(2012) 06 GAU CK 0061

Gauhati High Court

Case No: Criminal Revision NO. 74 of 2004

Sri Dhwajendra Chandra Roy		APPELLANT
	Vs	
State of Assam and others		RESPONDENT

Date of Decision: June 6, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 8
- Penal Code, 1860 (IPC) - Section 409, 420, 467, 468, 477A

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: P. Bora, Mr. H. Roy, Mr. N. Sinha and Mr. K.C. Roy, for the Appellant; D. Das, Addl. P.P., for the Respondent

Final Decision: Dismissed

Judgement

I.A. Ansari

1. By judgment and order, dated 30.12.2002, passed, in GR Case No.49/97, by the learned Chief Judicial Magistrate, Kokrajhar, the accused-petitioner was convicted u/s 468 IPC and, following his conviction, he was sentenced to undergo simple imprisonment for seven years and pay fine of Rs.1,000/- and, in default thereof, undergo simple imprisonment for a further period of three months. The case of the prosecution, as unfolded at the trial, may, in brief, be described thus: A sum of Rs.1,65,000/- was kept, in the State Bank of India, Kokrajhar Branch, in the name of the Deputy Commissioner, Kokrajhar. On 06.11.96, while working in the Development Branch of the office of the Deputy Commissioner, Kokrajhar, PW2 (Moniram Basumatary), who was Senior Assistant, prepared a cheque and sent the same to the Deputy Commissioner, Kokrajhar, with notes in the relevant file. The Deputy Commissioner, Kokrajhar, did not, however, receive the cheque; but forging the signature of the then Deputy Commissioner, Kokrajhar, the said cheque was

encashed on the basis of a letter of authority shown to have been issued, in this regard, in the name of one Mangalu Roy. On coming to know about the fact that the money had been so withdrawn, though the cheque, in question, had not been signed by him, the Deputy Commissioner, Kokrajhar (PW3) lodged, on 22-01-1997, a written Ejahar and, treating the same as First Information Report (in short, ''FIR''), a case was registered, at Kokrajhar Police Station, under Sections 467/468/477A IPC, against the accused-petitioner. The accused-petitioner, who had gone on Earned Leave on 28-01-1997 never returned to his office. When his house was raided by the Investigating Officer, the accused was found absconding, though his wife was present there. A search, conducted at the said house, led to the recovery of, amongst other articles, one stencil copy of authorization slip, without being filled up, addressed to the Branch Manager, State Bank of India, Kokrajhar, one typed authorization letter, partially legible, in the name of Mangalu Roy, which name completely tallied with the fake authorization letter by which the amount of Rs.1,65,000/- had been withdrawn as mentioned hereinbefore. The said materials were seized, on 30.01.97, vide seizure list (Ext.4). The cheque, which had become the basis for release of the fund by way of encashment thereof, and other materials were sent to the Forensic Science Laboratory for examination of handwriting and signature on the said cheque, authorisation letter and other documents aforementioned. As the accused-petitioner was absconding, his applications for Earned Leave and Casual Leave, which were lying in the office of the Deputy Commissioner and which contained the signatures of the accused-petitioner, were sent along with the said alleged forged documents to the Forensic Science Laboratory . The opinion of the expert was to the effect that the handwriting in the said cheque tallied with the signatures contained in the leave applications of the accused-petitioner. Having completed investigation, police submitted charge-sheet, on 17.09.97, against the accused-petitioner, under Sections 409/468/420 IPC, showing him as an absconder. The accused-petitioner, eventually, surrendered, in the Court of the learned Chief Judicial Magistrate, Kokrajhar, on 17.04.2001, i.e., after more than four years of the occurrence, and was allowed to go on bail on 03.05.2001.

2. To the charge framed against him, at the trial, u/s 468 IPC, the accused-petitioner pleaded not guilty.

3. In support of their case, prosecution examined altogether five witnesses. The accused-petitioner was, then, examined u/s 313 Cr.P.C. and, in his examination aforementioned, he denied that he had committed the offence, which was alleged to have been committed by him, the case of the defence being that of denial. No evidence was adduced by the defence. On finding the accused-petitioner guilty of the offence charged with, the learned trial Court convicted him accordingly and passed sentence against him as mentioned above.

