

Shri N. Sri Rama Reddy, Etc.

Vs

Shri V. V. Giri

Election Petitions Nos. 4 and 5 of 1969

(C. A. Vaidialingam, S. M. Sikri, G. K. Mitter, J. M. Shelat, V. Bhargava JJ)

27.04.1970

JUDGMENT

VAIDIALINGAM, J. -

1. On April 1, 1970, Shri Jagat Narain (R.W. 25) was being cross-examined by the counsel for the petitioners in Election Petition No. 5 of 1969, when certain suggestions were put to him that he had tried to dissuade the first petitioner in the said Election Petition, viz., Shri Abdul Ghani Dar from filing the election petition on political reasons and when the witness denied not only those suggestions but also certain other suggestions put to him, counsel for the petitioner represented that Shri Abdul Ghani Dar had a tape recording of the talk that took place between him and the witness and he sought permission from the Court to play the same for being put to the witness. Objection was raised by Mr. C. K. Daphtary, learned counsel for the respondent, that the tape-recorded conversation was not admissible in evidence. In view of this objection counsel on both sides were heard regarding the admissibility of the tape-recorded conversation, on April 2, 1970 and, after hearing arguments on both sides, we then expressed the opinion that the tape-recorded conversation could be received in evidence and that we would give our reasons later. The further cross-examination and re-examination of the witness proceeded in respect of the tape-recorded conversation which was played in Court in the presence of the witness.

2. We now proceed to state our reasons for holding that the tape-recorded conversation could be admitted in evidence. But we make it clear that we have dealt with only the question regarding the admissibility in evidence of the tape-recorded conversation, which is distinct and separate from the weight to be given to such evidence which question will be dealt with in the main judgment to be delivered in the election petitions.

3. Before we deal with the question of admissibility of the tape-recorded conversation, it is necessary to state that in Election Petition No. 5 of 1969 the petitioners allege that offences of undue influence at the election had been committed by the returned candidate and by his supporters with the convenience of the returned candidate. The material facts relating to the said allegations have also been given in the petition in Paragraph 13 of the election petition. It has been alleged that on August 9, 1969 an unsigned pamphlet in cyclostyled form and also a printed pamphlet without bearing the name of its publisher or printer (marked as Exhibits P-18B and P-37A respectively) were published by free distribution among the members of the Electoral Colleges for the Presidential Election. It has been further alleged that the offence of undue influence was freely committed at the election by the returned candidate and the persons mentioned in the election petition and by their supporters and workers with the connivance of the returned candidate, by voluntarily interfering and attempting to interfere with the free exercise of the electoral rights of the

candidates and the various electors mentioned in the petition. It is further alleged that with the object of interfering with the free exercise of electoral rights by Sri N. Sanjiva Reddy, a candidate at the election, Shri Jagat Narain and certain other persons named in the petition who are described as supporters and workers of the returned candidate in general with the consent and connivance of the returned candidate published, by free distribution, pamphlets in Hind and English in cyclostyled form as well as in printed form in which very serious allegations were made against Shri Reddy which amounted to undue influence upon the persons referred to in the election petition within the meaning of Section 171(c) of the Indian Penal Code. There is a further allegation that these pamphlets were distributed from August 9, 1969 to August 16, 1969 among all the electors of the Electoral College for the Presidential election and they were also distributed during this period in the Central Hall of Parliament by the various persons mentioned in the petition, which included Shri Jagat Narain.

4. No doubt the allegations that undue influence in the manner mentioned was exercised by the respondent or by anybody with his connivance have been strongly refuted in the counter-affidavits filed by the respondent.

5. In the particulars given by Shri Abdul Ghani Dar, relating to the distribution of pamphlets in question, he has stated that the persons who distributed them between August 9 and August 16, 1969 had already been mentioned in the election petition. He has further stated in the said particulars that Shri Jagat Narain was one of the persons who distributed the pamphlets in the Central Hall of Parliament on August 11, 1969 to the Members of Parliament whose names have also been given.

6. Issues have been framed whether the respondent, or any persons with his connivance, printed, published and distributed pamphlets and other matters connected therewith.

