Devi Prasad and ors. Vs. State

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Court : Allahabad

Decided On : Sep-10-1964

Reported in : AIR1967All64; 1967CriLJ134

Judge : M.H. Beg, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 239 and 337; Evidence Act, 1872 - Sections 24, 45, 47 and 73

Appeal No. : Criminal Appeal No. 1881 of 1961

Appellant : Devi Prasad and ors.

Respondent : State

Advocate for Def. : Mahamed Husain, Dy. G.A.

Advocate for Pet/Ap. : Anand Deo Gir, ;C.S. Saran, ;D. Behari and ;S.S. Tewari, Advs.

Judgement :

M.H. Beg, J.

1. These are three appeals by the twenty two convicted out of thirty accused persons many of whom were tried upon a number of charges all joined together as they were in respect of offences alleged to have been committed in the course of

one vast conspiracy. The object of the conspiracy was said to have been to obtain cement and iron by means of forged permits in favour of fictitious and non-existent individuals and to use these controlled goods for the purposes of black marketing and also for adulteration of cement, by mixture with sand and earth, and its sale as good and genuine cement. Originally, there were thirty one accused persons, but one Nathmal (P. W. 275) was permitted to become an approver and given a conditional pardon so that he may reveal the inner workings of the conspiracy which wassaid to have been unearthed due to the information given and efforts made by Sri Pannalal Trivedi who came forward, as a public spirited citizen, with an application (Ex Ka-1) which was received in the office of Sri Sarnpurnanand, the then Chief Minister of Uttar Pradesh, on 26th September 1955, containing allegations which Sri Trivedi had already made orally to the Chief Minister. It was forwarded on to the Senior Superintendent of Police, Varanasi, on 4-10-1955, and then investigations started. The period covered by the charges for the alleged conspiracy is from 1-11-54 to 31-3-56.

2. The learned Civil and Sessions Judge of Varanasi who heard this case, continuously for more than a year, examined exactly three hundred witnesses, whose evidence covered nearly 3000 pages, and 4989 documents were taken in evidence to prove the charges against the appellants. The learned Judge disposed of the case by means of a very elaborate but lucid judgment of 350 pages with a very neatly arranged index giving various headings under which the evidence and the contentions have been marshalled and dealt with. The length of the judgment does not diminish the clarity which results from the commendable systematic arrangement and treatment of all items of evidence and of the contentions advanced. Nevertheless, there is a danger in such a case that the evidence may be rather mechanically weighed and stamped as acceptable or unacceptable by applying much too simple tests. Such a danger of over simplification can only be met by a close scrutiny of all the evidence against and in favour of each accused and a thorough and careful consideration of the case of each accused individually. I have, therefore, carefully considered the case of each accused-appellant again. The whole evidence was re-examined and reassessed by me and the whole long judgment of the trial court was read before me. Parts of the evidence and the judgment were gone over several times before me during a hearing of nearly a

month and a half. I will, however, deal only with questions which I consider material and significant in reassessing the evidence against each appellant.

3. The first objection taken on behalf of the appellants is that there was a misjoinder of accused persons and of charges in respect or separate transactions which has resulted in prejudice and injustice to the appellants who were so confused by the multiplicity of charges and profusion of evidence that they could not meet each of them separately properly. In a case of conspiracy, it is not necessary for the validity of a trial to ultimately prove that the conspiracy alleged actually existed. The validity of a joint trial upon charges for offences alleged to be parts of the conspiracy is determined by the initial accusations levelled by the prosecution against the whole body of accused persons (vide K. Kunhammad v. State of Madras : 1960 CriLJ1013 relying upon Babu Lal v. Emperor). In this case, there is an accusation of conspiracy against each accused person which enables the case to pass the initial test of a valid joinder of a number of charges and of accused persons.

Moreover, 1 find that charges were preferred first of all, against seven accused persons, namely, Bhagwati Prasad, and Banarsi, and Parma Lal, and Debi Prasad, and Lalli Prasad, and Munni Lal, and Chhedi Lal. But, these seven accused persons, who are amongst the appellants, objected to a separate trial and wanted a joint trial with all the other accused persons against whom the cases were still under investigation. The matter came up to this Court in revision at the instance of the accused persons, and this court ordered a joint trial. No accused person complained at any earlier stage of any prejudice resulting from a joinder of charges or of accused persons, and, in any case, in view of the legal position stated above, there can be no legally valid objection to the joinder of charges and of accused persons. 1, therefore, reject this initial objection which was taken but not seriously pressed before me. The only course open to a Court in such a case is, as I have already indicated, to scrutinize the case of each accused person with special care so as to guard against lurking possibilities of prejudice and injustice from multiplicity of charges to accused persons.

4. The appellants' counsel have assailed not only the veracity of each prosecution witness but also put forward certain principles for the assessment of each type of evidence in the case and contend that, upon the application of those principles, the evidence of each kind against each of the appellants has to be rejected as unsatisfactory. The evidence in this case may be classified as follows:--

Firstly, there is the evidence of the approver Nathmal (P. W. 275). Secondly, there is a confession of Abdul Hamid Alias Bhondu. Thirdly, there is the evidence of the handwriting expert, Mr. Gregory (P. W. 286), consisting of his reports and his statement in court with regard to the disputed writings in the documents examined by him. Fourthly, there are witnesses who are alleged to have proved the hand-writings of the accused persons with whose hand-writings they were alleged to be acquainted as required by Section 47 of the Indian Evidence Act. Fifthly, there are a very large number of forged documents and permits which were used for the purpose of obtaining cement and iron, the controlled commodities, during the period in question. Sixthly, there is the evidence of witnesses about the information given, investigations started, and the conduct of the Investigations by series of police officers. I shall consider seriatim each of the aforementioned classes of evidence which has been assailed as unreliable.

