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SUJOY MITRA

v.

STATE OF WEST BENGAL

(Criminal Appeal No. 1620 of 2015)

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DECEMBER 02, 2015

[JAGDISH SINGH KHEHAR AND R. BANUMATHI, JJ.]

Code of Criminal Procedure, 1973 – s.278 – Rape case – Recording of testimony of prosecutrix through video conferencing – Complainant prosecutrix-PW5 a citizen of Ireland filed a complaint against appellant alleging rape – Four witnesses examined before examining PW5– Trial court accepted prayer to record testimony of PW5 through video conference – Appellant challenged the procedure adopted by trial court, while recording the statement of PW5 through video conferencing by filing petition u/s.482 Cr.P.C. – High Court laid down procedure for recording such statement – In the instant appeal, appellant alleged that the procedure postulated by High Court was not fair to him – Held: In addition to the steps and safeguards provided in the impugned order, following procedure should be adopted, while recording the statement of PW5 – State of West Bengal to make provision for recording the testimony of PW5 in trial Court by seeking the services of the NIC for installing the appropriate equipment for video conferencing – Before recording her statement, the Embassy to nominate a responsible officer, in whose presence the statement would be recorded – The officer so deputed shall ensure and affirm to the trial court that there is no other person besides the concerned witness, in the room, in which the testimony of PW5 is be recorded – In case, the witness is in possession of any material or documents, the same shall be taken over by the officer concerned in his personal custody – The statement of the witness shall be recorded in consonance with the provisions

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of s.278 – At the culmination of the recording of the statement, the same shall be read out to the witness in the presence of the accused – The transcript of the statement of the witness recorded through video conferencing shall be scanned and dispatched through email to the Embassy – At the embassy, the witness will authenticate the same in consonance with law – The said authenticated statement shall be endorsed by the officer deputed by the Embassy – It shall be scanned and returned to the trial court through email – The statement signed by the witness at the Embassy, shall be retained in its custody in a sealed cover – The statement received by the trial court through email shall be re-endorsed by the trial Judge – The instant statement endorsed by the trial Judge, shall constitute the testimony of PW5, for all intents and purposes – Appellant’s plea that recording of the video-graphic testimony of the witness should be furnished to the appellant is rejected – These parameters have to be adopted to record the testimony of PW5, in addition to the procedure and safeguards provided for in the impugned order.

State of Maharashtra vs. Dr. Praful B. Desai (2003)
4 SCC 601 – referred to.

Case Law Reference

(2003) 4 SCC 601 referred to. Para 6

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1620 of 2015.

From the Judgment and Order dated 17.06.2015 of the High Court at Calcutta in CRR No. 1285 of 2015.

Basant R., Sr. Adv., Manoj V. George, Francis Samson Correa, Arvind Kumar Singh, Siju Thomas, Rohit Adlakha (For Zulfiker Ali P. S.), Advs. for the Appellant.

Joydeep Mazumdar, Rohit Dutta, Parijat Sinha, Advs. for the Respondent.

A The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. Leave granted.

B 2. The appellant before this Court is an accused, who is facing trial in ST No. 1(8) of 2014 arising out of Kalighat police station Case No. 164/2013 dated 1.6.2013, inter alia, under Section 376 of the Indian Penal Code. The complainant in the above case is a citizen of Ireland, resident in Dublin. Four witnesses were examined by the trial Court before examining the prosecutrix-PW5. The trial Court accepted to record the testimony of the prosecutrix, through video conference.

C 3. The appellant before this Court raised a challenge to the procedure adopted by the trial Court, while recording the statement of PW5 on various grounds, by filing a petition under Section 482 of the Code of Criminal Procedure. The learned D Single Judge of the High Court of Calcutta, disposed of Criminal Revision No. 1285 of 2015, by passing the impugned order dated 16.06.2015. Alleging, that the postulated procedure was not fair to the appellant, the appellant has approached this Court.

E 4. We have heard learned counsel for the rival parties at some length, and are satisfied, that the following procedure should be adopted, in addition to the steps and safeguards provided in the impugned order, while recording the statement of PW5:

F I) The State of West Bengal shall make provision for recording the testimony of PW5 in the trial Court by seeking the services of the National Informatic Centre (NIC) for installing the appropriate equipment for video conferencing, by using G "VC Solution" software, to facilitate video conferencing in the case. This provision shall be made by the State of West Bengal in a room to be identified by the concerned Sessions Judge, within four weeks from today. The NIC will ensure, that the equipment installed in the premises of the trial Court, is

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compatible with the video conferencing facilities at the Indian Embassy in Ireland at Dublin. A

II) Before recording the statement of the prosecutrix-PW5, the Embassy shall nominate a responsible officer, in whose presence the statement is to be recorded. The said officer shall remain present at all times from the beginning to the end of each session, of recording of the said testimony. B

