

Sudhindra Nath Dutt Vs. the King

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Court : Kolkata

Decided On : Apr-12-1949

Reported in : AIR1952Cal422

Judge : G.N. Das and ; Lahiri, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 411A; ; [Evidence Act, 1872](#) - Sections 9 and 45

Appeal No. : Criminal Appeal No. 1 of 1949

Appellant : Sudhindra Nath Dutt

Respondent : The King

Advocate for Def. : S. Bose, Adv.

Advocate for Pet/Ap. : Nalin Chandra Banerjee and ; Prasun Kumar Ghose, Adv.

Disposition : Appeal allowed

Judgement :

Lahiri, J.

1. Messrs. Harold F. Ritchie and Co. Ltd. are a reputed business concern carrying on business at 11 Olive Street, Calcutta. Amongst other things they are importers

& distributors of Eno's Fruit Salt, Germolene and Brylcream. It is said that on 14-5-1948, they received an order from Messrs. Section N. Siddique & Sons of 2 Waterworks Road - Dacca for the supply of 100 cases of Eno's Fruit Salt, 50 cases of Germolene and 50 cases of Brylcream by a letter which has been marked as Ex. 1 in the case. On the same day at about 4.30 p.m. a man named A. Rahaman representing himself to be an agent of Messrs. S. N. Siddique & Sons of Dacca came to see the Manager of Messrs. Harold F. Ritchie & Co. Ltd., Mr. Maurice D. Sopher in connection with the order for sale; but as it was late in the afternoon & the office hour was over he was asked by the Manager to come on the following morning which was a Saturday. Next morning Rahaman again came at 9 O'clock but had to wait at the outer office for half an hour as the Manager was otherwise busy. At 9.30 a.m. Rahaman met Sopher and told him that his master was a big business man of Karachi who had advanced a loan of 25 lacs of rupees without interest to the Pakistan Govt. On these representations Mr. Sopher agreed to sell so much as he could supply provided payment was received in his office. Rahaman told Sopher that he was not allowed to handle cash by his master & accordingly arrangements were made for payment by a pay order issued by the 'Hindusthan Commercial Bank'. Sopher agreed to accept the pay order & instructed his Storekeeper, & D. D. Tamboli to draw up a pro forma invoice which was done & signed by Sopher. This document is Ex. 4 & it shows that 900 dozens of Eno's Fruit Salt, 600 dozens of Brylcream & 50 dozens of Germolene Ointment were to be sold for the total price of Rs. 33,187/8/-. It bears the date 15-5-1948. Rahaman took the pro forma invoice & promised to call on the next working day, i.e. 17-5-1948 with the pay order; on 17-5-1948 Rahaman came in the morning to enquire how many lorries would be-required to carry the goods & promised to call again in the afternoon with the pay order. Rahaman again came in the afternoon with the pay order, Ex. 6, & letter of authority Ex. 5, issued by the Hindusthan Commercial Bank, Bhowanipur. The delivery order Ex. 3 was prepared before the Pro forma Invoice & it was in the possession of the Store-keeper. Rahaman asked for a receipt for the pay order whereupon the Cashier, V. S. Narayan Swami prepared a receipt which was signed by Sopher & made over to Rahaman. Ex. 14 is the Counterfoil of the receipt. The Co. had two godowns one at 11 Clive Street & the other in Park Street. After taking the required quantity of Germolene from the

Clive Street godown Rahaman went to the Park Street godown with the Store-keeper Tamboli & five coolies of the Co. in a taxi hired by Rahaman which was waiting outside. At the Park Street godown the Store-keeper delivered the remaining quantity of goods according to the pro forma invoice on taking a receipt from Rahaman on the delivery order. Rahaman's receipt is Ex. 3(1).

2. On 18-5-1948 Sopher sent the pay order to his Banker, the National Bank of India, in the usual course of business, for collection & very soon thereafter discovered that he had omitted to charge Sale tax in his pro forma invoice. Upon this discovery Sopher attempted to contact Rahaman without success & became nervous about) the pay order; on enquiry his Banker informed Sopher that the pay order had been sent out for clearing & that he would be informed as soon as any intimation was received. On 19-5-1948, one Swarup Prakash Puri, the Agent of the Hindusthan Commercial Bank at 11 Clive Street, informed Sopher that he had received a message from the Bhowanipur Branch of the Hindusthan Commercial Bank to the effect that the pay order presented by Sopher had never been issued by them. When Sopher was talking to Puri, the Cashier Narayan Swami came with the pay order which has been returned by the National Bank of India. After inspection of the pay order & the letter of authority (Exs. 6 & 5) purported to have been issued by the Bhowanipur Branch of the Hindusthan Commercial Bank, Puri confirmed that they had never been issued by them. Ex. 18 is a reply given, by the Agent of the Bhowanipur Branch of the Hindusthan Commercial Bank to Messrs Harold F. Ritchie & Co. to their letter dated 18-5-1948, by which the Agent of the Bank informed Sopher that he had not issued any pay order or letter of authority in favour of Messrs. Harold F. Ritchie & Co. This reply is dated 19-5-1948.

