AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.279 of 2012

{Arising out of judgment dated 20-1-2012 in Sessions Trial No.52/2011 of the Additional Sessions Judge, Balod}

Vikki @ Bharat, S/o Kriparam Sahu, aged about 26 years, R/o Dipak Nagar, Durg, Gali No.5, P.S. Mohannagar, Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through the Police Station Rajhara, District Durg (C.G.)

---- Respondent

Criminal Appeal No.278 of 2012

Ajay Singh, S/o Santosh Kumar Singh, aged about 24 years, R/o Harinagar, Katulbod, P.S. Mohannagar, Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through the Police Station Rajhara, District Durg (C.G.)

---- Respondent

AND

Criminal Appeal No.272 of 2012

Shahid Ali, S/o Badarujama Musalman, age 28 years, R/o Raipur Naka, Durg, Double Story, Q.No.57, P.S. Kotwali, Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Rajhara, District Durg (C.G.)

---- Respondent

For Appellants in Cr.A.Nos.279/2012 & 278/2012: -
Mr. Shikhar Sharma, Advocate.
For Appellant in Cr.A.No.272/2012: -
Mr. Aditya Khare, Advocate.

For State / Respondent: -
Mr. Sudeep Verma, Deputy Government Advocate.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Rakesh Mohan Pandey, JJ.

Judgment On Board
(13/12/2022)

Sanjay K. Agrawal, J.

1. Sole appellant namely, Vikki @ Bharat (A-1) in Cr.A. No.279/2012; sole appellant namely, Ajay Singh (A-2) in Cr.A. No.278/2012; and sole appellant namely, Shahid Ali (A-3) in Cr.A.No.272/2012, have preferred these appeals under Section 374(2) of the CrPC feeling aggrieved and dissatisfied with the impugned judgment dated 20-1-2012 passed by the Additional Sessions Judge, Balod, in Sessions Trial No.52/2011, by which the learned Additional Sessions Judge has convicted and sentenced the appellants in the following manner: -

Conviction	Sentence
Sec. 147 read with Sec. 149 of the IPC	Rigorous imprisonment for two years
Sec. 364 read with Sec. 149 read with Sec. 120B of the IPC	Imprisonment for life and fine of ₹ 50/- each, in default, additional rigorous imprisonment for three months
Sec. 302 read with Sec. 149 read with Sec. 120B of the IPC	Imprisonment for life and fine of ₹ 50/- each, in default, additional rigorous imprisonment for three months
Sec. 201 of the IPC	Rigorous imprisonment for two years and fine of ₹ 50/- each, in default, additional rigorous imprisonment for three months

2. Since all the three criminal appeals have arisen out of one and same judgment dated 20-1-2012 passed by the Additional Sessions Judge, Balod, in one Sessions Trial No.52/2011 and since common question of fact and law is involved in all the three appeals, they have been clubbed together, heard together and are being disposed of by this common judgment.

3. Case of the prosecution, in short, is that in between 10-5-2010 and 2-6-2010, near Sirpur Lohara Nala, Police Station Dondilohara, the three appellants herein in furtherance of their common object and in furtherance of their conspiracy, constituted unlawful assembly and abducted Dr. Avinash Ramteke and in order to commit his murder, taken him in the Bolero vehicle bearing registration No.CG-04/ZF-7777 and thereafter, strangulated him and after causing his murder, in order to screen themselves of the aforesaid offences, burnt the dead body. Further case of the prosecution is that on 10-5-2010 at 07.00 p.m., Dr. Avinash Ramteke left his home from Kusumkasa, Rajhara, Durg to visit Rajnandgaon, but he could reach Rajnandgaon till evening which led to lodging of missing report (unexhibited) by his father D.K. Ramteke (PW-9), of his son Dr. Avinash Ramteke to Police Station Rajhara, District Durg on 10-5-2010 pursuant to which first information report bearing Crime No.92/2010 was registered on 21-5-2010 against unknown person vide Ex.P-25.

