

**In Re: Athappa Goundan**

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**Court :** Chennai

**Decided On :** Mar-16-1937

**Reported in :** (1937)2MLJ60

**Appellant :** In Re: Athappa Goundan

**Judgement :**

ORDER

Horace Owen Compton Beasley, C.J.

1. The following questions have been referred to the Full Bench, namely:

2. (1) Is the whole or any part of the following statement:

He said that at about 11 P.M. on the night of 26th March, 1936, himself and Gurunatha Goundan, son of Kanda Goundan of Erangattur, together killed Sennimalai Goundan alias Sottayan by gagging his mouth with cloth and throttling his neck with hands and also by putting a rope and pressing it,.... that that night... they got two bottles of illicit arrack by paying Rs. 2 to Gandhi Ranga Royan of Kallipatti who got it from some other place,... that a small quantity was left over in one bottle only, that... (they) buried (1) the empty bottle, (2) a rope and the cloth gag in a dung hill next to the cattle-shed in the same compound and the other bottle with some arrack in a heap of mud near a log of wood in corner of the compound east of the choultry at Kallipatti and that he would go and take them and produce them. This is known to us

3. Alleged to have been made by the first accused--admissible against the first accused under Section 27 of the Indian Evidence Act and if yes how much of it; and

4. (2) If the answer to No. (1) is in the affirmative, can such statements or any part thereof be 'taken into account' against the second accused under Section 30 of the Indian Evidence Act?

5. In the Order of Reference my learned brothers Mockett and Horwill, JJ., the referring Judges, directed that, in order that the Full Bench could give the fullest consideration to this matter, the whole of Ex. G which sets out the statement made by the first accused should be typed and added to the record to be placed before the Bench. This direction has been carried out and the Court translation of Ex. G where it relates to the cloth buried in the dung hill reads as follows:

The cloth which was used for gagging the mouth.

6. The learned Counsel for the appellants agree that that is the correct translation.

7. The facts of this case are sufficiently stated in the Order of Reference and I will therefore proceed to discuss Section 27 of the Indian Evidence Act which my learned brothers in their Order of Reference correctly say has given rise to opinions which from the case-law are by no means uniform. That section reads 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 information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

8. Divergent opinions have been given by Judges upon how much of statements made by the accused persons in the custody of the police in consequence of which facts are thereby discovered can be proved of which the following may be given as examples, namely, that the accused has buried the weapon with which he cut or stabbed the deceased in a certain place or has stolen property which he has pledged or disposed of with certain persons, or has with the property stolen

done something, or has murdered someone and thrown the body into a well, or has buried a weapon, adding with which he stabbed or cut the deceased. Some judges have taken the view that only such part of the statement as relates to the burial or disposal of the articles can be proved and that the further part that the article had been used by the person for stabbing or cutting, or that the property disposed or pledged, etc., was stolen property must be excluded; other judges have taken the view that the latter statement can also be proved; and the cases directly bearing on this question need very careful examination.

9. The first of these is Reg. v. Jora Hasji and Ors. (1874) 11 B.H.C.R. 242 the headnote of which reads as follows:

Under Section 27 of the Indian Evidence Act nor every statement made by a person accused of any offence while in the custody of a police officer, connected with the production or finding of property, is admissible. Those statements only which lead immediately to the discovery of property, and, in so far as they do lead to such discovery, are properly admissible. Whatever be the nature of the fact discovered, that fact must, in all cases, be itself relevant to the case, and the connection between it and the statements made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and thus mediately, but not necessarily or directly, connected with the fact discovered, are not admissible.

10. This headnote is taken bodily from the judgment of West, J., on p. 244. In that case, one Lallu disappeared from his village. On a search being made, a quantity of human bones and two cloths were found in a field within the limits of the village of Baithal and the three accused were sent for by a chief Constable on suspicion. One accused produced a billhook and a knife from a field; another accused produced a stick; and the two showed the scene of murder together which was also pointed out the next day by another of the accused. In the statement of the facts of the case the words used by the accused whilst in the custody of the police are not set out and therefore I do not know what they were. West, J., however, gives an instance of a statement a part of which he says would be inadmissible.

He says at p. 244:

For instance a man says: 'You will find a stick at such and such a place. I killed Rama with it.' A policeman, in such a case, may be allowed to say he went to the place indicated, and found the stick; but any statement as to the confession of murder would be inadmissible. If, instead of 'you will find', the prisoner has said, 'I placed a sword or knife in such a spot', when it was found, that too, though it involved an admission of a particular act on the prisoner's part, is admissible, because it is the information which has directly led to the discovery, and is thus distinctly and independently of any other statement connected with it. But if, besides this, the prisoner has said what induced him to put the knife or sword where it has been found, that part of his statement, as it has not furthered, much less caused, the discovery is not admissible.

11. Further on he says:

The effect is that, although ordinarily a confession of an accused while in custody would be wholly excluded, yet if, in the course of such a confession, information leading to the discovery of a relevant fact has been given, so much of the information as distinctly led to this result may be deposed to, though as a whole, the statement would constitute a confession which the preceding sections are intended to exclude.

