

(1896) 07 CAL CK 0022
In the Calcutta High Court
Case No : Reference No. 13 of 1896

Queen Empress

APPELLANT

Vs

Fakir Mahomed Sheikh, Arshad Ali Shaha and Sitanath Dass

RESPONDENT

Date of Decision : 16-07-1896

Acts Referred:

Citation : (1896) 07 CAL CK 0022

Judgement

O'Kinealy, J.—In this case the Appellants were tried by a jury in the district of Nadia. Three of the jurors were for acquitting and two for convicting them, and the Judge concurring in the view taken by the minority has referred the case to us Criminal Reference No. 13 of 1896 by the Sessions Judge of Nadia, under Sec. 307, Cr. P. Code. under Sec. 307 of the Code of Criminal Procedure. The complainant in this case is apparently a professional beggar, and the Appellant, Fakir Mahomed, is a wealthy man, the mahajan of his village, which is about two miles from the town of Meherpore. On the 25th February Fakir Mahomed presented a document for registration in Meherpore, and received it back on the 29th February following. It is in regard to this document that he and the other two Appellants are charged with forgery and false personation. The complainant says that he heard of this on the 6th March, when he returned from a begging tour, and on that day he attempted to present an application for a copy. He did not succeed in having his application received on that day, but it was received on the 7th. The copy was given to him on the 9th, and on the 10th he laid his complaint before the criminal authorities. Thus, it appears quite clear that the complainant had laid all his plans, and apparently required no further advice after the 6th. Every step subsequently taken, up to the 10th, was taken in regular order and without delay. From the evidence of the Sub-Registrar it appears clear that the complainant, when he says he returned about the 6th was not telling the truth, for two or three days before that he appeared before the Sub-Registrar with a Mukhtear and made enquiries from the Sub Registrar. They said that they did not want to see the document but that they would take a copy of it. Apparently, three or four days before the 6th the complainant knew the

contents of the documents and only waited to get a copy of it to start a prosecution. Immediately after the complaint was laid, an application was presented for a warrant to search the house of the accused Fakir Mahomed, and his house was searched. The document, said to have been forged, was not found. The accused Fakir Mahomed states that, owing to the death of his mother, things fell into confusion and the document has been lost.

2. Now, the evidence in support of the conviction greatly depends on the evidence of the Head Clerk in the Registration Office, and some thumb marks taken for the purpose of identifying the persons connected with the execution of this document. The Judge of the Court below allowed what is called expert evidence to show that the complainant, Noyan Shah, is not the person, who made those thumb marks. No doubt in any matter, connected with a mark so far as it is a sign, such evidence would be admissible, but we think that the Judge should in the matter of making a comparison, have done it himself. If we were sure that the procedure adopted in the Registration Office in taking these thumb impressions was strictly in accordance with the rules laid down by Government in that behalf, there could be no doubt of the guilt of the accused; but on this point we are not satisfied; the Head Clerk himself failed to appear at the beginning of the case, and it appears on the evidence that he was watched and distrusted by both sides. We, therefore, feel great difficulty in finding the accused guilty on his evidence, and this is really the material evidence in the case.

3. The result is that we agree with the majority of the jury that the evidence is not sufficient and we accordingly acquit the accused, and direct that they be discharged.

Banerjee, J.

4. I am of the same opinion. I only wish to add a few words with reference to that part of the evidence, which relates to the thumb marks.

5. It was contended for the Crown that a comparison of this thumb impression, taken by the Registrar under orders of Government, of the person who presented the document in question, with the thumb impression taken in Court of Noyan Shah, the alleged executant of the deed, went clearly to show that the persons who presented the document before the Registrar could not have been Noyan Shah, and that one of the accused must, therefore, have falsely personated and the others abetted the false personation of Noyan Shah, and they have thereby committed an offence punishable under clauses (c) and (d) of Section 82 of the Registration Act. On the other hand, it was argued by the learned counsel for the accused that neither the comparison of the thumb impressions, which we were asked to make, nor the evidence of the expert on the point, was admissible in law, and that, even if they were admissible their weight was so slight that it could not affect the decision of the case.

6. One of the main questions for determination in this case being whether the document now impugned was or was not presented before the Registrar by the

complainant Noyan Shah, a comparison of the thumb impression of the person, who presented the document with that of Noyan Chand is, I think, admissible under Sec, 9 of the Evidence Act, if the similarity of those impressions can establish the identity of that person with Noyan Shah, or under Clause (2) of Sec. 11 of the Act, if their dissimilarity makes such identity improbable. Now those who have made finger prints their special study have come to the conclusion that their similarity is, as a rule, evidence of personal identity and their dissimilarity will, therefore as a rule, be evidence of the reverse. See Galton on Finger Prints, Chapters VI & VII. That being so, the comparison we were asked to make would be allowable in law, if it was shown that the impression taken by the Registrar was that of the left thumb of the persons who made it, the impression taken in Court being that of Noyan Shah's left thumb. Upon this point, however, we don't think there is any sufficient and reliable evidence. The comparison of the thumb impressions, therefore, cannot lead to any safe inference.

7. Though the comparison of thumb impression Is allowable, such comparison must be made by the Court itself; and the opinion of an expert as to the similarity of such impression is not admissible under Sec. 45 of the Evidence Act, The other evidence on the record is not sufficient to warrant the conviction of the accused. I, therefore, agree with my learned colleague in holding that the verdict of majority of the jury in this case is right and that the accused should be acquitted.