

(1982) 12 KL CK 0016
In the High Court Of Kerala
Case No : A.S. No. 210 of 1977

Kunju Kunju

APPELLANT

Vs

Chellappan and Others

RESPONDENT

Date of Decision : 09-12-1982

Acts Referred:

Evidence Act, 1872 — Section 45, 46, 47, 68, 73
Penal Code, 1860 (IPC) — Section 302, 384, 417, 419, 465

Citation : (1982) 12 KL CK 0016

Hon'ble Judges : U.L. Bhat, J;Chandrasekhara Menon, J

Bench : Division Bench

Advocate : S.A. Nagendran, N.N.D. Pillai and Subhagamony, for the Appellant;
S. Narayanan Poti and S. Sankarasubban, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—This is an appeal filed by the first Defendant in O.S. 70 of 1974 of the Subordinate Judge's Court, Quilon, challenging the decree and judgment passed therein.

2. The first Respondent herein filed a suit against the Appellant (first Defendant) and his son the second Respondent (second Defendant) for recovery of Rs. 36,994 from them. The first Defendant was a contractor. Second Defendant was involved in the business conducted by the first Defendant and it is alleged, they used to borrow money from the Plaintiff for the purpose of their business. On 29th February 1972, there was settlement of accounts between the parties at the office of P.W. 5, an advocate of Quilon in the presence of advocates P.Ws. 4 and 5 and an auditor Ayyappan Pillai and the amount due to the Plaintiff was fixed at Rs. 45,000. The Defendants' issued two post dated cheques for Rs. 10,000 and 35,000 bearing dates 31st March 1972 and 31st May 1972, drawn by the second Respondent and signed and delivered by the first Defendant. Since the amounts due were not paid on or before the dates shown in the cheques, the Plaintiff presented the cheques for collection and the cheques were dishonoured and the

Defendants were duly informed. Thereafter two cheques dated 6th June 1972 and 17th June 1972 for a total amount of Rs. 9,000 drawn by Lakshmana Perumal Raja were endorsed in favour of the Plaintiff and these cheques also, when presented, were dishonoured and the Defendants were informed about it. The plaint further alleges that the second Defendant paid Rs. 10,000 in cash and took back the two cheques and on 21st July 1972 the first Defendant endorsed another cheque for Rs. 5,000 in favour of the Plaintiff and the cheque has been encashed. Two other cheques for Rs. 2,500 each dated 17th February 1973 and 14th February 1973 were also endorsed by the first Defendant in favour of the Plaintiff but only one cheque could be encashed the other being dishonoured. Thus, in all Rs. 17,500 has been received out of the amounts due and an amount of Rs. 25,500 with interest at 10 percent per annum is due by the Defendants. The amount remained unpaid in spite of notice of demand which elicited only a false reply from the first Defendant alleging that the Plaintiff had been paid Rs. 35,000 against receipts issued. Such an amount has not been paid and the Plaintiff has not issued any receipts. Defendants in their written statement contended that the cheques dated 31st March 1972 and 31st May 1972 were caused to be issued on account of pressure and influence exerted by P.W. 5; blank cheques were signed by the first Defendant and handed over to P.W. 5 and they were made to be filled up by the second Defendant as a result of threats uttered by P.W. 5. There was no agreement to pay interest. However, since the two cheques bore the signature of the first Defendant, the first Defendant decided to pay off the amounts. The Defendants denied the payment said to have been made by the second Defendant. They contended that on 12th February 1973, the first Defendant paid Rs. 10,000 and 20,000 towards the amounts covered by the two cheques referred to earlier and the Plaintiff issued receipts, for the balance amount due on behalf of the Plaintiff, two lorry loads of timber worth Rs. 3,000 was supplied to the Plaintiff's brother by the first Defendant on 9th July 1973 and the balance due to the Plaintiff would be only Rs. 2,000. The second Defendant is an unnecessary party. The Plaintiff filed a replication denying the material allegations in the written statement.

3. The trial court held that the alleged discharge by payment of Rs. 30,000 in cash against receipts Exts. B-6 and B-7 is not true, that the claim of adjustment by supply of timber is not true, that the second Defendant is not liable for the plaint claim, that the Plaintiff is entitled to realise interest only at 6 percent per annum from the date of notice and accordingly granted decree against the first Defendant for Rs. 27,500 with interest at 6 percent per annum from 27th May 1974 with proportionate costs against the first Defendant and directed the second Respondent to bear his costs.

