Murari Lal

Vs

State of Madhya Pradesh

Criminal Appeal No. 125 of 1975

(R.S. Sarkaria, O. Chinnappa Reddy JJ)

21.11.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. Murari Lal, who was accused 2 before the Sessions Judge, Jabalpur, was convicted under Section 302 I.P.C. and sentenced to death. He was also convicted under Section 460 read with Sections 34, 457, 380, 392, 394 and 397 I.P. C. but sentenced under Section 460 read with Section 34 and Section 394 read with Section 397 only to rigorous imprisonment for a period of 7 years on each count. On appeal by Murari Lal and on reference by the learned Sessions Judge. The high Court of Madhya Pradesh altered the conviction from Section 302 I. P.C. to Section 302 read with 34 I.P.C. and substituted the sentence of imprisonment for life for the sentence of death. Otherwise the appeal was dismissed. Murari Lal has preferred this appeal by special leave of this Court.

2. H. D. Sonewala (the deceased) used to live alone in one of the two 'quarters' in the compound of the Parsi Dharmshala at Jabalpur. He was the Area Organiser of Charak Pharmaceuticals Company of Bombay. On the night of July 12, 1972 he went out to dinner at the house of PW 2 and returned home at about midnight. He retired for the night. Next morning, his driver PW 9 and his servant PW 6 came to the house in the usual course to attend to their duties. The gate was found locked. They called out to their master but there was no response. PW 6 who also had a key opened the lock and went inside. Sonewala was found murdered in his bed. A first information report was given at the police station Omti, Jabalpur, the Station House Office. PW 28, came to the scene, found things in the room strewn about in a pell-mell condition. He seized various articles. One of the articles so seized was a prescription pad ex. P.9. On pages A to F of Ex. P.9, there were writings of the deceased but on page G, there was a writing in Hindi in pencil which was as follows :

> Translated into English in means : "Though we have passed B. A., we have not secured any employment because there is none to care. This is the consequence. Sd./- Balle Singh". The dead body of Sonewala was sent to the Medical Officer for post-mortem examination. There was an incised wound on the neck 71/2" long, the maximum width of which was 2" of tissues and vessels up to the trachea were cut. Trachea was also cut. For several months after the discovery of the murder, the investigation made no progress till February 18, 1973. On that day pursuant to information received in connection with some other case of theft in which one Roop Chand appeared to be involved, the Station House Officer secured the presence of Patrick (A-1) and questioned. Patrick made a statement and led them to his room from which two choppers and as many as 234 items of stolen property were seized. We may mention that out of the 234 items so seized, only two were alleged to belong

to Sonewala, one was a tie-pin and the other was a cheque-book. Thereafter, the house of Patrick's father Gabrial was also searched and 310 items of stolen property were recovered, none of which has anything to do with this case. On February 19, 1973 Murari Lal (A-2) said to be a friend of Patrick was questioned. He made a statement and led them to the house of his maternal uncle Suraj Prasad (A-4). Murari Lal asked his uncle to produce the wrist-watch, which was done. The wrist-watch had some special characteristic of its own and it was later duly identified by unimpeachable evidence as belonging to the deceased. Specimen writings Ex.P. 41 to Ex.P. 54 of Murari Lal were obtained. They were sent to a handwriting and finger-print expert PW 15 along with the prescription pad Ex. P.9, for his opinion. The expert gave his opinion that the writing in Hindi at page G of Ex. P.9 and the specimen writings of P.41 to P.54 were made by the same person. Patrick. Murari Lal, Gabrial and Suraj Prasad were tried by the learned Sessions Judge. Suraj Prasad was acquitted. Gabrial was convicted under Section 411. Patrick and Murari Lal were both convicted under Section 302 I.P.C. and sentenced to death as already mentioned. The sentence of death passed on Patrick and Murari Lal was altered to imprisonment for life by the High Court. Patrick has not further appealed but Murari Lal has.

3. The two vital circumstances against Murari Lal were : (1) the recovery of a wrist-watch which belonged to the deceased Sonewala, and (2) the writing in Hindi at page G of Ex. P.9 which was found to be in his handwriting indication his presence in the house of the deceased on the night of the murder and his participation in the commission of the offences. Shri R. C. Kohli, learned counsel for the appellant, argued that the recovery of the wrist-watch was too remote in point of time to connect the appellant with the crime. He further argued that the High Court fell into a grave error in concluding that the writing at page G of Ex. P.9 was that of the appellant. He submitted that the evidence of PW 8 who claimed to be familiar with the handwriting of the appellant was wholly unacceptable, that it was not permissible in law to act upon the uncorroborated opinion-evidence of the expert PW 15 and that the High Court fell into a serious error in attempting to compare the writing in Ex.P. 9 with the admitted writing of the appellant.

