

**(2015) 02 AHC CK 0043**

**In the Allahabad High Court**

**Case No :** Criminal Misc. 482 Cr.P.C. Application No. 540 of 2015

Leena Katiyar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision :** 16-02-2015

**Acts Referred:**

Constitution of India, 1950 — Article 20(3)  
Criminal Procedure Code, 1973 (CrPC) — Section 311, 362, 482, 53  
Evidence Act, 1872 — Section 121, 122, 123, 124, 125  
Penal Code, 1860 (IPC) — Section 201, 302, 364-A

**Citation :** (2015) 1 ACR 989 : (2015) 4 ADJ 348 : (2015) 89 ALLCC 556

**Hon'ble Judges :** Ramesh Sinha, J.

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

Ramesh Sinha, J.—This application under Section 482 Cr.P.C. has been filed for quashing the order dated 7.1.2015 purporting to have been passed by the Special Judge Fatehgarh in S.S.T. No. 140 of 2007 under Sections 364-A, 302, 201 I.P.C., police station Kotwali Fatehgarh (State vs. Amit Katheria and others) and the learned Special Judge be directed that the accused persons arrayed as O.P. Nos. 2 to 8 be sent by the police of police station Kotwali Fatehgarh for taking their voice sample for voice testing to the headquarter of either of the 5 laboratories and get the voice of the accused persons compared with the voice recorded in the C.D. which is the part of record of the aforesaid case.

2. Brief facts of the case are that an F.I.R. was lodged by the applicant, who is the first informant of the case on 23.4.2007 which was registered as Case Crime No. 467 of 2007 at police station Fatehgarh, district Farrukhabad for offence under Sections 364-A/302, 201 I.P.C. alleging that on 11.4.2007 her son, namely, Madhusudan was kidnapped by accused Happy @ Shivam @ Harsh along with 7 other associates for ransom. The applicant had initially lodged a missing report of her son at the police station Kotwali Fatehgarh which was initially endorsed in the G.D. of the said police station on 23.4.2007. On 6.5.2007, the

dead body of her son Madhusudan was dug out at the pointing out of the accused persons which was buried in about 4-5 feet deep in the ground and his shirt, belt and spectacles were kept in a gunny bag buried under mud. The said recovery was made from the jungles of village Chauspur, police station Kamalganj, District Farrukhabad. It is alleged that the main architect of the crime is accused Happy @ Shivam @ Harsh, who was also a resident of Fatehgarh city. He had taken admission in B.A. (Part-I) in Venkateshwar College of Delhi University and within a short span of time, he developed friendly terms with the applicant's son. It is stated that on 22.4.2007, the applicant received a telephonic call which was later on traced to have been made from Pandu Nagar, New Delhi asking the applicant to pay a sum of Rs. 10 lacs for the release of her son. The applicant expressed her inability to arrange the said amount within the short period which was required to pay for the release of her son. On receiving the said information, the Superintendent of Police Fatehgarh after obtaining approval from the Inspector General of Police, Kanpur Zone, Kanpur started making electronic surveillance of the applicant's mobile number and got taped the calls which were received at her number.

3. On 25th and 28th April, 2007 other calls were received at applicant's Cell No. 98399710406 which was made from Kanpur city whereby the demand of the ransom towards the release of her son was again made. Thereafter another call was received by the applicant traced to be made from Kanpur on 30.4.2007 by telephone number 915126992864 reiterating the demand of ransom. The taping of these calls have also been made by the police and the Superintendent of police Fatehgarh constituted a team of 5 police officers as "Special Operation Group" for laying trap for arresting the accused persons. On 1.5.2007 in about 6 calls were made at the applicant's mobile No. 9839710406 making the demand of ransom. A few of such calls were even heard by Additional Superintendent of police Fetehtarh, who was keeping surveillance upon the calls. The mobile Nos. and basic telephone Nos. whereby the calls were made at applicant's mobile were as follows:-

4. One of the calls which was received by the applicant at about 3:30 p.m. on 1.5.2007, and the money was demanded to be paid on that day at Khakar Katti, Bus Station, Kanpur City. The applicant had told the person making the call that she is not in such physical position as to undertake journey upto Kanpur. Whereupon the caller told that the money can be sent through some other person of confidence and the applicant was further asked to handover her mobile to that person so that his identity could be ascertained.

