

In Re: Hanumantha Rao

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SooperKanoon Citation : sooperkanoon.com/430007

Court : Andhra Pradesh

Decided On : Dec-20-1955

Reported in : 1957CriLJ930

Judge : Umamaheswaram and ;Krishna Rao, JJ.

Appellant : In Re: Hanumantha Rao

Judgement :

Umamaheswaram, J.

1. I have perused the judgment of my learned brother and I agree with his conclusion. I am satisfied on the evidence on record that the appellant administered about one grain or more of sodium nitrite poison. But, as the prosecution has not established, beyond doubt, that the lethal dose was administered the benefit of doubt must be given to him I agree that the appellant is liable to be convicted under Section 328, Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of seven years.

2. I do not think that it is necessary for me to decide in this case as to how far the discovery of a witness is a discovery of fact within the meaning of Section 27 of the Indian Evidence Act. In Palaniendi Velan v. Emperor 1934 Mad WN 601 (A), a Division Bench of the Madras High Court took the view that the discovery of a witness to the crime or act of the accused, on his information would not be a discovery of a fact within the meaning of the section. In King Emperor v.

Ramanujam ILR 58 Mad 642 at pp 655 and 666 : AIR 1935 Mad 528 at pp. 534 and 540(B), a Special Bench of three Judges constituted by the Chief Justice in the exercise of his powers under Clause 25 of the Letters Patent had to consider the scope and effect of Section 27 of the Indian Evidence Act. Burn, J., without discussing the numerous cases cited before him. held as follows:

Section 27 says 'any fact,' but, in spite of that, the contention is, we must suppose that it means only facts of this peculiar nature. I must decline for my part to accept any such contention. Nothing can be easier to understand than the words 'any fact' and I am not prepared to hold that they mean less than they say. I shall therefore not discuss any of the numerous cases cited by Mr. T. R. Venkatarama Sastri in which learned Judges have gone the length of holding that the only facts contemplated by Section 27 are actual physical material objects There is no warrant for any such limitation.

Cornish. J., also took the same view. But. Lakshmanarao, J., dissented from them and held as follows ;

The fact discovered may thus be the stolen property, the Instrument of the crime, the corpse of the person murdered or any other material thing, or a material thing in relation to the place or the locality where it is found, and it should confirm though its connection with the crime and identification are always provable aliunde. The discovery of a witness to the crime or act of the accused, on his information, would not be a discovery of a fact within the meaning of the section, vide 1934 Mad WN 601 (A), and the confirmation or otherwise of the statement of the accused by the witness discovered cannot make any difference. Further, Section 162 of the Code of Criminal Procedure, prohibits the use of any statement by the witness to the investigation officer, and the discovery should in my opinion be of some concrete fact.

The view taken by the Division Bench in 1934 Mad WN 601 (A), and by Lakshmanarao J., in ILR 58 Mad 642 : AIR 1935 Mad 523(FB)(B), accords with the view taken by the High Courts of Lahore, Bombay and Vindhya Pradesh vide Sukhan v. The Crown ILK 10 Lah 283 : AIR 1929 Lah 344(PB)(C) : Ganu Chandra v. Emperor AIR 1932 Bom 286(D) and Kartar Singh v. State of Vindhya Pradesh

AIR 1952 Vidh Pra 42(E).

3. Several single Judges of the Madras High Court have followed the majority opinion of the Special Bench in ILR 58 Mad 642 : (AIR 1935 Mad 528)(B), and assumed that it is now settled law in the Madras State that the discovery of a witness is a discovery of a fact. They have not discussed the question whether the decision of a Special Bench has the same binding force as that of a Full Bench constituted under the Appellate Side Rules for resolving conflict of opinion and whether the decision in 1934 Mad WN 601 (A), should be regarded as having been overruled by the Special Bench. In this context, it may be noted that in England, the Full Court is not regarded as having any greater powers of jurisdiction than any division of the Court : vide *Young v. Bristol Aeroplane Co Ltd.* 1944-2 All ER 293 at p 298(P). As I am clearly of opinion that the evidence on record excluding the statement Exhibit P-18 is sufficient to warrant a conviction, it is not necessary to consider whether the decision in 1934 Mad WN 601 (A), is still good law Or refer the matter to a Full Bench. The effect of the observations of Sir John Beaumont in *Pulukuri Kotayya v. King Emperor* AIR 1947 PC 67 at p. 70(G). viz..

normally the section is brought into operation when a person in police custody produces from some place of concealment some object such as a dead body, a weapon or ornaments, said to be connected with the crime of which the informant is accused.

on the conflicting views may have to be considered in an appropriate case.

