* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 3rd September, 2013
Pronounced on: 13th November, 2013

\+ **CRL.A. 1327/2012**

DEVENDER SINGH ..... Appellant
Through: Ms. Rakhi Dubey, Advocate

versus

STATE ..... Respondent
Through: Ms. Richa Kapoor, Advocate

\+ **CRL.A. 1328/2012**

RAKESH KUMAR CHAUDHARY ..... Appellant
Through: Mr. Avinder Singh, Advocate &
Mr. Aditya Vaibhav Singh, Advocate

versus

STATE ..... Respondent
Through: Ms. Richa Kapoor, Advocate

\+ **CRL.A. 1329/2012**

RAMESH SINGH BISHT ..... Appellant
Through: Ms. Anita Abraham, Advocate

versus

STATE ..... Respondent
Through: Ms. Richa Kapoor, Advocate

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL J.

1. These three appeals are directed against the judgment dated 23.03.2012 and order on sentence dated 24.03.2012 whereby the Appellants Ramesh Singh Bisht, Devender Singh and Rakesh Kumar Chaudhary were convicted in Sessions Case No.155 of 2009 for the offence punishable under Section 302/201 read with Section 34 of the Indian Penal Code (IPC). They were sentenced to undergo rigorous imprisonment (RI) for life and to pay a fine of ₹2,000/- each and in default to undergo RI for a period of six months for the offence punishable under Section 302 read with Section 34 IPC. They were further sentenced to undergo RI for a period of three years and to pay fine of ₹1,000/- each and in default to undergo RI for a period of three months each for the offence punishable under Section 201 read with Section 34 IPC.

2. We shall first advert to the facts.

3. On 09.02.2008, at about 11:14 a.m., DD No.15-A was recorded in Police Station (PS) Samai Pur Badli (SP Badli) to the effect that a dead body was lying near the railway track between *ganda nala* and the road. The DD entry was assigned to ASI Sugan Lal. Simultaneously, information was also transmitted to Inspector Sanjeev Kumar (PW-17), SHO of the Police Station. ASI Sugan Lal (PW-14) reached the spot and in the meanwhile Inspector Sanjeev Kumar (PW-17) also reached there and noticed that a naked dead body with its legs tied with a wire, wrapped in a black and gray coloured blanket was lying in a cardboard box. Inspector Sanjeev Kumar made inquiries about the dead body but the deceased could not be identified. Inquest proceedings were held. A *rukka* was sent to the PS for registration of a case for the offence punishable under Sections 302/201 IPC. Crime team was summoned at the spot.

Photographs of the dead body were taken from different angles. Since the dead body could not be identified, it was shifted to the mortuary with a direction to preserve it. After seven days, the dead body was cremated as unidentified.

4. Hue and cry notice was circulated all over Delhi. During the course of investigation, one Raju Kumar (PW-2) came in contact with the police and on interrogation disclosed that he used to work as a waiter with appellant Ramesh who was working as a catering contractor. On 07.02.2008, he along with one Vinod was resting in his room at Badli Extn. At about 10:00 p.m., they heard sounds of *maar-peet.* They noticed that appellant Ramesh with co-accused Pramod (proclaimed offender) and his own waiters Devender and Rakesh (Appellants herein) were beating Ram Mohan (the deceased) with fists and legs. He was also being given blows with a belt. The cause for extending beatings to the deceased was the demand of his dues amounting to ₹2,000/- from appellant Ramesh which was not taken kindly by him (appellant Ramesh). PW-2 and the co-waiter Vinod Kumar, who were witnesses to the beatings extended to the deceased were also threatened with similar treatment, if they also asked for settlement of their dues or if they disclosed about the incident to anyone. On the next morning, PW-2 and Vinod heard appellant Ramesh saying that Ram Mohan had died in the night. Vinod Kumar (not produced as a witness in the Court on the ground of being not traceable) further informed the IO that the appellants Ramesh, Rakesh and Devender along with co-accused Amit and Pramod had packed the dead body in a cardboard box and threw the same somewhere at night. After their return, the accused persons threatened PW-2 and Vinod to keep quiet or else to meet the same fate.

