Man In India, 97 (23) : 219-230

THE CRIMINAL AND LEGAL CHARACTERISTIC OF CRIMES COMMITTED BY INDIVIDUAS WHO ARE INVOLVED IN JUDICIAL PROCEEDINGS

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Abstract: In this article the author considers crimes committed by individuals who are involved in judicial proceedings. In detail the author analyzes elements of such crimes as falsification of evidences in a civil case (p.1 Art. 303 of Criminal Code), obviously false testimony, the expert opinion, the specialist or the wrong translation (Art. 307 of CC), refusal of the witness or victim of evidence (Art. 308 of CC). Various arguments and opinions of scientists on this subject are given and also the author has drawn conclusions about need of allocation in independent group of the crimes committed in the sphere of administration of justice and judicial proceedings. Unfortunately, today there is no such division in the theory of criminal law that leads to illegal investment of the specified bodies with justice implementation functions, to dissolution of functions of judicial authority in functions of the law enforcement agencies executing judicial acts. The law enforcement agencies and bodies executing judicial acts aren't invested with functions of judicial authority. They only promote the implementation of administration of justice and judicial proceedings by court. The author supposes the solution of this problem is only correct as it allows to differentiate and define accurately the place of judicial authority in the general system of the government, prosecutor's office, law enforcement agencies and bodies which are carrying out the execution of judicial acts. The author points that justice in a broad sense is an activity of court and of law enforcement agencies and bodies executing judicial acts. And in narrow sense justice is only anactivity of court.

Keywords: Crimes committed by individuals who are involved in judicial proceedings; falsification of evidences in a civil case; obviously false testimony, expert opinion, specialist or wrong translation; refusal of the witness or victim of evidence.

INTRODUCTION

In the Russian Federation a component (branch) of the governmental power is judicial authority that is in Art. 10 of the Constitution of the Russian Federation called to carry out justice.

The judicial authority has the specifics as carries out such form of the governmental power which is organizationally made out in a justice system. According to chapter 7 of the Constitution of the Russian Federation it is presented by judicial system which is called to administer justice in the country and represents a type of the state activity sent for the consideration and permission of various social conflicts connected with the valid and alleged violation of rules of law and legal regulations (The Constitution…, 2014).

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Administrating justice in the form of procedural activity, judicial authority is called to exercise also judicial control that follows from contents of Art. 46 of the Constitution of the Russian Federation according to which judicial protection of his rights and freedoms is guaranteed to each citizen.

Administering justice, judicial authority needs in the state protection against illegal intervention in execution of its functions but also, on the other hand, it has to be guided only by the law. In this regard an important role in protection of lawful activity of judicial authority is played by the criminal law called to protect a normal functioning and power of judicial authority from criminal encroachments.

One of the types of such intervention are crimes committed by individuals who are involved in judicial proceedings.

THE MAIN PART

The object of this group of crimes is normal functioning of judicial power and its authority. Being participants of judicial proceedings, guilty persons with their action and inaction counteract achievement of the truth complicating thereby justice implementation. At the same time judicial proceedings are essentially a stage of administration of justice by results of which the court also makes the decision. Therefore illegal actions of participants of judicial proceedings can negatively influence making the reasonable decision by court, i.e. administration of justice. The public danger of committed acts also consists in it.

These crimes are falsification of evidence in a civil case (p.1 Art. 303 of CC), obviously false testimony, the expert opinion, the specialist or the wrong translation (Art. 307 of CC), refusal of the witness or victim of evidence (Art. 308 of CC) (The Criminal code…, 1996).

Falsification of evidence (p.1 Art. 303 of the Criminal Code of the Russian Federation). Implementation of justice is reached only on the basis of objective evidence and therefore their distortion and furthermore falsification interferes with normal functioning of judicial authority, undermines its authority, at the same time significantly violating the rights and legitimate interests of citizens, legal entities and the state.

The main direct object of the considered crimes are public relations providing a normal functioning of judicial authority at implementation of civil or arbitration proceedings.

