



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

RELEVANCY OF EVIDENCE RECORDED BY VIDEO CONFERENCING IN CRIMINAL TRIALS

Authored By: Gaganjot, Advocate
(BA., LL.B. Honors), Specialized in Constitutional Law
District and Sessions Court, SBS Nagar.
Mob. 9501538787, Email- gaganjot231099@gmail.com

Co-Author: Amit Sharma, Advocate
(B.Com., LL.B.), District and Sessions Court, SBS Nagar.
Mob. 9855620369, Email- advsharmaamit82@yahoo.in

ABSTRACT

The modern-day world belongs to internet and cyberspace where almost everything is on and over the internet now-a-days. In same way, the court system and litigation in India is also gradually moving towards the cyberspace platform such as e-filing of the cases, virtual hearings, taking evidences via video conferencing, maintenance of case records and hearing dates through online and centralized e-courts systems for each District etc. Considering this, when we talk about taking evidences in Criminal trials via video conferencing is a popping topic which needs great attention and credibility as to how reliable and admissible as to decide a criminal case.

This paper endeavors to put a successive effort to elaborate relevancy and admission of the pieces of evidence taken through video conferencing with the help of accurate reasoning and the opinions and observations given by the hon'ble judges in various landmark cases and mainly in light of the most landmark case namely as State of Maharashtra v. Dr. Praful B. Desai¹ wherein the court have strictly laid down guidelines as to recording of the evidences by the way of video conferencing in the Criminal trials.

Keywords- *Criminal Trials, Evidence, Video conferencing, Government, Law, Judiciary, Case laws, Virtual world, Cyber space*

¹ (2003) 4 SCC 601

INTRODUCTION

Today's era belongs to the world of Scientific and Technical advancement which has brought everything to a single Virtual world platform. From communicating with each other to studies, jobs, and businesses, everything has been placed on the Online Platform i.e., with the blink of an eye, a person is able to do those things which he used to do manually by visiting the other places. And now in the days of the Covid-19 pandemic, almost everything has been brought to the Internet/ to the Virtual World only. Similarly, if we talk about this in the context of the Legal Perspective, we see that the Courts nowadays are indulging in Online hearings, e-filing of some cases, taking evidence through video conferencing, maintaining the daily case records and hearing dates through the official District Courts, High Courts, and the Supreme Court sites and much more.

So, as we see the Internet/ Virtual World has so many pros as well as cons that the court may often become reluctant to take evidence through Video conferencing. This may be due to many factors which include lack of infrastructure, doubt of reliability, violation of a particular law, the sensitivity of a particular case, and many other reasons, depending upon case to case. All such things could highly affect the reliability, relevancy, and admissibility of the evidence taken by the court via video conferencing.

Through this paper; an endeavor is made to elaborate upon the relevancy of the pieces of evidence taken through the video conferencing mode, what the law says and permits upon the same, and the various guidelines mentioned by the courts to be kept in mind while taking the video conferencing evidence, especially pertaining to the Criminal Cases. Also, we would discuss one landmark case law namely- State of Maharashtra v. Dr. Praful B. Desai² in which the Hon'ble Supreme Court of India has affirmed the use of Video conference mode for recording evidence in criminal trials for all the Subordinate Courts in India to follow them whenever recording the evidence of the witnesses through video conferencing in the Criminal Cases.

But before moving towards the main focus of this assignment, let's have a look upon the brief idea of What an Evidence as well as the Evidence through Video Conferencing actually mean.

² (2003) 4 SCC 601

What is Evidence?

As per the definition contained under the Section 3 of the Indian Evidence Act³, 1872,

“Evidence” means and includes—

- a) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;
- b) all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence.

As per the interpretation given under the Section 3, the term “Evidence” majorly consists of 2 categories-

- i. Documentary Evidence.
- ii. Oral Evidence.

The Documentary Evidence is further divided into 2 types i.e.

Primary Evidence- The concept of Primary Evidence is contained under the Section 62 of the Indian Evidence Act, 1872 which means the Documents which are produced itself before the Court of Law.

The Documents considered under the Primary Evidence are the original ones e.g., Original Sale Deeds, Agreements, Postmortem Reports, Original Marriage Certificates etc.



