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CONDUCTING CRIMINAL TRIAL THROUGH VIDEO CONFERENCING: CHALLENGES AND OPPORTUNITIES

INTRODUCTION

In December 2019 a virus came called Corona Virus which was later declared as pandemic. Because of which government announced a lockdown to save human life from getting affected to the Covid-19. As lockdown was declared, economy started to slow down and the legal proceedings were also at a halt. To solve this problem and continue the work, help of video conferencing was taken, through which criminal trials could be done. Through video conferencing proceedings are done by fixing time slots for the trial. However, it is not possible for a judge to handle fifty to sixty matters a day as some of them might not be techno friendly or the connectivity time could be longer. There is need of proper time slots for proceedings and to be heard. Witnesses, prosecutors, investigator officers, police staff, complainants, accused, defence lawyer, judge, steno all should congregate at a particular time for the trial.

The Supreme Court E-committee chairperson Justice DY Chandrachud has held a meeting through video conferencing with the judges of High Court to ensure that urgent matters are heard promptly and litigants are not required to come to court during the lockdown. He also said that prompt measures are to be adopted and also said that technology must be institutionalised even after the lockdown if lifted and normalcy returns.

PROVISIONS

Any act or omission which is prohibited by law and is punishable by law is a crime. The punishment for such crime is decided by procedures of criminal trial. According to the Code of Criminal Procedure 1973, a Criminal Trial is mainly of three types-Warrant trial, Summon trial, Summary trial.

- **Warrant Trial**-This has been explained under Section 238- 250 of CrPC, 1973. And according to Section 2(x) of CrPC, 1973 a warrant case is one which is related to offenses punishable with death, imprisonment for life or imprisonment which may exceed to a term of two years. The trial in warrant cases starts either by the filing of

FIR in a police station or by filing a complaint before a magistrate. If the magistrate is satisfied that the offence is punishable for more than two years and the case is sent to sessions court and that process is known as 'committing it to sessions court'. Charges must be mentioned in a warrant case and the personal appearance of the accused is mandatory. A warrant case cannot be converted into a summons case. The accused can examine or cross-examine the witness more than once¹. Video conferencing enables the Magistrate to be face to face with the electronically transmitted image of the accused. This gives the accused the right of a fair trial.

- **Summons Trial-** This has been explained under Section 251-259 of CrPC, 1973. And according to Section 2(w) of CrPC, 1973 the cases in which an offence is punishable with an imprisonment of less than two years is said to be a summons case. The summons case does not require a method of preparing the evidence. A summons case can be converted into a warrant case if the magistrate, after looking into the case, if he thinks that the case is not a summons case. The person accused need not be present personally. The person accused should be informed about the charges orally. No need for framing the charges in writing. The accused gets only one opportunity to cross-examine the witnesses.

In the case of *Abdul Karim Telgi v. State*², it was the first case in which the whole trial was conducted through video conferencing. It was surprising that on no occasion Telgi was physically produced before the court due to his health and security reasons. After this a bill was presented in Rajyasabha proposing that the magistrate may extend detention of an accused in judicial custody through the medium of electronic video linkages except where the production of the accused is required.

- **Summary Trial-** This has been explained under Section 260- 265 of CrPC, 1973. Cases which generally take one or two hearings to decide the matter come under the category of summary trial. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Under this trial the offences which are punishable with imprisonment for not more than six months are tried. However, if a person is being tried in the way of summary trial then the person could

¹Rebecca Furtado, *All about the various stages of criminal trial in India*, Blog-iplleader, <https://blog.ipleaders.in/all-about-the-various-stages-of-criminal-trial-in-india/> (last visited May 11, 2020)

²*Abdul Karim Telgi v. State*, 25880 OF 2007

not be awarded with a punishment of imprisonment for more than three months. In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons. Thus, through video conferencing it becomes easier and less costly to arrange hearings again and again as the judges and advocates and both the parties needs to be in video conference and hearing can continue.

CHALLENGES

For doing trials through video conferencing there are many requirements which are needed to be done to make a hearing successful. There are some challenges which are faced during this procedure some of them are explained below-

- **Presence of Accused** - The main challenge which arises in video conferencing of trials is that the accused should be present at the same time.
In the case of Ram Narayan v. State of Maharashtra³, the examination of the accused under Section 137, of The Indian Evidence Act, 1872 is meant only to get explanation from the accused of the incriminating circumstances appearing in the documents sent up under Section 173 of CrPC, 1973.
Also, in the amendment of 2008 in Code of Criminal Procedure in Section 167(2)(b) of the act, electronic video-linkage as an alternative method for production of accused in the court was introduced.
- **Presence of Witnesses** - Another challenge which here arises is of the presence of the witness at the time of trial. He should be given a secured environment where he has no threat to his life. He must be free from the influence of the prosecution, accused, complainant so that he could not change his statements which may harm the decision of the court.
- **Security of Software**- The software which are used for hearings should be safe and secured with high security. No person shall be allowed to tamper the information given during the hearing. Those platforms should not be used which can be easily hacked. No body except the authorities shall be allowed to record the trial procedure which later be used as a threat to the people concerned. In the recent time, people are using platforms like Zoom meeting app for group video conferences. It is not a secured platform to do any hearing where there will always be fear of recording or

