

PETITIONER:
HIMACHAL PRADESH ADMINISTRATION

Vs.

RESPONDENT:
SHRI OM PRAKASH

DATE OF JUDGMENT 07/12/1971

BENCH:
REDDY, P. JAGANMOHAN
BENCH:
REDDY, P. JAGANMOHAN
PALEKAR, D.G.

CITATION:
1972 AIR 975 1972 SCR (2) 765
1972 SCC (1) 247
CITATOR INFO :
R 1973 SC 863 (15,27)
R 1979 SC 400 (8)
F 1979 SC1284 (4)
R 1986 SC1769 (5)
RF 1989 SC1205 (17)
RF 1991 SC1108 (10)
RF 1991 SC1853 (9)
RF 1992 SC 49 (9)

ACT:
Constitution of India, 1950, Art. 136--Criminal appeal against acquittal--Scope of interference by Supreme Court. Criminal trial--Circumstantial evidence--Approach by Court. Evidence Act (1 of 1872), s. 27--Weight of evidence re : recovery--Panch witnesses--If should be different for each recovery. Criminal Procedure Code (Act 5 of 1898), s. 510--Admissibility and weight of report of finger print expert.

HEADNOTE:

The accused was charged with murder by stabbing, and the evidence against him was circumstantial. It consisted of : (a) evidence of ill-will against the deceased furnishing a motive (b) evidence that he was last seen in the company of the deceased, (c) evidence furnished by finger prints, that he was present in the room of the deceased at or about the time of the murder, (d) evidence that he was subsequently found in Possession of articles which had incriminating blood strains, and (e) evidence that he had bidden a dagger with bloodstains thereon, and certain other articles. which were discovered on information furnished by him.

The trial court convicted him but the High Court set aside the conviction on the ground that the witnesses were not independent or impartial.

Allowing the appeal to this Court,

HELD : (1) In an appeal against acquittal by special leave under Art. 136, this Court has power to interfere with the findings of fact, no distinction being made between judgments of acquittal and conviction though in the case of acquittals, it will not ordinarily interfere with the appreciation of evidence or findings of fact unless the High

Court acted perversely or otherwise improperly. [772 B-D]
State of Madras v. Vaidyanatha Iyer, [1958] S.C.R. 580, 587, referred to.

(2) In the case of circumstantial evidence if the links in the chain are complete leading to the undoubted conclusion that the accused alone could have committed the offence then it can be accepted. In appreciating -such evidence the prime duty of a court is to ensure that the evidence is legally admissible, that the witnesses are credible and that they have no interest or motive in implicating the accused, Since it is difficult to expect a scientific or mathematical exactitude while dealing with such evidence corroboration is sought wherever possible. If there is any reasonable doubt the accused is given the benefit of such doubt. The doubt should be reasonable and not a remote possibility in favour of the accused. That is, the greatest possible care should be taken by the court in convicting an accused,, who is presumed to be innocent till the contrary is clearly established, and the burden of so establishing is always on the prosecution. [772 C-E, G; 773 E-H; 774 C]

(3)(a) While considering the evidence relating to the recovery under S. 27 of the Evidence Act the court will have to exercise that caution and care which is necessary to lend assurance that the information furnished by the accused lead in to the discovery of a fact is credible. [776 D]

766

In the present case, the various panchnamas of seizure prepared by the Investigating Officer could not be assailed on the ground that the witnesses who witnessed the recoveries were connected with the deceased or with his business, and that therefore, they were not independent or impartial witnesses. [775 H; 776 G]

(b) The evidence relating to recoveries is not similar to that contemplated under s. 103, Cr. P.C. It cannot be laid down as a matter of law or practice that where recoveries had to be effected from different places on the information furnished by an accused different sets of persons should be called to witness them. [777 B-C]

On the contrary, in the present case, the witnesses who worked with the deceased were proper persons to witness the recoveries as they could identify the things which were missing. [777 C-D]

(4) The report of the Director of the Finger Print Bureau regarding the finger prints can be used as evidence under s. 510 Cr. P.C., without examining the person making the report, because identification of finger prints has developed into an exact science. As long as the report shows that the opinion was based on relevant observations that opinion can be accepted. [783 A-E]