5. In the meanwhile accused Happy @ Shivam @ Harsh was arrested and was remanded to custody on 1.5.2007. The police made efforts that this information may not leak out. Thus the team of S.O.G. headed by S.I. Mahendra Singh Yadav took steps to nab the other members of the gang of aforesaid accused. The police of Kanpur City was accordingly contacted by the S.O.G. and they proceeded for the place wherefrom the ransom money was demanded and it was

required to be paid to the person demanding the money.

6. One person, namely, Rakesh Katiyar, who had seen the accused persons accompanying the kidnaped on the date of incident, was given the applicant's mobile, who could talk with the persons, who were making call demanding the ransom. He had received calls at 7:27 p.m. and 9:11 p.m. inquiring as to how much distance was left to be covered from arriving at Kanpur. The place of venue of paying the money was meanwhile changed by the accused persons. They asked Rakesh Katiyar to come at Platform No. 7 of Kanpur Central Railway Station. The bag containing the money was asked to be kept on the upper berth adjoining the last gate of general compartment behind the last sleeper coach of Pushpak Express leaving for Mumbai. The person with money Rakesh Katiyar boarded the train at Anwarganj railway station. Two persons of S.O.G. in plain clothes accompanied Rakesh Katiyar and the other had directly gone to platform No. 7 but the trap had failed as the accused persons did not turn up to collect the money.

7. On the next date, i.e., 2.5.2007, the applicant had met the Superintendent of Police, Farrukhabad, who revealed that one police constable, namely, Shyam Babu Kanaujia, who is member of Scheduled Caste to which Caste the accused Happy @ Shivam @ Harsh belonged and was posted in the Confidential Section of his Office located at his residence had leaked the message of trap. At the said instance, the applicant realized that how deep the links and influences of accused Happy @ Shivam @ Harsh or the members of his family had been with the few police personnel of Farrukhabad.

8. The police submitted charge-sheet on 12.5.2007 in the Court of Special Judge (D.A.A.) Fatehgarh, who took cognizance on 17.5.2007 and the trial was numbered as S.S.T. No. 40 of 2007 under Section 364-A, 302/201 I.P.C.

9. Call-detail records prepared by the investigating agency have been made the part of the record. As such in the order dated 13.9.2013 has been recorded upon the order-sheet of this case, i.e., S.S.T. No. 140 of 2007 requiring the copies to be furnished to all the accused persons on 19.10.2013.

10. It appears that the applicant approached the Apex Court for redressal of her grievances by filing S.L.P. (Crl.) No. 7599-7600 of 2008 which was connected with S.L.P. (Crl.) No. 7862 of 2008 and S.L.P. (Crl.) No. 1590 of 2009 (Leena Katiyar vs. State of U.P.) whereby the Apex Court on 3.5.2010 allowed her to raise all the issues which may be available to her before the trial court in accordance with law. The applicant also filed S.L.P. (Crl.) No. 2670 of 2010 Leena Katiyar vs. Narendra Kumar Khanna which was disposed of by the Apex Court 23.3.2012 observing that the trial court may conclude the trial as early as possible preferably within a period of nine months. It further appears from the record that accused Happy @ Shivam @ Harsh took plea of juvenile before the Principal Judge, Juvenile Justice Board, Farrukhabad. It further transpires from the record that on 23.8.2013, accused Happy @ Shivam @ Harsh was declared

juvenile and the applicant being aggrieved by the said order had filed a Crl. Revision before this Court being numbered as Crl. Revision No. 2490 of 2013 Leena Katiyar vs. State of U.P. which is still pending.

11. The applicant being so much disturbed on accused Happy @ Shivam @ Harsh being declared juvenile by the Court under the Juvenile Justice (Care and Protection of Children) Rules, 2007 which came into effect on 26.10.2007, challenged the validity Act of 2000 in C.M.W.P. No. 60458 of 2013 Smt. Leena Katiyar vs. Union of India and others in which this Court has issued notices to the Central Government as well as State Government vide order dated 31.10.2013 for filing counter affidavit but till date no counter affidavit has been filed and the matter is still sub judice before this Court. It appears from the record that the trial of accused Happy @ Shivam @ Harsh and accused Arif has been separated from the remaining accused persons, who are facing trial. The trial court could not decide the case within the aforesaid time frame work, hence it sought for extension of further time for deciding the case and the Apex Court on 1.8.2014 extended further three months.

