Sonu @ Amar vs State Of Haryana on 18 July, 2017

Equivalent citations: AIR 2017 SUPREME COURT 3441, AIR 2017 SC (CRIMINAL) 1170

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Bench: Chief Justice, L. Nageswara Rao, Navin Sinha

REPORTA

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1418 of 2013

SONU @ AMAR

.... Appellant(s

Versus

STATE OF HARYANA

….Respondent(s)

With

CRIMINAL APPEAL No.1416 of 2013
CRIMINAL APPEAL No. 1653 of 2014
CRIMINAL APPEAL No. 1652 of 2014

JUDGMENT

L. NAGESWARA RAO, J.

The Appellants in the above appeals along with Dharmender @ Bunty were found guilty of abduction and murder of Ramesh Jain. They were convicted and sentenced for life imprisonment. Their conviction and sentence was confirmed by the High Court. Accused Dharmender @ Bunty did not file an appeal before this Court. Accused Rampal was convicted under Section 328 read with 201 IPC and was sentenced to 7 years imprisonment. His conviction was also confirmed by the High Court which is not assailed before us.

2. Dinesh Jain (PW-1) approached the SHO, Ganaur Police Station (PW 31) at 01:30 pm on 26.12.2005 with a complaint that his father was missing on the basis of which FIR was registered by PW 31. As per the FIR, Dinesh Jain left the rice mill at 7:00 pm on 25.12.2005 and went home while his father stayed back. As his father did not reach home even at 10:00 pm, he called his father's mobile number and found it to be switched off. He went to the rice mill and enquired about the whereabouts of his father from Radhey, the Chowkidar and was informed that his father left the rice

mill at 9:30 pm on his motor cycle bearing Registration No. DL-8-SY-4510. He along with his family members searched for his father but could not trace him. He apprehended that his father might have been kidnapped.

3. After registration of the FIR, PW 31 started investigation by visiting the rice mill and making inquiries. On 28.12.2005 one motor cycle was recovered from a pit near Bai crossing. As the number plate of the vehicle was blurred, PW31 verified the engine number, compared it with the registration certificate to find that the seized motor cycle belonged to Ramesh Jain.

4. On 09.01.2006, Dinesh Jain (PW 1) and Ashok Jain (PW 3) informed PW 31 that a call was received on the mobile phone of PW 1 from a person who identified himself as Bunty and who was speaking in Bihari dialect. He informed them that Ramesh Jain was in his custody and demanded a ransom of Rs.1 crore for his release. They were also asked to purchase another mobile phone having Delhi network to which future calls would be made. The Investigating Officer (PW31) visited the rice mill belonging to deceased Ramesh Jain on 17.01.2006 and met PW 1, PW3 and Dhir Singh (PW 7). They handed over four threatening letters (Exh.P 1 to P 4), one key ring (Exh.P 9), one silver ring having a precious stone (Exh.P 10) and a piece of cloth of a shirt worn by the deceased on 25.12.2005 when he was kidnapped (Exh.P11). PW 1 and PW 3 informed the Investigating Officer that Bunty called them and told them that they would find the key ring, silver ring, a piece of cloth and cuttings of newspaper near Bai crossing. They collected the said articles from Bai crossing.

5. The Investigating Officer along with SHO Special Cell, Rohini, Delhi constituted three raiding parties on 20.01.2006 on the basis of information that the accused would visit Tibetan Market. Pawan (A1), Surender (A2) and Dharmender @ Bunty (A3) were arrested at 11:45 pm when they visited the Tibetan Market, Delhi in a Maruti car. Their mobile phones and some cash were recovered from them.

6. On 22.01.2006, Amar @ Sonu (A5) and Parveen (A4) were arrested near the bus stand at Ganaur Chowk, GT Road, Ganaur. Two mobile phones were seized from Sonu (A5). Parveen @ Titu (A4) suffered a disclosure statement during the course of investigation that Ramesh Jain was abducted and a demand of Rs. 1 crore was made from his family members for his release. Parveen (A4) stated that Ramesh Jain was murdered and his dead body was buried at Baba Rude Nath temple in village Kheri Khusnam. In his disclosure statement, Surender (A2) further disclosed that Dr. Rampal administered injections to keep Ramesh Jain unconscious. He further disclosed that Ramesh Jain was murdered on 29.12.2005 and his dead body was buried in a pit at Baba Rude Nath temple. Dharmender @ Bunty (A3) and Surender (A2) also suffered disclosure statements in which they stated that they can identify the place where Ramesh Jain was murdered and buried.