7. In chief-examination, Jagat Narain, as R.W. 25, has stated that he has never seen either of these pamphlets being distributed and that he has seen them only in Court, on the day when he was giving evidence, viz., on March 31, 1970. He has also stated that he never received the pamphlets at all. He has further reiterated that he has not distributed the pamphlet as spoken to by some of the witnesses on the side of the petitioners and he has further affirmed that he has never distributed the pamphlets in the Central Hall of Parliament and that he has not seen the pamphlets except in Court. In cross-examination, the witness was asked about the telephone call that he had made to Abdul Ghani Dar about 6 or 7 days before the filing of the election petition, i.e., in the first week or second week of September 1969 and suggestions were made that the witness attempted to dissuade Abdul Ghani Dar from filing the election petition on the ground that serious consequences would follow from such action. Though the witness admitted that he had a telephone talk with Abdul Ghani Dar, he denied various other suggestions put to him regarding the nature of the talk that took place between him and Abdul Ghani Dar. It was at that stage that the counsel for the election petitioner wanted the tape-recording of the talk that took place between Abdul Ghani Dar and the witness to be adduced as evidence on the ground that the answers given by the witness in Court were quite contrary to the nature of the conversation that he had with Abdul Ghani Dar. Objection was raised to receiving the same as evidence.

8. Mr. Daphtary, learned counsel for the respondent, raised two contentions regarding the admissibility of the tape-recorded conversation between R.W. 25 and Abdul Ghani Dar : (1) The tape-recorded conversation cannot be admitted in evidence for contradicting the evidence of the witness; and (2) under Section 155(3) any former statement, before it could be put in evidence to

impeach the credit of a witness, the Court must be satisfied that the previous statement is relevant to the matter in issue and the tape-recorded conversation, in this case, has no relevance to the matters which are in issue in these proceedings.

9. Mr. Daphtary, learned counsel, did not dispute the correctness of two decisions of this court, to which reference will be made later, wherein the taped records of conversation had been admitted in evidence. But, according to him, in those cases the tape-recorded conversations were admitted in evidence to corroborate the evidence given by a witness before the Court, and not to contradict his evidence.

10. Both the grounds of objection raised by Mr. Daphtary have been controverted by Mr. Malik and by Mr. Sharma, learned counsel appearing for the election petitioners in Election Petitions Nos. 5 and 4 of 1969, respectively. According to Mr. Malik, whose contentions were substantially adopted by Mr. Sharma, issues have been framed whether undue influence has been exercised by the respondent or by any other person with his connivance. According to the petitioners undue influence has been exercised by the publication and distribution of the pamphlets, making scurrilous attack about the personal character of Sri Sanjiva Reddy. Specific allegations have been made in the election petition that R. W. 25 is one of those who distributed the pamphlets in the Central Hall of Parliament with the connivance of the respondent. The witness denied this allegation in chief-examination and when certain suggestions, that the witness attempted to dissuade Shri Abdul Ghani Dar from filing his election petition on the ground that serious consequences would follow, were put to him in cross-examination, witness denied them and, in that context the tape-recorded conversation between the witness and Shri Abdul Ghani Dar assumes importance. Relying upon that tape-recorded conversation, counsel urged that his client is entitled to test the veracity of the witness and to impeach the credit of the witness and satisfy the Court that the evidence given by the witness before us is inconsistent or contrary to what he had stated on an earlier occasion.

