

## REVISIONAL CRIMINAL.

---

*Before Mr. Justice Moti Sagar.*

JASSU RAM—Petitioner,

*versus*

THE CROWN—Respondent.

Criminal Revision No. 401 of 1923.

*Indian Penal Code, 1860, section 465—Forgery—conviction based solely upon the evidence of a finger-print expert.*

*Held, following Bazari Hajam v. King-Emperor (1), that a person should not be convicted of a serious offence solely upon evidence of similarity of thumb-impressions.*

*Application for revision of the order of Mian Ahsan-ul-Haq, Sessions Judge, Mianwali, dated the 19th January 1923, modifying that of Pir Haidar Shah, Magistrate, 1st Class, Mianwali, dated the 18th December 1922, convicting the petitioner.*

ANANT RAM, for Petitioner.

NEMO, for Respondent.

The judgment of the Court was delivered by—

MOTI SAGAR J.—After hearing counsel I am clearly of opinion that the convictions of the accused persons in these cases are unsustainable, and that their convictions and sentences must be set aside. The circumstances under which these convictions were recorded are briefly as follows:—

On the 12th of November 1917, one Jassu Ram brought a suit for the recovery of Rs. 600, principal and interest, against one Mawaz Khan on the basis of a *bahi* account. Under the entry on the *bahi* there was a thumb-impression which, it was alleged by the plaintiff, was that of the defendant, Mawaz Khan. The defendant denied the thumb-mark, and contended that he had not borrowed any money from the plaintiff. The plaintiff produced one Kalla Ram as a witness in the case who stated that he was the scribe of the

---

(1) (1921) I. L. R. 1 Pat. 242.

entry in the *bahi*, and that the defendant had affixed his thumb-mark in his presence. The defendant, however, persisted in his denial that the thumb-mark on the entry was his. The Court thereupon obtained certain thumb-marks of the defendant on a piece of paper in Court and sent them along with the disputed thumb-mark in the *bahi* for comparison to the Finger Print Bureau at Phillour. The report was that the impression on the *bahi* did not correspond with any of the other impressions and that it did not appear that the impressions on the two documents were made by one and the same person. The case was set down for a hearing for the 30th of April 1918. On that date the plaintiff failed to appear in Court, and the case was accordingly dismissed for default under Order IX, rule 8 of the Code of Civil Procedure. On the 19th of May 1918 an application was made by the plaintiff for the restoration of the case, but it was dismissed. An appeal to the District Judge and application for revision to the Chief Court also met with the same fate. The defendant Mawaz Khan thereupon made an application to the District Judge for sanction to prosecute Jassu Ram and Kalla Ram, the former under sections 465 and 471 of the Indian Penal Code, and the latter under sections 465, 467 and 197 of the Indian Penal Code. The District Judge granted the sanction upon which a complaint was filed by Mawaz Khan against Jassu Ram and Kalla Ram which eventually resulted in the conviction of both. An appeal was filed to the Sessions Judge but was dismissed.

The petitioners have now come up in revision to this Court, and it has been contended on their behalf that there is no legal evidence on the record upon which these convictions could have been based. It is urged that the only evidence in support of the contention that the thumb-impression on the *bahi* was not that of the complainant, Mawaz Khan, is that of the Finger-Print Expert, *Pandit* Ram Narain, and that the petitioners should not have been convicted on the sole testimony of this witness. It appears that a portion of the document, which was supposed to have borne the forged thumb-impression

1928

---

JASSU RAM  
v.  
THE CROWN.

1923

JASEU RAM  
v.  
THE CROWN.

was torn away when the case came up before the Criminal Court, and that under these circumstances it became impossible to compare the genuine thumb-impressions of the complainant, Mawaz Khan, with the disputed thumb-mark on the *bahi*. The Court, however, relied upon the fact that the original document was examined by the Finger-Print Expert in the Civil case and also upon the fact that he had then come to the conclusion that that thumb-mark was forged and that it did not tally with the admitted thumb-marks of the complainant. It is clear, however, that the Finger-Print Expert was not cross-examined in the Civil case, and that the accused had no opportunity in that case to show that the opinion of the Expert was wrong. In the present case there is no evidence to corroborate the statement of the Finger-Print Expert, and it seems to me that it would be very dangerous to convict the petitioners on his sole testimony. In the case of *Bazari Hajam v. King-Emperor* (1) it has been held that ordinarily a person should not be convicted of a serious crime solely upon evidence of similarity of thumb-impressions and that the thumb-impression of an accused person should not be taken during his trial.

I entirely concur in this opinion and hold that the evidence in the present case is wholly insufficient to justify the convictions of the accused and that they are entitled to an acquittal.

I accordingly accept the revisions, set aside the convictions and the sentences and direct that the accused be released forthwith.

C. H. O.

*Revisions accepted.*

(1) (1921) I. L. R. 1 Pat. 242.