

The State Vs. Ramkumar Ramgopal

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Court : Madhya Pradesh

Decided On : Apr-09-1957

Reported in : AIR1957MP73

Judge : A.H. Khan and ;Newaskar, JJ.

Acts : [Constitution of India](#) - Article 20 and 20(3); [Telegraph Act, 1885](#) - Sections 29

Appeal No. : Criminal Appeal No. 68 of 1954

Appellant : The State

Respondent : Ramkumar Ramgopal

Advocate for Def. : J.M. Anand, Adv.

Advocate for Pet/Ap. : Shiv Dayal, Dy. Govt. Adv.

Disposition : Appeal dismissed

Judgement :

A.H. Khan, J.

1. The facts sought to be proved by the prosecution are that the accused Ram Kumar had some cases pending before Mr. Harak Chand, a Municipal Magistrate, Basoda, in these cases he had been granted some adjournments and he was

required to appear on 30-6-1952. In order to avoid appearing before the Municipal Magistrate on the above date, he is said to have resorted to the device of sending a telegram, a day earlier, from Bhilsa to Mr. Harak Chand on behalf of Mr. Datar, who was Mr. Harak Chand's counsel in a personal case pending at Bhilsa. The telegram required the immediate presence of Mr. Harak Chand and runs thus:--

'Harakchand Oswal, Basoda.

Come immediately first train.

Datar.'

On receiving this telegram, the recipient left for Bhilsa and when he reached there, he found that his counsel was out of station. When Mr. Datar returned to Bhilsa he lodged a report with the Police on 3-7-52.

2. In the course of investigation, the Police took out an application alleged to have been written by the accused from the file of one of the cases pending before the Municipal Magistrate, and, taking the accused to the Tahsildar, who is a Second Class Magistrate, made the accused copy out that application in the presence of the Tahsildar. This writing was compared with the writing on the telegraph form by a Hand-writing Expert. The Expert, Mr. Gupta was of opinion that the telegram was in the handwriting of the accused.

The trial Court held that there was no satisfactory evidence to hold the accused guilty and that it was not prepared to convict the accused merely on the evidence of a hand-writing expert. It also said that even if it be assumed that the telegram was written by the accused, there is no proof of the fact that the accused caused the telegram to be transmitted, which alone would make it an offence under Section 29, Indian [Telegraph Act, 1885](#). The trial Court in consequence acquitted the accused and the Government has filed this appeal under Section 417, Criminal P. C., against the order of acquittal.

3. On going through the record I find that the Sub-Post Master, who accepted the telegram does not say that it was the accused who came to the Post Office to dispatch it. He says that he cannot recognise the person who brought the telegram

for being transmitted.

4. The prosecution tried to prove that the accused handed over the telegram to one Shiv Prasad, who handed it at the Post Office. But Shiv Prasad when examined denied the fact. He was declared hostile but there is nothing in his cross-examination to suggest that he is really hostile.

5. One curious thing about the telegram in question is that the telegraph form at the end of it contains space where the name and address of the sender is recorded, but this telegram does not contain either the name of the sender nor his address, and yet it was accepted by the telegraph clerk. In the absence of the address, it cannot be said that 'Datar' means the counsel of Mr. Ilarak Chand, Municipal Magistrate, on whose behalf it was purported to have been sent.

6. It is contended that the object of the telegram was to have the cases of the accused postponed which were pending before the Municipal Magistrate. But no record of the Municipal Magistrate has either been produced or examined to show that actually any case was fixed for that date. In the cross-examination, the Magistrate could not state what cases were actually pending against the accused on the date in question.

The Municipal Magistrate has not said that if the accused had asked for a further adjournment in the case he would not have postponed the hearing. If there was no such apprehension in the mind of the accused, there seems to be no reason for him to send the wire. On the contrary the Municipal Magistrate had granted adjournments to him in the past, and so there was reason to believe that if he would ask again for an adjournment again, it would be granted.

7. The act of the Police in taking the accused to the Tahsildar of Basoda and in making him copy out the application in his handwriting and then having it compared with the alleged writing on the telegraph form is nothing but compelling the accused to make him produce evidence against himself. Among the various safeguards provided to accused persons under the civilised nations, one important safeguard is that no person shall be compelled to be a witness against himself. The principle of immunity from Self-incriminating is traceable to the system of

British Jurisprudence and it appears to have been adopted by the Constitution of United States of America as well.

8. In *Boyd v. United States*, (1884) 116 US 616 (A), this privilege of the accused has received very liberal interpretation and the privilege now extends to include not only the oral evidence but also any documentary evidence which may involve the accused. This principle of prohibition against self-incrimination is embodied in Clause (3), Article 20 of the [Constitution of India](#), and in *M.P. Sharma v. Satischandra*, AIR 1954 SC 300 (B), their Lordships of the Supreme Court, in defining the scope and extent of this fundamental right have observed:--

'Article 20 (3) embodies the principle of protection against compulsion of self-incrimination which is one of the fundamental canons of the British system of criminal jurisprudence and which has been adopted by the American system and incorporated as an article of its Constitution. It has also to a substantial extent, been recognised in the Anglo-Indian Administration of criminal justice in this country by incorporation into various statutory provisions.

'Analysing the terms in which this fundamental right has been declared in our Constitution, it may be said to consist of the following components; (1) It is a right pertaining to a person 'accused of an offence'; (2) It is a protection against 'compulsion to be a witness'; and (3) It is a protection against such compulsion resulting in his giving evidence 'against himself'.