3. Upon these facts Swarup Prakash Puri & Sopher filed a complaint-Ex. 9 with the Lal-bazar Police on the 19-5-1948 & under the orders of the Assistant Commissioner of Police investigation was taken up by Jyotsna Kumar Mitra, Sub-Inspector attached to the Detective Department. In the course of the investigation, the investigating officer went to premises No. 5/1 Bindubasini Street (Kidderpore) on 31-5-1948 at 3 p.m. & searched the house. The major portion of the goods delivered by Messrs. Harold F. Ritchie & Co. Ltd. was recovered from two rooms of the house both of which were locked. The key of one of the two rooms was

produced by Sudhangsu Kumar Das Gupta who is a Sub-Inspector of Police attached to the Enforcement Branch. This room was a part of the main building. The other room from which also a portion of the goods was seized by the police was in the compound & it had to be broken open.

4. On 12-6-1948 one person named Amal Kumar Ghose, who is accused 2 in the present case & who is said to be a friend of Sudhangsu Kumar Das Gupta & a resident of S. R. Das Road (Tollyganj) surrendered in Alipur Court, in connection with this case & asked for a test identification parade. On 17-6-1948 the test identification parade was held by a Magistrate of Alipur & the investigating officer (J. K. Mitter) & Sopher, Tamboli, & Narayan Swami of Messrs. Harold F. Ritchie & Co. Ltd. were present. At this parade Sopher identified one Nurul Hossain as Rahaman who had cheated the Company. We have forgotten to state that it appears from the crime sheet that on 31-5-1948 one Bimal Kumar Ghose, brother of Amal Kumar Ghose, & a resident of 53/c Southern Park, had been arrested by the police, but he was not mixed up with other persons at the test identification parade, held on 17-6-1948. On 19-6-1948 Sopher fell ill & remained in a hospital till about the end of June.

5. On 21-6-1948 the appellant, before Us named Sudhindra Nath Dutt attended the Court of the Additional Chief Presidency Magistrate, Calcutta in connection with a criminal case & it is said that the Store-keeper Tamboli also went there in connection with another Criminal case against the ex-cashier of Harold F. Ritchie & Co. Ltd. When Tamboli was coming out he noticed the appellant in the central lobby of the Court-house & at once recognised him to be A. Rahaman who had cheated the Co. He informed Sub-Inspector B. K. Roy who had assisted J. K. Mitter in the search of premises No. 5/1, Bindu Basini Street & who was investigating the case against Sudhindranath that was fixed for 21-6-1948. Tamboli thereafter immediately rang up his office & the new Manager of the office named Francis came to the Police Court, with the Cashier Narayan Swami. The appellant was also identified by Narayan Swami & thereupon Sub-Inspector B. K. Roy took him to the Lal Bazar Police Station where he was put under arrest. The specimen writing of the appellant was taken by the police & it is Ex. 23. This writing was compared by a handwriting expert with the writings in Exs. 5, 6 &- 3(1).

The handwriting expert was of the opinion that certain figures in Ex. 5 were written by the same man who wrote Ex. 6 and that Ex. 6 was in the hand-writing of the writer of the specimen Ex. 23. But the handwriting expert was of the opinion that the signatures 'A. Rose' appearing in Exs. 5 & 6 were in the handwriting of the writer of the specimen Ex. 24, i.e. Accused 2, Amal Kumar Ghose.

