1931

SUNDRABAI
v.
HANMANT
GURNATH

Baker J.

from various places in Dharwar, Mysore, Bijapur and the adjacent parts of Bellary, in which the daughter's son has been adopted amongst Deshastha Brahmins.

As to the argument that no instances amongst Vaishnavas should be regarded as of any use for proving a custom where the parties are Smartas, as they are in the present case, it has been admitted by all the witnesses for both sides that Smartas and Deshasthas freely intermarry, and although there may be external differences, there is no reason to suppose that there is any fundamental difference between them as to the main tenets of Hindu law.

In these circumstances, I am of opinion that the custom alleged is established, and therefore the appeal must fail.

Appeal dismissed.

J. G. R.

ORIGINAL CRIMINAL.

Before Mr. Justice Wadia.

1932
January 29.

EMPEROR *v.* RAMRAO MANGESH BURDE AND OTHERS.*

Criminal Procedure Code (Act V of 1898), Secs. 233, 234, 235—Joinder of charges—Offences forming part of the same transaction—Forgery—Cheating—Conspiracy—Indian Penal Code (Act XLV of 1860), Secs. 467, 468, 471, 420, 109, 120B—Indian Evidence Act (I of 1872), Sec. 73—Specimen signatures and writings made by accused while in police custody—Comparison of such writings by expert—Admissibility in evidence.

Where more persons than one are charged with conspiring together to forge and use as genuine certain letters and cheques, with the object of cheating a bank by inducing it to cash those cheques, they can all be tried at one trial for all the offences together even though there may be more than three offences alleged to have been committed within a period of twelve months. This is so because the charges against the accused are based on a series of acts alleged to have been committed by them with one continuous purpose and design, and the acts are so connected together in point of time that they really form one transaction.

*Case No. 11, First Criminal Sessions, 1932.

Abdul Salim v *Emperor*,[1] followed.

Specimen signatures and writings made by an accused person while he is in the custody of the police and while the police are investigating into the offence, are admissible in evidence at the trial of the accused for the offence of forgery. Remarks as to the undesirability of taking such specimens except in Court under the direction of a Magistrate or a Judge.

The Supdt. & Rembr. of Legal Affairs of Bengal v. *Kiran Bala Dassi*,[2] *King-Emperor* v. *Virammal*,[3] *Basgit Singh* v. *King-Emperor*,[4] *Zahuri Sahu* v. *King-Emperor*,[5] *Public Prosecutor* v. *Kandasami Thevan*,[6] and *King-Emperor* v. *Tun Hlaing*,[7] applied.

Bazari Hajam v. *King-Emperor*,[8] not followed.

FORGERY of cheques and cheating of a bank.

Accused No. 1 was a clerk in the Eastern Bank, accused No. 2 a clerk in the Bank of India, the approver, Dattatraya Bignoor, a clerk in Lloyds Bank and accused No. 5 a clerk in the Bank of Taiwan. The approver knew all the accused. The approver and accused No. 1 formed a plan for defrauding the Bank of India by getting it to cash forged cheques drawn on it. Having ascertained that one Maneklal Purshottam had a current account with the Bank of India upon which he had not operated from July to October 1930, the accused decided to get a cheque book from the Bank in Maneklal's name. For this purpose accused No. 1 drafted a letter to the Manager in Maneklal's name. Accused No. 2 supplied the specimen signature of Maneklal Purshottam from the file of the Bank. Accused No. 2 introduced accused No. 3 to accused No. 1 and the approver. Accused Nos. 4 and 5 went with the letter to Nasik and from there sent it to the Manager of the Bank. The Bank replied asking that the application for the cheque book be made on the printed form supplied to customers for that purpose in their cheque books. To this letter a reply was sent from Nasik by accused No. 5 in the name of Maneklal whose signature was forged by accused No. 1. In that letter an explanation was given-

[1] (1921) 49 Cal. 573.
[2] (1925) 30 Cal. W. N. 373.
[3] (1922) 46 Mad. 715.
[4] (1926) 6 Pat. 305.
[5] (1927) 6 Pat. 623.
[6] (1923) 50 Mad. 462.
[7] (1923) 1 Rang. 759, F. B.
[8] (1921) 1 Pat. 242.