5. With regard to the approver's evidence, the first argument advanced is that, as the Supreme Court has held in Sarwan Singh v. State of Punjab : 1957 CriLJ1014 an approver's evidence has to satisfy a double test; firstly that the approver is a sufficiently reliable witness and secondly, that his evidence is sufficiently corroborated in material particulars. It is argued that it is only after the first test is satisfied that the question of looking for corroboration arises. In Jnanendra Nath v. State of West Bengal, AIR1959 SC 1199, Sarwan Singh's case : 1957 CriLJ1014 (supra) was explained as illustrating the application of general principles of appreciation of evidence to the particular approver in that case. In State of Andh. Pra. v. Ganeshwara Rao : [1964]3SCR297 at p. 1872 the usual tests of credibility of an approver were indicated, and it was, in particular, pointed out that it was not essential for the prosecution to prove that an approver, to be considered reliable, is a 'penitent witness'. Here, it was also held by the Supreme Court that the illegality in tendering pardon to an accused person does not affect his competence

as a witness. I do not, therefore, propose to deal with the alleged defects in granting a pardon to Nathmal.

6. It is a basic rule of appraisal of evidence of all witnesses, whether approvers or not, that their versions must be shown to be credible. It is also a rule common to all types of unreliable witnesses, including approvers, that corroboration of their versions should be found before accepting them. In Sarwan Singh's case : 1957 CriLJ1014 (supra), it is not laid down that no part of the evidence of an approver can be or should be used even for purposes of corroborating any part of the case if some part of the approver's evidence is rejected as unacceptable. The part which is rejected as well as the part which is accepted has to be subjected to the abovementioned tests for appraisal of evidence before it is either rejected or accepted. In using that part of the evidence of an approver which has passed the test of credibility, as merely corroborative of the evidence given by other witness on the same aspect of the case, no rule of prudence or practice is violated. The rna im 'talsus in uno falsus in omnibus' is not applicable either to approvers or to any other class of witnesses in this country.

7. The evidence of the approver Nathmal (P. W. 275) has certainly failed to satisfy me, for the reasons given below, that he is a completely reliable witness and not a poverty stricken rogue who was only trying to escape the possible consequences of the charges against him by glibly telling tales, which may not be true, implicating a number of accused persons and providing a much needed link sought by the prosecution to enable the charge of conspiracy to succeed.

8. Nathmal was an employee of a firm of iron stockists. His duty was to take delivery of railway receipts from the bank and to write out accounts. He was not a dealer in iron and cement himself. He did not stand to gain much personally by any scheme of profiteering or black-marketing which could only bring money to his employers, Om Prakash and Co. It is difficult for me to understand why Panna Lal and Devi Prasad should be so particularly anxious to secure the attendance of this insignificant servant at a meeting at which a criminal design for a conspiracy was to be unfolded and its modus operandi explained. This, however, is what his evidence amounts to. Devi Prasad, appellant, was the speaker, according to

Nathmal, who addressed the meeting alleged to have been attended by fourteen of the accused per-sons out of whom Nathmal named ten and identified four. Even if one were to accept that he was to be used as a particularly valuable tool by his employers, it is rather extra-ordinary that none of the 20 or 22 persons, who are alleged to have attended the meeting, raised any objection to what was transparently a fraudulent scheme to obtain permits or offered any suggestion. This witness said that he made only about 20 or 23 rupees as his share of the profits said to have been distributed by Devi Prasad. Nathmal admitted that it was correct that he could not defend himself owing to want of funds. He even admitted that he had told a number of lies to the C. I. D. Inspector and alleged that he had done so because he had been asked to do so by Devi Prasad and Panna Lal who wanted to implicate one Bansidhar, the owner of Om Prakash & Company. He also admitted that he made an application to become an approver after his dismissal by Banshidhar and that the reason why lie wanted to become approver was his poverty. This admission is not very consistent with another reason given for Nathmal's desire to become an approver. This other reason is the alleged prick of his conscience which, according to him, coincided with the pinch of poverty. He admitted that he was always in need of money and stated that he used to make Rs. 5/- or Rs. 6/- per permit. He alleged that he had visited the shop of Devi Prasad, but later on stated that Devi Prasad had no shop, and the shop he meant was that of Chhedi Lal where the meeting was said to have been held. He pretended not to know the meaning of the common word 'Bekasoor' which was put down in his application to the court to describe himself when he decided to turn an approver.

Evidently, the reason was that he realised, by the time he came to give evidence in court, that if he stuck to the version that he was 'Bekasoor', it will mean that he was giving an exculpatory statement which is of little value. According to him, the shop of Chhedi Lal, where the meeting was held, remained open even when Devi Prasad was making the speech in which the criminal design and the method of achieving the object of the conspirators were disclosed. During his cross-examination, he disclosed a second alleged meeting at an 'Akhara' about a week after the first meeting. The 'Akhara' is said to be an open public place in which 300 or 400 persons can sit. It is difficult to understand the purpose of the second

meeting except that the accused participating in the second meeting may be proved to have signified their assent to the scheme outlined at the first meeting by attending the second meeting. Nathmal stated that he knew that the object of the conspirators was to commit illegal acts when the second meeting was held. According to him, he did not know this when he was called to the first meeting.

9. Another criticism against him is that he identified a very large number of alleged handwritings of Munni Lal and Chhedi Lal and Devi Prasad accused persons and some of Kashi Nath and of Pattar Alias Narrotam and of Jamuna Prasad and Ganga Prasad and Parma Lal. It isargued that he did not have sufficient opportunity to know the writings of these accused persons. The number of writings identified by the approrer is certainly quite large. It is difficult to understand how he could have identified so many of these handwritings correctly unless he knew the handwritings well enough.

10. The explanation put forward on behalf of the appellants of the performance of this and other witnesses, who identified the handwritings of the accused persons, is that the prosecution had resorted to a trick in getting the writings upon the documents identified. It is pointed out that all the documents are classified & each document bears letters which indicate the accused person whose hand-writing the document is supposed to contain. This so-called 'trick' of the prosecution was apparently suspected when Panna Lal Trevedi (P. W. 1) wag being cross-examined. Patina Lal (P. W. 1) stated that he paid attention to the writings and not to the numbers which were used for classifying the documents. The learned Judge has remarked that some method of classifying the documents had necessarily to be used. The next witness to whom the hand-writings were put by the prosecution was Narain Dass (P. W. 101). When the prosecution was proving the hand-writings, by putting them to this witness, there was a request by the counsel for the accused that the documents should be proved by putting questions and answers relating to each document. The learned Judge then remarked that, although the documents were being put in a strictly legal fashion, he will accede to the request made by the counsel for the accused. It may be assumed that, after this decision, the documents, whenever proved or examined by any prosecution witness, were proved properly and without the use of any device to guide the witnesses in

identifying the documents correctly. If there was any unfair method or device used to help the witnesses to identify, it was the duty or the defence counsel to object to the method of proving the hand-writings and to expose the trick. I cannot presume, merely from the fact that some questions were put in the cross-examination of the first witness and a prayer was made and granted, when the second witness of hand-writings was testifying, to adopt a more appropriate mode of proving the documents, that any unauthorised or dishonest method of proving the documents was used.

