

PADUM KUMAR

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v.

STATE OF UTTAR PRADESH

(Criminal Appeal No. 87 of 2020)

JANUARY 14, 2020

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[R. BANUMATHI AND A. S. BOPANNA, JJ.]

Criminal Law – Evidence – Opinion of hand writing expert – Appreciation of – Appellant-accused was working as Postman at the relevant time – On 09.04.92, PW-3 sent registered envelope to the Complainant-PW-1 – Envelope contained four Indira Vikas Patra of value of each Rs.5,000/- totalling Rs.20,000/- – Envelope did not reach PW-1 who made complaint to the Department of Posts – Information was received that a person named “Mohan” received the aforesaid registry – PW-1 and his son named Devesh Mohan (PW-2) went to the Post Office and saw the signature where it was written “D. Mohan” – PW-2 denied that the signature in question belongs to him – Investigation revealed that the appellant forged the signature on the delivery slip-Ex.-P4 – Trial court convicted the appellant u/ss.467, 468, IPC– Appellant’s appeal and revision were dismissed – Held: Before acting upon the opinion of the hand-writing expert, prudence requires that the court must see that such evidence is corroborated by other evidence, direct or circumstantial – In the present case, the report of the Government Forensic Science Laboratory was in favour of the appellant – But since the hand-writing expert from the said laboratory was not examined, the said report cannot be looked into – Further, the private hand-writing experts (PW-5 and PW-8, son of the hand writing expert who died by the time of the trial) opined that the disputed signature-”Q-1” in Ex.-P4 does not match with the specimen signatures of PW-2, “S-1 to S-6” – Appellant not right in contending that the courts below based the conviction solely upon the opinion of the hand-writing experts – Evidence of hand-writing experts is only a corroborative piece of evidence to corroborate the evidence of PW-2 – Conviction u/ss.467 & 468 IPC, confirmed – Under ss.467 & 468, the appellant was sentenced to undergo imprisonment for four and three years with fine of Rs.500/-, respectively – Occurrence was of the year

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A *1992 – Appellant has been in custody from 04.07.18 i.e. for more than 18 months – In the facts and circumstances of the case, the sentence of imprisonment imposed is reduced to the period already undergone – Appellant be released forthwith unless required in any other case – Penal Code, 1860 – ss.467, 468.*

B **Partly allowing the appeal, the Court**

HELD : 1.1 In his evidence, son of the complainant-PW-2 stated that the registry is said to have been received at his house on 13.04.1992 and on the said date, he was not present at home as he had gone for coaching at 10:00 am and had come back to the house at about 04:00 pm. On being shown the delivery slip-Ex.-P4, PW-2 clearly denied that it does not bear his signature. The evidence of PW-2 denying his signature in Ex.-P4-delivery slip is a valuable piece of evidence supporting the case of the prosecution. The courts below rightly recorded the concurrent findings that by the evidence of PW-2, the prosecution has clearly established that PW-2 had not put the signature in Ex.-P4-delivery slip. The prosecution relies upon the reports of the hand-writing experts only to corroborate the evidence of PW-2. The report of the Forensic Science Laboratory, Lucknow is in favour of the appellant. But as rightly pointed out by the courts below that since the hand-writing expert from the Forensic Science Laboratory, Lucknow had not been examined, the said report cannot be looked into. The appellant-accused had also not summoned the hand-writing expert from the Government Forensic Science Laboratory, Lucknow to substantiate his defence. [Paras 12, 13] [63-H; 64-A-E]

1.2 Before acting upon the opinion of the hand-writing expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence. [Para 17] [66-D]

G *S. Gopal Reddy v. State of A.P. (1996) 4 SCC 596 : [1996] 3 Suppl. SCR 439 – referred to.*

Magan Bihari Lal v. State of Punjab (1977) 2 SCC 210 : [1977] 2 SCR 1007 ; Murari Lal v. State of Madhya Pradesh (1980) 1 SCC 704 : [1980] 2 SCR 249 – relied on.