Image Source: Image Source - <http://informatics.nic.in/news/280>

³ Section 3 of the Evidence Act, 1872, available at: <https://indiankanoon.org/doc/1031309/> (Last visited on October 21, 2023).

Secondary Evidence- The concept of Secondary Evidence is given from the Sections 63-65 of the Indian Evidence Act, 1872. As per the Section 63 of the Evidence Act⁴.

The Secondary Evidence simply means the copies made out of and from the original documents and also the oral contents of the documents given by a person who has himself seen the original document. The value of Primary Evidence is more than the Secondary one.

Further, Section 65A⁵ and 65B⁶ of the Indian Evidence Act, 1872 clearly justifies the relevancy and admissibility of the witness examination through the video conferencing. The Provision of Section 65A of the act states as-

“Special provisions as to evidence relating to electronic record- The contents of electronic records may be proved in accordance with the provisions of section 65B.”

And Section 65B of the Act states all those circumstances and conditions under which the electronic evidence may be relevant and admissible as to the strong evidence into the court of law. If those conditions are completely fulfilled while taking the witness evidence by the way of video conferencing, then the relevancy of the same would stand strong.

The Sections 65A and 65B of the Indian Evidence Act, 1872 were inserted by the Information Technology Amendment, 2008 keeping in view the technological advancement into electronic communication and information technology.

What is an Evidence through Video Conferencing?

When the Court allows the witnesses to make statements before it via the Video Conferencing platforms available on the Internet and record the evidence delivered by the witnesses with the help of those virtual platforms only, then it is referred to as Evidence through Video Conferencing. The Courts, most of the time are reluctant to take the evidence through video conferencing for Criminal trials because we can sense that the criminal trials most of the time

⁴ Section 63 of the Evidence Act, 1872, available at: <https://indiankanoon.org/doc/1456410/> (Last visited on October 21, 2023).

⁵ Section 65A of the Evidence Act, 1872, available at: <https://indiankanoon.org/doc/159075137/> (Last visited on October 21, 2023).

⁶ Section 65B of the Evidence Act, 1872, available at: <https://indiankanoon.org/doc/35556724/> (Last visited on October 21, 2023).

involve very sensitive issues the evidence of which could render difficult for the court to be taken as relevant evidence and its reliability is affected a lot, especially in the cases of Criminal Trials.

This is because any kind of fabrication during video conferencing could highly corroborate the chances of false convictions or wrongly affect the interests of the victims because whether the evidence is relevant or reliable, it somehow tends to create some image in the mind of the judge.

STATE OF MAHARASHTRA V. DR. PRAFUL B. DESAI (CASESTUDY)

PETITIONER:

The State of Maharashtra & P. C. Singhi

RESPONDENT:

Dr. Praful B. Desai and another

BENCH:

J. S.N. Variava & J. B.N. Agrawal

FACTS OF THE CASE:

- The Petitioner's wife was suffering from Terminal Cancer and her treatment was carried out by Dr. Ernest Greenberg from Sloan Kettering Hospital, New York USA. Dr. Ernest had already told the Petitioner that surgery is not advisable for Petitioner's wife and her problem could be cured through medications only. Late on, the Petitioner consulted another Specialist doctor who had been a medical practitioner for 40 years. The Petitioner had already told the Respondent/Doctor about Dr. Ernest Greenberg's opinion of him and even then the Respondent/ Doctor suggested surgery to Petitioner's Wife.
- On the suggestion made by the Respondent, the Petitioner and his wife agreed to get the operation done on the date of 22.12.1987.

One consultant surgeon to the Respondent namely Dr. A.K. Mukherjee started the operation and as soon as Dr. Mukherjee opened the abdomen of the Petitioner's wife, some ascetic fluids oozed out of her abdomen. As a result, the situation went out of control of Dr. Mukherjee, and in panic,

he made a call to the Respondent and the Respondent immediately told Dr. Mukherjee to close the Abdomen.

This negligent act of the doctors resulted in an infection in the abdomen of Petitioner's Wife and caused an Intestinal Fistula.