On the other hand, from the cross-examination of the first witness and the objection put forward during the evidence of the second witness of hand-writing, it is abundantly clear that the defence were not being tricked in any way by the prosecution. The defence counsel were sure to object and to point out the unfairness if any trick was being used by the prosecution. I cannot assume that the defence counsel failed to perform their duly in the trial court. On the contrary, 1 find that objections were taken whenever they could be taken and that the weapon of cross-examination was used effectively. The capacity of the witnesses of hand-writing to prove hand-writings on the documents was tested. In some cases the witnesses failed, but in most cases they passed the test. The numberof cases in which Nathmal (P. W. 275) and other witnesses of hand-writing passed the test and correctly identified the hand-writings is overwhelming. It is this feature of the case which compels me to believe that, although the story which has been spun out by Nathmal (P. W. 275), with regard to the alleged meetings of the conspirators, were probably the result of his attempts to curry favour with the investigating authorities and to earn his pardon, this witness was sufficiently acquainted with the persons so many of whose hand-writings he has identified so correctly.

In those cases where his evidence does not show sufficient acquaintance with the handwriting of an accused, Nathmal's evidence may be ignored.

11. It is difficult for me to believe that the investigating authorities are so dishonest as to fabricate evidence in order to bolster up a totally untrue case. It may be that, at the initial stage of the investigation, some stockists were also being roped in,

but they were probably dropped at a subsequent stage owing to want of sufficient evidence against them. It is not possible for me to presume that the prosecuting agencies are so thoroughly unscrupulous that they implicate different persons at different times only to please themselves and drop real culprits without compunction and without regard for truth.

12. One of the objections to the evidence of Nathmal was that he had tried to implicate Bansidhar, the stockists, at the stage when the investigating authorities were proceeding against stockists, but he turned against the appellants at a subsequent stage. I find it possible to accept this suggestion only to the extent of suspecting that some stockists were also involved at the initial stage of investigation. The cases against them were perhaps dropped for want of evidence. At that stage, Nathmal, who is capable of inventing stories, may have tried to satisfy the investigating authorities by naming Bansidhar also. It is possible that he may have tried to please the investigating authorities at a later stage by deposing about the illegal meetings which were probably never held. But, the manner in which he has acquitted himself as a witness acquainted with the hand-writings of accused persons is quite impressive. Even though he has estimated that he saw Panna Lal writing applications and recommendations 20 or 25 times, Chhedi Lal 5 to 10 times, Devi Prasad 5 to 10 times, and Munni Lal also 5 to 10 times, he deposed that he saw a number of applications written by each person on each occasion.

I do not think that this estimate of the number of times the approver is alleged to have seen the above mentioned accused persons writing is so meagre that the approver cannot be said to satisfy the definition given, in Section 47 of the Indian Evidence Act of a person acquainted with the handwriting of another and also to be capable of proving satisfactorily the handwritings of the other. The net result of the consideration of the evidence of the approver is that I am only prepared to rely upon his evidence of identification of hand writings for the purpose of corroboration of other evidence. Hissole testimony cannot, in any case, provide the basis for the conviction of any accused person. But, his evidence of identification of hand-writing may corroborate other evidence of identification of hand-writings. This is the very limited extent to which the evidence of the approver can, in my opinion,

be used in this case.

13. The next class of evidence is the confession of Abdul Hamid alias Bhondu. This confession was recorded on 21-6-1957 by Sri R. V. Pandey (P. W. 192), Magistrate 1st Class Varanasi, under Section 164, Cr. P. C. The learned magistrate had received an application made by Abdul Hamid, dated 15-6-1957, which was forwarded on to him from the court of Sri R. K. Arya, Judicial Officer, Varanasi, which Sri Pandey returned to Sri Arya with his endorsement on 19-6-1957. Sri R. V. Pandey received another application, dated 17-6-1987, from Abdul Hamid which was forwarded on to the learned magistrate, and Abdul Hamid appellant was himself also present in the court of the learned magistrate. The learned magistrate then proceeded to warn the appellant Abdul Hamid that if, in accordance with the desire expressed in the applications, the accused confessed, it would be used against him and asked the accused to reconsider the matter.

The learned magistrate fixed 21-6-1957 for recording a confession after the accused had thought over the matter well. The confession was recorded after the magistrate had satisfied himself by means of questions and answers, that the confession was voluntary. When this confession and the manner in which it was made were put to the accused Abdul Hamid, under Section 342 Cr. P. C., at the trial, he admitted having made the applications and the confession, but he denied their truthfulness. He came forward with the explanation that whatever he had confessed was done under the influence and due to promptings of Sri J. A. Lari, who was alleged to have got the applications drafted and typed and to have paid Rs. 10 to Abdul Hamid. The accused stated that he had agreed to make the confession on account of his poverty and the advantages of confessing pointed out by Sri Lari. The applications and confession have been examined by me.

The contents of the applications and the confession, even though they emanate from such a tainted source as that of a confessing accused who has gone back upon a confession so formally and deliberately made and recorded, cannot be ignored when the confession was made after the abundant precautions taken by Sri Pandey who was fully satisfied that the confession was voluntary. The contents of the confession also disclosed knowledge with a wealth of details which only a

participant in a conspiracy, with inner knowledge of its workings, could possess. It is true that the particulars given in the confession, of the activities of various accused persons, are not many, but the manner in which the alleged conspirators are said to have worked together has been quite graphically described. It is also true that the confession contains a somewhat more elaborate version than that which the prosecution ultimately adopted. It disclosessome of the activities of the stockists also who probably know of and benefited from the activities or the conspirators, but against whom no case was started, presumably for want of sufficient evidence. This, however, cannot make the confession worthless as regards those accused persons with whose activities the confessing accused disclosed sufficient acquaintance quite convincingly. The confession is materially corroborated by the evidence about hand-writings given by the expert and other witnesses.

