INDIA'S 1ST "REVENGE PORN" CONVICTION

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SPECIAL P.P.

In Panskura PS case, after 6 months' trial, resulted into the first conviction on cyber crime case of CID, WB :

- Total 18 numbers of witnesses and two expert (CFSL) witnesses whose personal appearance waived u/s 294 Cr.P.C.
- More than 200 numbers of documents exhibited and 79 numbers of material exhibited including electronic records.
- The entire case to be completed within 6 months approximately.
- Prosecution in its written arguments containing 118 pages referred more than 300 judgements of Hon'ble Apex Court of India and also foreign courts.
- One of the fastest, contested Cybercrime cases in India.
- The first case of conviction since inception of Cyber Cell, CID, West Bengal and entire West Bengal Police.
- Perfect blend of volumes of electronic evidences, non-electronic evidences, the vital evidence of traceability path starting from IP address to user details was produced before the court u/s 91 Cr.P.C. even after filling supplementary charge-sheet.
- The victim girl after being completely devastated and collapsed by the heinous offence of posting her nude videos in the virtual world which was lateron shared and spread to numerous virtual platforms or accounts specifying her and her father's name fought back and boldly withstood two day's rigorous cross-examinations after delivering clear and truthful evidence in examinations-in-chief.

: FACTS :

THE COMPLAINANT GOT INVOLVED IN AN AFFAIR WITH THE ACCUSED PERSON ABOUT 3 YEARS AGO FROM THE DATE OF INCIDENT AND DURING THIS PERIOD THERE WAS A GREAT DEAL OF INTIMACY BETWEEN THEM AND AS PER THE COMPLAINT THE ACCUSED PERSON DURING THIS TIME HAD ASKED FOR SOME PRIVATE PHOTOS OF HER AND WHILE INITIALLY THE COMPLAINANT REFUSED TO PROVIDE ANY SUCH PHOTOGRAPHS, LATER ON WAS CONVINCED AND GAVE PHOTOS. IT WAS ALSO SPECIFIED IN THE COMPLAINT THAT SOME NUDE PHOTOS OF THE COMPLAINANT HAD BEEN TAKEN SECRETLY BY THE ACCUSED WHO HAD HACKED HER MOBILE PHONE. THE ACCUSED HAD THEN DEMANDED THAT THE COMPLAINANT GO FOR OUTING WITH HIM WHICH THE COMPLAINANT HAD REFUSED AND HENCE THE ACCUSED PERSON UPLOADED THE COMPROMISING VIDEOS TO THE PORN SITE. TO UPLOAD THE VIDEOS THE EMAIL ADDRESS USED HAD ALSO BEEN MENTIONED IN THE COMPLAINT AND THE ADDRESS OF THE PORN SITE IS ALSO MENTIONED IN THE COMPLAINT.

CHARGE HAS BEEN FRAMED ON THE FOLLOWING SECTIONS

- Section 354C of the IPC - Voyeurism
- Section 354D of the IPC - Stalking
- Section 66E in the I.T. Act, 2000 - Punishment For Violation Of Privacy
- Section 67 in the I.T. Act, 2000 - Punishment For Publishing Or Transmitting Obscene Material In Electronic Form
- Section 67A in The I.T. Act, 2000 - Punishment For Publishing Or Transmitting Of Material Containing Sexually Explicit Act, Etc., In Electronic Form.

IMAGE BASED SEXUAL ABUSE VERSUS "REVENGE PORN"

As per CLARE MCGLYNN and ERIKA RACKLEY of University of Birmingham, in his celebrated article observed that offence of this type is Image Based Sexual abuse, more than just ''revenge porn''. As per him, ''First, it's not always about revenge. Revenge porn covers just one form of image-based sexual abuse – the malicious ex-partner sharing photos or videos without the agreement of their former partner. But there are many other kinds of image-based sexual abuse that the law should cover. Secondly, it's not 'porn'. The labeling of revenge porn as 'porn' is salacious, designed to titillate. It distracts governments, leading some down the wrong path by thinking that images must be 'pornographic' or 'obscene' before being unlawful; or that the perpetrator must be motivated by sexual gratification.''

(https://www.birmingham.ac.uk/schools/law/research/spotlights/ibsa.aspx)

LOCARD'S EXCHANGE PRINCIPLE

"Wherever he steps, whatever he touches, whatever he leaves, even unconsciously, will serve as a silent witness against him. Not only his fingerprints or his footprints, but his hair, the fibers from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen he deposits or collects. All of these and more, bear mute witness against him. This is evidence that does not forget. It is not confused by the excitement of the moment. It is not absent because human witnesses are. It is factual evidence. Physical evidence cannot be wrong, it cannot perjure itself, it cannot be wholly absent. Only human failure to find it, study and understand it, can diminish its value."