11. In this connection counsel relied upon Section 146, exception 2 to Section 153 and clause (3) of Section 155 of the Evidence Act. Section 146 deals with questions lawful in cross-examination and, in particular, clause (1) thereof provides for a witness being cross-examined by questions being put to him which tend to test his veracity. Section 153 generally deals with exclusion of evidence to contradict answers to questions testing veracity, but Exception 2 states that if a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted. Section 155 deals with impeaching the credit of witness by the various ways dealt with in clauses (1) to (4). One of the ways by which the credit of a witness may be impeached is dealt with in clause (3) and that is by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted. Mr. Daphtary pointed out that Section 146 must be read with Section 153. We cannot accept this contention in its entirety. It may be that clause (3) of Section 146 may have to be read along with the main Section 153 but clause (1) of Section 146 and Exception (2) to Section 153 deal with different aspects. Under Section 146(1) question may be put to a witness in cross-examination to test his veracity and, under Exception 2 to Section 153 a witness may be contradicted when he denies any question tending to impeach his impartiality. The objects of the election petitioner to adduce the tape-recorded conversation as evidence is to impeach the testimony of the witness that he has never seen the pamphlet and that he has never attempted to induce the election petitioner not to file the election petition of threat of serious consequences, and to establish that the evidence given in Court is quite contrary to the statements made by him in the conversation that he had with Abdul Ghani Dar and which has been recorded on tape.

12. We will now refer to the case-law on the subject. In *Hopes and Another v. H. M. Advocate*

((1960) Scots Law Times 264) a tape-recorded conversation which took place between a complainant and a blackmailer was played before the jury and sought to be put in evidence by a police officer who had listened to the conversation as it was transmitted through the loudspeaker. Objections were raised to the admissibility of the said evidence. The learned trial Judge over-ruled the objection as follows :

"New techniques and new devices are the order of the day. I can't conceive, for example, of the evidence of a ship's captain as to what he observed being turned down as inadmissible because he had used a telescope, any more than the evidence of what an ordinary person sees with his eyes becomes incompetent because he was wearing spectacles. Of course, comments and criticisms can be made, and no doubt will be made, on the audibility or the intelligibility, or perhaps the interpretation, of the results of the use of a scientific method; but that is another matter, and that is a matter of value, not of competency. The same can be said of visual observation by a witness who says he sees something; his evidence can be criticised because of his sight or because of the sort of glasses he is wearing, and so on, but all these matters are matters of value and not of competency."

Accordingly, the learned Judge allowed the police officer to give evidence as to what he heard on the tape-recorder, which was played before the Jury.

13. On appeal to the High Court of Justiciary it is seen that no objection appears to have been taken to the competency of the evidence furnished by the tape-recorder but the admissibility of the evidence of the police officer based upon his hearing of the tape-recorded conversation was objected to. This objection was over-ruled by the High Court of Justiciary stating that it is competent for the police officer to give evidence of conversation which he hears with the help of hearing aid or, as in the case before them, when the conversation is transmitted to him over a distance by wireless and that there may be criticism of the quality of his evidence and not about the competency of the evidence of what he has heard. The Court further observed at p. 267 :

"The Inspector's evidence of the conversation was as much primary evidence as the evidence from the replaying of the tape-recorder. Each received it at the same time, the one recording it in the human memory the other upon piece of tape."

From the above decision it is apparent that the tape itself is primary and direct evidence admissible as to what has been said and picked up by the recorder.

14. In *R. v. Mills* ((1962) 3 All ER 298) a conversation which had been recorded on tape between two of the persons was heard by a police officer who gave evidence that he has himself remembered the various remarks which passed between those two persons which could be corroborated by the conversation recorded on the tape. But the tape-recording itself was not introduced in evidence nor was there any production of the record by consent before the Jury. They referred to the decision of the High Court of Justiciary in *Hopes'* case (*supra*) and held that according to the said decision the tape-recorded conversation was admissible as direct evidence. Though the discussion in the judgment shows that a tape-recorded conversation is admissible in evidence ultimately the Court left open the question stating :

"The Court has not debated, and is not deciding, any broad and general question of principle whether evidentiary material obtained by the use of a tape-recorder without

the concurrence of a human being listening to the same sounds is admissible or is not dismissible in evidence in a criminal trial."

15. But it is significant to note that the Court of Criminal Appeal rejected the contention of the counsel for the accused that there has been any question of introduction of hearsay evidence at the trial by the evidence of the police officer giving evidence after refreshing his memory from the tape.

