

Magan Bihari Lal vs State Of Punjab on 15 February, 1977

Equivalent citations: 1977 AIR 1091, 1977 SCR (2)1007, AIR 1977 SUPREME COURT 1091, (1977) 2 SCC 210, 1977 SC CRI R 203, 1977 CRI APP R (SC) 183, 1977 ALLCRIC 129, 1977 SCC(CRI) 313, (1977) 2 SCR 1007, 1977 UJ (SC) 235

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, Syed Murtaza Fazalali

PETITIONER:
MAGAN BIHARI LAL

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT15/02/1977

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
FAZALALI, SYED MURTAZA

CITATION:
1977 AIR 1091 1977 SCR (2)1007
1977 SCC (2) 210
CITATOR INFO :
E 1980 SC 531 (9,10,12)

ACT:

Evidence--Value of opinion evidence--Conviction on the basis solely of opinion evidence of a handwriting expert without corroboration is ~~Evidence~~ Evidence Act (Act No. 1 of 1872), s. 45--Probative value of circumstantial evidence.

HEADNOTE:

A certain consignment of iron sheets despatched by M/s. Hindustan Steel Plant EXBNDM (Banda Bunda, near Bhilai) to Bikaner in wagon No. SEKG 4875 was carried to Ludhiana via. Agra because at some point of time before it reached Agra, the labels attached to the wagons were either changed or removed and the entry in the vehicle summary guidance was also tampered with and changed to EXLAR to LDH indicating that the wagon was despatched from Lalitpur and its destina-

tion was Ludhiana. One Umedi Lal, a resident of Agra, approached a firm called M/s. Jindal Khemka & Co. represented by its partners Joginder Lal and Ram Nath with a forged railway receipt Ex. PW 10/A written on a blank form stolen from the Railway Receipt Book maintained at Ban more Railway Station and offered to sell to them the iron sheets covered by the aforesaid consignment sent by M/s. Hindustan Steel Co. Ltd. to Bikaner. Umedi Lal represented himself as the partner of M/s. Banshi Dhar & Sons., Lalitpur_ since the forged RR (to self) bore the name of the consignor as M/s. Banshi Dhar & Sons, Lalitpur. After negotiations when one of the partners, Mr. Joginder Lal presented the RR and claimed the goods, a goods clerk on duty, by name Teja Singh Sodhi, entertained a doubt and returned the RR as defective. Thereafter, Umedi Lal accompanied by one Bhoja Ram, a washing soap dealer presented Ex. PW10A himself and obtained the delivery of the goods from the very same goods clerk, Teja Singh, who entertained the suspicion about the RR earlier. Joginder Lal later on refused to purchase the iron sheets being a controlled item, in the absence of bill of purchase, but, however, took a receipt Ex. PW45/A from Umedi Lal to the effect that the latter has taken back the iron sheets brought by him to their godown. The appellant, a guard working in the Northern Railway, was stated to have accompanied and been present on the day i.e., 6-8-1964 when Joginder Lal asked Umedi Lal to produce the original purchase bill. On this basis coupled with the circumstances, namely, (a) his absence on leave from 1-8-1964 to 16-8-1964; (b) the tally of his handwriting given before the Police during the investigation with that of Ex. PW10/A as opined by the handwritten expert and (c) his identification by Ram Nath, one of the partners of M/s. jindal Khemka & Co. at the identification parade the appellant was put on trial for the offences under 109/420, 411, 468, 471 but convicted for offences under 468, 411, 109/420 I.P.C. and sentenced to 2 years R.I. with a fine of Rs. 1,000/- or in default to undergo further R.I. for six months under s. 468 and to R.I. for one year each under s. 411/109/420 I.P.C.--the substantive sentences to run concurrently. The appeals before the Sessions Judge and the revision before the High Court were dismissed.

Allowing the appeal by special leave, the Court, HELD: (1) It is 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. It is unsafe to base a conviction solely on expert's opinion without substantial corroboration. In the instant case, it would be extremely hazardous to condemn the appellant merely on the strength of opinion 'evidence of a handwriting' expert. [1011C-D]

Ram Chandra v. State AIR 1957 SC 361; Ishwari Prasad v. Md. Isa AIR 1963 SC 1728; Shashi Kumar v. subodh Kumar AIR 1964 SC 529 and Fakhruddin v. State AIR 1967 SC 1326,

reiterated.