In forensic science, Locard's exchange principle holds that the perpetrator of a crime will bring something into the crime scene and leave with something from it, and that both can be used as forensic evidence. Dr. Edmond Locard, a pioneer in forensic science had formulated the basic principle of forensic science as: "Every contact leaves a trace"

(https://en.wikipedia.org/wiki/Locard%27s_exchange_principle)

The principle is sometimes stated as “every contact leaves a trace”, and applies to contact between individuals as well as between individuals and a physical environment

CHAIN OF EVIDENCE

EXPERIMENT AND UTILIZATION OF SEC. 91 CR.P.C. - As regards to the allocated IP to Jio connection number and its details evidence till the SDR details or the user details matching with the details of the accused person was elaborately proved by the PW 16.

Four steps to traceability : Traceability can be expressed in four independent steps and they are namely -

- First, one determines the IP address to be traced.
- Second, one establishes which ISP (or perhaps a university) has been allocated the IP address.
- Third, the ISP's technical records will indicate which user account was using the IP address at the relevant time.
- Fourth and finally, the ISP's administrative records will establish the real-world" identity of the individual who was permitted to operate the account.

EVIDENCE IN TRACEABILITY

- Exhibit 42 – Certificate u/s 65B of the Indian Evidence Act containing three pages prepared by P.W. 16 (With objection).
- Exhibits 42/1, 42/2 and 42/3 – Signatures along with date of P.W. 16 in exhibit 42 (With objection).
- Exhibit 43 – Screen shot of the I.P. search result of 47.15.15.236 from the website traceip.bharatiyamobile.com and signature of P.W. 16 along with date into it (With objection).
- Exhibit 44 – Print out of Reliance Jio reply regarding IP allotment details of the I.P. containing two pages which P.W. 16 printed the same and signed into it and put date into it (With objection).
- Exhibit 45 – Print out copy in excel format of IPDR which was the attachment copy of the reply of Reliance Jio which P.W. 16 printed the same and signed into it and put date into it (With objection).
- Exhibit 46 – Screen shot copy of Pornhub.com converted to IP address result using domaintoipconverter.com which P.W. 16 had prepared the screen shot and signed into it and put date into it (With objection).
- Exhibit 47 – Screen shot print out copy of subscriber details of mobile no. 8240136385 which P.W. 16 had collected from the monitoring cell with the help of monitoring cell, CID, and P.W. 16 had signed into it and put date into it (With objection).
- Exhibit 48 - Certificate u/s 65 B of the Indian Evidence Act containing two pages to prove the authenticity and P.W. 16 had prepared it and signed into it (With objection).

EVIDENCE BY INDIRECT WAY - Another very important point is that another mobile number of Vodafone was in the name of the mother of the accused person and the most important evidence coming from the PW 12 (manager of bank) proves the fact that the accused opened his bank account using the same mobile number and the most shocking incident is that in statement u/s 313 Cr.P.C. the accused completely disown both the connections which are elaborately proved to be in his name or used by him at the relevant point of time. In this respect in is pertinent to detail the provisions of section 4 of the Banker's Book Evidence Act which states that -

"*4. Mode of proof of entries in banker's books. -Subject to the provisions of this Act, a certified copy of any entry in a banker's books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.* "

In addition to the above, the prosecution further submitted before the Honour's Court that –

As per the **Section 44 in The Indian Penal Code**

INJURY —*The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.*

Hence, it is evident that who sustained the injury in ordinary course who's evidence cannot be disbelieved.

Malkhan Singh vs State of Uttar Pradesh AIR

1975 SC 12 : (1975) 3 SCC 311 : 1974 SCC (Cri) 213 : 1975 Mad LJ (Cri) 450

EVIDENCE FROM THE VG – Last but not the least, the VG herself, at the time of her examination-in-chief before the Learned Court has shown the video available on internet to the Learned Court.

DIFFICULTIES FACED DURING TRIAL

1) **OMISSION TO SIGN** – That, omission to sign in seizure list and in some Material, exhibits and in Disclosure Memo by PW-16 is not a fatal to the prosecution's case in proving those documents as because a document can be proved by circumstantial evidence as found in AIR 1937 Cal 99 38 Cr LJ 818 which states that – "*Document can be proved by circumstantial evidence.*"

2) **ERRORS IN WRITING DATE** - In the present case the obvious errors of writing wrong date in inspection memo (written 19.07.2017 instead of 21.07.2017) is only insignificant procedural irregularity and is of no significance because with ample evidence the fact of initiation of FIR and first seizure was proved to be on 21.07.2017 and not on 19.07.2017.

