

(2019) 07 BOM CK 0124

In the Bombay High Court

Case No : Criminal Appeal No. 385, 549 Of 2019

Vaijinath

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:

Evidence Act, 1872 — Section 65B, 65B(2), 65B(4)
Constitution Of India, 1950 — Article 227

Citation : (2019) 07 BOM CK 0124

Hon'ble Judges : T.V. Nalawade, J;K.K. Sonawane, J

Bench : Division Bench

Advocate : Rajendra G. Hange, V.N. Patil Jadhav, C.V. Dharukar, S.J. Salgare

Final Decision : Disposed Off

Judgement

T.V. Nalawade, J

1. After hearing for some time, when this Court expressed that this Court is not inclined to grant the relief, as claimed in the Criminal Appeals, the

learned counsel for the appellants, on instructions, seeks leave to withdraw both the Criminal Appeals. Leave granted. Both Criminal Appeals stand

disposed of as withdrawn. No order as to costs.

2. During the course of hearing, learned APP submitted that CCTV footage is collected by Police showing that the deceased was last seen in the

company of appellants and that will be used as piece of circumstantial evidence. She submitted that pen drive containing CCTV footage was collected

by Police during the course of investigation from Manager of the Hotel. She submitted that when pen drive was collected, the certificate of the

Manager, who was controlling the CCTV system, was collected on 21-08-2018. She submitted that hard disc was not collected of the computer

system controlling CCTV. She submitted that pen drive is sent to Expert for getting opinion regarding possibility of tampering etc. She also submitted that Investigating Agency shall collect the photographs of the persons captured by the CCTV camera through Expert. She showed to this Court the covering letter addressed to Director of Forensic Science, in which various requests are made as under :- (i) to compare the CCTV footage with articles like full shirt of accused Udhav Rakh with persons appearing in the CCTV footage. (ii) to compare the Jean pant taken by Police from the person appearing in the footage like Udhav Rakh, (iii) to compare the shirt taken by the Police from the person appearing in the footage like Vijay Hange. A similar request is made in respect of other clothes in relation to other persons. The photographs of accused persons are also sent to the Expert, which are taken from different angles. A request is made to the Expert to ascertain as to whether four wheeler appearing in the CCTV footage is having number, particular number, given in the requisition letter. One another request is made to give opinion as to whether the pen drive containing data was from the original electronic record of CCTV footage. The aforesaid requisition letter given by Officer of the rank of Sub-Divisional Officer, Shrirampur shows that there are many misconception in the mind of the Police Officers. First, the contents of the original electronic record, hard disc of CCTV system, which could have been easily seized, was not done. The investigating agency will now be acting on the basis of pen drive in which some video recoding is down loaded and only after opinion as sought is received.

3. Whenever any electronic record of like nature is to be taken over, it is necessary for Police Officer to take the record under Section 65B of Evidence Act and seize it in presence of panch witnesses. The record like transcript of such record needs to be prepared by the Police Officer in presence of panch witnesses at the same time (See para 24 of the Chapter VI of Criminal Manual). If subsequently, Police Officer wants to prepare transcript, then the same panch witnesses need to be used and in their presence material can be opened and transcript of the footage can be made. Invariably, such transcript needs to be prepared on the first occasion when material is to be seized by the Police. Such material is always necessary as the Court wants to go through the contents of CCTV footage, even at the time of consideration of bail application.

4. As far as possible hard disc or hard drive need to be collected by the Investigating Agency. The CCTV system is prepared only for one purpose and cost of hard disc or hard drive is not on higher side so it can be collected, seized by the Police. As CCTV footage stored directly on hard drive of computer is self-generated without human intervention there is no necessity to get certificate under Section 65B of the Evidence Act. However, it is always desirable to obtain at least three copies when material is viewed and heard in presence of panch witnesses and for that the certificate needs to be obtained. When hard disc is taken over, the Police statement of the person, who was controlling the system needs to be recorded. After collection of hard disc or hard drive and even collection of CCTV footage in pen drive etc. such articles should be packed in such material that packing material does not create problem for storage. The expert needs to assist during that process and it needs to be ascertained whether packing material like plastic bags may affect the material. Further, care needs to be taken to see that disc etc. are properly packed so that they are not pressed, there is no bend in it and no scratches are developed on such material. The material needs to be stored in such a condition that extreme weather condition will not affect the material. Such material needs to be kept away from the sources like radio transformer and speaker magnet as they may damage such material. The hard disc and hard drive is of multipurpose and big system, it may not be seized and in that case invariably provision of Section 65B of the Evidence Act can be used and copies be obtained.

