
(1980) 02 RAJ CK 0020
In the Rajasthan High Court
Case No : Criminal Appeal No. 451 of 1973

Gopiram and Ajandas	Vs	APPELLANT
The State of Rajasthan		RESPONDENT

Date of Decision : 08-02-1980

Acts Referred:

Evidence Act, 1872 — Section 3, 45, 47, 73
Penal Code, 1860 (IPC) — Section 417, 471

Citation : (1980) RLW 96 : (1980) WLN 83

Hon'ble Judges : P.D. Kudal, J; Mahendra Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mahendra Bhushan, J.—In Sessions Case No. 27/72, the learned Addl. Sessions Judge, Ajmer convicted and sentenced the accused Gopi Ram under Sections 471 and 417 of the Indian Penal Code Gopi Ram has been sentenced to undergo three years" rigorous imprisonment, & a fine of Rs. 30!/-, or to suffer simple imprisonment for three months more u/s 471 and, to undergo one year"s rigorous imprisonment and a fine of Rs.10/-, or in default to suffer imprisonment far two months u/s 417, I.P.C., Both the substantive sentences have been ordered to run concurrently.

2. Accused Anjan Das and Mansingh were acquitted of the charges levelled against them by the learned Addl. Sessions Judge, Ajmer Gopi Ram preferred S.B. Criminal Appeal No. 451 of 1973 against his conviction and sentence, whereas the State preferred D B. Criminal Appeal No. 42 of 1974 against the acquittal of the accused persons, Anjan Das and Mao Singh. As both the appeals arise out of the same judgment of the learned Addl. Sessions Judge, Ajmer, they are being disposed of by us by a common judgment

3. The brief case of the prosecution is that accused Gopi Ram was appointed as a constable on November 23, 1964, in the district of Ajmer by Subhash Chandra Tandon, the then Superintendent of Police, Ajmer on the application of Gopi Ram

Ex. P 12/1 At that time, he was middle pa 8 & the same qualification were entered by him in Ex. P/12/I, and it was also mentioned therein that he appeared in the examination of the Board of Secondary Education Rajasthan, but due to bad luck he could not get success. During the year 1966, Gopi Ram was posted as Constable in Police Station. Roopangarh in Ajmer District, and Shri Bhagirath Ram Bishnoi PW/9 was then the then the Superintendent of Police, Ajmer. He remained there as such till years 1969. Shri Bhagirath Ram Bishnoi PW/9 went far inspection to Roopangarh Police Station and there the accused Gopi Ram produced an application before him requesting him that since he had passed matriculation examination, an entry to this effect may be, made in his service books He also showed the mark-sheet for the satisfaction of Shri Bishnoi who ordered on the application that an entry be made in the service book as requested. But Manesewer Nath PW/5 who was then the Force Clerk in the office of the Superintendent of Police, Ajmer some how forgot to make the entry in the service book of Gopi Ram.

4. In the year 1968, some posts of. Head Constables had fallen vacant in various districts including Ajmer and a Committee was constituted headed by Shri Bhagirath Ram Bishnoi PW/9, Superintendent of Police, Ajmer and two Deputy Superintendents of Police to hold a test in order to promote constables, if they fulfilled certain condition and qualifications as laid down in the circular Ex. P/7, under which one of the condition, as prescribed in the Schedule of the relevant Police Rut's, was that only those constables who have either five years" service or High School passed and completed two years" service are eligible to appear at the examination, and passed the test, Gopi Ram had not completed five years" service, but applied to the Superintendent of Police, Ajmer Shri Bhagirath Ram Bishnoi to allow him to appear in the test. There was an objection from the office that Gopi Ram was not eligible as his qualification, as entered in the service book was only middle pass This objection was conveyed to Gopi Ram, who met Shri Bhagirath Ram Bishnoi, Superintendent of Police, Ajmer PW/9 in his office and told him that he has passed his matriculation examination and would produce the certificate after some time. The test was, to be conducted either on the next day for after a few days, and the request of Gopi Ram was allowed by Shri Bishnoi, and admission to the examination was granted provisionally. In the test Gopi Ram was declared successful, and in Ex. P/10, the list of successful candidates, the name of the accused Gopi Ram appeared at Sr No. 28 Gopi Ram accused, whose number as constable was 471, was thereafter promoted as Head Constable and posted to Police Station, Nasirabad Sometime, thereafter Shri B.R. Bishnoi PW/9, Superintendent of Police, Ajmer came to know from secret sources that Gopi Ram accused was not matriculate and he had deceived him by producing forged mark sheet and certificate, Gopi Ram was sent for and asked to produce the original certificate of matriculation and the mark-sheet. Gopi Ram appeared before Shri Bishnoi PW/9 and produced the mark-sheet Ex. P/3, and the original High School Examination certificate PW/6. Shri Bhagirath Ram Bishnoi PW/9 sent these documents to the Secretary, Board of Secondary