14. It has been argued for the appellants that the retracted confession is entirely worthless as a confession is not the statement of a person whose credibility had been tested by cross-examination. Also a retracted confession is by an accused person who admits having made false statements. A number of authorities have been cited, by both sides, on the evidentiary value of such confessions. The most important of these authorities are: Pyare Lal Bhargava v. State of Rajasthan : 1963 CriLJ178 ; R. K. Dalmia v. Delhi Administration : [1963]1SCR253 ; Subramania Goundan v. State of Madras : 1958 CriLJ238 , Balbir Singh v. State of Punjab : 1957 CriLJ481 . None of the authorities cited before me goes to the extent of laying down that a retracted confession cannot be used even for the purposes of corroborating other evidence against the co-accused in the case as it conies from a tainted source. It may even provide the basis of the conviction of the confessing accused, if the Court is satisfied that it is true and voluntary, as observed by their Lordships of the Supreme Court in Pyare Lal's case : 1963 CriLJ178 (supra), the latest case of the Supreme Court cited before me on this subject. The Supreme Court also pointed out, in that case, that it is a rule of prudence, not of law, to accept the veracity of the confession only if it is corroborated by other evidence. I do not propose to use the confession of Abdul Hamid for any purpose other than that of corroboration of other evidence except in the case of the appellant Abdul Hamid himself. In the case of Abdul Hamid, I think it could be used as an

admission which he has not been able to explain away at all satisfactorily in his statement under Section 342, Cr. P. C. The trial court found the confession to be substantially true and voluntary. Sufficient grounds have not been made out to induce me to disturb these findings about the confession which seems quite truthful. Its retraction has all the marks of mendacity and tutoring.

15. A Division Bench case of this Court was cited State v. Tula Ram : AIR1960 All585 , in which it was laid down (at p. 588):

'There can be no corroboration of a false or doubtful witness by another witness of the same character .....'

This was sought to be relied upon for excluding the evidence of Nathmal (P. W. 27) as well as the confession of Abdul Hamid entirely. This is another way of urging that the evidence of even a partly unreliable witness as well as of an approver and the retracted confession of an accused person, which is prima facie suspect, must be totally disregarded. I do not think that the Division Bench intended to lay down anysuch general proposition. It was purporting to follow their Lordships of the Supreme Court in Vadivelu Thevar v. State of Madras : 1957 CriLJ1000 with regard to the oral testimony which was neither wholly reliable nor wholly unreliable. The Supreme Court there held that a Court should be circumspect and look for corroboration in material particulars by reliable testimony, direct or circumstantial, before accepting the testimony of a partially unreliable witness. This means that a court has to sift, from the evidence before it, parts which are wholly reliable and parts which are wholly unreliable and those which are partly reliable and partly unreliable. Even a partly unreliable part of evidence may form the basis of a conviction where it is corroborated in material particulars by some reliable evidence. It is always a question of fact whether a particular piece of evidence is sufficiently reliable to be used, or, even it appears unreliable, whether it ought not to be accepted in view of some other independent and reliable corroborative evidence. A question appertaining to sifting or weighing of individual items of evidence, about which no fixed and rigid rules can possibly be laid down, must be distinguished from the general rule that a piece of evidence which is found to be partly unreliable, after such a sifting and weighing, needs to be

corroborated by reliable evidence before it is acted upon. Of course, if a witness or any part of his version is wholly unreliable, no use can be made of the wholly unreliable evidence. But, before this is done, there has to be a finding, based on sound and reasonable grounds that a witness or a piece of evidence to be rejected in toto is wholly unreliable.

16. The next category of evidence in this case consists of the evidence of the expert, Mr. Gregory (P. W. 286), with regard to the disputed documents. It has been contended that the opinion of the handwriting expert is a very unsafe basis for conviction. A number of authorities have been cited for this well established proposition. I may mention, in particular, the following: Ishwari Prasad v. Mohd. Isa : [1963]3SCR722 ; Ram Chandra v. U. P. State : 1957 CriLJ559 ; Kameshwar Nath v. The State, 1957 Cr L J 276 (All); Sudhindhra Nath Dutt v. The King : AIR1952 Cal422 ; Ambal Bagyam v. Ramayya Padayachi : AIR1955 Mad88 .

17. In Ishwari Prasad's case : [1963]3SCR722 (supra), Gajendragadkar, J. (as he then was) observed: 'Evidence given by experts of handwriting can never be conclusive, because it is, after all opinion evidence.' It appears hardly necessary for me to point out that opinion evidence cannot, as a general rule, be considered infallible.

18. In Ram Chandra's case : 1957 CriLJ559 (supra) their Lordships of the Supreme Court did not lay down a general rule of prudence with regard to expert evidence in stronger terms than these 'It may be that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction'. And, after making this observation, their Lordships accepted the expert evidence as it was corroborated by other evidence including the internal evidence furnished by the writing on the document itself.

