

Chatt Ram

Vs

State of Haryana

Criminal Appeal No. 56 of 1973

(R.S. Sarkaria, P.N. Shinghal, O. Chinnappa Reddy JJ)

08.08.1979

JUDGMENT

SARKARIA, J. –

1. Chatt Ram appellant, Joginder Lal and Badri Nath were prosecuted jointly for offences under Sections 467 and 471 of the Indian Penal Code.
2. The Additional Sessions Judge acquitted Badri Nath convicted the appellant and his companion, Joginder Lal, under Sections 467 and 471, Penal Code, and sentenced them to five years' rigorous imprisonment, each, on each account with a direction that the sentence shall run concurrently.
3. On appeal, the High Court, by a judgment dated June 2, 1972, upheld the conviction and sentence of the appellant and his companion, and dismissed their appeals.
4. The prosecution case was that Joginder Lal along with one Sham Dass was a Sub-Agent of Haryana Lotteries. Joginder Lal had borrowed a sum of Rs. 3,000 from Chatt Ram on March 21, 1968 and had not repaid the loan. Joginder Lal as Sub-Agent sold Haryana State Lottery Tickets relating to the third draw. Those tickets were printed by Thompson Press, Faridabad, for Haryana State. The third draw of the lottery was held on March 29, 1969 and the result was declared on the same day by a State Government Notification No. DOL/69/1952. There were 501 prizes. There was also a special prize of a lakh of rupees. This prize was won by Ticket No. X-78410. The booklet containing tickets of X-series was sold to Express Lotteries Centre, Hatam Manzil, Bombay, who further sold it to their Sub-Agent, Shri Vijay Ram Andheram of Poona, from whom the prize winning ticket was purchased by one G. S. Kale.
5. Joginder Lal in his capacity as a Sub-Agent had come into possession of two blank (numberless) tickets of Haryana State Lottery. According to the prosecution, the appellant and accused Joginder Lal planned to get No. X-78410 printed on one of those blank tickets in order to secure the special prize of one lakh. The scheme was that after collection the prize money, half of it would go to Chatt Ram, while the remaining half would be divided equally between Badri Nath and Joginder Lal. In pursuance of that conspiracy, No. X-78410 was got printed on the blank ticket by Badri Nath accused in his press at Faridabad, and thereafter, Joginder Lal and Chatt Ram along with others, Approached the Treasury Officer, Gurgaon, and told him that they were in possession of the ticket which had won the special prize of one lakh. The Treasury Officer advised them to produce the ticket before the Director of Haryana State Lotteries on April 1, 1969, at Gurgaon, where he was expected on that day. Consequently, on April 1, 1969, Chatt Ram appellant and Joginder Lal accused and others, appeared before Shri J. K. Dhingra, Director of Haryana State Lotteries in the

house of the Treasury Officer, Gurgaon and showed the ticket (Ex. P 3) to him (Director). On being asked by the Director, The Assistant Treasury Officer (Shri A. N. Bansal) took down the signature and address of Chatt Ram on the reverse of the ticket (Ex. P 3).

6. Joginder Lal claimed to have sold that ticket to Chatt Ram. The Assistant Treasury Officer, therefore, directed Joginder Lal to produce the counterfoil for claiming the seller's prize and he promised to do so after searching out the same. Later on, however, Joginder Lal never produced the counterfoil. The result was that neither Joginder Lal nor the appellant got the prize money on the basis of the ticket (Ex. P 3), which, according to the prosecution, was a forged one.

7. On the other hand, three persons, namely, G. S. Kale, Kanti Lal and Dharam Singh, each produced a ticket bearing No. X-78410 to claim the special prize, before the Director, who held enquiries and got the tickets of all the rival claimants examined by Joginder Singh, Overseer of the Government of India Press. Joginder Singh, Overseer, after examination, opined that the ticket produced by G. S. Kale was genuine. The Director then sent a letter, dated April 30/May 1, 1969, to the Inspector-General of Police, for taking necessary "legal action" against Chatt Ram s/o Daulat Ram Ratra of Faridabad; Dharam Singh Yadav s/o Krishna Yadav of Jhajjar, and Kanti Lal Ramjibai of Ahmedabad. It was alleged in the letter that these persons "have surreptitiously removed the blank tickets from the press and had fake numbers printed thereon from somewhere. They have thus attempted to cheat the Haryana Government by getting tickets fraudulently printed in order to obtain gain to which they are not entitled". The tickets produced by G. S. Kale, Chatt Ram and other rival claimants were also sent to Dr. B. R. Sharma, Director of the Forensic Science Laboratory, who opined that the ticket produced by G. S. Kale was genuine, while that by Chatt Ram was not so.

