



Narco-Analysis: A Judicial Response with special reference to evidentiary value

****Dr. Ajay Ranga**

***Indu Rani**

Abstract: The judge is not expert in all fields especially where subject matter involves technical knowledge. In these circumstances he needs the help of an expert who is supposed to have superior knowledge or experience in relation to subject matter. This paper will give emphasis on various case laws, constitutional right, violates, Evidentiary Value and other facts etc.

Keywords: Narco-Analysis Test, Indian Evidence Act, 1872, Constitutional Law.

Introduction

The Narco Therapy or Narco Analytics Interview is described as the application of a truth drug which has been various called Narco Analysis, Narco Synthesis and Amytal Interview and involves, interviewing the person under the influence of some sort of narcotic. First time this drug used in early days of 1890s Pre-Psycho Analysis where Freud used hypnosis to relax patient to help them discuss emotionally difficult matter¹. The idea that being relaxed overcome the mind's natural resistance to entertaining difficult thoughts and helped get access to the unconscious became the foundation of Freud's work. Narco Analysis is still based on that Idea.² The Term Narco Analysis is derived from Greek word "*nark*" meaning "*Anesthesia*" or Torpor and the term is coined by J. Stephens Horsley³ in 1936.

In our consideration 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. The

** Associate Professor, University Institutes of Legal Studies, (Panjab University Chandigarh).

* Research Scholar, Department of Laws, (Panjab University Chandigarh).

¹Dr. Sigmund Schiomo Freud an Austria (6th may 1856- 23rd Sept, 1939). Freud was also known as father of Psycho Analysis. Available at <https://en.m.wikipedia.org/wiki/sigmund-freud> visited on May 20 2016 at 10.00pm

²The People of State of Colorado v. James Eagan Holmes, 2012 CR1522, "*a-brief-history-of-narco-analysis*" available at www.mindhacks.com, visited on 31/08/2015 at 9.00pm.,

³Sir Victor Alexander Haden Horseley (14th April 1857-16th July 1916) was an accomplished scientist and Professor. Available at <http://en.wikipedia.org/wiki/victor-horseley>, visited on April 30, 2016 at 6.00am



Court has recognized the protective scope of Article 20(3) extends to the investigative stage in criminal cases and Section 161(2) of the Code of Criminal Procedure, 1973 which protects accused persons, suspects as well as witnesses who are examined during investigation.

The scientific validity of the impugned has been questioned and it is argued that their results are not entirely are not entirely reliable. For instance, the narco-analysis technique involves the intravenous administration of sodium pentothal, a drug which lowers inhibitions on the part of the subject and induced revelations need not necessarily be true. These techniques are essentially confirmatory in nature, wherein inferences are drawn from the physiological responses of the subject.

In our consideration opinion, the compulsory administration of the impugned techniques⁴ 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.

Case Laws

In *Nisha v. State of Orissa*⁵ Article 20(3), Constitution of India does not contemplate the suppression of truth simply because the information is given by the accused. It only protects him against being compelled to be a witness against himself.

In the case of *Radha Kishanv. State of Punjab*⁶, it was held that the scope of Section 27 is reduced by Article 20(3) of the Constitution of India. The discoveries which are brought about by compelling an accused person cannot be used against him, and in the case of narco-analysis the accused is compelled to give evidence.

In *Mohinder Singh Pandher and Surender Singh Koli v. State of U.P.*⁷, which also known as Nithari Muder case Narco-Analysis test was conducted on Surender Koli and Mohinder Singh Pandher in Jan 2007, who were the main accused in the famous Nithari Murder case. This test

⁴Narco-analysis test a mode of modern scientific method.

⁵1955 Raj 147: Cr 1285.

⁶1960 CrLJ 847.

⁷AIR 2011 SC 970.



was basically conducted in the Forensic Science Laboratory in Gandhinagar. This test was basically conducted to ascertaining the veracity of their statement during their custodial interrogation. During this test, the accused person disclosed the name of various females and children who had been murdered by them and also revealed his argue to rape them after murdering them. By the conducting of this test many relevant information were disclosed to the investigation authorities.

In *Ritesh Sinha v. State of U.P. & Anr*⁸ The results of these tests cannot be likened to physical evidence so as to exclude them from the protective scope of Article 20(3). This Court concluded that compulsory administration of the impugned techniques violates the right against self-incrimination. These tests could be read in with the help of the words “and such other tests”, because the list of “Modern and Scientific techniques” contemplated was illustrative and not exhaustive.

In *Dr. Rajesh Talwar and Another v. Central Bureau Investigation through its Directors and Other*⁹, which commonly known as Arushi Murder case, It was held by the court on behalf of the judgment of *Selviv. State of Karnataka* that such tests cannot be conducted by the authority if the consent has not been given by the accused person. Trial court held that the result of tests cannot be admitted as evidence because the subject does not exercise conscious control over the response during the conducting of the test.

In *Mangtu Ram v. Govt. of NCT of Delhi and Anr*¹⁰ On 19.01.2009, the court allowed Narco Analysis test of Santosh. Accordingly, FSL, Gandhinagar was requested to fix a date for Narco Analysis Test. The conclusion given by the experts was "The information revealed in the narco interview of Santosh Devi, depicts Santosh Devi has no involvement in the incident of missing Kamlesh." Her brain mapping and narco analysis test was done with the permission of the Court, but could not yield any result.

⁸ CRIMINAL APPEAL NO. 2003 of 2012 [Arising out of Special Leave Petition (Crl.) No.7259 of 2010]

⁹ 2013 (83) All CC 283.