4. Learned Counsel for the Appellant urged only two contentions before us. According to learned Counsel, the trial court ought to have accepted the plea of discharge of Rs. 30,000 covered by Exts. B-6 and B-7 and adjustment by supply of two lorry loads of timber to the Plaintiff's brother. Undoubtedly, there were transactions between the Plaintiff and the first Defendant under which the

Plaintiff was advancing money to the first Defendant. There is no dispute now that the transactions were settled in the presence of P.Ws. 5 and 6 on 29th February 1972 and the balance due to the Plaintiff was fixed at Rs. 45,000. The claim was sought to be discharged by the first Defendant issuing two cheques dated 31st March 1972 and 31st May 1972 but the cheques were dishonoured. Subsequently, two cheques, one dated 6th June 1972 for Rs. 4,000 and another 17th June 1972 for Rs. 5,000 drawn by Lakshmana Perumal Raja, were endorsed in favour of the Plaintiff and these were also dishonoured. According to the Plaintiff, Rs. 10,000 had been paid by the second Defendant thereafter and he took back the cheques. This is denied by the first Defendant. But this amount has been given credit to by the trial court. On 25th July 1972, a cheque for Rs. 5,000 was endorsed in favour of the Plaintiff and that cheque had been encashed. Two other cheques for Rs. 2,500 each dated 17th February 1972 and 24th July 1972 were endorsed in favour of the Plaintiff and only one cheque was honoured. It is thus that Plaintiff gave credit to Rs. 17,500. It is the contention of the first Defendant that on 12th February 1973 the Plaintiff went to the business premises of the first Defendant without taking the cheques dated 31st March 1972 and 31st May 1972 and on that occasion, the first Defendant paid in cash Rs. 30,000 to the Plaintiff; Rs. 10,000 was paid towards the amount covered by the cheque dated 31st March 1972 for Rs. 10,000 and Rs. 20,000 was paid towards the cheque dated 31st May 1972 for Rs. 35,000. Since the Plaintiff had not taken the two cheques with him, it is alleged, he issued two receipts Exts. B-6 and B-7. This plea of discharge was set up in the reply notice and denied in the plaint and the replication. The burden of proving the discharge rested entirely on the first Defendant. At his instance, Exts. B-6 and B-7 as well as records containing admitted signatures of the Plaintiff were sent for examination of the expert D.W. 1, C.T. Bhanage, who submitted Ext. P-5 opinion stating that the disputed signature and the admitted signatures were made by the same person. The first Defendant also relied on his own oral evidence as D.W. 8 as well as the evidence of D.Ws. 3 and 4 who claimed to have witnessed the payment and passing of receipts. The trial court, on a consideration of the expert opinion and its own observations thought that the signatures in the disputed receipts might be those of the Plaintiff. The trial court however sought other corroborative evidence in support of the expert opinion and found such corroboration lacking. Trial Court was also of the view that the testimony of D.Ws. 3 and 4 could not be believed. On this ground the trial court held that the discharge pleaded and Exts. B-6 and B-7 are not proved. This finding is seriously challenged by learned Counsel for the Appellant.

5. Learned Counsel for the Appellant contended that the trial court committed a serious error of law in seeking corroboration of the expert opinion. It is contended that there is no rule of law or of caution requiring the court to insist on corroborative evidence. Our attention has been invited to a number of decisions of the Supreme Court. We shall briefly refer to them.

6. The decision in Ram Chandra and Another Vs. State of Uttar Pradesh, dealt

with conviction for an offence of murder. One of the Appellants, Ram Chandra was accused of writing various ransom letters. A large number of noted currency notes paid as ransom were traced to his possession. It was expert evidence regarding handwriting which connected Ram Chandra with the letters. In this connection, the Supreme Court observed as follows:

It may be that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction. But in this case, the authorship of the letters has been held by the courts below to be that of Appellant Ram Chandra, on various items of external and internal evidence already noticed above in addition to the opinion of the expert.

(emphasis supplied)

The conviction was confirmed.

