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**(1977) 09 MP CK 0007**

**In the Madhya Pradesh High Court**

**Case No : Criminal Appeal No. 361 of 1971**

State of Madhya Pradesh

APPELLANT

Vs

Sitaram Gajraj Singh Rajput and Others

RESPONDENT

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**Date of Decision : 27-09-1977**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 109, 120B, 409, 467, 471  
Prevention of Corruption Act, 1988 — Section 5(1)(c), 5(1)(d)

**Citation :** (1981) ILR (MP) 862 : (1978) MPLJ 194

**Hon'ble Judges :** G.P. Singh, J; C.P. Sen, J

**Bench :** Division Bench

**Advocate :** M.L. Chansoriya, Government for State, for the Appellant; S.C. Datt, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

C.P. Sen, J.

The State has preferred this appeal against the acquittal of the Respondents 1 to 12 for the various offences, viz. Respondents 1 and 5 for offences under Sections 409, 467 and 471 of the Indian Penal Code and also u/s 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act; and remaining Respondents except Respondents 10 to 12 for the aforesaid offences read with Sections 109 and 120B of the Indian Penal Code. So far as the Respondents 10 to 12 are concerned they are only for the offence u/s 467 of the Indian Penal Code.

The prosecution case is that in the year 1966-67 scarcity relief works were done in Damoh District. Here we are concerned with the work of Tejgarh Tank approach road, constructed in that period for scarcity relief. Respondent No. 1 Sitaram Rajput was the disbursing officer, Respondent No. 5 T.W. Hingankar was the Sub-Divisional Officer and Respondent No. 2 Kanti Swaroop Saxena was the Overseer, in-charge of the work. Respondent No. 3 Jagdishprasad and Respondent No. 4 Udaichand Jain were the Muster-roll Clerks. It is alleged that all these Respondents entered into a conspiracy to commit criminal breach of

trust by preparing false muster-rolls and showing payments on the basis of such muster-rolls to the fictitious labourers when in fact no such payments were made and the amounts were misappropriated. In fact whatever works were done, were done through contractors and no work was done departmentally. For this purpose false muster-rolls bearing numbers 3878, 3879, 3880, 3882, 3883, 3914, 3916, 3917, 3918, 3458, 331, 332 and 336 were got prepared and on the basis of these muster-rolls, Respondent No. 1 is shown to have disbursed an amount of Rs. 4889 on 25-1-1967 to the labourers mentioned in the rolls, when, in fact, no such payment was made. There are some mistakes in the totalling also. Although it was obligatory to mention the names of the villages to which the labourers belonged, the names of villages have not been mentioned deliberately in order to avoid detection. The payments so made have been attested by Sukhisingh, Respondent No. 7 and Hari singh, Respondent No. 8, as Panchas. On investigation, it was found that about 320 thumb impressions on these muster-rolls were clear out of which 89 are of Respondent No. 6 Bhopatsingh, 70 are of Respondent No. 8 Harisingh, 36 are of Respondent No. 9 Dallu, 79 are of Respondent No. 10 Khumansingh, 32 are of Respondent No. 11 Makhansingh and 20 are of Respondent No. 12 Maharajsingh. These persons have put their thumb impressions against the names of various labourers shown in the muster-rolls, showing payments to them. The prosecution case is mainly based on evidence of the expert who had examined the thumb impressions.

Respondent No. 1 admits that he had disbursed the amount on 25-1-1967 as per the muster-rolls which were duly certified by the Overseer. He claims that he made the payments to individual labourers which were duly identified by the Mates who had taken the thumb marks of the Respective labourers. The mistakes in the totalling were due to pressure of work. Respondents Nos. 2 and 5 pleaded that they were not present when the amounts were paid to the labourers; but they asserted that the muster-rolls were prepared properly and they had certified on the basis of the muster-rolls prepared by the muster-clerks. According to them, no printed muster-rolls were given; but they were given blank sheets bearing seals of the office of the Sub-Divisional Officer and there was no column for mentioning the names of the villages of the labourers. Respondents Nos. 3 and 4 admitted that they had prepared the muster-rolls and had marked the presence of the labourers. They denied that they prepared fictitious muster-rolls. Respondents 7 and 8 admitted that they had attested the payments made on 25-1-1967 by the Respondent No. 1, and that the labourers were paid in their presence. The rest of the Respondents denied that they had put their thumb marks against the names of different labourers and they had no knowledge about any fraud being practised.

