

The Public Prosecutor Vs. Indla China Lingiah and ors.

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Court : Chennai

Decided On : Sep-12-1952

Reported in : AIR1954Mad433

Judge : Ramaswami, J.

Acts : [Evidence Act, 1872](#) -Sections 9, 27, 101 to 103 and 114; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154; [Indian Penal Code \(IPC\), 1860](#) - Sections 411

Appeal No. : Criminal Appeal No. 46 of 1952

Appellant : The Public Prosecutor

Respondent : indla China Lingiah and ors.

Advocate for Def. : P. Ramachandra Reddy, Adv.

Advocate for Pet/Ap. : Party in person

Disposition : Appeal allowed

Judgement :

Ramaswami, J.

1. This is an appeal preferred by the State against the order of acquittal by the Sub-Divisional Magistrate, Kandukuru in C. C. No. 38 of 1951.

2. The facts are: On the night of 24-4-1950 at Ayyanakota there was house-breaking by night and theft in the house of P. W. 1 Venkatasubbiah. This burglary was discovered by him the next morning. It was then found that the big wooden chest or Bhoshanam box had been broken open and the boxes M. O. 1 belonging to P. W. 1 and M. O. 2 belonging to the son-in-law of P. W. 1 viz., P. W. 2 and 3 boxes M. Os. 3 to 5 belonging to P. W. 3 and valuable jewellery and clothing of the family of P. W. 1 and the clothes left for safe custody by some shepherds had been removed from that Bhoshanam Box. P. W. 1 found 3 or 4 chains away from his house some of these opened boxes which he identified as those kept in the chest. Then P. W. 1 went to inform the Triune Officer P. W. 6 who was in the fields who visited the scene of offence and got a report Ex. P1 made out in the handwriting of P. W. 2 and which has been signed by P. W. 1. P. W. 6 then sent the usual reports to the Police and the Magistracy, P. W. 12, the Sub-Inspector of Police, Pamur, reached the scene of offence at 8 A.M. on 26-4-1950. The boxes which were found lying broken open viz., M. Os. 1 to 5 at distance from the house of P. W. 1 and the lock of the Boshanam box M. O. 6 were seized. P. W. 1 gave a supplemental list of properties lost. P. W. W Venkiah who had been deputed by P. W. 1 to trace the footsteps leading from P. W. 1's door step returned saying that the footsteps led to Narappa Reddi's well where he found a silver Kunkarna Bharani (M. O. 10) and a silver tin for keeping the katuka (M. O. 9) and from inside the well an aluminium vessel M. O. 11. P. W. 10 finally lost the footsteps on reaching Pichollakonda. P. W. 12 took these M. Os. 9 to 11 into custody.

3. The investigation in this case led on information received to recoveries of properties from the four accused persons in this case viz., India China Lingiah, Gundalatoti Poliah, India Polugadu and Jayampu Musaligadu, all of Markondapuram. I shall deal with these recoveries in the next succeeding four paragraphs.

4. On 29-4-1950, P. W. 12 arrested accused 1 under a Mahazar Ex. P-5 in Yellapaneni Bodu. Accused 1 took out of the Bpdu, silver tumbler (M. O. 8), a silver Uddarani (M. O. 12), two silver spoons (M. O. 16), two silver tins, a red bordered cloth (M. O. 17), a snow bottle (M. O. 14) and a powder tin M. O. 15. P. W. 12 seized them under a mahazar Ex. P-6 in the presence of mediators P. W. 5

Guruvareddi, the village Munsif of Markandapuram and others.

5. On the same day P. W. 12 arrested accused 2. Accused 2 produced cash of Rs. 1223 which was contained in a small brass box (M. O. 20) and a cloth pouch M. O. 21. P. W. 12 seized these articles under a mahazar Ex. P-7.

6. On 1-5-1950 P. W. 12 proceeded to Ongole where he examined one Boggavarapu Brahmiah (P. W. 7) who produced a bar of gold (M. O. 23) weighing 14 sovereigns and ten silver bars (M. Os. 22 to 22-j) weighing 142 tolas saying that one Matam Krishniachetty of Podili had sold some gold and silver jewels for Rs. 1227, that the vendor gave a receipt Ex. P-12 for the cash and that the jewels both silver and gold had been melted into bars. P. W. 12 seized M. Os. 23, 22 to 22-J under a mahazar Ex. P-13 in the presence of the village Munsif of Ongole K. Kotiah P. W. 8 and another.

7. On 29-5-1950, P. W. 12 arrested accused 3 at Ayyanacheruvu and seized from his person some clothing M. Os. 7 and 13 under a mahazar Ex. P-8.

8. On 4-7-1950, P. W. 12 arrested accused 4 near Adivena Boda when some clothing M. Os. 17 and 18 were recovered from him (accused 4) under a mahazar Ex. P-10.

9. P. W. 4, U. Varadayya one of the shepherds who had kept some clothing in P. W. 1's house identified M. Os. 17 to 18 as his lost clothing and P. W. 1 identified M. Os. 8 to 11 as his properties which had been stolen. P. W. 2 identified M. O. 12 and P. W. 3 identified M. Os. 14 to 16.

10. On a requisition from P. W. 12 to the Stationary Sub-Magistrate of Kanigiri on 11-5-1950 Janab Mohamad Usman Khilji (P. W. 9) the special third class Magistrate of Kanigiri held an identification parade in the premises of the sub-jail, Kanigiri taking all legitimate precautions to ensure a fair identification. P. W. 7 identified accused 2 as Mattamsetty Krishniahsetty, the vendor of the gold and silver ware.