7. The Investigating Officer was led by Parveen (A4), Dharmender (A3) and Surender (A2) to Baba Rude Nath temple in village Kheri Khusnam on 22.01.2006. The room in which Ramesh Jain was confined and murdered was pointed out by A2 to A4. The dead body of Ramesh Jain was exhumed from the place identified by A2 and A4. PW1, PW3, PW6 along with PW11 Jai Chand, SDM were present at the spot from where the dead body of Ramesh Jain was taken out from the pit.

8. On 24.01.2006, a disclosure statement was made by Parveen (A4) pursuant to which he identified the place where the key ring of the motor cycle, threatening letters and a ring of deceased Ramesh Jain were placed near a sign board at the crossing of village Bai. He further disclosed that he concealed another ring of Ramesh Jain at his house in village Ghasoli at a place which he can only identify. Parveen led the police party to the place where he concealed the golden ring of the deceased which was identified by PW1 and recovered through memo Exh.PT/5. Dharmender @ Bunty (A3) led the police party to a rented room situated at Shashtri Park, Delhi from where the SIM card of mobile No. 9896351091 belonging to deceased Ramesh Jain was recovered from a concealed place. Pursuant to a disclosure statement, he also identified the place where the motor cycle of deceased was thrown after he was abducted. On 30.01.2006, Sonu @ Amar suffered a disclosure statement to the effect that he had concealed the wallet of Ramesh Jain and certain documents like PAN card, diary, three electricity bills, two water bills and his photographs underneath the seat of his shop which were exclusively in his knowledge. The said documents were seized by the Investigating Officer from the shop belonging to Sonu @ Amar (A5). The registration certificate of the motor cycle of deceased Ramesh Jain was recovered from a drawer of the table in the house situated at Begha Road, Ganaur which was occupied by Pawan (A1) pursuant to a disclosure statement by him. A country made pistol with two live cartridges were recovered from the same room situated at Begha Road on the basis of disclosure statement made by Surender (A2).

9. Dr. Ram Pal (A6) surrendered in the Court of Sub Divisional Judicial Magistrate (SDJM), Ganaur on 01.02.2006. He suffered a disclosure statement on the basis of which a syringe which was used for giving injections to keep the deceased unconscious was seized from the roof of Baba Rude Nath temple, village Kheri Khusnam. A spade was also recovered from underneath a cot in his house on the basis of his disclosure statement.

10. The Investigating Officer collected the Call Detail Records (CDRs) of all the mobile phones that were recovered from the accused, mobile phones of the deceased and Dinesh Jain (PW

1) from the Nodal officers of the mobile companies.

11. Accused Manish (A7) who is a cousin of Sonu (A5) surrendered on 12.04.2006 in the Court of SDJM, Ganaur. He is alleged to have assisted A5 in the abduction. He was acquitted by the Trial Court which was confirmed by the High Court which remains unchallenged. The accused were tried for offences punishable under Section 120 B, 364 A, 302, 328 A and 201 read with 120 B of the Indian Penal Code. In addition, A2 was also charged for committing an offence under Section 25 of the Arms Act. The Additional Sessions Judge, Sonepat by his judgment dated 11.10.2010 convicted A1 to A5 for the aforesaid offences and sentenced them to life imprisonment. A6 was convicted under Section 328 and 201 of IPC and sentenced to seven years. All the convicted accused filed appeals before the High Court. Dinesh Jain (PW 1) filed an appeal for enhancement of the sentence of the convicted appellants. He also challenged the acquittal of accused Manish (A7). The High Court dismissed all the appeals after a detailed re-appreciation of the material on record. A1, A2, A4 and A5 have approached this Court by filing appeals against the confirmation of their conviction and sentence.

12. We have carefully examined the entire material on record and the judgments of the Trial Court and the High Court. The Trial Court relied on the testimonies of PW1 and PW3, the recoveries made pursuant to the disclosure statements of the accused and the CDRs of the mobile phones of the accused, the deceased and PW 1 to conclude that the prosecution established that the accused are guilty beyond reasonable doubt. The Trial Court also discussed the complicity of each of the accused threadbare. The High Court re-appreciated the evidence and placed reliance on the disclosure statements, the consequential recoveries and the CDRs of the mobile phones to confirm the findings of the Trial Court.

