

1905
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32 G-756=2
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9 G. W. N.
911=2 Cr. L.
J. 459.

Haidar Ali, who is a wholesale dealer in the bazar, against whom the retail sellers have combined.

Then, the case of *Moher Sheikh v. Queen-Empress* (1) is directly in point, and we follow that authority.

We, therefore, decline to interfere.

Conviction upheld.

32 C. 759 (=9 G. W. N. 520--2 Cr. L. J. 259.)

[759] CRIMINAL REFERENCE.

Before Mr. Justice Henderson and Mr. Justice Geidt.

EMPEROR v. ABDUL HAMID.*

[24th March 1905.]

Thumb-mark—Thumb-mark, evidentiary value of—Blurred impressions—Expert opinion, grounds of.—Judge—Jury—Power of Judge to question the Jury—Criminal Procedure Code (Act V of 1898) s. 303.

Where certain thumb impressions were blurred, and many of the characteristic marks, therefore, far from clear, thus rendering it difficult to trace the features, enumerated by an expert as showing the identity of the impressions, and the Court could only find a distinct similarity in some respects, e. g., pattern and central core:—

Held that the Jury were not wrong in refusing to accept the opinion of the expert.

Per Geidt J. A Jury may decline to accept the opinion of an expert without the corroboration of their own intelligence as to the reasons which guided him to his conclusion with respect to the identity of the impressions.

Per Henderson J. It is only when it is necessary to ascertain what the verdict really is that s. 303 of the Criminal Procedure Code justifies the Judge in putting questions to the Jury.

Where, therefore, on a charge under s. 82 (c) of the Registration Act (III of 1877), the verdict was a plain and simple one of not guilty, the Judge was not empowered to ask the Jurors whether they found that the thumb impression on the bond alleged to have been forged was that of the accused.

[Ref. 9 P. R. 1914 Cr.; Fol. 27 I. C. 900=16 Cr. L. J. 228.]

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The accused, Abdul Hamid, was alleged to have falsely personated one Moshrof Ali, and in such assumed character to have admitted the execution of a bond purporting to have been made in favour of one Garon Ali, his cousin's husband, and to have presented the same for registration on the 5th November 1902 before the Sub-Registrar of Adhunagar. It appeared that on the 11th instant, the real Moshrof Ali went to [760] the Sub-Registrar, and lodged a written complaint before him that some person, not named, had falsely personated him and got the said bond registered, upon which an inquiry was held resulting in criminal proceedings being instituted against the accused and certain others. The accused was not, however, arrested till the 18th September 1904, and he was committed for trial on the 7th December last.

He was in due course tried before the Sessions Judge of Chittagong and a Jury on a charge under s. 82 (c) of the Registration Act (III of 1877).

During the trial one Mahomed Amin, a Sub-Inspector in the Criminal Investigation Department of the office of the Inspector-General of Police,

Criminal Reference No. 3 of 1905 by B. K. Mulliok, Sessions Judge of Chittagong, dated 23rd January 1905.

(1) (1893) I. L. R. 21 Cal. 392.

was examined as an expert on finger prints, and he deposed that the thumb impressions on the forged bond and in the Sub-Registrar's thumb register corresponded with the thumb impression of the accused taken before the Magistrate, but not with that of Moshrof Ali.

The Jury returned a unanimous verdict of not guilty, whereupon the Judge put to them the following question :—

Q.—Do you find that the thumb impression Exhibit I (d)—on the bond—is not the impression of the accused ?

A.—We are not ready to accept the evidence of the expert as conclusive. We do not think he is properly qualified to give an opinion.

The Judge, disagreeing with the Jury, referred the case to the High Court under s. 307 of the Criminal Procedure Code on the ground that their verdict was perverse.

No one appeared for the accused or the Crown.

HENDERSON, J. The accused, Abdul Hamid, in this case was, charged under section 82 (c) of Act III of 1877 with having personated one Moshrof Ali and having in such assumed character on the 5th November 1902, admitted execution of a bond before a Sub-Registrar.

