

State of Orissa Vs. Ranjan Singh

State of Orissa Vs. Ranjan Singh

SooperKanoon Citation : sooperkanoon.com/1084570

Court : Orissa

Decided On : Aug-14-2012

Appellant : State of Orissa

Respondent : Ranjan Singh

Judgement :

ORISSA HIGH COURT, CUTTACK. DSREF No.1 of 2012 AND Jail Criminal Appeal No.4 of 2012 (From the judgment dated 18.02.2012 and order of death sentence dated 24.02.2012 passed by Shri R.K. Sahu, learned Ad hoc Additional Sessions Judge (F.T.C.-II), Balasore in Sessions Trial Case No.42/52 of 2009, under Sections 302/201, I.P.C.) ----- In DSREF No.1 of 2012 State of Orissa Appellant Respondent Versus Ranjan Singh For Appellant : Mr. Sangram Das, Addl. Standing Counsel. For Respondent : Mr. D.P. Dhal, Advocate. AND In JCRLA No.4 of 2012 Ranjan Singh Appellant Respondent Versus State of Orissa For Appellant : Mr. Goutam Mishra, Advocate. For Respondent : Mr. Sangram Das, Addl. Standing Counsel. ----- 2 PRESENT :THE HONOURABLE MR. JUSTICE L. MOHAPATRA AND THE HONOURABLE MR. JUSTICE C.R. DASH

Date of Judgment :

14. 08.2012

C.R. Dash, J.Twenty-two accused persons including Ranjan Singh were tried in Sessions Trial Case No.42/52 of 2009 by learned Ad-hoc Additional Sessions

Judge (F.T.C.-II), Balasore on the basis of charge under four different heads, i.e. Sections 148/302/149, I.P.C. and Sections 201/149, I.P.C., for committing murder of four persons namely Tia Singh, Surin Singh, Budhini Singh and Sambari Singh and for disposing of the dead bodies to screen themselves from punishment. Ranjan Singh was individually charged further under Section 302, I.P.C. for committing offence of murder on two counts. Learned Trial Court, vide judgment dated 18.02.2012, found Ranjan Singh guilty of the offence under Section 302, I.P.C. on four counts for committing murder of Tia Singh, Surin Singh, Budhini Singh and Sambari Singh and also under Section 201, I.P.C. for causing disappearance of evidence and convicted him thereunder. Other twenty-one accused persons were acquitted of the charge. Vide order of sentence dated 24.02.2012, learned Trial Court passed order sentencing aforesaid Ranjan Singh to suffer death penalty. The Death Sentence Reference by the State and Jail Criminal Appeal by the condemned prisoner Ranjan Singh are directed against the judgment and order of sentence passed by learned Trial Court in the aforesaid sessions trial.

2. A compendium of the prosecution case, as found from the record, is as follows :- 3 On 27.08.2007, one headless dead body of a female was found trapped in between two spurs situated in the bank of river Suna and in that connection Ayodhya Out-Post Case No.143 of 2007 was registered. The dead body however could not be identified. On 29.08.2007 another headless dead body of a male was traced floating in river Suna near Bharipur under Remuna P.S., and in that connection Remuna P.S. Case No.99 of 2007 was registered. On the same day, another (third) headless dead body of a female was found floating in river Budhabalanga near Totapal under Balasore Sadar P.S. and in that connection Balasore Sadar P.S. Case No.172 of 2007 was registered. After post-mortem examination, the headless dead bodies were preserved for identification. The police administration while beating about the bush, could only suspect that all the recovered headless dead bodies might have been connected to one case. In course of investigation, police came to know that the offence was committed at Pratappur village under Nilagiri P.S. All the cases were tagged together and the C.I. of Police, Nilagiri (P.W.29) was entrusted with the charge of investigation of the case. On 31.08.2007 appellant Ranjan Singh and some of the acquitted

