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IN THE FIJI COURT OF APPEAL

CRIMINAL APPEAL NO. 12 OF 1987

Between:

SOHAN SINGH s/o Johra Singh

Appellant

- and -

BHAN MATI a.k.a. MALA SINGH

Respondent

Mrs. A. Hoffman for Appellant

Mr. S.M. Koya for Respondent

Date of Hearing: 17th September, 1987

Delivery of Judgment: 25~~th~~ September, 1987

JUDGMENT

Roper, J.A.

On the 13th June 1982 Dr. Bhajan Singh, a Medical Practitioner, and husband of the Respondent died at Labasa Hospital. As a last will could not be found the Respondent applied for and was granted Letters of Administration in relation to her husband's estate on the 30th November 1982. A year later the Appellant, Dr. Singh's brother, issued proceedings seeking revocation of the Letters of Administration and a grant of probate in solemn form in respect of what was alleged to be Dr. Singh's last will. This document is dated the 16th July, 1978 and appoints the Appellant as sole executor and beneficiary. It was claimed that this will had been handed to Harbans Kaur, Dr. Singh's mother, by the Doctor sometime after its execution for safe-keeping on terms that she was to tell no-one of its existence. Harbans Kaur said in evidence that her son had told her it was a will, an important document, making his brother sole beneficiary, but claimed to have forgotten about it following Dr. Singh's death until she was cleaning the house prior to Diwali 1983 when she and the appellant went through

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a suitcase containing various documents.

The Appellant's claim was heard by Rooney, J. on various dates between the 10th March and 10th December 1986 with judgment being delivered on the 30th January 1987. He dismissed the claim for revocation, declined to pronounce probate in solemn form in favour of the alleged last will and declared it to be a forgery. This is an appeal against his judgment.

The day before the appeal hearing Mrs. Hoffman for the Appellant filed an application seeking an adjournment to the next sittings to enable the Appellant to call fresh evidence, namely, that of a handwriting expert, Mr. C. Anderson of Sydney. We were not informed of the nature of Mr. Anderson's evidence, but that is by the way. We rejected the application and our reasons for so doing can be shortly stated.

The Appellant knew within days of filing his claim that it would be alleged that the will was a forgery. Furthermore, he had knowledge prior to the hearing that a handwriting expert to be called by the Respondent, Mr. J.A. West, had expressed the view that the signature on the will was not that of Dr. Singh. The Appellant had the further advantage that Mr. West's evidence was interpolated and heard before the Appellant had closed his case. An adjournment could have been sought by the Appellant at the conclusion of Mr. West's evidence with a view to calling another expert, but it was not. An application for leave to call further evidence was made sometime after the Appellant had closed his case, but was refused and properly so. Further evidence is admissible on an appeal but only if certain conditions are met. It must be such that it could not have been obtained at the trial with reasonable diligence; would or might, if believed, have a very important effect on the mind of the tribunal; and be of a type which inherently is not improbable. The Appellant failed to meet any of those conditions.

We turn now to the appeal. The purported will contains the signatures of three witnesses to what was alleged to be Dr. Singh's signature. They are Mohammed Hussein, his wife Shamsad Bano and Deo Karan. Only the first two were called as witnesses as the person Deo Karan has been neither identified nor located. Hussein and his wife gave evidence of a visit to Dr. Singh's surgery for the purpose of having their child's leg treated and claimed that it was during this visit that they were asked to witness the will.

Considering that five years had elapsed between the alleged witnessing of the will and when they would have been first asked to recall the event their evidence was quite remarkable for the detail and consistency of their recall. Suspiciously so. Both knew the precise time they had arrived at the surgery, which doors were open and which closed, and were able to recite the coversations that took place in some detail.

The main witness for the Respondent was a Mr. J.A. West of New Zealand, a forensic document examiner and hand-writing analyst. He has been engaged in this work for some 22 years and for 20 years was Chief Document Examiner and Hand-writing Analyst for the New Zealand Police Department. He retired in 1983 with the rank of Detective Chief Inspector but still does work for the Police department and other Government agencies. As all members of this court can attest he was, and still is, a frequent and respected expert witness in New Zealand Courts.

He examined the purported will, and specimen signatures of Dr. Singh taken from various documents and reached the following conclusions:-

- (a) The purported will had been cut from a larger piece of paper and was roughly cut along all four sides.
- (b) The right edge had been cut through the signature so that only the letters "Sin" were left of the name Singh and an underlining entered under the signature from the lower right edge of the paper.
- (c) The text of the Will had been typed by an unskilled typist who had made many errors which had been altered by erasure and over typing.

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- (d) The typewriter used was a different machine from that used to produce a specimen letter typed on the deceased Dr. Bhajan Singh's headed paper.
- (e) The signature purporting to be that of the deceased Dr. Bhajan Singh and the signatures of the three witnesses had been written in dark coloured ball-point ink. Visual track characteristics indicate that at least three pens were used.
- (f) The purported signature of Dr. Singh on the impugned Will differed in many respects from the specimen signatures. There were features which are invariably found in signatures which are produced in an attempt to duplicate another's signature.
- (g) When a person produces a signature there is a subconscious adjustment made prior to writing the signature so as to produce the signature within the space available. In this case there was ample space and yet the questioned signature was incomplete and required at least another  $\frac{1}{2}$  inch of paper to complete.

In conclusion Mr. West said he was compelled to the view that the signature on the will had not been written by Dr. Singh.

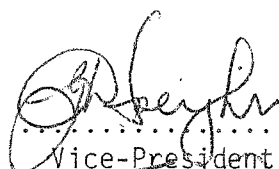
In the result Rooney, J. accepted Mr. West's evidence and rejected that of Hussein and his wife as he was fully entitled to do.

The main thrust of the appeal was to the effect that Rooney, J. erred in preferring the "speculative opinion" of Mr. West to the "direct" evidence of Hussein and his wife. However, there was more to it than that, as Rooney, J. recognised. It is certainly curious

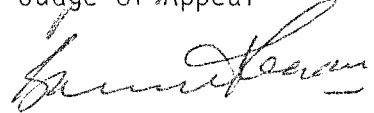
that Dr. Singh, a professional man, who according to his own brother, had adopted modern ideas should be content to make such an inept will in the manner described. It is also relevant that "the will" was made only four months after the Doctor's marriage. Why, one might ask, did he give it to his mother, and then allow it to remain in force when for a considerable time prior to his death he was in serious conflict with his brother and mother? It is also difficult to accept that Dr. Singh's mother completely forgot about the will handed to her by her son, when the disposition of his estate must have been well-discussed between the Appellant and Harbans Kaur following the Doctor's death. There was also the evidence of Kamachi Murti, the Doctor's nurse and receptionist from 1977 until his death. She saw thousands of Dr. Singh's signatures over the years on prescriptions, letters and cheques but she had never seen him sign as he was said to have done on the will. She is not an expert, but her testimony has some value.

There is nothing more we can usefully say on this appeal. The onus was on the Appellant to prove the will and he failed to do so. In our opinion Rooney, J. came to the only conclusion open on the evidence.

The appeal is dismissed with costs to the Respondent to be fixed by the Registrar if the parties cannot agree.

  
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 Vice-President

  
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 Judge of Appeal

  
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 Judge of Appeal