

Mohd. Isa Khan Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-10-1992

Reported in : 1992CriLJ3987

Judge : Kundan Singh, J.

Acts : [Evidence Act, 1872](#) - Sections 9; Indian Penal Code (IPC) - Sections 419, 420, 467, 468 and 471; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Cri. A. No. 3194 of 1979

Appellant : Mohd. Isa Khan

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : D.N. Wali and ;G.S. Chaturvedi, Adv.

Disposition : Appeal allowed

Judgement :

Kundan Singh, J.

1. This appeal revolves round the questions (1) Whether the evidence of witnesses identifying the accused for the first time in court without having

identification test during investigation can be relied upon and (2) whether the opinion of Hand writing and Finger Print Expert in respect of signature on the voucher can form basis of conviction and sentence of the appellant Mohammad Isa.

2. This appeal has been preferred by the appellant against the judgment and order dated 3-12-1979 passed by Sri Usha Kant Varma, the then Vth Additional Sessions Judge, Kanpur, in Session Trial No. 273 of 1972 whereby he has convicted the appellant Mohammad Isa under Section 419, IPC and sentenced him to two years' rigorous imprisonment, under Section 420, IPC to 3 years' rigorous imprisonment and a fine of Rs. 2000/-, under Section 467 to four years' rigorous imprisonment and a fine of Rs. 10,000/-under Section 468, IPC to 3 years' rigorous imprisonment and under Section 471, IPC to 3 years' rigorous imprisonment, making all the sentences to run concurrently. In default of payment of fine, he has been directed to further undergo rigorous imprisonment for six months.

3. The facts leading to this appeal, briefly stated, are that one Hari Shanker Gupta, Head Cashier in the office of the Director of Industries, made available a blank voucher to Ali Raza, who made forged entries therein except the signature of Ram Pratap Singh Bhatia for Rs. 24000/- purporting to have been issued by Sri C. R. Mitra, Director of H. B. Technological Institute, Kanpur and allegedly being passed by Sri Danish Ali Khan, Additional Treasury Officer, Kanpur. Mohammad Isa Khan forged the fictitious signature of Ram Pratap Singh Bhatia on Ext. 1 and presented it before V. C. Sarkar P.W. 2 on 29-3-65, who at the relevant time was working as Clerk at the local Head Office of the State Bank of India, Kanpur, V.C. Sarkar on comparison of the signatures of the Additional Treasury Officer on the voucher with the specimen signatures with the Bank, found the signatures on the voucher not tallying with those available with the Bank as specimen signatures. Consequently, he contacted the Officer Incharge Sri K. L. Dixit, who advised the Clerk to return the voucher to the payee for getting the voucher signed again by the the Additional Treasury Officer Sri Wanish Ali Khan. Accordingly, the voucher was returned to the payee (the appellant). Ali Raza again made forged signature of the Additional Treasury Officer on the voucher. Binda Prasad Khanna, Head

Clerk of the same Branch of the Bank persuaded one Sohan Lal (P.W. 1) who was having a current account No. 9189 in the State Bank of India to identify the signature of Ram Pratap Singh Bhatia on the voucher. P.W. 2 at the persuasion of Sri Binda Prasad Khan allegedly attested the signatures of the appellant as that of Ram Pratap Singh Bhatia on that voucher. At that time Gautam Prakash Saxena(P.W. 6), Cashier of Income-tax Department Kanpur, was also present in the Bank. The appellant again presented the voucher before V.C. Sarkar (P.W. 2) who saw the re-appended signature of the Additional Treasury Officer Sri Wanish Ali Khan on the voucher and found the forged signature of Ram Pratap Singh Bhatia attested by Sohan Lal disclosing his account number and the signature of Sohan Lal was attested by S.R. Singh, Incharge of Current Account of the State Bank. Sri V. C. Sarkar taking the voucher as genuine passed it for payment and handed over token No. 880 to the appellant to receive the payment on the counter. Ayodhya Prasad P.W. 3, who was Cashier in the State Bank called the holder of Token No. 880 to receive payment. The appellant appeared and received the payment of Rs. 24,000/- from P.W. 3 Ayodhya Prasad. On 2-4-65 it was detected that no such amount of Rs. 24,000/-was deposited by the Director H.B.T.I. Kanpur nor such refund order was passed by the Treasury and the seal as well as signature of the Additional Treasury Officer Sri Wanish Ali Khan were forged. The Director H.B.T.I, was contacted, who found his signatures to be forged. An FIR of this incident was lodged at 12-10 p.m. on 9-4-65 by Sri M. N. Khanna, senior Treasury Officer, at police out post 280 of Police Station Kotwali Kanpur and a case was registered on its basis.