1932

EMPEROR
v.
RAMRAO
MANGESH

explaining why the application could not be sent on the printed form and the request for the issue of a new cheque book was repeated. On receiving this letter the Bank sent a cheque book. From this cheque book accused No. 1 took out five cheques and signed them in the name of Manecklal and made them out for various amounts totalling in all about Rs. 15,000. Accused Nos. 2 and 3 assisted accused Nos. 1, 4, 5 and the approver in cashing the said cheques. They opened Savings Bank Accounts in the Central Bank of India under assumed names and got the amount of the said cheques through the Savings Bank accounts so opened by them. On Maneklal Purshottam finding out that his account was being wrongly operated upon, he complained to the Bank which called in the C. I. D. During the course of the investigation the five accused and the approver were arrested by the police who charged them with conspiring together to commit forgery, cheating and abetment of these offences. They were placed before the Presidency Magistrate, 3rd Court at Bombay, who tendered a pardon to the approver on condition of his making a full and true disclosure of the whole circumstances relative to the offences; and committed the accused to the Sessions Court in Bombay.

At the hearing of the case counsel for the defence objected to the joint trial of all the accused in respect of offences in connection with the said five cheques on the ground that not more than three offences committed in the course of one year could be tried together at the same trial.

While counsel for the prosecution in the course of his opening address to the jury was about to refer to various signatures and writings made by the accused persons while they were in police custody pending the trial and to show their similarity to hand-writing in the letters about the cheque books and the signatures on the cheques counsel for the accused objected to any reference being made to those specimen signatures or the writings on the ground that these

signatures and writings were taken from the accused while they were in police custody and that they should be treated as confessions and that they should therefore not be treated as admissible in evidence in the case and that they should therefore not be shown to the Jury.

S. G. Velinker, for the Crown.

P. A. Mahale, with *Shah*, for accused No. 1.

Y. B. Rege, for accused No. 2.

M. M. Thakor, for accused No. 3.

M. S. Pandit, for accused No. 4.

N. H. Jhabvalla, for accused No. 5.

The arguments of counsel in support of and against the objections are dealt with at length in his Lordship's judgment.

WADIA, J. :—The accused in this case are charged with being parties to a conspiracy in or about October 1930 to do certain illegal acts consisting of offences under the Indian Penal Code. Accused Nos. 1 and 5 are also charged with having forged between them two letters addressed to the manager of the Bank of India, Ltd., Bombay, and five cheques of various amounts drawn on the same bank, in the name of one Maneklal Purshottam Seth, and the remaining accused are charged with abetting accused Nos. 1 and 5 in the commission of the said offence. The accused are also further charged with using the said cheques as genuine, knowing or having reason to believe that they were forged, and also with cheating the Bank of India by dishonestly inducing the bank to deliver the various amounts of the cheques, and with abetment in respect of the same. An objection was raised at the outset that the accused could not be charged with having committed more than three offences within the space of twelve months under section 234 of the Criminal Procedure Code. This objection, however, is unfounded, as section 235, which is one of the exceptions to the

1932

EMPEROR
v.
RAMRAO
MANGESH

Wadia J.

principle laid down in section 233, provides that if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person—which word would include persons—he or they may be charged with, and tried at one trial for, every such offence. In my opinion the charges against the accused are based on a series of acts alleged to have been committed by them with one continuous purpose and design, and the acts are also so connected together in point of time that they really form one transaction. It has also been laid down in *Abdul Salim* v. *Emperor*[1] that a charge of conspiracy to cheat a person by means of several forged documents and fraudulently and dishonestly inducing that person to pay different sums of money to different persons, in pursuance of which conspiracy that person was so deceived and induced to pay the said sums, is really a charge of one offence only, viz., conspiracy, the acts of cheating being laid not as offences, but as acts done in pursuance of the conspiracy. In my opinion, the offence of conspiracy and the different offences alleged to have been committed by the accused in this case in pursuance of that conspiracy formed one and the same transaction and could be jointly tried. There is, therefore, no misjoinder of charges which may render the trial illegal.

The accused were arrested on different dates in May and June 1931, and in the course of investigation Inspector Achrekar of the C. I. D., Bombay, asked accused Nos. 1 and 5 separately to write on blank slips and sheets of paper in the presence of "panchas" in order to send the writings along with the letters and cheques alleged to have been forged in the name of Maneklal Purshottam Seth and also certain admitted signatures of the same party to the handwriting expert for comparison prior to the examination of the expert in Court. Similar writings were also taken from the accused separately by Sub-Inspector D'Sa, Deputy

[1] (1921) 49 Cal. 573.

