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Nathu Vs. State

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Court : Allahabad

Decided On : Sep-18-1957

Reported in : AIR1958All467; 1958CriLJ821

Judge : H.P. Asthana and ;J.N. Tandon, JJ.

Acts : Evidence Act, 1872 - Sections 27; General Clauses Act, 1897 - Sections 13; Indian Penal Code (IPC), 1860 - Sections 201

Appeal No. : Criminal Appeal No. 928 of 1955

Appellant : Nathu

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : C.B. Misra and ;J. Rathore, Advs.

Disposition : Appeal allowed

Judgement :

Tandon, J.

1. One Ram Ghulam was resident of village Roshanpur Tikari, P.S. Khaga, in district Fateh-pur. He had three sons, Ram Narain, Mata Prasad and Mata Badal. Ram Narain the eldest is employed in cultivation in village Roshanpur. Mata

Prasad is employed at Kanpur in the power house. The third son was a student in D. A. V. College at Kanpur in 1954. Ram Ghulam and Ram Narain along with other members of their family resided at Roshanpur. Besides the residential house he possessed a bagar also, two houses away in the same village, where his cattle etc. used to be tied. It was alleged that Ram Ghulam used to sleep during night in this bagar.

As usual he went to sleep there on the night between 13th and 14th of August 1954 but did not return to his house in the morning of 14th August. Ram Narain went out in search of him but could not trace him out. Next it is said that the search by Ram Narain lasted for three days whereafter he went to Kanpur thinking that Ram Ghulam might have gone there to meet Mata Prasad and Mata Badal. He was not found at Kanpur and the three sons then returned to their village and started the search once again.

During the search Ram Narain met Ram Charan Morai, one of the prosecution witnesses who gave the clue that he had met Nathu Gadaria, the appellant before us, near the river Sasur-khaderi which flows nearby. Nathu's clothes were wet and upon his accosting him he remained quiet and gave no reply. Ram Narain and his brother Mata Prasad then went towards the river and there they noticed after travelling about half a mile that a corpse was floating entangled in the branches of an overhanging Semar tree. The head and the forearms of the body were, however, missing and the stomach was in a torn condition, They nevertheless recognised the corpse to be of their father and took it out.

After the above discovery Mata Badal lodged the first information report at police station Khaga at one in the afternoon of August 17, 1954. In this he recited the facts preceding the disappearance of his father from the house and the ultimate discovery of his corpse, as mentioned above from the river Sasur-khadri. He further stated that there was enmity between his father and Nathu, the appellant, in connection with the former's not allowing the latter to Irrigate his fields. Enmity was also pointed out with Dashrath Pasi who was one of the accused in this case but was acquitted by the Sessions Judge.

He pointed his suspicion for the murder of his father on these two persons besides one Ram Phal who was alleged to be their companion.

2. The station officer, Khaga, took up the Investigation and ultimately sent up five persons namely, Nathu, Dasrath, Sheo Prasad, Thakur Din and Ram Phal on charges under Sections 302/34 and 201/34 I. P. C.

3. The prosecution allegation further is that Nathu, Dasrath and Sheo Prasad were arrested on 18-8-1954 by the station officer, who thereafter interrogated Sheo Prasad accused and he made a confession to the station officer which ultimately resulted in the discovery of a kulhari and also a khurpa, the instruments by which the alleged murder was committed, from his house where they were lying concealed.

This discovery, the prosecution case was, had been done by Sheo Prasad himself after he had given the information in that behalf to the station officer. On interrogation Nathu accused also, it was alleged, made a confession and pointed out that he along with Dasrath and Sheo Prasad had kept the head and fore-arms of Ram Ghulam deceased concealed in the earth and later delivered them after digging to the station officer. Dasrath and Sheo Prasad similarly stated to the station officer about the concealing of the head and forearms.

It is said that the three accused accompanied the station officer to a place, which was about half a mile from the spot where the trunk of the body was found, for taking out the head and the fore-aims. On reaching there Nathu accused dug out the head and the forearms of the deceased and handed over the same to the station officer.

