

Satish Kumar Gupta and Others Vs. the State of Bihar

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Court : Patna

Decided On : Feb-28-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No. 644, 503, 549 & 550 of 2013

Appellant : Satish Kumar Gupta and Others

Respondent : The State of Bihar

Judgement :

1. Criminal Appeal (SJ) No. 503 of 2013 wherein Guddu Rai happens to be the appellant, Criminal Appeal (SJ) No. 549 of 2013 wherein Amitabh Rai @ Amitab Kumar @ Amitab Kumar Rai happens to be appellant, Criminal Appeal (SJ) No. 550 of 2013 wherein Aman Kumar Singh @ Abhay Kumar Singh happens to be the appellant, Criminal Appeal (SJ) No. 644 of 2013 wherein Satish Kumar Gupta, Raj Kumar Sah happens to be the appellants, commonly originate against the judgment of conviction dated 27.06.2013 and sentence dated 02.07.2013 passed by Sessions Judge, Saran at Chapra in Sessions Trial No.96 of 2011, on account thereof there have been analogous hearing and are being disposed of by a common judgments.

2. Appellants Aman Kumar Singh @ Abhay Kumar Singh, Guddu Rai, Satish Kumar Gupta, Amitabh Rai @ Amitab Kumar @ Amitab Kumar Rai, Raj Kumar Sah have been found guilty for an offence punishable under Section 395 of the

IPC and each of them has been directed to undergo R.I. for 10 years as well as fined Rs.2000/- in default thereof to undergo S.I. for one year. Appellant Satish Kumar Gupta and Aman Kumar Singh @ Abhay Kumar Singh have further been found guilty for an offence punishable under Section 412 of the IPC and each of them has been directed to undergo R.I. for 5 years as well as also fined Rs.2000/- in default thereof to undergo S.I. for one year with a further direction to run the sentences concurrently.

3. Ajay Rai (PW-1) gave his fardbeyan on 13.09.2010 at about 07:30 P.M. at Doriganj Police Station disclosing therein that on 12.09.2010 at about 11:00 PM he along with Rahul Kumar proceeded with Tata ACE bearing Registration No.BR-2F 2605 to its destination Chapra, Siwan and Gopalganj. On 13.-09-2010 at about 01:00 A.M. while they reached near Balua, one motorcycle overtook and then halted in front of his vehicle over which he stopped his vehicle. As soon as he stopped his vehicle, one another motorcycle came from behind and parked by the side of gate of his vehicle and then thereafter began to abuse on the pretext why he had not given pass to them. Thereafter, they all forcibly taken him out as well as Rahul Kumar and began to assault and taken them to a maize field and further directed that in case they will come out there from, they will be murdered. Subsequently thereof, two persons, out of them, sat inside his vehicle and after reverting back the vehicle proceeded towards Patna followed by another two miscreants over motorcycle. He had seen all the four miscreants and as well as detailed their physical feature. He further apprehended presence of other miscreant who probably could not be seen on account of darkness. He further disclosed that out of fear they have not come out of maize field. At the early morning they came to Police Station. He had further disclosed that details of article will be furnished by the Manager.

4. It is evident that soon after registration of the case as Doriganj P.S. Case No.74/2010 police came into action, apprehended the accused, booties were recovered along with the vehicle recorded statement of witnesses and then thereafter, completing the other paraphernalia submitted charge sheet whereupon appellants were put on trial and ultimately met with conviction and sentence as stated above, the subject matter of instant appeal.

5. Defence of appellants as is evident from mode of cross-examination as well as statement recorded under Section 313 Cr.P.C. is of complete denial of occurrence as well as recovery and further pleaded it a case of plantation, for which also examined witnesses.

6. Many fold arguments has been raised on behalf of appellants while assailing, judgment of conviction and sentence rendered by the learned trial court. It has been submitted that police acted in more enthusiastic way during course of investigation brushing aside the legal norms requirement and on account thereof, the conviction and sentence would not sustain.

7. To buttress such event, it has been submitted that from the evidence of informant Ajay Rai (PW-1) as well as PW-5, Rahul Kumar, the Khalasi, it is apparent that their status, even after recording of FIR was not above as an accused because of the fact that they were confined by the police officials for days together at P.S. and on account thereof, their participation to facilitate the investigation would not be acknowledged in the eye of law.