12. Next is *Queen-Empress v. Babu Lal* I.L.R. (1884) All. 509 a decision of a Full Bench. There, the accused gave information to the police to the effect that they had stolen a cow and a calf and sold them to a particular person at a particular place. As a result of this information the cow and calf were discovered. It was held that only the statement that the accused had sold the cow and calf to a certain person could be proved under Section 27 but not the statement that the accused had stolen them. But Brodhurst, J., in the course of his judgment expresses his opinion upon the meaning of Section 27 by stating a case where a person was missing and fears were entertained that he had been murdered. The Sub-Inspector on receiving a report about this went to Rampur and on his arrival there and whilst he was standing close to a well one Gobind Kahar came up to him and said, 'I give myself up; I am guilty' and then made a voluntary and full confession

stating the particulars of the crime and the reason for committing it and concluded by saying:

The knife with which I committed the murder is, together with the body, in this well.

13. The well was thereupon searched and the knife and the body with a knife wound through the heart were found. Brodhurst, J., says that the Sub-Inspector when giving evidence in Court as to the discovery of the corpse and the knife was under the provisions of Section 27 of the Act competent to say that he had searched the well and found the body and a knife owing to Gobind Kahar having given the information:

The knife with which I committed the murder is, together with the body, in this well.

14. The learned Judge was, it is apparent, taking as an instance an actual case. It seems difficult to reconcile Brodhurst, J.'s opinion with the views of the other Judges forming that Full Bench. They excluded the statement of the accused that they had stolen the cow and the calf. But according to Brodhurst if they had said that the cow and the calf which they stole they sold to Abdul Rahman, the whole of that statement could have been proved and I am unable to see that it can make any difference because they stated first that they had stolen the cow and the calf and then that they had sold them. I will refer to this case again later on. However taking his view, the statement in either shape would have to be admitted. In *Abu Shikdar v. Queen-Empress* I.L.R. (1885) Cal. 635 it was held that Section 27 was not intended to let in a confession generally but only such particular part of it as set the person to whom it was made in motion and led to his ascertaining the fact or facts of which he give evidence. In that case the prisoner's statement was that he had robbed Kristo Rishi of Rs. 48 whereof he had spent Rs. 8 and had Rs. 40. Kristo Rishi was the murdered man. Norris, J., said that no facts deposed to were discovered by that statement of the prisoner but this case is cited by learned Counsel for the first appellant in support of his argument because Norris, J., at p. 641 emphatically endorses the observations of Straight, J., in *Queen-Empress v. Babu Lal* I.L.R. (1884) All. 509 to which case reference has already been made where he says:

No judicial officer dealing with such provisions should allow one word more to be deposed to by the police officer detailing a statement made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused, so as in itself to be a relevant fact against him. Section 27 was not intended to let in a confession generally, but only such particular part of it as set the person to whom it was made in motion and led to his ascertaining the fact or facts of which he gives evidence.

15. Straight, J.'s observations when applied to the facts of this case are, in my opinion, of greater assistance to the learned Public Prosecutor's argument than the appellants' and I will refer to them again later. The next case is a decision of this High Court which has been relied upon successfully for many years, in support of arguments similar to the appellants', namely, *Queen-Empress v. Commer Sahib* I.L.R. (1888) Mad. 153 a decision of Muthuswami Iyer and Parker, JJ. They state that the reasonable construction of Section 27 is that in addition to the fact discovered so much of the information as was the immediate cause of its discovery is legal evidence. The information given by the prisoner in that case was that he had deposited the cloths produced with the witnesses who delivered them upon demand and this information they held was the proximate cause of the discovery of the cloths and was admissible in evidence. The Bench then said:

If he had proceeded further and stated that they were cloths which he stole, on the day mentioned in the charge from the complainant, that statement would not be evidence, for it would be only introductory to a further act on his part, vis., that of leaving the cloths with the witnesses and on that ground it would not be the immediate cause of or the necessary preliminary to, the fact discovered.

16. This opinion was clearly obiter because the prisoner had not made any such further statement and it was not necessary to consider what would have been the position had he done so. In *Manjunathaya v. King-Emperor* : (1914)26MLJ352 . I think that Sadasiva Iyer, J., had that case in mind when he stated that he was bound by, authority and that but for it he should himself have held that any statement which forms a simple connected narrative leading naturally to the

discovery of the stolen property is admissible in evidence and that only statements which are patently irrelevant to the discovery should be excluded. The statement made by the first accused in that case was that he and the second accused stole the missing money and that the stolen money would be found in a heap of rubbish close to the house. In view of what he considered binding authority he held that the earlier part of the statement was inadmissible. Another case is *Queen-Empress v. Nana* I.L.R. (1889) Bom 260 a Full Bench decision. There the accused was charged with dishonestly receiving stolen property. In the course of the police investigation he was asked by the police where the property was. He replied that he had buried it in the fields. He then took the police to the spot where the property was concealed and with his own hands disinterred the earthen pot in which the property was kept. He made a second statement when pointing out the spot to the effect that he had buried the property there. It was held that his statement that he had buried the property in the fields was admissible in evidence under Section 27 of the Evidence Act as it set the police in motion and led to the discovery of the property and the view taken by this High Court in *Queen-Empress v. Commer Sahib* I.L.R. (1888) Mad. 153 was followed. The Court ruled out the statement that he had 'kept' the property because it was not necessarily connected with the fact discovered. In *Amiruddin Ahmed v. Emperor* I.L.R. (1917) Cal. 557 the prisoners appear to have made long statements although what they said is nowhere stated in the judgment. As a result of the statements facts were discovered. The statements set out the whole history of the investigation and it was held as in the other cases that only the particular information which led to the discovery could be proved and Shamsul Huda, J. observes:

If therefore an accused person were to state to a police officer that he killed A with a knife and concealed the dead body at a particular place, all that is admissible, is that the information that he had concealed the dead body in that place but the further information that he himself had killed A is not admissible under Section 27.

