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**CASE COMMENT ON SHAMSHER SINGH VERMA  
v. STATE OF HARYANA****Criminal Appeal No. 1525 OF 2015 (Arising out  
of S.L.P. (Crl.) No. 9151 of 2015)****Author** - ISIRI RAJANEESH, STUDENT OF LAW, PES  
UNIVERSITY**Best Citation**- ISIRI RAJANEESH, CASE COMMENT  
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JURISPRUDENCE, 1 (1) of 2023, Pg. 27-30, ISBN -  
978-81-960677-6-2.**HEAD NOTES**

*Section 3 - Indian Evidence Act, 1872 - Definition of Document - Held, Compact Disk within the Definition of Document - Section 294 - Criminal Procedure Code, 1973 - Held, Endorsement of Admission or Denial by Defendant Party - Sufficient Compliance of this provision - Appeal Allowed.*

**ABSTRACT**

In the instant case, an F.I.R. was filed under POCSO Act and I.P.C. Section 354 against the accused for abusing a juvenile girl. Charges under sections 354A and 376 I.P.C. and sections 4 and 12 of the POSCO Act were filed against him by the Special Judge, Kaithal. The accused filed a petition with the trial court under section 294 Cr.P.C., asking that a tape of a conversation between the father of the victim girl and the accused's wife and son be taken on record as evidence so that it may be sent to a forensic laboratory to be verified. However, both the lower court and the higher court supported the lower court's decision to deny the application. So, the defendant took his "right to defend himself" and his ability to present mitigating evidence to the Supreme Court and had it overturned.

**PRIMARY DETAILS**

<b>Forum / Court</b>	Supreme Court of India
<b>Jurisdiction</b>	Appellate Jurisdiction
<b>Equivalent Citations</b>	Criminal Appeal No. 1525 OF 2015 (Arising out of S.L.P. (Crl.) No. 9151 of 2015)
<b>Presiding Members of the Bench</b>	Prafulla C. Pant, J.
<b>Bench Type</b>	Single Judge Bench
<b>Provisions Concerned</b>	The Code of Criminal Procedure, 1973 - Section 294, 313 The Indian Evidence Act, 1872 - Section 3
<b>Date of Pronouncement of Judgement</b>	November 24, 2015

**FACTUAL BACKGROUND OF THE CASE**

On October 25, 2013, a member of the young girl's family by the name of Munish Verma filed a First Information Report (FIR) against the appellant (the accused) for abusing the child in violation of Section 354 of the Indian Penal Code and the POCSO Act. This was done in accordance with the provisions of the POCSO Act. After the investigation had been completed, official charges were filed against him. The appellant was accused by Special Judge Kaithal with violating Sections 354A and 376 of the Indian Penal Code as well as Sections 4 and 12 of the POCSO Act after the judge heard arguments from both sides of the case. The accused then conducted his own examination of the witnesses and filed an application with the trial court under section 294 Cr.P.C., praying that a recording of the conversation between the father of the victim girl, the wife, and the son of the accused be preserved by the Court so that it could be sent to a forensic laboratory to be verified as authentic. The conversation in question took place between the father of the victim girl and the wife of the accused. The



accused's son was also present during the conversation. In addition, as he was praying, he requested for the voice of the victim's father to be recorded so that it could be contrasted with the one on the recording. However, both the lower court and the High Court came to a decision that was contrary to his position. As a result, the Appellant filed an appeal with the Supreme Court, requesting that Section 3 of the Indian Evidence Act of 1872 be amended to permit CD to be treated as a document.

### ISSUES RAISED

1. Are CDs admissible as evidence in India under Section 3 of the Indian Evidence Act of 1872?
2. When it comes to this case, does the appellant have the right to defend himself?
3. Was it a legal mistake for the lower court to deny him a chance to defend himself?