3) <u>LEADING STATEMENT OF ACCUSED NOT WRITTEN IN CD BUT STATED IN DEPOSITION BY 1ST I/O</u> –

The prosecution further wants to submit that as per the paras 70 and 72 of S.C Bahri V. State of Bihar AIR 1994 SC 2420; para 69 of Mohd. Arif V. State (NCT of Delhi) (2011) 13 SC 621 - *the statements of A1 and A3 were not reduced to writing, that also will not prevent the applicability of Section 27 of the Evidence Act.* ***Failure to record the disclosure statement is not fatal to the prosecution.*** *What is important is that the investigating officer should credibly depose before Court regarding the fact discovered.*

4) **MINOR DISCREPANCIES IN SEIZURE LIST OF ACCUSED'S MOBILE** - That the defence story was repeatedly reflected on the point of conventional seizure procedures of tag, label etc. which if at all presents in this case is of no consequence or significance as mobile always carry the best and the exclusive identity that is IMEI number which is not so fragile like tag, label etc. and which cannot be deleted or destroyed by any means. That the IMEI Number, CDR, SDR, CAF is an ultimate proof of the physical device and his virtual identity beyond the control of investigating agency or any individual to destroy the same that is why the Hon'ble Court opines this way in **Gajraj v. State (NCT of Delhi) Criminal Appeal No. 2272 of 2010, decided on September 22, 2011** *-Use and possession of mobile handset of murdered person, stolen at time of incident, on date of murder itself, by accused,* ***as mobile phone SIM number registered in name of accused- Establishment of – Exclusiveness of IMEI (International Mobile Equipment Identity) number of every mobile handset – Utilised in proving guilt of accused – Existence of even serious discrepancy in oral evidence, held to yield to conclusive scientific*** *evidence.*

5) **CONTRADICTION** - In cross examinations the defense tried to established that the PW – 05 (authorized representative of the institution from where the accused person continuing his studies) is not well conversant with English language but the exact degree of his knowledge on English language was not clear from the trend of cross examination and on the contrary the I/O of this case has emphatically stated that he knew English. His testimonials before the open court of law are a clear proof that he is having a well to do knowledge in English language.

6) **USING SEC. 311 CR.P.C. IN ABSENCE OF STATEMENT U/S 161 CR.P.C.** - In the middle of the trial the prosecution has filed an application u/s 311 Cr.P.C. for adducing evidence of four witness which was allowed on merit as they have played active role in investigations as per the material of the CD and lateron they were accordingly examined and cross examined. For those witnesses there was no statement u/s 161 Cr.P.C. but on that score, there was no infirmity or latches in the prosecution case in light of celebrated observations by the Hon'ble Apex Court.

7) <u>SIGNATURE PROVING BY ANOTHER</u> AND PRODUCING EVERY WITNESS–

As per the mandate of section 47 of the Indian Evidence Act which states that, "*Opinion as to handwriting, when relevant.—When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.*"

Unless there are some special circumstances making it obligatory for a party to produce evidence, no adverse inference can be drawn unless a party has been called or ordered to produce such evidence and fails to do so –

Standard Chartered Bank v Andhra Bank (2006) 6 SCC 94 ;

Bilas Kumar v Desraj AIR 1915 PC 96.

Ramrati v Dwarika AIR 1967 SC 1134 ;

Indira v Sheolal (1988) 2 SCC 488

8) **ADMISSIBILITY OF STATEMENT U/S 65B OF EVIDENCE ACT** – The VG and the Bank Manager have submitted their respective statements u/s 65B of the Indian Evidence Act after submission of the charge-sheet.

As per the opinion cited in **Paras Jain and Ors. v. State of Rajasthan, MANU/RH/1150/2015 –**

" My opinion such evidence can be produced subsequently also as it is well settled legal position that the goal of a criminal trial is to discover the truth and to achieve that goal, the best possible evidence is to be brought on record……

When legal position is that additional evidence, oral or documentary, can be produced during the course of trial if in the opinion of the Court production of it is essential for proper disposal of the case, how it can be held that the certificate as required under section 65-B of the Evidence Act cannot be produced subsequently in any circumstances if the same was not procured alongwith the electronic record and not produced in the court with the charge-sheet. In my opinion it is only an irregularity not going to the root of the matter and is curable."

9) **TYPING ERROR OF IMEI NO. IN THE LABEL OF MOBILE OF ACCUSED** - The mobile which has been seized from the accused person carries like any other mobile two exclusive IMEI Numbers which carry the exclusive identity of the said mobile. As a matter of fact the said mobile when labeled for sending the same to CFSL there was a typographical error wherein two digits were omitted. It is purely a bonafide typographical mistake and a minor discrepancies which in no way affecting the material evidences which is as follows –

a) The mentioning of IMEI No. in the seizure list which was duly been proved by the PW 14 and PW 17 as exhibit.
b) The CFSL report has given one of the IMEI No. being 358960061307271
c) Even if the court wants at the time of appreciation of evidence can type *#06# to find out the existing IMEI No. of the mobile seized from the accused being MAT Exhibit no. 08.