6. Upon these facts the appellant was placed on his trial before our learned brother Blank J. & a Special Jury on charges under Ss. 420, 420/120B, 467 & 471. The charges under Ss. 420 & 420/120B relate to the goods which the Co. was induced to deliver & the charges under Ss. 467 & 471 relate to the letter of authority (Ex. 5) & also the pay order (Ex. 6). Amal Kumar Ghose, Accused 2 was charged under Ss. 420/120B & 420/109 & 467, I. P. C, & Bimal Kumar Ghose, accused 3 was charged under Ss. 420/120B & 420/109, I.P.C. As a result of the trial the jury returned a unanimous verdict of not guilty of all the charges in respect of Amal Kumar Ghose & Bimal Kumar Ghose; but by a majority of 6:3 returned a verdict of guilty against the appellant under Ss. 420, 467 & 471, I.P.C. Accepting aforesaid verdict of the jury our learned brother Blank J. acquitted Amal & Bimal & convicted the appellant, Sudhindra under Ss. 420, 467 & 471, I.P.C. & sentenced him to rigorous imprisonment for three years under Section 420, no separate sentence being passed under Ss. 467 & 471, I.P. C. At the time of admission the appellate Court admitted the appeal under Section 411A (a) & (b) Cr. P. C. leave being expressly granted under (b) to urge grounds of facts in the appeal under the decision of the Judicial Committee in the case of 'Thiagaraja Bhagavater v. Emperor', 51 C.W.N. 732. We have therefore to consider not merely whether the verdict of the jury was reasonable & proper but also whether it was right.

7. The primary point for consideration in this appeal is the question of identity i.e. whether the appellant Sudhindra is A. Rahaman who visited the office of Harold F. Ritchie & Co. Ltd. between 14 and 17-5-1948. The evidence on this point falls under two broad heads (a) identification by appearance & (b) identification by handwriting. The evidence on the first head consists of the testimony of Sopher (P. W. 1) Banku Behari Roy (P. W. 3). D. D. Tamboli (P. W. 4), V. S. Narayanswami (P. W. 5), Gajadhar Rao (P. W. 6) and Byomkesh Roy (P. W. 17). The evidence under the second head is furnished by the Handwriting Expert Bani Khanta

Bhattacharji (P. W. 16).

8. Before we proceed to deal with the direct evidence adduced by the prosecution we shall have to discuss certain amazing facts which have transpired in the course of the investigation of this case, because it will be in the background of those facts that we shall have to assess the value of the prosecution evidence as mentioned above.

9. We have already stated that the major portion of the goods was seized by the police as a result of the search of premises No. 5/1 Bindu Basini Street Kidderpore on 31-5-1948.

10. The search list (Ex. 12) shows that items 1, 2 & 3 of that list consisting of 50 cases of Eno's Fruit Salt including one broken case were seized from a tin shed at premises No. 1/6 Bindubashini Street; items 4 to 8 consisting of 79 cases of Eno's Fruit Salt & BrylCream & Germolene including 6 empty cases said to contain Brylcream were seized from the western room facing south of premises No. 5/1 Bindu Bashini Street & there is an entry against these items which runs as follows:

'The key of this room was produced by S. Das Gupta S. I. Enforcement Branch in the presence of the above search witnesses & the room was also opened with the key in their presence.'

Items 10 & 11 of the search list which consist of 3 iron rods used for breaking open the case & 3 letters reported to be written by one Safdar Ali were 'seized from the room in the main building of 5/1 Bindubashini Street. Seized from Mr. Das Gupta's room'. Sudhangsu Kumar Das Gupta has been examined as P. W. 13 & his evidence is to the effect that he came to occupy a room of premises No. 5/1, Bindu Bashini Street about the middle of May 1948 & that one Sunil Kumar Dutt was the occupant of another room & that it was Sunil Dutt who handed over to him the key with which the lock was opened by the searching party & further that he assisted the search by handing over the key to the investigating officer. It is to be noted that the name of Sunil Dutt does not appear either in the search list or in the evidence of the investigating officer (P. W. 18).

Das Gupta has further stated in his evidence that one caretaker used to live in the outhouse of premises No. 5/1 Bindu Bashini Street. Neither this caretaker nor Sunil Dutt have been examined in this case. Neither Sudhangsu Kumar Das Gupta from whose custody an appalling quantity of goods was recovered nor the caretaker was put under arrest. The crime sheet (Ex. 26) shows that the only other occupant Sunil Dutt was not arrested at any rate upto 3-7-1948. Mr. Bose appearing for the Crown has drawn our attention to the order sheet of the committing Mag. from which it appears that against an order dated 18-6-1948 there are names of several persons who were brought under arrest and in this list we find the names of the appellant Sudhindra Nath Dutt (who was arrested on 21-6-1948), Sunir-mal Roy (who was arrested on 3-7-1948) & after Sunirmal Roy we find the name of Sunii Kumar Dutt. Mr. Bose tells us that though the order is dated 18-6-1948 the names of the arrested persons were put in subsequently after they had been arrested.

