As per Section 10 A of the Information Technology Act, validity of contracts formed through electronic means :

Where in a contract formation, the communication of proposals, the revocation of proposals and acceptances, as the record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

Affidavit under Section 65B, Indian Evidence Act is not absolute:

The mandate to file an affidavit under Section 65B is not always absolute. The Hon'ble Supreme Court made observation in the case of *State v. Navajot Sandhu,* (2005) 11 SCC 600- print outs from the computers by mechanical process and certified by a responsible official of the service providing company can be led in to evidence through a witness who can identify the signatures of the certifying officer or otherwise speak to the facts based on his personal knowledge.

In S*tate v. Navajot Singh*, (2005) 11 SC 600 & *P Padmanabh v. Syndicate Bank Ltd., Banglore*-AIR 2008 Kant.42, it was held that the non compliance of Section 65B, Indian Evidence Act, 1872 is not always fatal if secondary evidence can be given in any circumstances.

The evidence relating to electronic record, as noted herein before, being no special provision, the general law under Section 63 read with Section 65 of the Indian Evidence Act shall yield to the same Generalia Specialibus non derogant, special law will always prevail over the general law. Sections 59 and Section 65A dealing with the admissibility of electronic record. Sections 63 and 65 of Indian Evidence Act, 1872 have no application in the case of secondary evidence by way of electronic record, the same is wholly governed by Section 65 A and Section 65B. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus in the case of CD, VCD, Chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which the secondary evidence relating to that electronic record is inadmissible as observed by the highest court of the land in *Anvar P.V. v. P.K. Basheer and others* in Civil Appeal No.4226 of 2012.

ARUSHI VERDICT: A JUDGEMENT WHICH LEFT MANY QUESTIONS UNANSWERED

By

K. Ramakanth Reddy, Advocate

The Allahabad High Court bench comprising of Justice B.K Narayana and Justice A.K Mishra on Thursday has finally acquitted Aarushi's dentist parents Nupur and Rajesh Talwar who were convicted for the murder of their 14-year-old daughter and domestic help Hemraj by a special CBI court in 2013. This verdict though has ended the nine year old sufferings of the Talwars who were given a life sentence by a CBI court on November 28, 2013 but still left the question open for the investigating authorities to challenge this acquittal and one can see that we are yet to reach the end of this mysterious matter.

In the present matter, we feel that the truth has been buried under our faulty

investigations system and it is the duty of the Court to identify the real culprit and punish in accordance with law. The Allahabad High Court would have followed the other alternative legal remedies as observed by the Hon'ble Supreme Court in *State of Gujarat v. Kishanbhai* (1) (2014) 5 SCC 108 where there is failure of investigation agencies to carry out proper investigation in a case of rape and murder of a small child. The Supreme Court observed that "He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy." Having expressed its deep concern for false implication of innocent people and their conviction, the Supreme Court has framed the following guidelines for fixing responsibility on the investigating/ prosecuting officials responsible for acquittal.

"On the culmination of a criminal case in acquittal, the concerned investigating/ prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct, the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/ officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."

Recently, in *Pidathala Satyam Babu v. The State of Andhra Pradesh* (2) (2017) 1 ALT 82 following the above guidelines of Supreme Court in the cases where there is failure on the part of investigative authority, the Andhra Government in pursuance of these guidelines, has issued G.O. Ms. No.20, dt. 14.02.2017, constituting an Apex Committee with Home Secretary as Chairman, Law Secretary, Director General of Police and other functionaries as Members, for identification of erring investigation/prosecuting officials/officers for their failure in a prosecution case and for taking departmental action against such officials/officers in accordance with law.

There may not be perhaps a better case than the present one where the Andhra Government didn't tolerate the incompetency of the investigative authorities of State and referred to the Apex Committee for taking action against all the erring investigating/prosecuting officials/officers,

for not identifying the real culprits and prosecuting an innocent person and getting him convicted. The State was accordingly directed to refer the matter to the Apex Committee. In the same lines of thought, the Allahabad High Court would have taken into consideration these guidelines proposed by the Hon'ble Supreme Court and deliver the decision then it would have set an example in the mysterious cases of this nature where due to incompetence of the investigating agency there is escape of the real culprit and at the same time making the public spirited citizens puzzled.

