Supreme Court of India
Udai Bhan vs The State Of Uttar Pradesh on 29 January, 1962
Equivalent citations: 1962 AIR 1116, 1962 SCR Supl. (2) 830
Author: K L.
Bench: Kapur, J.L.

PETITIONER:
UDAI BHAN

Vs.

RESPONDENT:
THE STATE OF UTTAR PRADESH

DATE OF JUDGMENT:
29/01/1962

BENCH:
KAPUR, J.L.
BENCH:
KAPUR, J.L.
DAYAL, RAGHUBAR

CITATION:
1962 AIR 1116 1962 SCR Supl. (2) 830
CITATOR INFO :
F 1976 SC 483 (12)

ACT:
Criminal Law-Evidence-Confession-Information received from accused-Accused producing stolen articles-If amounts to confesion-Admissibility of production-Indian Evidence Act, 1872(1 of 1872), ss. 25, 26, 27-Indian Penal Code (Act 45 of 1860) ss. 71, 380, 457.

HEADNOTE:
On October 13, 1956, at about 8 p.m. the complainant locked his shop and went out for a while, but when he returned he found the shop broken open and his box containing money and clothes stolen. On information given that the appellant had been seen carrying the box from the direction of the complainant's shop the appellant was arrested by the sub-inspector of police and on being interrogated he produced a box from out of a pond situate close to his field and handed over the same to the sub-inspector. He also produced a key from out of a bunch of keys, which fitted the lock of the shop belonging to the complainant, and

the sub-inspector took into possession both the key and the lock. The appellant was tried for offences under ss. 380 and 457 of the Indian Penal Code and convicted by the Magistrate under both the sections. The appellant contended that the conviction was unsustainable
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because (1) the appellant's handing over the box and the key amounted to a confessional statement made to a police officer and, therefore, the production was inadmissible in evidence under ss. 25 and 26 of the Indian Evidence Act, 1872, and that s. 27 was not applicable, and (2) ss. 380 and 457 of the Indian Penal Code were offences which fell under s. 71 of the Code and, therefore, the appellant could not be punished under both the sections.
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Held, that s. 27 of the Indian Evidence Act, 1872, was applicable to the case and that the conviction of the appellant was valid.

A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence. Applying this test, the evidence in regard to the discovery of the key as well as the box was rightly admitted into evidence in the present case.

Lachman Singh v. The State, [1952] S.C.R. 839, Ramkishan Mithanlal Sharma v. The State of Bombay, [1955] 1 S.C.R. 903 and Pulukuri Kotayya v. Emperor, (1946) L. R. 74 I.A. 65, relied on.

Held, further, that the two offences under ss. 380 and 457 of the Indian Penal Code did not fall under s. 71 of the Code, and, therefore, the conviction under both the sections was not illegal.

In re Natesa Mudaliar, A.I.R. 1945 Mad. 330, considered.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Civil Appeal No. 243 of 1959.

Appeal by special leave from the judgment and order dated September 25, 1959. of the Allahabad High Court in Criminal Revision No. 1546 of 1958.

M.I. Khowaja for the appellant.

G. C. Mathur and C. P. Lal, for the respondent.

1962. January 29. The Judgment of the Court was delivered by KAPUR, J.-This is an appeal against the judgment and order of the High Court of Allahabad dismissing the revision application of the appellant against his conviction under ss. 457 and 380 of the Indian Penal Code.

On October 13, 1956, at about 8 p.m. the complainant locked his shop and went out for a short while. On his return after about three- fourths of an hour he found his shop broken open and a box containing Rs. 2,000 and clothes and another box containing Rs. 200 stolen. He was told by prosecution witnesses Liladhar and Harnam Singh and two others that they had seen the appellant and Narain carrying away the boxes. On the following day at about 10 a.m. a report was lodged with the police and on October 15, 1956, the appellant was arrested by Sub-Inspector Virendrapal Singh. According to the prosecution, on being interrogated the appellant produced a box from a pond and handed over the same to the Sub- Inspector. He also produced a key from out of a bunch of keys before the Sub-Inspector and that key fitted the lock of the complainant which had been sent for. The Sub-Inspector took into possession both the key and the lock. The appellant and Narain were tried for offences against ss. 457 and 380 of the Indian Penal Code and the appellant was convicted by the Magistrate under both the sections and was given consecutive sentence of one year's rigorous imprisonment under s. 457 and six months' rigorous imprisonment under s. 380, Indian Penal Code. Narain was, however, acquitted. The appellant unsuccessfully appealed to the Sessions Judge and then took a revision to the High Court which was dismissed. He has brought the present appeal by Special Leave.

The High Court upheld the conviction holding that from the fact that the appellant was seen carrying the box from the direction of the complainant's shop and soon after produced the box and the key with which the lock could be opened were sufficient for the purposes of holding that he had committed offences with which he was charged. The High Court also held that it was unnecessary to go into the question of possession of the stolen articles because the fact that he knew that they were stolen from the shop of the appellant coupled with the fact that he was seen in the neighborhood of the premises from where the articles were stolen was sufficient to uphold the conviction. The High Court did not go into the question of the applicability or otherwise of s. 27 of the Indian Evidence Act, 1872, which had been held to be ultra vires by that court and has since been held to be intra vires by this Court* the reason being that there was no evidence of a statement made by the appellant about the stolen property made to the police and therefore there was no discovery resulting therefrom.