Property and other rights of citizens, legal entities and the state are an additional object.

Various evidences are subject of the considered crime which are meeting the requirements of Art. 73 of CPC (Civil Procedure code) and the Art. 76 of APC (Arbitration Procedure code) (The Civil procedure…, 2002), having essential values for the comprehensive consideration and civil cases' decision-making connected

with law-suit according to standards of the CPC of the Russian Federation and also on the disputes arising between legal entities according to APC of the Russian Federation.

The objective element of the act is characterized by falsification, i.e. submission of distorted actual data to court of the distorted actual data which are evidences on the case considered in court.

Types of evidences which can be brought into court are defined in Art. 55 of CC (The Civil code…, 1994) and Art. 71 of the CPC of the Russian Federation, Art. 64 and the Art. of 75 APC of the Russian Federation. These include information about facts on the basis of which the court determines the presence or absence of circumstances justifying the claims and objections of the parties as well as other circumstances that are important for the proper consideration and resolution of the case. This information can be obtained from the explanations of the parties and third parties, the testimony of witnesses, written and physical evidence, audio and video recordings and expert opinions. However, it seems that authors are right pointing at the same time that with regard to the requirements of Part 1 art.303 of the Criminal Code it is enough if they conform to the condition of the case (at least, if it included the consciousness of the guilty) and presented (collected) by a proper subject. You can not link the existence of the object of the crime with a procedural documentation of evidence.

At the same time, we suppose that the opinion of some authors about need of expansion of a disposition p.1 of Art. 303 of CC unacceptable that to provide responsibility not only for application of those ways of distortion or concealment of the truth in a case which are covered by a concept of falsification of proofs, but also for use in the same purposes of other methods of impact on contents or a form of the proofs and also for refusal or evasion of procedural fixing of the obtained actual data or deposition of existing evidence and having evidentiary value.

Also falsification is a planting of objects or documents for their subsequent withdrawal and deposition of evidences. We share this position.

Being among formal crime elements falsification of proofs is ended crime from the moment of presentation of forged evidences in court irrespective of the consequences. The forged evidence can be shown as during consideration of a civil case in court and during presentation of the corresponding claim or claims with deposition of materials including forged for initiation of civil or arbitration procedure.

The subjective element is characterized only by direct intention, i.e. the guilty person realizes that he provides the forged evidence and wishes it. Motives and purposes can be various and therefore do not impact on qualification of act.

The subject can only be persons participating in case or their representatives. The parties (the claimant, the defendant), the third parties (the person declaring

independent requirements concerning a subject of dispute), the prosecutor, the public authorities, local governments and other bodies appealing to court for a protection of the rights and freedoms and legitimate interests of other persons or persons entered in legal process for making the conclusion (experts), applicants and other interested persons on cases of a special procedure and legal public cases (Art. 34 of CPC and the Art. of 40 APC).

According to Art. 49-50 of CPC and Art. 59-61 of APC representatives are capable persons having the authority to conduct the case with the exception of judges, investigators, prosecutors, assistants of judges and court staff; lawyers appointed by the court; staff of the bodies of state power and local governments and organizations representing, according to the federal laws and other normative legal acts on behalf of the bodies referred to them; legal representatives; parents, adoptive parents, guardians, trustees or disabled who do not have full legal capacity of citizens and other persons to whom this right is given.

Obviously false testimony, expert opinion, specialist opinion or wrong translation (Art. 307 of the Criminal Code of the Russian Federation). Giving obviously false testimonies by witnesses, victims or experts and specialists and also obviously wrong translation made by the translator can seriously influence administration of justice because of a complicate finding of the truth on case. It can lead to the violation of rights and legitimate interests of citizens, legal entities and the state. Considering these circumstances the existing Criminal Code of the Russian Federation has provided responsibility in Art. 307 for obviously false testimonies, the expert and specialist opinion or wrong translation.

Public relations are direct object of this act providing normal functioning of judicial authority in connection with implementation of justice at adjudgement and other judicial act. At violation of the rights and legitimate interests of participants of the considered case or materials the rights and legitimate interests of the persons participating in criminal or civil trial can act as an additional object.