11. These facts were proved by the prosecution through the 12 witnesses examined by them viz., P. Ws. 1 to 4 the owners of the properties, P. W. 5 the

village Munsif of Markondapuram, P. W. 6 the Triune Officer to whom P. W. 1 complained and who sent the usual reports to the Police and the Magistracy, P. W. 7 the purchaser of stolen property from accused 2, P. W. 8 the village Munsif of Ongole who was at the shop of P. W. 7 when the stolen properties M. Os. 22 and 23 were recovered, P. W. 9 the Third Class Magistrate who held the identification parade at which P. W. 7 identified accused 2 as the vendor of the properties sold to him and recovered by the Police, P. W. 10 who was deputed by P. W. 1 to trace the footsteps from the burgled house and who recovered M. Os. 9 to 11 at the well and who found the footsteps leading to Picholla Konda, P. W. 11 the Karnam of Pamur who was present when P. W. 1 identified M. O. 8, P. W. 4 identified M. O. 19 and P. W. 3 identified M. Os. 14 to 16 as properties stolen from them and P. W. 12 Mr. Ramachandra Singh the investigating officer, viz., the Sub-Inspector of Pamur Police Station.

12. The case for the accused was as follows. Accused 1 and 3 completely denied all knowledge of the offence. Accused 2 stated that the money seized from him was his own and that he had some at home which was returned to him by the police and disowned all knowledge of the offence. Accused 4 stated that he was arrested at Cumbum and that he had been falsely implicated in this case.

13. The accused persons examined three witnesses. Of them D. Ws. 1 and 2 were examined by accused 2 to speak to the fact that accused 2 deals in skins and hides and accused 2 has been having cropped head for a long time. D. W. 3 was examined by accused 4 to speak to the fact that he (accused 4) was engaged by D. W. 3 as the watchman of his mango tope, that accused 4 fell sick from March 1950 to May 1950, that D. W. 3 got him treated at Giddalur, that in June '50 D. W. 3, accused 4, and others had been to see the cinema at Cumbum, that when they were about to enter the cinema house three persons stopped accused 4 to talk to him, that D. W. 3 saw the cinema and that when enquiries were made about accused 4 he was not to be seen and that ten days later accused 4's mother came and reported to D. W. 3 that her son had been arrested by the police.

14. The learned Additional First Class Magistrate acquitted the accused persons on the ground that the properties recovered in this case have not been shown to

be stolen properties and that their possession by the accused had not been brought home to them.

15. We have now to examine the evidence in this case under two heads, viz., whether the recovered, properties had been shown to be stolen properties of P. Ws. 1 to 4 and secondly whether after commission of theft these properties were recovered from the possession of these accused persons and if they were so recovered whether this possession was recent, exclusive and unaccompanied by any explanation showing innocent possession.

16. Before dealing with the prosecution evidence in this case I shall dispose of the defence evidence. The defence evidence of D. Ws. 1 and 2 even at their face value shows nothing more than that accused 2 is an itinerant dealer in hides and skins and would not make out that he is such a substantial merchant that he cannot be thought of in connection with an offence of this nature and that he could be in possession of funds to the extent of Rs. 1200/- at any given moment. On the other hand, the account book which has been sought to be put in by him in this case shows transactions long prior to the commission of the offence and does not probabalise the version of accused 2 that the money recovered from him is his own. The evidence of D. W. 2 that accused 2 had always a cropped head does not ring true and this witness himself is found to be a person interested in this accused and is a person of such a status that little reliance can be placed on his testimony. The evidence of both D. Ws. 1 and 2 has got to be rejected as untrustworthy. Turning to D. W. 3, his evidence is so vague that no alibi can be legitimately deduced for accused 4 from his testimony. On the footing that the entire evidence is true it would not make out that accused 3 could not have committed either the offence of burglary or receiving stolen property. The testimony of D. W.3 has also got to be rejected. But the mere fact that the defence testimony has proved unhelpful need not detain us further because it is for the prosecution to establish the guilt of the accused and not for the accused to establish their innocence. It is on that footing I shall examine the evidence in this case.

17. There is no dispute in this case about the burglary in the house of P. W. 1 on the night of 24-4-1950. Immediate report of the same has been made to the Triune

Officer P. W. 6 and he came and inspected the scene. The first information in this case has been sent without any practicable delay and this first information sets out the details of this burglary. It is a strong piece of corroborative circumstance. P. W. 10 further corroborates the commission of this burglary and speaks to his tracing the footsteps from the burgled houses his discovering M. Os. 9 and 10 near Narappa Reddi's well and his tracing the footsteps as far as Picholla Konda. It is not also the case for the accused that a burglary did not take place but their case is that they are not the burglars or the receivers of stolen property. Therefore it may be taken as safely established that a burglary as alleged by P. W. 1 took place in his house on the night of 24-4-1950.

18. I have already set out how the various articles were recovered from all the accused in this case. On 29-4-1950 when P. W. 12 arrested accused 1 in the presence of mediators he gave information and led the Sub-Inspector of Pamur P. W. 12 and others to Yellapeneni Bodu situated at a distance of 1 1/2 miles north of Markonda-puram and took out from the Rallagunta a silver lotta which was crushed, an Uddarani which was crushed, silver spoons, snow bottle, powder tin and a thick cloth seven cubits long having red lines, viz., M. Os. 8, 12, 16, 14, 15 and 17 and the police seized them. On account of the fact that a lot of small articles had been lost the F. I. R. could not naturally mention each and every one of these articles. On the other hand the owner to the best of his recollection has narrated all the articles lost. There is no dispute that a list of these articles is given in the F. I. R. But what is more important is that the owner P. W. 1 identified M. O. 8, P. W. 2 identified M. O. 12, P. W. 3 identified M. Os. 14 to 16 and P. W. 4 identified M. O. 19 as their properties which had been lost in the burglary. These identifying witnesses are respectable people and have no motive to falsely claim properties which did not belong to them as theirs. The condition in which they were found also shows the attempts which had been made by the receiver to destroy identification possibilities as much as possible. They were also found secreted in a place which was only known to accused 1 and no one else, legitimately leading to the inference that it was he who had secreted them there. People do not secrete properties far away from the village in unknown places unless they are not in a position to claim them as their own and unless they have been dishonestly got they won't hide the traces of the same.