Three questions have been raised by the appellant. First: the case is covered by ss. 25 and 26 of the Evidence Act as the appellant's handing over the property amounts to a confessional statement made to a police officer and the production therefore is inadmissible in evidence. The argument was put in this way that when an accused person in the custody of the police just produces an article which is stolen he must be taken to have made a statement of a confessional nature to the police and not a statement in consequence of which a fact is discovered by the police. In order to consider this question we have to see what exactly was stated to the police by the appellant.

Sub-Inspector Virendrapal Singh stated that he made an inquiry from the appellant about the stolen property and the appellant brought out a box from the pond and handed it over to him. The pond was near the field of the appellant. He (Sub- Inspector) prepared a memo in respect of the recovery. The key which was handed over to the police by the appellant and which he took out from out of a bunch of keys, fitted the look. A recovery memo was prepared in which he had stated as follows:

> "In the presence of the witnesses, viz., Shri Damodar Singh son of Sunder Singh, Pradhan and Liladhar Singh son of Gulab Singh Thakur, residents of Maoo, Udaibhan son of Bhikam Singh, accused in this case took out from the bunch and handed over a key saying that he had opened therewith the lock of the shop belonging to Laik Singh. The lock of the shop of Laik Singh was opened with it. It opened and closed easily. It was, therefore, taken into police possession. The lock belonging to the complainant was also taken into police possession. Memo was prepared and signatures of the witnesses were obtained."

In regard to the recovery of the box the recovery memo stated as follows:-

> "In the presence of the witnesses, viz., Sri Damodar Singh son of Sunder Singh and Liladhar Singh son of Gulab Singh Thakur, residents of Maoo, a tin box containing the clothes mentioned below was recovered from the water of the pond Garara, situate close to the field of Udaibhan accused, towards the west of the village, on the pointing of Udhaibhan son of Bhikam Singh Thakur, resident of Maoo. It was taken out of water and handed over by Udaibhan, accused himself. It was taken into police possession and sealed on the spot. Memo was prepared on the spot and signatures of the witnesses were obtained."

These statements, it was contended, were confessions of guilt and were not covered by s. 27 of the Evidence Act. Section 27 is in the nature of a proviso to s. 26 which interdicts the provision of confessional statements made by a person in custody of the police. Section 27 reads as under:

> "How much of information received from accused may be proved.-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."

Thus, s. 27 partially removes the ban placed on the reception of confessional statements under s. 26. But the removal of the ban is not of such an extent as to absolutely undo the object of s.

26. All it says is that so much of the statement made by a person accused of an offence and in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered is proveable. Thus, in this case taking the recovery memos the statements in regard to the key was this that the appellant handed over the key and said that he had opened the lock of the shop of the complainant with that key. The handing over of the key is not a confessional statement

but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore, that portion will be inadmissible in evidence and only that partion will be admissible which distinctly relates to the fact discovered i.e., the finding of the key. Similarly the recovery of the box is proveable because there is no statement of a confessional nature in that memorandum.

The Privy Council in Pulukuri Kottaya v. Emperor (1) dealt with this matter and observed:

> "In their Lordships' view 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".

The Privy Council accepted the decision of the Lahore High Court in Sukhan v. Emperor (1) and of the Bombay High Court in Ganuchandra v. Emperor(2).

This Court, in Lachman Singh v. The State (3) held that if a person in the custody of the police takes the police to a particular spot and at his instance some blood-stained earth is recovered and he also points out the trunk of one of the dead bodies the case is covered by the language of s. 27 and the evidence of discoveries is admissible. In a later case Ramkishan Mithanlal Sharma v. The State of Bombay (4), it was observed that according to the section if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true and it can safely be allowed to be given in evidence. Kottaya's case (5) was approved. Bhagwati, J., observed:

> "On a bare reading of the terms of section it appears that what is allowed to be proved is the information of such part thereof as relates distinctly to the fact thereby discovered."

Thus it appears that s. 27 does not nullify the ban imposed by s. 26 in regard to confessions made by persons in police custody but because there is the added guarantee of truthfulness from the fact discovered the statement whether confessional or not is allowed to be given in evidence but only that portion which distinctly relates to the discovery of the fact. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence. Applying this test, in our opinion, the evidence in regard to the discovery of the key as well as the box was rightly admitted into evidence in the present case. Apart from this we have the finding of the High Court that the appellant was seen carrying the box near about the place of occurrence when he was coming from the side of the shop of the complainant. Therefore the contention as to the non-applicability of s. 27 is without substance and must be repelled.

It was next contended that as ss. 457 and 380 of the Indian Penal Code are offences which fall under s. 71, the appellant could not be punished under both these sections. Section 457 makes punishable lurking house trespass by night or house breaking by night in order to the committing of any offence punishable with imprisonment and if the effence intended to be committed is theft, the punishment is higher. Section 380 makes punishable a theft committed in a dwelling house. The two offences do

not, in our opinion, fall under s. 71 and, therefore, the conviction under both the sections is not illegal. See In re Natesa Mudaliar (1).

There is no substance in the contention that the appellant was not examined under s. 342 of the Code of Criminal Procedure about his handing over the key. This point was never taken at any stage before nor is it shown how the appellant was prejudiced by the non-examination in this respect.

This appeal is without force and is therefore dismissed. The appellant will surrender to his bail.

Appeal dismissed.