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Curnev v. Langlande (1622) 5 B & AId. 330; Morllar of Alfred Foster's Will 34 Mich. 21, quoted with approval.

(2) In the instant case, the circumstance that the appellant was on leave from 1st August 1964 to 16th August 1964 does not lead to the inferences that he had gone to Ludhiana in connection with the sale of iron sheets and that he was present in Ludhiana on 6th August 1964. The identification by Ram Nath after some hesitation, the improbability of identifying after 21/2 years a person who is supposed to have merely accompanied another only once--and the inability of Joginder Lal to identify him--all these are circumstances, which militate the prosecution theory of the appellant's presence. No conviction can therefore, be founded on such evidence. [1012D-A, 1013-A-B]

(3) In the instant case the various facts, namely, inability of the Police to trace Umedi Lal or even Bhoja Ram who was frequently going to the Railway Station for taking delivery of goods on behalf of M/s. Jindal Khemka & Co. and apprehend them, the passing on of the forged Ex. PW10/A to joginder Lal by Umedi Lal, a stranger without insisting on payment and even without settling the bargain, the delivery of the goods the next day to Umedi Lal by Teja Singh who earlier suspected the genuineness of the RR when presented by Joginder Lal, the return of the iron sheets on the advice of some, broker on the non-production by Umedi Lal of a bill of purchase, taking a receipt Ex. PW45/A when Umedi Lal removed back his goods etc. prima facie indicate that Umedi Lal was a fictitious person and M/s. Jindal Khemka & Co. were not absolutely innocent in so far as this transaction was concerned. This iron sheets appeared to have been taken delivery of by M/s. Jindal Khamka & Co. for themselves on the strength of the forged Railway Receipt No. PW10/A. But some how or the other, due to police inaction, they appear to have escaped and a small man like the appellant seems to have been made a scape-goat. The prosecution has totally failed to bring home the charge against the appellant. [1013C-H, 1014-A-B]

[Their Lordships expressed their dissatisfaction in the way the case was investigated and observed that "it was indeed a sad commentary on the efficiency of the Police".] [1013B-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Crimital Appeal No. 22 of 1976.

(Appeal by Special Leave from the Judgment and Order dated the 12th September 1975 of the Punjab and Haryana High Court in Criminal Revision No. 314 of 1973).

R.L. Kohli, for the appellant.

O.P. Sharma, for respondent.

The Judgment of the Court was delivered by BHAGWATI, J.--We made an order on 28th January, 1977 immediately after the conclusion of the hearing of the appeal and by that order, we allowed the appeal and set a'side the order of conviction and sentence recorded against the appellant. We now proceed to give our reasons for making that order.

The appellant was tried and convicted by the Judicial Magistrate, 1st Class, Ludhiana for offences under sections 468, 411 and 420 read with section 109 of the Indian Penal Code. He carried an appeal to the Sessions Court but the appeal was unsuccessful. A further revision application followed but that too was rejected by the High Court. Hence the present appeal by special leave..

The facts giving rise to the prosecution are set out in great detail in the judgment of the High Court and hence it is not necessary to reiterate them. It is enough to state that 354 black iron sheets worth Rs. 17,701.91 were des- patched by Hindustan Steel Plant from Munda near Bhilai to M/s. Shiv Rattan Mohatta at Bikaner in Wagon No. SEKC 4075. The Railway Receipt in respect of this consignment was sent to M/s Shiv Rattan Mohatta through the State Bank of Bikaner and M/s Shiv Rattan Mohatta took delivery of the Railway Receipt against payment to the Bank. The consignment, however, did not reach Bikaner and on enquiries being made, it was found by the Railway authorities that the wagon containing the goods had reached Agra en route Bikaner but at some point of time before it reached Agra, the labels attached to the wagon were either changed or removed and the entry in the vehicle summary guidance was also tempered with and Changed to Ex. LAR indicating that the wagon was des- patched from Lalitpur and its destination was Ludhiana. The result was that wagon, instead of going to Bikaner, was carried to Ludhiana and it reached there on 1st August, 1964.