4. Aggrieved by his conviction and the sentence passed against him, the accused-petitioner preferred an appeal, which gave rise to Criminal Appeal No. 2(1) of 2003. By the judgment and order, dated 30-12-2002, the learned Sessions Judge, Kokrajhar, has dismissed the appeal and upheld the conviction of the accused-petitioner and also the sentence passed against him. Dissatisfied by his conviction and the sentence passed against him, the accused-petitioner has, now, come to this Court with the present revision petition.

5. The accused-petitioner attended his duty last on 27-01-1997 and, with effect from 28-01-1997, he went on leave, but never rejoined his duty, on expiry of the leave, though the accused-petitioner was required to resume his duty. This apart, the Deputy Commissioner, Kokrajhar, placed the accused-petitioner under suspension by order, dated 06-02-1997.

6. I have heard Mr. P Bora, learned counsel for the accused-petitioner, and Mr. D Das, learned Additional Public Prosecutor, Assam.

7. While considering the present revision, what needs to be noted is that the fact that on the strength of a cheque, dated 06-11-1996, and an authorisation letter, issued in the name of Mangalu Roy, the said sum of Rs. 1,65,000/- had been withdrawn from the State Bank of India, Kokrajhar Branch, from the account, maintained by the Deputy Commissioner''s establishment, by forging the signature of the Deputy Commissioner, Kokrajhar, on the said cheque and the said letter of authorization, have not really been in dispute, at the trial.

8. It had also not been in dispute, at the trial, that the accused-petitioner was, at the relevant point of time, an office peon at the said office. In fact, the FIR (Ext.1), lodged in the case, shows that there were as many as four office Peons at the relevant point of time in the Development Branch of the Deputy Commissioner Establishment, at Kokrajhar, one of the said five Peons being the accused-petitioner, Dhawjen Ch. Roy, but none fled away as did the accused-petitioner. The defence also did not dispute the fact that after the charge-sheet was submitted in the case, one Sub-Inspector of Police, namely, Haren Ch. Das, did visit the house of the accused, where the accused used to live, but could not trace out his whereabouts. The accused was, therefore, declared and treated as an absconder by the learned trial Court.

9. Coupled with the above, what cannot, and must not, be ignored is that a Handwriting Expert (PW5) was examined, whose opinion was, as already indicated above, that the said cheque as well as the said authorisation letter were forged inasmuch as the said documents did not contain the signatures of the then Deputy Commissioner, Kokrajhar; rather, these documents bore the signatures of the present accused-petitioner. In his report, which was submitted by the PW5, as Handwriting Expert, though he had not assigned reasons for the opinion, which he had so reached, the fact remains that this witness assigned the reasons by giving evidence for the conclusions, which he had reached. While the defence disputed the

correctness of the opinion, so given by PW5 and claimed that the accused-petitioner had not forged the said cheque or the letter of authorization, the fact remains that the defence did not assign any reason as to why the reasons, which were assigned, and the opinion, which had been given by the PW5, were incorrect and not acceptable. Mere denial by the defence that the opinion and/or the reason for the opinion of a Handwriting Expert is not correct, would not be enough. In fact, such a denial would be of no consequence unless the defence also assigns reasons as to why the findings of the Handwriting Expert are incorrect or not sustainable.

10. It has been contended, and rightly so, by Mr. P Bora, learned counsel for the accused-petitioner, relying upon the case of Magan Bihari Lal Vs. The State of Punjab,) that a Handwriting Expert''s opinion cannot be treated as conclusive, such an opinion must be considered with great caution and circumspection and that relying solely on the evidence of the Handwriting Expert, a person cannot be held guilty of committing forgery unless the witness is corroborated by direct or circumstantial evidence. The relevant observations, appearing, in this regard, at para 7, in Magan Bihari Lal (supra), read as under:

7. 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 despatched 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. PW 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 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. 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 v. Md. 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 v. Subodh Kumar Banerjee where it was pointed out by this Court that experts 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. 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. Langlands and Matter of Alfred Foster''s Will. 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 from 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.