4. Initially the investigation of the case was entrusted to Shanti Kumar Paterya, Sub-Inspector, Special Investigation Staff (P.W. 10), who recorded the statements of the prosecution witnesses and took the voucher in custody. Thereafter the investigation was transferred to Crime Branch, Lucknow, and there it was entrusted to Sri K. P. Tewari, Inspector in Crime Branch, Lucknow (P. W. 12), who recorded the statements of the witnesses and took 12 papers, bearing the hand writing of Mohammad Isa, into custody from the Roadways Office, Allahabad, where he was employed, in order to compare his hand writing with that on the voucher. The appellant was arrested on 22-11-1966 and the specimen signatures as that of Ram Pratap Singh Bhatia were taken in the hand writing of the appellant

at police station Cannington Allahabad in the presence of Madho Prasad Gupta, a public witness. The appellant was also directed to be kept Baparda as he was to be put to identification. Sri Uma Kant, Magistrate, was directed to hold the identification parade of the accused-appellant and various dates were fixed in that connection but his identification parade could not be held as similar persons were not available to join the accused in the parade. Thereafter various dates were fixed at Lucknow also for his identification but there too it could not be held due to non-availability of similar persons. The 12 papers taken into custody from the Roadways Department were sent for comparison with the hand writing on the voucher on the basis of which payment was received from the Bank but the Hand Writing Expert could not form any positive opinion as dates were not sufficient. Thereafter the specimen signatures of the appellant as 'Ram Pratap Singh Bhatia' were sent for comparison with those of Ram Pratap Singh Bhatia contained on the voucher. The Hand Writing Expert gave his opinion that the specimen signatures of Ram Pratap Singh Bhatia in the hand writing of the appellant tallied with those on the voucher. Sri K. P. Tewari after completing the investigation submitted charge sheet against Mohammad Isa Khan, Binda Prasad Khanna, Ali Raza and Hari Shanker Gupta. Later on Ali Raza died. Hari Shanker filed a criminal revision in this Court against the committal order which was allowed on 17-11-1977 by Hon. V. N. Verma, J. and thus the trial proceeded against two persons only, namely the appellant and Binda Prasad Khanna, who denied the charges and pleaded not guilty.

5. The prosecution examined 12 witnesses in all in order to prove its case. Sohan Lal P.W. 1 was the person who had attested the signatures of appellant as Ram Pratap Singh Bhatia on the voucher at the instance of Binda Prasad Khanna. P.W. 2 V. C. Sarkar was examined to prove the factum of presentation of the voucher before him, purportedly to have been passed by Sri Wanish Ali Khan, Additional Treasury Officer, which he first returned as the signature of the Treasury Officer did not tally with those on the voucher subsequently he passed it on re-presentation after the signatures of Ram Pratap Singh Bhatia were attested by Sohan Lal. P.W. 3 Ayodhya Prasad is the person who had made payment of Rs. 24000/- to the appellant against token No. 880. At the relevant time he was posted as Cashier in the State Bank of India. P.W. 6 Gautam Prakash was Accountant in the Income-