11. P. W. 14 Abdul Gaffur who is the husband of the owner of premises No. 5/1, Bindu Bashini Street tells us that one 'Mirza Safdar Ali' is the lessee of that house & that he left for Dacca in the month of April or May 1948 in connection with some work that he got from Pakistan Govt. & that in the month of May he saw only the Police Officer (Das Gupta). & a few coolies living in the house. P. W. 12 Abdul Rezak who lives close to 5/1, Bindu Bashini Street states that Nawab Safdar Ali who is an Executive Engineer of Pakistan Govt. used to live in the said house in the month of June 1948 & that he moved to Pakistan in June. Three letters written by this Safdar Ali were recovered from the possession of Sub Inspector Sudhangsu Kumar Das Gupta & entered as item No. 11 of the search list. These letters have not been produced at the trial. P. W. 12 - Rezak further states that on 17-5-1948 when the shadows of evening were deepening he saw many things being unloaded from a lorry at premises No. 5/1 Bindu Bashini Street. If that be so it must have taken place in the presence of the caretaker who was living in the out house & who has not been examined in this case.

12. We must confess that we have been completely mystified by the evidence relating to the search of premises No. 5/1 Bindu Bashini Street & the conduct of the investigation following that search. It seems to us that this house was being

used as the base camp of operations by a gang of smugglers. The letter Ex. 1 contains a significant passage which runs as follows:

'Due to troubles in booking by rail and steamer we have provisionally placed one of our responsible officers. A. Rahaman in Calcutta who will arrange boats and steamers to carry stocks.'

Nawab Safdar Ali who has since joined the Pakistan Govt. was living there, his letters, though seized, have not been produced; no serious attempt has been made by the police to bring any of the occupants of that house to trial and no attempt has been made to proceed against persons from whose custody the goods were recovered. The activities of the inmates of premises No. 5/1, Bindu Bashini Street must for ever remain a mystery to the enquiring mind. In view of this attempt on the part of the investigating officer to screen the persons who could be reasonably suspected to have taken part in the offence, we have strong reasons for holding that all the subsequent stages of the investigation were intended not to disclose but to conceal the truth.

13. It appears from the crime sheet (Ex. 26) that the accused Bimal Kumar Ghose, a resident of 53/c Southern Park - was arrested on suspicion at 6 a.m. on 31-5-1948 on Bindu Bashini Street. The search of premises No. 5/1 took place on the same day at about 3 p.m. If the arrest had taken place after the search we could appreciate the reason for his arrest; but the arrest of Bimal nearly nine hours before the search at a place which is far away from his place of residence tends to deepen the mystery. The surrender of Bimal's brother Amal in Alipur Court on 12-6-1948 is equally dramatic & mysterious. There is no evidence that he was ever wanted by the police or that any warrant of arrest had been issued against him. There is apparently no reason why of all the citizens of Calcutta Amal should take it into his head to surrender in Court in connection with this case. One plausible reason is suggested by the defence & that is this: 'P. W. 13' (Sub Inspector Sudhangsu Kumar Das Gupta) has stated in his evidence that Amal was his friend & that it was through the instrumentality of Amal that Das Gupta succeeded in occupying the room at 5/1, Bindu Bashini Street. The defence suggests that Amal's surrender was another friendly act intended to shield Sudhangsu. It is

unnecessary for us to pursue this matter any further.

14. The test identification parade held on 17-6-1948 was only in respect of Amal. Bimal was not mixed up though he had been arrested long before Amal. Sopher when called upon to identify Rahaman pointed out a Mahomedan named Nurul Hossain. & not Amal.

15. In the background of this kind of investigation we have to assess the value of the direct evidence adduced by the prosecution.

