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**Ram Gopal Vs. State of M.P.**

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**SooperKanoon Citation** : sooperkanoon.com/506783

**Court** : Madhya Pradesh

**Decided On :** Apr-10-2000

**Reported in** : 2000(2)MPHT353; 2000(3)MPLJ458

**Judge** : S.P. Khare, J.

**Acts** : Evidence Act, 1872 - Sections 25, 26 and 27; Indian Penal Code (IPC), 1860 - Sections 201 and 302

**Appeal No.** : Criminal Appeal No. 1708/98

**Appellant** : Ram Gopal

**Respondent** : State of M.P.

**Advocate for Def.** : S.K. Rai, Panel Lawyer

**Advocate for Pet/Ap.** : Paresh Parekh, Adv.

**Disposition** : Appeal allowed

**Judgement** :

**S.P. Khare, J.**

1. Appellant Ram Gopal has been convicted under Section 201 I.P.C. and sentenced to rigorous imprisonment for seven years and to a fine of Rs. 5000/-.

2. The prosecution case was that accused Ram Gopal had married Sushilabai in Natra form and was living with her in Anupnagar in a hut. On 21-3-1997 at about 11 A.M. there was quarrel between the two. The accused caused injuries on the head of his wife with a stone resulting in her death. He buried the dead body of his wife in the nearby forest. He made an extra judicial confession to Radheshyam (P.W. 1) who took him to the Police Station. Radheshyam (P.W. 1) lodged the report Ex.P-1. The accused gave the information under Section 27 of the Evidence Act that he has buried the dead body of his wife in the forest and he would point out the place where it was buried. That information was recorded by C.L. Chouhan (P.W. 6) Station Officer of the Rehati Police Station. The accused took him to the forest and pointed out the place where the dead body was hidden. It was recovered at the instance of the accused. It was sent for post-mortem examination. According to the opinion of the autopsy surgeon, the death of Sushilabai was homicidal on account of the head injury sustained by her.

3. The accused pleaded not guilty. His defence was that he found his wife missing from his house and he went to the Police Station to lodge the report but it was not recorded.

4. The trial Court acquitted the appellant of the charge under Section 302, I.P.C. in the absence of any direct or circumstantial evidence on that point. However, the appellant has been convicted under Section 201, I.P.C. The basis of this conviction is the information given by the accused to the Police Officer leading to the recovery of the dead body in the forest.

5. In this appeal it has been argued that the accused did not give any information to the police and that is also inadmissible in evidence. The evidence on record has been carefully scrutinised by this Court. Radheshyam (P.W. 1) is said to have lodged F.I.R. Ex. P-1 at Rehati Police Station on 23-3-1997 at 11.30 A.M.. According to contents of this F.I.R. Radheshyam (P.W. 1) stated that accused Ram Gopal came to his house and confessed before him that he has caused the death of his wife by hitting a stone on her head and he has buried her dead body in the forest near his hut. According to C.L. Chouhan (P.W. 6) Sub-Inspector of Police, he recorded the statement of the accused on 23-3-1997 at 11.45 A.M..

That is Ex. P-3. The accused gave the information to him that he has buried the dead body of his wife in the forest. This information which is said to have been given by the accused was recorded at Rehati police station in the presence of Nanakram (P.W. 2) and Bhaiyalal. Nanakram (P.W. 2) has not supported the testimony of Sub-Inspector of Police on this point. He has been declared hostile. Bhaiyalal who was other attesting witness has not been examined. Nanakram (P.W. 2) who is said to have been present at the time of the recovery of the dead body from the forest has also not supported the prosecution. He has also been declared hostile. Radheshyam (P.W. 1) before whom extra judicial confession is said to have been made by the accused has also not supported the prosecution case. He has also been declared hostile.

6. The question is whether the information which is said to have been given by the accused under Section 27 of the Evidence Act as per memorandum Ex. P-3 is admissible in evidence. As mentioned above this information is said to have been given by the accused on 23-3-1997 at 11.45 A.M. and before that Radheshyam had lodged the report Ex. P-1 at 11.30 A.M. on the same date. From the report of Radheshyam (P.W. 1) the Police Inspector had come to know that the dead body of Sushilabai wife of the accused is buried in the forest near the hut of the accused. Therefore, the information which was subsequently given by the accused as per memorandum Ex.P-3 is not admissible in evidence. Section 27 of the Evidence Act provides: 'How much of information received from accused may be proved-- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.' The Supreme Court has held in Thimma v. State of Mysore, AIR 1971 SC 1871, that once a fact is discovered from the other sources there can be no fresh discovery even if relevant information is extracted from the accused and the Court has to be watchful that the protection of Sections 25 and 26 Evidence Act is not whittled down. In has been again held by the Supreme Court in Makhan Singh v. State of Punjab, AIR 1988 SC 1705, that when the investigating officer admitted that after recording the statement from a witness to whom the accused had made an extra-judicial confession, he know that the bodies were buried in the field but he felt that

information was not sufficient, it cannot be said that the place from where the bodies were recovered was such a place about which knowledge could be attributed to the accused and none else.

7. There must be a recovery in pursuance of the information furnished by the accused and that information should not have been previously known to the police. The discovery of hidden incriminating articles said to have been recovered by the accused is inadmissible in evidence if the police already knew where they were hidden (Aher Raja v. State of Saumshtra, AIR 1956 SC 217), Section 27 cannot be used to rediscover a discovered fact. That proposition has been laid down in Sukhvinder Singh v. State of Punjab, (1994) 5 SCC 152, and Vijender v. State of Delhi, (1997) 6 SCC 171. It has been pointed out in these cases that under Section 27 Evidence Act if an information given by the accused leads to the discovery of a fact which is the direct outcome of such information then only it would be evidence but when the fact has already been discovered, evidence could not be led is respect thereof. The case of Rajasthan High Court in Inder Dass v. State of Rajasthan, 1985 Cr. L.J. 1416, was on identical facts as the present one. In that case also the accused made an extra-judicial confession to the person who lodged the F.I.R. that he had buried the dead body in a particular place and that fact was also mentioned in the F.I.R.. The subsequent confession to the police about burying the dead body at a particular place is not admissible since that fact had already been in the F.I.R..

8. In view of the above legal position the statement of the accused to the Sub-Inspector that he has buried the dead body of his wife in the forest is not admissible in evidence as the police Sub-Inspector had already come to know on the basis of the prior F.I.R. Ex. P-1 by Radheshyam (P.W. 1) that the dead body of the wife of the accused has been buried in the forest. Therefore, there could not be conviction under Section 201, I.P.C. on the basis of evidence which was legally inadmissible.

9. The appeal is allowed. The conviction and sentence are set aside and the appellant is acquitted of the charge under Section 201, Indian Penal Code.

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