7. In *Ishwari Prasad Mishra Vs. Mohammad Isa*, handwriting experts had been examined on both sides. Dealing with the evidence, the Supreme Court observed.

Evidence given by experts of handwriting can never be conclusive, because it is, after all, opinion evidence. Since we have come to the conclusion that the evidence given by the attesting witnesses and the scribe and the Appellant is wholly satisfactory, that evidence proves the execution of the document by the Respondent and the said evidence does not really need to be corroborated by the opinion of experts.

(emphasis supplied)

The Supreme Court proceeded to examine the evidence of experts and rejected the evidence against the disputed genuineness of the document.

8. In *Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee* since deceased and after him his legal representatives and Others, Bench of five Judges had to consider whether expert opinion regarding the timing of the signature could be acted upon. There was direct evidence to the effect that signatures were affixed on a particular date and contradicting the opinion of expert. It was also found that the expert had not made a chemical test which could have shown definitely whether the signature was of a particular year or period. In this background, the Supreme Court observed:

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 direct testimony of the two attesting witnesses which we accept is wholly inconsistent with it.

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In these circumstances the mere opinion of the expert cannot override the positive evidence of the attesting witnesses in a case like this where there are no suspicious circumstances.

(emphasis supplied)

9. The conviction entered against the Respondent in *State of Gujarat v. Vinaya Chandra Chhota Lal Pati* AIR 1967 S.C. 778, by the trial court was reversed by the Gujarat High Court on the ground that it was not safe to act upon the evidence of the complainant alone. It appears the trial court had itself compared the disputed writings and signatures with writings and signatures proved to be that of the Respondent. The Supreme Court took the view that the court is competent to compare writings though it may not be safe to record the evidence about a person's writing merely on the basis of comparison. Such comparison could be made to appreciate properly the other evidence produced before the Court. In that context, the Supreme Court observed as follows:

The opinion of a handwriting expert is also relevant in view of Section 45 of the Evidence Act, but that too is not conclusive. It has also been held that the sole evidence of an handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. It was therefore not right for the learned Judge to consider it unsafe to rely upon the evidence of the complainant in a case like this i.e. in a case in which no handwriting expert had been examined in support of his statement.

(emphasis supplied)

The Supreme Court also adverted to the other evidence in the case and restored the conviction.

10. The Appellant in *Fakhruddin v. The State of Madhya Pradesh* AIR 1967 S.C. 1326 was convicted for offences under Sections 465, 467, 417, 419, 471, etc. of the I.P.C. on the allegation that application for permits to the Civil Supplies Officer in fictitious names were presented and permits obtained by pretending to be the applicants and iron sheets taken delivery of. The trial Judge accepted the evidence of handwriting expert that the signatures in the permit were made by Fakhruddin. Supreme Court took the view that the best method of proof consists of direct evidence though three other modes contemplated under Sections 45, 47 and 73 also are relevant. The evidence under Sections 45 and 47 is only an opinion evidence. The Court further observed that in either case the court must satisfy itself by such means as are open that the opinion can 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 ones, not to become a handwriting expert, but to verify the premises of the expert in the one case and to test 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

existence of same characteristics in large measure in the disputed handwriting. In this way, opinion of the deponent, whether expert or otherwise, is subject to scrutiny and although relevant to start, become probative. Where an expert 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.

11. In *Ram Narain v. State of Uttar Pradesh* AIR 1973 S.C. 2200, a Bench of two Judges had to deal with a conviction for an offence u/s 384 of the Indian Penal Code. The question was whether accused had written two anonymous letters demanding ransom after kidnapping a child. The only evidence against the accused consisted of the evidence of the expert to the effect that the handwriting was that of the accused. The court considered the earlier decisions and took the view that there is no inconsistency in the ratio of any one of the earlier decisions. The court observed that:

Now it is no doubt true that the opinion of a handwriting expert given in evidence is no less fallible than any other expert opinion adduced in evidence with the result that such evidence has to be received with great caution. But this opinion evidence which is relevant may be worthy of acceptance if there is internal or external evidence relating to the document in question supporting the view expressed by the expert. If after comparison of the disputed and admitted writings by the court itself when the presiding officer is familiar with that language it is considered safe to accept the opinion of the expert then the conclusion to arrive at cannot be assailed on special leave on the mere ground that comparison of handwriting is generally considered as hazardous and inclusive and that the opinion of the handwriting expert has to be received with considerable caution. The question in each case falls for determination on the appreciation of the evidence....