17. *Sukhan v. The Crown* I.L.R. (1929) Lah. 283 is a decision of a Full Bench of seven Judges. The question there was:

A is being tried under Section 302, Indian Penal Code, for having committed the murder of B, who is proved to have suddenly disappeared from his house and whose dead body was recovered from a well two days later. At the time of his disappearance B was wearing certain ornaments, but these ornaments were not found on his body at the time of its recovery from the well. During the investigation A is alleged to have made a statement to the police in these terms: ' I had removed the karas, had pushed the boy into the well and had pledged the karas with Allah Din', and in consequence of the information so received the karas were recovered from Allah Din, which were identified as those worn by B at the time of his disappearance. Is the whole or any part of the aforesaid statement admissible against A under Section 27 of the Indian Evidence Act, and if so, how much of it?

18. The Full Bench held (Fforde and Jai Lal, JJ.) dissenting that the statement by the accused that he had pledged with Allah Din the karas subsequently recovered from the latter was admissible under Section 27 of the Evidence Act, but that the rest of the incriminating statement could not be received in evidence. Shadi Lai, C.J., says that the fact discovered may be the stolen property, the instrument of the crime, the corpse of the person murdered or any other material thing or it may be a material thing in relation to the place or the locality where it is found and that taking the case before them as an illustration the fact discovered was not the karas simpliciter but the karas being found in the possession of Allah Din and that it was necessary to draw that distinction because the amount of the information admissible is limited by the precise fact discovered thereby or in other words the information to be admitted must relate distinctly, not to the karas, but to the karas in relation to their possession by Allah Din. I must observe that the importance of the last named is that the karas in the possession of Allah Din were proved to be the karas which the boy was wearing when he was last seen alive. Therefore the information given by the accused that he had pledged them with Allah Din was by itself sufficient to make the subsequent discovery of them in the possession of Allah Din a highly relevant fact and indeed a very damaging one to him. Had the karas not been shown to have been those worn by the deceased, then in my view no relevant fact would have been discovered in consequence of the information given by the accused limited to that statement and there would be no connection at all between the karas and the offence charged; and this to my mind is a very

important point because it appears to me that in every case which has been cited where only such part of the information as relates to the disposal of the articles has been admitted the articles themselves were the stolen articles or cloths or jewels worn by the deceased or the dead body of the victim himself and were thus definitely connected with the offence charged and needed the inclusion of no further matter in the information in order to make them material objects because not only must the information relate distinctly to the fact discovered but the fact discovered must be a relevant fact. Shadi Lal, C.J., agrees that the judgments of the High Courts in India which were cited did not disclose a complete unanimity as to the extent of the information admissible in evidence under Section 27 but he takes the view that the consensus of judicial opinion however is in favour of the view that the section allows only so much of the information as leads directly and immediately to the discovery of a fact but that the portion of the information which merely explains the material thing discovered cannot be proved. In dealing with those opinions he says on page 296:

Suppose a prisoner on being asked about the weapon of offence says 'I buried a hatchet in my field. I killed A with it'. Now, it is indisputable that the recovery of a hatchet from the field renders only the first part of the statement admissible, and that the second part cannot be given in evidence. But if the police officer converts the two sentences into one and represents the accused as saying ' the hatchet with which I killed A I buried in my field/ then, according to those judgments, the whole of the above statemen, would be admissible.

19. He, however, does not agree that it is. In the course of his judgment he refers to a Madras decision, namely, Sogaimuthu Padayachi v. King-Emperor I.L.R. (1925) Mad. 274 where this High Court admitted in evidence the statement of the accused that:

The properties stolen from the mutt were buried by me and others in the Cauvery Bank.

20. He expresses the doubt whether the portion of the statement ' stolen from the mutt ' could be admitted on the strength of the decision in Queen-Empress v. Commer Sahib I.L.R. (1888) Mad. 153 already referred to. I will refer to

Sogaimuthu Padayachi v. King-Emperor I.L.R. (1925) Mad. 274 later on. Both the dissenting Judges Fforde and Jai Lai, JJ., definitely take the opposite view and the reasons stated by them for doing so, with all respect to the other members of the Full Bench seem to me to be correct. Fforde, J., says that the fact that is the 'thing' must be connected with the crime in question in order to come within the rule of relevancy laid down in Section 5 of the Act; and this is in my view obviously correct and no one has disputed that the fact must be a relevant fact. He observes quite rightly that in all the cases which have come before the Courts the 'fact discovered' has been the body of the murdered person, the instrument of the crime, the spoils of the robbery or some other incriminating object connected with the crime under consideration and that it follows that before a confessional statement made by a person accused of an offence who is in the custody of a police officer may be proved against him two conditions must be observed, firstly, that some incriminating things must be proved to have been found as the direct result of the information supplied by the accused and, secondly, it must be confined to that portion which refers exclusively to the thing found and that the rule may be expressed in this way; when any incriminating object is proved to have been found as the result of information given by a person accused of any offence in the custody of a police officer that portion of the information which has led to the object being found may be proved--provided it refers clearly to that object, even though the information provable is self-incriminating. On page 304, Fforde, J., says:

