

Ram Narain

Vs

State of Uttar Pradesh

Criminal Appeal No. 6 of 1970

(I.D. Dua, K.K. Mathew JJ)

05.04.1973

JUDGMENT

DUA, J. -

1. This appeal by special leave is directed against the judgment and order of a learned Single Judge of the Allahabad High Court, dated October 6, 1969, dismissing the appellant's revision from the order of a II Temporary Sessions Judge, Kanpur, dated November 8, 1967, dismissing his appeal from his conviction by a learned Magistrate under Sections 384/511, I.P.C. and sentence of rigorous imprisonment for one year.

2. On August 15, 1964, Mannu, a boy about 6 years old, was found missing from the house of the appellant's relation Shri Gajendra Nath (P.W. 19), an Excise Inspector, residing in Mohalla Ashok Nagar, Kanpur, within the jurisdiction of police station Sisamau the following day. A report was lodged at the police station Sisamau about this fact and a notice was also published in the newspapers and hand-bills were distributed announcing a reward of Rs. 501 for anyone who furnished the clue of the missing child's whereabouts. A post-card (Ext. Ka-1) bearing post office seals, dated August 21, 1964 and later an inland letter (Ext. Ka-2) bearing the date October 21, 1964, were received by Gajendra Nath demanding, in the first letter a ransom of Rs. 1,000 and in the second a ransom of Rs. 5,000 for the return of the boy. In December, 1964, a trainee of the local I.T.I., Kanpur, Yashpal Singh by name, after reading the announcement of the reward, made attempts to trace the whereabouts of the missing child. Having found a clue, he gave the necessary information to the father of the child regarding his whereabouts. Thereupon, on January 11, 1965, the child was recovered by Rahasbehari, the grand-father of the child, from the house of Ganga Bux Singh and Chandrabhushan Singh in village Pandeypur District Kanpur. The investigation of the case revealed that the appellant, Ram Narain, was also responsible for kidnapping and wrongfully confining the said child and that it was he who had sent the two anonymous letters (Exts. Ka-1 and Ka-2) demanding ransom. All the three persons were prosecuted under Sections 363, 368, 384 and 511, I.P.C. The trial court convicted Ganga Bux Singh and Chandrabhushan Singh under Sections 384 and 511, I.P.C. On appeals by the convicted persons, the learned II Temporary Sessions Judge, Kanpur, came to the conclusion that the offence under Section 368, I.P.C., had not been established beyond reasonable doubt with the result that Ganga Bux Singh and Chandrabhushan Singh were acquitted. The appellant, Ram Narain's conviction for an offence under Sections 384 and 511, I.P.C., was, however, upheld. This conviction was solely based on the conclusion that the two anonymous letters had been written by him. The appellant having categorically denied his authorship of those letters, Shri R. A. Gregory, a hand-writing expert was produced in support of the prosecution case. Believing his testimony that the appellant was the writer of those two letters, all the three courts below have agreed in convicting the appellant.

3. The short question raised before us relates to the legality and propriety of the appellant's conviction on the uncorroborated testimony of the hand-writing expert. The High Court relied in support of the appellant's conviction on the decision of this Court in *Fakhruddin v. State of Madhya Pradesh* (AIR 1967 SC 1326 : (1967) 2 SCJ 885 : 1967 Cri LJ 1197.), in which after referring to four of its earlier decisions in *Ram Chandra v. State of U.P.*, *Ishwari Prasad Misra v. Mohamad Isa*, *Shashi Kumar Banerjee v. Subodh Kumar Banerjee* (AIR 1964 SC 529.), and *State of Gujarat v. Chhotalal Patni* ((1967) 1 SCR 249 : AIR 1967 SC 778 : 1967 Cri LJ 668 : (1967) 1 SCJ 821.), this Court rejected the contention that the Court dealing with the authorship of a writing could not observe for itself the similarity and differences between the admitted and the disputed hand-writings to verify whether or not the conclusions of the hand-writing expert were proper. Then, after referring to Sections 45, 47 and 73 of the Indian Evidence Act, this Court observed :

"Both under Section 45 and Section 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 a hand-writing 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 writing and in 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 be 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 the court may accept the 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.

Therefore, to satisfy ourselves whether the testimony of the hand-writing 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 be that of *Fakhruddin* (Exhibit P-58). The other was a 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 ex. 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 Ali*, P.W. 14 which has been 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 those P.W. 16 did not identify the appellant as the writer but the other P.W. 27 did. Exhibit P-61, therefore, furnishes the necessary comparative material".

4. According to the appellant's learned counsel, the High Court has not properly understood the principle of law laid down by this Court in its various decisions. Our attention was invited to Chhota Lal Patni's case (supra) where it is observed :

"A Court is competent to compare the disputed writing of a 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 a 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 a hand-writing expert is also relevant in view of Section 45 of the Evidence Act, but that too is not conclusive. It has also been held that the sole evidence of a hand-writing expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the hand-writing expert must be examined in a case to prove or disprove the disputed writing. It was, therefore, not right for the learned Judge to consider it unsafe to rely upon the evidence of the complainant in a case like this, i.e., in a case in which no hand-writing expert had been examined in support of his statement."

