

Courts Should Make Careful Study To Ascertain Similarities When Comparing Disputed Handwritings, Signatures With Admitted Documents: Kerala HC

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

K. BABU; J.

CRL.A Nos.1276/2007, 1308/2007, 1363/2007; 11 July 2022

S. SIVADAS versus STATE OF KERALA

Appellants by Advs. V.S. Vineeth Kumar, R.T. Pradeep, V. Vijulal, Sasthamangalam S. Ajithkumar, Renjith B. Marar,

Respondent / Complainant by Special GP (Vigilance) Rajesh. A

J U D G M E N T

These appeals arise from the judgment dated 30.06.2007 in C.C.No.26/2002 passed by the Enquiry Commissioner and Special Judge, Thiruvananthapuram. The appellant in Crl.Appeal No.1276/2007 is accused No.1. Accused No.2 is the appellant in Crl.Appeal No.1363/2007. Crl.Appeal No.1308/2007 has been filed by accused No.3. The three accused face charges under Section 13(2) r/w Section 13(1)(d) of the PC Act, 1988 and Sections 409, 477-A and 420 r/w Section 120 B of the Indian Penal Code.

2. The trial Court convicted accused Nos.1 to 3 for the offences alleged and sentenced accused No.1 to undergo rigorous imprisonment for a term of two years and accused Nos. 2 and 3 to undergo rigorous imprisonment for a term of one year each.

3. During the pendency of these appeals, accused No. 2 died. The near relatives of accused No.2 filed Crl. M.A. No.6811/2015 seeking permission to prosecute the appeal. As per the order dated 01.07.2020, this Court allowed Crl. M.A. No.6811/2015 and the legal heirs of accused No.2 were permitted to prosecute the appeal. They were also impleaded as additional appellants 2 to 4 in Crl Appeal No.1363/2007.

4. The prosecution case, as described by the trial Court in the impugned judgment, is extracted below:-

“2. ... A1 was working as Junior Employment Officer from 12.10.1987 to 16.4.1992 and A2 was working as UD Clerk from 1986 to 1991 in the Town Employment Exchange, Neyyattinkara and as such they were public servants. A3 is a private person who had registered his name in the Neyyattinkara Town Employment Exchange as No.8393/82 dated 29.11.1982 under the “Kerala Unemployment Assistance and Self Employment Scheme 1982”. The registration of third accused was due for renewal in November 1987 but his registration was not renewed either in November 1987 or during the grace period allowed for such renewal. Accused 1 and 2 in their capacity as Junior Employment Officer and UD Clerk of Neyyattinkara Town Employment Exchange entered into a criminal conspiracy with third accused and by corrupt or illegal means or by otherwise abusing their position as such public servants prepared and issued a duplicate registration card to third accused on 4.7.1988 which enabled third accused to obtain unemployment assistance under the “Kerala Unemployment Assistance and Self Employment Scheme 1982” to the extent of Rs.3,070/- during the period from 27.02.1989 to 15.6.1994. Accused 1 and 2 being entrusted with or having dominion over Government money under the “Kerala Unemployment Assistance and Self Employment Scheme 1982” committed criminal breach of trust in respect of the said amount which was disbursed to third accused in pursuance of the said conspiracy and they also willfully and with intent to defraud the Government prepared and issued a false duplicate identity card to third accused on 4.07.1988 on which date there was no live registration on account of the non renewal of his employment registration card and for issuing such duplicate identity card, accused 1 and 2 made false entries in the records of the Neyyattinkara Employment

Exchange and A3, who was ineligible to get unemployment assistance under the above scheme, obtained the said sum of Rs.3,070/- and thereby accused 1 to 3 have committed offences under Ss.13(2) r/w 13(1)(d) of P.C Act, 1988 and Ss.409, 477-A and 120-B of I.P.C.