¹⁰ CRL.M.C. 3165/2015 (Judgment delivered on: 26th August, 2015) (High Court of Delhi), Available at: <https://indiankanoon.org/docfragment/174263387/?formInput=narco%20analysis%20test>



In *Pappuram v. State*¹¹ This criminal misc. petition under Section 482 Cr.P.C. has been filed by the petitioner being aggrieved with the order dated 01.08.2016 passed by the Additional Sessions Judge (Women Atrocities Cases), Jodhpur Metropolitan (hereinafter referred to as 'the trial court') in Sessions Case No.18/2014, learned counsel for the petitioner has placed reliance on the decision of Hon'ble Supreme Court rendered in *Smt. Selvi & Ors. v. State of Karnataka*¹² decision of this Court rendered in *Moti Ram Vs. State of Rajasthan* reported in 2013(2) Cr.L.R. (Raj.) 1045, decisions of Gujarat High Court rendered in *Dr. Purshottam Swaroopchand Soni Vs. The State of Gujarat* reported in (2007) 2 GLR 2088 and in *State of Gujarat Vs. Inayat Ismail Vohra (S.B. Special Criminal Application No.1805/2012)* decided on 14.10.2013 and the trial court be directed to instruct the prosecution to conduct Narco Analysis Test, Brain Mapping Test and Polygraph Test upon the petitioner.

In *Sooraj Aditya Pancholi v. The State of Maharashtra And Ors*¹³ the CBI has also carried the Forensic Statement Analysis of the accused, which was conducted by CFSL, SAU, Navi Mumbai, by Dr. Rajnee Kumari, Forensic Psychologist. The request was made by CBI for accused to undergo the forensic tests (Polygraph Examination, Brain Mapping Test / Brain Encephalograph Oscillation Signature Test and Narco Analysis Test). However, accused refused to undergo the tests. Hence, Central Bureau of Investigation could not do anything.

The essential principles governing expert evidence is that the expert is not only to provide reasons to support his opinion but the result should be directly demonstrable. The court is not to surrender its own judgment to that of the expert or delegate its authority to a third party, but should assess his evidence like any other evidence. If the report of an expert is slipshod, inadequate or cryptic and the information of similarities or dissimilarities is not available in his report and his evidence in the case, then his opinion is of no use. It is required of an expert whether a Government expert or private, if he expects, his opinion to be accepted to put before

¹¹Criminal Misc. (Pet.) No. 3230 / 2016 (Date: 27 January, 2017) (High Court Rajasthan) Available at: <https://indiankanoon.org/docfragment/100097690/?formInput=narco%20analysis%20test> (Visited on October 11, 2017 at 10:00 am)

¹²AIR 2010 Supreme Court 1974

¹³CRIMINAL WRIT PETITION NO.669 OF 2016 (Dated: 9 February, 2017) (Bombay High Court) available at: <https://indiankanoon.org/docfragment/186485476/?formInput=narco%20analysis%20test> (Visited on October 12, 2017 at 4:15 am).



the court the material which induces him to come to his conclusion so that the court though not an expert, may from its own judgment on the material. The opinion is required to be presented in a convenient manner and the reasons for a conclusion based on certain visible evidence, properly placed before the court. In other words, the value of expert evidence depends largely on the cogency of reasons on which it is based.¹⁴

The Evidence Act is completely silent on such employment of scientific process. Such process has often been criticised as against the tenets of Constitution and on the other hand has been upheld as a necessity to evaluate some complicated issues. There are several issues regarding the validity of narco-analysis as scientific tool of investigation and admissibility in court of law.¹⁵

Indian Evidence Act, 1872

Section 3 of the Evidence Act, 1872 defines evidence as under:

“Evidence” means and includes

- (1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of act under inquiry; such statements are called oral evidence;
- (2) All statements including electronic records produced for the inspection of the Court; Such statements are called documentary evidence.

Question arises whether any answer received as result of Narco Analysis P300 Test would be evidence or not. Perhaps such answers or statement would not part of evidence unless it satisfies some other tests. It must be made clear that if any statement has been permitted or required by the Court it does not become admissible in evidence. Court may admit or may not admit it. Admissibility would depend upon number of factors.¹⁶

The scientific validity of the impugned has been questioned and it is argued that their results are not entirely are not entirely reliable. For instance, the narco-analysis technique involves the intravenous administration of sodium pentothal, a drug which lowers inhibitions on the part of

¹⁴*Chunni Lal v. State of Haryana* (1971) 73 Punj LR 159: 1971 Pun LJ 96: 1977 Cr LJ (Notes) 57.

¹⁵Sarita Jand, *Forensic Science & Law* 102 (New Eraw Publications, Faridabad, 1stedn, 2017).

¹⁶R. Ramachandran, *Scientific Techniques for Criminal Investigation* 249 (Kamal Publishers, New Delhi, 2012).



the subject and induced revelations need not necessarily be true. These techniques are essentially confirmatory in nature, wherein inferences are drawn from the physiological responses of the subject. In the context of criminal cases, the reliability of scientific evidence bears a causal link with several dimensions of the right to fair trial such as the requisite standard of proving guilt beyond.¹⁷

Conclusion

Law of Evidence allows a person who is witness to state the facts but not his inference and expert is permit to give opinion evidence and the judge is not expert in all fields especially where subject matter involves technical knowledge. Today, the most pertinent question which generates much debate among Jurists, Judges, Scientists, Lawyers and Academicians irrespective of our legal system is how for the present value-based system of justice required to be changed or modified or reoriented for the purpose of utilizing the benefit of modern scientific discoveries and technological in justice delivery system.

¹⁷ B.R. Sharma, *Forensic Science in Criminal Investigation and Trials* 1567 (Universal Law Publishing Co. Pvt., Ltd., New Delhi, 5th edn., 2014).