16. The question again directly arose in *R. v. Maqsd Ali* ((1965) 2 All ER 464). In that case a conversation which took place in Punjabi dialect between two persons and which had been recorded on the tape was played before the jury and was admitted in evidence by the trial Judge. Objection was taken before the Court of Criminal Appeal regarding the admissibility in evidence of the tape-recorded conversation between the accused. Therefore the point that specifically arose before the Court of Appeal was 'Is a tape-recording as such admissible in evidence, as a matter of law ?' After referring to the observation in *Mills'* case (*supra*) the appellate Court noted that the question regarding the admissibility of a tape-record was not actually decided in that case. The decision of the High Court of Judiciary in *Hopes'* case (*supra*) was referred to and it was noted that the evidence of the police officer who listened to the tape-recorder was held to be admissible. The Court said, at p. 469 :

"We think that the time has come when this Court should state its views of the law on a matter which is likely to be increasingly raised as time passes. For many years now photographs have been admissible in evidence on proof that they are relevant to the issues involved in the case and that the prints are taken from negatives that are untouched. The prints as seen represent situations that have been reproduced by means of mechanical and chemical devices. Evidence of things seen through telescopes or binoculars which otherwise could not be picked up by the naked eye have been admitted, and now there are devices for picking up, transmitting, and recording, conversations. We can see no difference in principle between a tape-recording and a photograph. In saying this we must not be taken as saying that such recordings are admissible whatever the circumstances, but it does appear to this Court wrong to deny to the law of evidence advantages, to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and the voices recorded properly identified; provided also that the evidence is relevant and otherwise admissible, we are satisfied that a tape-recording is admissible in evidence. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. There can be no question of laying down any exhaustive set of rules by which the admissibility of such evidence should be judged."

In consequence, the Court held that the tape-recorded conversation was admissible in evidence, subject to the limitations mentioned in the above extract.

17. It will therefore be seen that though the question of admissibility of a tape-recorded conversation had been left open in *'Mills'* case (*supra*), the same was specifically considered and decided affirmatively in *Maqsd Ali's* case (*supra*).

18. Before we deal with the decisions of this court bearing on this point, it is necessary to advert to two decisions, one of the Punjab High Court and the other, of the Calcutta High Court. In *Rup Chand v. Mahabir Parshad* (AIR 1956 Punj 173) the defendant, in answer to a suit for recovery of a

certain sum of money on the basis of a promissory note, put forward a plea that the original promissory note containing certain endorsement had been destroyed and had been replaced by another promissory note bearing the same date. The defendant attempted to substantiate this plea by the oral testimony of a broker but the latter declined to support him. The defendant requested the Court to permit him to confront the broker witness with the conversation which had taken place between himself and the broker in regard to the destruction of the earlier promissory note and which had been faithfully recorded on a tape-recorder. The plaintiff objected to the admissibility of the evidence by tape-recorder, but the Trial court over-ruled the objection. In the revision taken before the High Court by the plaintiff, the order of the Trial Court was confirmed. The High Court relied upon Section 155(3) of the Evidence Act and held that as the broker appearing as a witness in the case before it had made a statement to the defendant on a former occasion which was at variance with the statement made by him before the Court, there can be no doubt that the defendant could establish that a previous statement which was contradictory to the evidence given before the Court was made by the witness to him. Dealing with the question whether a record of such a previous statement, as prepared by a scientific instrument, could be produced in Court as evidence, the High Court held that such a tape-recorded statement was admissible in evidence, and observed as follows :

"I am aware of no rule of evidence which prevents a defendant who is endeavouring to shake the credit of a witness by proof of former inconsistent statements, from deposing that while he was engaged in conversation with the witness a tape-recorder was in operation, or from producing the said tape-recorder in support of the assertion that a certain statement was made in his presence."

This decision lays down two propositions : (i) that a tape-recorded conversation is admissible in evidence and that (ii) if it contains a previous statement made by a witness, it can be used to contradict the evidence before the Court.

