

CALCUTTA HIGH COURT

Golam Rahman

Vs.

King

Criminal Appeal No. 138 of 1948

(Blank and Lahiri, JJ.)

12.08.1949

JUDGMENT

Lahiri, J.

1. In April 1943, the Government of Bengal received reports from the Collector of Burdwan about acute economic distress in certain parts of that district and sanctioned certain sums of money on various dates amounting to a total of about 4 lacs under the Famine Code to be spent on Test Relief operations under the provisions of the said Code. These operations were carried on in 52 different centres through the District Board under the control of the Collector between the months of April and July 1943. The District Board, in its turn, carried out the operations by Agents who used to be employed on a commission basis. Purulis-Ambalgram road under P.S. Kethgram was one of the 52 Centres where Test Relief operation in the shape of earth work was taken up and one Gulzar Shaikh [who has since died] was employed as an agent at this Centre. Under Section 63 of the Famine Code read with para. 6 of the Famine Manual, the Collector directed that the Agent would employ his own men and the District Engineer would have to pay the Agent the following : (a) Cost of temporary staff employed and (b) Supervision allowance to the Agent vide Collector's order dated 11th May 1943-Ext. 1 (41), Acting under this order, the District Engineer authorized the Agent to appoint the following temporary staff (1) One Pay Master for every 600 laborers, (2) one Work Sircar for 500 labourers, (3) one *dafadar* for every 100 laborers [vide Ex. 68 (1)]. To supervise the work of the Agents there was to be a Supervisor under the District Board. The duties of the Agent in carrying out the works were specified in various circular orders and instructions issued by the District Engineer from time to time, as will appear from Exs. 68(2), 68(3), 68(4) and 68(B). The following were some of the more important duties of the Agents and Supervisors : (1) Men from neighboring districts are not to be employed for the relief works of the Burdwan District. (2) Agents should maintain a Muster Boll which will be signed by Supervisors in course of inspection. (3) Measurements of earth work are to be entered daily in Measurement Books to be maintained by the Agents and they are to be submitted once a week along with Muster Bolls and Pay-sheets to the District Engineer. (4) Measurements are to be checked regularly and Muster Bolls are to be checked daily by Supervisors and their initials are to be affixed at the end of the entries of each date. (5) Entries in Measurement Books, Pay-sheets and Muster Rolls are to be made without leaving any blank space, Supervisors and

Sub-overseers are to sign the pay-sheets and Muster Rolls whenever they visit any centre and corrections, if any, are to be signed by the Supervisor.

2. Exhibit 1 (29) shows that allowances at the rates of Section 6 and 4 p.c. were sanctioned for the Agents upon daily laborers employed by them up to 500, 501 to 2000 and above 2000 respectively.

3. The system followed in carrying out the earth work was as follows : (a) Gangs of Coolies working in a centre and consisting of males, females and children were employed in different batches working under a mate who was himself a coolie and also a representative of the coolies working under him and used to receive payments on behalf of all the members of his gang on affixing his thumb impressions on pay-sheets, (b) Attendance of coolies used to be recorded in muster rolls maintained for the purpose and pay-sheets used to be drawn up showing the quantity of earth work done by each batch. and the amounts of money paid by the Agent against the receipt containing the thumb impression of the mate to whom the payment is supposed to have been made and also the signature of the witness of payment, the signature of the Sarkar and a certificate by the Supervisor about the accuracy of the entries, (c) Daily wages were to be paid at the rate of -/8/- for a male and -/6/- or -/7/- for a female labourer against a daily output of 100 cubit feet of earth work. (d) The Agent used to receive payments from the District Board on production of periodical abstracts of pay-sheets certified as correct by the Supervisor.

