APPELLATE CRIMINAL

Before S. S. Sandhawalia, J.

CHHAT RAM, ETC.,—*Appellants.*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Appeal No. 1338 of 1971.

June 2, 1972.

Evidence Act (1 of 1872)—Section 45—Words 'Science or art' occurring therein—Meaning of —Tests for determinaion of a particular question whether of scientific nature—Stated—Expert testimony regarding the printed word or typescript—Whether admissible.

Held, that the general words 'science or art' as used in section 45 of the Evidence Act, 1872 are not to be given a narrow or constricted meaning; they must be liberally construed and the widest scope and amplitude has to be given to them. The term 'science' is not limited to the higher sciences and the term 'art' is not limited to the fine arts. These words, having their original sense of handicraft, trade, profession and skill in work, which, with the advance of culture, have been carried beyond the sphere of the common pursuits of life into that of artistic and scientific action. However, in order to determine whether a particular question is one of scientific nature or not and consequently whether expert testimony may or may not be admittted, the test is whether the subject-matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it without the assistance of experts. The further test is as to whether it partakes of the character of a science or art so far as to require a course of previous habit or study in order to obtain a competent knowledge of its nature. The words 'science or art' include all subjects on which a course of special study or experience is necessary to the formation of an opinion.

(Para 16)

Held, that where ticklish questions as to the genuineness or otherwise of a questioned document which may be printed or typed etc., arise, the need for expert testimony is vital to aid the Court in arriving at a decision on the point. Whatever may have been the state of law in earlier times, the Courts in India have now admitted expert testimony on telephony, psychiatry, identification of footmarks, and tracker's evidence, etc. As science and technology make rapid strides, vast areas of knowledge which were earlier beyond their reach, are now squarely within their sphere. Hence both on principle and on the language of section 45 of the Act

expert testimony in regard to the printed word or typescript is admissible.

(Paras 17, 19 and 20)

Editor's note :

In this case Hanumant Govind Nargundkar and another v. *State of Madhya Pradesh*, 1952, S.C. 343, *has been explained and it is observed that it does not create a blanket bar against the reception of expert testimony as regards typescript. The observations therein are only confined to this that expert testimony may not be looked at in regard to the fact whether the particular document was typed on a particular typewriter. They cannot be elongated or extended by way of analogy to other realms.*

Appeal from the order of Shri S. R. Bakshi, Additional Sessions Judge, Gurgaon, dated the 8th December, 1971, *convicting the appellants.*

Anand Sarup, Senior Advocate, with I. K. Mehta and I. S. Balhara, Advocates, *for the appellants.*

H. N. Mehtani, Assistant Advocate-General, Haryana, *for the respondent.*

JUDGMENT

SANDHAWALIA, J.—Does section 45 of the Evidence Act create a bar against the admissibility of Expert testimony on the point of the questioned nature or otherwise of a printed document ? This is one of the material questions arising in this Criminal Appeal in which the two appellants have been convicted and sentenced for having forged a valuable security and subsequently using the same as a genuine document.

(2) The facts disclose an ingenious attempt to use a forged ticket in order to obtain the first prize of rupees one lakh and over in the Haryana State Lotteries. The third draw of the above-said lotteries was held on the 29th of March, 1969, and the result was declared on the same day and subsequently published in a Government notification. The special prize of rupees one lakh and one ambassador car was declared to have been won by ticket number X-No. 78410. It is the case of the prosecution that all the tickets for the third draw were printed at the Thompson Press, Faridabad. Of

these tickets including the one, which won the prize and the booklets containing the tickets of X series were sold by the Lottery authorities to Messrs Express Lotteries Centre, Hatam Manzil Bombay. The above-said concern further sold the relevant booklet containing 50 tickets which included the winning one to its Sub-Agent Vijay Ram Chander Dhamankar of Poona. The said Sub-Agent sold the same to the genuine purchaser G. S. Kale who according to the prosecution is the true holder of the relevant ticket (Exhibit P. 1) and on the basis of the same he claimed the first prize.

(3) The prosecution case against the two appellants and their co-accused Badri Nath is that Joginder Lal appellant along with P.W. Sham Das was also a Sub-Agent of the Haryana Lotteries. It is not in dispute that Joginder Lal above-said had borrowed a sum of Rs. 3,000 from the appellant Chhat Ram and apparently being in financial straits was unable to repay the same. The prosecution suggests that the three accused persons in the case then hit upon a plan to secure the first prize of the lottery and to share the spoils of the crime equally. Joginder Lal appellant had obtained possession of two lottery tickets in which the column for the printing of the relevant number had remained blank. The scheme of the accused person was to get the winning number X-No. 78410 printed in the column for the same in one of the blank tickets and use the same subsequently for claiming the first prize. It is the case that this number was got printed and forged on Exhibit P. 3 at the behest of the two appellants by Badri Nath, co-accused in his press at Faridabad.