What is it which sets the police in motion and leads to the discovery of property? Usually it is the statement by the accused that he has hidden in some place some object connected with the crime. Take an actual case. The accused says 'the chhavi with which I killed A is hidden under a heap of manure in my haveli'. What part of this information must be deemed to have set the police in motion and led to the finding of the chhavi? Surely, not merely the words 'the chhavi under a heap of manure in my haveli'. By themselves those words would be meaningless. They would hardly be likely to set the police in motion. Is it not the connection of the chhavi with the murder under investigation which set the police in motion and led to the discovery? If the words 'with which I killed A' can in this sense be said to have led to the discovery of the chhavi, then the whole of that piece of information

may be proved--though it amounts to a confession, as the words certainly relate distinctly to the fact discovered, i.e., to the chhavi.

21. He refers to *Sogaimuthu Padayachi v. King-Emperor* I.L.R. (1925) Mad. 274 and agrees with the opinion of Spencer and Devadoss, JJ. Jai Lal, J., in his judgment on page 324 makes observations also with which I entirely agree, vis:

I will put the case in another form. The object of the prosecution in proving the information is to show, not that a certain thing was found in a particular place, but that the accused had the knowledge, invariably guilty knowledge, and in some cases possession, of a thing which was connected with the crime. The location of the thing is not so very material. It may be with A, B or C or may be in one place or the other. The important consideration is always the thing discovered and its connection with the crime. Divorced from the thing, therefore, the information becomes both useless and irrelevant. I will illustrate what I mean by giving an instance; supposing the prosecution merely proves that a certain thing was found in a particular place as a result of information supplied by the accused but fails to prove the connection of the thing so discovered with the crime, is the evidence relevant in the case? I think not. The attempt of the prosecution, therefore, always is to establish the connection of the thing discovered with the crime and therefore it is necessary for them to prove as a first step that the particular thing was discovered as a result of the information and then to prove its connection with the crime.

22. Another way of looking at the same topic is this. Supposing the witness in one case says:

As a result of information given by accused I recovered some karas from Allah Din.

23. And in another case he says:

As a result of information given by the accused I recovered karas which the deceased had on his person when he was last seen alive.

24. Which of these two statements is relevant to the case? I have no hesitation in saying that it is the last statement which is relevant or has any bearing on the case. It is therefore not so much the reference to the place where certain property is found that is the important part of the information but it is the incriminating thing recovered on which stress is always laid. Without a description of the thing discovered or its connection with the crime, whether this is done by means of the statement of the accused or by other evidence, the information is of no value and in practice the police never bothers to discover the thing unless the accused by his statement has connected it with the crime. What has therefore led to the discovery of the article is the information about its connection with the crime and its location.

25. Before dealing with *Sogaimuthu Padayachi v. King-Emperor* I.L.R. (1925) Mad. 274 *Manjunathaya v. King-Emperor* : (1914)26MLJ352 and *In re Periakaruppan* (1931) R.T. No. 11 of 1931 I must refer to another decision of the Bombay High Court, a decision of the Calcutta High Court and a decision of the Patna High Court which support the appellants' contention. The first case is *Ganu Chandra v. Emperor* I.L.R. (1931) 56 Bom. 172. There each of the accused gave information to the police that he would point out the place where his share of the property stolen in a dacoity case was buried and offered to produce the same. The Court held that the words ' his share of the property ' and ' stolen in the Dahiwadi dacoity ' must be excluded on the ground that they were not necessarily connected with and did not distinctly relate to the discovery of the property. Therefore the only part of the information admitted was that the accused would point out the places where the property was buried and that they offered to produce the same. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Bhajoo Majhi* (1929) 34 C.W.N. 106 is to the same effect. In *Sonar am Mahton v. King-Emperor* I.L.R. (1930) Pat. 153 the person who was accused of murder made a statement to the effect that he and two others had hid the corpse of the victim in a mine into which they had descended by means of a wire rope hanging from a palas tree at the entrance to the incline and in consequence of the information so received the body and clothes of the deceased were discovered. It was held that the whole of the statement that the prisoner himself had put the body into the incline was receivable in evidence under Section 27 of the Evidence Act. There was no statement by the prisoner that the body was that of a man murdered by him or that

he had murdered the man and hidden the corpse in the mine. Since it is generally accepted by all High Courts that the statement of the accused that he hid or buried material objects is admissible under Section 27 where the material objects are discovered in consequence of his statement and it is not contested here by the appellants that such a statement is admissible. This case is not of much assistance but *Sukhan v. The Crown* I.L.R. (1929) Lah. 283 quoted with approval in the judgment and to that extent it does support the appellants' case: though Scroope, J., on p. 159 does say:

On the other hand, we cannot garble the statement made to the police so as to render it absolutely innocuous to the prisoner and remove it entirely from the nature of a confessional statement.