'Broadly stated the guarantee in Article 20(3) is against 'testimonial compulsion'. But there is no reason to confine it to the oral evidence of a person standing his trial for an offence when called to the witness-stand. The protection afforded to an accused in so far as it is related to the phrase 'to be a witness' is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him. It is available, therefore, to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution.

'Considered in this light, the guarantee under Article 20(3) would be available to persons against whom a First Information Report has been recorded as accused

therein. It would extend to any compulsory process for production of evidentiary documents which are reasonably likely to support a prosecution against them.'

9. In the present case the accused was compelled to write in the presence of the Tahsildar and this document involves the accused in so far as by comparing it with, the writing on the telegraph form, the accused is sought to be held guilty.

10. The learned Deputy Government Advocate has cited Sailendra Nath Sinha v. The State, AIR 1955 Cal 247 (C) and In re., Muhammad Hussain, AIR 1957 Mad 47 (D), in support of the contention that the action of the Police in taking the accused to the Tahsildar and in making him write does not amount to testimonial compulsion and is therefore not hit by Article 20(3) of the Constitution,

11. In the Calcutta case, AIR 1955 Cal 247 (C), Criminal Proceedings under Section 237, Companies Act, were sought to be stayed and in that connection it was argued that the order of the Court directing specimen writing of the petitioners to be taken amounted to compelling the petitioners (accused) to give evidence against them. The Supreme Court decision AIR 1954 SC 300 (B), was also cited. The Calcutta High Court observed:--

'This was a case AIR 1954 SC 300 (B), in which their Lordships interpreted the article as meaning (1) that it is a right pertaining to a person accused of an offence, (2) that it is a protection against compulsion to be a witness, and (3) that it is a protection against such compulsion resulting in his giving evidence against himself and while they also said that broadly stated the guarantee in Article 20(3) is against testimonial compulsion, they could not go to the length of holding that the issue of a search warrant for production of documents amounting to such testimonial compulsion. The decision therefore is not, in our opinion, any authority for the proposition that the direction to take specimen writings of a person who is accused of an offence amounts to a direction compelling him to give evidence against himself.'

With great respect to the Calcutta High Court I must say that though the Supreme Court decision arose out of a case in which a search warrant for production of documents was sought to be challenged as offending against Article 20(3) of the

Constitution, yet their Lordships of the Supreme Court also discussed the law on the point and observed that:--

'Broadly stated the guarantee in Article 20(3) is against 'testimonial compulsion'. But there is no reason to confine it to the oral evidence of a person standing his trial for an offence when called to the witness-stand. The protection afforded to an accused in so far as it is related to the phrase 'to be a witness' is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him. It is available, therefore, to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution.'

12. The main point to be considered in every case like this is whether a particular action sought to be challenged does or does not amount to testimonial compulsion. The Calcutta High Court seems to have restricted the Supreme Court decision to the case of a search warrant alone and did not refer to other observations made by the Supreme Court. Those observations, to which I have referred earlier, lay down the principle which should be applied in considering whether the accused is being compelled to give evidence against himself.

In the instant case, the accused was taken by the Police to a Magistrate and before him he was made to copy out an application, so that it may be available for comparison with another handwriting. The very presence of the Magistrate introduces an element of compulsion. And it goes without saying that the writing so obtained from the accused has been used against the accused in so far as the opinion of the Hand-writing Expert rests upon it.

13. In the Madras case, AIR 1957 Mad 47 (D), an objection was taken (that the taking of the thumb impression of the accused and making use of it was hit by Clause (3) of Article 20 of the Constitution. When the Supreme Court case was referred, the learned Madras Judge merely said:--

'So far as I am aware, their Lordships of the Supreme Court have not held that any statement taken by the Police or anything done by the Police in the course of investigation which is subsequently produced before the Court as evidence is hit

by Sub-clause (3) of Article 20 of the Constitution. In my opinion the thumb impression taken by the Police on a slip of paper which was later on produced in Court cannot amount to testimonial compulsion.'

14. It is true that their Lordships of the Supreme Court did not say that any statement taken by the Police in the course of investigation was hit by Clause (3) of Article 20, but it was so because no question of any statement by the accused was involved in the case before the Supreme Court. The learned Madras Judge, with great respect I say, did not consider the principle on which the Supreme Court decision proceeded. Mr. Anand, the learned counsel for the accused has referred me to another decision of the Madras High Court, *Rajamuthukoil Pillai v. Periyasami Nadar*, AIR 1956 Mad 632 (E), in which that very learned Judge of the Madras High Court took the view that a direction by the Court, asking the accused to give his thumb impression, amounts to asking him to furnish evidence, which is prohibited under Article 20(3) of the Constitution.

15. After considering the authorities cited before me, I have no doubt that what the Supreme Court has laid down is that the accused cannot be asked to furnish evidence against him -- whether the evidence is oral or documentary. In the present case, what is sought by the prosecution is that by copying out the application and by having it compared later on, the accused should furnish evidence to the Court. The Police in this case adopted a wrong procedure and the evidence which the accused was made to furnish must be overlooked and cannot be received in the case.

16. For reasons stated above, there is no evidence to sustain a charge under Section 29, Indian [Telegraph Act, 1885](#), and the Government appeal must be disallowed.

Newaskar, J.

17. I agree that the appeal should be disallowed.