³ Ram Narayan v. State of Maharashtra, AIR 1964 SC 949: 1964(2) Cr LJ 44

leaking the personal data. Likewise, there are several reports received where conferences are disrupted by pornographic content and also hate images and threatening language is being used. If this kind of thing happens during any criminal hearing people will start taking it as a joke and the belief and fear on judiciary will fade away. For this courts should make or use their personal made platforms to avoid such hindrances.

- **Identity Theft-** Identity theft has been the biggest fear in the online trials. Because any person can use other person's name to harm or take the important information of the case. If any person tries to cause wrongful damage or loss to public or any person commits hacking as defined under section 66 of Information Technology Act, 2000.
- **Physical Production For Remand & Access To Counsel-** Production under S.167 or 309 of CrPC, 1973 state gives a person in custody access to counsel. This also enables counsel to seek factual instructions and prepare for trial and develop strategy. Video conferencing at the time of remand will be needed to provide for securing client or counsel conference to maintain confidentiality and adequate time is to be provided as jail visits are on hold any in any case have limitations.
- **Prosecution Concerns-** Prosecutors are mainly dependent on the police support or the investigating officers and Naib Courts and have constant interaction for explanation of records and obtaining instructions. Before trial they need to access credibility of witness and interact whether those witnesses are correct or not. To acquaint the witnesses with records and documents before examinations in court, specially when trials are delayed. Without face to face contact credibility of witness can't be checked, in videoconferencing hearing it becomes a little bit difficult to have a personal contact with everyone. A mechanism is required by which this kind of interaction becomes more and more effective and useful.
- **Appearance of Accused-** Personal presence is required in the criminal trial every time when summoned. In such case exemption form personal appearance under S. 205/317 CrPC is required, otherwise the whole matter of social distancing will fail.

In the case of *Habeeb Mohammad v. State of Hyderabad*⁴, after the examination and cross-examination of the witnesses is finished, the accused shall be called upon his defence. It is mandatory for a magistrate to order the accused to enter upon his defence, if no opportunity is given and the accused is not called upon his defence, the trial vitiates.

- **Analysis of Original Record-** other problem here arises is of analysis of original record. According to Section 207, CrPC documents and statements are to be supplied to each accused. There should be proper access to the police report i.e. charge sheet, final report or challan. In video conferencing it could be digitised but problem here arises is to verify the existence of sanctity of material objects. It needs to be verified that whether exculpatory documents have been seized and suppressed from police report.

In the case of *Public Prosecutor v. C.S. Pachiappa Mudaliar*⁵ and *State of Gujarat v. Champak Lal*⁶, it was stated that there is ample authority in support of the view that if in the course of trial, the prosecution thinks it necessary to file additional documents or statements of witnesses on which they propose to rely, the non-supply of copies does not prevent them from filing the documents or examining the witnesses⁷.

- **Contempt of Court-** Contempt of the Court is the offence of being disobedient or disrespectful towards a court of law and its officers in the form of behaviour that opposes or defies the authority, justice and dignity of the court. A person if found to do the contempt of court is punishable under Section 12 of Contempt of Court Act, 1971. During video conferencing a person can do contempt of court by not maintaining the decorum of the court.

In the present example, the Rajasthan High Court adjourned the bail proceedings after the petitioners counsel was found to be attending the courts video conference hearing wearing a vest. Judge in its order stated that the learned counsel was contacted through video conferencing and was found wearing Baniyan (inner vest). It has been instructed to High Court Bar Association to urge all advocates to appear in their proper uniforms during the hearing conducted through video conferencing.

⁴ *Habeeb Mohammad v. State of Hyderabad* AIR 1954 SC 51: 1954 Cr LJ 338

⁵ *Public Prosecutor v. C.S. Pachiappa Mudaliar* AIR 1958 Mad 295

⁶ *State of Gujarat v. Champak Lal* AIR 1965 (2) Cr LJ 497

⁷ *Batuk Lal, The Code of Criminal Procedure* pg.409 (3rd ed. 2017)

OPPOURTUNITIES

Where there are some challenges there are some opportunities or some benefits in the process of hearing through video conferencing. Following are some of the opportunities explained-

