SUPREME COURT OF INDIA

Fakhruddin

Vs.

State of M.P.

Crl.A.No.1 of 1964

(M. Hidayatullah and V. Bhargava, JJ.)

13.12.1966

JUDGEMENT

HIDAYATULLAH, J.:

1. The appellant Fekhruddin has been convicted under Sections 465, 467, 417, 419, 471 and 120-B of the Indian Penal Code and sentenced in the aggregate to three years' rigorous imprisonment, by the 2nd Additional Sessions Judge, Indore. His appeal to the High Court of Madhya Pradesh under appeal.

2. As many as seven persons (including Fakhruddin) were presented for criminal conspiracy, forgery, cheating and personation. They were alleged to have conspired together to forge applications for permits for corrugated and plain iron sheets in the names of non-existing persons. It was alleged against some of them that in the prosecution of the conspiracy they had committed the several offences above-mentioned. Fakhruddin was one such person. The Additional Sessions Judge convicted only three and acquitted the rest. They were Fakhruddin, one Ali Hussain and Anandilal. On appeal, the High Court acquitted Ali Hussain and a cartman by name Anandilal. Thus of the

seven original accused, Fakhruddin alone has suffered conviction.

3. Fakhruddin like some of the other accused who have since been acquitted was in the hardware business. The modus employed in the commission of the offences was to present applications for permits to the Civil Supplies Officer in fictitious names and to obtain permits by pretending to be the applicants. Persons desiring to obtain iron-sheets had to apply on printed forms stating their names, addresses and the kind, size and quantity of the sheets desired. The permits were made in triplicate copies and the third counterfoil was required to be signed in token of receipt of the permit. The permit and one extra copy were handed over to the successful applicants, who on presentation of the permit to the Indore Iron and Steel Registered Stockholders Association, received the items mentioned in the permits. Although the iron-sheets were not rationed, the issuance of permits was with a view to keeping a check so that only genuine users might benefit and the passing of the sheets into the black market prevented. As a matter of fact slackness in or absence of verification of the identity of the applicants and their needs, made it easy for some persons in the trade to resort to such devices to obtain supplies with a view to profiteering.

4. On November 28, 1960, Fakhruddin presented at the office of the Association seven permits. Three of these permits are marked Exs. P-28, 30 and 35. They were in the names of Munnalal, Devilal, and Laxminarayan. These were fictitious names. Before the iron sheets could be weighed and other formalities could be completed, the police arrived and arrested Fakhruddin. It was then found on investigation that Fakhruddin had presented several applications in other fictitious names and the charge in this case is in respect of given Exs. P. 13, 15, 16, 17 and 24 which stood respectively in the names of Manakchand, Surojmal, Hiralal s/o Chotelal, Munnalal, Gulabchand who were all fictitious persons.

5. The prosecution case depends upon the proof if forgery of these applications in the names of fictitious persons with a view to cheating and this necessarily involved the offence of personation. All the offences were said to be part of a big conspiracy in which the several accused in the case were said to be involved. The Sessions Judge, accepting the evidence of a handwriting expert that the writing on the applications and signatures on the permits were made by Fakhruddin held him guilty of forgery. The other offences were also held proved. One other accused Ali Hussain by name was also likewise held guilty and a cartman (Anandilal) was convicted of some of the offences. These two have since been acquitted.

6. In this appeal it is contended firstly, that the offence of conspiracy cannot now stand because Fakhruddin alone is left and it is not established with whom he conspired; secondly, that the offences of forgery were not established, the High Court having gone only on the testimony of the handwriting expert of whose testimony there was no corroboration either direct or circumstantial; and, thirdly, that the offence of cheating or personation was not made out.

7. The first submission must be accepted. The offence of conspirary cannot survive the acquittal of the alleged co-conspirators. Fakhruddin cannot be convicted unless there be proof that he had conspired with person or persons other than his co-accused. If all the other accused have been acquitted of the charge of conspiracy, Fakhruddin alone cannot be held guilty. Moreover, the offences charged are such that they could have been perpetrated by different persons acting in the same manner but independently and the large number of petitions does not show per se that there was necessarily a conspiracy. When it must have been known that there was no verification, persons wishing to take advantage need not have conspired for they could act on their own and the similarity of method followed by them does not establish a planned operation by consensus. The charge of conspiracy must fail and Fakhruddin is at acquitted of that charge and the sentence passed under that charge against him is set aside.