4. One Santosh Kumar Bhattacharjya was the supervisor of the District Board and Ghulam Babaman, Mirza Ghulam Hoasain, Abdul Based and Gora Chand Chakravarty were members of the temporary staff maintained by the Agent Gulzar Shaikh (deceased) in the Purulis Ambalpur Section of the Test Belief operations. The prosecution case is that the deceased Agent had submitted a bill for Rs. 16,732-12-6 claiming the amount as actually spent by him against 21,09,322 cubic feet of earth work done in the Purulis Ambalpur Section and had received an amount of Rs. 16,599 in several installments from the District Board on the strength of pay-sheets submitted from time to time. As a result of depart, mental enquiry, however, it transpired that the total quantity of earth work shown in the pay-sheets was considerably in excess of the work that had been actually done, that payments alleged to have been made to mates had been artificially inflated by including the names of fictitious and non-existent persons in the muster rolls and by showing that a particular person had worked for a larger number of days than he had actually done and that payments were shown to have been made in the pay sheets against forged thumb impressions and in this way the District Board had been cheated to the extent of a considerable sum of money. The prosecution case further is that the accused named above along with one Abadhut Majhi entered into a criminal conspiracy to cheat the District Board of Burdwan by fabricating muster rolls and pay-sheets and making false entries as indicated above. One of the co-conspirators according to the prosecution case named Bholanath Majhi, made a confession at the time of the investigation and he has been examined as an approver in the case. A finger-print expert and a handwriting expert examined thumb impressions and the handwriting appearing in the different pay-sheets and compared them with the specimen thumb impressions and handwritings of the different accused taken in Court and as a result of his examination the finger-print expert gave it as his opinion that : (a) the specimen of the right thumb impression of the accused Ghulam Rahaman was identical with the finger-impressions in the pay sheets against the names of 108 mates who were named by the expert in his evidence; (b) the specimen of the left thumb impression of Ghulam Rahaman was identical with the thumb impressions in the pay sheets against the names of four mates; (c) the specimen of the right middle finger impression of

Ghulam Rahaman was identical with the finger impressions in the pay sheets against the names of four mates; (d) the specimen at the right thumb impression of the accused Mirza Ghulam Hossain was identical with the finger impressions in the pay sheets against the names of 39 mates; (e) the specimen of the left thumb impression of the accused Mirza Ghulam Hossain was identical with the finger impressions in the pay-sheets against the names of 66 mates; (f) the specimen of the left thumb impression of the accused Abdul Based was identical with the finger impressions in the pay sheets against the names of 15 mates; (g) the specimen of the left thumb impression of the accused Gora Chand Chakravarty was identical with the finger impressions in the pay-sheets against the names of thirty-one mates.

5. We need not refer to the opinion of the handwriting expert; because nothing hinges on that opinion in this appeal and that opinion has not also been relied upon by the Court below.

6. Upon the aforesaid allegations all the four appellants named (1) Ghulam Rahaman, (2) Mirza Ghulam Hossain, (3) Abdul Based, (4) Santosh Kumar Bhattacharjya were placed on their trial on a charge under Section 120B, Penal Code and besides that common charge Ghulam Rahaman was specifically charged under Section 467, Penal Code on 116 counts in respect of each thumb impression alleged to have been forged by him; Mirza Ghulam Hossain was similarly specifically charged under Section 467, Penal Code on 105 counts in respect of the thumb impressions alleged to have been forged by him; Abdul Based was similarly specifically charged under Section 467, Penal Code on 15 counts in respect of the thumb impressions alleged to have been forged by him Santosh Kumar Bhattacharjya was also specifically charged under Section 420/109, Penal Code on eight counts. Besides these four persons Gora Chand Chakravarty, who has not appealed to this Court, was also placed on the trial on charges under Sections 120B and 467, Penal Code, the charge under Section 467 being on 31 counts and Abadhut Majhi who has been acquitted was charged under Section 120B, Penal Code only.

7. It appears from the oral and documentary evidence in the case and it is not also disputed that the accused Santosh was employed as the Supervisor under the District Engineer and his duty was to sign the certificates in the pay sheets and generally to maintain the measurement books. The other four accused were members of the temporary staff employed by the Agent Gulzar Sheikh and no fixed duty was allotted to them and by turn one or other of them kept the muster roll or drew up the pay sheets or signed as witnesses of payment.