In *Manindra Nath v. Biswanath* (67 CWN 191) the Calcutta High Court had to consider whether a defendant was entitled to adduce in evidence a previous statement of the plaintiff and recorded on the tape to contradict the plaintiff's evidence given before the Court and held that the tape-recorded conversation was admissible in evidence and the previous statement recorded therein could be used to contradict the evidence given before the Court. After referring to *Rup Chand's* case (*supra*) the Court observed at p. 192 :

"If the plaintiff, while he is in the witness box, makes a statement which is at variance with a statement previously made by him, the plaintiff may be asked whether he made such previous statement and if he denies having made the previous statement, such previous statement may be proved by the defendant. There, as in this case, it is alleged that the previous statements of the plaintiff were recorded in a tape-recorder, those statements may be admitted in evidence, if it is proved that they were made by the plaintiff and that the instrument accurately recorded those statements. The fact that the statements were recorded in a tape-recorder and the recording was made behind the back and without the knowledge of the plaintiff is by itself no objection to the admissibility of the evidence."

There are two decisions of this Court bearing on this matter : *S. Pratap Singh v. The State of Punjab* ((1964) 4 SCR 733) and *Yusuffalli v. Maharashtra* ((1967) 3 SCR 720).

20. In Pratap Singh's case (supra), it has been held that rendering of a tape-recorded conversation can be legal evidence by way of corroborating the statement of a person who deposes that the other speaker and he carried on the conversation and even of the statement of a person who may depose that he overheard the conversation between the two persons and what they actually stated had been tape-recorded and that weight to be given to such evidence will depend on the other facts which may be established in a particular case. Though there was a difference of opinion in the majority and minority judgments regarding certain other aspects which arose for consideration, so far as the admissibility of a tape-recorded conversation in evidence, all the Judges appear to have been unanimous in the view that it was admissible. But it must be noted that in the majority judgment it is stated that it was not contended on behalf of the State that the tape-recordings were inadmissible. Similarly, in the minority judgment also it is observed that tape-recordings can be legal evidence by way of corroborating the statements of a person who deposes that the speaker and he carried on that conversation and, as it had not been held by the Trial Court that the record of a conversation on tape is not admissible in evidence for any purpose it was not necessary to pursue the matter further.

21. In Yusuffalli's case (supra), the question was whether a conversation between the complainant and a person, who later figured as an accused on a charge of offering bribe, and recorded on tape was admissible in evidence. It is seen from the decision of this Court that the tape-recorder was played in Court at the trial of the accused. This Court held that the evidence of the complainant was sufficiently corroborated by the tape-recorder and observed at p. 723 :

"The contemporaneous dialogue between them formed part of the *res gestae* and is relevant and admissible under Section 8 of the Indian Evidence Act. The dialogue is proved by Shaikh. The tape-record of the dialogue corroborates his testimony. The process of tape-recording offers an accurate method of storing and later reproducing sounds. The imprint on the magnetic tape is the direct effect of the relevant sounds. Like a photograph of a relevant incident, a contemporaneous tape-record of a relevant conversation is a relevant fact and is admissible under Section 7 of the Indian Evidence Act."

22. Reference was made, with approval, to the decision of the Punjab and Calcutta High Courts in Rup Chand's case (supra) and Manindra Nath's case (supra) and also to the earlier decision of this Court in Pratap Singh's case (supra), where a tape-recorded conversation had been admitted in evidence. The decision in Maqsd Ali's case (supra), was also quoted with approval.

23. In particular, it will be noted that this Court, in the said decision, approved of the division of the Punjab High Court in Rup Chand's case (supra), holding that tape-recording of a former statement of a witness can be admitted in evidence to shake the credit of the witness under Section 155(3) of the Evidence Act.