The Jury returned a unanimous verdict of "not guilty," and the Sessions Judge, who disagreed with that verdict, has made a reference to this Court under section 307 of the Criminal Procedure Code.

[761] The Sessions Judge in his letter of reference points out

(i) that the prosecution produced evidence to show that the accused told the writer of the document that he was not Moshrof Ali,

(ii) that the accused was seen by the witness Imamuddi on the day of registration (the 5th November 1902) going towards the Registry office with the writer, and

(iii) that the thumb impression of the alleged executant taken at the time of registration corresponds exactly with that of the accused, but does not correspond at all with that of Moshrof Ali.

In the opinion of the Judge, the Jury took a perverse view of the evidence in refusing to believe that Imamuddi saw the accused with the writer of the deed on the day it was registered, and their refusal to place any reliance on the expert evidence with regard to finger prints was "absolutely and utterly unreasonable."

It appears, therefore, that the case turns entirely upon the credit to be given to the evidence.

It is clear upon the evidence that the person, who presented the document for registration, admitted before the Sub-Registrar that he had executed it, that he placed his thumb impression on the document below the execution endorsement and also in the register of thumb impressions, and that the document purported to be signed by one Moshrof Ali. It is also clear that Moshrof Ali did not sign it. In the evening of the 5th November the document having been duly registered was ready to be returned to any one presenting the receipt for it.

On the 11th November the real Moshrof Ali, accompanied by the witness Imamuddi, came to the Sub-Registrar and made certain inquiries, and the information he received resulted in his lodging a complaint in writing stating that a fraud had been committed and that some person had personated him. It was not stated in the complaint that the accused, Abdul Hamid, was the person, who had personated the complainant, but

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MARCH. 24. that it was the accused Abdul Hamid.

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The complaint was forwarded to the District Registrar, and, on the 23rd November, that officer gave orders for an enquiry [762] to be made. After the enquiry had been held the Deputy Magistrate issued a summons against the accused under section 82 of Act III of 1877, and also against Ahsanullah, who was alleged to have identified the accused, and against Guron Ali, the person in whose favour the bond was executed. Ahsanullah died before the trial, and Guron Ali was discharged on the 18th February 1904 under section 253 of the Criminal Procedure Code. The accused, Abdul Hamid, was not arrested till the 18th September 1904, and he was committed for trial on the 7th December last.

It is said, and it seems to be the fact, that the accused is the cousin of the wife of Guron Ali. The accused denied all knowledge of the bond, alleging that the case had been got up by the witness Imamuddi in order to revenge himself against Guron Ali with whom, he said, Imamuddi was at enmity for various reasons alleged by him.

One of the most important questions for determination in this case is whether the accused falsely stated to the Sub-Registrar that he was Moshrof Ali, the presenter and executant of the bond. Neither the Sub-Registrar nor any one from the Registry office could identify the accused as the person who had presented the bond and admitted execution.

Moshrof Ali did not execute the bond. As a reason for a false bond being set up he alleged that six months before the document was presented for registration he had a quarrel with Guron Ali and Abdul Hamid about giving change for a bad rupee. He said he was told by the witness Imamuddi that a bond in his name had been forged, and that, in consequence, he went to the Registry office with him and made inquiries and then lodged a complaint.

The writer of the bond was the witness Kabel Krishna. He said that Ahsanullah, who was the brother of Guron Ali, took him to Guron Ali's house, and there he met the accused, whom he had never seen before, and then he was instructed by the accused to write the bond in Guron Ali's favour, Guron Ali not being present. He did not know the accused before, but he said his name was Moshrof Ali. The accused did not sign the document. After writing out the bond Kabel Krishna says he came away leaving the accused in Guron Ali's house. He did [763] not go to the Registry office. He did not know how Imamuddi came to know of the bond as he never spoke to him or any one else about it. In fact, until he was summoned to appear before the Magistrate, he had no idea that the bond was forged.

