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TAPE-RECORDED EVIDENCE: IT'S ADMISSIBILITY AND EVIDENTIARY VALUE

INTRODUCTION

In the intricate web of legal proceedings, certain legislative foundations stand as pillars without which the very essence of justice would crumble. Among these, the Indian Evidence Act emerges as a cornerstone, providing the framework through which disputes are resolved and justice is administered. Yet, within this structured framework, certain complexities persist, challenging the clarity and coherence of legal discourse. Chief among these complexities is the intricate terrain surrounding the admissibility and relevance of tape-recorded evidence. As legal proceedings evolve, so too do the intricacies inherent in deciphering the nuances of this particular form of evidence. The process of producing tape-recorded evidence, from its inception to its culmination in a verdict, presents a myriad of challenges and uncertainties. Despite its ostensible purpose of presenting a comprehensive account of pertinent facts, tape-recorded evidence often falls short of fulfilling its intended role before the bench.

TAPE – RECORDED EVIDENCE

Tape-recorded evidence stands as a vital component in modern legal proceedings, offering a means to capture and preserve sound to present a voice sample as evidence. Utilizing a diverse array of electromagnetic devices, tape recording technology has become ubiquitous in its ability to document conversations, interviews, and other auditory interactions. However, beneath the surface of its seemingly straightforward functionality lie intricate technical intricacies that significantly impact its reliability and admissibility in court. One of the foremost concerns regarding tape-recorded evidence revolves around its vulnerability to manipulation and tampering. Unlike physical evidence, such as documents or objects, tape recordings are susceptible to abrupt erasure, duplication, editing, and splicing, making them inherently malleable.

The ease with which sounds can be rearranged, unwanted elements removed, and altered recordings seamlessly reassembled poses a significant challenge to the integrity of tape-recorded evidence. Moreover, the extent of potential modification varies depending on the mode of recording employed, further complicating matters. Surprisingly, despite the critical role tape-recorded evidence plays in legal proceedings, there exists a notable absence of comprehensive legislation addressing its technical and legal intricacies. This legislative vacuum exacerbates the challenges faced by courts and legal practitioners in evaluating the authenticity and reliability of tape recordings presented as evidence.

The Elements of an Admissible Tape-Recorded Evidence

1. Should Not Have Been Tampered and Genuine: In the case of *Magraj Patodia vs. RK Birla*, the court emphasized that tape-recorded evidence must not have been tampered with and should be genuine in nature to be admissible.¹
2. Technology Used Does Not Affect Admissibility: The case of *N. Sri Rama Reddy vs. V. V. Giri*² established that the technology used to record the conversation does not affect the admissibility of the tape-recorded evidence.³
3. Relevance to the Matters in Issue: According to *RM Malkani vs. State of Maharashtra*, tape-recorded evidence must be relevant to the matters in issue in order to be admissible.⁴
4. Identified Voice: Courts often require that the voices on the tape recording be identified. This was highlighted in various cases, including *State of Maharashtra vs. Damu*.⁵
5. Accuracy of Conversation: The accuracy of the conversation captured on the tape recording is crucial for its admissibility, as established in *Ram Bihari Yadav vs. State of Bihar*.⁶
6. Eliminating the Possibility of Erasing Tape-Recorded Evidence: Courts may require measures to be taken to eliminate the possibility of the tape-recorded evidence being erased or tampered with, as seen in *Vijay Kumar vs. State of U.P.*⁷

¹ *Magraj Patodia vs R. K. Birla And Ors*, 1971 AIR 1295

² *Shri N. Sri Rama Reddy Etc vs Shri V. V. Giri*, 1971 AIR 1162

³ Venkatesh Vijayaraghavan, *Look But Don't Touch: A Critique of the Indian Position on Evidence Illegally Obtained Through Tape Recording*, 12 NAT'L L. SCH. INDIA REV. 8, XXXX (2000).

⁴ *R. M. Malkani vs State Of Maharashtra*, 1973 AIR 157

⁵ *State Of Maharashtra vs Damu S/O Gopinath Shinde*, Appeal [cr] 992-993 of 1999

⁶ *Ram Bihari Yadav vs. State of Bihar*, 1998 AIR SC 1850

⁷ *Vijay Kumar vs. State of UP*, 2011 AIR SCW 6236

7. Admissible under Res Gestae: Tape recorded evidence may be admissible under the Res Gestae exception if it forms part of the transaction or event in question, as outlined in *State of Rajasthan vs. Mehram & Anr.*⁸

8. Carefully Sealed and Under Custody of Authorized Official: In *State of Punjab vs. Ajaib Singh*, the court stressed the importance of tape-recorded evidence being carefully sealed and kept under the custody of an authorized official to maintain its integrity.⁹

9. Imprint on Magnetic Tape Directly Reflecting Relevant Sounds: In *Sarwan Singh Rattan Singh vs. State of Punjab*, the court highlighted the significance of an imprint on the magnetic tape directly reflecting relevant sounds for the admissibility of tape-recorded evidence.¹⁰

10. Proof Beyond Reasonable Doubt: Finally, tape-recorded evidence must be proved beyond a reasonable doubt to be admissible, as reiterated in numerous cases including *Kashmira Singh vs. State of Madhya Pradesh.*¹¹

Scope of Tape-Recorded Evidence

1. Equivalent to Photographic Evidence: Tape-recorded evidence can hold an evidentiary value similar to that of photographic evidence. Just as photographs capture visual representations of events, tape recordings capture auditory representations, providing a contemporaneous record of conversations or interactions that can be crucial in establishing facts in a case.

