

Supreme Court of India

Shafhi Mohammad vs The State Of Himachal Pradesh on 3 April, 2018 Author: ..J.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 2302 OF 2017

SHAFHI MOHAMMAD

Petitioner

Versus

THE STATE OF

HIMACHAL PRADESH

Respondent

WITH

SPECIAL LEAVE PETITION (CRIMINAL) NO. 9431 OF 2011
(Ravinder Singh @ Kaku versus The State of Punjab)

AND

SPECIAL LEAVE PETITION (CRIMINAL) NOS. 9631-9634 OF 2012
(The State of Punjab versus Ravinder Singh @ Kaku and Anr.)

O R D E R

SLP(Crl.) No. 2302 of 2017

1. Use of videography of the scene of crime is the subject matter of consideration herein. We may note the proceedings in the case on earlier hearings. In order dated 25 th April, 2017, it was observed:

Signature Not Verified Digitally signed by SWETA DHYANI Date: 2018.04.05 14:34:08 IST Reason:

Mr. A.N.S. Nadkarni, Additional Solicitor General, has accordingly put in appearance and made his submissions. He has also submitted a note to the effect that such videograph will indeed help the investigation and such concept is being used in some other advanced countries. The National Institute of Justice which is an agency of U.S. Department of Justice in its report has noted the perceived benefits for using the Body-Worn Cameras and also the precautions needed in doing so. The British Transport Police has also found body worn cameras as deterrent against anti-social behaviour and tool to collect evidence. He also referred to judgment of this Court in Karnail Singh Vs. State of Haryana, (2009) 8 SCC 539 wherein reference to use of technology during search and seizure under Narcotic Drugs and Psychotropic Substances Act, 1985 has been made. Reference has also been made to Information Technology Act (Amendment) 2006, particularly, Section 79A. In (1976) 2 SCC 17, Ziauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra & Ors., this Court noted that new techniques and devices are the order of the day. Audio and video tape technology has emerged as a powerful medium through which a first hand information can be gathered and can be crucial evidence.

Learned Additional Solicitor General has also drawn our attention to the Field Officers' Handbook issued by the Narcotics Control Bureau, Ministry of Home Affairs, Government of India, inter-alia, suggesting that logistic support be provided to the search teams. It further suggests that all recovery and concealment methods should be videographed simultaneously. The said handbook 3 also suggests that permission should be taken under Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 for pretrial disposal of the contraband. Further, reference has been made to the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2016 moved by a private member in the Lok Sabha. He submits that in his view such Bill will advance the interests of justice and he will advice the Government of India to consider and oversee adoption for these measures in the Country by investigating agencies.

Mr. A.I. Cheema, learned Amicus points out that Second Proviso to Section 54A of the Cr.P.C. provides for videography of identification process in circumstances specified in the said provision. He also stated that there should be videography of confessional statement under Section 164 Cr.P.C. He states that such measures can also be adopted for recording dying declarations, identification processes and the post-mortem.

Since, we find that at the ground level these measures have not been fully adopted, we direct the Home Secretary, Government of India to ascertain from different Investigating Agencies to how far such measures can be adopted and what further steps be taken to make use of above technology for effective investigation and crime prevention.

2. Thereafter, in the order dated 12 th October, 2017 consideration of the matter was as follows:

Mr. A.N.S. Nadkarni, learned Additional Solicitor General, has filed a note stating that the matter was discussed by the Union Home Secretary with the Chief Secretaries of the States. A decision was taken to constitute a Committee of Experts (COE) to facilitate and prepare a report to formulate a road-map for use of videography in crime investigation and to propose a Standard Operating Procedure (SOP). The Committee has held its meetings. The response of the States is in support of use of videography. The Central Investigation Agencies have also supported the said concept. However, certain reservations have been expressed in the implementation such as funding, securing the data and storage of the same. It has also been submitted that the production and admissibility of evidence are also issues which may need to be addressed.

We had requested Mr. Jayant Bhushan, learned senior counsel, to assist the court who has also submitted a note to the effect that videography will be a beneficial step for effective prosecution subject to the issue of admissibility being resolved to make the use of videography compatible and useful. He also submitted that the direction ought to be issued for use of videography in investigation and such use be made mandatory.

