

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.109 of 2024

Arising Out of PS. Case No.-47 Year-2020 Thana- MAHILA PS District- Jamui

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1. Sukho Yadav @ Sukhu Yadav S/O Ganpat Yadav R/O Village- Gangti, P.S- Chandramandih, Distt.- Jamui.
 2. Tulsi Yadav S/O Karu Yadav R/O Village- Gangti, P.S- Chandramandih, Distt.- Jamui.

... .. Appellants

Versus

1. The State of Bihar
2. XXX, C/O Late Indreodeo Das, R/O Village Madhopur, P.S. Chandramandih, District-Jamui.

... .. Respondents

Appearance :

For the Appellants	:	Mr. Ranjan Sinha, Advocate Ms. Seema, Advocate Ms. Jyoti Kumari, Advocate
For the State	:	Mr. Abhimanyu Sharma, Addl.PP
For the Informant	:	Mr. Satya Prakash Paraser, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 24-07-2025

Heard learned counsel for the appellants and learned Additional Public Prosecutor for the State as also learned counsel for the informant.

2. This appeal has been preferred for setting aside the judgment of conviction dated 21.12.2023 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 23.12.2023 (hereinafter referred to as the ‘impugned order’) passed by learned Additional Sessions Judge-I-cum-Spl. Judge,



SC/ST & POCSO Act, Jamui (hereinafter referred to as the 'learned trial court') in SC/ST Case No. 53 of 2021 (CIS No. 53 of 2021) arising out of Jamui Mahila PS. Case No. 47 of 2020. By the impugned judgment, the appellants have been convicted for the offences under Sections 376(D) of the Indian Penal Code (in short 'IPC') and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short 'SC/ST Act'). Further Sukho Yadav @ Sukhu Yadav has also been convicted under Section 354(C) IPC and Section 3(2)(va) of the SC/ST Act. By the order of sentence, they have been ordered to undergo life imprisonment with a fine of Rs.25,000/- under Section 376(D) IPC and in default of payment of fine, they shall further undergo rigorous imprisonment for one year. Further, Sukho Yadav (appellant no. 2) has been ordered to undergo rigorous imprisonment for seven years with a fine of Rs.10,000/- under Section 354(C) IPC and in default of payment of fine, he has to further undergo rigorous imprisonment for six months. He has also been ordered to undergo rigorous imprisonment for seven years with a fine of Rs.10,000/- under Section 3(2)(va) of the SC/ST Act and in default of payment of fine, he has to further undergo rigorous imprisonment for six months. All the sentences are to run concurrently.



Prosecution Case

3. The prosecution case in brief is that on 5th September, 2020, the informant (PW-3) went to Tetria Jungle to graze her she-goats. When she was sitting and she-goats were grazing, then Tulsi Yadav (appellant no. 2) caught hold of her from the back, slammed her on the ground and committed wrong act. In the meantime, Sukho Yadav (appellant no. 1) was making obscene video of her. When the informant asked him why are you making video then he said if you tell this to anybody, then he will make her video viral. Thereafter, the informant took her she-goats and went to her house. On 17th September, 2020, Sukho Yadav and Rajesh Das made her video viral through Mobile No. 7667758330 on the mobile of her son, *gotiyas* and villagers. On the next day, her *devar* Sanjay Das, Nilmani Das came at her door, abused her and assaulted her and threatened to leave the village along with her family members else she would be killed on which the informant said where will she go but no one listened to her. The informant along with her two sons and one daughter went to her *maika* Parachi (Chakai) and has been living there. When son of the informant Pradeep Kumar went to Madhopur village then Vijay Das sent him away and threatened him that if he would come in the village then he will break his hand and sell it.



4. On the basis of this written application, Jamui Mahila P.S. Case No. 47 of 2020 dated 31.10.2020 was registered under Sections 341, 323, 504, 506, 376, 354(C), 34 IPC and Section 67A of the Information and Technology Act (in short 'IT Act') and Section 3(2)(va) of the SC/ST Act. After investigation, police submitted chargesheet bearing chargesheet No. 17 of 2021 dated 12.04.2021 under Sections 341, 354(C), 376(D), 504, 506 IPC and 67A of the IT Act and 3(2)(va) of the SC/ST Act against the appellants. Thereafter, vide order dated 15.04.2021 learned trial court took cognizance of the offence under Sections 341, 354(C), 376(D) IPC and 67A of the IT Act and 3(2)(v) of the SC/ST Act. Charges were read over and explained to the appellants in Hindi to which they pleaded not guilty and claimed to be tried, accordingly, vide order dated 11.08.2021, charges were framed under Section 376(D) IPC and 3(2)(va) of the SC/ST Act against the appellants and further against Sukho Yadav (appellant no. 1) charge under Section 354(C) IPC was also framed.