The learned Additional Sessions Judge was of the view that the prosecution has failed to prove beyond reasonable doubt the case against any of the Respondents. It has not been proved by the prosecution that no works were done in respect of the payments made to the labourers shown in the muster-rolls. It has also not been shown that the payments shown were in excess of the works actually done.

The admissions of certain Respondents vide Ex. P-174 to Ex. P-177 have not been proved. The muster-rolls (Ex. P-3 to Ex. P-15) were prepared on plain papers and there were no printed forms. S.C. Sohni (P. W. 54) Executive Engineer was unable to mention whether he had issued any instructions to mention the names of the villages of the labourers in the muster-rolls. On the other hand, Rajeshwardas (P. W. 55) has proved that in the printed muster-rolls (Exs. D-5, D-6 and D-7) there is no column of the village of the labourers. The prosecution case fully depends on the evidence of the Finger Print Expert Vinayak (P. W. 53); but his evidence was not acceptable. He has not taken photo enlargement of all the disputed thumb marks; but prepared enlargement of only 12 disputed thumb marks. He has not followed the correct principles in comparing with the specimen thumb impressions. His report (Ex. P-142) is in conflict with the report of the Director of the Finger Print Bureau. The Finger Print Expert has himself contradicted some of his Reasonings in his cross-examination. The Respondents have, therefore, been acquitted.

Scientific study has proved that finger prints afford an infallible means of personal identification; not only is the ridge arrangement on every finger of every human being unique, but the arrangement does not alter with growth. Finger prints serve to reveal an individual's true identity despite personal denial, assumed names or changes in personal appearance resulting from age, disease or accident. Because of its simplicity and economy, the practice of utilizing finger prints as means of identification, referred to as dactyloscopy, has become established as indispensable aid to modern law enforcement. Finger impressions can be taken with a minimum of time and effort, and the ridges in such impressions form patterns which can be readily sorted out into groups for ease in filing. Each ridge of the epidermis (outer skin) is dotted with sweat pores for its entire length and is anchored to the dermis (inner skin) by a double row of peglike protuberances or papillae. Identifiable points can be obtained from the dermal papillae after the epidermis has been destroyed or sloughed off. Injuries such as superficial burns, abrasions, cuts and blisters, which affect only the epidermis, do not alter the ridge structure and the original pattern is duplicated in the new skin. An injury which destroys the dermal papillae, however, will obliterate the ridges. The ridges are not all continuous but end, fork and rejoin in numerous places throughout the pattern (Encyclopaedia of Britannica, 1970 Edition, "Finger-Print").

Interest in modern finger print identification dates from 1880. With the publication of Articles of Henry-Faulds and W.J. Herschel, who was in Indian Civil Services, about uniqueness and permanance of finger prints, facts which the English scientist Sir R. Galton was to verify through lengthy systematic observations. Systems of finger print classification were developed later by Sir E.R. Henry, formerly of Indian Civil Service and afterwards Chief Commissioner of the London Metropolitan Police and by Juan Vucetich of Argentina. However, Henry system of classification has been adopted by scores of law enforcement agencies around the world and is the most widely used method of finger print

classification. All impressions are broadly classified as arches, loops, whorls and composites or compounds and there are further sub-divisions. In arches the ridges run from one side to the other without making backward turn, unlike the loops, whorls or composites. In loop, whorls or composites types there are fixed points, which are known as delta or outer terminus and the core or the inner terminus. These serve a useful purpose in the classification of finger prints. Generally there are no deltas or cores in arches. There are also considerable amount of finer details of branching and coalescence of ridges, of island and unlimited quantity of extremely fine pore details along individual ridges. About 5 per cent of the impressions are arches, 60 per cent loops and 35 per cent whorls and composites. Loops and whorls always predominate (From Taylor and Modi on Medical Jurisprudence).

For the purposes of comparison of two finger prints i.e. the disputed and the specimen, to begin with the patterns are seen first. If the patterns are different then the impressions are of different persons. If the patterns are similar then it is seen whether general flow of the ridges is similar. If the patterns and ridge flows are similar, then the ridge characteristics of the two impressions are compared. Two common fixed points are then located. In cases of loops, whorls or composites, core is taken as the inner terminus and the delta outer terminus. Generally speaking, core and delta are not available in cases of arches, so also in partial or blurred impressions such core and delta may not be available. So, dot, rod, ridge end, bifurcation, island etc. are taken as the starting point and similarly outer point is fixed. Having got or fixed the two points, their similarity is determined by counting the number of ridges in between the two points. If the numbers tally, then the sequence of individual ridge characteristics and their relative positions are observed. The points of similarities are then noted. If the relations of each of the points so noted in both the impressions is the same, it is an absolute certainty that the impressions are of the same person.

