

Tarini Kumar Panday Vs. the State

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Court : Kolkata

Decided On : Aug-04-1959

Reported in : AIR1960Cal318

Judge : N.K. Sen and ;D.N. Das Gupta, JJ.

Acts : [Constitution of India](#) - Article 20 and 20(3); ;Code of Criminal Procedure (CrPC) ; ;[Evidence Act, 1872](#) - Section 47

Appeal No. : Criminal Appeal No. 395 of 1958

Appellant : Tarini Kumar Panday

Respondent : The State

Advocate for Def. : N.C. Das Gupta, Adv.

Advocate for Pet/Ap. : S.S. Mukherjee and ;Sukumar Mitra, Adv.

Disposition : Appeal allowed

Judgement :

N.K. Sen, J.

1. The appellant was tried by the Judge, City Sessions Court with the aid of a jury under Sections 120B/ 466/420, I.P.C. and under Section 466 for forging two documents and also under Section 420 I.P.C. on two counts. He was unanimously

found guilty under all the charges and the learned Judge agreeing with and accepting the said verdict sentenced him to rigorous imprisonment for 5 years on each charge to run concurrently.

2. The prosecution story was that the appellant who is a clerk in the Eastern Railway Office at Kailaghat Street used to reside at Howrah where he was acting as private tutor to the children of the family of Radhesyam Tekriwalla and P.W. 13 Satyanarain Tekriwalla who were residing at Howrah but carrying on business at 203/1 Harrison Road, Calcutta. One Bilas Rai Lundia, P.W. 8 is a partner of the Tekriwallas and he also resided at Howrah and looked after the affairs of the Tekriwallas at 203/1 Harrison Road. Towards the end of May, 1955 the appellant told Bilas Rai Lundia that two money orders for Rs. 500/- and Rs. 600/- intended for the appellant would come in the name of Radhesyam Tekriwalla and Satyanarain Tekriwalla respectively. The appellant requested Bilas Rai Lundia to accept those two money orders and hand over the moneys to him. The appellant wrote out two letters of authority authorising Radhesyam Tekriwalla and Satyanarain Tekriwalla to accept the two money orders and made over the letters of authority to Bilas Rai Lundia P.W. 8. On 3-6-1956 two money orders of the value of Rs. 500/- and Rs. 600/- actually came in the names of Radhesyam Tekriwalla and Satya-narain Tekriwalla and Bilas Rai Lundia accepted the two money orders and on 4-6-1955 made over the moneys to the appellant on taking two receipts from him. In due course the Audit office of the Postal Department found that the two money orders in question purporting to bear Nos. 2225 and 2226 both dated 31-5-1955 and which purported to have been sent from Madrassa Post Office, Calcutta were bogus money orders and contained forged signatures of the Post Master, Gurudas Mukherjee, P.W. 11 of the Madrassa Post Office. The money orders however bore true seal stamps of the Madrassa Post Office. It was also found that no money orders bearing these two numbers 2225 and 2226 were ever issued from the Madrassa Post Office and the book of the money order receipts which contained these two receipts had not been issued from the G.P.O. to the Madrassa Post Office. On a comparison of the advice portion of the two money order forms with the writings of the appellant in some papers of the Eastern Railway Office, where he serves, and also with the specimen writings of the appellant taken by the Police, it was found that the writings on the two money

orders were in the hand-writing of the appellant.

3. The defence of the appellant was that he was falsely implicated in this case. It was also suggested that the two money orders in question were genuine money orders for which the remitter had deposited the moneys in the Madrassa Post Office but the employees of that Post Office particularly the Post Master and the Money Order clerk have mis-appropriated the moneys themselves. Along with this defence he has also suggested that he did not receive the two amounts at all. In his examination under Section 342, Cr. P. C. however he admitted that he had requested Bilas Rai Lundia to receive the two money orders and also gave him two letters of authority and had actually received the amounts from Bilas Rai Lundia. He however denied having written up the two money order forms or to have forged any portion of them. He admitted that the office files of the Eastern Railway office produced before the Court contained his handwritings but he challenged the specimen writings said to have been taken by the Police to be in his own handwriting. He added that Bindhyachal Singh, Packer of the Madrassa Post Office owed him Rs. 1,100/- and this Bindhyachal at the request of the appellant sent the two money orders in the name of the Tekriwallas and he accepted the money in good faith.

4. The first objection taken by Mr. Mukherjee who has appeared in support of the appeal is as regards the legality of the conviction in that the Police officers acted in violation of the [Constitution of India](#) in taking a specimen writing of the appellant at a time before his arrest, and the Court below could not have made any use of such specimen writing against the appellant. Complaint is also made that the learned Judge used a portion of the statement of the appellant made while examined under Section 342, Cr. P. C. and not the whole of it. Mr. Mukherjee submits that if it was intended to make any use of any of such statement the learned Judge should have placed before the jury the whole of it and should have also placed the statement of the accused made before the Committing Court telling the jury that the statement before the committing Court was as good evidence as the statement in the Court of Sessions was. Another point of law taken by Mr. Mukherjee was with regard to the learned Judge's direction regarding Section 114 of the Evidence Act. Mr. Mukherjee's comment was that the learned Judge's direction under Section

114 of the Indian Evidence Act was hedged with a number of unwarranted limitations and was of very little value except in so far as it misled the jury.

5. With regard to the handwriting of the appellant which plays a very important part in the decision of this case, evidence of P.W. 18, Usha Ranjan Chatterjee, Sub-Inspector of police of the Detective Department, was referred to. He said that he arrested the appellant on 6-1-1956 and took his specimen writings on that very day. No witness signed the specimen. He did not take the permission of any Magistrate to take this specimen writings.