10) **I/O IS NOT BOUND TO RECORD EVERYTHING IN STATEMENT U/S 161 CR.P.C. –** That the contradiction of I/O is of no use. The facts stated by the I/O was only confronted with concerned statement u/s 161 Cr.P.C. but not with the CD at the time of Cross examination. Again, the facts omitted in statements recorded u/s 161 Cr.P.C. of the PW 11 and PW – 16 were mostly relates to seizure or procedures effected before I/O which has been otherwise proved through seizure list and seizure witnesses. Hence minor discrepancies i.e. the omissions which are not material cannot get the status of fruitful contradiction. As per the judgement made in **AIR 1979 SC 1234 : 1979 CrLJ 1027 : 1980 Supp. SCC 157 , As held in Narayan vs State , (2000)8 SCC 457** - "*Insignificant omissions in the statement of witnesses to the police are no ground for disbelieving them*".

CONDUCT OF THE ACCUSED

During investigation CID has sent a query u/s 91 Cr.P.C. to the porn website to obtain details and source from where the alleged videos have been uploaded. In reply of the same the investigating agency came to know and one of the officers of CID being PW -11 in the case states in his examination-in-chief before the Ld. Court that –

"The URL ends with badF224 plus other four video URLs has been uploaded using email id animeshbokshi18@gmail.com under user name "Anibokshi". The "last_login" on "07/20/2017" (mm/dd/yyyy) and the current "status" of video is "deleted" and "status_reason" is "Self Deleted" ."

Hence there is clear proof that accused have caused the disappearance of evidence and thus his intention was malafide.

MOTIVE ESTABLISHED

That the revenge has been established by proving that the accused pressurized, forced the PW -01 by stating her to go for outing and when she refused his proposal he was in a revenge mood and threatened her and committed the heinous crime of uploading the hacked or unauthorizedly obtained the nude videos on internet by labeling her name and her father's name.

73 CWN 468, 475 ; AIR 1955 SC 807, 810 ; 1955 CrLJ 1653

JUDGEMENTS RELIED UPON

The prosecution has relied upon more than 300 judgements including the judgements of Honourable Apex Court and Foreign Courts as well.

SL. NO.	CITATION	BRIEF NOTE
1)	AIR 1971 SC 691 ; AIR 1971 SC 69 : 1970 Cr LJ 820 ; AIR 1971 SC 820 : 1971 CrLJ 23	Imaginary possibilities are unacceptable. Ordinary human probabilities sufficient.
2)	Ajmal Amir Kasab vs State of Maharashtra (2012)9 SCC 1 : (2012)3 SCC (Cri) 481	The relevance of electronic evidence is also evident in the light of Mohd.....
3)	AIR 1973 SC 2622 : 1973 Cr LJ 1783 ; 1992 Cr LJ 238 (para 12) (Ker)	Damages of exaggerated devotion to the rule of benefit of doubt at the expense of social defence. The doctrine of reasonable doubt not to be stretched morbidly to embrace every hunch, hesitancy and degree of doubt.
4)	1978 Cr LJ 766 (SC)	Proof beyond reasonable doubt is not perfect proof. It is a guideline and not a fetish.
5)	1993 Cr LJ 187 (SC)	Evidence of a sole eyewitness who received injury must be wholly reliable

Sl. No.	CITATION	BRIEF NOTE
6)	AIR 1990 SC 209 : 1990 Cr LJ 562 ; 1994 Cr LJ 2104, 2116 (SC)	Exaggerated devotion to the rule of benefit of doubt must not nature fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice.
7)	State vs Lekh Raj (2000)1 SCC 247; see State vs Dibakar (2000)5 SCC 323	The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The traditional, hypertechnial approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial.
8)	1992 Cr LJ 2049 (Ker)	Straightforward and trustworthy evidence of relative witness cannot be thrown away on the ground of interestedness.
9)	AIR 1971 SC 28	Evidence of investigating Officer conducting a search may be relied upon . Corroboration not necessary.
10)	Ram Kumar vs State (NCT) of Delhi AIR 1999 SC 2259	Where no independent witness is available, the evidence of the police officers can not be discarded when it is found to be reliable

Sl. No.	CITATION	BRIEF NOTE
11)	AIR 1952 SC 54 : 1952 Cr LJ 547	A girl or women is extremely reluctant to admit an incident which reflects on her chastity. There is a built-in assurance that the charge is genuine rather than fabricated.
12)	AIR 1972 SC 667 : (1972)3 SCR 58 : 1972 Cr LJ 487 ; AIR 1947 SC 839. See also AIR 1956 SC 460: 1956 Cr LJ 827	Unless it is proved that witness has a motive to spare the real offender and to implicate the accused the relative witness cannot be disbelieved.
13)	(1974)3 SCC 698 : AIR 1974 SC 276; AIR 1976 SC 83 1976 Cr LJ 21	Relationship with victim is no sufficient reason to discard the evidence.
14)	1992 Cr LJ 196 (All)	witness nothing to gain from accused cannot be disbelieved simply because I.O. did not examine him
15)	1981 Cr LJ 646 (SC)	identification by torch. Factum of presence of torch corroborated by eyewitnesses. Omission to refer to torch in FIR and in statement under sec. 161 Cr.P.C. immaterial.

