious reasons.

Second Topic:

Legal nature of expertise

The opinions of the jurists differed about determining the legal nature of expertise. Some considered it a means of evidence, others considered it a means to help the judge, others considered it a kind of examination and others considered it a kind of testimony.

The First Opinion: Expertise is a means of criminal evidence, which is based on two factors: Proving the crime, and attributing this crime to its perpetrator. These means contribute to the formation of the judge's emotional conviction^{9,10}.

The Second Opinion: Expertise is a means to help the judge, by stating that the issue of evidence is a moderate case between the judge and the lawsuit parties. As for expertise, it is an issue related only to the judge. The judge may resort to this expertise if he wants or refrain if he believes that expertise will add nothing to the lawsuit^{11,12}.

The Third Opinion: Expertise is a technical inspection, which is a direct sensory detection to prove the status of something or a person, and it takes place by moving the investigator to the place of this status or bringing the inspection subject to the investigator's headquarters, through investigation and collecting evidence in order to reveal the truth of the crimes. Both expertise and inspection aim to uncover the truth of the crime through physical evidence in most cases. Expertise or inspection is resorted to by a decision of the Court on its own or upon the litigants' request. The court has the discretion power to conduct the expertise or inspection in case it deems them necessary, or refuses to conduct them in case it deems them in vain in the criminal lawsuit¹³.

And the Jordanian judiciary provisions related to expertise and with regard to forensic medicine in particular:

1- The Jordanian Court of Cassation upheld the High Criminal Court Resolution with the evidence it approved in forming its conviction of its landmark resolution and extracted parts of evidence which it proved in the resolution text. It is a legal evidence that

has its own origin proved in the lawsuit, which leads to that outcome, which is approved and proven, the most important of which is the Prosecution's witness, Dr. Adnan Saeed Muhammad Abbas, a forensic consultant, before the court, about the medico-legal report drafted against the victim Jordanian Court of Cassation, Ruling No. 1746/2020.

2- The defendant is criminalized with attempted murder, as the defendant intention was not directed to murder. The medical report issued by the forensic physician, Mansour Al-Maaytah indicated that the injuries suffered by the victim did not present a risk for life since they did not affect any of the chest and abdomen entrails and did not cause bleeding Jordanian Court of Cassation, Ruling No. 2116/2020.

3- The medical reports, including the forensic physician's report issued by the official authorities, may be challenged by forgery. There are special methods for challenging such reports with the competent authorities Jordanian Court of Cassation, Ruling No. 716/2008, published on 7/4/2008.

4- Article No. 147/2 of the Jordanian Criminal Procedures Law stipulates that *proof in felonies, misdemeanors and infractions shall be established by all means of proof and the judge shall rule according to his personal conviction*. Furthermore, it is a well-known fact that the expert opinion, which he is assigned by the court after the oath, is considered evidence valid for judgment since expertise is one of the legal means of evidence Jordanian Court of Cassation, Ruling No. 2748/ 2020.

5- The criminal judge is not restricted by the results of the expertise except that he shall indicate in his ruling that he excluded them and explain the reasons that to exclude them. The Jordanian Court of Cassation also held that expertise is a matter left to the court discretion and the investigative authority Jordanian Court of Cassation, Ruling No. 53/2000.

6- The competent and the most able to determine the cause of death and the extent to which the perpetrator's behavior contribute to death are forensic physicians by virtue of their academic specialization. The law does not require hearing the testimonies and affidavits of all the experts drafting the expert opinion as long as the expert

opinion is clear and fulfills the purpose for which it was produced and the testimony of one of the experts drafting the report is sufficient for the purposes of submitting and presenting it to the court Jordanian Court of Cassation, Ruling No 1886/1997, issued on 18/11/1997.

7- When there are multiple injuries, especially caused by different tools by several people, it may be important and necessary to know which injuries caused death. The forensic physician shall estimate the status of each wound, its severity, its position and whether or not it is accompanied with fractures, as well as whether or not vital organs were injured and the times of injuries in case there was some indication that it occurred at multiple times Jordanian Court of Cassation, Ruling No. 209/2009, published on 7/9/2009.