Imamuddi professes to have known the accused for six or seven years, but in cross-examination he said he did not know his name, but only knew him by sight. On the day the bond was registered, he said (and in this he contradicts Kabel Krishna) he met Kabel Krishna and the accused about 80 yards from Guron Ali's house, and in the course of conversation he (Kabel Krishna) said he was going to the Registry office. They then parted, but a little later, before sunset, Kabel Krishna came to his house and told him about the bond, and from another man he heard the same story the next day. The following day he went to the Registry office and told the Sub-Registrar what he had heard. He was shown the bond and told to bring the man who had been defrauded. He sent for Moshrof Ali who came to his house, and they both proceeded to the Registry office, where Mosh-

rof Ali filed a petition of complaint. In cross-examination he said that the accused and Kabel Krishna were acquainted with each other. Afterwards he said that they were not and denied having ever said so. He further said that Kabel Krishna told him that the man, who said he was the executant of the document, had confessed to him that his name was not Moshrof Ali, but that at Guron Ali's solicitations he had agreed to personate him, and that thereupon he came away.

The evidence of these two witnesses is extremely unsatisfactory. There seems to be reason to believe that Kabel Krishna Das was a party to the fabrication of the false bond, and the Sessions Judge taking that view cautioned the Jury against accepting his evidence, pointing out that he seemed to be trying to make his connection with the document as distant as possible.

The Sessions Judge pointed out to the Jury the improbability that Kabel Krishna, if he was in the conspiracy, would have told Imamuddi anything about the bond, and he told them that it seemed to him that Imamuddi was unwilling to disclose the name of his informant, and that he had, therefore, concocted the story that he had been told about it by Kabel Krishna.

[764] If the evidence of Kabel Krishna and Imamuddi stood apart, I should have no hesitation in saying that any Jury would be justified in refusing to accept it.

The only other evidence to which reference may be made is that of the muharrir of the Sub-Registrar, who stated that he knew Ahsanullah, and was certain that it was he who identified the executant of the bond, and of Mahomed Amin, a special Sub-Inspector on Rs. 30 a month in the Criminal Investigation Department, who was brought down from Calcutta to give evidence as an expert as to the correspondence between the thumb impressions of the accused with those on the bond and in the thumb impression register kept at the Registry office. He said that he had studied finger impressions for five months in a training school and 13 months in the office of the Inspector-General of Police, and that he had examined two or three lakhs of impressions and had himself taken thousands of impressions. He was of opinion, apparently without any reservation, that the thumb impressions made in Court by the accused corresponded with those made by the person, who presented the bond, on the bond itself and in the thumb register. He gave his reasons for his opinion, stating the various points of similarity, and his opinion is, therefore, entitled to be treated with very great consideration. I have myself subjected the impressions to a careful study both with the naked eye and a magnifying glass. The impressions are unfortunately blurred and many of the characteristic marks are, therefore, far from clear. This renders it difficult to trace the marks enumerated by the expert witness as demonstrating the correspondence between the two sets of impressions. I am unable to say more than that in some respects a distinct similarity can be traced. Under these circumstances, I should hesitate to say that the Jury were wrong in not accepting the evidence of the expert more especially when the evidence to corroborate his testimony was of such an unreliable character.

There is another matter to which I think some reference ought to be made. The Jury after having returned a unanimous verdict of "not guilty" were asked the following question:—

"Do you find that the thumb impression Exhibit 1 (d) (on the bond) is not the impression of the accused."

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[765] and they have the reply :—

" We are not ready to accept the evidence of the expert as conclusive. We do not think he is properly qualified to give an opinion."

