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Admissibility of CCTV Evidence

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In the technological world of the 21st century where Closed-Circuit Television (CCTV) is been widely used whether it is the road one is travelling to or the place one is buying groceries, it has become an inevitable part of our daily lives. It is also been used as the crime control technique, because of the footage recorded by them, it has helped the criminal justice system progressively because many a time the case is solved just by the CCTV evidence. The judgements and investigation are becoming dependent on technology. In terms of legislation that makes CCTV footage admissible in constitutional courts is Section 65-B of the Indian Evidence Act, 1872.¹ The rapid development in the level playing field of technology means that now much of the CCTV footage will be recorded on a modern-day hard disk than on a videotape. By allowing the manufacturing of more efficient quality automated CCTV systems by the government it has great potential for the law enforcement agencies. As the law of nature goes everything has its own disadvantage the CCTV systems have theirs since the footage is stored in storage devices it is very easy for anyone to copy the data from the device without any loss of the quality and without anyone knowing it, the copied data can be used anywhere and may be altered accordingly. Considering the 21st-century technological advancements and how AI/ technology has started to help injustice delivering systems, this research paper will scrutinize the reliability of CCTV footage as evidence, video-tape and digital images in terms of evidential significance (and the application of the hearsay rule); relevance; tracing the expansion of the law from the admissibility of photographs to audio-tape, the exercise of judicial discretion, the authenticity of CCTV and also to suggest future expectation from our Legislators and Judiciary to determine the defiance that may come across in the admissibility of Electronic Evidence.²

¹ Indian Evidence Act 1872, s 65B

² Ibid

Keywords: *section 9 of IEA,³ cctv footage, electronic records.*

INTRODUCTION

There has been substantial growth in the usage of CCTVs around the world and is constantly increasing, with respect to India the market is expected to grow by 22.5 % by 2025.⁴ With the advancement of technology CCTVs once used in highly sophisticated places⁵ to now been used by local government authorities⁶ and police⁷ are now widely using CCTVs to monitor public spaces.⁸ Due to various incentives provided by the Indian government in CCTV systems manufacturing, the use of such systems has become cheaper and easier. The laws regarding the admissibility of the CCTV during the trial as it is sometimes difficult to present footage for the admissibility during the court trial.⁹ The authenticity and legality of the evidence are being challenged before the Supreme Court during many cases, the prosecution has to show the court the reliability and source of footage.¹⁰ Sometimes as may be the case the image captured by the CCTV is not very clear or doubtless and the party is getting the benefit of the doubt in this case the admissibility of the footage can be challenged and the whole case proceeding may come to a halt as the whole case is dependent on it.¹¹ The apex court from time to time has given the verdicts that were solely based on the legal framework of the CCTV evidence; it is of the utmost importance to delve into the legal position and perception of the judiciary towards the admissibility of electronic evidence with special focus on CCTVs in

³ Indian Evidence Act 1872, s 9

⁴ Prasanth Aby Thomas, 'What to expect from India CCTV market in 2021?' (*Asmag.com*, 4 January 2021) <<https://www.asmag.com/showpost/32098.aspx#:~:text=The%20research%20firm%20Mordor%20Intelligence,percent%20between%202020%20and%202025>> accessed 10 October 2021

⁵ *Ibid*

⁶ 'Guidelines for implementation of the sub-scheme of "Assistance to States for Modernisation of Police"' (*Government of India*, 13 December 2017)

<https://www.mha.gov.in/sites/default/files/Guidelines14pages_19022018.pdf> accessed 10 October 2021

⁷ Raj Shekhar, 'No getting away: CCTVs in Delhi helped police solve over 100' (*Times of India*, 28 August 2021) <<https://timesofindia.indiatimes.com/city/delhi/no-getting-away-cctvs-helped-police-solve-over-100-key-cases-this-yr-alone/articleshow/85698576.cms>> accessed 10 October 2021

⁸ Government of India (n 6)

⁹ *Ibid*

¹⁰ Shekhar (n 7)

¹¹ *Ibid*

India. The admissibility of electronic evidence is a vital issue and it cannot be put as the hanging flowerpot in the balcony of the justice.