Rajesh and Nupur Talwar's conviction in this double murder case has been oscillating from being innocents to guilty over the last decade in the hands of the investigating authority and now they are back to being innocents due to lack of direct evidences against them. The Allahabad High Court observed that no conviction can stand on the basis of mere suspicion and the CBI failed to prove either by the circumstances and the evidence was held not enough to hold them guilty beyond reasonable doubt.

From the legal point of view, this judgment of the Hon'ble High Court is neither very innovative nor it has introduced a path breaking concept in the domain of criminal & Evidence law. The verdict is purely based on the basic premise upon which the Criminal Jurisprudence is based i.e. Benefit of doubt. The two eminent judges in this case have delivered two concurring decisions upon this matter.

The Hon'ble Justice A.K.Mishra in his short opinion with a cautionary note to the lower judiciary on conducting criminal trials has commented that the CBI Judge has, "prejudged things in his own fashion, drawn conclusion by embarking on erroneous analogy conjecturing to the brim on apparent facts telling a different story propelled by vitriolic reasoning."

Justice B.K.Narayan on the other hand in his 250 pages judgement gave benefit of doubt to the Talwars with his concluding remark that "The circumstances of this case upon being collectively considered do not lead to the irresistible conclusion that the appellants alone are the perpetrators of crime in question and on the evidence adduced in this case certainly two views are possible; one pointing to the guilt of the appellants; and the other to their innocence and in view of the principles expounded by the Apex Court in the case of Kali Ram we propose to adopt the view which is favourable to the appellants".

There is no denying of the fact that view favorable to the accused is followed if two views are possible but at the same time we also can't deny that this judgement has led us back to the square one that there is a murder of two individuals and we are still unable to find the offender even after nine year of numerous trials and investigations. The observation made by both of the Hon'ble judges and its proportionality is still left best to be judged by the Supreme Court in case if it is appealed.

The work of criminal trial is not always about finding the truth but to test the finding of the prosecution on the basis of evidence available and in the cases like murder where there is absence of eye-witnesses, the trial is conducted on the basis of circumstantial evidence. In the criminal trial,the burden lies on the prosecution to prove the guilt of the accussed beyond reasonable doubt but due to no direct evidences against the Talwars, our criminal procedure has extended the benefit of doubt to them. This

judgement of Allahabad High Court lead us to two conclusions: either the accussed is innocent or that the prosecution is not able to establish the guilt on the basis of evidence. The second conclusion as we can see from the observation of the Judges is more viable in the present case and we cannot completely say that the accused were innocent.

However, the Media and all the sympathizer of Arushi's Parents are celebrating because of an end of Talwar's nine year ordeal in this double murder case but the learned people who are concerned with the Justice administration cannot deny this that our system is inadequate to handle the complexities of criminal investigation and jurisprudence.

There are few lessons that we can learn from this judgment, firstly that the media and the public hue and cry should not be the basis to impel the Courts to arrive at the conclusion in the cases where the facts and circumstances of the case is complex and needs more clarity. Secondly, the guilty should not be allowed to escape due to incapacity/incompetence of the investigating authorities.

With this judgment we are facing a very unusual and puzzling case where neither the guilt nor the innocence is established and henceforth we are left staring at the collective failings of our Justice System and Institutions.

ADMISSIBILITY OF DYING DECLARATIONS: WHETHER JUSTIFIED?

By

Kancha Prasad, B.A., LL.M., Junior Civil Judge, Bellampally, Mancherial District, Telangana State.

Introduction:

Although the Indian Evidence Act, 1872 was framed by Sir James Fitz James Stephen on the lines of the Law of evidence in England, the former is in certain aspects different from the latter. In this article, I shall first discuss the difference in the declaration in the two countries, go on the point out an apparent anomaly within the Indian law, and finally, I shall contemplate over the possible ways to eliminate such on anomaly.

The difference:

Statements, written or verbal of relevant facts made by a person who is dead, or who cannot be found or who has become capable of giving evidence, or whose attendance cannot be procure without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts under the circumstances enumerated under sub-section (1) to (8) of Section 32 of the Indian Evidence Act. 1872. Clause (1) of Section 32 of the Indian Evidence Act states: "When the statement is made by a person as to cause of his death, or as to any of the circumstances of the transaction which resulted in the death, in cases in which of that person's death comes into questions is admissible in evidence being relevant whether the person was or not at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question." Such statement in law are compendiously called dying declarations, though such an expression has not been used in any statute.