

State (through CBI/New Delhi)

Vs

S. J. Choudhary

Criminal Appeal No. 461 of 1987

(S. Ratnavel Pandian, K. Jayachandra Reddy JJ)

22.03.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. -

1. The State represented by CBI, New Delhi has directed this appeal against the order dated May 20, 1987 of the High Court of Delhi passed in Criminal Revision No. 105 of 1987 dismissing the petition of the petitioner in limine. The relevant facts which have given rise to this appeal can be stated thus :

The respondent, S. J. Choudhary is taking his trial before the Additional Sessions Judge, new Delhi for the offences under Section 302 IPC and Sections 3 and 4 of the Explosive Substances Act, 1908 in Sessions Case No. 36 of 1983. According to the prosecution on October 2, 1982 at about 5.45 p.m., the deceased in this case, namely, Krishan Sikand received a parcel addressed to him. The deceased being unaware of the camouflaged contents opened the parcel which on opening exploded resulting in the instantaneous death of the deceased. Relating to this incident, a case was registered at Hazart Nizamuddin Police Station as FIR No. 305 dated October 2, 1982. The investigation was taken up by the police of the said police station. Thereafter, the investigation was transferred to Crime Branch, Delhi on the very next day i.e. on October 3, 1982 and finally in March 1983 to the Central Bureau of Investigation where it was registered as case RC 3/83-CBI/DSPE/CIUI(P)/New Delhi. The respondent/accused was arrested by the CBI on August 1, 1983. Under the orders of court, the custody of the respondent was handed over to the CBI for some time. After completing the investigation, the CBI laid the charge-sheet on October 28, 1983.

2. Presently, the case is pending trial before the Additional Sessions Judge, Delhi. While the petitioner in the SLP, filed in August 1987 would state that as many as 63 prosecution witnesses have been examined and PW 64 is in the witness box, the respondent in his affidavit dated February 21, 1990 has state that so far 67 witnesses have been examined.

3. Be that as it may, according to the prosecution the cover of the device parcel containing camouflaged live hand grenade was found pasted with a typewritten name and address of the deceased, Krishan Sikand on a white slip and the explosion of the hand grenade resulted in the shattering of the materials into pieces inclusive of the said slip. The police collected from the scene of incident the typewritten pieces of the paper in which the grenade had been wrapped amongst the debris and remnants which were sent to the Central Forensic Science Laboratory for examination

and expert opinion. In the laboratory, the parcel sent by the Investigating Agency for examination was opened by PW 61, Dr. G. R. Prasad, Head of the Ballistic Division on October 12, 1982. He while examining the contents of the parcel succeeded in partially reconstructing the typewritten name and address of the deceased from the shattered pieces of the slip. It is the version of the prosecution that on August 5, 1983, while the respondent was in the custody of the CBI pursuant to the order of the court, he made a voluntary confession which led to the discovery of the fact that the address on the aforesaid parcel was got typed by him from a commercial college namely, Janta Commercial College at I-43, Lajpat Nagar-II, New Delhi. The Investigating Agency took the specimen of typing prints from the 13 English typewriters found in the said college. The reconstructed typed address and the specimen type-prints were examined by Mr. S. K. Gupta, Head of Document Division in the Central Forensic Science Laboratory. Mr. S. K. Gupta gave his opinion that on balance of similarities and dissimilarities, it is reasonable to conclude that the typescripts found on the slip pasted on the wrapper of the parcel collected from the scene have been typed from one of the machines of the Janta Commercial College as both the impressions are identical. Now, the prosecution wants to examine Mr. S. K. Gupta as an expert to prove the above fact. This request of the prosecution to examine Mr. S. K. Gupta was stoutly resisted by the learned counsel for the accused on the ground that the evidence of such typewriting expert is inadmissible under Section 45 of the Indian Evidence Act as it does not fall within its ambit. It seems from the impugned order that several decisions were cited at the bar by both the parties but the trial court on the strength of certain observation made by this Court in Hanumant v. State of Madhya Pradesh (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) dismissed the prayer of the prosecution holding thus :

"It shows that Hon'ble Judges of the Supreme Court meant that such evidence cannot be brought on record and be evaluated by the court. It is well settled that if their Lordships of the Supreme Court clearly intended to declare the law on a particular point then even though the observation may be 'obiter dictum', they are nevertheless binding upon the High Court and subordinate courts.

Under these circumstances, I uphold the objections raised by the counsel of the accused and order that Mr. S. K. Gupta, who is sought to be examined as an expert on typewritten documents cannot be examined to give evidence on this point."

4. On being dissatisfied with the above order of the High Court, this criminal appeal is filed by the State.

5. For proper understanding and appreciation of the question involved in this case, the relevant portion of the observation of this Court in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) on the strength of which the High Court has passed the impugned order may be reproduced hereunder : (SCR p. 1110)

"Next it was argued that the letter was not typed on the office typewriter that was in use in those days, viz. Art. B and that it had been typed on the typewriter Art. A which did not reach Nagpur till the end of 1946. On this point evidence of certain experts was led. The High Court rightly held that opinion of such experts were not admissible under the Indian Evidence Act as they did not fall within the ambit of Section 45 of the Act. This view of the High Court was not contested before us. It is curious that the learned Judge in the High Court, though he held that the evidence of the experts was inadmissible, proceeded nevertheless to discuss it and placed some reliance on it."

6. Though a lengthy argument was advanced by the respective counsel for both the parties by citing a series of decisions in support of their respective contentions, we are not advertent to all those contentions except to the relevant one, as we are of the view that the matter requires an in depth analysis and examination by a larger bench in view of the observation in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129).

