

(2013) 03 DEL CK 0046

Delhi High Court

Case No: Criminal Rev. P. 124 of 2013

Ram Singh and Others

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

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**Date of Decision:** March 7, 2013**Acts Referred:**

- Constitution of India, 1950 - Article 19(1)(a), 21
- Criminal Procedure Code, 1973 (CrPC) - Section 162, 327, 327(3), 376, 482
- Evidence Act, 1872 - Section 145, 146, 155, 65A, 65B
- Penal Code, 1860 (IPC) - Section 120B, 228A, 327, 364A, 376

**Citation:** (2013) 135 DRJ 119**Hon'ble Judges:** G.P. Mittal, J**Bench:** Single Bench**Advocate:** V.K. Anand with Mr. Manoj Tomar, for the Appellant; Dayan Krishnan, Special PP and ASC for State with Ms. Manvi Priya, for the Respondent

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**Judgement**

G.P. Mittal, J.

The Petitioners invoke inherent powers of this Court u/s 482 of the Code of Criminal Procedure ("Code") for setting aside of the order dated 08.02.2013 passed by the learned Additional Sessions Judge ("ASJ") whereby the Petitioners' prayer for confronting PW 1 (the complainant) with his previous statement, that is, interview telecast on Zee News on 04.01.2013 was rejected by the learned ASJ on the grounds, first that the interview being in violation of Section 327(3) of the Code was illegal, thus it could not be used as any evidence or previous statement to confront PW 1 with the same and, second on the ground that the Press interview given to any news channel cannot be attached to any weight or credibility and thus, the Courts should not take the same into consideration for any purpose whatsoever. Relying on [Bipin Shantilal Panchal Vs. State of Gujarat and Another](#), the sole ground urged by Mr. V.K. Anand, the learned counsel for the Petitioners, at the time of hearing the Petition, is that if there was any objection as to the admissibility of the video CD

containing the interview, the same ought to have been recorded by the learned ASJ and subject to the objection, the Petitioners ought to have been permitted to confront PW 1 with his previous statement in the form of video CD if there was any material variation in the same. The learned counsel for the Petitioners also presses in service a judgment of Gujarat High Court in [State of Gujarat Vs. Shailendra Kamalkishor Pande and Others](#), where in similar circumstances the interview contained in the video CD recorded by a TV channel was permitted to be confronted to the victim who was allegedly kidnapped by the persons facing trial for offence u/s 364-A /506(2) read with Section 120-B of the Indian Penal Code ("IPC").

2. Per contra, Mr. Dayan Krishnan, Special Public Prosecutor (Special PP) and Additional Standing Counsel (ASC) for the State (NCT of Delhi) supports the impugned order on the ground that sub-Section (2) of Section 327 of the Code mandates that the inquiry into and trial of an offence of rape or offence u/s 376 of the Code where any proceedings are held in camera and as per sub-Section (3) of Section 327 where any proceedings are held in camera, it is not lawful for any person to print or publish any matter in relation to any such proceedings except with the previous permission of the Court. Elaborating his argument, the learned Special PP submits that the charge sheet in the instant case was filed on 03.01.2013 and the inquiry started on the very same day. Thus, the interview given by PW 1 to Zee News on 04.01.2013 was illegal. Referring to a report of the Supreme Court in [Ranu Hazarika and Others Vs. State of Assam and Others](#), the learned Special PP argues that permitting an evidence illegally taken would perpetuate and encourage an illegality which is not permissible.

3. Referring to [State \(N.C.T. of Delhi\) Vs. Navjot Sandhu @ Afsan Guru](#), [Sidhartha Vashisht @ Manu Sharma Vs. State \(NCT of Delhi\)](#), [Mushtaq Moosa Tarani v. Government of India, Writ Petition \(L\) 269/2005](#) decided on 31.03.2005, the learned Special PP argues that in the above said cases, the Supreme Court not only declined to look into the TV interview but also observed that the trial by media hampers fair investigation in trial. The Hon'ble Supreme Court reminded the Press that media should perform the acts of journalism and should not act in a manner prejudicial to fair trial or interference with the administration of criminal justice.

4. First of all, I shall deal with the contention raised by the learned Special PP.

5. In order to appreciate the bar to print or publish any matter in relation to any proceedings in respect of an offence of rape etc., it would be apposite to extract Section 327 of the Code hereunder:

S.327. Court to be open-[(1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room building used by the court.

[(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence u/s 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860) shall be conducted in camera:

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court.

[Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.]

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court.]

[Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.]

