

**Ayyappan Vs. State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/726053](http://sooperkanoon.com/726053)

**Court :** Kerala

**Decided On :** Aug-09-2004

**Reported in :** 2005CriLJ57; 2004(3)KLT254

**Judge :** R. Basant, J.

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

**Appeal No. :** Crl. R.P. 1492 of 2004

**Appellant :** Ayyappan

**Respondent :** State of Kerala

**Advocate for Def. :** K.G. Bhaskaran, Public Prosecutor

**Advocate for Pet/Ap. :** Ashalatha Varma (S.B.), Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**R. Basant, J.**

1. Is information furnished by an accused in his confession statement that he has handed over the stolen articles for disposal to another accused admissible in evidence under Section 27 of the Evidence Act? Is there any irreconcilable conflict

between the decisions in Joseph v. State of Kerala, 1997 (1) KLJ 764, and Raveendran & Ors. v. State, 1989 (2) KLJ 534? These questions are thrown up for consideration in this revision petition.

2. This revision petition is preferred by the petitioner - a person in custody, challenging the concurrent verdict of guilty, conviction and sentence imposed on him in a prosecution under Sections 457 and 380 of the Indian Penal Code. He was granted the assistance of a legal aid counsel.

3. Three persons faced indictment initially for the offences punishable under Sections 457, 380, and 414 read with Section 34 of the IPC. Accused 2 and 3 were convicted only for the offence punishable under Section 414 of the IPC. The petitioner/accused was found guilty, convicted and sentenced for the offences punishable under Sections 457 and 380 of the IPC.

4. The prosecution alleged that at about 4.30 a.m. on 26.9.97 the accused trespassed into the residential building of PW2. He allegedly gained access into the house by removing the tiles of the roof. He committed theft of M.Os.1, 3 and 4, car stereo, speakers and remote control from the car, in the possession of PW2 which was available out side the house. It is thereafter that he gained access into the house. Inside the house, he allegedly committed theft of M.O.2 - a bangle studded with golden beads. A crime was registered and there was no clue about the identity of the assailant, though PW.2 claimed that he will be in a position to identify the accused if he sees him again.

5. Long after, the accused was arrested on 26.6.1998. Interrogation of the petitioner/accused led to his furnishing information about the manner of concealment/ disposal of M.Os. 1 to 4. He stated that he had handed over M.O.2 to the 2nd accused for disposal. Accordingly, PW9 arrested the 2nd accused and on the basis of his confession statement, effected recovery of M.O.2 under Ext.P3 from the possession of P.W.3 to whom the 2nd accused had allegedly sold M.O.2. The petitioner/accused furnished information to P.W.9 about the concealment of M.Os. 1, 3 and 4. He confessed that he had handed over M.Os.1, 3 and 4 to the 3rd accused for disposal. Accordingly, PW9 arrested the 3rd accused and on the basis of his confession statement, recovered M.Os.1, 3 and 4 under Ext.P5 from

the possession of PW.5 to whom the 3rd accused had allegedly sold them.

6. Cognizance was taken on the basis of the final report filed by the police. PWs.1 to 10 were examined and Exts.P1 to P7 were marked. PW1 is an attessor to Ext.P1 scene mahazar. PW.2 identified the petitioner/accused and M.Os. 1 to 4. PW.3 from whose possession M.O.2 was recovered under Ext.P3, turned hostile to the prosecution. PWs. 4 and 7 are the attestors to Ext.P3. PW10 is an attessor to Ext.P5. PWs.8 and 9 are the police officials and PW6 is the finger print expert who allegedly compared the chance finger prints obtained from the scene with the specimen finger prints of the 1st accused and submitted Ext.P4 report to confirm that the chance finger prints were those of the petitioner/accused.

7. The accused denied all the circumstances which appeared in evidence against them. On the side of the accused, Exts.DI to D7 were marked.