(emphasis supplied)

12. In *Magan Bihari Lal Vs. The State of Punjab*, the Supreme Court had to deal with conviction for a criminal offence based solely on expert opinion. The court considered the observations in *Ram Chandra and Another Vs. State of Uttar Pradesh*, , *Ishwari Prasad Mishra Vs. Mohammad Isa*, , *Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee* since deceased and after him his legal representatives and Others, and *Fakhruddin's* case AIR 1967 S.C. 1326 and observed:

...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.

The court after analysing the other evidence found that the conviction could not stand.

13. In *Murari Lai v. State of Madhya Pradesh* AIR 1980 S.C. 531, the Supreme

Court had to deal with a conviction for an offence u/s 302 I.P.C. One of the items of evidence relied on by the prosecution was a writing in a diary found in the premises of the deceased and made on the night of the occurrence. The only evidence connecting the writing with Murari Lal was the expert opinion. If the writing was accepted as having been made by Murari Lal, his presence at the scene on the night of the occurrence could be established. The question arose whether corroborative evidence was necessary before the expert opinion could be accepted. The Supreme Court reviewed the entire case law and referring to Sections 45 and 46 of the Indian Evidence Act observed:

So, corroboration may not invariably be insisted upon before acting on the opinion of a handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject.

(emphasis supplied)

The court took the view that the observations in *Ram Chandra and Another Vs. State of Uttar Pradesh*, *Ishwari Prasad Mishra Vs. Mohammad Isa*, and *Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others*, were not of universal application but must be read in the light of the circumstances existing in each of those cases. The court also took note of the fact that in *Fakhruddin's case* AIR 1967 S.C. 1326, the court ultimately acted upon the uncorroborated testimony of the expert. The Judges constituting the Bench compared the writing. The court also took the view that some of the observations in *Magan Bihari Lal Vs. The State of Punjab*, were sweeping general observations not intended to be of general application or laying down any legal principle. The observations relate only to a rule of caution and not a rule of law. The court observed as follows:

We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of a handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in

subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted.

(emphasis supplied)

The court took the view that it is the duty of the court to compare the writings and come to its own conclusions either with the help of the expert or where such help is not available, without such help.

14. We do not find any inconsistency in these decisions. In the several cases, different aspects of the same question have been emphasised, depending on the particular facts and circumstances obtaining in each case; at the same time, the cases reveal a common and broad approach to the question. Courts must always keep in mind the difference between relevancy of evidence and the testimonial weight of such evidence. Undoubtedly expert evidence in proof or disproof of genuineness of handwriting or signatures is rendered relevant u/s 45 of Evidence Act; at the same time, other evidence which supports or detracts from expert opinion is also relevant u/s 46 of Evidence Act. This is the rule of relevancy. In arriving at a decision whether to act upon expert evidence or not, an important feature of such evidence must be kept in mind. Expert opinion, like other opinion evidence, say for example, u/s 47 of Evidence Act, is only evidence based on opinion. It should be realised that science of identification of handwriting is science which is imperfect and not exact. It is quite different in nature from direct evidence which could be adduced u/s 68 of Evidence Act. Expert opinion regarding identity of handwriting, being only opinion evidence based on an imperfect science, may not be conclusive; normally it may not be safe to base the courts' finding solely on opinion evidence. This is only a rule of caution. Such expert opinion could be acted upon if supported by internal and external evidence, direct or circumstantial evidence. It is for the court in each case to satisfy itself that the opinion may be acted upon. Court may of its own observation of the admitted or proved writing and comparison with disputed writing, verify the premises of and the reasons given by the expert in support of his opinion. If the reasons given by the expert are unchallenged or are found acceptable, there is no reason to say that the finding of the court cannot rest on such evidence. The only rule is rule of caution. How the court is to apply the rule of caution in a given case depends on the facts and circumstances of each case. Expert opinion is as fallible as any other opinion evidence. Prudence requires that it must be approached with caution; caution is to be exercised by looking for internal or external evidence--call it corroboration, if you must--supporting the opinion. Corroboration may be forthcoming as a result of court's own observations and comparison and the testing of reasons given by the expert; or it may be forthcoming in the form of external evidence, direct or circumstantial. The decision of the court must be taken in the light of all relevant evidence and circumstances. Conversely, if the reasons given are not acceptable or are found to be of doubtful validity, or if observations of court do not support expert opinion or if in a given case court is not able to agree or disagree with reasons