12. It appears that the trial is in progress and the evidence of 24 witnesses have been recorded by the trial court.

13. The trial court on 8.10.2014 passed an order that the voice samples of six accused persons, who are facing trial before it should be taken for examination with the audio C.D. Ex. Ka. 2 to fix their identity in the crime and further directed the prosecution to take necessary steps for the same.

14. A letter from the Deputy Director of Government Science Laboratory, Lucknow dated 18.10.2014 was received in the Court of Special Judge that the facility of voice testing is not available in the laboratory in the State of U.P. and had given the details of five laboratories of the Central Government from where the voice testing could be made. The Special Judge directed the D.G.C. (Crl.) to get the voice sample of accused and tested by taking necessary steps on which the A.D.G.C. (Crl.) on 11.11.2014 wrote a letter to the District Magistrate Farrukhabad for getting the voice sample recorded and further letters were also sent to the C.O. City Fatehgarh as well as Inspector-in Charge of police station Fatehgarh requesting them for getting the voice sample of the accused and tested with the voice recorded in audio C.D. Ex. Ka. 2. The Police officials on 3rd and 6th January, 2015 after making detailed enquiry sent letters to the A.D.G.C. (Crl.) and further enclosing the letter of Dy. Director of Govt. Forensic Science Laboratory dated 18.10.2014 (annexure-7-A to the application) stating that no facility of testing voice sample is available in district Farrukhabad on which an application was moved by the prosecution on 7.1.2015 before the trial court which passed an order that there appears no reason to grant any further time for getting the voice sample and tested but to proceed with the trial. Being aggrieved by the said order, the applicant has filed the instant 482 Cr.P.C. application for quashing of the impugned order dated 7.1.2015 passed by the Special Judge/trial court.

15. Heard Sri Prem Prakash Yadav holding brief of Smt. Akansha Yadav, learned counsel for the applicant, Sri Narendra Kumar Singh, learned counsel for the opposite party No. 3 and Sri U.P. Singh, learned brief holder for the State.

16. Learned counsel for the applicant submits that looking to the nature of the case and the crime committed by the accused persons, the trial court vide order dated 8.10.2014 has directed the prosecution to get the voice sample of the accused persons tested. When the prosecuting agencies have reported the matter that they have no facility in the district for getting the voice sample tested and there is no laboratory in the State of U.P. for the said purpose, the trial court without making its own effort for getting the same tested has passed the impugned order and observed that as the voice sample cannot be tested and there is no such facility in the State of U.P. for the same, no further time is required to be given to the prosecution and it proceeded with the trial. He further argued that when the prosecution agency has failed to get the voice sample tested it was the duty of the trial court under Section 311 Cr.P.C. and Section 165 of the Evidence Act to take steps itself for getting the voice sample of the accused be taken and be tested with the recorded audio C.D. Ex. Ka. 2. It was argued that the impugned order passed by the trial court on 7.1.2015 amounts to review its earlier order dated 8.10.2014 by which it has directed for taking of the voice sample of accused Amit Sahu, Narendra Kumar, Sumit Kumar, Amit Kumar, Sajeb and Mujahid Hussain and get it tested with the audio C.D. Ex. Ka. 2 from Vidhi Vigyan Prayogshala Lucknow which also amounts to recalling of the said order which has become final and is barred by Section 362 Cr.P.C., hence the same is illegal and without jurisdiction and is liable to be quashed by this Court. He further urged that the order of the Apex Court dated 23.3.2012 expediting the trial in no way had taken away the right of the applicant by which the Apex Court vide order dated 3.5.2010 allowed the applicant to raise all the issues which may be available to her before the trial court in accordance with law. Hence he prayed that the accused be summoned for taking of voice sample and be sent for testing by the trial court to fix their identity in the crime to any one of the five laboratories in the country as mentioned in the letter of the Dy. Director of Vidhi Vigyan Prayogshala Lucknow.