(4) Thereafter Joginder Lal and Chhat Ram appellants along with some others contacted P.W. I. L. Dhingra then posted as a Treasury Officer at Gurgaon and informed him that they were in possession of the winning ticket. The latter advised them to produce the ticket before the Director of the Haryana State Lotteries, who was to arrive in Gurgaon on the 1st of April, 1969. Accordingly the two appellants along with others appeared before the Director in the house of the Treasury Officer and presented the ticket Exhibit P. 3, upon which according to the prosecution the winning number had been forged. The Director asked the Treasury Officer to obtain the signatures and address of Chhat Ram appellant on the reverse of the ticket and

Shri A. N. Bansal the Assistant Treasury Officer obtained the signatures and addresses of both the appellants as Joginder Lal appellant had claimed that he had sold the ticket above-said to Chhat Ram and was consequently also entitled to the prize given to the seller of the winning ticket. Joginder Lal appellant was directed to produce the relevant counter-foil and he promised to do so after searching the same. However, the prosecution case is that this appellant later never produced the counter-foil nor claimed the prize which was the seller's due.

(5) It is then the case that apart from the real claimant G. S. Kale who had purchased the ticket Exhibit P. 1 and the two appellants, one Kanti Lal and another Dharam Singh also produced two tickets bearing the same number and laid a claim to the first prize. Naturally this aroused the suspicion in the mind of the Director and relevant enquiries were made. The disputed tickets were got examined by Shri Joginder Singh Overseer of the Government of India Press and he opined that the ticket Exhibit P. 1 produced by Mr. Kale was the genuine one and the others produced by Chhat Ram appellant and others were faked forgeries. Thereupon the Director sent a communication to the Inspector General of Police, Haryana, briefly mentioning the above-said facts on the basis of which the case against the appellants and their co-accused was registered. Subsequently the forged ticket Exhibit P. 3 and the genuine ticket Exhibit P. 1 were got examined by the Experts of the Thompson Press and subsequently by Dr. B. R. Sharma, the Director of the Forensic Science Laboratory, Chandigarh. The expert opinion was unanimous that the ticket Exhibit P. 1 produced by Mr. G. S. Kale was genuine whilst that produced by Chhat Ram appellant in connivance with Joginder Lal appellant was a forgery. After completion of investigation the appellants and their co-accused were committed for trial before the Additional Sessions Judge, Gurgaon, who whilst according the benefit of doubt to Badri Nath, co-accused has recorded a conviction under sections 467 and 471, Indian Penal Code, against the two appellants and has imposed sentences of five years' rigorous imprisonment on each count though they have been directed to run concurrently.

(6) The prosecution has examined as many as 38 witnesses in support of its case. However, as some of the evidence relates to the case against the acquitted co-accused whose acquittal has not been challenged by the State by way of appeal, it is unnecessary to make a reference thereto.

(7) The Expert testimony consists of four witnesses to the admissibility of which a challenge has been laid and around which the legal question revolves. P.W. 6 A. K. Mukerjee is the Works Manager, P.W. 12 P. N. Kirpal is the production Manager and P.W. 26 Joginder Singh is an Overseer of the Thompson Press, Faridabad, where the Lottery Tickets of the Third draw were admittedly printed. The fourth witness is P.W. 22 Dr. B. R. Sharma, the Director of Forensic Science Laboratory, Chandigarh. All these Expert witnesses have opined unanimously to the fact that the ticket Exhibit P. 3 produced by the two appellants was a forged document whilst Exhibit P. 1 presented by P.W.G.S. Kale was a genuine one.

(8) The material direct testimony consists first of P.W. 1 J. R. Dhingra, the Director of the State Lottery, P.W. 2 I. L. Dhingra, the Treasury Officer, Gurgaon, as also Shri A. N. Bansal, the Assistant Treasury Officer attached to the State Lotteries. The other set of witnesses is P.W. 4 G. N. S. Kale of Poona, the genuine purchaser and holder of the winning ticket and P.W. 5 Vijay Ram Chander Dhamankar is the Sub-Agent who had sold the above-said ticket to Shri Kale and subsequently produced the relevant counterfoil as well. Both these witnesses were not challenged by way of cross-examination. The other witnesses on this aspect of the prosecution case do not merit any detailed reference here. The prosecution also produced P.W. 29 Master Sham Das, a partner of Joginder Lal appellant in their business of the selling Agency of Haryana Lotteries. Muni Lal Aggarwal, P. W. 7 an Assistant in the Loharu Sub-Treasury deposed that in the account relating to Sham Das and Joginder Lal appellant, no ticket of the X Series of the Third Draw of the Haryana Lotteries has ever been sold to them. P.W. 9, Inder Singh Gandhi, Assistant Treasury Officer, Faridabad, deposed that Joginder Lal appellant had met and told him that he had a blank ticket of the third draw of the Haryana State Lottery. P.W. 10 Deen Dayal was examined regarding his having accompanied the two appellants to the house of the Treasury Officer and having met the Director there on the 1st of April, 1969. However, he did not support the prosecution case in full and was cross-examined at length. The prosecution also led evidence of P.W. 14 Gobind Ram Bhatia to show that blank tickets could by inadvertance be sold over to the Agents and this witness deposed that he had handed over such a blank ticket to the Director and was awarded a prize. The prosecution also led evidence to show that Joginder Lal appellant had borrowed a sum of Rs. 3,000 from Chhat Ram appellant and the relevant

pronote, Exhibit P. R. had been executed to evidence the same. P.W. 37 Shri M. S. Saini, who was posted as Judicial Magistrate 1st Class at Ballabgarh on 21st of May, 1969, deposed that Mukhtiar Singh, Inspector C.I.D. produced Joginder Lal appellant before him for the purpose of recording his statement as as a witiess under section 164, Criminal Procedure Code. Thereafter he recorded the statement Exhibit PAH/3 correctly. In cross-examination the witness conceded that he did not observe any of the formalities required under section 164 for recording the confessional statement of an accused person. P.W. 35 Mukhtiar Singh, Inspector C.I.D. and a number of other police officials have appeared as prosecution witnesses to depose regarding their participation in the various stages of the investigation. The rest of the testimony is of a supporting and formal nature.