8. Under notification No. 495J, dated 17th February 1947, issued by the Government of Bengal under Section 269(1), Criminal Procedure Code, the trial was held by the Additional Sessions Judge of Burdwan with the aid of assessors, and the trial went on from day to day for a period of nearly three months from 26th January 1948 to 22nd April 1948. 406 witnesses were examined by the Court of the committing Magistrate and 357 witnesses by the Court of Session, because some of the witnesses examined by the committing Magistrate had died and others were not available and the evidence of still others was tendered for cross examination. Besides the oral evidence the prosecution produced hundreds of exhibits and Sub-exhibits to prove the complicity of the different accused. As a result of the trial all the assessors unanimously found the accused Abadhut Majhi not guilty of the offences charged against him and the learned Additional Sessions Judge accepted that finding and acquitted him. With regard to the remaining five accused, two of the assessors found them not guilty of the offences and the opinion was rejected by the learned Judge. One other assessor found the accused Gora Chand Chakravarty not guilty

under Section 120B but guilty under Section 467, Penal Code and the other accused guilty of all the charges against them. The learned Judge rejected the opinion of not guilty under Section 120B, Penal Code in favour of Gora Chand because the materials on the record do not afford any ground for differentiation between the charge under Section 120B and the charge under Section 467, Penal Code. The fourth assessor found all the accused except Abadhut Majhi guilty of all the charges against them and this opinion was accepted in its entirety by the learned Additional Sessions Judge. In the result the accused Santosh Kumar Bhattacharjya was sentenced to rigorous imprisonment for one year and to pay a fine of Rs. 150 for each of the two charges under Sections 120B and 420/109 and in default of payment of the aggregate fine of Rs. 300 to suffer rigorous imprisonment for three months more. Ghulam Rahaman and Mirza Ghulam Hossain were sentenced to rigorous imprisonment for one year and to pay a fine of Rs. 150 for each of the two charges under Sections 120B and 467, Penal Code and in default of payment of the aggregate sum of Rs. 300 to suffer further rigorous imprisonment for a further period of 3 months but the sentences of rigorous imprisonment to run concurrently; Abdul Based and Gora Chand Chakravarty were similarly sentenced to rigorous imprisonment for six months and to pay a fine of Rs. 100 for each of the two charges under Sections 120B and 467, Penal Code and in default of payment of the aggregate sum of Rs. 200 to suffer rigorous imprisonment for an additional period of two months, the sentences of rigorous imprisonment to run concurrently in each case. In awarding the sentences, the learned Judge very rightly took into consideration the impecunious condition of the accused and also the fact that they were helpless tools in the hands of the principal conspirator, the agent, named Gulzar Sheikh who had died. In the case of Gora Chand Chakravarty he rightly observed that this accused joined in the conspiracy at a very late stage and in the case of Abdul Based it was found that the number of instances in which he was implicated were fewer.

9. Against the aforesaid order of conviction and sentence the present appeal has been filed by four viz., Ghulam Rahaman, Mirza Ghulam Hossain, Abdul Based and Santosh Kumar Bhattacharjya. Out of these four, again, Santosh Kumar Bhattacharjya filed an application from jail praying for an order that his name might be struck off from the category of the appellants as he did not desire to prosecute the appeal. This petition is dated 17th September 1948, and the signature of the petitioner is attested by the jail clerk, Sailendra Nath Biswas.

10. Mr. Taluqdar appearing in support of the appeal has raised the following points : (1) that the trial has been vitiated by a mis-joinder of charges because more than three offences have been tried together at the same trial, and in support of this point reliance has been placed upon the well-known case of *Subramanis Iyer v. King-Emperor*¹, (2) Even if the joinder of charges be permissible under the law the accused in the present case

¹28 IA 257 : (25 Mad 61 PC)

have been bewildered by a plurality of charges and the prospect of a fair trial was endangered by the production of a mass of evidence tending by its mere accumulation to induce an undue suspicion against the accused and consequently the trial is bad. In support of this proposition reliance was placed upon the decision of the Bombay High Court in the case of *Queen-Empress v. Fakirapa*², and the case of *Alimuddi Naskar v. Emperor*³, (3) The prosecution under Section 120B, Penal Code is invalid in the absence of a sanction under Section 196A, Criminal Procedure Code (4) The procedure of taking the specimen thumb impression in Court, as followed in this case, is not permissible under the law. (5) Undue importance has been placed upon the evidence of the finger-print expert which cannot be accepted unless it is corroborated by

other evidence.