Some authors determine public relations as a direct object of this crime by ensuring of getting authentic evidences to judicial bodies, public relations on protection of the rights and legitimate interests of individuals are additional object. Others recognize interests of justice are the main object and personal and (or) property interests of citizens violated by the falsification of evidences are facultative.

However, public relations can't protect the principle of legality. Besides the protection of rights and legitimate interests of the personality, society and state is carried out not only in scope of Art. 307 of the Criminal Code of the Russian Federation. Such protection is carried out also by means of other norms of the Special part of the Criminal Code of the Russian Federation and therefore at such approach to definition of a direct object of the considered crime its specifics in relation to this crime is not reflected.

For the same reasons and also because of the restriction of action of Art. 307 of the Criminal Code of the Russian Federation only in the sphere of criminal legal proceedings, it is impossible to agree that a direct object are public relations providing protection of the personality in criminal legal proceedings from illegal and unreasonable conviction and restriction of her/his rights and legitimate interests.

There is no definiteness in definition of the direct object given by other authors as public relations providing normal implementation of justice by court.

Some people suppose that public relations settled by norms of procedural law excluding the obtaining of wrong evidentiary information are the direct main object. However, this position is not in the content of a disposition of Art. 307 of the Criminal Code of the Russian Federation as, for example, the translator is not a source of evidence.

There is an opinion about that the direct object of the crime is a procedural law's rule of giving evidence, an expert and specialst opinion or translation in the legal process or criminal prosecution.

The objective element of the act is characterized by: (1) false testimonies of the witness and victim; (2) false expert and specialist opinion; (3) translator's wrong translation. At the same time falsehood of testimony and wrong translation have to be obvious. Obviously false testimonies of witnesses and victims are expressed in giving information of false data about circumstances and facts which must be proved and have essential value for proceedings of civil or criminal case in court. However, testimonies are false when they fully or partly exclude circumstances of the declared civil suit or the committed crime.

In accordance with article 55 of the Code of civil procedure of the Russian Federation testimonies in civil proceedings are significant if they are connected with the subject and cause of an alleged claim. This requirement is related to arbitration proceedings. And according to article 73 of the Code of criminal procedure in a criminal case must be proved: (1) crime; (2) the guilt of the person, the form of guilt, motives of crime committed; (3) the circumstances characterizing the personality of the accused; (4) the nature and extent of the harm caused by the crime; (5) circumstances excluding crime and punishable act; (6) circumstances mitigating or aggravating the punishment; (7) the circumstances which can entail the release from criminal liability and punishment (The Criminal procedure…, 2001).

In this regard we can not agree with the opinion expressed in the literature that the initiation of criminal case against the witness or victim giving false testimony should be after the sentence comes into force (Barysheva, 2013).

False testimonies of accused, plaintiffs, defendants and third parties in civil proceedings are not elements of the crime.

Obviously false expert and specialist opinion a conscious misstatement of results of the study, for example, wrong conclusions or assessment, the omission of certain

facts or distorting them. In our opinion, A.I. Chuchaev is right that the silence of expert or specialist unlike the witness and victim about essential circumstances of the case constitutes the offence under article 307 of the Criminal code (Chuchaev, 2014). However, the false testimony of an expert or specialist also constitutes an analyzed crime in the court.

However, the mistake of an expert or specialist because of the insufficient level of special knowledge or good misconception of them is not a crime

Obviously wrong translation is a false translation of documents, witness testimony, questions of the judge and answers of defendant, etc., i.e., the distortion of a translation, oral speech or document.

For a false testimony a person may be prosecuted only in cases when it is proved by judicial decision. In such a situation, if in the sentence there is a false testimony, for example, of a witness or victim, the court admits this testimony is unreliable, which did not affect the validity of the court's decision. And even when false testimony has led to the imposition of ungrounded judicial decisions and in the administrative case to the enactment so in this case, these testimonies had to find backup in a review and comparison with other evidence that was not made either by the preliminary investigation bodies or the court.