- **Time Limit-** Timing for each video conference hearing will be fixed and can be capped, thus hearings can be concluded in a time bound manner. When there are multiple hearings in a single day then in such case it becomes easy for a lawyer and also for a judge to sit at their home or work place and carry the hearings in a particular period of time without any delay.
- **Enhancement of Protection-** Examination of witness over video calls becomes easy and also enhances the level of protection provided to all and especially to vulnerable witnesses by limiting physical proximity. It also gives benefit when any witness who is severely injured and can't be present in the court, then in such case he can be produced in court through video conferencing.
- **Geographical distance-** Video conferencing enables the examination of witness irrespective of the geographical distance of witness which can be beneficial for the larger states i.e. they can be sitting at home and doing their work. It would be more convenient and speed up due to saving of travel time and scheduling.
- **Opportunities for Freshers-** Juniors of bar or freshers are sometimes not able to present themselves for court proceedings due to the limited court capacity. Through video conferencing young members of the bar can be given opportunity to link up or observe more proceedings and enhance their skills. Live streaming of hearings could be developed. Or else the juniors will be deprived of learning from observing the experienced lawyers even though they are not engaged in the matter.
- **In Camera Proceedings-** Where it is not possible for the accused to be present in the court physically then in such case help of in camera proceedings can be taken. These are those proceedings which are held before a judge either in the court or in the chamber and the press and the other parties who are not connected with the case are

not allowed to be present at the time of the hearing. This generally is done in the case of high-profile case but during this pandemic it can be made a part of day to day proceedings.

In the case of CBI v. Baba Gurmeet Ram Rahim and others⁸, where statements of all the convicts were recorded separately through video conferencing. The court held that in the light of provision under Section 353 of CrPC, 1973 and the law laid down by the Supreme Court with regard to the constructive presence of an accused in the light of technological advancements it will not be violative of any substantive provision of law. And thus, it was directed that the accused Gurmeet Ram Rahim Singh be produced in court through video conferencing.

- **Transparency in Proceedings-** Greater transparency and participation would also facilitate the monitoring of insiders by checking their self-interest. Through video conferencing more transparency would be there as if any person is not able to go to the court then he can keep a check on his advocate through video conferencing or the recording of the hearing. Transparency will be more like if an offender is situated outside India and he is not able to come to India for hearing neither the advocate could go in small intervals. Thus, through video conferencing it would be possible to summon the offender and to continue the trials in less cost and in short span of time. Here the example of fugitive economic offenders like Vijay Mallya, Lalit Modi, Mehul Choksi, Nirav Modi etc. who have left India and refuses to return, these people if can't be brought to court then can be present during video conferencing and the pending hearings could be done easily. In this way monitoring of the proceedings could also be done.

SUGGESTIONS

When it comes to conducting of criminal trials through video conferencing there are several opportunities as well as some of the challenges which may hinder the hearing of the court. Following are some of the suggestions to overcome the challenges of conducting criminal trial through video conferencing-

⁸ CBI v. Baba Gurmeet Ram Rahim and others, Chi/1852/2013

- Standardised technical requirements, during lockdown everybody is using internet which causes problem of slow speed. To solve this problem internet speed needs to be good to conduct cross examination, good sound and video quality are required⁹.
- There must be laptops or desktops with camera working or suitable smartphone to conduct the trial properly.
- The name should be correct and ideally identifiable through which the advocate joins.
- Wired or Bluetooth headphones or earphones with good quality of microphone shall be used to avoid any voice related issues.
- Ramp up capacity, criminal trials are required to be conducted before a Trial Court Judge. It will be essential for such judges to have dedicated days and timings for holding hearing via video conferencing in order to ensure that they can carry out their duties efficiently.
- Standardisation of filing and listing procedures- under the present system, physical copies of the cases are filled in court, while online filing procedures are in the process of being setup, there is a need to provide a procedure to fill the cases online.
- Proper training to advocates, clerks, judges, court staffs to use the web systems shall be given in order to work efficiently.
- Legislative and regulatory changes must be affected across the board in every court for immediate implementation of the web systems.
- Proper guidelines shall be made to follow the rules of court. Contempt of court shall be punished during video conference too.

CONCLUSION

Thus, to conclude it can be stated that justice is need of the hour. Without justice crime will prevails and the criminals too. In this situation where the whole world is battling against this virus criminal trials could not be stopped, where social distancing is required no one can go to court and the best way possible is to conduct the criminal trials through video conferencing. In video conferencing there are some benefits as well as some challenges which are being faced. There are some benefits like it is speedy and less costly as a person

⁹ Sidharth Luthra, *Conducting criminal trial through video conferencing: challenges and opportunities*, Akhil Bharatiya Adhivakta Parishad “The Dattopant Thengadi lecture series” https://youtu.be/rk6C_Ha18d0

either judge or advocates, they can stay in their homes and can work easily. To solve the challenges faced proper mechanism and guidelines shall be given related to trials.

