

Harendra Nath Sen Vs. Emperor

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Court : Kolkata

Decided On : Mar-11-1931

Reported in : AIR1931Cal441

Appellant : Harendra Nath Sen

Respondent : Emperor

Judgement :

S.K. Ghose, J.

1. The appellant Harendra Nath Sen has been convicted under Sections 457 and 380 read with Section 75, I. P.C., and sentenced to undergo rigorous imprisonment for two years. The prosecution case is that on the night of 15th February last year there was a burglary in premises No. 3, Harrison Road and a large number of articles worth about Rs. 20,000 was stolen. The police took charge, among other things, of a hasp of a trunk, a plate, a thali and a house-breaking instrument as they were alleged to contain finger impressions. The case for the prosecution is that the finger impression on the hasp of the trunk is identical with the left thumb impression of the appellant Harendra, which was found on the fingerprint slip kept in the Finger-print Bureau. That led to the arrest of the appellant. One Deb Sankar was similarly traced from a finger impression and both men were put upon their trial before the Chief Presidency Magistrate, with the result that they were convicted, Harendra alone has appealed.

2. So far as the appellant is concerned, there is no evidence except the alleged identity of the aforesaid thumb impression. Mr. Taluqdar for the appellant has contended that it is unsafe to rely on such evidence when it is not corroborated by any other circumstance. He has drawn our attention to certain cases in which it has been held that it is not safe to rely merely on a critical inspection of a thumb impression made by an expert : Emperor v. Abdul Hamid [1905] 32 Cal. 759, Bazari Hajam v. Emperor A.I.R. 1922 Pat. 73, Jassu Ram v. Emperor A.I.R. 1923 Lah. 622, Baidya Nath Dutt v. Alep Jan Bibi A.I.R. 1923 Cal. 240, Panchu Mondal v. Emperor [1905] 2 Cr. L. J. 311, Singri Bhima v. Emperor [1915] 16 Cr.L.J. 228 which is a case of the Madras High Court; Basgit Singh v. Emperor A.I.R. 1928 Pat. 129 which is a case of the Patna High Court and Hari Singh v. Lachhmi Devi A.I.R. 1921 Lah. 126 which is a case of the Lahore Court. In the case of Mohini Mohan Ghose v. Emperor [1919] 46 Cal. 635 the jury accepted the expert, view, and on appeal this was not interfered with, because the jury had been properly warned by the Sessions Judge. On the other hand there are cases in which conviction has been had on the evidence regarding the thumb impression, the Court being satisfied as to its identity; Emperor v. Virammal A.I.R. 1923 Mad. 178, Public Prosecutor v. Kandasami Thevan : AIR1927 Mad696 and Be. Thomas Herbert Castleton [1909] 3 Criminal Appeal Reports 74. I do not think that it can be laid down as a rule of law, that it is unsafe to base a conviction on the uncorroborated testimony of a finger print expert. The true rule seems to me to be one of caution, that is to say, the Court must not take the expert's opinion]1 for granted, but. it must examine his evidence in order to satisfy itself that there can be no mistake, and the responsibility is all the greater when there is no other evidence to corroborate the expert. In the present case the evidence as to the identity of the thumb impression on the hasp is based upon a comparison of the left thumb impression : vide Ex. 9 (1) (2) which is an enlargement of the impression to be found in the fingerprint slip of the Bureau, with the impression on the hasp, vide, Ex.6 (2) which is an enlargement of that impression. This comparison was made by two experts, P. Ws. 3 and 12. The judgment of the learned Magistrate shows that he has taken great pains to follow the method of comparison. But the judgment also shows the weakness of such evidence, when it comes up for scrutiny in a Court of appeal. The learned Magistrate says:

There has been some practical difficulty in making the record show the actual evidence given in cross-examination by Hridoy Nath Dutt, the Superintendent of the Finger Print Bureau. The witness really demonstrated point by point the resemblances he had marked. I find it difficult to think that anyone, not himself an expert, could appreciate fully the points and resemblances except under the personal guidance of the witness. The witness and the accused's lawyer came upon the Beach and in some cases, under a magnifying glass, the witness pointed out the features for the benefit of the Court and the learned lawyer.

3. The evidence might have satisfied the learned Magistrate but in view of the deficiency of the record, we do not find ourselves in a similarly favourable position. It would not be proper to us to take the evidence for granted, and if a doubt; arises obviously the benefit of that doubt must go to the accused. The impression on the hasp on which the conviction was based, seems to us, to be blurred, and that was also admitted by the two experts. The comparison of the two impressions shows that all the 18 points on which the identity was sought to be based, are not similar. As regards the ridge at point 18 for instance there is a difference. Similarly the markings at points 12 and 17 are described by each witness differently. There is no evidence that such markings, as for instance the one at point 18, would not appear in more than one person. Similarly there is no evidence as to how the differences in some of the markings as between two impressions can be reconciled. I sympathize with the learned Magistrate when he says that it is difficult for one who is not himself an expert to appreciate the evidence fully. But with the materials before us we are not prepared to say that the two impressions, Ex. 9 (1) (2) and Ex. 6 (2), are exactly identical, and as there is no other evidence I must hold that the appellant is entitled to the benefit of doubt. In that view the appellant is acquitted of the offence under Section 457 and Section 380 read with Section 75, I. P.C., and directed to be set at liberty. He is also discharged from his bail bond.

Williams, J.

4. I agree.