26. I now come to the Madras cases. I have already referred to *Queen-Empress v. Commer Sahib* I.L.R. (1888) Mad. 153 and also to *Manjunathaya v. King-Emperor* : (1914)26MLJ352 where Sadasiva Aiyar, J., clearly expresses a view contrary to that in *Queen-Empress v. Commer Sahib* I.L.R. (1888) Mad. 153 and would admit a statement by the accused:

I committed this theft and I have concealed the stolen property in such and such a place but in view of binding authority he is forced to hold otherwise. He did however admit ' that portion signifying that the property stolen from the dabbi about which the police were then making an investigation will be found in the rubbish heap.

27. Then there is the recent case of *Sogaimuthu Padayachi v. King-Emperor* I.L.R. (1925) Mad. 274 which was decided by Spencer, O.C.J., on a difference of opinion between Devadoss and Wallace, JJ. He held agreeing with Devadoss, J., that if an accused makes a statement under Section 27 of the Indian Evidence Act the whole of the statement which leads to the discovery of the stolen article is admissible and it should not be cut up so as to confine it only to the actual words which the accused may use to express the fact that he had hidden the properties. Wallace, J., took the contrary view and held that only the statement by the accused that he had hidden the properties should be admitted. The accused in that case were charged with murder under Section 302, Indian Penal Code, and

the information given by the accused was that:

The properties stolen from the- mutt were buried by me and others in the Cauvery bank.

28. The case for the Crown was that this property was worn by or on the person of the victim who was the thambiran of the mutt. The part of the statement in controversy was ' stolen from the mutt '. Devadoss, J., in his judgment cites a number of decisions bearing on the point and subjects them to a very careful examination and amongst others refers to the observations of Brodhurst, J., in Queen-Empress v. Babu Lal I.L.R. (1884) All. 509 stating on p. 281.

29. As mentioned by Brodhurst, J., in Queen-Empress v. Babu Lal I.L.R. (1884) All. 509 if the accused says:

The revolver with which I shot the deceased is in this well.

30. Can it be said that that statement is inadmissible? If the accused says:

I have hidden the stolen properties in this place the whole statement must be taken together. If he does not make statement that the properties are stolen there is no confession at all. Section 27 of the Evidence Act does contemplate a confession.

31. The appellants' contention in that case was that the statement of the accused that the properties were in a particular place was admissible but that any statement which carried an explanation as to how the properties came to be there was inadmissible in evidence as well as the statement that they were stolen properties, in other words, only the statement that the property was buried in the Cauvery bank was admissible, and, reliance was placed upon Queen-Empress v. Commer Sahib I.L.R. (1888) Mad. 153 and the Full Bench decision in Queen-Empress v. Babu Latt. Neither of these cases however supported the appellants' contention there that the statement that the accused had buried the articles was not receivable in evidence though certainly they supported the contention that the statement that the articles was stolen must be excluded. Spencer, J., in his judgment adheres to the view expressed by him In re Naina-malai Konan (1921)

14 L.W. 418 that:

The statement of an accused that he had in his possession certain stolen property is admissible in evidence even though he himself produced the property.

32. Upon this point he agrees with Devadoss, J., and he also agreed that if an accused makes a statement which is admissible under Section 27, the whole of the statement which leads to the discovery of the stolen property is admissible and that evidence should not be cut up so as to reduce the statements only to the actual words which the accused may use to express the fact that he has hidden the properties. The opinion of Devadoss, J., was quoted with approval by Fforde, J., in *Sukhan v. The Crown* I.L.R. (1929) Lah. 283. Next there is the case cited by my learned brothers Mockett and Horwill, JJ., in their Order of Reference, namely, *In re Periakaruppani* a decision of myself and Sundaram Chetty, J., reported in *In re Periakaruppan* (1931) R.T. No. 11 of 1931. There the prisoner made a statement to the police during investigation that he threw into a channel the aruval with which he cut the deceased and buried in the hollow of a tree the ornaments worn by the deceased. He also showed the places to the police where from they were taken out. In this case again there was a strenuous argument on the appellant's behalf as in *Sogaimuthu Padayachi v. King-Emperor* I.L.R. (1925) Mad. 274 that the statement by the accused that he threw into the channel the aruval and buried the ornaments in the hollow of the tree should be excluded as being inadmissible; but we say:

It is quite clear that that part of the statement of the appellant where he says that he had hidden the aruval and buried the other ornaments is admissible in evidence against him. Otherwise his evidence is incomplete and may even be unintelligible.

33. We do not admit the statement that it was the aruval with which the accused cut nor the statement that the ornaments were those which he took from her body. To that extent the judgment is inconsistent with *Sogaimuthu Padayachi v. King Emperor* I.L.R. (1925) Mad. 274 and is opposed to the view of Fforde and Jai Lal, JJ., in *Sukhan v. The Crown* I.L.R. (1929) Lah. 283 and the opinion of Sadasiva Aiyar, J., in *Manjunathaya v. King-Emperor* : (1914)26MLJ352 but the learned