8. After completing the investigation, the police charge-sheeted Chatt Ram, Joginder Lal and Badri Nath in the Court of the Chief Judicial Magistrate, who committed them for trial in respect of offences under Sections 467/420/511, Penal Code, to the Court of Session, Gurgaon.

9. The trial Court framed a charge under Sections 467/34 and Section 471, Penal Code against the accused persons.

10. The Sessions Judge convicted Joginder Lal and Chatt Ram as aforesaid, but acquitted Badri Nath.

11. The State did not prefer any appeal against the acquittal of Badri Nath. Chatt Ram and Joginder Lal, filed separate appeals in the High Court. By a common judgment, dated June 2, 1972, learned single Judge of the High Court, dismissed those appeals and upheld their conviction and sentence.

12. Chatt Ram's case alone is now before us in appeal by special leave under Article 136 of the Constitution.

13. Almost the entire discussion in the judgment under appeal is focussed on the legal question, whether expert opinion with regard to the questioned nature of a printed document is admissible under Section 45, Evidence Act, or not ?

14. There were two crucial questions which has to be considered before the appellant Chatt Ram could be convicted of the offences with he was charged. With regard to the charge under Section 467, Indian Penal Code, it was to be determined whether Chatt Ram had participated in any manner in the act of forging the ticket (Ex. P 3). Similarly regarding the offence under Section 471, Indian Penal Code, it was necessary to consider whether the prosecution had established by adducing

cogent and convincing evidence that Chatt Ram, appellant knew or had reason to believe the ticket (Ex. P 3) to be a forged document when he presented it before the Treasury Officer and later before the Director to claim special prize on the basis thereof. Proof of this factual ingredient was essential for conviction of the appellant for an offence under Section 471, Penal Code. The High Court does not appear to have concentrated on these crucial issues of fact.

15. Learned counsel for the appellant contends that, in the first place, the evidence of the four prosecution witness, by whose opinion it was sought to prove that the number on the ticket (Ex. P 3) had been forged, could be called 'experts' evidence'. Even so, it is maintained, their evidence does not indubitably show that the number on the ticket (Ex. P 3) was not printed by the Thompson Press, Faridabad, which had printed all the lottery tickets relating to the third draw for Haryana State. In the alternative, it is urged that there was absolutely no evidence to show that Chatt Ram, appellant, had forged or had abetted the forging of the ticket (Ex. P 3) in any manner; nor was there any admissible evidence to show that the appellant knew or had reason to believe the ticket (Ex. P 3) to be forged document when he presented it first to the officers concerned, and claimed special prize on the basis thereof. It is pointed out that the only evidence produced to establish Chatt Ram's complicity in forging (Ex. P 3) was the confessional statement of Joginder Lal co-accused recorded under Section 164, Criminal Procedure Code by the Magistrate. But the same inadmissible in evidence because all the mandatory requirements of Section 164, Criminal Procedure Code with regard to the recording of confessions, were honoured in breach by the Magistrate.

16. As against this, learned counsel for the State submits that by any reckoning, Joginder Singh (PW 26), Overseer, and Dr. B. R. Sharma (PW 22), had acquired special skill and experience in the science of questioned printed documents to merit the status of experts for the purposes of Section 45, Evidence Act. It is pointed out that Joginder Singh had been working and supervising the work of the special branch of the Thompson Press in the matter of printing lottery tickets and like documents for a period of 26 years; that he had written an article entitled 'Detection of Forgeries in Printed Material' and that he has given good reasons in support of his opinion. Dr. B. R. Sharma, it is stressed, is the Director of the Forensic Science Laboratory, Chandigarh, and he has been acting as an expert of questioned documents since 1957. PWs 6 and 12 apart, the opinions of these two witnesses (it is urged), were lucid, sound and convincing enough to establish that the number on the ticket (Ex. P 3) had been forged.