IS CCTV FOOTAGE PRIMARY EVIDENCE OR SECONDARY EVIDENCE?

The question that arises is whether CCTV footage is primary or secondary evidence? Therefore, we should look at what they are and what is their legality? Primary evidence is the one which is presented before the court first handed for inspection and secondary evidence is the one that is reproduced from the original document and presented before the court for inspection.¹² The CCTV footage can be considered as both that may be subjected to different situations that are when the recordings are saved directly on the Hard-disks or one drive storage it is regarded as the Primary Sources of evidence, but when the part or whole of the recording is extracted from these storages and saved in primary sources like CDs, DVDs, SD card or Pen Drive then it will be regarded as the Secondary Source of evidence.

IS CCTV FOOTAGE ADMISSIBLE AS SECONDARY EVIDENCE?

Evidence like DVDs, CDs, pen drives is admissible in constitutional courts. For instance, any storage device that is primary in nature must be admissible in court, for primary evidence to be submitted as evidence it is necessary that the data to be presented in the court necessary be stored in that DVD itself, in other words, the original media has to be self-generated or recorded and stored in that device directly and not be copied from any other storage device so was discussed in *Kishan Painter v. The State*¹³.¹⁴ But if on the other hand the device on which the data stored was copied from the original sources and now is being presented as a duplicate version it will be subject to a test and will have to pass the test of authenticity that will be with regards to conditions laid down in Section 65-B of Indian Evidence Act as stated in the Whereas if a storage device in question is secondary in nature,¹⁵ if it is a copy of the original one, then it necessarily has to pass the test of validity, with respect to the provisions laid down

¹² *Ibid*

¹³ *Kishan Tripathi @ Kishan Painter v The State* Criminal Appeal No 108/2013

¹⁴ 'LU (June 43) 2018 DEL Law Updates' (Insta Mojo, June 2021)

<<https://www.instamojo.com/updatedlawsociety/lu-june-43-2018-del-law-updates/>> accessed 10 October 2021

¹⁵ *Ibid*

under section 65(B) as was held in the case of *Anvar P.V v P.K. Basheer and others*.¹⁶ The precedence laid down by the courts in the subsequent years has helped the criminal justice system in delivering justice and it has ensured that the CCTV footage is authentic and can be relied upon.¹⁷

THE LEGALITY OF CCTV FOOTAGE AS EVIDENCE

What is the importance and accuracy of CCTV footage as evidence was the question before the Apex court? A case before the Supreme Court determined that any circumstantial evidence on which the accusation was based must be proven by facts of the case and the circumstances have to be such that they form a complete chain that suggests the guilt of the accused and, consequently, before the Supreme Court, the lower courts ignored the conditions that must be met in a circumstantial case. The two accused and the deceased were sharing a room in a hotel when the murder happened. The cause of the death was identified as asphyxiation (*when a person dies due to lack of oxygen*). It was also found that the non-production of CCTV footage, which is extremely important, generates a serious lack of knowledge on the part of the prosecutor that they did not understand how important it was for the case and the non-production is such the best fatal evidence for the accusation.¹⁸ It is undeniable that there were no eyewitnesses and certainly the case was based on definition encapsulating circumstantial evidence. The fact was that the defendant and the victim were present in a hotel room and therefore only the defendant had the opportunity to commit the act. To prove whether the defendant was present at the hotel at the time of the commission of the crime, there must be evidence of this, CCTV cameras were already installed in the hotel and were considered the best evidence and, consequently, during the investigation, it was determined whether the accused was present or not. The court considers that the effect of not presenting the best evidence is material repression leading to an adverse conclusion under section 114 (g) of the

¹⁶ *Anvar P V v PK Basheer & Ors* Civil Appeal No 4226/2012

¹⁷ 'Is Certification Under Section 65B(4) Of Indian Evidence Act Mandatory For The Production Of Electronic Evidence?' (*Khurana & Khurana*, 30 September 2020) <<https://www.khuranaandkhurana.com/tag/anvar-p-v-vs-p-k-basheer/>> accessed 12 October 2021