In the present case, the report set out many points of similarity between the finger prints found in the room of the deceased and those of the accused. [783 H]

(5) The information given by the accused that he purchased a dagger from one of the prosecution witnesses followed his leading the police to that witness and pointing him out is inadmissible under s. 27 of the Evidence Act. The concealment of a fact which is not known to the police is what is discovered by the information given by an accused and lends assurance that the information was true. What makes the information leading to the discovery of a witness admissible is the discovery from him of the thing sold to him or hidden or kept with him which the police did not know until information was furnished by the accused. But a witness cannot be said to have been discovered if nothing was found with or recovered from him. as a consequence of

the information furnished by the accused. [778 F- 779 H; 780 A-C]

Emperor v. Ramanuya Ayangar, A.I.R. 1935 Mad. 528, over-ruled.

Pulukiuri Kotayya & Ors. v. King Emperor, 74 I.A. 65, Ramkrishan Mithapal Sharma v. State of Bombay, [1955] I S.C.R. 9'03, Sukhan v. Crown, I.L.R. X Lah. 283, Public Protector v. India China Lingiah & Ors., A.I.R. 1954 Mad. 435 and Re : Vellingiri, A.I.R. 1950 Mad. 613. referred to.

(6) But that the accused had taken some of the prosecution witnesses to the witness from whom he bought the dagger and pointed him out, would be admissible under s. 8 of the Evidence Act as conduct of the accused. [780 C-D]

(7) Even after excluding some recoveries on the ground that the evidence regarding them was not satisfactory, the evidence against the accused consisted of evidence of motive, recovery of a button in the room of the deceased which matched with the button on the cuff of the coat recovered from the accused, the finger prints in the room, recovery of a blood stained coat and other articles of dress, a blanket, and the dagger, and the

767

fact that the accused and deceased were last seen together. The evidences cogent and conclusive and should not have been rejected by the High Court. [781 C-E; 786 C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 67 of 1969.

Appeal by special leave from the judgment and order dated August 12, 1969 of the Delhi High Court in Criminal Appeal No. 68 of 1967 and Murder Reference No. 1 of 1967.

H. R. Khanna and R. N. Sachthey, for the appellant.

Har Pershad and O. N. Mohindroo, for the respondent.

The Judgment of the Court was delivered by

P. Jaganmohan Reddy, J. This Appeal is by Special leave against the Judgment of the Himachal Bench of The High Court of Delhi acquitting the accused who had been sentenced to death for an offence of murder under Section 302 of the Indian Penal Code. The accused Respondent was a Manager at the Kotkhai Branch of the Himachal Pradesh State Cooperative Bank of which Sunder Lal Chaturvedi the deceased was the General Manager. It appears that during the period the accused was working in that Bank there was a fire in the Kotkhai Branch in which the records of the Bank were burnt and a sum of Rs. 10,000/- was found missing. The deceased had suspended the accused from the service and subsequently he was dismissed. In or about 1964, the deceased retired from the Bank and in 1965 started a Private Limited Company under the name of Himprasth Financiers with the Head Office at Nagina Singh Building which was situated in the Mall at Shimla of which he was the Managing Director. He used to also live in the same building in one of the rooms of the office and have his meals in the Mansarovar Hotel. The other Directors of this Company were Gurucharan Singh, Puran Chand Sood and Kailasli Devi wife of I. C. Gupta, P.W. 2, who was at one time also Manager in the Himachal Pradesh State Cooperative Bank. After the accused was dismissed from the Bank he had applied to the deceased for a job and was appointed as an Accountant in the Finance Company but later when his request for increase in his pay was not sanctioned, he sent in his resignation by a letter dated 31-