5. The three appellants were thereafter arrested at the instance of PW-2 and Vinod on 06.03.2008. The three appellants are alleged to have made a clean breast of their guilt before the IO. The postmortem report opined the cause of death as asphyxia consequent upon ligature strangulation. The blunt injuries found on the person of the deceased were opined to be ante-mortem in nature. After completion of the investigation, a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was presented in the Court.

6. On the appellants pleading not guilty to the charge framed under Sections 302/201/34 IPC, the prosecution examined 17 witnesses. PW-2 Raju Kumar, PW-3 Naresh Kumar, PW-6 Constable Gunwant, PW-9 Dr. K. Goel, PW-10 HC Dalbir Singh, PW-11 Satpal Singh, PW-12 Dayashanker, PW-13 HC Pawan Kumar, PW-14 ASI Sugan Lal, PW-16 Constable Surender Negi and PW-17 Inspector Sanjeev Kumar are the important witnesses examined by the prosecution, whereas rest of the witnesses have provided various links in the case.

7. Raju Kumar (PW-2) is the star witness of the prosecution. The success of the prosecution hinges around his testimony. He testified that appellant Ramesh was working as a catering contractor who used to supply labour in marriage parties. Appellants Devender and Rakesh were working with appellant Ramesh. In February 2008, he (Raju Kumar) and Vinod noticed the appellants and one Pramod extending fists, legs and belt blows to Ram Mohan the deceased in a room at Badli. They gave beatings to the deceased as he demanded his dues from Ramesh. Ramesh had also leveled allegations of committing theft of some CDs against the deceased. Appellant Ramesh threatened PW-2 and Vinod that if they or

anybody else demanded the money for the work done by them, they would meet the same fate. They were also threatened not to disclose about the incident to anybody. He went on to add that the appellants kept the dead body of Ram Mohan in a carton box and threw the same somewhere in the night. He deposed that the three appellants were arrested on his and Vinod's pointing out. He also pointed out the spot of giving beatings, to the IO.

8. In cross-examination, the witness admitted that he used to reside with his parents and family in a *jhuggi*. He stated that the place of incident was at a distance of 4-5 kms. from his house. He stated that the appellant Ramesh was residing at House No.C-30, Badli Extn along with 40-50 boys who were working as his labourers. He stated that this house where appellant Ramesh and the boys were staying consisted of six rooms. He denied the suggestion that he was working as a waiter with contractor Vinod. He stated that the room of Vinod was in the corner in the opposite line in the same house. He admitted that there were other houses in the vicinity and the window of the room of appellant Ramesh opened in the street. He denied the suggestion that the distance between the rooms of Ramesh and Vinod was 30-35 steps. He went on to add that the same could be about 8-10 steps and if anything would occur in the room of Ramesh, noise could be heard outside. He admitted that apart from him, there were 20 other boys who witnessed the occurrence. He also admitted that his name as also the names of other waiters were mentioned in an attendance register maintained by appellant Ramesh. He stated that he and some other boys were detained in the Police Station. He denied the suggestion that he was beaten by the police and was made to confess that he had committed the offence. He clarified that the fact of throwing

of the dead body of the deceased after putting it in a carton box was told to him by Vinod. (Thus, hearsay evidence). He further admitted that Vinod had a mobile phone with him. He (Vinod) did not inform the police about the incident through his mobile. He denied the suggestion that he was never threatened by the accused persons or that he was not asked to keep quiet.

9. Naresh Kumar (PW-3) is the landlord of House No.C-30, Badli Extn. He stated that appellant Ramesh used to work as a contractor to supply labour during marriage parties. He used to charge a sum of ₹4,000/- per month as rent from Ramesh for the rooms in which Ramesh and other workers used to reside. He stated that there was no written lease agreement with Ramesh. He did not issue any rent receipts to him. In cross-examination, PW-3 deposed that it was appellant Ramesh only who was the tenant in the house and other persons were his labourers. He admitted that police did not take any documentary evidence with regard to his ownership of House No.C-30, Badli Extn.