tax Department and he was examined to prove that the signatures of Ram Pratap Singh Bhatia were attested by Sohan Lal P.W. 1 in his presence. Sri Wanish Ali Khan (P.W. 4) is the Additional Treasury Officer and P.W. 8 Dinesh Prasad Srivastava is the Bill passing Clerk and they were examined to prove the fact that the voucher in question was never presented in nor was passed by the Treasury. Ravindra Nath Srivastava (P.W. 9) deposed that after receipt of the voucher from the local Head Office of the Bank he detected that it was forged one and no such voucher was ever passed by the Treasury. Sri R. S. Bidhulia (P.W. 5) was posted as Magistrate at Lucknow at the relevant time and he was examined to prove the fact that various dates were fixed, for test identification parade of the appellant but since no similar persons were available to join him in the parade, the test identification proceedings could not be held. P.W. 7 Madho Prasad Gupta, who was cited by the prosecution as a public witness deposed that the specimen signatures of the appellant as 'Ram Pratap Singh Bhatia' were taken by the Police in his presence at police station Cannington, Allahabad, P.W. 11 M. Y. Khan is the Hand Writing and Finger Print Expert and was examined to prove the fact that the signatures on the voucher tallied with the specimen signatures of the appellant appended as 'Ram Pratap Singh Bhatia' and they were of the same person. P.W. 10 Shanti Kumar Pateria is the Investigating Officer, who initially started the investigation and recorded statements of some of the witnesses. K. P. Tewari (P.W. 12) is another Investigating Officer, who took over the investigation from Sri Pateria. He recorded statements of the remaining witnesses, took specimen signatures of the appellant as Ram Pratap Singh Bhatia at police station Cannington Allahabad and after completion of the investigation submitted the charge sheet against the accused persons.

6. One Yagya Dutta Bajpai was examined as C.W. 1. At the relevant time he was posted as Additional Head Clerk in Kanpur Treasury and he was examined to ascertain whether the voucher in question was passed by the Treasury and his reply to that query was in negative.

7. The appellant denied the prosecution version and slated in his statement recorded under Section 313, Cr. P.C. that he was not given any notice to bring similar persons for joining him in the test identification parade. He admitted that

various dates were fixed for his identification test but due to non-availability of similar persons the proceedings could not be held. He further deposed that after his arrest on 22-11-66 he was not kept Baparda. He also denied that his specimen hand writing was ever obtained at the police station, Cannington, Allahabad or he ever forged the signatures of Ram Pratap Singh Bhatia on the voucher or had ever received the amount of Rs. 24000/- from the Bank. He further deposed that some quarrel had taken place between him and Sri Dwarika Prasad Singh, Deputy Superintendent of Police at the Railway Station, who threatened him. On the day of occurrence he was working as Office Record Keeper Grade II in the U.P. Roadways Head quarters, Rajapur, Allahabad and he was present at Allahabad on the date of incident.

8. The accused-appellant also examined four witnesses in defence. D.W. 1 Ayodhya Prasad, Cashier, State Bank of India, Kanpur and D.W. 2 Ram Gopal Shukla, Cashier in the Income-tax Office Kanpur deposed that Gautam Prakash P.W. 6 who was junior Accountant in the Income-tax Office Kanpur had no occasion to be present in the State Bank of India on 29-3-65. D.W. 3 Madho Prasad Gupta deposed that he made a false statement in Court because the Police had threatened him. He also stated that he had written a letter to Nazam Bhai in that connection which has been tendered in evidence and marked as Ext. Kha 5. D.W. 4 Sri D. Alexander is the Hand Writing Expert and he deposed that on the voucher the signatures as 'Ram Pratap Singh Bhatia' did not tally with the specimen signatures taken as Ram Pratap Singh Bhatia.

9. The above is the epitome of the entire evidence led on both the sides. The learned Additional Sessions Judge took stock of the entire evidence available on record and held the appellant alone guilty of the offences charged with and accordingly he convicted and sentenced him as aforesaid. However, he acquitted Binda Prasad Khanna of the charges levelled against him with the finding that the prosecution has not led evidence to establish that he ever attested the signatures of Sohan Lal, who deposed that whenever his signatures required attestation Binda Prasad Khanna had attested the same. Feeling aggrieved by the judgment and order of the learned Additional Sessions Judge, dated 3-12-79, convicting and sentencing the appellant aforesaid, he has now come up to this Court in the above

appeal.

