
(1956) 03 BOM CK 0022
In the Bombay High Court
Case No : O.C.J. Suit No. 469 of 1952

Chelaji Gomaji and Co.

APPELLANT

Vs

Bai Jashodharabai Shambhudutt Nishir

RESPONDENT

Date of Decision : 23-03-1956

Acts Referred:

Evidence Act, 1872 — Section 45, 7, 78

Citation : (1958) 60 BOMLR 251

Hon'ble Judges : Tendolkar, J

Bench : Single Bench

Judgement

Tendolkar, J.—Mr. Parpia wishes to call Mr. Gajjar who, he claims, is an expert on typewriters or rather on. typewritten documents, to prove that the promissory note and the memo of mortgage were typed on the same typewriter. He says that the comparison, of material typed on different typewriters is a matter of science, and Mr. Gajjar is an expert who can give opinion evidence. u/s 45 of the Indian Evidence Act, but, in any event, he submits that even if Mr. Gajjar may not be allowed to give opinion evidence, he may be permitted to point out the similarities between the two documents, in so far as their typing is concerned, or the defects which might enable the Court to come to a conclusion as to whether the two documents are or are not typed on the same typewriter. A recent decision of their Lordships of the Supreme Court reported in Hanumant Vs. The State of Madhya Pradesh, lays down in unmistakable language that such opinion evidence is not admissible u/s 45, and what is more, Mahajan J., who delivered the judgment of their Lordships, expressed disapproval of the fact that the High Court, after having held such opinion evidence to be inadmissible, proceeded to discuss it and placed some reliance on it. His Lordship observes (p. 350):

Next it was argued that the letter was not typed on the office typewriter that was in use in those days, viz., Article B and that it had been typed on the typewriter Article A which did not reach Nagpur till the end of 1946. On this point evidence of certain experts was led. The High Court rightly held that opinions of such

experts were not admissible under the Indian Evidence Act as they did not fall within the ambit of Section 45 of the Act. This view of the High Court was not contested before us. It is curious that the learned Judge in the High Court, though he held that the evidence of the experts was inadmissible, proceeded nevertheless to discuss it and placed some reliance on it. The trial magistrate and the learned Sessions Judge used this evidence to arrive at the finding that as the letter was typed on Article A which had not reached Nagpur till the end of December 1946, obviously the letter was antedated. Their conclusion based on inadmissible evidence has, therefore, to be ignored.

Faced with this decision Mr. Parpia concedes that the opinion of Mr. Gajjar may not be evidence; but he still urges that Mr. Gajjar should be allowed to depose to facts which would enable the Court to form its own opinion as to whether the two documents were or were not typed on the same typewriter. It appears to me somewhat difficult to distinguish between the evidence of an expert in the sense of his opinion on a matter in respect of which he is an expert and the grounds on which such opinion is based, because for all practical purposes, no opinion is worth anything in a Court of law, unless it is supported by the reasons for forming that opinion, and where an expert gives opinion evidence u/s 45, he has of necessity to state the grounds in support of his opinion. What is now urged is that although his opinion may not be admissible, the grounds on which he has formed such an opinion should be admitted, I am afraid that such a contention cannot be upheld, and indeed their Lordships of the Supreme Court in expressing their disapproval of the High Court considering part of the evidence after holding it to be inadmissible clearly indicated that such a course was not permissible. Mr. Parpia has relied on two earlier decisions of the Allahabad High Court where, apparently, a view favourable to the contention of Mr. Parpia was taken by that High Court. In *Manabendra Nath v. Emperor* [1933] AIR All. 498. *Thorn J.* held that evidence that the type writers used in the typing of the various exhibits had certain defects which were dear from the typing of those exhibits was evidence of a fact which could be competently given by an expert who had had an opportunity of examining the documents. Now, with respect to the learned Judge, I find it difficult to understand what an expert means in the context of an opinion which is not within the purview of Section 45 of the Evidence Act. How can there be an expert who can give any evidence as to the defects which are disclosed in the typing, if typing is not a science or art in which the existence of experts is recognised by statute? The same opinion was expressed in a subsequent decision of the Allahabad High Court in *Bacha Babu and Others Vs. Emperor*, In my opinion these decisions are, in any event, not good law, after the decision of their Lordships of the Supreme Court in *Hmmmant v. State of M.P.*

2. Mr. Parpia urges that in any event he should be allowed to put in photographic enlargements and measurements of the letters in the two documents in order to enable the Court to compare the two and to arrive at a conclusion as to whether they were typed on the same typewriter or not. Now, comparison as a mode of arriving at the truth is a permissible mode only in cases in which the law

specifically allows such comparison. For example, if the parentage of a child was in dispute, it is not permissible to a Court to look at the face of the child and the parents to determine whether the child was of a particular father or mother; and where comparison is allowed by law, we have a specific provision for it, such as for example in Section 78 of the Evidence Act where comparison of a signature, writing or seal with other signatures, writings or seals which are admitted or proved is specifically allowed. It is interesting in this context to note that before the science of hand-writing experts was recognised, it was not permissible for a Court to compare the hand-writing on two documents in order to arrive at a conclusion as to whether one document was executed by the same man who executed the other document; and in England an Act had to be passed in 1854 to make such comparison permissible. This only emphasises the fact that comparison as a mode of arriving at a judicial decision on a disputed question of fact is a dangerous doctrine, and unless specifically permitted by any provision of law, it cannot be resorted to.

3. Mr. Parpia has also relied on certain decisions relating to similarity of footmarks. They fall in a somewhat different category of cases where in the detection of crime any marks left by the criminal have over a long period of years been allowed to be compared with the existing features of the alleged criminal and the marks that he may produce in order to establish the identity of the criminal. Indeed, Illustration (b) to Section 7 of the Evidence Act specifically refers to one such case of marks left and the Illustration is:

The question is whether A murdered B. Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant, facts.

But even such comparisons have to be done with the utmost care and caution. There was a time when it was a common practice to give evidence that the shoes of an alleged criminal placed upon the foot mark left near the place of crime fitted into the impressions; but this practice was judicially denounced and Justice Parker directed a Jury not to draw any inference from such a comparison. Not only this, but even when, the identity of foot-marks has been established beyond doubt, there have been cases where such foot-marks have been planted for the purpose of diverting attention which only emphasises that no correct conclusion can necessarily be drawn by mere comparison even when comparison is permissible. But since I am not dealing with foot-marks, I do not propose to go further into the cases relating to foot-marks.

4. In my opinion the evidence of the nature which Mr. Parpia wishes to lead is inadmissible and I, therefore, do not allow him to lead that evidence.