¹⁸ *Ibid*

Evidence Act.¹⁹ It is important to note that the court's reasoning is not limited to the lack of video surveillance footage so was stated in the case of *Tomaso Vs State of U.P.*²⁰

Inconsistencies in the testimony of the prosecution witnesses and the medical examination. The court stated: "The lower courts have ignored the importance of the best evidence. CCTV camera in the present case and did not notice the absence of symptoms of strangulation in the medical reports. Taking into account the facts and circumstances of the case, we believe that the circumstances and evidence presented by the prosecution do not constitute a complete chain of guilt of the defendant and, in case of doubt, the defendant and the applicant's conviction can be set aside. "²¹

The sentence determined that the case could not be easily solved without video surveillance footage, and henceforth it was seen as valid proof, in addition, the individual and institutions have increased, and many times they follow the path of technological advances towards the methods of research to penetrate. and to prove his innocence of facade. Which becomes more and more common over time and therefore hampers the judicial system. Electronic records as evidence are admissible in a court during the proceeding if they fulfill the criteria of the manner specified in Section 65B of the Evidence Act. Secondary evidence of the content of the document may also be provided in accordance with Section 65 of the Evidence Act. Scientific and electronic evidence in court, within the meaning of Section 65B of the Evidence Act, is of great help to the investigating authority and the prosecutor.

What is electronic evidence that has been clearly identified and explained under the IT Act 2008²²? According to the act, electronic evidence includes sound, data, images generated or recorded and sent or received in electronic form.²³ It is the Indian Evidence Act that makes it possible for electronic evidence to be admissible as electronic records.²⁴

¹⁹ Indian Evidence Act, s 114(g)

²⁰ *Tomaso Bruno v State of UP* Criminal Appeal No 142/2015

²¹ *Ibid*

²² Information Technology Act 2000, s 2(t)

²³ *Ibid*

²⁴ Indian Evidence Act 1872, s 65A

In the case of *Ram Singh & Ors vs Col. Ram Singh*²⁵ various tests were laid down to check the authenticity of the evidence as the footage which the research paper discussed above could be altered, erased, or can also be recorded.²⁶ These tests include matching the voice of the speaker as it is in the current form and that of the footage, its correction, relevance, exclusion of the possibility of tampering or manipulation, adequate storage, and clarity of the audio material in question. When the footage has passed all the tests and all those tests, there is no gray area as far as its eligibility. Some of the cases in which tape recordings have been considered valid evidence are:

- a) *Rup Chand v. Mahabir Parshad And Anr. on 15 May 1956*²⁷
- b) *Dr. Partap Singh v. The State Of Punjab on 4 April 1962*²⁸
- c) *Yusufalli Esmail Nagree v. The State Of Maharashtra on 19 April 1967*²⁹
- d) *R. M. Malkani v. the State Of Maharashtra on 22 September 1972*³⁰

Non-production of the best evidence like CCTV footage, call details of the accused, and SIM details by the authorities and tagging them as the mere instances will lead to the faulty evidence should be regarded as the crime as this amounts to with-holding the best evidence available. But the things are not simple as they may seem prima facie sometimes the DVD or CD in which the data was supposed to be transferred couldn't be arranged because of the financial stability of either of the parties.³¹ Hence section 114 (g) in the Indian Evidence Act according to which if a party in possession of best evidence which if presented in the court would help the case to move forward and solve the controversy if it is withheld by them, the court can arrange a summon for this person to be present in the court or else can also charge him with the adverse consequence which is notwithstanding the fact that the onus of proving

²⁵ *Ram Singh & Ors v Col Ram Singh* 3 1985 SCR Supl (2) 399

²⁶ *Ibid*

²⁷ *Rup Chand v Mahabir Parshad & Anr* AIR 1956 P&H 173

²⁸ *Dr Partap Singh v The State of Punjab* AIR 1963 P&H 298

²⁹ *Yusufalli Esmail Nagree v The State of Maharashtra* 1968 AIR 147

³⁰ *R M Malkani v State of Maharashtra* 1973 SCR (2) 417

³¹ *Ibid*

the facts doesn't lie on this person. The presumption under Section 114 (g) of the Evidence Act is only a permissible inference and not a necessary inference.