(9) Substantial parts of the prosecution case are not in dispute. In the statement under section 342, Criminal Procedure Code, Chhat Ram appellant admitted that he was in possession of the allegedly forged ticket, Exhibit P. 3 and that he had first contacted the Treasury Officer at Gurgaon on the 30th of March, 1969, and subsequently on the first of April, 1969, he had appeared before the Director of Haryana State Lotteries with the said ticket to claim the first prize. He, however, claimed that the ticket, Exhibit P. 3 produced by him is the genuine one and that at the request of the Director he had himself photographed with the said ticket. This appellant, however, denied that when he had appeared before the Lottery authorities he was accompanied by his co-accused Joginder Lal. He also denied that he had informed the authorities that he had purchased the ticket from Joginder Lal and instead claimed that he had done so from someone in Delhi. This appellant admitted that at the asking of the Director and at the behest of the Treasury Officer he had signed on the back of Exhibit P. 3 upon which Din Dayal P.W. who was with him had written the address. He also admitted that he had advanced a loan of Rs. 3,000 to Joginder Lal, co-accused and that he had not repaid the amount so far. The rest of the prosecution allegations were either denied or ignorance was pleaded thereto. It was stated that he produced the ticket Exhibit P. 3 in the belief that it was a genuine one. Joginder Lal appellant admitted that he along with Master Sham Dass was a duly authorised agent for selling the Haryana State Lotteries Tickets. He also admitted that he had borrowed a sum of Rs. 3,000 from Chhat Ram, co-appellant which he had been unable to repay. However, he denied having sold the forged

ticket Exhibit P. 3 to Chhat Ram appellant and also denied that he was with him when the same was presented to the lottery authorities. The rest of the prosecution allegations were also controverted and it was stated that he had made the statement, Exhibit PAH/3 to the Magistrate at Ballabgarh under the pressure of the police and on receiving an assurance that he would be made a witness in the case. No defence was adduced on behalf of either of the appellants.

(10) The crucial issue in the case is indeed a narrow one. It is in terms this—

> "Whether serial No. X-78410 imprinted on the lottery ticket Exhibit P. 3 is subsequently forged or not ?

This is so because Chhat Ram appellant in terms admits the possession, the production and the claiming of the first prize in the lottery squarely on the basis of Exhibit P. 3. It is his case that this document including the serial number above-mentioned thereon is as genuine as Exhibit P. 1 produced by P.W.G.S. Kale who has successfully claimed the first prize.

(11) The prosecution in order to support its case that Exhibit P. 3 and in particular the number super imposed thereupon is a forgery relies on the testimony of four Expert witnesses, namely, P.W. 6 A. K. Mukerjee, P.W. 12 P. N. Kirpal, P.W. 26 Joginder Singh (all of the Thompson Press at Faridabad) and P.W. 22 Mr. B. R. Sharma, the Director of Forensic Science Laboratory, Chandigarh, P.W. 26, an Overseer in the Government of India Press, Faridabad, listed the following six reasons for his opinion that Exhibit P. 1 produced by G. S. Kale was the genuine one—

1. The series type 'X' corresponds to the genuine type face is Chelthenem 18, Condensed bold.
2. Movement of the digits on the ticket is similar to the movement of the digits of machine No. 386008 Tutilo numbering machine, made in Germany and which is available with the Thompson Press, Faridabad.
3. Numbering of counterfoils produced is similar to the genuine numbering machine. It was printed by a Machine No. 386012 of Tutilo numbering machine, made in Germany and which is available in Thompson Press Faridabad.

4. The space between number and alphabets is same on the ticket and the counterfoil.

5. Types of series are same on the ticket and counterfoil, i.e., Chelthenem 18, bold condensed.

6. Inking of ticket is genuine, i.e., with densed black.

In sharp contrast thereto this witness opined that Exhibit P. 3 was a forged one for the following four reasons:—

1. Ink shade is not the same as in the genuine ticket, i.e., Exhibit P. 1.
2. Distance between number and X is little more.
3. There is no alignment with X and numbering.
4. The numbering has been done in a slanting position.

All the above-said reasons were listed by this witness in his report Exhibit P.D. which he has submitted after due comparison and which was endorsed by his superior Mr. Mukerjee,—*vide* Exhibit P.D./1.

