

**(2018) 2 Supreme Court Cases 801 : (2018) 1 Supreme Court Cases (Cri) 860 :
(2018) 2 Supreme Court Cases (Civ) 346 : 2018 SCC OnLine SC 56**

In the Supreme Court of India

(Record of Proceedings)

(BEFORE A.K. GOEL AND ROHINTON FALI NARIMAN, JJ.)[§]

SLP (Crl.) No. 2302 of 2017[±], decided on April 25, 2017

SHAFHI MOHAMMAD . . Petitioner;

Versus

STATE OF HIMACHAL PRADESH . . Respondent.

With

(BEFORE A.K. GOEL AND UDAY U. LALIT, JJ.)[§]

SLP (Crl.) No. 2302 of 2017[±], decided on October 12, 2017

SHAFHI MOHAMMAD . . Petitioner;

Versus

STATE OF HIMACHAL PRADESH . . Respondent.

With

(BEFORE A.K. GOEL AND UDAY U. LALIT, JJ.)[§]

SLPs (Crl.) No. 2302 of 2017[±] with Nos. 9431 of 2011[±] and 9631-34 of 2012, decided
on January 30, 2018

SHAFHI MOHAMMAD . . Petitioner;

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STATE OF HIMACHAL PRADESH . . Respondent.

SLP (Crl.) No. 2302 of 2017, decided on April 25, 2017

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SLP (Crl.) No. 2302 of 2017, decided on October 12, 2017

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SLPs (Crl.) No. 2302 of 2017 with Nos. 9431 of 2011 and 9631-34 of 2012, decided
on January 30, 2018

A. Evidence Act, 1872 — Ss. 3 to 9, 65-A, 65-B and 62 — Electronic evidence — Standard of proof, authenticity and admissibility — Law summarised — Ss. 65-A and 65-B of the Evidence Act, 1872, reiterated, cannot be held to be a complete code on the subject — Threshold admissibility of electronic evidence cannot be ruled out on any technicality if same is relevant — Its authenticity and procedure for its admissibility may depend on fact situation such as whether person producing such evidence is in a position to furnish certificate under S. 65-B(4) — If party producing electronic evidence is not in possession of device from which electronic document was produced, then such party, held, cannot be required to produce certificate under S. 65-B(4) of the Evidence Act — Requirement of certificate under S. 65-B(4) being procedural, can be relaxed by court wherever interest of justice so justifies — Thus, requirement of certificate under S. 65-B(4) is not always mandatory

(Paras 21 to 32)

Held :

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 is admissible subject to safeguards adopted by the court about the authenticity of the same. In the case of tape-recording, the voice of the speaker must be duly identified, accuracy of the statement is required to be proved by the maker of the record, possibility of tampering is 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 is relevant.

(Para 21)


Ram Singh v. Ram Singh, 1985 Supp SCC 611; *R. v. Maqsood Ali*, (1966) 1 QB 688 : (1965) 3 WLR 229 : (1965) 2 All ER 464 (CCA); *R. v. Robson*, (1972) 1 WLR 651 : (1972) 2 All ER 699 (CCC); *Tomaso Bruno v. State of U.P.*, (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54; *Mohd. Ajmal Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1 : (2012) 3 SCC (Cri) 481; *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715, summarised

Though electronic devices are susceptible to tampering, no exhaustive rule can be laid down by which the admission of electronic evidence may be judged. Standard of proof of its authenticity and accuracy has to be more stringent than other documentary evidence.

(Para 22)

Tukaram S. Dighole v. Manikrao Shivaji Kokate, (2010) 4 SCC 329 : (2010) 2 SCC (Civ) 112 : (2010) 2 SCC (Cri) 826, relied on

It has been held in *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473, that electronic evidence by way of primary evidence is covered by Section 62 of the Evidence Act to which procedure of Section 65-B of the Evidence Act is not admissible. However, for the secondary evidence, procedure of Section 65-B of the Evidence Act is required to be followed and the view that secondary evidence of electronic record could be covered under Sections 63 and 65 of the Evidence Act, is not correct. There are, however, observations in para 14 of *Anvar case* to the

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effect that electronic record can be proved only as per Section 65-B of the Evidence Act.