No question remains as to how many points of similarities can definitely establish the identity beyond question. The Federal Bureau of Investigation of U.S.A. requires twelve and the Scotland Yard requires sixteen points of similarities for positive identification. However, some English and American authorities are of the view that if there are five or six "well grouped" characteristics and the patterns uncommon, the identification is definite. By well grouped characteristics, they mean dots, islands, books and spurs. If five or six characteristics occur close to one another and in a narrow area, the force of identity is enhanced. In the case of blurred or partial impressions, the view of some of the Indian authors is that if there are three identical points, they would be sufficient to prove the identity. This has been questioned by other Indian authors who insist on at least six points of similarities to establish the identity. The Finger Print Bureaus of different States in India have fixed varying standards, requiring six to twelve points of similarities to determine the identity. In para 88 of the Finger Print Manual of M.P. State it has been observed: "If a sufficient number of ridge characteristics are in complete agreement in the two impressions it can be said

definitely that the impressions were made by the same person. However, no definite rule can be laid down for fixing the number of the points of similarities. Four or five might be sufficient if there were unusual peculiarities. The consensus of modern opinion is that six, four in sequence, are sufficient to justify a definite opinion being given." It is said that the number is now changed to eight in M.P., in view of certain decisions of this Court. The following extracts from the book Modern Criminal Investigation by Soderman and O' Connell may be quoted here in this regard:

The demand for twelve similar details is the result of the opinion of bygone days, founded on the opinion of Gallon, Remus, Balthazard and others. All recent scientists working in the field of dactyloscopy, as, for instance, Locard, De Rechter, and others, share the opinion that the number of characteristic points which can be noted at the edge of an enlargement is a matter of little importance. A rare detail is an identification sign one hundred times more important than a whole series of forks, four to five details in a centre of an unusual pattern have much more value as evidence than twelve to fifteen forks in the periphery. Some ridges with unusually grouped pores have more weight than the classical twelve points.

So no hard and fast rule can be laid down. Each case has to be seen on its own merits and in cases of well grouped characteristics in a narrow area and patterns uncommon, six points or even less may be sufficient to fix the identity.

The branch of finger print is now a highly developed and technical subject. The classification of finger prints is a science requiring much study and specialization in the subject. Therefore, a finger print expert is in a more advantageous position to compare finger prints and point out similarities or dissimilarities between two impressions by critical examination of the impressions. This was recognised by amendment of Section 45 of the Evidence Act in 1899, making opinion of finger print expert relevant as was the case with medical and hand writing experts. Section 73 of the Act was also suitably amended, enabling taking of specimen thumb impressions for comparison. Section 510 of the Code of Criminal Procedure was amended in 1955 to make the report of the Director of Finger Print Bureau admissible under that section. The Supreme Court in *Shri Phool Kumar Vs. Delhi Administration*, has held that when neither the Court nor the prosecution or the accused filed any application to summon and examine the finger print expert as to the subject matter of his report, no objection can be taken at the appellate stage by the accused against his non-examination.

Majority of the High Courts have found that it cannot be laid down as a rule of law that it is unsafe to have conviction on the uncorroborated testimony of a finger print expert. The true rule seems to be one of caution. The Court cannot delegate its authority to the expert but has to satisfy itself as to the value to be given to the evidence of the expert in the same way as to the value given to any other evidence. The reasons given by the expert in arriving at the conclusion are ultimately to be weighed by the Court and satisfy itself about the correctness of

the conclusion by comparison of the prints. The task of the Court becomes much easier when the finger print expert has taken enlarged photo prints of the disputed and specimen finger prints and marked the distinct points of similarities. Otherwise it becomes an uphill task to examine each and every individual prints with magnifying glass when there are large number of prints. If the enlarged photo prints are kept side by side and their markings compared, it becomes much easier to follow the reasonings of the finger print expert about points of similarities or dissimilarities and judge the correctness of his conclusion. In *Emperor v. Sahdeo* 3 NLR 1 it has been observed:

The papillary ridges covering the bulbous points of the human finger and thumb with which linger impressions are produced, afford a surer criterion of identity than any other comparable bodily feature.

Where it is proved by competent expert testimony that two such impressions, made at different times, however far apart, contain several points of agreement and no points of disagreement in their minutiae, no further evidence is necessary to prove that they were made by the same finger.