The prosecution case was that round about this time, one person. styling himself .as Umedi Lal, resident of Agra, approached a firm called M/s Jindal Khemka & Co. which was carrying on business as dealers in iron sheets in Ludhi- ana. Umedi Lal produced a Railway Receipt Ex. PW 10/A before Joginder Lal and Ram Nath, partners of this firm and offered to sell the goods covered by this Railway Receipt to M/s Jindal Khemka & Co. This Railway Receipt was a forged document written out on a blank form stolen from the Railway Receipt Book maintained at a railway station called Banmore. Joginder Lal went to Ludhiana Railway Station with this Railway Receipt on 2nd August, 1964 for taking delivery of the goods and presented the Railway Receipt to Teja Singh Sodhi, who was the Goods Clerk on duty at the goods-sheet. Teja Singh entertained some doubt about the genuineness of the Railway Receipt and he told Joginder Lal that the Rail- way Receipt appeared to be defective. In view of this, Joginder Lal, according to the prosecution, returned the Railway Receipt to Umedi Lal on the following day when he came to enquire about the receipt of the goods. Umedi Lal then went to the railway station accompanied by one Shoja Ram, who was a Washing Soap dealer in Ludhiana, and present- ed the Railway Receipt to Teja Singh Sodhi for taking delivery of the goods. Curiously enough, though only a day before, Teja Singh-Sodhi had entertained doubt about the genuineness. of the Railway Receipt, his doubts suddenly seemed to have vanished

and he delivered the consignment of 354 black iron sheets which had come in wagon No. SEKG 40765 to Umedi Lal. It does not appear from the record as to where this consignment of 354 black iron sheets was kept by Umedi Lal, but out of it, 200/250 iron sheets were taken to the premises of M/s Jindal Khemka & Co. for sale on commission basis. Joginder Lal and Ram Nath were, however, according to the prosecution, advised by some broker that since iron sheets were controlled items, they should insist on production of a bill showing purchase of these iron sheets by Umedi Lal. Joginder Lal and Ram Nath accordingly asked Umedi Lal to produce the bill in connection with the purchase of these iron sheets, but Umedi Lal pleaded his inability to do so on the ground that these iron sheets represented 'surplus goods remaining after execution of a works contract by his firm of M/s Bansidhar & Sons of Lalitpur. When this talk took place between Joginder Lal and Ram Nath on the one hand and Umedi Lal on the other, Umedi Lal was, according to the prosecution, accompanied by the appellant who was at the material time employed as a Guard in the Northern Railway. Since Joginder Lal and Ram Nath refused to purchase the iron sheets, Umedi Lal removed the same in three carts and passed a receipt in, respect of the same in favour of M/s Jindal Khemka & Co. The prosecution case was that at this time also Umedi Lal was accompanied by three or four persons who included the appellant.

It appears that since M/s Shiv Rattan Mohatta did not receive delivery of the iron sheets consigned to them in Wagon No. SEKG 40765, they lodged a claim with the Railway Administration and this led to enquiries being made by the Railway Administration. Ultimately, the Railway Administration filed a first information report with the Special Police Establishment, Ambala Branch, and following upon the first information report, the police started investigation. During the course of investigation, the police entertained suspicion against the appellant and they obtained from 'the appellant specimen handwritings PW 27/37 to PW 27/57 for the purpose of comparing them with the handwriting on the Railway Receipt Ex. PU 10/A which was a forged document. The Police also requested the Railway authorities to direct the appellant and one Ameeruddin, who was also an employee of the Railway Administration, to subject themselves to test identification parade at the hands of the Special Railway Magistrate, Patiala. The appellant and Ameeruddin accordingly went to Patiala and they were taken to the Central Jail and there, a test identification parade was held, at which Joginder Lal failed to identify the appellant but Ram Nath, after some hesitation, managed to identify him. The specimen handwritings of the appellant Exs. PW 27/37 to PW 27/57 were sent, along with the Railway Receipt Ex. PW 10/A, to B. Lal, Government Examiner of Questioned Documents and B. Lal gave his opinion that the writing marked at A1 on the Railway Receipt Ex. PW 10/A and the specimen handwritings PW 27/37 to 27/57 were all by one and the same person. The appellant was, on the basis of this material, put up for trial before the Judicial Magistrate, 1st Class, Ludhiana. The learned Magistrate convicted the appellant and his conviction was maintained in appeal as well as revision. The question is whether the material on record was sufficient to justify the conviction of the appellant. We have carefully gone through the evidence but we find it difficult to sustain the conviction of the appellant. The only two pieces of evidence against the appellant are the evidence of B. Lal, the handwriting expert, who identified the handwriting on the forged Railway Receipt Ex. PW 10/A as that of the same person who wrote the specimen signatures Exs. PW 27/37 to PW 27/57 and the evidence showing the presence of the appellant with Umedi Lal at Ludhiana when the talk took place between Umedi Lal on the one hand and Joginder Lal and Ram Nath on the other in connection with the sale of the iron sheets. We do not