10. Constable Gunwant (PW-6) handed over DD No.15-A (Ex.PW-1/A) to ASI Sugan Lal on 09.02.2008. Thereafter he accompanied ASI Sugan Lal to the spot and where the dead body was lying. He deposed about the recovery of the dead body which was lying wrapped in a blanket. He testified about having taken *rukka* to the PS for registration of the FIR.

11. Daya Shanker (PW-12), ASI Sugan Lal (PW-14) (SI on the date of recording of his statement) and Constable Surender Negi (PW-16) are other witnesses regarding recovery of the dead body from near the railway line near *ganda nala.* PW-14 ASI Sugan Lal also deposed about

seizure of the cardboard box, blanket, plastic rope and an electric wire (with which the legs of the dead body were tied).

12. Dr. K.Goel (PW-9) conducted the autopsy on the unidentified dead body on 18.02.2008. He noticed the following external and internal injuries:-

> ***"External injuries:-***
> *1. Ligature Mark – There was diffuse, slightly, depressed pinkish pressure mark running transversely all around the neck just on and below apple of adam of width 2 cms. to 3 cms. all around. The skin above and below the ligature mark was more blackish.*
> *2. Diffused bruises coalesced all over front, lateral and back of left arm (clot were present underneath the skin), lateral aspect of right arm and scattered at places over back of chest, diffuse.*
> *3. Grazing were seen in vertical fashion 5 cms x 3 cms on front of right wrist and lower side of right forearm.*
>
> ***Internal examination:-***
> *On reflection of skin of neck, there was subcutaneous and platysmal bruising all over front and sides of neck. Deeper neck muscles also bruised signs of decomposition were also seen. There was vertical fracture of body of thyroid cartilage with massive bruising and clots around.*
> *All the chest and abdominal viscera were showing signs of early to moderate decomposition changes."*

13. He opined the cause of death to be *asphyxia consequent upon ligature strangulation.* He testified that all the injuries were ante-mortem in nature and injury no.1 was sufficient to cause death in the ordinary course of nature. He stated that injury no.2 was caused by impact of a blunt object during assault, whereas injury no.3 was caused by friction against a blunt rough surface. He opined the time since death to be 10-11 days.

14. HC Dalvir (PW-10) testified having joined investigation of the case with Inspector Sanjeev Kumar on 06.03.2008. He deposed that they met public witnesses Vinod and Raju. The IO showed them the photographs of the deceased which they identified to be those of Ram Mohan. The witnesses were given assurance of their safety and security. They disclosed about the incident of giving beatings to the deceased by the appellants along with one Amit and one Pramod. He stated that the three appellants were arrested from C-30, Badli Extn. on identification by Vinod and Raju. The three appellants confessed to their guilt. However, the confession to the police officer is not admissible in evidence. The IO recorded their disclosure statements Ex.PW-10/A, Ex.PW-10/B and Ex.PW-10/C. They pointed out the place where they had thrown the dead body of Ram Mohan vide pointing out memos Ex.PW-10/D and PW-10/E. This is inadmissible, as the place of recovery of dead body was already known to the police and other witnesses. He deposed that the three appellants pointed out the place where they committed the murder of deceased Ram Mohan vide pointing out memo Ex.PW-10/F which was signed by him at point A. Again this is inadmissible in evidence being a confession to the police officer. In cross-examination, the witness denied the suggestion that Vinod and Raju were already detained by the police at PS for about five days prior to 06.03.2008. He testified that there were several rooms in C-30, Badli Extn. including one hall and some rooms on the ground floor. He testified that he had called the owner of the house. He added that proof of ownership of the building was not collected by the IO in his presence. He stated that the documents regarding arrest of the appellants were prepared in the PS and not at the spot.

15. SI Satpal Singh (PW-11) was the in-charge of the crime team who reached the spot on 09.02.2008 at 11:40 a.m. He deposed about the recovery of the dead body, inspection of the spot and getting the spot photographed from various angles through Constable Dalvir Singh.

16. HC Pawan Kumar (PW-13) deposed about the recovery of a leather belt with brass buckle and a red and black electric wire at the instance of appellant Ramesh. This statement is not of much consequence, to which we shall advert a little later.