### APPELLANT'S ARGUMENTS

Appellant's learned counsel contended that the previous courts erred by denying the accused his constitutional right to present any relevant evidence in his defence. Because the appellant (the accused) is now incarcerated, he said, he cannot delay the trial. It was also claimed that the appellant was illegally held by the police at the complainant's request for mediating a quarrel between the complainant and the appellant's wife's brother (the father of the minor girl victim). After an appeal was filed for habeas corpus with the High Court, the court appointed a Warrant Officer and the appellant was freed. An FIR accusing him of molesting the child was quickly lodged. He claimed that the appellant had been unfairly dragged into the parties' property dispute.

### RESPONDENT'S ARGUMENTS

*Per contra*, in response to the appellant's claim, the respondent's counsel contended that the sexual assault in issue occurred when the

victim was a nine-year-old child and that the appellant is trying to elope prosecution by dragging out the trial. They also argued that the lower court appositely denied the motion of the accused/appellant, according to the learned counsel, since the dialogue recorded occurred after the alleged molestation and rape.

### LEGAL PROVISIONS AND ANALYSIS WITH RESPECT TO THE FACTS

#### 1. Tape and CD as a Document under Section 3 of Evidence Act, 1872

Abuse of a juvenile girl is a violation of both the Indian Penal Code and the Protection of Sexual Offenders Act, both of which were alleged to have been committed by the individual who was accused in this case. The question of whether or not a compact disc may be considered a "document" that can be used as evidence in a trial was referred to the Supreme Court for a decision. According to Section 3 of the Indian Evidence Act, the term "document" refers to any content that is expressed or described onto any material by means of letters, figures, or markings, or by more than one of those methods, and which is intended to be used, or which may be used, for the purpose of documenting such a matter, or which may be used for such a purpose.<sup>37</sup>

In the case of *R.M. Malkani v. State of Maharashtra*,<sup>38</sup> court ruled that taped conversations may be used as evidence if they pertain to the matter at hand and the speaker can be positively recognised from the video.

In the case of *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*,<sup>39</sup> The court ruled that the taped conversations qualify as records under Section 3 of the Evidence Act, so long as the creator of the record can identify the speaker, can offer proof that what is being

<sup>37</sup> Indian Evidence Act, 1872, § 3, No. 1, Acts of Parliament, 1872 (India)

<sup>38</sup> R.M. Malkani v. State of Maharashtra, 1973 AIR 157.

<sup>39</sup> Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra, 1975 AIR 1778.



recorded is accurate, and can show that no tampering with the evidence has taken place. Additionally, the tape's content must be shown to be relevant in accordance with the criteria of relevance outlined in the Indian Evidence Act.

## **2. Section 294 of Cr.P.C: No formal proof of certain documents**

Firstly, any document that is presented in court is subject to an obligation for either the prosecutor or the defendant, depending on the circumstances, or the pleader for either the prosecution or the defence, if there is one. This obligation requires them to either accept or deny the document's authenticity.<sup>40</sup> Secondly, the format for the list of documents has been specified by the State Government and must be followed.<sup>41</sup> Thirdly, It is possible for a document to be admitted into evidence in any investigation, trial, or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed; however, the Court may, at its discretion, require such signature to be proved. If the authenticity of the document is not in dispute, however, the signature of the person to whom it purports to be signed must be proved.<sup>42</sup> Since Compact Disk in the instant case can be considered a document as per the precedent established in *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*<sup>43</sup> thus no formal proof for its genuineness is undisputed and it can thus be read in evidence.