17. Per contra, counsel for accused-opposite party No. 3 has vehemently opposed the prayer for quashing of the impugned order and has refuted the arguments advanced by learned counsel for the applicant. He has pointed out that after passing of the order dated 8.10.2014, the trial court on 31.10.2014 again passed an order directing the prosecution to take the voice sample within 15 days and sent it to the concerned laboratory for its testing and submit a report of the concerned laboratory within four months from the date of said order which is also not disputed by the learned counsel for the applicant. The said order has not been filed by learned counsel for the applicant along with the present application but a photocopy of the same has been filed by learned counsel for the opposite party No. 2 which it taken on record. He further argued that as sufficient opportunity has been given to the prosecution for taking the

voice sample of accused and be tested by the trial court and when the prosecution failed to get the voice recorded in the audio C.D. Ex. Ka. 2 tested, the trial court was right in not granting any further indulgence to the prosecuting agency for the said test as the trial is being delayed and there is also an order of the Apex Court which was passed on the application of the applicant for concluding the trial of the present case within nine months. Moreover, the evidence of 24 witnesses have been recorded by the trial court and the applicant is lingering on the trial. He further argued that there is no provision in the Cr.P.C. for getting the voice sample of the accused be taken and tested, hence the application moved by the applicant for the said purpose is against law, hence the present application lacks merit and it should be dismissed. In support of contention he has placed reliance on the judgment of the Apex Court in the Case of Ritesh Sinha vs. State of U.P. in Criminal Appeal No. 2003 of 2012 arising out of S.L.P. (Crl.) No. 7259 of 2010.

18. Learned A.G.A. tried to justify the impugned order passed by the trial court but could not dispute the fact that the trial court has twice pass orders for testing of voice sample of the accused persons with the audio C.D. Ex. Ka. 2.

19. After having considered the submissions advanced by learned counsel for the parties and perusing the record, it is evident that the trial court taking into account the nature of offence committed by the accused in its wisdom had initially ordered on 8.10.2014 and 31.10.2014 directing the prosecuting agency to get the voice sample of the accused be taken and be tested with the audio C.D. Ex. Ka. 2 from the authorized laboratory but when the prosecution as well as the State agencies reported that there was no such facility available in the State of U.P. for getting the voice recorded in the said audio C.D. Ex. Ka. 2 tested then the trial court passed the impugned order on 7.1.2015 dropping the idea for taking the voice sample of the accused and tested and started to proceed with the trial.

20. In this context two important questions of law were formulated by the Apex Court in the Case of Ritesh Sinha vs. State of U.P. (Supra):-

(I) Whether Article 20(3) of the Constitution of India, which protects a person accused of an offence from being compelled to be a witness against himself, extends to protecting such an accused from being compelled to give his voice sample during the course of investigation into an offence?

(II) Assuming that there is no violation of Article 20(3) of the Constitution of India, whether in the absence of any provision in the Code, can a Magistrate authorize the investigating agency to record the voice sample of the person accused of an offence?

21. On the above two questions of law which are to be adjudicated by the Court there appears to be different views of the High Courts of the country and further the said issues also came up before the Apex Court in the Case of Ritesh Sinha vs. State of U.P. (supra) which has been preferred against one of the judgment of

this Court. The said S.L.P. was filed and the matter was came up before the Bench of Hon''ble Mrs. Justice Ranjana Prakash Desai and Hon''ble Mr. Justice Aftab Alam and their lordships after examining the various judgments of the High Courts and of the Apex Court had same view with respect to first question framed by them with respect to Article 20(3) Cr.P.C. is that taking of voice sample of an accused by the police during investigation is not hit by Article 20(3) Cr.P.C. of the Constitution which was followed by the Apex Court in a recent decision in the case of Smt. Selvi and Others Vs. State of Karnataka, but so far as the second question is concerned their Lordships differed with each other and they had given their reasons for their views.