In many sophisticated areas like huge shopping complexes or five-star hotels, they have big servers installed where years-old recordings could be saved, now it is not rational to bring the whole set-up in court and show the e-evidence hence it was made the fact that the authority in charge of the servers must provide an authentic certificate after which the relevant period recoding will be allowed to be transferred.³² The objective of the certificate will be to ensure that the evidence was taken in the proper working conditions, through which the court could become sure that the evidence is from the relevant and proper place and is not tampered or corrupted due to human intervention or server malfunctioning although the secondary evidence is subjected to pass a certain test to see if it was doctored or not.

CCTV EVIDENCE (HOW IT WORKS)

Whenever a crime is committed, who is innocent and who is guilty depends on the basis of evidence found. Moreover how the CCTV works in practicality can be discussed by taking the following questions:-

1. When the only available source of evidence is CCTV, can it be used as the only substantial evidence against the accused to prove actus reus at the instance of the accused?
2. How much weightage will the CCTV footage evidence hold if the testimony of the eye witness, the evidence which he gave, and the evidence of the footage is in contrast with each other?

The answer to both of the questions is if the CCTV recording is of clear quality, then the sustainability of the footage is proved beyond a reasonable doubt, it will be enough to show it in the court as evidence. Even at the international level, different courts have observed the importance of CCTV admissibility during the trial. In fact in *Gubinas and Radavicius V HM*

³² *Ibid*

Advocate,³³ High Court at Aberdeen, Scotland, it was observed that even if all witnesses are saying something else and the CCTV footage is proving to be contrary to it, then the electronic evidence will be given superiority.³⁴ This observation made by the Court makes it clear that the content of CCTV footage is considered sufficient to establish the commission of the crime and for identification of the accused person which actually answers the 2nd question.³⁵

In the case of *K Ramajayam @ Appu v The Inspector of Police*,³⁶ wherein the accused entered the shop, stole pieces of jewelry and committed murder, which was identified by the CCTV camera, installed in the particular shop and in the footage the accused was clearly identifiable. Hence the accused was arrested on the basis of the CCTV evidence who later confessed the commission of the offense, later on, the clothes which were identified in the CCTV camera were also recovered from the accused shelter.³⁷ The CCTV recording along with the photograph of the accused was sent for examination to Forensic Science Department. There was also other incriminating evidence other than the CCTV evidence and hence the accused was convicted and sentenced to life imprisonment.³⁸

HOW CCTV FOOTAGE HELPS DURING THE INVESTIGATION?

The '5WH' inquiry model³⁹ could be described as a series of issues: who was involved in an incident, where it started, what happened when it happened, why it happened, and how some violations were committed.⁴⁰

³³ *Gubinas and Radavicius V HM Advocate* [2017] HCJAC 25

³⁴ 'Gubinas and Radavicius v HM Advocate' (*Counsel Magazine*) <<https://www.counselmagazine.co.uk/content/Gubinas-and-Radavicius-v-HM-Advocate>> accessed 19 October 2021

³⁵ *Ibid*

³⁶ *K Ramajayam @ Appu v The Inspector of Police* Criminal Appeal No 110/2015

³⁷ Srushti Iyer, 'K. Ramajayam v. Inspector of Police' (*Cyber Blog India*, 12 April 2020) <<https://cyberblogindia.in/k-ramajayam-v-inspector-of-police/>> accessed 19 October 2021

³⁸ *Ibid*

³⁹ Prue F E Addison, 'Conservation practitioners' perspectives on decision triggers for evidence-based management' (*BES Journals*, 25 June 2016) <<https://besjournals.onlinelibrary.wiley.com/doi/full/10.1111/1365-2664.12734>> accessed 19 October 2021

⁴⁰ *Ibid*

Investigators now see the entire incident thanks to CCTV video. The video shows the timeline of the activities, the offender's tactics, and the offender's entry and exit instructions. While this is not possible for a number of reasons, CCTV footage can be helpful in disproving other types of evidence, such as B. Testimony. Video can help investigators determine who was directly involved in the incident, such as when a suspect was identified, or indirectly, even when the criminal touches material that can be used as forensic evidence.