6. Reliance was placed by Mr. Mukherjee in the case of *M. P. Sanna v. Satish Chandra*. : 1978(2)ELT287(SC) and also upon the recent decision of this Court, still unreported, in the case of *Farid Ahmed v. The State in Criminal Revn. Case No. 623 of 1958* decided by Mitter and Bhattacharjee, JJ. on 4-6-1959. (Since reported in : AIR1960 Cal32 in which their Lordships following the Supreme Court decision cited above and dissenting from the Bench decision of this Court in the case of *Sailendra Nath Sinha v. The State*, : AIR1955 Cal247 , held that the guarantee is against compelled testimony both in and out of Court. The *Cri. Revn. Case No. 623 of 1958*, (Since reported in : AIR1960 Cal32 arose out of an order passed by a Magistrate at Howrah directing the accused in that case to give his specimen writings to the Police. Against that order the accused in that case moved the High Court and their Lordships set aside the order of the Magistrate. We have for ourselves considered the two Bench decisions of this Court. Admittedly in the present case no order from a Magistrate was taken for obtaining the specimen band writings of the appellant and it is also not disputed that there is no provision in the Criminal Procedure Code which permits the Police to take specimen of the handwriting of an accused person in course of investigation and when the accused is in custody. Although there is no positive evidence that the accused was in custody when the specimen writings were taken from him, it would appear from the evidence of the Investigating officer that the handwritings were taken on the very same day on which he arrested the accused. In his examination-in-Chief the Investigating officer however said that the specimen handwritings of the accused were taken by him before his arrest. In any case the writing concerned, namely, the specimen handwritings therefore furnished evidence against the appellant and

amounted to a violation of the guarantee against testimonial compulsion.

7. The question ultimately is how far the specimen handwritings influenced the jury in coming to their conclusion and would the jury have come to the same conclusion had the specimen handwritings being excluded from evidence.

8. AS we have come to the conclusion that in the circumstances of the case the specimen handwritings were not admissible in evidence we have gone into the evidence in the case in order to satisfy ourselves whether on the evidence adduced in the case the verdict of the jury was one which could be said to be a correct verdict.

9. The learned Judge told the jury while placing the evidence of the handwriting Expert, BaniKanta Bhattacharjee that his opinion corroborates the statements made by Modon Mohan Tekriwalla P.W. 14 and Mani Bhusan Banerjee, P.W. 15. Modon Mohan Tekriwalla is a boy aged about 16 or 17 years. He passed the last School Final Examination. He said that the appellant was his private tutor and he read with him for four or five years and thus knew his handwritings. P.W. 15 Mani Bhusan Banerjee is the chief clerk of the Claims Prevention Department in the Eastern Railway. The appellant was a clerk in the outstanding section of the same office. The Police seized some papers from Mani Bhusan Banerjee and those papers contained the handwritings of the appellant. The evidence that this witness gave in Court was that he was sure about some handwritings but was not sure about others. As regards the handwriting on the money orders in question, his answer was; 'I am not (sic) definite if the handwritings on the money orders are of the accused but they appear to be in his handwritings.' So far as the evidence of the handwriting expert is concerned he gave his opinion on a comparison of the two money orders with the specimen writing of the appellant forwarded to him by the Police and also on a comparison with the writings of the appellant on the office papers. These office papers are Ex. 30. The appellant of course has in his statement under Section 342. Cr. P. C. accepted Ex. 30 to be in his handwriting. The position therefore is that the handwriting expert had before him Ex. 30 to be compared with the disputed writing of the appellant on the money orders in question. It is not known what his opinion would have been had not the specimen

writings Ex. 35 procured by the Police from the appellant been before him. It is idle to speculate what influence the specimen handwritings had on the opinion of the expert, nor is it possible to say that he would have unhesitatingly come to the same conclusion even without having the specimen handwritings, before him to compare with. The evidence of P.W. 15 Mani Bhusan Banerjee though furnishing evidence as to the handwriting of the appellant yet does not seem to us to be conclusive, The evidence of P.W. 14 Modon Mohan Tekriwalla a young boy of 15 or 16 years as to the handwriting of the appellant cannot form the only sure guide to come to the conclusion as to the authorship of the handwriting. The testimony of these two witnesses which formed the only basis of coming to any conclusion upon the handwriting may yet be accepted if they are corroborated by the evidence of an expert. But as we have said above the opinion of the expert was undoubtedly influenced by the specimen handwriting Ex. 35. The charge of cheating under Section 420 is dependent upon the money orders being forged and not independently of them. The only evidence as to the appellant having forged the money orders comes from P.Ws. 14 and 15. Their evidence divorced from the evidence of the hand-writing expert cannot, in our opinion, form the basis of a conviction. We are not prepared to say that when a handwriting expert is not examined the Court is not justified in relying upon the evidence as to handwriting coming from a person who was not only competent but who appeared to be correct in saying that the handwriting was in the handwriting of a particular person. In the present case if the evidence of the expert be excluded from consideration, the residue of the evidence as to the handwriting is not such on which explicit reliance could be placed for the purpose of convicting the appellant.

10. We have considered the question whether we should send the case back for retrial. It appears that the occurrence related to events more than 4 years old now and that the prosecution cannot be allowed to bring forward new witnesses to prove the handwriting of the appellant. We have also considered whether the questioned handwritings should be placed before another handwriting expert for his opinion without the specimen writings being placed before him for comparison. We do not think that such a course would be in the interest of justice but on the other hand might afford an opportunity of causing serious prejudice to the appellant. If the evidence as to handwriting be discarded the rest of the evidence

does not prove the charges levelled against the appellant.

11. In the result this appeal is allowed. The conviction and sentences passed on the appellant are set aside. The appellant who is on bail will now be discharged from his bail bond.

D.N. Das Gupta, J.

12. I agree.

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