Education, Ajmer along with his letter, Ex. F/1, dated 12/8/1968, inquiring of him whether these documents were genuine. These documents were received by Kripa Shankar PW/12, the then Deputy Secretary of the Board, who after making inquiry, informed Shri Bishnoi PW/9, under his letter EsP2 dated 13/8/1963, that both the documents were forget that the facts were that one Gopi Ram son of Deda Ram resident of Ganganagar had appeared in the High School Examination in the year 1964, having Roll No. 16752; but he was declared unsuccessful and as such, no certificate was issued to him. It was also given out that one Goverdhan Lal son of Dhokal Ram was registered at Roll No. 18185 of Jodhpur district, and had passed High School in 1964. It was he who was issued a certificate to the effect having Sr No. 3843. and the mark sheet bearing No. 1636 was issued to one Fateh Chand whose Roll No was 1630. After receiving the information Shri Bhagirath Ram Bishnoi. PW/9, S.P., sent an information Ex. P/13/1 dated 13/8/1968 to the S.H.O. Civil Lines, Ajmer for registering a case. A case was registered by Phool Chand PW/1 then SHO Civil Lines who drew an FIR Ex. P/34. The accused persons were arrested and the specimen handwritings and signatures of accused Gopi Ram. Arjan. Dass and Man Singh were obtained. The disputed document Ex. P/3 and Ex. 16 and the specimen hand writings of the accused persons were sent to Shri C.T.Bhanagay PW/8. In the opinion of Shri Bhanagay PW\\8 the writer of the "disputed documents was the same person who had written the specimen and standard writings.

5. All the three accused were tried by the learned Addl. Sessions Judge, Ajmer in whose court as many as 15 witnesses were examined for the prosecution at d 75 documents were exhibited Thereafter each of the accused was examined u/s 342, Cr. P.C, (old) to explain the circumstances appearing against them in the evidence of the prosecution witnesses The accused stood on the bare plea of denial. The accused persons examined four witnesses. The learned Addl. Sessions Judge convicted and sentenced the accused Gopi Ram as aforesaid, whereas Anjan Das and Man Singh were acquitted,

6. The necessary ingredients of cheating are: 1. there should be fraudulently or dishonest inducement of person to deceive him; 2 the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and 3. the act or omission should be one which causes or likely to cause damage or harm to the person Induced in body, mind, reputation or property. It can hardly be disputed that before a person can be held guilty of the offence of cheating, it must be shown by the prosecution that his intention was dishonest at the time of making the promise. In the instant case, we have gone through the evidence on record and it can easily be said that Gopi Ram was only middle pass, and that was clearly entered by him in Ex. P/12/ I, which was submitted by him for appointment as a constable. It is proved from the statement of Muneshwar Nath Nigam and Shri Bhagirath Ran Bishnoi that for being eligible for appearing at the test for Head Constable a constable should have completed 5 years" service or should have passed matriculation examination and should have completed two years" service. This is, also clear