13. Ramesh Jain left his rice mill at 9:30 pm on 25.12.2005. His dead body was exhumed from the premises of the temple in village Kheri Khusnam on the intervening night of 22/23.01.2006. The post mortem examination was conducted by Dr. Pankaj Jain (PW16) on 23.01.2006. He deposed that the process of decomposition was in progress. The skin was peeled off at most places. A muffler was present around the neck of the dead body. Both wrists and ankles were tied by a piece of cloth. The hyoid bone was found fractured. In the opinion of PW 16, Ramesh Jain died of asphyxia. The probable time of death, according to him, was 3/4 weeks prior to 23.01.2006. He also deposed that the process of decomposition would be slower during winter. Dinesh Jain (PW1) deposed that there was a demand of ransom of Rs.1 crore for the release of his father which was made through a telephone call on 06.01.2006 from a person who identified himself as Bunty and who was speaking in Bihari dialect. He also spoke of the calls that were made from the mobile phone bearing No. 9896351091 belonging to his father on 08.01.2006 and 09.01.2006 by which the ransom demands were repeated. He further stated about the threatening letters received by him at his shop address. He also deposed that he collected a piece of shirt worn by his father on the day of his abduction along with one silver ring and a key ring of the motor cycle of his father at a place specified in a call received by him on 16.01.2006. He was present when the dead body of his father was being taken out and he video-graphed the exhumation. Ashok Jain (PW3) who is the brother of deceased Ramesh Jain, corroborated the evidence of PW1 regarding the demands that were made for payment of ransom for the release of Ramesh Jain.

14. The arrest of A1 to A3 from Tibetan Market, Delhi at 11:45 pm on 20.01.2006 led to several disclosure statements made by the accused pursuant to which relevant material was recovered. The details of recoveries made from each of the accused will be discussed later. The dead body of the deceased Ramesh Jain was also recovered pursuant to a disclosure statement made by A2 to A4. The CDRs that were obtained from the Nodal officers of the telephone companies which were exhibited in the Court without objection clearly prove the complicity of all the accused. A detailed and thorough examination of the number of calls that were made between the accused during the period 25.12.2005 to 20.01.2006 was made by the Courts below to hold the accused guilty of committing the offences. We do not see any reason to differ from the conclusions of the Courts below on the basis of the evidence available on record. Neither do we see any perversity in the reasons and the conclusion of the Courts below. The jurisdiction of this Court in criminal appeals filed against concurrent findings is circumscribed by principles summarised by this Court in Dalbir Kaur v. State of Punjab, (1976) 4 SCC 158 ¶ 8, as follows:

"8. Thus the principles governing interference by this Court in a criminal appeal by special leave may be summarised as follows:

"(1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;

(2) that the Court will not normally enter into a re-appraisement or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on;

(3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;

(4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused;

(5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence."

15. Admittedly, there is no direct evidence of kidnapping or the murder of Ramesh Jain. This is a case of circumstantial evidence. In a catena of cases, this Court has laid down certain principles to be followed in cases of circumstantial evidence.

They are as under:

1. The circumstances from which an inference of guilt is sought to be proved must be cogently or firmly established.

2. The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.

3. The circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else.

4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

(See: Shanti Devi v. State of Rajasthan, (2012) 12 SCC 158 ¶10); (See also: Hanumant v. State of Madhya Pradesh (1952) SCR 1091 (P.1097) Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 ¶153).

16. Applying the above principles to the facts of this case, we find that the following circumstances would lead to the conclusion of guilt against the accused:

A. The deceased was missing from 23.12.2005 and his dead body was dug out from the premises of a temple on 23.01.2006.

B. Demand of ransom for the release of the deceased is proved by the oral testimonies of PW1 and PW3.

C. Disclosure statements of A2 to A4 and the recovery of the dead body from the premises of the temple.

D. Disclosure statements made by the accused pursuant to which there was recovery of several articles belonging to the deceased including the SIM card of his mobile number, wallet containing his personal belongings, etc. E. The CDRs of the mobile which clearly show the interaction of the accused during the period from 25.12.2005 to 20.01.2006 as well as the calls made to PW1 including the calls made from the mobile phone of the deceased.

F. The silver ring, key ring of the motor cycle and a piece of cloth worn by the deceased on 25.12.2005 which were sent to PW1 by the accused.

