Supreme Court of India
State (Through Cbi/New Delhi) vs S.J. Choudhary on 13 February, 1996
Equivalent citations: 1996 AIR 1491, 1996 SCC (2) 428
Author: J S Verma
Bench: Verma, Jagdish Saran (J), Ray, G.N. (J), Singh N.P. (J), Faizan Uddin (J), Nanavati G.T. (J)

PETITIONER:
STATE (THROUGH CBI/NEW DELHI)

Vs.

RESPONDENT:
S.J. CHOUDHARY

DATE OF JUDGMENT: 13/02/1996

BENCH:
VERMA, JAGDISH SARAN (J)
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VERMA, JAGDISH SARAN (J)
RAY, G.N. (J)
SINGH N.P. (J)
FAIZAN UDDIN (J)
NANAVATI G.T. (J)

CITATION:
1996 AIR 1491 1996 SCC (2) 428
JT 1996 (2) 186 1996 SCALE (2)37

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N I J.S VERMA. J.

The reference made in this appeal to the Constitution Bench is for deciding the important question of law : Whether the opinion of a typewriter expert is admissible in evidence under Section 45 of the Indian Evidence Act, 1872 ?

The respondent - S.J. Chaudhary was being tried in the Court of Addl. Sessions Judge, New Delhi, on charges punishable under Section 302, IPC and Sections 3 and 4 of the Explosive Substances Act, 1908 in Sessions Case No. 36 of 1983. The prosecution wanted to examine a typewriter expert for proof of certain incriminating facts against the respondent based on the identity of a typewriter on which a material document was alleged to have been typed. An objection was taken to the

admissibility of the opinion evidence of the typewriter expert under Section 45 of the Indian Evidence Act, 1872 (for short "Evidence Act") based on the decision of this Court in Hanumant vs. The state of Madhya Pradesh, AIR 1952 SC 343 = 1952 SCR 1091, and the Trial Court upheld that objection. Criminal Revision No.105 of 1987 was filed in the Delhi High Court by the prosecution challenging that order. The Delhi High Court has dismissed the revision, hence this appeal by special leave.

The Present criminal appeal came up for hearing before a Division Bench comprising of two learned Judges of this Court. The correctness of the observations in Hanumant's case by a Bench of three learned Judges on this point was doubted and reconsideration thereof was sought on behalf of the appellant. Accordingly, by order dated March 22, 1990 the Division Bench took the view that this important question of law involved in this appeal should be considered and decided by a larger Bench. This question of law is the only point involved for decision in this appeal and the decision thereon would dispose of the appeal.

In Hanumant (supra), while dealing with one of the arguments advanced therein, it was stated thus:

> "Next it was argued that the letter was not typed on the office typewriter that was in those days, viz., article B, and that it had been typed on the typewriter article A which did not reach Nagpur till the end of 1946. On this point evidence of certain experts was led. The High Court rightly held that opinion of such experts was not admissible under the Indian Evidence Act as they did not fall within the ambit of section 45 of the Act. This view of the High court was not contested before us. It is curious that the learned Judge in the High Court, though he held that the evidence of the experts was inadmissible, proceeded nevertheless to discuss it and placed some reliance on it. The trial magistrate and the learned Sessions Judge used this evidence to arrive at the finding that, as the letter was typed on article A which had not reached Nagpur till the end of December, 1946, obviously the letter was antedated. Their conclusion based on inadmissible evidence has therefore to be ignored."
>
> (Page 1110) (emphasis supplied) The above passage in that decision is the basis of the view taken that the opinion of a typewriter expert is not admissible under the Evidence Act and that it does not fall within the ambit of Section 45 of the Act. It is significant that this view taken by the High Court in that case was not even contested in this court and, therefore, the decision in Hanumant proceeds on the concession that the evidence of a typewriter expert is not admissible in evidence under Section 45 of the Act. In our opinion, the decision in Hanumant cannot be taken as deciding that point even though on the basis of that observation the evidence of typewriter expert was excluded as inadmissible. This question of law has, therefore, to be answered without any further assistance being available from the decision in Hanumant.