In this situation the question arises: "Is it possible in this case to consider actions of a witness or victim to be a crime?".

It was scientists who suggest to exclude a criminal liability for false testimony of witnesses and victims. An additional argument in favor of the adoption of this proposal, there is an coercion, the statement of threats to witnesses and victims by the suspects, accused and defendants, and their relatives, friends and acquaintances with the ineffectiveness of the security measures by the state in respect of witnesses and victims. N. Getman notes that to bona fide participants of legal proceedings are increasingly used encouraged, carefully planned and skillfully implemented techniques of physical and psychological effects. This resulted in numerous cases of refusal and evasion of victims and witnesses from participation in criminal proceedings (Getman, 2014).

The authors also refer to the availability of notes to article 307 of the Criminal code, allowing to free up individuals when giving false testimony, conclusions and incorrect translation in any stage of the proceedings, until the departure of the judges to the jury room, which practically makes impossible the application of article 307 of the Criminal code.

There is also a suggestion to provide an administrative responsibility in the civil and arbitration processes for perjury (Kosyakova, 2011).

At the same time it is proposed to strengthen the sanction of article 307 of the Criminal code to include a penalty of imprisonment for up to two and even to three years (Dodonov, 2012).

It seems to us that the arguments of these authors are worthy of attention, that allow us to agree with them relating to the part 1 of article 307 of the Criminal code, replacing criminal liability to administrative. However, in our view, it is inappropriate to exclude a criminal liability in relation to false testimony, expert opinion and specialist, as well as an incorrect translation, connected with an individual's accusation of committing serious or especially serious crimes (part 2 of article 307 of the Criminal code).

If a false testimony, conclusion and a wrong translation became the reason for initiation of criminal case, the act of guilty became a false accusation the responsibility for which is provided by article 306 of the Criminal code. In this regard, the false witness must be distinguished from false denunciation (article 306 of the Criminal code), and V.A. Blinnikov notes it should in this case go on about the testimony of an accusatory nature. At the same time as false statements of exculpatory do not contact with the composition of false denunciation (Blinnikov, 2011). And this view is confirmed by the practice.

First of all, false testimonies of the accusatory nature can be after the initiation of a criminal case in a preliminary investigation and official investigation. A false accusation takes place mostly before the initiation of proceedings. Usually a false accusation has a purpose of criminal prosecution.

Perjury can only be by calling the person for interrogation as a witness to the body conducting the investigation or to the court for questioning at the hearing. When false accusation a person shall submit an application on their own initiative.

The perjury after a false accusation does not make cumulative offences and perpetrators are subject to liability in this case only under article 306 of the Criminal code, as in false testimony we are talking about the same false facts that had been in a false denunciation.

In the literature there are different opinions about the possibility of committing acts under part 1 of article 307 of the Criminal code by inaction when the witness or victim is silent about the essential circumstances concerning with the matter of the proving or claim. So, some authors believe that such behavior of the person can form a considered part of the crime. Others, however, believe that such a default should be regarded as a kind of refusal to testify and therefore their actions should be qualified under article 308 of the Criminal code. We consider the last point of view more correct because no information (neither wrong, nor accurate) is reported in default. There is no refusal to testify in this situation.

As the formal structure of a crime, false testimony of the witness and victim, expert and specialist opinion or incorrect translation are result crime from the moment of giving a false testimony, conclusion or incorrect translation. So, when false testimony of a witness, victim, expert and specialist a crime should be recognised from the moment of their result, ie. when they have finished their

testimony. If you give a false conclusion a crime is completed since the signing conclusions by an expert or specialist and referring them to the court and a false translation since its doing. However, in literature there is a different approach to the definition of the moment of the end of giving of obviously false conclusion by the expert and specialist. It seems that a false conclusion of the expert or specialist must be a completed crime from the moment of its referring to the court (or body of a preliminary investigation).