5. In course of trial, the prosecution has examined altogether six witnesses and exhibited several documentary evidences. The description of prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Dr. Devendra Kumar
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PW-2	Sushil Kumar Singh
PW-3	Victim
PW-4	Son of the Victim
PW-5	Dr. Khushboo Kumari
PW-6	Gyan Bharti

List of Exhibits on behalf of the Prosecution

Exhibit P-1/PW-1	Signature of Dr. Devendra Kumar on the Radiological Examination Report
Exhibit P-2/PW-2	Chargesheet
Exhibit P-3/PW-3	Signature of the Informant/ victim over written report
Exhibit P-4/PW-3	Signature of the informant/Victim over her statement recorded under Section 164 CrPC
Exhibit P-5/PW-4	Signature of son of the informant (PW-3) over written report
Exhibit P-6/PW-5	Medical Examination Report of the Informant in pen and signature of Dr. Khushboo Kumari
Exhibit P-7/PW-6	Production cum Seizure List in pen and Signature of S.H.O. Gyan Bharti
Material Exhibit	
M-I (Exhibit ‘P-8’)	Pen Drive

6. Thereafter, the statement of the appellants were recorded under Section 313 of the CrPC. The appellants denied all the allegations and took a plea that they are innocent.

Findings of the Learned Trial Court

7. Learned trial court after examining all the evidences available on the record found that the charges levelled against the appellants have been proved by the prosecution beyond all reasonable doubts.



8. Learned trial court on the point of inordinate delay of about two months in lodging of the FIR found that on analysing the evidence of the victim, it is apparent from paragraph '1' of her deposition that the accused persons raped her and threatened her to kill and repeat the offence with her daughter as also kill her two sons. Learned trial court found that a widow helpless lady who had faced oppression of the accused persons did not immediately lodge the FIR with a view to save her son and daughter but the accused persons made her video viral and the victim was ousted from the village, hence, she had no choice but to lodge the FIR. Learned trial court found that in this case, there is proper and justified explanation which are expressed by the circumstances itself and on the ground of inordinate delay, the prosecution case cannot be disbelieved.

9. Learned trial court found that the victim has categorically stated in her 164 CrPC statement that the accused Sukhu Yadav and Tulsi Yadav both committed rape on her. Learned trial court opined that the victim is a rustic widow lady of Scheduled Caste and it cannot be expected that she must narrate her ordeal in detail to her son to mention the same in the written report. Learned trial court found that the statement under Section 164 CrPC has more authenticity than the written report of the



informant who anyhow just signed it. Learned trial court further found that in her evidence also she has clearly stated that she was raped by Tulsi Yadav and Sukho Yadav. Learned trial court found that PW-4 and PW-6 have supported the prosecution case. Learned trial court found that the pen drive (Material Exhibit 'M-I') submitted in the court contains video of rape in the forest area but during cross-examination of the I.O., the defence never raised any objection regarding genuineness of the pen drive and regarding absence of the certificate under Section 65(B) of the Indian Evidence Act. Therefore, learned trial court observed that taking together the evidences of PW-3, PW-4 and PW-6 and the pen drive, the prosecution has successfully proved the charge of gang rape against the accused persons.

10. Learned trial court found that the witnesses clearly stated in their examination-in-chief that the accused persons abused the victim by calling her names but the defence never drawn the attention of the I.O. towards any contradiction regarding calling and abusing the victim. Thus, learned trial court found that the accused persons are guilty for the offence under Section 3(2) (v) of the SC/ST Act.

11. Learned trial court found that so far as charge under Section 354(C) IPC is concerned, it is apparent from the evidences



of PW-3, PW-4, PW-6 and Exhibits 'P-3', 'P-4', 'P-7', 'P-8' that the accused Sukhu Yadav had made video of the occurrence.

Submissions on behalf of the appellants

12. Learned counsel for the appellant has assailed the impugned judgment and order on various grounds. It is submitted that the learned trial court has wrongly appreciated the evidences available on the record. The prosecutrix (PW-3) reported the alleged occurrence by way of a written information only after fifty five days of the occurrence, that too when she had already left the village. In her written information, she has declared her age as 35 years and claimed that on 5th September 2020, she had gone to graze her she-goat to Tetaria Forest. In course of trial, it has come that she had gone there alone and Tetaria Forest is at a distance of 2-2.5 kilometre from the village. This seems to be highly unnatural and improbable that during the relevant period, which was a lockdown period due to COVID-19, the prosecutrix would go alone to a forest at a distance of 2-2.5 kilometre from her village to graze her she-goat.

