

Arjan Singh and Others

Vs

Hazara Singh

Criminal Appeal No. 213 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

14.02.1979

JUDGMENT

FAZAL ALI, J. –

This appeal by special leave is directed against the order of the High Court dated November 24, 1973 by which the High Court reversed the acquittal of the appellants and convicted them under Sections 467 and 471 of the Indian Penal Code to two years' R.I. on each count. Sentences were to run concurrently. One of the respondents before the High Court, Bachan Singh, died and the appeal against him has abated. The charges of forgery against the accused persons were based on a will Ex. PD stated to have been executed by Sahib Singh in favour of Arjan Singh and others in respect of the property mentioned in the will. There is no direct evidence of forgery at all and the conviction is founded upon the evidence given by the expert PW 7 Bhakhtawar Singh who had opined that the thumb impression on Ex. PD did not tally with the admitted thumb impression of Sahib Singh on Ex. PA. Bhakhtawar Singh was examined before the trial Court and his testimony was both slipshod and cryptic. For these reasons, the High Court in appeal re-summoned Bhakhtawar Singh and re-examined him and gave an opportunity to the accused to cross-examine this witness. Having gone through the evidence of the expert, we are unable to place any reliance on this witness. To begin with, he admits that he has examined the documents for 2-3 minutes and has pointed out important dissimilarities between the disputed thumb impressions and the admitted thumb impressions. He further admits that both the thumb impressions are similar in that the number of ridges are the same on both the thumb impressions. Delta is also present in both the thumb impressions. He also found that there was a curve in the forming of the delta. But in his cross-examination he admits that dissimilarities could be cause particularly in the curve of the delta by pressure on ink or such other factors. The defence examined three experts viz. DW 4 Philip Hardless, DW 5 A. S. Bal and DW 9 Rattan Lal, all of whom opined that the disputed thumb impression fully tallied with the thumb impression of Sahib Singh on Ex. PA. We have also examined the thumb impression concerned and we are unable to find any positive dissimilarity between them. If there is any superficial dissimilarity, than can easily be explained because of the following factors :

1. The inks with which the thumb impressions are taken in the two documents are different;
2. The angle from which the thumb impression has been taken in the two documents and the size thereof are different.
2. The thumb impression Ex. PA appears to have been taken by printer ink and is clearer than the thumb impression of Ex. PD which is taken by pad ink. Otherwise in

other respects we do not find any vital difference between the two thumb impressions. At any rate, having regard to the evidence of the experts on one side and that of PW 7 on the other, it is really a question of oath against oath. In these circumstances, we are unable to convict the appellant on such a conflicting state of the evidence. It has not been pleaded by the prosecution that the thumb impression was that of deceased Sahib Singh which might have been taken on Ex. PD after his death. Nor was such averment made in the complaint nor any cross-examination directed towards that effect. Mr. Manchanda strongly relied on certain circumstances mentioned by the high Court as creating suspicion on the genuineness of the will. The High Court observed thus :

Sahib Singh executed will Ex. PB, the gift deed Ex. PA and the will Ex. PC which were unregistered. In the will Ex. PD is unregistered. In the earlier wills and gift the description of the property was given but no description of the property is there in Ex. PD. There is no reference of the previous wills in the will Ex. PD although it is in respect of the whole of the property of Sahib Singh. Sahib Singh did not revoke his earlier two wills which is inconsistent with his conduct. The mutation proceedings, after the death of Sahib Singh had started on April 29, 1962 but Arjan Singh mentioned the existence of the will Ex. PD for the first time on December 30, 1963 before the Assistant Collector II Grade in the statement, Ex. PL. Even on December 30, 1973, the will, Ex. PD was not produced. The will was produced before the Collector on February 8, 1964. Arjan Singh, in his statement Ex. PI, stated that the will was written in his village but in the court he deposed that the bill was scribed in village Kheri Nodh Singh. In Ex. PL dated December 30, 1963 Arjan Singh stated that the will was scribed four years back but the will itself is purported to have been written on February 8, 1961. All these circumstances indicate that the will Ex. PD came into being after the death of Sahib Singh. In view of the discussion above, we find that will, Ex. PD is a forged document.

3. In fact most of the circumstances relied upon by the High Court are clearly explainable or are not very relevant. But even assuming that these circumstances throw some suspicion on the genuineness of the will, that will not take the place of proof in order to convict the appellant of a criminal charge. These matters may weigh with the civil court in deciding upon the validity or genuineness of a will, but the prosecution has failed to prove in this case that the thumb impression taken on Ex. PD was a forged one. The Sessions Judge had rightly found that in view of the conflicting state of evidence produced by the prosecution, it was unsafe to convict the appellant of the offence of forgery. The High Court does not appear to have given any cogent reasons for disbelieving this finding of the trial Court and was, therefore, in error in reversing the acquittal on the basis of some suspicious circumstances only. For these reasons, therefore, the appeal is allowed, the order of the High Court is set aside and the appellants are acquitted of the charges framed against them. They will now be discharged from their bail bonds.

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