

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-410-DB-2010
Reserved on: 14.09.2022
Date of decision: 20.09.2022

MUKESH @ GHASAR AND ORS. ...Appellants

Versus

STATE OF HARYANA ...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Ms. Sumanjit Kaur, Advocate
for the appellant.

Mr. Anmol Malik, AAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 13.01.2010 upon Sessions Case No.72 of 02.06.2008/03.03.2007, by the learned Additional Sessions Judge, Gurgaon, wherethrough in respect of charges drawn for offences punishable under Sections 302, 201, 34, 311, 396 of IPC, he recorded a verdict of conviction against the accused. Moreover, through a separate sentencing order drawn on 16.01.2010, he imposed the hereinafter extracted sentence(s) upon each of the convict.

<i>Under Section 302 Indian Penal Code</i>	<i>Imprisonment for life and fine of Rs.5,000/- each. In default of payment of fine, to undergo RI for one year each.</i>
<i>Under Section 396 Indian Penal Code</i>	<i>Imprisonment for life and fine of Rs.5,000/- each. In default of payment of fine, to undergo RI for one year each.</i>
<i>Under Section 201 Indian Penal Code</i>	<i>Rigorous Imprisonment for three years each and fine of Rs.2,000/- each. In default of payment of fine, to further undergo RI for six months each.</i>

2. All the convicts became aggrieved from the verdict of conviction (supra), besides from the consequent therewith sentence(s) of imprisonment (supra), thus they have instituted thereagainst an appeal before this Court.

FACTUAL BACKGROUND

3. The genesis of the prosecution case is embodied in the FIR to which Ex.PJ is assigned, therein it has been recorded that on 14.4.2006 ASI Prem Chand (PW1) along with other police officials was present near Om Shanti Centre in connection with patrolling. There complainant Pehlad Meena (PW22) met him and got his statement Ex.PA recorded to the effect that he was resident of village Sisodia (Rajasthan) and used to ply rickshaw at Tilak Nagar Road, Delhi. He along with his brother Gopal Meena were engaged in plying of rickshaw for the last 15 years with Jeevan Steel Furniture, Shop No.1, Fateh Nagar, Jail Road, New Delhi. On 13.4.2006 at about 11.00 PM, his brother boarded three wheeler from Tilak Nagar for going to Dhaula Kuan for going to his house alongwith Rs.22,000/- and some household goods in a bag. On 14.4.2006, he (first informant) received information that the dead body of his brother Gopal Meena was lying in the fields of village Bhora Kalan. He along with his uncle's son Shambhu and some other family members reached the spot and identified the dead body. He further stated that some unknown persons had committed murder of Gopal by strangulation with a safi of green colour and had thrown the dead body behind Om Shanti Centre to cause disappearance of evidence to screen themselves from punishment.

COMMITTAL PROCEEDINGS

4. After completion of investigations into the crime event, the investigating officer concerned, prepared, and, filed a report under Section 173 of Cr.P.C., before the learned Committal Court concerned. The learned

Committal Court concerned, vide commitment order made on 17.02.2007 committed the trial of the case to the Court of Session.

TRIAL PROCEEDINGS

5. The prosecution examined as many as 23 witnesses. Moreover, the learned public prosecutor also tendered into evidence FSL reports Ex.PAA, Ex.PAA/1, and, CD Ex.PAA/2, and subsequently, the public prosecutor closed prosecution evidence. After the closure of the prosecution case the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, they did not choose to lead any defence evidence.

SUBMISSIONS OF LEARNED COUNSEL FOR APPELLANTS

6. The learned counsel appearing for the convicts has submitted that no reliance can be placed upon the respectively recorded disclosure statements as made by the convicts, as the evidence qua the subsequent thereto discovered relevant fact or the evidence qua the recovery of the body of the deceased rather is extremely fragile. In making the submission (supra), she rests the same upon the plank qua the place of recovery or discovery of the body of deceased, was, as revealed by the inquest report carried in Ex.PD, rather already known to the investigating officer concerned.