4. It is also the case of the prosecution that marriage of deceased

Dr. Avinash Ramteke was about to solemnize with Devi Vaidya – sister of Keyur Vaidya (PW-5) on 16-5-2010, but before marriage could be solemnized, Dr. Avinash Ramteke went missing on 10-5-2010 and thereafter, Devi Vaidya along with one Sudhish Singh was missing on 24-5-2010. As per the statement of Keyur Vaidya (PW-5), his sister along with Sudhish Singh was found dead in a hotel at Shimla (Himachal Pradesh) on 21-6-2010. His statement also reveals that Devi Vaidya & Sudhish Singh were already married much prior than Devi Vidya was about to marry Dr. Avinash Ramteke, vide Ex.P-15 which has been proved by J.P. Gauthiya (PW-4). As per the statement of D.D. Chandrakar (PW-14), who is the investigating officer in the present case, he has obtained morgue diary report from Medical College, Shimla, but, thereafter, nothing was done in the matter of death of Devi Vaidya & Sudhish Singh.

5. During the course of investigation, on 2-6-2010, the police received information of a dead body in the jungle proximate to Singhpura, Mohara Nala and registered dehati morgue intimation at zero vide Ex.P-26A at around 04.00 p.m. and consequently, morgue was also registered as Morgue No.26/2010 vide Ex.P-27 on the same day i.e. on 2-6-2010 at around 04.00 p.m. and on the same day, panchnama of the dead body / part of skeleton was drawn vide Ex.P-29. D.K. Ramteke (PW-9) – father of Dr. Avinash Ramteke, identified the dead body through his burnt socks vide Ex.P-20. Immediately thereafter, the police

apprehended and arrested appellant Vikki @ Bharat (A-1) on 2-6-2010 and recorded his memorandum statement vide Ex.P-4 at 08.00 a.m.. Dead body of a human / skeleton was recovered from the jungle proximate to Singhpura, Mohara Nala vide Ex.P-9 at around 03.00 p.m. on the same day. One Samsung mobile having IMEI No.325991401069414 along with SIM No.9626803495 was also seized from appellant Vikki @ Bharat (A-1) vide Ex.P-10. The police also took appellant Ajay Singh (A-2) into custody and recorded his memorandum statement vide Ex.P-3 on 2-6-2010 at 08.30 a.m. and on the strength of the said memorandum statement, seizure memo vide Ex.P-11 was prepared wherein two empty bottles of water carrying petrol for burning the dead body of the deceased was also seized. The police also recovered a Nokia mobile handset containing SIM from appellant Ajay Singh (A-2) vide seizure memo Ex.P-5. Memorandum statement of appellant Shahid Ali (A-3) was also recorded on 12-6-2010 vide Ex.P-24 pursuant to which mobile of Shahid Ali of ZTE model bearing SIM No.9300237258 was recovered vide Ex.P-25.

6. The police also seized soil from the spot and burnt cloths belonging to the deceased vide Ex.P-12 and sent the same for chemical examination to the State Judicial Forensic Science Laboratory, Raipur vide Exs.P-31 & P-32. Bones so recovered were sent to Dr. R.K. Singh (PW-11) who examined the same and submitted his report Ex.P-23 and came to the conclusion that

the said bones were morphological bones which show human bones' character, sex – male in character, age at the time of death – 30 years ± 5 years, fractures present on bones were caused with hard & blunt object, and height about 6 feet ± 2 inches, however, he said that cause of death could not be ascertained.

7. The investigating officer after completion of investigation, charge-sheeted the three appellants herein before the jurisdictional criminal court from where the case was committed to the court of sessions for hearing and disposal in accordance with law.

8. The prosecution, in order to bring home the offence, has examined as many as 14 witnesses and exhibited 33 documents Exs.P-1 to P-33 and Articles A, B & C were brought on record. The appellants abjured the guilt and entered into defence by stating that they have not committed the offence and they have been falsely implicated. They have examined none and also not exhibited any document in support of their case.