The only point of criticism advanced by the learned Magistrate is that these articles are articles of common use and bear no particular identifying marks and consequently no reliance can be placed on the testimony of these identifying witnesses. But in advancing this criticism it is forgotten that small and even nice points of difference distinguishing one thing from others of the same kind may merely by the frequent sight of them and without any special attention to them make an impression on the mind. They are component parts of the thing and go to make the whole of which the mind receives an impression. In this case the impression is the general appearance of the thing. This sort of impression is exceedingly common; a workman has it of his tools and most people have it of their dress, jewellery and other things they are frequently seeing, handling or using. It occurs every day that by remembrance of their general appearance a carpenter, mason or other workman recognises his tools; and dress, jewellery or other property is known by its owner. Undoubtedly animals and things may be identified by those familiar with them. Observation teaches that such identification may be safely relied upon. But at the same time a witness would not be able to formulate his reasons for the identification since it is based upon general untranslatable impressions of the mind. I may readily recognise my veshti, my (sic)ow, my wife's addigai or my friend's handwriting in the midst of a multitude of other things in most respects like them. But if questioned I would not be able to formulate any cogent or intelligent reason for the identification. It would be fatuous to discredit such identification on the ground that reasons are not being formulated for them.

It is not the case for accused 1 that these properties belong to him. On the other hand he denies all knowledge of producing them and does not claim any acquaintance with the properties. Therefore when it is found that respectable witnesses have identified their own articles of use merely by their frequently seeing, handling and using them it is silly to reject their testimony on the ground that identification parades for these articles were not held and that reasons have not been formulated by these witnesses. Therefore, it may be taken as safely established that the properties produced by accused 1 and identified in court by these P. Ws. 1 to 4 as their properties which had been lost by them can be safely accepted. The same considerations apply to M. Os. 7 and 13 recovered from

accused 3 and from his person on 29-5-1950 and of which M. O. 7 was identified by P. W. 1 and M. O. 13 by P. W. 2 as their properties. The same considerations further apply to M. Os. 18 and 17 which were recovered when P. W. 12 arrested accused 4 on 4-7-1950 of which M. O. 17 was identified by P. W. 4 as his property which was lost by him. Therefore the properties recovered from accused 1, 3 and 4 and which were almost all identified by P. Ws. 1 to 4 as their own properties, can be safely considered to have belonged to P. Ws. 1 to 4 and as having been lost in the burglary on the night of 24-4-1950.

19. Then we have to deal with the recovery of the gold and silver ingots from P. W. 7 and which are found to be conversions of some of the jewellery lost in the burglary. On accused 2 being arrested he gave information that he sold one god oddnam (belt) with one side short, four silver golusu, one silver plate, one pair of solid silver 'Kadivalu Kolichuttu' and one silver Waist string of one row of (sic) to Boggavarapu Brahmayya at Ongole for Rs. 1227-0-0 and produced from a secret place this Rs. 1223-12-6 which had been seized by the police. Both these pieces of information are admissible and are not affected by the limits placed upon the admission of evidence under Section 27 of the Indian Evidence Act by the Privy Council decision in -- 'Pulukuri Kottaya v. Emperor', AIR 1947 PC 67 (A). This decision was specifically considered by Rajagopalan J. in -- 'Vellingiri v. The King', : AIR1950 Mad613 (B). There the accused was charged with the dishonest possession of a dynamo and light punishable under Section 411, I. P. C. He made a confessional statement of which the portions admitted were

'I gave the dynamo and the light to Venkata-swami (accused 2) I got back from Venkata-swami the Dynamo light..... and the dynamostolen from my next house and sold them to the proprietor of a Soda Factory near the Pillayar temple in Anuppupalayam for Rs. 15 (that is to say, the witness discovered as P. W. 4).'

It was held:

'The portion of the confession 'I gave the dynamo and the light to Venkataswami' does not satisfy the requirements of Section 27, Evidence Act and is not admissible in evidence. All that was discovered on the basis of the confession was possession with accused 2 and not original possession of accused 1 and

subsequent transfer of that possession from accused 1 to accused 2. The previous history of the dynamo spoken to by accused is not admissible. That accused 1 got it back from Venkataswami or that earlier in point of time accused 1 stole it from the next house would be inadmissible under Section 27, Evidence Act. 'I sold the dynamo to P. W. 4' is admissible as the possession with P. W. 4 was discovered on the basis of the confession.'

This is exactly that has happened here and on the information given by this accused 2 P. W. 7 was traced. That the discovery of a Witness is discovery of a fact within the meaning of Section 27 has been laid down in the wellknown F. B. decision of -- 'Emperor v. Ramanuja Ayyangar', (popularly known as the Karunguzhi Parcel Murder case) AIR 1935 Mad 528 (C) and -- 'In re, Rami Reddi' : AIR 1941 Mad 238 & in -- 'Venkatasubbayya, In re', AIR 1943 Mad 418 (E). The leading decisions of the opposite view 'Sukhan v. Emperor', AIR 1929 Lah 344 (F) and -- 'Ganuchandra v. Emperor', AIR 1932 Bom 288 (G) are not binding on me and especially when -- 'AIR 1947 PC 67 (A)' does not limit the sense in which the word 'fact' in Section 27 should be constituted on the long time (line?) of Madras decisions based upon the commonsense principle pointed out in -- 'Palanlandi Velan v. Emperor', 1934 Mad W N 601 (H) that no rigid rule of course can be made limiting the manner of assistance which it is legitimate to obtain from the accused in an investigation. It is now settled law in this state that the discovery of a witness is a discovery of a fact.

