
(2013) 09 AHC CK 0076

Allahabad High Court (Lucknow Bench)

Case No: Criminal Revision No. 26 of 2002

Ramakant Dubey

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Sept. 5, 2013

Citation: (2013) 83 ALLCC 794

Hon'ble Judges: Arvind Kumar Tripathi, J

Bench: Single Bench

Advocate: Anil Kumar Tripathi and V.P. Pandey, for the Appellant; Bireshwar Nath, for the Respondent

Judgement

Arvind Kumar Tripathi, J.

Heard Sri Anil Kumar Tripathi, learned Counsel for the revisionist and Sri Bireshwar Nath, learned Counsel for respondent. This criminal revision has been filed by Rama Kant Dubey, son of late Sri Ram Adhar Dubey, resident of Village-Dhaskari, P.S. Bhadohi, District Bhadohi (Varanasi) challenging the order dated 15.1.2002 passed by Additional District and Sessions Judge-8th, Lucknow in Criminal Appeal No. 1 of 1998 by which the criminal appeal filed against conviction order dated 16.12.1997 passed by Special Judicial Magistrate (CBI) was dismissed.

2. As per prosecution version, a first information report was lodged by Superintendent of Police on 29.1.1986 that accused was working as an agent in National Insurance Company, Bhadohi Branch Office Varanasi. He has moved an application for appointment on the post of Inspector/Development Officer in the year 1985. But due to certain reasons his name was not considered. After that a recommendatory letter was received in the Office of Regional Manager National Insurance Company by Sri G.S. Narang the Regional Manager. The letter was allegedly written by Secretary, Sri S. Singh allegedly from Prime Minister's residence which was found forged. On this First Information report, a case under sections 420/511/468/471 IPC was registered. The matter was investigated by CBI, Lucknow and charge-sheet was submitted against the accused. At the time of trial, charge under sections 420, 468 and 420 read with section

511 IPC was framed against the accused who pleaded not guilty and claimed to be tried.

3. Prosecution in order to prove its case, examined PW1 M.M.S. Beg, Branch Manager, National Insurance Company, P.W.2 B.R. Khatri retired Senior Divisional Manager National Insurance Company, P.W.3 G.S. Narang, retired Assistant Manager, P.W.4 Ashok Babu, Inspector C.B.I., P.W. 5 Amar Singh, Handwriting Expert and P.W. 6 Om Prakash Mishr, section Officer (Administration) Prime Minister's Office. Documentary evidence was adduced from the side of prosecution which is the envelope containing that letter Exhibit-K-1 to K-16. Learned Court below after going through the evidence and hearing the parties convicted the accused under sections 468, 471, 420 read with section 511 IPC and convicted him to undergo one year simple imprisonment in each section and Rs. 500/- fine and in default of payment of fine he was directed to undergo one month simple imprisonment.

4. Appeal against that order was preferred being Criminal Appeal No. 1/98, which too was dismissed on 15.1.2002. Feeling aggrieved this criminal revision has been filed.

5. It was argued from the side of the revisionist that the letter which is alleged to be forged has not been produced in original. Photostat copy was produced and proved without comparing with the original. It was also submitted that the sample handwriting was compared by the handwriting expert from that of the photostat and the entire judgment is based on conjectures and surmises.

6. It was also submitted that without original being proved no case of forgery is made out. It was also submitted that the expert report is very weak type of evidence and without any corroboration it is dangerous to convict the accused. It was also submitted that statement of the accused u/s 313 Cr.P.C. is not evidence and no conviction can be based on the basis of the statement u/s 313 Cr.P.C. It was also submitted that the statement u/s 313 Cr.P.C. should be read as a whole and not as a part. Without considering the statement u/s 313 Cr.P.C. as a whole, the conviction by the Trial Court and dismissal of appeal both are erroneous. It was also submitted that both the Courts have not considered the evidence in proper perspective and thus the finding is perverse.

7. This Revisional Court has not been entrusted with the powers of Appellate Court. As this Court has only to see the irregularity and illegality in the order and for deciding that whether the order is perverse, analysis of the evidence can be done.

8. In the First Information Report which was lodged on 29.1.1986 at about 10 am in Police Station-Bhadohi alleges that Ramakant Dubey attempted to commit the offence of cheating for getting himself appointed at the post of Development Officer/Inspector of NIC, Bhadohi, Varanasi by adopting fraudulent means inasmuch as he sent/got sent a forged recommendation letter No. Patrank 2/Delhi/34/3 dated 21.1.1985 purported to have been issued by one Sri S. Singh, Secretary to the Prime Minister of India addressed to G.S. Narang, Regional Manager, NIC, Lucknow with copy to Divisional Office, NIC,

Varanasi for favour of his appointment at the post of Development Officer/Inspector at NIC, Bhadohi, Varanasi. List of annexures shows that a photostat letter was sent purportedly issued from Prime Minister's House New Delhi. This clearly goes to show that a photo-stat letter was sent to Sri G.S. Narang, Regional Manager, NIC, Lucknow and another Photostat copy was sent to Divisional Office, NIC, Varanasi. This clearly means to say that there was no original, which was produced in the Court and the accused was not confronted with the original copy of that alleged recommendation letter. It also clearly goes to show that the handwriting expert has given his opinion on the basis of examination of writing on photostat letter.

