Madras High Court
Public Prosecutor vs Kandasami Thevan on 12 October, 1923
Equivalent citations: AIR 1927 Mad 696
Author: S C.J.
JUDGMENT Schwabe C.J.

1. This is an appeal by the Crown against the acquittal of the accused on charges relating to a money order which came to his hands in his capacity of postman. I am quite at a loss to understand how, on the face of the evidence, in this case, the learned Judge could have arrived at the conclusion at which ne arrived. In my judgment, it is against all the evidence. He has given entirely wrong grounds from start to finish.

2. The facts are that Rs. 20 was sent to a woman called Muniammal by her daughter who was away in the Malay States. The money order, Exhibit C, purports on the face of it, to have been paid over to the lady P. W. 1 and to bear her left hand thumb-mark witnessed by a man called Doraiswami. The accused says that he received that document and the money from the local postmaster, took it to P. W. 1, paid the money to her and got her receipt by taking her thumb-mark witnessed by Doraiswami. It is perfectly clear on the evidence that he did nothing of the kind. There can be no doubt whatever that the witness's signature is a forgery and there cannot be the slightest doubt that the thumb-mark on the document is not the thumb-mark of P. W. 1, hut is the thumb-mark of the postman himself, the accused. The learned Judge declines to act on what he describes as the evidence of an expert, that the thumb-mark on Exhibit C is similar to the thumb-mark of the accused. The evidence was not that it was similar, but it was that it was identical. He apparently accepts the evidence that the mark on Exhibit C has no resemblance to either of the thumb-marks of P. W. 1, but he suggests that it is possible that it was not her thumb-mark, but was her fingermark.

3. It is quite clear that the definite rule of the post office, well known to the accused, was that he is to take the loft thumb-mark of the person who cannot write. There was no evidence at all before the Court that there was any resemblance between this mark and the finger marks of P. W. I and, therefore, this suggestion is a figment of the learned Judge's imagination. He further purports to follow a ruling in Bazari Hajam v. Ring-Emperor A. I. R. 1922 Patna 73 a case on which considerable doubt has already been thrown by this Court on other points in Public Prosecutor v. Veerammal A. I. R. 1923 Mad. 178 and the part on which he relies is a statement in the judgment of Bucknill, J., to the following effect:

The very fact of the taking of the thumbimpression from an accused person for the purpose of possible manufacture of the evidence by which he could be incriminated is in itself sufficient to warrant one in setting aside the conviction upon the understanding and upon the assumption that such was not really a fair trial.

4. It was applied in this case by the learned Judge to certain impressions of the accused's thumb-marks taken before the Magistrate. It really was unnecessary for anything that the learned Judge had to apply his mind to, because there were ample examples of the accused's thumb marks without having recourse to that particular example which was excluded. But I think it is very

desirable to say that I wholly disagree with the remark I have quoted from the judgment of Bucknill, J. Why the taking of the thumb-impression from an accused person should he described as being taken for the purpose of possible manufacture of the evidence, or on what principle of law a conviction based on the resemblance between that thumbimpression and the thumb-impression on the document in question in the suit is to be set aside on the assumption that it was not a fair trial is beyond my comprehension.

5. It is enough for me to say that I see no objection in law at all to the taking of the accused's thumb-mark, if the Judge thinks it relevant at any time; nor do I think that a conviction based on a comparison of the thumb-mark of the accased person with the thumb- mark on the document in question in suit is in the least objectionable. The question of identity of the thumb-mark is a question of fact to be decided by evidence as any other question of fact; as I have already stated, in my judgment, it is clearly established in this case that the thumb-mark on the document in question in the suit is the thumb-mark of the accused. In my judgment, there is ample evidence to convict this accused.

6. I shall not, however, part from this case without saying something about certain documents, Exs. 1, 2 and 2 (a). It would seem to be a fact, and clearly established as a fact, that P. W. 1 received from her daughter a registered letter, two months after the date of the alleged payment to her of this money, saying that she had sent this money and had no receipt for it, and that P. W. 1 took that letter to the postmaster at Nidur. She having told him that she had not received the money and he having got what purported to be her receipt in the records of the post office, he said he would make enquiries and see her again. She came two days later and was then met by the accused, and the accused handed to her Rs, 20 and took her thumb-mark as a receipt for the payment. That receipt has never been produced. At a later date when the higher postal authorities were making enquiries into the matter, this woman was got somehow to the post office and statements were taken from her. The first one of them, Ex. 1, taken by the postmaster is interpreted by him to mean that she was then stating that she had been paid her Rs. 20 at its due date, that is, in December; and the same statement is repeated in her later statements, Exs. 2 and 2 (a), taken by the Inspector on a later occasion. They were written by the Inspector's peon in Tamil, because the Inspector could not write Tamil freely, and her thumb-impressions were taken. They are badly translated into English. They purport to show that they were read over to P. W. 1. They were then shown to her at the trial and were apparently accepted by the learned Judge as showing, that the whole story was wrong and that she really had received the money in December. The postmaster, who took the first statement, Ex. 1, knew perfectly well that that was not what she meant to say, because she had come with a man whom she had got to read to her the letter from her daughter and had said: "Here is that letter, why have I not got the money?" He then delays matter so as to give time to the accused to refund the money which he had stolen and then writes a statement which looks as if the woman was satisfied that she had been paid at the proper date and so supplies evidence to save this dishonest postman when the matter comes up for discussion.

7. I think it is a matter into which very careful enquiry should be made by the postal authorities to ascertain how far this postmaster was a party to the fraud and how far the Inspector was justified in taking the statements which he took in the circumstances of this case. However, it is a matter with

which we are not concerned. What we are concerned with is to see that justice is done. I am quite satisfied that this was a deliberate misappropriation of the money entrusted to this postman and that the accused thereby committed criminal breach of trust. He must be convicted of that charge. For a public servant like a postman to commit a crime of that kind, to bolster it up with forging the name of a witness and to substitute his own thumb-mark for that of the payee is a very serious crime indeed. The maximum punishment for that offence is transportation for life or imprisonment for ten years. So far, as we know, this is his first offence and I, therefore, think that the proper sentence is a sentence of rigorous imprisonment for three years.

Waller, J.

8. I entirely agree, There can be no doubt whatever that Muniammal was not paid the money on the alleged date, but about two months later after she had received a letter from her daughter. It is clear that her supposed thumb-impression on the acknowledgment is really that of the accused and that the signature of the attesting witness is a forgery. There is, however, no appeal against the acquittal on the charge of forgery but only against the acquittal under Section 409, I. P. C. I agree that the acquittal should be set aside and the accused should be convicted of an offence under Section 409, I. P. C. I entirely agree in the opinion which the learned Chief Justice has expressed as regards the ruling in Bazari Hajam v. King-Emperor A. I. R. 1922 Patna 73.