(Para 24)

Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108, relied on

State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715, held, overruled on this point

Electronic evidence is admissible and provisions under Sections 65-A and 65-B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65-B(4).

(Para 25)

Ram Singh v. Ram Singh, 1985 Supp SCC 611; *Tomaso Bruno v. State of U.P.*, (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54, relied on

Sections 65-A and 65-B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. Primary evidence of electronic record is not covered under Sections 65-A and 65-B of the Evidence Act. Primary evidence is the document produced before the court and the expression "document" is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

(Para 26)

Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108, relied on


The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing

certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under Sections 63 and 65 can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65-B(4) is not always mandatory.

(Para 29)

Accordingly, 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 is clarified. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies.

(Para 30)

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B. Criminal Trial — Investigation — Generally — Introduction of new technology — Videography of crime scene/recoveries, etc. — Directions, suggestions and steps taken

— Central Government directed to suggest measures that can be adopted for using videography in crime investigation and collection of evidence — Government also formed a Committee of Experts (COE) to formulate roadmap for use of videography in crime investigation and propose a Standard Operating Procedure (SOP) — Apprehensions also expressed by Government, regarding funds, security and storage of data — Doubts also issued about production and admissibility of evidence — Pending report of COE, matter adjourned — Finalisation of the roadmap for use of the videography in the crime scene and the Standard Operating Procedure (SOP) to be considered at a later date — Evidence Act, 1872, Ss. 3 to 9, 65-A, 65-B and 62

(Paras 1 to 18 and 31)

Karnail Singh v. State of Haryana, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887; *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, (1976) 2 SCC 17, referred to

SS-D/59803/CRV

Advocates who appeared in this case:

A.N.S. Nadkarni, Additional Solicitor General, Jayant Bhushan (Amicus Curiae), Ms Meenakshi Arora (Amicus Curiae), Yashank Adhyaru, Ms V. Mohana and Arun Mohan (Amicus Curiae), Senior Advocates [Ketan Paul, Ms Reeya Varghese, Tushar Bhushan, Ms Ananya Ghosh, Rituj Chopra [for Dr Arun Mohan (Amicus Curiae), Senior Advocate], Ms E.R. Sumathy, Bharat Bhushan, Ms Jaspreet Gogia, Raj Kamal, Ms Mandakini Singh, Ms Shirin Khajuria, Ms Sanskriti Bhardwaj, Ms Ayushi Gaur, B.V. Balaram Das, Ms Asha G. Nair, Zoheb Hussain, Ms Rukmini Bobde, Kumar Shashank, Ajay Marwah, Ms Seema Sharma, Varinder K. Sharma, Karan Thakur, Vikas Mahajan, Vinod Sharma, Arun Singh, Ms Anuradha Mutatkar, A.I. Cheema (Amicus Curiae), Apoorv Shukla, Sareen Kasawa, S.S. Rebello, Ms Nivedita Nair, Ms Sneha Tendulkar, B.K. Prasad, Chirayu Jain, E.R. Sumathy (Advocate-on-Record, SCLSC), Ms Sneha Prabhu Tendulkar, Abhishek Bhardwaj and Gautam Sharma, Advocates] for the appearing parties.

