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SHAMSHER SINGH VERMA

v.

STATE OF HARYANA

(Criminal Appeal No. 1525 of 2015)

B

NOVEMBER 24, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

C *Code of Criminal Procedure, 1973: s.294 – Right of
defence – Denial of – Allegation against the accused-
appellant that he molested a female child aged 9 years –
Complainant party and accused-appellant related to each
other – Application by accused-appellant for getting exhibited
the compact disc filed in defence and to get the same proved
D from Forensic Science Laboratory – In the application, it was
alleged that there was recording of conversation between
father of the victim and the son and the wife of the accused
regarding the property dispute – Said application rejected –
Held: The compact disc is a document – On document filed
E by the defence, endorsement of admission or denial by the
public prosecutor is sufficient and defence will have to prove
the document if not admitted by the prosecution – Courts
below erred in law in rejecting the application to play the
compact disc in question to enable the public prosecutor to
F admit or deny, and to get it sent to the Forensic Science
Laboratory, by the defence – Penal Code, 1860 – s.354 –
Protection of Children from Sexual Offences Act, 2015 –
Evidence – Compact disc.*

G

Allowing the appeal, the Court

**HELD: 1. The object of Section 294 CrPC is to
accelerate pace of trial by avoiding the time being wasted
by the parties in recording the unnecessary evidence.**

H

Where genuineness of any document is admitted, or its

formal proof is dispensed with, the same may be read in evidence. The compact disc is a document. It is not necessary for the court to obtain admission or denial on a document under sub-section (1) to Section 294 Cr.P.C. personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 CrPC. Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence. [Paras 11, 14] [240-B; 241-E-G]

2. As per order dated 21.2.2015 passed by the trial court, all the prosecution witnesses, including the child victim, her mother, maternal grandmother and complainant were examined. The father of the victim appeared to have been discharged by the prosecution, and the evidence was closed. From the copy of the statement of accused recorded under Section 313 Cr.P.C., the accused has alleged that he has been implicated due to property dispute. It is also stated that some conversation is in possession of his son. From the record it also reflected that the Registration Clerk, the Document Writer, the Clerk-cum-Cashier, State Bank of Patiala, and the son of the appellatant were examined as defence witnesses and evidence in defence is in progress. The courts below have erred in law in not allowing the application of the defence to get played the

- A compact disc relating to conversation between father of the victim and son and wife of the appellant regarding alleged property dispute. The courts below have erred in law in rejecting the application to play the compact disc in question to enable the public prosecutor to admit or deny, and to get it sent to the Forensic Science Laboratory, by the defence. The appellant is in jail and there appears to be no intention on his part to unnecessarily linger the trial, particularly when the prosecution witnesses have been examined. [Para 15-16] [241-H; 242-A-C, E-F]

- R.M. Malkani v. State of Maharashtra* (1973) 1 SCC 471:1973 (2) SCR 4; *Ziyauddin Barhanuddin Bukhari v. Brijmohan Ramdass Mehra and others* (1976) 2 SCC 17: 1975 (Supp) SCR 281 – relied on.

Case Law Reference

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|---|---------------------|------------|---------|
| | 1973 (2) SCR 4 | relied on. | Para 12 |
| E | 1975 (Supp) SCR 281 | relied on. | Para 13 |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1525 of 2015

- F From the Judgment and Order dated 25.08.2015 of the Judicature of Punjab & Haryana at Chandigarh in CRM-M No. 6828 of 2015.

Jay Savla, Shilpi Chowdhary, Ankita Jain for the appellant.

- G Mahalakshmi Pawani, Shakti P. Sethi, Mamta Rani, Anu Gupta, Vishwa Pal Singh, Shrinath Agarwal for the respondent.

The Judgment of the Court was delivered by

- H **PRAFULLA C. PANT, J.** 1. This appeal is directed against order dated 25.8.2015, passed by the High Court of

Punjab and Haryana at Chandigarh, whereby said Court has affirmed the order dated 21.2.2015, passed by the Special Judge, Kaithal, in Sessions Case No. 33 of 2014, and rejected the application of the accused for getting exhibited the compact disc, filed in defence and to get the same proved from Forensic Science Laboratory.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Briefly stated, a report was lodged against the appellant (accused) on 25.10.2013 at Police Station, Civil Lines, Kaithal, registered as FIR No. 232 in respect of offence punishable under Section 354 of the Indian Penal Code (IPC) and one relating to Protection of Children from Sexual Offences Act, 2015 (POCSO) in which complainant Munish Verma alleged that his minor niece was molested by the appellant. It appears that after investigation, a charge sheet is filed against the appellant, on the basis of which Sessions Case No. 33 of 2014 was registered. Special Judge, Kaithal, after hearing the parties, on 28.3.2014 framed charge in respect of offences punishable under Sections 354A and 376 IPC and also in respect of offence punishable under Sections 4/12 of POCSO. Admittedly prosecution witnesses have been examined in said case, whereafter statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short "CrPC"). In defence the accused has examined four witnesses, and an application purported to have been moved under Section 294 CrPC filed before the trial court with following prayer: -

"In view of the submissions made above it is therefore prayed that the said gadgets may be got operated initially in the court for preserving a copy of the text contained therein for further communication to F.S.L. for establishing their authenticity. It is further prayed that the voice of

A Sandeep Verma may kindly be ordered to be taken by
the experts at FSL to be further got matched with the
recorded voice above mentioned.”

B 4. In said application dated 19.2.2015, it is alleged that
there is recording of conversation between Sandeep Verma
(father of the victim) and Saurabh (son of the accused) and
Meena Kumari (wife of the accused). The application appears
to have been opposed by the prosecution. Consequently, the
trial court rejected the same vide order dated 21.2.2015 and
C the same was affirmed, vide impugned order passed by the
High Court.