Public Prosecutor has reminded me that the question of the admissibility of that part of the accused's information was never argued at all and that as a matter of fact he was not called upon to argue the case on behalf of the Crown, the case on the evidence before us having been very clearly proved without the assistance of that part of the confession. It seems to me, therefore, that we assumed that those words should be excluded without hearing any argument to the contrary an assumption which I now think was incorrect. Then there is the decision of the Patna High Court in *Lalji Dusadh v. King-Emperor* I.L.R. (1927) Pat. 747. There the accused in answer to the investigating Police Officer stated that he threw the weapon with which he assaulted the deceased at a certain place the weapon was discovered as the result of that information and the statement consisting of the assertion that the weapon had been thrown at a particular place and that it was the weapon with which the offence was committed was held admissible under Section 27. This is directly in agreement with the view taken in *Sogaimuthu Padayachi v. King-Emperor* I.L.R. (1925) Mad 274, Mullick, A.C.J., says:

It is contended on the authority of some cases that the prosecution is only entitled to prove that the accused in answer to a certain question gave information which led to the discovery of the weapon; but common sense requires that the discovery should be connected with and be relevant to the investigation. The omission to connect the weapon with the offence would render the provisions of Section 27 of the Indian Evidence Act wholly nugatory. The whole confession of a prisoner in police custody cannot of course go in but where the confession includes a statement that a weapon was used for committing the offence charged that part of the confession can certainly go in if it leads to the discovery of the weapon.

34. And he cites *Sogaimuthu Padayachi v. King-Emperor* I.L.R. (1925) Mad 274 in support of his opinion. Before leaving these cases I will again refer to *Queen-Empress v. Babu Lal* I.L.R. (1884) All. 50. There the fact that the accused had sold the cow and calf to a particular person was a relevant fact because they were identified as being the property of the person from whom they were stolen.

35. They were therefore connected with the offence charged against the accused, namely, assisting in concealment of stolen property (Section 414, Indian Penal

Code). The cow and the calf were shown to have been stolen and the statement of the accused that they had sold them to a person one Abdul Rahman in whose possession as a result of the information they were found to be by the police also directly connected the accused with that offence without the further information that the accused had stolen them and that is where the observations of Straight, J., which I have set out earlier in my judgment apply, namely, that not one word more than is absolutely necessary to show how the fact that was discovered is connected with the accused so as in itself to be a relevant fact against him can be deposed to by the police officer since the fact discovered must also be connected with the offence as well as with the accused, it follows from this that--if the statement of the accused does connect it with the offence then that is admissible also.

36. The cases to which I have referred clearly show that there is a preponderance of opinion supporting the appellants. Nevertheless, I am more impressed with the reasons given in support of the minority view. The fact deposed to and the fact discovered obviously must be relevant and the fact or thing discovered can only be relevant if it is connected with the offence of which the accused is charged; and the confession in the section is a confession of the offence charged and not of anything else. Before the statement is given in evidence it must be shown that fact discovered is a relevant fact and that the object is a material object. In cases where the things discovered as a result of the accused's information are proved to be properly stolen from a person and the subject of the charge or worn by the victim of a murder, just before the murder is committed, the property so discovered is directly connected with the crime and the fact thereby discovered relevant. It can be made relevant by evidence aliunde, and it can be made relevant by the statement of the accused itself. Suppose there is no evidence aliunde, what warrant...is there for saying that the part of the statement of the accused that makes it relevant must be excluded because it amounts to a confession? Is there any warrant for garbling the statement in order to make it innocuous to the accused and in the process causing it to be irrelevant and consequently inadmissible in evidence? That is often the effect of removing from a statement the confessional portion, as what is left is by itself meaningless. Take the present case. If the appellants' contention is correct, only the following words can be

admitted:

As it stands, the statement is unimportant as, without more, the empty bottle, the rope and the cloth gag are not connected with the offence. There is nothing to show that the rope was the rope used on the neck of the deceased or that the cloth was used to gag him with; and indeed there is no evidence at all otherwise to show that the victim had been gagged. I am clearly of the opinion that without the earlier portion of the statement no relevant fact was discovered by the police as a result of it. I will give an example which supports my view. A is murdered and the medical evidence shows that he died as the result of a wound which is consistent with its having been caused by a sharp cutting weapon. B an agriculturist is accused of the murder and whilst in custody states to the police: ' I threw the bichuva with which I cut A into the back room of my hut.' The police go to his hut and there find the bichuva. They have discovered a relevant fact. Strikeout the words 'with which I cut A ' and all that remains is ' I threw the bichuva into the back room of my hut.' What is there to connect the bichuva with the murder Every agriculturist has one bichuva or more in his possession. What bichuva is this? There is no evidence otherwise that it was the bichuva with which the murder was committed. It is merely a bichuva and if the police discover it they have not discovered a relevant fact. The statement, the confessional part having been struck out, is irrelevant; and none of it would go in under Section 27; and indeed, were that the law, no attempt to put it in would ever be made. Further, it is undisputed that the information must set the police in motion, because it is in consequence of it that the discovery is made. Would the police be set in motion merely by the statement of the accused that he threw a bichuva into the back room of his hut if there is no evidence that it is the instrument of the crime? If there is no evidence aliunde, then the police will not be set in motion unless the fact discovered is connected with the case under investigation and if it is the accused's statement which connects the fact discovered with the offence and makes it relevant, then even though that statement amounts to a confession of the offence, it must be admitted because it is that that has led directly to the discovery of the fact. If this reasoning is applied to the present case, then the earlier part of it that the accused and Gurunatha Goundan killed the victim by gagging his mouth with a cloth and throttling his neck with hands and also by putting a rope and pressing in