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1.3 The hand-writing experts - PW-5 and 'SRG' opined that the disputed signature-"Q-1" in the delivery slip-Ex.-P4 does not match with the specimen signatures-"S-1 to S-6". Hand-writing experts also opined that the one who wrote the specimen signatures had not written the disputed signature "Q-1" in Ex.-P4. As pointed out by the courts below, the evidence of hand-writing expert is the evidence relied upon by the prosecution to corroborate the evidence of PW-2 who denied his signature in Ex.-P4. The counsel for the appellant is not right in contending that the courts below have based the conviction solely upon the opinion of the hand-writing experts. The evidence of hand-writing experts is only a corroborative piece of evidence to corroborate the evidence of PW-2. In the light of the evidence of PWs 1 to 3 and other evidence, the High Court rightly found that the appellant who delivered the registered envelope at the place of the complainant-PW-1 is bound to explain as to who made the alleged signature in Ex.-P4-delivery slip. In the absence of any explanation by the appellant-accused, as held by the High Court, a presumption is to be raised against the appellant who delivered the envelope as he is the only person having knowledge of the same. From the evidence of PW-3, the prosecution has proved that the envelope contained valuable security-four Indira Vikas Patra of value of each Rs.5,000/- totalling Rs.20,000/-. Upon appreciation of evidence adduced by the prosecution, the courts below rightly recorded the concurrent findings that the appellant has forged the signature of PW-2 and the conviction of the appellant under Sections 467 and 468 IPC is based upon the evidence and the conviction does not suffer from any infirmity warranting interference. For the conviction under Section 467 IPC, the appellant was sentenced to undergo imprisonment for four years and for the conviction under Section 468 IPC, for three years along with fine of Rs.500/-. The occurrence was of the year 1992. As seen from the custody certificate, the appellant has been in custody from 04.07.2018 i.e. for a period of more than eighteen months. Considering that the occurrence was of the year 1992 and the facts and circumstances of the case, the sentence of imprisonment imposed upon the appellant is reduced to the period already undergone. The impugned judgment is accordingly modified. [Paras 18-21] [67-F-H; 68-A-G]

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Case Law Reference

[1996] 3 Suppl. SCR 439	referred to	Para 15
[1977] 2 SCR 1007	relied on	Para 16
[1980] 2 SCR 249	relied on	Para 17

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 87 of 2020.

From the Judgment and Order dated 19.02.2018 of the High Court of Judicature at Allahabad, Lucknow Bench in Criminal Revision No. 511 of 2006.

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Saurabh Mishra, Rishad Murtaza and Rameshwar Prasad Goyal,
Advs. for the Appellant.

Adarsh Upadhyay, Aviral Saxena and Garvesh Kabra, Advs. for
the Respondent.

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The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

2. This appeal has been preferred challenging the impugned judgment dated 19.02.2018 passed by the High Court of Judicature at Allahabad in Criminal Revision No.511 of 2006 whereby the High Court dismissed the revision petition filed by the appellant confirming his conviction under Sections 467 and 468 IPC and the sentence of imprisonment imposed upon him.

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3. Briefly stated case of the prosecution is as under:-

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The appellant-Padum Kumar was then working as Postman in Indira Nagar Post Office, Lucknow. On 09.04.1992, PW-3-Dr. M.L. Varshney, Professor, Agriculture Institute, Naini, Allahabad had sent a registered envelope No.0095 to the Complainant-Dr. K.B. Varshney (PW-1) from the Sub-Post Office of the said Institute. The said envelope contained four Indira Vikas Patra of value of each Rs.5,000/- totalling Rs.20,000/-. The envelope did not reach PW-1-Dr. K.B. Varshney; therefore, on 27.04.1992, PW-3-Dr. M.L. Varshney made a complaint before the Post Master, Post Office, Agriculture Institute, Naini, Allahabad. PW-1-Complainant-Dr. K.B. Varshney also enquired from Indira Nagar Post Office. On 29.04.1992, PW-1 had also filed a complaint

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to the Senior Superintendent, Department of Posts that the envelope Registry No.0095 has not been received. On 14.05.1992, information was received from Senior Superintendent, Post and Telegraph, Lucknow that a person named “Mohan” has received the aforesaid registry on 13.04.1992. Then, PW-1 and his son Devesh Mohan-PW-2 went to Indira Nagar Post Office and saw the signature where it has been written as “D. Mohan”. Complainant’s son is also named Devesh Mohan (PW-2). On being shown the signature, PW-2 denied that the signature in question belongs to him. A case was registered in Crime No.394/1992 under Sections 420, 467 and 468 IPC at P.S. Ghazipur, Lucknow. The case was investigated. Later on, the investigation of the case was entrusted to C.B. C.I.D.

