

Magan Bihari Lal

Vs

The State of Punjab

Criminal Appeal No. 22 of 1976

(P.N. Bhagwati, Syed M. Fazal Ali JJ )

15.02.1977

JUDGMENT

BHAGWATI, J. –

1. We made an order on January 28, 1977 immediately after the conclusion of the hearing of the appeal and by that order, we allowed the appeal and set aside the order of conviction and sentence recorded against the appellant. We now proceed to give our reasons for making that order.
2. The appellant was tried and convicted by the Judicial Magistrate, 1st Class, Ludhiana for offences under Sections 468, 411 and 420 read with Section 109 of the Indian Penal Code. He carried an appeal to the Sessions Court but the appeal was unsuccessful. A further revision application followed but that too was rejected by the High Court. Hence the present appeal by special leave.
3. The facts giving rise to the prosecution are set out in great detail in the judgment of the High Court and hence it is not necessary to reiterate them. It is enough to state that 354 black iron sheets worth Rs. 17,701.91 were despatched by Hindustan Steel Plant from Munda near Bhilai to M/s. Shiv Rattan Mohatta at Bikaner in Wagon No. SEKG 40765. The Railway Receipt in respect of this consignment was sent to M/s. Shiv Rattan Mohatta through the State Bank of Bikaner and M/s. Shiv Rattan Mohatta took delivery of the the Railway Receipt against payment to the Bank. The consignment, however, did not reach Bikaner and on enquiries being made, it was found by the Railway authorities that the wagon containing the goods had reached Agra en route Bikaner but at some point of time before it reached Agra, the labels attached to the wagon were either changed or removed and the entry in the vehicle, summary guidance was also tampered with and changed to Ex. LAR indicating that the wagon was despatched from Lalitpur and its destination was Ludhiana. The result was that wagon, instead of going to Bikaner, was carried to Ludhiana and it reached there on August 1, 1964.
4. The prosecution case was that round about this time, one person styling himself as Umedi Lal, resident of Agra, approached a firm called M/s. Jindal Khemka & Co. which was carrying on business as dealers in iron sheets in Ludhiana. Umedi Lal produced a Railway Receipt Ex. PW 10/A before Joginder Lal and Ram Nath, partners of this firm and offered to sell the goods covered by this Railway Receipt to M/s. Jindal Khemka & Co. This Railway Receipt was a forged document written out on a blank form stolen from the Railway Receipt Book maintained at a Railway station called Banmore. Joginder Lal went to Ludhiana Railway Station with this Railway Receipt on August 2, 1964 for taking delivery of the goods and presented the Railway Receipt to Teja Singh Sodhi, who was the Goods Clerk on duty at the goods-shed. Teja Singh entertained some doubt about the genuineness of the Railway Receipt and he told Joginder Lal that the Railway Receipt

appeared to be defective. In view of this, Joginder Lal, according to the prosecution, returned the Railway Receipt to Umedi Lal on the following day when he came to enquire, about the receipt of the goods. Umedi Lal then went to the railway station accompanied by the Bhoja Ram, who was a washing soap dealer in Ludhiana, and presented the Railway Receipts to Teja Singh Sodhi for taking delivery of the goods. Curiously enough, though only a day before, Teja Singh Sodhi had entertained doubt about the genuineness of the Railway Receipt, his doubts suddenly seemed to have vanished and he delivered the consignment of 354 black iron sheets which had come in wagon No. SEKG 40765 to Umedi Lal. It does not appear from the record as to where this consignment of 354 black iron sheets, was kept by Umedi Lal, but out of it, 200/250 iron sheets were taken to the premises of M/s. Jindal Khemka & Co. for sale on commission basis. Joginder Lal and Ram Nath were, however, according to the prosecution, advised by some broker that since iron sheets were controlled items, they should insist on production of a bill showing purchase of these iron sheets by Umedi Lal. Joginder Lal and Ram Nath accordingly asked Umedi Lal to produce the bill in connection with the purchase of these iron sheets, but Umedi Lal pleaded his inability to do so on the ground that these iron sheets represented surplus goods remaining after execution of a works contract by his firm of M/s. Bansidhar & Sons of Lalitpur. When this talk took place between Joginder Lal and Ram Nath on the one hand and Umedi Lal on the other, Umedi Lal was, according to the prosecution, accompanied by the appellant who was at the material time employed as a Guard in the Northern Railway. Since Joginder Lal and Ram Nath refused to purchase the iron sheets, Umedi Lal removed the same in three carts and passed a receipt in respect of the same in favour of M/s. Jindal Khemka & Co. The prosecution case was that at this time also Umedi Lal was accompanied by three or four persons who included the appellant.

