

Rjee (Decd.) Vs. Before:

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Court : Kolkata

Decided On : Sep-27-2016

Judge : Ranjit Kumar Bag

Appellant : Rjee (Decd.)

Respondent : Before:

Judgement :

IN THE HIGH COURT AT CALCUTTA TESTAMENTARY AND INTESTATE JURISDICTION ORIGINAL SIDE TS11OF 2013 GA2761of 2016 IN THE GOODS OF: JYOTI PRAKASH BHATTACHA RJEE (DECD.) Versus BEFORE: The Hon'ble JUSTICE RANJIT KUMAR BAG Date : 27th September, 2016.

Mr.Mr.Mr.Mr.Mr.Malay Kumar Ghosh, Sr.Advocate R.K.Mitra, Advocate S.Ghosh, Advocate S.Dhar, Advocate Indranil Karfa, Advocate for plaintiff Mr.Debdutt Mukherjee, Advocate Mr.Meghajit Mukherjee, Advocate Mr.Arijit Law, Advocate Ms.P.Sharma, Advocate for petitioner The Court :-The defendant Ranjana Ghoshal has prayed for appointment of Commissioner for her examination through video conference as she is unable to come to the Court to give evidence from her residence at 2114, Crest Field Drive, San Ramon, CA 94582, United States of America.

Mr.Debdutt Mukherjee, learned Counsel for the defendant Ranjana Ghosal submits that the husband of the said defendant has been suffering from various ailments

and has been residing in the United States of America and as such she will not be able to come to the Court at Calcutta without wasting huge amount of money.

Mr.Moloy Kumar Ghosh, learned Senior Counsel appearing on behalf of the plaintiff, submits that the witness may be examined on commission through video conference provided precautionary measures are taken at the time of video conference as laid down by the Supreme Court and our High Courts in various decisions.

The Supreme Court has decided long back in 2003 that the evidence of a witness can be recorded through video conference while the Supreme Court interpreted the provisions of Section 273 of the Code of Criminal Procedure in State of Maharashtra V.

Dr.

Praful B.

Desai reported in AIR 2003 SC2053 In the said reported decision the Supreme Court has given some guidelines for examination of the witness on Commission through video conference in paragraph 24, which are as follows: 24.

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We do not have the slightest doubt that the officer who will be deputed would be one who has authority to administer oath.

That officer will administer the oath.

By now science and technology has progressed enough to not worry about a video image/ audio interruptions/distortions.

Even if there are interruptions they would be of temporary duration.

Undoubtedly an officer would have to be deputed, either from India or from the Consulate/Embassy in the country where the evidence is being recorded who would remain present when the evidence is being recorded and who will ensure

that there is no other person in the room where the witness is sitting whilst the evidence is being recorded.

That officer will ensure that the witness is not coached/tutored/prompted.

It would be advisable, though not necessary, that the witness be asked to give evidence in a room in Consulate/Embassy . The above guidelines are given by the Supreme Court for examination of the witness through video conference in a criminal proceeding.

In Amitabh Bagchi V.

Ena Bagchi reported in AIR2005 Cal 11, learned Single Judge of this Court has laid down the following safeguards for examination of witness on commission through video conference in paragraph 10, which are as follows: 10.

1) Before action of the witness under Audio-Video Link starts the witness Will have to file an affidavit or an undertaking duly verified before a Judge or a Magistrate or a Notary that the person who is shown as the witness is the same person as who is going to depose on the screen with a copy of such identification affidavit to the other side.

(2) The person who wishes to examine the witness on the screen will also file an affidavit or an undertaking in the similar manner before examining the witness with a copy to the other side with regard to identification before hand.(3) As soon as identification part is complete, oath will be administered through the media, as per the Oaths Act, 1969 of India.(4) The witness will be examined during working hours of Indian Courts.

Plea of any inconvenience on account of time difference between India and other country will not be allowed.

(5) The witness action, as far as practicable, be proceeded without any interruption without granting unnecessary adjournments.

However, discretion of the Court or the Commissioner will be respected.

(6) Witness includes parties to the proceedings.

(7) In case of non-party witness, a set of plaint, written statement and/or other papers relating to proceeding and disclosed documents should be sent to the witness for his acquaintance and an acknowledgement in this regard will be filed before the Court.

(8) Court or Commissioner must record any remark as is material regarding the demeanour of the witness while on the screen and shall note the objections raised during recording of evidence either manually or mechanically.

