

Present: Lyall Grant J.

KING v. SUPPIAH.

37—D. C. (Crim.) Colombo, 9,342.

*Finger impressions—Power of Court to compel an accused to give them—
Evidence Ordinance, s. 73.*

A Court has power under section 73 of the Evidence Ordinance to compel an accused to give his finger impressions.

A PPEAL from a conviction by the District Judge of Colombo.

Krishna Das, for appellant.

Crosette Thambiah, C.C., for the Crown.

May 28, 1930. LYALL GRANT J.—

The accused in this case was charged in the Police Court of Colombo with having (1) committed housebreaking by night by entering into a petrol depôt with intent to commit theft, and (2) with having, in a building used for the custody of property, viz., a petrol depôt, committed theft of Rs. 37.89 in cash, three pieces of chamois leather, four Champion plugs, and motor tail light bulbs.

He was committed to the District Court of Colombo and was tried and convicted on both of these charges and sentenced to nine months' rigorous imprisonment on each count, the sentences to run concurrently.

The principal ground of appeal is that the finger prints of the accused were taken without his consent and at the direction of the Police Magistrate and were improperly admitted and used as evidence against him, and the appellant further avers that the prosecution evidence is meagre and inconclusive.

The evidence shows that on the morning of April 15 a window of the petrol store was found to be broken and one of the doors opened, the table drawer had been forced open and some show cases were also open and some articles were missing and cash to the value of Rs. 37.89.

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The store appears to have been opened by a pane of glass in a sliding window being broken, a hand inserted, and the window opened from the inside.

The pieces of broken glass were picked up by the police constable who was summoned, and upon them and on the window shutter were found finger prints.

These finger prints were sent by the police to the registrar of finger prints. The registrar of finger prints has given evidence and states that he first of all compared the finger impressions which he found on the glass with the impressions of the fingers of the accused taken by the police afterwards when the accused was produced in the Police Court.

The Police Magistrate ordered the accused to give an impression of his finger prints.

The finger print expert took the impression in Court and compared them with the original impressions on the glass. As a result of his comparison he found that the impressions taken in Court were identical with those on the glass. He also took an impression in Court of the palms of the accused and found them to be identical with the impressions found on the shutter.

The finger prints on the shutter had been found by the Inspector of Police at the store and were produced in Court.

On this evidence and on some evidence that the accused, who was a dismissed employee of the firm, had been seen in the vicinity on the night in question, he was convicted.

It was argued on appeal that the finger prints of the accused had been taken by the Police Magistrate without authority and were improperly admitted as evidence by the District Judge.

Section 73 of the Evidence Ordinance empowers the Court to compare any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written by a certain person to be compared with the signature, writing, or seal which is to be proved in order to ascertain whether that signature, writing, or seal is that of the person by whom it purports to have been written or made.

The section proceeds : " The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person . . . " and concludes with the words " this section applies also with any necessary modifications, to finger impressions. "

It seems to me clear that this section empowers the Magistrate to direct the accused who was present in Court to submit his finger impressions.

It was argued that no section of the Criminal Procedure Code entitles the Court to compel an accused person to give evidence against himself. The only section of the Criminal Procedure Code which allows an accused person to be physically examined is section 149 (6)—a section which does not apply to the present case. Section 295 empowers the Police Magistrate to question the accused but does not compel the accused to answer.

I agree that these sections are irrelevant for the purposes of the present case, which depends entirely on the construction to be put on section 78 of the Evidence Ordinance.

This is not a question of a confession or statement by the accused; it is one of identification.

To my mind the section definitely empowers the Court to compel an accused person to give his finger impressions for the purpose of such identification.

I have been referred to the case of *King Emperor v. Tun Hlaing*,¹ where the Full Bench of the Burma High Court took this view.

It was there held that the taking of finger prints is an entirely different matter to putting questions to an accused person.

One of the Judges in that case remarked that "the Court was not in effect compelling him to provide evidence against himself, since what really constituted the evidence, viz., the ridges of his thumb, are not provided by him any more than the features of his countenance."

In another case before the Burma High Court (*Nga Tun*²) it was held that the words "any person present in Court" includes an accused person.

Similar reasoning was applied by this Court in *Rex v. Francis Perera*,³ a decision of the Full Bench. There the question was whether specimens of handwriting submitted by the accused amounted to a confession within the meaning of section 26 of the Evidence Ordinance.

In that case Middleton J. said: "It seems to me that the writing of these words and letter was merely the creation of facts, which standing alone were of no probative value, but which, when coupled or compared with some other facts in the case, might suggest an inference one way or the other and until that comparison or conjunction was made no inference arose." And Lascelles A.C.J. said: "By a statement, I understand some expression of a fact or opinion by means of words, writing or otherwise. Here the value of the papers produced consisted not in their meaning, not in the expression of any fact or idea but solely in certain physical characteristics."

¹ *Ran.* 759, 2 *Bur. L. J.* 27.

² 28 *C. R. L. J.* 108; 2 *Bur. L. J.* 270.

³ 9 *N. L. R.* 122.

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I think that precisely the same reasoning applies to finger impressions. They are not in themselves statements or evidence but are facts which may become the basis of evidence.

In the present case the evidence given by the expert, which includes his report, is very strong on the question of the identity of the finger impressions of the accused and the finger impressions found at the scene of the offence.

This evidence coupled with the other evidence in the case appears to me to be conclusive of the guilt of the accused.

Appeal dismissed.