Chronological list of cases cited

on page(s)

1. (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54, *Tomaso Bruno v. State of U.P.*

809d, 80

2. (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108, *Anvar P.V. v. P.K. Basheer* 809e, 810a
3. (2012) 9 SCC 1 : (2012) 3 SCC (Cri) 481, *Mohd. Ajmal Amir Kasab v. State of Maharashtra* 809a
4. (2010) 4 SCC 329 : (2010) 2 SCC (Civ) 112 : (2010) 2 SCC (Cri) 826, *Tukaram S. Dighole v. Manikrao Shivaji Kokate* 80f
5. (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887, *Karnail Singh v. State of Haryana* 80f
6. (2005) 11 SCC 600 : 2005 SCC (Cri) 1715, *State (NCT of Delhi) v. Navjot Sandhu (held, overruled on this point)* 809d-e, 80f
7. 1985 Supp SCC 611, *Ram Singh v. Ram Singh* 808g, 80f
8. (1976) 2 SCC 17, *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra* 80f
9. (1972) 1 WLR 651 : (1972) 2 All ER 699 (CCC), *R. v. Robson* 80f
10. (1966) 1 QB 688 : (1965) 3 WLR 229 : (1965) 2 All ER 464 (CCA), *R. v. Maqsood Ali* 80f



(2018) 2 SCC 805
ORDER dated 25-4-2017

(BEFORE A.K. GOEL AND ROHINTON FALI NARIMAN, JJ.)
SLP (Cri.) No. 2302 of 2017[±]

1. Notice was issued to consider the question whether in every case of recovery when possession itself is an offence, the investigator must videograph the scene of recovery and whether in every other case the scene of crime should also be videographed during investigation.

2. We requested the learned Attorney General to depute a Law Officer to assist the Court and also requested Mr A.I. Cheema, Advocate to assist the Court as Amicus.

3. 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 v. State of Haryana*¹, wherein reference to use of technology during search and seizure under the Narcotic Drugs and Psychotropic Substances Act, 1985 has been made. Reference has also been made to the Information Technology (Amendment) Act, 2006, particularly, Section 79-A. In *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*², 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.

4. The 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 also suggests that permission should be taken under Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 for pre-trial 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 advise the Government of



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India to consider and oversee adoption for these measures in the country by investigating agencies.

5. Mr A.I. Cheema, learned Amicus points out that the second proviso to Section 54-A CrPC 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 CrPC. He states that such measures can also be adopted for recording dying declarations, identification processes and the post-mortem.

6. 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 as to how far such measures can be adopted and what further steps be taken to make use of the above technology for effective investigation and crime prevention.

7. Let an affidavit of the steps taken be filed by the Home Secretary, Union of India within two months from today.

8. List for further consideration on 11-7-2017.

(2018) 2 SCC 806

ORDER dated 12-10-2017

(BEFORE A.K. GOEL AND UDAY U. LALIT)

SLP (Cri.) No. 2302 of 2017

9. Heard. Use of videography for crime investigation is the issue taken up for consideration as per the order dated 25-4-2017³.

10. 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 roadmap 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.

11. 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.

12. 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



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suggested in certain publications on the subject. A copy of each of the said 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 investigating officer can e-mail photographs taken at the crime scene. To give authenticity and prevent manipulation, digital images can be retained on the State's 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, smartphones can also be used. BPR&D may prepare a guidance manual for the investigating officers for crime scene photography and videorecording of statements of witnesses. He stated that a further note on the subject may be submitted by him.

13. Mr Nadkarni submitted that the Committee of Experts is examining the matter and is likely to submit a report by the 2nd week of November 2017.

14. We are of the view that any further direction on the subject ought to be given by this Court after considering the said report.

15. List the matter for further consideration on 23-11-2017, as prayed.

(2018) 2 SCC 807
ORDER dated 30-1-2018

(BEFORE A.K. GOEL AND UDAY U. LALIT, JJ.)

SLPs (Cri.) No. 2302 of 2017 with Nos. 9431 of 2011, 9631-34 of 2012

SLP (Cri.) No. 2302 of 2017

16. One of the questions which arose in the course of consideration of the matter was whether videography of the scene of crime or scene of recovery during investigation should be necessary to inspire confidence in the evidence collected.