accused persons namely Anjan Singh, Narottam Singh and Suvendu Satpathy were arrested. Appellant Ranjan Singh, while in police custody, confessed his guilt and led to recovery of the severed heads of four deceased persons packed in a gunny bag from river Suna. The three headless trunks (dead bodies) with their corresponding severed heads and the severed head of the fourth deceased (whose trunk could not be found) were identified by their respective relatives. It came to light during investigation that son of acquitted accused Siba Singh died of snake bite. Suspecting his death to be result of sorcery, appellant Ranjan Singh, who happens to be the nephew of aforesaid Siba Singh, along with acquitted accused Muna Singh and Sambhu Singh called a meeting in village Pratappur 4 on 24.08.2007 evening. All the deceased persons, some of their family members and other villagers were there in that meeting. The deceased persons were confronted about practice of sorcery by them. When they denied, they were assaulted by all the accused persons (charge-sheeted). In course of such assault, appellant Ranjan Singh dealt a blow to the neck of deceased Budhini Singh by a Kata and beheaded her instantly. In similar fashion, he also beheaded deceased Surin Singh. Witnessing such a ghastly scene, the villagers left the meeting place. Then accused persons, namely, Sambhu Singh, Muna Singh, Kala Singh, Shyam Sundar Singh, Tuna Singh along with appellant Ranjan Singh packed the dead bodies of deceased Surin Singh and Budhini Singh in a gunny bag and proceeded towards river Suna flowing nearby their village. Other two deceased persons, viz. Tia Singh and Sambari Singh were asked to follow them. They had no other choice but to follow them. On the way, accused Muna Singh dealt a blow to the neck of deceased Tia Singh by a Kata and beheaded her. On the river bank, Sambari Singh was also beheaded with a Kata by another accused Sambhu Singh. Thereafter, they threw away the weapon of offence (Kata) and the trunks of the deceased persons into river Suna. They also packed the severed heads of the deceased persons in a gunny bag, put sand into the gunny bag to add weight to it, then tied the gunny bag and threw away the same into the river water. After the incident, none including the relatives of the deceased persons who were present in the meeting, dared to disclose the incident before anybody. The crime however came to be detected in the manner as discussed supra. The C.I. of Police, Nilagiri (P.W.29), on completion of investigation, filed charge-sheet against all the

accused persons implicating them in offence punishable under Sections 147/148/302/201/149, I.P.C. showing two of the accused persons, viz., Dasara Singh and Kala Singh as absconders

3. Trial was taken up by splitting up the case of the absconding accused persons Dasara Singh and Kala Singh. Prosecution examined 29 witnesses to prove the charge against the accused persons. P.Ws. 17, 20, 24, 25 and 26 are stated to be the eye-witnesses to the occurrence. P.Ws. 23, 22 and 19 are the relatives of the deceased persons, who identified the trunks and the severed heads of the deceased persons. P.Ws. 2, 5 and 8 are the witnesses to the recovery of three trunks on 27.08.2007 and 29.08.2007. P.Ws. 9 and 18 are the witnesses to the inquest of the trunks and severed heads of the deceased persons. P.W.14 is an independent witness to the making of confessional statement by appellant Ranjan Singh and recovery of the severed heads at his instance on the basis of such confessional statement. P.W.21 is the photographer of the D.F.S.L., Balasore, who videographed the entire proceeding under Section 27 of the Evidence Act, starting from confessional statement of appellant Ranjan Singh to the recovery of the severed heads of the deceased persons. P.W.12 is the Police Constable, who was engaged for search of the severed heads of the deceased persons in river Suna after the statements made by appellant Ranjan Singh and he also recovered the severed heads of the deceased persons kept tied in a gunny bag from river Suna. P.W.13 is the Revenue Inspector, who had prepared the Spot Map. P.W.11 is the Executive Magistrate, in whose presence recovery of the severed heads of the deceased persons was made and he is also a witness to the inquest over the severed heads. P.Ws. 3, 4, 6, 7 and 10 are the Medical Officers, who conducted post-mortem examination over the trunks and severed heads of the deceased persons. P.Ws. 1, 15, 16, 27, 28 and 29 are the Investigating Officers of the case, out of whom P.W.29 is the principal investigating officer. 6 The defence plea is one of complete denial, but none was examined by the defence.

4. Learned Trial Court, on the basis of recovery of the severed heads of the deceased persons at the instance of appellant Ranjan Singh, held the appellant Ranjan Singh guilty of the offence under Section 302, I.P.C. on four counts and also found him guilty under Section 201, I.P.C. He was accordingly awarded death

sentence.

5. Mr. Goutam Mishra, learned counsel appearing for appellant Ranjan Singh in JCRLA No.4 of 2012 and Mr. D.P. Dhal, learned counsel appearing for the respondent Ranjan Singh in DSREF No.1 of 2012, submit that learned Trial Court has basically relied on the evidence under Section 27 of the Evidence Act to sustain the conviction of the appellant Ranjan Singh, but so far as the materials on record and especially the evidence of P.Ws.29, 12 and 14 are concerned, it canNo.be held that any fact was discovered pursuant to confessional statement made by the appellant and the same circumstance canNo.be held to be incriminatory as against the appellant. It is also contended that the circumstance of recovery of the severed heads on the basis of purported statement under Section 27 of the Evidence Act is, no doubt, a good piece of corroborative evidence, but such evidence alone canNo.be made the basis of conviction so far as offence under Section 302, I.P.C. on four counts is concerned. Mr. Sangram Das, learned Addl. Standing Counsel on the other hand taking us through the evidence of different witnesses, advanced his submissions supporting the impugned judgment and order of sentence

6. evidence. Admittedly, the case is based entirely on circumstantial Learned counsels appearing for Ranjan Singh, with all the vehemence at their commands, submit that except recovery of severed heads of four deceased persons allegedly at the instance of Ranjan Singh, there is no other evidence to sustain the charge and the evidence so adduced purportedly under Section 27 of the Evidence Act suffers from infirmities beyond repair. Learned Addl. Standing Counsel on the other hand taking us through paragraph-32 of the impugned judgment, submits that besides the recovery under Section 27 of the Evidence Act, other five circumstances having been relied on by the learned trial court in returning the finding of guilt as against Ranjan Singh, there is no scope to question the justification so far as the impugned judgment is concerned.