(Emphasis is added)

11. There is no doubt that in Magan Bihari Lal (supra), the Supreme Court has held that Expert''s opinion must always be received with great caution and, more particularly, when it is the opinion of a Handwriting Expert. Referring to its earlier case, in Ram Chandra and Another Vs. State of Uttar Pradesh, , the Supreme Court observed, in Magan Bihari Lal (supra), that in Ram Chandra (supra), it has been held that it is unsafe to treat an Expert''s opinion as sufficient basis for conviction, but it may be relied upon, when supported by other items of internal and external evidence. Referring also to the case of Ishwari Prasad Mishra Vs. Mohammad Isa, , the Supreme Court, in Magan Bihari Lal (supra), observed that in Ishwari Prasad (supra), the Court has expressed the view that the evidence of Handwriting Expert can never be conclusive and, then, referring to the decision, in Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, , the Supreme Court, in Magan Bihari Lal (supra), pointed out that the Supreme Court had earlier expressed the view, in Shashi Kumar Banerjee (supra), that a Handwriting Expert''s opinion 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 by clear, direct or circumstantial evidence. Even in the case of Fakhruddin v. State of M.P. (AIR 1967 SC 1326), points out the Supreme Court, in Magan Bihari Lal (supra), the Supreme Court has observed that it would be risky to convict a person solely on the evidence of a

Handwriting Expert and before acting on his evidence, the Court must always see that it is corroborated by other evidence, direct or circumstantial.

12. The question, which, in the light of the decision of Magan Bihari Lal (supra), arises is: How the opinion of a Handwriting Expert can be corroborated by direct or circumstantial evidence, because all the decisions, which are referred to in Magan Bihari Lal (supra), have clearly taken the view that a Handwriting Expert''s opinion cannot be made the sole basis of conviction; but, at the same time, the Court has also made it clear that if a Handwriting Expert''s opinion is corroborated by direct or circumstantial evidence, the conviction of a person is possible.

13. It may be noted that a Handwriting Expert''s opinion can be corroborated by the evidence of a person, who may be acquainted with the handwriting of the accused or who may have seen the accused putting signature, which the accused is alleged to have forged. These are, however, the instances of direct evidence. What can, then, be, in a case of this nature, circumstantial evidence ?

14. With regard to the above, one cannot ignore the fact that the Supreme Court, even in Magan Bihari Lal (supra), did try to determine as to whether there was any possibility of the accused having come into possession of a blank railway receipt, which was the subject-matter of controversy, and, in this regard, the Supreme Court pointed out, in Magan Bihari Lal (supra), that 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. Had, therefore, there been evidence on record, in Magan Bihari Lal (supra), to show the possibility of the accused having come into possession of blank railway receipt, the Handwriting Expert''s opinion would not have been totally ignored.

15. Thus, when the Supreme Court holds, in Magan Bihari Lal (supra), that a Handwriting Expert''s opinion cannot be made the basis of conviction of a person unless the Expert''s opinion is corroborated by direct or circumstantial evidence, it logically follows that the Court has the duty to determine if there is or are any such circumstance or circumstances available on record, which may show that the accused was the author of the forged document. Circumstantial evidence would not, therefore, mean evidence of a person, who sees an accused forging someone''s signing. No wonder, therefore, that Mr. P Bora, learned counsel for the accused-petitioner, does not, as he always fairly does, insist that since none had seen the accused-petitioner forging the signature on the cheque, in question, of the Deputy Commissioner concerned, there is no evidence in corroboration of the expert''s evidence nor does Mr. Bora insist that since none has seen the accused-petitioner preparing the authorization letter in the name of Mangalu Roy, the expert''s evidence lacks corroboration meaning thereby that even Mr. Bora, learned counsel, knows that it is not only direct, but even indirect evidence, i.e., circumstantial evidence, which can be used for the purpose of corroborating the

evidence of a Handwriting expert. It is, thus, clear, if one may reiterate, that a Handwriting Expert''s opinion can be corroborated by circumstantial evidence too. The circumstantial evidence would, however, have to be such evidence as would bring the Court to conclude that it is none other than the accused, who was the author of the crime.