The subjective element of the offense is characterized only by direct intent, i.e., the perpetrators are aware of the social danger of false testimony, conclusions or incorrect translation, foresee the possibility of harmful consequences and wish their commission.

The motives can be of a different nature and have no effect on the qualification of the offense.

The subject may be any person who is 16 years old and appeared in the court as a witness, victim, expert, specialist and interpreter.

Parties of the constitutional, civil and arbitration case can not be the subject of the crime and also their representatives, suspects, accused persons and defendants.

Obviously false evidence, conclusion of expert, specialist or incorrect translation are different rom the falsification of evidence, the responsibility for which is provided by article 303 of the Criminal code.

As qualifying signs part 2 of article 307 of the Criminal code provides for the committing of actions associated with the prosecution of victims of committing a serious or especially serious crime, the definition of which is provided by article 15 of the Criminal code.

We suggest to include as qualifying signs the causing of serious consequences by a victim and committing actions by a guilty in collusion with other persons.

It is also proposed to include in these signs the actions of the perpetrators on the motive of self-interest or other personal interest and false testimony of a witness or victim, connected with artificial creation of prosecution evidence or justification; perjury resulting in serious consequences.

However, in accordance with the note to article 307 of the Criminal code the witness, victim, expert, specialist or interpreter shall be exempt from criminal liability if they voluntarily in the proceedings before the sentencing court or the court's decision affirm the falsity of their testimony, the conclusion or obviously wrong translation. Thus, the legislator has provided the possibility to avoid the persons of criminal responsibility and at the same time created the conditions for prevention of the onset of socially dangerous consequences, however, limiting the validity of the notes by the period before the sentence or judgment.

Therefore, the analysis of the content of the notes to article 307 of the Criminal code shows that it does not apply to cases when the witness, victim, expert, specialist

and translator have said about the falsity of his testimony, conclusions and translation after the sentencing and other judicial decisions.

As for perjury connected with accusation of a person committing in serious or especially serious crimes it is expedient to consolidate the rule on mitigation of punishment to the guilty until the opportunity to exempt him. Thus the judge in sentencing would take into consideration the stage of the process that person had made a voluntary statement about the falsity of the earlier testimony (Kosyakova, 2011).

This approach meets the requirements of strict differentiation of criminal responsibility.

The refusal of witness or victim from testifying (article 308 of the Criminal code). Public danger of this crime consists of the fact that the refusal to testify makes difficult and in many cases eliminates the bringing to responsibility for their actions.

The main direct object of the crime are public relations providing normal functioning of the judiciary for providing justice associated with obtaining reliable information on the case. In the case of harm to the legitimate rights and interests of citizens and legal entities in case of refusal to testify as a secondary object will be these rights and legitimate interests.

The objective of the act is characterized by the refusal to give testimony in court. So, according to article 78 and 79 of the Criminal procedure code and article 69 of the Code of civil procedure of the Russian Federation, testimonies of witnesses and victims are important for the proper solution of a criminal or civil case. The refusal of the testimony of a witness or victim is an open reluctance to tell the court certain information. It can be expressed both in written and in oral form. In this case the person can refuse to testify in full or only certain parts of it.

The refusal of witness or victim may be both a direct and veiled. A direct refusal is characterized by an open statement that the person will not testify and a veiled is by various including fictional circumstances.

Thus, the act is committed by omission, i.e., the perpetrators do not comply with its procedural obligation imposed by law to inform the court about circumstances known to them in a criminal or civil case. The concealment of a witness or a victim of the known facts also constitutes a refusal to testify.

According to part 1 of article 51 of the Constitution of the Russian Federation nobody is obliged to testify against himself, his spouse and close relatives whose range is determined by Federal law. The provisions of the Constitution set out in the note to article 308 of the Criminal code, p. 1. part 1 of article 56 of the CPC. Thus, the range of these persons is defined in clause 4, article 56, Code of criminal procedure. Similar provisions are contained in clauses 1-3 of article 69 of the Code of civil procedure and in p.6 of Art. 56 of APC.