6. Thus, it may be seen that it is mandatory to have a trial for an offence u/s 376, 376A etc. IPC in camera. Sub-section (3) of Section 327 of the Code places an embargo to print or publish any matter in relation to any proceedings held in camera under sub-Section (2). The proviso to sub-Section (3) lifts the ban on printing and publication of the trial proceedings in relation to an offence of rape subject to maintaining confidentiality of name and address of the parties. Thus, what is prohibited under sub-Section (3) is the printing or publication of the Court proceedings in relation to an offence u/s 376 IPC without previous permission of the Court. To my mind, sub-Section (2) does not put a blanket ban on anybody talking about the offence of rape in respect of which trial is going on. In fact, the ban placed under sub-Section (3) is clarified by the proviso which was inserted by the Code of Criminal Procedure (Amendment) Act, 2008 w.e.f. 31.12.2009 which provides that the ban on printing or publication of the trial proceedings may be lifted subject to maintaining confidentiality of name and address of the parties. Thus, I have no doubt that the ban envisaged under sub-Section (3) is only with regard to the printing or publishing of the proceedings of inquiry or trial held under sub-Section (2) and nothing more. In this view of matter, it cannot be said that giving an interview by PW1 was illegal and thus the learned Special PP is not right in saying that in permitting the confrontation with the video CD would amount to perpetuating the illegality.

7. At this juncture, I shall like to refer to the provision of Section 228A IPC which penalise printing or publishing the name or any matter which may disclose identity of any person against whom an offence u/s 376 IPC etc. is alleged or found to have been committed. Thus, Section 327(3) of the Code and Section 228A operates in two different fields. Section 327(3) of the Code prohibits printing or publication of the Court proceedings, whereas Section 228A IPC penalises disclosure of the name or identity of a victim of sexual assault. Thus, the contention raised by the learned Special PP that the video CD containing the interview is an illegal piece of evidence is bound to be rejected.

8. Now, is the time to refer to the cases wherein the Supreme Court declined to take into account the media interview. In Navjot Sandhu, an interview was given to Aaj Tak TV by Afzal (an accused in Parliament attack case). In the confessional statement made to the police, he implicated Gilani whereas in the TV interview he stated that Gilani was not involved. The Hon"ble Supreme Court declined to attach any importance to the TV interview primarily on the ground that Afzal was in police custody at that time. I extract the observations of the Hon"ble Supreme Court with regard to the TV interview hereunder:

176..... We are of the view that the talk which Afzal had with the TV and press reporters admittedly in the immediate presence of the police and while he was in police custody, should not be relied upon irrespective of the fact whether the statement was made to a police officer within the meaning of Section 162 CrPC or not. We are not prepared to attach any weight or credibility to the statements made in the course of such interview prearranged by the police. The police officials in their over-zealousness arranged for a media interview which has evoked serious comments from the counsel about the manner in which publicity was sought to be given thereby. Incidentally, we may mention that PW 60 the DCP, who was supervising the investigation, surprisingly expressed his ignorance about the media interview. We think that the wrong step taken by the police should not enure to the benefit or detriment of either the prosecution or the accused.

9. Thus, in the case of Navjot Sandhu, the TV interview was not sought to be used as a previous statement.

10. Similarly, in Manu Sharma, while referring to [R.K. Anand Vs. Registrar, Delhi High Court](#), the Supreme Court deprecated the TV interviews which causes impediments in fair investigation and trial. Paras 298 to 301 of the report will be relevant to be extracted hereunder:

298. Despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. It will amount to travesty of

justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

299. In the present case, certain articles and news items appearing in the newspapers immediately after the date of occurrence, did cause certain confusion in the mind of public as to the description and number of the actual assailants/suspects. It is unfortunate that trial by media did, though to a very limited extent, affect the accused, but not tantamount to a prejudice which should weigh with the court in taking any different view. The freedom of speech protected under Article 19(1)(a) of the Constitution has to be carefully and cautiously used, so as to avoid interference with the administration of justice and leading to undesirable results in the matters sub judice before the courts.

300. A Bench of this Court in [R.K. Anand Vs. Registrar, Delhi High Court](#), clearly stated that it would be a sad day for the court to employ the media for setting its own house in order and the media too would not relish the role of being the snoopers for the court. Media should perform the acts of journalism and not as a special agency for the court. "The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law." This will not be fair. Even in [M.P. Lohia etc. Vs. State of West Bengal and Another](#), the Court reiterated its earlier view that freedom of speech and expression sometimes may amount to interference with the administration of justice as the articles appearing in the media could be prejudicial, this should not be permitted.

301. Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. [ [Anukul Chandra Pradhan Vs. Union of India \(UOI\) and Others](#), .] It is essential for the maintenance of dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country, that the criticism or even the reporting particularly, in sub judice matters must be subjected to check and balances so as not to interfere with the administration of justice.

11. Thus, in Manu Sharma, the Supreme Court was more concerned about the right of fair trial to an accused and a person being painted as guilty even before the conclusion of trial than with the issue of confronting a previous statement to a witness.

12. Mushtaq Moosa Tarani, a judgment of a Division Bench of the Bombay High Court similarly does not deal with the question of use of a film or a video interview as a previous statement. The screening of the film "Black Friday" purported to be on serial bomb explosion in Mumbai on 12.03.1993 was, therefore, postponed till the pronouncement of judgment in the criminal case.

