STATE OF KARNATAKA

v.

DAVID RAZARIO AND ANR.

SEPTEMBER 17, 2002

[U.C. BANERJEE AND ARIJIT PASAYAT, JJ.]

Evidence Act, 1872—Section 27:

Accused allegedly committing murder and robbery—Evidence relating to recovery—Trial Court convicting the accused on the basis of evidence—High Court setting aside the same—Correctness of—Held, High Court erred in acquitting the accused—Penal Code, 1860—Sections 302 and 392.

Conviction—Whether could be based only on recovery of items—Held, Question need not be decided since prosecution case is not based only on such recovery.

According to the prosecution an octogenarian lady was robbed and murdered by accused-respondents. Investigation Officer found one tape recorder missing from the deceased's house. Few days later accused were arrested in another case of theft. One of the accused viz. A2 led Investigating Officer to the shop of PW-21 to whom he had sold the tape recorder after redeeming the same from PW-8-pawn broker. Investigation officer seized pawn ticket receipt and also recovered the weapon by which deceased was assaulted on basis of the information given by A2. Trial Court convicted A1 and A2 under section 302 read with section 34 and section 392 read with section 34 IPC. However, High Court set aside the conviction. Hence the present appeal.

Appellant-State contended that High Court was wrong in setting aside the conviction by a sketchy and non-reasoned order.

Respondent contended that trial court applied Section 27 of the Evidence Act to record conviction when the same cannot be the only foundation for conviction; that High Court rightly stressed upon the fact that the tape recorder was of very small value and for that the accused persons could not have taken the life of an elderly lady; and that there was no evidence to show that the tape recorder which was pawned belonged to the deceased.

A **Allowing the appeal, the Court**

HELD: 1.1 The High Court was clearly in error in directing acquittal of the respondents-accused. The evidence of PW-8 and PW-21 are of significance. PW8 who runs pawn broker shop stated that the accused were frequently visiting his shop and on day of the incident they pledged a tape
B **recorder which was redeemed the next day. PW21 stated that A2 approached him with an offer to sell a tape recorder, which was pledged with PW-8. He identified the tape recorder which was sold by the accused. Employee of PW-8 corroborated the statement of PW 8. Oral evidence of prosecution witnesses, the documentary evidence relating to the tape recorder, customs invoice and**
C **the colour photograph established that the tape recorder that was earlier with the deceased was the same that was pawned by the accused with PW8 and was subsequently sold to PW21. Furthermore forensic reports disclosed that blood group found on the weapon which was used for assaulting the deceased was the same as found on the shawl which the deceased was wearing.**

[424-C, D, E, G, H; 425-A, B, E]

D

1.2. The plea that the accused could not kill an old lady for an article of very small value particularly when article of higher value were not touched is based on suppositions. In view of the credible evidence on record, it is not necessary to fathom as to what was in the mind of the accused or find out why
E **valuable articles were not lifted. [425-C, D]**

1.3. Instant case is not a case where the prosecution case rests only on the evidence in terms of Section 27 of the Evidence Act. That was only one of the pieces of evidence. It is, therefore, not necessary to decide the question as to whether conviction can be recorded only on the basis of such
F **recovery. [425-E]**

Delhi Admn. **v.** *Balakrishan,* **AIR (1972) SC 3;** *Md. Inayatullah* **v.** *State of Maharashtra,* **AIR (1976) SC 483;** *Palukuri Kotayya* **v.** *Emperor,* **AIR (1947) PC 67 and** *State of Maharashtra* **v.** *Danu Gopinath Shirde and Ors.,* **(2000) Crl. LJ 2301, relied on.**

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 844 of 1995.

From the Judgment and Order dated 23.3.92 of the Karnataka High Court in Crl. A. No. 388 of 1989.

H M. Veerppa for the Appellant.

Naresh Kaushik, Ms. Lalita Kaushik and Shree Pal Singh, (N.P) For the Respondents. A

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. An octogenarian old lady was the victim of robbery and murder allegedly committed by the respondents-David Rozario and Christopher David (hereinafter referred to as A1 and A2 respectively for convenience). B

Prosecution version sans unnecessary details is as follows:

The deceased who had three children residing abroad, was staying alone in her house at No. 47, Stephen's Road, Frazer Town, Bangalore City. A maid-servant Tayarmma (PW5) was working in her house and also in the house of Mrs. Joyce wife of Holmes (PW10). In the evening of 20.12.1986 the fateful day, PW5 as usual served coffee to the deceased in her house and went to the house of PW10 to work there, and was there till about 8.00 p.m. Thereafter, she left the place to go to her house, which was situated on the back side of deceased's house. When she was near the house of the deceased, she saw the electric lights in the house of the deceased were burning, and also noticed that the front door of the house was closed. While the back door was open she entered the house of the deceased through back door and came to the hall, where she saw the deceased sitting on a chair with blood all over the body. The deceased had sustained head injury, which was bleeding PW5 ran out screaming to the house of Mrs. Joyce and brought her husband PW10 along with her to the house of deceased. They also called another person PW-7. They took the deceased in injured condition to the Nursing Home of Bikram Chand (PW14). Since the deceased had sustained injuries on the head, the doctor PW14 requisitioned an Ambulance and sent her to the Nimhans Hospital for further treatment. In spite of treatment she could not regain consciousness and passed away around mid-night. Intimation was sent by the doctor to the police station. First information report was accordingly recorded and investigation was undertaken. On 26.12.1986 information was gathered by the Investigating Officer about one tape recorder which was missing from the house of the deceased. The tape recorder (M.O.2) was of foreign make. It came to light that the said tape recorder was gifted by her daughter to the deceased. Some days after the date of the incident the accused persons were arrested in another case of theft of a T.V. set. Accused no.2 led the Investigating Officer and others to a shop where Dilip Ghodke (PW-21), the owner of the shop was asked by A2 to bring the tape recorder C D E F G H

A which he had sold to him, after redeeming the same from the pawn broker Mohammed Ilyas (PW-8). Relevant pawn ticket receipts were seized by the Investigating Officer. On the basis of the information given by the accused persons recovery was made of the weapon i.e. an Iron Rod (M.O.4.) The VII Additional Sessions Judge, Bangalore, on the basis of evidence on record found the accused-appellants guilty under Section 302 read with Section 34 B and Section 392 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') They were sentenced to undergo imprisonment for life and rigorous imprisonment for a period of 5 respectively for the aforesaid two offences. The Devision Bench of the Karnataka High Court set aside the conviction.