given by the expert, or if the other evidence and circumstances are inconsistent with expert opinion, court will certainly be justified in seeking corroboration of the opinion. Whether the court must seek such corroboration depends upon facts and circumstances of each case. If the reasons given by the expert are convincing and if there is no acceptable evidence inconsistent with the expert opinion, court may act upon it.

15. D.W. 1, in Ext. C-5 report has given a number of reasons for coming to the conclusion that the disputed signatures marked D-1 and D-2 in Exts. B-6 and B-7 and the admitted signatures S-1 to S-15 found in the attachment schedules, vakalath and plaint are made by the same person. We will briefly examine some of the important reasons given. The expert has stated that there are no suspicious retouchings or tremours in the disputed signatures. We have carefully examined the photographic enlargements made by the expert. We find that there are such retouchings in the letter 'C' in signature D-1 and letter 'R' in signature D-2. We find tremours in the letters 'C-PP' and the line connecting 'H' and 'e'. The expert has stated that the disputed signatures have naturalness and freedom of movement. The existence of tremours belies this reasoning. The sweeps in the letters 'K', 'R' and 'C' in the disputed signatures do not appear to have naturalness. The expert also was of the view that the disputed signatures contain natural variations. This reason is belied by a careful scrutiny of the letters 'K', 'R' and 'C'. He found medium fast to fast speed in both sets of signatures. We are unable to agree with this reason. We find that the speed disclosed by disputed signatures is definitely slower than the speed in the admitted signatures. The letters in the admitted signatures have a decidedly greater slant than the letters in the disputed signatures. According to the expert, the spacing variation is uniform in both sets of signatures. A careful examination does not support this reason. We find that the space variation in the disputed signatures is decidedly more than that in the admitted signature. The expert has stated that the pen-pressure is uniform in both sets of signatures. We find that the pen-pressure is more in the admitted signatures. According to the expert, the curves are well-balanced in both sets of signatures. The photographic enlargements show better balance in the admitted signatures than in the disputed signatures. The caligraphic similarities in the letters 'K, R, C, E, 1, 1, a, p, p' do not appear to be as suggested by the expert. The expert also relied on the similarity in underscoring and putting dots in both sets of signatures. We do not think that this is a very significant factor. The expert also stated that the two sets of signatures disclose careless abandon of genuine writing. A close examination reveals such careless abandon in the admitted signatures. Hesitancy is revealed in the disputed signatures. The expert did not discuss the possibility of freehand forgery. He has not properly identified the characteristics of the admitted signatures. He did not bestow any thought on verifying if there were any dissimilarities and in analysing them. On a careful consideration of Ext. C-5, the evidence of expert and our own observation of the signatures in the originals and the photographic enlargements, we are of the view that several of the reasons

given by the expert are incorrect. We are unable to agree with the opinion of the expert in support of the genuineness of the signatures in Exts. B-6 and B-7. In such circumstances naturally the court is entitled to seek corroboration from external evidence.