17. Inspector Sanjeev Kumar (PW-17) is the investigating officer in this case. He deposed about the recovery of the dead body on 09.02.2008 from near railway line in between *ganda nala* and the road. He testified about preparation of *rukka* Ex.PW-17/A and sending it to the PS for registration of the case. He deposed that on 06.03.2008, he along with other police officials was present in Street No.9, Badli Exn. They were intensively interrogating various persons as they had information that the labourers similar to the deceased were residing in the locality. They met two persons, namely, Raju Kumar and Vinod Kumar. When they were questioned, they got frightened. On taking them in confidence, they disclosed about the beatings given by the three appellants along with Pramod and Amit to the deceased. They also disclosed about the deceased being strangulated by the appellant Ramesh resulting in his death and disposal of the dead body by the appellants. (This part of the testimony of PW-17 is again inadmissible being hearsay evidence). This witness then deposed about the arrest of the three appellants and making of the confessional statements by them. He deposed that appellant Ramesh got recovered a belt of black colour with brass buckle and a red and black

electric PVC wire, apparently whose portion was used to tie the legs of the deceased. He also stated about recovery of a shirt of the deceased at the instance of appellant Ramesh and its seizure. He testified that the articles recovered at the instance of the appellant Ramesh were sealed. He testified that the witness Vinod was untraceable despite of best efforts being made by the police. In cross-examination, the witness admitted having not noticed any bloodstains on the belt and the shirt of the deceased. He denied the suggestion that the shirt did not belong to the deceased. At the same time, no evidence has been collected or produced by the IO to show that the shirt did belong to the deceased.

18. On close of the prosecution evidence, in order to afford them an opportunity to explain the incriminating evidence appearing against them, the appellants were examined under Section 313 Cr.P.C. Appellants Ramesh and Rakesh denied the prosecution's allegation and stated that they were lifted from Badli Chowk on 02.03.2008 by the police officials. They were illegally confined at the PS, beaten mercilessly and then implicated in the case falsely. Similarly, appellant Devender stated that he had nothing to do with the alleged incident. He was illegally arrested on 03.03.2008 and was wrongfully confined and mercilessly beaten in the PS and later falsely implicated in the case. He stated that he used to reside in a *jhuggi* at railway crossing Badli. The appellants did not produce any evidence in defence.

19. While appreciating the evidence adduced by the prosecution and relying on *Leela Ram v. State of Haryana (1999) 9 SCC 525,* the Trial Court observed that some discrepancies are bound to occur in the testimony of the witnesses. The Trial Court observed that "*the corroboration of*

evidence with mathematical niceties cannot be expected in criminal cases."

20. Relying on the testimony of PW-2, the Trial Court held that the identity of the three appellants and the factum of giving beatings by them was fully established. The Trial Court rejected the plea of the appellants of being removed on 02.03.2008/03.03.2008 by police and held their plea of being mercilessly beaten to be an afterthought as the same was not put to PW-2 or other prosecution witnesses. Further, relying on the recovery of the red and black electric PVC wire by appellant Ramesh, which tallied with the red and black wire with which the legs of the dead body were tied, the Trial Court held the appellants to be connected with the murder of the deceased and thus, the three appellants were convicted and sentenced as aforesaid.

21. We have heard Ms. Rakhi Dubey, Mr. Avinder Singh and Ms. Anita Abraham, learned counsels for the appellants and Ms. Richa Kapoor, learned APP for the State and have perused the record.

22. In order to bring home the appellants' guilt, the prosecution relied on direct evidence in the shape of testimony of PW-2 who is an eye witness to the beatings being extended to the deceased by the appellants and two others (POs). The prosecution further relies on the circumstantial evidence, that is, recovery of a shirt Ex.P-2 purported to be belonging to the deceased, recovery of a red and black PVC electric wire Ex.P-4 alleged to be similar to the one with which the feet of the dead body were tied and recovery of a leather belt Ex.P-3 with which the deceased was allegedly strangulated, in pursuance of a disclosure statement Ex.PW-10/B, purported to have been made by the appellant Ramesh Singh Bisht.