In my opinion the Jury ought not to have been asked the question after having given a unanimous verdict of " not guilty." The verdict was a plain simple verdict of " not guilty," and in my opinion it was the duty of the Judge to receive it. It is only when it is necessary to ascertain what the verdict really is that section 303 of the Criminal Procedure Code justifies the Judge in putting questions to the Jury. Here it was unnecessary. The reasons which the Jury gave for not accepting the evidence of Mahomed Amin are reasons which a Jury might very well have honestly acted upon, and in my opinion it would be going a long way to characterize the verdict as perverse.

In my opinion the evidence afforded by the correspondence of thumb impressions is ordinarily of great value, and I should be sorry to lay down any proposition which might detract from its value generally. At the same time I should hesitate before I would convict on the mere result of a critical examination of thumb impressions made by an expert. I know nothing about the particular expert witness who gave his evidence in the present case. The Jury had an opportunity (the Judge, of course, had also) of seeing the witness and judging of his manner of giving evidence, and it may be that they were honestly of opinion that they could not trust his evidence.

In the present case I should certainly not set aside the verdict, unless I felt that the evidence as to the thumb impressions was conclusive, and as I have indicated, I am not prepared to say it is. One ground upon which the Sessions Judge considered the verdict perverse was that they refused to believe that Imamuddi saw the accused and the writer of the bond together on the day of registration. In the first place, the writer denies that he was at the place alleged with the accused, and his story is altogether inconsistent with the two having been together. In the next place, in his charge the Sessions Judge furnished the Jury with reasons more or less cogent for disbelieving the evidence of Imamuddi as to how he came to know of the fraud.

[766] Under the circumstances the verdict of the Jury must stand. The accused is, therefore, acquitted and ordered to be released.

GEIDT, J. The accused, Abdul Hamid, was placed on his trial before the Sessions Judge of Chittagong sitting with a Jury on the charge that he had falsely personated Moshrof Ali, and in such assumed character had presented a document for registration and admitted its execution, thereby committing an offence under section 82 (c) of the Registration Act, 1877. The Jury acquitted the accused, and the Judge has referred the case to this Court under section 307 of the Code of Criminal Procedure, with an expression of his opinion that the offence charged had been established, and that the accused should be convicted.

The accused Abdul Hamid and Moshrof Ali, the person alleged to have been personated, are inhabitants of the same village, Poichari. The document (Exhibit 1) in respect of which the charge was laid is a bond purporting to have been executed by Moshrof Ali in favour of Guron Ali, who is married to Abdul Hamid's cousin, and resides at Barahatia some seven or eight miles from Poichari. This document was, on 5th November 1902, presented for registration at the Adhunagar Sub-Registry office by a person calling himself Moshrof Ali. He was identified as such by Guron's

brother Ahsanullah, since dead, and admitted the execution of the deed. His signature was placed on the document below the endorsement of admission of execution, and the impression of his left thumb was taken in the same place and also in a Register kept for the purpose. The former impression is marked Exhibit 1 (d), and the latter, Exhibit 2. About a week afterwards Moshrof Ali, who is a chaukidar, appeared at the Sub-Registry office, accompanied by Imamuddi, a duffadar of chaukidars, and presented a written complaint in which he stated that a forged bond had been presented by a fictitious Moshrof, and asked for an enquiry. In the written complaint the name of the personator was not inserted but the Sub-Registrar deposes that Abdul Hamid's name was mentioned orally. An inquiry was held, and in the result warrants were issued, amongst others, for Abdul Hamid, but he was not arrested till the 18th September 1904.