CASE LAWS

Sonu vs State of Haryana⁴¹

The Apex Court of India had upheld the conviction of the accused although a crucial part of the evidence that is CDRs are produced before the court without a certificate requirement as per Section 65 (B) of the Indian Evidence Act.⁴² The Hon'ble Court had not taken into consideration the ratio laid down by the three-judge bench in the Anvar Case.⁴³ The division bench had not put reliance on the three-judge bench judgment and ignored the accused arguments that the evidence produced against him is inadmissible because it does not fulfill the requirement of the law. The objection that was not raised by the accused at the time of trial is unfortunate but the Hon'ble Apex Court had an opportunity to correct the mistake which was missed by the Apex Court of India.⁴⁴

Shafi Mohammad vs The State of HP⁴⁵

The Apex Court of India had observed that a certificate under Section 65 (B) (4)⁴⁶ is not required for a person who is not in possession of a device that has produced an electronic document. The Hon'ble Court further observed that the requirement of a certificate under Section 65 (B) (4) can be relaxed in the interest of justice. The Apex Court of India had ignored

⁴¹ *Sonu v State of Haryana* Criminal Appeal No 1418/2013

⁴² *Ibid*

⁴³ *Anvar* (n 16)

⁴⁴ *Ibid*

⁴⁵ *Shafi Mohammad v State of HP* Special Leave Petition (Crl) No 2302/2017

⁴⁶ Indian Evidence Act 1872, s 65(B)(4)

the ratio of the P.V. Anvar case⁴⁷ and give a liberal interpretation for the admissibility of electronic evidence. The Apex Court of India had put more emphasis on delivering justice rather than following the strict procedure of law.⁴⁸ The Apex Court of India had opined that Section 65 (B) (4) of the Indian Evidence Act requirement is a procedural requirement and it may be interpreted liberally if the Hon'ble Court deemed it fit that electronic evidence produced before the court is reliable and authentic.

Shamsher Singh vs State of Haryana⁴⁹

In this case, the petitioner was booked, tried, held guilty, and sentenced by the trial Court on the allegations that on the particular intervening night, the petitioner did lurking trespass in the bank premises. He was identified through CCTV footage in which the petitioner was trying to break open the chest. Being aggrieved, the petitioner approached the First Appellate Court but remained unsuccessful as his appeal too was dismissed. Learned counsel for the petitioner inter alia contends that the entire prosecution story is based on CCTV footage, which is not admissible in the evidence without compliance with Section 65 of the Evidence Act⁵⁰. Only attempt of theft was made.⁵¹ Therefore, the petitioner could not have been convicted under Sections 379⁵² and 511⁵³ IPC.

On the other hand, learned State counsel, vehemently opposing the above submissions, contends that apart from the CCTV footage, the petitioner has made a disclosure statement admitting his guilt. The petitioner was identified by a bank manager. Photographs prepared on the basis of CCTV footage were compared with the original disc. Therefore, provisions of Section 65 of the Evidence Act were very much complied with. Having given thoughtful consideration to the rival submissions, this Court finds the instant revision completely devoid

⁴⁷ *Anvar* (n 16)

⁴⁸ *Ibid*

⁴⁹ *Shamsher Singh v State of Haryana* Criminal Appeal No 1525/2015

⁵⁰ 'ACT 001 OF 1872 : EVIDENCE ACT, 1872' (*Casemine*)

<<https://www.casemine.com/act/in/5a979db94a93263ca60b7317#5a97a7034a93264050a36366>> accessed 19 October 2021