23. On examination of the disclosure statement, it is clear that since the recovery of the wire was not in pursuance of any information provided by the appellants, the same was not admissible in evidence as held by a Division Bench of this Court in *Chander Pal v. State 1998 (47) DRJ (DB)* where it was observed as under:-

> *"It may also be appreciated that as far as the joint recovery of muffler vide memo Ex.PW-4/D is concerned, it has no basis inasmuch as the recovery of muffler Ex.P-8 vide recovery memo Ex.PW-4/D is not preceded by any discovery statement of the accused persons either singly or jointly. It need hardly be said that recovery of a Mudda Mal property stated to have been produced by the accused persons must be first shown to have voluntarily disclosed/express willingness to point out and produce the incriminating article and for that a statement by the accused person stating that he had concealed or kept an article at a particular place and that he wants/desires to produce the same willingly. It is only thereafter that the accused leads the IO and the attesting witnesses to the place where he has stated to have kept and/or concealed the incriminating article and thereafter the article taken out and produced by the accused in presence of the witnesses and that is how the recovery of the incriminating article is to be affected so as to be legal and admissible in law. Thus, the recovery must have the basis of a disclosure statement voluntarily made by the accused person desirous of producing the article kept/concealed by him from certain place. In the instant case the basis, namely, a voluntary disclosure statement of Chander Pal stating that he has kept a muffler (Ex.P-8) at a particular place and that he desires to/is willing to produce the same is non-existant. So on that score also the recovery of the muffler Ex.P-9 cannot be said to be legal and valid besides other infirmities from which it suffers.*
>
> *For the reasons aforestated the circumstance of recovery of piece of muffler and the clothes cannot be taken into consideration."*

24. Similarly in *State of Karnataka v. David Rozario and Anr. (2002) 7 SCC 728,* the Supreme Court held that the statement which is admissible under Section 27 is the one which is the information leading to the discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. Relevant para of the report in *David Rozario* is extracted hereunder:-

> *"5..... The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands, in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in the custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a*

prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of a fact envisaged in the section. Decision of the Privy Council in Pulukuri Kottaya v. Emperor AIR 1947 PC 67 is the most-quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu (2000) 6 SCC 269. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given"

25. Since the PVC electric wire was not recovered in pursuance of any information provided by the appellants, this was no information which could be admissible as evidence.

26. It is urged by the learned counsels for the appellants that PW-2 is unworthy of reliance. He was coerced by the police to make a statement in as much as he admitted having been confined by the police for five days before his statement was recorded by the police. It is urged that PW-2 admitted in cross-examination that there were around twenty other boys who also witnessed the incident. He had also admitted that the police had made inquiries from at least 15 of these boys. Consequently, non-production of those 15 boys is fatal to the prosecution and, therefore,

PW-2 cannot be believed with regard to the beatings alleged to be given by the appellants.

27. It is contended that PW-3 Naresh Kumar did not produce any document to show that appellant Ramesh was a tenant under him in respect of House No.C-30, Badli Extn. No documentary evidence was collected by the prosecution to prove that Naresh Kumar was actually the owner of the earlier said house. It is contended that the appellants were lifted from Badli Chowk, kept in wrongful confinement, mercilessly beaten up along with PW-2 and then falsely implicated in the case by the police.

28. With regard to the alleged recovery, the learned counsels for the appellants Devender and Rakesh contend that no discovery was affected and no fact was discovered in pursuance of the confessional statement alleged to have been made by these appellants. The confession and the recovery, if any, made at the instance of appellant Ramesh Singh Bisht was not admissible against them. The learned counsel for appellant Ramesh Singh Bisht submits that no independent witness was joined by the police at the time of the alleged recovery affected in pursuance of the confessional statement Ex.PW-10/B. Section 27 of the Indian Evidence Act, 1872 (the Evidence Act) admits only so much of the information given by an accused which distinctly relates to the facts discovered in pursuance of the information. The learned counsel for appellant Ramesh Singh Bisht contends that recovery of an object has to be distinguished from the *fact thereby discovered.* Referring to a celebrated judgment of the Privy Council in *Pulukuri Kottaya & Ors. v. Emperor AIR 1947 PC 67,* the learned counsel urges that in pursuance of the information provided, if any fact is discovered which connects the accused with the

commission of the offence, then only the fact discovered becomes relevant. In the instant case, the alleged recovery of the articles does not become a fact discovered as the articles allegedly recovered do not indicate that the appellant was a perpetrator of the crime or that he had any role to play in the same.

