Mohmed Inayatullah vs The State Of Maharashtra on 9 September, 1975

Equivalent citations: 1976 AIR 483, 1976 SCR (1) 715, AIR 1976 SUPREME COURT 483, 1976 (1) SCJ 517, 1975 CRI APP R (SC) 350, 1975 MADLW (CRI) 265, 1975 CURLJ 668, 1975 BBCJ 760, (1976) 1 SCC 828, 1976 ALLCRIC 11, 1976 SCC(CRI) 199, 1976 (1) SCR 715, 1976 SC CRI R 375, 1976 MADLJ(CRI) 329

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, P.N. Bhagwati

PETITIONER:
MOHMED INAYATULLAH

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA

DATE OF JUDGMENT09/09/1975

BENCH:
SARKARIA, RANJIT SINGH
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SARKARIA, RANJIT SINGH
BHAGWATI, P.N.

CITATION:
1976 AIR 483 1976 SCR (1) 715
1976 SCC (1) 828

ACT:
Evidence Act (1 of 1872), s. 27-Scope of-S. 114(a)-Scope of.

HEADNOTE:
The appellant was charged with an offence of theft or three drums of chemicals. He was taken into police custody. On interrogation he said : I will tell the place of deposit of the three chemical drums which I took out.... "

The drums were thereafter recovered from the place mentioned by him. The trial court held that the. information given by the appellant as a result of which the stolen drums

were discovered, was admissible under s. 27 of the Evidence Act and that under illustration (a) to s 114 Evidence Act, the appellant would be presumed to be the thief.

Allowing the appeal to this Court,

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HELD: 1(a) The conditions necessary for bringing this section into operation are (1) the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence (ii) the discovery of such fact must be deposed to, (iii) at the time of the receipt of' the information the accused must be in police custody, and (iv) only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. [718 E]

(b) The word 'distinctly means 'directly', 'indubitably' 'strictly', 'unmistakably. The word has been advisedly used to limit and define the scope of the proveable information. The phrase "distinctly relates to the fact thereby discovered" refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. [718 F]

(c) If a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. [718 G]

Palukuri Kotayya and ors. v. Emperor 74 I.A. 65 and Udai Bhan v. State of Uttar Pradesh [1962] Supp. 2 S.C.R 830 referred to.

In the instant case only the first part of the statement, namely "I will tell the place of deposit of the three chemical drums" was the immediate and direct cause. Of the fact discovered. Therefore this portion only was admissible under s. 27. The rest of the statement was not a distinct and a proximate cause of the discovery and had to be ruled out evidence altogether. [719 G]

2(a) It cannot be said that the admissible portion of the information taken in conjunction with the facts discovered was sufficient to draw the presumption that the accused was the thief or receiver of stolen property knowing it to be stolen. The drums were in a Musafirkhana which was a place accessible to all and sundry. The drums were not alleged to be lying concealed nor was the compound under the lock and key of the appellant. [720 A-B]

(b) The inference under s. 114(a) can never be reached unless it is a necessary inference from the circumstances of a given case which could not be explained on any other hypothesis save that of the guilt of the accused. In the present case two alternative hypotheses are equally possible

(1) that it was the accused who had himself deposited the stolen drums in The Musafirkhana
716
or (ii) the accused only knew that the drums were lying at that place. The second hypothesis was compatible with the innocence of the accused and he is entitled to the benefit of doubt. [720 C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 131 of 1971.

Appeal by special leave from the judgment and order dated the 4th March. 1971 of the Bombay High Court in Criminal Appeal No. 1954 of 1969.

