Ram Narain vs State Of Uttar Pradesh on 5 April, 1973

Equivalent citations: 1973 AIR 2200, 1973 SCR (3) 911, AIR 1973 SUPREME COURT 2200, 1973 2 SCC 86, 1974 (1) SCJ 534, 1973 3 SCR 937, 1973 (1) SCWR 675, 1973 SCC(CRI) 752, 1973 MAH LJ 548, 1973 MPLJ 674, 1973 SCD 479, 1974 MADLJ(CRI) 297, 1975 MADLW (CRI) 175

Author: Kuttyil Kurien Mathew

Bench: Kuttyil Kurien Mathew

PETITIONER:
RAM NARAIN

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT05/04/1973

BENCH:
DUA, I.D.
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DUA, I.D.
MATHEW, KUTTYIL KURIEN

CITATION:
1973 AIR 2200 1973 SCR (3) 911
1973 SCC (2) 86
CITATOR INFO :
R 1992 SC2100 (30)

ACT:
Indian Evidence Act, 1872, s.45--Handwriting Expert-Sole testimony for conviction--Courts below comparing handwriting for themselves and agreeing with Expert-No illegality in conviction-Sentence-Lapse of time--Sentence reduced to period already undergone.

HEADNOTE:
The appellant was convicted of an offence under s. 384 read with s. 511 Indian Penal Code. The conviction was solely based on the conclusion that the two anonymous letters demanding ransom for the kidnapped boy had been written by him. The appellant having categorically denied his

authorship of those letters a handwriting expert was produced in support of the prosecution case, and believing the expert testimony the three courts below agreed in convicting the appellant. In this Court the sole question for consideration was as to the legality and propriety of the appellant's conviction on the, uncorroborated testimony of the handwriting expert. It was urged by the appellant that it was not safe to record a finding about a person's handwriting merely on the basis of comparison because the opinion of the handwriting expert is not conclusive.

Dismissing the appeal.

HELD : (i) The legal position enunciated in Fakhruddin's case cannot be said to be inconsistent with the ratio of anyone of the earlier decisions to which reference has been made therein. [916A]

Fakhruddin v. State of Madhya Pradesh, A.I.R. 1967 S.C. 1326, Ram Chandra v. State of U.P., A.I.R. 1957 S.C. 381, Ishwari Prasad Misra v. Mohammad Isa, A.I.R. 1963 S.C. 1728 and Shashi Kumar Banerjee, v. Subodh Kumar Banerjee, A.I.R. 1964 S.C. 529, referred to.

It is no doubt true that the opinion of a hand-writing expert given in evidence is no less fallible than any other expert opinion adduced in evidence with the result that such evidence has to be received with great caution. But this opinion evidence which is relevant may be worthy of acceptance if there is internal or external evidence relating to the document in question supporting the view expressed by the expert. If after- comparison of the disputed and the admitted writings by the Court itself when the Presiding Officer Is familiar with the language, it is considered safe to accept the opinion of the expert, then the conclusion so arrived at cannot be assailed on special leave on the, mere ground that comparison of handwriting is generally considered as hazardous and inconclusive.

In the present case the Trial Magistrate, the Sessions Judge who heard the appeal and the High Court themselves compared the writing with the help of the expert's opinion and came to the conclusion that the disputed handwriting tallied with the specimen handwriting of the appellant. There was, therefore no ground for interference by this Court with the appellant's conviction. [916B]

(ii) Though a large number of factors fall for consideration in determining the appropriate sentence the broad object of punishment

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of an accused found guilty in progressive civilized societies is to impress on the guilty party that commission of crime does not pay and that it is both against his individual interest and also against the larger interest of the society to which he belongs. The sentence to be appropriate should, therefore, be neither too harsh nor too lenient. The sentence of rigorous imprisonment for one year imposed in the present case would not in the normal course

be considered to be too harsh but considerable time had elapsed since the commission of crime and the appellant had been on bail granted by this Court since January, 1970. To send him back to jail after so many years would be somewhat harsh. [917B]
[Sentence reduced to period already undergone with fine.]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 6 of 1970.

Appeal by special leave from the judgment and order dated October 10, 1969 of the Allahabad High Court in Criminal Rev. No. 2093 of 1967.

J. P. Goyal and R. K. Bhatt, for the appellant.. O. P. Rana, for the respondent.

The Judgment of the Court was delivered by DUA, J. : This appeal by special leave is directed against the judgment and order of a learned Single Judge of the Allahabad High Court dated October 6, 1969 dismissing the appellant's revision from the order of a 11 Temporary Sessions Judge, Kanpur dated November 8, 1967 dismissing his appeal from his conviction by a learned Magistrate under ss. 384/511 I.P.C. and sentence of rigorous imprisonment for one year.