Sl. No.	CITATION	BRIEF NOTE
16)	**AIR 1981 SC 1390 : 1981 Cr LJ 1012**	**'Related' is not equivalent to 'interested'. 'interested' is who wants to see a person punished.**
17)	**1980 Cr LJ 1330 (SC)**	Interested testimony can be the basis of conviction even without corroboration if the same is **intrinsically reliable and inherently probable.**
18)	**AIR 1978 SC 1511: 1978 Cr LJ 1531**	Evidence of seizure tendered by I.O. convincing Seizure witnesses do not support prosecution version **Recovery evidence cannot be rejected.**
19)	**1983 Cr LJ 1096 (SC); 1991 Cr LJ 1195 (Pat).**	**Much importance should not be given to minor discrepancies. They can be overlooked unless discrepancies go to the root of the matter to impeach basic version. Further, version here is supported by probabilities.**
20)	**1963 Cr LJ 377**	**Court is not always bound to reject the prosecution version on account of discrepancy between given in court and FIR.**

Sl. No.	CITATION	BRIEF NOTE
21)	AIR 1971 SC 1789	Minor variances cannot dislodge prosecution story proved beyond reasonable doubt.
22)	1991 Cr LJ 1195 (Pat).	Minor discrepancy not going to the case to be overlooked if testimony as a whole is reliable.
23)	1991 Cr lJ 1269 (Guj)	Minor discrepancy due to lapse of memory immaterial.
24)	AIR 1973 SC 2195	Exaggeration and falsehood on points which do not touch the core of the prosecution story are not be given undue importance .
25)	AIR 1980 SC 1322: 1980 Cr LJ 958	Improvement of the story at the trial in one material particular. Entire evidence cannot be rejected. Court to sift very carefully.
26)	AIR 1963 SC 151 : (1963)2 SCJ 35 : (1963)2 SCR 774.	There is no difference between conclusive proof and conclusive evidence.
27)	11 CWN 266	Secs. 6 to 9 and 14 deal with accompanying circumstances. Such circumstances are best and most proximate evidence of the nature and quality of the fact in issue.

Sl. No.	CITATION	BRIEF NOTE
28)	ILR 1941 Kar 525 : AIR 1942 Sind 11	Evidence of footprint at or near the scene of offence. Or that footprint came from a particular place or led to a particular place is relevant.
29)	39 CWN 368;37 CrLJ 775	Statement of the accused accompanying or explaining his conduct is relevant.
30)	AIR 1936 Cal 316	Verbal statement to a police officer during the time of recovery of articles in pursuance of information of an accused in custody is admissible.
31)	AIR 1979 SC 400 : 1979 CrLJ 329	Conduct of an accused during the course of an investigation is admissible.
32)	ILR 31 All 592 (FB)	Accused took the police to certain place and there pointed out and produced ornaments worn by the deceased girl before disappearance. It is admissible.
33)	AIR 1935 Cal 184 : ILR 62 Cal 572 : 36 Cr LJ 808	Act of production by the accused is a conduct and so is admissible.

Sl. No.	CITATION	BRIEF NOTE
34)	AIR 1955 SC 104 : 1955 CrLJ 196	Accused made statement and led police to A who dug out incriminating articles from under earth at the instance of the accused. It is no evidence under section 27. It is evidence of conduct of the accused admissible against him along.
35)	AIR 1979 SC 400 : 1979 Cr LJ 329	Conduct of an accused unaccompanied by his statement before police is admissible. Evidence of Conduct is not hit by sec. 162 CrPC.
36)	1994 CrLJ 555, 563, 564 (Ker)	Accused opened a box in his house and produced a watch before the police. Watch identified as belonging to deceased. Conduct admissible.
37)	AIR 1960 SC 500 ; 1960 CrLJ 682	Piece of conduct can be held to be incriminating which has no reasonable explanation except on the hypothesis that he is guilty. **Conduct which destroys the presumption of innocence is material.**
38)	Darshan Singh vs state 1995 SCC (Cr) 70.2	When the prosecution has established all the circumstances connecting the accused with a crime and in the absence of any explanation, it cannot be said that the conduct of the accused has to be ignored and need not be taken into account.