17. In order dated 25-4-2017³ statement of Mr A.N.S. Nadkarni, learned Additional Solicitor General is recorded to the effect that videography will help the investigation and was being successfully used in other countries. He referred to the perceived benefits of "body-worn cameras" in the United States of America and the United Kingdom. Body-worn cameras act as deterrent against anti-social behaviour and is also a tool to collect the evidence. It was submitted that new technological device for collection of evidence are the order of the day. He also referred to the Field Officers' Handbook by the Narcotics Control Bureau, Ministry of Home Affairs, Government of India. Reference was also made to Section 54-A CrPC providing for videography of the identification the process and the proviso to Section 164(1) CrPC providing for audio-video recording of confession or statement under the said provision.



18. Thereafter, it was noted in the order dated 12-10-2017⁴ that the matter was discussed by the Union Home Secretary with the Chief Secretaries of the States in which a decision was taken to constitute a Committee of Experts (COE) to facilitate and prepare a roadmap for use of videography in the crime scene and to propose a standard operating procedure (SOP). However, an apprehension was expressed about its implementation on account of scarcity of funds, issues of securing and storage of data and admissibility of evidence. We noted the suggestion that still-photography may be useful on account of higher resolution for forensic analysis. Digital cameras can be placed on a mount on a tripod which may enable rotation and tilting. Secured portals may be established by which the investigating officer can e-mail photograph(s) taken at the crime scene. Digital images can be retained on the State's server as permanent record.

SLP (Crl.) No. 9431 of 2011⁺⁺

19. Since identical question arose for consideration in this special leave petition as noted in the order dated 12-10-2017⁴, we have heard the learned Amicus, Mr Jayant Bhushan, Senior Advocate, Ms Meenakshi Arora, Senior Advocate, assisted by Ms Ananya Ghosh, Advocate, on the question of admissibility of electronic record. We have also heard Mr Yashank Adhyaru, learned Senior Counsel, and Ms Shirin Khajuria, learned counsel, appearing for the Union of India.

20. An apprehension was expressed on the question of applicability of conditions under Section 65-B(4) of the Evidence Act to the effect that if a statement was given in evidence, a certificate was required in terms of the said provision from a person occupying a responsible position in relation to operation of the relevant device or the management of relevant activities. It was submitted that if the electronic evidence was relevant and produced by a person who was not in custody of the device from which the electronic document was generated, requirement of such certificate could not be mandatory. It was submitted that Section 65-B of the Evidence Act was a procedural provision to prove relevant admissible evidence and was intended to supplement the law on the point by declaring that any information in an electronic record, covered by the said provision, was to be deemed to be a document and admissible in any proceedings without further proof of the original. This provision could not be read in derogation of the existing law on admissibility of electronic evidence.

21. We have been taken through certain decisions which may be referred to. In *Ram Singh v. Ram Singh*⁵, a three-Judge Bench considered the said issue. English judgments in *R. v. Maqsood Ali*⁶ and *R. v. Robson*⁷ and American Law as



noted in *American Jurisprudence* 2d (Vol. 29) p. 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.

22. In *Tukaram S. Dighole v. Manikrao Shivaji Kokate*⁸, the same principle was reiterated. This Court observed that new techniques and devices are the 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.

23. In *Tomaso Bruno v. State of U.P.*⁹, 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*¹⁰ and *State (NCT of Delhi) v. Navjot Sandhu*¹¹.

24. We may, however, also refer to the judgment of this Court in *Anvar P.V. v. P.K. Basheer*¹², delivered by a three-Judge Bench. In the said judgment in para 24 it was observed that electronic evidence by way of primary evidence was covered by Section 62 of the Evidence Act to which procedure of Section 65-B of the Evidence Act was not admissible. However, for the secondary evidence, procedure of Section 65-B of the Evidence Act was required to be followed and a contrary view taken in *Navjot Sandhu*¹¹ that secondary evidence of electronic record could be covered under Sections 63 and 65 of the Evidence Act, was not correct. There are, however, observations in para 14 to the effect that electronic record can be proved only as per Section 65-B of the Evidence Act.