3. A preliminary enquiry was conducted by VACB Thiruvananthapuram Unit and it was revealed that A3 had registered his name in the Employment Exchange and he had to renew his registration during November 1987 and as he did not renew his registration, it had lapsed and he became ineligible to receive unemployment assistance and on 4.07.1988 , accused 1 and 2 by misusing their official position issued a duplicate card to third accused and on the basis of the said duplicate identity card , a sum of Rs.3,070/- was paid to third accused during the period between 27.02.1989 to 15.6.1994 as unemployment assistance and thus A3 gained pecuniary advantage to the extent of the above amount and the Government had sustained the corresponding loss. Based on the above preliminary enquiry, a case was registered by PW12 who was then working as Dy.S.P of VACB, Thiruvananthapuram Unit against these accused for the offences under S. 13(2) r/w S.13(1)(d) of P.C Act, 1988 and S.120-B of I.P.C. on preparing Ext.P24 FIR. PW13 who was working as Dy.S.P of Thiruvananthapuram Vigilance Unit proceeded with the investigation and he questioned PWs 1 to 5 and 7 to 10 and recorded their statements. On 1.7.2000 he also took into custody Exts.P2 and P3 on preparing Ext.P25 inventory. On 25.4.2000 he took into custody the record of registration for the period from 9.11.1982 to 13.4.1983 and renewal log book for the period from 27.10.1987 to 5.4.1988 and they were returned to PW2 on the basis of Ext.P12 kaichit. He also took into custody Ext.P1, on preparing Ext.P22 inventory. PW14 proceeded with the investigation and he further questioned PWs 1 to 10 and took into custody 23 records which included Exts.P4, P5, P6 series and subsidiary cash books maintained in the Neyyattinkara Town Employment Exchange and the said cash books were returned on EX.P12 Kaichit. After completing the investigation, he submitted the records and factual report before the Vigilance Director and after getting back Ext.P23 sanction order and records, he filed charge sheet against accused 1 to 3 for the offences mentioned above.”

5. The prosecution examined PWs 1 to 14 and proved Exts.P1 to P25. The trial Court, relying on the oral evidence of PWs 3, 4, 7, and 8 and Ext.P2, duplicate identity card issued in favour of accused No.3, held that accused No.2 prepared Ext.P2 and accused No.1 affixed signature and date on it in the capacity as issuing authority.

6. The trial Court, after comparing the signatures that appeared in Ext.P6 series with Ext.P1(a) application allegedly submitted by accused No.3, found that the signatures in Ext.P1(a) and Ext.P6 series are substantially similar. Based on this finding, the trial Court held that accused No.3 executed Ext.P6 series receipts.

7. Heard Shri. Sasthamangalam S. Ajith Kumar, Shri V.S. Vineeth Kumar, and Shri R.T. Pradeep, the learned counsel appearing for the appellants/accused, and Shri. A. Rajesh, Special Government Pleader (Vigilance).

8. The accused face the following charges:

“That you first accused, while working as Junior Employment Officer from 12.10.1987 to 16.4.1992, and second accused, while working as U.D. Clerk from 1986 to 1991 in the Town Employment Exchange, Neyyattinkara and as such being public servants, by corrupt or illegal means or by otherwise abusing your position as such public servants obtained for third accused pecuniary advantage to the extent of Rs.3,070/towards his unemployment assistance for the period from 27.2.1989 to 15.6.1994 under the scheme of “the Kerala Unemployment Assistance and Self Employment Scheme 1982 ” which third accused was ineligible to get under that scheme due to the timely non-renewal of his employment Registration No.8393/82 dated 29.11.1982 of that Exchange from 1987 onwards and who was issued with a fraudulent duplicate identity card on 4.7.1988 where upon the said sum was obtained by third accused and thereby you accused 1 and 2 committed the offence specified in S.13(1)(d) of P.C. Act, 1988 which is punishable under S.13(2) of that Act;

That you accused 1 and 2 being entrusted with or having dominion over Government money under “ the Kerala Unemployment Assistance and Self Employment Scheme 1982” in your capacity as public servants during the period from 12.10.1987 to 16.4.1992 and from 1986 to 1991 respectively committed criminal breach of trust with respect to a sum of Rs.3.070/- which was disbursed to third accused towards his unemployment assistance under the above scheme for the period from 27.2.1989 to 15.6.1994 which third accused was ineligible to get from the above scheme due to his timely non renewal of his Employment Registration No.8393/82 dated 29.11.1982 of the Neyyattinkara Employment Exchange from November 1987 onwards and to whom you A1 and A2 issued a duplicate identity card on 4.7.1988 and thereby committed an offence punishable under S.409 of Indian Penal Code;