19. Even in Kameshwar Nath's case, 1957 Cri LJ 276 (All.) (supra) in which Asthana, J. of this Court, cited a passage from Sircar's Law of Evidence pointing out the deceptibility of the evidence of handwriting experts, on which strong reliance is placed by the appellants. It was pointed out, relying on Kalicharan Mukherji v. King Emperor, 6 All LJ 184 that there might be such characteristic peculiarities of a writer as to lead to an irresistible conclusion about his identity

from a writing. Mr. P. C. Chaturvedi drew my attention to an unreported decision of this Court in Kameshwar v. State, Criminal Appeals Nos. 1672, 1675 and 2132 of 1958, dated 10-2-1960 (All) in which the accused is apparently the same individual as Kameshwar Nath of the 1957 case. In this case, where facts were certainly very exceptional and remarkable, there was found to be what was described as a 'twin-like resemblance' between the disputed writings alleged to be of the accused and the indisputably proved writings of another individual who had nothing to do with the disputed writings so that the expert and also other witnesses, who were very familiar with the writing of the accused, were completely misled and were compelled to admit their mistakes when it was pointed out. This case illustrates the danger inherent in evidence relating to identity of an accused person from similarities in writings only. I am, however, unable to hold that the evidence as to the identity of an accused person, from close resemblance between his admitted handwriting and the disputed handwriting, is even less reliable than evidence as to the identity based upon personal impressions of previously unknown individuals, alleged to have been seen in all kinds of lights in dacoity cases, which courts in this country do accept and act upon. The authorities cited before me only indicate the need for care and caution in judging and utilising the testimony of handwriting experts. Apart From the liability to err to which opinion evidence and evidence as to identity in general are specially exposed, the technical terminology of the handwriting expert (his 'Jargon' as the anti-experts would like to call it) enables the expert to conceal errors and even dishonesty to a degree which an untrained witness cannot attain.

20. No useful purpose will be served by discussing the fallibility and deceptibility of expert opinion evidence and of evidence relating to identity or the abstract general principles about such evidence which are well established. An appellate court has to examine whether the trial Court has correctly understood the general principles and then rightly applied them in assessing the worth of the particular opinion evidence upon the data in a given case. Reliable criteria have been scientifically formulated for judging the worth of the evidence of handwriting experts. The trial court has rightly relied upon Jitendranath Gupta v. Emperor, : AIR1937 Cal99 and has pointed out that the evidence of an expert has to be tested with care and cautionand has set out the considerations which the learned Judge has applied in

judging the worth of the expert's evidence in this case.

21. A great deal of emphasis was placed upon the brevity of the reasons given by the expert, Mr. Gregory, in his reports on the disputed documents. Quotations from a work of Mr. Osborn, the well-known authority on handwriting, were made to demonstrate the weight to be attached to the reasons given for an opinion by an expert. There is no doubt that the worth or an opinion can be tested by the reasons given in support of that opinion and not by the bare conclusions of the expert. Nevertheless, the trial court was, in my opinion, quite justified in pointing out that the opinion can be stated by the expert both by means of a report and by means of the statement in the witness box which must be there in addition. Moreover, as the unsound-ness of the expert's opinion about some writing can be demonstrated by means of his cross-examination, the brevity of his reports is not sufficient to destroy the value of his evidence, (see P.S. Misra v. State, 1956 All LJ 910 at p. 912.) Even if the reports given by the expert are very brief in this ease, in view of the great number of documents alleged to bear the writings of the accused persons, the expert has supplemented his reasons by his statement in court, and he has been subjected to quite stringent and searching and expert cross-examination. It may be observed that the appellants did not produce any expert in reply to the evidence of the expert produced by the prosecution. In my opinion, the brevity of the initial statements made by the expert in the form of his reports upon the disputed handwritings of the accused is not sufficient to justify the elimination of the expert's testimony as worthless in this case.

22. It was argued that Mr. Gregory (P. W. 286) was not really a handwriting expert at all inasmuch as he did not hold any qualification, such as a degree or a diploma possessed by a qualified medical or legal practitioner. This objection overlooks what was pointed out by Dr. W. R. Harrison. Director, Home Office Forensic Science Laboratory of Briatin, in a recent book entitled 'Suspect Documents'.

'The demand for specialists in the examination of documents is so small that comparatively few qualified men are ever likely to be wholly engaged in this work. No university college of any standing either in Great Britain or America offers a course of study leading to a degree, and, if such course were contemplated, it

would be a difficult matter to provide either teachers or anything like full employment for any substantial number of students when qualified.'

23. Mr. Gregory has deposed that he is a handwriting expert, with a standing of 32 years at the time when he gave evidence in 1961, and that he had given evidence in more than 2500 cases all over India. He also stated that he held certificates of competency from leading handwriting experts, including one from Dr. Locar, Ex-Director of the French Police Laboratory, and that, in 1948, he went to England to study the latest developments in his subject at the laboratory of the world famous Scotland Yard.He also staled that he had been an expert placed on the approved list of the Oudh Chief Court and also a consulting expert of the C. I. D. of Uttar Pradesh. He has also written a book on the subject. The abovementioned credentials and qualifications of Mr. Gregory were, at any rate, not questioned in the course of his cross-examination. However, it is not the apparent qualifications of a handwriting expert which ought to determine the value of the evidence given by him, but the soundness of the reasons advanced by him in support of the particular opinion expressed by him. These reasons are always open to scrutiny by a court of law, and their soundness can be tested by examining the disputed and the admitted writings in the light of the reasons given. The object of expert evidence is to assist the court in forming its own opinions. Even if an expert's opinion was not reliable in any particular case, a court is not absolved from the duty of forming its own opinion about the disputed handwriting. See : AIR1937 Cal99 . There are certain well-known criteria, such as the examination and comparison of individual characteristics and idiosyncrasies, which have to be employed by experts as well as by courts in arriving at their conclusions.

24. Mr. C. S. Saran, appearing for some of the appellants, argued that it is very hazardous for a court to act as an expert and to form its own opinions from the individual characteristics, spacing, size, thickness, and slant of letters, or the pen pressure at various points, pen lifts, pauses, and the pictorial effect of the whole writing. The task of arriving at a sound opinion is always fraught with difficulties. A court cannot, for that reason, either abandon its duty of forming its own opinions or reject the opinions of a qualified expert merely because his evidence belongs to the variety known as 'opinion evidence'. In the absence of better evidence, opinion

evidence has to be utilised by courts of law in forming their own opinions. The only effective safeguard against erroneous conclusions is for courts to use their own powers of observation well and to study and use the recognised tests in a manner which satisfied the conscience of the court. I have noted the commendable care and, attention with which the trial court has used the opinions of Mr. Gregory (P. W. 286). It arrived at its own conclusions after testing the opinions of the expert by close examination of the documents about which the opinions were given. I have also tested the reliability of the opinions of Mr. Gregory by closely examining the disputed and admitted writings once again for the purposes of forming my own opinions with the help of the expert evidence. Far from finding tin's method objectionable, I am not able to find any other more satisfactory way of testing the reliability of expert evidence in a case.