connects the rope and the cloth gag directly with the offence and without it they are quite unconnected. Mr. Chandrasekhara Sastri, the learned Counsel for the first appellant, contended that in none of the cases cited was the confessional statement so lengthy as here. I agree. The statement objected to has usually consisted only of a few words such as 'stolen from,' 'we stole from', etc., but in my opinion if those statements are admissible in evidence under Section 27 for the reasons already stated it makes no difference that the statement consists of ten words or twenty words so long as they are necessary to make the fact discovered a relevant one care being taken of course not to allow more words to be deposed to than are absolutely necessary. With regard to the information relating to the two bottles of illicit arrack and the discovery of one of them with some arrack in it in a heap of mud in the corner of the compound of the choultry, and the other empty in the dung heap, it is to be observed that this is not within that part of Section 27 which, given the circumstances required therein, makes admissible in evidence a confessional statement. The statement that the bottle would be found in the dung heap, etc., is not a confession but. it constitutes 'information' leading up to the discovery of a fact which is made material because there is evidence that at a time material to this case the accused was in the near vicinity of the scene of murder carrying a bottle and intoxicated which fact is wholly denied by the first accused in every respect. Upon the second question referred, in my view, so much of the statement set out in question No. 1 as is admissible against the first accused can be taken into consideration as against the second accused. I see no reason for drawing any distinction between the confession in Section 27 and the confession which cannot be proved at all under Section 25, and under Section 26 only when it is made in the immediate presence of a Magistrate or confession made in Court or to a member of the public. There is nothing in the section which restricts the confession to one recorded before a Magistrate. On the other hand, Illustration A to Section 30 suggests that the section contemplates 'the taking into consideration' of a confession to an ordinary witness. It follows therefore that all such confessions when the accused are being tried jointly for the same offence when made by one of them affecting himself and another or others of the accused may be taken into consideration as against the other or others under Section 30 of the Evidence Act. In support of this view there are Sankappa Rat, In re :

(1908)18MLJ66 Shiva-bhai v. Emperor I.L.R. (1926) Bom. 683 and Periaswami Moopan, In re : (1930)59MLJ471 . I would therefore answer this question in the affirmative.

37. The question of whether the same considerations apply to the third accused does not arise as all references to her were deleted by the trial Court and I am only dealing with such part of the statement as was admitted.

38. My answer to question No. 1 is that the following statement is admissible in evidence under Section 27 of the Act, namely:

He stated that at about 11 o'clock in the night of 26th March, 1936, he and Gurunadha Goundan, son of Erungattur Kanda Goundan, together murdered the deceased Sottayan alias Sennimalai Goundan by gagging his mouth with cloth by pressing him with rope that that night they got two bottles of illicit arrack.... that a small quantity was left over in one bottle only After, (1) the empty bottle, (2) a rope and the cloth which was used for gagging the mouth have been buried in cowdung pond adjoining the cattle-shed in the compound and the other bottle with some arrack in a heap of mud near a log of wood in a corner of the compound east of the choultry at Kallipatti and that he would go there, take them out and give.

39. And as I have said in my answer to question No. 2 the whole of that statement can be taken into consideration as against the second accused also. It is necessary to add for the information of the Sessions Judges and the police that as pointed out in Public Prosecutor v. Venkoba Rao (1937) 2 MX.J. 32 by a Bench of this High Court, statements made by an accused which are or may be provable under Section 27 of the Evidence Act should be clearly and carefully recorded by the Police officers concerned. They should be recorded in the first person, that is to say, as far as possible in the actual words of the accused. They should not be paraphrased. Obviously, if what a man says is to be used in evidence, his own words should be used and not a rendering into the third person of the purport of his statement. With such a record of the statement before him it will then be for the trial Judge to decide how much of it is admissible under the section. I might add that no point has been taken by the accused's advocate in this case that the statement before us was an inaccurate paraphrase. The making of any such

statement was wholly denied.

40. I cannot leave this case without saying that in my opinion the case for the first appellant has been most ably argued by Mr. Chandrasekara Sastri, his learned counsel. Although his efforts have been unsuccessful they clearly deserve such a tribute.

**Mockett, J.**

41. I agree. I am not, as I intended, delivering a separate judgment in this case as I have had an opportunity of reading the judgment which has been delivered by my Lord the Chief Justice and there is nothing which I can usefully add to that judgment which entirely expresses my views on this most important topic. Moreover I consider that it is most desirable that the Sessions Courts of this Presidency should be able to look for guidance to a single judgment expressing the views of the Full Bench. I would only say that in construing this section of the Indian Evidence Act I have endeavoured to follow the direction of the Judicial Committee relating to the construction of Indian statutes in *Ramanandi Kuer v. Kalawati Kuer* (1927) 54 M.L.J. 281 : L.K. 55 I.A. 18 : I.L.R. 7 Pat. 221 (P.C.) namely:

To examine the language of that statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law--or of the English law upon which it may be founded.

42. In this respect I find myself in respectful disagreement with the observations of Lord Williams, J., at the beginning of his judgment in *Superintendent and Remembrancer of Legal Affairs, Bengal v. Bhajoo Majhi* : AIR1930 Cal291 . The learned Judge's views as to the correct method of construing the same Section 27 of the Evidence Act do not seem to me to be in accord with the above judgment of the Judicial Committee. If it were not for the very divergent views which have been held regarding this matter in this and other High Courts, I should almost have said that the words of this section are clear enough by themselves if they are read free from the considerations which the Judicial Committee have prohibited. I also agree

with the comments on the various cases in the judgment which my learned brother Horwill, J., is about to deliver.