29. We shall deal with the recovery of the three articles, that is, shirt, belt and red and black colour PVC electric wire one by one to see whether the same connects any of the appellants with the commission of the offence so as to amount to a fact discovered within the scope of Section 27 of the Evidence Act, 1872.

30. First of all, a perusal of the confessional statement Ex.PW-10/B shows that the appellant Ramesh Singh Bisht disclosed that he had kept the clothes of the deceased in his room at C-30, Badli Extn.

31. It is highly improbable that an accused after committing a gruesome crime of murdering a person would keep the clothes of the deceased in his own room so as to be easily caught by the police. When a person/persons could dispose of the dead body, he/they could also easily dispose of or even destroy the shirt. Moreover, as per the recovery memo Ex.PW-13/A, a brown and grey colour shirt allegedly belonging to the deceased was got recovered by appellant Ramesh Singh Bisht. PW-17 IO of the case did state that the shirt belonged to the deceased. He has, however, not given the source of this information. The IO himself was not related to the accused. No evidence whatsoever was collected by the police to prove that the shirt Ex.P-2 allegedly recovered at the instance of appellant Ramesh Singh Bisht actually belonged to the deceased. Thus, the alleged recovery of the shirt does not amount to a fact discovered

within the meaning of Section 27 of the Evidence Act and consequently, it is of no consequence.

32. Now we turn to the recovery of the red and black PVC electric wire and the leather belt. Section 25 of the Evidence Act takes any confession made to a police officer out of the purview of consideration. Similarly, Section 26 of the Evidence Act bars admissibility of any confession made by a person to any person while he is in police custody unless it is made in the immediate presence of a Magistrate. The purpose of imposing a ban upon the admissibility of confessions made to a police officer or made to any other person while the accused is in police custody, is because of the fact that the legislature thought that a person under police influence might be induced to confess his guilt by undue pressure or coercion. The proviso in the shape of Section 27 has been provided because discovery of a fact pursuant to a confessional statement provides an assurance about the genuineness of the information or confession made by an accused.

33. In *Pulukuri Kottaya,* the Privy Council very vividly brought forward the distinction between the object discovered and discovery of a fact in pursuance of an information provided by a person accused of an offence while he is in police custody. Their Lordships observed as under:-

> *"Section 27, which is not artistically worded, 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 in consequence of 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 as relates distinctly to the fact thereby*

discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in cones quence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to section 26, added by section 27, should not be held to nullify the substance of the section. 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. 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. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the

house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informent."

34. Turning to the facts of the instant case, as per the prosecution, the legs of the dead body were tied with an electric wire. PWs 6, 12, 14, 16 and 17 are the witnesses to the recovery of the dead body whereas PWs 10,13 and 17 are the witnesses to the recovery of the red and black wire at the instance of appellant Ramesh Singh Bisht. A perusal of the *rukka* Ex.PW-1/C written by Inspector Sanjeev Kumar (PW-17), IO of the case shows that the same is curiously silent about the colour of the wire with which the legs of the dead body were tied. In the recovery memo, the colour of the electric wire with which the dead body was tied and which was allegedly deposited in the *malkhana* as mentioned is red, black, yellow and blue. PWs 6, 12 and 14 are silent about the legs of the dead body being tied with any electric wire. However, PW-14 did depose about the seizure of an electric wire and converting it into a packet after sealing it with the seal of 'SK'. So much so, PW-17 also simply deposed about tying of the legs of the dead body with an electric wire and seizure of the wire along with other articles. Thus, he was silent as to the colour of the wire with which the legs of the deceased were tied.