4. The Investigating Officer has recorded the statement of various witnesses. The Investigating Officer had sent the disputed signature along with the specimen signatures of PW-2-Devesh Mohan to the Forensic Science Laboratory, Lucknow. As per the report given by the Forensic Science Laboratory, Lucknow, the person who has made specimen signatures has also made the disputed signature in the delivery slip-Ex.-P4. The disputed signature “Q-1” along with the specimen signatures of PW-2 “S-1 to S-6” were sent to private hand-writing expert M.Y. Khan-PW-5. In his evidence, PW-5 has stated that on comparison of the disputed signature “Q-1” in Ex.-P4-delivery slip with the specimen signatures of PW-2 “S-1 to S-6”, he came to the conclusion that the disputed signature is different from the specimen signatures and PW-5 had issued his report-Ex.-P9. Yet another hand-writing expert Siya Ram Gupta had also examined the disputed signature with reference to the specimen signatures. Siya Ram Gupta had opined that the disputed signature in the delivery slip has not been made by PW-2-Devesh Mohan. By the time of trial, hand-writing expert Siya Ram Gupta passed away and his son Ranjeet Kumar has been examined as PW-8. As PW-8-Ranjeet Kumar was acquainted with the hand-writing of his father-Siya Ram Gupta, the report of hand-writing expert Siya Ram Gupta has been marked through his son-PW-8. The investigation revealed that the appellant had forged the signature on the delivery slip-Ex.-P4. On completion of investigation, charge sheet has been filed against the appellant-accused under Sections 420, 467 and 468 IPC.

5. To prove the charges against the appellant, the prosecution has examined PW-1-Dr. K.B. Varshney, PW-2-Devesh Mohan, PW-3- Dr.

- A M.L. Varshney, hand-writing expert-PW-5-M.Y. Khan, PW-8-Ranjeet Kumar, son of another hand-writing expert-Siya Ram Gupta and other witnesses. Upon consideration of the oral and documentary evidence, the trial court noted that three hand-writing experts are on record. According to one expert, the disputed signature has been made by Devesh Mohan-PW-2. The trial court also noted that the other two experts
- B have mentioned in their reports that the disputed signature “Q-1” in delivery slip do not match with the specimen signatures “S-1 to S-6”. The trial court held that the appellant being the Postman did the work of delivery of registry and the delivery slip was kept with him therefore, the conclusion is that the appellant made the signature of “D. Mohan” in the
- C delivery slip. The trial court held that the appellant frequently used to visit the house of the complainant-PW-1 by taking registries and letters and thus, he was well-acquainted with the signature of PW-2-Devesh Mohan. Based upon the evidence of PWs 1 to 3 and the reports of hand-writing experts, the trial court held that the appellant had committed the offence of forgery and convicted him under Sections 467 and 468
- D IPC and sentenced him to undergo rigorous imprisonment of four years and three years respectively. Both the sentences were directed to run concurrently.

6. Challenging the conviction, the appellant has filed an appeal before the appellate court – Additional Chief Judicial Magistrate, Lucknow. The appellate court dismissed the appeal by holding that upon proper analysis of evidence adduced by the prosecution, the trial court has rightly convicted the appellant under Sections 467 and 468 IPC.
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7. Being aggrieved, the appellant filed Criminal Revision No.511 of 2006 before the High Court of Allahabad which came to be dismissed by the impugned judgment. The High Court held that the prosecution has adduced evidence proving that the signature of “D. Mohan” in the delivery slip and the specimen signatures of PW-2-Devesh Mohan differs. The High Court further held that the appellant was the person who delivered the envelope and in such circumstances, it is for the appellant
- F to explain as to who signed the disputed signature and in the absence of any such explanation from the appellant, the presumption is to be raised against the appellant that he is the only person having knowledge of the same. The revision was accordingly dismissed and the conviction of the appellant was affirmed.
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8. Assailing the impugned judgment, Mr. Saurabh Mishra, learned counsel for the appellant has contended that without proving that the appellant has forged the signature in Ex.-P4-delivery slip, the conviction of the appellant under Sections 467 and 468 IPC cannot be sustained. Learned counsel further submitted that the courts below erred in not considering that the Government hand-writing expert's report was in favour of the appellant. It was submitted that in the absence of examination of hand-writing expert Siya Ram Gupta who gave the opinion, the report of Siya Ram Gupta cannot be proved by examining his son-Ranjeet Kumar-PW-8 and the courts below ought not to have placed reliance upon the opinion of the hand-writing expert-PW-5-M.Y. Khan and another hand-writing expert Siya Ram Gupta. It was contended that the High Court erred in holding that it is for the appellant to prove as to who signed in Ex.-P4-delivery slip and the High Court erred in raising the presumption against the appellant and the conviction of the appellant is not sustainable.

