

Basrur Venkata Row Vs. the Crown

Basrur Venkata Row Vs. the Crown

SooperKanoon Citation : sooperkanoon.com/780337

Court : Chennai

Decided On : Dec-29-1911

Reported in : (1912)22MLJ270

Appellant : Basrur Venkata Row

Respondent : The Crown

Judgement :

Sundara Aiyar, J.

1. The appellant, who was the 1st accused in Sessions Case No. 19 of 1910 in the Sessions Court of South Canara, was tried along with two other persons, the appellant for the forgery, and two others for abetment of the forgery, of certain documents. These documents were certain income tax records in the Udipi Taluq office in the office of the Head Assistant Collector of South Canara. The forged documents related to the assessment to income tax of one Vishnumurti Upadhya for the year 1905-1906. The prosecution alleges that the B. Schedule of income put in by Vishnumurti under the Income-Tax Act, the Takid issued to the Village officers of Gundmi to send a report, the Takid issued to the Patel of Gundmi to communicate to the assessee the order of confirmation of the tax, the deposition of Vishnumurti before the Village officers, the deposition of Venkirtatrrnana Bhatta (a witness) before them, the list of the houses prepared by the Shanbhog and the report submitted by him to the Tahsildar, were all replaced with forged documents

in substitution for the original ones, and that an interpolation was made in the deposition of Vishnumurti before the Head Assistant Collector after the confirmation of the tax. Three of the above documents were selected as the subject-matter of the charges against the accused, namely, the deposition of Vishnumurti before the Tahsildar, Exhibit B, the B. Schedule pnt in by him. Exhibit Y, and the interpolation in his statement before the Head Assistant Collector Exhibit H, Exhibit H 1 being the interpolation. These forgeries are alleged to have been made in the interest of one Nagappa Hande. Nagappa was also charged with forgery before the Committing Magistrate but died after his commitment to the Sessions Court. These two persons, Nagappa Hande and Vishnumurti, financed one Tammava Urala in 1897 in a partition suit instituted by Tammaya Urala against his undivided co-parceners. Nagappa obtained a mortgage bond from Tammaya Urala and executed a mortgage himself in favour of Vishnumurti on the 24th March 1898. Nagappa alleged that the mortgage debt due to Vishnumurti by him was discharged except a small portion. In 1898 Vishnumurti filed a suit in the District Court of South Canara on the mortgage-deed and produced a copy of it. The suit was transferred to the Sub-Court where it was registered as O.S. No. 53 of 1909. According to Vishnumurti and the prosecution case here, Nagappa made no payment whatever towards the mortgage. Nagappa, in support of his 'plea that the major portion of the debt has been paid off, produced along with his written statement certain correspondence which he alleged passed between him and Vishnumurti in 1898, 1899, 1904, 1905 and 1906, as well as receipts and acknowledgments for payments made by him. Vishnumurti denounced those documents as forgeries. When Vishnumurti was being cross-examined in the Sub-Court as a witness he was shown certain certified copies of income-tax proceedings relating to him and cross-examined with reference to them. He denounced these also as forgeries. They were not filed in the Sub-Court, though the plaintiff Vishnumurti and the Court called upon Nagappa Hande to produce them. Nagappa applied for copies of these income-tax proceedings in February 1909; these certified copies were the documents used at the cross-examination of Vishnumurti. The first accused is alleged to be the writer of these documents. He is a petition writer by profession; the 2nd and 3rd accused were respectively an attender of the Head Assistant Collector's office and the record-keeper of the Udipi

Taluq office. They are alleged to have helped Nagappa in obtaining the records of these two offices. The Sessions Judge, after a very elaborate enquiry, convicted the 1st accused and acquitted the 2nd and 3rd accused. The 1st accused has appealed to this court from his conviction.

2. Most of the evidence in the case was adduced for proving that the documents in question, including those which formed the subjects of the charges against the accused, were forgeries. The major portion of the judgment of the learned Sessions Judge is also devoted to the establishment of that proposition. The appellant has not contended before this court that that finding is wrong. The question we have to decide is whether the prosecution has satisfactorily proved that the appellant was the writer of Exhibits B, Y and H. There is no direct evidence on record that the accused was the forger. The conviction is based on the evidence of prosecution witness No. 12, Mr. Charles Hardless, Government handwriting expert, who was examined to prove that these documents are in the handwriting of the accused, and on certain other evidence which was relied on in corroboration of the evidence of prosecution witness No. 12. It will be convenient to examine the corroborative evidence before proceeding to deal with the evidence of the expert.

3. The facts alleged to corroborate the expert evidence are these:

(1) that the accused was on intimate terms with Nagappa and used to write documents for him and others connected with him.

(2) that the accused visited Nagappa in January 1909 when, according to the prosecution, the forgeries must have been committed ;

(3) that the accused received a considerable sum of money from Nagappa in 1909 and that the latter raised a loan from one Mahabala Rao, prosecution witness No. 37, in January 1909, apparently to be paid to the accused ; and

(4) that the accused was a man who used to forge documents as shown by Exhibit YYYYYY discovered at a search of his house a paper containing the signatures of certain persons in the handwriting of the accused.