- i. Afterward the incident, the Petitioner's Wife suffered huge physical pain as whatever she used to eat or drink, automatically used to come out of the wound which took so many dressings a day. Ultimately, the Petitioner's wife died after suffering this pathetic pain for almost 3 months.
- ii. The case was registered against the Respondent Doctor and Dr. A.K. Mukherjee under Section 338⁷ read with Sections 109⁸ and 114⁹ of the Indian Penal Code, 1860. Later on, the trial started and the process was issued by the Metropolitan Magistrate, Esplanade, Mumbai.
- iii. The Prosecution made an application before the Trial Court to examine Dr. Ernest Greenberg through Video Conferencing because being in New York, USA, Dr. Ernest Greenberg agreed to be a witness but he refused to come to India to be a witness and it was not possible for the Indian Courts to compel Dr. Ernest Greenberg as any of the provisions of the Criminal Procedure Code, 1973 do not provide any such provision as to compel any foreign national to act as a witness for the cases in India. Also, it was a mandatory point for the prosecution to bring Dr. Ernest Greenberg before the Court because he was the major witness in the present case for the prosecution side. The present application was filed on the date of 29.06.1998. The Respondent moved to the High Court challenging the application on the ground that Dr. Ernest Greenberg's evidence is not relevant to the present case.
- iv. Keeping in view the strict interpretation of Section 273 of the Code of Criminal Procedure, 1973, the High Court allowed the application filed by the respondent and held that the Prosecution cannot examine Dr. Ernest Greenberg through video conference as it defeats the very purpose of the criminal procedural law because the intention of the

⁷ Section 338 of the Indian Penal Code, 1860, *available at:* <https://indiankanoon.org/doc/1721129/> (Lastvisited on October 21, 2023).

⁸ Section 109 of the Indian Penal Code, 1860, *available at:* <https://indiankanoon.org/doc/513074/> (Lastvisited on October 21, 2023).

⁹ Section 114 of the Indian Penal Code, 1860, *available at:* <https://indiankanoon.org/doc/112749/> (Lastvisited on October 21, 2023).

- Parliament has not been reflected expressly in any of the provisions of criminal procedure.
- v. Aggrieved from the decision of the Bombay High Court, 2 Special Leave Petitions (SLP) were filed by the State of Maharashtra and the Petitioner P.C. Singhi against the decision made by the Bombay High court disallowing to examine Dr. Ernest Greenberg through video conferencing mode, into the Hon'ble Supreme Court of India. Being a Common Question of Law arising out of both the Criminal Appeals, the Hon'ble Supreme Court decided to hear both the appeals together and subject to a common judgment.

QUESTION OF LAW-

Whether or not Evidence could be recorded by Video Conferencing in a Criminal Trial or not?

CONTENTIONS OF THE PARTIES

Submissions made by the Counsel for the Respondent (Dr. Praful B. Desai)

- It was argued that the procedure which governs the Criminal Trial is crucial to the basic rights of the accused given to the accused itself expressly by the Constitution of India under Articles 14¹⁰ & 21¹¹ of the Indian Constitution.
- That the procedure established under the statute of the Code of Criminal Procedure, 1973 is the "Procedure established by Law", so the provisions expressly stated under the Code could only be strictly adhered to while carrying the criminal trial because the rights of the accused have also to be taken care of. Keeping in view the strict interpretation of the Criminal Procedure Code, 1973, the evidence of Dr. Ernest Greenberg could not be allowed through Video Conferencing because there's neither direct involvement of Dr. Ernest in the present case nor he was present at all here in India during the occurrence of any of the disputed incidents.
- It was argued that any departure from the "Procedure established by Law" would defeat the purpose of enacting the very particular law and would hinder the rights provided to the respondent under Article 21 of the Indian Constitution.
- The Respondent's counsel further argued and laid emphasis upon the various provisions of the Code of Criminal Procedure, 1973. The Respondent stated that Section 273 of the

¹⁰ Article 14 of the Indian Constitution, 1949, available at: <https://indiankanoon.org/doc/367586/> (Last visited on October 22, 2023).

¹¹ Article 21 of the Indian Constitution, 1949, available at: <https://indiankanoon.org/doc/1199182/> (Last visited on October 22, 2023).

Criminal Procedure Code¹² does not expressly provide for taking evidence by way of video conferencing.