### **Horwill, J.**

43. I would like to add to the judgment of my Lord the Chief Justice, with which I completely agree, that the weight of authority against the view we have here held is much less than the array of authorities adduced by the defence would at first sight lead one to believe. *Reg. v. Jora Hasji* (1874) 11 Bom. H.C.R. 242 purports only to be a minute on Section 27 for the instruction of the Courts of that Presidency, without reference to the particular facts of that case. The minute covers not only the point that has been raised before us but all the other aspects of Section 27.

44. The arguments put forward in that case must have been of the most general kind and no authorities seem to have been discussed or considered. Very much the same remarks can be made regarding *Queen-Empress v. Commer Sahib* I.L.R. (1888) Mad. 153 except that that case confined itself to the question which we have been considering. In *Queen-Empress v. Bdbu Lal* I.L.R. (1884) All. 509 the real point for consideration which was discussed at great length in the principal judgments of that case, was whether Section 27 of the Evidence Act governs Section 26 only or Section 25 as well as Section 26. The majority of the judges held that Section 27 controls Section 25 also, although Brodhurst, J., and Straight, C.J., held very different views regarding the extent to which the statement actually made could be admitted in evidence. In *AduShikdar v. Queen-Empress* I.L.R. (1885) Cal. 635 Norris, J., who delivered the judgment of the Court, thought that no relevant fact had been discovered in pursuance of the confessional statement and so although he approved of the remarks of Straight, C.J., in *Queen-Empress v. Babu Lal* I.L.R. (1884) All. 509 the question as to how much of a statement such as we have been considering could be admitted did not there directly arise. That part of the sentence admitted in *Queen-Empress v. Nana* I.L.R. (1889) Bom. 260 probably did not differ materially from what would be admissible upon an application of the principles enunciated by my Lord the Chief Justice in his judgment above. The identity of the property was fixed by the question put by the

police to the accused and the portion considered inadmissible by the Judges in that case still leaves a sentence which is complete in itself. The accused was asked what he had done with the property and he replied ' I have kept it and will show'. The portion ' have kept it and ' were held to be inadmissible. That would leave the answer to the question of the Police as 'I will show', which makes perfectly good sense. *Amiruddin Ahmed v. Emperor* I.L.R. (1917) Cal. 557 was concerned with the admissibility of a confession made at the time of discovery; and it was rightly held such a confession did not lead to the discovery of the property. Certain ornaments taken in a dacoity were dug up and when they were brought to light the accused said: ' I got these ornaments as my share in the Rajoi dacoity'. This confession was very obviously inadmissible. *Ganu Chandra v. Emperor* I.L.R. (1931) 56 Bom. 172 was one of those difficult cases in which the actual words used by the Police in questioning the accused and the words by the accused in reply were not known. Only the general purport-was given and Beaumont, C.J., in the principal judgment in that case, said:

It was the duty of the Judge to dissect the evidence regarding the confession and to divide the sentence into its component parts and only admit that part which led to the discovery of the particular fact, vis., the hidden property.

45. In such circumstances this procedure seems justifiable. In *Superintendent and Remembrancer of Legal Affairs, Bengal v. Bhajoo Majhi* : AIR1930 Cal291 a contrary view to that held by us was undoubtedly arrived at; but some of the remarks made by Lord Williams, J., in the principal judgment in that case are instructive as showing why it is that such divergence of opinion exists with regard to the proper interpretation of Section 27. He says:

There is a school of legal thought in India which holds that in construing Acts of the Indian legislature, the natural meaning of the sections should be given effect to regardless of previous decisions, and especially of decisions other than those of Indian Courts. The Indian Evidence Act in general and Section 27 in particular are examples which in my opinion indicate the falsity of this point of view.

46. He comes to the conclusion that:

Some restricted or limited meaning, narrower than the natural meaning, must be given to these words.

47. This in our opinion is contrary to the canon of interpretation laid down by their Lordships of the Privy Council in many cases, of which *Ramanandi Kuer v. Kalawati Kuer* (1927) 54 M.L.J. 281: L.R. 55 IndAp 18 : I.L.R. 7 Pat. 221 (P.C.) may be quoted as an example. The judgment of Lord Williams, J., except with regard to the method to be adopted in interpreting Section 27, supports the view which we have here taken. He says:

If their natural meaning were given to the words of Section 27 regardless of their parentage and history, I am satisfied that the result would be contrary to the intention of the legislature. It would be so wide as to render Section 26 practically useless. If therefore so much of the information as is clearly connected with, or has reference to, the fact thereby discovered, is admissible under Section 27, it is difficult to see where the line can be drawn.

48. In other words, he was of the opinion that when a confession to the police which would be inadmissible under Section 26 leads to the discovery of property, the whole confession may be admissible if the natural interpretation of Section 27 were adopted. That is exactly our view. It is the attempt to interpret Section 27 in the light of the existing English law that has led a great many Courts to give an interpretation to that section which is not warranted by the words used, and especially is this the case in *Sukhan v. The Crown* which has been so fully discussed by my Lords.

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