(9) Depositions of the witness either in the question answer form or in the narrative form will have to sign as early as possible before a Magistrate or Notary Public and thereafter it will form part of the record of the proceedings.

(10) Mode of digital signature, if can be adopted in this process, such signature will be obtained immediately after dayss deposition.

(11) The visual is to be recorded at both the ends.

The witness alone can be present at the time of video conference, Magistrate and Notary is to certify to this effect.

(12) In case of purjury Court will be able to take cognizance not only about the witness who gave evidence but who induced to give such evidence.

(13) The expenses and the arrangements are to be borne by the applicant who wants this facility.

(14) Court is empowered to put conditions necessary for this purpose. The examination of a victim of rape through video conference was challenged before the High Court at Calcutta in *Sujay Mitra V.*

State of West Bengal reported in 2015(3) CLJ (Cal) 462 where this Court directed the Trial Court to proceed with the examination of the victim through Video

conference from the office of Indian Embassy in Ireland without granting any adjournment to either of the parties and by giving some procedural safeguards in paragraph 13 which are as follows: 13.

(i) The Court must be satisfied about the identity of the witness giving evidence through video conference, (ii) The Court will administer the oath to the witness before recording of the evidence, (iii) The witness must be examined during the working hours of the Indian Courts, (iv) The copy of the documents to be proved by the witness must be sent to the witness in advance, (v) The Court must ensure that the witness is alone in room of Indian Embassy from where the witness is giving evidence through video conference , (vi) The Court must record the demeanour of the witness which is relevant for the purpose of evaluation of evidence of the witness, (vii) The recording of evidence of the witness once started through video conference must be continued on day-to-day basis till completion of recording of evidence of the said witness, (viii) The Trial Court can impose any other condition to ensure smooth recording of evidence of the witness through video conference. The above decision of this Court was challenged before Supreme Court in *Sujay Mitra V.*

State of West Bengal reported in (2016) 2 C Cr LR (SC) 337 wherein the Supreme Court has given some additional guidelines in paragraph 4 for examination of the witness in a criminal proceeding through video conference, which are as follows: 4.1) The State of West Bengal shall make provision for recording the testimony of PW5 in the trial Court by seeking the services of the National Informatic Centre (NIC) conferencing, for by installing using VC the appropriate Solution equipment software, to for video facilitate video conferencing in the case.

This provision shall be made by the State of West Bengal in a room to be identified by the concerned Sessions Judge, within four weeks from today.

The NIC will ensure, that the equipment installed in the premises of the trial Court, is compatible with the video conferencing facilities at the Indian Embassy in Ireland at Dublin.

2) Before recording the statement of the prosecutrix-PW5, the Embassy shall nominate a responsible officer, in whose presence the statement is to be recorded.

The said officer shall remain present at all times from the beginning to the end of each session, of recording of the said testimony.

3) The officer deputed to have the statement recorded shall also ensure, that there is no other person besides the concerned witness, in the room, in which the testimony of PW5 is to be recorded.

In case, the witness is in possession of any material or documents, the same shall be taken over by the officer concerned in his personal custody.

4) The statement of witness will then be recorded.

The witness shall be permitted to rely upon the material and documents in the custody of the officer concerned, or to tender the same in evidence, only with the express permission of the trial Court.

5) The officer concerned will affirm to the trial Court, before the commencement of the recording of the statement, the fact, that no other person is present in the room where evidence is recorded, and further, that all material and documents in possession of the prosecutrix-PW5 (if any) were taken by him in his custody before the statement was recorded.

He shall further affirm to the trial Court, at the culmination of the testimony, that no other person had entered the room, during the course of recording of the statement of the witness, till the conclusion thereof.

The learned Counsel for the accused shall assist the trial Court, to ensure, that the above procedure is adopted, by placing reliance on the instant order.

6) The statement of the witness shall be recorded by the trial Court, in consonance with the provisions of Section 278 of the Code of Criminal Procedure.

At the culmination of the recording of the statement, the same shall be read out to the witness in the presence of the accused (if in attendance, or to his pleader). If the witness denies the correctness of any part of the evidence, when the same is read over to her, the trial Court may make the necessary correction, or alternatively, may record a memorandum thereon, to the objection made to the recorded statement by the witness, and in addition thereto, record his own remarks, if necessary.

7) The transcript of the statement of the witness recorded through video conferencing (as corrected, if necessary) in consonance with the provisions of Section 278 of the Code of Criminal Procedure, shall be scanned and dispatched through email to the embassy.