16. Apart from the fact that in Magan Bihari Lal (supra), the Supreme Court has referred to Shashi Kumar Banerjee (supra), even Mr. P Bora, learned counsel has referred to the case of Shashi Kumar Banerjee (supra) for the purpose of showing that the expert''s evidence, as to handwriting, is merely an opinion and it cannot take place of substantive evidence and that before acting on Handwriting Expert''s opinion, it is usual to see if it is corroborated either by direct or circumstantial evidence. The relevant observations made, in this regard, at para 21 of Shashi Kumar Banerjee (supra), read as under:

This conclusion is in our opinion borne out by the various signatures on the will and the various writings therein which were made to fill in the blanks after the main body of the will had been written in January to March 1943. The full signature at the foot of the will does show some tremor but there are a number of signatures on the margin of the will which are not full and some of them do not show much tremor though some do. Further according to the evidence of the attesting witnesses, the plan attached to the will was also signed at the same time as the will and the expert admitted in his evidence that the signature of the testator on the plan showed superior control and was not like the signature at the bottom of the will which according to the expert showed failing pen control. If both these signatures were made on the same day- and there is no reason why they should not have been, whether in 1943 or late in 1946-, it is remarkable that the one on the will, according to the expert, shows failing pen control while the one on the plan does not disclose any tremor. The evidence of the expert therefore in these circumstances is not conclusive and cannot prove that the signature at the bottom of the will could not possibly have been made on August 29,1943 on which date it purports to have been made. Besides it must not be forgotten that the will was executed in August 1943 soon after the testator had recovered from a serious illness and if there is some tremor here and there in his writing on that day, his illness may partly explain it. In this connection however our attention was drawn to some signatures made on September 1, 1943 only three days later which do not show much tremor: (see Ex.C/15). As we see the signature of September 1,1943, we find that it is not quite so firm as some other signatures made later in the month of September. On the whole therefore we are not prepared to accept that the signature at the bottom of the will could not possibly have been made in August 1943 and must have been made late in 1946. 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 all the probabilities are against the expert''s opinion and the direct testimony of the two attesting witnesses, which we accept is wholly inconstant with it.

(Emphasis is added)

17. Thus, what the Supreme Court, in Shashi Kumar Banerjee (supra), concluded was that all the probabilities of the case are against the Expert''s opinion. Conversely speaking, had the evidence, on record, been, in Shashi Kumar Banerjee (supra), in favour of the Expert''s opinion, then, the situation would have been different.

18. In the face of the fact that the Handwriting Expert''s opinion, in the present case, is, as already mentioned above, that the cheque and the authorization letter had been forged by the accused-petitioner, one has to necessarily look for corroboration of the Handwriting Expert''s opinion. Such corroboration may be from direct either or circumstantial evidence. While considering this aspect of the case, one has to bear in mind, as already indicated above, that there can be different cases, where different nature of corroboration may be available. In the case of a will, signature of an executant may be claimed to be forged and the Handwriting Expert may give an opinion that the handwriting, on the will, is, indeed, forged. In such a case, prosecution can examine witnesses, who might be acquainted with the signatures of the executant, and if the witnesses claim that the signatures, appearing on the will, are not the signatures of the executant, then, the expert''s opinion that the executants'' signatures, appearing on the will, was forged, stands corroborated.

19. In the case at hand, the fact that the cheque, in question, and the authorisation letter aforementioned were forged and none of these two documents bore the signatures of the then Deputy Commissioner, Kokrajhar, have, as already mentioned above, never been in dispute. The question, therefore, was as to whether it was the accused-petitioner, who had put or forged the signatures of the Deputy Commissioner concerned on the said two documents or it was person other than the accused. In this regard, it needs to be noted, as mentioned above, that with the help of the cheque, dated 06-11-1996, the money was withdrawn from the bank, on 08-11-1996. Withdrawal of the amount having come to the notice of the Deputy Commissioner, the FIR was lodged by the Deputy Commissioner on 22-01-1997. Though the accused had not been named in the FIR, it is impossible to ignore the fact that the accused-petitioner, admittedly (according to the revision petition), went, on leave on 28-01-1997, but he never reported thereafter and when a raid was conducted, at the house of accused-petitioner, on 30-01-1997, a stencil copy of the authorization slip, addressed to the Manager, State Bank of India, Kokrajhar Branch, and the authorization, in partially legible condition, in the name of Mangalu Roy, were recovered. What is, now, of immense importance to note is that according to