- It was argued that the recording of the evidence via video conferencing was not contemplated by the Parliament/ Legislature at that time as there was no such technological advancement during the era of the 1970s. Also, if there is any such provision regarding the evidence by the way of video conferencing, the Legislature expressly includes it by way of amendments or new laws e.g., the An ordinance passed by the State of Andhra Pradesh expressly permitted the use of video conferencing mode for the procedure established under Section 167 of the Criminal Procedure Code, in case of Remand applications.

***Submissions made by the Counsel for the Petitioner/ Prosecution
(State of Maharashtra)***

- The Prosecution Counsel for the State of Maharashtra argued that it must always be remembered that the Code of Criminal Procedure, 1973 is an ongoing statute. The principles of an ongoing statute have been very succinctly set out by the leading jurist Francis Bennion in his commentary titled “Statutory Interpretation”, 2nd Edition page 617¹³ as:
“It is presumed the Parliament intends the Court to apply to an ongoing Act a construction that continuously updates its wordings to allow for changes since the Act was initially framed. While it remains law, it has to be treated as always speaking. This means that in its application on any day, the language of the Act though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as a current law.”
- The Law is always dynamic and always goes with the changes in the society and every law has to be applied as per the current changes and scenarios. In construing the ongoing procedural statute, the interpreter has to assume that the Parliament intended to apply the act in the present and future as well, so its intention would always be to give effect to the contemporaneous scenarios.
- Hence, accordingly, the interpreter should also allow for any current changes that have to

¹² Section 273 of the Code of Criminal Procedure, 1973, available at: <https://indiankanoon.org/doc/1151812/> (Last visited on October 22, 2023).

¹³ Francis Bennion, *Bennion on Statutory Interpretation* 617 (Lexis Nexis Butterworth India, 7th edn., 2018).

be made as per the need and requirement of the time. An enactment of the past years has to be read in light of the present time keeping in view the progress made over time.

- A mere procedure involving the mode of taking evidence through “Video Conferencing” could not be made subject to the rights of the accused under the Article 21 of the Indian Constitution. Such an argument shows the ignorance of virtual reality and video conferencing.
- As long as the accused or his pleader is present when the evidence is recorded with the help of “video conferencing”, the requirements laid down under Section 273 of the Criminal Procedure Code would be fully satisfied.

JUDGMENT

Ratio Decidendi

The Supreme Court of India while overruling the judgment passed by the Bombay High Court held that the recording of the evidence by Video Conferencing is allowed and it completely fulfills the requirements of the requirements stated under Section 273 of the Code of Criminal Procedure, 1973. The Accused and his pleader both can see the witness clearly sitting in front of them through the video conferencing.

The only difference the video conferencing makes is that it won't be possible to touch or see the witness physically, but the rest of the things would be the same as the physical presence of the witness. The Apex Court admitted the submissions made by the Prosecution and held that; keeping in view the facts and circumstances of the present case, where for the ends of justice, the attendance of the witness could not be procured without sufficient delay, expense of inconvenience, the court could dispense with such attendance and could issue a commission of examination for the witness by the way of video conferencing.

Hence, the impugned judgment delivered by the Bombay High Court was set aside by the Apex Court and further, the court ordered the Magistrate of the Trial Court to proceed with the case by allowing Dr. Ernest Greenberg to act as a witness through the video conferencing and undoubtedly, the costs of holding the video conferencing must be borne by the state. The court also directed the Respondent to pay the costs to the Petitioner and there by the appeal stood disposed of.

Obiter Dicta

The Apex Court, while delivering the landmark judgment on the issue of the relevancy of the evidence given by way of video conferencing, laid down the following observations-

- ✓ Recording of the evidence by way of video conferencing does not defeat the purposes of both Section 3 of the Indian Evidence Act, 1872 and Section 273 of the Criminal Procedure Code, because under Section 3 of the Evidence Act, the expression “all documents including electronic records” which was added by the Information Technology Act, 2000, exhibits the express intention of the legislature to include any evidence by the way of electronic means and thereby permitting the use of video conferencing also, for the purposes of recording examination of witnesses. And, for Section 273 of the Criminal Procedure Code, 1973, the only necessary element which is provided under the provision is the “Evidence to be taken in presence of accused or in the presence of his pleader”.