25. In : 1957 CriLJ559 their Lordships of the Supreme Court examined the contents of a document, and relied upon internal evidence in addition to other external and corroborative evidence before accepting the expert evidence about the writing before their Lordships.A comparison of disputed and admitted writings, which are pieces of evidence on record, is also a method of examining the internal evidence of a document and of judging whether it finds support from other evidence on record which is external qua the document containing the disputed writing. Another method of testing whether the opinion of an expert should be accepted or not, suggested by what was laid down in Ram Chandra's case : 1957 CriLJ559 (supra), is to look for other kinds of circumstantial or direct corroborative evidence on record. It is certainly hazardous to rely upon expert evidence solely without any corroboration from other kinds of evidence in the case. But, it is seldom that a prosecution case hinges purely on expert opinion evidence. Usually there is also other evidence as there is in this case.

26. My attention has been drawn by Mr. Hamind Husain, appearing for the State, to two cases in which their Lordships of the Privy Council examined the disputed and the accepted writings in order to arrive at their own conclusions (See Manindra v. Mahalaxmi Bank Ltd. at p. 107; and G. Madhavayya v. G, Achamma . Indeed, Section 73 of the Indian Evidence Act empowers courts of law to compare admitted and disputed writings for the purposes of forming their own opinions. The

rule of caution is not to base a conclusion entirely upon the courts own comparison because the court's function is distinct from and above the role of an expert witness giving evidence on handwriting which is tested by cross-examination: (See Bhagwandin v. Gouri Shankar : AIR1957 All119 and Fazaladdin Mandal v. Panchanau Das, AIR 1957 Cal 924). The court is, however, bound to form its own opinions with the aid of all the permissible methods, and to arrive at a conclusion where a conclusion can safely be arrived at. Such a conclusion can safely be arrived at where the conclusions of a court, after comparing the admitted and disputed writings, coincide with the opinions of the expert and are further corroborated by other pieces of evidence. In other words, the method contemplated by Section 73 of the Evidence Act can and ought to be employed by courts in order to test and find corroboration or contradiction of the opinion of the expert. The court does not, in such a case, function as a handwriting expert itself, but it acts as the authority charged with the duty of arriving at a conclusion with the aid of all the data upon the record by all legally permissible means at its commands (See Bisseswar Poddar v. Nabadwip Chandra 0065/1961 : AIR1961 Cal300). With great respect, I find myself in complete agreement with what was laid down in Fazaladdin's case : AIR1957 Cal92 (supra) by the Calcutta High Court per K. C. D. Gupta, j. (see p. 93):

'It is true, if there was no evidence before the court as regards the genuineness of the signature, the court could not, in law, rely on its own examination of the signature to supply the evidence because the learned Judge could not treat himself as au expert. I am unable to find anything in principle or authority which bars the judge of facts from using his own eyes andlooking at the admitted signature along with the disputed signature in deciding whether the evidence that has been given as regards the genuineness of the document should be believed or not.'

27. If the opinion of the handwriting expert is found by a court to be honest and reliable, after subjecting it to the recognised tests of soundness, it can even be considered better evidence than the evidence of indifferent witnesses whose motives are often mixed and whose powers of observation and recollection are very faulty. The observations of the expert are far more careful and guided by

scientific knowledge and skill which, where they exist must be duly appreciated. Prof. Wigmore, the celebrated authority on the law of Evidence wrote, in 1910, in his introduction to Mr. Cabora's book on 'Questioned Documents' 2nd Edition:

'A century ago the science of handwriting study did not exist. A crude empiricism still prevailed. This hundred years past has seen a vast progress. All relevant branches of modern science have been brought to bear. Skilled students have focussed upon this field a manifold of appurtenant devices and apparatus. A science and an Art have developed. A firm place has now been made for the expert witness who is emphatically scientific and not merely empiric.'

28. An objection put forward to the opinion of the expert in this case is that he has admitted that there are deliberate attempts at disguise in a number of writings. The existence of disguise certainly makes the task of the expert and of the court more difficult. The obstacles placed by it are, however, not insurmountable. Certain rules have been formulated and discussed by Dr. Harrison, the Director of the Home Office Forensic Science Laboratory in Britain in his book on 'Suspect Documents' (1958), as guides for piercing the disguise. These are as follows:

1. 'Most Disguise is Relatively Simple in Nature.

2. 'Disguised Handwriting Exhibits less Fluency and Poorer Rythm than the Normal Hand.

3. 'Any Change in Slope Introduced as Disguised is Rarely Constant.'

4. 'Disguised Handwriting often Contains Altered Letters '

5. 'The Internal Consistency of Handwriting is Disturbed by the Introduction of Disguise.'

6. 'Originality in Disguise is Rare.'

7. 'Disguise is Rarely Consistent.'

8. 'Certain Features are Rarely Disguised.'

29. Another objection put forward against Mr. Gregory as an expert witness in this case was that he had been acting as a consulting expert of the C. I. D. of Uttar Pradesh. It was, therefore argued that he could not be impartial in his opinions but must be presumed to be interested in making the prosecution case successful. It has also been suggested that experts are bound to give opinions in favour of parties consulting them. The duty and interest of an expert, if he wants his individual opinion to carry some weight and enjoy a good reputation is to be scrupulous and impartial. If the expert has some professional pride or even regard for his ownself interest, he will not, for the sake of some small immediate advantage, jeopardise the value of his opinion and degrade the status of his profession by making his knowledge and skill serve as tools of dishonest parties. An expert who gives dishonest opinions is quite certain to be exposed by ruthless cross-examination and to be soon found out by astute courts which do not and should not readily accent expert opinions without rigorously testing what an expert has to say. I do not think that a presumption is a legitimate weapon for demolishing the testimony of an expert with such a back-ground and standing as those revealed by Mr. Gregory. His opinions could certainly be demolished by superior reasons to support contrary conclusions or by convincing proof that they are not honest.