That you accused 1 and 2, while working as Junior Employment Officer from 12.10.1987 to 16.4.1992 and U.D. Clerk from 1986 to 1991 respectively in Town Employment Exchange, Neyyattinkara, willfully and with intent to defraud the Government issued a duplicate identity card to third accused on 4.7.1988 under “ the Kerala Unemployment Assistance and Self Employment Scheme 1982” who was ineligible to get financial assistance from the above scheme due to non renewal of his Employment Registration No.8393/82 dated 29.11.1982 of that Exchange from November 1987 onwards and you accused 1 and 2 for issuing such duplicate identity card and to enable third accused to obtain Rs.3,070/- under that scheme made false entries in the records of the Neyyattinkara Employment Exchange which were in your possession and thereby committed an offence punishable under S.477-A of Indian Penal Code;

And that you accused Nos. 1 and 2 being public servants entered into a criminal conspiracy with you 3 rd accused with intention to defraud the Government and to obtain pecuniary advantage to third accused by illegal means and in pursuance of such criminal conspiracy, you accused 1 and 2 issued a duplicate identity card to you third accused on 4.7.1988 who was ineligible to get financial assistance from “the Kerala Unemployment Assistance and Self Employment Scheme 1982” due to non renewal of his employment Registration No.8393/82 dated 29.1.1982 of Neyyattinkara Town Employment Exchange and by abusing the official positions of A1 and A2 made false entries in the records of the said employment exchange and enabled 3 rd accused to obtain Rs.3,070/- towards his unemployment Assistance under the above scheme for the period from 27.2.1989 to 15.6.1996 which resulted in corresponding loss to the Government and thereby all of you committed offence under S.120-B r/w Ss.409 and 477-A of Indian Penal Code and S.13 (2) r/w S.13(1)(d) of Prevention of Corruption Act, 1988 which is with in my cognizance.

And I hereby direct that you be tried by this Court on the said charge.”

9. The prosecution seeks to establish charges against the accused with the aid of the oral evidence of PWs 1, 3, 4, and 7 to 9 and Exts.P1(a), P2, P3 and P6 series. According to the prosecution, accused No.1 who was the then Junior Employment Officer, accused No.2 an Upper Division Clerk employed in the Town Employment Exchange, Neyyattinkara, and accused No.3, a beneficiary under the ‘Kerala Unemployment Assistance and Self Employment Scheme, 1982’ hatched a conspiracy in which accused Nos. 1 and 2, being public servants abused their official position to extend the pecuniary benefit to accused No.3. The prosecution alleges that when the registration of accused No.3 in the Employment Exchange expired in November 1987 and he failed to renew it within the statutory period, accused Nos. 1 and 2 issued Ext.P2. According to the prosecution, accused No.2 prepared Ext.P2, and accused No.1 affixed his signature in the capacity as issuing authority.

10. The prosecution relied on the oral evidence of PWs 3,4,7 and 8 to prove that it was accused No.1 who affixed the signature in the capacity as issuing authority in Ext.P2. The prosecution also relied on the oral evidence of PWs 1,3,4 and 7 to 9 to establish that it was accused No.2 who prepared Ext.P2. PW3, an Upper Division Clerk attached to the