7. He also submits that the recovery of jeep, as made through Ex.PZ besides the recovery of bank receipts slip and of photo, respectively through Ex. PX, and, Ex.PY, rather are also invalid, and, legally infirm recoveries.

8. In making the above argument she rests it, upon, the body of deceased Gopal being first sighted on 14.04.2006, but yet the accused making their respective disclosure statements much belatedly therefrom, inasmuch as on 06.11.2006. Thus, the above recovery of bank slips receipts, and, of photographs

which were even otherwise of no avail to the accused, and, could well have been destroyed by them, in the afore span, are to be construed to be completely engineered, and, planted by the investigating officer concerned. Moreover, she also submits that the recovery of jeep as made at the instance of accused-convict Parmod, is also not a valid recovery, as the identity of the above jeep was already known to the police, given the description of the relevant jeep, being mentioned in the disclosure statements as made by the convicts on 14.11.2006 in FIR No. 1133 of 04.11.2006, whereas the recovery of jeep being made much belatedly therefrom.

I. She submits that no reliance can be placed upon the adversarial results of the polygraph test(s) as embodied in Ex.PAA, nor any reliance can be placed upon the adverse results, of the brain mapping test(s) as made upon the accused concerned.

II. The above argument is rested upon a verdict of Hon'ble Apex Court recorded in **Criminal Appeal No.1267 of 2004**, decided on 05.05.2010, with case titled '**Smt. Selvi & Ors. V. State of Karnataka & Ors.**' wherein, it becomes expostulated that though without the consent of the accused, the accused cannot become subjected to the relevant tests, but even if any consensual polygraph test or brain mapping tests are conducted, upon the accused, yet only if they in consequence thereof, rather lead to the recovery of any fact, thus alone the voluntarily administered tests besides the adverse results as pronounced thereons can be admitted in evidence. However, since she submits that the prime discoveries (supra), as made at the instance of the accused concerned, were planted, and, engineered at the instance of the investigating officer concerned. Thus, the adversarial results of the above tests are inadmissible

in evidence. More so, when the authors of the tests concerned, have not stepped into the witness box besides when there is no proof that the relevant tests were voluntarily administered upon the accused concerned.

9. Contrarily, the learned State counsel has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

MEDICAL EVIDENCE (POST MORTEM REPORT)

10. The post mortem upon the body of deceased Gopal, was conducted on 14.04.2006 by PW-17. PW-17 has proven qua his, authoring Ex.PR/1, as relates to the autopsy as made upon the body of deceased Gopal. Moreover, he has proven that the cause of death of deceased Gopal was owing to strangulation caused by ligature resulting in asphyxia.

DISCLOSURE STATEMENTS OF THE ACCUSED

11. Ex.PK is the signed disclosure statement of accused Ravi, Ex.PM is the signed disclosure statement of accused Rohtansh, and, Ex.PO is the signed disclosure statement of accused Budh Ram @ Budhu. The above signed disclosure statements are extracted hereinafter.

“Disclosure statement of accused Ravi Ex.PK

xxx

2. That during month of April, 2006, I along with Parmod @ Bhuru Rohtas, Mukesh, Budhu s/o Pipalya, Harkesh had jointly made a person aged 40/45 years in Mahindra Jeep of Rohtas Max No.HR61/1154 from Dhula Kuan Delhi for Behrod and after passing Gurgaon we had killed him by strangulation of his throat and we had found Rs.14,000/- on his person which we had distributed amongst us equally and his dead body was thrown by us near Om Shanti Kendra Bhorakalan.

Disclosure statement of accused Rohtas Ex.PM

xxx

2. In the month of April, 2006, I along with Parmod @ Bhuru, Mukesh Budhu s/o Pipalia, Ravi, Harkesh jointly made a person aged about 44/45 years sit in my vehicle Mahindra Max Jeep No.HR61-1154 from Daula Kuan Delhi for Behrod and after passing Gurgaon we had killed him by strangulating his throat and from his person Rs.14,000/- were found which we had divided equally and we had thrown his dead body near Om Shanti Kendra Bhorakalan.