the Investigating Officer, the said authorisation letter completely tallied with the fake authorization letter by which the said amount of Rs. 1,65,000/- had been drawn from the State Bank of India, Kokrajhar Branch. The evidence, so given by the Investigating Officer, went wholly unchallenged by the accused and the accused, as indicated hereinbefore, never reverted back to his office. Hence, his absence from duties cannot, but be regarded as an act of his abscondance. Moreover, on the recovery of the materials, on 30-01-1997, as mentioned hereinbefore, the accused-petitioner was suspended by the then Deputy Commissioner, Kokrajhar. Though the accused-petitioner was suspended, his headquarter had not been changed and, hence, there was no reason for him to have not remained or found at his address, but he was never found there. In fact, the Investigating Officer, in categorical terms, deposed that he could not interrogate the accused-petitioner, because the accused-petitioner had absconded. This assertion of the Investigating Officer (PW4) went, as usual, completely unchallenged by the defence.

20. An act of abscondance is relevant u/s 8 of the Evidence Act as conduct of a person. When the Handwriting Expert''s opinion that the signature of the Deputy Commissioner on the cheque, in question, and also the signature on the said authorization letter, issued in the name of Mangalu Roy, were a forged ones, the evidence of the abscondance of the accused cannot, but be regarded as corroborative evidence, particularly, when the accused could not give any explanation for the fact that he remained absconding until the time he surrendered in the Court on 17-04-2001, i.e., after as long as more than four years. Why the accused-petitioner remained untraceable for as long a period as four years has remained unexplained by the defence and no explanation is discernible, in this regard, from the evidence on record.

21. Situated thus, the act of abscondance of the accused-petitioner furnishes evidence against him of his being responsible for committing forgery on the said two documents.

22. Coupled with the above, the Investigating Officer has deposed that by seizure list (Ext.4), he had seized the copy of the authorization slip, which had been recovered from the search conducted at the house of the accused-petitioner. The evidence, so given, by the Investigating Officer, as pointed out above, went wholly unchallenged by the defence. The seizure list (Ext.4), in question, very clearly shows that one stencil copy of authorization slip addressed to Branch Manager, State Bank of India, Kokrajhar, had been found, when a raid was conducted at the house of the accused on 30-09-1997. This apart, one typed authorization letter, partially legible, in the name of Mangalu Roy, was also found in the said search, Mangalu Roy being, interestingly, the name of the person, in whose name, letter of authorization, in the present case, was shown to have been issued in order to enable withdrawing of the said sum of Rs. 1,65,000/-. This was yet another circumstantial evidence pointing to the guilt of the accused.

23. What crystallizes from the above discussion is that the act of abscondance of the accused with no explanation either offered or discernible, in this regard, from the evidence on record and also the materials seized from his house, by Ext. 4, lend strong and credible corroboration to the opinion of the Handwriting Expert, who has assigned cogent reasons for the opinion reached by him that the said cheque and the authorization letter had been forged by the present accused-petitioner and no reason as to why his finding shall not be accepted as correct, the defence, as already mentioned above, could ever show.

24. What surfaces from the above discussion is that the accused-petitioner has been proved, beyond reasonable doubt, guilty of the charge framed against him and he has been, rightly and legally, convicted by the learned trial Court and the learned appellate Court committed no error in dismissing his appeal. In other words, the finding of guilt, reached against the accused-petitioner, does not suffer from any infirmity, factual or legal.

25. As far as the sentence passed against the accused-petitioner is concerned, the same, in the facts and attending circumstances of the present case, cannot be said to be illegal, unduly harsh and/or unreasonable.

26. This Court does not, therefore, see any merit in this revision.

27. In the result and for the foregoing reasons, this revision fails and the same shall accordingly stand dismissed with direction to the accused-petitioner to surrender, forthwith, to the learned trial Court so as to serve out the sentence passed against him. Send back the LCR with a copy of this order.