

(2016) 07 SC CK 0049

In the Supreme Court Of India

Case No : Criminal Appeal Nos. 700-701 of 2016 (Arising out of SLP (Crl) Nos. 3009-3010 of 2015)

Sudhir Chaudhary Etc. Etc.

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Evidence Act, 1872 — Section 45

Citation : (2016) 97 ACrC 527 : (2016) 166 AIC 139 : (2016) 4 AICLR 271 : (2016) AIR(SCW) 3772 : (2016) AIRSC 3772 : (2016) ALLSCRCrI 1319 : (2016) 2 AndhLDCriminal 956 : (2016) 3 ApexCourtJudgments(SC) 38 : (2016) 3 BBCJ 580 : (2016) 3 BLJud 209 : (2016) 3 BomCR(Cr

Hon'ble Judges : T.S. Thakur, CJI, A.M. Khanwilkar and Dr. D.Y. Chandrachud, JJ.

Bench : Full Bench

Advocate : Sarvesh Singh Baghel, Rajeev Goyal, Gurpreet S. Parwanda, Advocates, for the Appellant; D. S. Mahra, K.V. Viswanathan, Sr.Adv., Abhishek Kaushik, Sidhant Buxy, Dhananjay Bhaskar Ray, Ravi Raghunath, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

Dr. D.Y. Chandrachud, J.—Leave granted.

2. A judgment of the High Court of Delhi dated 11 February 2015 has given rise to these proceedings. The High Court dismissed a petition instituted under Section 482 of the Code of Criminal Procedure 1973 and affirmed an order dated 7 July 2014 of the Additional Sessions Judge-01 Patiala House Courts, New Delhi, in a Criminal Revision.

3. On 2 October 2012, a First Information Report (`FIR") was registered at P.S. Crime Branch New Delhi, on a complaint made by Rajiv Bhadauria of Jindal Steel Company Private Limited. Briefly stated, the allegation in the FIR (FIR 240 of 2012) is that the Appellants demanded a sum of money to refrain from

telecasting programmes on a television channel pertaining to the alleged involvement of a corporate entity in a wrongful activity pertaining to the allocation of coal blocks. The FIR was registered against the Appellants for offences under Sections 384, 511, 420 and 120B of the Penal code. The Appellants were arrested on 27 November 2012.

4. On 10 December 2012, an application was moved by the Investigating officer in the Crime Branch before the Additional Chief Metropolitan Magistrate (South), when the Appellants were in police custody in pursuance of an order of remand, requesting the court to seek the consent of the Appellants for obtaining their voice samples at the Central Forensic Science Laboratory, CBI (CFSL-CBI) for the purpose of comparing it with a recording which had been made in the course of a sting operation. In their replies to the application the Appellants furnished their consent for tendering their voice samples. Consequently, on 13 December 2012 the Metropolitan Magistrate disposed of the application by directing that the Investigating officer may move an appropriate application for the visit of the accused to the place or office where he proposes to collect the voice samples with a specification of time, date and place. The Appellants were required by the Investigating officer to furnish their voice samples on 21 December 2012. When they reported at the police station, the Investigating officer directed them to read out from a paper.

5. The grievance of the Appellants was that they were being made to read out inculpatory material drawn from an audio recording of the alleged sting operation. The Appellants objected to do so and moved an application under the Code of Criminal Procedure, 1973 for monitoring the investigation and for a direction to the Investigating officer to provide material for the purpose of a voice sample "which does not contain any inculpatory statement" in the presence of a judicial magistrate. The Additional Chief Metropolitan Magistrate (for brevity 'ACMM') dismissed the application on 4 February 2013, observing that while it was open to the accused to decide whether or not to grant their consent, once consent was granted the accused would have to abide by the instructions of the Investigating officer and cannot dictate the terms on which the voice sample has to be given.

6. A Criminal Revision was filed against the order of the ACMM. The Revision was heard and decided by an order dated 7 July 2014. During the course of the proceedings before the ACMM, the State agreed to provide a text which was not an exact reproduction of the earlier text given to the accused but which was stated to be a mixture of some sentences drawn from the inculpatory material, besides some general statements. After perusing the draft text, the Appellants objected to the text stating that it contained portions of the audio recording. Before the ACMM an opinion furnished by the CFSL expert was produced. The opinion, inter alia, stated that:

"(A) It is not mandatory to have vis-a-vis same text to be read by a suspect. However, sufficient common sentences/words should be present in the sample

voice recording with respect to the questioned voice recording for spectrographic examination.

(B) In case there are sufficient common sentences/words in between questioned & specimen voice recording, then a complete opinion could be offered. However, in case of complete different text and sufficient common sentences/words are not available; opinion could be offered based on auditory examination only.

(C) For auditory comparison, the whole recording/text is used. For spectrographic examination, some selected sentences/words are taken for comparison."