think that these two pieces of evidence are at all satisfactory and in any event on conviction can be rounded on them. In the first place, it may be noted that the appellant was at the material time a Guard in the employment of the Rail- way Administration with his Headquarters at Agra and he had nothing to do with the train by which Wagon No. SEKG .40765 was despatched from Munda to Bikaner, nor with the train which carried that wagon from Agra to Ludhiana. He was not a Guard on either of these two trains. There was also no evidence to connect the appellant with the theft of the blank Railway Receipt at Banmore Station. It is indeed difficult to see how the appellant, who was a small employee in the Railway Administration,. could have possibly come into possession of the blank Railway Receipt from Banmore Station which was not within his jurisdiction at any time. It is true that B. Lal, the handwriting expert, deposed that the handwriting on the forged Railway Receipt Ex. PW 10/A was that of the same person who wrote the specimen handwrit- ings Ex. 27/37 to 27/57, that is the appellant, but we think it would be extremely hazardous to condemn the appel- lant merely on the strength of opinion evidence of a hand- writing .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*(1) that it is unsafe to treat expert hand- writing opinion as sufficient basis for conviction, but it may be relied upon when supported by other items o[internal and external evidence. This Court again pointed out in *Ishwari Prasad v. Md. Isa*(2) that expert evidence of hand- writing can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar v. Subodh Kumar* (3) 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 o[expert opinion in regard to handwriting in *Fakhruddin v. State*(4) and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evi- dence 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. It is interesting to note that the same view is also echoed in the judgments of English and American courts. Vide *Gurney v. Langlands*(5) and *Matter of Alfred* (1) AIR 1957 SC 381. (2) AIR 1963 SC 1728 (3) AIR 1964 SC 529 (4) AIR1967 SC 1326 (5) 1822, 5B & Qld 330 *Fogter's Will*(1). The Supreme Court of Michigan pointed out in the last mentioned case: Every one knows how very unsafe it is to rely upon any one's opinion concerning the nice- ties of penmanship--Opinions are necessarily evil" and may be valuable, but at best this kind of evidence, vii". We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence being opinion evidence, is by its very nature, weak and infirm and cannot of itself form and the basis for a conviction. We must, therefore, try to see whether, in the present case, there is, apart from the evi- dence of the hand. writing expert B. Lal, any other evidence connecting the appellant with the offence.

The only other evidence which was sought to be relied upon on behalf of the prosecution was that showing the presence of the appellant with Umedi Lal at Ludhiana when there was talk between Umedi Lal on the one hand and Jogind- er Lal and Ram Nath on the other in regard to the sale of