(12) Again Mr. P. N. Kirpal, the Production Manager of the Thompson Press after due comparison opined that Exhibit P. 1 was the genuine ticket number from his press whereas the numbering of Exhibit P. 3, the forged ticket was different for the following four reasons:—

1. The position of X was outside the red border which in case of the tickets (genuine) it is always inside the red line.
2. The face of X is different from the face of X on the genuine ticket.
3. The impression is of a weaker nature in the forged ticket than in the genuine.
4. If the same type of machine is used in numbering the tickets the space from word No. to first figure will be the same in each case.

The detailed views expressed by the above-said two witnesses were endorsed,—*vide* Exhibit P.D./1 by P.W. 6 Shri A. K. Mukerjee, the

Works Manager of the Thompson Press. He listed his qualifications as a Printing Technologist from London and had worked for three years in West Germany and now was working for the last 14 years in India in various organisations. Mr. B. R. Sharma the Director, Forensic Science Laboratory, Chandigarh, endorsed the opinions of the above-noted three witnesses and gave his added reasons as follows regarding the variations of the distances of the serial number in Exhibits P. 1 and P. 3 :—

1. The total distance covering figure 78410 is 3.4 cm. in the case of P. 1 while it is 3.5 cm in case of P. 3.

2. The distance covered by the digits alone is 3 cm in the case of P. 1 and 2.9 cm in case of Exhibit P. 3.

Having listed in detail his reasons which appear in the report Exhibit P.A.B. this witness opined that the number 78410 on ticket Exhibit P. 1 had been printed with the machine Exhibit P. 10. Finally he concluded in these terms :—

> "I carefully examined the numbers on the two tickets and came to the conclusion that the numbers of the two tickets were printed with different machines. This conclusion was reached by me after careful study of the dimensions of the digits and letters individually and *inter se*."

(13) A detailed cross-examination was levelled against the above-said four Expert Witnesses. But the significant thing is that nothing material was elicited in favour of the defence therein. The testimony of all these four witnesses apart from being unanimous is based on reasons and supported by a reference to their expert knowledge on the point. Learned counsel for the appellants could advance no cogent reason why the same should not be accepted nor any serious criticism of the appraisal thereof by the trial Court could be levelled.

(14) Unable to pose any serious challenge to the overwhelming nature of the above-quoted Expert testimony (and indeed no criticism of the evidence of these four witnesses was at all made) Mr. Anand Sarup fell back primarily on the contention that the evidence

of the four Expert witnesses was wholly inadmissible and should thus be completely excluded from consideration. It was contended that no Expert opinion regarding the forgery of printed documents like Exhibits P. 3 and P. 1 was receiveable in evidence and the case was not covered by section 45 of the Evidence Act. Primary reliance was on a line (even a word) in the observations made in *Hanumant Govind Nargundkar and another* v. *State of Madhya Pradesh* (1).

(15) The issue of the admissibility or otherwise of the Expert testimony in the present case is both significant and not entirely free from difficulty. The controversy needs must revolve around the relevant provision of the Evidence Act and it is best to first set it down for facility of reference :—

> *Section* 45. "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, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.
>
> Such persons are called experts.
>
> *Illustrations*
>
> (a) * * * * * *
>
> (b) * * * * * *
>
> (c) * * * * * *"

(16) It is expedient first to consider the issue in the light of the language of the above quoted provision of the statute and upon first principles before adverting to Indian precedents bearing directly on the point. It is evident from the plain language of section 45 that the nature of the expert testimony adduced in the present case cannot come within an opinion regarding identity of handwriting or finger impressions. Consequently to become admissible this testimony must squarely fall within the general words 'science or art' as used in this section. Now this appears to be well settled that these words in the statute are not to be given a narrow or constricted

(1) A.I.R. 1952 S.C. 343.

meaning. They must be liberally construed and the widest scope and amplitude has to be given to them. The learned authors of the authoritative Indian Work on the Law of Evidence, namely, Woodroffe and Ameer Ali in the Twelfth Edition have this to say—

> "The words 'science or art', if interpreted in a narrow sense, would exclude matters upon which expert testimony is admissible both in England and America, such as questions relating to trades and handicrafts. But it is apprehanded that these words are to be broadly construed the term 'science' not being limited to the higher sciences and the term 'art' not being limited to the fine arts, but having its original sense of handicraft, trade, profession and skill in work, which, with the advance of culture, has been carried beyond the sphere of the common pursuits of life into that of artistic and scientific action."

The above view has repeatedly received judicial approval. However, difficulties do and are bound to arise in order to determine whether a particular question is one of scientific nature or not and consequently whether expert testimony may or may not be admitted. The same learned authors have then formulated the following as a plausible test :—

> "Is the subject-matter of inquiry such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it without the assistance of experts ? Does it so far partake of the character of a science or art as to require a course of previous habit or study in order to obtain a competent knowledge of its nature, or is it one which does not require such habit or study?"

Similarly Stephen in his authoritative work—Digest of the Law of Evidence also says that—

> the words 'science or art' include all subjects on which a course of special study or experience is necessary to the formation of an opinion."