16. On 21-6-1948 Sub Inspector Byomkesh Roy (P. W. 17) was present in the Court of the Additional Chief Presidency Magistrate with the appellant Sudhindra in connection with another case in which Sudhindra figured as the accused & which was being investigated by Byomkesh. Byomkesh was also present at the search of premises No. 5/1, Bindu Bashini Street. According to Byomkesh both Tamboli and Swami were present in the Court room of the Additional Chief Presidency Magistrate & on their identification he took the appellant in a rickshaw to the Lalbazar Police Station where he was arrested. According to Tamboli (P. W. 4) Swami was not present in Court at the time of identification but it was only he who identified the appellant to Byomkesh & shortly after that rang up his office & the Manager Francis came with Swami. That is also the story narrated by Swami (P. W. 5. Francis (P. W. 7) who was the manager also supports that statement. The defence has argued that there was no reason for the presence of Tamboli in the Police Court on 21-6-1948. Tamboli has said that he attended the Court on that date in connection with a criminal case started by Messrs. Harold F. Ritchie & Co. Ltd. against their ex-cashier Nripendranath Banerjee. From Ex. B (1) the deposition of Tamboli in the committing Magistrate's Court it appears that Tamboli stated there that he attended the Court on 21-6-1948 as a witness. As it transpired that 21-6-1948 was not fixed for the hearing of the case against Nripendra Nath Banerjee Tamboli sought to introduce the story in the Ses. Court that he attended the police Court on 21-6-1948 to give inspection of his account books to the-lawyer of the accused. If this story of Tamboli had been true we should have expected the prosecution to examine the lawyer who inspected the account books of Tamboli on 21-6-1948. We cannot rely on the uncorroborated testimony of

Tamboli on this point. With regard to Byomkesh we have to state-that his evidence stands self-condemned. In cross examination he says that it was only on 21-6-1948 that he was asked to trace the accused persons in connection with the present case though the investigation was in the hands of another officer whose name is J. K. Mitter. Thereafter he went on prevaricating on the question who asked him to trace the accused. About forty three questions had to be asked to draw out a simple answer that the Assistant Commissioner Mr. S. C. Mitter asked him to trace the accused on that date. We do not know why the Assistant Commissioner should delegate this duty to him at all & more particularly on 21-6-1948. Having regard to the fact that Byomkesn. took part in the search of 5/1 Bindu Bashini Street, we hold that the suggestion of the defence that the idea of falsely implicating the appellant emanated from him, is not Un-reasonable.

17. We have now to consider the evidence of Maurice D. Sopher who was the manager of Messrs. Harold F. Ritchie & Co. Ltd. at the relevant time. The letter Ex. 1 which he received on 14-5-1948 shows that it was written, by a smuggler whoever he might have been; the writer was not known to Sopher & the order was for a heavy quantity of goods valued at nearly thirty four thousand rupees. The-writer of Ex. 1 gave references to certain banks to whom the writer was known & one of those banks was the Hindusthan Commercial Bank Ltd., Bhowanipur. This bank had another branch in the same building in which Sopher's office was located & the agent (Mr. Swarup Prakasb Puri) of this branch was known to Sopher. In spite of all this Sopher did not consider it worthwhile to contact the Bhowanipur branch of the Hindusthan Commercial Bank Ltd. to ascertain whether the writer of Ex. 1 was a real or a bogus man. What is more, Sopher knew that the letter Ex. 1 did not come by post & still he did not enquire who brought it to his office. P. W. 5 Swami who states that he opens all mails & renders general assistance to all in addition to his duties as a Cashier of the Company throws no light on this point. Sopher further says that he never sold goods, against pay orders & admits that he always, got pay orders through banks & never through, a private individual. P. W. 9 Karali Charan Mookerjee accountant of the Bhowanipur Branch of the Hindusthan Commercial Bank-also says that only banks use pay orders & they are never supplied to constituents. Ins spite of all this Sopher unhesitatingly delivered the goods against the pay order Ex. 6 handed over to him by A. Rahaman without

even, verifying through Swarup Prokash Puri whether it was a genuine pay order.

18. The omission to charge Sales Tax is another factor which excites suspicion. Sopher attempts to shift the responsibility for this omission to Tamboli (P. W. 4) who in his turn gives a very curious explanation. According to Tamboli he thought that the purchaser of the goods was a registered dealer on whom no sales tax could be charged & as Dacca was in Bengal the purchaser was not required to pay Sales Tax. The knowledge that Dacca was in another Dominion did not dawn upon Tamboli before the date of his deposition in Court in December 1948. Further comment is unnecessary. We only desire to state that even on his own evidence it was incumbent on him to insist on the production of the certificate of registration under the Sales Tax Act which he did not do.

19. From all these circumstances the inference is not unreasonable that Sopher & his employees were not victims of a foul conspiracy to cheat as they pretend to be but were themselves engaged in actively assisting a gang of smugglers whoever they might be & when it was discovered that the pay order was bogus & the Company was involved in a huge loss that Sopher & his employees became alive to the gravity of the situation & tried to recover the goods.