35. May be that the colour of the electric wire with which the deceased's legs were tied at the time of recovery of the dead body was not thought of much importance by the IO and the other witnesses and even if it is believed that the legs of the dead body were indeed tied with a red, black, yellow and blue electric wire, we have to see whether the recovery

of a similar red and black wire can be believed and if so, whether the same is of any consequence. PW-10 HC Dalvir, PW-13 HC Pawan and PW-17 Inspector Sanjeev Kumar, IO are the witnesses regarding the alleged recovery at the instance of appellant Ramesh. PWs 10, 13 and 17 on this aspect deposed about the making of the confessional statement Ex.PW-10/B by appellant Ramesh.

36. Thus, apart from the fact that there is no independent witness to the alleged recovery of the leather belt and red and black PVC wire, the same do not amount to any fact discovered under Section 27 in view of the law laid down in *Pulukuri Kottaya* which has been relied on and referred to with approval by the Supreme Court in its various decisions including *Harivadan Babubhai Patel v. State of Gujarat (2013) 7 SCC 45* and *Rumi Bora Dutta v. State of Assam (2013) 7 SCC 417.*

37. The leather belt Ex.P-3 was an ordinary leather belt. It was not even shown to PW-9 (Dr. K. Goel) who conducted postmortem examination of the dead body to determine as to whether the ligature mark corresponded to that leather belt Ex.P-3 or that the same was used to strangulate the deceased. Even if it would have been opined to be so by the autopsy surgeon, at the most, it could have been used only as a corroborative piece of evidence. Similarly, as stated earlier, the colour of the PVC electric wire with which the legs of the dead body were tied was not mentioned in the *rukka*. Recovery memo Ex.PW-14/B which states about the dead body and the articles recovered from the dead body reveals that it was a red, black, yellow and blue electric wire which was seized from the dead body, whereas the PVC electric wire which was got recovered in pursuance of the alleged confessional statement made by appellant

Ramesh Singh Bisht was only a red and black electric PVC wire. The wire recovered as also the one used to tie the legs of the dead body are ordinary electric wires. Merely the recovery of a red and black PVC wire, on the authority of *Pulukuri Kottaya,* does not amount to discovery of a fact and thus the same is also of no consequence.

38. Now we turn to the oral evidence with regard to the place of incident and extending of beatings to the deceased by the three appellants and the POs. Statement of PW-2 Raju Kumar with regard to the beatings extended by the appellants is extracted hereunder:-

> *"..... In the month of February 2008 all the accused persons namely Ramesh, Parmod, Devinder & Rakesh were giving beatings with fist, legs & belt blows to Ram Mohan (since deceased) at Badli in a room. The accused persons gave beatings to Ram Mohan as he demanded a sum of Rupess from Ramesh Thekedar. Ramesh Thekedar had also levelled allegations against Ram Mohan that Ram Mohan had committed the theft of CDs. When we saw while beating the deceased by the accused persons Vinod Kumar was also with me. The accused Ramesh threatened me and Vinod Kumar that if myself and anybody else will demand the money for the work done by them, in that case the labourer who demands the money will be having the similar fate as of Ram Mohan and Ramesh also threatened us that we should not disclose about the incident to anybody. Due to the fear I did not disclose the occurrence to anybody...."*

39. It is true that in cross-examination PW-2 admitted that about fifteen other boys along with him were questioned by the police with regard to the incident. He was candid enough to admit that he and other boys were detained in PS S.P. Badli for 3-4 days for inquiry. The police did cite another eye witness to the incident in addition to PW-2. The police is not expected to cite a large number of witnesses to prove a particular fact.