17. We deem it proper to consider the submissions made by the learned counsel for the accused.

A1 - Pawan (Criminal Appeal No.1416 of 2013)

18. The registration certificate of motor cycle No. DL-8-SY-4510 of the deceased was recovered from A1 pursuant to the disclosure statement Exh.PDD. The registration certificate was recovered from the drawer of a table lying in the room of his house situated at Begha Road, Ganaur.

19. Mr. D. B. Goswami, learned counsel appearing for A1 submitted that A1 and A4 are brothers. A4 and A2 were partners in transport business. He submitted that A1 was arrested from his house in his village Ghasoli, District Sonepat. He relied upon the evidence of DW 2 and DW 5 in support thereof. DW2 and DW 5 who are residents of village Ghasoli deposed that police personnel visited the village around 9 am in search of Parveen (A4) on 20.01.2006. They stated that A1 accompanied the police to the police station. He travelled in his own car and the police went in the Govt. Jeep. On the other hand, the case of the prosecution is that A1 was arrested along with A2 and A3 at 11:45 PM on 20.01.2006 at Tibetan Market, Delhi. The police from Rohini Police Station, Delhi were also involved in the raid pursuant to which A1 was arrested. The interested testimonies of DW2 and DW5 do not merit acceptance, especially when the prosecution has proved the arrest and the subsequent

recoveries made pursuant to the disclosure statement of A1. The learned counsel submitted that the application filed by A1 to take his voice sample was rejected by the Trial Court and so he cannot be found fault with for not giving his voice sample. A1 refused to give his voice sample when the prosecution moved the Court. Thereafter, A1 filed an application to take his voice sample and the said application was disposed of by the Trial Court giving liberty to A1 to file again after the prosecution evidence was completed. Therefore, the learned counsel for A1 is wrong in contending that his application for giving voice samples was rejected by the Court. The learned counsel further submitted that the CDRs of the mobile phone of A1 would suggest that he was making calls only to A2, A3 and A4. He made an attempt to justify the calls on the ground that A4 was his brother and A2 was his brother's partner. No justification has been given for the 28 calls between him and A3 who is from Bihar and who was making the calls demanding a ransom of Rs.1 crore from PW 1.

A2 - Surender (Criminal Appeal No.1652 of 2014)

20. A2 was arrested on 20.01.2006 in Tibetan Market, Delhi along with A1 and A3 and was found to be in possession of a mobile phone bearing No.9813091701 which was used by him for conversing with A1, A3 and A4 between 25.12.2005 to 20.01.2006. Three STD booth receipts Exh.P41, P42 and P43 were recovered from A2. These receipts showed calls being made to mobile No. 9896001906 which belongs to A5 Sonu. He was a resident of Jhinjhana village and the calls made from the STD booth with telephone No. 01398257974 pertain to Jhinjhana. An amount of Rs.20,000/- was also recovered from him at the time of his arrest. The said amount was supposed to have been given to him by A5 Sonu. Pursuant to his disclosure statement Exh.PCC A2 led the police party to his rented accommodation at Begha Road, Ganaur and a country made pistol with two live cartridges .315 bore were recovered in the presence of PW5 Mohan Lal. He also identified the place of abduction of Ramesh Jain at Ganaur and the place where the dead body was buried at Baba Rude Nath temple in village Kheri Khusnam. Mr. Ram Lal Roy, learned counsel for A2 doubted the recovery of the country made pistol and cartridges. He submitted that the dead body recovered on 22.01.2006 is that of a priest and not of Ramesh Jain. There is no foundation laid by the defence in support of this contention. There is nothing on record to prove that the dead body is that of a priest. We are of the opinion that the dead body is that of Ramesh Jain as identified by his relatives. The medical evidence shows that the skin was peeled off at several places but the features of the body could easily be made out. PW 16 also deposed that decomposition is slow in winter months. We have perused the photograph of Ramesh Jain and compared it with a photograph of the dead body recovered. We are convinced that the body recovered is that of the deceased Ramesh Jain.