from Ex F/7 notice issued for appointment for the post of head constables. Accused Gopi Ram had not completed five years" service in the year 1968 when the tests were held as he was only appointed on 23-11-1964, therefore, had he not given out that he had passed his High School Examination, Shri Bhagirath Ram Bishnoi PW/6 would not have allowed him, even provisionally, to appear at the test. Shri Bhagirath Ram Bishnoi PW/9 has clearly stated that accused appeared before him on 24-11-1968, and submitted an application that he has passed his High School Examination. The original application is not traceable, and it is on record that it is misplaced from the court file. The learned Addl. Session Judge allowed secondary evidence with regard to this application. From the statement of Bhagirath Ram Bishnoi PW/6 it can be said that the accused appeared before him and submitted an application wherein he mentioned that he passed his High School Examination. It can also be said from his statement that the accused, also produced true copies of Ex. P/3 and Ex. P/6 and the originals were returned to him by Bhagirath Ram Bishnoi PW/9. Later on when Bhagirath Ram Bishnoi PW/9 came to know that the accused was not High School pass, he asked him to produce the original certificate and mark-sheet. The accused produced Ex. P/3 and Ex. P/6, mark-sheet and, High School Certificate, in original, respectively. These were the documents which were sent by Shri Bishnoi PW/9 to the Board of Secondary Education Rajasthan, Ajmer, who, on inquiry, informed him that they were forged documents. There can be no manner of doubt that Ex. P/3 and Ex. P/6 are not genuine documents, and these documents are forged. It is borne out from the statement of Kripa Shankar PW/12. Dy. Secretary of the Board during the relevant time. He has stated by referring to the counterfoils of (the duplicate mark sheet kept in the office that Ex. P/3 was issued in the name of one Fateh, Chand, and not in the name of Gopi Ram, and Fateh Chand had Roll No. 16310, and had passed the High School Examination of 1964. He has further stated that the certificate of High School Examination bearing Sr. No. 3843, Ex. P/6. was issued to Gordhan Lal son of Dhokal having Roll No... 18185, and was not issued to Gopi Ram bearing Roll No. 16752. Shri Bhanagay PW/8, Handwriting Expert has, clearly stated that the surface of Ex. P/6 marked as DW/1 showed discolouration at places, causing bigger irregular stains visible to the naked eyes, and under ultra violet rays giving out uneven fluorescence of different intensity suggesting that it has been treated with, some" chemical reagent. He also noticed that under the present writing (hand-writing) some traces of previous ink strokes are also traceable. The surface; and size of the paper is also heavily disturbed. According to him, the hand-writing under DW/1. circle in green ink was not the original writing. Similar statement was given by him with regard to mark-sheet Ex. P/3, marked by him as DW/2A, he stated that the disputed portion marked in Ex. P/3 encircled in green ink. The surface where the writing DW-2A appears shows heavy mechanical erasures and thinking at the area where the hand written roll number and the name of the candidate appears indicating that the original writing at both the places was erased and, as such, the present writing at these two places is not the first original writing. After having gone through this evidence no doubt is left what so

ever that Ex. P/3 and Ex. P/6 are not genuine documents, and Ex. P/3 was issued in the name of Fateh Chand. whereas, Ex. P/6 was issued in the name of Gordhan Lal son of Dhokal Chand Gordhan Lal has appeared as PW/2 and he has clearly stated that he appeared in the High School Examination having Roll No, 18185, and had passed. A certificate was issued to him. As he had to appear in the High Secondary Examination in the year 1968, he had forwarded the original certificate with his application, but he had not received it back. It, therefore, appears that after the original certificate in the name of Gordhan Lal was received in the office of the Board the same was not returned to him, and the same was forged so as to make a High School Certificate for accused Gopi Ram There is, therefore, no doubt that the accused Gopi Ram has rightly been convicted under Sections 417 and 471, IPC The defence of the accused was that he did not produce Ex. P/3 and Ex. P/6 before the Superintendent of Police and he only Submitted that he was middle pass and he has examined witnesses in the defence. But the defence has rightly been disbelieved by the learned Addl. Sessions Judge, as none but the accused could have produced Ex. P/3 and Ex. P/6 before the Superintendent of Police as it was the accused who was "not otherwise eligible for appearing at the test of Head Constable, He appeared at the test and was" declared successful and was promoted as Head Constable. The accused fraudulently and dishonestly used as genuine Ex. P/3, & Ex. P/6 which he knew or had reason to believe them be a forged document. The sentence awarded to the accused in both the counts does not appear to be excessive. Therefore the appeal of the appellant Gopi Ram against his conviction and sentence is hereby dismissed.