Inspector Mahankal, and Sub-Inspector Pednekar of the Bombay Police, in the presence of "panchas". Counsel for accused No. 5 objected to those writings being shown to the jury in the opening address of the counsel for the prosecution on the ground that Inspector Achrekar had no power to make accused Nos. 1 and 5 write upon those slips and sheets in the course of investigation, and that they were, therefore, inadmissible in evidence. Counsel for accused No. 1 also joined in the objection. Under the Indian Evidence Act there are three ways of proving a disputed handwriting or signature as being the handwriting or signature of a particular person, viz., under section 47, by calling another person who knows or is acquainted with the handwriting of the person whose writing is in dispute; secondly, under section 45, by calling a handwriting expert; and, thirdly, under section 73, by a comparison of the disputed handwriting or signature with others that are either admitted or proved to the satisfaction of the Court to have been written or made by the person whose handwriting or signature is in dispute. It is further provided by this section that "the Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person". It may be here stated that the onus of proving the genuineness of the signature on a deed or a document in a criminal proceeding lies on the party impeaching it, viz., the Crown, and not as in a civil suit, in which the onus lies on the party setting up the deed or document and asserting its validity. The question, however, for consideration is in what manner the genuineness of the signature or the document can be impeached by the Crown in the discharge of that onus. Counsel for accused No. 5 referred me to *Bazari Hajam* v. *King-Emperor*,[1] in which case it was alleged that a certain deed purporting to have been executed by a person was

[1] (1921) 1 Pat. 242.

1932

EMPEROR
v.
RAMRAO
MANGESH

Wadia J.

not in fact executed by him but by the accused. When the accused was brought in the Magistrate's Court and in the Sessions Court, his thumb-print was taken, and on a comparison of the thumb-print on the deed and the thumb-prints taken in Court he was convicted. In appeal the conviction was set aside, and Bucknill J. deprecated the practice of taking thumb-impressions of the accused in Court which, according to him, was " for the purpose of possible manufacture of the evidence by which he (i.e. the accused) could be incriminated ". Das J. agreed in setting aside the conviction, but all that he added at the end of his judgment was that it was extremely dangerous to take the finger-print impression of an accused person in Court. Evidently the learned Judge did not go so far as to say that he considered the practice as being "repugnant to all thought of the proper administration of justice " in a British country. This case was decided in 1921. In *The Supdt. & Rembr. of Legal Affairs of Bengal* v. *Kiran Bala Dassi*,[1] which was decided in 1925, the learned Judges of the Appeal Court referred to section 5 of Act XXXIII of 1920, being an Act to authorise the taking of measurements and photographs of convicts and others, and to section 45 of the Indian Evidence Act, and held that the taking of a thumb-impression of an accused person was permitted by section 5 of that Act, and that the opinion of the expert formed by a comparison of such thumb-impressions was admissible in evidence. They, therefore, held that the procedure adopted by the Magistrate of taking thumb-impressions in his Court was one in strict accordance with the provisions of the law. A similar view was taken in *King-Emperor* v. *Virammal.*[2] Both these cases are referred to in *Basgit Singh* v. *King-Emperor*,[3] in which it was held that it was not improper for the Court to take thumb-prints of the accused in its presence and to have them compared by an expert with the

[1] (1925) 30 Cal. W. N. 373. [2] (1922) 46 Mad. 715.
[3] (1926) 6 Pat. 305.

1932

EMPEROR *v.* RAMRAO MANGESH

Wadia J.

disputed finger-prints. The case of *Bazari Hajam* v. *King-Emperor*[1] is also referred to in *Zahuri Sahu* v. *King-Emperor*,[2] in which it was held that the Court was entitled to ask the accused to allow his thumb-impression to be taken in Court for the purpose of comparison. I may here mention that section 73 of the Indian Evidence Act also applies with any necessary modifications to finger-impression. The case of *Bazari Hajam* v. *King-Emperor*[1] has not been followed in the cases that I have referred to above, and it has actually been dissented from in *Public Prosecutor* v. *Kandasami Thevan*,[3] in which it was held that there was no objection in law to a Judge taking the thumb-mark of an accused person if the Judge thought it relevant, and a conviction based on a comparison of a thumb-mark of an accused person taken in Court with the thumb-mark on the document in question was not improper. Counsel for accused No. 5 at first contended that even the Court had not the power to take the finger-impression of an accused person or make him write in Court, on the ground that section 73, which refers to "any person present in Court", does not contemplate an accused in a criminal trial. It has, however, been decided by a full bench in the High Court at Rangoon in *King-Emperor* v. *Tun Hlaing*[4] that the Court has the power to direct even an accused person present in Court to make his finger-impression for the purpose described in section 73, and that if it was the intention of the legislature to exempt an accused person from the operation of section 73, there was nothing to prevent it from saying so. I agree with the judgment.