12-66 Exh. P. 8 and it was accepted on 3-1-67 by a resolution of the Board of Directors Exh. P. 43. On the night of 30th January 1967 the deceased had his dinner at the Hotel and when he came out after taking his food it was alleged that he was met by the accused. This was witnessed by Romesh Chand P.W. 7 the Proprietor of the Hotel who saw them both going towards the Mall. Thereafter at the betel shop which is near Nagina Singh Building, Lal Chand P.W. 9 who was purchasing cigarettes at that shop saw them together and going towards the Nagina Singh Building. It
768

was the last time he was seen alive. On the 31st January 67 at about 9.30 a.m. I. C. Gupta P.W. 2, came to visit the deceased and found that the main door was bolted from inside. He then peeped through the glass of the window panes through the adjoining room and saw that the deceased was lying in a pool of blood. He immediately telephoned to the Police. In response to this call the Station House Officer of the Saddar Police Station, Inder Raj Malik, P.W. 28 came to the building, broke open the room through the kitchen door and saw that the back door of the bath room was open. At that time there were present P.W. 2. Amar chand P.W. 8, Raidev Krishan P.W. 13 and others. The deceased had on him four incised wounds one on the neck and 3 on the hands. On inspection of the room he found on the nearby table a key Ex. 4 stained with blood and under the table there was a biscuit colour Coat button Ex. 1. Inside the shelf of an Almirah there was a water flask which appeared to have on its neck 3 finger impressions. On the glass pane of the door leading to the kitchen were also found two finger marks. The curtain near the kitchen door showed that someone had wiped his blood stained hands on it. The key and the button were seized and a panchnama was made. There were also found two bunches of the keys underneath the pillow of the deceased. Des Raj, P.W. 6, the Police Photograph took photographs not only of the various objects in the room but also of the finger marks on the flask and the window panes after the same were dusted with some prey powder. Thereafter the Investigating Officer P.W. 28 requested P.W. 2, P.W. 8 and P.W. 13 to ascertain if any of the things belonging to the deceased were missing. These three persons informed him after inspection list two loan registers, one general ledger, one cash book and vouchers from April '66 to December '66 were missing. They further informed him that one blanket of the deceased, one tea-poy cove,' and one canvas bag was missing. An inquest on the dead body was held and the blood found was also seized. Thereafter- P.W. 28 went to Mansarovar Hotel and recorded the statement of P.W. 7. On 1-2-67 at about 11.30 a.m. P.W. 28 accompanied by the Assistant Sub-Inspector and Constables met P.W. 2, P.W. 8 and boarded the jeep of P.W. 2 driven by Roshan Lal and went towards the house of Om Prakash. On the way P.W. 2 saw Kala Ram, P.W. 5, who was waiting for a bus and asked him to get into the jeep. Thereafter they went to the house of the accused situated at Anandale and there P.W. 28 went inside the house and saw the accused in one of his rooms and brought him outside. After interrogating him he arrested him and pursuant to a statement made by him seized from him one sweater, one coat, one blanket which was hidden inside the nivar of his cot lying inside his room. The sweater and the coat were stated by the accused to be his. The accused also gave them the pair of boots and socks which he was wearing and informed them that he had concealed one blood
769

stained dagger under a stone slab below the Maidan of Burnt Market and over the bakeries which was by the side of a pipe and offered to have it recovered. He further stated that he had kept the five registers in a canvas bag which lie had hidden below a stone at Krishna Nagar on the bank of Ganda Nala and that he had thrown 8 or 9 bundles of the vouchers tied in a tea-poy cloth and his blood stained pants in the Ganda Nala and would get them recovered. The, Investigating Officer reduced the statements to writing in the presence of the Panchas and took their signatures. This Panchnama is Ex. P. 6. The coat and sweater and the blanket inside he nivar of his cot were handed over by the accused to the police. These were found to contain blood and were seized through a Panchnama. The accused then took them to the market and on the way were met by Bhag Singh P.W. 12 and in the presence of all these persons he removed a piece of stone which was near a pipe and brought out a blood stained dagger from under it and gave it to P.W. 28. He then took them to the Tekri of one Ganga Singh P. W. II, in the Lower Bazar who sells daggers and there P.W. 28 recorded his statement that on the day of the incident the accused had purchased the dagger recovered from under the stone which was identified by P.W. 11, as the one sold to him. On the next day namely 2-2-67 P.W. 28, got a plan of the rooms and the office where the deceased was working and living prepared and from there accompanied by P.W. 2, P.W. 13 went to Krishna Nagar taking with them on the way Manohar Lal P.W. 14, from Krishna Nagar to Ganda Nala which was flowing in the khud. From near there the accused pointed out a stone slab from where a canvas bag which contained five registers said to be missing from the residence of the deceased were recovered and then the accused went into the Ganda Nala brought out a tea-poy cloth which contained vouchers and also recovered a blood stained pant which was lying under the water. The button and the coat were sent to the forensic laboratory at Chandigarh for examination. The flash and, the glass panes were sent to the Finger Print Examiner at Phillor and the button to the Forensic Laboratory which gavel a report that it was similar to the button on the coat from which it was missing. The Chemical Examiner and Serologist found human blood on the key. the dagger, blanket, coat, sweater and pant, the shoes and socks. The blood grouping could only be found on the pajama and shirt of the deceased which is of 'O' group while no blood grouping was possible in respect of the other articles referred to. Vide Ex. P. 60 and Ex. P. 48. The finger print expert found on the flask and the glass pane reported as per Ex. P. 59 that they are the same as those of the accused and have more than 12 points of similarity i.e. matching ridge characteristic details. The High Court grouped the circumstances relied against the accused Under 4 broad heads namely