10. The prosecution evidence in this case can be classified into three categories. The first is the category of those witnesses who gave negative evidence that the voucher in question was never presented in or passed by the Treasury and that consists of the statements of Sri Wanish All Khan, Additional Treasury Officer (P.W. 4) and Sri Dinesh Prasad Srivastava, Head Clerk, Kanpur Treasury (P.W. 8) and the statement of Sri Yagya Dutta Bajpai, Additional Head Clerk, Treasury Office, Kanpur, who has been examined as C.W. 1. The Second category of the witnesses is of those who gave the eye witness account of the incident and in that category fall the statements of Sohan Lal (P.W. 1), V. C. Sarkar (P.W. 2), Ayodhya Prasad (P.W. 3) and Gautam Prakash (P.W. 6) and the last and third category is of the Hand Writing and Finger Print Experts.

11. At the out-set the learned counsel for the prosecution has vigorously challenged the eye witness account given by the aforesaid four witnesses on the ground that the witnesses had for the first time seen the accused appellant on 29-3-65 in the main Branch of the State Bank of India at Kanpur. Thereafter they saw him in the committing court in the year 1972, i.e. after seven years of the alleged incident when they pointed out towards the appellant that it was he who had presented the forged voucher, and urged that after such a long span their identification evidence in court was nothing but a farce, hence it ought to have been eliminated and not considered.

12. I have carefully and anxiously examined the evidence of these witnesses in order to find out as to what extent their statements inspite confidence and whether their testimony can be relied upon to sustain the conviction and sentences of the appellant as awarded by the learned Additional Sessions Judge. The incident is said to have occurred as far back as 29-3-65. Sohan Lal P.W. 1 at the instance of Binda Prasad Khanna is said to have attested the signature of the appellant as that of Ram Pratap Singh Bhatia on the voucher Ext. 1 in the presence of Gautam Prakash P.W. 6. V. C. Sarkar P.W. 2 before whom the voucher is said to have been presented by the appellant was returned by him in the first instance saying that it be got resigned by the Additional Treasury Officer as his signature on the

voucher did not tally with the specimen signatures in the Bank records but when it was presented second time he passed the voucher, the signatures of Ram Pratap Singh Bhatia on the voucher being attested by Sohan Lal. P.W. 3 Ayodhya Prasad, who made the payment to the appellant, has identified him in court. The evidence of all these witnesses is to the effect that they had seen the appellant on the day of incident in the Bank for the first time and then it is court of Committing Magistrate in the month of March, 1972. Undisputably the appellant was not previously known to either of these witnesses and he was also not put to identification test as he is alleged to be of an extraordinary physique, being stout, tall and healthy, and similar persons were not available for holding his test identification parade though several dates were fixed for that purpose in Central Jail Naini, Allahabad and at Lucknow.

13. Now the question that arises for determination is whether the evidence of these eye witnesses before the Committing Court regarding identification when no test identification parade was held can be relied upon for upholding the conviction of the appellant. I am cautious of the fact that identification evidence is not a substantive evidence but substantive is the evidence of the witness while in the court. In my opinion, in certain cases the subjective evidence of the witness in court can be relied upon irrespective of the fact that no identification test has been held when during the investigation the identity of the accused or his broad features had been established. For example, if a witness has deposed before the Investigating Officer that a particular accused had particular distinguishing marks viz he was one eyed, or had an amputated leg or hand or was cripple and that witness when in witness-box deposes those broad features in the court, then his evidence can be relied upon as a substantive evidence despite the fact that there was no identification evidence to corroborate the subjective evidence.