K. R. Chaudhury, S. L. Setia, Rajendra Chaudhury and Veena Khanna, for the appellant.

H. R. Khanna and M. N. Shroff, for the respondent. The Judgment of the Court was delivered by SARKARIA, J. This appeal by special leave is directed against a judgment of the High Court of Bombay upholding the conviction and sentence passed against the appellant under s. 379, Penal Code. The facts are these :

> The appellant was tried in the court of the Presidency Magistrate 5th Court, Dadar on the charge of committing theft of three drums containing phosphorous pentaoxide, valued at Rs. 300/- from the premises of the Bombay Port Trust on 1-8-1968 at 8.40 a.m. The First Information Report of the theft lodged with the police by Murari Bhikaji Bidya (PW 1) Shed Superintendent of Haji Bunder, at 9.15, was as follows:
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> "Today in the morning at about 8. a.m. I reported for duty at Haji Bunder. At about 8.40 a.m. or so, the Canteen boy named Shri Babu Durga came to me and informed me that one M/Car had come inside Haji Bunder and removed 3 small drums which were lying between 'A' Shed and Canteen in an open place along with several drums. I immediately asked Shri Joshi the gate-keeper who was present in my office at that particular time, to go out and see what was the matter after some time Shri Joshi came to my office and informed me that before he could reach the gate, the car had already left. However, he has noted down the number of the Car as 6649. He further told me that he shouted to stop the car but the driver of the said car drove away the Car at a fast speed. I then went in the open place in between 'A' Shed and Canteen where the drums were lying when the above said Canteen boy showed me a gap in between bigger-size drums from where the small drums were removed .. "

Sub-Inspector Thorat PW 7, conducted the investigation. After making inquiries from the Regional Transport office, he traced the owner of the car, BML 6649, and requested him to send his car-driver to the Police station. Accordingly, the driver, Babu Vithal (PW 5), accompanied by the

accused (appellant) appeared before the Sub-Inspector in the Police Station on September 26, 1968. The Sub-Inspector took the accused into custody. He then called the Panchas (including PW 6) and, in their presence, interrogated the accused who made a statement which was recorded by the Sub-Inspector. Rendered into English, this statement (incorporated in the Panchanama Ex. C) reads:

> "I will tell the place of deposit of the three Chemical drums which I took out from the Haji Bunder on 1st August."

The accused then led the Police officer and the Panchas to a Musafirkhana in Crowford Market and pointed out the three drums lying there, bearing the markings, 'ACC I Phosphorous Pentaoxide'. Thereafter, the drums were identified by PW 1 as the same which had been stolen.

Among others, the prosecution examined Bhikaji (PW 1) the informant, Vishnu Sakharam (PW 2), the Gate-keeper, Govindji (PW 3) the Clearing Agent and Rasal Mohd. (PW 6), a panch witness of the discovery. The driver of the car BML 6649 was also put in the witness-box as PW 5. He turned hostile and the prosecution cross-examined him to impeach his credit.

The plea of the appellant was one of plain denial of the prosecution case.

The courts below have concurrently found these facts:

> 1. That three drums had been stolen from the shed of the Bombay Port Trust on 1-8-1968 at 8.4 A.M.
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> 2. That the drums in question were the same that had been stolen.
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> 3. That these drums were discovered in consequence of the information (vide Ex. C) given by the accused whilst in police custody.
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> 4. That such information, as admissible under s. 27 Evidence Act, showed that the accused was admittedly in possession of these stolen drums on 26-9-1968 and therefore, under illustration (a) of sec. 114, Evidence Act, he would be presumed to be the thief.

Mr. Chaudhry, the learned Counsel for the appellant does not seriously dispute the first two findings. But he forcefully assails the third and the fourth. His contentions are: (a) that the courts below have not only misconstrued the statement made by the accused but have used more of it than was permissible under Sec. 27, Evidence Act; (b) that properly read, the admissible portion of the statement, in the circumstances of the case, did not warrant an inference under illustration (a) to Sec. 114, Evidence Act, that the appellant was the thief or a receiver of stolen property.

As against this, Mr. H. R. Khanna, learned Counsel for the State submits that the whole of the information supplied by the accused was admissible udder sec. 27.

Although the interpretation and scope of sec. 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be remained of its requirements. The Section says:

> "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."