In the Indian Evidence Act, 1872, Chapter II relating to 'Relevancy of Facts' contains Sections 5 to 55 and therein under the heading 'Opinions of Third Persons, when relevant' are Sections 45 to 51.

Section 45 reads thus:

> "Opinions of experts - When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting [or finger impressions] (Ins. by Act 5 of 1899, S. 3), the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] (Ins. by Act 18 of 1872, S. 4), [or finger impressions] (Ins. by Act 5 of 1899, S. 3), are relevant facts. Such persons are called experts."

Illustration (c) to Section 45 is as under:

> "(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.
>
> The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant."

The plain meaning of Section 45 is that the Court in order to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting, or finger impressions can treat the opinion upon that point of person specially skilled in such foreign law, science or art, or in questions as to identity of - handwriting, or finger impressions as relevant facts. In other words, the opinion of persons specially skilled in such foreign law, science, or art, or questions as to the identity of handwriting or finger impression, called experts therein, are relevant facts. The opinion of such experts is admissible in evidence as relevant facts by virtue of Section 45 of the Evidence Act.

In our opinion, irrespective of the view taken on the question of meaning of the word 'handwriting' in Section 45 to include typewriting, the word 'science', occurring independently and in addition to the word 'handwriting' in Section 45, is sufficient to indicate that the opinion of a person specially skilled in the use of typewriters and having the scientific knowledge of typewriters would be an expert in this science; and his opinion about the identity of typewriting for the purpose of identifying the particular typewriter on which the writing is typed is a relevant fact under Section 45 of the Evidence Act. It is obvious that the Indian Evidence Act when enacted originally in 1872 did not specifically mention typewriting in addition to handwriting because typewriters were then practically unknown. However, the expression 'science, or art' in Section 45 in addition to the expressions 'foreign law' and 'handwriting' used in the Section as originally enacted, and the expression 'finger impressions' inserted in 1899 is sufficient to indicate that the expression 'science, or art' therein is of wide import. This expression 'science, or art' cannot, therefore, have a narrow meaning in Section 45 and each of the words 'science' and 'art' has to be construed widely to include within its ambit the opinion of an expert in each branch of these subjects, whenever the Court has to form an opinion upon a point relating to any aspect of science or art.

The meaning of the word 'science' as understood ordinarily with reference to its dictionary meaning must be attributed to the word as used in Section 45 of the Indian Evidence Act. Some of the meanings given in the dictionaries are :

The Oxford Encyclopedic English Dictionary :

"Science.....a systematic and formulated knowledge, esp. of a specified type or on a specified subject (political science). b. the pursuit or principles of this....."

The New Shorter Oxford English Dictionary, Vol. 2.,:

"Science...2a Knowledge acquired by study; acquaintance with or mastery of a department of learning 3a. A particular branch of knowledge or study; a recognized department of learning;..."

Collins Dictionary of the English Language:

"Science n. 1 the systemetic study of the nature and behavior of the material and physical universe, based on observation, experiment, and measurement, and the formulation of laws to describe these facts in general terms. 2. the knowledge so obtained or the practice of obtaining it. 3. any particular branch of this knowledge: the pure and applied sciences. 4. any body of knowledge organized in a systematic manner.

5. skill or technique..."

It is clear from the meaning of the word 'science' that the skill or technique of the study of the peculiar features of a typewriter and the comparison of the disputed typewriting with the admitted typewriting on a particular typewriter to determine whether the disputed typewriting was done on the same typewriter is based on a science study of the two typewritings with reference to the peculiarities therein; and the opinion formed by an expert is based on recognized principles resulting the scientific study. The opinion so formed by a person having the requisite special skill in the subject is, therefore, the opinion of an expert in that branch of the science. Such an opinion is the opinion of an expert in a branch of science which is admissible in evidence under Section 45 of the Indian Evidence Act.