III) The officer deputed to have the statement recorded shall also ensure, that there is no other person besides the concerned witness, in the room, in which the testimony of PW5 is to be recorded. In case, the witness is in possession of any material or documents, the same shall be taken over by the officer concerned in his personal custody. C

IV) The statement of witness will then be recorded. The witness shall be permitted to rely upon the material and documents in the custody of the officer concerned, or to tender the same in evidence, only with the express permission of the trial Court. D

V) The officer concerned will affirm to the trial Court, before the commencement of the recording of the statement, the fact, that no other person is present in the room where evidence is recorded, and further, that all material and documents in possession of the prosecutrix-PW5 (if any) were taken by him in his custody before the statement was recorded. He shall further affirm to the trial Court, at the culmination of the testimony, that no other person had entered the room, during the course of recording of the statement of the witness, till the conclusion thereof. The learned counsel for the accused shall assist the trial Court, to ensure, that the above procedure is adopted, by placing reliance on the instant order. E
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VI) The statement of the witness shall be recorded by the trial Court, in consonance with the provisions of Section 278 of the Code of Criminal Procedure. At the culmination of the recording of the statement, the same shall be read out to H

- A the witness in the presence of the accused (if in attendance, or to his pleader). If the witness denies the correctness of any part of the evidence, when the same is read over to her, the trial Court may make the necessary correction, or alternatively, may record a memorandum thereon, to the objection made to
- B the recorded statement by the witness, and in addition thereto, record his own remarks, if necessary.

- VII) The transcript of the statement of the witness recorded through video conferencing(as corrected, if necessary), in consonance with the provisions of Section 278 of the Code of Criminal Procedure, shall be scanned and dispatched through
- C email to the embassy. At the embassy, the witness will authenticate the same in consonance with law. The aforesaid authenticated statement shall be endorsed by the officer deputed by the embassy. It shall be scanned and returned to
- D the trial Court through email. The statement signed by the witness at the embassy, shall be retained in its custody in a sealed cover.

- VIII) The statement received by the trial Court through
- E email shall be re-endorsed by the trial Judge. The instant statement endorsed by the trial Judge, shall constitute the testimony of the prosecutrix-PW5, for all intents and purposes.

5. We are satisfied, that the aforesaid parameters will meet the ends of justice, and that no further inputs are required.
- F Needless to mention, that the procedure for recording the statement of PW5, as noticed above, was finalised with the invaluable assistance of the learned counsel for the rival parties.

6. In recording our conclusions in regulating the above procedure, the learned senior counsel for the appellant
- G emphasised, that recording of the video-graphic testimony of the witness should be furnished to the appellant, and it is only thereupon, that the direction contained in the judgment rendered by this Court in State of Maharashtra vs. Dr. Praful B. Desai (2003) 4 SCC 601, can be deemed to have been

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fully complied with. The instant contention of the learned senior counsel for the appellant is based on a variety of reasons including the fact, that the statement may be recorded in a language which is not known, and/or is not properly understandable to the accused. And even if the statement of the witness is recorded in English, because of different accents of English (based on the countries of their origin), it may not be possible to fully understand the testimony of the concerned witness.

7. Having given our thoughtful consideration to the instant contention advanced at the hands of the learned senior counsel for the appellant, we find no reason whatsoever to agree with the same. In case of there being any difficulty in recording the testimony of the concerned witness, it is always open to the trial Court to seek appropriate assistance (based on, or independently of such plea raised by a party to the proceeding), as may be required by the trial Court, for a truthful recording of the testimony of the concerned witness. We are of the view, that furnishing recorded video-graphic testimony to an accused may eventually turn out to be a cumbersome process, if the same has to be replicated in all cases. Specially because this procedure is increasingly being adopted, by allowing the accused to participate in their trials, from jail premises also (at certain stages of the trial). And further more, it is likely to lead more record, which will also have to be maintained for its safe custody. What has been allowed to the accused herein, is what an ordinary accused would be entitled to, had the statement been recorded by the trial Court itself.

8. The instant appeal is accordingly disposed of. The trial Court shall fix the date of hearing, as and when the video-conferencing facilities have been provided for in the premises of the trial Court, and after the same have been synchronized with the facilities available at the Indian Embassy in Ireland at Dublin.

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A 9. The trial Court shall forward the instant order through the Sessions Judge, 24 Parganas, Alipore to the Ambassador of the Indian Embassy in Ireland at Dublin for compliance.

B 10. The instant parameters have to be adopted to record the testimony of the prosecutrix-PW5, in addition to the procedure and safeguards provided for in the impugned order. Accordingly, it will be imperative to record her testimony afresh.

Devika Gujral

Appeal disposed of.