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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: September 04, 2014*

+ **CRL.A. 1171/2012**

ACHCHEY LAL YADAV ..... Appellant  
Represented by: Mr.Avninder Singh, Advocate with  
Ms.Sumi Anand, Advocate

versus

STATE ..... Respondent  
Represented by: Mr.Varun Goswami, APP  
Insp.Vijay Shrotriya, SHO, New  
Ashok Nagar

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**PRADEEP NANDRAJOG, J. (Oral)**

1. Master Harsh aged five years was dropped, as claimed by his mother Rekha at the gate of MCD Nigam Prathmik Vidyalaya on January 22, 2009. He did not return home. As per the case of the prosecution Shambhu Nath Verma received ransom calls on mobile No.9958838258, the registered user whereof was Krishan Kumar, the nephew of Sambhu Nath Verma and had been handed over by Krishan Kumar Verma to Shambhu Nath Verma.
2. The ransom calls were purportedly received by Shambhu Nath Verma from a mobile No.9718657950 and land line Nos.2511540 and 2511091, registered user whereof as Om Prakash Verma. As per the prosecution two other land line numbers 22722880 and 2666014 in the names of Manoj Kumar were also used to make telephone calls to Shambhu Nath Verma at his mobile No.9958838258.

3. We find from the testimony of the witnesses of the prosecution that stored in the computer memory and print outs generated thereof have not been proved as per the requirement of Section 65B of the Evidence Act.
4. With reference to the record of the trial we find that in spite of it being filed and date given to the prosecution to prove an FSL report lying in the Trial Court record as per which '*Phenobarbital & Cannabinol*' were found in the viscera Ex.1A, Ex.1B and Ex.1C of Harsh Kumar Verma and also on Ex.2B being a plastic colour packet with some sticky substance labelled as 'Bhola'.
5. We pain to note that in every second case concerning electronic evidence learned Sessions Judges are showing complete ignorance of the law. The learned prosecutors seem to know nothing of the law.
6. In the instant case whereas certificate contemplated by Section 65B of the Evidence Act has been filed concerning the mobile No.9958838258, no such certificates have been filed concerning computer generated print out of the calls concerning the four land line and the second mobile No.9718657958.
7. Two witnesses of MTNL and BSNL have been examined and we refer to only one to illustratively bring home the point. Vijay Kumar Jain PW-21 has deposed as under:-

*"I have brought the concerned commercial files pertaining to telephone nos.2511540, 2511091 and 2666014 from our office BSNL Sector 19, Noida. The numbers 2511540 and 2511091 are in the name of ownership of Manoj Kumar, S/o Sh.Ram Gulam Sharma, R/o Sweet Studio, Sector 15, Naya bans, Gali No.2, Sher Singh Market, Noida, he was running STD, PCO on these nos. The telephone no.266614 belongs to and under the ownership of Mr.Gajendra Pal Singh, S/o Durg Pal Singh, R/o in front of Krishna Floor Mill, Railway Road, Dadri, Gautam Budh Nagar-201301 and from this number also*

*PCO was running.*

*I have seen the call details of the aforesaid three telephone connections on the records. The said call details are Ex.PW21/A, 21/B and 21/C respectively. The details are correct as per our record maintained in our office.”*

8. Vijay Kumar Jain was the Sr.Office Assistant, BSNL. He could not have proved and therefore the call details of the three telephone numbers could have been exhibited as PW-21/A, Ex.PW-21/B and Ex.PW-21/C, in the manner the learned Trial Judge has recorded his testimony.

9. Section 65A and 65B of the Evidence Act, 1872, inserted by Act No. 21 of 2000 read as under:-

**“65A. Special provisions as to evidence relating to electronic record.-**

*The contents of electronic records may be proved in accordance with the provisions of Section 65B.*

**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 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 the 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 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 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 regular carried out 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, or 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 this 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 reasonable 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 or 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) to 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.*

10. Thus, computer generated electronic records is evidence, admissible at a trial if proved in the manner specified by Section 65B of the Evidence Act.

11. Sub-section (1) of Section 65B makes admissible as a document, paper print-out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfillment of the conditions specified in Sub-section (2) of Section 65B. Following are the conditions specified by Sub-section (2):

*a) The computer from which the record is generated was regularly used to store or process information in respect of activity regularly carried on by a person having lawful control over the period, and relates to the period over which the computer was regularly used;*

*b) Information was fed in the computer in the ordinary course of the activities of the person having lawful control over the computer;*

*c) The computer was operating properly, and if not, was not such as to affect the electronic record or its accuracy;*

*d) Information reproduced is such as is fed into computer in the ordinary course of activity.*

12. Under Sub-section (3) of Section 65B, Sub-section (1) and (2) would apply where single or combination of computers, is used for storage or

processing in the regular course of activities and the computers used shall be construed as a single computer.

13. Under Sub-section (5), information shall be taken to be supplied to a computer by means of an appropriate equipment, in the course of normal activities intending to store or process it in the course of activities and a computer output is produced by it whether directly or by means of appropriate equipment.

14. The normal rule of leading documentary evidence is the production and proof of the original document itself. Secondary evidence of the contents of a document can also be led under Section 65 of the Evidence Act. Under Sub-clause "d" of Section 65, secondary evidence of the contents of a document can be led when the original is of such a nature as not to be easily movable. Computerised operating systems and support systems in industry cannot be moved to the court. The information is stored in these computers on magnetic tapes (hard disc). Electronic record produced there from has to be taken in the form of a print out. Sub-section (1) of Section 65B makes admissible without further proof, in evidence, print out of a electronic record contained on a magnetic media subject to the satisfaction of the conditions mentioned in the section. The conditions are mentioned in Sub-section (2). Thus compliance with Sub-section (1) and (2) of Section 65B is enough to make admissible and prove electronic records.

15. Thus, if witnesses depose concerning computer print outs of call details generated they must speak the facts to establish that clauses (a) to (d) of sub-section (2) of Section 65B or sub-Section (3) thereof, as the case may be, are satisfied. It is not enough to say *‘I have seen the call details of the aforesaid three telephone connection on the record. The said calls details*

*are Ex.PW-21/A, Ex.PW-21/B and Ex.PW-21/C respectively. The details are correct as per our record maintained in our office.'*

16. Section 386 of the Code of Criminal Procedure permits the appellate Court to direct further evidence to be recorded. We dispose of the appeal setting aside the judgment dated May 19, 2012 and order on sentence dated May 25, 2012 convicting appellant for the offence of having kidnapped for ransom and having murdered Master Harsh Verma.

17. We remand the matter to the learned Trial Court with a direction that further evidence would be led as required by law concerning the various call details record pertaining to the land line and mobile number which we have referred to hereinabove. The prosecutor would be given an opportunity to prove the FSL report.

18. Copy of this decision is directed to be sent to the District & Sessions Judge(s) of the eleven districts in Delhi who shall bring the same to the notice of all the judicial officers working in their respective districts.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(MUKTA GUPTA)**  
**JUDGE**

**SEPTEMBER 04, 2014**  
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