(17) Applying the aforesaid test, it appears to me that where ticklish questions as to the genuineness or otherwise of a questioned document which may be printed or typed etc. arise, then need for

expert testimony is vital to aid the Court in arriving at a decision on the point. Indeed now there appears to be no doubt that in the allied systems of jurisprudence from which we mainly derive our sources, such expert testimony is now readily and invariably admitted. Osborn, the leading American author, in his well-known book 'Questioned Document Problems' noticed as early as 1946 that in the 19th century the Courts were at first shy to admit disputed typewriting evidence but subsequently now in every State such evidence is admitted. At the end of Chapter XVIII devoted to "Forgery on a Typewriter", the learned author cites a number of American cases in which expert testimony has been admitted in the context of the printed or the type-written words. On these points, reference may also be made to *Bartholomew* v. *Walsh*, (2), where the Supreme Court of Michigan upheld the admission of an expert on type-script who opined that 'page 5 of the book had been written by different operator on a different typewriter than page 6, as indicated by the alleged differences in type, in margining, in punctuation, in capitalizing, and in the watermarks on the paper.' The decision was followed by the Circuit Court of Appeals in *Hartzell* v. *United States* (3), where it was held that the question of the identity or similarity of two or more pieces of typewriting may be the subject of expert testimony. A writ of *certiorari* was taken out against the abovesaid judgment but the same was summarily denied by the United States Supreme Court. Reverting back to Osborn, it deserves notice that the learned author devoted three chapters to the detection of forgery by printing or typewriting. He opined as follows:—

> "It is incorrectly assumed that machine writing, unlike handwriting, furnishes no evidence of its origin or its fraudulent character, and for this reason this useful machine furnishes an added temptation to the evilminded."

However, after enumerating a number of tests for the detection of printed and type-written forgery, the learned author categorically opines in these terms :—

> "Taking all these five distinct qualities of typewriting in combination, it will readily appear that a typewriting machine,

(2) 157 North Western Reporter 575.
(3) 72 Federal Reporter (2nd Series) 569.

> especially after it has been in use, will produce in its writing a result that is distinctly individual. It is not an exaggeration to say that with many machines an individuality is developed which makes the machine differ from all other machines manufactured."

It will be evident from the above that in America expert testimony regarding printing and type-script is now invariably admissible. That it is so in England as well again does not admit to be of any doubt. Reference to the second impression of the leading book on the subject "suspect Documents" by Wilson R. Harrison makes this evident. The learned author has devoted considerable space to the science of printed and typescript forgeries.

(18) Their Lordships in *Pritam Singh and another* v. *The State of Punjab* (4) had admitted the expert testimony on so rudimentary a science as that of footprint identification and that of a tracker. It was observed as follows:—

> "The science of identification of footprints is no doubt a rudimentary science and not much reliance can be placed on the result of such identification. The track evidence, however, can be relied upon as a circumstance which, along with other circumstances, would point to the identity of the culprit though by itself it would not be enough to carry conviction in the minds of the Court."

Similarly in *Bachraj Factories Ltd.* v. *Bombay Telephone Co. Ltd.* (5), it was held that telephony was a "science or art" and the testimony of expert witnesses in this regard was admissible under section 45. In *Baswantrao Bajirao* v. *Emperor* (6), a Division Bench consisting of Bose and Hidayatullah, JJ. (as their Lordships then were) upheld the admission of the testimony of a psychiatrist and weighed the same with meticulous care.

(19) Whatever may have been the state of law in earlier times, it is evident that in construing the words 'science or art' in section 45, a static view can no longer be tenable. As has already been noticed, the Courts in India have now admitted expert testimony on

(4) A.I.R. 1956 S.C. 415.
(5) A.I.R. 1939 Sind 245.
(6) A.I.R. 1949 Nagpur 66.

telephony, psychiatry, identification of footmarks, and tracker's evidence etc. which in an earlier era of the late 19th or the earlier 20th century may well have been excluded. As science and technology make rapid strides, vast areas of knowledge, which were earlier beyond their reach, are now squarely within their sphere. A significant example is that of the space race. Only a decade ago, the landing of a human being on the moon could well be dismissed as a mere fantastic imagination fit only for science fiction or for children's comics. It has now become a fact. Indeed if a substantial question in such a context were now to arise in a Court of law, it could hardly exclude expert testimony on space technology.

(20) I am, therefore, inclined to the view that both on principle and on the language of section 45 expert testimony in regard to the printed word or typescript would be admissible and may well provide a valuable aid to a Court in arriving at its decision. It, however, remains to be seen whether any bar has been created by authority against the reception of such evidence.

(21) I would, therefore, now advert to those authorities though not directly covering the point but bearing a close analogy. There is no direct precedent regarding expert testimony in regard to a printed document and nearest analogy is that of typescript. The decisions on the point strike a certain discordant note. In *Manabendra Nath Roy.* v. *Emperor,* (7) Thom, J. took the view that the evidence of an expert regarding the peculiarities of the particular typewriting machine was admissible and the Court was entitled to take into consideration and arrive at its own conclusion. Later, however, a Bench consisting of Sulaiman, C.J. and Mr. Justice Young in *S. H. Jhabwala and others* v. *Emperor* (8) without noticing the above quoted earlier decision of Thom, J. expressed the view that the opinion of an expert, to the effect that one document has been typewritten on the same machine as another document was not admissible under section 45 of the Evidence Act. However, it proceeded to observe as follows:—

> "The Court may ask the witness to explain points in favour of the view whether the two documents have or have not been typewritten on the same machine, but must come to its own conclusion and not treat such assistance as an expert opinion a relevant fact in itself."