4. As regards the contention of Sri G. V. Raghavayya that the Magistrate ought not to have handed over the appellant to police custody on 17th September, 1954, I am inclined to take the view that there is considerable force. The Magistrate ought to have followed the provisions of Section 167(3), Criminal Procedure Code and Rule 86(1) of the Criminal Rules of Practice and given proper reasons for handing over the appellant to the police custody for a period of five days. But, in my opinion, the non-compliance of the provisions has not in any way affected the result of the case as I am of opinion that the evidence of P. W. 1 taken alone with the first information report clearly establishes that the appellant administered the

poison Following the decisions of the Allahabad High Court in Emperor v. Sikandar AIR 1930 All 532(H) and Happu v. Emperor AIR 1933 All 837(1), referred to by my learned brother I hold that the offence under Section 302, Indian penal Code, is not made out.

Krishna Rao, J.

5. The appellant Immanent Hanumantha Rao has been sentenced to death by the learned Sessions Judge of West Godavary for the murder of Bhima Bahadur, a Gurkha watchman in the branch office of the Imperial Bank of India at Palakol, by administering sodium nitrite poison in a drink about midnight on 11th September, 1954.

6. The case for the prosecution is that the appellant wanted to rifle the iron-safe in the strong room of the Bank with the aid of false keys and if necessary with the aid of a tinker P. W. 16, that with this purpose, at about midnight on 11th September, 1954, he gave drinks containing sodium nitrite poison to the deceased and to P W. 1, who were the night watchmen, that his plan was foiled as P W. 1 refused to have the drink, and that he decamped at about 1-30 or 2 A. M. while the deceased who had the poisoned drink was suffering from its effects. He was charged under Section 302, Indian Penal Code, for murdering the deceased and under Section 307, Indian Penal Code for attempting to murder P. W. 1, The learned Sessions Judge convicted him of the first charge, but, acquitted him of the second charge on the ground that his act in respect of P. W. 1 amounted only to preparation and not an attempt.

7. The evidence adduced by the prosecution may be summarised as follows : The appellant was a cashier in the service of the Imperial Bank of India and was working in the Palakol branch office for about three years until he was transferred to the Bapatla branch office in 1952. Even after he was transferred to Bapatla, he used to visit the Palakol branch office and meet the staff. He was therefore acquainted with P. W. 1, Tikkaram who was working there as a night watchman for about six years prior to the occurrence, and with the deceased who was appointed as a second night watchman about seven months prior to the occurrence. About

two months before the occurrence, he visited the Bank at about midnight, entertained the deceased and P W. 1 with beer, cool drinks and refreshments and went away about half an hour later saying that it was time for the train

He was on leave; from 16th August, 1954 to 15th September, 1954. On the night of the occurrence, the deceased was on duty as night watchman from 9 p.m. to midnight, punching the dial of the telltale clock every quarter-hour and P. W. 1 took over from him at, midnight. The appellant came to the Bank at that time with a hold-all M. O. 1 containing his building, a hand bag M.O. 2 containing three bottles of drinks and a basket containing cakes and apples. He pretended that he was returning to Bapatla after attending a marriage at Pithapuram and that he wanted to stay in the Bank for a few hours and to leave by the 2 A. M. train. He Went to the staff tiffinroom upstairs, called the deceased and P. W 1 there and offered them two tumblers containing drink saying that it was sherhat mixed with brandy.

The deceased drank a full tumbler, but P. W. 1 refused saying that he was not accustomed to it. The appellant pressed the second tumbler to P. W. 1's mouth, but P. W, 1 found the drink bitter and spat it out and refused to take any more. The deceased went downstairs to the threshold of the strong room, began, to complain that he was feeling hot and lay down saying that he was dying. The appellant followed the deceased and P. W. 1 with the second tumbler of drink and tried to persuade P. W. 1 to take it saying that he had mixed sugar in it. P W. 1 spurned it and a small portion of liquid fall on the Guddapah slab floor.