9. The trial Court after appreciating ocular, oral and documentary evidence on record, convicted and sentenced the appellants in the manner mentioned in the opening paragraph of this judgment against which these appeals have been preferred.

10. Mr. Shikhar Sharma, learned counsel appearing for the appellants in Cr.A.Nos.279/2012 & 278/2012, would submit that the prosecution has failed to prove that death of deceased Dr. Avinash Ramteke was homicidal in nature and furthermore,

though bones / skeleton of the deceased were recovered, but it could not be identified to be that of Dr. Avinash Ramteke, as no DNA test was conducted and the identification allegedly made by his father D.K. Ramteke (PW-9) on the basis of socks of the deceased, is not in accordance with law. He would further submit that motive of the offence and conspiracy were also not proved and as such, the present two appellants are entitled for acquittal and their appeals deserve to be allowed.

11. Mr. Aditya Khare, learned counsel appearing for the appellant in Cr.A.No.272/2012, would submit that the prosecution has failed to bring home the offence beyond reasonable doubt and no DNA test was conducted to establish the identity of the deceased as skeleton was recovered and therefore in light of the decision of the Supreme Court in the matter of **S. Kaleeswaran v. State by the Inspector of Police Pollachi Town East Police Station, Coimbatore District, Tamil Nadu**[1], the appellant deserves to be acquitted and the appeal deserves to be allowed.

12. Mr. Sudeep Verma, learned State counsel, would submit that the prosecution has been able to bring home the offences against the appellants beyond reasonable doubt, therefore, the appellants have rightly been convicted and furthermore, the trial Court has rightly recorded the death of the deceased to be homicidal in nature in view of the identification of skeleton by D.K. Ramteke (PW-9) which has not been seriously disputed

1 2022 SCC OnLine SC 1511

before the trial Court. He would further submit that since the deceased was engaged with Devi Vaidya and marriage was to be solemnized on 16-5-2010, therefore, he was abducted and murdered by the appellants, as such, the appeals deserve to be dismissed.

13. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

14. The first question to be considered was, whether the trial Court has rightly held that the skeleton recovered pursuant to the memorandum statement of Vikki @ Bharat (A-1) was that of deceased Dr. Avinash Ramteke and whether the said skeleton has duly been identified through socks to be of deceased Dr. Avinash Ramteke, by his father D.K. Ramteke (PW-9) and his uncle Surendra Kumar Ramteke (PW-8)?

15. Undisputedly, Dr. Avinash Ramteke went missing on 10-5-2010 pursuant to which missing report was lodged on 21-5-2010 and the police during the course of investigation, arrested Vikki @ Bharat (A-1) and recorded his memorandum statement Ex.P-4 at around 08.00 a.m. on 2-6-2010. Dead body of a human / skeleton was recovered from the jungle proximate to Singhpura, Mohara Nala vide Ex.P-9 at 03.00 p.m. on the same day. One Samsung mobile having IMEI No.325991401069414 along with SIM No.9626803495 was also seized from him vide Ex.P-10. The police also recorded memorandum statement (Ex.P-3) of

Ajay Singh (A-2) on 2-6-2010 at 08.30 a.m. and at his instance, two empty bottles of water carrying petrol for burning the dead body of deceased Dr. Avinash Ramteke, were recovered vide Ex.P-11 and one Nokia mobile handset containing SIM was also recovered from Ajay Singh (A-2) vide Ex.P-5. Socks said to be of deceased Dr. Avinash Ramteke were recovered from the spot vide Ex.P-9. Bones were recovered from the spot vide Ex.P-30. Memorandum statement of Shahid Ali (A-3) was recorded vide Ex.P-24 pursuant to which his mobile phone was recovered from vide Ex.P-5.

