

[2023 PLRonline 0001 = 2023 PLRonline 412600](#)

2023 PLRonline 0001 = 2023 PLRonline 412600

HIGH COURT OF KARNATAKA (DHARWAD BENCH)

Justice H.B. Prabhakara Sastry and Justice C.M. Joshi.

Santhosh Dinakar Achargi v. The State of Karnataka.

Criminal Petition 100027 of 2020

21.02.2023

Evidence Act, S. 65B - Prosecution wants to rely on the contents of the CD or any other electronic document, the provisions of Section 65B of the Evidence Act are applicable - If a certificate as required under Section 65B of the Evidence Act is not accompanying the electronic document/electronic record, then such electronic record is not admissible in evidence - M.O.1 cannot be relied by the prosecution in any way - With an objection, M.O.1 was played and perused by the Trial Court and it was only with the said object it was played before us - In view of the above position of law, the electronic evidence, which is bereft of certificate as required under Section 65B(4) of the Evidence Act is inadmissible in evidence. The prosecution could have produced such a certificate through PW11 and PW21, who had prepared the CDs from handy-cam. In the absence of any such certificate, the M.O.1 is to be eschewed from the evidence - Call records regarding conversation between the accused and the deceased are also inadmissible in evidence.

Held,

Added to this, PW11 has stated that on being informed by PW26, he went to the spot and from there he was asked to go to the hospital with a handycam. Therefore, he went to Ashok Nagar Police Station and then to the KIMS Hospital with a handycam and recorded the statement of the deceased Ramadas Kudalkar. Though the videograph in the CD's at M.O.1 are not admissible in evidence due to non-production of certificate as required under Section 65B(4) of the Evidence Act, the oral testimony of PW11 regarding the ability of the deceased to speak and give a statement is admissible in evidence. There is no reason as to why PW11 would lie before the Court. His testimony has not been discredited in the cross-examination.

Further, the prosecution contends that PW14-Ramachandra Niralagi, PW3-Smt.Deepa, who happens to be the wife of the deceased, PW11-Manjunath, who is police constable and allegedly recorded the video wherein the deceased has given the dying declaration, PW13-Manjunath, who happens to be the nephew of the deceased, and lastly PW26-Pushpalatha,

who happens to be police inspector had heard the statement made by the deceased. Further, the evidence of PW23 as discussed supra discloses that the prosecution failed to elicit from her as to whether the deceased was capable of giving a statement when he was brought to the hospital. Under these circumstances the contention of the learned Senior counsel for the appellant that the deceased could not have made a dying declaration because of the heavy dosage of the medicine cannot be accepted. Even if we accept the contention of the learned counsel for the appellant/accused that the deceased was incapable of giving any statement on account of the heavy dosage administered, there is nothing on record to show that even prior to PW14 enquired the deceased, the injured was administered with any medicine. Though the videograph in the CD's at M.O.1 are not admissible in evidence due to non-production of certificate as required under Section 65B(4) of the Evidence Act, the oral testimony of PW11 regarding the ability of the deceased to speak and give a statement is admissible in evidence. In the case on hand, the evidence of PW26 discloses that soon after the information of the incident was received, she rushed to the hospital and continuously followed to record the dying declaration of the deceased through a competent person, but by time she visited the Balaji Hospital, the doctors at Balaji Hospital did not permit her.

The case of the prosecution as it unfolds is that the accused was having enmity with the deceased-Ramadas Kudalkar owing to the financial transaction between them. The prosecution contends that the repeated demand by the deceased about the sum of `60,000/- was the motive for the accused to commit the offence.

There is no suggestion made to PW23 that there was heavy dosage of medicine administered and therefore, he was not capable of giving any statement to the police or others. There is nothing on record to show that even prior to PW14 enquired the deceased, the injured was administered with any medicine. The oral testimony of PW11 regarding the ability of the deceased to speak and give a statement is admissible in evidence.

There is absolutely no evidence on record to show that the deceased was tutored while he was on the way to KIMS Hospital. If at all there is any tutoring, it would have been by the family member who only met the injured in the hospital, much prior to which the deceased has disclosed about the assailant before PW14 at the place of occurrence itself.

[2023-PLRonline-0001-2023-PLRonline-412600-Text.1Download](#)