14. In the present case, admittedly the appellant has broad features. He is a man of extra-ordinary physique, having stout, tall and a healthy personality. In case his identification test could not be held due to nonavailability of similar persons either at Lucknow or at Allahabad and the witnesses might have deposed about his aforesaid physical features before the Investigating Officer, then if those very facts had been stated by the witnesses in the court also, in that event their evidence

could be relied upon being subjective but here that is not the case. None of the witnesses had deposed like that before the Investigating Officer. On the other hand, P.W. 2 V.C. Sarkar stated in his statement recorded under Section 161, Cr. P.C. that the person who presented the voucher was of an average built. Sohan Lal (P.W. 1), V. C. Sarkar (P.W. 2), Ayodhya Prasad (P.W. 3) and Gautam Prakash (P.W. 6) while in the witness-box have deposed that for the first time they saw the appellant on 29-3-65, the day of the incident, in the bank, thereafter in the court of Committing Magistrate in the month of March, 1972, say about 7 years after the incident, and third time in the court of Sessions during trial when they alluded the appellant that it was he who had presented the voucher bearing forged signatures and had cheated the bank by receiving payment of Rs. 24,000/-. Can such evidence of the witnesses before the court after such a long lapse of time be treated as test identification and my answer to that self-posed question is 'certainly not'. The reason behind this answer or opinion is that identification test is held in Jail in accordance with the procedure prescribed in the Jail Manual. Certain precautions are ensured during the identification test and the main culprit is picked up in the parade, who is mixed up with 9 or 10 similar persons. Identification evidence is not substantial. No conviction of an accused can be based on the identification evidence of a witness until and unless he deposes before the Court that it was the same person whom he had identified in the Jail. In the present case the identification test of the appellant could have been held in case the appellant and other persons could have been lined up in such a manner that the heads of all the persons been put at one and the same level and their bodies covered with blankets during the test identification parade. Here the evidence of these witnesses cannot be relied upon in view of the law laid down by the Supreme Court in the case of Kenan v. State of Kerala AIR 1979 SC 1127 : (1979 Cri LJ 919) where it has been held (at page 920 (of Cri LJ)) :-

It is well settled that where a witness identifies an accused who is not known to him, in the court for the first time, his evidence is valueless unless there has been a previous test of identification parade to test his power of observations. The idea of holding test of identification parade under Section 9 of the Evidence Act is to test the veracity of witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no test of identification

parade is held, then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in court. In these circumstances, therefore, we feel that it was incumbent on the prosecution in this case to have arranged test identification parade and get identification made before the witness was called upon to identify the appellant in Court.

15. The evidence of the ocular witnesses Sohan Lal (P.W. 1), V. C. Sarkar (P.W. 2), Ayodhya Prasad (P.W. 3) and Gautam Prakash (P.W. 6), which I have discussed above, if judged at the anvil and in the background of the aforesaid Supreme Court decision which has enunciated the law on the point of identification, it will be quite unsafe to rely upon, their evidence for sustaining the conviction of the appellant.

16. As regards the third category of evidence, namely the evidence of Hand Writing and Finger Print Experts, the learned counsel for the appellant strenuously argued that no conviction of the appellant could be recorded on the mere expert evidence and in that connection he relied upon a Supreme Court decision in the case of Magan Behari Lal v. State of Punjab reported in 1977 Cri LJ 711 : (AIR 1977 SC 1091). The learned counsel also contended that the evidence of M. Y. Khan (P.W. 11) Hand Writing Expert suffers from infirmities, while the evidence of D. Alexander (D.W. 4), another Expert, examined on behalf of the defence, is more convincing and reliable than that of the Expert examined by the prosecution.