4. On 22-8-1954, Thakur Din and Ram Phal the other two accused were arrested. And yet again it was said, on interrogation, they made a confession to the station officer and promised to take out the clothes which were on the person of the deceased at the time of the murder and which they had concealed. These clothes were, it was alleged, subsequently discovered by these two accused from a talab nearby.

5. The prosecution made no claim that any person had actually seen the murder of Ram Ghulam. No eye-witness was therefore forth coming nor named. The prosecution mainly relied on the above confessions; first, leading to the discovery of kulhari and khurpa, the second leading to the head and fore-arms, and, the third leading to the discovery of the clothes, besides the evidence of Ram Ghulam's disappearance and some other circumstances.

Thus the prosecution case in brief was that the five accused joined together in murdering Ram Ghulam and having done so they disposed of his body, his clothes and the instruments of murder so that the evidence of the commission of the crime might also disappear and they be saved from punishment. They were accordingly tried under Section 302/34 and Section 201/34 I. P. C.

6. Every one of the accused denied the prosecution allegations against them. They also denied that they had made any confessional statements before the station officer or had discovered the articles attributed to them. According to them they had enmity with Chandra Pal and Raj Narain, who had falsely implicated them.

7. So far the charge under Section 302/34 I. P. C. was concerned, the learned Sessions Judge acquitted all Of them in the absence of any evidence about the commission of the murder by them. He acquitted the accused other than Nathu on charges under Section 201/34 I. P. C. also, but he convicted Nathu under Section 201 I. P. C. and gave him a sentence of seven years' rigorous imprisonment. Nathu has accordingly come up in appeal.

8. The prosecution case which has already been noted earlier against Nathu was that he along with Dasrath and Sheo Prasad made a confession giving information to the station officer about the hiding of the head and fore-arms of Ram Ghulam and this information ultimately led to the discovery by him of the head and fore-arms of Ram Ghulam deceased. The learned Sessions Judge believed this part of the prosecution story and sentenced Nathu as above.

9. Before we proceed to discuss the case against him, it might be mentioned that Nathu's appeal came up for hearing firstly before a single Judge (Hon'ble Mr.

Justice V. D. Bhargava) who, however, referred it to a Division Bench as, in his view, an important question of law as to the interpretation of Section 27 of the Indian Evidence Act was involved. Section 27 which is in the form of a proviso is as follows:

'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 in-formation, whether it amounts to a confession or not as related distinctly to the fact thereby discovered may be proved.'

10. It does not appear necessary for deciding this appeal to refer in detail to the alleged con-fessions which led to the discovery of Ram Ghulam's clothes, or the kulhari and the khurpa with which he was alleged to have been murdered, as none of these was made by Nathu. Nathu has been attributed the liability for the confession which led to the discovery of the head and forearms alone. Ex. P. 3, which is the recovery memo and had been prepared after the recovery of the head and the fore-arms had been effected, contained what, according to the prosecution had been stated by Nathu, Dasrath and Shea Prasad.

It is a pity that in spite of repeated pronouncements by this Court and other courts in thai behalf, the investigating officer did not consider it necessary separately to record or state the precise information which each of the three persons had given. On the contrary, Ex. P. 3 only mentioned that they said that;

'they the three accused persons and Ram Phal son of Sukh Raj, Lonia by caste, and Thakur Din son of Ram Pyare, Lonia by caste, residents of Roshanpur Tikri had killed Ram Ghulam son of Pancham, Murai by caste, resident of Roshanpur Tikri and buried the head of the dead body and half portions of both the fore-arms after digging earth near the Semar tree on the bank of Sasurkhaderi river at a distance of about a mile towards the east of Naubasta Road and that they could go and hand over the same'.

11. As would appear the statement attributed to these persons was a joint statement and Ex p. 3 without stating the precise confession made by the accused has simply stated what may be said to be the purport of the words attributed to

them. It cannot be said with certainty whether the several accused simultaneously made the statement or each stated separately one after the other and with what interval. Even the precise words spoken by or any of them individually have not been mentioned. It was accordingly urged that the alleged joint statement being a statement by more than one person it failed to be of any use so far as Section 27 of the Evidence Act was concerned.