11. On the merits of the case it has been argued that the evidence adduced by the prosecution is unworthy of acceptance as a large number of witnesses examined in this case were concentrated in a police camp and deposed at the dictation of the police and the evidence of the executive engineer, Ramnath Chatterjee (P.W. 256) shows that his measurements are unreliable as they were undertaken about a year after the earth work had been completed and after a substantial portion of the work done had been washed away by flood. It is urged that the deficiency in earth work found on measurement by the Executive Engineer is the foundation of the whole structure of the prosecution case and if that foundation is found to be rotten the whole case fails. We propose to deal with the points raised, one by one.

12. On the first point about misjoinder of charges Mr. Chatterjee appearing for the Crown has strongly relied upon the decision of the Judicial Committee in the case of *Babulal Chukani v. Emperor*⁴, in which Lord Wright made the following observations on Section 239(d), Criminal Procedure Code : This clause is expressly an exception from Section 233 and enables a plurality of offences to be dealt with in the same trial. But it does not import either expressly or by implication the limitation set out in Section 234 according to which not more than three offences, of the same kind committed within the space of 12 months can be tried together or the limitation contained in Section 235(1) under which more offences than one committed by the same person can only be tried together, if they are in one series of acts so connected together as to form the same transaction in which case there is no specific limit of number. Nor is there any limit of the number of offences specified in Section 239(d). The one and only limitation there is that the accusation should be of offences 'committed in the course of the same transaction' It is enough for the present case to say that if several persons conspire to commit offences and commit overt acts in pursuance of the conspiracy [a circumstance which makes the act of each and all the conspirators] these acts are committed in the course of the same transaction which embraces the conspiracy and the acts done under it. The common concert and the agreement which constitute the conspiracy serve to unify the acts done in pursuance of it.

13. The charge of conspiracy as framed against; all the accused in the present case runs as follows :

That you between 29th April and 17th June 1943, at Purulis and at other places agreed

²15 Bom 491

⁴65 IA 158 : 42 CWN 621 : (AIR 1938 PC 130 : 39 Cr. LJ 452)

³52 Cal 253 : (AIR 1925 Cal 341 : 26 Cr. LJ 487)

with one another and with others to do or cause to be done Illegal acts, viz., to cheat the District Board of Burdwan and some of its officers by dishonestly inducing them to recommend payments to, pass and deliver moneys on false bills to Gulzar Sheikh, since deceased, which is an offence under Section 420, Penal Code, in connection with the test Relief operations on Purulis-Ambalgram Road Section and also for that purpose to fabricate Muster Rolls and Pay Sheets and Abstracts by making false entries therein and committing forgeries of thumb impressions and signatures therein and also to fabricate Measurement looks and Abstracts of Pay Sheets, daily reports and other documents and the aforesaid illegal acts, viz., fabrication of Muster Rolls, Pay Sheets, Abstracts, etc., by making false entries, were done in pursuance of the said agreement and thereby committed an offence punishable under Section 120B, Penal Code.

14. In furtherance of the dominant object of the conspiracy the appellants before us are alleged to have forged a large number of thumb impressions on pay sheets and for these specific acts of forgery, charges under Section 467, Penal Code, on 116 counts were framed against the appellant Ghulam Rahaman, charges under Section 467 on 105 counts were framed against the appellant Mirza Ghulam Hossain and charges under Section 467 on 15 counts were framed against the appellant Abdul Baaed. A sample of the specific charges under Section 467, Penal Code, is given below : that you on or about 8th May 1943 forged a certain document purporting to be a valuable security to wit, a pay sheet Ex. 19(5) by putting your finger impression Ex. 19(f) purporting to be the left thumb impression of Sadu Ram with intent that fraud may be committed upon the District Board and its officers by acting upon the pay sheet with a forged finger impression as a genuine one and thereby committed an offence punishable under Section 467, Penal Code, etc.

15. It is remarkable that each of these specific charges which were 236 in number against the three appellants Rahman, Hossain, and Baaed specifically mentions the thumb impression which is alleged to have been forged, the pay sheet on which it was affixed and also the purpose for which it was forged. The community of purpose which serves to unify the specific acts and makes them parts of the same transaction is the intention to cheat the District Board and the modus operandi is the forgery of the thumb impressions of different persons on the different pay sheets. It is therefore clear that the present case comes under clause (d) of Section 239, Criminal Procedure Code and we are bound by the decision of the Judicial Committee to hold that in such a case the limitation as to the number of offences contained in Section 234, Criminal Procedure Code does not apply. The first point about mis-joinder of charges must therefore be overruled.