8. The Courts below concurrently came to the conclusion that the prosecution has succeeded in proving all the ingredients of the offences punishable under Sections 457 and 380 of the IPC against the petitioner/accused No. 1 and all ingredients of the offence under Section 414 of the IPC against accused Nos. 2 and 3. Accordingly, they proceeded to pass the impugned judgments. Accused Nos. 2 and 3 appear to have accepted the verdict of guilty against them. No challenge is pending before this Court, reported by the Registry.

9. The learned counsel for the petitioner assails the conclusions of the courts below on various grounds.

10. First of all, it is contended that the identification made by PW2 should not have been accepted and acted upon. PW2 on that night heard the caution given by his wife and it is then that he found the accused inside his bed room. The accused thereafter ran away. He could not be apprehended before he finally vanished from the sight of PW.2. PW.2 was allegedly able to identify the accused. No test identification parade has been conducted. Authentic identification is made for the first time in Court. I have no hesitation to agree with the learned counsel for the petitioner that such identification is inherently uninspiring and cannot be accepted and acted upon unless sufficient circumstances are there to corroborate such

identification.

11. The prosecution attempted to support the evidence of PW2 with the evidence of PW6 finger print expert and Ext.P4 report submitted by him. I have been taken through the evidence of PW.6 and Ext.P4. I am in agreement with the learned counsel for the petitioner that except to indicate or explain why PW.9 suspected the petitioner/ accused, Ext.P4 and the evidence of PW.6 cannot be put to any other specific or satisfactory purpose. I am surprised to note the nature of the evidence tendered through PW.6. There is no authentic and safe data to show that chance finger prints were properly lifted from the scene and was made available for examination of PW6. The chance or specimen finger prints have not been proved in any manner known to law. Ext.P4 report does not reveal the nature of the comparison effected or the basis of the opinion of PW.6 as to how he reached the conclusion that the chance finger prints were that of the petitioner. In these circumstances, the evidence PWs.6 and Ext.P4 cannot also be of any crucial help to the prosecution. (sic) referred above identification by PW.2 or expert evidence in (sic) be made the foundation for conviction.

12. We have the further evidence that when PW.9 arrested accused in this crime and interrogated him, he made a confession statement. (sic) statement he allegedly furnished information to PW.9 about the thieved (sic) Os. 1 to 4. He stated that he had handed over M.O.2 to the 2nd accused for (sic) He further stated that he had handed over M.Os. 1, 3 and 4 to the 3rd accused (sic). The relevant portions of the confession statement of the 1st accused are proved through PW.9. According to PW.9, on receipt of this information, he went after 2nd and 3rd accused. He got them into custody. He interrogated the 2nd accused who furnished the information that he had handed over M.O.2 to PW.3. Accordingly, PW.9 proceeded to PW.3 and recovered M.O.2 under Ext.P3 from PW.3 in the presence of PWs.4 and 7 who are the attestors in Ext.P3. On the basis of the information furnished by the 3rd accused about the disposal of M.Os.1, 3 and 4, PW.9 proceeded to P.W.5 and effected recovery of M.Os.1, 3 and 4 under Ext.P5 in the presence of PW.10. Notwithstanding the hostility of the attestors, I am satisfied that the evidence of PW.9 on this aspect can be safely accepted.

13. The learned counsel for the petitioner contends that the information furnished by the accused about the persons to whom he had handed over the stolen articles for disposal/concealment cannot be admitted in evidence under S .27 of the Indian Evidence Act. She places reliance on the decision of a Single Bench of this Court reported in Joseph v. State of Kerala, 1997 (1) KLJ 764. In particular, she places reliance on para-6 of the said decision and portions of para-9 which are extracted below:

'6. The other piece of evidence which the prosecution relies to prove its case against the petitioner is the alleged recovery. According to the prosecution, the petitioner was arrested on 11.10.1988 and he came out with the statement Ext.P4(a) as per which he has stated that if he is taken to the place he will show the man to whom he had given the necklace. This statement in my view will not be admissible under Section 27 of the Evidence Act as any statement to be admissible under Section 27 of the Evidence Act must lead to the discovery of a fact which is found wanting in ExtP4(a)

XXX XXX XXX XXX'9..... A witness cannot be said to be discovered under Section 27 of the Evidence Act though

the statement of the accused may be taken into consideration as conduct relevant under Section 8 of the Evidence Act. Hence it cannot be said that M.O.1 was recovered at the instance of the petitioner'.