The contention was that the information in consequence of which the discovery of any fact is made should always be information by one single individual only and not information given by more than one person even though the information may be identical in terms or given simultaneously, jointly or successively will not servethe purpose of the above section. And since the Prosecution allegation in this case is that the information was given Jointly by all the three accused the appellant's argument is that the so called confession was inadmissible in evidence.

The prosecution on the other hand has urged that the information was so given separately by the three accused and that Nathu did so before others and it would not therefore be said so far as Nathu was concerned that the information was given jointly by two or more persons. Against Nathu it was further urged that the facts deposed to by him were admissible under Section 27 of the Evidence Act. The question of law which the learned single Judge accordingly referred to the Division Bench was whether it was necessary for the application of Section 27 of the Indian Evidence Act that the facts deposed to should always be information given by one single individual only and whenever the information is jointly by two or more persons that section is inapplicable.

12. Section 27 of the Evidence Act is in the nature of an exception to the general rules contained in the two preceding Sections 25 and 26. Section 25 makes inadmissible any confession by an accused person to a police officer. Under Section 26 no confession by any person while he is in the custody of a police officer shall be proved against such person unless it be made in the presence of a Magistrate. Section 27 says that such part of the information given by an accused person while in the custody of a police officer may be proved against him as distinctly relates to the fact which is thereby discovered. It therefore makes

admissible a confession made while in police custody if the other conditions laid in it are fulfilled. Being an exception to the general rule it has to be strictly construed.

13. The section does not permit the admission in evidence of the whole of the confession, but of such portion only of it as can be said to relate distinctly to the fact discovered. There does not seem to be any controversy on this aspect of the section. In view of it that portion of the alleged joint statement by the three accused wherein they stated that they along with Ram Phal and Thakur Din had killed Ram Ghulam would not be admissible in evidence since it could not be said that it related distinctly to the discovery of the the head and fore-arms beneath the semar tree.

At the most the information that they buried the head of the dead body and half portions of the fore-arms after digging earth near the semar tree on the bank of Sasurkhaderi river at a distance of about half a mile towards the east of the Naubasta Road, would be information leading to the discovery of the head etc. We shall revert to consider this statement later when discussing the question how far the prosecution has succeeded in proving it. At the moment it should suffice to state that on its face it was a joint statement by all.

14. In terms of Section 27, the information deposed to should be information

'received from a person accused of any offence.'

The word employed being a 'person,' it is contended that the Legislature intended to lay down that the information should be information received from one single individual only. If, however, the information has been received from more than one individual, whether simultaneously, jointly or successively, it ceased to be information received from 'a person' and the protection of Section 27 is not available. Reliance has been placed on the case of Poshaki v. State : AIR1953 All526 which followed an earlier decision of the Oudh Chief Court in Puttu v. Emperor, AIR 1045 Oudh 235 (B).

The facts in Foshaki's case (A) were that two persons were sent up for trial under Section 395, I. P. C. Besides the evidence of identification it was alleged that the

two accused had made a statement to the head constable in the presence of the station officer and in consequence of this statement a well was discovered in which a box said to have been stolen was ultimately found. The information as regards the well and the box inside the well was conveyed to the police 'more or less jointly by the two accused.' The well itself was, however, pointed out by the two accused one after the other, first by P and subsequently by A.

The statement made by the two accused to the head constable was admitted by the trial court under Section 27 of the Evidence Act. In appeal against their conviction by the trial court, it was urged that it was not open to the prosecution to rely on Section 27 to prove the statement or rather the facts deposed to against either appellant. It was contended that Section 27 even

'refers only to a discovery that is made as a result of the statement of one particular individual and it does not contemplate the proof of successive recoveries, i.e. of the same thing being proved as a result of successive statements by different accused persons.'

The case of AIR 1945 Oudh 235 (B) was cited in support. In that case it was laid down that Section 27 contemplated information from a single individual alone and the main reason given was that the words 'a person' in singular had been used in the section. It was held that the joint statement of a number of persons could not be said to be an information received from any one particular individual or one of them, when therefore a fact is discovered in consequence of the information received from one or several persons charged of an offence and others also give like information it was not possible to treat the discovery as having been made in consequence of the information received from each one of them.

