

Emperor Vs. Babulal Behari

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Court : Mumbai

Decided On : Jan-10-1928

Reported in : (1928)30BOMLR321; 108Ind.Cas.508

Judge : Madgavkar, J.

Appeal No. : Fifth Criminal Sessions (1927) (Case No. 17)

Appellant : Emperor

Respondent : Babulal Behari

Judgement :

Madgavkar, J.

1. The question for my decision is, whether the opinion with its reasons of the police finger print expert Mr. Saldanha on the identity of a certain palm impression of one of the accused with the palm impression on the pot found on the scene of offence on April 28, 1927, is or is not admissible in evidence.

2. The facts shortly are that on April 28, 1927, a Marwari boy was found murdered in a room and the safe rifled of valuable ornaments. Among other clues such as a Bhaiya cap and some mangoes, a handa or brass pot of water bore the impression of a palm upon it. That impression was photographed and enlarged and subsequently-the precise dates are not on record-Mr. Patel the senior expert

and Mr. Saldanha the junior expert took and compared twenty-one palm impressions including those of the principal accused and witnesses and other Pardeshis with the impression found on the handa.

3. There has been unfortunately considerable delay in the trial of this case. The seven accused were all arrested by May 16; but as investigation had to be carried on in Cawnpore, Benares and Ahmedabad, the proceedings before the Magistrate did not begin till September 7. Charges were not framed till November 7 and the present trial did not commence till January 5, involving, amongst other consequences, the loss of the evidence of Mr. Patel, who died of apoplexy in December last.

4. The question was raised in the opening address for the Crown and objection was immediately taken on behalf of accused Nos. 2 and 3. I then ruled that the photographs of the palm impressions were admissible and reserved my decision as to the admissibility of reasons and opinion until the evidence was tendered. Today Nowroji the photographer and Mr. Saldanha who has been working for seventeen years in the finger print department and is now the senior expert of the bureau have given their evidence.

5. It is contended for accused Nos. 2 and 3 that while the photographs of the impression on the handa and the impressions of the palm of the accused are admissible, it must be left to the counsel to bring to the notice of the Court and the jury points of similarity, and that the opinion either on the points of similarity or of identity of the so called expert is not admissible under Section 45 which in terms confines the admissibility of opinion to points of science or of art or identity of finger impressions under the section as now amended. For the Crown reliance is placed on Section 7, Clause (b), of the Indian Evidence Act; and it was argued that knowledge of the impression of the palm is sufficiently organised to fall within the term 'science' employed in Section 45.

6. There can be no question, in my opinion, and I hold that it is as open to the Crown to question Mr. Saldanha as to the similarities between the two palm impressions as it is open to the defence to cross-examine him on the dissimilarities. No section of the Indian Evidence Act prevents any such similarities

or dissimilarities which have been observed by Mr. Saldanha himself from being recorded in his evidence. Evidence of similarity of the impression of the foot, shod or unshod, is admitted by the Courts in India, and in Great Britain, and, as far as I know, in every other country, though there is no science of such impressions. In this light photographs have been put in recording fifty-seven such similarities. Mr. Saldanha swears that out of the twenty-one palm impressions he picked out one accused's as the only one which tallied with the impression on the handa; and this without knowing at the time that any particular person was the person suspected of having made the impression on the handa.

7. The question as to opinion presents some difficulties. The wording of the section admits opinion as to finger impressions. Does this include palm impressions, and is there a science of such impressions? As is observed by Woodroffe and Ameer Ali, 8th Edn. (1925), p. 427 :-

The words 'science or art' if interpreted in a narrow sense would exclude matters upon which expert testimony is admissible both in England and America, such as questions relating to trades and handicrafts.

8. The general rule laid down by Taylor, Vol. II (11th edition), Section 1418 is that

The opinion of witnesses possessing peculiar skill is admissible, whenever the subject-matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it without such assistance; in other words, when it so far partakes of the character of a science or art, as to require a course of previous habit or study, in order to obtain a complete knowledge of its nature.

9. In the present case it is apparent from photographs and the fifty-seven points that without Mr. Saldanha's assistance it would be next to impossible to appraise the similarities or otherwise of the impressions. As regards science, Mr. Saldanha has gone to the length of saying that he is prepared to swear that the impression on the handa cannot be the impression of any one but that particular accused, because these ridges and furrows on the palm do not change and are different in the case of each individual.

10. The skin of the finger and the palm is after all one and the same, belonging to one organ, the hand, and possessing precisely the same characteristics. But while the whorls and the loops of the fingers have been observed in the case of millions of individuals and accurately classified so that the probabilities are millions against a mistake as to the identity of finger prints in the case of two individuals, scientific observation, classification and inference in the case of palm prints is neither so accurate nor so great. Mr. Saldanha himself admits that this comparison of palm prints has not been decisive in any previous case in his own observation.

11. It is also to be observed that in India the opinion of expert illiterate trackers called 'puggees' has invariably been admitted by Courts in different provinces, including, to my own knowledge, Sind, without any exception having been taken as far as I am aware, and has been valued as evidence. Under these circumstances I think that palm impressions are akin to finger impressions. The knowledge of both is a study for the same class of expert. They are in fact a portion of the same science, though it has not been found necessary by the police and other experts to develop the science of palm impressions to the same extent that finger impressions properly so called have been developed. It appears to me on the whole that such opinion should be admitted rather than excluded, to be weighed by the Court and the jury for whatever it is worth. Accordingly, I hold the opinion of Mr. Saldanha as to identity is admissible under Section 45 of the Indian Evidence Act. [Note In his statement to the Court on the following day this accused admitted that he had stained his hand with the blood of the deceased and had grasped the handa in order to wash his hands.]