30. One of the ways in which the honesty of an expert can be tested is to consider the number of instances in which he has given opinions contrary to the opinions which those who consult him may be presumed to desire. I find that Mr. Gregory has given quite a number of opinions rejecting the disputed handwritings sent to him after comparing them with the admitted handwritings. In other cases, I have also found that his opinions are not dogmatic or obstinate. It has been held in Subodh Kumar v. Soshi Kumar : AIR1958 Cal264 that an expert is entitled to more credit if his answers indicate that he appreciates the other side of the case, and can and does look at the problems before him impartially. The general impression created by the replies to the cross-examination of Mr. Gregory, from this point of view also, is quite favourable.

31. The worth of the expert's opinions with regard to the handwriting of each appellant can only be judged by examining his reasons and comparing the

admitted and the disputed writings about which the opinion was given. As I have already indicated, I propose to adopt this method of judging the reliability of the evidence of the handwriting expert with reference to each accused person. Another test which I propose to employ is to see whether the effect of the expert evidence is corroborated by other kinds of evidence in the case from other sources such as the approver's evidence about handwritings, the confession, and the evidence of other witnesses. I have already held that the evidence of the approver and the confession of Abdul Hameed can be used in this case for the purpose of finding corroboration for the evidence of handwriting as they are not so unreliable as to merit total rejection even if the part of the approver's statement relating to the two alleged meetings of conspirators is so thoroughly unreliable that it must be rejected.

32. The 4th and 5th classes of evidence mentioned above--the witnesses who proved the handwritings and the document upon which the writings exist--will be considered by me in relation to each accused appellant as no general question relating to all the evidence of either of these two types, not covered by other questions already discussed, has been raised in this case except one involving an interpretation of the explanation to Section 47 Indian EvidenceAct. It was argued that fee witnesses who had not seen the accused persons writing so much or in such a way as to become familiar with their writings could not be said to be really acquainted with me handwritings of the accused. In my opinion, the degree to which a person is acquainted with the handwriting of another is really a question of fact which can only affect the value of his evidence.

33. The technical requirements of proof of handwriting are satisfied if a person alleges that be had seen another writing, and that, in his opinion, the writing to be proved is of that other persons. Section 47 of the Evidence Act deals only with the admissibility of a variety of opinion evidence and not with its value. In a case covered by this provision, the value of the opinion, unlike that of the expert, depends upon fee familiarity which a witness has acquired with the writing of another about which the opinion is expressed, and not upon the reasons which he can advance in support of the opinion. It would be quite legitimate to discard the evidence given by a witness who is shown to have insufficient familiarity with the

handwriting of a person about which he states his opinion. If a witness is not sufficiently familiar with the writings of another person, a cross-examiner can easily test the value of the opinion expressed by the witness provided other admitted writings of the alleged writer are available. In the present case each accused-appellant was in a position to make any number of his writings available for testing the correctness of opinions expressed by witnesses professing to be acquainted with his handwriting.

34. The last of the abovementioned six types of evidence in this case relates to the manner in which the prosecution was commenced and the investigations were conducted. It has been argued that Sri Panna Lal Trivedi (P. W. 1) in his complaint (Ex. Ka-1), which led to the investigation into the alleged conspiracy, has given a number of details which were not investigated at all. He stated that he had seen the work of adulteration of cement being carried out in certain dens situated in mohallas Lohatia and Bara Ganesh and Nakhas and that he had done so after having purchased cement and iron which were adulterated. He also gave details of complaints he made to Sri C. B. Gupta, the Minister of Supplies in U. P. in 1955, and of the Letters he sent to the local newspapers which published them. After that, he made a complaint to Dr. Sampurnanand, who was then the Chief Minister of U. P., by means of a letter dated 21-9-1955 (Ex. Ka. 1). He gave the names of iron stockists from whom he obtained the adulterated cement and iron. In the course of private enquiries which he started he became acquainted with Debi Prasad and Panna Lal and Munni Lal and Benarsi and Buddha, and he proves the writings of Debi Prasad and Panna Lal. He also stated that he had complained against the D. I. G. of police at Varanasi, Sri Onkar Singh, when he came to know that the scope of investigation and enquiry were being narrowed and certain important persons, presumably the stockists, were being left out. He stated that he became acquainted with the hand-writing of Devi Prasad, who drafted a number of applications at the shop of this witness. Sri Trivedi is a typist by profession. No possible reason for any hostility between this witness and any of the accused has been brought out.

35. Nothing was brought out, in the course of the long and protracted trial, to suggest that Sri Trivedi could gain personally or satisfy any private grudge against

anybody by setting in motion the machinery of criminal investigation and prosecution against the accused. I do not think that the mere fact that the dens, where this witness is alleged to have seen the adulteration of cement as a passer-by, were not found out by the investigating authorities, could diminish the value of his evidence or throw any doubt upon the bona fides of the investigation. After me letters of this witness had been published in the local newspapers and after the complaints he had made to the authorities, about which there must have been some talk in the guilty quarters, it is not likely that the dens where illegal activities were being carried on would continue to function near any road side. In my opinion, the opportunities which this witness had of getting acquainted with the handwritings of Debi Prasad and Panna Lal were sufficient to enable him to identify their handwritings. The most that the appellants could say against this evidence was that, at the stage at which this witness was giving evidence, they were not aware of the marks used for classifying the writings of each accused. Even if this was correct, it has not been shown that this witness was guided by the letters and the numbers put upon the documents containing disputed writings for their proper classification. When cross-examined about the markings upon the documents, he stated that he paid attention to the disputed writings and not to any marks upon the documents. The most that the defence can ask for is that the evidence of Panna Lal Trivedi (P W. 1), where he proves the handwritings of any of the accused, should be ignored, as a matter of caution and fairness, because the defence was not aware of the possibilities of guiding witnesses in identifying handwritings, at the time of the examination-in-chief of this witness, by means of letters and numbers on the documents. As 1 have already held, no such excuse was available to the defence after the defence had become fully aware of such possibilities and had then obtained an order of the Court to guard against possibilities of leading witnesses and to protect the interests of the accused. I have, while holding that the evidence of this witness is credible even about handwritings, decided not to use it for any purpose other than that of corroboration of other evidence of handwriting.