There cannot be any doubt that the opinion of an expert in typewriting about the questioned typed document being typed on a particular typewriter is based on a scientific study of the typewriting is based on a scientific study of the typewriting with reference to the significant peculiar features of a particular typewriter and the ultimate opinion of the expert is based on scientific grounds. The opinion of a typewriter expert is an opinion of a person specially skilled in that branch of the science with reference to which the Court has to form an opinion on the point involved for decision in the case. In our opinion, on a plain constructing of Section 45 giving to the word 'science' used therein its natural meaning, this conclusion is inevitable; and for supporting that conclusion, it is not necessary to rely on the further reason that the word 'handwriting' in Section 45 would also include typewriting.

Statutory Interpretation by Francis Bennion, Second edition, Section 288 with the heading "Presumption that updating construction to be given" states one of the rules thus:

" xxx xxx xxx (2) It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.

xxx xxx xxx

(Page 617)

In the comments that follow it is pointed out that an ongoing Act is taken to be always speaking. It is also, further, stated thus:

> "In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded as 'a living Constitution', so an ongoing British Rct is regarded as 'a living Act'. That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording.
>
> xxx xxx xxx An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials."
>
> (Pages 618-619) There cannot be any doubt that the Indian Evidence Act, 1872 is, by its very nature, an 'ongoing Act.' It appears that it was only in 1874 that the first practical typewriter made its appearance and was marketed in that year by the E. Remington and Sons Company which later became the Remington typewriter - Obviously, in the Indian Evidence Act enacted in 1872 typewriting could not be specifically mentioned as a means of writing in Section 45 of the Evidence Act. Ever since then, technology has made great strides and so also the technology of manufacture of typewriters resulting in common use of typewriters as a prevalent mode of writing. This has given rise to development of the branch of science relating to examination of questioned typewriting.

I 'Questioned Documents', Second Edition, by Albert S. Osborn in the Chapter of "questioned typewriting" this aspect is considered and, therein at page 598, it is stated thus:

> "The principles underlying the identification of typewriting are the same as those by which the identity of a person is determined or a handwriting is identified. The identification in either case is based upon a definite combination of common or class qualities and features in connection with a second group of characteristics made up of divergences from class qualities which then become individual peculiarities. The mathematical principles outlined in the fourteenth chapter show how remote is the possibility of coincidence of even a few scars or deformities on a person, and coincidence of scars and deformities are as remote with typewriters as with persons."

In 'Photographic Evidence' by Charles C. Scott, Second Edition, Volume 1, under the heading "Typewriting-Identity or Non-identity of Typing" it is stated thus:

> "But even as the nationality of an individual may be perplexing but does not in any way hamper the determination of his personal identity by means of his finger- prints, his handwriting, or other reliable indications, so also the fact that it is often difficult to determine the make of a typewriter used in typing a document does not lessen the reliability of the scientific determination that a certain typewritten document was typed on a particular machine ragardless of its make. By the use of the proper microscopes and test plates the document examiner often can determine the question and by the use of photographic comparison charts he can demonstrate his findings, usually with unimpeachable certainty.
>
> From a comparison of the typewriting on a document which is a subject of controversy with specimens known to have been made on a certain typewriter it is usually possible to determine whether or not that typewriter was used in typing the subject document, provided the subject document contains sufficient typewriting and the specimens from the known machine are of a suitable kind. This is true because every typewriter when it comes off the assembly line is an individual and writes exactly like no other typewriter. When a typewriter is brand new the differences between it and other typewriters coming off the assembly line at the same time are extremely minute and elusive, but theoretically at least there are identifying differences that can be discovered by microscopic examination and demonstrated photographically. Furthermore, the more a typewriter is used the more individualistic it becomes and the easier it is to identify its typewriting. In some instances through overuse, misuse, or abuse a typewriter develops so many peculiarities that its typing can be identified readily with the naked eye."
>
> (page 636) In `Law of Disputed and Forged Documents' by J. Newton Baker, while dealing with the basic principles of identification of Typewriting generally it is stated:

" Since typewriting possesses individuality it can be compared and identified in the same manner as handwriting. ....."