(7) A.I.R. 1933 All. 498.
(8) A.I.R. 1933 All. 690.

This Bench decision was followed again in *Bacha Babu and others* v. *Emperor* (9), wherein it was again opined that the Court was entitled to ask the expert witness the points in favour of the view whether the two documents have or have not been typewritten on the same machine and with such assistance come to its own conclusion. Having so observed, the Bench then proceeded to consider such expert evidence along with its own observations of the questioned document and evaluated the case in the light of all those factors. It appears to me that the above noted three Allahabad decisions would leave the law in a slightly unsettled state. Firstly because the Single Bench decision of Mr. Justice Thom in *Manabendra Nath Roy* v. *Emperor* (7) was not noticed and has not been expressly overruled in the two subsequent Division Bench decisions. These Bench decisions also, though they have expressed an opinion that expert testimony would not be admissible under section 45, have nevertheless held that such evidence may be taken into consideration as an aid by the Court in arriving at its independent opinion. Thus whilst the practical effect, therefore, is that such evidence could be allowed to be brought on the record and be evaluated by the Court which can hardly be the case if it was strictly inadmissible.

(22) No other authority was cited before me for the intervening period till we came to the authoritative observations of their Lordships of the Supreme Court in *Hanumant's case* (1) (supra). There is a very brief observation in the said decision pertinent to the point and it is in these terms :—

> "Next it was argued that the letter was not typed on the office typewriter that was in use in those days, viz., Art B and that it had been typed on the typewriter Art. 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 opinions of such experts were 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."

(9) A.I.R. 1935 All. 162.

In interpreting the abovesaid observations of their Lordships of the Supreme Court in *Chelaji Gomaji & Co.* v. *Bai Jashodharabai Shambhudutt Nishir* (10) Tendolkar, J. whilst recording an interlocutory order on the original civil side, has opined that the Allahabad decisions above quoted were probably not good law after the pronouncement in *Hanumant's case* (1) abovesaid.

(23) In the context of the decision in *Hanumant's case*, I must notice a contention raised on behalf of the respondents which I cannot but characterise as slightly audacious. It was first argued that their Lordships did not and in fact have not declared the law regarding the admissibility of expert testimony on typescript in the said decision. In the alternative it was argued that the decision was rendered 20 years ago and scientific knowledge had made so rapid strides that expert evidence on the point can now well be termed within the ambit of the words "science or art" used in section 45 in this context as well. Reliance was placed on various expert treatises in which a reconsideration of the decision in Hanumant's case has been suggested if this is to be construed as laying down that expert testimoney on a typescript is inadmissible. In particular, the following submission in Woodrofee and Ameerali's Law of Evidence was relied upon:—

> "The Supreme Court has held in *Hanumant* v. *State of M. P.* (1) that the opinion of an expert that a particular letter was typed on a particular typewriting machine does not fall within the ambit of section 45 of the Evidence Act and it is not admissible. It is respectfully submitted it may require reconsideration in the light of the modern knowledge indicated to some extent by the research materials which show that detection of forgeries of typewritten documents has become an integral part of the science of questioned documents."

(24) I only notice the above argument in order to reject it forthrightly. No argument seeking a reconsideration of a decision of the Supreme Court can possibly be allowed to be raised in this forum. It is well settled that if their Lordships clearly intended to declare the law on a particular point, then even though the observation may be *obiter dictum*, they are nevetheless binding upon the High Court.

(10) 60 (1958) Bom. L.R. 251.

The only issue, therefore, in this Court is as to what has been exactly intended to be laid down by the above quoted passage in *Hanumant's case* (1).

(25) Now a close analysis of the judgment in *Hanumant's case* patently discloses that the issue of admissibility or otherwise of expert testimony under section 45 was never agitated before their Lordships. That being so, their Lordships have pronounced no independent opinion upon the same. It is expressly noticed that the view of the High Court of Nagpur, which was under appeal, was not contested before their Lordships of the Supreme Court and it was in this situation that their Lordship used the word rightly in regard to the judgment of the Court below. The observation in thsi regard is thus patently *ex concessnis*. It appears from the judgment that the learned Judge of the Nagpur High Court, though opining that expert testimony was not admissible, had nevertheless not only taken it into consideration but also placed some reliance thereon. This their Lordships of the Supreme Court naturally described as curious. It is also patent that in the absence of any argument on the point, their Lordships of the Supreme Court referred to the matter only in the briefest manner and disposed it of in a few lines on the basis of the concession made as regards the correctness of the view of the Nagpur High Court. The Full Bench of the Rajasthan High Court in *Jeevraj and another* v. *Lal Chand and others* (11) has expressly commended the law as laid down in the following terms by the Division Bench in *Smt. Bimla Devi* v. *Chaturvedi and others* (12) as regards the binding nature of a precedent:—

> "It is true that where a point has not been argued and certain general observations have been made which may seem to cover points not argued before the Court, they may not be considered to be binding, and in such cases the binding nature of the observation of the Court may be limited to the points specifically raised and decided by the Court. It is also true that pronouncements made on concessions of counsel, when a point is not argued, are not binding—*Venkanna* v. *Laxmi Sannappa* (13), but otherwise even what is generally called an *obiter dictum* provided it is upon a

(11) A.I.R. 1969 Raj. 192.
(12) A.I.R. 1953 All. 613.
(13) A.I.R. 1951 Bom. 57.

point raised and argued, is binding upon the Courts in India.",

Again in the Supreme Court decision in *B. Shama Rao* v. *The Union Territory of Pandichery* (14) Shelat, J. speaking for the majority, made the following terse observation:—

> "It is trite to say that a decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein."