The expression "Provided that" together with phrase "whether it amounts to a confession or not" shows that the section is in the nature of an exception to the preceding provisions particularly Secs. 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Sec. 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The Second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the proveable information. The phrase "distinctly" relates to the fact thereby "discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Crown,(1) Rex v. Ganee) (2). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see Palukuri Kotayya and ors. v. Emperor(3), Udai Bhan v. State of Uttar Pradesh.(4) Before proceeding further, it is necessary to be clear about the precise statement which had been made by the appellant to the Police officer. This statement finds incorporation in the panchnama, Ex. and we have reproduced an English rendering of the same earlier in this judgment. While considering this statement, the High Court observed that the accused had stated that "he had kept them (drums) there". We have perused the original record of the statement which is in Hindi, and we are of opinion that by no stretching of the words this statement can be so read or construed as has been done by the High Court. The copy Ex. of the Panchnama, in the Paper-book contains a correct English rendering of the same. What the accused had stated was: "I will tell the place of deposit of the three Chemical drums which I took out from the Haji Bunder on first August". It will be seen that he never I said that it was he who had deposited the drums at

the place from which they were produced. It seems the latter part of the statement which was an outright confession of the theft, was not completely ruled out of evidence and something of it was imported into and superimposed on the first part of the statement so as to fix the responsibility for deposit and possession of the stolen drums there, on the accused.

Having cleared the ground, we will now consider, in the light of the principles clarified above, the application of s. 27 to this statement of the accused. The first step in the process was to pinpoint the fact discovered in consequence of this statement. Obviously, in the present case, the threefold fact discovered was: (a) the chemical drums in question, (b) the place i.e. the Musafirkhana, Crawford Market, wherein they lay deposited and (c) the accused's knowledge of such deposit. The next step would be to split up the statement into its components and to separate the admissible from the inadmissible portion or portions. Only those components or portions which were the immediate cause of the discovery would be legal evidence and not the rest which must be excised and rejected.. Thus processed. in the instant case, only the first part of the statement, viz., "I will tell the place of deposit of the three Chemical drums" was the immediate and direct cause of the fact discovered. Therefore, this portion only was admissible under Sec. 27. The rest of the statement, namely, "which I took out from the Haji Bunder on first August", constituted only the past history of the drums or their theft by the accused: it was not the distinct and Proximate cause of the discovery and had to be ruled out of evidence altogether.

After culling out and rejecting the inadmissible portion, it was to be considered further whether the admissible portion of the infor-

> (1) I.L.R. 10 Lah. 283 F.B. (2) I.L.R. 56 Bom. 172. (3) 74 I. A. 65; (4) [1962] Supp. 2 S.C.R. 830 mation taken in conjunction with the facts discovered was sufficient to draw the presumption that the accused was the thief or receiver of stolen property knowing it to be stolen. The answer to this questions in the circumstances of the case, had to be in the negative. The drums in question were found in the compound or yard of a Musafirkhana which was a place of rest and waiting for Musafirs (travellers).

It was not alleged by the prosecution-much less proved-that the drums were lying concealed, or that the compound was under the lock and key of the accused. There is not even an oblique hint that the place of the deposit of the drums was in any way under the control or occupation of the accused. The place being a Musafirkhana, was from its very nature accessible to all and sundry.

It must be remembered that an inference under s. 114, Illustration (a) should never be reached unless it is a necessary inference from the circumstances of the given case, which cannot be explained on any other hypothesis save that of the guilt of the accused. Such is not the case here.

The facts proved by the prosecution, particularly. The admissible portion of the statement made by the accused"

> could give rise to two alternative hypotheses, equally possible, namely: (1) that it was the accused who had himself deposited the stolen drums in the Musafirkhana, or

(ii) the accused only knew that the drums were lying at that place. The second hypothesis was wholly compatible with his innocence. In the ultimate analysis, therefore, the appellant was entitled to the benefit of doubt.

Accordingly, we allow his appeal, set aside his conviction and acquit him of the charge levelled against him.

P.B.R. Appeal allowed.