14. On the strength of the said decision, it is contended that such a statement of an accused furnishing information about a witness cannot be received in evidence under Section 27 of the Evidence Act.

15. I am unable to agree that the said decision lays down any such broad proposition. Even assuming that such proposition as canvassed by the learned counsel for the petitioner emanates from the decision in Joseph's case (cited supra), it cannot certainly be held to be the correct interpretation of law in the light of the decision of the Division Bench in Raveendran & Ors. v. State, 1989 (2) KLJ 534. The fact discovered under Section 27 of the Evidence Act need not be an object, it is by now trite. In a lucid discussion of the law, the Division Bench had

made the following observations in that decision which can leave no doubt on the question of law. In para 19 in the said decision, the Division Bench after adverting to the relevant decisions including Pudukuri Kottaya and Ors. v. Emperor, AIR 1947 P.C. 67, has observed:

'If the information leading to discovery of a fact is relating to the concealment of an incriminating object it can be by concealment in a place or by entrustment with a person'.

16. The learned Judges proceeded to observe in para 19 that:

'19.....The fact discovered must be connected with the crime charged and discovery of the fact must be the direct outcome of the information, the truth of which is thereby assured. Only then the embargo on the statement of the accused to the police is removed. For the application of Section 27. there is practically no difference between the information that the article is kept concealed in a particular place and the information that the article is given to a particular person. The only difference is that the named person is substituted for the place'.

17. In the light of the categorical observations and the law laid down by the Division Bench, there can hence be no doubt that the information furnished by the accused in the course of his confession statement that he had entrusted the thieved articles to other specified persons for clandestine disposal is certainly admissible provided the truth of that information is established.

18. In the instant case, there is convincing evidence to show that the 1st accused/petitioner had made a confession statement that he had handed over M.Os. 1 to 4 for clandestine disposal to the 2nd and 3rd accused. Authenticity of that information is confirmed by the actual recovery of M.Os. 1 to 4 on the basis of admissible confession statements made by the 2nd and 3rd accused. The recovery of M.Os. 1 to 4 was effected from the possession of PWs. 3 and 5.

19. The information furnished had distinctly referred to the concealment of the object by handing them over to the 2nd and 3rd accused. Assurance for the correctness of that information furnished by the 1st accused is secured by Court

by the recovery of M.Os. 1 to 4 on the basis of the confession made by the 2nd and 3rd accused. M.Os.1 to 4 were actually recovered from P.Ws.3 and 5. Assurance is, thus, available for the Court for the information furnished by the petitioner to the police about the concealment of the stolen articles by handing over the same to the 2nd and 3rd accused. In these circumstances, I am of opinion that there is no merit in the contention that the information furnished by the petitioner to PW.9 is inadmissible under Section 27 of the Evidence Act.

20. Though some observations in Joseph's case, 1997 (1) KLJ 764, extracted out of context may create confusion, it must be noted that the decision in Joseph's case turned primarily on the ground that the nexus between the stolen gold ornaments and the gold ingot recovered was not established. That is the irresistible conclusion flowing from the following observations in para 9 in Joseph's case:

'There is no material in the case to suggest that M.O.1, the gold ingot was actually the ingot obtained by melting the chain that was snatched away from the neck of PW.2, as PW4 from whom the ingot was said to have been recovered under Ext.P4 has turned hostile'.