16. The second point relates to the alleged bewilderment of the accused resulting from a plurality of charges. Mr. Taluqdar has argued that even if the joinder of so many charges is permissible under the law it is improper as it tends to prejudice the accused. In support of this proposition Mr. Taluqdar cited the decisions of *Queen-Empress v. Fakirappa*⁵, and *Alimuddi Naskar v. Emperor*⁶, The Bombay decision does not really support the proposition for which it was cited, because in that case it was held that the different criminal acts charged against the four accused were not parts of the same transaction within the meaning of Sections 235 and 239, Criminal Procedure Code of 1882 and it was

⁵15 Bom 491

⁶52 Cal 253 : (AIR 1925 Cal341 : 26 Cr. LJ 487)

held that the accused were likely to be bewildered by having to meet many disconnected charges. It was pointed out that the alleged criminal acts were separated by distinct intervals of time and place and that the identity of circumstances required to constitute one transaction was impaired by differences of time, place and persons present. We have not been able to find in this decision any support for the view that even if the joinder of charges be permissible under the law, a plurality of charges is improper as it bewilders the accused. In the case of *Alimuddi Naskar v. Emperor*⁷, seven offences of murder were combined in one charge and Mukherji, J. observed at p. 264 as follows : then first part of Section 233, Criminal Procedure Code lays down that for each distinct offence there shall be a separate charge. This provision is mandatory, and seven different charges should have been framed for these seven offences of murder which appear to have been huddled into the first count as it stands. His Lordship then points out that the joinder of several charges was permissible in that case in view of the fact that the offences were committed

in pursuance of one conspiracy. Still however, the accused were prejudiced by reason of the fact that several charges of murder were huddled into one count as it appeared from the evidence that there was no foundation for the charges as regards most of the accused. The case before us avoids the mischief pointed out by Mukherji, J., by including each offence of forgery in a separate count. The sample of the charge under Section 467, quoted above, shows that each offence was set out with sufficient clearness and precision against each accused and that there was no ambiguity or obscurity with regard to the accusation the accused had to meet. We have not been able to read the decision in Alimuddi Naskar's case, 52 Cal 253 : (AIR 1925 Calcutta 341 : 26 Cr. LJ 487), as laying down the proposition that even in a case where the charges are absolutely clear and unambiguous and strictly in conformity with Section 233, Criminal Procedure Code, the accused must be deemed to have been prejudiced merely by the plurality of counts, the prosecution case being that the appellant Ghulam Rahman [to take only one instance] committed 116 offences of forgery in pursuance of the conspiracy to cheat the District Board. We fail to see how the prejudice to him would have been less if he had been put on trial in 39 different cases with three counts in each. On the contrary we think that one trial for all the different counts set out with sufficient clearness and precision is less prejudicial and less embarrassing from the point of view of the defense. We are accordingly unable to give effect to the second point raised by the appellants.

17. The third point is that the prosecution under Section 120B, Penal Code, is invalid for want of sanction under Section 196A, Criminal Procedure Code. It is admitted that sub-section (1) of Section 196A, Criminal Procedure Code does not apply to the present case and the only question is whether it comes under sub-section (2) which requires that the object of the conspiracy must be to commit either a non-cognizable offence or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards. If the object of the conspiracy is a cognizable offence punishable with imprisonment for two years or upwards no sanction is required under Section 196A(2). From the charge of conspiracy set out above, it is clear that the principal object was to cheat the District Board which is an offence under Section 420, Penal Code and a cognizable offence punishable with imprisonment for 7 years. Such a case does not fall within the mischief of sub-section (2) of Section 196A. It is true that in the charge of conspiracy it is also alleged that for the purpose of cheating the accused committed

752 Cal 253 : (AIR 1925 Cal 341 : 26 Cr. LJ 487)

forgeries of thumb impressions which are offences under Section 467, Penal Code and non-cognizable offences. The mere fact that the subsidiary acts, which are means to the achievement of the principal object of the conspiracy, are non cognizable offences will not attract the operation of Section 156A(2) provided the principal or dominant object falls outside its scope. This principle was laid down by the Bombay High Court in the case of *Ram Chandra Rango v. Emperor*⁸, and followed by a Division Bench of this Court presided over by Blank and Ellis, JJ. in the case of *Paresh Nath v. Emperor*⁹. The result of these authorities, with which we respectfully agree, is that there is difference between the object of a conspiracy and the means adopted to achieve that object and if the object is not hit by Section 196A(2) it does not matter whether that object is sought to be attained by non-cognizable offences. Accordingly we hold that Section 196A, Criminal Procedure Code does not apply to the present case and the third point fails.