The close relatives are spouses, parents, children, adoptive parents, adopted children, brothers and sisters, grandfather, grandmother, grandchildren.

In the literature it has been suggested that persons living in unregistered so-called civil marriages are recognized as spouses (Fargiev, 2012). However, in our opinion, his position rightly has been subjected to criticism which is substantiated by the fact that according to article 1 of the Family code spouses are only persons in a registered marriage by registry offices. Religious marriage and so-called civil marriage do not become a marriage and family relationship. We agree with this statement.

In accordance with part 3 of article 56 of the Code of criminal procedure it is forbidden to interrogate as witnesses: (1) judges and jurors concerning circumstances which become known to them in the criminal proceedings; (2) the defender of the suspect or accused about circumstances known to him in connection with the participation in the proceedings on the case; (3) lawyers about circumstances which became known to them in connection with the legal assistance; (4) clergymen of religious organizations that have passed state registration about the circumstances that became known to them in confession; (5) members of the Federation Council, deputies of the State Duma without their consent about the circumstances that became known to them in connection with the exercise of their powers.

The subjective element of the crime is expressed in direct intention, i.e. the perpetrators are aware of public danger of the inaction, foresee that thereby counteract the administration of justice and want the onset of these consequences. The motive and purpose of the offense may be very different in nature, such as pity for the defendant, the desire to facilitate his fate, greed, etc.

The subject of the crime is a witness or victim called to testify in court.

The refusal of the testimony of an expert or a specialist is not the composition of the analyzed crimes. For this they shall be liable only to disciplinary sanctions.

The crime should be distinguished from concealment of crimes (article 316 of the Criminal code). So, if the witness and the victim in case of refusal from testimony showing the omission, concealment is manifested in active behavior, i.e., in the various actions directed on concealment of the criminal, tools and means of committing the crime, traces of crime or items obtained by criminal means.

It is necessary to distinguish the refusal to testify from false testimony when the witness or victim is silent about the individual circumstances of the case in court (Korobeeva, 2012). So, if the witness or victim being summoned declares that he knew nothing in the present case that his conduct constitutes a refusal to testify as they did not have active opposition to finding out the truth. In other words, the basis of differentiation of structures of the crimes provided for by article 308 and 307 of the Criminal code is the behavior of the perpetrator. In those cases where such behavior obstructs the truth the deed constitutes perjury. If the perpetrator

only does not contribute to clarifying the truth his behavior constitutes a refusal to testify.

However, the legislator has provided for the note to article 306 of the Criminal code according to which the victims and witnesses are not subject to criminal liability for a refusal to testify against themselves, their spouse or their close relatives. In this regard we share the view that with those directly specified in the note the half blood, i.e. brother and sister consanguinean, grandparents, grandchildren and adopted children should be in the note.

CONCLUSION

The need to allocate a separate group of crimes committed in the sphere of administration of justice and trial proceedings is due to the interests of criminal legal protection of the normal functioning and credibility of the judiciary. We believe that such an approach is the only correct one because it allows to clearly separate and define the place of the judiciary in the general system of state authorities, prosecutors, law enforcement agencies and bodies engaged in the execution of judicial acts. The need for this approach arises from the provisions of Chapter 7 of the Constitution of the Russian Federation. Unfortunately, in the theory of criminal law there is no this division that leads to the wrongful granting of these authorities with functions of the administration of justice, to the dissolution of the judiciary in the functions of law enforcement bodies performing judicial acts and it is difficult to agree with that. Law enforcement bodies and bodies executing judicial acts does not have the functions of the judiciary. They only contribute to the exercise of the court justice and trial. And, realizing the fallacy in determining the species of the object of crimes in the justice system including the activity of law enforcement bodies and the bodies executing judicial acts in the literature can be interpreted in a narrow and broad sense. Thus, justice in a broad sense is the activities of the court and law enforcement bodies and bodies executing judicial acts. And justice in a narrow sense is only court's activities. However, the Constitution of the Russian Federation in Chapter 7 clearly indicates only the judicial power called to administer justice, so these statements are erroneous.

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