The discretion of the investigating officer in merely citing two witnesses, in the circumstances of the case, cannot be faulted. PW-2 boldly stood the test of cross-examination. He denied the suggestion that he was beaten by the police officials or was made to confess his guilt. He admitted, which in fact is the case of the prosecution that the arrest memos in respect of the three appellants were signed in the PS. PW-2 was dependant for his bread and butter on appellant Ramesh. Moreover, he had seen the fate of the deceased Ram Mohan and therefore, there was nothing unusual in him not disclosing the factum of the beatings by the appellants to the police. PW-2 gave vivid details of the beatings. In cross-examination, he gave detailed description of the rooms and how he saw the appellants and two others giving beatings to the deceased. Unfortunately, the other eye witness (Vinod) could not be produced being untraceable. In view of PW-2 having successfully stood the test of cross-examination, we see no reason to disbelieve his testimony with regard to appellants giving fists, legs and belt blows on the person of the deceased Ram Mohan. These injuries are further corroborated by the postmortem report vide injury no.2 which stated *"diffused bruises coalesced all over front, lateral and back of left arm (clots were present underneath the skin), lateral aspect of right arm and scattered at places over back of chest, diffuse."*

40. Presence of PW-2 at the place of incident, that is, C-30, Badli Extn., to some extent stands corroborated by the testimony of PW-3 who was the landlord of the house. It is true that the prosecution did not collect any evidence to prove that PW-3 was the actual owner of the house or that appellant Ramesh was actually a tenant under him in respect of House No.C-30, Badli Extn. At the same time, it has to be borne in mind that

many of the landlords, particularly, in unauthorised colonies do not enter into any written agreement of tenancy. People do not even possess evidence of ownership in respect of a house located in unauthorised colonies. In such cases, the court has to see the value to be attached to the testimony of such witnesses. PW-3 categorically deposed that the house was let out to appellant Ramesh and he along with his labourers used to stay in the house. He was candid enough to admit that he was unable to identify the two other appellants or the other labourers who were staying in the house let out to appellant Ramesh. There is a ring of truth in the testimony of PW-3. PW-3's statement with regard to the house being taken on rent by appellant Ramesh is corroborated by PW-2. Therefore, I see no reason to disbelieve the evidence of PWs 2 and 3 that appellant Ramesh had taken House No.C-30, Badli Extn. on rent, which was being used for the purpose of housing the labourers working with him.

41. It has been consistently held by the Supreme Court that in the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence which is important, as there is no requirement in the law of evidence that a particular number of witnesses must be examined in order to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise. The legal system has laid emphasis on the value of the evidence provided by each witness, as opposed to the multiplicity or plurality of witnesses. It is thus, the quality and not quantity, which determines the adequacy of evidence, as has been provided by Section 134 of the Evidence Act. *(R. Shaji v. State of Kerala,*

Criminal Appeal No.1774 of 2010, decided on 04.02.2013; Namdeo v. State of Maharashtra (2007) 14 SCC 150; Bipin Kumar Mondal v. State of West Bengal (2010) 12 SCC 91 and Kishan Chand v. State of Haryana (2013) 2 SCC 502).

42. Hence, we hold that the prosecution has proved beyond all reasonable doubts that the three appellants along with two others (POs) had given beatings to the deceased with fists, legs and belt. But, at the same time, there is no shred of evidence to show that the appellants or any one of them was a party to the strangulation of the deceased. No evidence has been produced to show that the appellants had disposed of the dead body or had any knowledge of the dead body being present near the railway track between *ganda nala* and road. Thus, the Trial Court fell in grave error in admitting the inadmissible evidence while convicting the appellants for the offence punishable under Sections 302/201/34 IPC, rather than for giving only beatings with a blunt object. The appellants undoubtedly are guilty for the offence punishable under Section 323 read with Section 34 IPC.

43. Thus, the appeals are liable to be allowed. The appellants' conviction for the offence punishable under Sections 302/201/34 IPC is hereby set aside and on the other hand, the appellants are convicted for the offence punishable under Section 323 read with Section 34 IPC. The appellants are sentenced to undergo RI for a period of one year each and to pay fine of ₹1,000/- each or in default of payment of fine to undergo SI for a period of three months.

44. The appellants are in custody for over a period of six years. Thus, they have already undergone the sentence including the sentence in default. They shall be released forthwith, if not required in any other case.

45. Pending applications, if any, also stand disposed of.

46. Copy of the order be sent to the Superintendent of Jail for information.

(G.P. MITTAL)
JUDGE

(G.S. SISTANI)
JUDGE

NOVEMBER 13, 2013
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