18. The fourth point of law raised in the appeal relates to the legality of taking specimen thumb impressions in Court. Mr. Taluqdar has argued that this procedure is wholly unwarranted and

relied upon *Bazari v. King Emperor*¹⁰, where it was observed that there is no law which authorises a Court to ask the accused to do something which may have a tendency to incriminate them. It is remarkable that in this case the attention of the Court was not invited to Section 73, Evidence Act. Tola decision was dissented from by the same High Court in the cases of *Basgit Singh v. King Emperor*¹¹, and *Zahuri Sahu v. Emperor*¹², in which reliance was placed upon Section 6 of Act XXXIII [33] of 1920. [Identification of Prisoners Act] which authorises a Magistrate for the purpose of any investigation under the Criminal Procedure Code to direct finger impression to be taken. In the case of *Public Prosecutor v. Kanda Samit*¹³ the Madras High Court has dissented from the view taken by the Patna High Court in Bazari's case, (1 pat. 242 : AIR 1922 Patna 73) and held that it is not illegal or improper for a Magistrate to direct the finger print of the accused to be taken in the course of a criminal trial where he is charged with the offence of forgery of a finger print. The Bombay High Court has taken the same view as the Madras High Court in the case of *Emperor v. Ram Rao*¹⁴, In the case of *Superintendent and Remembrance of Legal Affairs, Bengal v. Kiran Bala Dasi, reported in*¹⁵ C.C. Ghosh and Duval, JJ., it was held that the procedure of directing the specimen of the thumb impression of the accused to be taken was permissible under Section 5 of Act XXXIII [33] of 1920 as also under illustration (c) of Section 45, Evidence Act but no reference was made to the provisions of Section 73, Evidence Act. In *Kishori v. Emperor*¹⁶, there was a difference of opinion between Lort-Williams and Jack, JJ. on the question whether Section 73, Evidence Act applied to such a case although it was not necessary for the learned Judges to decide the point. The obiter dictum of Lort Williams, J. was to the effect that it was doubtful whether the word person in Section 73 applies to an accused person whereas the obiter dictum of Jack, J., was to the effect that Section 73 does apply to the accused in a criminal trial. The question of the applicability of Section 73 to the accused in a criminal trial was decided in the affirmative by a Full Bench of the Rangoon High Court in *King. Emperor V. Nga Tun Alaing*¹⁷,

⁸ AIR 1939 Bom 129 : 41 Bom LR 98 : 40 Cr. LJ 579)

¹⁰ Pat 242 : (AIR 1922 Pat 73)

⁹ 47 Cr. LJ 710 : (AIR 1947 Cal 32)

¹¹ 6 pat 305 : (AIR 1928 Pat 129 : 28 Cr. LJ 850)

¹² 6 Pat 623 : (AIR 1928 Pat 103 : 28 Cr. LJ 1028)

¹⁴ 56 Bom 304 : (AIR 1932 Bom 406 : 33 Cr. LJ 666)

¹³ 50 Mad 462 : (AIR 1927 Mad 696 : 27 Cr. LJ 1251)

¹⁵ 30 CWN 373 : (AIR 1926 Cal 531 : 21 Cr. LJ 409)

¹⁶ 39 CWN 986 : (AIR 1935 Cal303 : 36 Cr. LJ 921)

¹⁷ 1 Bang. 759 : (AIR 1924 Bang 115 : 26 Cr. LJ 108 FB)

where it was pointed out that Section 342, Criminal Procedure Code, does not prevent the application of Section 73, Evidence Act to a criminal trial. Young, C.J. observed as follows :

Section 342, Criminal Procedure Code relates only to oral questioning of the accused and does not prohibit a direction to him to make a thumb impression, any more than it prohibits a direction to him to face a witness in order that he may be identified.