At the embassy, the witness will authenticate the same in consonance with law.

The aforesaid authenticated statement shall be endorsed by the officer deputed by the embassy.

It shall be scanned and returned to the trial Court through email.

The statement signed by the witness at the embassy, shall be retained in its custody in a sealed cover.

8) The statement received by the trial Court through email shall be reendorsed by the Trial Judge.

The instant statement endorsed by the Trial Judge, shall constitute the testimony of the prosecutrix-PW5, for all intents and purposes. In view of the above proposition of law laid down by High Court and the Supreme Court the defendant Ranjana Ghosal may be examined on Commission through video conference at the cost of the defendant Ranjana Ghosal.

Shri Amitava Das, learned Counsel is appointed as Commissioner for examination of the defendant Ranjana Ghoshal through video conference at consolidated remuneration of 3000 gMs. which will be paid in two equal instalments the first instalment will be paid to the Commissioner at the time of commencement of witness action and the second instalment will be paid to the Commissioner on submission of the report.

Learned Registrar, Original Side will handover the original Will and other documents demanded by both parties to the Commissioner before Puja Vacation.

The Commissioner will have to submit the report within a period of six weeks after expiry of Puja Vacation.

Learned Registrar, Original Side will fix the venue for video conference in consultation with the learned Commissioner and learned Counsel for the plaintiff as well as learned Counsel for defendant Ranjana Ghoshal.

The Commissioner will fix the timing of video conference on consideration of the time gap between India and United States of America preferably during the period from 7 AM to 10 AM of Indian Standard Time or from 7 PM to 10 PM of Indian Standard Time.

Learned Registrar, Original Side will communicate the order of the Court to both Indian Embassy at Washington and to Indian Consulate at San Francisco, California, 540 Arguello, Boulevard, San Francisco, California 94118 before Puja Vacation, so that one senior responsible officer of Indian Consulate may be deputed to carry out the exercise of video conference of the defendant Ranjana Ghoshal from the premises of Indian Consulate at San Francisco, California.

The cost of video conference is to be assessed by learned Registrar, Original Side and the same will be communicated to the learned Counsel for defendant Ranjana Ghoshal, so that the entire cost of video conference will be deposited with the Learned Registrar, Original Side by the defendant Ranjana Ghoshal before commencement of the work of commission.

The Commissioner will follow the procedural safeguards laid down by the Supreme Court and this Court in various decisions cited in this order as far as practicable.

Apart from that, the Commissioner will follow the safeguards enumerated below for recording of evidence of the witness through video conference: (i) Before commencement of witness action the defendant Ranjana Ghoshal will file an affidavit being duly verified before the Magistrate or Notary as proof of identity of the defendant Ranjana Ghoshal at the time giving evidence on the screen.

The Commissioner must be satisfied about the identity of the witness Ranjana Ghoshal (ii) The oath will be administered to the defendant Ranjana Ghoshal by the Commissioner (iii) The witness will be examined between 7 AM and 10 AM, Indian Standard Time or between 7 PM and 10 PM, Indian Standard Time for which prior arrangement will be made by the Indian Consulate at San Francisco, California (iv) The witness action once started will proceed without any interruption or without granting any adjournment to either of the parties to the suit.

(v) The copy of the documents to be proved by the witness or copy of the documents to be shown to the witness during cross-examination must be sent to the witness in advance on behalf of the defendant Ranjana Ghoshal (vi) The Indian Consulate at San Francisco, California shall nominate one responsible officer in whose presence the defendant Ranjana Ghoshal will be examined by the Commissioner and the said officer shall remain present at all times from the beginning till the conclusion of the cross-examination of the witness (vii) The officer deputed by the Indian Consulate for the purpose of examination of the defendant Ranjana Ghoshal through video conference shall ensure that no other person is present in the room in which the examination will be done except the witness and the officer deputed by the Indian Consulate (viii) The Commissioner is at liberty to impose any other conditions to ensure smooth recording of evidence of the witness through video conference.

All parties are to act on a signed photocopy of this order on the usual undertakings.

Let the record be placed before the learned Registrar, Original Side along with copy of this order for necessary action.

List the suit under the heading Submission of Report after expiry of six weeks after the puja vacation.

GA No.2761 of 2016 is thus disposed of.

(R.K.BAG, J.) GH/R.

Bose AR(CR)

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