22. The view taken by Hon''ble Mrs. Justice Ranjana Prakash Desai is quoted hereinbelow:-

"In the facts of this case, I am not inclined to give a narrow construction to the provisions of the Prisoners Act and Section 53 of the Code. Judicial note can be taken of the fact that there is a great deal of technological advance in means of communication. Criminals are using new methodology in committing crimes. Use of landlines, mobile phones and voice over internet protocol (VoIP) in the commission of crimes like kidnapping for ransom, extortion, blackmail and for terrorist activities is rampant. Therefore, in order to strengthen the hands of investigating agencies, I am inclined to give purposive interpretation to the provisions of the Prisoners Act and Section 53 of the Code instead of giving a narrow interpretation to them. I, however, feel that Parliament needs to bring in more clarity and precision by amending the Prisoners Act. The Code also needs to be suitably amended. Crime has changed its face. There are new challenges faced by the investigating agency. It is necessary to note that many local amendments have been made in the Prisoners Act by several States. Technological and scientific advance in the investigative process could be more effectively used if required amendments are introduced by Parliament. This is necessary to strike a balance between the needs to preserve the right against self incrimination guaranteed under Article 20(3) of the Constitution and the need to strengthen the hands of the investigating agency to bring criminals to book.

In the view that I have taken, I find no infirmity in the impugned order passed by the High Court confirming the order passed by learned Chief Judicial Magistrate, Saharanpur summoning the appellant to the court for recording the sample of his voice. The appeal is dismissed."

23. The view taken by Hon''ble Mr. Justice Aftab Alam is as follows:-

"5. As regards the first question, relying primarily on the eleven (11) Judges'' Bench decision of this Court in State of Bombay vs. Kathi Kalu Oghad and others which was followed in the more recent decision in Selvi and others vs. State of Karnataka she held that taking voice sample of an accused by the police during investigation is not hit by Article 20(3) of the Constitution.

6. I am broadly in agreement with the view taken by her on Article 20(3) but, since I differ with her on the second question, I think the issue of constitutional validity in compelling the accused to give his/her voiced sample does not really arise in this case.

16. I am completely unable to see how Explanation (a) to Section 53 can be said to include voice sample and to my mind the ratio of the decision in Selvi does not enlarge but restricts the ambit of the expressions "such other tests" occurring in the Explanation.

42. Should the Court still insist that voice sample is included in the definition of "measurement" under the identification of Prisoners Act and in the Explanation to Section 53 of the Code of Criminal Procedure? I would answer in the negative.

43. In light of the above discussion, I respectfully differ from the judgment proposed by my sister Desai, J. I would allow the appeal and set aside the order passed by the Magistrate and affirmed by the High Court.

44. Let copies of this judgment be sent to the Union Law Minister and the Attorney General and their attention be drawn to the issue involved in the case.

45. In view of the difference of opinion between us, let this case be listed for hearing before a Bench of three Judges after obtaining the necessary direction from Honourable the Chief Justice of India.

24. It is noteworthy that in the case of Ritesh Sinha vs. State of U.P. (Supra), the question before the Apex Court was whether the Magistrate can summon and direct the accused during the course of investigation for giving his or her voice sample on an application made by police officers before him and in the said matter there was difference of opinion between two Hon''ble Judges of the Apex Court as is apparent from the preceding paragraphs, the matter has been referred for hearing before a Bench of three Judges after obtaining the necessary direction from Hon''ble The Chief Justice of India and the matter is still sub judice before the Apex Court.

25. In the instant case the position appears to be altogether different as the accused opposite parties are facing trial before the trial court and an application was moved on behalf of the applicant/complainant for taking their voice sample and be sent for being compared with the recorded voice in the audio C.D. which has been obtained during the course of investigation and has been marked as Ex. Ka. 2 either by any of the five laboratories of the country mentioned by the Dy. Director of Vidhi Vigyan Prayogshala Lucknow. On the said application, the accused persons filed their objection and were heard by the trial court which ordered for taking of voice sample by the prosecuting agency and be sent to the Vidhi Vigyan Prayogshala Lucknow for being compared with the voice recorded in the audio C.D. vide order dated 8.10.2014 and by another order dated 31.10.2014 respectively but the prosecuting agency has showed its inability to get the voice test done because of the lack of facility either in the district or in

the State of U.P., hence the trial court passed by the impugned dated 7.1.2015 dropping the idea of taking of voice sample of the accused persons and be tested with the audio C.D. Ex. Ka. 2 and further there is an order of the Apex Court to conclude the trial within nine months which was passed on the application filed by the applicant.