[767] Moshrof Ali denies that he executed the document Exhibit 1, or that he took it to the Sub-Registry office, or that he there admitted its execution. His denial is supported by the appearance of the impression of his left thumb. An officer from the Criminal Identification Department of the office of the Inspector-General of Police who has examined many thousands of such impressions and professes to be an expert on the subject, has deposed that Moshrof Ali's thumb impression taken in Court differs entirely from the thumb impressions Exhibits 1 (d) and 2 made by the presenter of the document, and the difference is so marked as to be plain to an untrained eye. It may, therefore, be taken as proved that it was not Moshrof Ali himself who presented the document Exhibit 1 for registration. It remains to be determined whether the prosecution have succeeded in establishing, with reasonable certainty, that it was the accused Abdul Hamid, who personated Moshrof Ali. The accused denies the charge, and in a written statement alleges that it was instigated by Imamuddi, who is at enmity with Guron Ali. The direct evidence to prove personation is very slight. The Sub-Registrar and his muharrir, who received and dealt with the document, could not recognize the presenter after a lapse of two years. The muharrir was personally acquainted with Ahsanullah, who identified the presenter of the document, but Ahsanullah, as already indicated, is dead, and no further inquiries in that direction are, therefore, possible.

The discovery by Moshrof Ali of the forgery and personation is said to have been due to the duffadar, Imamuddi, who is an important witness in the case. This man lives at Barabatia, the same village as Guron Ali, and he deposes that one day he met in the village the accused and Kabel Krishna who, in the course of conversation, informed him that they were on the way to the Registration office. He received some information the same night from Kabel Krishna, and on the following day from Nasir Mahomed, which led him to go to the Sub-Registry office and make inquiries. These inquiries resulted in his sending a letter to Moshrof Ali who then came and complained of the personation.

Kabel Krishna, whose name appears on the document as the writer, has also given evidence in the case. He deposes that he [768] wrote the document in Guron Ali's house. Guron Ali was absent but his brother Ahsanullah was present, as also the accused with whom the witness was not previously acquainted. The accused called himself Moshrof Ali, and said that he was the executant of the document, though the execution of the document did not take place in the witness' presence, nor did the witness go to the Registration office. This is the only piece of direct evidence against the accused, and the Judge has properly pointed out that Kabel

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Krishna seems to have been a party to the fabrication. It is very likely that Kabel Krishna knew or had reason to suspect that the person executing the deed was not Moshrof Ali, and it is quite consistent with what we know of human nature to suppose that after being a party to the fraud he became frightened and revealed to Imamuddi what had been done. In order to conceal his complicity in the transaction by Kabel Krishna minimizes his own share in the transaction by denying that he witnessed the execution, by denying that he knew at the time of the fraud or that he said anything about it to Imamuddi. It is quite clear that very soon after the registration Abdul Hamid was named as the person, who has personated Moshrof Ali, and it is possible that it was from Kabel Krishna that Imamuddi learnt Abdul Hamid's name. But whether that be so or not, it was competent for the Jury to refuse to act on Kabel Krishna's evidence, if that evidence is uncorroborated; and had the case rested on that evidence alone, there could be no possible ground for disturbing the verdict of the Jury. Imamuddi's evidence that he saw Kabel Krishna in the company of the accused, and that they told him they were going to the Registration office, may be regarded as some corroboration, if believed, but it was open to the Jury to disbelieve it, considering that Kabel Krishna denied the incident.

The Sessions Judge, however, is of opinion that the evidence of the Sub-Inspector from the Inspector-General's Criminal Investigation Department is quite sufficient to fasten the personation on the accused. The Sub-Inspector took an impression of the accused's thumb before the Committing Magistrate (it is marked Exhibit 4), and professing himself an expert he declares that this impression is made by the same person as the impressions [769] marked Exhibit 1 (d) and Exhibit 2, made on the document and the register. If this evidence be accepted, it would corroborate the testimony of Kabel Krishna, and put it beyond reasonable doubt that it was the accused who presented the document and admitted its execution. The Jury have, however, declined to regard the Sub-Inspector as an expert, and to act on his opinion, and it is necessary for us to consider whether they were wrong in so doing. Now though the classification of finger impressions is a science requiring study, and though it may require an expert in the first instance to say whether any two finger impressions are identical, yet the reasons which guide him to this conclusion are such as may be weighed by any intelligent person with good powers of eyesight. In the present case the Sub-Inspector has enumerated nine different marks by which he has come to the conclusion that Exhibit 4 is the impression of the same thumb as Exhibits 1 (d) and 2. I have examined these impressions for myself with the aid of a magnifying glass, and endeavoured to test the Sub-Inspector's reasons. His first reason is that the pattern in the two sets of impressions is the same, and his fifth is that the central core or ridge is the same. These reasons can readily be verified by a comparison of the impressions, but they do not carry us very far, for it is obvious they may co-exist in the thumb impressions of many different persons. With these two exceptions I have been unable to identify the marks enumerated by the witness as existing in the two sets. For instance, the Sub-Inspector's second reason is that the number of ridges between the right delta and the inner terminus is the same. The Sub-Inspector has not mentioned the number of ridges thus indicated, and they are so blurred and run together, that I am unable to count them for myself.