(page 453) Therein while discussing individuality of typewriting, it is stated thus :

"The individuality of the typewriter is established by the character of its type impressions on the paper. These characteristics of typewriting can be analyzed, compared and differentiated and can be positively identified as those of a particular typewriter. This individual comparison and identification of characteristics may establish the genuineness or forgery of a typewritten instrument and when admitted in evidence is sufficient proof.

The occurrence of similar irregularities in typewriting it two or more machines is practicable impossible. The rule that the typewriter creates for itself a certain distinctive character of writing which identifies one certain machine from all other machines is well established. To prove that two instruments were written on a Particular typewriter similar coincidences of character- istics must be shown in both instruments, and these coincidences considered collectively must demand a single conclusion."

(pages-451-452) In 'Typewriting Identification (Identification System for Questioned Typewriting)' by Billy Prior Bates, the conclusion of the principles is stated thus:

"Conclusion TYPEWRITING identification is based on the same principle underlying handwriting identification, or any other thing which has a great number of possible variations.

The identification of a typewritten document can be likened to the identification of a particular person. A person may be identified in general by his sex, size, features etc., and in addition, for example, by a radical mastestomy scar. A typewriter may be identified in general by characteristics such as type design and size, possessed by all machines of a specific make and model, and in addition, for example, by a flaw in the serif on the letter E. No opinion as to identity should be based upon only a few dissimilarities (or similarities).

It is the combination of measurements and characteristics all together make up the conclusion.

When good, clear specimens ere available in sufficient amount for a scientific identification of the twelve points of comparison, it is possible to show with absolute certainty that a document was, or was not, produced by a particular machine.

The mathematical probability of the same combination of these characteristics divergent from the norm appearing in two machines is practically nil. The evidence of

> the twelve points of comparison can be conclusive proof."
>
> (page 59) It is, therefore, clear that the examination of typewriting and identification of the typewriter on which the questioned document was typed is based on a scientific study of certain significant features of the typewriter peculiar to a particular typewriter and its individuality which can be studied by an expert having professional skill in the subject and, therefore, his opinion on that point relates to an aspect in the field of science which falls within the ambit of Section 45 of the Indian Evidence Act.

Such opinion evidence of experts in the field has long been treated as admissible evidence in similar jurisdictions like United States as is evident from these standard text books on the subject.

In the present case, even without resort to the word handwriting' in Section 45 to include typewriting therein, in the view we have taken, the word 'science' is wide enough to meet the requirement of treating the opinion of a typewriter expert as an opinion evidence coming within the ambit of Section 45 of the Evidence Act. We may, however, add that the long accepted practice of Judicial construction which enabled the reading of the word 'telegraph' to include 'telephone' within the meaning of that word in Acts of 1863 and 1869 when telephone was not invented, would also be available in the present case to read 'typewriting' within the meaning of word 'handwriting' in the Act of 1872. This is so because what was understood by hand writing in 1872 must now in the present times after more than a century of the enactment of that provision, be necessarily understood to include typewriting as well, since typing has become more common than handwriting and this change is on account of the availability of typewriters and their common use much after the statute was enacted in 1872. This is an additional reason for us to hold that the opinion of the typewriter expert in this context is admissible under Section 45 of the Indian Evidence Act.

As a result of the above discussion, we hold that the observations made in the above extract in the decision in Hanumant on the basis of a concession does not reflect the correct position of law on this point and should, therefore, be treated as no longer good law on the point.

For the aforesaid reasons, we hold that the opinion of the typewriter expert in the present case is admissible under Section 45 of the Evidence Act and the contrary view taken by the Trial Court and the High Court is erroneous. This appeal is accordingly allowed and the impugned orders of the Trial Court and the High Court are set aside.