Sl. No.	CITATION	BRIEF NOTE
39)	A.N. Venkatesh vs state (2005)7 SCC 714 : 2005 CrLJ 3732	Even if disclosure statement under sec. 27 is found inadmissible still it is relevant under section 8 as conduct of the accused.
40)	73 CWN 468, 475; AIR 1955 SC 807, 810; 1955 CrLJ 1653	If there is a clear proof is motive for crime, it will be an additional support to the finding of guilt. But there cannot be a contrary conclusion in the absence of proof of motive.
41)	AIR 1962 Cal 504 : (1962)2 Cr LJ 354	Circumstantial evidence leading to conclusion of guilt. Motive is not crucial
42)	AIR 1981 SC 1021 : 1981 CrLJ 714	Prosecution is not bound to prove motive ; but motive is proved by prosecution, court has to consider it and see whether it is adequate.
43)	AIR 1972 SC 54 : 1972 CrLJ 7	Motive and opportunity to commit the crime present. Circumstantial evidence excludes the reasonable possibility of any one else being the culprit. The accused become fixed.

Sl. No.	CITATION	BRIEF NOTE
44)	1981 CrLJ 743 (SC)	Conviction is tenable even if motive is not proved.
45)	State vs Jeet Singh (1999)4 SCC 370; see also Nathuni vs State (1998)9 SCC 238 and State vs Babu Ram (2000)4 SCC 515	Every criminal act is done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused.
46)	State vs Navjot Sandhu (2005) 11 SCC 600 : 2005 Cr LJ 3950	Statement are admissible under section 8 when they accompany and explain acts other than statement.
47)	AIR 1972 SC 975	Information leading to discovery of shop wherefrom accused purchased the offending weapon. Admissible under sec. 8
48)	AIR 1952 SC 167: 1952 Cr LJ 683: 1952 SCR 839: 1952 SCJ 230	Several accused stated that dead bodies could be recovered in nala. Nala stretching over several miles. Accused pointed out the exact place Discovery.

Sl. No.	CITATION	BRIEF NOTE
49)	Anter Singh vs State (2004)10 SCC 657: AIR 2004 SC 2865: 2004 Cr LJ 1380	it is now the settled legal position that the expression "fact discovered" includes not only the physical object produced, but also the place from which is the produced and the knowledge of the accused as to this.
50)	AIR 1957 SC 211: 1957 Cr LJ 328	Statement of the accused that he would give the clothes of the deceased which he had kept in a brick-kiln and thereafter the accused dug out the clothes from the pit is admissible.
51)	1994 Cr LJ 322 (Ker)	Accused led the police to his room shared by others also and produced gold ornaments from the pocket of his pant. Admissible.
52)	1992 Cr LJ 3298 (Guj)	Statement leading to discovery is not involuntary because the police interrogated.
53)	State vs Sunil (2001)1 SCC 652	It is for the accused through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is unreliable. It is not a legally approvable procedure to presume police action as unreliable.

Sl. No.	CITATION	BRIEF NOTE
54)	AIR 1956 SC 217; 1956 CrLJ 426 ; 1974 CrLJ 11 : AIR 1973 SC 2783 ; 1973 CrLR (SC) 600 ; AIR 1965 Punj 27; 1965 CrLJ 76 ; AIR 1970 Tri 1 : 1970 CrLJ 69 ; AIR 1967 Del 26 : 1967 CrLJ 744; AIR 1967 Del : 1967 CrLJ 1138 ; AIR 1967 Raj 10 : 1967 CrLJ 121	It is not proper to distrust a Police Officer without grounds therefor.
55)	AIR 1936 Nag 200 ; AIR 1932 Bom 286 ; AIR 1963 AP 87 ; 42 CrLJ 485 ; AIR 1941 All 145	Statement accompanying and explaining such conduct of the accused is also admissible.
56)	AIR 1956 SC 460 : 1956 CrLJ 827 ; AIR 1971 SC 1656: 1970 SCD 697. See also Murarilal vs State 1997 Cr LJ 782 (SC)	The question of motive loses importance if evidence is clear, cogent and reliable.
57)	51 CWN 200; AIR 1946 PC 187; 1958 CrLJ 362 : AIR 1958 Cal 118; CWN 345; AIR 1973 SC 337 ; 1972 CrLJ 1254	Motive is no sine qua non for brining the offence home to the accused.