16. The assertion by the first Defendant examined as D.W. 8, in support of the receipts is rebutted by the Plaintiff examined as P.W. 5. According to the Appellant, Rs. 30,000 was paid and Exts. B-6 and B-7 receipts were executed and passed in the presence of D.Ws. 3 and 4 who are partners in a firm dealing in firewood. They claim to have gone to the business premises of the first Defendant to purchase firewood on 12th February 1973 on which date, it is alleged, the transaction took place. Their case is that they paid Rs. 500 on that day to the Defendant and sent a further amount of Rs. 800 in two weeks and took delivery of the firewood in the middle of March. Curiously, the first Defendant did not produce any records in support of the alleged transaction with the witnesses. The first Defendant produced cash book Ext. B-11 and Ledger Ext. B-12 to show that Rs. 30,000 had been paid on 12th February 1973. These books do not contain entries to show the receipt of the amounts said to have been paid by D.Ws. 3 and 4. This, it appears to us, is a very crucial circumstance militating against the presence of D.Ws. 3 and 4 on the day in question as well as their evidence. We are not impressed by the explanation offered by learned Counsel for the Appellant that being minor transactions or in an attempt to evade tax liability, the necessary entries were not made. Their evidence would also show the elaborate manner in which these receipts were allegedly executed. The Plaintiff is not an illiterate person. Receipts were being passed for huge amounts. Yet, Plaintiff was not asked to write the receipts himself and witnesses were not asked to attest the receipts. First Defendant, it appears, asked D.W. 3 to write the receipts and the witness stated that he can write receipts on seeing a sample receipt. First Defendant produced a sample receipt and on the instructions of both parties, D.W. 3 prepared drafts and after they were approved, he wrote the originals. The elaboratedness of the process is inconsistent with the carelessness in not getting the receipt attested. On that day, it appears, the first Defendant handed over to the Plaintiff two cheques for Rs. 2,500 each, given by Perumal Raja to the first Defendant. If that be so, first Defendant would have endorsed the cheques. The evidence of D.Ws. 3 and 4 is that the first Defendant brought out a cheque book and took two cheques and gave them to the Plaintiff, a story which underscores the unreliability of their evidence. On a careful consideration of the evidence and circumstances of the case, we are inclined to agree with the trial court that D.Ws. 3 and 4 would not have been present at the place on the day in question. Their evidence cannot be relied on at all. The circumstance that false evidence has been given in support of Exts. B-6 and B-7 also militates against the genuineness of these receipts.

17. The Appellant relies on the entries regarding the payment of Rs. 30,000 in Exts. B-11 and B-12 accounts. They are alleged to merit consideration as having been produced before the sales tax authorities. That is not a factor, in the

circumstances of the case, which will be sufficient to authenticate their genuineness in regard to the particular transactions. We have already commented on the fact that the payments alleged to have made by D.Ws. 3 and 4 are not found in the books. The books of account are in the handwriting of D.W. 6 who admitted that accounts were not written daily but at intervals, on two or three occasions every month. Accounts were written on the basis of chits and notes maintained in the handwriting of the first Defendant and one Chettiar. These chits and notes are not before Court, the explanation being that they had been destroyed after the accounts were written. The evidence of D.W.6 shows that these chits and notes were in the office even in 1974. It has to be remembered that Plaintiff sent registered notice to the first Defendant in May, 1974. That being so, it is difficult to accept that the primary evidence of transactions would have been destroyed in 1974.

18. First Defendant did not even care to adduce satisfactory evidence to show in what manner he was able to raise Rs. 30,000. The evidence is that the money was raised by sale of timber, drawings from bank and receipt of Rs. 10,000 from Perumal Raja two days earlier. It is significant to note that the books of account produced do not bear out the claim of drawings from the bank and receipt of a substantial sum of money from Perumal Raja.

19. In the circumstances, we agree with the trial court that external evidence and corroboration is lacking in support of the expert opinion. The circumstance referred to above militate against the case of payment of Rs. 30,000 or the passing of receipts on 12th February 1973. We hold that the payment of Rs. 30,000 has not been proved.

20. According to the first Defendant, has supplied two lorry loads of timber on behalf of the Plaintiff to the Plaintiff's brother. ExtsB-13 and B-14 are said to be carbon copies of the bills issued in regard to the transaction on 8th July 1973. The transaction is affirmed by D.W. 8 and denied by P.W. 6. The Plaintiff's brother has not been examined. The burden of proof is entirely on the first Defendant to prove the transaction. There is no case for the first Defendant that Plaintiff personally went and made the purchase. No doubt, D.W. 6 speaks to the preparation of the bills, the originals of Exts. B-13 and B-14. The production of copies of the bills will not by itself establish their genuineness. There is no dispute that to convey timber from the business premises of the first Defendant, passes had to be obtained. Trip sheets also have to be maintained in that connection. Trip sheets signed by the consignee were to be handed over to the seller. No attempt was made by first Defendant to ensure production of these records before court. They would be the best corroborative evidence of the transaction in question. In these circumstances, we agree with the trial court that the burden of proving this transaction has not been discharged by the first Defendant.

In the result, we confirm the decree and judgment of this trial court and dismiss the appeal with costs.