

(1949) 10 KL CK 0001

High Court Of Kerala

Case No: None

Gunamudayan Packianathan,
Christian, Vellam Odi, Nelvely
desom, Nattalam Pakuthy

APPELLANT

Vs

Sirkar Prosecutor

RESPONDENT

Date of Decision: Oct. 12, 1949

Acts Referred:

- Travancore Penal Code - Section 469, 473

Citation: AIR 1950 Ker 5 : (1950) CriLJ 569

Hon'ble Judges: Simon, J; Govinda Menon, J

Bench: Division Bench

Judgement

Govinda Menon, J.

The first accused in Sessions Case No. 14 of 1123 on the file of the Nagercoil Sessions Court has been convicted for the offences falling Under Sections 469 and 473, Travancore Penal Oode, and he has been sentenced to undergo rigorous imprisonment for three years. This appeal is directed against the said conviction and sentence. One Boothathan Padmana-bhan was the complainant in this case. He did not live to give evidence at the trial. His evidence before the Committing Magistrate's Court as P.W. 3 has been proved as Ex. 9. His son was examined as P.W. 9. Kali Booths-than waa the father of the complainant and to him belonged a sixth share in survey no, 5475 of Nattalam Pakuthy and it stood included in Ex. J, a joint patta, issued to him and Subra-manian Narayanan who owned a third of the property between them. Kali Soothathan left six sons and each of them had an equal share in the one-sixth of the property owned by him. The complainant had therefore 1/36th share in the property in question. Another sharer had filed a suit, c. s. no. 1m of 1120, on the file of the Kuzbithura Munsiff's Court for a partition of his share in the property and the complainant Boothathan Padmanabhan was defendant 1 in the case and accused 1 and 2 were respectively defendants is and

19, Exhibit M is the copy of the plaint. It was alleged by the prosecution that accused 1 and 2 with the help of accused 3 and 4 forged a document a copy of which is ex. a forging the signature of Boothath Padmanabhan and got it registered on 22-7-1122. It purported to be a release of all the rights under Ex. J patta in respect of a sixth share in the property comprised in the aforesaid survey number 6475 in Nattalam Pakuthy. Accused 3 and 4 were the attestors to the document. The document was so forged for the purpose of using it as genuine in a judicial proceeding namely in Ex. M suit which was pending. The complainant obtained a copy of the document on 3-6-1122 and he filed the complaint Ex. N. on 5-6-1121.

2. The learned Judge found that accused 3 and 4 who were attestors to the document did not know either the complainant or accused 1 and 2 and that they merely identified the man who produced the document for registration before the Sub-Registrar on the representation by P.W. 3 that he was the executant mentioned as Boothath Padmanabhan in the document. Accused 3 and 4 have therefore been acquitted. The evidence regarding the making of the document consists of the oral testimony of P.W. 3 and P.W. 5. P.W. 3 stated that it was accused 1 who forged the signature of the executant in the document and did not swear to the presence of accused 2. P.W. 5 stated that accused 2 was also present. The learned Judge, however, disbelieved the evidence of P.W. 6 and acquitted accused 2. P.W. 1 the Sub-Registrar proved Ex. B. book kept in the Sub-Registry Office in which the thumb impression of the person who presented the document for registration as the executant was taken by him. The thumb impression of accused 1 was taken by the Committing Magistrate in Court with the help of P.W. 2 who was the Finger Print Expert employed under the Government of Travancore. Exhibit O is the impression so taken and Exs. C-1 and C-2 are the photographic enlargements of Ex. C. The thumb impression contained in Ex. B book has also been photographed and enlarged and the enlargements are B-1 and B-2. P.W. 2 gave evidence that the thumb impression in the book marked as B and the thumb impression A are of the same person. The learned Judge convicted accused 1 relying on the evidence of P.W. 3 and that afforded by a comparison of the thumb impression of the accused taken in Court and that taken of the person who figured as the executant of the document and presented it for registration.