We have also requested Mr. Arun Mohan, learned senior counsel, present in the Court, to assist the Court on the subject as amicus. He submitted that equipments which may be useful for scientific investigation have been suggested in certain publications on the subject. A copy each of the said 3 publications has been furnished to Mr. Nadkarni so that the same can be considered by the Committee of Experts. He submitted that still photography may be more useful as it enables much higher resolution for forensic analysis. Digital camera can be placed on a mount on a tripod which may enable rotation and tilting. Secured portals may be established to

which Investigation Officer can e-mail photographs taken at the crime scene. To give authenticity and prevent manipulation, digital images can be retained on States server as permanent record. The State server can re-mail the digital files back to the police station for further use. Special cameras may be selected by the BPR&D. Till this is done, smart-phones can also be used. BPR&D may prepare a guidance manual for the Investigation Officers for crime scene photography and video recording of statements of witnesses. He stated that a further note on the subject may be submitted by him.

3. In order dated 30th January, 2018 it was observed:

(3) We have been taken through certain decisions which may be referred to. In *RamSingh and Others v. Col. Ram Singh*, 1985 (Supp) SCC 611, a Three- Judge Bench considered the said issue. English Judgments in *R. v. Maqsd Ali*, (1965) 2 All ER 464, and *R. v. Robson*, (1972) 2 ALL ER 699, and American Law as noted in *American Jurisprudence 2d* (Vol.29) page 494, were cited with approval to the effect that it will be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. Electronic evidence was held to be admissible subject to safeguards adopted by the Court about the authenticity of the same. In the case of tape-recording it was observed that voice of the speaker must be duly identified, accuracy of the statement was required to be proved by the maker of the record, possibility of tampering was required to be ruled out. Reliability of the piece of evidence is certainly a matter to be determined in the facts and circumstances of a fact situation. However, threshold admissibility of an electronic evidence cannot be ruled out on any technicality if the same was relevant.

(4) In *Tukaram S. Dighole v. Manikrao Shivaji Kokate*, (2010) 4 SCC 329, the same principle was reiterated.

This Court observed that new techniques and devices are order of the day. Though such devices are susceptible to tampering, no exhaustive rule could be laid down by which the admission of such evidence may be judged. Standard of proof of its authenticity and accuracy has to be more stringent than other documentary evidence.

(5) In *Tomaso Bruno and Anr. v. State of Uttar Pradesh*, (2015) 7 SCC 178, a Three-Judge Bench observed that advancement of information technology and scientific temper must pervade the method of investigation. Electronic evidence was relevant to establish facts. Scientific and electronic evidence can be a great help to an investigating agency. Reference was made to the decisions of this Court in *Mohd. Ajmal Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1 and *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600.

4. On the issue of interpretation of Section 65B(4) of the Evidence Act with regard to the admissibility of the electronic evidence it was observed :

12. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section

65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.

13. To consider the remaining aspects, including finalization of the road-map for use of the videography in the crime scene and the Standard Operating Procedure (SOP), we adjourn the matter to 13th February, 2018.

5. We have now taken up the issue for further consideration.

An affidavit dated 21st March, 2018 has been filed by the Director, Ministry of Home Affairs (MHA) annexing thereto Report of the Committee constituted by the MHA about use of videography in police investigation dated 22nd November, 2017. The Committee considered various issues including the present infrastructure and usage, concerns/problems raised by various States for use of videography during investigations, admissibility of electronic evidence in absence of a certificate under Section 65B(4) of the Evidence Act, operational difficulties, lack of training, funding, forensic facilities. The Committee observed that though crime scene videography was a desirable and acceptable best practice, the mandatory videography required major issues being addressed. Videography may be done on Best Effort basis. The timeline should be different for different States and the Central Investigating Agencies. The Committee suggested two alternative timelines. The second option i.e. Option-B suggested by the Committee is as follows:

7.3 Option-B: Centrally Driven Plan of Action:

The second approach suggested is for implementation of the directions in a phased manner with milestone based review mechanism.

a. Phase-I: Three Months: Concept, Circulation and Preparation.

* The concept for videography of the recommended categories of tasks, preparations for pilot project launch in

i) Cities of 50 lakhs population or more; and, ii) at least one district of every remaining State/Union Territory; within three months of the orders of the Honble Supreme Court. In the selected district(s), at least five police stations may be identified for implementation of the scheme on best effort basis as a pilot project * Capacity Building by organizing training programme for personnel in the police station on the Videography Techniques for them to be qualified as the Trained Police Videographer by the end of three months. Each selected Police Station should identify personnel for Trained Police Videographer qualification, at the rate of two (2) Trained Police Videographer for every 25 heinous/grave crime cases reported in that police station in a year.