FOREIGN JUDGEMENTS

SL. NO.	CITATION	BRIEF NOTE
1)	*See* Fed. R. Crim. P. 41(c).	The probable cause necessary to search a computer or electronic media is probable cause to believe that the media *contains* or *is* contraband, evidence of a crime, fruits of crime, or an instrumentality of a crime.
2)	*See, e.g., United States v. Horn*, 187 F.3d 781, 787-88 (8th Cir. 1999)	Evidence of crime can include evidence of ownership and control
3)	*United States v. Vilar*, 2007 WL 1075041, *35 n.22 (S.D.N.Y. Apr. 4, 2007), quoting Orin S. Kerr, *Searches and Seizures in a Digital World,* 119 Harv. L. Rev. 531 (2005);	In many cases, rather than seize an entire computer for off-site review, agents can instead create a digital copy of the hard drive that is identical to the original in every relevant respect. This copy is called an "image copy"—a copy that "duplicates every bit and byte on the target drive including all files, the slack space, Master File Table, and metadata in exactly the order they appear on the original." (Here the CFSL expert ahs done all the above imaging)
4)	*United States v. Ladd*, 885 F.2d 954, 956 (1st Cir.1989).	Once evidence has met this low admissibility threshold, it is up to the fact finder to evaluate what weight to give the evidence.
5)	*United States v. Gagliardi*, 506 F.3d 140, 151 (2d Cir. 2007).	The proponent need not prove beyond all doubt that the evidence is authentic and has not been altered.

SL. NO.	CITATION	BRIEF NOTE
6)	*Lorraine v. Markel American Ins. Co.*, 241 F.R.D. 534, 544 (D. Md. 2007)	Authentication requirements are "threshold preliminary standard[s] to test the reliability of the evidence, subject to later review by an opponent's cross-examination."
7)	*United States v. Catabran*, 836 F.2d 453, 458 (9th Cir. 1988); *United States v. Tank*, 200 F.3d 627, 630 (9th Cir. 2000).	Notably, once a minimum standard of trustworthiness has been established, questions as to the accuracy of computer records "resulting from . . . the operation of the computer program" affect only the weight of the evidence, not its admissibility.
8)	*See generally* *United States v. Whitaker*, 127 F.3d 595, 601 (7th Cir. 1997)	Instead, the witness simply must have first-hand knowledge of the relevant facts, such as what the data is and how it was obtained from the computer or whether and how the witness's business relies upon the data.
9)	*United States v. Tank*, 200 F.3d 627, 630-31 (9th Cir. 2000)	district court properly admitted chat room log printouts in circumstances similar to those in *Simpson.*

SL. NO.	CITATION	BRIEF NOTE
10)	*See, e.g., United States v. Simpson*, 152 F.3d 1241, 1249-50 (10th Cir. 1998) (applying general rule 901(a) standard to transcript of chat room discussions) *In re F.P.*, 878 A.2d 91, 95-96 (Pa. Super. Ct. 2005)	"We see no justification for constructing unique rules for admissibility of electronic communications such as instant messages; they are to be evaluated on a case by case basis as any other document to determine whether or not there has been an adequate foundational showing of their relevance and authenticity."
11)	*United States v. Siddiqui*, 235 F.3d 1318, 1322-23 (11th Cir. 2000)	email messages were properly authenticated where messages included defendant's email address, defendant's nickname, and where defendant followed up messages with phone calls.
12)	Compare Laughner v. State, 769 N.E. 2d 117, 1159 (Ind. Ct. App. 2002)	AOL Instant Message logs that police had cut-and-pasted into a word-processing file satisfied best evidence rule.
13)	Advisory Committee Notes, Proposed Federal Rule of Evidence 1001 (3) (1972)	While strictly speaking the original of photograph might be thought to be only the negative, practicality and common usage require that any print from the negative be regarded as an original. Similarly, practicality and usage confer the status of original upon any computer printout.

SL. NO.	CITATION	BRIEF NOTE
14)	*Cf. United States v. Gagliardi*, 506 F.3d 140, 151 (2d Cir. 2007) (transcript of instant message conversations that were cut and pasted into word processing documents were sufficiently authenticated by testimony of a participant in the conversation).	Courts should admit even "cut and paste" documents in many contexts.
15)	*United States v. Vilar*, 2007 WL 1075041, at *35 n.22 (S.D.N.Y. Apr. 4, 2007), quoting Orin S. Kerr, *Searches and Seizures in a Digital World*, 119 Harv. L. Rev. 531 (2005)	Imaging... It results in the creation of an "image copy" of the hard drive—a copy that "duplicates every bit and byte.....
16)	*Salgado*, 250 F.3d at 453 ("The government is not required to present expert testimony as to the mechanical accuracy of the computer where it presented evidence that the computer was sufficiently accurate that the company relied upon it in conducting its business.");	While expert testimony may be helpful in demonstrating the reliability of a technology or computer process, such testimony is often unnecessary.

SL. NO.	CITATION	BRIEF NOTE
17)	**Deo v. United State, 805 F. Supp. 1513, 1517 (D. Haw. 1992)**	**The Federal Rules of Evidence have expressly addressed this concern. The Rules state that "[i] f data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an 'Original'." Fed. R.Evid. 1001 (3). Thus, an accurate printout of computer data always satisfies the best evidence rule.**
18)	**Reno v. American Civil Liberties Union, 521 U.S. 844 (1997)**	Sexually Explicit Material on the Internet includes text, pictures, and chat and "extends from the modestly titillating to the hardest-core." 11 These files are created, named, and posted in the same manner as material that is not sexually explicit, and may be accessed either deliberately or unintentionally during the course of an imprecise search. "Once a provider posts its content on the Internet, it cannot prevent that content from entering any community."