16. It is apparent on face of record that some bones were recovered vide Ex.P-30 which were said to be of Dr. Avinash Ramteke and the said bones were sent for examination before Dr. R.K. Singh (PW-11) to Medical College, Raipur who has examined the bones and vide his report Ex.P-23 held that the said bones were morphological bones which show human bones' character, its sex was male and age at the time of death was 30 years ± 5 years, and according to him, fractures present on bones were caused with hard & blunt object, but whether caused during life or after death, could not be determined and duration of death could not be determined and stature of the person is about 6 ft. ± 2 inches. However, in his statement before the Court he has stated that he could not say certainly that the bones were belonging to Dr. Avinash Ramteke and for that he has preserved the bones for DNA test. In his report Ex.P-23, he has also clearly

stated that he has preserved one intact tibia bone for DNA profiling. In cross-examination, D.D. Chandrakar (PW-14) – investigating officer, has clearly admitted that he did not make any attempt for DNA profiling of the bones of Dr. Avinash Ramteke, as his bones were identified by his father D.K. Ramteke (PW-9) to be of deceased Dr. Avinash Ramteke and the deceased has been identified by his bones and his socks as per evidence of Surendra Kumar Ramteke (PW-8) & D.K. Ramteke (PW-9).

17. In the matter of **Rama Nand and others v. State of Himachal Pradesh**[2], their Lordships of the Supreme Court have held in no uncertain terms that discovery of the dead body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the *corpus delicti* in murder. Their Lordships further held that the 'body' doctrine is merely a rule of caution and not of law. It has also been held that where the dead body of the victim in a murder is not found, other cogent and satisfactory proof of homicidal death of the victim must be adduced by the prosecution. But where the fact of *corpus delicti* or homicidal death is sought to be established by circumstantial evidence alone, or by both, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Their Lordships observed as under:-

2 (1981) 1 SCC 511

"28. This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the recovery of the dead body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There was a time when under the old English law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide. "I would never convict," said Sir Mathew Hale, "a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead." This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Sir Hale's enunciation has to be interpreted no more than emphasising that where the dead body of the victim in a murder case is not found, other cogent and satisfactory proof of the homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eyewitness, or by circumstantial evidence, or by both. But where the fact of corpus delicti i.e. 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3, Evidence Act, a fact is said to be "proved", if the court considering the matters before it,

> considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculpating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned. …"

18. The principle of law laid down in **Rama Nand** (supra) has been reiterated and followed by the Supreme Court in the matter of **Ramjee Rai and others v. State of Bihar**[3] and similar proposition has been made in the matter of **Rishi Pal v. State of Uttarakhand**[4] following **Rama Nand** (supra) and it has been held that absence of *corpus delicti* is insignificant if cogent and satisfactory proof of homicidal death of victim is adduced. The decision of the Supreme Court in **Rama Nand** (supra) has further been followed in the matter of **Sanjay Rajak v. State of Bihar**[5].

19. However, in **S. Kaleeswaran** (supra), their Lordships of the Supreme Court have made exception to the rule of *corpus delicti* that if the entire chain is duly proved by cogent evidence, the conviction could be recorded even if the corpus is not found, but when as per the case of the prosecution, the dead body of the victim was discovered from the place shown by the accused, it is imperative on the part of the prosecution to prove that the dead body or the skeleton found at the instance of the accused was that of the victim and of none else, and it was held as under: -

> "14. … but when as per the case of the prosecution,

3 (2006) 13 SCC 229
4 2013 Cri.L.J. 1534
5 (2019) 12 SCC 552

> the dead body of the victim was discovered from the place shown by the accused, it is imperative on the part of the prosecution to prove that the dead body or the skeleton found at the instance of the accused was that of the victim and of none else."

20. At this stage, the submission of learned counsel for the appellants that identification of the deceased made by socks is not in accordance with law and in order to identify the body of the deceased, DNA test ought to have been conducted by the prosecution and failure to conduct DNA test will vitiate the conviction recorded and sentences awarded to the appellants herein, has to be noted for consideration.