Counsel subsequently argued that if the Court had the power given to it by section 73 of the Indian Evidence Act, a police-officer, of the rank of a Sub-Inspector, a Deputy Inspector or even an Inspector of Police, had no such power, and he referred to section 63 of the City of Bombay Police

(1) (1921) 1 Pat. 242.
(2) (1927) 6 Pat. 623.
(3) (1923) 50 Mad. 462.
(4) (1923) 1 Rang. 759, F. B.

1932

EMPEROR
v.
RAMRAO
MANGESH

Wadia J.

Act (Bom. IV of 1902), which provides that no statement made by any person to a police-officer in the course of an investigation under this Act shall, if taken down in writing, be signed by the person making it, nor shall such writing be used in evidence. It was argued that the writings, namely, the blank slips and sheets of paper on which accused Nos. 1 and 5 were asked to write by the police-officer, were statements within the meaning of that section. In my opinion they do not amount to statements. On a charge of forgery or making a false document and offences cognate thereto such writings often form part of the investigation itself, the object being to see whether there is any ground for placing the accused before the Magistrate on that charge. It was further argued that the writings amount to confessions within the meaning of the Indian Evidence Act and were, therefore, inadmissible under the provisions of sections 25 and 26. That contention, in my opinion, is equally unsound, for the writings do not state nor in the case of forgery do they really suggest an inference that the accused must have committed the crime. In fact a comparison of handwriting as a mode of proof is often hazardous and inconclusive, and as a method of proving disputed handwriting it is accepted by the Courts with great caution. I may also state here that no objection was raised to these writings when they were tendered in evidence in the Magistrate's Court which the accused could have taken, if they wished to suggest that they had been made to write under coercion. Even so, the objection would have affected the cogency or the evidentiary value of the writings, but not their admissibility. The jury are the judges of fact, and when the writings are tendered in evidence, it will be for them to say what weight they should attach to them, and also to the result of the comparison made by the handwriting expert. It is, however, within the province of the Judge to say whether the documents are admissible in evidence, and I hold that they are. I am strengthened in the ruling I have given by

a similar ruling given by Mr. Justice Rangnekar in the case of *Emperor* v. *Monghibai.*[1]

1932

EMPEROR v. RAMRAO MANGESH

Wadia J.

I should only like to add in conclusion that although there is nothing illegal in the accused having been made to write by the police-officers of the rank I have referred to, especially when the charge against the accused is one of forgery, as there is nothing either in the Criminal Procedure Code or in the City of Bombay Police Act which prohibits it, it would be generally desirable in the interests of the administration of justice in a criminal trial that for the purposes of comparison the accused should be made to write or give his finger-impression in Court under the direction of a Magistrate or a Judge. If the accused refuses to write or to give his finger-impression in Court, an adverse inference may even be drawn against him in respect of the charge on which he is brought to trial.

B. K. D.

[1] (1929) Case No. 32, 4th Criminal Sessions for 1929. (Unrep.)

PRIVY COUNCIL.

VACUUM OIL COMPANY (PLAINTIFFS) *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANTS).

J. C.*
1932
April 4.

[On Appeal from the High Court at Bombay]

Customs duty—Basis of assessment—Real value—"Wholesale cash-price"—Importer selling direct to consumers—Absence of similar goods—Sea Customs Act (VIII of 1878), section 30.

The Sea Customs Act, 1878, imposed upon goods, including oil, imported into India by sea customs duties according to their real value, and provided by section 30 that the real value should be deemed to be "(*a*) the wholesale cash-price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation . . . : or (*b*) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place . . .".

The appellants imported at Bombay very large quantities of lubricating oil of a particular manufacture and mark. They sold it direct to numerous customers, never to dealers. The price they charged was the same whether a large or small quantity was bought, except that if a consumer contracted to buy from them all his

*Present: Lord Blanesburgh, Lord Tomlin, and Sir Lancelot Sanderson.