A4 - Parveen @ Titu (Criminal Appeal No.1653 of 2014)

21. The STD booth receipt Exh. P44 showing a call made from STD booth having No. 01398257974 from Shamli village in Uttar Pradesh was recovered from A4 at the time of his arrest on 22.01.2006. As per the receipt, a call was made to mobile No.9896001906 which belongs to Sonu (A5). Pursuant to the disclosure statement made by him, he identified the place at village Bai crossing on GT Road where he kept the key ring of motor cycle, silver ring belonging to deceased Ramesh Jain and the threatening letters. A golden ring of the deceased was also recovered from his residential house at village Ghasoli. He also made a disclosure statement which led the police to the place where the

deceased was wrongfully confined. His SIM card with mobile No. 9812016269 was seized from his residential house. There is sufficient evidence on record to suggest that he was in constant touch with the other accused. His mobile phone and the recoveries that were made pursuant to the disclosure statement would clearly prove his involvement in the crime.

A5 - Sonu (Criminal Appeal No.1418 of 2013)

22. Mr. Sidharth Luthra, learned Senior Counsel appearing for A5 submitted that it is highly improbable that A5 was arrested at a bus stop at Ganaur Chowk, GT Road, Ganaur. According to him, A5 was arrested on 20.01.2006 at 10:15(30) pm from his house. He relied upon the evidence of DW5 and DW8. We do not find any substance in the submission that A5 was arrested on 20.01.2006 itself as it is clear from the testimony of DW8 that no complaint was made regarding the forcible arrest of A5 on 20.01.2006. A disclosure statement was made by A5 which was marked as Exh.PBB pursuant to which there was a recovery of the wallet belonging to the deceased from the shop of A5. A laminated PAN card, one passport size photograph of the deceased, three electricity bills, two water bills and a small diary of Jain Mantras bearing title 'Aanu Purvi' were recovered from underneath the seat of his Aarat shop at Ganaur Mandi. The STD booth receipts which were recovered from A2 Surender and A4 Parveen at the time of their arrest show that they made calls on the mobile No.9896001906 belonging to A5 on 29th and 30th December, 2005. A5 also received a call from an STD booth in Patna on 06.01.2006. Pursuant to a disclosure statement made by him an Indica car bearing No. DL-3CW-2447 which was used in the abduction was seized. The recoveries made pursuant to the disclosure statements of A5 cannot be relied upon, according to Mr. Luthra. He referred to the six disclosure statements made by A5 between 22.01.2006 and 04.02.2006. He commented upon the improbability of recovery of the wallet from underneath his seat at his shop. He also submitted that the recovery is from a public place accessible to everybody and so the recoveries made cannot be relied upon. We disagree with Mr. Luthra as the recovery of the wallet from underneath his seat is something which is to his exclusive knowledge though other people might have access to his shop.

23. Mr. Luthra contended that the CDRs are not admissible under Section 65B of the Indian Evidence Act, 1872 as admittedly they were not certified in accordance with sub-section (4) thereof. He placed reliance upon the judgment of this Court in Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 by which the judgment of this Court in State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 was overruled. In Navjot Sandhu (supra) this court held as follows:

> "Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65".

In Anvar's case, this Court held as under:

> "22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.
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> 23. The appellant admittedly has not produced any certificate in terms of Section 65-B in respect of the CDs, Exts. P-4, P-8, P-9, P-10, P-12, P-13, P-15, P-20 and P-22.

Therefore, the same cannot be admitted in evidence. Thus, the whole case set up regarding the corrupt practice using songs, announcements and speeches fall to the ground." In view of the law laid down in the case of Anvar, Mr. Luthra submitted that the CDRs are liable to be eschewed from consideration.

24. Mr. Vivek Sood, learned Senior Counsel appearing for the State of Haryana submitted that the CDRs were adduced in evidence without any objection from the defence. He submitted that the accused cannot be permitted to raise the point of admissibility of the CDRs at the appellate stage. He placed reliance on Padman v. Hanwanta, AIR 1915 PC 1 in which the Privy Council held that objections regarding admissibility of a document must be raised in the Trial Court. Mr. Sood contended that there can be two classes of objections regarding admissibility of documents. The first class is that a document is per se inadmissible in evidence. The second is where the objection is regarding the method or mode of the proof of the document. He submitted that the objection of the accused in this case is regarding the mode or method of proof as it cannot be said that the CDRs are per se inadmissible in evidence.