13. Learned counsel further submits that in her written information, PW-3 has stated that Tulsi Yadav (A-2) came near her, caught hold of her from behind and slammed her down, whereafter he committed the wrong act with her. So far as Sukho



Yadav (A-1) is concerned, she has alleged that he had concealed himself and was making the filthy video. In her statement, recorded under section 164 CrPC, after 11 days of the lodgement of the FIR, PW-3 has stated that Sukho Yadav (A-1) put a towel on her neck and took her to the nearby bushes where both the appellants hurled abuses on her and Sukho Yadav (A-1) made her naked and committed rape on her, at that time, Tulsi Yadav (A-2) made video and then Tulsi Yadav committed rape on her which was videographed by Sukho Yadav (A-1). It is submitted that the prosecutrix (PW-3) never disclosed this occurrence to anyone. She claimed that her devar showed her the video on 17th October, 2020, which was viral in her house and in the whole village. She has stated that her *sarural* people had beaten her whereafter she went to her *naihar* with her children. On the point of beating also, the prosecutrix (PW-3) has made completely different statements in her written information and the 164 CrPC statement. At the same time, if her evidence in course of trial is perused, it would be found that in her examination-in-chief, the prosecutrix made a statement that she had been threatened by the accused persons not to disclose the occurrence otherwise she would be killed and the same occurrence would be done with her daughter, however, this statement as to the threat to kill her and commit the same act with



her daughter is a mere pretext to explain the huge delay but there is no explanation for a delay of one month fourteen days even after the video was received by her son.

14. Learned counsel for the appellants submits that the prosecutrix (PW-3) is the solitary eyewitness of this case but the manner in which she has been changing her statements, she cannot be put in the category of sterling witness.

15. Learned counsel submits that the so-called viral video in the mobile of her *devar* and son were not duly proved. The mobile phones with which the video was allegedly made were not seized, neither the devar nor the son of the prosecutrix provided their mobile phones to the I.O. for forensic test. In this regard, the learned trial court has admitted into evidence a pen drive (Exhibit 'P-8' and Material Exhibit 'M-1') produced by PW-6. The trial court has recorded that in the cross-examination of the I.O., the defence never raised any objection regarding the genuineness of the pen drive or regarding the genuineness of the certificate under Section 65(B) of the Indian Evidence Act and the pen drive has been admitted in evidence without any objection. It is evident that the pen drive was admitted without following the essential condition prescribed under Section 65(B) of the Indian Evidence Act. The lacuna on the part of the defence cannot



absolve the prosecution from proving its evidences in accordance with law but the learned trial court has forgotten the basic principles of the criminal jurisprudence.

16. Learned counsel further submits that the whole prosecution case clustered around viral video in support of which the pen drive (Exhibit 'P-8') was produced without certificate. When the statements of the appellants were recorded under section 313 CrPC, the appellants were not informed about any evidence with respect to making of the viral video and sending the same from their mobile to any inmate of the house of the prosecutrix or to any of the co-villagers of the prosecutrix. Thus, in this case, the appellants have been convicted and sentenced in absence of any cogent and reliable piece of evidence.

Submissions on behalf of the State and Informant

17. On the other hand, learned Additional Public Prosecutor for the State and learned counsel for the informant have opposed the appeal. It is submitted that the prosecutrix had reason not to report the occurrence to either her family members or to the police station as she was under threat of life and the accused persons-appellants had threatened that if she would disclose it, then the same act would be done with her daughter. It is submitted that the learned trial court has rightly recorded that the prosecutrix



being a member of the Scheduled Caste and a rustic woman is not supposed to give every detail of the occurrence to her son.

18. It is also submitted that the Sandisk pen drive was produced by the Station House Officer (S.H.O.) of Mahila Police Station (PW-6). She had proved the production-cum-seizure list of the said pen drive, which has been marked Exhibit 'P-7'. She identified the pen drive which was of red-black colour and on which Sandisk was written (Exhibit 'P-8'). It is submitted that the I.O. (PW-6) had also gone to the place of occurrence. She has stated that the distance between the house of the informant and the place of occurrence is one and half kilometer. It is submitted that the learned trial court has convicted the appellants and sentenced them after being fully satisfied with the admissibility and relevancy of the evidences, therefore, no interference is required with the opinion of the learned trial court.