17. With regard to the second contention of the appellant, Mr. Ravinder Bana first raised a preliminary objection that the appellant had not taken up this plea regarding want of knowledge in the courts below, and consequently, he should not be allowed to take up this plea, for the first time, in this Court. In the alternative, he pointed out two circumstances appearing in evidence, which, according to him, raise an inference about the appellant's complicity in the forgery, and further, about his knowledge or belief about (Ex. P 3), being a forged document. These are : (i) The appellant denied that he had purchased the ticket (Ex. P 3) from his co-accused, Joginder Lal, and instead, put up the false plea that he had purchased this ticket from 'someone in Delhi'. (ii) Joginder Lal admittedly owed Rs. 3,000 to Chatt Ram, appellant, which the former had not repaid. This, according to the counsel, is suggestive of Chatt Ram's participation or abetment of the forgery committed by Joginder Lal and also Chatt Ram's knowledge about Ex. P 3 being a forged document.

18. Since the High Court did not fully examine the depositions of these witnesses, we have ourselves scrutinised the evidence of A. K. Mukherjee (PW 6), Works Manager of the Thompson Press, Faridabad; P. N. Kirpal (PW 12), Chief Manager, Publication Office, Survey of India; Dr. B. R. Sharma (PW 22), Director of Forensic Laboratory, Chandigarh and Joginder Singh (PW 26),

Overseer, Government of India Press, Faridabad. We may say at once that in the examination of PWs 6 and 12, no foundation was laid to show that these witnesses had the necessary qualification of an expert. It was not shown that they had received special training or had acquired special skill and experience in the science of identification of questioned documents in type-script or in print. Moreover, the evidence of Mukherjee (PW 6) was mere hearsay, a fact which the witness conceded in these words :

I did not personally examine the documents and therefore, have based my report on the opinion of my technicians while being the manager I used the word "We" instead of "I".

In cross-examination, Mukherjee disclosed that in the Thompson Press, Faridabad, there were about eight tutilo number machines which were used for numbering the lottery tickets.

19. PW 12, P. N. Kirpal, was a Production Manager in Thompson Press, on deputation from Government of India, with effect from February 3, 1969 to August, 1970. He did not claim to have acquired special knowledge, skill or experience in the science of identification of printed documents. His statement was to the effect :

The Director of Haryana State Lotteries PW 1 had produced four tickets bearing the same number, i.e. X-78410 which were examined by me as well as by Sarv-Shri Joginder Singh and Mukherjee. I was of the opinion that Ex. P 1 was the genuine ticket numbered from our press whereas the numbering of Ex. P 3 ticket was different for the following reasons :

- (1) The position of X was outside the red border which in case of the tickets (genuine) is always inside the red line.
- (2) The face of X is different from the face of X on the genuine ticket.
- (3) The impression is of a weaker nature in the forged ticket than in the genuine.
- (4) If the same type of machine is used in numbering the tickets the space from word No. to first figure will be the same in each case.

20. In the first place, the witness was not an 'expert', whose opinion could be admissible within the contemplation of Section 45, Evidence Act. Secondly, his deposition is in conflict with that of PW 6. Thirdly, qualitatively the reasons given by him in support of his opinion, are not of clinching character. In cross-examination, he candidly admitted :

The type faces of 'Exs. P 12 to P 15' are available in the market. I am not able to say which particular X out of P 12 to P 15 was used in the genuine ticket. I did not examine the ticket (P 3) along with the other two tickets as to their similarity and to have been prepared by the same numbering machine. By constant use the impression on the type face of these P 12 to P 15 would become dim. There will be a difference in the impression if a new type face is used or an old type face is used.