25. Refuting the contentions of the learned senior counsel for the State, Mr. Luthra submitted that the objection raised by him pertains to inadmissibility of the document and not the mode of proof. He urged that the CDRs are inadmissible without the certificate which is clear from the judgment of this Court in Anvar's case. He refers to the judgment of RVE Venkatachala Gounder v. Arulmigu Visweswaraswami, (2003) 8 SCC 752 relied upon by the prosecution to contend that an objection relating to admissibility can be raised even at the appellate stage. Mr. Luthra also argued that proof required in a criminal case cannot be waived by the accused. He relied upon a judgment of the Privy Council in Chainchal Singh v. King Emperor, AIR 1946 PC 1 in which it was held as under:

> "In a civil case, a party can, if he chooses, waive the proof, but in a criminal case strict proof ought to be given that the witness is incapable of giving evidence" He further relied upon the judgment of a Full Bench of the Bombay High Court in Shaikh Farid v. State of Maharashtra, 1983 CrLJ 487. He also submitted that Section 294 Cr. P.C. which is an exception to the rule as to mode of proof has no application to the facts of the present case.

26. That an electronic record is not admissible unless it is accompanied by a certificate as contemplated under Section 65B (4) of the Indian Evidence Act is no more res integra. The question that falls for our consideration in this case is the permissibility of an objection regarding inadmissibility at this stage. Admittedly, no objection was taken when the CDRs were adduced in evidence before the Trial Court. It does not appear from the record that any such objection was taken even at the appellate stage before the High Court. In Gopal Das v. Sri Thakurji, AIR 1943 PC 83, it was held that:

> "Where the objection to be taken is not that the document is in itself inadmissible but that the mode of proof put forward is irregular or insufficient, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. A party cannot lie by until the case comes before a Court of Appeal and then complain for the first time of the mode of proof." In RVE Venkatachala Gounder, this Court held as follows:
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> "Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of

proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court." [Emphasis supplied] It would be relevant to refer to another case decided by this Court in PC Purshothama Reddiar v. S Perumal, (1972) 1 SCC 9. The earlier cases referred to are civil cases while this case pertains to police reports being admitted in evidence without objection during the trial. This Court did not permit such an objection to be taken at the appellate stage by holding that:

"Before leaving this case it is necessary to refer to one of the contentions taken by Mr. Ramamurthi, learned Counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head-constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility."

27. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the Trial Court without a certificate as required by Section 65B (4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 of the Cr. P.C. 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65 B (4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.

28. Another point which remains to be considered is whether the accused is competent to waive his right to mode of proof. Mr. Luthra's submission is that such a waiver is permissible in civil cases and

not in criminal cases. He relies upon a judgment of the Privy Council in Chainchal Singh's case in support of the proposition. The Privy Council held that the accused was not competent to waive his right. Chainchal Singh's case may have no application to the case in hand at all. In that case, the issue was under Section 33 of the Evidence Act, and was whether evidence recorded in an earlier judicial proceeding could be read into, or not. The question was whether the statements made by a witness in an earlier judicial proceeding can be considered relevant for proving the truth or facts stated in a subsequent judicial proceeding. Section 33 of the Evidence Act allows for this inter alia where the witness is incapable of getting evidence in the subsequent proceeding. In Chainchal Singh, the accused had not objected to the evidence being read into in the subsequent proceeding. In this context, the Privy Council held that in a civil case, a party can waive proof but in a criminal case, strict proof ought to be given that the witness is incapable of giving evidence. Moreover, the judge must be satisfied that the witness cannot give evidence. Chainchal Singh also held that:

> "In a civil case a party can, if he chooses, waive the proof, but in a criminal case strict proof ought to be given that the witness is incapable of giving evidence".
>
> The witness, who had deposed earlier, did not appear in the subsequent proceeding on the ground that he was unable to move from his house because of tuberculosis, as deposed by the process server. There was no medical evidence in this regard. The Court observed that the question of whether or not he was incapable of giving evidence must be proved in this context, and in the proof of such a fact it was a condition that statements given in an earlier proceeding can be taken as proved in a subsequent proceeding. Chainchal Singh's case therefore, does not lay down a general proposition that an accused cannot waive an objection of mode of proof in a criminal case. In the present case, there is a clear failure to object to the mode of proof of the CDRs and the case is therefore covered by the test in R.V.E. Venkatachala Gounder.