Consideration

19. We have heard learned counsel for the parties and perused the trial court's records.

20. The informant in this case is prosecutrix herself, who is a widow aged about 35 years. As per the information furnished by her in the written information (Exhibit 'P-3/PW-3'), she is a resident of village-Madhampur under Chandramandi Police Station



in the district of Jamui. In course of trial, PW-3 has stated that the accused-appellants are from another village. Thus, it is evident that the informant and the accused are from two different villages. She has given the name of the village of the accused in the written information.

21. As per her written information, it was Tulsi Yadav (A-2) who came near her, caught hold of her from behind, slammed her down on the earth and committed wrong act with her. So far as A-1 is concerned, the only allegation against him in the written information (Exhibit 'P-3') is that he was making the video and had threatened her that if she would disclose it to anyone then he would make the video viral. PW-3 has not stated in the written information that she was threatened to kill or that the accused would commit the same act with her daughter if she would disclose it to anyone. This fact gains importance because the written information was furnished after fifty five days of the occurrence and it was written by her son. Had there been any threat of killing, she would have definitely disclosed it to her family members, but she did not disclose the occurrence to anyone.

22. According to the informant (PW-3), Sukho Yadav and Rajesh Das had made the video viral in mobile phone of the



gotiyas who were those *gotiyas* is not disclosed. There is no witness from amongst her *gotiyas*. Video was made viral from the mobile phone of Rajesh Das and the mobile number given in the written information is 7667758330. It is, therefore, evident that in the written information there is no statement that Sukho Yadav (A-1) had made the video viral from his own mobile phone. She has made allegation against her Devar Sanjay Das, Neelmani Das, both sons of late Bajrangi Das, Liter Das, son of Khushi Das, she has stated that they came together with Rajesh Das at her door, abused her, beaten her and asked her to leave the place with her whole family otherwise she would be killed, despite her saying that where would she go, they did not hear anything and they evicted the informant from the village, whereafter she came to her *maike* Parachi (Chakai) with her both sons and one daughter. She has stated that the video was made viral in her *maike* also and when her son Pradeep went to village Madhopur then Vijay Das, son of Uttam Das of village Madhopur made him to flee and threatened him that if he would come there then hands of her mother would be broken and she would be sold in the prostitute market. There is no witness on this point from her *maike*.

23. On a complete reading of the written information (Exhibit 'P-3'), it appears that the informant had been asked to



leave the village by her devar Sanjay Das, Neelmani Das and Liter Das. These two appellants had not gone to the house of the informant to ask her to leave the village. Rajesh Das, who is brother of Sukho Yadav (A-1), is said to have accompanied her *devars* when they were asking her to leave the village. In the written information, there is no statement that at any point of time, these appellants had threatened her to kill or to commit wrong act with her daughter. In our considered opinion, the learned trial court has completely missed out on this aspect of the matter and the finding of the learned trial court that with a view to save her son and daughter and because of the threat to her to kill and to repeat the offence with her daughter, she had not disclosed the occurrence to anyone, this finding cannot be sustained. The written information rather suggests that the prosecutrix had a quarrel with her *devars* on 17th September, 2020, whereafter she had left her village and went to reside in her *maike*. The written information was submitted after one month, thirteen days from 17th September, 2020. In these circumstances, the delay in lodging of the First Information Report is such that it would prove fatal to the prosecution case.

24. In course of trial, the prosecution examined the prosecutrix (PW-3). She has given a different sequence of



occurrence. In her examination-in-chief, she has stated that she had gone to the Tetaria Forest where her she-goat was grazing and she was sitting. She has stated that Tulsi Yadav and Sukho Yadav both put a towel on her neck and took her to a bush where both of them committed rape on her and they made video of the same. She had stated that when she started weeping then both of them told her that if she would go to the police station then she would be killed, they took her caste name and said that they would commit the same act with her daughter. They also said that her both sons would be killed. She has stated that they made the video viral and the video was received in the mobile of her son who asked her and then she disclosed about the occurrence. The whole family came to know this and they asked her to leave the house whereafter she went to her *naihar* from there she went to Mahila Police Station with her son who wrote the written information, she read over the same and put her signature thereof. She has proved the written information as Exhibit 'P-3'.