8. As to forgery, there is no doubt that the High Court found it entirely on the evidence of the handwriting expert. Mr. Kohli has naturally made a point of this faulty approach and has drawn our attention to several cases of this Court and a ruling of a Divisional Bench of the Bombay High Court. In Ram Chandra v. State of Uttar Pradesh, AIR 1957, SC 381 at p. 388, it is observed that the expert evidence as to handwriting is opinion, evidence and it can rarely, if ever, take the place of substantive evidence." In Ishwari Prasad Misra v. Mohammad Isa, AIR 1963 SC 1728, held that "evidence given by experts of handwriting can never be conclusive because it is after all opinion evidence". The last observation was obiter because the Court had already found the testimony of the attesting witnesses satisfactory. In Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529, it is observed that acting on such evidence it is usual to see if it is corroborated either by clear, direct or by circumstantial evidence. Tn State of Gujarat v. Vinaya Chandra Chhota Lal Pathi, Criminal Appel No. 13 of 1964, D/-2-9-1966 unreported: (Now reported in AIR 1967 SC 778), it is held that "a Court is competent to compare disputed writings of person with others which are admitted or proved to be his writings. It may not be safe for a Court to record a finding about a person's writing in certain document merely on the basis of comparison but a Court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of handwriting expert is also relevant in view of S. 45 of the Evidence Act but that too is not conclusive. It has also been held that the sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certnin person or not." Lastly, in Rudragouda Venkangouda v. Basangouda Danappagouda, AIR1938 Bom 257, it is held that "comparison of the handwriting by the Court with the other documents not challenged as fabricated, upon its own initiative and without the guidance of an expert and even with it is at all times hazardous and recognizably inconclusive."

9. Mr. Kohli said that these cases establish that the evidence of the handwriting expert is worthless and the Court cannot compare the writing for itself and the only possible evidence should have been of one who either saw Fakhruddin write or was familiar with his writing. We had sent for the writings which are disputed and the writings with which they were compared with a view to observe for ourselves the similarities and differences between the two and to verify whether the conclusions of the handwriting expert were proper or not. Mr. Kohli contened that this was not open to us. We do not agree.

10. Evidence of the identity of handwriting receives treatment in three sections of the Indian Evidence Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind s rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert (S. 45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. 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 by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (S. 73) is 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.

11. Both under S. 45 and S. 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case 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 one, 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. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely he held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that Court may accept that 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.

12. Therefore, to satisfy ourselves whether the testimony of the handwriting expert is acceptable or not, we sent for the record and compared the disputed writings with some comparable material. There were two such writings which were claimed as standard. One was a register maintained at the office of the Association in which there was a signature in three places in Hindi which purported to the that of Fakhruddin (Exhibit P-56). The other was writing which Fakhruddin made to the dictation of the Police Officer in Jail (Ex. P-61). These were, of course, not admitted by Fakhruddin and the question had to be first decided which of the two or both could be said to be approved standard material. Mr. Kohli urged that P-56 could not be so treated as there was no proof that the signatures were made by Fakhruddin. In this submission Mr. Kohli is right. The evidence of Tahir Ah. P. W. 14 which has relied upon is not definite on this point. He does not say that the signatures were of Fakhruddin who was the accused in the case. He only says that the persons whose signatures were made in the register, signed it and this leaves the matter at large. There is, however, proof that the other writing was made by Fakhruddin the appellant. The Sub-Inspector, P. W. 33 took the precaution of having two witnesses P. Ws. Nos.16 and 27. Of these P. W. 16 did not identity the appellant as the writer but the other P. W.27 did. Exhibit P-61, therefore, furnishes the necessary comparative material.

13. Mr. Kohli said that the expert took both Exs. P-56 and 61 into account to reach his conclusion that the disputed writing was that of the appellant and he might have been persuaded to this view on the strength of Ex. P-56. This is not a correct reading of the evidence. The expert said that Exs. P-56 and 61 and the disputed writings were an by the same person as they possessed the same individual characteristics. In other words he proved that all these writings agreed in characteristics features. He proved that Exs. P-56 and 61 were by the same writer but as we need not go to Ex. P-56 we may leave it out altogether and the conclusion of the expert that Ex. P-61 and the disputed material were written by the same person thus remains unimpaired.

14. We sent for these writings and compared them to satisfy ourselves about the accuracy of the expert's observations. Exhibit P-61 and the disputed writings on the applications are so clearly written by the same person that one hardly needs expert guidance. Numerous idiosyncracies in one are faithfully reproduced in the other and leave no manner of doubt as to the authorship of the applications. They were written by the appellant. As the applications are ostensibly by different persons the conclusion is inescapable that Fakhruddin was making applications in diverse names and collecting iron sheets in this manner. Once the offence of forgery is established the proof of the other offence is clear Fakhruddin's conviction for the offences other than conspiracy was, therefore, soundly grounded.

15. In the result his appeal fails except for his acquittal for the offence of conspiracy. That, however, does not help him as the sentences were made concurrent . The appeal will, therefore, stand dismissed but the conviction and sentence under S. 120-B Indian Penal Code will be quashed. The other convictions and sentences will stand.

Order accordingly.