7. Honble Supreme Court in the case of M.G. Agarwal vs. State of Maharashtra, A.I.R. 1963 S.C. 200 has held that it is well established rule of criminal jurisprudence that circumstantial evidence can be reasonably made the basis of

an accused persons conviction, if it is of such a character that it is wholly inconsistent with the innocence of the accused and consistent only with his guilt. It is further held that if the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. Proceeding further, Honble Supreme Court has ruled that in applying the aforesaid principle it is necessary to distinguish between facts which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of basic or primary facts, the Court has to judge the evidence in the ordinary way and, in the appreciation of evidence in respect of proof of those 8 basic or primary facts, there is no scope for application of doctrine of benefit of doubt. In the case of Gambhir vs. State of Maharashtra, A.I.R. 1982 S.C. 1157, Honble Supreme Court has laid down the test of cases based entirely on circumstantial evidence and have held that when a case rests upon circumstantial evidence, such evidence must satisfy three tests - (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else. Proceeding further, Honble Supreme Court has ruled that the circumstantial evidences, in order to sustain conviction, must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should No.only be consistent with the guilt of the accused but should also be inconsistent with his innocence. Same is the view of Honble the Supreme Court in the case of Jaharlal Das vs. State of Orissa, A.I.R. 1991 S.C. 1388 so far as the test of cases based on circumstantial evidence is concerned. Proceeding further in the case of Jaharlal Das (supra), Honble the Supreme Court has given a note of caution by ruling that in cases depending largely upon circumstantial evidences, there is always a danger that conjecture or suspicion may take the 9 place of legal proof, and such suspicion, however so strong, canNo.be allowed to take the place of proof. The Court has to be watchful to ensure that conjectures and suspicion do No.take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence

should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. Bearing in mind the above principles, we proceed to address the evidence obtained on record and the rationale behind the findings by the learned Trial Court.

8. In the present case, in paragraph-26 of the impugned judgment, learned trial court has held thus :In view of the decisions discussed above, in the instant case, from the discovery of fact, i.e. recovery of severed heads of the deceased persons packed in a gunny bag from river Suna pursuant to the disclosure statement made by accused Ranjan Singh, it is proved that : (i) That the severed heads of the deceased persons were packed in a gunny bag; (ii) The said gunny bag tied with severed heads of the deceased persons was concealed in the river Suna in the place from where it was recovered; (iii) Accused Ranjan Singh had got the knowledge about the same.

9. Except some decisions on Section 27 of the Evidence Act and the evidence relating to recovery of the severed heads allegedly at the instance of Ranjan Singh, learned Trial Court has discussed no other circumstance as pointed out by learned Additional Standing Counsel from paragraph-32 of the impugned judgment to arrive at the aforesaid findings. In paragraphs 8 and 10 of the impugned judgment, learned Trial Court has referred to the evidence of 10 P.Ws.17, 20, 22, 23, 24, 15 and 19, but all the aforesaid witnesses have turned hostile and their evidence in no way prove the complicity of the present appellant. Learned Trial Court however has relied on the decision of Honble the Supreme Court in the case of State of Maharashtra vs. Suresh, (2000) 1 S.C.C. 471, where it has been ruled thus - Three possibilities are there when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by him. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But, if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities, the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such

concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by him. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

. (emphasis supplied) Relying on the aforesaid decision, learned trial court, in page-29 of the impugned judgment, has held thus - In view of the above decision, as in the instant case the accused Ranjan Singh failed to explain as to how and under what circumstances he came to know of such concealment, it is to be accepted that he himself had concealed the same.

10. Proceeding further, learned trial court has relied on the case of *Pulu Kuri Kottaya vs. Emperor*, A.I.R. 1947 P.C. 67, to hold that the statement of Ranjan Singh to the effect that they packed the severed heads of the deceased persons in a gunny bag and threw it into the river proves authorship of concealment of the severed heads by Ranjan Singh and none else. Learned trial court has relied on the decision of Honble Kerala High Court in the case of *Joy @ Job and another vs. C.I. of Police*, 1990 Cr.L.J.No.124 (Kerala), which has been quoted in paragraph-31 of the impugned judgment, as follows :What Section 27 of the Evidence Act permits is only proof of that part of the relevant information given by the accused. The extent of the admissible information and its effect in deciding the guilt will depend upon facts of cases. That will have relation to the extent of criminality which the proved information is capable of placing on the accused. The deficiency, if any, will have to be supplied by other items of admissible evidence. The information acting as the Cause. and the discovery of fact. operating as the immediate and proximate effect. of the information, when put together could only lead to the legitimate inference possible. Information regarding the whereabouts of the dead body (subject to identification in case of dispute) and the consequent discovery may, in the absence of cogent, exculpatory explanation, in some cases lead to inference of concealment by the maker and his involvement in the crime. If the information only leads to the inference of the knowledge of the maker that the dead body is there without any involvement on his part in the crime, it may not by itself be sufficient to fix criminality and the remaining links may have to be supplied