P. W. 7 has subsequently identified at an identification parade held by P. W. 9 that the person who sold these articles, converted by him into gold and silver ingots and for which he paid Rs. 1227 and a receipt had been passed by that person who gave out his name Mattanichetti Krishniah who was this accused 2. This P. W. 7 further states that accused 2 contacted him on 26-4-1950 and brought him on 27-4-1950 one gold waist belt with gajjalas, one silver plate, one silver waist belt with beads, one pair of silver anklets, one silver waist thread, one small waist thread and four silver tumblers and that he purchased them for Rs. 1227 & paid this amount to accused 2 & that accused 2 passed a receipt to him in the name of Mattanichetti Krishniah & that accused 2 told him that his father's name was Ramiah & that he is a resident of Tallampalli in Palili Taluk and that subsequently

the Sub-Inspector of Pamur came and that in the presence of mediators he produced the silver and gold ingots into which he had melted these articles and that they were seized by the Sub-Inspector under a Mahazar and that he identified them as M. Os. 22-a to 22-j and 23 before Court. The information given by the owners shows that these articles which were sold by accused 2 to P. W. 7 formed part of the loot in the burglary. It is quite true that the original jewellery lost were not the articles recovered viz., the ingots. It has been held that property into or for which the stolen property has been converted or exchanged is not stolen property: -- 'In re, Marimuthu Kavandan' : AIR1941 Mad694 . Hence money obtained upon forged money orders or money obtained by sale of properties stolen or currency notes of smaller denomination obtained in exchange of currency notes of higher denomination which were stolen is not stolen property; -- 'Empress v. Subha Chand', 39 Pun Re 1881 Cri (J); -- 'Queen v. Monmohun Roy', 24 W R Cri 33 (Cal) (K); -- 'Reg v. Chapple', (1840) 9 C & P 355 (L) and -- 'Rex v. Walkley', (1829) 4 C & P 133 (M). But mutton obtained by killing sheep which was stolen alive, as in -- 'Cowell v. Green', (1796) 2 East 617 (N) or ingot of gold, or silver obtained by melting gold or silver articles which were stolen does not cease to be stolen property. In -- 'Ganu Vithu Gode', Criminal Appeal No. 1847 of 1942 (FB) (Bom) (O) decided by Beaumont C. J. and Wassoodew J. it was held:

'It is necessary to prove that the property, which is produced is the property which was stolen, but it need not necessarily be produced in the form which it possessed when it was stolen. If a gold necklace is stolen, and exchanged for another necklace or a bullock, it is obvious that the second necklace or bullock is not the stolen property. But, if the gold necklace is melted down and converted into an ingot it does not cease to be the same gold as was in the necklace. What was stolen was gold in the form of a necklace, and what is produced is the same gold in the form of an ingot.'

It can be taken therefore as safely established that part of the loot of this burglary was sold by accused 2 to P. W. 7 and was recovered from the possession of P. W. 7 in the form of gold and silver ingots.

20. Having established that a burglary as alleged by the prosecution took place on the night of 24-4-1950 in the house of P. W. 1 and that a lot of these properties had been recovered and produced in Court and satisfactorily identified as properties lost in that burglary we have to consider whether the accused persons were in possession of these properties shortly after the commission of this offence and were satisfactorily proved to have been in exclusive possession thereof and that such possession was unaccompanied by any explanation of innocent origin.

21. The burglary took place on 24-4-1950 and the recoveries from accused 1 was on 29-4-1950 and the information was given by accused 2 on 29-4-1950 and the recovery from P. W 7 was made on 1-5-1950 and the recoveries from accused 3 were made on 29-5-1950 and the recovery from accused 4 was made on 4-7-1950. The proximity of dates is sufficiently near for as to draw the inference under Section 114, Indian Evidence Act.

22. Then, these accused persons were found to be in exclusive possession of these properties. In the case of accused 1, Ex. P-5 records the information given by him in detail before P. W. 12 and the mediators as to how he and others committed the offence in the house of P. W. 1, how some of the stolen articles were given to him and how he concealed them in Yallavaneni Chodu and offered to show them the place. The information admissible in this case has been set out in -- 'AIR 1947 PC 67 (A)' and which has been interpreted in three other decisions of the Madras High Court viz., -- 'Public Prosecutor v. Oor Goundan', AIR 1948 Mad 242 (P) decided by Rajamannar J. as he then was and Shahabuddin J. in : AIR1950 Mad613 decided by Rajagopalan J. and -- 'Khader Sahib v. The King' : AIR1950 Mad108 decided by Somasundaram J. Their Lordships of the Privy Council themselves did not put an arbitrary limitation on Section 27 as is now imagined and all that they did was to set limits to unwarranted extensive use of the same by the police to prove not only so much of the information as led to the discovery of the facts but also information as to past user or past history of the object produced etc. In other words extensive confessional statements were sought to be thrust in under Section 27 of the Evidence Act which could not be admissible under Section 25 and this undoubtedly received some encouragement by reason of the terms in which the Full Bench decision of this Court in -- 'In re,

Athappa Goundan', AIR 1937 Mad 618 (R) had been couched. The Full Bench while admitting that the weight of Indian authority was against them nevertheless took the view that any information which served to connect the object discovered with the offences charged was admissible under Section 27.