The appellant returned upstairs with the unused tumbler of drink and seems to have washed it ss P. W. 1 found some water falling down. When the appellant came downstairs again P. W. 1 questioned him about the drink he had. given to the deceased The appellant explained that it was only brandy and that the deceased was probably not used to it. Ho asked P. W. 1 to go out and fetch some soda. P. W. 1 refused to go out leaving the strong room unguarded. Then the appellant himself went to P. W. 7's shop about 100 yards away and brought two bottles of soda water.

The deceased was unable to drink the soda and the appellant drank the other bottle himself and returned the bottles at P. W. 7's shop. As the deceased was

found to be in agony, the appellant asked P. W. 1 to fetch a doctor, but P. W. 1 again refused to go out leaving the strong room unguarded. Thereupon, the appellant left saying that he would taring a doctor and did not return. He collected his bedding and hand-bag and went away to the Palakol railway station in P, W. 8s jutka, which was pyling for hire.

8. After waiting for a short time of the appellant's return, P W. 1 wanted to inform P. W. 2 the daffadar of the Bank, who was living one or two furlongs off. He requested P. W. 6, a neighbour living behind the Bank building, to watch the Bank during his absence, but P. W. 6 refused on the ground that he had to fetch his wife who had gone to the cinema. Therefore, P. W. 1 ran to P. W. 2's house at about 2 or 2-30 A. M, after bolting the entrance gate, told P. W. 2 what had happened and returned to the Bank. P. W. 2 came to the Bank and saw the deceased lying unconscious.

Then he informed P. W. 3, the cashier and P W. 4, the agent. They came to the Bank along with P. W 23, the Civil Assistant Surgeon at 4-20 A. M. and found that the deceased was dead. P. W. 4 asked P W. 1 to give a report of what had happened. P. W. 1 got Exhibit P-1 written by a clerk of a sundry shop in the locality, describing how the appellant came and gave drinks and wait away, consistently with his evidence at the trial. P. W. 4 sent Exhibit P-1 to the Palakol police at 7 A.M., and the police officers P. Ws. 32 to 34 investigated the case.

9. P. W. 34 the Inspector of Police at Bapatla, searched the appellant's house on the evening of 12th September. 1854, on receiving telegraphic instructions from the Deputy Superintendent of police. He found nothing material at the appellant's house and the appellant himself was absent. At about 11-1.5 P, M, on 15th September, 1954, the appellant went to P. W. 24 and enquired the reason for searching his house in his absence.. P. W. 24 handed over the appellant to P. W. 25, the head-constable of Palakol and the latter produced the appellant before P. W. 34. the Inspector of Police, Narasapur, on the next day. On 17th September. 1954. after the appellant was taken before the Magistrate for judicial remand, P. W. 34 got the appellant remanded to his custody for a period of five days for the purpose of further investigation.

The appellant made a statement to P. W. 34, which was recorded by P. W. 26, the village Munsif of Palakol, and a portion thereof Exhibit P-18 has been admitted in evidence under Section 27 of the Evidence Act. The admissibility of Exhibit P-18 is challenged by the learned Counsel for the appellant and we shall deal with the question later in the course of judgment.

10. P. W. 34's, evidence is that the appellant took him to several places between 18th September, 1954 and 21st September 1954, showed him. P W 17's shop at Guntur P. W. 10's shop at Ponnur, the shop of P. Ws. 13 and 14 at Bapatla, P. W. 16 at Guntur, P. W. 19 at Vijayawada and P. W. 20 at Gudivada. Consequently, P. W. 34 examined these and connected witnesses, who disclosed how the appellant equipped himself and went to the Bank in order to commit the offence.

The following is the gist of the evidence thus gathered by P. W. 34. About three months before the occurrence, the appellant went to P. Ws. 13 and 14 two tinkers at Bapatla and purchased 12 secondhand iron-safe keys for Rs. 15. from p. W. 14, by representing that he wanted them for his iron-safe which was at, his native place Kothapatnam. On 2nd September, 1954, 3rd September, 1954 and 4th September, 1954, the appellant obtained the prescriptions Exhibits P-5 P-7 and P-9 from P, W. 11, a registered medical practitioner of Ponur, for the supply of two ounces of brandy on each of the dates by representing that his wife was suffering from bronchitis and needed brandy.