by the prosecution because his knowledge can be that somebody else placed the dead body there. If authorship of the concealment is also part of the information given by the accused that is an additional 12 circumstance to fix criminality on him in the absence of any acceptable explanation leading to innocence.

. (emphasis supplied) Relying on the aforesaid decisions, learned trial court concluded thus - In view of the decisions discussed above, the accused Ranjan Singh is to be accepted as the author of the homicidal death of the deceased persons.

11. The discussion in the impugned judgment shows that in paragraph-26 of the impugned judgment, learned trial court has relied on recovery of severed heads of the deceased persons packed in a gunny bag from river Suna pursuant to disclosure statement made by Ranjan Singh and has held the following facts to have been proved :(1) that the severed heads of the deceased persons were packed in a gunny bag; (2) the said gunny bag tied with severed heads of the deceased persons was concealed in the river Suna in the place from where it was recovered; and (3) the condemned convict Ranjan Singh had got knowledge about the same.

12. From the knowledge of Ranjan Singh about the place of concealment of the severed heads, learned Trial Court has drawn the inference of his guilt so far as murder of four persons is concerned. Learned Trial Court has No.taken into consideration any other evidence to arrive at the conclusion regarding complicity of Ranjan Singh in the crime. The inference of guilt of Ranjan Singh from his knowledge about place of concealment of the severed 13 heads is rather imbued with certain principles decided in the judicial pronouncements discussed supra.

13. Proceeding further, in paragraph-32 of the impugned judgment, learned trial court has summarized the evidence adduced by the prosecution under the following heads :(i) As per the oral evidence of P.W.19 and P.W.24, the cousin brother of accused Ranjan Singh died due to snake bite. (ii) Suspecting his death to have been caused by the practice of witchcraft, a meeting was called in the village. (iii) To that meeting all the four deceased persons were called and they did No.return back from the meeting. (iv) Subsequently, trunks (headless dead bodies)

of the three of the deceased persons were recovered in the down stream of river Suna. (v) During police custody, accused Ranjan Singh made disclosure statement that they had packed the severed heads of the deceased persons in a gunny bag and thrown into river Suna and pursuant to his disclosure statement, the four severed heads of the deceased persons tied in a gunny bag were recovered from river Suna from the exact place shown by him. (vi) Accused Ranjan Singh had No.given any explanation as to how and under what circumstances he had the knowledge that the severed heads of the deceased persons were tied in a gunny bag and were thrown in that place of river Suna. (vii) The disclosure statement of accused Ranjan Singh further corroborated by the fact that the headless dead body of the 14 deceased persons were recovered from the down stream of river Suna. Learned Trial Court has proceeded further to hold thus :From these facts it is conclusively established that accused Ranjan Singh is the author of such homicidal death of the deceased persons. In my opinion, the prosecution has succeeded in establishing consistently the guilt of the accused Ranjan Singh beyond all reasonable shadow of doubt.

14. Coming to the contentions raised by learned counsels appearing for Ranjan Singh and learned Additional Standing Counsel, we may note here that it is an admitted fact at the Bar that none of the eye-witnesses including the relatives of the deceased persons has supported the prosecution case. Evidence of P.Ws. 17, 20, 24, 25 and 26, who are examined as eye-witnesses, are of no avail to the prosecution in as much as they did No.utter a single word in favour of the prosecution and they only were cross-examined by the Public Prosecutor under Section 154 of the Evidence Act on the point of their previous statements before the Investigating Officer, and such cross-examination is in the form of suggestions, which the witnesses have denied to.

15. Some pieces of evidence, which learned Trial Court seems to have relied, are re-addressed in view of the contentions raised by learned counsels. P.W.24 though declared hostile, in his cross-examination by the Public Prosecutor, has testified thus - After the death of the son of accused Siba Singh due to snake bite, suspecting his death to have been caused by practicing witchcraft, a meeting was called in village at about 4 p.m. and in that meeting deceased persons namely, Tia

Singh, Surin and Budhini had 15 attended that meeting. I canNo.say if Sambari was called to that meeting or not. I had gone to attend the meeting, but before the meeting was concluded, I left the meeting. Deceased Tia, Surin and Budhini also returned from the meeting, but again they were called to the meeting in the evening. Since then they were No.traced.