29. We proceed to deal with the submission of Mr. Luthra that the ratio of the judgment of the Bombay High Court in Shaikh Farid's case is not applicable to the facts of this case. It was held in Shaikh Farid's case as under:

> "6. In civil cases mode of proof can be waived by the person against whom it is sought to be used. Admission thereof or failure to raise objection to their tendering in evidence amount to such waiver. No such waiver from the accused was permissible in criminal cases till the enactment of the present Code of Criminal Procedure in 1973. The accused was supposed to be a silent spectator at the trial, being under no obligation to open his mouth till the occasion to record his statement under section 342 (present S. 313) of the Code arose. Even then he was not bound to answer and explain the circumstances put to him as being appearing against him. In the case of Chainchal Singh v. Emperor AIR 1946 PC 1 it was held by the Privy Council that the accused was not competent to waive his right and the obligation of the prosecution to prove the documents on which the prosecution relied.

Resultantly, the prosecution was driven to examine witnesses even when the accused was not interested in challenging the facts sought to be proved though them. The inconvenience and the delay was avoidable.

7. Section 294 of the Code is introduced to dispense with this avoidable waste of time and facilitate removal of such obstruction in the speedy trial. The accused is now enabled to waive the said right and save the time. This is a new provision having no corresponding provision in the repealed Code of Criminal Procedure. It requires the prosecutor or the accused, as the case may be, to admit or deny the genuineness of the document sought to be relied against him at the outset in writing. On his admitting or indicating no dispute as to the genuineness, the Court is authorised to dispense with its formal proof thereof. In fact after indication of no dispute as to the genuineness, proof of documents is reduced to a sheer empty formality. The section is obviously aimed at undoing the judicial view by legislative process.

8. The preceding Section 293 of the Code also dispenses with the proof of certain documents. It corresponds with Section 510 of the repealed Code of Criminal Procedure. It enumerates the category of documents, proof of which is not necessary unless the Court itself thinks it necessary. Section 294 makes dispensation of formal proof dependent on the accused or the prosecutor, not disputing the genuineness of the documents sought to be used against them. Such contemplated dispensation is not restricted to any class or category of documents as under section 293, in which ordinarily authenticity is dependent more on the mechanical process involved than on the knowledge, observation or the skill of the author rendering oral evidence just formal. Nor it is made dependent on the relative importance of the document or probative value thereof. The documents being primary or secondary or substantive or corroborative, is not relevant for attracting Sec. 294 of the Code. Not disputing its genuineness is the only solitary test therefor.

9. Now the post-mortem report is also a document as any other document. Primary evidence of such a document is the report itself. It is a contemporaneous record, prepared in the prescribed form, of what the doctor has noticed in the course of post-mortem of the dead body, while investigation the cause of the death. It being relevant, it can be proved by producing the same. But production is only a step towards proof of it. It can be received in evidence only on the establishment of its authenticity by the mode of its proof as provided under sections 67 to 71 of the Evidence Act. Section 294(1) of the Code enables the accused also, to waive this mode of proof, by admitting it or raising no dispute as to its genuineness when called upon to do so under sub-section (1). Sub-section (3) enables the Court to read it in evidence without requiring the same to be proved in accordance with the Evidence Act. There is nothing in Section 294 to justify exclusion of it, from the purview of "documents" covered thereby. The mode of proof of it also is liable to be waived as of any other document."

30. Section 294 of the Cr. P.C. 1973 provides a procedure for filing documents in a Court by the prosecution or the accused. The documents have to be included in a list and the other side shall be given an opportunity to admit or deny the genuineness of each document. In case the genuineness is not disputed, such document shall be read in evidence without formal proof in accordance with the Evidence Act. The judgment in Shaikh Farid's case is not applicable to the facts of this case and so, is

not relevant.

The Effect of Overrule

31. Electronic records play a crucial role in criminal investigations and prosecutions. The contents of electronic records may be proved in accordance with the provisions contained in Section 65B of the Indian Evidence Act. Interpreting Section 65B (4), this Court in Anvar's case held that an electronic record is inadmissible in evidence without the certification as provided therein. Navjot Sandhu's case which took the opposite view was overruled.

32. The interpretation of Section 65B (4) by this Court by a judgment dated 04.08.2005 in Navjot Sandhu held the field till it was overruled on 18.09.2014 in Anvar's case. All the criminal courts in this country are bound to follow the law as interpreted by this Court. Because of the interpretation of Section 65B in Navjot Sandhu, there was no necessity of a certificate for proving electronic records. A large number of trials have been held during the period between 04.08.2005 and 18.09.2014. Electronic records without a certificate might have been adduced in evidence. There is no doubt that the judgment of this Court in Anvar's case has to be retrospective in operation unless the judicial tool of 'prospective overruling' is applied. However, retrospective application of the judgment is not in the interests of administration of justice as it would necessitate the reopening of a large number of criminal cases. Criminal cases decided on the basis of electronic records adduced in evidence without certification have to be revisited as and when objections are taken by the accused at the appellate stage. Attempts will be made to reopen cases which have become final.