9. On the other hand, Mr. Adarsh Upadhyay, learned counsel for the respondent-State has submitted that upon proper appreciation of evidence adduced by the prosecution, the courts below rightly convicted the appellant. It was submitted that the prosecution relies upon not merely on the opinion of the hand-writing experts, but the evidence of PW-2-Devesh Mohan, son of complainant-Dr. K.B. Varshney (PW-1) who has denied having put his signature in Ex.-P4-delivery slip and the prosecution has well established the guilt of the appellant.

10. We have carefully considered the submissions and perused the impugned judgment and other materials on record.

11. By adducing the evidence of Dr. M.L. Varshney (PW-3), the prosecution has proved that on 09.04.1992, PW-3 had sent a registered envelope No.0095 to PW-1-Dr. K.B. Varshney, Indira Nagar, Lucknow. When PW-1 did not receive the said envelope, on 27.04.1992, PW-3 complained the same to the concerned Sub-Post Office, Naini, Allahabad. PW-1-Dr. K.B. Varshney also filed a complaint on 29.04.1992 to the Senior Superintendent, Department of Posts, Lucknow. After investigation, it was learnt that on 14.05.1992, a person named Mohan has received the aforesaid registry on 13.04.1992.

12. In his evidence, son of the complainant-PW-2-Devesh Kumar has stated that the registry is said to have been received at his house on

- A 13.04.1992 and on the said date, he was not present at home as he had gone for coaching at 10:00 am and had come back to the house at about 04:00 pm. On being shown the delivery slip- Ex.-P4, PW-2 clearly denied that it does not bear his signature. PW-2 further stated that the appellant had brought the registry and his mother had received them. It is to be pointed out that neither the name of “Devesh Mohan” nor the name of
- B “mother of PW-2” was written on the distribution slip; but some other thing had been written. The evidence of PW-2 denying his signature in Ex.-P4-delivery slip is a valuable piece of evidence supporting the case of the prosecution. The courts below rightly recorded the concurrent findings that by the evidence of PW-2, the prosecution has clearly
- C established that PW-2-Devesh Mohan had not put the signature in Ex.-P4-delivery slip.

13. The prosecution relies upon the reports of the hand-writing experts only to corroborate the evidence of PW-2-Devesh Mohan. Of course, hand-writing expert’s report by the Government Forensic Science
- D Laboratory, Lucknow has stated that the person who has written the specimen signatures “S-1 to S-6” had written the disputed signature “Q-1” in Ex.-P4-delivery slip. The report of the Forensic Science Laboratory, Lucknow is in favour of the appellant. But as rightly pointed out by the courts below that since the hand-writing expert from the Forensic Science
- E Laboratory, Lucknow had not been examined, the said report cannot be looked into. It is pertinent to note that the appellant-accused had also not summoned the hand-writing expert from the Government Forensic Science Laboratory, Lucknow to substantiate his defence.

14. Be that as it may, the hand-writing expert-M.Y. Khan (PW-5) in his report-Ex.-P9 has stated that the person who had written the specimen signatures “S-1 to S-6” had not written the disputed signature “Q-1” in Ex.-P4-delivery slip and that the same is different from the signature of PW-2-Devesh Mohan. In his report, PW-5 had also explained as to how the disputed signature does not match with the specimen signatures of PW-2-Devesh Mohan. Likewise, in his report, hand-writing
- F expert Siya Ram Gupta had also opined that the disputed signature in Ex.-P4-delivery slip has not been written by PW-2-Devesh Mohan. By the time when the trial was taken up, hand-writing expert Siya Ram Gupta passed away and his son-Ranjeet Kumar (PW-8) who was acquainted with the hand-writing of Siya Ram Gupta was examined to
- G mark the report.