Town Employment Office, Neyyatinkara, who worked as such from 1985 to 1991, stated that the signature seen against the issuing authority in Ext.P2 was that of accused No.1. He further stated that the entries in Ext.P2 were filled up by accused No.2. While examined in the cross, PW3 stated that the signature placed against the issuing authority in Ext.P2 resembles that of accused No.1. He would further state that the other writings in Ext.P2 resemble that of accused No.2. Going by the oral evidence of PW3, it is seen that he could not ascertain the signature and writings seen in Ext.P2 as that of accused Nos.1 and 2 respectively. PW4 deposed that he could not ascertain who wrote Ext.P2. PW7, Employment Officer of the Town Employment Exchange identified the signature in Ext.P2 as that of accused No.1. But, he added that as the name of the signatory is there, he came to the conclusion that the said signature was affixed by accused No.1. At the time of examination, PW7 was aged 71 years. While examined in the cross, he made it clear that he could not identify the signatures of the employees who worked with him. The evidence of PW7 also has no tendency of assurance as to the identification of the signature seen in Ext.P1. PW7 further added that he could not ascertain whether the entries in Ext.P2 were made by accused No.2. PW8, another employee of the Town Employment Office, Neyyattinkara stated that the signature and writings seen in Ext.P2 resemble that of accused Nos.1 and 2. PW9 would state also that the signature and writings in Ext.P1 resemble that of accused Nos. 1 and 2.

11. The learned counsel for accused Nos. 1 and 2 contended that the evidence of PWs 3, 4 and 7 to 9 does not satisfy the requirement of Section 47 of the Evidence Act. The learned Special Government Pleader, per contra, contended that the prosecution could prove the signature of accused No.1 and the handwriting of accused No.2 within the meaning of Section 47 of the Evidence Act.

12. The learned counsel for the appellants relied on **B. Raghuvir Acharya v. Central Bureau of Investigation** [(2014) 14 SCC 693] and **Thiruvengadam Pillai v. Navaneethammal and Another** [(2008) 4 SCC 530] to substantiate their contentions.

13. The learned Special Government Pleader relied on **Hema v. State Through Inspector of Police, Madras** [(2013) 10 SCC 192] and **Ajit Savant Majagvai v. State of Karnataka** [(1997) 7 SCC 110] in support of his contentions.

14. The trial Court, relying on the oral evidence of the aforesaid witnesses and Ext.P2, concluded that the opinions of PWs 1,3,4,7 and 8 to the effect that it was accused No.1 who affixed his signature in Ext.P2 against the issuing authority and that accused No.2 made the entries in Ext.P2 are acceptable.

15. The dispute in this case centres around the admissibility of the opinion of the lay witnesses PWs 3, 4, and 7 to 9 as provided in Section 47 of the Evidence Act.

16. Section 47 of the Evidence Act reads thus:-

“47. Opinion as to handwriting, when relevant.— When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

17. Section 47 permits the Court to admit the opinion of a person who is acquainted with another person's handwriting or signature. The explanation attached to Section 47

gives guidance as to who is considered to be acquainted with another's handwriting. It includes a person;

- (1) who has seen that person writes;
- (2) or who has received documents written by that person in answer to documents written by himself or under his authority and addressed to that person or;
- (3) who has in the ordinary course of business receives documents written by that person or such documents are habitually submitted to him.

18. The first case deals with direct evidence. Going by Section 47, besides direct evidence, the law makes two other modes as mentioned above.

19. In **B. Raghuvir Acharya (supra)**, the Apex Court held that the prosecution has to produce relevant material before the Court to establish that the witness who claimed familiarity with the handwriting of the accused had the competency to identify the disputed writings. In **Hema (supra)**, the Apex Court found the evidence of a lay witness identifying the handwriting of the accused therein admissible under Section 47 of the Evidence Act on the ground that the witness had the opportunity to get familiarity with the disputed writings and he has the competence to identify the same. In **Ajit Savant (supra)**, the Apex Court observed that a comparison made by anyone familiar with the handwriting of the person concerned is admissible under Section 47 of the Act.

20. In the present case, admittedly, there is no direct evidence as the prosecution has no case that any of the witnesses examined to prove its allegations has seen either accused No.1 or 2 write or put signature.