21. He further admitted that he did not remember if he had measured the distance between 'X' and 'N' in the number in question. According to him, the difference between the X in Ex. P 1 and the X in Ex. P 3 is this : "The X in P 1 is thicker than that in the other, but I cannot measure the difference

with a naked eye. I cannot say that due to improper inking the width of X could be that as in Ex. P 3 while the same machine could produce the letter X in Ex. P 1". The witness further revealed that the numbering and the printing of the body of the tickets is not done by the same machine in the same process. The body of the tickets is printed on one machine. Thereafter, the numbers are printed thereon by feeding with hands; while sometimes they are automatically fed on the machines. The witness could not say if X-series of the tickets of the third draw were printed by a numbering machine which was fed by hand or was fed automatically. Another fact which was brought out in his cross-examination was that so far as the counterfoils of the tickets were concerned, their numbering was always done on a different machine; and this was the case in respect of Ex. P 1, also. He conceded that similar numbering machines "are probably used in other printing presses in India".

22. Dr. B. R. Sharma (PW 22) undoubtedly had the qualifications of an expert, although he had not published any paper with regard to the comparison and identification of printed matters. But his evidence, even if admissible, does not necessarily lead to the conclusion that the number on the ticket, Ex. P 3 was forged, and not printed in due course on any of the eight machines on which the numbers of the lottery tickets for the third draw were printed. Only three exhibits were sent to Dr. Sharma for examination and comparison. They were : (i) One Haryana State Lottery ticket marked 'A' allegedly produced by Shri Kanti Lal. (ii) One genuine ticket produced by Shri G. S. Kale which is Ex. P 1. (iii) One allegedly forged ticket which is Ex. P 3. The further circumstances that robbed his evidence of determinative value was that his opinion was invited only on the narrow point whether these three tickets were printed with the same printing machine. The witness examined these tickets and answered the reference in the negative. Reasons in support of his opinion are mentioned in his report (Ex. PAB). In cross-examination, however, Dr. Sharma stated that he was required to compare the marks (the number) on the ticket (Ex. P 1) with the machine (Ex. P 10) and therefore, the establishing of individual characteristics of the machines was neither possible nor necessary. For such identification, the witness added, "We need a number of machines to establish the individuality of the machines with reference to other machines". The witness further conceded :

I did try to find out data in the letter X to give a definite opinion either in positive or negative form. There can be slight differences in the dimensions of the letters and digits due to the proper and improper inking. I could not find significant differences which could permit to say that the letter X was not printed with the letter-face, which was sent to me, on Ex. P 1 and Ex. P 2/1. I did not compare the letter X on Ex P 1 and P 3 inter se as it would not have served any useful purpose nor I was required to do so. In this case it was not possible to give a definite opinion on the printing of letter X as it was a single letter.

He further stated that he had not compared the inks on Ex. P 1 and Ex. P 3, and therefore, could not say whether there was or was not any difference in the inks used in printing the numbers on these tickets. Thus, Dr. Sharma's opinion on his own showing could not be definite and conclusive. PW 6, and PW 12 revealed that the numbers on the tickets relating to the third draw were printed in the Thompson Press on eight different machines and not only on the machine (Ex. P 10) which alone was examined by Dr. Sharma in relation to the three tickets sent to him. Thus, Dr. Sharma's evidence did not concededly clinch the issue as to whether the ticket Ex. P 3 was a forged one.

23. The last witness in this set is Joginder Singh, Overseer (PW 26). He was the Supervisor of the Lotteries Department of Thompson Press in which the lottery tickets were printed. He examined the four tickets in question, each bearing No. X-78410, on December 8, 1969, including Ex. P 1 and Ex. P 3. In his opinion, Ex. P 1 (which was the ticket produced by Shri G. S. Kale) was genuine for the

following reasons :

1. The series type X corresponds to the genuine type-face in CHALTHENEM 18, condensed bold.
2. Movement of the digits on the ticket is similar to the movement of the digits of machine No. 386008 of Tutilo numbering machine, made in Germany and which is available with the Thompson Press, Faridabad.
3. Numbering of Counterfoils produced is similar to the genuine numbering machine. It was printed by Machine No. 386012 of Tutilo number machine made in Germany and which is available in Thompson Press, Faridabad.
4. The space between No. and alphabets is same on the ticket and the counterfoil.
5. Types of series are same on the ticket and counterfoil, i.e. CHALTHENEM 18, bold condensed.
6. Inking of ticket is genuine, i.e. with dense black.

