

CHAPTER V

REMOVING INCRIMINATING EVIDENCE FROM (OUTSIDE OF) THE BODY OF THE ACCUSED

Sometimes to identify the accused, it may be necessary to take into custody incriminating evidence from his person, like blood-stained clothes, seminal spots, nail clippings, hair, blood spots, etc. Enforced furnishing of this type of physical evidence is usually held not to amount to testimonial compulsion violative of the privilege against self-incrimination.

Thus in *McFarland v. U. S.*,¹ an American case, it was held that examination of the body of the accused to discover blood did not violate the privilege against self-incrimination, the court stating that "out of court as well as in court, his body may be examined with or without consent."² Similarly, it has been held in the American courts that finger-nail scrappings of an accused person can be taken to determine whether they contain human blood³ or tissues of a woman allegedly raped.⁴ Likewise hair could be taken without violating the privilege. So also it has been held that taking of smears and slides from the defendant's genitals did not violate the privilege against self-incrimination.⁵

It may be noted that evidence consisting of blood⁶ or

1. 150 F. 2d 593 (1945).

2. *Ibid.*, p. 594.

3. *State v. McLaughlin*, (1916) 138 La. 958. The case is cited in *Annotation, Physical Examination as Violation of Constitutional Rights*, 164 A. L. R. 967, 973 (1946).

4. *Coleman v. State*, (1948) 209 SW 2d 925. The case is cited in *Annotation, Physical Examination or Test as Violation of Constitutional Rights*, 25 A. L. R. 2d 1407, 1410 (1952).

5. *People v. Morgan*, 146 Cal. App. 2d 722, 304 P 2d 138, cited in A. L. R. 2d Supp. Serv. (1960) at 2148.

6. It is now well established that human blood can be readily distinguished from animal blood. Of human blood certain types can be distinguished with accuracy and must be in making blood transfusions. However, no way of identifying the blood of a particular person is known.

hair is usually of negative value only. "Since blood grouping tests usually serve only to exonerate, and therefore benefit an accused person, the issue of self-incrimination will seldom arise."⁸

Under Section 51 of the Criminal Procedure Code the police can search an arrested person and place in safe custody all articles, other than necessary wearing apparel, found upon him.⁹ There is no statutory provision in India which gives power either to the police or to a court to order examination of the accused for the removal of blood or hair or other physical evidence from his person.

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7. Regarding hair, it has been stated: "An affirmative answer to the identification question is rarely possible. The most that can usually be expected is a conclusion that the evidence and specimen hairs are consistent with a common source. In cases of special identity characteristics, it might be possible to conclude the identification of an individual by hair examination. Future research and development may further this possibility." Lowell W. Bradford, *Microscopic Evidence in Criminal Cases*, 31 Temp. L. Q. 330, 336 (1957-58).
 8. *Inbau, Self-Incrimination*, p. 84 (1950).
 9. *In re Palani Goundan*, A. I. R. 1957 Mad. 546, the court stated that blood stained clothes can be seized from the body of the accused without violating Art. 20 (3). *Cf. In re Palani Moopan*, A. I. R. 1935 Mad. 495, 497. In this case the accused who was charged with homicide had surrendered to the magistrate and the blood-stained clothes worn by him were seized upon the direction of the magistrate by his clerk and peon. On these facts the court held that no compulsion was exercised against him.