9. After evidence, he has in his statement u/s 313 Cr.P.C. denied that the matter written in Exhibit K-2 Q-5 and Q-6 is written in his own handwriting. He has only admitted that application Exhibit K-2 is under his signature. He has further admitted that during investigation his handwriting sample was taken by the Investigating Officer. He has further stated that previously a criminal case under sections 43 of 1983 has proceeded against him in which he has been acquitted and the prosecution has filed a criminal appeal which is pending.

10. A perusal of the Trial Court judgment reveals that the only basis of conviction is expert report of handwriting and certain admissions of revisionist u/s 313 Cr.P.C. There is no corroborative evidence that this letter was sent by the accused.

11. In the case of [S. Gopal Reddy Vs. State of Andhra Pradesh](#), the Apex Court has held as under;

The evidence of an expert is a rather weak type of evidence and the Courts do not generally consider it as offering "conclusive" proof and, therefore, safe to rely upon the same without seeking independent and reliable corroboration. In [Magan Bihari Lal Vs. The State of Punjab](#), while dealing with evidence of a handwriting expert, this Court opined:

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 and Another Vs. State of Uttar Pradesh](#), 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 Mishra Vs. Mohammad Isa](#), that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in [Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and](#)

[Others](#), 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 Vs. The State of Madhya Pradesh](#), and it uttered a note of caution pointing out that it would be risky to find a conviction solely on the evidence of a handwriting expert before acting upon such evidence, the Court must always try to see whether it is corroborated by other evidence, direct or circumstantial.

12. In the case of [Magan Bihari Lal Vs. The State of Punjab](#), the Apex Court has held in Para 7 as under:

In the first place, it may be noted that the appellant was at the material time a Guard in the employment of the Railway Administration with his Headquarters at Agra and he had nothing to do with the train by which Wagon No. SEKG. 40765 was dispatched from Munda to Bikaner, nor with the train which carried that wagon from Agra to Ludhiana. He was not a Guard on either of these two trains. There was also no evidence to connect the appellant with the theft of the blank Railway Receipt at Banmore Station. It is indeed difficult to see how the appellant, who was a small employee in the Railway Administration, could have possibly come into possession of the blank Railway Receipt from Banmore Station which was not within his jurisdiction at any time. It is true that B. Lal, the handwriting expert, deposed that the handwriting on the forged Railway Receipt Ex. PW 10/A was that of the same person who wrote the specimen handwritings Ex. 27/37 to 27/57, that is the appellant, 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 presidential 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 and Another Vs. State of Uttar Pradesh](#), 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 Mishra Vs. Mohammad Isa](#), that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in [Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others](#), 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 Vs. The State of Madhya](#)

[Pradesh](#), 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. It is interesting to note that the same view is also echoed in the judgments of English and American Courts. Vide *Gurney v. Longlands* (1822) 5 B & Ald 330, and *Matter of Alfred Fogter's Will*, 34 Mich 21. The Supreme Court of Michigan pointed out in the last mentioned case: "Every one knows how very unsafe it is to rely upon any one's opinion concerning the niceties of penmanship--Opinions are necessarily received, and may be valuable, but at best this kind of evidence is a necessary evil." We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence being opinion evidence, is by its very nature, weak and infirm and cannot of itself form the basis for a conviction. We must, therefore, try to see whether, in the present case, there is, apart from the evidence of the handwriting expert B. Lal, any other evidence connecting the appellant with the offence.

13. A careful perusal of the above decision of Apex Court it is clear that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This type of evidence being opinion evidence is weak and infirm and cannot of itself form the basis of conviction.

14. There is one more and second aspect in this case, admittedly photostat letter was received in the Office of Regional Manager, NIC, Lucknow. Admittedly, the handwriting expert never had occasion to examine the original document, he has examined and compared the sample in handwriting of accused from the photostat letter. Naturally, the handwriting expert of indicating in examining the pain pressure and pain pause.

15. A perusal of the record also reveals that the photographs taken by the handwriting expert and its negative are not in the file.

16. A perusal of the statement of PW 5 (Amar Singh) reveals that he has received the documents from the Office of CBI, Lucknow for comparing the sample. The specimen documents are marked 5 to 16 and he compared the specimen handwriting with photostat handwriting. He has nowhere stated that he has taken photographs himself and enlarged it. He has also not filed the photographs and negatives of the photo taken of original and specimen handwriting. He has further admitted in cross-examination when original document is not given to him. He presumes that the photostat is correct photostat of the original and there is no error in the photostat.