20. Turning now to the evidence of identification by Sopher we are not prepared to attach the slightest importance to it in view of the fact that Sopher identified Nurul Islam as Rahaman at the test identification parade held on 17-6-1948 & for the reasons stated above we are not inclined to accept the evidence of Tamboli & Swami. We are now left with evidence of Banku Behari Roy (P. W. 3) who is a Stenographer of Messrs. Harold F. Ritchie & Co. Ltd. & was in the service of that Company for 12 years. He claims that nobody can enter the office of the Company except through him & that he had the best opportunity of studying the features of Rahaman on each & every occasion he came to the office & as such his evidence as to the identity of the appellant is unassailable. Curiously enough nobody took this view of his ability to identify before the actual trial of this case. At the test identification held on 17-6-1948 neither his office master (Sopher) nor the police thought of taking him to the test identification parade & even on 21-6-1948 when the appellant was discovered in the police Court the new manager Normal

Charles Francis did not think of taking him to the Police Court for identification. The police also did not think it worth while to hold another test identification parade in respect of the appellant. It has been repeatedly pointed out by this Court that the evidence of identification of the accused in Court is of little consequence in a case of this description.

'Before we can accept such identification as sufficient to establish the identity of the accused it is very necessary that there must be good corroborative evidence & the corroborative evidence which one is entitled to expect in cases of this nature is the evidence of witnesses having pointed out the accused persons whom they have identified in Court from the midst of other persons whom they are mixed up at a test identification parade.' Vide the observations of the Division Bench of this Court presided over by the Chief Justice & Das Gupta J. in the case of 'Pravash Kumar Bose v. The King', Criminal Appeal No. 229 of 1948, D/- 25-1-1949. In this case it seems to us that the omission of the police to hold any test identification in respect of the appellant was not accidental but deliberate & was the result of the dismal failure of the test identification held at Alipur on 17-6-1948. The same observations also apply to the identification of the appellant by the Coolie Gajadhar Rao who has been examined in this case as P. W. 6.

21. In this view of the matter our conclusion is that we cannot accept the evidence of identification by appearance as given by several witnesses examined by the prosecution.

22. We are now left with the evidence of identification by the hand-writing Expert. With regard to this class of evidence, it is a rule of law that it is extremely unsafe to base a conviction upon the opinion of hand-writing experts without substantial corroboration; because it is well known that a comparison of hand-writing as a mode of proof is always hazardous & inconclusive, unless it is corroborated by other evidence. P. W. 16, Bani Kantha Bhattacharjee is the Expert, who was examined by the prosecution in this case. He says that he compared Ex. 5 with Ex. 6 & Ex. 6 with Ex. 23. Ex. 5 was not compared with Ex. 23. The opinion of the Expert is that the body-writing of Ex. 6 was in the hand-writing of the writer of the Specimen Ex. 23 & he has given certain reasons for his conclusion. He refers to

the slant designs of certain capital letters, the manner of grouping letters & also pen lifts in various places. On a general view of Exs. 6 & 23, however, the writings of the two documents appear to be totally different. The expert has said that even in writing by the same person dissimilarities are frequent, but we are not prepared to uphold the conviction of the appellant on this ground. Our learned brother Blank J. has, in his charge to the Jury very fairly pointed out various mis-takes committed by the Expert in his examinations of the questioned documents & on account of those mistakes we hold that it will be extremely unsafe to uphold the conviction of charges under Ss. 467 & 471, I. P. C. upon the evidence of the Expert. As regards the pencil-writing of Rahman in Ex. 3 (1) Blank J. has told the Jury that this part is little more than a scribble & it will be safer for the gentlemen of the Jury to leave out the evidence of the hand writing expert on that part of the case. For these reasons, we are not in a position to convict the appellant upon the evidence of the hand-writing expert, more particularly, because this evidence is not corroborated by any other material on record.

23. Mr. Bose appearing for the Crown has very rightly pointed out to us that we should not interfere with the verdict of the jury merely upon surmises and speculations. This argument is quite correct and it has been pointed out by the Judicial Committee in the case to which we have already referred in this judgment (reported in 51 C W N 732) that the views of the Jury as to the credibility of witnesses, implicit in their verdict, should be kept in view by the Appellate Court. Having regard to the evidence which we have discussed in course of our judgment, we think we shall be justified in interfering with the verdict of the Jury in this case, because in our view, the verdict is certainly against the weight Of the evidence and the probabilities of the case and we have definitely come to the conclusion that the majority verdict of the Jury is wrong.

24. In the above view of the matter, this appeal must be allowed, the conviction and sentences of the appellant Sudhindra Nath Dutt on all the charges must be set aside and we direct that he be set at liberty at once unless he is otherwise to be detained.

G.N. Das, J.

25. I agree.

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