Construing the ratio in *Hanumant's case* (1) in the light of the abovesaid enunciation of the law, I am inclined to take the view that their Lordships of the Supreme Court did not intend to lay down any principle of creating a blanket bar against the reception of all expert testimony as regards typescript. At the highest, the observations are confined only to this that expert testimony may not be looked into in regard to the fact whether the particular document was typed on a particular typewriter. The observations cannot possibly be elongated or extended by way of analogy to other realms as well.

(26) In the present case it is patent that this is not a case of typescript but of printing. A printing machine is not something so commonplace as an ordinary typewriter. The expert had wanted to connect the genuine ticket Exhibit P. 1 with the specific printing machine Exhibit P. 10 installed and working in the Thompson Government Printing Press. In the American case *Sunday* v. *Hagenbach* (15), it has been held that typewriting is not printing. I am, therefore, of the view that *Hanumant's case* (1) abovesaid does not create any bar to the admissibility of the expert evidence of the four witnesses as regards the forged ticket Exhibit P. 3 and on the point of the genuineness of Exhibit P. 1, would consequently reject the argument of Mr. Anand Sarup that the testimony of P.Ws. 6, 12, 22 and 26 in the present case be excluded. I affirm the admissibility and the weight attached thereto by the Court.

(27) Having held as above that the Expert testimony in the present case is admissible *per se* or at least as an aid to the Court for arriving its own conclusions I have for myself examined the two

(14) (1967) 20 S.T.C. 215.
(15) 18 Pennsylvania C.O. 540.

documents—the forged ticket Exhibit P. 3 and the genuine one Exhibit P. 1 as also the counter-foil book Exhibit P. 2 and the particular counter-foil of the genuine ticket Exhibit P. 2/1. An examination of these documents even by the bare eye and also under a common magnifying glass bears out the fact that the reasoning given by the four Experts and the opinions recorded by them for holding that the serial number on Exhibit P. 3 is a forgery are of weight and validity.

(28) Learned counsel for the appellants also resorted to a rather ingenious argument by contending that it may well be possible in the mass production of the lottery tickets that certain serial numbers may be duplicated on more than one of the lottery tickets. It was argued that it may be sheer co-incidence or accident that the ticket Exhibit P. 3 produced by Chhat Ram appellant may be bearing the duplicate serial number as that of the genuine one produced by Mr. G. S. Kale. Apart from the ingenuity of the learned counsel, there does not appear to be much merit in this contention. Indeed no factual basis for the same is laid on the present record and any such suggestions to the Expert witnesses were stoutly repelled. The lie direct to this contention appears in the testimony of P.W. 12 P. N. Kirpal elicited on behalf of the appellant himself in cross-examination in these terms:—

> "It is a fact that our press checks the tickets individually before they are actually bound in a packet. There is always a man at the time of printing to check the numbers on the tickets. Since there are six/seven times checking done in respect of the tickets there is no probability that a ticket would go without number or that the same number is printed on more than one ticket."

The contention above-said is further falsified in the present case by the admitted fact that no counter-foil of the disputed ticket Exhibit P. 3 was or ever could be produced. There is the overwhelming testimony of P.Ws. 1, 2 and 3 to the effect that in the first instance Chhat Ram appellant had in terms stated that he had purchased the ticket from Joginder Lal appellant and the latter in even more categorical terms had stated that he would produce the counter-foil upon the basis of which he could even claim the sellers prize for the same. Significantly, however, at the trial both the appellants took a *volte face* in this regard and the corresponding counter-foil of Exhibit P. 3 was never produced. The salient fact is that a substantial part of the

prosecution case in this regard went unchallenged and is in conclusive support of its case. P. Ws. 4, 5 and 38 were not challenged at all on behalf of the defence by way of cross-examination. Their testimony conclusively proves that the ticket-book Exhibit P. 2 containing the winning ticket was sold by Shri Ram Chander Anand Mangaonkar to P.W. 5 Vijay Ram Chander Dhamnkar. P. W. 5 then deposed in terms that he had sold the genuine ticket Exhibit P. 1 numbered as X-78410 to Shri G. S. Kale of Poona. He stated that Exhibit P. 2/1 was the relevant counter-foil and on its front side he had written the name of the purchaser Shri G. S. Kale and on the back thereof were his signatures and address which he proved. Conclusive corroboration to this is provided by P.W. 4 G. S. Kale, who deposed to have purchased the relevant ticket from P.W. 5 and subsequently having claimed the prize therefor. The prosecution, therefore, has been conclusively able to establish the genuineness of the ticket Exhibit P. 1 which as already noticed was hardly challenged on behalf of the defence. It is obvious that two genuine tickets cannot proceed or be related to the same counter-foil and in the present case the only genuine counter-foil proved is Exhibit P. 2/1.