25. In her cross-examination, PW-3 has stated that the Tetria Forest is at a distance of 2-4 minutes. No one else had gone with her that day and she was alone. There is no house of any person at the place where the she-goat was grazing and she was sitting. At a distance of five minutes from the said place, there



were houses of Turi Families. She has stated that when the accused persons were pulling her by towel, she had shouted but no one came to save her. She had not received any injury on her body. She was trying to save herself at the time of rape but she had not received any injury on her body. She was trying to persuade the accused persons not to make video but they had threatened her. She denied the suggestion that no act of rape had been committed with her and she was making a false statement.

26. The son of the prosecutrix has been examined as PW-4. He was eighteen years old at the time of his deposition. He has stated that on 17.10.2019 when he was sitting and the *shradh karm* of his dadaji had already been performed, a filthy video came on his mobile and on the mobile of the villagers then he asked his mother, she disclosed about the occurrence. He has stated in paragraph '5' that Tulsi Yadav and Sukho Yadav are residents of the neighbouring village. In his cross-examination, this witness has stated that the occurrence took place on 05.09.2020, his mother had not disclosed anything about the occurrence in the house and after seeing the video, she had disclosed the occurrence. He has stated that he was present in his house on 05.09.2020. In paragraph '10' of his deposition, he has stated that Tetaria Forest is at a distance of about two and half kilometer from his house and that is



a lonely place and villages are at a far distance from there. He has further stated that no one had gone with her mother and she had gone alone. He has stated that video was received on his WhatsApp.

27. The Station House Officer (PW-6) has stated that on the basis of the written information furnished by the prosecutrix, this case was lodged. She had recorded the restatement of the prosecutrix who had produced the viral video. PW-6 had prepared the production-cum-seizure list of the pen drive of the said video and attached the same with the case diary. She has proved the production-cum-seizure list (Exhibit 'P-7') and the pen drive (Exhibit 'P-8'). PW-6 has given the description of the place of occurrence, which is a forest place. She had handed over the investigation to the Police Inspector, Jhajha on 23.02.2021. She has stated that she had tried to take statement of the neighbouring people but she could not find anyone. She has stated that she had sent to the Technical Cell but no report was received. She had asked for the clothes of the prosecutrix but she had not provided the clothes and told her that she had washed the clothes with soap.

28. The two doctors who have been examined in this case are Dr. Devendra Kumar (PW-1) who had conducted the age determination test of the prosecutrix and concluded that the age of



the prosecutrix was above twenty years. He has proved his report (Exhibit 'P-1'/PW-1'). Dr. Khusboo Kumari (PW-5) had examined the prosecutrix on 31.10.2020 in presence of nursing staff. She had not found any sign of external injury all over the body. The vagina admitted two finger loose and the hymen was old ruptured. In her cross-examination, she has stated that at the time of medical examination conducted by her, she found that hymen was ruptured but no external or internal injury was found around genitalia region.

29. In course of their statement under Section 313 CrPC, both the appellants were asked the same questions, both of them denied the same and claimed to be innocent. The statement under Section 313 CrPC of one of the appellants is being reproduced hereunder for a ready reference:-

“प्रश्न :- क्या आपने गवाहो का ब्यान सुना है ?

उत्तर :- जी हाँ।

प्रश्न :- आपके विरुद्ध आरोप है कि आप दिनांक 5.9.20 ई० को सूचिका दाया देवी, उम्र 35 वर्ष पति स्व० इन्द्रदेव दास सा० माधोपुर थाना – चन्द्रमंडीह जिला जमुई, बकरी चराने जंगल गयी थी और इसी बीच आप सूचिका को पीछे से पकड़ कर जमीन पर पटक दिए और दुष्कर्म किए और छुप कर अश्लील बिडीओ बना रहे थे ?

उत्तर :- यह असत्य बात है।

प्रश्न :- इस संबंध में आपको क्या कहना है।

उत्तर :- मैं निर्दोष हूँ। ”



30. From the entire discussions made hereinabove, we find that in this case, at first instance, the prosecutrix did not disclose the occurrence to anyone from 05.09.2020 to 16.09.2020. It is stated that the video went viral and was received on the mobile phone of her son (PW-4) on 17.09.2020. On that day, at least all the family members and the villagers are said to have come to know about the occurrence, still it took one month fourteen days to the prosecutrix and her family members including her son to report the occurrence to the police station. This is not a natural conduct and the huge delay on the part of the prosecutrix and her family in reporting the occurrence to the police station would cast strong doubt over the prosecution story. We are taking this view keeping in mind that in her written information, which was submitted after fifty five days of the occurrence, she has not stated that the accused persons-appellants had threatened her to kill or to commit wrong act with her daughter.