On the strength of the prescriptions, he purchased two ounces of brandy on each of the dates from P. W. 10. a medical shop-keeper of Ponnur. On 10th September, 1954, he went to P. W. 16, a tinker at Guntur who was introduced to him by another tinker, P, W. 15, He engaged P. W. 16 for a remuneration of Rs. 25 besides expenses, to open an iron-safe at Palakola, by representing that it belonged to him and his brother and that there was a dispute between them. P. W. 17, a neighbouring shop-keeper saw the appellant engaging P. W. 16,

On the morning of 11th September, 1954, the appellant left Guntur toy train along with P. W. 16, who took his bag M. O. 7 containing tools for open-ins the look of the iron-safe P. W. 18, a railway police constable at Guntur saw the appellant coming to Guntur on the morning of 10th September, 1954, with M. Os. 1 and 2

and a basket and sleeping at the station on the night. The appellant took P. W. 16 by train to Palakol, On their way, the appellant purchased and took with him two orange crush bottles in his bag M. O. 2 from P. W. 19, an ice-vendor at Bezwada railway station. P. W. 20, a railway police constable at Gudivada railway station saw the appellant with M. Os. 1 and 2 and a basket and accompanied by another person passing though Gudivada.

After reaching Palakol at about 10 p.m. on 11th September. 1954, the appellant left P. W. 16 near the cart-stand and went away somewhere with M. Os, 1, 2 and 7. He returned some time later at about midnight. Ha then said that P. W. 16's services were not required as the brother returned home and gave P W. 16 a basket and asked him to go to the railway station. Subsequently the appellant came in a jutka with M. Os. 1, 2 and 7 and as they missed the train they walked to the next station about three miles off. There the appellant returned M. O. 7 to P. W. 16, gave him a sum of Rs. 8 and asked him to return to Guntur.

11. The autopsy over the deceased was conducted at 3 p.m. on 12th September, 1954 by P. W. 23, the Civil Assistant Surgeon, who had been taken earlier by P. Ws. 3 and 4 to see the deceased at 4-20 a.m. that morning. The deceased was found to have two bruises on the head, which might have been caused by his falling on the ground. The pericardium and heart were livid in colour and contained dark blood. The lungs were found congested and livid and all the solid organs in the abdomen were congested with dark blood.

The inner aspect of the duramater was found congested and the cerebrospinal fluid slightly bloodstained. The mucus lining of traches, larynx, cesophagus was found soft and livid and the tongue slightly swollen. P. W. 23 preserved all the viscera for chemical analysis. They included all the available items mentioned in paragraph 592 at page 263 of the Madras Civil Medical Code (4th Edition, Vol. I, 1929) such as the stomach and intestines and their contents and the Liver and the Kidney. P. W. 23 gave a provisional opinion that the deceased appeared to have died of shock, anoxaem' a and failure of heart on account of some poison which might have acted rapidly and reserved his definite opinion pending the Chemical Examiner's report (Exhibit P-15).

The Chemical Examiner detected sodium nitrite equivalent to about one grain in the stomach contents and a quantity of nitrite too small for estimation in the intestine contents and blood from the heart. Alcohol was also found in the viscera and the Chemical Examiner further stated that nitrite of potassium and sodium were virulent poisons. (Exhibit P-16). After receiving the Chemical Examiner's report P. W. 23 gave his final opinion that the deceased appeared to have died of shock, anoxaemia and nitrite poisoning as sodium nitrite was detected on chemical analysis. (Exhibit P-17), The police recovered on 12-9-1954, the clothes of the deceased, the stoneslab on which a part of the drink offered to P. W. 1 was spilled and scrapings from the wall and floor and two tumblers at the tiffinroom in the upstairs of the Bank. These were sent to the Chemical Examiner who detected, nitrite in quantities too small for estimation, only in the said scrapings. (Exhibit P-32). No omitted matter was found at the scene by the police. The hold-all M. O. 1 and the hand-hag M. O. 2 were recovered by the Police at the appellant's house on 19-9-1954 and P. W 16's tool-bag M. O. No. 7 was recovered from on 20-9-1954. It may also be mentioned that a newspaper M. O, 3, said to have been used by the appellant as a wrapper for his bottle of brandy and thrown away by him in the tiffinroom was recovered by the police and the evidence of the head cashiers P. Ws. 2 and 5 is that the addresses of the two persons written on it is in the hand-writing of the appellant.