C The State of Karnataka is in appeal before this Court . Learned counsel for appellant-State submitted that the High Court by a sketchy and practically non-reasoned order has set aside the conviction. Learned counsel for the respondents on the other hand submitted that the High Court has rightly stressed upon the fact that the tape recorder was of very small value and two persons could not have the life of an elder lady. According to him. Section D 27 of the Indian Evidence Act, 1872 (in short ' Evidence Act') was applied by the trial court to record conviction when the same cannot be the only foundation for conviction.

It has to be noted that primarily what seems to have weighed with the E High Court, is the meager value of the tape recorder. It was also observed that there was no evidence to determine as to when cassette player was stolen and came to the possession of accused with the knowledge that it was stolen.

The first question is whether the evidence relating to recovery is sufficient to fasten guilt on the accused Section 27 of the Evidence Act is F by ways of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by this Court in *Delhi Admn.* v. *Balakrishan,* AIR (1972) SC 3 and *Md. Inayatullah* v. *State of Maharashtra,* AIR (1976) SC 483. The words "so much of such information" as relates distinctly to the fact thereby discovered, G are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the Legislature that a person under police influence might be H induced to confess by the exercise of undue pressure. If all that is required

to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. The object of the Provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequences of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body; weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of Privy Council in *Palukuri Kotayya* v. *Emperor,* AIR (1947) PC 67, is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [see *State of Maharashtra* v. *Damu Gopinath Shirde and Ors.*, (2000) Crl.L.J., 2301]. No doubt, the information

A B C D E F G H

A permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the article is not indicative of the information given.

In the instant case the evidence of PWs 8 and 21 are of significance. PW 21 has stated that in the evening of 21.12.1986 he was sitting in the shop of his father, when A2 approached him with an offer that they (A1 and A2) intend to sell a tape recorder, which was pledged with a pawn broker PWs. They also showed him the pawn ticket. He gave Rs. 240 to one of the accused and other one was asked to sit in the shop so that the first one can go and bring the tape recorder. After finding that the same was in good condition the extra amount of Rs. 15 was given to them. Thereafter, Ex. P18 was prepared and it was signed by one of the accused on the stamp paper and was attested by the other. He identified the tape recorder (M.O.2.) which was sold by the accused. PW8 who runs pawn broker shop stated that the accused were frequently visiting his shop and on 20.12.1986 they pledged a tape recorder which was redeemed on 21.12.1986. Sale receipt Ex.P8 was produced. Dhanraj (PW-16) is an employee of PW8 who stated that the tape recorder was pledged on 22.12.1986 and was redeemed by A1. In the pawn broker's records, A1 has signed as Peter Brown. At this juncture, it is relevant to take note of Section 114 of the Evidence Act. Illustration (a) provides that a presumption arises that when a man is in possession of stolen goods soon after the theft, he is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. Presumption of facts are assumption resulting from one's experience of the course of natural events of human conduct and human character, and all those which one is entitled to make use of or has to make use of in the ordinary course of life, as well as the business of Courts. It was submitted by the learned counsel for the accused that there is no evidence that the one tape recorder which was pawned belonged to the deceased. This plea is without any substance. The oral evidence of R.S. Macdermott (PW-2), Tayarmma (PW-5) and M.W. French (PW-6) clearly show that M.O.2. was one which belonged to the deceased. This article was gifted to the deceased by her daughter. Documentary evidence of the tape recorder, customs invoice and the colour photograph (M.O.3) clearly establish that the tape recorder which was earlier with the deceased was the same one which was pawned by the accused with PW8 and was subsequently sold to

PW21. From the evidence of PW-5, it appears that deceased wrapped in shawl, when she first found her bleeding on account of injuries. The weapon used in the assault for causing injuries on the deceased and blood stained shawl (M.O.1) were sent for forensic examination Forensic reports disclosed that blood group found on the weapon (M.O.4) was the same as was found on the shawl (M.O.1). A B

A faint plea was made by the learned counsel for the accused that for an article of very small value, no one would kill an old lady, particularly when the articles of higher value were not touched. This plea is really based on suppositions. Robbery can be made of articles which are easy to be disposed of. Articles of a particular category, for example, electronic goods may be preferred. It is on record that the accused-respondents were arrested in another case of theft of T.V. set. Without going into the merits of that case, it can only be said by way of illustration that there may be fascination for selling goods of particular category which are easy to carry and are easily disposable. In view of the credible evidence on record, it is not necessary to fathom as to what was in the mind of the accused or find out why valuable articles were not lifted. This is not a case where the prosecution case rests only on the evidence in terms of Section 27 of the Evidence Act. That was only one of the pieces of evidence. It is, therefore, not necessary to decide the question as to whether conviction can be recorded only on the basis of such recovery. The High Court was clearly in error in directing the acquittal. The impugned order of the High Court set aside, and that of the trial Court is restored. C D E

The appeal is allowed.

N.J. Appeal allowed. F