4. We will first consider the argument, a stale argument often heard, particularly in criminal courts, that the opinion-evidence of a handwriting expert should not be acted upon without substantial corroboration. We shall presently point out how the argument cannot be justified on principle or precedent. We begin with the observation that the expert is no accomplice. There is no justification for condemning his opinion-evidence to the same class of evidence as that of an accomplice and insist upon corroboration. True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert is not because experts, in general, are unreliable witnesses - the quality of credibility or incredibility being one which an expert shares with all other witnesses -, but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection and the risk an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, however the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has

to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty 'is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence' (Vide Lord President Cooper in Davis v. Edinburgh Magistrate, 1953 SC 34 quoted by Professor Cross in his Evidence)

5. From the earliest times, courts have received the opinion of experts. As long ago as 1553 it was said in Buckley v. Rice-Thomas ((1554) 1 Plowden 110) :

> If matters arise in our law which concern other sciences or faculties, we commonly apply for the aid of that science or faculty which it concerns. This is a commendable thing in our law. For thereby it appears that we do not dismiss all other sciences but our own, but we approve of them and encourage them as things worthy commendation.

6. Export testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person 'specially skilled' 'in questions as to identity of handwriting' is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like illustration (b) to Section 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars, which justifies the court in assuming that a handwriting expert's opinion in unworthy of credit unless corroborated. The Evidence Act itself (Section 3) tells us that 'a said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence to probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists'. It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act lest we set an artificial standard of proof not warranted by the provisions of the Act. Further, under Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that Section 46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.

7. Apart from principle, let us examine if precedents justify invariable insistence on corroboration. We have referred to Phipson on Evidence, Cross on Evidence, Roscoe on Criminal Evidence, Archibald on Criminal Pleadings, Evidence and Practice and Halsbury's Laws of England but we were unable to find a single sentence hinting at such a rule. We may now refer to some of the decisions of this Court. In Ram Chandra v. U. P. State (AIR 1957 SC 381 : 1957 Cri LJ 559), Jagannadhadas, J. observed : "It may be that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction". (emphasis ours). "May" and "normally" make our point about the absence of an inflexible rule. In Ishwari Prasad Misra v. Mohammad Isa ((1968) 3 SCR 722 : AIR 1963 SC 1728) Gajendragadkar, J. observed : "Evidence given by experts can never be conclusive, because after all it is opinion-evidence", a statement which carries us nowhere on the

question now under consideration. Nor, can be statement be disputed because it is not so provided by the Evidence Act, on the contrary, Section 46 expressly makes opinion-evidence challengeable by facts, otherwise irrelevant. And as Lord President Cooper observed in Davis v. Edinburgh Magistrate : "The parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert."

8. In Shashi Kumar v. Subodh Kumar (AIR 1964 SC 529), Wanchoo, J., after noticing various features of the opinion of the expert said :

> We do not consider in the circumstances of this case that the evidence of the expert is conclusive and can falsify the evidence of the attesting witnesses and also the circumstances which go to show that this will must have been signed in 1943 as it purports to be. Besides it is necessary to observe that expert's evidence as to handwriting is opinion-evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. In the present case the probabilities are against the expert's opinion and the direct testimony of the two attesting witnesses which we accept is wholly inconsistent with it.

So, there was acceptable direct testimony which was destructive of the expert's opinion; there were other features also which made the expert's opinion unreliable. The observations regarding corroboration must be read in that context and it is worthy of note that even so the expression used was 'it is usual' and not 'it is necessary'

9. In Fakhruddin v. State of M. P. (AIR 1967 SC 1326 : 1967 Cri LJ 1197), Hidayatullah, J. said :

> 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 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 dependent 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.

These observations lend no support to any requirement as to corroboration of expert testimony. On the other hand, the facts show that the Court ultimately did act upon the uncorroborated testimony of the expert though these judges took the precaution of comparing the writings themselves.