D 5. Learned counsel for the appellant argued before us
that the accused has a right to adduce the evidence in defence
and the courts below have erred in law in denying the right of
defence.

E 6. On the other hand, learned counsel for the complainant
and learned counsel for the State contended that it is a case
of sexual abuse of a female child aged nine years by his uncle,
and the accused/appellant is trying to linger the trial.

F 7. In reply to this, learned counsel for the appellant
pointed out that since the accused/appellant is in jail, as such,
there is no question on his part to protract the trial. It is further
submitted on behalf of the appellant that the appellant was
initially detained on 24.10.2013 illegally by the police at the
instance of the complainant, to settle the property dispute with
the complainant and his brother. On this Writ Petition (Criminal)
G No. 1888 of 2013 was filed before the High Court for issuance
of writ of habeas corpus. It is further pointed out that the High
Court, vide its order dated 25.10.2013, appointed Warrant
Officer, and the appellant was released on 25.10.2013 at 10.25
p.m. Immediately thereafter FIR No. 232 dated 25.10.2013
H was registered at 10.35 p.m. regarding alleged molestation

on the basis of which Sessions Case is proceeding. On behalf A
of the appellant it is also submitted that appellant's wife Meena
is sister of Munish Verma (complainant) and Sandeep Verma
(father of the victim), and there is property dispute between
the parties due to which the appellant has been falsely
implicated. B

8. Mrs. Mahalakshmi Pawani, learned senior counsel for
the complainant vehemently argued that the alleged
conversation among the father of the victim and son and wife C
of the appellant is subsequent to the incident of molestation
and rape with a nine year old child, as such the trial court has
rightly rejected the application dated 19.2.2015.

9. However, at this stage we are not inclined to express
any opinion as to the merits of the prosecution case or defence D
version. The only point of relevance at present is whether the
accused has been denied right of defence or not.

10. Section 294 CrPC reads as under: -

"294. No formal proof of certain documents. – (1) E
Where any document is filed before any Court by the
prosecution or the accused, the particulars of every such
document shall be included in a list and the prosecution
or the accused, as the case may be, or the pleader for
the prosecution or the accused, if any, shall be called F
upon to admit or deny the genuineness of each such
document.

(2) The list of documents shall be in such form as may be
prescribed by the State Government. G

(3) Where the genuineness of any document is not
disputed, such document may be read in evidence in
any inquiry, trial or other proceeding under this Code
without proof of the signature of the person to whom it
purports to be signed: H

A Provided that the Court may, in its discretion, require such signature to be proved.”

B 11. The object of Section 294 CrPC is to accelerate pace of trial by avoiding the time being wasted by the parties in recording the unnecessary evidence. Where genuineness of any document is admitted, or its formal proof is dispensed with, the same may be read in evidence. Word “document” is defined in Section 3 of the Indian Evidence Act, 1872, as under:-

C “‘Document’ means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

D

Illustration

A writing is a document;

Words printed, lithographed or photographed are documents;

E

A map or plan is a document;

An inscription on a metal plate or stone is a document;

A caricature is a document.”

F 12. In ***R.M. Malkani vs. State of Maharashtra***¹, this Court has observed that tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and, thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record.

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13. In ***Ziyauddin Barhanuddin Bukhari vs. Brijmohan Ramdass Mehra and others***², it was held by this Court that tape-records of speeches were “documents”, as defined by

¹ (1973) 1 SCC 471 : 1973 (2) SCR 417

H ² (1976) 2 SCC 17 : 1975 (Supp) SCR 281

Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions: A

- "(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it. B
- (b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record. C
- (c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act." D

14. In view of the definition of 'document' in Evidence Act, and the law laid down by this Court, as discussed above, we hold that the compact disc is also a document. It is not necessary for the court to obtain admission or denial on a document under sub-section (1) to Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 CrPC. Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence. E F G

15. On going through the order dated 21.2.2015, passed H

A by the trial court, we find that all the prosecution witnesses,
including the child victim, her mother Harjinder Kaur, maternal
grandmother Parajit Kaur and Munish Verma have been
examined. Sandeep Verma (father of the victim) appears to
B have been discharged by the prosecution, and the evidence
was closed. From the copy of the statement of accused
Shamsher Singh Verma recorded under Section 313 CrPC
(annexed as Annexure P-11 to the petition), it is evident that in
reply to second last question, the accused has alleged that he
has been implicated due to property dispute. It is also stated
C that some conversation is in possession of his son. From the
record it also reflects that Dhir Singh, Registration Clerk, Vipin
Taneja, Document Writer, Praveen Kumar, Clerk-cum-Cashier,
State Bank of Patiala, and Saurabh Verma, son of the appellant
have been examined as defence witnesses and evidence in
defence is in progress.

D 16. We are not inclined to go into the truthfulness of the
conversation sought to be proved by the defence but, in the
facts and circumstances of the case, as discussed above, we
are of the view that the courts below have erred in law in not
allowing the application of the defence to get played the
compact disc relating to conversation between father of the
E victim and son and wife of the appellant regarding alleged
property dispute. In our opinion, the courts below have erred
in law in rejecting the application to play the compact disc in
question to enable the public prosecutor to admit or deny, and
to get it sent to the Forensic Science Laboratory, by the
F defence. The appellant is in jail and there appears to be no
intention on his part to unnecessarily linger the trial, particularly
when the prosecution witnesses have been examined.

17. Therefore, without expressing any opinion as to the
final merits of the case, this appeal is allowed, and the orders
G passed by the courts below are set aside. The application
dated 19.2.2015 shall stand allowed. However, in the facts
and circumstances of the case, it is observed that the accused/
appellant shall not be entitled to seek bail on the ground of
delay of trial.