Carrying out witness evidence through video conferencing would have no effect on the presence of either the Respondent or his pleader.

- ✓ There would be an added advantage of holding the witness examination through video conferencing that it will all be recorded, so a playback facility would be offered by the video conferencing and it could be replayed again for the purposes of referring to the statements made by the witness during the examination and for judging the demeanor of the witness, which is not possible in case of physical hearing.
- ✓ The Court also observed that for the sake of the advancement of science and technology, which has brought almost everything to one platform called a “Virtual world,” should benefit in Litigation also.

It was completely possible for the Court to set up the required infrastructure for the witness examination by video conferencing in the courtroom itself so that the requirements of Section 273 of the Criminal Procedure Code could fully met. However, if the infrastructure could not be set up in the courtroom, then a resort could be made to the Examination of witnesses on Commissions, the provisions of which are contained in Sections 284¹⁴ to 289 of the Criminal Procedure Code, 1973.

- ✓ When the witness is willing to give evidence through video conferencing, an official of the court would be deputed to record the evidence and the evidence would be recorded in the hall/ studio

¹⁴ Section 284 of the Code of Criminal Procedure, 1973, available at: <https://indiankanoon.org/doc/663817/> (Last visited on November 11, 2023).

and the deported official would keep a record of the video conference. Also, as soon as the video conference is started, it would be proceeded further without any adjournments.

- ✓ The Hon'ble Court referred to the judgment of the case namely as *Shri Krishna Gobe v. State of Maharashtra*¹⁵ and observed that the very 1st and foremost duty of the court is to find out the truth and to meet the ends of justice even if they have to use the method of video conferencing in such cases for which physical attendance is not practicable.
- ✓ The Hon'ble Court also referred to one judgment of the Supreme Court of USA in the case namely *Maryland v. Santra Aun Craig*¹⁶ in which the Apex Court of USA permitted the use of video conferencing for the purposes of recording the witness examination and held that it was not the violation of the criminal procedural law.
- ✓ Law must always be interpreted in a Current Scenario. "The Judge has to inject flesh and blood in the dry skeleton provided by the legislature and by a process of dynamic interpretation, invest it with a meaning which will harmonize the law with the prevailing concepts and values and make it an effective instrument for delivery of justice" as held in *S.P. Gupta v. Union of India*¹⁷.

LEGISLATIVE COLOR TO RECORDING OF EVIDENCE THROUGH VIDEO CONFERENCING IN CRIMINAL TRIALS

When the case of Dr. Praful B Desai came into the picture, at that time in the year, there was no other express provision in any of the statutes regarding taking of the evidence through video conferencing mode except the electronic mode as provided under Section 3 of the Indian Evidence Act, 1872.

Later on, in the year 2008¹⁸, an amendment was made to Section 275 (1) of the Code of Criminal Procedure, 1973,¹⁹ and the bare provision of the same states as follows:

"Provided that evidence of a witness under this subsection may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offense."

¹⁵ (1973) 4 SCC 23

¹⁶ [497 US 836]

¹⁷ AIR 1982 SC 149

¹⁸ The Criminal Law (Amendment) Act, 2008, available at:

<https://bombayhighcourt.nic.in/libweb/act/yearwise/2009/2009.05.pdf> (Last visited on November 11, 2023).

¹⁹ Section 275 of the Code of Criminal Procedure, 1973, available at: <https://indiacases.com/section-275-code-of-criminal-procedure-1973/> (Last visited on November 11, 2023).

So, by adding this proviso to Subsection (1) of Section 275, the doubt stands removed that the legislature expressly states as to what it intends to include in any of the provisions of a particular Act/ Statute.

Thus, in the present case as well as otherwise, the taking of evidence through the mode of video conferencing for Criminal trials is totally relevant as per the provisions of Section 3 of the Indian Evidence Act, 1872 and Sections 273 & 275 (1) of the Code of Criminal Procedure, 1973.

The same has been justified in the *Dr. Praful B Desai* Case. But before doing so, the court has to take utmost care of the sensitivity as well as the facts and circumstances of the case.