7. The ACMM by an order dated 7 July 2014, came to the conclusion that it will not be appropriate if the accused are required to read out a transcript of the questioned text. At the same time, the ACMM took the view that in the interest of a proper investigation it would not be proper to direct that a text completely different from the questioned text is used for drawing a voice sample. The ACMM issued a direction in the following terms:

"....it will be appropriate if the CFSL experts at CBI Laboratory are directed to prepare a text inter-mixed with sufficient sentences from the questioned text which may facilitate the examination of voice sample identification by them. The said text shall be prepared by the CFSL experts themselves only after the investigating agency first provides them with the questioned recording. The collection of voice sample of the accused persons shall also be done in the CFSL Laboratory in presence of the experts as not only it will provide them a controlled environment to suitably collect the samples but it will also clear the apprehension of the accused persons that the investigating agency may play some mischievous role while collecting the voice samples."

8. The order of the ACMM was questioned before the Delhi High Court. By a judgment and order dated 11 February 2015, a learned Single Judge held that the purpose of a voice sample is to facilitate the process of comparing it with a recorded conversation. The voice sample is not a testimony in itself since it only constitutes what was described as 'identification data'. A voice sample, in the view of the High Court is not a substantive piece of evidence. The High Court rejected the submission that the direction to furnish a voice sample was in violation of the fundamental right under Article 20(3) of the Constitution since firstly, the Appellants had not been forced or coerced into furnishing such a sample since it was they who had furnished their consent; secondly, a voice sample is not evidence since its purpose is only to compare it with the questioned text. In the view of the High Court, once the Appellants had furnished their consent to furnishing their voice samples, it was not open to them to dictate the course of investigation. This order is called into question.

9. Learned senior counsel appearing on behalf of the Appellants submitted that while it is true that the Appellants have consented to the drawing of their voice samples (a concession which was reiterated before this Court in the course of the submissions) yet the process of drawing the samples must be fair, so as to be

consistent with the right of the Appellants under Article 21 of the Constitution. The requirement of a fair investigation, it was urged, is implicit in Article 21 and the procedure which is adopted for drawing a voice sample must be fair and reasonable.

10. The Appellants expressly consented to a voice sample being drawn, in their response to the application that was filed by the Investigating officer before the Court of Metropolitan Magistrate. This was reiterated before the High Court. In the submissions which have been urged in these proceedings, learned counsel has specifically stated that the Appellants would abide by the consent which they had furnished to their voice samples being drawn. That being the position, the only surviving issue for this Court is to ensure that the underlying process for drawing the voice samples is fair and reasonable, having due regard to the mandate of Article 21. On the one hand, it is not open to the accused to dictate the course of investigation. Hence, we do not find substance in the submission that the text which is to be read by the Appellants in the course of drawing their voice samples should contain no part of the inculpatory words which are a part of the disputed conversation. A commonality of words is necessary to facilitate a spectrographic examination.

11. By our order dated 17 November 2015, this Court allowed an adjournment to the Respondent to seek instructions from the expert concerned whether or not a sample of words in such number as the expert may suggest would suffice for the experts to give their opinion by scientific voice sampling methods. Accordingly, a brief note has been filed on the record stating that:

"That the experts of the Central Forensic Science Laboratory (CFSL) have informed that two separate texts/scripts have been prepared in the laboratory from each Speaker/Accused, which are different from the received transcripts.

That the text/script prepared by the CFSL experts cannot be provided to the petitioners in advance as there is apprehension that the petitioner may practise the texts/scripts thereby adversely affecting the voice sampling examination. Accordingly it is submitted that the sample/modal text/script can only be supplied to the speakers/Accused if this Hon"ble Court deems it appropriate."

12. By an Order of this Court dated 1 July 2016, the Investigating officer was directed to file a transcript of the disputed conversation in a sealed cover. The Director CFSL-CBI, was called upon to file in a sealed cover a proposed passage of a written text which the Appellants shall be required to read out for the purpose of giving their voice samples using words, but not the sentences, appearing in the disputed conversation in such number as the Director/Scientific Officer may consider necessary for the purpose of comparison.

13. We are of the view that the aforesaid directions which have been issued by this Court would allay the apprehension of the Appellants in regard to the fairness of the process involved in drawing the voice sample. Our directions ensure that the text which the Appellants would be called upon to read out for

the purpose of drawing their voice samples will not have sentences from the inculpatory text. Similarly, permitting the text to contain words drawn from the disputed conversation would meet the legitimate concern of the investigating authorities for making a fair comparison.

14 In pursuance of the directions issued by this Court the Investigating officer has filed in sealed cover: (i) transcripts of the disputed conversations; and (ii) a proposed passage of a written text required to be read out by the Appellants for the purpose of giving their voice samples. The passage contains words but not the sentences appearing in the disputed conversation. Having perused the contents of the sealed covers, we are satisfied that the Investigating officer has complied with our directions. We order accordingly.

15 The order passed by the High Court shall accordingly stand modified and be substituted by the aforesaid directions.

16 The Appeals are disposed of in the above terms.