(29) Mr. Anand Sarup had gone to the length of faintly contending that it was incumbent on the prosecution to give meticulous accounts regarding precisely the number of tickets printed, how and when sold to which purchaser and the manner and safe custody of each one of these. It was argued that in the absence of this testimony the prosecution had failed to discharge the burden laid upon it. I only notice the argument to reject the same for it does not appear relevant how the prosecution was bound to do what the learned counsel for the appellants claims to be its duty. The burden lay on it to prove that Exhibit P. 3 was a forged document and had been used as genuine and I am of the view that it had adequately discharged the same.

(30) In the present case there is the wholly disinterested and unimpeachable testimony of P.Ws. 1, 2 and 3 to show that Chhat Ram appellant along with Joginder Lal had appeared before these witnesses and claimed to have purchased Exhibit P. 3 from his co-appellant who equally supported him on the point that he had sold the same to him. There is no reason to distrust this testimony and the denial of the appellant and the change of front later by him would only show that he had hardly a plausible reason or defence to offer against the

incriminating nature of this evidence. It is not denied that Chhat Ram appellant and Joginder Lal were well known to each other, as a debtor and creditor to the amount of Rs. 3,000 and that Joginder Lal had failed to discharge his financial liabilities to this appellant. Their previous association is thus not in doubt. It is Chhat Ram's own case that he had himself photographed with the forged ticket Exhibit P. 3. As already noticed no counter-foil therefor was forthcoming and in its absence a specious plea was taken that the ticket was purchased from an unknown seller in Delhi. It is significant to remember that the seller of the winning ticket is himself entitled to a substantial prize which in the present case was never claimed. On the evidence it must, therefore, be held that the prosecution has been able to establish the case against Chhat Ram appellant and his conviction and sentence are hereby sustained and his appeal dismissed.

(31) Mr. Anand Sarup made a faint attempt to distinguish the case of Joginder Lal appellant. Though the objection as to the admissibility of the earlier statement made by Joginder Lal to the Judicial Magistrate must succeed, there nevertheless remains overwhelming evidence to support the conviction. In the course of the investigation the prosecution had got examined Joginder Lal under section 164, Criminal Procedure Code, before P.W. 37 Mr. M. S. Saini, then the Judicial Magistrate at Ballabgarh. This evidence was got recorded on the premises that he was to appear as a prosecution witness. In cross-examination Mr. Saini conceded that he did not observe any of the formalities which were necessary for recording of the confessional statement Exhibit P.A./3 under section 164 of the accused person. Counsel, therefore, rightly relied on *Nazir Ahmad* v. *King Emperor* (16) and *State of Uttar Pradesh* v. *Singhara Singh and others*, (17) and in view of these authorities it must be held that Exhibit P.H./3 could not be taken into consideration against this appellant.

(32) Nevertheless there is the unimpeachable testimony of P.W. 1 J. R. Dhingra, and P.W. 2 I. L. Dhingra and P.W. 3 Amar Nath Bansal against Joginder Lal appellant which fully incriminates him in the present case. It is not in dispute that Joginder Lal was an authorised agent for the sale of Haryana Lottery Tickets. This stands fully proved by the testimony and the documentary evidence tendered by P.W. 9 Inder Sain Gandhi, P.W. 29 Master Sham Dass and is, even

(16) A.I.R. 1936 P.C. 253.
(17) A.I.R. 1964 S.C. 358.

otherwise hardly in dispute. His association with Chhat Ram has already been referred to. Significantly this appellant himself stated that he was known to P.Ws. 1, 2 and 3 and not a hint or suggestion of animus appears as to why such responsible officers are deposing against him. The sole criticism offered against this testimony was that the details of their evidence were not found precisely in their earlier police statement or did not find place in the first information report. It is significant that in the present case the first information report was merely despatched by the concerned official for the purpose of the registration of the case and an investigation therein to. It cannot be equated with the version of an eye-witness in a hurt case wherein a substantial account of the incident is usually required to be stated. The omissions in the police statement also of some of the witnesses on this point are hardly of any significance. The testimony of these three witnesses against this appellant also must be accepted as also other evidence to which reference has been earlier made in the discussion of the case in the context of Chhat Ram appellant. I hold the view that the prosecution has been equally able to establish the case against Joginder Lal appellant beyond reasonable doubt and the conviction and the sentence recorded by the trial Court in his case also must be affirmed. In the result the appeal fails and is hereby dismissed.

K. S. K.

REVISIONAL CRIMINAL.

Before Bal Raj Tuli, J.

ISHER DASS,—*Petitioner.*

versus.

AMAR NATH,—*Respondent.*

Criminal Revision No. 183 of 1971.

June 14, 1972.

Code of Criminal Procedure (Act V of 1898)—Section 197—Punjab Gram Panchayat Act (IV of 1953)—Sections 9 and 102(2)—Sarpanch—Whether removable only by sanction of the State Government—Previous sanction for his prosecution—Whether necessary under section 197.