Their Lordships of the Privy Council brought back the user under Section 27 of the Evidence Act to the original limits which were set up by decisions previous to -- 'AIR 1937 Mad 618 (R)' like -- 'In re, Choda Atchanna', (Holoway and Ellis JJ.) 3 Mad H C R 318 (S); -- 'AIR 1929 Lah 344 (F)' (Shadidlal C. J.) and -- ' : AIR1932 Bom286 (G)' (Beaumont C. J.) and held that 'Section 27, Evidence Act, provides an exception to the prohibition imposed by the preceding section and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact which 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 in consequence of the information received from a person accused of any offence in the custody of a police officer must be deposed to and thereupon so much of the information ss (a) has caused the discovery of the fact and (b) the information relating distinctly to the fact thereby discovered may be proved. The extent of the information admissible must depend upon the exact nature of the fact discovered to which such information is required to relate. On normal principles of construction, the proviso to Section 26 added by Section 27 should not be held to nullify the substance of the section. 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 distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Any information which serves to connect the object discovered with the offence charged is not admissible under Section 27.' But at the same time their Lordships of the Privy Council make it clear that this is so except in cases in which the possession or concealment of an object constitutes the gist of the offence charged and where information relating to the discovery of the fact formed the foundation of the prosecution case and this would not be merely one link in the chain of proof

and the other link having to be forged in the manner allowed by law. In the Privy Council case the statement that was admitted by the lower court was this:

'About 14 days ago, I Kotayya and people of my party lay in wait for Sivayya and others at about sunset time at the corner of Pulipad Tank. We all beat Boddupati China Sivayya and Subayya to death. The remaining persons, Pulayya Kotayya and Narayana ran away. Dondapati Ramayya who was in our party received blows on his hands. He had a spear in his hands. He gave it to me then. I hid it & my stick in the rick of Venkatanarasu in the village I will show if you come. We did all this at the instigation of Pulukuri Kotayya.'

Their Lordships held that the whole of that statement except the passage 'I hid it (a spear) and my stick in the rick of Venkatanarasu in the village. I will show if you come' is inadmissible.

There was a confessional statement made by accused 3 in that case which was deposed to by the police Sub-Inspector who stated that accused 3 said to him :

'I stabbed Sivayya with a spear. I hid the spear in a yard in my village. I will show you the place.'

Their Lordships referred to this and said:

'The first sentence must be omitted. This was followed by a Mediatornama, Ex. Q-1 which is unobjectionable except for a sentence in the middle. 'He said that it was with that spear that he had stabbed Boddapati Sivayya' which must be omitted.'

This decision of the Privy Council has been referred to and followed by a Bench of this Court in -- 'AIR 1948 Mad 242 (P)' in which it was held that the statement 'I have buried in the margin of the eastern ridge of my sugarcane garden the knife. If you come with me I shall take and give it' is admissible. I have already pointed out how in ' : AIR1950 Mad613 ' Rajagopalan J. admitted the statement 'I sold the dynamo to the proprietor of a Soda Factory near the Pillayar Temple in Anuppa. palayam for Rs. 15' as admissible.

In ' : AIR1950 Mad108 ', the facts were:

'On 27th November, 1946, between 7 and 8 P.M. there was a theft of gold and diamond jewels, cash and other properties of the value of about Rs. 10,000 in the house of one Rao Sahib K. Venkatesam Chetti in Cuddapah town. The Circle Inspector of Police on re-receipt of information, investigated the case. In the course of the investigation, he recovered M. Os. 1 to 4 from the tank bund on 29th November 1946. The next day he had the tank searched as a result of which he recovered M. Os. 5 to 38. He suspected the first accused who was traced and arrested on 18th December, 1946, and he made a statement in consequence of which M. Os. 39 to 62, 72 to 82, 85 and 86 were recovered from a pit adjoining the pial of the house of accused 3. Accused 3 was then arrested and on information furnished by him M. Os. 63 and 64 were recovered from a pit under a flower pot in the backyard of his house. A search of his house resulted in the recovery of a small tin, M. O. 83 containing Rs. 382-8-0. He was then taken to the police station and there he made a further statement in consequence of which M. Os. 65 to 71 were recovered from a pot buried in a corner in the kitchen of accused 3. The properties were later identified by P. W. 1 as his. The case against the accused rests mainly on the statements made by them under Section 27 of the Indian Evidence Act and the consequent recovery of the stolen articles.'

The statement attributed to the first accused and admitted by the lower Court in the above case was as follows:

'On 27th November 1946, i.e., the second day of Moharram I brought out a trunk from the residence of Rao Sahib P. Venkatesam Chetty at about 7-30 in the evening. I bundled the jewels that were in the trunk in a cloth and I buried that cloth bundle by the side of the pial of Khader Sahib in a pit. I will show you the spot.'

Accused 3 in the above case, as already stated, made two statements. The portions admitted by the lower Court were:

'(a) I dug out the pit to find out what it contained and found a number of jewels. I took out one gold pannirbuddi and one gold kadium set with stones from among the jewels & kept back the bundle in the pit. I buried the gold pannir buddi and the hand kadium in my backyard under a flower pot in a pit. I will point out the spot.'

(b) I took some more jewels from the place where Bechu concealed them in addition to gold panniru buddi and gold kadium. I buried them in my house in one of the kitchen. I will point out the place.'

On the above two statements by the accused in the above case they were convicted and sentenced. Therefore it fell to be considered by Somasundaram J. as to the portions that could be admitted under Section 27 of the Evidence Act within the limits laid down in -- 'AIR 1947 PC 67 (A)'.