7. Now we will take up the State Appeal. We have held above while dealing with the case of the accused Gopi Ram that Ex. P/3 and Ex. 6 are forged documents. The submission of the learned Public Prosecutor is that even though the learned Addl. Sessions Judge, on" comparison of the disputed writings or Ex. P/3 and Ex. P/6 and the admitted specimen of the accused Anjandas and Gopiram, was satisfied that there are marked similarities, but even then he refused to convict the accused persons on the wrong assumption that only on the evidence of the Hand-writing Expert it will not be safe to convict the accused persons. According to the learned public prosecutor though, the evidence of Hand-writing Expert is an-opinion evidence, but none the less it is evidence like any other-evidence, and if the Court u/s 73 of the Evidence Act, on comparison, of the disputed handwriting with the admitted or specimen hand-writing can come to the conclusion that the disputed and the specimen or/and admitted or proved hand; writings are of the same person, conviction can be based on such evidence. In support of his submission he has placed reliance on Fckhruddin v. State of MP. (1) AIR 1967 SC 1326, in which their Lordships of the Supreme Court have held as under:

Both u/s 45 and Section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience, In either case the Court must satisfy itself

by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observations to the admitted or proved writings and to compare them with the disputed one, not to become a handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent, whether expert or other, is subjected to scrutiny and although relevant to start with, becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.

8. The learned Public Prosecutor has also referred to *Ram Chandra and Another Vs. State of Uttar Pradesh*, in which their Lordships of the Supreme Court have observed as follows:

It may be that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction. It may be however, relied upon along with other various items of external and internal evidence relating to the document in question.

9. ON the basis of this authority, learned Public Prosecutor submits that if in a given case apart from the evidence of the handwriting expert there is other external and internal evidence, then the accused should be convicted on such evidence. The learned Advocate for the accused, on the other hand, has referred to *Magan Bihari Lal Vs. The State of Punjab*, wherein their Lordships of the Supreme Court have observed as under:

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. It is unsafe to base a conviction solely on expert opinion without substantial corroboration. This type of evidence, being opinion evidence, is by its very nature, weak and infirm and cannot of itself form the basis of a conviction. 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.

10. Having gone through the above authorities we are of the opinion that, though, the opinion of the Handwriting Expert should be received with great caution, and conviction solely on such evidence should not be based: but if there is some external or internal evidence apart from the opinion of the Handwriting Expert, conviction can be based on such evidence. In a case where there is the only evidence of the Handwriting Expert and on comparison of the disputed

writings with the specimen or standard or proved writing the Court comes to its own conclusion that they are writings of the same person, conviction can be recorded, as in that case it can be said that the fact that the dispute writings are of the accused can be said to be proved within the meaning of Section 3 of the Indian Evidence Act.

11. In the instant case, the learned Addl. Session Judge has observed that Shri C.T. Bhanagay is a qualified person and the court is satisfied about his competency that he holds necessary qualifications, and is an experienced person in the art of handwriting. On the basis of the statement of Shri C.T. Bhanagay, and his report, the learned Addl. Sessions Judge has observed as follows:

He has definitely stated that in Ex. P/3 portion figure 16752 name of "Gopi Ram Vishnoi, other figure's written in hand and also figures 16752 and name of Gopiram Vishnoi Tarachand Vishnoi Tenth December Forty Five Ganganagr District" written in Ex. P/6 were written by Shri Anjandas accused

12. Thereafter the court compared the writings from Ex. P/3 and Ex. P/6 which were disputed writing with the standard one carefully and observed as follows:

I have also compared the disputed writings with the standard ones carefully and cautiously and I find that to a naked eye there are great similarities in the letters and figures pointed out by the expert.