. P.W.26, in his cross-examination by the P.P., has testified thus - It is a fact that on 14.8.2007 on the day of Chitau Amabasya the son of accused Siba Singh died due to snake bite.

. P.W.19 is the son of deceased Surin Singh and Budhini Singh. He has testified thus - On the night of the incident the villagers of Pratappur called my parents and another lady of village Kadapada from our maternal uncles house. Since that night my parents and that lady of village Kadapada did No.return home. After three days of that incident, I found the chopped heads of my father and mother and of that lady of vill. Kadapada in the river bed. The heads were chopped off from the neck, and were packed in a gunny bag.

. None of the aforesaid witnesses including other villagers examined as witnesses in the case have implicated any of the accused persons (since acquitted) including Ranjan Singh. P.Ws.24 and 26 have testified that son of Siba Singh died of snake bite. There is nothing however on record to prove that Ranjan Singh is the nephew of accused Siba Singh (since acquitted). There is also nothing to show that Ranjan Singh was there in the meeting where the deceased persons were called, or he had gone to call the deceased persons from their respective houses

16. If we take into consideration the Circumstance Nos. 1, 2, 3 and 4, as quoted in paragraph-32 of the impugned judgment, and analyse the evidence in the touch-stone of the dictum in M.G. Agarwals case (supra), all the aforesaid four circumstances can be held to have been proved on the basis of the evidence adduced, to the extent that the villagers had convened a meeting where the deceased persons were called, but they did No.return thereafter, and after some days their chopped heads kept in a gunny bag were recovered.

17. Coming to Circumstances No.5, 6 and 7, as quoted in paragraph-32 of the impugned judgment, we find Circumstance No.7 is of no consequence in as much as the trunks of the deceased persons were found at different points of time and at different places in the down stream of the river. Such a fact may only be pressed to justify an inference that the occurrence had happened somewhere in the up-stream of the river and such a circumstance, as relied on by the learned trial court, canNo.be held to be incriminatory so far as Ranjan Singh is concerned. Circumstance Nos.5 and 6 are on the point of recovery of the severed heads allegedly at the instance of Ranjan Singh pursuant to his statement purported to have been recorded under Section 27 of the Evidence Act.

18. In the premises as aforesaid, we propose to address the contentions raised by learned counsels for the parties on the question as to whether the discovery of severed heads at the instance of Ranjan Singh can be held to have been proved or, in the alternative, whether said circumstance alone can be made the basis of conviction

19. P.W.29 is the principal I.O. He had recorded the confessional statement of Ranjan Singh under Section 27 of the Evidence Act, vide Ext.35. His evidence on the point runs as follows :During police custody accused Ranjan Singh confessed his guilt in presence of witnesses and stated that his cousin brother (son of Siba Singh) died due to snake bite and on 24.8.07 on the day of 10th day of rituals, he, Muna, Sambhu, Kala, Surendra, Mara, Kanda and Fampu decided to call a meeting in the village suspecting his cousin brother to have been died by practicing witchcraft and No.due to snake bite, and on Sunday evening they called all the villagers to the foot-ball field of their village for a meeting and they called deceased persons namely Surin Singh, Tia Singh, Sambari Singh and Budhini Singh to that meeting and inquired to them if they had committed murder of the son of Siba Singh by practicing witchcraft, to which they denied the charge. Thereafter he dealt a blow by a Kata to the neck of the deceased Budhini Singh and beheaded her and he also dealt a blow by that Kata to the neck of deceased Surin Singh and beheaded him. Thereafter, they picked the dead bodies and proceeded towards the river side and asked the villagers and the other two deceased persons to follow them and on the way accused Muna dealt a blow with

a Kata to the neck of deceased Tia Singh and beheaded her and packed her dead body and then proceeded towards river bank and on the river bank deceased Sambari was asked to put her head on a wooden log and accused Sambhu dealt a blow by means of an axe to her neck and beheaded her and thereafter they threw all the four dead bodies without heads in the current of river water and packed the four heads of deceased persons in one gunny bag and tied the same and then threw it in the current of river water. They also threw all the weapons of offence (Kata, axe, etc.) in the river. I recorded his confessional statement in presence of witnesses.

20. A cursory reading of the aforesaid evidence would make it clear that Ranjan Singh, Muna and Sambhu had thrown the severed heads into the river after packing the same in a gunny bag. Though the authorship of such concealment is plural, Ranjan Singh in his statement has confessed that he was one among the accused persons (since acquitted), who had thrown the severed heads into the river. It is No.a case where the confessional statement is one containing the fact about the accused No.stating that the severed heads were concealed by him. Judgment of Honble the Supreme Court in the case of State of Maharashtra vs. Suresh (supra) covers a case where an accused points out the place where a dead body or an incriminating material is concealed without stating that it was concealed by him/her. The judgment shall become applicable to draw the inference to the effect that the accused himself had concealed the incriminatory fact if he declines to tell the criminal court that his knowledge about concealment was on account of the fact that he had seen somebody else concealing it or he was told by another person that it was concealed in the place from where it was found. In the present case, Ranjan Singh having confessed to have thrown the gunny bag containing severed heads of the deceased persons into the river water and such act having been confessed to have been done along with Muna and Sambhu, the decision in the case of State of Maharashtra vs. Suresh (supra) has no application to the facts of the present case.