The witness further opined that the ticket (Ex. P 3) is not genuine for these reasons :

1. Ink shade is not the same as in the genuine ticket, i.e. Ex. P 1.
2. Distance between No. and X is little more.
3. There is no alignment with X and numbering.
4. The numbering has been done in a slanting position.

In cross-examination, the witness revealed that he had ample training regarding the comparison of printed disputed documents and had written an article entitled "Detection of Forgeries in Printed Material". The witness admitted that in (Ex. P 3) the type-face is also from "CHALTHENEM 18 bold condensed" but it is from a brand new type face. The witness conceded :

It is possible that numbering of Ex. P 3 was done with Tutilo machine rather it was printed with a tutilo make machine. It is true that the size of the type and spacing of the digits were the same in Exs. P 1 and P 3. We used dense black ink in our printing the tickets while this ink was not in Ex. P 3 but they were not of the same shade although both were black.

The witness added that he had examined the ink shades with a magnifying glass and found that while the ink used in Ex. P 1 was of their press, it was not so in the case of other three tickets. The witness, however, did not perform any chemical test to ascertain the identity of the ink.

24. Assuming *arguendo* that Joginder Singh, had the necessary skill, scientific knowledge and experience of an 'expert' and his opinion was admissible under Section 45, then also it would be highly unsafe to condemn Ex. P 3 on his opinion alone, as a forged document. The dissimilarities between Ex. P 1 and Ex. P 3 on the basis of which he has characterised the number on Ex. P 3 as a forged number, may be natural variations. His opinion does not indubitably exclude the possibility

of the number in question on Ex. P 3 having been printed in the ordinary course on one of the eight tutilo machines of the Thompson Press. In cross-examination, he did not rule out this possibility. His opinion that the questioned number on Ex. P 3 had not been printed with the same ink with which the numbers on the other lottery tickets were printed in their press cannot pass muster. The only reason for this difference in the printing ink given by him, is that the ink used in printing the questioned number on Ex. P 3 is less dense or lighter in shade than that of Ex. P 1. This variation in density of ink may be due to an innocuous cause. The witness never examined the ink chemically. This circumstance pointed out by the witness was too precarious to be a safe basis for a finding of forgery.

25. Even if it is assumed for the sake of argument that the number on Ex. P 3 had been forged, that by itself would not show that Chatt Ram, appellant forged it or participated in its forgery. Nor would the mere fact that Chatt Ram presented this ticket before the officers concerned and claimed the special prize on its basis, necessarily stamp him with the knowledge or belief of its forged character.

26. Nor were the two circumstances pointed out by the counsel for the State such as would unerringly raise an inference that the appellant possessed the means reia requisite for an offence under Section 471, Penal Code, when he presented Ex. P 3 to the officers concerned for claiming the special prize. These two circumstances (which have been set out in a foregoing part of this judgment), at the most raise a suspicion about the requisite guilty knowledge or belief on the part of the appellant. But suspicion is no substitute for proof.

27. To sum up, even if the evidence of PWs 6, 12, 22, and 26 was assumed to be admissible under Section 45, Evidence Act, it was not sufficient to establish beyond reasonable doubt that the ticket Ex. P 3 was a forged document. Further, even on the assumption that the ticket EX. P 3 was a forged document, the evidence on the record did not indubitably lead to the conclusion that the appellant Chatt Ram was concerned in forging it or had the requisite guilty knowledge of its forged character when he presented it and claimed prize on its basis before the officers concerned. It is immaterial if at any subsequent point of time he came to know of its forged character.

28. Since, in any event, the evidence on the record is insufficient to sustain the conviction of Chatt Ram appellant under Sections 467/471, Indian Penal Code, the legal question posed by the High Court is rendered wholly academic and it is not necessary to decide the same for the purpose of this appeal.

29. For the foregoing reasons, we allow this appeal, set aside the conviction of Chatt Ram and acquit him of the charges levelled against him.

</html