8. It has further been submitted that PW-1, the informant and PW-5, the Khalasi being an outsider as well as not knowing to any of the appellants as miscreant who have had indulged in committing dacoity while the aforesaid informant and Rahul Kumar were in a way to destination lent institution of First Information Report against unknown. Then thereafter, the only option left to Investigating Officer was to put the apprehended accused on T.I. parade to see whether the investigation is going on in right direction or not. The law does not permit presence of prosecution party along with Investigating Officer during conduction of raid and further, accepting identification of an accused without holding T.I. Parade so required in terms of Section 9 of the Evidence Act. In this case, it has been submitted that Investigating Officer had not followed such mandatory procedure and on account thereof, prosecution of the appellants are found illegal and being in contravention of law.

9. In likewise manner, it has also been argued that certain articles have been shown to be recovered from possession of the appellant which again not been put under T.I. parade and consequent thereupon, such recovery should not as well as

ought not to be used against the appellants from whose custody the items as per seizure list has been shown.

10. It has further been submitted that appellant Guddu Rai, Amitabh Rai @ Amitab Kumar @ Amitab Kumar Rai, Raj Kumar Sah were implicated on the basis of extra judicial confessional statement of co-accused without any supportive or corroborative material against them so, their conviction happen to be in mechanical manner.

11. Now, coming to factual aspect, it has been submitted that Khalasi, PW-5 had not identified any of the appellants during course of evidence in dock. The evidence before court happens to be the only substantive evidence and on account thereof, non-identification by PW-5 is a circumstance which need not be ignored. In likewise manner, it has also been submitted that from the evidence of PW-1, it is not clear that there was any sort of presence of source of light. He had not claimed that during said course the headlight, the cabin light of the vehicle which they were occupying or of headlight of motorcycle, the light was flashing. Therefore, in absence of positive evidence regarding source of light, it happens to be a very difficult for a human being to perceive the physical feature of another person in dead of night who were unknown to them without having any opportunity at an earlier occasion to see. So, mistaken identification cannot be ruled out.

12. It has further been submitted that majority of the witnesses happens to be police official and after going through their evidences, it is evident that they are the persons who manipulated the whole thing, commanded the situation by putting PW-1 as well as PW-5 under custody and under their influence PW-1 and PW-5 were forced to identify the appellants as well as accepted the recovery from the possession of the appellants. So, submitted that in any view of the matter, the conviction and sentence recorded by the learned lower court is found non-sustainable.

13. On the other hand, the learned Additional Public Prosecutor submitted that the valour of police official are rarely seen now a days and this case happens to be one of the glaring example wherein the police immediately rushed, collected confidential information conducted raid, apprehended the culprit recovered the

booty, as well as the vehicle. It has further been submitted that purpose for holding TI parade is only to ascertain whether the investigation is going on in right path or not. Raid was conducted along with PW-1 and PW-5 who had identified the culprit, and the witnesses identified the recovered article to be the booty. It has further been submitted that neither the prosecution was knowing the appellants since before the occurrence nor any occasion to falsely implicate them.

14. The witnesses even during course of their deposition before court have had corroborated the event, supported the factum of identification along with recovery then in that event, the claim of appellant that neither they nor the seized article have not been put on T.I. parade made the trial frustrated, is found not acceptable. It has also been submitted that from the judgment impugned, it is evident that learned trial court had thrashed hold the issue before coming to the finding adverse to the appellant. Consequent thereupon, the judgment impugned does not attract interference.

15. In order to prove its case, the prosecution had examined altogether twelve PWs out of PW-1 is Ajay Rai, PW-2 is Jai Bahadur Singh, PW-3 is Akshay Lal Singh Yadav, PW-4 is Harendra Prasad Nirala, PW-5 is Rahul Kumar, PW-6 is Shankar Chaudhary, PW-7 is Om Prakash, PW-8 is Bindeshwar Prasad, PW-9 is Ram Ratan Rai, PW-10 is Suresh Thakur, P.W.-11 is Verma Manjhi, PW-12 is Ajay Kumar as well as had also exhibited series of documents. Side by side defence had also examined witnesses.