SL. NO.	CITATION	BRIEF NOTE
19)	*United States v. Safavian*, 435 F. Supp. 2d 36, 41 (D.D.C. 2006). *United States v. Whitaker*, 127 F.3d 595, 602 (7th Cir. 1997) *United States v. Bonallo*, 858 F.2d 1427, 1436 (9th Cir. 1988) ("The fact that it is possible to alter data contained in a computer is plainly insufficient to establish untrustworthiness.") *United States v. Glasser*, 773 F.2d 1553, 1559 (11th Cir. 1985) ("The existence of an air-tight security system [to prevent tampering] is not, however, a prerequisite to the admissibility of computer printouts. If such a prerequisite did exist, it would become virtually impossible to admit computer-generated records; the party opposing admission would have to show only that a better security system was feasible.").	Because electronic records can be altered easily, opposing parties often allege that computer records lack authenticity because they have been tampered with or changed after they were created. Importantly, courts have rejected arguments that electronic evidence is inherently unreliable because of its potential for manipulation. As with paper documents, the mere possibility of alteration is not sufficient to exclude electronic evidence. Absent specific evidence of alteration, such possibilities go only to the evidence's weight, not admissibility.

On the point of punishment

While dealing with section 4 of the Probation of Offenders Act, 1958 it was observed that in such case that section 4 of Probation of Offenders Act could be restored to when court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct. This court is not in a state of mind to apply section 4 of the Probation of Offenders Act as well as section 360 Cr. PC considering the galloping trend in sexual harassment of women in India when the offences is related to u/s 354A/354C/354D/509 of Indian Penal Code and sections 66E/66C/67/67A Information Technology Act 2000 (Amendment 2008) as it would convey a wrong message to the society.

While considering the quantum of sentence to be imposed for such an offence one of the prime considerations should be deterrence. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. So, it is the duty of the court having regard the nature of the offence and the manner in which it was executed and committed. It is to be decided considering the facts and circumstances of the case the factors and the circumstances in which the crime had been committed. There is no full proof formula that would provide a reasonable criteria in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. The object of the court should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. The social impact of crime against women have great impact on social order and public interest cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking sympathetic view will be against social interest. Thus this court has not only to keep in 135 view the rights of the offender but also the rights of the victim of the crime and the society at large while considering the imposition of sentence.

Virtual rape

In this instant case the convict ……..by uploading the nude pictures and videos of the victim of this case in the virtual world is not only restricted to India but is available all over the world and everyday virtual rape is committed against the victim of this case when someone sees the video in the virtual world. Even for sake the contents are removed from the virtual world but what will happen if anybody had already downloaded those and again it will spread in the virtual world and it will never end and virtual rape will be committed against the victim till the last day of her life.

In Alister Anthony Pareira Vs. State of Maharashtra (AIR 2012 SC 3802) the Hon'ble Apex Court held that “Sentencing policy is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no strait jacket formula for sentencing and accused on proof of crime. The courts have evolved certain principles: twin objectives of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence”

Crimes against women are increasing day by day even in the virtual world

Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of heinous crime and when the offence is committed where the victim is a women. In this present case the 134 crime committed is a crime against woman. Crimes against women are increasing day by day even in the virtual world and this is high time when stringent measures are to be adopted to suppress this menace.

Inadequate sentence can do harm to society

The convict ……who is a student of Engineering College knows about the consequences of it very well. The type of crime as committed by the convict this court thinks that the sentence will run as per section 31 of Cr. PC. as regarding this the court followed the judgment (2015) 2 Supreme Court Cases 501. Women should be treated with utmost respect and if the court starts liberal approach towards such offences then the society at large will be at sake. Thus inadequate sentence can do harm to the society. This court also holds that the victim is entitled to get compensation under the victim compensation scheme.

SENTENCING & JUDGEMENT

Observing and considering all the evidences from witnesses as well as the documents and material exhibits came before the Learned Court, the Learned Court passed the judgement –

The accused person has been sentenced for -

- **Five years of imprisonment**
- **Rs. 9,000/- (Rupees Nine Thousand) as penal charges in default simple imprisonment for 6 months.**

The Learned Court further ordered for compensation to the Victim under the Victim Compensation Scheme from the District Legal Services Authority, Purba Medinipur as per the provision of section 357A of Cr.P.C. in accordance with law.

THANKS FOR PAYING ATTENTION TO

MR. BIVAS CHATTERJEE

Special P.P.

Cyber Crime and Electronics Evidence related cases

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