21. Honble Kerala High Court in the case of Joy @ Job and another vs. C.I. of Police (supra) has given a proposition by holding that if authorship of concealment

is also a part of the information given by the accused, that is an additional circumstance to fix confess criminality on him in 19 absence of any acceptable explanation leading to innocence. In view of such proposition, a question obviously arises as to whether the confession of the accused regarding authorship of the concealment of incriminating article leads ipso facto to conclusion of guilt of the said accused so far as the substantive offence is concerned. To find answer to this question, we feel persuaded to address the scope and ambit of Section 27 of the Evidence Act and find out the probative effect of the discovery pursuant to statement purported to have been recorded under Section 27 of the Evidence Act. We feel persuaded to note here that Section 27 of the Evidence Act is the most important but at the same time most controversial Section occurring in the statute. No section has perhaps raised so much controversy and doubt as Section 27 of the Evidence Act, and no section has perhaps hunted the ingenuity of the judges and jurists so much like Section 27.

22. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulu Kuri Kottaya vs. Emperor, A.I.R. 1947 P.C. 67, in the following words, which have become locus classicus : It is fallacious to treat the fact discovered within the section as equivalent to the object produced : the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to the fact. Information as to past user or the past history, of the object produced is No.related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that I shall produce the concealed knife from the roof of my house does No.lead to discovery of knife : knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is 20 very relevant. But if to the statement the words be added with which I stabbed A, these words are inadmissible since they do No.relate to the discovery of the knife in the house of the informant.

. The aforesaid decision is highlighted in Udai Bhan vs. State of Uttar Pradesh, A.I.R. 1962 SC 111.and Prabhoo vs. State of Uttar Pradesh, A.I.R. 1963 SC

1113.Honble Supreme Court in the case of Anter Singh vs. State of Rajasthan, A.I.R. 2004 SC 2864.in paragraph-15 of the judgment highlighting the aforesaid position, has ruled thus :15. At one time it was held that the expression fact discovered. in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does No.include a mental fact, No.it is fairly settled that the expression fact discovered. includes No.only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Pulukuri Kottayas case (supra) and in Udai Bhan v. State of Uttar Pradesh (AIR 196.SC 1116).

. It is therefore clear that fact discovered. included No.only the physical object produced but also the place from which it is produced and the knowledge of the accused as to this.

23. Honble Supreme Court in the case of K. Chinnaswamy Reddy vs. State of Andhra Pradesh and Anr., A.I.R. 1962 SC 178.was dealing with a case under Section 411, I.P.C., where the accused had made a statement under Section 27 of the Evidence Act to the effect that he would show the place where he had hidden the ornaments. Honble Supreme Court ruled that the whole of the statement relates distinctly to discovery of the ornaments and 21 is admissible under Section 27 of the Evidence Act. The words where he had hidden them. have nothing to do with the past history of the crime and are distinctly related to the actual discovery that took place by virtue of the statement. Supplying the rationale for admissibility of the confessional statement of the accused on the point of self-authorship of the concealment indicative of his direct knowledge, Honble Supreme Court held that if any part of the statement distinctly relates to the discovery, it will be admissible wholly and the Court canNo.say that it will excise one part of the statement, because it is of a confessional nature.

24. An analysis of the provision contained in Section 27 of the Evidence Act along with the aforesaid decisions would show that Section 27 includes the mental fact of the author / actor, which is his knowledge about the object concealed and the place of concealment. Such knowledge may be direct, as done by the accused himself, or as perceived by his sense of vision by seeing somebody concealing, or

indirect / hearsay, as heard by him from others about the fact of concealment. This aspect of direct and derivative knowledge of the accused has been highlighted in clear term in the case of State of Maharashtra vs. Suresh (supra) by holding that when the accused makes his statement without stating that the incriminatory material was concealed by him, the possibilities that may arise are : (1) that, the accused himself would have concealed it; (2) that, he would have seen somebody else concealing it; and (3) that, he would have been told by another person that it was concealed in the place from where it was discovered. We, therefore, are of the view that any fact discovered pursuant to the statement of an accused can No. be stretched beyond his knowledge, i.e., direct or indirect (as outlined supra) about the object concealed and the place of concealment.