16. PW-1 had stated that the occurrence happens to be 3-4 days prior to ŹVishwakarma PoojaŹ. It was 12 OŹclock. He was driving Tata ACE whereupon the articles of courier were laden which was to be unloaded at Chapra, Siwan, Gopalganj. After proceeding from ŹAamiŹ, the two motorcycles ridden miscreants followed out of whom one had proceeded ahead and then forced him to stop vehicle. Meanwhile the miscreants having over another motorcycle got down, abused and then began to assault after dragging from cabin. They pushed him and then taken away vehicle towards Hajipur. After regaining sense, he gone to P.S. and instituted the case. He had given physical feature of the miscreant out of whom police had caught hold one person whom he identified. Articles have also

been recovered from the houses of the miscreants who have had assaulted him. He had identified the miscreant from whose house articles were recovered. Police had recovered booty in his presence for which seizure list was prepared over which he put his LTI. He had further identified one person in dock who was caught hold by police who disclosed his name as Aman Kumar on query made by the court. This witness further spoken that on interrogation made by the police, he had named other accused persons. He further stated that the persons who had assaulted him was also identified by him. As other accused persons were represented under Section 317 Cr.P.C. hence on account thereof, the claim of identification is found waived. He had also stated that the persons from whose possession articles were recovered are not present in court but one had disclosed his name as Satish while other had disclosed as Abhay. He had further claimed that in case of having their presence he would have identified them. During cross-examination at para-4 he had stated that it was a dark night. In para-6 his attention was drawn up. He had further stated that he was confined at the P.S. after giving his statement. He was confined at P.S. for 4-5 days and during course thereof he was taken to Dy.SP as well as S.P. After recovery he was let of. The booty was recovered within 4-5 days. He had further stated that accused persons were assaulted at P.S. after their apprehension and then thereafter their statement was recorded. His LTI was taken over seizure list at P.S. Till then, all the articles were recovered. On the same day handcuff was opened. In para-9 he had stated that at the time of occurrence it was dark night. He had not identified face of all the accused. He had identified only one. He does not know his name. Those persons have assaulted him. In para-10, he had stated two persons took away vehicle while four persons gone over motorcycle. Rahul was also assaulted. In para-14 he had further stated that first of all he had gone to Avtar Nagar Police Station where he had disclosed the occurrence. Then thereafter had gone to Doriganj Police Station as the P.O. was lying within the aforesaid jurisdiction.

17. PW-5 is Rahul Kumar who had accompanied PW-1 on the alleged date and time of occurrence. During his examination-in-chief he had supported the case of the prosecution and further having been assaulted by the miscreants during course thereof who have had intercepted the vehicle on two motorcycle. They assaulted them, took away vehicle, snatched away cash, mobile for which they

have gone on the following morning to Avtar Nagar P.S. and then to Doriganj. He had identified his signature over fardbeyan. He had further stated that he remained at P.S. for four days however from his examination-in-chief as well as cross-examination it is evident that he had not identified any of the accused.

18. PW-2 is Jai Bahadur Singh, the then Officer-in-charge of Dighwara Police Station. He was one of the member of raiding party constituted under leadership of Dy.S.P. along with other. They have conducted raid at the house of Abhay Kumar Singh and seized one country made loaded pistol and mobile. Then on his pointing out 3100 cartridges were recovered from his straw room and accordingly seizure list was prepared. Four bolts of clothes were also found. Then on disclosure made by Aman Singh, house of Satish Kumar Gupta was searched and from his room a country made loaded pistol along with a mobile set was recovered. On his pointing out 1245 cartridges were recovered from beneath of a bed for which seizure list was prepared. In para-2,3,4 of his cross-examination, certain admission relating to previous statement is visible. In para-5 of his cross-examination, he detailed the event of search and seizure and further disclosed that all the articles were not sealed in his presence at the P.O. He denied the suggestion that nothing was recovered from the house of accused.