## **3. Section 313 of Cr.P.C: Power to Examine the Accused**

During the course of a trial or investigation, in order to guarantee that the accused is given the right to react to any and all charges levelled against him: (1) the court may,

at any stage, without previously warning the accused, put such questions to him as the Court considers necessary; (2) the court shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case, with the exception of a summons-case, in which the accused is not required to appear in court until his defence has been presented. In this type of case, the accused is not required to appear in court until his defence has been presented (b).<sup>44</sup> On the other hand, when the accused is questioned in accordance with Section 313, no oath will be administered.<sup>45</sup> If the accused person refuses to answer such queries or lies about doing so, he will not be held accountable in any way.<sup>46</sup> In any future investigation or prosecution for any other offence that those replies are relevant to, the accused's responses may be used as evidence for or against him, depending on the circumstances of the investigation or trial.<sup>47</sup>

## **RATIO DECEDENDI & OBITUR DICTUM**

### **1. CDs Come Within the Definition of "Document"**

The Indian Supreme Court has declared that a compact disc may be used as evidence, using the Indian Evidence Act as its legal authority. In addition, in order for the courts to use subsection (1) of section 294 of the Criminal Procedure Code, the courts do not require the acceptance or rejection of a document by the complainant, the accused, or the witnesses.

### **2. Endorsement of Admission or Denial by Defendant Party is Sufficient Compliance of Section 294 (Cr.P.C.)**

<sup>40</sup> The Code of Criminal Procedure, 1973, § 294(1), No. 2, Acts of Parliament, 1973 (India)

<sup>41</sup> The Code of Criminal Procedure, 1973, § 294(2), No. 2, Acts of Parliament, 1973 (India)

<sup>42</sup> The Code of Criminal Procedure, 1973, § 294(3), No. 2, Acts of Parliament, 1973 (India)

<sup>43</sup> *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, 1975 AIR 1778.

<sup>44</sup> The Code of Criminal Procedure, 1973, § 313(1), No. 2, Acts of Parliament, 1973 (India)

<sup>45</sup> The Code of Criminal Procedure, 1973, § 313(2), No. 2, Acts of Parliament, 1973 (India)

<sup>46</sup> The Code of Criminal Procedure, 1973, § 313(3), No. 2, Acts of Parliament, 1973 (India)

<sup>47</sup> The Code of Criminal Procedure, 1973, § 313(4), No. 2, Acts of Parliament, 1973 (India)





The judge held that it is sufficient to meet the criteria of section 294 of the Criminal Procedure Code with an admission or denial that is endorsed on the document that was presented by the prosecution party or on the application/report with which the same was submitted. The endorsement of admission or rejection by the public prosecutor on the document that was provided by the defendant is also adequate; if the prosecution does not accept the document, the burden of evidence will shift to the defendant. If it is accepted as true, then it may be used as proof without first needing to be demonstrated in an explicit manner.

As part of the prosecution's case, the child, as well as her mother and grandmother, as well as Munish Verma, have all been subjected to cross examination. It seems that the prosecution has decided not to press any charges against Sandeep Verma, who is the father of the little girl who was the victim. The questioning of all of the prosecution's witnesses is now complete, and the defence is beginning to deliver its side of the argument.

### **3. Lower Courts erred in law by Not Allowing the Appellant's Application of Playing CD**

The court ruled that the lower courts made a legal mistake when they denied the appellant's request to play the compact disc that contained the conversation between the victim's father and the appellant's wife and son about the alleged property dispute and send it to the Forensic Science Laboratory to verify its authenticity. The court also ruled that the lower courts should not have denied the appellant's request to send the compact disc to the Forensic Science Laboratory. The testimony of the witnesses for the prosecution has been heard, and the accused party seems to have little interest in dragging out the trial any more. As a consequence of this, the Supreme Court upheld the appeal and declared null and invalid the decisions made by the lower courts.

However, a defendant is not permitted to claim that a delay in the trial constitutes grounds for release.

### **CONCLUSION**

Under the Indian Evidence Act of 1872, the court determined that compact discs meet the requirements to be considered documents. According to subsection (1) of Section 294 of the Criminal Procedure Code, a personal acknowledgement or denial on paper by the accused, the complainant, or the witness is not necessary. Additionally, the decision affirmed that compact discs (CDs) meet the criteria for the category of documents and may be presented as evidence in court.

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