21. In the matter of **Rambraksh alias Jalim v. State of Chhattisgarh**[6], the Supreme Court has held that the investigating officer did not take any attempt to conduct DNA analysis of bones to prove that the skeleton seized was that of Ramsevak and their Lordships have held that the prosecution has failed to prove the death of Ramsevak either homicidal or otherwise.

22. Similarly, in the matter of **Rajendra Pralhadrao Wasnik v. State of Maharashtra**[7], their Lordships of the Supreme Court referring to Sections 53-A and 164-A of the CrPC, held that DNA profiling has now become a part of the statutory scheme and for the prosecution to decline to produce DNA evidence would be a little unfortunate particularly when the facility of DNA profiling is available in the country, and observed in paragraphs 54, 55 & 56 as under: -

6 (2016) 12 SCC 251
7 (2019) 12 SCC 460

"54. For the prosecution to decline to produce DNA evidence would be a little unfortunate particularly when the facility of DNA profiling is available in the country. The prosecution would be well advised to take advantage of this, particularly in view of the provisions of Section 53-A and Section 164-A of the CrPC. We are not going to the extent of suggesting that if there is no DNA profiling, the prosecution case cannot be proved but we are certainly of the view that where DNA profiling has not been done or it is held back from the trial court, an adverse consequence would follow for the prosecution.

55. In Mukesh v. State (NCT of Delhi)[8] a separate opinion was delivered by Banumathi, J. and in para 455 of the Report it was held that DNA profiling is an extremely accurate way of comparing specimens and such testing can make a virtually positive identification. It was stated:

> "455. … DNA profiling is an extremely accurate way to compare a suspect's DNA with crime scene specimens, victim's DNA on the bloodstained clothes of the accused or other articles recovered, DNA testing can make a virtually positive identification when the two samples match. A DNA fingerprint is identical for every part of the body, whether it is the blood, saliva, brain, kidney or foot or any part of the body. It cannot be changed; it will be identical no matter what is done to a body. Even relatively minute quantities of blood, saliva or semen at a crime scene or on clothes can yield sufficient material for analysis. The experts opine that the identification is almost hundred per cent precise. Using this i.e. chemical structure of genetic information by generating DNA profile of the individual, identification of an individual is done like in the traditional method of identifying finger prints of offenders."
>
> (emphasis supplied)

56. In the context of importance of scientific and technological advances having been made, we may

8 (2017) 6 SCC 1

> recall the observation of this Court in *Selvi v. State of Karnataka*[9] in para 220 of the Report that "The matching of DNA samples is emerging as a vital tool for linking suspects to specific criminal acts.""

23. The Supreme Court in the matter of **Pattu Rajan v. State of Tamil Nadu**[10] has held that though a DNA test helps the courts immensely in determining reliability of identification of body of deceased, but rejected the contention that non-conducting of a DNA test and reliance on evidence regarding identification through superimposition is improper. It has been observed in paragraph 57 of the report as under: -

> "57. Therefore, we are of the opinion that the scientific evidence of PW 34 was rightly believed by the trial court as well as by the High Court, and strengthens the evidence of PWs 1 and 2 regarding the identification of the body. Though a DNA test would have helped the courts immensely in determining the reliability of the identification of the body of the deceased, in the presence of other reliable evidence on record in favour of the prosecution version on this aspect, we reject the contention that the non-conducting of a DNA test and the reliance on evidence regarding identification through superimposition is improper. This is all the more true since no material is forthcoming to the effect that the parents of the deceased were alive during the relevant period, so as to conduct comparative DNA tests."