19. PW-3 is Akshay Lal Singh Yadav who on the alleged date was Officer-in-charge of Avatar Nagar Police Station. He had deposed that S.P. had constituted a team under the leadership of Dy.SP, Headquarter consisting Officer-in-charge, Dighwara Police Station, Officer-in-charge, Sonapur Police Station, Officer-in-charge Doriganj Police Station for investigation and conducting raid including other police personnel and accordingly raid was conducted at the house of Abhay Kumar Singh @ Aman and Satish Kumar Gupta on 16.09.2010 from 03:15 A.M. to 04:55 A.M. From the house of Abhay Kumar Singh one country made loaded pistol and mobile was recovered and on his interrogation, the booty of Doriganj Police Station was recovered from straw room. Thereafter, house of Satish Kumar Gupta was raided where from country made loaded pistol and mobile was recovered. On interrogation, cartridges relating to Doriganj Police Station were recovered and on account thereof, both the accused were apprehended. He had also identified both the accused in court. During cross-examination in para-5, he had stated that raid

was conducted at the house of Abhay Kumar Singh as well as Satish Kumar Gupta in presence of two seizure list witness and none others. He had further stated that he had not prepared seizure list. He was unaware with the residence of seizure list witnesses.

20. PW-3 is Harendra Prasad Nirala who had not supported the case of the prosecution and on account thereof was declared hostile.

21. PW-6 Shankar Chaudhary, the then ASI of Dighwara Police Station had stated that on 13.09.2010 he was ASI of Dighwara Police Station and was accordingly directed to be a member of raiding party under the leadership of Officer-in-charge, Dighwara, namely, J.B. Singh. Firstly, raid was conducted at the house of Aman Singh over confidential information, 3500 cartridges of .315 bore was recovered from a cartoon as well as a loaded pistol and a mobile recovered from his bed for which seizure list was prepared. Then thereafter house of Satish Kumar Gupta was searched where from one country made pistol and 45 cartridges were recovered. He had further identified accused. During cross-examination in para-3 he had stated that the room wherein straw was kept was by the side of residential house. He was unable to say the exact number of rooms. In para-4 he had stated that after conduction of raid he returned back to Police Station, the seized article was not sealed at that very place. He had further stated that during course of conduction of raid he was present there.

22. PW-7 is Om Prakash, Officer-in-charge of Sonapur Police Station, one of the member of the raiding party. He had stated that on 16.09.2010 raid was conducted at the house of Abhay Kumar Singh @ Aman and his house was searched in presence of two independent witnesses, Bhola Prasad Kushwaha, Shashikant and during course thereof, one country made loaded pistol was recovered. At his instance 3500 rounds of cartridges of .315 bore as well as 8mm was seized along with one bundle and for that seizure list was prepared in presence of seizure list witnesses. At his instance, house of Satish Kumar Gupta was searched where from one country made loaded pistol was seized from his bed while from a bag kept beneath his bed about 1025 cartridges were recovered of .315 bore, 8mm bore, mobile set for which seizure list was also prepared had also identified both

accused Satish Kumar Gupta and Abhay Kumar Singh @ Aman. During cross-examination in para-4 he had stated that altogether eight members of the raiding party have gone inside house of accused. Then had said that the room wherein straw was kept and the room wherein Aman was residing happens to be one but at two different places. In para-8 he had stated that the seized articles were sealed at the place of occurrence over which the seizure list witnesses have also put their signature. Paragraph-10, Paragraph-11, Paragraph-12, Paragraph-13, Paragraph-14 and Paragraph-15 happens to be the contradiction.

23. PW-8 is Bindeshwar Prasad, the then Officer-in-charge of Doriganj Police Station. He had stated that on 13.09.2010 at about 05:50 A.M. on his instruction Devewhar Pathak had recorded fardbeyan of Ajay Rai over which Rahul Kumar had also put his signature (exhibited) and took up investigation. He had inspected the place of occurrence and prepared sketch map. He had taken further statement of informant, statement of Rahul Kumar and independent witnesses. During course of investigation, he received confidential information regarding presence of looted vehicle near the Digghi Dhala at Hajipur in abandoned condition whereupon he had gone there. He had informed the manager of 'Saif Express' who also came. Seized the vehicle. Made physical verification and then prepared the seizure list. As per information (consignment list) the cartridges and cloths were missing on 15.09.2010 as per direction of S.P. a raiding party was constituted. After getting confidential information under the leadership of Dy.S.P. on 16.09.2010 at about 03:00 A.M. house of Abhay Kumar Singh @ Aman was searched in presence of two seizure list witnesses along with Ajay Rai and Rahul Kumar (victim) and during course thereof, one person was apprehended. From his bed a loaded pistol and a mobile was recovered. One person was arrested who disclosed himself as Abhay Kumar Singh @ Aman, he further confessed his guilt. On his pointing out, seven packets of cartridges were recovered from a straw room while with regard to remaining he had disclosed that two cartoon is being kept by Satish Kumar Gupta while three cartoons were taken away by Guddu. Seizure list was prepared in presence of seizure list witnesses as well as extra judicial confidential statement was also scribed. At his instance house of Satish Kumar Gupta was searched where from country made pistol was recovered. His confessional statement was also recorded and on his pointing out, cartoon of