Somasundaram J. held:

'The only limitation is that the extent must relate distinctly to the facts discovered subject to its relevancy being proved by other evidence. The burial of the jewels by the accused in the pit becomes relevant only when the jewels are proved to be stolen property. The statement, 'I buried the cloth bundle by the side of the pial of Khadar Sahib in a pit. I will show you the spot' by itself is innocuous. It is no more harmful than 'I hid it (Spear) and my stick in the rick of Venkatanarasu in the village. I will show you if you come', which is admitted by the Privy Council as the portion admissible. It is only when the spear or the stick is proved to have been used in the commission of the offence the fact discovered is relevant. Similarly, only when the jewels are proved to be stolen, their burial in the pit by the accused becomes relevant: I therefore hold the following portions as admissible; as regards accused 1: 'I buried that cloth bundle by the side of the pial of Khadar Sahib in a pit. I will show you the spot'. As regards accused 3: 'I buried the gold panniru-buddi and hand kadium in my backyard under a flower pot in a pit. I will point out the spot. I buried them (some more jewels) in my house in one corner of the kitchen. I will point out the place.'

In Other words, the result is that in this limited class of cases where the gist of the offence is possession, words such as 'I hid', 'I pledged', 'I sold', 'I gave' or 'I have kept' are admissible on the ground that the words are distinctly related to the fact discovered though in the circumstances of the case they may amount to a confession. 'Hiding' and 'pledging' have been construed as showing possession because by doing either the hider or pledger shows that he has both 'animus' and 'corpus' and selling, giving or keeping have been construed as showing

possession because no one who has no possession can sell or give or keep: -- ' : AIR1932 Bom286 (G)'; -- 'Emperor v. Chokhey', AIR 1937 All 497 (T); -- 'Mohd. Ilyas v. State' : AIR1950 All615 , -- 'Jamunia v. Emperor', AIR 1936 Nag 200 (V); -- 'Sadashiva Daulat v. State', AIR 1950 Madh B 104 (W) and the Full Bench decision of Bombay High Court -- 'Rama Shidappa v. State' : AIR1952 Bom299 (X) (wherein Chagla C. J. has discussed the entire Bombay case law on Section 27, Evidence Act).

23. The settled law now may be summed up in the form of the following proposition as has been done by Mr. Y. H. Rao in his 'The Law of Admissions and Confessions'. The proposition may be graphically represented with effect as in the triangle in the margin. If the apex of the triangle to the left is supposed to represent the crime, and the two angles at the base the object discovered and the accused respectively, it may be laid down that so much of the information is admissible under Section 27 as serves to connect the two angles at the base with each other, but not either of them with the apex. It is permissible in other words to connect the accused and the object with each other through the information but not either of them with the crime. In the course of such a strict construction of the section by precisely limiting the information admissible to so much of it as distinctly serves to connect the accused with the object alone, it sometimes happens that the admissible portion amounts to a confession, which it does in cases where the gist of the offence is possession or concealment. The law is not that Section 27, Indian Evidence Act prohibits the same. Except in such a special case the connection between the object and the crime must always be exclusively established by evidence 'aliunde'. The connection between the crime and the accused however though it has to be established always by evidence 'aliunde' is permissible on the facts of the given case to be inferred to some extent from the very connection established between the accused and the object itself by the admissible information; but it is not permissible to directly connect the accused with the crime through his own mouth.

24. While applying the tests to the facts of a particular case the real difficulty arises where in a case the admissible portion of a confession is so mixed up with the inadmissible portion, that the two cannot be separated without modifying the

language in which the confession was made by the accused, it is competent to the court to split up the language used by the accused in conveying the information, to strike out words which are objectionable and admit only those which relate strictly to the discovery. The admissibility of the information must depend upon its intrinsic character and substance and not on the ingenuity of the Police Officer or the folly of the prisoner in composing the sentence; -- 'AIR 1929 Lah 344 (F)'. The Police Officer can only state the fact of what information was given to him; he is not at liberty himself to dissect it and give evidence of part of it only. But when the Judge gets the evidence of that information, he must before he records it as evidence or leaves it to the jury, divide the sentence into what are really its component parts, and only admit that part which has led to the discovery of the particular fact; -- ' : AIR1932 Bom286 (G)'.

25. But before admitting even the strictly relevant portion care should be taken to see that the information given by the accused was recorded as nearly as possible in the very words of the accused; Mockett and Horwill JJ. in --'Public Prosecutor v. Venkoba Rao', 1937 Mad W N Cri 73 (Y) Burn and Mockett JJ. in --Chenna Reddi v. Emperor' : AIR1940 Mad710 and that the information is not (a) the result of persistent unfair and oppressive questioning savouring of third-degree methods which takes away all its voluntary character; Burn and Stodart, JJ. in -- 'Chinna Papiiah v. Emperor', AIR 1940 Mad 136 (Z1), Mockett and Krishnaswami Ayyangar JJ. in -- 'Emperor v. Poligadu' : AIR1940 Mad12 see however opposite view in -- 'Public Prosecutor v. Pakkiriswami', AIR 1929 Mad 846 (Z3) (b) is not a repetition of what had already been stated to the police or already known to the police; Curgenvin and Cornish JJ. in -- 'Krishna Iyer v. Emperor' : AIR1935 Mad479 , Burn and Lakshmana Rao JJ. in -- 'Public Prosecutor v. Subba Reddy', AIR 1939 Mad 15 (Z5); Burn and Mockett JJ. in ' : AIR1940 Mad710 , (c) or is a composite statement of several accused where it is impossible to say how much of the statement was made by one and how much by the other; Wadsworth and Somayya JJ. in -- 'Peria Guruswami, In re', AIR 1941 Mad 765 (Z6); --'Mahboob Sheik, In re' : AIR1942 Mad532 .