24. Having due regard to the decisions referred to above, it is clear that a previous statement, made by a person and recorded on tape, can be used not only to corroborate the evidence given by the witness in Court but also to contradict the evidence given before the Court, as well as to test the veracity of the witness and also to impeach his impartiality. Apart from being used for corroboration, the evidence is admissible in respect of the other three last-mentioned matters, under Section 146(1), Exception 2 to Section 153 and Section 155(3) of the Evidence Act. Therefore, it is not possible for us to accept the contention of Mr. Daphtary that the previous statement can be used only for purposes of corroboration but not for the purpose of contradicting the evidence given before the Court. If a previous statement made by person can be used to corroborate his evidence

given before the Court, on principle, we do not see any reason why such previous statement cannot be used to contradict and also for the other purposes referred to above. In particular the fact that the decisions of the Punjab and Calcutta High Court *Rup Chand's* (supra) and *Manindra Nath's* case (supra), where the previous statements have been used to contradict the evidence given before the Court has been approved by this Court in *Yusuffalli's* case (supra), clearly establishes that the contention of Mr. Daphtary that the previous statement cannot be used to contradict the evidence given before the Court cannot be accepted. As pointed out already, Mr. Daphtary has not challenged the correctness of the decision in *Yusuffalli's* case (supra). Therefore the first ground of objection raised by Mr. Daphtary will have to be over-ruled.

25. Coming to the second contention of Mr. Daphtary, which has been set out earlier, in our opinion that question becomes really academic when once we have held that the previous statement can be used to contradict the evidence given before the Court under Section 155(3) for the purpose of impeaching the credit of the witness. But, as the question has been raised, we shall deal with that aspect also.

26. According to Mr. Daphtary, the expression 'which is liable to be contradicted' in clause (3) of Section 155 means 'which is relevant to the issue'. In support of this contention, the counsel referred us to decision of the Calcutta High Court in *Khadijah Khanum v. Abdool Kurreem Sheraji* (1890 ILR 17 Cal 344) and pointed out that the said decision has been referred to in text-books on the Law of Evidence viz., *Woodroffe and Ameerali's Law of Evidence*, *Field's Law of Evidence* and *Sarkar's Law of Evidence*. In the Calcutta decision the Court has stated :

"I am inclined to think that in Section 155(3) of the Evidence Act the words, 'which is liable to be contradicted', mean 'which is relevant to the issue'."

27. In our opinion, the proposition has been too broadly laid down by the learned Judge. A reference to the various clauses in Section 155 in our opinion does not warrant the interpretation placed by the Calcutta High Court. For instance, under clause (1), the evidence that is contemplated and which could be given will certainly not be directly relevant to the issue which is before the Court but will be of a general nature that the witness is unworthy of credit. Again, under clause (2), the evidence regarding the receipt of bribe will only be to establish that the evidence of the witness regarding the matters about which he speaks cannot be acted upon. Even otherwise, in this case, we have already referred to the relevant issues bearing on the matter and we have pointed out that according to the counsel for the petitioners their attempt is to impeach the credit of R.W. 25, establishing, if possible, that his evidence cannot be relied on in view of the fact that he is making contradictory statements. On that basis, even applying the test laid down by the Calcutta High Court, it will follow that the previous statement, recorded on tape, must be considered to be relevant to the issue before the Court. Counsel also drew our attention to the decision of the Judicial Committee in *Bhogilal v. Royal Insurance Co.*, (AIR (1928) PC 54) to the effect that Section 153 and 155 of the Evidence Act, must be strictly construed. There can be no controversy that the provisions of any statute must be properly and strictly construed. This decision, hence, has no bearing on the matter before us. It is also significant that the Judicial Committee, when dealing with Section 155 of the Evidence Act, makes no reference to the decision of the Calcutta High Court in *Khadijah Khanum's* case (supra).

28. It follows that the second ground of objection, urged by Mr. Daphtary, to the admissibility of this piece of evidence, has also to be over-ruled.

29. In the result we hold that the conversation, which is stated to have taken place between R.W. 25 and the first petitioner in Election Petition No. 5 of 1969 (viz., P.W. 55) and recorded on tape, is admissible in evidence.

30. We once again emphasize that this order relates only to the admissibility in evidence of the conversation recorded on tape and has not dealt with the weight to be attached to that evidence. It must also be pointed out that the question, whether the pamphlets. Exhibits P-18-B and P-37-A, have been circulated in the manner alleged by the petitioners and the further question whether they amount to exercise of undue influence are also matters which have not been considered in this order. The above are all aspects which will be dealt with in the judgment, while disposing of the Election Petitions.

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