12. The appellant admitted that he purchased 6 ounces of brandy at the rate of 2 ounces per day in all, as stated by P. Ws. 10 and 11, but explained that he did so as his wife was actually ill. It was elicited in the cross-examination of one of the prosecution witnesses (P. W. 27) that the appellant's wife was lean and sickly. However, the appellant denied altogether that he went to Palakol on 11-9-1954 and denied also the other incriminating facts spoken to by the witnesses such as that he purchased keys from P W. 14 and engaged, or took with him P.W. 16. The learned Sessions Judge held that death was proved beyond doubt to have been due to the administration of sodium nitrite poison on the night of 11-8-1954. On the question as to whether the appellant administered the poison, he believed P.W. 1's direct evidence and the circumstantial evidence showing that the appellant's object was to open the safe of the Bank after poisoning the two watchmen. He accordingly convicted and sentenced the appellant as mentioned

above.

13. Sri G. V. Raghavayya, the learned Counsel for the appellant has contended that the Magistrate acted illegally in handing over the appellant to police custody on 17-9-1954, that the police were thereby enabled to concoct the belated evidence of P. Ws. 13 to 20 and that in any event the appellant's alleged statement in Exhibit P-18 is inadmissible in evidence. He recognises that Section 107(3) of the Code of Criminal Procedure empowers a Magistrate to authorise detention of an accused person in the custody of the police after recording reasons for so doing, but contends that proper reasons did not exist here. The application made by P. W. 34 the Inspector on 17-9-1954, to the Magistrate for remanding the appellant, to custody has been marked as Exhibit P-40. P. W. 34 has stated therein that he has to examine the appellant, trace the appellant's associates and ascertain the appellant's movements and contacts with the help of the appellant.

For this purpose, a remand to P. W. 34's custody for a period of five days was asked for. The Magistrate passed a considered order accepting the several reasons given in Exhibit P-40 and remanding the appellant to P. W. 34's custody for five days. The learned Counsel points out that the head-constable P. W. 25, who arrested the appellant at Bapatla at about mid-night on 15-9-1954, spoke to having produced the appellant before P. W. 34 at Narsapur on the next day. He further points out that when P. W. 25 produced the appellant before the Magistrate at 7-20 P. M. on 16-9-1954, the Magistrate asked him to produce the appellant on the next morning and therefore the appellant was kept in the police lock-up on the night of 16-9-1954. He urges that P. W. 34 could very well have examined the appellant in the lock-up before the morning of 17-9-1954. But P. W. 34's evidence is that he did not interview the appellant at all until 1 P. M. on 17-9-1954, when he got recorded the statement containing Exhibit P-18. It is seen from Exhibit P-40 that P. W. 25, the head-constable produced the appellant before the Sub-Magistrate at Bapatla and then travelled with the appellant all the way from Bapatla to Narsapur on 16-9-1954. P. W. 34 might well have thought that it was improper to examine the appellant on the same night and without the permission of the Magistrate who had authorised the detention for the night in the lock-up. We therefore see no substance in the contention that the Magistrate should not have

accepted the reasons put forward by P. W. 34 in Exhibit P-40. The facts are Quite different from those in The Emperor v. Kampu Kuki 11 Cal WN 554(J), where the police officer vaguely represented that it was 'necessary that the accused should remain with him until next Thursday' and the Magistrate recorded an order 'allowed' The learned Counsel has also drawn our attention to Rule 86(1) of the Criminal Rules of Practice which lays down:

Magistrates shall not grant remands to police custody unless they are satisfied that there is good ground for doing so and shall not accept a general statement made by the investigating or other police officer to the effect that the accused may be able to Rive further information....