In Poshaki's case (A) reliance was also placed on Queen Empress v. Babu Lal, ILR 6 All 509 (PB) (C). This was in case in which the persons made a statement in consequence of which certain facts were discovered. A joint statement on behalf of the two accused was put forward. It was held that where a statement is being attributed to an accused in consequence of which he discovered a certain fact or facts the strictest precision should be enjoined on the witness so that there may be no room for the mistake or misunderstanding. And their Lordships refused to admit

under Section 27 of the Evidence Act Information given by the accused as it was indefinite and failed to show what precise statement was made by each one of them.

The question whether any information given simultaneously and together by two or more accused persons while in the custody of the police officer was admissible under Section 27 of the Evidence Act, was not decided in that case. Where however, a joint statement attributed to two accused is rejected on the ground that it failed to show what precise statement was made by each one of them, the ground for rejection is the absence of precision, which is the essence of Section 27, and not that it was the joint statement of two persons.

A joint statement in identical words by two or more persons can be made together and simultaneously, for instance, if two accused give an information in writing signed by them or written by them it will be information given by them jointly and simultaneously and likewise they can simultaneously utter out words which are identical and amount to information. Therefore, to reject a joint statement by two or more persons on the ground alone that it is a joint statement cannot be justified on the ground of precision.

If the statement is precise and also clear and further shows what the several accused stated individually and collectively it should not fail on the ground of want of precision. The question before the learned Judges in ILR 6 All 509 (C) was not, if we may say so with respect, whether a joint statement by two accused was inadimissible under Section 27 of the Evidence Act On that account alone.

15. In AIR 1945 Oudh 235 (B) the Oudh Chief Court no doubt held that Section 27 did not contemplate joint statement by two accused. But the learned Judges were persuaded in placing that interpretation on account of the presence of the words 'a person' in that section. As, however, appeared, firstly, it was not necessary for the disposal of that case to decide this aspect of Section 27 as the learned Judges were not convinced upon the facts also, secondly, their attention was not invited to Section 13 of the General Clauses Act 1897 which clearly lays down that unless context otherwise requires words used in singular shall include plural and vice versa.

There is nothing in Section 27 to show beyond what the words 'a person' may themselves mean that the Legislature intended to depart from the general rule laid down in Section 13 of the General Clauses Act. The presence of the words 'a person' in singular therefore cannot mean that the information should be by a single individual only. In Poshaki's case (A) the learned Judges, no doubt referred with approval to the presence of the words 'a person' in Section 27, but its decision was obviously not based on this interpretation of the section.

On the other hand, it was decided on the ground that Section 27 did not contemplate a second and subsequent discovery of the same fact, i.e., which has already been discovered once. We do not therefore think that Poshaki's case (A) is authority for the proposition that a joint statement by two or more accused is necessarily outside the purview of Section 27. The only case in which the question was answered was thus AIR 1945 Oudh 235 (B) but the reasoning followed by the learned Judges omitted to take account of Section 13 of the General Clauses Act, 1897.

In view, however, of Section 13, General Clauses Act, the presence of the words 'a person' in singular does not exclude the possibility of joint information by two or more persons. With great respect we do not agree with the view of Section 27 held in this case. As regards Poshaki's case (A) although there was a joint statement in it by two accused the discovery of the well in which the box was found was made at two different occasions, once in the company of one accused again in the company of the other accused and the question arose whether a re-discovery was contemplated by Section 27 of the Evidence Act.

There could be no discovery of a fact about which the police has information already and in this view of the matter Section 27 was inapplicable. Their Lordships of the Supreme Court also have in Aher Araja Khima v. State of Saurashtra : 1956 CriLJ426 held that the discovery of incriminating articles alleged to have been recovered by the accused is inadmissible in evidence if the police already knew where they were hidden.