25. It can No. be disputed that there is a great deal of difference between a dead body as an incriminating fact and other articles like weapons of offence, blood stains, etc. as incriminating fact. A dead body (with marks of violence if can be found on inquest or on post mortem examination indicative of homicidal death) or for that matter, severed human heads as found in the present case, ipso facto proves commission of a crime and discovery of such dead body or severed human heads at the instance of an accused ipso facto makes the fact so discovered incriminating. But, so far as other articles are concerned, until their connection with the crime is proved, the fact discovered does No. become relevant as incriminating. Nice questions have arisen in a number of cases, as to what extent, on facts, a particular part of the statement made by the accused is admissible under Section 27 of the Evidence Act. In this connection, reference may be made to Sanwat Khan vs. State of Rajasthan, A.I.R. 1956 SC 54. Limbaji & others vs. State of Maharashtra, 2001 (8) SCALE 522 K. Chinnaswami (supra) Trimbak vs. State of M.P., A.I.R. 1954 SC 3. and to host of other decisions. If the facts discovered become incriminating as an obvious corollary, the knowledge about the place of concealment of such an incriminating fact and the knowledge about concealment of such incriminating fact themselves become incriminating. But can we draw any inference of guilt of the author of concealment regarding a substantive offence of murder to have been committed by him from his self authorship of the object concealed, i.e. a dead body or a severed human head and his such knowledge about the place of concealment

26. At the cost of repetition, it is worthwhile to quote Section 27 of the Evidence Act here for ready reference. It reads : Sec.27 : Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

. Now, a careful reading of the provision would show that such. refers to the entire statement or information given by the person. The words so much. relate to so much. out of the total statements as relates distinctively to the fact thereby discovered. In other words, what is relevant is that part of the statement relating distinctively to the facts thereby discovered.

. Honble Supreme Court in Md. Inayatullah vs. State of Maharashtra, A.I.R. 1976 SC 48.held that distinctly. means directly, indubitably, strictly, unmistakably.. The Privy Council in Pulukuri Kotayyas case held that the inculpatory part of the statement of an accused is No.admissible under Section 27 of the Evidence Act. In that case the High Court had convicted the accused following the judgment in Athappa Gounder, I.L.R. 1937 Mad. 695 and holding as admissible the word with which I stabbed.. The Privy Council held the aforesaid inculpatory statement to be No.admissible under Section 27 of the Evidence Act and gave the famous ruling quoted very often with approval in different judicial pronouncement as quoted supra in paragraph-22. If Kotayyas case, as approved by Honble Supreme Court in different judicial pronouncements, is followed, then if the accused has no explanation to offer as to how he came to kNo.that the dead body was in a particular place, a presumption will be drawn against him that he merely aided in hiding / concealment of the dead body and he would be guilty of an offence 24 only under Section 201, I.P.C. By aid of any presumption, the Court canNo.travel further beyond the scope of Section 27 of the Evidence Act to hold that, if no explanation leading to innocence is given by an accused, in such a case it may lead to conclusion that the accused is guilty of the offence of murder. In other words, from the factum of discovery of a dead body / severed head at the instance of an accused, the Court canNo.jump to a conclusion that in view of the self-authorship of the concealment and absence of any exculpatory explanation by the

accused, the accused is presumed to have committed the substantive offence of murder. At best, in such a situation, he can be found guilty of offence under Section 201, I.P.C. for having aided in hiding the dead body, etc. Honble Kerala High Court in the case of Joy @ Job (supra) must be referring to the criminality of the accused in such a situation to the aforesaid extent while holding thus : If authorship of the concealment is also part of the information given by the accused that is an additional circumstance to fix criminality on him in the absence of any acceptable explanation leading to innocence.

. Any other interpretation of the Section on the basis of judicial dictums so far shall certainly militate against the probative effect of discovery. under the Section, which includes the physical object produced, place from which it is produced and knowledge of the accused as to this. We feel persuaded to quote here the observation of Honble Supreme Court in Anter Singhs case (supra) while quoting with approval the views of Privy Council in Pulukuri Kotayya and Honble Supreme Court in Chinnaswamy Reddy, so far as probative effect of evidence under Section 27 of the Evidence Act is concerned. 25

17. As observed in Pulukuri Kottayas case (supra) it can seldom happen that information leading to the discovery of a fact forms the foundation of the prosecution case. It is one link in the chain of proof and the other links must be forged in manner allowed by law. To similar effect was the view expressed in K. Chinnaswamy Reddy v. State of Andhra Pradesh and another (1962 SC 1788).

. We, therefore, have no hesitation to hold that evidence obtained under Section 27 of the Evidence Act alone in absence of any other incriminating circumstance canNo.be made the sole basis of conviction under Section 302, I.P.C.

