

IN THE SEYCHELLES COURT OF APPEAL

TREFFLE FINESSE

APPELLANT

Versus

THE REPUBLIC

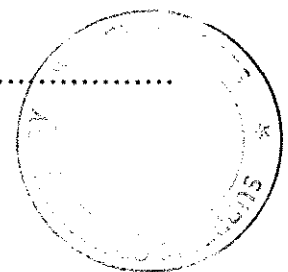
RESPONDENT

Criminal Appeal No:19 of 1996

(Before: Goburdhun, P., Ayoola, Venchard, J.J.A)

.....
Mr. F. Bonte for the appellant

Mr. R. Kanakarathene for the respondent

JUDGMENT OF THE COURT

On allegations that Treffe Finesse, the appellant, during the night of the 18th February 1994 and the morning of the 19th February 1994, at La Poudriere, entered or was in the dwelling house of one Pranal Jivan with intent to commit a felony, namely, theft and that at the time and place mentioned he did commit theft of jewellery therefrom, the appellant was charged at the Supreme Court with the offences of entering or being in a dwelling house with intent to commit felony contrary to Section 290 of the Penal Code and theft contrary to Section 260 of the Penal Code, respectively. He was convicted of both offences by the Supreme Court (Alleear CJ) and sentenced to concurrent terms of imprisonment of four and three years respectively. He has now appealed against conviction and sentence.

Sometime between the night of Friday 18th February 1994 and Saturday 19th February 1994, the dwelling house of one Pranal Jivan was broken into and items of jewellery stolen therefrom. The appellant was charged with the offences earlier stated on the allegations stated in the charge, that it was he who entered the house and stole therefrom. He pleaded not guilty. The only evidence against the appellant was that fingerprint lifted from a metal shelf in a room in the house which had been ransacked by the marauder was that of the appellant. In his Judgment, the Chief Justice duly noted that the prosecution evidence hinged entirely on the evidence of identification by means of fingerprint, which was confirmed by the fingerprint expert to be that of the appellant.

The defence, on the other hand, alleged that the said print was smudged and blurred. The Chief Justice correctly directed himself in law, when he said:

"It is beyond dispute that a Court can convict on the evidence of fingerprint alone, provided it is satisfied beyond reasonable doubt that the print is that of the accused and is of good quality and reliable."

Having so rightly directed himself, he went on to hold thus:

"In this case the Court is satisfied that the print lifted on the said shelf was that of the accused and that ASP Bedier, an experienced fingerprint expert of over 17 years' standing is not mistaken and has correctly marked out 16 points of similarities from each of the said impression. On the evidence adduced, I have no doubt that it was the accused who was the perpetrator of the charges levelled against him."

He found the appellant guilty.

The conviction of the appellant is challenged on this appeal, on the main and only ground that the disputed fingerprint had been of much poor quality that the handwriting expert's evidence should not have been relied on. Counsel for the appellant argued that the disputed fingerprint was so smudged and blurred as not to provide material which could be compared with the genuine fingerprint of the appellant. Similar arguments had been placed before the Chief Justice.

For the guiding principle that can be called in aid in deciding the main question in this appeal, it suffices to quote from paragraph 10 - 18 of Archbold 1992, Vol.1, as follows:

"The duty of experts is to furnish the Judge or Jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the Judge or Jury to form their own independent Judgment by the application of these criterias to the facts proved in evidence: Davie v Edinburgh Magistrates (1953) S.C. 34, 40. Although an expert may be regarded as giving independent evidence to assist the Court, it is wrong for the Jury to be directed that his evidence should be accepted in the absence of reasons for rejecting it: R v Lanfear (1968) 1 ALL ER. 683, C.A."

In the present case, the handwriting analyst, Mr. Paul Bedier, gave the following evidence:

"I have mounted a copy of exhibit 8 and a copy of exhibit 12, the two enlargements side by side on the chart, labelled them all on each of which I have marked 16 points of similarities on each impression which all agreed in sequence of the reach (sic) of characteristics. I produce the chart as exhibit 13."

Exhibit 8 is the enlarged print of the disputed fingerprint lifted from the scene of the incident. Exhibit 12 is the enlarged print of the genuine fingerprint of the appellant. The expert was not cross examined

as to the method he used or the scientific criteria he produced in form of exhibit 13, showing points of similarities. The only suggestions put to him was that *"the print are so blurred that you cannot make an emphatic pronouncement that these are definitely the prints of Treffle Finesse."* He rejected the suggestion.

Counsel for the appellant is mistaken in the argument that the disputed fingerprint was so blurred as not to afford adequate material for comparison. Exhibit 8 which is an enlarged print of the disputed fingerprint does not appear so blurred to be worthless. By indicating the points of similarities on the prints of the disputed fingerprint and prints of the genuine fingerprint, the expert witness had provided sufficient scientific criteria for testing the accuracy of his conclusions.

The Chief Justice expressed his satisfaction that the print lifted on the shelf at the scene of the crime was that of the appellant. There was evidence before him consisting of the oral evidence of the expert witness, the disputed and genuine fingerprints and the reason for the expert witness's conclusion. The trial Judge had before him materials on which he could come to a conclusion of fact. It is futile to challenge his conclusion, merely on the argument that he should have come to a different conclusion. There is really no substance in this appeal against conviction.

Nothing has usefully been urged on this appeal to justify this Court intervening in the matter of sentence. The appeal against sentence will also be dismissed.

In the result, this appeal fails in its entirety and it is dismissed.

		
H. GOBURDHUN	E.O. AYoola	L.E. VENCHARD
PRESIDENT	JUSTICE OF APPEAL	JUSTICE OF APPEAL

Dated this 2nd day of April 1997.