24. Reverting to the facts of the case in light of the aforesaid parameters laid down by their Lordships of the Supreme Court in the aforesaid judgments, it is quite vivid that Medical Officer Dr. R.K. Singh (PW-11) who is the Professor, Medical College, Raipur, had very well advised the prosecution vide his report

9 (2010) 7 SCC 263
10 (2019) 4 SCC 771

Ex.P-23 by preserving tibia bone for DNA profiling in order to find out as to whether the bones were of deceased Dr. Avinash Ramteke and also stated in paragraph 12 of his statement before the Court of preserving tibia bone for DNA profiling, but the investigating officer – D.D. Chandrakar (PW-14) in his statement before the Court, especially in paragraph 26, has clearly stated that he did not make any attempt to conduct DNA profiling of the bones to prove that the bones seized were that of Dr. Avinash Ramteke and continued to rely upon the statement of the father of the deceased – D.K. Ramteke (PW-9) who has identified the socks to be belonging to the deceased. As such, it is quite vivid that where the dead body of the victim in a murder is not found, other cogent and satisfactory proof of homicidal death of the victim must be adduced by the prosecution, but where the fact of *corpus delicti* or homicidal death is sought to be established by circumstantial evidence alone, or by both, the circumstances must be of a clinching and definitive evidence that the death was homicidal in nature, but where the dead body of the victim / bones / skeleton were found at the instance of the accused, the prosecution is obliged to prove that the dead body or the bones were of the deceased alone and of none else which the prosecution has miserably failed in the present case, to prove that the death of the deceased was either homicidal or otherwise.

25. The prosecution has relied upon the identification of burnt socks to be of the deceased, identified by his father D.K. Ramteke

(PW-9) and his uncle Surendra Kumar Ramteke (PW-8) vide Ex.P-20 – identification memo. The burnt socks which were recovered from the place of incident have been identified by Surendra Kumar Ramteke (PW-8) & D.K. Ramteke (PW-9) which have been relied upon by the trial Court as one of the incriminating circumstances to hold that the bones were of deceased Dr. Avinash Ramteke, however, there is nothing on record to show that the seized socks were unique and there is also nothing on record to show that the same kind of socks is not easily available in the market or the said burnt socks were of any peculiar design or of any special workmanship which would show that it is not easily available in the market. In such circumstances, it cannot be held to be a conclusive proof that the socks seized, though burnt, are in any way unique to the exclusion of everyone else. Therefore, the burnt socks seized and identified by D.K. Ramteke (PW-9) – father of the deceased, would be of no help to the prosecution and reliance placed by the trial Court on the identification of socks is absolutely illegal.

26. In that view of the above-stated analysis, the prosecution has miserably failed to prove that the death of the deceased was homicidal in nature for want of DNA profiling. Since skeleton was found at the instance of the appellants, it was imperative on the part of the prosecution to prove that the dead body or the skeleton found at the instance of the accused was that of Dr. Avinash Ramteke, as held by the Supreme Court in **S.**

Kaleeswaran (supra), which the prosecution has miserably failed to prove.

27. The next incriminating circumstance brought on record on behalf of the prosecution is call details of the appellants herein which have been filed as Ex.P-31 and also the call details of Sudhish Singh & Devi Vaidya to demonstrate conspiracy and that has been relied upon by the trial Court as one of the incriminating circumstances.

28. In order to assail the above-stated finding holding it to be a piece of incriminating circumstance, it has been contended on behalf of the appellants that it is not supported by certificate under Section 65B(4) of the Indian Evidence Act, 1872, therefore, it is inadmissible in evidence and as such, no reliance can be placed upon it, as the trial Court went wrong in accepting it as a piece of incriminating evidence and reliance has been placed upon the judgment of the Supreme Court in the matter of Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal[11] in which their Lordships resolving the dispute and the conflict raised in the matters of Shafhi Mohammad v. State of Himachal Pradesh[12] and Anvar P.V. v. P.K. Basheer[13] have clearly held that production of certificate under Section 65B of the Evidence Act is mandatory only in case of secondary evidence where primary evidence is not laid or original is not produced. Their Lordships further held that the certificate required under Section 65B(4) of the Evidence

11 (2021) 7 SCC 1
12 (2018) 2 SCC 801
13 (2014) 10 SCC 473

Act is a condition precedent to the admissibility of secondary evidence by way of electronic evidence as laid down in **Anvar P.V.** (supra) and incorrectly clarified in **Shafhi Mohammad** (supra). It was held 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.* (supra), and incorrectly "clarified" in *Shafhi Mohammed* (supra). 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*[14], 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."