* Selected Districts be enabled/provided finances to procure the equipment required for use by the Trained Police Videographer.

* A representative of the FSL trained in handling digital evidences should be identified by each of the states to mentor and hand hold the Pilot Project implementation district Trained Police Videographers. Where FSL has no resources to offer, the SP/DCP of the concerned district should be authorized to hire a private

technical person proficient in digital imaging and back-up technologies to handhold/mentor the Trained Police Videographers.

* Preparation of Trainer Police Videographer Training Modules and Training of Trainers courses byBPR&D/CDTS/State Police Academies.

b. Phase-II: Six Months: Pilot Project Implementation * After the three months of Concept, Circulation and Preparation stage, the pilot project should be launched in the selected police stations of the shortlisted Districts of the States.

* The concerned District Superintendent of Police / Deputy Commissioner of Police, shall designate an officer of the rank of Deputy Superintendent of Police/Assistant Commissioner of Police, to supervise the implementation of the Pilot Project and to chronicle the Pilot implementation. Any implementation issues shall immediately be flagged and brought to the notice of the SP / DCP concerned. The officer designated will be responsible for the uninterrupted implementation of the Pilot.

* Launch of Trained Police Videographer Training Programmes/ Training of Trainer Course byBPR&D/CDTS/ State Police Academies.

c. Phase-III: Three Months: Pilot Implementation Review * The Phase II Pilot implementation should be reviewed by an independent consultant and, suggestions for seamless implementation on a wider scale should be prepared.

* The report of the independent consultant to be considered by MHA and select group of officers regarding Pilot implementation and review report preparation.

* The review and findings by MHA to be placed before the Honble Supreme Court for incorporating necessary changes as required regarding the Videography during Investigation and obtain necessary instructions.

* During this phase, each state should prepare detailed plans for the launch of the next phase of Videography in Investigations project extending it to

i) all cities with a population of 10 lakhs and more; b) in all districts with a population of 20 lakhs and more, during Phase-IV.

* A representative of the FSL trained in handling digital evidences should be identified for each of the new unit to mentor and hand hold the district Trained Police Videographers, where roll out is proposed in Phase-IV.

Where FSL has no resources to offer, the SP/DCP of the concerned district should be authorized to hire a private technical person proficient in digital imaging and back-up technologies to handhold/mentor the Trained Police Videographers.

* Each state to submit plans for strengthening the Forensic Sciences Laboratories for handling increased Cyber Forensics/Digital Media analysis units. MHA to consider the requirements for this purpose under the MPF scheme.

* During Phase-III, the Pilot implementation districts/cities will continue with the Videography in Investigations project and extend them to all their Police Stations.

d. Phase-IV: One Year: Coverage extension from Pilot Implementation * Implementation of the Videography in Investigations project to Cities of 10+ lakhs population/Districts of 20+ lakhs population identified during Phase-III.

* During this phase, each state should prepare detailed plans for the launch of the Videography in Investigations project in all remaining districts/cities, which were not covered during Pilot Phase (Phase-II) and Phase-III.

* A representative of the FSL trained in handling digital evidences should be identified for each of the remaining units to mentor and hand hold the district Trained Police Videographers, where roll out is proposed in Phase-V. Where FSL has no resources to offer, the SP/DCP of the concerned district should be authorized to hire a private technical person proficient in digital imaging and back-up technologies to handhold/mentor the Trained Police Videographers.

* MHA to work on extending the financial support for implementation of the project for remaining cities and districts during Phase-V.

e. Phase-V: One Year: Coverage extension to remaining Cities and Districts * Implementation of the Videography in Investigations project in all remaining districts and cities.

* Review of Phase-IV implementation learning based on independent consultants report by MHA and submission of status report to the Supreme Court for modifications/suggestions for improvement of the Videography in Investigations project.

6. Apart from above, the Committee suggested that a group of experts may be set up at the level of Government of India comprising:

- (i) One head of Central Investigation agencies (CBI, NIA, NCB) as Chairperson;
- (ii) One head of State Police;
- (iii) One head of CFSL or Senior Forensic Scientist with expertise in the area;
- (iv) A Senior Legal Professional (LA of CBI or NIA or comparable from Ministry of Law); and
- (v) A senior representative from MHA as members.