Disclosure statement of accused Budh Ram Ex.PO

xxx

2. That April, 2006, I along with Parmod @ Bhuru, Rohtas, Mukesh, Ravi and Harkesh jointly made a person aged 44/45 years sit in the vehicle of Rohtas Mahindra Max Jeep No.HR61/1154 from Dhula Kuan Delhi for Behrod (Raj) and after passing Gurgaon we all strangulated his throat and his death was caused. From his person we found 14,000/- which we had divided equally and his dead body was thrown by us near Om Shanti Kendra Bhorakalan.”

12. Though, in pursuance to the signed disclosure statements (supra) as made by the accused concerned, they led the investigating officer concerned, to the site where the dead body of deceased was lying, besides though they did not either ably deny their signatures as made thereon nor they ably proved the denials. Nonetheless, no reliance can be made upon their respective signed disclosure statements. The reason is very simple inasmuch as, though the confession of guilt as made by each of the convicts, in their respective signed disclosure statements, did not become hit by the bar constituted under Section 25 of the Indian Evidence Act, inasmuch as, thereafter theirs within the domain of Section 27 of the Indian Evidence Act, through respectively drawn memos leading the investigating officer concerned, to the place where the body of the deceased rather was lying. However, only if the relevant discovered fact was previously exclusively within the knowledge of the

accused, resultantly the relevant discovered fact at their instance, may well have been construed to be validly made, in pursuance to the confession of guilt, as made by each of the accused in their respective signed disclosure statements. Contrarily, if the relevant discovered fact was earlier within the knowledge of the investigating officer concerned. Thus the fact discovered in pursuance to the signed disclosure statement of the accused, would be a rather fact known earlier to the investigating officer concerned, or obviously its discovery, at their instance, would rather become a tainted or an engineered or an invented recovery/discovery, hence by the investigating officer concerned. Needless to say that for reasons hereafter no reliance can be placed thereons.

INFERENCES FOR NEGATING THE EVIDENTIARY WORTH OF DISCLOSURE STATEMENTS

13. In determining whether the relevant discovered fact inasmuch as, the recovery of the body of the deceased, purportedly at the instance, of the accused was exclusively within the knowledge of the accused or it was not earlier within the knowledge of the investigating officer concerned, it becomes relevant to make a reference to the inquest report to which Ex.PD is assigned. A reading of the inquest report drawn on 14.04.2006, reveals that then the body of the deceased was already discovered or was in the knowledge of the police officer. In other words, if the location of the body of the deceased occurred on 14.04.2006, but obviously then the above fact was previously known to the investigating officer. Thus, with almost six months elapsing therefrom, the above fact rather becoming purportedly discovered in pursuance to signed disclosure statement(s) of the convicts, yet, the relevant discovered fact was evidently not obviously within the exclusive knowledge of the convicts, rather

the recovery or the discovery of the relevant fact, rather is construable to be a completely engineered recovery/discovery.

14. In consequence, no credence can be assigned to the signed disclosure statement as made by the convicts, wherein, they confessed their guilt in the crime event, and, thereafter they purportedly caused the discovery of the relevant fact, to the investigating officer concerned.

**INFERENCE OF RECOVERY MEMO OF BANK RECEIPTS SLIP
EX.PX, PHOTO EX.PY, JEEP EX.PZ**

15. Though through recovery memo Ex.PX the relevant bank receipts slips became recovered. Moreover, through Ex.PY the relevant photograph also became recovered. In addition, through memo Ex.PZ the recovery of jeep bearing registration No.HR-18-6128 became effected, at the instance, of the accused concerned to the police officer. However, none of the above recoveries connect the accused in the commission of the crime event. The reason for forming the above inference becomes rooted in the factum, that the above recoveries were made much subsequently, since the instant FIR became lodged, besides when the recovery of bank receipts slip, and, recovery of relevant photographs, at the instance of the accused concerned, were of no avail to the accused rather when they could have been easily destroyed within the above elongated span hence by the convicts. Thus, the above recoveries can be construed to be a sequel of a stratagem employed by the investigating officer concerned. Therefore, the above recoveries do not connect the convicts in the commission of the crime event. Moreover, even the recovery of jeep bearing registration No.HR-18-6128 at the instance of the accused concerned, to the police officer, is also, not a potent incriminatory link for connecting the accused in the commission of the crime. The reason is simple inasmuch as, the identity of