On August 15,1964, Mannu, a boy about 5 years old, was found missing from the house of the appellant's relation Shri Gajendra Natth (P.W. 19), an Excise Inspector, residing in Mohalla Ashok Nagar, Kanpur within the jurisdiction of police station Sisamau the ,Following day. A report was lodged at the police station Sisamau about this fact and a notice was also published in the newspapers and hand-bills were distributed announcing a reward of Rs. 501/- for anyone who furnished the clue of the missing child's whereabouts. A post-card (Ext. Ka-1) bearing post office seals dated 21- 8-1964 and later an inland letter (Ext. Ka-2) bearing the date October 21, 1964 were received by Gajendra Nath demanding, in the first letter a ransom of Rs. 1,000/-, and in the second a ransom of Rs. 5,000/- for the return of the boy. in December, 1964, a trainee of the local I.T.I., Kanpur, Yashpal Singh by name, after reading the announcement of the reward, made attempts to trace the whereabouts of the missing child. Having found a clue, he gave the necessary information to the, father of the, child regarding his whereabouts. Thereupon, on January 11, 1965 the child was recovered by Rahasbehari, the grand-father of the child, from the house of Ganga Bux Singh and Chandrabushan Singh in village Pandeypur District Kanpur. The investigation of the case revealed that the appellant, Ram Narain, was also responsible for kidnapping and wrongfully confining the said child and that it was he who had sent the two anonymous letters (Exts. Ka-1 and K-2) demanding ransom. All the three persons were prosecuted under ss. 363, 468 and 384/51 1, I.P.C. The trial court convicted Ganga Bux Singh and Chandrabushan Singh under s. 368, I.P.C. and Ram Narain appellant under ss. 384/511, I.P.C. On appeals by the convicted persons, the learned 11 Temporary Sessions Judge, Kanpur, came to the conclusion that the offence under s. 368, I.P.C. had not been established beyond reasonable doubt with the result that Ganga Bux Singh and Chandrabushan were acquitted. The appellant, Ram Narain's conviction for an offence under ss.

384/511, I.P.C. was, however, upheld. This conviction was solely based on the conclusion that the two anonymous letters had been written by him. The appellant having categorically denied his authorship of those letters, Shri R. A. Gregory, a hand-writing expert was produced in support of the presecution case. Believing his testimony that the appellant was the writer of those two letters, all the three courts below have agreed in convicting the appellant.

The short question raised before us relates to the legality and properiety of the appellant's conviction on the uncorroborated testimony of the hand-writting expert. The High Court relied in support of the appellant's conviction on the decision of this Court in Fakhruddin v. State of Madhya Pradesh(1) in which after referring to four of its earlier decisions in, (i) Ram Chandra v. State of U.P.(2)

(ii) Ishwari Prasad Misra v. Mohammad Isa(3) (iii) Shashi Kumar Banerjee v. Subodh Kumar Banerjee(4) (iv) State of Gujarat v. Chhotalal Patni(5) this Court rejected the contention that the Court dealing with the authorship of a writing could not observe for itself the similarity and differences between the admitted and the disputed hand- writings to verify whether or not the conclusions of the handwriting expert were proper. Then, after referring to ss. 45, 47 and 73 of the Indian Evidence, Act, this Court observed :-

> "Both under S. 45 and S. 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the (1) A. 1. R. 1967 S. C. 1326.
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> (2) A. 1. R. 1957 S. C. 381.
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> (3) A. 1. R. 1963 S. C. 1728.
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> (4) A. 1. R. 1964 S. C. 529.
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> (5) [1967] 1 S. C. R. 249 admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case an to appraise the value of the opinion in the other case.

This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.

Therefore, to satisfy ourselves whether the testimony of the handwriting expert is acceptable or not, we sent for the record and compared the disputed writings with some comparable material. There were two such writings which were claimed as standard. One was a register maintained at the office of the Association in which there was a signature in three places in Hindi which purported to be that of Fakhruddin (Exhibit P-56). The other was a writing which Fakhruddin made to the dictation of the Police Officer in Jail (Ex.P.61). These were, of course, not admitted by Fakhruddin and the question had to be first decided which of the two or 'both could be said to be approved standard material. Mr. Kohli urged that Ex. P-56 could not be so treated as there was no proof that the signatures were made by Fakhruddin. In this submission Mr. Kohli is right. The evidence of Tahir Ali, P.W.14 which has been relied upon is not definite on this point. He does not say that the signatures were of Fakhruddin who was the accused in the case. He only says that the persons whose signatures were made in the register, signed it and this leaves the matter at large. There is, however, proof that the other writing was, made , Fakhruddin the appellant. The Sub- Inspector, P.W. 33 took the precaution of having two witnesses P.Ws. Nos. 16 and 27. Of these P.W. 16 did not identify the appellant as the writer but the other P.W. 27 did. Exhibit P-61, therefore, furnishes the necessary comparative material." According to the appellant's learned counsel, the High Court has not properly understood the principle of law laid down by this Court in its various decisions. Our attention was invited to Chhota Lal Patni's case (supra) where it is observed :--

> "A Court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings. It may not be safe for a Court to record a finding about, a person's writing in a certain document merely on the basis of comparison, but a Court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting expert is also relevant in view of s. 45 of the Evidence Act, but that too is not conclusive. It has also been held that the sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. It was therefore not right for the learned Judge to consider it unsafe to rely upon the evidence of the complainant in a case like this, i.e., in a case in which no handwriting expert had been examined in support of his statement."

