**In Re: Sankappa Rai**

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**SooperKanoon Citation** : sooperkanoon.com/773902

**Court** : Chennai

**Decided On :** Feb-05-1908

**Reported in** : (1908)18MLJ66

**Appellant** : In Re: Sankappa Rai

**Judgement** :

1. The 6th accused is the appellant before us; he was charged with abetting a dacoity and receiving stolen property and has been found guilty of the former offence and acquitted of the latter, the verdict of the jury being that 'it is doubtful whether he received the stolen property knowing it to be stolen.'

2. The principal contentions in the appeal are that the Sessions Judge has misdirected the jury (1) in regard to a confession said to have been made by the 1st accused, and (2) in regard to the statement made by the 2nd accused's wife Akku, prosecution witness No. 11.

3. The confession of the 1st accused was made to the Police Inspector and was therefore inadmissible in evidence, but under Section 27 of the Evidence Act, if the 1st accused was in the custody of the Police, so much of the information given by him might be proved as related distinctly to the discovery of the stolen property. The confession was to the following effect: The 1st accused had obtained a share of the property stolen in the present dacoity and in the other three and he would produce it. * * * He had one mura of rice, and one kalsige of horse-gram, one umbrella, one piece of white cloth, and one rupee; on the night of the dacoities the

stolen rice muras were carried to the Potel's (6th accused's) house, and there Potel gave three muras, one to him, one to Patta (2nd accused) and one to Malinga. He had left the umbrella in the Potel's house. The Sessions Judge directed the jury in the following terms: 'The law regarding confessions is that a confessional statement made by an accused to a Police officer is not admissible against him, and it is perfectly just and reasonable, because you can hardly believe that a person will voluntarily confess his guilt to a Police officer, and if you take such a confession to be evidence against him, no doubt anybody maybe convicted on such evidence. But the law says, supposing that, in consequence of such information, property is discovered, then so much of the information is relevant and can be proved against that person. If a person merely says 'yes, I stole the property' and if he afterwards says he did not say so, you may have reason to believe that his confession was not voluntary and true. But if it is said that he confessed and produced the property as being his share, their you have good reason to believe that the confession is a truthful thing unless the production of the property can be otherwise accounted for, and therefore the law wisely says that 'unless such corroboration is afforded a confession to the Police is not relevant.' But if you find corroboration, and property is discovered in consequence of such statement, then to that extent it is a relevant matter, and therefore1, in my opinion, the statement of the 1st accused that he had certain stolen property, that the Potel gave one mura to him and one each to the 2nd accused and to Malinga, and that the rest of the muras were with the Potel is relevant as against the 1st accused himself and, as Section 30 of the Evidence Act says, such confession may be taken into consideration against such other person, that is, against 2nd and 6th accused.'

4. It is first objected to this direction that the 1st accused was not, at the time he gave the information, in the custody of the Police. The Police Inspector's evidence, however, implies that he was brought to him by a constable to Venkatakrishna Bhatta's house, and the Sessions Judge, though he does not say so, might well have accepted this evidence as proving the custody. It was the duty of the Judge, not of the Jury, to decide the point as being a matter of fact which it was necessary to prove in order to enable the confession to be admitted in evidence [Criminal P.C., Section 298, Clause (d)] and his omission to state to the Jury his finding on

the point is not a misdirection and could not prejudice the accused. We think the Sessions Judge was wrong in leaving to the Jury to take into consideration the 1st accused's confession as against the 6th accused, the statement by the 1st accused that he had certain stolen property with him, and that the 6th accused gave him one mura of rice and gave one mura of rice to the 2nd accused f and one to Malinga. The facts were not the immediate cause of the discovery of stolen property in the Potel's house vide Queen-Empress v. Commer Sahib I.L.R. (1889) M. 315 and it cannot be that a statement which would not have been admissible against the 6th accused, if made by himself when in custody, is admissible against him when made by a co-accused when in custody. The most that could be taken into consideration as affecting the 6th accused would be so much of the information, if it amounted to a confession, as was the immediate cause of the discovery of some fact relevant against him - in the present case the fact that he was in possession of stolen rice - and as that, in this case, was only the statement that the 1st accused carried some rice to him which could not amount to a confession, there is here no confession which could be taken into consideration against the 6th accused.

5. In paragraph 9 of his charge to the Jury the Sessions Judge deals with the evidence of the witness Akku, and after pointing out that she at the trial (and we may remark also in the committing Magistrate's court) withdrew the statement which the Inspector alleged mat she had made to him, directed the Jury that if they believed the story which the witness told the Inspector and which was also recorded in a statement made to an investigating Magistrate, though not to the committing Magistrate 'it is a strong case against the 6th accused as also against some other accused.' Clearly there is here a serious misdirection.

6. The Sessions Judge has told the Jury that they may use as evidence against the accused a statement made behind their back, and not tested by cross-examination. Whether the judge is referring to the statement made to the Inspector or to the statement (Exhibit G) made to the Magistrate Saldanha, the result is the same. Neither statement is evidence against the accused; for even if the latter statement was made in the presence of the accused, which does not appear, Section 288 of the Criminal Procedure Code will not apply to it as it was not made

before the committing Magistrate holding an enquiry under Chapter XVIII of the Code.

7. The Sessions Judge has thus directed the Jury that a statement which is not evidence against the 6th accused (though it might, no doubt, be used to contradict the witnesses, if believed, strong evidence against him. It is clear the verdict cannot in these circumstances be sustained. The misdirection is repeated in paragraphs 14 and 15 of the charge and must have misled the Jury.

8. Throughout his charge the Sessions Judge has placed too much stress upon statements made or alleged to have been made to the Inspector of Police and too little on the evidence given by the witnesses at the trial. The statements made to the Police cannot be treated as evidence on which the accused can be convicted when the facts stated in them are not proved by evidence given at the trial. The evidence of the prosecution witness No. 20 seems to be altogether irrelevant, and we think that the Jury should not have been told that they were entitled to draw any inference against the 6th accused from that evidence or from the fact that where were 3 or 4 dacoities on the same night in the same neighbourhood. We set aside the conviction of the 6th accused and direct his re-trial.

9. The prisoners Nos. 1 to 5 convicted of dacoity have not appealed, and inasmuch as there is clearly evidence against them, sufficient to warrant their conviction, and the misdirection on which we have to set aside the conviction of the 6th accused affects only some of them and affects those to a much slighter extent than it affects the 6th accused, and further, considering the fact that the sentence passed on them is a light sentence for the offence of dacoity and a sentence which might be increased on a re-trial, we thinly that we are not called on to interfere on their behalf in revision.