the iron sheets. But this evidence is wholly unsatisfactory and does not inspire any confidence at all. In the first place, it is difficult to see why the appellant should have one with Umedi Lal to Ludhiana for the purpose of selling the iron sheets. The appellant was a mere railway Guard and even if it be assumed for the purpose of argument that his service were utilised for the purpose of forging the railway receipt Ex. PW 10/A, there is no reason why he should have been persuaded to accompany Umedi Lal to Ludhiana. It is true that the appellant was on leave from 1st August, 1964 to 16th August, 1964 but from that circumstance, it does not follow that he had gone to Ludhiana in connection with the sale of the iron sheets. Even according to the prosecution, the appellant was in Ludhiana only on 6th August, 1964 and that would not necessitate the appellant taking such a long leave from 1st August, 1964 to 16th August, 1964. The leave taken by the appellant from 1st August, 1964 to 16th August, 1964 would not necessarily support the inference that the appellant was present in Ludhiana on 6th August, 1964. The appellant might have taken this long leave for some other purpose. Moreover, it may be noted that Joginder Lal could not identify the appellant at the rest identification parade held at the Central Jail, Patiala. Ram Nath, of course, did identify the appellant but that was after some hesitation. 'The Special Railway Magistrate (PW 39) stated in cross-examination that Ram Nath took some time in identifying the appellant. The appellant in fact raised an objection before the Special Railway Magistrate, prior to the test identification parade, that he had a doubt that he had been shown to the witnesses by the police. The identification made by Ram Nath at the test identification parade can therefore, inspire any confidence in the mind of the Court. Moreover, it is difficult to imagine how Ram Nath who is supposed to have seen the appellant for the first time on 6th August, 1964 on a stray occasion could identify him at a test identification parade held after about two and a half years on 25th February, 1967. It is not as if the appellant had any direct talk with Ram Nath on this solitary occasion. The appellant was supposed to have merely accompanied Umedi Lal along with one or two other persons and it is impossible to believe that Ram Nath could have remembered his fact after such a long period as two and a half years. We are not at all satisfied that the appellant was with Umedi Lal when the latter is supposed to have negotiated with Joginder Lal and Ram Nath in connection with the sale of the iron sheets.

It is indeed strange that the police could not trace Umedi Lal or even Bhoja Ram. Bhoja Ram, according to the prosecution evidence, was frequently going to the Railway Station for taking delivery of goods on behalf of M/s Jindal Khemka & Co. and yet he could not be caught hold of by the police. That is indeed a sad commentary on the efficiency of the police. We fail to understand why the police did not try to find out what happened to the iron sheets--where they went from the shop of M/s Jindal Khemka & Co. If the prosecution story is true, these iron sheets were removed by Umedi Lal from the shop of M/s Jindal Khemka & Co. and they must have been removed by some cartmen. We find it difficult to believe that the police could not have pursued the matter and traced the iron sheets by making enquiries from the cartmen. It is also intriguing why the police did not try to find out the whereabouts of Bhoja Ram. Surely he could not have disappeared into the thin air. It is not right for us to speculate but we cannot help feeling that M/s Jindal Khemka & Co. were not absolutely innocent in so far as this transaction is concerned. Umedi Lal was a stranger to both Joginder Lal and Ram Nath and yet, according to the prosecution case, Umedi Lal handed over the forged Railway Receipt PW 10/A to Joginder Lal for the purpose of taking delivery of the goods without insisting on payment and even without settling the bargain. The Railway Receipt Ex PW 10/A was found to be defective by Teja Singh Sodhi, Goods Clerk on 2nd August, 1964 and yet on the

next day, strangely enough, he was, for some inexplicable reason, persuaded to accept the same Railway Receipt and delivered the iron sheets against it at the instance of Bhoja Ram, who was a person frequently acting on behalf of M/s Jindal Khemka & Co. Then again, Joginder Lal and Ram Nath are supposed to have returned the iron sheets to Umedi Lal because some broker told them that they should insist on the production of a bill of purchase by Umedi Lal which Umedi Lal was unable to do. This also appears to be a rather 'ngenuous story made up by Joginder Lal and Ram Nath for the ose of showing as if the iron sheets did not remain with them. indeed strange why they should have taken a receipt from Umedi ,7hen the latter removed the goods from their shop. The iron belonged to Umedi Lal and if Umedi Lal took them back from der Lal and Ram Nath, there was no reason why the latter d have insisted on taking a receipt from him. Presumably the .t was fabricated for the purpose of support- ing their case that id not keep the iron sheets with them, because otherwise they have nO account for them. It does appear to us prima facie edi Lal was a fictitious person and the iron sheets were taken of by M/s Jindal Khemka & Co. for themselves on the strength of the forged Railway Receipt PW 10/A. But some how or the other, due to police inaction, they appear to have escaped and a small man like the appellant seems to have been made a scape-goat.

We are of the view that the prosecution has totally failed to bring some the charge against the appellant and hence our order dated 28th January, 1977 setting aside the order of conviction and sentence recorded against the appel- lant and acquitting him of the offences charged against him.

S.R.

Appeal allowed.