36. The argument repeatedly urged on behalf of the appellants was that the investigation had changed its direction, from the stockists of iron and cement to others who were merely 'small fry'. It is suggested that powerful agencies and the

influence of money were at work to divert the attention from the proper and really guilty quarters towards insignificant individuals who are alleged to have been madescapegoats of. The stockists named are mostly firms and not individuals. If, as the argument on behalf of the appellants seeks to make out, the owners of these firms are wealthy and influential individuals, they were not at all likely to take part personally in the dangerous task of committing forgeries of documents to obtain permits. They would employ, as their tools, persons like Devi Prasad and Nathmal, rather than risk committing crimes themselves, if they wanted to indulge in and did engage in black marketing. I do not find sufficient evidence to justify the belief that the real offenders were actually let off for dishonest motives and substituted by wrong and insignificant individuals who have been accused falsely. To attribute such a deliberately and consistently dishonest policy to nine C. T. D. officers, all of whom have appeared in the witness box, without proving anything to substantiate the serious charge, is quite unjustifiable. It is the employees of the stockists who are likely to know of the activities of the actual forgers who are proved to have been operating. Some of the employees have appeared as witnesses and others have been prosecuted. Unless complicity in some criminal transaction is proved against any particular witness, his evidence cannot be viewed with suspicion simply because he happens to be an employee of a stockist. The Investigating officers, whose various activities have been set out very clearly by means of a chart in the judgment of the learned Sessions Judge, have not been shown to be guilty of any dishonesty in procuring evidence or investigating, in spite of very searching cross-examination to which they were subjected. I, therefore, find that the investigation in this case is above board.

37. After considering the total evidence against each of the appellants individually, and the defence taken by each of them, and the arguments advanced relating to each appellant, I have come to the following conclusions about the individual cases:

XX XX XX XX

(After consideration of each individual case in paras 38 to 78 the judgment proceeds).

79. In the result, I affirm the convictions and sentences of: Debi Prasad Kapoor, under Section 120-B I. P. C. with a sentence of three years' R. I., and for seven offences under Section 468 I. P. C. with a sentence of five years' R. I. each, and for two offences under Section 419 I. P. C. with a sentence of two years' R. I. for each, and for two offences under Section 420 I. P. C. with a sentence of five years' R. I. for each, and for one offence under Section 467 I. P. C. with a sentence of five years' R. I. and for two offences under Section 471 I. P. C. with a sentence of five years' R. I. for each, all the sentences to run concurrently; Pannalal, under Section 120-B I. P. C. with a sentence of three years' R. I., and for four offences under Section 468 I. P. C. with a sentence of five years' R. I. for each, and for one offence under Section 419 I. P. C. with a sentence of two, years' R. I., and for one offence under Section 420 I. P. G. with a sentence of five years' R. I., and for one offence under Section 471 I. P. G. with a sentence offive years' R. I. all the sentences to run concurrently; Abdul Hamid, under Section 120-B I. P. G. with a sentence of three years' R. I., Munnilal Seth, under Section 120-B I. P. C. with a sentence of three years' R. I., and for three offences under Section 468 I. P. C. with a sentence of 5 years R. I. for each, and one offence under Section 471 I. P. C. with a sentence of five years' R. I., and one offence under Section 419 I. P. C. with a sentence of two years' R. I., and one offence under Section 420 I. P. C. with a sentence of five years' R. I. all the sentences to run concurrently; Chhedi Lal, under Section 120-B I. P. C, with a sentence of three years' R. I., and for four offences under Section 468 I. P. C. with a sentence of five years' R. I. and for one offence under Section 471 I. P. C. with a sentence of five years' R. L. and for one offence, under Section 419 I. P. C. with a sentence of two years' R. I., and for one offence under Section 420 J. P. C. with a sentence of five years' R. L, all the sentences to run concurrently; Buddhu Sardar, under Section 120-B I. P. G. with a sentence of three years' R. L. and for two offences under Section 468 I. P. G. with a sentence of five years' R. I. for each, and for one offence under Section 471 I. P. C. with a sentence of five years' R. L, and for one offence under Section 419 I. P. C. with a sentence of two years' R. I. and for one offence under Section 420 I. P. G. with a sentence of five years' R. L. all the sentences to run concurrently; Banarsi, under Section 120-B I. P. G. with a sentence of three years R. I., and for one offence under Section 468 I. P. C. with a sentence of 5 years' R. L. and for

one offence under Section 471 I. P. C. with a sentence of 5 years' R. I. and for an offence under Section 420 I. P. C. with a sentence of five years' R. I., all the sentences to run concurrently; Shyam Lal alias Shyamu, under Section 120-B I. P. C. with a sentence of three years' R. I. and for two offences under Section 468 I. P. C. with a sentence of five years' R. I. each, and for one offence under Section 471 I. P. C. with a sentence of five years' R. L. Shyam Lal son of Kanhaiya Lal, under Section 120-B I. P. G. with a sentence of three years' R. I. for two offences under Section 468 I. P. C. with a sentence of five years' R. I. for each, and for one offence under Section 471 I. P. C. with a sentence of five years' R. I., Raghunath Prasad, under Section 120-B. I. P. G. with a sentence of three years, and for one offence under Section 468 I. P. G. with a sentence of five years' R. I.

80. In the case of the above mentioned convicted persons, I see no particular reason for making the sentences under Section 120-B 1. P. C. consecutive, as the trial court has done, when the sentences for all other offences have been made to run concurrently. I, therefore, make the sentences of each person convicted under Section 120-B I. P. C. who has been convicted of other offences also concurrent with the concurrent sentences for these other offences. Subject to this modification, the appeals of the convicted persons mentioned above are hereby dismissed. These appellants, who are on bail, will surrender forthwith and serve out the remaining periods of their sentences.

81. I allow the appeals of Triloki Nath Tandon and Bhagvvati Prasad and Abdul Ghaffar and Kanhayya Lal and Lalli Prasad Gupta and Kashi Nath and Prem Shanker Agnihotri and Balliram Pandey and Ram Chander and Narottam Das alias Patter and Jawahar Lal and Bhagwan Dass, and I set aside the convictions and sentences of all these appellants. The appellants released on bail need not surrender. Their bail bonds are cancelled.