Section 73, Evidence Act is quite general in its terms and applies to all cases and there is no exception in favour of an accused person. If there is nothing in the Criminal Procedure Code which precludes its application to criminal trials we do not see any reason why the plain language of the section should not be given its full effect. The operation of any other Act is, of course, expressly saved by Section 2, Evidence Act. We agree with Young, C.J. that Section 342, Criminal Procedure Code does not make Section 73, Evidence Act inapplicable to criminal trials. We accordingly hold that the procedure followed in taking specimen thumb impressions under the direction of the Court is in strict compliance with Section 73 and Section 45, ill. (c), Evidence Act and also Section 5 of Act XXXIII [33] of 1920. The fourth point raised by Mr. Taluqdar is accordingly overruled.

19. We have now to address ourselves to the question whether the evidence on the record, which is voluminous, is sufficient to justify the order of conviction and sentence. [After discussing the evidence and holding that the charges under Section 467, Penal Code and conspiracy were proved his Lordship proceeds.]

20. There is an approver in the case whose name is Bholanath Majhi and who has been examined as P.W. 6. Before his examination in Court he made a confession which is EX. 2. He has proved the association and common concert of the different accused for the purpose of cheating the District Board by forging thumb impressions and showing inflated numbers and figures in Muster Rolls and pay sheets. From the discussion of the prosecution evidence on the heads of forgery and also of conspiracy we are satisfied that his evidence has been corroborated in material particulars by independent and reliable evidence. The best corroboration of the approver's evidence comes from the acts of the accused in affixing their thumb impressions against the names of fictitious persons and also against the names of living persons who never worked.

21. On behalf of the appellants, Mr. Taluqdar strenuously argued that the evidence of the fingerprint expert is unworthy of acceptance and in any case it is unacceptable without corroboration. On the first branch of this argument it is said that the so called expert is not a real expert, and his omission to take photographs of the impugned thumb impressions has vitiated his conclusions. From the evidence of the expert it appears that he received training at the Finger Impression Bureau in Calcutta under the D.I.G. C.I.D. and passed the examination and since 1939 he has been serving in that department. At the time he examined the thumb impressions of this case he had nearly seven years' experience. With regard to photographs it appears that P.W. 242 confined his opinion only to these thumb impressions in which the ridges are quite clear and distinct and avoided any opinion with regard to thumb impressions which are blurred or smudged in which cases photographs are necessary. For example the expert did not give any opinion with regard to Exs. 26 and 29 which are blurred. This precaution eliminates the possibility of any mistake resulting from the omission to take photographs. We have carefully gone through the evidence of the expert and we have also compared some of the specimens with the disputed thumb impressions with the help of magnifying glasses to test the conclusions arrived at by the expert and without pretending to have any expert knowledge, we can say that we are in general agreement with the opinion of the expert. The learned advocates appearing for the defence also did not point out any thumb impression with regard to which the opinion of the expert might be said to be erroneous. In these circumstances we cannot reject the testimony of the expert as unacceptable. Mr. Taluqdar next contended that at all events, no conviction can be based upon the opinion of the expert without corroboration by independent evidence, and relied upon the decision in the case of *Harendra v. Emperor*¹⁸, where S.K. Ghose, J., sitting with Lord-Williams, J. observed as follows : I do not think that it can be laid down as a rule of law that it is unsafe to base a conviction on the uncorroborated testimony of a finger print expert. The true rule seems to be one of caution, that is to say, the Court must not take the expert's opinion for granted, but it must examine his evidence in order to satisfy itself that there can be no mistake, and the responsibility is all the greater when there is no other evidence to corroborate the expert.

We respectfully agree with the observances quoted above but in our judgment they only mean that the Court cannot delegate its authority to the expert but has to satisfy itself as to the value of the evidence of the expert in the same way as it must satisfy itself as to the value of any other evidence. We have to point out, however, that in the case before us it cannot be said that there is

no evidence to connect the accused except the evidence of the expert. From the evidence which we have discussed above it will appear that finger prints of imaginary persons and finger prints of persons who exist but never worked, were affixed to the pay sheets and the evidence of the expert was utilized only for the purpose of connecting the different accused with the different faked thumb impressions. Moreover the thumb impressions with which we have to deal are not casual or accidental ones but deliberately affixed for the purpose of giving a valid discharge to the Agent. We cannot also lose sight of the fact though the evidence of a handwriting expert is frequently found to be faulty, the evidence of a thumb impression expert is more reliable, because with regard to finger prints it has never been found that two finger prints are identical in all respects. As already indicated, we have for ourselves tested the opinion of the expert examined in this case and we accept his evidence as reliable.