As in Poshaki's case (A) the police had already information of the well in which the box was hidden consequent upon its discovery by the first accused its re-discovery

later at the instance of the second accused was no discovery such as would have attracted the provisions of Section 27. It also was not clear in this case what precise words had been spoken by the two accused separately and accordingly benefit of Section 27 was declined on the ground of want of precision too.

16. The learned counsel for the appellant also cited before us two other cases, Durlav Namasudra v. Emperor : AIR1932 Cal297 and Faqira v. Emperor, AIR 1929 Lah 665 (F). The latter case was referred to in Puttu's case (B) as well. The facts of this case are not fully reported but what appeared was that on the joint pointing out by the three accused of the place where certain bloodstains were discovered the body of the deceased for whose murder they were being prosecuted was discovered buried in a nala.

It is not clear whether a joint statement was made by the several accused or they stated the facts successively and in what terms. The learned Judge held the joint discoveries to be inadmissible against any of the accused as it was not shown who first made the discovery. It is not unlikely that as in Poshaki Lal's case (A') there were successive discoveries in this case also and the decision was based on that consideration. It was not decided in that case--there is nothing in the report to lead to that conclusion that the joint statement by two or more accused was per se inadimissible under Section 27 of the Evidence Act.

17. The Calcutta case, too, is distinguishable; firstly as it was a case in which the statement relied upon by the prosecution was made by the accused prior to his arrest, i.e. while in police custody. Section 27 made exception in favour of statement made while in police custody and where in consequence of the statement a discovery also is effected. The section being of the nature of an exception it has to be strictly construed, and its benefit will be claimable only if the conditions therein laid down are present.

One of these conditions is that the accused person is in the custody of the police. As the accused was not in the custody of the police when he made the alleged statement it was correctly held that Section 27 was inapplicable. What, however, further appeared was that after holding that the statement of the accused was inadmissible the learned Judge proceeded to make certain observations, which

were not necessary for the decision of the case. It is these observations which have been referred to by the learned advocate for the appellant.

The statement in question appeared to have been made by four persons, and it was observed that the statements of the persons, other than the first, could not be used in evidence. The view expressed was that Section 27 did not permit the statement made by other than the first individual to be admissible in evidence. It is not clear from the report whether the statements relied uponwere made at different occasions by the different accused, or it could be said with certainty that when the second and the third accused made the statements the information was not already in possession of the police. In the absence of these facts it is difficult to accept the contention that the learned Judges intended to lay down that a joint statement by two or more accused was per se inadmissible under Section 27 of the Evidence Act.

18. Section 27 of the Evidence Act came up for examination in two other cases, Naresh Chandra Das v. Emperor : AIR1942 Cal593 , and State Government M. P. v. Chhote Lal Mohan Lal, (S) AIR 1955 Nag 71 (H). The question arose in those cases whether the mere plurality of information received from accused persons before discovery took out the information from the purview of Section 27 of the Evidence Act.

While holding that the section had to be construed strictly the learned Judges of the Calcutta High Court held that an information received from accused which has led to discovery does not cease to be the information causing the discovery simply because such discovery was facilitated by other assistance as well. When a fact is one discovered in consequence of information received from some source, any further information subsequently received from any other source cannot be said to be the information whereby the fact is discovered.

The mere plurality of information received before discovery shall not necessarily take any of these informations out of the section, in a suitable case it is possible to ascribe to more than one accused the information which leads to the discovery.

19. In the Nagpur case also it was held that under section 27 of the Evidence Act simultaneous statements made by accused persons are not per se inadmissible in evidence and are liable to be considered if the discovery made in consequence thereof affords a guarantee about the truth of the statements. The learned Judge also considered the effect of the presence of the words 'a person' in Section 27 and very correctly held that the mere fact that they happened to be in singular did not exclude the meaning that the information could also be information furnished by two or more accused.

They referred to Sub-section (2) of Section 13 of the General Clauses Act which provided that words in the singular shall include the words in plural end vice versa unless there be something repugnant in the subject or context. So far as Section 27 went there was nothing in it which could be said to be repugnant to the interpretation that statements jointly made by more than one person were excluded from its scope. So long as the facts discovered in consequence of the statements afforded some guarantee about the truthfulness of those statements that being the principle underlying Section 27 they may be admissible.