5. It was emphasised by the appellant's learned counsel that according to this decision it is not safe to record a finding about a person's writing merely on the basis of comparison because the opinion of a hand-writing expert is not conclusive and his evidence is normally insufficient for recording a definite finding about the writing being of a certain person or not. Indeed the appellant's contention was that in Fakhruddin's case (supra) though reference was made to this decision, its ratio was not properly appreciated and the decision in Fakhruddin's case (supra) is not in conformity with this earlier decision. We are unable to agree with this submission. Reference was also made by the appellant's counsel to Shashi Kumar (supra) where it is observed that the expert evidence as to hand-writing is opinion evidence and it can rarely, if ever, take the place of substantive evidence, and therefore, before acting on it the courts usually look for corroboration either by direct or circumstantial evidence. In Shashi Kumar (supra), it may be pointed out, this Court found all the probabilities against the expert opinion and the direct testimony of two witnesses accepted by this Court also wholly inconsistent with that opinion.

6. In our view, the legal position enunciated in Fakhruddin's case (supra) cannot be said to be inconsistent with the ratio of any one of the earlier decisions to which reference has been made therein. Now it is no doubt true that the opinion of a hand-writing expert given in evidence is no less fallible than any other expert opinion adduced in evidence with the result that such evidence has to be received with great caution. But this opinion evidence, which is relevant, may be worthy of acceptance if there is internal or external evidence relating to the document in question supporting the view expressed by the expert. If after comparison of the disputed and the admitted writings by the court itself, when the Presiding Officer is familiar with that language, it is considered safe to accept the opinion of the expert then the conclusion so arrived at cannot be assailed on special leave on the mere ground that comparison of hand-writing is generally considered as hazardous and inclusive (sic) and that the opinion of the hand-writing expert has to be received with considerable caution. The question in each case falls for determination on the appreciation of evidence and unless some serious infirmity or grave failure of justice is shown, this Court would normally refrain from re-appraising the matter on appeal by special leave. The trial court in this case agreeing with the principle of law enunciated by this Court compared the relevant documents and arrived at the conclusion that they have all been written in one hand. The learned II Temporary Sessions Judge on appeal, after referring to the comparison of the disputed and specimen writings by the Trial

magistrate, himself compared those and writings with the help of the expert's opinion and his report and came to a definite conclusion "that the disputed hand-writings tally with the specimen hand-writing". In the High Court also the learned Single Judge, after referring to the decision in Fakhruddin case (supra), observed as follows :

"I have myself made a comparison of the specimen writing of the applicant with the writing contained in the two letters. I have not the least doubt that the writing in the post-card and the writing in the admitted writing of the applicant are the same. Thus, I have no reason to differ from the finding recorded by the courts below."

7. No serious attempt was made on behalf of the appellant to find fault with the approach of the three courts below. There is, therefore, no ground made out for interference by this Court with the appellant's conviction. Unfortunately, the record is not before us otherwise we would have also tried to examine for ourselves the disputed and the specimen hand-writings. However, in view of the concurrent decisions of the three courts below, we did not consider it necessary to adjourn the hearing of this case to have the documents before us for our examination.

8. The next question is one of sentence which is always a matter of some difficulty. It generally poses a complex problem which requires a working compromise between the competing views based on reformative, deterrent and retributive theories of punishments. Though a large number of factors fall for consideration in determining the appropriate sentence, the broad object of punishment of an accused found guilty in progressive civilized societies is to impress on the guilty party that commission of crime does not pay and that it is both against his individual interest and also against the large interest of the society to which he belongs. The sentence to be appropriate should, therefore, be neither too harsh nor too lenient. In the case in hand the imposition of rigorous imprisonment for one year upheld by the appellant and the revisional courts may not have been considered by us in the normal course to be too harsh calling for interference under Article 136 of the Constitution. The difficulty now posed is that the appellant is on bail and he has served out only one month's sentence. He was originally sentenced by the trial court on April 17, 1967, for the offence committed as far back as 1964. The proceedings against him have lasted for more than 8 years. He was released on bail by this Court in January, 1970. To send him back to jail now after the lapse of so many years for serving out the remaining period of sentence seems to us on the facts and circumstances of this case to be somewhat harsh. The offence of attempted extortion undoubtedly reflects to some extent anti-social depravity of mind but the attempt did not succeed. We, therefore, consider that on the facts and circumstances of this case the ends of substantial justice would be amply met if we now reduce the sentence of imprisonment to that already undergone but also impose fine of Rs. 700 and in default of payment of fine direct that he undergone rigorous imprisonment for a period of three months. We order accordingly. The appeal is thus accepted in part as just stated.

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