17. In that connection I examined the evidence on record meticulously. The specimen signatures of the appellant as Ram Pratap Singh Bhatia were taken by K. P. Tewari, Deputy Superintendent of Police (P.W. 12) at Cannington Police Station, Allahabad in the presence of Madho Prasad Gupta (P.W. 7). Madho Prasad Gupta after his evidence in court as P.W. 7, wrote a letter to one Nazam Bhai stating therein that his statement before the court was under compulsion of police and thereafter he was examined as a defence witness when he resiled from his earlier statement given as P.W. 7. The defence counsel seriously challenged the specimen signatures of Ram Pratap Singh Bhatia allegedly obtained in the hand writing of the appellant. There is no independent witness examined on behalf of the prosecution to corroborate the fact of taking the specimen signatures as

Ram Pratap Singh Bhatia from the appellant in his hand writing, though various independent witnesses from amongst the employees of Nagar Mahapalika, Allahabad, which situate just in front of the Cannington Police Station across the road, were available readily to witness and prove the aforesaid fact. However, be that as it may, now I proceed to examine the evidence of the Hand Writing Expert examined on behalf of the prosecution assuming that the specimen signatures of Ram Pratap Singh Bhatia were taken in the hand writing of the appellant as alleged by K. P. Tewari (P.W. 12), the Investigating Officer. The Investigating Officer took 12 papers, containing the hand writing of the appellant, in his custody from the office of Roadway where the appellant was employed and those papers were sent along with the voucher containing the disputed signatures of Ram Pratap Singh Bhatia, allegedly made in the hand writing of the appellant, to the Hand Writing Expert Sri M. Y. Khan (P.W. 11) for comparison and his opinion, who reported that no positive opinion could be given as the dates available for comparison were not sufficient to form an opinion. Then the specimen signatures of the appellant as Ram Pratap Singh Bhatia and the signatures on the disputed voucher were sent for opinion to the same Expert Sri Khan, who submitted his report Ext. Ka 20 giving out his opinion that the signature of Ram Pratap Singh Bhatia on the voucher tallied with those of the specimen signatures and both were made by one and the same person. He also mentioned in his report that the letters 'S', 'h', 'P', 'R', 'B', 'T' and 't' in the signature of Ram Pratap Singh Bhatia on the voucher are similar to the letters in the specimen signatures. Thus he found similarity in 8 letters out of 20 but he has not mentioned about dissimilarity in other letters. He also admitted that the shape and design of the letters in the specimen signatures were different from the letters in the disputed signatures on the voucher. He also admitted that the shading of the letters in the specimen signatures was regular but in the disputed signatures it was irregular. On the contrary the D.W. 4 D. Alexander Hand Writing and Finger Print Expert examined on behalf of the defence stated that the the disputed signatures on the voucher were not of the same person who had given his specimen signatures, though he frankly admitted that letters 'S', 'M' and 'P' in the disputed signatures were similar to those in the specimen signatures but the other letters did not tally at all and were quite different. It is a case in which the evidence of both the parties is vice

versa. Even according to the opinion of M. Y. Khan (P.W. 11) examined on behalf of the prosecution similarity in few of the letters out of 20 was found but not in all. Hence, it could not be irresistably concluded that the opinion given by M. Y. Khan (P.W. 11) was free from doubt to hold that the disputed signatures on the voucher were in the handwriting of the appellant alone, I am afraid to place implicit reliance upon the evidence of M. Y. Khan (P.W. 11) in view of the Supreme Court decision in the case of Magan Behari Lal 1977 Cri LJ 711 : (AIR 1977 SC 1091), wherein it has been held (at page 1093 (of AIR):--

It is now well settled that Expert opinion must always be received, with great caution and perhaps none so with more caution than the opinion of a Hand Writing Expert. There is a profusion of presidential authority, which holds that it is unsafe to base a conviction wholly on Expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court, in Ram Chandra v. State of U.P. AIR 1957 SC 381 : (1957 Cri LJ 559) that it is unsafe to treat Expert Hand Writing opinion as sufficient basis for conviction but it may be relied-upon when supported by other items of internal and external evidence.

18. Thus in view of the observations made above as well as the legal position enunciated by the Supreme Court regarding identification and Expert evidence, I am constrained to hold that the prosecution has miserably failed to bring home guilt to the appellant beyond any shadow of doubt on the basis of the evidence led by it. Hence, this appeal succeeds and is hereby allowed. The conviction and sentences passed by the learned Additional Sessions Judge are set aside and the appellant is acquitted of the charges levelled against him. He is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.