21. The learned counsel for accused Nos.1 and 2 contended that the prosecution has not succeeded in establishing that any of the witnesses gave evidence to show that they had an opportunity to acquaint with the writing and signature of accused Nos. 1 and 2. A person gets an opportunity to get acquainted with the handwriting of another person when he has often seen that person writing something, or when he has been receiving papers written by that person in reply to his own drafts or for the purpose of typing, filing, or advising. The mandate of Section 47 is that the opinion of such a person can be relied upon. In the present case, the witnesses relied on by the court below only stated that as they had worked with the accused in the same office, they could identify their signatures and writings. The circumstances by which they got familiarity with the signature of accused No.1 or the handwriting of accused No.2 had not been brought out in evidence. They had not given evidence to the effect that they had received documents written by accused Nos. 1 and 2 in answer to documents written by themselves or under their authority and addressed to them or in the ordinary course of business received documents written by accused Nos. 1 and 2 or such documents were habitually submitted to them. Their evidence is so weak that such an inference is not possible.

22. As far as the evidence against accused Nos.1 and 2 is concerned, the prosecution could not bring forth sufficient material to prove that the witnesses though partly supported the prosecution had an opportunity to have familiarity with the signature of accused No.1 and handwriting of accused No.2 in accordance with the requirements of Section 47 of the Evidence Act.

23. The complicity of accused No.3 with the alleged offence is stated to be established by the prosecution based on the following:--

- (i) Ext.P2 duplicate registration card and Ext.P3 identity card were recovered from his possession.

(ii) Signatures found on Ext.P6 series receipts showing the receipt of money in the name of accused No.3 are substantially similar to the signatures seen on Ext.P1(a), the application stated to have been submitted by accused No.3 at the time of registration in the Employment Exchange.

24. The learned counsel for accused No.3 contended that the alleged recovery of Exts.P2 and P3 from the possession of accused No.3 has not been proved as the Officer who allegedly obtained Exts.P2 and P3 from accused No.3 was not examined and moreover, he had no competence to effect such a recovery. The learned counsel contended that the alleged recovery of Exts.P2 and P3 was done by an Officer of the VACB who conducted preliminary enquiry before the registration of FIR. The learned counsel contended that Exts.P2 and P3 were taken into custody by the officer who conducted the investigation as per Ext.P25 inventory from the office of the Vigilance department. It is also contended that the alleged recovery effected by the officer who conducted the preliminary enquiry before the registration of FIR cannot be looked into as it has not been duly proved. Further, it is contended that the signatures found in Ext.P6 series have no similarity with the signature found in Ext.P1(a) application form stated to have been submitted by accused No.3 at the time of registration.

25. Exts.P2 and P3 were recovered by an Officer of the Vigilance wing who conducted the preliminary enquiry before the registration of FIR. The Investigating Officer, PW13 obtained those documents from the office of the Vigilance department as per Ext.P25 inventory. The officer who conducted the preliminary enquiry was not examined. So there is no credible evidence to show that Exts. P2 and P3 were recovered from the possession of accused No.3.

26. The Court below, invoking Section 73 of the Indian Evidence Act proceeded to compare the signature found in Ext.P1(a), the application stated to have been submitted by accused No.3 at the time of enrollment in the Employment Exchange, with that of the signatures found in Ext.P6 series receipts.

27. The Apex Court in ***Thiruvengadam Pillai v. Navneethammal and Another*** (Supra) on the matter of prudence and caution, a Judge has to bear in mind while proceeding under Section 73 of the Evidence Act, observed thus:-

“15. Section 45 of the Evidence Act, 1872 relates to “opinion of experts”. It provides inter alia that when the court has to form an opinion as to identity of handwriting or finger impressions, the opinion upon that point of persons specially skilled in questions as to identity of handwriting or finger impressions are relevant facts. Section 73 provides that in order to ascertain whether a finger impression is that of the person by whom it purports to have been made, any finger impression admitted to have been made by that person, may be compared with the one which is to be proved. These provisions have been the subject-matter of several decisions of this Court.”

28. In ***State (Delhi Administration) v. Pali Ram*** [(1979) 2 SCC 158 : 1979 SCC (Cri) 389], the Apex Court on the caution to be taken while proceeding under Section 73 held thus:-

“30. ... Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.”

29. In *Ajit Savant Majagvai v. State of Karnataka (supra)* referring to Section 73 of the Evidence Act, the Supreme Court held:-

“37. ... The section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.

38. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act.”