7. The group should have the freedom to co-opt members and private experts. The group could periodically issue guidelines/advisories. It is further suggested that each State Police and the Central Investigating Agency may create a Steering Committee under HOPF/Head of CPO within the organization to spearhead this drive. Each State Police/Central Investigating Agency may also designate a senior officer in the rank of IG/ADG as Nodal Officer for spearheading the massive expansion of photography and videography in investigation. Such an officer should be given authority/responsibility to review the progress at periodic intervals and take/propose necessary measures.
8. After considering the report of the Committee, the MHA prepared an action plan on the use of videography in the police investigation stipulating capacity building in terms of training, equipment, forensic facilities, a scheme for requisite funds, preparation of Standard Operating Procedure (SOP). For this purpose, the timeline suggested is as follows:

All Central Agencies will be asked to prepare and submit Annual Action Plan on photography and videography in Investigation for 2018 within three months.

The Ministry will scrutinize the plans and prepare a consolidated requirement and send a formal proposal/scheme to the Ministry of Finance for concurrence and obtaining budget within two months from the finalization/approval of the consolidated action plan, insofar as Central Agencies are concerned.

Efforts will be made to obtain the budget from Ministry of Finance within the financial year 2018-19.

Similar action will have to be taken by States/UTs with respect to their forces.

9. We are in agreement with the Report of the Committee of Experts that videography of crime scene during investigation is of immense value in improving administration of criminal justice. A Constitution Bench of this Court in *Karnail Singh versus State of Haryana* (2009) 8 SCC 539 noted that technology is an important part in the system of police administration¹. It has also been noted in the decisions quoted in the earlier part of this order that new techniques and devices have evidentiary advantages, subject to the safeguards to be adopted. Such techniques and devices are the order of the day. Technology is a great tool in investigation². By the videography, crucial evidence can be captured and presented in a credible manner.
10. Thus, we are of the considered view that notwithstanding the fact that as of now investigating agencies in India are not fully equipped and prepared for the use of videography, the time is ripe that steps are taken to introduce videography in investigation, particularly for crime scene as desirable and acceptable best practice as suggested by the Committee of the MHA to strengthen the Rule of Law. We approve the Centrally Driven Plan of Action prepared by the Committee and the timeline¹ Para 34 (2009) 8 SCC 539² *Ram Singh and Ors. vs. Col. Ram Singh* 1985(Supp) SCC 611, *R. vs. Maqsood Ali* (1965) 2 All ER 464, *R vs. Robson* (1972) 2 All ER 699, *Tukaram S. Dighole vs. Manikrao Shivaji Kokate* (2010) 4 SCC 329, *Tomaso Bruno and anr. vs. State of Uttar Pradesh* (2015) 7 SCC 178, *Mohd. Ajmal Amir Kasab vs. State of Maharashtra* (2012) 9 SCC 1 and *State (NCT of Delhi) vs. Navjot Sandhu* (2005) 11 SCC 600. as mentioned above. Let the consequential steps for implementation thereof be taken at the earliest.

11. We direct that with a view to implement the Plan of Action prepared by the Committee, a Central Oversight Body (COB) be set up by the MHA forthwith. The COB may issue directions from time to time. Suggestions of the Committee in its report may also be kept in mind. The COB will be responsible for further planning and implementation of use of videography. We direct the Central Government to give full support to the COB and place necessary funds at its disposal. We also direct that the COB may issue appropriate directions so as to ensure that use of videography becomes a reality in a phased manner and in first phase of implementation by 15th July, 2018 crime scene videography must be introduced at least at some places as per viability and priority determined by the COB.
12. We place on record the suggestion of the learned amicus that funding for this project may be initially by the Centre to the extent possible and a central server may be set up. These suggestions may be considered by the COB. We also note that law and order is a State subject.
13. We may also refer to a connected issue already dealt with by this Court in D.K. Basu versus State of West Bengal and ors. (2015) 8 SCC 744. This Court directed that with a view to check human rights abuse CCTV cameras be installed in all police stations as well as in prisons. There is need for a further direction that in every State an oversight mechanism be created whereby an independent committee can study the CCTV camera footages and periodically publish report of its observations. Let the COB issue appropriate instructions in this regard at the earliest. The COB may also compile information as to compliance of such instructions in the next three months and give a report to this Court.
14. Compliance of above directions may be ensured by the Secretary, Ministry of Home Affairs in the Central Government as well as Home Secretaries of all the State Governments.
15. An affidavit of progress achieved may be filed by the Oversight Body on or before 31st July, 2018.

Put up the matter for further consideration on 1 st August, 2018.

...J.

[Adarsh Kumar Goel] ...J.

[Rohinton Fali Nariman] New Delhi;

3rd April, 2018.