the above jeep was previously known to the police officer, given the identity of the recovered jeep being revealed in another FIR No.1133 of 04.11.2006, thus leading to its recovery on 14.11.2006. Thus, when knowledge qua the identity of the recovered jeep was available with the police officer, besides when it was also crime vehicle in another FIR (supra). Therefore, in its being linked as a crime vehicle in the extant FIR appears to be an afterthought or an invention deployed by the investigating officer concerned. Moreover, the disclosure statement made in another FIR (supra), is in respect of jeep bearing No.HR-18-1154, but the consequent therewith recovery as made was of a contra distinct jeep bearing No.HR-18-6128. As a sequel even the disclosure statement, if any, made in another FIR (supra), qua the relevant crime vehicle concerned, does not match with the consequent thereof recovery, as made through EX.PZ. Accordingly, both the apposite disclosure statement, as also recovery memo bearing Ex.PZ, where throughs its recovery became effected rather loose their evidentiary value. Importantly also when the prime link in the chain of circumstantial evidence, inasmuch as, the confession of guilt as made by the convicts in their respectively signed disclosure statement, hence leading to the purportedly discovery of the prime fact inasmuch as of the body of the deceased, has not been for reasons (supra), rather assigned any credence by this Court.

POLYGRAPH TEST EX.PAA

16. The result of the polygraph test, as embodied in the concluding portion of Ex.PAA, is extracted hereinafter.

***“Conclusion:** When the questions related to the crime cited above were administered to Mr. Mukesh Omkar, Mr. Pramod @ Bhuru, Bijendra Singh Rajput and Mr. Rohtash @ Bablu Ved Pal Rajput the “signs of deception” were seen indicating non-truthfulness in*

their statement given. This suggests that the above-mentioned accused are not truthful in their statement given and have knowledge of the crime.”

BRAIN MAPPING TEST EX. PAA/1

17. Moreover, the result of the brain mapping test, as embodied in the concluding portion of Ex.PAA/1, is extracted hereinafter..

*“**Conclusion:** The major findings supported by the “Brain mapping” tests are indicative of the possession of knowledge about the activities listed above by Mr. Mukesh Omkar, Mr. Pramod @ Bhuru Bijendra Singh Rajput and Mr. Rohtash @ Bablu Ved Pal Rajput. Brain activation during information processing and generation of such ERP responses associated with target are suggestive of primary encoding information with Mr. Mukesh Omkar, Mr. Pramod @ Bhuru Bijendra Singh Rajpur and Mr. Rohtash @ Bablu Ved Pal Rajput and thus suggesting active participation of Mr. Mukesh Omkar, Mr. Pramod @ Bhuru Bijendra Singh Rajput and Mr. Rohtash @ Bablu Ved Pal Rajput.”*

18. Though the above extracted conclusions are adversarial to the convicts. However, for the reasons to be assigned hereinafter, the above extracted conclusions adversarial to the convicts yet cannot be assigned any creditworthiness. The prime reason is comprised in the factum, that the Hon'ble Supreme Court in Smt. Selvi's case (supra), has in concluding paragraph thereof, which becomes hereinafter extracted, has deprecated the carryings of the above tests, on the score of theirs breaching the Constitutional mandate of right of self incrimination.

“CONCLUSION

221. In our considered opinion, the compulsory administration of the impugned techniques violates the 'right against self- incrimination'. This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence. This Court has recognised that the protective scope of [Article](#)

[20\(3\)](#) extends to the investigative stage in criminal cases and when read with [Section 161\(2\)](#) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. [Article 20\(3\)](#) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. [Article 20\(3\)](#) aims to prevent the forcible 'conveyance of personal knowledge that is relevant to the facts in issue'. The results obtained from each of the impugned tests bear a 'testimonial' character and they cannot be categorised as material evidence.