13. In [N. Sri Rama Reddy, etc. Vs. V.V. Giri](#), a Constitutional Bench of the Supreme Court laid down that a previous statement made by a person and recorded on a tape can be used not only to corroborate the evidence given by the witness in Court but also to contradict the evidence given before the Court as well as to test the veracity of the witness's impartiality.

14. A Division Bench of this Court in [Court on its own motion Vs. State and Others](#), placed video CD on a higher pedestal than an audio CD on the ground that tape recorded material is concerned with only one of our senses, that is, sense of hearing while video recorded material is concerned with two senses, that is, sense of hearing and that of sight. The Division Bench observed that while challenging the genuineness of a video CD, it has to be demonstrated that it is not only that the sound is tampered but that the images are also tampered with.

15. The decision of Gujarat High Court in Shailendra Kamalkishor Pande applies to the instant case on all fours where while observing that the weight to be given to such an evidence is to be seen during trial, the Court allowed the use of video CD to confront the witness subject to proving its relevancy and authenticity. Para 7.4 of the report lays down as under:

7.4 The weight to be given to such evidence is however distinct and separate from the question of its admissibility. Assuming for the moment that the trial Court admits some evidence contrary to the rules of evidence or the provisions of the Evidence Act by merely exhibiting the same or by merely admitting the same no final conclusion is drawn or decision is taken on such evidence. The defence is ultimately obliged to establish by cogent evidence as regards the genuineness of the CD, as to how the CD was prepared, by examining the person who prepared the CD and who authenticates the same as regards the true nature of the same. It is only after the defence discharges this obligation that the trial Court would be in a position to consider it as a piece of evidence. Therefore, at this stage when the question is as regards to admissibility of a document in the form of a CD by the defence, there should not be any serious objection because the trial Court will consider the relevancy of the same and the authenticity of the same at the final stage while appreciating the entire evidence on record.

16. Finally, the report of the Hon"ble Supreme Court in Bipin Shantilal Panchal equally applies to the instant case wherein the Supreme Court disapproved the practice of rejecting the evidence on the ground of admissibility. The Supreme Court held that whenever admissibility of any evidence is challenged, the evidence must be taken on record subject to the objection of its admissibility. In para 13, the Supreme Court observed as under:

13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the

above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

17. The learned Special PP argues that a video CD cannot be said to be a previous statement in writing as envisaged u/s 145 Indian Evidence Act, 1872 (the Act of 1872) and thus, at the most, the video CD could be used to impeach credit of a witness u/s 155 of the Act of 1872. The learned Special PP states that the legislature in its wisdom preferred to insert Section 65-A, 65-B, 81-A, 85-A, 85-B, 85-C etc. whereby electronic documents etc. were made admissible in evidence, yet Section 145 of the Act of 1872 was not amended to incorporate any evidence relating to any document in the shape of electronic record. I am not inclined to agree with the submission raised. There are catena of judgments which permit the use of audio CD or even audio tape for the purpose of confronting a witness.

18. There is a direct judgment of Gujarat High Court in Shailendra Kamalkisho Pande which permitted the use of Video CD not only to test veracity of the witness but to confront the witness with his previous statement for the purpose of Section 145 of the Act of 1872. In Vinod Kumar @ Vinod Kumar Handa v. State (Govt. of NCT of Delhi) CrI. RP. 577/2009 decided on 05.07.2012 relying on a judgment of the Punjab High Court in [Rup Chand Vs. Mahabir Parshad and Another](#), ; and a judgment of the Supreme Court in [S. Pratap Singh Vs. The State of Punjab](#), this Court held that tape recorded version of a conversation was admissible in evidence to corroborate the evidence of a witness or to shake the credit of the witness. In N. Sri Rama Reddy the Supreme Court held that the previous statement made by a person recorded on tape could be used not only to corroborate the evidence given by the witness in Court but also to contradict his evidence given before the Court as well as to test veracity of the witness and also to impeach his impartiality. In [R.M. Malkani Vs. State of Maharashtra](#), the Supreme Court observed that tape recorded version was admissible provided that the conversation was relevant to the matter in issue and its genuineness is proved by the person who seeks to rely on the same.

19. In view of above discussion, in my view, the learned ASJ acted illegally in shutting Petitioners' right to put the TV interview to PW 1 for the purpose of contradicting

him with his previous statement or to test his veracity or to impeach his credibility.

20. The impugned order, therefore, cannot be sustained. The same is accordingly set aside with the direction to the Trial Court to permit the use of video CD for the purpose of Section 145, 146 and 155 of the Act of 1872. It goes without saying that the Petitioners shall be bound to prove authenticity of the video CD if the same is disputed by the witness.

21. Pending Applications stand disposed of. A copy of the order be transmitted to the learned ASJ.