27. Before proceeding further, we feel persuaded to bear in mind the caution interdicted by the Honble Supreme Court in the case of Thimma vs. The State of Mysore, A.I.R. 1971 S.C. 1871. In the aforesaid case, Honble Supreme Court, in paragraph-10 of the judgment, has held thus :- .it appears to us that when P.W.4 was suspected of complicity in this offence, he would in all probabilities have disclosed to the police the existence of the dead body and the other articles at the place where they were actually found. Once a fact is discovered from other

sources, there can be no fresh discovery even if relevant information is extracted from the accused and Courts have to be watchful against the ingenuity of the Investigating Officer in this respect so that the protection afforded by the wholesome provisions of Section 25 and 26 of the Evidence Act is No.whittled down by the mere manipulation of the record of Case Diary. It would, in the circumstances, be somewhat unsafe to rely on this information for proving the appellants guilt.

28. In the present case, recovery of four severed heads was made pursuant to the statement of Ranjan Singh purported to have been recorded 26 under Section 27 of the Evidence Act and proved vide Ext.35. The aforesaid statement vide Ext.35 was recorded at 8.45 A.M. on 31.08.2007 at Nilagiri P.S. (evidence of P.W.29). Immediately after recording of the statement, Ranjan Singh, as testified by the I.O. (P.W.29), led him and the witnesses to the spots one after another, where murders of four persons were committed and the place of the river where the severed heads tied in a gunny bag was thrown into. P.W.29 has further testified that he engaged his staff and local people to enter inside the river water to search for the weapon of offence and the severed heads and, during such search Constable No.C/649 namely S.K. Panigrahi (P.W.12) recovered a gunny bag from the river, inside which the severed human heads were there. The Constable (P.W.12) has testified that at about 1.30 to 2.00 P.M. on 01.09.2007 Reporters of Aajtak TV were shooting inside Suna river; some labourers shouted to have found one suspected gunny bag inside the water. Immediately he (P.W.12) entered into the river water, brought out a gunny bag and through a hole into the gunny bag he could see four numbers of human heads. In the afternoon all the four human severed heads were seized and inquests over the same were held. From such fact, it is therefore clear that after about 24 hours of the disclosure statement made by Ranjan Singh and pointing out by him to the spot where the severed heads were thrown, the severed heads were recovered after much search by the labourers engaged by the police and the police staff. In view of such fact, it canNo.be held that the severed heads were discovered from the exact place pointed out by Ranjan Singh. The I.O. (P.W.29) has testified that during investigation he could kNo.that two working Adivasi ladies namely Sambari Singh and Tia Singh of village Pratappur have No.returned to their house. After the

investigation commenced, two more headless trunks were recovered and one of such trunk 27 was recovered at Bharipur on 29.08.2007 and another on the same day from Budhabalanga river near Totapali under Balasore Sadar P.S. From recoveries of three headless trunks in the down stream of river Suna and information regarding missing of two working Adivasi ladies namely Sambari Singh and Tia Singh from village Pratappur, the I.O. (P.W.29) had already knowledge about the fact that the occurrence has happened either at Pratappur or nearby places situated in the upstream of river Suna. It was therefore obvious on the part of the police to search for the severed heads in the upstream near village Pratappur. In the present case, altogether 24 accused persons are chargesheeted, out of whom two are absconding and 22 accused faced trial. Out of said 22 accused persons, 21 have been acquitted. The evidence of witnesses namely P.W.19, 24 and 26 speaks of meeting by the villagers and there is no direct implication of Ranjan Singh either to be present in that meeting or to have called any of the deceased from their respective houses. When a gory and diabolic occurrence culminating in murder of four persons has happened and number of villagers are implicated as accused in the case, there is every chance that Ranjan Singh might have also knowledge about the place where the dead bodies were disposed of and the severed heads were thrown. Before arresting Ranjan Singh on 31.08.2007, the I.O. (P.W.29) had already arrested accused Daktar Singh and Rabi Singh of village Pratappur. He also had examined them on 30.08.2007. The I.O. in paragraph-4 of his evidence has testified that on the basis of statements of Daktar Singh and Rabi Singh, he arrested Ranjan Singh and some other accused persons. The prosecution story is to the effect that the deceased persons were killed in a meeting attended by the villagers. In view of such facts, there is no escape from the conclusion that the I.O. by all probabilities had the knowledge about the place 28 of disposal of the severed heads before examination of Ranjan Singh and recording of his statement under Section 27 of the Evidence Act. Taking into consideration these circumstances in their entirety, we feel unsafe to rely on the discovery proceeding.

29. Regard being had to all the aforesaid facts and discussions, we are constrained to set aside the impugned judgment and order of sentence. Accordingly, the Jail Criminal Appeal is allowed and the Death Sentence

Reference is answered in negative. Appellant Ranjan Singh be released from custody forthwith, if his detention is No.required in any other case. C.R. Dash, J.L. Mohapatra, J.I agree. L. Mohapatra, J.Orissa High Court, Cuttack. The 14th day of August, 2012. / Parida.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com