31. On going through the prosecution case, it appears to us that the whole case hinges around the viral video. The prosecutrix has stated in her written information that it was Rajesh Das (not before this Court) who had made the video viral from his mobile phone. In course of investigation, the I.O. has not seized the mobile phone of Rajesh Das. The mobile phone of the son of



the prosecutrix was not produced for forensic examination. What was produced before the I.O. was a pen drive of red-black colour on which 'Sandisk' is inscribed. This is the only evidence if at all it is, which has been collected by the I.O. (PW-6). Who prepared the pen drive and from which device it was prepared is not known. The pen drive was produced by the prosecutrix before the I.O. (PW-6) in her own village-Madhopur. The production-cum-seizure list (Exhibit 'P-7') shows the place of seizure and the two witnesses of Exhibit 'P-7' are Amit Kumar and Savitri Devi but none of them have been examined. The pen drive was not sent to forensic and in this regard, the I.O. (PW-6) has made a statement that she had written to the Technical Cell but no report was received. It is, thus, evident that regarding the viral video, the I.O. was not able to collect any scientific evidence from the Technical Cell of the Office of the Superintendent of Police. The prosecution has not even proved any documentary evidence to show that the I.O. had ever requested the Technical Cell of the Office of the Superintendent of Police to provide any technical support. From perusal of the records, it appears that neither the source of making of the video nor the metadata of the video could be found.

32. The learned trial court has admitted the pen drive in evidence in absence of production of any certificate as required



under Section 65 of the Indian Evidence Act. It is a blunder committed by the learned trial court. To us, it appears that the learned trial court was bent upon convicting the appellants by committing any wrong. In the process, the learned trial court could not keep in mind that in our adversary system of law, hundreds of culprits may go scot-free, but one innocent cannot be hanged. In a case of the present nature where there is huge delay in lodging of the FIR even after knowledge of the occurrence to the son and other family members of the prosecutrix, her conduct in going to a distance of 2-2.5 kilometer from her village inside the forest to graze her she-goat and then keeping a complete silence about the occurrence for so many days would take away the credibility of the prosecutrix as a sterling witness. It would not be safe to convict the appellants on the basis of the statement of the prosecutrix (PW-3) alone. In the present set of evidences where the trial court had no credible evidence corroborating the statement of the prosecutrix, the trial court has committed an error in convicting the appellants.

33. As regards the proof of electronic evidences, Section 65 of the Indian Evidence Act reads as under:-

“65. Cases in which secondary evidence relating to documents may be given.

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-



(a) when the original is shown or appear to be in the possession or power —

of the person against whom the document is sought to be proved; or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in "[India]" to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents."

(a) Substituted for "the States" by the Part B State (Laws) Act, 1951 (3 of 1951), Section 3 and Schedule (1-4-1951)

34. In the case of Arjun Panditrao Khotkar v. Kailash

Kushanrao Gorantyal reported in (2020) 7 SCC 1, the Hon'ble

Supreme Court has considered the entire gamut of proving the



electronic evidences. The case laws have been reviewed and what have been concluded by the Hon'ble Supreme Court are as under:-

“61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anvar P.V.*², and incorrectly “clarified” in *Shafhi Mohammad*³. Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor v. Taylor*⁴⁰, which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.

84. But Section 65-B(1) starts with a non obstante clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B, *for the purpose of proving the contents of electronic records*, but Section 65-B speaks entirely about *the preconditions for admissibility*. As a result, Section 65-B places admissibility as the first or the outermost checkpost, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.”

2. *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108

3. *Shafhi Mohammad v. State of H.P.*, (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865

40. (1875) LR 1 Ch D 426



35. As we have already found that the learned trial court has committed a blunder in admitting the pen drive (Exhibit ‘P-8’), it was not even sent to the Forensic Science Laboratory to confirm the alleged occurrence and in fact there was nothing before the trial court to take a view as to the contents of the said pen drive, we are of the considered opinion that the impugned judgment and order are liable to be set aside.

36. Accordingly, we set aside the impugned judgment and order. Both the appellants are acquitted of the charges giving them benefit of doubt.

37. The appellant no.1 is on bail. He and his sureties are discharged from the liability of the bail bonds. Tulsi Yadav (A-2) is in incarceration. He will be released forthwith if not wanted in any other case.

38. This appeal is allowed.

39. Let the trial court records along with copy of the judgment be sent down to the trial court.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

SUSHMA2/-

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CAV DATE	
Uploading Date	29.07.2025
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