In this connection it may be borne in mind that the Supreme Court of India in -- 'Luchman Singh v. The State' : AIR1952 Bom299 (Z8) recently remarked:

'It seems to us that if the evidence adduced by the prosecution is found to be open to suspicion and it appears that the police have deliberately attributed similar confessional statements relating to facts discovered to different accused persons, in order to create evidence against all of them, the case undoubtedly demands a cautious approach. But as to what should be the rule when there is clear and unimpeachable evidence as to independent and authentic statements of the nature referred to in Section 27 of Evidence Act having been made by several accused persons either simultaneously or otherwise all that we wish to say is that as at present advised we are inclined to think that some of the cases relied upon by the learned counsel for the appellants have gone further than is warranted by the language of Section 27 and it may be that on a suitable occasion in future those cases may have to be reviewed'.

Such Madras cases to be so reviewed will be-- 'Ayyanna Thevan v. Emperor', 1941 Mad Cri. C 123 (Z9) -- 'Bhujanga Goundan v. Emperor', 1941 Mad Cri C 231 (Z10); : AIR1942 Mad532 ', 'AIR 1941 Mad 765 (Z6)'. These infirmities though touched upon in the instant case as having affected the Section 27 statements of accused 1 and accused 2, were not made out and deserved no further consideration. Two other criticisms levelled by the learned advocate may also be dealt with here. It was just pointed out that the Mahajar witnesses were taken by the Police to be present at the hearing of the statements leading to discovery showing that the Police knew already what the accused was going to say and consequently those statements could not be said to be statements leading to discoveries of facts. It has become the practice In this Province for Police officers, when they expect the accused to make a confession, either on information received or from deduction from surrounding circumstances or their own intuition born of experience a professional sixth sense -- to take with them or procure respectable mediators and a panchayatnama is then prepared reducing into writing the information given by the accused and it is then attested by the Police Officer and mediators present. This practice springs not from any requirement of law but as pointed out by Burn J. from the diffidence felt by the Police officers that they might not be believed if they come to court and allege that the accused told them so and so which led to the discovery of such and such properties.

It is to fortify these statements which they have to make in court later that this course is adopted; see 'In re, Venkata Narayana', 1935 Mad Cri C 48 (Z11), & 'AIR 1939 Mad 15 (Z5)'. This diffidence by the Police Officers & the still lingering distrust of their testimony by the Bar and Bench and litigant public is no doubt regrettable but undeniable and so long as that diffidence and distrust last the present practice is safe and in no way irregular. But the Panchayatnama is not substantive evidence and can be used for corroborating or contradicting or refreshing the memories of the persons who participated in it; --'Seetharama Reddi v. Emperor', AIR 1939 Mad 766 (Z12). The second point was that from the information given by the P. Ws. which should have been the material that led the Police to apprehend the accused the Police could have deduced and recovered the properties without the adventitious aid of the accused's information. This argument has been repeatedly examined by High Courts in several decisions of which a few will suffice. In -- 'In re Chinnavan (1928) 1 Mad Cri. C. 258 (Z13)', there was evidence given by the Police Inspector that about two hours after the accused had gone to the Police Station he was brought back to the scene of offence and that in the room where his murdered wife had been sleeping he pointed out the knife M. O. 1. Reilly J. (with whom Madhavan Nair J. as he then was sat and concurred) observed:

'It appears to me very doubtful whether as a fact the knife was really discovered in consequence of anything which the accused saidand on the evidence it is clear that any one who had gone into the room and looked about with the slightest care could have found the knife. In the circumstances I think we should exclude in this case all the evidence as to what the accused said to the Police in connection with the knife as not coming really within Section 27 of the Indian Evidence Act.'

Similarly, in -- 'Addanki Venkadu, In re', AIR 1939 Mad 266 (Z14).; in -- 'Chundru Pallayya, In re' : AIR 1943 Mad 315 some of the P. Ws. told the police that the accused said to them that he had hidden the jewels of the deceased in his or in his sister's field and thereafter the accused gave information and took the Sub-Inspector of Police to a particular place in the sister's field and he then dug up the ground with a stick to a depth of about a foot and disclosed the jewels. Held, it could not be said that on the information given by the P. Ws. to the police, the

police knew in what particular field and where exactly in the field the jewels were hidden and therefore the information of the accused was admissible under Section 27 as leading to the discovery of the deceased's jewellery. Held further that even if the police knew from the statements of the P. Ws. where the jewels were hidden, it would still be discovery in consequence of information given by the accused, for the P. Ws. derived their information from the accused. Mere existence of other information by which discovery was facilitated does not make information under Section 27 inadmissible: 'Naresh Chandra v. Emperor' : AIR1942 Cal593 . It is wrong to contend that a statement made to the police officers resulting in the discoveries (finding out the body of the deceased and of the bloodstained lathi) made, could not be (used under Section 27 as the discovery of the body must already have been known to numerous people when it has not been proved that anybody else had seen the body or was aware where the stick had been placed on the spot until it was pointed out by the accused and such information had either reached the police or with ordinary diligence could have been collected by the police; -- 'Bharosa Ram Dayal v. Emperor', AIR 1941 Nag 86 (Z17). The accused made a statement during investigation by the police as to his having thrown a darri and a Kandasa into the canal. In consequence of the statement the police recovered them from a neighbouring village, having discovered from a boy the fact that they had been found in the place pointed out to them by the accused. There was therefore immediate connection between the statement and the discovery and the statement was admissible in evidence; -- 'Kapur Singh v. Emperor', AIR 1919 Lah 184 (Z18). Therefore it depends upon the circumstances of each case whether the discovery was really made in consequence of the information given by the accused and in the present case there cannot be the slightest doubt that it was so and it remains for us only to find out which portion of the statement of accused 1 and accused 2 recorded in this case is admissible.