Here P. W. 34 has set out particular reasons in Exhibit P-40 and the Magistrate considered them and accepted them. There is no basis for supposing that the appellant was improperly remanded by the Magistrate to P. W. 34's custody, nor for drawing an inference that P. W. 34's object in obtaining the custody of the appellant was to concoct evidence by putting a statement into the mouth of the appellant.

14. Exhibit P-18 the appellant's statement has been admitted in evidence reads as follows:

A bearded Muhammadan (P. W. 14) sold 12 iron-safe keys for Rs. 15. In the beginning of the month I took a brandy prescription from a doctor (P. W. 11) on the ground that my wife was sick. On 10-9-1954. I purchased three daggers, brandy from a brandy shop (P. W. 10's shop). I kept my hold-all, zip canvass-bag and a basket in Guntur Railway Police Station. I slept in the Police Station, Then I readied Bezwada by 11 A. M. As soon as Nizam train came, I and Masthan drank two orange crush from the ice-compartment. I reached Gudivada at about 2 P. M, A known constable (P. W. 20) talked with me.

Q.-Can you show the persons and places as stated?

A.-If accompanied, I will show all.

Sri S. Malakonda Reddy, the learned Counsel who appeared for the Public Prosecutor, argued that in consequence of Exhibit P-18, the facts discovered were that the appellant purchased 12 iron-safe keys from P.W. 14 and brandy from P.W. 10 and orange crush from P. W. 19 and also that the appellant took P W. 16 with him. But this does not appear from P. W. 34's evidence nor the other evidence. With reference to this part of the case. P. W. 34 said that after Exhibit P-18 was recorded:

Then the accused took me to several places. On 18-9-1954, we reached Guntur at 1 P, M. I examined P. Ws. 15 and 17 and some others. The accused took me to the place of P. W. 17 and showed his shop. The accused then took me to Ponnur at 7 P. M. and took me to the shop of P. W. 10. I sealed his shop before the mediators, I examined P.W. 10 and others. On the next day, I searched the shop of P, W. 10 and seized brandy chits Exhibits P-5 and P-7 and P-9 and the brandy account of P, W. 10,...The accused then took me to Bapatla and we readied the place by 2 P. M.,, The accused showed me the shop of P, Ws. 13 and 14. I examined them...On 20-9-1954, the accused showed me P. W. 16 at 2-30 P. M. I examined P, W. 16 and seized the bag M. O. 7 with its contents. On 21-9-1954, we left Guntur at 9-30 A, M. and reached Vijayawada at 12 noon. The accused showed me P. W 19 and I examined him and others.

All that P. W. 34 says with reference to P. Ws. 10 and 14 is that the appellant showed their shops. Thereupon, P. W. 34 examined P. Ws, 10 and 14 and he recovered Exhibits P-5, and P-7 and P-9 by searching P.W.. 10's shop. As regards P.W. 16. it was elicited in cross-examination from P.W. 34 that he ascertained P. W. 16's house address by enquiry, that the appellant merely showed the person of P. W 16 at his house and that P. W. 34 did not state in the committing Court that the appellant showed P W. 16 at the house. In these circumstances, the appellant's showing P. W. 16 after P. W. 34 had already examined the connected witnesses P. Ws. 15 and 17 two days earlier and ascertained P. W, 16's house address was only a formal matter.

15. In order to attract Section 27 of the Evidence Act. the fact must be deposed to as discovered in consequence of information received from the accused and the

information must relate distinctly to the fact thereby discovered, i.e., discovered in consequence of the information. The effect of P. W. 13's evidence; is that he merely discovered the shops of P. Ws. 10 and 14 and the person of p. W. 19 by the, appellant showing them and that the other facts were gathered by P. W 34 himself by enquiry. The appellant's purchases of keys, brandy and orange crush were facts gathered by P W. 34 himself by examining P. W. 11, 10 and 19 and the discoveries of these facts were not the direct consequence of what the appellant stated some days earlier in Exhibit P-18 excepting the final sentence therein, viz.:

If accompanied, I will show all.

16. Immediately before showing the shops of P. Ws. 10, 14 and the person of P. W 19, the appellant presumably informed P, W. 34 that he had contacts with them. This was all the information that distinctly related to what P. W. 34 discovered in consequence of the information, viz., that P. Ws. 10. 14 and 19 had some connection with the appellant's commission of the offence. The other facts were discovered by P. W. 34 by examining the respective witnesses.