Their Lordships also held that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced and this can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and / or operated by him. The reference was answered in paragraphs 73.1., 73.2. and 73.3. as under: -

> "73.1. *Anvar P.V.* (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in *Tomaso Bruno*[15], being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi

14 (1875) LR 1 Ch D 426
15 Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54

> Mohammad (supra) and the judgment dated 3-4-2018 reported as *Shafhi Mohd. v. State of H.P.*[16], do not lay down the law correctly and are therefore overruled.
>
> 73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 in *Anvar P.V.* (supra) which reads as "… *if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act* …" is thus clarified; it is to be read without the words "*under Section 62 of the Evidence Act,* …". With this clarification, the law stated in para 24 of *Anvar P.V.* (supra) does not need to be revisited.
>
> 73.3. The general directions issued in para 64 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67-C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers."

29. In the matter of **Ravinder Singh @ Kaku v. State of Punjab**[17], their Lordships of the Supreme Court while following the decision of **Arjun Panditrao Khotkar** (supra) have held that oral evidence in the place of certificate cannot be possibly suffice as Section

16 (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704
17 2022 LiveLaw (SC) 461

65B(4) is a mandatory requirement of law. Their Lordships held that Section 65B(4) is a mandatory requirement of law and observed as under:-

> "21. In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law. As rightly stated above, oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law."

30. Returning to the facts of the present case in light of the aforesaid pronouncement of the Supreme Court in **Arjun Panditrao Khotkar** (supra) and **Ravinder Singh @ Kaku** (supra), though call details of the accused persons and the deceased were brought on record and proved by oral testimony of M.R. Nayak (PW-13), but in view of the fact that Section 65B(4) of the Evidence Act is a mandatory requirement of law and in absence of certificate under the aforesaid provision, merely on the basis of the statement of M.R. Nayak (PW-13), call details cannot be said to be proved in absence of required certificate, though the mobile sets of all the three appellants have been seized. Thus, the prosecution has failed to produce mandatory certificate under Section 65B(4) of the Evidence Act. As such, reliance placed by the trial Court on the call details of the appellants and that of Sudhish Singh & Devi Vaidya is of no use to the prosecution.

31. Similarly, since the bones recovered were not proved to be that of deceased Dr. Avinash Ramteke, the finding recorded by the

trial Court convicting the appellants for offence under Section 120B of the IPC is not in accordance with law and is not sustainable and as such, the said offence is also not made out against the appellants. Sudhish Singh & Devi Vaidya died before framing of charge against the appellants and as such, conviction of the appellants for offences under Sections 147 & 149 of the IPC is also not made out as the same is not established against them. Furthermore, D.D. Chandrakar (PW-14) – investigating officer, even did not make any attempt as apparent from Ex.P-31 – letter sent to the FSL, Raipur, for DNA profiling of the bones of Dr. Avinash Ramteke preserved by Dr. R.K. Singh (PW-11). In that view of the matter, even if motive is proved, since other circumstances could not be established as held by their Lordships of the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**[18], we are of the opinion that the trial Court is absolutely unjustified in convicting the appellants and the appellants are entitled for benefit of doubt.

32. Consequently, the three criminal appeals preferred by the three appellants herein are allowed. Conviction and sentences imposed upon them under Sections 147 read with Section 149 of the IPC, 364 read with Section 149 read with Section 120B of the IPC, 302 read with Section 149 read with Section 120B of the IPC & 201 of the IPC are set aside and they are acquitted of the said charges. They are on bail. They need not surrender. However, their bail bonds shall remain in force for a period of six

18 (1984) 4 SCC 116

months in view of the provision contained in Section 437A of the CrPC.

Sd/-	Sd/-
(Sanjay K. Agrawal)	(Rakesh Mohan Pandey)
Judge	Judge

Soma