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15. Learned counsel for the appellant has submitted that without independent and reliable corroboration, the opinion of the hand-writing experts cannot be relied upon to base the conviction. In support of his contention, learned counsel for the appellant has placed reliance upon *S. Gopal Reddy v. State of A.P. (1996) 4 SCC 596*, wherein the Supreme Court held as under:-

“28. Thus, the evidence of PW 3 is not definite and cannot be said to be of a clinching nature to connect the appellant with the disputed letters. The evidence of an expert is a rather weak type of evidence and the courts do not generally consider it as offering ‘conclusive’ proof and therefore safe to rely upon the same without seeking independent and reliable corroboration. In *Magan Bihari Lal v. State of Punjab (1977) 2 SCC 210*, while dealing with the evidence of a handwriting expert, this Court opined:

“... We think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra v. State of U.P. AIR 1957 SC 381* that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad Misra v. Mohd. Isa AIR 1963 SC 1728* that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar Banerjee v. Subodh Kumar Banerjee AIR 1964 SC 529* where it was pointed out by this Court that expert’s evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of

A expert opinion in regard to handwriting in *Fakhruddin v. State of M.P.* AIR 1967 SC 1326 and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.”

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16. Of course, it is not safe to base the conviction solely on the evidence of the hand-writing expert. As held by the Supreme Court in *Magan Bihari Lal v. State of Punjab* (1977) 2 SCC 210 that “*expert opinion must always be received with great caution.....it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law.*”

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17. It is fairly well settled that before acting upon the opinion of the hand-writing expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence. In *Murari Lal v. State of Madhya Pradesh* (1980) 1 SCC 704, the Supreme Court held as under:-

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“4.True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses — the quality of credibility or incredibility being one which an expert shares with all other witnesses — but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial

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suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty “is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence (Vide Lord President Cooper in Davis v. Edinburgh Magistrate, 1953 SC 34 quoted by Professor Cross in his evidence).”

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6. Expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person “specially skilled” “in questions as to identity of handwriting” is expressly made a relevant fact..... So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.”

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18. As pointed out earlier, the hand-writing experts - M.Y. Khan (PW-5) and Siya Ram Gupta have opined that the disputed signature-”Q-1” in the delivery slip-Ex.-P4 does not match with the specimen signatures-”S-1 to S-6”. Hand-writing experts have also opined that the one who wrote the specimen signatures had not written the disputed signature “Q-1” in Ex.-P4. As pointed out by the courts below, the evidence of hand-writing expert is the evidence relied upon by the prosecution to corroborate the evidence of PW-2-Devesh Mohan who has denied his signature in Ex.-P4. Learned counsel for the appellant is not right in contending that the courts below have based the conviction solely upon the opinion of the hand-writing experts. The evidence of hand-writing experts is only a corroborative piece of evidence to corroborate the evidence of PW-2-Devesh Mohan.

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A 19. In the light of the evidence of PWs 1 to 3 and other evidence,
the High Court rightly found that the appellant who delivered the registered
envelope at the place of the complainant-PW-1 is bound to explain as to
who made the alleged signature in Ex.-P4-delivery slip. In the absence
of any explanation by the appellant-accused, as held by the High Court,
B a presumption is to be raised against the appellant who delivered the
envelope as he is the only person having knowledge of the same. From
the evidence of PW-3-Dr. M.L. Varshney, the prosecution has proved
that the envelope contained valuable security-four Indira Vikas Patra of
value of each Rs.5,000/- totalling Rs.20,000/-. Upon appreciation of
evidence adduced by the prosecution, the courts below rightly recorded
C the concurrent findings that the appellant has forged the signature of
PW-2-Devesh Mohan and the conviction of the appellant under Sections
467 and 468 IPC is based upon the evidence and the conviction does not
suffer from any infirmity warranting interference.

D 20. For the conviction under Section 467 IPC, the appellant has
been sentenced to undergo imprisonment for four years and for the
conviction under Section 468 IPC, the appellant has been sentenced to
undergo imprisonment for three years along with fine of Rs.500/-. The
occurrence was of the year 1992. As seen from the custody certificate,
the appellant has been in custody from 04.07.2018 i.e. for a period of
more than eighteen months. Considering that the occurrence was of the
E year 1992 and the facts and circumstances of the case, the sentence of
imprisonment imposed upon the appellant is reduced to the period already
undergone.

F 21. In the result, the conviction of the appellant-accused under
Sections 467 and 468 IPC is confirmed and the sentence of imprisonment
imposed on him is reduced to the period already undergone. The
impugned judgment dated 19.02.2018 passed by the High Court of
Judicature at Allahabad in Criminal Revision No.511 of 2006 is accordingly
modified and the appeal is partly allowed. The appellant-accused is
ordered to be released forthwith unless his presence is required in any
G other case.