30. In *Murari Lal v. State of M.P.* [(1980) 1 SCC 704 : 1980 SCC (Cri) 330] the Apex Court indicated the circumstances in which the Court may itself compare disputed and admitted writings thus:-

“12. The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and two voices of science are heard. There may be cases where neither side calls an expert, being ill-able to afford him. In all such cases, it becomes the plain duty of the court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the court. Where there is none, the court will have to seek guidance from some authoritative textbook and the court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence.”

31. The decision in *Murari Lal (supra)* was followed in *Lalit Popli v. Canara Bank and Others* [(2003) 3 SCC 583 : 2003 SCC (L&S) 353].

32. The Trial Court formed the following opinion after comparing the signatures seen in Ext.P6 series and Ext.P1(a).

“Ext.P6 series contain 11 receipts and these receipts are found to be executed by third accused. The signatures of third accused are seen all these receipts. Of course, third accused had denied these receipts and stated that he did not receive any amounts covered by such receipts. At the same time the signatures appearing on these records are found to be substantially similar to the admitted signatures of third accused. The very same signature as seen in Ext.P1(a) is seen to be available in Ext.P6 series. Since the signatures appearing in Ext.P6 series are found to be having substantial similarity with the admitted signatures of third accused, and there are no circumstances to suggest that these were created by any others, it is futile to contend that these receipts were not executed by third accused or that he did not receive the amounts covered by such receipts.”

33. The Court below reached the above-referred conclusions based on a mere casual or routine glance or perusal.

34. In a case where the Court is constrained to undertake the responsibility of comparing the disputed writing or signature with the admitted handwriting or signature, it shall make a careful study, if necessary, with the assistance of counsel, to ascertain the characteristics, similarities and dissimilarities. The judgment shall contain the reasons for

any conclusion based on a comparison of the handwriting/signature if the Court proceeds to record a finding thereon. Conclusions arrived based on a casual or routine glance, or perusal shall not be relied on to enter into a finding leading to the conviction of an accused.

35. Therefore, the finding recorded by the Court below, as extracted above, is to be excluded from consideration.

36. Moreover, the opinion formed by the trial Court after comparing Exts.P1(a) and P6 series was not put to accused No.3 in his examination under Section 313 Cr.P.C. There is nothing on record to show that the accused was given an opportunity to explain this circumstance.

37. This material circumstance brought on record against accused No. 3 on which his conviction is based was never put to him. Examination of the accused under Section 313 CrPC is not an empty formality. The requirement of Section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that he can offer an explanation. It is important to put to the accused each material fact that is intended to be used against him and to afford him a chance of explaining it if he can. In exercising its power under section 313 CrPC, the Court must take care to put all relevant circumstances appearing in the evidence against the accused person. It would not be enough to put a few general and broad questions to the accused. It is trite that the circumstances which were not put to the accused in his examination under Section 313 CrPC have to be completely excluded from consideration. **{See: *Jai Dev v. State of Punjab* [(1963) 3 SCR 489], *Hate Singh Bhagat Singh v. State of Madhya Bharat* [AIR 1953 SC 468], *Sharad Birdhichand Sarda v. State of Maharashtra* [(1984) 4 SCC 116]}.**

38. In the present case, accused No.3 was not given an opportunity to offer an explanation to the opinion formed by the trial Judge after comparing the signatures in Ext.P6 series and Ext.P1(a). Therefore, the opinion formed by the trial Judge is liable to be excluded from consideration. Resultantly, the prosecution failed to establish the complicity of accused No.3 with the alleged offence.

39. The resultant conclusion is that the prosecution failed to establish the offences alleged against the accused. The accused are found not guilty of the offences alleged and therefore they are acquitted of the offences punishable under Section 13(2) r/w 13(1)(d) of the PC Act, 1988 and Sections 409, 477-A and 420 r/w Section 120 B of the Indian Penal Code.

40. The conviction and sentence passed against the accused are set aside. Accused Nos.1 to 3 are set at liberty. Bail bonds, if any, executed by the accused stand discharged. Any amount deposited by the accused as per the interim orders of this Court shall be disbursed to them as per law.

The Criminal Appeals are allowed.

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