4. Assuming that these documents are in the handwriting of the appellant, can the evidence given by Mr. Hardless be taken as sufficient in itself to prove that Exhibits B, Y, and H1, are in the handwriting of accused His reason for the conclusion arrived at by him is as follows:-' All these writings (i. e., the standard writings given to him for comparison and the disputed writings) are the handiwork of one and the same person. All these writings are of the wrist movement, with the pen-presentation between 45 and 55 degrees of even pen pressure, of regular sizing whether the writings be large or small or wide, of varied direction of linear and oval sometimes inclining to roundness in style of ascendant alignment, of even spacing and of well formed thumb and finger curves.' Describing the writing of Vishnumurthi he describes it thus;-'Of the superior finger movement, of a pen-presentation of 35 degrees of an even medium pen pressure, of medium sizing, sloping direction, easy execution, close spacing, ascendant alignment, and of ordinary defined finger and thumb curves.' It will be observed that with regard to pen pressure, sizing, alignment and finger and thumb curves the witness points to no great difference. The differences no doubt are more prominent in some respects; in the one case it is wrist movement, in the other case superior finger movement. There is also appreciable difference in the angle of the pen-presentation and in the direction. But can it be said that the resemblances between the accused's writing and the disputed writings in these few respects are sufficient to prove with reasonable certainty that the latter are in the handwriting of the accused? In cases where a conclusion was based regarding the authorship of a document on a comparison of writing, the expert was generally able to point to marked peculiarities in the ordinary writing of the accused which are reproduced in the forged documents, the accused being unable to avoid them. No peculiarity or mannerism of such sort is spoken to by Mr. Hardless. Daniel Ames, in his work on Forgery, observes:-' Where a handwriting is brought into question it is rare that any one thing can determine the point at issue. It is usually by a more or less extended series of things, the presence or absence of which creates the decisive preponderance of evidence' (p. 100). At pages 104 and 105 and in the succeeding pages will be found the manner in which experts in the cases mentioned there were able to bring home to the court the decided peculiarities which proved the forgery. The learned vakil for the appellant also drew our attention to the fact that

in this case all the standard writings were put together and the disputed ones also put together separately and the expert was asked to compare the writings of the one group with those of the other. I by no means doubt that Mr. Hardless carried out his comparison with perfect bona fides, but it is unfortunate that the expert knew what the prosecution wished to be proved, and that circumstance must in my opinion detract to some extent from the weight to be attached to the expert's testimony. On reference to KKKKKK it is found that Mr. Hardless before the Committing Magistrate merely deposed that in his opinion the disputed documents were in the handwriting of the accused ; he gave no reasons for his opinion. Again I accept Mr. Hardless' bona fides as unimpeachable, but the prosecution would have done well to avoid all room for the observation that the witness committed himself at the preliminary enquiry to an opinion given without reasons and then gave reasons for them at the trial before the Sessions Court. He does not say that the handwriting of the accused is in any way peculiar or eccentric, a circumstance which would attach particular weight to evidence of comparison. I am unable by the application of any facts stated in the expert's evidence as to the writings before the court to come to the conclusion that Exhibits B, Y and H1 are in the handwriting of the accused. In *Lalla Prasad v. King Emperor* (1911) 11 Cri. L.J. 114 Pandit Sunder Lal, Additional Judicial Commissioner of Oudh, refused to convict the accused on the uncorroborated evidence of the handwriting expert who happened to be the same as in the present case. The learned Judge found that the corroborative evidence in the case was valueless in that there was no marked peculiarity in the handwriting of the accused or anything rare in its style. The learned Judge quotes the following passage from Dr. Lawson's work on the 'Law of Expert and Opinion Evidence' : ' The evidence of the genuineness of ' the signature based upon the comparison of handwriting and of the opinion of expert is entitled to proper consideration and weight. It must be confessed, however, that it is of the lowest order of evidence or of the most unsatisfactory character. We believe that ill this opinion experienced lay men unite with the members of the legal profession. Of all kinds of evidence admitted in a court this is the most unsatisfactory. It is so weak and decrepit as scarcely to deserve a place in our system of jurisprudence.' This passage possibly slates in too depreciatory terms the value of expert evidence. I am quite prepared to concede that there may b

cases in which the peculiarities in the handwriting of a person are so numerous and striking and there are so many mannerisms of the forger that he has been unable to avoid in committing his forgery that the court might well come to the safe conclusion on expert evidence alone that the writing is that of a particular person. But no help of this kind is afforded us in this case by Mr. Hardless. Again, this case must be distinguished from those where several independent experts have arrived at the same conclusion by their independent efforts. Pundit Sunder Lal J. refers to two judgments of the Allahabad High Court--Srikant v. King-Emperor (1904) 2 A.L.J. 444 and Kalicharan Mukerji v. King-Emperor (1908) 6 A.L.J. 184. In the former case Blair and Knox J J. observe that 'to base a conviction upon the evidence of an expert in handwriting is, as a general rule, very unsafe' and in the second case Justices Richards and Griffin approved of the above observation. In the second case no doubt there were improbabilities arising from the circumstances of the case in the story for the prosecution, but the observations of the learned Judges with regard to the value of expert evidence are none the less valuable. I have no hesitation in the present case in refusing to find the accused guilty on the evidence of prosecution witness No. 12 alone without substantial corroboration. I would therefore reverse the conviction of the accused and direct that he be released from custody.

Spencer, J.

5. I agree with my learned brother in thinking that this is not a case in which a conviction can be supported upon the uncorroborated testimony of the handwriting expert and the corroborative evidence available on the record against the 1st accused is of the weakest description, and in fact does little more than create a certain amount of suspicion that he may have had a hand in the forgeries.

6. I consider the present case to be one in which it would be dangerous to act on the uncorroborated evidence of the handwriting expert. The conviction of the 1st accused must be set aside and his release ordered.