The Sub-Inspector's third reason is as follows :

"The fifth ridge below the right delta ends abruptly, also the seventh ridge ends at the same point as the fifth ridge, the third ridge bores a little way and then stops."

I am able to follow these features in Exhibit 4, but cannot distinguish them in Exhibit 1 (d) or in Exhibit 2. I need not go in detail through the other distinguishing marks: it is sufficient to say that, though I can often perceive them in one [770] impression (generally Exhibit 4, in which the ridges stand out the clearest), I am unable to say that they exist in the other impressions.

The Sub-Inspector is a person who failed for his B. A. Examination, and has been only a little more than a year in the Police. Considering the difficulty I have in perceiving the marks which lead him to say that the impression marked Exhibit 4 is made by the same person as Exhibits 1 (d) and 2, I cannot say that the Jury were wrong in declining to regard him as an expert, whose opinion they were bound to accept without the corroboration of their own intelligence as to the reasons which guided him to his conclusion.

In making these observations I desire to throw no doubt on the science of finger impressions, or on the validity of the conclusions which may be established from a similarity in their marks. But in the present case I am of opinion that the similarity of the two sets of finger impressions has not been established; and as the remaining evidence is far from cogent, I would refuse to disturb the verdict of the Jury.

Verdict upheld.

32 C. 771 (=9 C. W. N. 621=2 Cr. L. J. 342.)

[771] CRIMINAL REVISION.

Before Mr. Justice Henderson and Mr. Justice Geidt.

NITYYANAND ROY v. PARESH NATH SEN.*

[8th March, 1905.]

Jurisdiction of Magistrate—Dispute relating to a kutchery—Initiatory Order—Omission to state the grounds of the apprehension of a breach of the peace—Reference to information obtained in a local inquiry not recorded—Order as to costs—Criminal Procedure Code (Act V of 1899), ss. 145, cl. (1), 149.

If the Magistrate omits in the initiatory order under s. 145, cl. (1) of the Criminal Procedure Code to state the grounds of his being satisfied as to the likelihood of a breach of the peace, the final order is without jurisdiction.

Where therefore, the initiatory order merely referred to some information, which was obtained during the course of a local inquiry held by himself, but had not been reduced into writing:—

Held that the proceedings under s. 145 were bad in law.

In a case initiated upon a police report or other information, which has been reduced into writing, reference can be made to the materials upon which the magistrate acted, to ascertain whether there were in fact grounds upon which he might have acted, but even then it is his duty to state the grounds, upon which he was satisfied that there was a likelihood of a breach of the peace.

Queen-Empress v. Gobind Chandra Das (1); *Dhanput Singh v. Chatterput Singh* (2); *Md. Hesh Sowar v. Narain Bag* (3); and *Jagomohan Pal v. Ram Kumar Gope* (4), referred to.

* Criminal Revision No. 39 of 1905, against the order of B. R. Mehta, Sub-divisional Magistrate of Chandpur, dated September 24th, 1904.

(1) (1893) I. L. R. 20 Cal. 520.

(3) (1900) I. L. R. 27 Cal. 981.

(2) (1893) I. L. R. 20 Cal. 518.

(4) (1901) I. L. R. 28 Cal. 416.

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