3. The learned advocate for the appellant contended that the evidence of P.W. 3 should not have been believed by the lower Court as he was in no better position than an accomplice. It was also argued that the Committing Magistrate was wrong in having asked P.W. 2 to take the thumb print of accused 1 in Court and that the evidence of P.W. 2 declaring that the thumb impression in Ex. B register and that of the accused taken in Court are of the same person should not have been relied on for the purpose of finding accused 1 guilty. Two witnesses P.W. 3 and P.W. 6 were put forward by the prosecution to prove the act of forging the original of Ex. A, [Their Lordships then discussed the evidence of P.W. 3 and P.W. 5 and came to the conclusion that the evidence of P.W. 3 was totally untrustworthy. The judgment

then proceeds as follows:

4. We are therefore left with only the evidence of P.W. 2 who gave expert evidence that the thumb impressions taken in Ex. B register of the person who presented the document for registration and admitted it, was of the same pattern as the thumb impression of accused 1 taken in Court. The first question arising for consideration is whether the Committing Magistrate was right in having taken the thumb impression of the accused in Court so as to serve as evidence against him. We have been referred to the decision of the Travancore High Court in C. A. Nos. 21 and 23 of 1108 and C. R. P. No. 344 of 1108 a short note of which is published on page 69 of vol. ix, of the Travancore Law Times. In that cases, the accused were furnished with the materials for counterfeiting and they were asked to demonstrate the process before the Committing Magistrate. The process was not successful and it was repeated in the premises of the Police Station and a mahazar was prepared of the process so conducted and the Magistrate himself was an attestor to the mahazar. This was severely condemned and it was held that in criminal cases, the prosecution should rely entirely on its own evidence independent of any help from the accused. It was observed also that

as regards the question whether an accused person could be compelled to allow his thumb impression being taken in the course of investigation or trial, even today there is a wide divergence of opinion between the High Courts in British India.

In this case, the prosecution version is that the document in question was presented for registration by accused 1 and not by Boothath Padmanabhan by whom the document was purported to be executed. Accused 1 presented the real executant and placed his thumb impression on the document as well as in the register ex. B kept in the Sub-Registrar's office when he presented the document and admitted it. A thumb-print of accused 1 was allowed to be taken in Court and P.W. 2 an expert was called in to compare the two thumb prints and say if they are of the same person and on the Court's opinion that the thumb marks are identical, a conviction has been entered. Having disbelieved the evidence of P.W. 3, the only evidence against the accused is the opinion of P.W. 3 the finger print expert. There is no reliable evidence as to who caused the original of Ex. A to be written and who signed it and in the absence of the forged document itself, the question arises whether it will be safe to act on the uncorroborated testimony of the finger print expert and declare the guilt of the accused. In *Bazari Majumdar v. King Emperor* 1 Pat. 242 : AIR 1922 Pat. 78 : 23 Cri.L.J. 638, the same question arose and Bucknill J. observed thus:

I think that, apart from the fact that I should be rather sorry without any other corroborative circumstances to convict a person of a serious crime solely and entirely upon similarity of thumb marks or finger prints, the very fact of the taking of a thumb impression from an accused person for the purpose of possible manufacture of the evidence by which he could be incriminated is in itself sufficient

to warrant one in setting aside the conviction upon the understanding and upon the assumption that such was not really a fair trial. I know of no law by which an accused person can be either by words, or by gestures, or by exposing himself to certain physical treatment made to implicate himself in the crime with which he is charged. When he is on trial such an idea is highly repugnant to all thoughts of the proper administration of justice in this or any other British country.

The above view was disapproved of by Sohwahe C. J. in *Publia Prosector v. Kandasami Thevan* 60 Mad. 462 : AIR 1927 Mad. 696 : 27 Cri.L.J. 1251 although the point did not directly arise in the case as there were thumb impressions of the accused in evidence other than that taken by the Judge in Court for comparison with the thumb impression in the document alleged to have been forged. The learned Chief Justice did not see any objection in law to the taking of the accused's thumb mark, if the Judge trying the case thought that it was relevant at any time. It is unnecessary to cite more cases to illustrate the divergence of opinion on the question among the High Courts in India. On principle it appears to us that the accused could not have been required to furnish any evidence in support of the case for the prosecution. This principle was indicated in the decision cited by us above a summary of which was published in page 59 of volume IX of the Travancore Law Times. We therefore agree with the view expressed by Bucknill J. in [Bazari Hajam and Another Vs. Emperor](#), that the practice of taking the thumb impression of the accused and using it against him is inconsistent with the principle of a fair trial and has to be severely condemned.

5. As a result of the foregoing discussion, we hold that the conviction and sentence passed by the lower Court against accused I cannot be legally sustained. We set aside the said conviction and sentence and in allowing this appeal, the appellant is acquitted. His bail-bonds are cancelled and he is set at liberty forthwith.