10. Finally, we come to Magan Bihari Lal v. State of Punjab (AIR 1977 SC 1091 : (1977) 2 SCC

210 : 1977 SCC (Cri) 313), upon which Sri R. C. Kohli, learned counsel, placed great reliance. It was said by this Court :

> ... 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 v. Mohammad Isa ((1968) 3 SCR 722 : AIR 1963 SC 1728) that expert evidence of handwriting can never be conclusive because it is, after all, opinion-evidence, and this view was reiterated in Shashi Kumar v. Subodh Kumar (AIR 1964 SC 529), where it was pointed out by this Court that expert's 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 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.

The above extracted passage, undoubtedly, contains some sweeping general observations. But we do not think that the observations were meant to be observations of general application or as laying down any legal principle. It was plainly intended to be a rule of caution and not a rule of law as is clear from the statement 'it has almost become a rule of law'. "Almost", we presume, means "not quite". It was said by the Court there was a "profusion of precedential authority" which insisted upon corroboration and reference was made to Ram Chandra v. State of U. P. (AIR 1957 SC 381 : 1957 Cri LJ 559), Ishwari Prasad v. Mohammad Isa ((1968) 3 SCR 722 : AIR 1963 SC 1728), Shashi Kumar v. Subodh Kumar (AIR 1964 SC 529), and Fakhruddin v. State of M. P. (AIR 1967 SC 1326 : 1967 Cri LJ 1197). We have already discussed these cases and observed that one of them supports the proposition that corroboration must invariably be sought before opinion-evidence can be accepted. There appears to be some mistake in the last sentence of the above extracted passage because we are unable to find in Fakhruddin v. State of M. P. (AIR 1967 SC 1326 : 1967 Cri LJ 1197) any statement such as the one attributed. In fact, in that case, the learned Judges acted upon the sole testimony of the expert after satisfying themselves about the correctness of the opinion by comparing the writings themselves. We do think that the observations in Magan Bihari Lal v. State of Punjab (AIR 1977 SC 1091 : (1977) 2 SCC 210 : 1977 SCC (Cri) 313), must be understood as referring to the fact of the particular case.

11. We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of

caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted.

12. The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and the voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the court. Where there is none, the court will have to seek guidance from some authoritative textbook and the court's will have to seek guidance from some authoritative textbook and the court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that Shashi Kumar v. Subodh Kumar (AIR 1964 SC 529), and Fakhruddin v. State of M. P. (AIR 1967 SC 1326 : 1967 Cri LJ 1197) were case where the Court itself compare the writings.

13. Reverting to the facts of the case before us, Sri Kohli had not a word of criticism to offer against the reasons given by the expert PW 15, for his opinion. We have perused the reasons given by the expert as well as his cross-examination. Nothing has been elicited to throw the least doubt on the correctness of the opinion. Both the Sessions Court and the High Court compared the disputed writing at page G in Ex. P.9 with the admitted writings and found, in conjunction with the opinion of the expert, that the author was the same person. We are unable to find any ground for disagreeing with the finding.

14. We may at this juncture consider the argument of Sri Kohli that the internal evidence afforded by the document showed that the appellant was not its author. He argued that the appellant was not even a matriculate whereas the author of the document had described himself as a graduate. And, what necessity was there for a murderer and robber to write a note like that, questioned Mr. Kohli. It appears to us that the note was designed to lay a false trail by making it appear that the murder and the robbery were the handiwork of some frustrated and unemployed young graduates, expressing their resentment against the world which had shown no regard for their existence.

15. The other important circumstance against the appellant was the recovery of the deceased's watch at the appellant's instance. That the deceased was the owner of the watch was not disputed before us. That the watch was recovered at the instance of the appellant was also not disputed before us. What was urged was that there was no reason to reject the explanation given by the appellant in his statement under Section 313 CrPC that he had purchased the watch from Roop Chand. Apart from his statement, there is nothing in the evidence to substantiate his case. On the other hand, we think that, having come to know that the statement of Roop Chand in connection with the investigation into another theft case had led the police to interrogate Patrick, the appellant very cleverly tried to

foist previous possession of the watch on Roop Chand. We are not prepared to accept the appellant's explanation. Even so, it was urged, the recovery was too remote in point of time to be linked with the robbery and the murder. It is true that there was a considerable time-lag. We might have found it difficult to link the recovery of the watch with the robbery and the murder had this been the only circumstance. But, we have the other vital circumstance that a writing made by the appellant was left on the deceased's table that night. That circumstance coupled with the recovery of the dead man's watch at the instance of the appellant, are sufficient, in our opinion, in the absence of any acceptable explanation, to hold the appellant guilty of the offences of which he has been convicted. The appeal is dismissed.

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