17. In AIR 1947 PC 67(G) dealing with Section 27. Sir John Beaumont said:

The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to. and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but 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. Normally the section is brought into operation when a per-son in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused'...In their Lordships' view 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 this fact.

18. In that case, certain weapons used for the murder were discovered in consequence of information given by the accused and the facts discovered were the place of concealment of the weapons and the accused's knowledge of it. The Judicial Committee held that only the portion of the information stating that the accused hid the weapons and that he would show them was admissible and that the other portions were inadmissible. The former portion was manifestly one distinctly relating to the fact of accused's knowledge which was discovered as a consequence. Similarly, in the present case, all that can be said is that P. Ws. 10, 14 and 19 and the accused's knowledge of them were discovered by P. W. 34. The information distinctly relating to the discovery and the cause of the discovery was the appellant's showing the shops and P.W. 19. The other facts were statedly discovered by P.W. 34 examining P.Ws. 10, 14 and 19.

19. It has to be noticed that in ILR 58 Mad 64.2 : (AIR, 1935 Mad 528)(FB)(B), the witnesses who were shown by the accused had forgotten that they respectively sold a mattress to the accused and carried the mattress for the accused until they were reminded of these facts by the accused. Not only the witnesses themselves but also the sale and the carrying of the mattress could not have been discovered in the absence of information about them given by the accused. But here the position is different and the facts disclosed by P.Ws. 10, 14 and 19 were gathered independently of the appellant.

20. Sri G, V. Raghavayya, the learned Counsel for the appellant relies on the judgment of a Division Bench of the Madras High Court in 1934 Mad WM G01 (A) for the position that information leading to the discovery of a witness is not admissible under S 27. But we are bound by the decision contra of the Full Bench in ILR 58 Mad 642; (AIR 1935 Mad 528)(FB)(B). The admissible information in Exhibit P-18 given by the appellant, with reference to Sri S. Malakonda Buddy's argument, is his showing the shops of P. Ws 10 and 14 and the person of P. W. 19. There is no force in Sri Raghavayya's contention that these were belated witnesses and that P. W. 34 has invented the story of having traced them with the

aid of the appellant in order to dispense with getting them to identify the appellant at identification parades. The entire group of witnesses who were traced with the aid of the appellant merely speak to the appellant's preparations to commit the offence and it is extremely natural and probable that they should have been traced only with the aid of the appellant. We have carefully perused the evidence of P. Ws. 10 to 20 and find no reason to distrust their testimony. They are all persons who have no motive whatever to give perjured evidence against the appellant. So far as P. Ws 10 and 11 are concerned, the appellant admits having purchased brandy and their evidence is only relevant to show that the appellant could have had brandy to be given to the deceased, in whose viscera alcohol was found. As regards the evidence of P.Ws. 13 to 20, the learned Counsel contends that the iron-safe in the Bank was Ghubb's make, with doublelock, and that the appellant would not have been so foolish as to think of opening the safe with the aid of P. W. 14's keys or of the tinker P W. 16. But the appellant's desire to rifle the safe and to get rich quickly might have overcome his powers of reflection as to the practicability of his schemes. In agreement with the learned Sessions Judge, we are of the opinion that the impracticability of opening the safe in the Bank is not by itself a reason to discredit the motive put forward by the prosecution.

21. The entire evidence of P. Ws. 10 to 20 relates to the appellant's motive and the fact of the appellant having gone to Palakol on the night of 11-9-1954. But in order to establish the charge framed against the appellant under Section 302 Indian Penal Code, the prosecution has to establish (1) that the appellant administered sodium nitrite poison to the deceased with the intent or knowledge to murder and (2) that the deceased died of sodium nitrite poisoning. Proof of these facts depends only on P. W. 1's oral evidence and the expert evidence of P. W. 23 taken along with the Chemical Examiner's report. Sri G. V Raghavayya contends that P. W. 1 is unreliable as he improved in several respects on the first information Exhibit P-1 given by him. But on a perusal of P. W. 1's evidence, we find that the so-called improvements or discrepancies are not of an important character.