26. On these conclusions it follows that the following information given by accused 1 and accused 2 relating to the discoveries are admissible. In the case of accused 1 the admissible portion of his statement is:

'I have kept one silver lota, two silver garitelu, two small dubbalu and one cloth having red border in the Rallagunta on Yallavaneni Chodu * * If you go with me,

I shall show, you the articles I concealed in the hill.'

Then turning to accused 2 the information admissible in his case will be that part of the statement which runs as follows:

'I went to the shop of Boggavarapu Brahmaya, shroff. I sold him one gold oddanam (belt) with one side short, four silver golusulu one silver plate, one pair of solid silver 'Kadivslu Kolichuttu' and one silver waist string of one row. I settled the price of gold at Rs. 71/- per sovereign and silver at Rs. 1-8-6 per tola and sold the same. * * When I sold the articles I gave out my name as Krishnayya. The shop-keeper obtained my signature on a paper.'

This information resulted in the discovery of the witness P. W. 7 who has later identified this accused 2 at an identification parade as his vendor' and also the discovery of the receipt which had been signed by this accused 2 as Krishnayya and recovered from P. W. 7. I have already adverted to the testimony of P. W. 7 that he paid Rs. 1227/- in all to accused 2 and the evidence of the Sub-Inspector and the mediators is that from a concealed place in his house accused 2 took and produced cash to the extent of Rs. 1227/-. In other words exclusive possession of the stolen properties had been brought home by this evidence and information and recoveries to accused 1 and 2.

27. Then coming to accused 3 and 4, on their being arrested stolen properties had been recovered from their very person and they have been identified as stolen properties by the respective owners. Thus, this evidence brings home the exclusive possession of stolen properties to these accused 3 and 4.

28. The accused persons in this case having, thus been shown to have been in exclusive possession of the stolen properties of P. Ws. 1 to 2 shortly after the commission of the burglary in the house of P. W. 1 that possession not having been legitimately accounted for by the accused the presumption can be safely drawn under Section 114(a), I. E. A. that the accused were the guilty thieves or guilty receivers. The weight of evidence in this case is more in favour of our drawing the conclusion that the accused were the guilty receivers rather than thieves.

29. Then we have the evidence of the movements of the accused which throw a flood of light on their complicity in the crime. On the police getting on the track of the accused persons it was found that accused 1 to 3 have been absconding from the village. Accused 1 could be arrested only on 29-4-1950 on the western side of Markondapuram village at the Kapilabhavi. Accused 2 was also arrested on the same day at 2 P.M. in his house at Markondapuram. Accused 3 was arrested on 29-5-1950 at Ayyana Cheruvubavi. Accused 4 was arrested by a police party when they raided Raviguntapalli Reserve Forest at a place called Akenu Bodu on 4-7-1950. On seeing the police party this accused 4 and another ran away and after a chase this accused 4 was caught with incriminating articles found on him and the other person made good his escape. It will be remembered that this accused 4 is a resident of Polinenicheruvu village in Chundi Division and the evidence shows that he could not give a reasonable explanation as to why he was hiding in the Reserve Forest along with another person. These absconding -- 'fateture facinus qui Judicium fugitis' -- clearly corroborate the other pieces of evidence in this case bringing home the offence to these accused persons: -- 'Khaista Khan v. Emperor', AIR 1935 Pesh 75 (Z19); -- 'Queen Empress v. Sami', 13 Mad 426 (Z20); -- 'Queen Empress v. Gobardhan', 9 All 528 (Z21); -- 'Chandrika Prasad v. Emperor', (Z22); -- 'Rakhal Nikari v. Queen Empress', 2 Cal W N 81 (Z23) -- 'Par-meshar Din v. Emperor', AIR 1941 Oudh 517 (Z24) and Section 8III(i), Ev. Act.

30. None of the accused admitted either giving information leading to discovery or recoveries of the properties from their person excepting accused 2. Even in the case of accused 2 he does not admit giving information leading to the discovery of P. W. 7 and he states that he did not sell anything to P. W. 7 and all that he wants to make out is that the money which was recovered from him Rs. 1223-12-6 was his own money and examined two witnesses to probabalise that it represented the proceeds of his trading in hides and skins. I have already pointed out that this contention of accused 2 cannot be believed in the face of the positive testimony of P. W. 7, the receipt passed by this accused, the recoveries made from P. W. 7 and the utterly untrustworthy character of the two D. Ws. examined by accused 2 and the account entry which did not relate to transactions at the material time. It is quite possible that accused 2 is carrying on a petty trade in hides and skins as a

cloak to cover his really nefarious activities as a fence or that this business of a fence is a profitable side-line carried on by him in connection with his own legitimate itinerant trade in hides and skins which would have incidentally the advantage of taking him all over the places and creating contacts for quiet disposal of stolen properties received from the actual burglars who require the aid of such intermediaries for disposing of the loot and for which it is common knowledge they pay very heavy commissions.

31. In the result, the prosecution has brought home to the accused beyond reasonable doubt the offence under Section 411, I. P. C. I set aside the acquittal of the lower Court and convict each of them for an offence under Section 411, I. P. C. and sentence each of them to rigorous imprisonment for one year. The sum of Rs. 1223-12-6 recovered from accused 2 will be handed over to the owner of the properties P. W. 1 and the gold and silver ingots seized from P. W. 7 will be returned to P. W. 7.

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