It was emphasised by the appellant's learned counsel that according to this decision it is not safe to record a finding about a person's writing merely on the basis of comparison because the opinion of a hand-whiting expert is not conclusive and his evidence is normally insufficient for recording a definite finding about the writing being of a certain person or not. Indeed the appellant's contention was that in Fakhruddin's case (supra) though reference was made to this decision, its ratio was not properly appreciated and the decision in Fakhruddin (supra) is not in conformity with this earlier decision. We are unable to agree with this submission. Reference was also made by the appellants counsel to Shashi Kumar (supra) where it is observed that the expert evidence as to hand-writing is opinion evidence and it can rarely, it ever, take the place of substantive evidence and therefore before acting on it the courts usually look for corroboration either by direct or circumstantial evidence. In Shashi Kumar (supra), it may be pointed out, this Court found all the probabilities

against the expert opinion and the direct testimony of two witnesses accepted by this Court also wholly inconsistent with that opinion.

In our view, the legal position enunciated in Fakhruddin (supra) cannot be said to be inconsistent with the ratio of any one of the earlier decisions to which reference has been made therein. How it is no doubt true that the opinion of a hand-writing expert given in evidence is no less fallible than any other expert opinion adduced in evidence with the result that such evidence has to be received with great caution. But this opinion evidence, which is relevant, may be worthy of acceptance if there is internal or external evidence relating to the document in question supporting the view expressed by the expert. If after comparison of the disputed and the admitted writings by the Court itself, when the Presiding Officer is familiar with that language, it is considered safe to accept the opinion of the expert then the conclusion so arrived at cannot be assailed on special leave on the niece ground that comparison hand-writing is generally considered as hazardous and inclusive and that the opinion of the hand-writing expert has to be received with considerable caution. The question in each case falls for determination on the appreciation of evidence and unless some serious infirmity or gave failure of justice is shown, this Court would normally refrain from reappraising the matter on appeal by special leave. the Trial Court in this case agreeing with the principle of law enunciated by this Court compared the relevant documents and arrived at the conclusion that they have all been written in one hand. The learned 11 Temporary Sessions Judge on appeal, after referring to the comparison of the disputed and specimen writings by the 'trial Magistrate. himself compared those writings with the help of the expert's opinion and his report and came to a definite conclusion "that the disputed hand-writings tally with the specimen hand-writing". In the High Court also the learned Single Judge, after referring to the decision in Fakhruddin (supra), observed as follows :-

> "I have myself made a comparison of the specimen writing of the applicant with the writing contained in the two letters. I have not the least doubt that the writing in the post-card and he writing in the admitted writing of the applicant are the same. Thus, I have no reason to differ from the finding recorded by the courts below."

No serious attempt was made on behalf of the appellant to find fault with the approach of the three courts below. There is, therefore, no ground made out for interference by this Court with the appellant's conviction. Unfortunately, the record is not before us otherwise we would have also tried to examine for ourselves the disputed and the specimen hand-writings. However, in view of the concurrent decisions' of the three courts below, we did not consider it necessary to adjourn the hearing of this case to have the documents before us for our examination.

The next question is one of sentence which is always a matter of some difficulty. It generally poses a complex problem which requires a working compromise between the competing views based on reformative, deterrent and retributive theories of punishments. Though a large number of factors fall for consideration in determining the appropriate sentence, the broad object of punishment of an accused found guilty in progressive civilized societies is to impress on the guilty party that commission of crimes does not pay and that it is both against his individual interest and also against the larger interest of the society to which he belongs. The sentence to be appropriate should, therefore, be neither too harsh nor too lenient. In the case, in hand the imposition of rigorous

imprisonment for one year upheld by the appellate and the revisional courts may not have been considered by us in the normal course to be too harsh calling for interference under Article 136 of the Constitution. The difficulty now posed is that the appellant is on bail and he has served out only one month's sentence. He was originally sentenced by the trial Court on. April 17, 1967 for the offence committed as far back as 1964. The proceeding against him have lasted for 'more than 8 years. He was released on bail by this Court in January, 1970. To, send him back to jail now after the lapse of so, many years for serving out the remaining period of sentence seems to us on the facts and circumstances of this case to be somewhat harsh. The offence of attempted exertion undoubtedly reflects to some extent anti-social depravity of mind but the attempt did not succeed. We, therefore, consider that on the facts and circumstances of this case the ends of substantial justice would be amply met it We now reduce the sentence of imprisonment to that already undergone but also impose fine of Rs. 700/- and in default of payment of fine direct that he undergoes rigorous imprisonment for a period of three months. We order accordingly. The appeal is thus accepted in part as just stated.

G.C. Appeal allowed in part.