26. So far as first question framed above it is now a well settled law as has been held in the case of Ritesh Sinha vs. State of U.P. (Supra) that taking of voice sample of an accused by the police during investigation is not hit by Article 20(3) of the Constitution.

27. So far as the contention of the accused opposite party No. 3 that there is no provision in the Code for directing the accused to give his voice sample for being tested with the voice recorded in the audio C.D. Ex. Ka. 2 by the trial court is against law, hence the trial court cannot order for taking of the voice sample of the accused and the said view was also taken by one of the Hon'ble Judge of the Apex Court in the case of Ritesh Sinha (Supra) with respect to the second question of law formulated in the case of Ritesh Sinha (Supra) by the Apex Court has to be considered by this Court.

28. Learned counsel for the applicant has vehemently refuted the said argument of learned counsel for accused-opposite party No. 3 and argued that once the trial court has formed an opinion for getting the voice sample of the accused and be compared with the recorded audio C.D. Ex. Ka. 2 and it passed orders twice to that effect, i.e., on 8.10.2014 and 31.10.2014 respectively taking into account the nature of offence and the evidence collected during the course of investigation against the accused persons and in order to determine their complicity in the crime, the trial court had committed error in passing the impugned order rejecting the recording of voice sample of the accused for being sent to examination simply because the prosecuting agency has reported that there is no such facility in the district or in the State of U.P. for the same. He submitted that the impugned order passed by the trial court is barred by Section 362 Cr.P.C. He further submitted that in view of Section 165 of the Evidence Act, the trial court has powers to pass orders for getting the voice sample of the accused recorded and be sent for testing with the recorded audio C.D. Ex. Ka. 2.

29. The question as to whether the trial court can order for taking the voice sample of accused, who are facing trial for being compared to the voice recorded in the audio C.D. Ex. Ka. 2 during investigation. Section 165 of the Evidence Act becomes relevant to be considered in this context which reads as follows:-

"Section 165. Judge's power to put questions or order production.--The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the

Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved: Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted." 30. Taking into account the powers of trial Judge as has been laid down in Section 165 of the Evidence Act, it is clear that the trial Judge is well within its jurisdiction in order to discover or to obtain proper proof of relevant facts call upon the accused persons to give their voice sample in the Court in order to determine their involvement in the crime and also to arrive a just decision of the case. It will be relevant to mention here that the accused is not being asked by the trial court about any fact which within his knowledge and if he compel to answer the same prejudice would be caused to him. In other words, the accused is not being asked by the trial court to be a witness against himself. In my opinion the voice sample is physical non-testimonial evidence, hence taking of voice sample cannot be held to be conceptually different from physical non testimonial evidence like DNA, semen, sputum, hair, blood, finger nails etc. Taking of voice sample does not involve any testimonial responses. In this regard Section 65-B of the Evidence Act is relevant which is quoted hereinbelow:-

"Section 65B Admissibility of electronic records:-

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) "throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether--

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in the section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,--

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.-For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

31. Thus, from the above, it is clear that the voice recorded in the audio C.D. Ex. Ka. 2 is admissible under Section 65-B of the Evidence Act, hence if the said evidence is to be proved by the prosecution then taking of voice sample of the accused by the trial court becomes essential to arrive at just decision of a case otherwise the said audio C.D. in which there is recording of conversation between the accused and applicant regarding demand of ransom of money for release of abductee/kidnaped would be a futile effort by the police to ascertain the complicity of the accused, hence the trial court was right in ordering to take voice sample of the accused persons. Hence, it appears from Section 165 of the Evidence Act that the trial Judge is empowered to order for taking of voice sample of accused for being compared to the recorded voice in audio C.D. Ex. Ka. 2 to ascertain the complicity of the accused persons in the present crime and once the trial court has ordered for the same it was not correct in dropping the idea for getting voice sample of the accused be taken and send for testing simply because of lack of facility in the district as well as in the State for getting the voice sample tested, hence the impugned order passed by the trial court is not sustainable in the eyes of law. Thus, the impugned order dated 7.1.2015 passed by the trial court is illegal and the orders dated 8.10.2014 and 31.10.2014 directing for taking of voice sample of accused persons was correct.