20. In Abdul Kader v. Emperor, AIR 1946 Cal 452 (I), also Section 27 came up for consideration and it was held that if the prosecution are in a position to establish that the statements or action by two accused persons which led to the discovery of certain facts were actually made or took place simultaneously the evidence with regard to the simultaneous statements or simultaneous action would not be entirely shut out by that section. But there must be clear and satisfying evidence on this point such as will enable the Court to decide whether the evidence is admissible against both of the accused or against either and if so against which.

The case of Puttu Lal (B), in which a contrary view was taken was considered in (S) AIR 1955 Nag 71 (H), but was not approved. The view held in AIR 1946 Cal 452 (I), was confirmed. Poshaki's case (A), was also cited but distinguished.

21. We are in agreement with the view held in the aforesaid three cases namely : AIR1932 Cal297 : AIR1942 Cal593 , and AIR 1955 Nag 71 (H). Section 27, Evidence Act on its plain language does ' not, in our view, exclude the interpretation as to plurality of information received from persons accused of any

offence. Being an exception to the general rule contained in the preceding section, it nevertheless insists that only such information shall be admitted as relates distinctly to the facts thereby discovered.

The information should directly and distinctly relate to the facts discovered. Where, therefore, a fact has already been discovered any information given in that behalf afterwards cannot be said to lead to the discovery of the fact There cannot be a re-discovery. Where the information as to the fact said to have been discovered is already in the possession of the police, the information given over again does not actually lead to any discovery so that its discovery over again in consequence of the information given by the accused is rightly inadmissible under Section 27 of the Evidence Act.

It is easily conceivable that two or more persons simultaneously or jointly furnish an information and as a result of that information a common discovery is made; such a case will if either conditions are satisfied be covered by the section. Each case will, however, have to be judged on its own facts but the underlying principle seems to be that the information is such information as cannot be said to be already in the possession of the police and that the discovery is made in consequence of that information and further that the discovery is not rediscovery of something already discovered.

22. Such being the true legal position we proceed to examine how far the confession relied upon in the present case fulfilled the conditions necessary for the application of Section 27.

23. We may first refer to the recovery memo Ex. P3 which is the earliest material on the fact on the record. This was prepared after the recovery of the head and the fore-arms had been made and was attested by three persons, namely, Ram Dhani, Ram Singh and Chander Pal Singh In the body the presence of Bhagwat son of Ganga Din, who has been examined as a prosecution witness, was also mentioned. The relevant portion of this document has already been quoted earlier.

As might have been noticed it is in two distinct portions firstly, where the three accused are said to have stated that they along with Ram Phal and Thakur Din

had killed Ram Ghulam, and, secondly, where they stated about their burying the head and portions of the two forearms of the deceased near the semar tree. The first portion wherein they admitted having killed Ram Ghulam cannot by any stretch of reasoning be said to be information relating distinctly to the discovery of the head and the forearms of the deceased.

It is only the second portion wherein they claimed to have buried the head and the halfportions of the forearms after digging the earth near the semar tree which related distinctly to the discovery. The former cannot therefore be admissible under Section 27 under any circumstance. It is only the second portion which is so admissible.

24. But in its case too, we find that it lacks precision. It is not mentioned whether all the three accused simultaneously and jointly gave the information or they did so one after other and with what intervals. Neither the precise words in which the information was communicated are to be found in it. At the most it contains what may be said to be the purport of what the several accused had stated in connection with the recovery. This practice of not recording the actual words used by the accused persons by the investigating agency has been disapproved more than once and we are constrained to observe that the rule is observed more in its breach than compliance.

Section 27 insists that that part only of the information given by an accused is admissible as distinctly relates to the facts discovered. Unless, therefore, the exact words used by an accused person in giving the information are known the Court is not in a position to decide to what extent particular statement of the accused is admissible in evidence. In the case of Ex. P3 it is not possible to find what words were used in giving the information by the accused persons and if each accused gave the information separately, how far the information given by any one accused was responsible for the discovery of the head and the two fore-arms.