13. Similarly, dealing with the case of the accused Man Singh and the opinion of the expert, disputed writings Ex. P/33 with standard writings of Mansingh accused, viz Ex. P/36/1 to Ex. P/40 written in the presence of Shri N.K. Bbargava PW/10, and while relying on the opinion of the Hand writing Expert the disputed and specimen writings are of the accused Man Singh, it has been observed by the learned Addl. Session Judge as follows:

On the basis of the above said characteristics of the disputed writings, contained he has opined that the disputed writings contained in Ex. P/33 was in the band of accused Mansingh, In order to appreciate the evidence of the expert I have also examined the disputed documents which is said to be in the handwriting of accused Mansingh with his standard hand-writing. I also find that there are similarities indicating that the disputed handwritings of Ex. P/33 appear to be in the handwriting of the same person whose handwritings are Ex. P/36/1, Ex. P/37 to Ex. P/43 that is accused Mansingh.

14. It cannot be said that the learned Additional Sessions judge apart from the evidence of hand writing expert after having himself compared the disputed writings with the standard writings of the accused persons Anjandas and Man Singh has observed that to a marked eye there are similarities which go to indicate that the writer of both is the same person, i.e. writer of Ex. P/3 and Ex. P/6 are Anjandas and Man Singh. But after dealing with the authorities of the Supreme Court and High Court he has held that it will not be safe to convict the accused on the sole testimony of the handwriting expert which is only opinion

evidence, This approach of the learned Sessions Judge cannot be said to be in accordance with law As we have said above, that only on the basis of the handwriting expert evidence and after comparison of the disputed and standard writings if the Court comes to the conclusion that they are of the same person, conviction can be based, and no illegality would be committed Bat it is an appeal against acquittal in which, though this Court has power to reappraise the evidence & to arrive at its own conclusion, but if two views are possible, and one has been taken by the learned trial Court, the appellate Court will be slow to interfere with the order of acquittal recorded by the trial Court In the instant case, the learned Addl. Sessions Judge has observed that there are similarities, but he has not stated clearly that after having compared the disputed writings with the standard writings, the accused persons Anjan Dass and Man Singh he is definitely of the opinion that they are of the accused persons. It has been observed by him that, though many witnesses appeared for the Board and were conversant with the hand-writing of Anjan Dass, who was an Accounts Clerk at the relevant time, In the Board, but none was asked to prove that the writings in Ex. P/3 and Ex. P/6 are of Anjan Dass, Under these circumstance of this case, therefore, the Court has not acted on the sole testimony of the hand-writing expert. The approach of the learned Addl. Sessions Judge, therefore, cannot be said to be perverse, and the conclusion arrived at by the trial Court could be arrived at The learned Public Prosecutor requested us to compare the disputed writings and the standard writing. of the accused persons ourselves, but then the trial Court: itself has not acted on such comparison, we feel, it would not be proper, while sitting in appeal against acquittal, go to through go that exercise, though in proper case this Court can of its own do so, & in case where the trial court has acted on such comparison, the Court may also do so in order to satisfy it self as to whether the conclusions arrived at on comparison of the disputed & standard hand-writing by the trial Court are correct or not, Therefore, we do not think it is a fit case in which the order of the trial Court acquitting the accused Anjandass and Man Singh can be reversed.

15. In the result, we dismiss the State appeal against accused person Ajandass and Man Singh,

16. In the result, both the appeals are here by dismissed. The trial Court, Sessions Judge, Ajmer, is directed to take the accused Gopiram in custody for under going the sentence awarded or any remaining part thereof.