222. We are also of the view that forcing an individual to undergo any of the impugned techniques violates the standard of 'substantive due process' which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature. The impugned techniques cannot be read into the statutory provisions which enable medical examination during investigation in criminal cases, i.e. the Explanation to [Sections 53, 53-A and 54](#) of the Code of Criminal Procedure, 1973. Such an expansive interpretation is not feasible in light of the rule of 'ejusdem generis' and the considerations which govern the interpretation of statutes in relation to scientific advancements. We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to 'cruel, inhuman or degrading treatment' with regard to the language of evolving international human rights norms. Furthermore, placing reliance on the results gathered from these techniques comes into conflict with the 'right to fair trial'. Invocations of a compelling public interest cannot justify the dilution of constitutional rights such as the 'right against self-incrimination'.

223. In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain

safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted, in accordance with [Section 27](#) of the Evidence Act, 1872. The National Human Rights Commission had published 'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narcoanalysis technique' and the 'Brain Electrical Activation Profile' test. The text of these guidelines has been reproduced below:

(i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.

(ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

(iii) The consent should be recorded before a Judicial Magistrate.

(iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

(v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police.

(vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

(vii) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(viii) A full medical and factual narration of the manner of the information received must be taken on record.

19. Even though, in the hereinabove extracted relevant paragraph of the judgment (supra) as made by the Hon'ble Apex Court, there is liberty to the prosecution to, during course of investigations (supra), subject the accused to the relevant consensual tests, but yet the adversarial results, of the test(s) as made by the expert yet are declared to be inadmissible in evidence. However, the ouster qua admissibility of adversarial results of the relevant tests, rather is not a complete ouster, but becomes relaxed only if subsequent thereto any relevant fact is discovered or is recovered. Thus, to the above event of the relevant fact being recovered or discovered but in pursuance to the consensually administered tests, whereons, a negative result is pronounced, rather than make the negative results of the relevant tests, as also the discovery/recovery in pursuance thereto, to become admissible in evidence.

20. Initially, it has to be determined from a perusal of the report or from other relevant records whether the accused had consented to theirs taking either the polygraph test or the brain mapping test. A perusal of the record, suggests that the accused had consented to the administration of polygraph test, but had not consented to the brain mapping test. Therefore, with the non purveyings of consent by the accused for the administration of brain mapping test, does not make the adversarial results as made thereons to be admissible in evidence. Moreover, the adversarial results of the consensual polygraph tests though would be admissible in evidence, but only if the relevant consequent thereto recovery or discovery of the prime fact, inasmuch as, the discovery of the body of the deceased rather became validly effected. However, the negative results of the relevant test(s) do not become admissible in evidence. The reason being that they would become admissible in evidence only if the relevant discovered fact, inasmuch as, the discovery of the body of the deceased being validly effected.

Since this Court for reasons (supra) has concluded that both the respectively signed disclosure statements besides the consequent therewith discovery of the relevant fact, inasmuch as, the body of the deceased, rather is blemished and tainted. Therefore, the negative results if any, of the consensually administered polygraph test, upon the accused rather but obviously do not become admissible in evidence.

FINAL ORDER

21. In aftermath, the instant appeal directed against the verdict of conviction as made upon the convict(s) in respect of charge(s) drawn for offences punishable under Sections 302, 396, 201 of IPC, is allowed. Moreover, the consequent therewith sentences are also quashed, and, set aside. The personal, and, surety bonds of the convicts are directed to be forthwith cancelled, and, discharged. The convicts if in custody, and, if not required in any other case, are directed to be forthwith released from prison. Release warrants be accordingly prepared. Fine amount, if any, deposited by the accused be forthwith refunded to them, but in accordance with law. Records of the Court below, be sent down forthwith. Case property, if any, if not required, be dealt with and destroyed after the expiry of the period of limitation.

(SURESHWAR THAKUR)
JUDGE

20.09.2022

Ithlesh

(N.S. SHEKHAWAT)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No