17. This statement clearly goes to show that original documents has not been compared. It is also very clearly that until and unless, the original is proved to be forged. The photostat cannot be said to be a forged document. This creates doubt in the prosecution version.

18. Now coming to the statement u/s 313 Cr.P.C. of which learned Trial Court has given emphasis on the fact that though, the accused had denied his handwriting on the disputed document but it is proved by the evidence of handwriting expert. The Trial Court has further given specific finding in his judgment that the forged document has not been proved to be sent in the Divisional Office, but it has been proved that this forged document has been sent to Divisional Manager Lahura Veer, Varanasi in this finding, the Trial Court is blank head and call to them if the prosecution is not proved that any forged letter was sent in the divisional office then how can be said a forged letter was sent in divisional office. The Trial Court has further held that prosecution has not proved the seizure memo by which the forged recommendatory letter was seized orders.

19. The statement of that accused u/s 313 Cr.P.C. is concerned, in the Case of Devendra Kumar Singla v. Raider Kirshan Singla 2004 (49) ACC 835 (SC), the Apex Court has held that the statement u/s 313 is not evidence. It is only the accused's stand or version by way of explanation, when incriminating materials appearing against him are brought to his notice.

20. In the case of [Banamali Samal Vs. State of Orissa](#), , the Apex Court has held that conviction cannot be based on the statement of accused alone.

21. In the case of [Mohan Singh Vs. Prem Singh and Another](#), , the Apex Court has held in Para 28 as under:

The statement made in defence by accused u/s 313, Cr.P.C. can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement u/s 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled the statement u/s 313 Cr.P.C. of the accused can either be relied in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See [Nishi Kant Jha Vs. The State of Bihar](#), .

In this case the exculpatory part of the statement in Ex. 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury which the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself u/s 342 Cr.P.C. to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13th October, 1961 negatives both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in the river Patra, the amount of bleeding and the washing of the blood-strains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and shoes. More than that the knife which was discovered on his person was found

to have been stained with blood according to the report of the Chemical Examiner. According to the postmortem report this knife could have been the cause of the injuries on the victim. In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Ex. 6 the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.

22. In the case of [Miss Hardevi Malkani Vs. State and Another](#), this Court has held in Para 21 as under:

21. Reliance has been placed on the case of [Mohideen Abdul Kadir and Others Vs. Emperor](#). His Lordship the Chief Justice of the Madras High Court relying on an earlier decision in *Basant Kumar Ghatak v. Queen Empress* (1903) ILR 26 Cal. 49, took the view that a gap in the evidence of the prosecution cannot be filled by any statement made by the accused in his examination u/s 342 of the Code of Criminal Procedure. I am in respectful agreement with the view taken in that case and I am of opinion that even where a matter had been admitted by the accused in his or her statement u/s 342 Cr.P.C. the prosecution had to prove such facts, for want of proof of which, the prosecution must fail. I have, therefore, to examine the evidence on the record in this case in order to find out if Ex. Ka. 2 has been proved according to law or not.

23. From the above discussion it is clear that prosecution has failed to prove the original document. The original document was even not produced in the Court. There is no evidence to show that the allegedly that the photostat letter sent to the Office of Regional Manager and Divisional Manager, National Insurance Company are true, photostat of the original document. The expert PW 5 has given his finding on the basis of photostat letter comparing it with the admitted handwriting. He himself has admitted that he has presumed that the photostat letter is true photo-stat of the original letter. Thus, there is nothing on record to show that the original letter was in the handwriting of the accused person. In the statement u/s 313 Cr.P.C., the accused has not admitted that he has sent the letter to the Regional Manager and Divisional Office.

24. The case is totally based on circumstantial evidence and there are big gaps in the chain of events.

25. Doubt would be called reasonable, they are free from zest of abstract speculation. Law cannot afford any favour it other than truth. To constitute reasonable doubt, it must be free from an over emotional response.

26. In the case of *State of U.P. v. Ashok Kumar Srivastava* 1991 (Suppl.) ACC 325, and in the case of [Inder Singh and Another Vs. The State \(Delhi Administration\)](#), the Apex Court has held that a reasonable doubt is not a imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence of the case. If a case is proved perfectly, it is argued that it is artificial, if a case

has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. Vague hunches cannot take place of judicial evaluation.

27. Judging the instant case from the above parameters it is clear that the prosecution has not been able to prove the case beyond reasonable doubt and both the Courts have erred in convicting the accused on the basis of evidence available on record and the Appellate Court has also erred in dismissing the appeal.

28. From the above discussion, I am of the view that the findings of both the Courts below are perverse and not based on record and liable to be set aside. In the result, the criminal revision is liable to be allowed, and is hereby allowed. The revisionist/accused Ramakant Dubey is acquitted giving benefit of doubt. The accused is on bail and he need not surrender before the Trial Court.