It is clear from the foregoing that the Jordanian legislator adopted the free proof system in the Jordanian Penal Trials Code No. 9 of 1961, as amended by Law No. 32 of 2017 in Article 147/2, by saying: The evidence is established in the felonies, delicts, and contraventions by all ways of verification, and the judge shall pass judgments in accordance with his personal persuasion, as well as the provisions of Article 39/1 of the previous law, saying: If distinguishing the nature of the crime depends on knowing some arts or handicrafts, then the public prosecutor may accompany one or more of the handicraftsmen. Thus, it is understood from the previous provisions with the rulings of the Jordanian courts that the expertise was considered a means of proof, but it is a discretionary authority for the judge to seek their help in the matters the judge has no experience in, including forensic medicine, because experience in forensic medicine helps in forming the judge's conviction and issuing his judgment of acquittal or conviction.

Conclusion

Forensic medicine and technical expertise are, from a criminal point of view, an important part of achieving criminal justice in a number of cases, the most important of which is if a person dies by murder or for unknown reasons that give rise to suspicion, then the report of the forensic doctor helps to uncover those causing the criminal incident and because penal provisions are based on certainty, not suspicion and guesswork. The importance of researching the legal value of the forensic report, as the judge most likely bases his judgment on

this report. We have reached a number of conclusions and recommendations.

Results

1- The Jordanian legislator has set up the reports and medical committees system No. 13 of 2014 and its amendments. This system deals with many medical committees, including the forensic committee. The Jordan legislator has also defined the system of expertise before regular courts for 2018 and its amendments, according to Article 11 / c which states that *a forensic physician shall be appointed either from forensic physicians appointed in the Ministry of Health, the Royal Medical Services, official university hospitals, or from those retired among them.*

2- The forensic physician cannot, through his report, exceed what he was required to do, otherwise it is considered an interference in the judicial affairs. Therefore, the role of the forensic physician is a detector and not an originator.

3- The Jordanian legislator clarified that forensic physicians are assigned upon a request from the public prosecutor. Articles 39: 41 of the Penal Trials Code No. 9 of 1961, as amended by Law No. 32 of 2017 did not indicate that a judge is able to assign a forensic physician. However, the response to that is that the public prosecutor is a judge and that the criminal case is initiated by the public prosecutor starting through the investigation, then assigning the criminal offense and then referring it to the competent court. The law is that which gives the authority to appoint a forensic physician or more if the circumstances of the case needed that, as well as the power to submit the report of the expert (forensic physician), accepting or rejecting it, and to request another expert report, as the judge is the supreme expert.

4- The Jordanian legislator adopted the free proof system in the Jordanian Penal Trials Code No. 9 of 1961, as amended by Law No. 32 of 2017 in Article 147/2, by saying: The evidence is established in the felonies, delicts, and contraventions by all ways of verification, and the judge shall pass judgments in accordance with his personal persuasion, as well as the provisions of Article 39/1 of the previous law, saying: If distinguishing the nature of the crime depends on knowing some arts or

handicrafts, then the public prosecutor may accompany one or more of the handicraftsmen. Thus it is understood from the previous provisions with the rulings of the Jordanian courts that the expertise was considered a means of proof, but it is a discretionary authority for the judge to seek their help in the matters the judge has no experience in, including forensic medicine, because experience in forensic medicine helps in forming the judge's conviction and issuing his judgment of acquittal or conviction.

Recommendations:

1- I wish the Jordanian legislator will set up a legal system for forensic physicians, which shall be independent of the medical reports and committees system No. 13 of 2014 and its amendments and the expertise system before regular courts of 2018 and its amendments. The proposed system is the Judicial Committee system for forensic physicians, and the reason for this is because the experience of forensic physicians is often the source of the basis for the judge's ruling, especially in cases of murder for unknown and suspicious reasons.

2- I wish the Jordanian legislator to amend Article 4 /D of the Medical Reports and Committee Regulation No. 13 of 2014 and its amendments, which stipulated that a forensic committee shall be formed by a decision of the Minister of Health, and its tasks shall be determined by the decision of its formation. What is proposed is to form a judicial forensic committee upon the recommendation of the Ministry of Health, and with the approval of a judicial committee determined by the Ministry of Justice, consisting of five judges from the Jordanian Court of Cassation, to which a special system is issued, because the judicial forensic doctors are part of the criminal justice in the courts, and their medical history or the reality of their lives and their dealings shall be considered, and this is not out of luxury or philosophy, but this is because a forensic report may sentence a person to death (conviction) or revive him/her (innocence).

3- I wish the Jordanian legislator will establish a department or center in the Jordanian Ministry of Justice that includes forensic physicians to serve the Jordanian judiciary, and for the ease and speed of litigation procedures.

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