cartridges, looted country made pistol, mobile set was recovered for which seizure list was prepared. Dighwara P.S. Case No.137 of 2010 was also registered for recovery. He had further stated that as per court's order, the vehicle as well as cartridges have already been released. He had further stated that he had also apprehended Amitabh Rai, Raj Kumar Sah. He had submitted charge sheet keeping the investigation pending against remaining. He had also identified the arms. During cross-examination he had stated that as he does not happens to be Investigating Officer of Dighwara P.S. Case No.137 of 2010, therefore he is unable to say anything by order the same.

24. PW-9 is Ram Ratan Rai, who had gone volte-face to prosecution. In likewise manner PW-10 also happens to be an on account thereof both of them were declared hostile. PW-11 is formal in nature who had produced the arms as well as mobile set.

25. PW-12 is Ajay Kumar, the then Dy.S.P., Headquarter. He had stated that on the alleged date and time of occurrence he was Dy.S.P., 1st. He had received information regarding occurrence in the same night. In pursuance of order of Superintendent of Police, a raiding party was constituted in his leadership and the other members were Officer-in-charge, Digbi, Avtar Nagar, Dighwara, Sonapur. The vehicle which was looted was recovered from Doriganj, Hajipur and for that as per his direction Officer-in-charge, Doriganj had prepared the seizure list. Then thereafter, on getting tip of conduct raid at the house of Abhay Kumar Singh @ Aman and Satish Kumar Gupta where from seven bundles of cartridge, one bundle of Raymond cloth and one pistol was recovered. Thereafter, they have searched the house of Satish Kumar Gupta where from one bundle of cartridge, some open cartridge, one pistol was recovered. During course thereof, they have kept informant and his Khalasi along with them who have also identified Abhay Kumar Singh @ Aman and Satish Kumar Gupta. Other accused were also apprehended and then charge sheet was submitted. During cross-examination he had stated that for the first time he had deposed before the court regarding the occurrence. His statement was not recorded during course of investigation.

26. DW-1, Shashi Kant Mishra, DW-2, Bhola Singh Kushwaha happens to be the seizure list witnesses who have simply stated that as per direction of the police he had put signature at Police Station on blank paper. Nothing was recovered from the possession of Satish Kumar Gupta as well as Abhay Kumar Singh.

27. DW-3 is Manoj Kumar, co-villager of Abhay Kumar Singh @ Aman and Satish Kumar Gupta who had stated that when he had gone to the house of Satish Kumar Gupta on 16-09-2010, he found Aman and Satish under custody of police. He had further stated that nothing was recovered.

28. During cross-examination, he had stated that he had perceived arrival of police at 01:00 P.M. on 16.09.2010 but he had gone there at 8-9 AM. He had further stated that he met with Satish and Aman at the house of Aman. He had further stated that when he reached, none of the police members were present there.

29. During their statement under Section 313 of the Cr.P.C., It is evident that the accused persons have simply denied the same.

30. After analytical approach as well as minute observation of the evidence on the record, it is evident that:-

1) Accused Aman was apprehended on confidential information and during search recovery of booty was made from his place at his instance.

2) At his instance house of Satish was searched out and recovery was also made from his house at the instance of Satish.

3) All the recovery along with apprehension of accused Aman and Satish were made in presence of PW-1 and PW-5, who have had identified both of them to be the culprit at that very moment.

4) During course of investigation none of the accused were put on T.I. parade.

5) During course of investigation none of the articles were put on T.I. parade.

6) However, DWs have admitted presence of police at the house of respective accused as well as DW-1 and DW-2 has accepted their signature over seizure list,

though with certain explanation.

7) There happens to be consistent version of witness over search and seizure from the house of Aman and Satish who have had also been identified by the witnesses in dock during evidence save and except PW-5.

8) With regard to other accused, there happens to be absence of reliable evidence much less even regarding their apprehension.