33. This Court in IC Golak Nath v. State of Punjab, (1967) 2 SCR 762 held that there is no acceptable reason why it could not restrict the operation of the law declared by it to the future and save transactions that were effected on the basis of earlier law. While referring to the doctrine of prospective overruling as expounded by jurists George F. Canfield, Robert Hill Freeman, John Henry Wigmore and Cardozo, this Court held that when a subsequent decision changes an earlier one, the latter decision does not make law but rather discovers the correct principle of law and the result is that it is necessarily retrospective in operation. As the law declared by this Court is the law of land, it was held that there is no reason why this Court declaring the law in supersession of the law declared by it earlier cannot restrict the operation of the law as declared to the future and save transactions that were affected on the basis of earlier law. While so holding, this Court in Golak Nath laid down the following propositions:

> "(1) The power of the Parliament to amend the Constitution is derived from Articles 245, 246 and 248 of the Constitution and not from Article 368 thereof which only deals with procedure. Amendment is a legislative process.
>
> (2) Amendment is 'law' within the meaning of Article 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void.

(3) The Constitution (First Amendment) Act, 1951, Constitution (Fourth Amendment) Act, 1955, and, the Constitution (Seventeenth Amendment) Act, 1964, abridge the scope of the fundamental rights. But, on the basis of earlier decisions of this Court, they were valid." While taking note of the doctrine of 'prospective overruling' in the United States, this Court referred to the decisions concerning the admissibility of evidence obtained by unreasonable search and seizure. In Weeks v. United States, 232 U.S. 383 (1914), the US Supreme Court held that evidence obtained by an unreasonable search and seizure has to be excluded in criminal trials. In 1949, the US Supreme Court in Wolf v. Colorado, 338 U.S. 25 (1949) held that the rule of exclusion laid down in Weeks did not apply to proceedings in State Courts. The judgment in Wolf was over ruled in Mapp v. Ohio, 367 U.S. 643 (1961). Subsequently, the US Supreme Court applied the doctrine of prospective overruling in Linkletter v. Walker, 381 U.S. 618 (1965) as it was of the opinion that if Mapp was applied retrospectively it would affect the interest of the administration of justice and the integrity of the judicial process.

34. The effect of overrule of a judgment on past transactions has been the subject matter of discussion in England as well. In R. v. Governor of H.M. Prison Brockhill, ex p. Evans (No.

2), [2000] 4 All ER 15, Lord Slynn dealing with the principle of prospective over ruling observed as under:

> "The judgment of the Divisional Court in this case follows the traditional route of declaring not only what was the meaning of the section at the date of the judgment but what was always the correct meaning of the section. The court did not seek to limit the effect of its judgment to the future. I consider that there may be situations in which it would be desirable, and in no way unjust, that the effect of judicial rulings should be prospective or limited to certain claimants. The European Court of Justice, though cautiously and infrequently, has restricted the effect of its ruling to the particular claimant in the case before it and to those who had begun proceedings before the date of its judgment. Those who had not sought to challenge the legality of acts perhaps done years before could only rely on the ruling prospectively. Such a course avoided unscrambling transactions perhaps long since over and doing injustice to defendants." [Emphasis supplied]

35. This Court did not apply the principle of prospective overruling in Anvar's case. The dilemma is whether we should. This Court in K. Madhav Reddy v. State of Andhra Pradesh, (2014) 6 SCC 537 held that an earlier judgment would be prospective taking note of the ramifications of its retrospective operation. If the judgment in the case of Anvar is applied retrospectively, it would result in unscrambling past transactions and adversely affecting the administration of justice. As Anvar's case was decided by a Three Judge Bench, propriety demands that we refrain from declaring that the judgment would be prospective in operation. We leave it open to be decided in an appropriate case by a Three Judge Bench. In any event, this question is not germane for adjudication of the present dispute in view of the adjudication of the other issues against the accused.

36. For the aforementioned reasons, the judgment of the High Court confirming the Trial Court is upheld. The appeals are dismissed.

.....J [S. A. BOBDE] .....J [L. NAGESWARA RAO] New Delhi, July 18, 2017