22. Mr. Taluqdar has also argued that the foundation of the prosecution case is the deficiency of the earthwork undertaken in the course of the Test Relief Operations and as the prosecution has failed to prove any deficiency the whole case fails. The evidence of the Executive Engineer (P.W. 256) Ram Nath Chatterjee has been placed before us in this connection and it has been pointed out that he took measurements about a year after the earthwork had been completed and after a considerable portion of the work done had been washed away by flood and rain. It is undoubtedly true that it appears from the evidence of P.W. 256 Ramnath Chatterjee who was the Executive Engineer from May 1939 to June 1944, that he submitted his report in July 1944 whereas the charges framed against the appellants cover the period beginning from 29th April 1943 and ending with 17th June 1943. It is also true that portions of the work done had been washed away by natural causes; but the Executive Engineer gave his opinion about deficiency after making an allowance of 18½ p.c. for sinking, wastage etc. But the more serious objection to this argument is that it does not form the subject-matter of any of the charges against any of

¹⁸³⁵ CWN 863 : (AIR 1931 Cal 441 : 32 Cr. LJ 1001)

the appellants. Far from being the foundation of the prosecution case it may be said that the prosecution case does not suffer in the least if this part of the evidence be totally excluded from consideration. From Ex. 1 (29) it appears that the remuneration of the Agent depended on the number of coolies employed by him and the prosecution case, as far as we have been able to understand it, is that the Agent used to draw larger amounts of money than were really due to him by falsely and dishonestly inflating the number of coolies and the amounts paid to them. The samples of the charges which we have quoted in an earlier part of the judgment will confirm this conclusion.

23. The last argument of Mr. Taluqdar is that a large number of witnesses examined by the prosecution in this case were concentrated in police camps and they deposed at the dictation, of the police and as such their evidence is unworthy of acceptance. This argument was dealt with by the learned Judge in his judgment and we have nothing to add to what has been said by him. As has been pointed out by the learned Judge these witnesses are illiterate and improvident village folk for whom suitable accommodation could not be found in the town. The learned Judge accepted only so much of their evidence as received corroboration from other reliable evidence on the record. In our opinion this was the most proper thing to do in the circumstances of the present case.

24. A feeble attempt was made to prove that the approver's evidence as to the complicity of the appellants has not been corroborated by any independent evidence and that the appellants were

not named by the approver in his confession EX. 2. With regard to the former, it is sufficient to state that the prosecution evidence which we have already discussed will show that it does not bear a moment's scrutiny. The evidence adduced by the prosecution is so strong that the findings arrived at by the Court below can be supported even without any reference to the approver's evidence. With regard to the confession it is clear that it purports to give only a bare outline of the prosecution case without the details. As we have accepted the evidence of the finger print expert and the evidence of other witnesses to have proved that the names of imaginary persons were introduced into the muster rolls and pay sheets it does not matter whether or not the appellants' names were mentioned in the confession.

25. The result of the foregoing discussion is that the appellants have been rightly convicted. On the question of sentence we find that the learned Judge took into account, the fact that the appellants committed the offences under pressure of poverty and that they were mere tools in the hands of the principal offender Gulzar Sheikh who has died. In this view of the matter we do not think we shall be justified in interfering with the sentences passed by the Court below.

26. Before parting with this case we desire to place on record our grateful appreciation of the assistance we have received from Mr. Harideb Chatterjee who has taken enormous pains in placing before us a very helpful analysis of the huge mass of documentary and oral evidence produced by the prosecution.

27. The appeal is accordingly dismissed. The appellants will surrender to their bail bonds and serve out the remaining portion of their sentences. We have not specifically dealt with the case of the appellant Santosh Kumar Bhattacharjya because he has withdrawn his appeal.

Blank, J.

28. I agree.

Appeal dismissed.