There are no eye witnesses in the case and obviously there could be none when the disbursing officer, officer certifying the works, muster-roll clerks and mates who had put their thumb impressions on the muster-rolls against the fictitious names of various labourers are all accused persons. As the names of the labourers mentioned in the muster-rolls are all fictitious and to avoid detection the names of their villages were not mentioned and so there was no question of examining any of the labourers to show that they were never paid the wages as shown in the muster rolls. The prosecution case can only succeed if the prosecution is able to prove beyond doubt that the thumb impressions on the muster-rolls are all forged and they are, in fact, the thumb impressions of the various Respondents. The prosecution case, therefore, hinges on the evidence of finger print experts. We have the report, Ex. P-143, of the Director of Finger Print Bureau which is admissible in evidence u/s 510 of the Code although he has not been examined as a witness. We have also the report, Ex. P. 142 of Shri Vinayak (P. W. 53) who has been examined in Court. The learned Judge found the evidence of the finger print expert to be not satisfactory and he has given cogent reasons for arriving at this conclusion. It cannot be said that the reasoning of the learned Judge is either perverse or unreasonable. In an appeal against acquittal it is not open to interfere even if another view of the evidence is reasonably possible, but here we are satisfied that the reasonings are well merited and there is nothing to differ from the view taken. There were in all about 320 disputed thumb impressions which were alleged to be those of Respondents Harisingh, Dalu, Khumansingh, Makhansigh and Maharajsingh and were referred to the finger print experts. The experts found that out of these 320 impressions some are smudged and are not fit for comparison, still the experts were left with quite a large number of legible finger prints and it was not all difficult to conclusively prove that the disputed finger prints tally with the finger prints of the aforesaid

Respondents. The finger print expert Vinayak (P. W. 53) had taken photo enlargement of only 12 disputed prints. He has also given his reasonings only in respect of these 12 prints though he stated that he had examined the other legible disputed prints with the specimens and he found them to be similar by examining the other prints which were not enlarged by magnifying glass. It may be mentioned that the reports Ex. P. 142 of Shri Vinayak and Ex. P. 143 of the Director do not tally in all respects. In Ex. P. 142 questioned prints 442, 446, 465, 168-A, 468-C and 46S-D are shown as identical but the Director has stated in the report that these prints are unfit for comparison. Questioned prints 550, 554, and 554-A have been stated by the expert to be identical but there is no such report about them by the Director. Similar is the case with regard to prints 606 and 606-A. If there are points of similarities between disputed and specimen prints there is no reason why the experts should differ.

Shri Vinayak admits that the best course to follow is to prepare enlarged photographs of the disputed and specimen prints to the same scale. Then, on the photographs a line may be drawn to connect the centre and the junction points. The lines between the two points should now be carefully counted. The next step is to find out how many agreements in detail there are on either side of the drawn line, such as free ends, forks, ellipses, tongues and rods and to see how they are situated as regards their relative positions with one another. One should also verify that the general pattern is the same in both, but he clearly admits that he did not consider the pattern of the prints. He has failed to take enlarged photographs of all the disputed prints which were subject to examination and comparison by him. He has not marked two fixed points nor drawn a line between the two points, nor he has counted the number of ridges in between. Although he admits that most of the disputed finger prints were quite legible, still he has only marked out six points of similarities in each of 12 enlargements of the disputed finger prints. His opinion is mainly based on the ridge characteristics which agree in nature and relative position. Perhaps, he has followed the instructions in the Finger Print Manual of M.P. State but in the Manual it is mentioned that 4 or 5 points of similarities might be sufficient if there are unusual peculiarities, though normally six points of similarities, four in sequence, are sufficient to justify a definite opinion being given. It is not the opinion of Shri Vinayak that any of these prints had unusual peculiarities nor he has stated that at least four points of similarities were in sequence. This apart, he has contradicted his report in the cross-examination in respect of several items. About photo enlargement, Ex. P. 126, he has mentioned that to the east of point No. 3 there is west-ward bifurcation with no ridge intervening but in cross-examination he admitted that point No. 4 is an end of a ridge. Similarly, with regard to photo enlargement, Ex. P. 128, he has mentioned that point No. 1 is end of a ridge and to the east of point No. 3 and after the intervention of 3 ridges there is end of a ridge but in cross-examination he admitted that point No. 1 is an upward bifurcation and is not end of a ridge and point No. 4 is also bifurcation and is not end of a ridge. Under the circumstances, the prosecution

has failed to prove beyond doubt that the thumb impressions on the muster-rolls are forged. The prosecution has also failed to show that no work, in fact, has been executed in respect of which these payments were made as per these 13 muster-rolls. We, therefore, find no reason to interfere with the acquittal.

The appeal fails and it is dismissed.