31. PW-1 the informant had stated that first of all one person was caught by the police whom he identified as well as from the house of assailant the police had recovered booty in his presence. As other accused was not physically present on that day and were represented under Section 317 of the Cr.P.C. waiving their dispute over identification, is also a matter of concern which is to be considered with the evidence of other PWs.

32. From the evidence of PW-1, it is evident that he had not spoken about other co-accused than that of Aman and Satish and in likewise manner happens to be the evidence of other PWs. Therefore, identification of other co-accused in the background of absence of coherent, conclusive evidence, found inadequate to attract their complicity save and except on the basis of extra judicial confessional statement of co-accused Aman and Satish.

33. It is apparent from the DWs that on 16-09-2010 there was presence of police at the house of Aman and Aman and Satish were under their custody. There happens to be consistent version with regard to recovery of booty from their possession by consisting version of the prosecution witnesses. Furthermore, even denied by the DW-1 as well as DW-2 having signature over seizure list but have accepted their signature on plain paper, is nothing but mere an eye wash. Repulsive conduct of seizure list witnesses have been taken into account by the Hon'ble Apex Court in Surendra Singh Vs. State of Haryana reported in (2006) 2 SCC (Cri.) 444 and held that once the signature of the witnesses have been established then there is no question to disbelieve merely because they have not supported the prosecution case about seizure. Whenever there happens to be examination of defence witnesses then in that event the accused is bound to

accept the facts so narrated by the DW as has been held by the Hon'ble Apex Court in *Ashok Kumar v. State of Haryana*, (2010) 12 SCC 350.

¶41. The above statement of this witness (DW 3) in cross-examination, in fact, is clinching evidence and the accused can hardly get out of this statement. The defence would be bound by the statement of the witness, who has been produced by the accused, whatever be its worth. In the present case, DW 3 has clearly stated that there was cruelty and harassment inflicted upon the deceased by her husband and in-laws and also that a sum of Rs. 5000 was demanded. The statement of this witness has to be read in conjunction with the statement of PW 1 to PW 3 to establish the case of the prosecution. There are certain variations or improvements in the statements of PWs but all of them are of minor nature. Even if, for the sake of argument, they are taken to be as some contradictions or variations in substance, they are so insignificant and mild that they would in no way be fatal to the case of the prosecution?.

34. Apart from this, it is also evident from the seizure list that accused persons have got their presence over it and for that neither the accused during course of statement under Section 313 Cr.P.C. nor through DWs had explained apart from the fact that prosecution witnesses are consistent over recovery from the houses of Aman and Satish at their instance and on account thereof, happens to be admissible as well as relevant in terms of Section 27 of the Evidence Act. In *Rumi Bora Dutta v. State of Assam* reported in 2013 Cr.L.J. 3260 the issue has been dealt with:

¶16. In this context, we may refer with profit to the ruling in *State of Maharashtra v. Damu* (2000) 6 SCC 269 wherein it has been observed that: (SCC pp. 282-83, para 35)

¶35. 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 in 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. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum.?

Thereafter, the two learned Judges proceeded to state as follows: (SCC p. 283, para 35)

œ35. It is now well settled that recovery of an object is not discovery of a fact as envisaged in the section [Section 27]. The decision of the Privy Council in Pulukuri Kotayya v. King Emperor (Emperor, (1946-47) 74 IA 65: 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.?

17. In State of Punjab v. Gurnam Kaur (2009) 11 SCC 225 it has been laid down that: (SCC p. 228, para 14) œ

14. If by reason of statements made by an accused some facts have been discovered, the same would be admissible against the person who had made the statement in terms of Section 27 of the Evidence Act.?

18. In Aftab Ahmad Anasari v. State of Uttaranchal (2010) 2 SCC 583, after referring to an earlier decision in Pulukuri Kotayya(Emperor, (1946-47) 74 IA 65: AIR 1947 PC 67), a two-Judge Bench opined in the context of the said case that when the accused was ready to show the place where he had concealed the clothes of the deceased, the same was clearly admissible under Section 27 of the Evidence Act because the same related distinctly to the discovery of the clothes of the deceased from that very place.