The learned Sessions Judge observed that P, W. 1, who is a Gurkha, was unable to understand and talk fluently the Telugu language. Exhibit P-1 was drafted in

Telugu by a clerk of a sundry shop from what P. W. 1 expressed to him. The further details elicited in P. W. 1's evidence cannot be regarded as improvements. The only suggestion against P. W. 1's veracity was a random suggestion that he had himself a motive against the deceased on account of the latter's intimacy with P. W. 1's concubine. The suggestion was denied and the appellant's own story is that he was not much acquainted with the deceased and P. W. 1. Having regard to all the circumstances, we agree with the learned Sessions Judge in accepting and relying on P. W. 1's evidence. It establishes that the appellant gave a drink to the deceased that soon afterwards the deceased showed symptoms of poisoning and died, and that while the deceased was suffering from the effects of poison, the appellant went on the pretext of getting a doctor and disappeared. The medical evidence taken along with the Chemical Examiner's report establishes that the deceased's death was due to some poisoning, that about one grain of sodium nitrite poison was detected in the viscera of the deceased and that sodium nitrite poison was also detected in the scrapings from the wall and the floor where the appellant washed the glasses containing the remnants of the drink he had offered to the deceased and to P. W. 1.

22. Sri G. V. Raghavayya for the appellant has strongly pressed the contention that the evidence does not establish that the cause of the deceased's death was sodium nitrite poisoning. He relies on Modi's Medical Jurisprudence and Toxicology (Twelfth Edition, 1955) in which it is stated at page 566 that the fatal dose has been calculated to be about 30 grains of sodium nitrite, Such calculation is the normal method for determining the fatal dose - See Taylor's Medical Jurisprudence Volume II at page 340(Ninth Edition, 1934)). The learned Counsel points out that only about one grain of sodium nitrite was detected in the deceased's viscera and urges that the fatal dose necessary to cause death has not been accounted for and that the death of the deceased is therefore not proved to be due to sodium nitrite poisoning. Sri S. Malakonda Reddy for the prosecution refers to the mention in the same page of Modi's book that nitrite is easily decomposed and destroyed in the system and therefore some times not detected in the viscera. He urges that the detection of only one grain in the viscera is not inconsistent with the fatal dose having been administered. No other treatises available to Us mention the fatal dose. But P. W. 23 himself has stated in his

examination in chief:

A dose of about 20 to 30 grains will kill a normal human being.

23. In spite of this evidence, the prosecution made no attempt whatever to account for the detection of only one grain in the viscera of the deceased. They left the shortage from the fatal dose to be a matter for speculation and conjecture, P. W. 23's final opinion that the deceased died of sodium nitrite poisoning was based only on the detection of about one grain of sodium nitrite in the viscera. There is nothing to establish that the lethal dose must have been administered to the deceased, in which event alone it can be said to be proved that the deceased died of the poison alleged. We are fortified in this position by the decisions in AIR 1930 All 532(H) and AIR 1933 All 837(I). No doubt sodium nitrite is not an ordinary ingredient of food and it is unreasonable to postulate, as was sought to be done by the learned Counsel for the appellant, that the sodium nitrite found in the deceased's viscera might have been derived from sources other than the drink given by the appellant. The detection of sodium nitrite in the scrapings from the wall and floor also strongly points to the conclusion that the drink given by the appellant contained sodium nitrite, But there is a complete lacuna in the evidence as to the quantity of the poison administered by the appellant and in the absence of evidence to show that the lethal dose must have been administered, it cannot be said to have been proved that the deceased's death was caused by sodium nitrite poisoning. It is possible that the effect of a smaller quantity of sodium nitrite administered in the drink might have been aggravated by inter-action with the other food previously taken by the deceased. It is also possible that the appellant administered less than the fatal dose as it was sufficient for his purpose if the watchmen merely became unconscious. The benefit of the doubt arising from the absence of proof that the lethal dose must have been administered by the appellant has to be given to him. But there can be no doubt from the evidence that the appellant did administer about one grain or more the poison to the deceased, although it might have been short of the lethal dose.

24. For these reasons we set aside the conviction and sentence under Section 302, Indian Penal Code and convict the appellant under Section 328, Indian Penal

Code and sentence him to undergo rigorous imprisonment for a period of seven years.

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