5. It appears that since M/s. Shiv Rattan Mohatta did not receive delivery of the iron sheets consigned to them in Wagon No. SEKG 40765. They lodged a claim with the Railway Administration and this led to enquiries being made by the Railway Administration. Ultimately, the Railway Administration filed a first information report with the Special Police Establishment, Ambala Branch and following upon the first information report, the police started investigation. During the course of investigation, the police entertained suspicion against the appellant and they obtained from the appellant specimen handwritings PW 27/37 to PW 27/57 for the purpose of comparing them with the handwriting on the Railway Receipt Ex. PW 10/A Which was a forged document. The police also requested the railway authorities to direct the appellant and one Ameeruddin, who was also an employee of the Railway Administration, to subject themselves to test identification parade at the hands of the Special Railway Magistrate, Patiala. The appellant and Ameeruddin accordingly went to Patiala and they were taken to the Central Jail and there, a test identification parade was held, at which Joginder Lal failed to identify the appellant but Ram Nath, after some hesitation, managed to identify him. The specimen handwritings of the appellant Exs. PW 27/37 to PW 27/57 were sent, along with the Railway Receipt Ex. PW 10/A, to B. Lal Government Examiner of Questioned Documents and B. Lal gave his opinion that the writing marked at A1 on the Railway Receipt Ex. PW 10/A and the specimen handwritings PW 27/37 to 27/57 were all by one and the same person. The appellant was, on the basis of this material, put up for trial before the Judicial Magistrate, 1st Class, Ludhiana. The learned Magistrate convicted the appellant and his conviction was maintained in appeal as well as revision. The question is whether the material on record was sufficient to justify the conviction of the appellant.

6. We have carefully gone through the evidence but we find it difficult to sustain the conviction of the appellant. The only two pieces of evidence against the appellant are the evidence of B. Lal, the handwriting expert, who identified the handwriting on the forged Railway Receipt Ex. PW 10/A as that of the same person who wrote the specimen signatures Exs. PW 27/37 to PW 27/57 and the

evidence showing the presence of the appellant with Umedi Lal at Ludhiana when the talk took place between Umedi Lal on the one hand and Joginder Lal and Ram Nath on the other in connection with the sale of the iron sheets. We do not think that these two pieces of evidence are at all satisfactory and in any event, no conviction can be founded on them.

7. In the first place, it may be noted that the appellant was at the material time a Guard in the employment of the Railway Administration with his headquarters at Agra and he had nothing to do with the train by which Wagon No. SEKG 40765 was despatched from Munda to Bikaner, nor with the train which carried that wagon from Agra to Ludhiana. He was not a Guard on either of these two trains. There was also no evidence to connect the appellant with the theft of the blank Railway Receipt at Banmore Station. It is indeed difficult to see how the appellant, who was a small employee in the Railway Administration, could have possibly come into possession of the blank Railway Receipt from Banmore Station which was not within his jurisdiction at any time. It is true that B. Lal, the handwriting expert, deposed that the handwriting on the forged Railway Receipt Ex. PW 10/A was that of the same person who wrote the specimen handwritings Ex. PW 27/37 to 27/57, that is the appellant, but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra v. State of U.P.* (AIR 1957 SC 381 : 1957 Cri LJ 559), that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad Mishra v. Md. Isa* (AIR 1963 SC 1728 : (1963) 3 SCR 722) that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar Banerjee v. Subodh Kumar Banerjee* (AIR 1964 SC 529) where it was pointed out by this Court that experts evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in *Fakhruddin v. State of M.P.* (AIR 1967 SC 1326 : (1967) 2 SCJ 885 : 1967 Cri LJ 1197) and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial. It is interesting to note that the same view is also echoed in the judgments of English and American courts. *Vide Gurney v. Langlands* (1822, 5B and Ald 330) and *Matter of Alfred Foster's Will* (34 Mich 21). The Supreme Court of Michigan pointed out in the last mentioned case :

Every one knows how very unsafe it is to rely upon any one's opinion concerning the niceties of penmanship - Opinions are necessarily received, and may be valuable, but at best this kind of evidence is a necessary evil.

We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence, being opinion evidence is by its very nature, weak and infirm and cannot of itself form the basis for a conviction. We must, therefore, try to see whether, in the present case, there is, apart from the evidence of the handwriting expert B. Lal, any other evidence connecting the appellant with the offence.