7. The learned Solicitor General has submitted that the words 'Science or Art' occurring in Section 45 of the Indian Evidence Act should be given wide and liberal construction so as to cover all branches of specialised knowledge to the formation of opinion, that by the march of science, the evidence of expert regarding typescript has assumed importance, that such expert evidence on typescript needs to be considered at par with the evidence of other experts brought within the ambit of Section 45 of the Evidence Act, and therefore, the expert opinion of Mr. S. K. Gupta cannot be shut out as being inadmissible. According to him, the brief observation of this Court in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) cannot be construed as ratio decidendi binding on this Court or even obiter dictum but it is only a passing observation as there was no issue in that case as to whether the expert's testimony on typescript was admissible or not under the Evidence Act and consequently there was no discussion of law on that subject and in fact, there was no contest on the question of the admissibility of the evidence of an expert regarding typed documents. He would reiterate that the judgment in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) has not declared the law in regard to the admissibility of the testimony of an expert in regard to typescript and that the learned Judges have pronounced no independent opinion upon the same. In support of this submission, firstly he drew our attention to the following passage appearing in Woodrofee and Ameerali's Law of Evidence which reads thus :

"The Supreme Court has held in Hanumant v. State of M. P. (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) that the opinion of an expert that a particular letter was typed on a particular typewriting machine does not fall within the ambit of Section 45 of the Evidence Act and it is not admissible. It is respectfully submitted it may require consideration in the light of the modern knowledge indicated to some extent by the research materials which show that detection of forgeries of typewritten documents has become an integral part of the science of questioned documents."

8. Secondly, he brought to the notice of this Court the opinion expressed by the Law Commission in its Sixty-ninth Report (Vol. IV) in Chapter 17 captioned "Opinion of Expert" wherein the Law Commission after referring to the decision in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) stated thus :

"17.26 One could regard these observations as not laying down a definite view on the subject. But the words "rightly held" could be construed as approving the negative view.

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17.31 We, therefore, recommend that Section 45 should be amended so as to include identity of typewriting."

According to the learned Solicitor General, as viewed by Woodrofee and Ameerali in Law of Evidence and by the Law Commission in its Sixty-ninth Report, the word 'science' occurring in Section 45 should be held comprehensive enough to include the opinion of an expert in regard to the

transcript as well. But the acceptability or otherwise of an expert testimony on typewritten documents would depend upon the satisfaction of the Court about the specialised skill and experience of that expert on that subject. Finally, he requested that this Court notwithstanding the passing observation in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) be pleased to examine in detail the question of the admissibility or otherwise of an expert testimony on typescript and lay down the law on this subject.

9. Mr. R. K. Garg, senior counsel appearing on behalf of the respondent vehemently urged that the observation in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) cannot be discarded or brushed aside as a passing observation and if that argument is to be accepted by treating the view expressed by this Court as *gratis dicta* and to declare law on the subject ignoring the view in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) it would be tantamount to saying that the view expressed by the learned three Judges in that case as having been wrongly held and therefore, the argument of the learned Solicitor General has to be discountenanced. The proceeding of the trial which has already been considerably delayed on this issue which is only academic so far as this case is concerned and so the respondent should not be subjected to immeasurable hardship. According to him, the High Court has passed this impugned order only on the strength of the observation in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) and rejected the plea of the prosecution to permit it to examine Mr. S. K. Gupta as an expert and, therefore, the impugned order can neither be said to be incorrect nor it calls for any interference. He adds that this Court should not dissent lightly from the previous decision of this Court merely on the ground that the contrary view appears to be preferable and that the power of review must be exercised with due care and caution and that too only for advancing the public well being in the light of the surrounding circumstances. In support of this submission, he places reliance in *Bengal Immunity Company Ltd. v. State of Bihar* ((1955) 2 SCR 603, 630 : AIR 1955 SC 661 : (1955) TC 446). He continues to state that this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India only in cases where there is violation of the principles of natural justice, causing substantial and grave injustice to parties or which raise important principles of law requiring elucidation and final decision of this Court or which disclose such of the exceptional or special circumstances which merit the consideration of this Court on a particular issue. He cites the decision of this Court in *Bengal Chemical & Pharmaceutical Works Ltd. v. Workmen* (1959 Supp 2 SCR 136, 140 : AIR 1959 SC 633 : (1959) 1 LLJ 413) in support of his latter submission. Finally, he states that the facts and circumstances of the case on hand do not warrant examination of the request made by the appellant.

10. After bestowing our anxious consideration on the question of law involved, we without expressing any view at this stage on the observation made in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129), feel that the question with regard to the admissibility of the opinion of an expert on typescript should be examined in detail and decided. Needless to say that by the march of time, there is rapid development in the field of forensic science and, therefore, it has become imperative to match the said march of modern vistas of scientific knowledge, the question whether the opinion of an expert in regard to typescript would fall within the ambit of Section 45 of the Evidence Act has to be decided. In fact, when the SLP in this matter came up for admission, the bench considering the importance of the question involved made the following order:

"Special leave granted.

Since the question involved is important and is involved in many cases, it is desirable that it should be heard as early as possible and the matter be mentioned to Hon'ble

the Chief Justice for appropriate directions."

11. Taking the overall view of this matter, we feel that this important question of law involved in this case is to be examined in detail and decided by a larger bench as the judgment in Hanumant case (1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129) was rendered by three learned Judges of this Court. Since the matter is urgent, it may be posted for hearing at an earliest point of time so that the trial of the case may not be further delayed.

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