The observations in para-26 in Raveendran's case which I extract below convey eloquently that under identical circumstances the information furnished is held to be admissible under Section 27 of the Evidence Act. The learned Judges in Raveendran's case were seized with exactly identical facts:

'26. From the foregoing discussions, it is clear that informations given by accused 3 and 4 that they entrusted the weapons concerned to the first accused would fall under Section 27. The correctness of those informations was confirmed when the first accused was questioned. The information given by the first accused and the recoveries were so inextricably connected with each other as cause and effect that the recoveries were the direct consequence of the information of accused 3 and 4. Entrustment to the first accused was an information exclusively known to accused 3 and 4 separately. Truth of these facts was known for the first time when the first accused was questioned and recoveries were made pursuant thereto. These recoveries were the direct out come of the informations received from accused 3

and 4. All these facts were deposed to and there is no reason to disbelieve the evidence'.

21. It follows that the information furnished by an accused person in the course of his confession statement that he had concealed the stolen articles in a theft case by handing it over to another person/persons (instead of concealing them at a place) is perfectly admissible under Section 27 of the Evidence Act, provided the nexus between the concealed articles and the offence can be established and provided that inspiring assurance is available for the truth of the information furnished. I am unable to accept the argument that the decision in Joseph's case lays down any contra proposition which is in direct conflict with the dictum in Raveendran 's case. It therefore follows that the criticism raised that the discovery of the fact of concealment of the stolen articles with the 2nd and 3rd accused and the recovery of M.Os. 1 to 4 on the basis of the information furnished by the accused to PW.9 are inadmissible in evidence cannot be accepted. The challenge against admission of the relevant portions of the confession statement must hence fail.

22. The accused has no explanation as to how he came into possession of M.Os. 1 to 4. The evidence of PWs.2 and 1 read along with Ext.P1 clinchingly establishes that M.Os. 1 to 4 were thieved from the house of PW.2. The innocuous incongruity in the narration of the stolen articles does not at all appeal to me. The learned counsel for the petitioner contends that a reading of Ext.P2 - First Information Statement must suggest that only a gold bead ('one') in the plastic bangle was lost, whereas the evidence of recovery shows that what is recovered is the bangle itself. I find no crucial or vital incongruity on this aspect. A careful reading of Ext.P2 and the evidence on oath tendered by PW2 must convey that the entire bangle was lost and not the gold bead in the bangle alone. Otherwise, the bangle without the bead must certainly have been shown to the investigating authorities and seized. Obviously, that deficiency in the statement in Ext.P2 cannot deliver any advantage to the accused.

23. Possession of stolen property recently thieved is, thus, clearly established. The petitioner/accused had handed over the stolen articles to the 2nd and 3rd

accused. That fact has been established beyond controversy. The accused must be presumed to be the one who committed the theft or the one who only received the stolen articles. It is here that the evidence of PW.2 regarding identification of the petitioner also assumes some significance. At any rate, the graver presumption is certainly the presumption of prudence in the given circumstances. The position of the 2nd and 3rd accused is certainly different as it is the very case of the prosecution and the evidence tendered that they came into possession of M.Os.1 to 4 after theft from the 1st accused. Merely because the 2nd and 3rd accused were found guilty only of the offence under Section 414 of the IPC, the petitioner herein cannot claim any benefit of advantage,

24. The learned counsel for the petitioner relying on the statement made by the accused in the course of his 313 examination contends that the petitioner was detained in prison on the date of the crime in this case. The arguments did arouse concern. But the learned Public Prosecutor points out with the help of the records available in the case that though the petitioner was earlier detained in custody, the definite case of the prosecution is that he had escaped from custody from the prison and the crime in question was committed during the period that he was at large. The records clearly indicate that mere statement made by the petitioner in the 313 examination, in the absence of any material, cannot deliver any advantage to the accused. It is not necessary to send the matter back to the trial Court for further evidence on that aspect.

25. I do not, in these circumstances, find any merit in the challenge raised against the concurrent verdict of guilty and conviction.

26. I do not find any merit in the challenge raised against the sentence imposed. The rigorous imprisonment for a period of two years is the sentence imposed. The currency has been conceded. Set off for the period undergone was also granted. I am, in these circumstances, satisfied that the sentence imposed is also absolutely justified.

27. In the result, this revision petition is dismissed.

28. Communicate a copy of this order to the petitioner/accused through prison authorities.

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