32. The Court cannot lose sight of the fact which appears from the facts and circumstances of the case that a school going boy was kidnapped and murdered for ransom of Rs. 10 lacs by the accused persons and continuous demand of ransom was made on the mobile phone of the applicant, who is mother of the deceased and was working woman posted as Manager (RBB) Allahabad Bank Barhpur Branch Farrukhabad and her husband being employed as Class-I Officer at New Delhi and the deceased was living along with his grand mother in the city of Farrukhabad when the incident has taken place.

33. These days the manner in which the crime is being committed by the accused persons by adopting high materialized techniques and there is a great deal of technological advanced in means of communication and criminals are using new methodology in committing crimes. Use of landlines, mobile phone

and voice over internet protocol (VOIP) in the commission of crimes like kidnapping for ransom, extortion, blackmail and for terrorist activities is rampant. The present case also falls in one of the such categories of crimes which has been committed by adopting advance means of communication and to ascertain the complicity of the accused persons in the crime and to do justice it is essential that the voice sample of the accused persons should be taken by the trial court and be sent for testing to the authorized laboratory with the recorded voice in audio C.D. by the police which is marked as Ex. Ka. 2. With utmost regard to Hon''ble Mr. Justice Aftab Alam, this Court in its humble opinion also agrees with the view taken by Hon''ble Mrs. Justice Ranjana Desia in the case of Ritesh Sinha vs. State of U.P. (Supra).

34. In view of the forgoing discussion, the impugned order dated 7.1.2015 passed by the trial court is hereby set aside and the trial court is directed to summon the accused persons facing trial before it for taking their voice sample within two week from the date of production of a certified copy of this order and send the same to be compared with the recorded voice in audio C.D. marked as Ex. Ka. 2 to one of the authorized laboratory which has been stated by the Deputy Director Forensic Science Laboratory U.P. dated 18th October, 2014, namely, 1. Kendriya Nyayalik Vigyan Prayogshala, Sector 36-A, plot-2, Dakshin Marg, Chandigarh. 2. Kendriya Nyayalik Vigyan Prayogshala, (C.B.I.) CGO Complex, Lodhi Road, New Delhi, 3. Vidhi Vigyan Prayogshala, Delhi Rajya Madhuban Chowk, Rohini, New Delhi, 4. Police Vidhi Vigyan Prayogshala Jaipur Rajasthan and 5. Police Vidhi Vigyan Prayogshala Gujrat Rajya, Police Bhawan, Gandhi Nagar, Gujrat in order to ascertain the involvement of the accused persons in the present crime which also appears to be essential for arriving at a just decision of the case.

35. The trial court shall send the voice sample of the accused along with the recorded voice in the audio C.D. marked as Ex. Ka. 2 to the Chief Secretary of the State of U.P. through District Magistrate Farrukhabad for being tested and the Chief Secretary of the State of U.P. within two months from the date of receiving of the said order from the trial court concerned shall seek a report within three months from either of the two laboratories situated at Delhi or any other laboratory in the country as mentioned above.

36. This Court hopes and trust that the Director of the laboratory where the said sample is sent by the Chief Secretary of State of U.P. shall make all endeavour for submitting its report to the Chief Secretary of the State of U.P. within three months thereafter for being forwarded to the trial court concerned as the incident is dated 11.4.2007 and more than 7 years have already elapsed and the applicant, who is the mother of the deceased is running to the Court of law for seeking justice.

37. Looking to the crimes which are committed in the State by such technological advance means of communication and was, the Court also directs the Chief Secretary of the State of U.P. to make all endeavor for making arrangement for

the voice sample tested in the laboratory in the State of U.P. and it shall also send a report regarding the steps taken by him in this respect to the Registrar General of this Court for being placed before me within three months from the date of receipt of a certified copy of this Court.

38. The Registrar General of this Court is directed to send a copy of this order to the Chief Secretary of State of U.P. and to the concerned trial court for information and its compliance forthwith.

39. The present 482 Cr.P.C. application stands allowed.