

(2013) 12 GUJ CK 0001
In the Gujarat High Court

Case No : Special Criminal Application No. 2306 of 2009

Ahendrabhai Lallubhai Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0001

Hon'ble Judges : A.G. Uraizee, J

Bench : Single Bench

Advocate : Zubin F. Bharda, No. 1, for the Appellant; Neeraj Soni, APP for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

A.G. Uraizee, J.—Heard learned advocate Mr. Zubin Bharda for the applicant and learned A.P.P. Mr. Neeraj Soni for the respondents Nos. 1 and 2. The facts in brief giving rise to this application are that a First Information Report, being C.R. No. I - 1 of 2009 with Mahuva Police Station, District: Surat, for offences punishable u/s 279 and Section 304A of the Indian Penal Code and Section 177 and Section 134 of the Motor Vehicles Act, 1988, came to be lodged. During the course of investigation, the investigating office by letter dated 14th November 2009 (Annexure E) called upon the applicant to remain present at Forensic Science Laboratory, Gandhinagar, from 23rd November 2009 to 25th November 2009 (total three days) for the purpose of undergoing lie detection test. The applicant made a representation dated 16th November 2009 (Annexure F) against the letter (Annexure E) of respondent No. 2 objecting to the proposal of the investigating officer to subject the applicant to lie detector test. The objection of the applicant was not favourably considered and by letter dated 17th November 2009 (Annexure G), once again, the applicant was asked to remain present in the Forensic Science Laboratory, Gandhinagar on the dates mentioned in letter dated 14th November 2009 (Annexure E). The applicant preferred this petition u/s 482 of the Code of Criminal Procedure, 1973 to quash the notice dated 14th

November 2009 as he is called for undergoing lie detection test without his consent.

2. The issue involved in the present petition is no more *res integra* inasmuch as the Supreme Court in the case of *Smt. Selvi and Others Vs. State of Karnataka*, has concluded as under:-

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 246 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, 53A 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 voluntarily 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.

3. Thus, it could be seen from the conclusion of the Apex Court that an accused person cannot be subjected to lie detector test without consent of the accused persons. Admittedly, the applicant is called by the investigating officer for undergoing the tests in the Forensic Science Laboratory, Gandhinagar, as mentioned in Annexure A notice issued by respondent No. 2, without their consent. In view of the judgment of the Apex Court in Smt. Selvi (supra), the applicants cannot be subjected to lie detector test or the other similar tests without consent of the suspect or the accused in violation of the guidelines for

administering polygraph test (lie detector test) on the accused. In view of the above, the present application needs to be accepted and accordingly it is allowed. The notice dated 14th November 2009 (Annexure E), calling upon the applicants to remain present in Forensic Science Laboratory, Gandhinagar for lie detector test, given by Police Inspector Odhav Police Station is hereby quashed and set aside. Rule is made absolute.