25. The other evidence relied upon by the prosecution consisted of the testimony of Bhagwat (P. W. 9), Ram Dhani (P. W. 5), Chandra Pal Singh (P. W. 10) and Satya Prakash Sharma (P. W. 20). The last named is the station Officer, who carried out the investigation and before whom the alleged confession was made.

In the earlier stage of the case it does not appear to have been stated that the three accused gave the information successively one after the other but before the Sessions Judge it was pointed out that Nathu accused was the first out of them to give the information and that the other two gave one after the other subsequently though at the same meeting.

The prosecution case in the court below accordingly was that Nathu alone gave the information in the first instance and the two accused, namely, Dashrath and Sheo Prasad, only followed. The defence contention with regard to it is that this change was purposely introduced in order to get over the difficulty about the Joint statement being admissible under Section 27 of the Evidence Act.

In view of the recovery memo Ex. P. 3 and of the statement of Chander Pal Singh (P. W. 10) before the committing magistrate, Ex. D. 10, it does appear that till then no attempt was made to show that the three accused had made separate statements. Chander Pal's version was that in his presence the accused persons had told Daroghaji that they would point out the head and fore-arms of Ram Ghulam. In his cross-examination he further said:

'Nathu, Sheo Prasad and Dashrath all the three said that they had buried the head and the hands'

Bhagwat (P. W. 4) no doubt stated before the Magistrate (Ex, 7), that the station officer had interrogated the accused one by one and Nathu was first to give the information about the head and the hands and Dashrath and Sheo Prasad followed him. In view of it while it may be said the prosecution pointed out this detail earlier also in the committing magistrate's court the fact remained that neither Ex. P. 3 nor Chander Pal Singh, who according to the defence was the moving spirit behind their entanglement in this case, claimed that the statements were made successively.

If at all his testimony is that all the three accused made the statement together. The learned Sessions Judge has relied on the fact that in the case diary the statement of Nathu accused was recorded first and after him the statement of Dashrath and then of Sheo Prasad and he concluded therefrom that Nathu must

have made the statement first. We do not think the mere fact of the statement of any particular accused appearing in the case diary before others is any guarantee that the statements were made in that order. The fact is to be made out independently of it.

26-28. But be that as it may, this part of the prosecution evidence does not appear to have much bearing on the merits of the case.

(Their Lordships then referred to the evidence and continued as follows:)

Therefore upon a consideration of the entire evidence on the point we are not convinced either as to the truthfulness of these witnesses or to the manner of discovery.

29. But apart from the above finding, even the statement attributed to Nathu, already quoted above, cannot sustain his conviction under Section 201, I. P. C.

30. Section 201, I. P. C., makes punishable the causing of any evidence of the commission of any offence to disappear if such disappearance is done with the knowledge or belief that an offence has been committed and it is done with the intention of screening the offender from legal punishment. It is necessary therefore before an offence under the above section can be made out that the person charged among other facts knew that an offence had been committed and that he caused the evidence thereof to disappear. He should be instrumental in the disappearance of the evidence of the crime. In the present case we, however, find that Nathu's alleged confession which was:

'Chalo nadi ke lanare mundh hath garha hai den.'

made no reference whatsoever how the mundh and the hath happened to be buried there or who did so. At the most the information given by him merely pointed to the existence of the mundh and the hath at the place stated by him. It is not possible from the above statement to infer the further ingredient of the offence under Section 201, I. P. C., namely that he caused the disappearance of these portions of the body. That being so it completely fell short of establishing his guilt under Section 201, I. P. C. And since this is the only evidence on which the

prosecution has relied in support there being no other evidence to show these happened to be there -- no conviction can be based on it. The learned Sessions Judge never considered this aspect of the alleged confession which was very necessary.

31. Therefore in view of what we have saidabove we are of the opinion that Nathu's guilt under Section 201, I. P. C., has not been established.

32. We accordingly allow the appeal, set aside his conviction and sentence and acquit him. We direct that he be set at liberty unless required to be detained under any ther process of law.

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