8. The only other evidence which was sought to be relied upon on behalf of the prosecution was that showing the presence of the appellant with Umedi Lal at Ludhiana when there was talk between Umedi Lal on the one hand and Joginder Lal and Ram Nath on the other in regard to the sale of the iron sheets. But this evidence is wholly unsatisfactory and does not inspire any confidence at all. In the first place, it is difficult to see why the appellant should have gone with Umedi Lal to Ludhiana for the purpose of selling the iron sheets. The appellant was a mere railway ? Guard and even if it be assumed for the purpose of argument that his services were utilised for the purpose of forging the railway receipt Ex. PW 10/A, there is no reason why he should have been persuaded to accompany Umedi Lal to Ludhiana. It is true that the appellant was on leave from August 1, 1964 to August 16, 1964 but from that circumstance, it does not follow that he had gone to Ludhiana in connection with the sale of the iron sheets. Even according to the prosecution, the appellant was in Ludhiana only on August 6, 1964 and that would not necessitate the appellant taking such a long leave from August 1, 1964 to August 16, 1964. The leave taken by the appellant from August 1, 1964 to August 16, 1964 would not necessarily support the inference that the appellant was present in Ludhiana on August 6, 1964. The appellant might have taken this long leave for some other purpose. Moreover, it may be noted that Joginder Lal could not identify the appellant at the test identification parade held at the Central Jail, Patiala. Ran Nath, of course, did identify the appellant but that was after some hesitation. The Special Railway Magistrate (PW 39) stated in cross-examination that Ram Nath took some time in identifying the appellant. The appellant in fact raised an objection before the Special Railway Magistrate, prior to the test identification parade, that he had a doubt that he had been shown to the witnesses by the police. The identification made by Ram Nath at the test identification parade cannot, therefore, inspire any confidence in the mind of the Court. Moreover, it is difficult to imagine how Ram Nath who is supposed to have seen the appellant for the first time on August 6, 1964 on a stray occasion could identify him at a test identification parade held after about two and a half years on February 25, 1967. It is not as if the appellant had any direct talk with Ram Nath on this solitary occasion. The appellant was supposed to have merely accompanied Umedi Lal along with one or two other persons and it is impossible to believe that Ram Nath could have remembered his face after such a long period as two and a half years. We are not at all satisfied that the appellant was with Umedi Lal when the latter is supposed to have negotiated with Joginder Lal and Ram Nath in connection with the sale of the iron sheets.

9. It is indeed strange that the police could not trace Umedi Lal or even Bhoja Ram. Bhoja Ram, according to the prosecution evidence, was frequently going to the Railway Station for taking delivery of goods on behalf of M/s. Jindal Khemka & Co. and yet he could not be caught hold of by the police. That is indeed a sad commentary on the efficiency of the police. We fail to understand why the police did not try to find out what happened to the iron sheets - where they went from the shop of M/s. Jindal Khemka & Co. If the prosecution story is true, these iron sheets were removed by Umedi Lal from the shop of M/s. Jindal Khemka & Co. and they must have been removed by some cartmen. We find it difficult to believe that the police could not have pursued the matter and traced the iron sheets by making enquiries from the cartmen. It is also intriguing why the police did not try to find out the whereabouts of Bhoja Ram. Surely he could not have disappeared into the thin air. It is not right for us to speculate but we cannot help feeling that M/s. Jindal Khemka & Co. were not absolutely innocent in so far as this transaction is concerned. Umedi Lal was a stranger to both Joginder Lal and Ram Nath and yet, according to the prosecution case, Umedi Lal handed over the forged Railway Receipt PW 10/A to Joginder Lal for the purpose of taking delivery of the goods without insisting on payment and even without setting the bargain. The Railway Receipt Ex. PW 10/A was found to be defective by Teja Singh Sodhi, Goods Clerk on August 2, 1964 and yet on the next day, strangely enough, he was, for some inexplicable reason, persuaded to accept the same

Railway Receipt and delivered the iron sheets against it at the instance of Bhoja Ram, who was a person frequently acting on behalf of M/s. Jindal Khemka & Co. Then again, Joginder Lal and Ram Nath are supposed to have returned the iron sheets to Umedi Lal because some broker told them that they should insist on the production of a bill of purchase by Umedi Lal which Umedi Lal was unable to do. This also appears to be a rather disingenuous story made up by Joginder Lal and Ram Nath for the purpose of showing as if the iron sheets did not remain with them. It is indeed strange why they should have taken a receipt from Umedi Lal when the latter removed the goods from their shop. The iron sheets belonged to Umedi Lal and if Umedi Lal took them back from Joginder Lal and Ram Nath, there was no reason why the latter should have insisted on taking a receipt from him. Presumably the receipt was fabricated for the purpose of supporting their case that they did not keep the iron sheets with them, because otherwise they would have no account for them. It does appear to us prima facie that Umedi Lal was a fictitious person and the iron sheets were taken delivery of by M/s. Jindal Khemka & Co. for themselves on the strength of the forged Railway Receipt PW 10/A. But some how or the other, due to police inaction, they appear to have escaped and a small man like the appellant seems to have been made a scape-goat.

10. We are of the view that the prosecution has totally failed to bring home the charge against the appellant and hence our order dated January 28, 1977 setting aside the order of conviction and sentence recorded against the appellant and acquitting him of the offences charged against him.

</html