

Mangal Singh Vs. State

Mangal Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/696701

Court : Delhi

Decided On : Nov-10-1994

Reported in : 1994IVAD(Delhi)819; 1995(1)Crimes290; 56(1994)DLT454; 1994(31)DRJ442

Judge : Jaspal Singh, J.

Acts : [Evidence Act, 1872](#) - Sections 27

Appeal No. : Criminal Appeal No. 76 of 1994

Appellant : Mangal Singh

Respondent : State

Advocate for Pet/Ap. : Mukta Gupta, Adv

Judgement :

Jaspal Singh, J.

(1) Mangal Singh is an unhappy man. His grievance is that he has wrongly been convicted and sentenced under sections 397 and 392 of the Indian Penal Code. Is his anguish justified? Let us see.

(2) The prosecution story is quite brief. Shorn of unnecessary details, it runs as under. On January 23, 1988 at about 11.25 P.M. three persons holding knives in

their hands caught hold of Zuber Rizvi and robbed him of his wrist-watch. Though the Police Station was quite near to the place of occurrence, report was lodged only on the next day and that too in the afternoon. It was only after about a month that the appellant and two others were arrested. The wrist watch, however, was never recovered.

(3) The learned Additional Sessions Judge convicted and sentenced the appellant principally on three grounds. First, he had refused to participate in the test identification parade. Second, he had been identified in court by the complainant Zuber Rizvi, and lastly, the appellant as well as co-accused Kundan in their disclosure statements' had confessed that while they were armed with open knives, they had caught hold of Zuber Rizvi and had robbed him of his wrist watch.

(4) It is true that the appellant had refused to participate in the test identification parade. He did so on the ground that he had already been shown to the witnesses. The learned trial judge has dismissed this plea as of no consequence. I feel otherwise. In his statement Public Witness 6 Constable Laxmi Narain, who was actively associated with the investigation of this case, has admitted that the appellant had been shown to the witnesses and more particularly to the complainant Zuber Rizvi. Does he thus not lend full throated support to the plea of the appellant? 'Was the appellant thus not justified in refusing to participate in the test identification parade?

(5) Undoubtedly, Zuber Rizvi identified the appellant in court. He was examined on February 8, 1993, that is, more than five years after the occurrence. Admittedly also, the appellant was not known to him from before. He had not even given his description in the First Information Report. And, above all, the appellant had already been shown to him by the police. Under the circumstances can identification of the appellant for the first time in court be accepted as sufficient to condemn the appellant? I think the answer must be in the negative.

(6) One thing more before I shift on to the next point. Why did Zuber Rizvi not rush to the Police Station on the night of occurrence itself when admittedly he would have covered the distance in five to six , Why did he sleep over the matter, so to say, till the afternoon of the next day? This inordinate delay which has remained

unexplained also makes the whole affair look fishy.

(7) Coming to the alleged disclosure statements and their admissibility, the entire approach of the learned trial Judge has left me completely stumped. The information contemplated under section 27 of the Indian Evidence Act must relate distinctly to the fact thereby discovered. The information is allowed to be proved only if that condition is satisfied. True, section 27 particularly removes the ban placed on the reception of confessional statements under section 26. But the removal of that ban is not of such an extent as to absolutely undo the object of section 26. As far back as in the year 1947, the Privy Council had held in *Pulukuri Kottaya v. Emperor* Air 1947 Pc 67.

'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 distinctively to this fact'. And, in *Ram Kishan Mithanlal Sharma v. State of Bombay* : 1955 CriLJ196 while approving the judgment of the Privy Council, Bhagwati J. observed: 'On a bare reading of the terms of the section it appears that what is allowed to be proved is the information or such part thereof as relates distinctively to the fact thereby discovered '

(8) In *Mohd. Inayatullah v. State of Maharashtra* , : 1976 CriLJ481 , it was held by the Supreme Court that section 27 is in the nature of an exception to the preceding sections particularly sections 25 and 26. The first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only 'so much of the information' as relates distinctively to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word 'distinctively' means 'directly', 'indubitably', 'strictly', 'unmistakably'.

(9) In the said case of *Mohd. Inayatullah* (supra) the statement made by the accused was as under:

'I will tell the place of deposit of the three Chemical drums which I took out from the Haji Bunder on first August'.

The court held that the first part of the statement, viz. 'I will tell the place of deposit of the three Chemical drums' being the immediate and direct cause of the fact discovered, would only be admissible under Section 27.

(10) The law being as noticed above what was the fact discovered in the present case? None, at all. The learned trial judge totally ignored this fact and made admissible what was not and thus arrived at a conclusion which is legally untenable.

(11) Mangal Singh is thus justifiably an unhappy man. I accept his appeal and consequently set aside his conviction and sentence. He be set free forthwith if not wanted in some other case.

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