⁵¹ *Ibid*

⁵² Indian Penal Code 1860, s 379

⁵³ Indian Penal Code 1860, s 511

of any merit for the reasons to follow. Considering the fact that the petitioner had tried to commit bank robbery by breaking open its locks, he does not deserve any interference in the impugned judgments, which are well-reasoned and convincing being based on an appreciation of evidence. Question of false implication of the petitioner does not arise inasmuch as a complainant is a bank, which had no motive or ill-will against the petitioner to falsely implicate him. Provisions of Section 65 of the Evidence Act,⁵⁴ have been very much complied with inasmuch as CCTV camera was taken into possession by the investigating officer during the investigation, and from running its footage, the identity of the petitioner was established. CCTV footage was not handed over by a stranger or third person to the police. Petitioner could prove his false implication by leading some rebuttal to the alleged CCTV footage. Though, he formally denied entire incriminating evidence led against him but did not lead any evidence in defense to rebut the CCTV footage being guilty in his mind. The facts and circumstances of the authority cited by learned counsel for the petitioner are not identical to the facts of the present case. Therefore, no benefit of the same can be given to the petitioner. I have gone through the impugned judgments of both the Courts below and find no illegality or perversity in the same. Dismissed Copy of this order is sent to the learned Chief Judicial Magistrate, Fatehabad, for issuance of arrest warrants of the petitioner to undergo the remaining part of a sentence.⁵⁵

CONCLUSION

In this day and age, surveillance cameras are mostly being installed in most of the public spaces to keep crime under control. Investigating authorities have repeatedly used CCTV footage to solve crimes and arrest those responsible. CCTV footage if the footage is not tempered with shows a true picture of the incidents and because of this authenticity, the courts rely heavily on their credibility. Since Section 65B was added to the IEA, the Supreme Court has made many decisions about the importance of the admissibility of electronic evidence. If the CCTV footage is clear, the source of the footage has been established, and it has met the

⁵⁴ Indian Evidence Act 1872, s 65

⁵⁵ *Ibid*

requirements of IEA Section 65B, then it can be used as best evidence. A confirmed case can be determined based solely on the element of video surveillance. CCTV evidence cannot be said to be equivalent to testimony as eyewitness testimony may differ and they have the tendency and ability to change their testimony. However, CCTV images are of reasonable quality and show the actual occurrence of the crime, and such evidence can infer the crime and the identification of the accused. If there are also eyewitnesses, CCTV can support or supplement the testimony of these witnesses. Electronic records are permitted in both the form of primary and secondary evidence, provided they are correct, the possibility of control or manipulation is excluded, adequate custody is available, and they are relevant and reliable. An important requirement that should not be overlooked is the certificate in accordance with Article 65B, paragraph 4, without which electronic evidence in the form of secondary evidence is not permitted. Electronic records are admissible in both the primary and secondary forms of evidence, provided they are accurate, the prohibition of the possibility of domination or control, adequate, applicable, and reliable guardianship. An essential condition that should not be overlooked is authentication according to § 65B (4), without which an electronic recording in the form of secondary evidence is not allowed, so it is highly unlikely that video surveillance in court if you are in perfect condition.

WAY FORWARD

As per the direction of the Hon'ble Supreme Court in the Arjun Panditrao case, the Government has to frame appropriate rules and directions by exercising powers under Section 67 C of the Information Technology Act, 2000⁵⁶. We strongly believe that there is a need to re-look Section 65 B of the Indian Evidence Act and it may be amended as per the need of an hour. Whenever the appropriate opportunity will come in the future related to the admissibility of electronic evidence, the Apex Court of India may give more clear view regarding the delay tactics weapon which may be misused by litigants on the admissibility of electronic evidence. It is necessary that the law should follow the development of science and the progress in society. The present and future eras are dominated by data and digital

⁵⁶ Information Technology Act 2000, s 67C

technology. It is the duty of the state to come with vibrant legislation to protect the interest of the people at large. It is essential to make strong unique legislation on electronic evidence to protect the civil society against the fraud/dispute/crime which is dealing with the electronic (digital) device/documents.