5. When original record is not preserved and only copy, output is sent to Expert for its opinion of the aforesaid nature and without creating record like copy and transcript, if in future, output material, which is sent to Expert becomes corrupt, Investigating Agency /prosecution will lose such material. Invariably, when such important output material is to be taken in the custody, the Police need to get at least three copies and one copy can be sent to expert for obtaining opinion. It is the job of the Investigating Agency to prepare a transcript of the CCTV footage as already mentioned and form opinion on it. It is for the Court to take decision on the basis of such record of police at initial stage. It is only the Court, which can give the decision as to whether the identity of accused is established on the basis of such CCTV footage. Only when material is blur, only Expert can identify the things by

using techniques, then only opinion of Expert would be necessary. In other cases, when material is clear and identity can be established on the basis of

that material the opinion only with regard to tampering will be necessary. Many incidents of aforesaid nature are noticed by this Court. In almost all

cases the State was not able to show the copy of transcription of the material, which the State was to rely and submissions of aforesaid nature were

made. Due to all these circumstances, this Court holds that necessary directions needs to be given to the concerned.

6. This Court is giving directions to Investigating Agency to see that at the time of seizure of electronic material itself invariably. Copies of output

material are obtained and transcript of both audio and video of the footage is prepared so that it can be made available to the Court whenever Court

feels it necessary. At the time of collecting such output, first see the contents of original record in the presence of panch witnesses and prepare

panchnama of that incident. This is to be done in the presence of a person having knowledge of working of computer. Then only the output as

mentioned in Section 65B of Evidence Act be collected. At the time of collecting the output, it be seen that conditions given in Section 65B(2) of

Evidence Act are satisfied and certificate as mentioned in Section 65B(4) is collected from person competent to issue such certificate. This incident

also be recorded in panchnama in the presence of panch witnesses. Preferably, only one panchnama be prepared containing the description of incident

recorded in electronic record and taking of output of the record as provided in Section 65B of Evidence Act. Three copies of out put be taken after

viewing and hearing the contents one be sent to expert. Other two copies be preserved as record collected under section 65B of Evidence Act.

7. While preparing compact disc(CD) in three copies mirror effect hash available on hard disc or hard drive as well as that on CD and pen drive be

prepared so as to ruled out possibility of tampering at any stage. Whenever, the copies are required to be sent to the Court or to expert or when they

are to be viewed or heard the proper procedure needs to be followed invariably and chain of the custody of all evidence transported to each and every

authority be created and such record be preserved.

8. The Registrar (Judicial) of this Court to communicate this decision to the Secretary, Home Department of the Government for circulation of it, to all

the Police Stations and other Investigating Agencies of the State so that the procedure as indicated above is followed.

[K. K. SONAWANE] [T.V. NALAWADE]

Chapter - VI: General Rules as to Inquiries and Trials in all Courts precedence and expeditious Disposal of Capital Cases.

24. The Honourable the Chief Justice and Judges, with the previous approval of the Governor under Article 227 of the Constitution of Indian, are

pleased to make the following rules regarding recording of the tape-record evidence in Court :-

(1) These Rules may be called the Rules for the Production, Use and Recording of the Tape-Record Evidence in Courts.

(2) These Rules came into force with effect from 1st August, 1978.

(3) The party producing the tape-recorded evidence shall also produce the transcript of the tape record along with the tape.

(4) The Court or its authorised officer who is to accept the tape should accept only such tapes as are under the seal of the party producing them.

(5) Court or such officer shall hear the tape record in order to verify whether the transcript produced alongwith the tape is correct or not and endorse

such verification on the transcript record under his signature with date.

(6) The tape shall be kept in safe custody in a cover under the seal of the court. In case the tape is replayed or the seal is broken for any reason, the

tape shall be re-sealed.

(7) The notice of production of the tape together with the transcript shall be served on the other side through the court.

(8) Any party to the proceeding may apply to the Court to hear the tape-record.

(9) The tape-record would be played within the hearing and sight of an officer appointed by the Court for that purpose and as far as possible in the

presence of the other side or its Advocate. The Court on receipt of application may grant the necessary permission. However, the tape shall ordinarily

not be played on 3rd or 4th occasion, unless the Court specifically permits hearing of the same. The Court while granting such permission should bear

in mind that repeated use and play of the tape may affect the tape and its audibility. The Court may also permit any party to record the voice on the

tape, produced in Court, on another tape.

- (10) Every Court shall maintain a record showing as to how, when and why the seal of the tape -record has been resealed. Such record shall be kept in the proceedings alongwith the tape record and its transceipt.
- (11) The tape in a sealed cover together with its transcript shall be given a separate exhibit.
- (12) In Criminal cases where appeal lies to the High Court and when the tape record is not in English, either wholly or in part, the transcript must be accompanied by an agreed or official English translation of the said transcript or part thereof, as the case may be.
- (13) In case of discrepancy or doubt, the court may direct the tape to be replayed and the transcript record shall be corrected if the Court so directs.
- (14) While preparing the paper-book for appeal to the High Court the Lower Court shall include therein the transcript in English under Rule 12, and a copy of record referred to in Rule 10 above.
- (15) The rules as to the production, preservation and destruction of the court record should mutatis mutandis apply to the tapes.
- (16) The above rules (Rules Nos.1 to 15) are framed for guidance of the Courts and they should be followed as far as possible and subject to the provisions of the Evidence Act and Code of Civil Procedure.