19. In Bhagwan Dass v. State (NCT of Delhi)(2011) 6 SCC 396, relying on the decisions in Aftab Ahmad Anasari (2010) 2 SCC 583 and Manu Sharma v. State (NCT of Delhi)(2010) 6 SCC 1, the Court opined that when the accused had given a statement that related to discovery of an electric wire by which the crime was committed, the said disclosure statement was admissible as evidence?.

35. The shifting of onus on account of recovery at the instance of the accused coupled with extra judicial confession has been considered by the Hon'ble Apex Court in Sandeepv. State of U.P., reported in (2012) 6 SCC 107.

¶52. We find force in the submission of the learned Senior Counsel for the State. It is quite common that based on admissible portion of the statement of the accused whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered. Similarly, this part of the statement which does not in any way implicate the accused but is mere statement of facts would only amount to mere admissions which can be relied upon for ascertaining the other facts which are intrinsically connected with the occurrence, while at the same time, the same would not in any way result in implicating the accused in the offence directly?.

36. Recovery of booty soon after the occurrence is given a favourable consideration regarding presumption as is coming out from Section 114 of the Evidence Act and its illustration is sufficient to attract Aman and Satish for an offence under Section 395 IPC also coupled with the fact that identified by the PW-1 at the time of arrest as well as during evidence at dock supported with evidence of other PWs on this very score. However, are found fully exonerated by PW-5. Important aspect relating to this issue is absence of suggestion to PW-1 that he identified under undue pressure of police or some other. Moreover, identification in court for the first time is not a mere worthless affair rather it has got legal sanctity because of the fact that evidence before court is only a substantive evidence. From the facts of the case, it is evident that accused persons have caught hold PW-1, PW-5 pushed and pulled, assaulted took them to some distance and then left then in such circumstances witnesses have got ample opportunity to see accused from close proximity, hence identification on that score, could not be challenged.

37. In Subal Ghorai Vs. State of West Bengal reported in 2013 Cr.L.J. 3626 at para-20, it has been dealt with in following way:-

œ40. Counsel for the appellant submitted that the identification of the accused in the court should not be relied upon. We have no hesitation in rejecting this submission. The attack was dastardly. It is difficult to forget such heinous episode. The injuries suffered by the deceased show how brutally they were attacked. The eyewitnesses had seen the accused from close quarters. There is, therefore, nothing unusual if the eyewitnesses identified some of the accused in the court. This Court has accepted the evidence of identification in the court in several cases (see Malkhansingh (AIR 2003 SC 2669 : 2003 AIR SCW 3336). This submission must, therefore, be rejected. It is pertinent to note that some witnesses have honestly stated that they could not identify some of the accused. That shows that they were not tutored. It was argued that the prosecution has not been able to establish motive. The incident appears to have taken place because juvenile delinquent Gopal was detained by deceased Hemanta. Assuming, however, that this is a case of weak motive or that the prosecution has not established motive, that will not have adverse impact on its case because when there is credible evidence of eyewitnesses on record, the motive pales into insignificance?.

38. Therefore, with regard to complicity of appellant, Aman Kumar Singh @ Abhay Kumar as well as Satish Kumar Gupta there happens to be ample legal evidence whereupon the finding recorded by the learned trial court with regard to their complicity in terms of Section 395 IPC, 412 of the IPC is found properly proved and is confirmed along with the quantum of sentence so inflicted therefor. With regard to remaining, Guddu Rai, Amitabh Rai @ Amitab Kumar @ Amitab Kumar Rai, Raj Kumar Sah, the evidence is found deficient one. Consequent thereupon, the judgment of conviction and sentence recorded against them by the learned trial court is set aside. As a result thereof Criminal Appeal (SJ) No. 503 of 2013, filed by appellant Guddu Rai, Criminal Appeal (SJ) No. 549 of 2013 filed by appellant Amitabh Rai @ Amitabh Kumar @ Amitab Kumar Rai and Criminal Appeal (SJ) No. 644 of 2013 to the extent of appellant Raj Kumar Sah are allowed. They are under custody, hence are directed to be released forthwith if not wanted in any other case, while Criminal Appeal (SJ) No. 550 of 2013 filed by appellant Aman Kumar Singh @ Abhay Kumar Singh as well as Criminal Appeal (SJ) No. 644 of 2013 to the extent of appellant Satish Kumar Gupta are dismissed. They are under custody, hence are directed to serve out the remaining part of

respective sentences.

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