2. Admissible with Supporting Evidence: Tape-recorded evidence may be admissible in court proceedings, but its admissibility often depends on the presence of supporting evidence. Courts may require additional corroborative evidence or authentication to ensure the reliability and accuracy of the recordings before admitting them as evidence.

3. Used to Contradict Witnesses under Section 5 with Authentication Check: In certain jurisdictions, tape-recorded evidence may be used to contradict witness testimony under Section 5 of relevant laws or rules of evidence. However, courts typically require authentication checks to verify the authenticity of the recordings and ensure their admissibility.¹²

⁸ *State of Rajasthan vs. Mehram & Anr*, 1894/2010

⁹ *State of Punjab vs Ajaib Singh*, 1995 AIR 975

¹⁰ *Sarwan Singh vs The State Of Punjab* 1957 AIR 637, 1957 SCR 953

¹¹ *Kashmira Singh vs State of Madhya Pradesh* AIR 1989 , SC 2039

¹² Venkatesh Vijayaraghavan, *Look But Don't Touch: A Critique of the Indian Position on Evidence Illegally Obtained Through Tape Recording*, 12 NAT'L L. SCH. INDIA REV. 8, XXXX (2000).

4. Used Only for Refreshing the Memories of Witnesses: Tape-recorded evidence can be utilized for refreshing the memories of witnesses who may have forgotten details of past events or conversations. By playing back the recordings, witnesses may be able to recall specific details or clarify discrepancies in their testimony, enhancing the accuracy and reliability of their statements.¹³

5. Used Only as Corroborative Evidence: Tape-recorded evidence may serve as corroborative evidence in legal proceedings, supporting or confirming other evidence presented by the parties involved. While tape recordings alone may not always be sufficient to establish facts conclusively, they can strengthen the credibility of other evidence or provide additional context to the events in question.

Application of Thayer's Exclusionary Principle

Core Elements of Thayer's Exclusionary Principle:

1. Admissibility Beyond Relevancy: Thayer's principle emphasizes the importance of admissibility beyond mere relevancy, positioning admissibility as a fundamental principle of evidence law¹⁴. It seeks to uphold the integrity of the evidentiary system by scrutinizing the means through which evidence is obtained.¹⁵

2. Restriction on Illegally Obtained Evidence: The principle aims to restrict the admissibility of evidence obtained through illegal or unauthorized means, with the dual purpose of deterring unethical evidence-gathering techniques by law enforcement officials and safeguarding individuals' rights against abuse of power.

However, the application of Thayer's principle encounters complexities when it comes to tape-recorded evidence. Unlike other forms of evidence, tape recordings often lack prescribed means of acquisition and may be obtained without the consent of all parties involved. This

¹³ Mahabir Prasad Verma vs Surinder Kaur, 1982 AIR 1043

¹⁴ *Rethinking Sukhar v. State of U.P.: How the Interpretation of Section 6 of Evidence Act Adopted a Thayerite Approach Rather than Stephen's* | SCC Times, SCC TIMES, <https://www.sconline.com/blog/post/2022/09/14/rethinking-sukhar-v-state-of-u-p-how-the-interpretation-of-section-6-of-evidence-act-adopted-a-thayerite-approach-rather-than-stephens/> (last visited Mar. 24, 2024).

¹⁵ Venkatesh Vijayaraghavan, *Look But Don't Touch: A Critique of the Indian Position on Evidence Illegally Obtained Through Tape Recording*, 12 NAT'L L. SCH. INDIA REV. 8, XXXX (2000).

raises questions about the strict application of the exclusionary principle, which could potentially render any tape-recorded evidence inadmissible.

In essence, while Thayer's exclusionary principle serves as a guiding principle in evidence law, its application to tape-recorded evidence requires a nuanced approach that balances the preservation of individual rights with the pursuit of justice and fairness. The determination of admissibility hinges on considerations of fairness, acceptability of methods, and reliability, as elucidated by legal precedents and principles.¹⁶

Conclusion

In summary, the admissibility of tape-recorded evidence is contingent upon various factors including authenticity, relevance, accuracy, identification of voices, and adherence to procedural requirements. These elements, as elucidated through case law precedents, guide courts in determining the reliability and validity of tape-recorded evidence in legal proceedings.

¹⁶ Venkatesh Vijayaraghavan, *Look But Don't Touch: A Critique of the Indian Position on Evidence Illegally Obtained Through Tape Recording*, 12 NAT'L L. SCH. INDIA REV. 8, XXXX (2000).