25. Though in view of the three-Judge Bench judgments in *Tomaso Bruno*⁹ and *Ram Singh*⁵, it can be safely held that electronic evidence is admissible and provisions under Sections 65-A and 65-B of the Evidence Act are by way



of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65-B(4).

26. Sections 65-A and 65-B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. In *Anvar P.V.*¹², this Court in para 24 clarified that primary evidence of electronic record was not covered under Sections 65-A and 65-B of the Evidence Act. Primary evidence is the document produced before the Court and the expression "document" is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

27. The term "electronic record" is defined in Section 2(1)(t) of the Information Technology Act, 2000 as follows:

"2. (1)(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;"

28. The expression "data" is defined in Section 2(1)(o) of the Information Technology Act as follows:

"2. (1)(o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer:"

29. The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65-B(4) is not always mandatory.

30. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in



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possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies.

31. To consider the remaining aspects, including finalisation of the roadmap for use of the videography in the crime scene and the Standard Operating Procedure (SOP), we adjourn the matter to 13-2-2018.

32. We place on record our deep appreciation for the valuable assistance rendered by the learned Amicus, Mr Jayant Bhushan, Senior Advocate, Ms Meenakshi Arora, Senior Advocate, who was assisted by Ms Ananya Ghosh, Advocate, as well as by Mr Yashank Adhyaru, learned Senior Counsel, and Ms Shirin Khajuria, learned counsel, appearing for the Union of India.

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⁵ **Ed.** : Given the nature of these orders, they have been published in SCC, together, in chronological order, by the date of the order, as one combined report with the citation : (2018) 2 SCC 801. This is to facilitate a holistic view of the matters decided in such orders. Furthermore, to make it possible to search for a particular order by date as well, in SCC Online, each order has been reported separately with an independent citation with reference to the page on which it falls in SCC, in the combined report of all the orders i.e. (2018) 2 SCC 805; (2018) 2 SCC 806 and (2018) 2 SCC 807.

[†] Arising from Judgment and Order in *Shafhi Mohammad v. State of H.P.*, 2014 SCC OnLine HP 5929 (Himachal Pradesh High Court, Shimla Bench, Criminal Appeal No. 404 of 2009, dt. 26-6-2014)

^{*} Arising from Judgment and Order in *State of Punjab v. Anita*, 2011 SCC OnLine P&H 17671 (Punjab and Haryana High Court, Chandigarh, Murder Reference No. 4 of 2010, dt. 22-2-2011)

[†] Arising from Judgment and Order in *Shafhi Mohammad v. State of H.P.*, 2014 SCC OnLine HP 5929 (Himachal Pradesh High Court, Criminal Appeal No. 404 of 2009, dt. 26-6-2014)

¹ *Karnail Singh v. State of Haryana*, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887

² *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, (1976) 2 SCC 17

³ Set out in paras 1 to 8, above.

⁴ Set out in paras 9 to 15, above.

^{††} Arising from judgment and order in *State of Punjab v. Anita*, 2011 SCC OnLine P&H 17671 (Punjab & Haryana High Court, Murder Reference No. 4 of 2010, dt. 22-2-2011)

⁵ *Ram Singh v. Ram Singh*, 1985 Supp SCC 611

⁶ *R. v. Maqsd Ali*, (1966) 1 QB 688 : (1965) 3 WLR 229 : (1965) 2 All ER 464 (CCA)

⁷ *R. v. Robson*, (1972) 1 WLR 651 : (1972) 2 All ER 699 (CCC)

⁸ *Tukaram S. Dighole v. Manikrao Shivaji Kokate*, (2010) 4 SCC 329 : (2010) 2 SCC (Civ) 112 : (2010) 2 SCC (Cri) 826

⁹ *Tomaso Bruno v. State of U.P.*, (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54

¹⁰ *Mohd. Ajmal Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1 : (2012) 3 SCC (Cri) 481

¹¹ *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715

¹² *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108

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