OTHER JUDICIAL PRONOUNCEMENTS ON TAKING OF EVIDENCE THROUGH VIDEO CONFERENCING IN CRIMINAL TRIALS

Other than the case of *Dr. Praful B Desai*, the Hon'ble Supreme of India as well as many of the High Courts of the different states have affirmed and approved the use of video conferencing methods for the purpose of recording witness examination along with some landmark observations and guidelines for the same. Now, let's have a look at some of those landmark cases-

In the case namely *Md. Ajmal Md. Amir Kasab @ Abu v. State of Maharashtra*²⁰, the Court permitted the use of video conferencing for the appearance of Kasab taking in view the sensitivity of the case as well as to ensure the security of the court, the advocates, witnesses, and the other people connected thereto.

In *Grid Corporation of Orissa Ltd. v. AES Corporation*²¹, the Hon'ble Supreme Court of India observed that it is not necessary that the 2 parties must be physically present in front of each other in order to make the witness examination relevant, the effective consultation could be done via electronic mode i.e., through video conferencing also.

²⁰ Criminal Appeal No. 1899-1900 of 2011

²¹ 2002 AIR SC 3435

In the case of *Sujay Mitra v. State of West Bengal*²², the High Court of Calcutta issued the following guidelines in lieu of taking the shreds of evidence/ witness examinations by way of video conferencing-

- 1) The Court must be satisfied as to the identity of the witnesses, there must be no tempering as to the identity of the witnesses.
- 2) The oath must be administered while taking evidence through video conferencing.
- 3) The witnesses can only be examined during the Court's working hours and not later or before.
- 4) Copies of documents which need to be proved must be given to the witnesses beforehand.
- 5) It must be ensured that the witness must be alone in the room where he is giving the evidence. This is so in order to avoid any influence or pressure upon the witness.
- 6) The demeanor must necessarily be recorded by the court during the witness examination in order to evaluate the evidence fully.
- 7) When the recording of evidence implies more than one day, then it must be recorded from day-to-day basis until the witness examination is completed.
- 8) The court may impose any other conditions as it deems fit while recording the witness through video conferencing.

In the case of **Som Prakash v. State of Delhi**²³, The Delhi High Court observed that-

“In our technological age nothing more primitive can be conceived of than denying discoveries and nothing cruder can retard forensic efficiency than swearing by traditional oral evidence only thereby discouraging the liberal use of scientific aids to prove guilt.”

The court by laying down this observation tried to implicate the provisions of statutory law to develop a better approach towards civil and criminal litigation to lessen the burden of investigating authorities as well as of the courts and the judges.

In *Gujarat High Court Ketan @ Arcit Pravinbhai Patel v. State of Gujarat*²⁴, the High Court of Gujarat gave directions to the subordinate courts to install appropriate infrastructure within the

²² CRR No. 1285 of 2015

²³ 1974 Cri. LJ 784

²⁴ R/CR. MA/22317/2015

courtrooms for the production of an under-trial person through video conferencing mode.

CONCLUSION

Recent times demand the use of virtual/ electronic modes to be adopted in the field of litigation. The courts have many times urged the use of video conferencing for the purposes of taking evidence, hearing the accused, and plaintiffs, and many other things. During this time of the COVID-19 pandemic, everything along with the court proceedings has come to the virtual platform thereby helping the courts to reach an advanced level in the field of litigation by providing facilities for online hearings, registration of cases, and all. There is also a need to adapt the Court system in India to Online mode in various factors to ensure fast and smooth litigation and the disposal of cases at a fast pace.

The relevancy of taking the evidence through video conferencing in criminal trials has no doubt been completely affirmed by the various High Courts and the Apex Court in many of the cases, as we have discussed above. But the courts while considering anything by virtual mode must be very cautious and careful to avoid any miscarriage of justice. Also, the infrastructure must be of that high tech quality in Indian Courts so that it does not hinder the courts in any way while taking the evidence via virtual hearings for the proper administration of justice.

BIBLIOGRAPHY

<https://indiankanoon.org/> <https://www.casemine.com/> <https://www.manupatrafast.com/>
<https://www.mondaq.com/india/trials-appeals-compensation/927246/e-evidence-in-india--cross-examination-through-video-conferencing->
<https://mynation.net/docs/477-2003/>
<https://lawschoolnotes.wordpress.com/2016/12/30/evidence-can-be-taken-by-video-conferencing-us-273-crpc-supreme-court/>