770

- (i) that there was a motive for committing the murder;
- (ii) that the deceased Chaturvedi was seen last in the Company of the accused;
- (iii) that in pursuance of the statement said to have been made by the accused as per Ex. P. 6 a recovery of blood stained sweater, coat, blanket. shoes and socks and blood stained dagger were made ,as per Ex. P. 6/A on 1-2-67 (the date given in the Judgment as 2-2-67 is not correct), and that on 2-2-67 five registers contained in a bag and 12 bundles of vouchers were recovered; and
- (iv) that the finger marks of the accused were found on the flask as well as on the glass panes at the place where the

murder took place.

If the circumstantial evidence as relied upon by the prosecution is credible and acceptable the offence with which the accused is charged can be held to be established beyond reasonable doubt. The High Court however did not accept these circumstances as having been established by any independent and reliable evidence. In so far as motive suggested by the prosecution is concerned it was of the view that while no doubt the accused was suspended by an order of the deceased on 21-6-63 that suspension must have been as a consequence of the action taken by the authorities of the Bank with the approval of the Board of Directors and this does not indicate that he could have any grievance against him; that the accused had no grievance against the deceased is also shown by the fact that the deceased had given him employment in the Finance Company. The second circumstance against the accused, that he was last seen in the Company of the deceased on 30-1-67 at 9.30 p.m. was also held not to incriminate him for the reason that even if Lal Chand P.W. 9's statement was true, it only goes to show that the accused was seen going with the deceased towards the Nagina Singh Building but that does not mean that they had gone into that Building together, but on the other hand there was a possibility of the accused taking leave of the deceased and going away to his house without entering into the Nagina Singh Building. With respect to the third circumstance relating to the seizure and recovery of articles and their admissibility under Sec. 27 of the Evidence Act, it was observed that the evidence adduced by the prosecution for establishing these circumstances reveals a number of irregularities and is suspicious firstly because the prosecuting officer took with him all the witnesses who were neither independent nor impartial and even the witness P.W. 5 Kala Ram cannot be considered to be independent or impartial as he was not a stranger but was known to the Enquiry Officer. A reading of Kala Ram's evidence gives the impression that he is a person willing to be an agent of the police. It also appeared to the High Court that the

771

action of P.W. 28 in bringing the accused out of the room when he and the other witnesses went to his house gives rise to the suspicion that it might have been done deliberately to clear the way for planting the articles in the cot which was in the room and fourthly the statement Ex. 6 said to have been made by the accused amounted to a confession by the accused and it as the enquiry officer P.W. 28 claimed that the statement was voluntary instead of recording it himself he could have produced the accused before a Magistrate for recording the same. In view of this the High Court was not satisfied that the statements were freely and voluntarily made by the accused and accordingly neither the portions of those statements which related to the discovery of incriminating facts nor the admissibility under Sec. 27 of these Memos Ex. P6 & P. 6A and P. 7 which were signed by P.W. 2, P.W. 5, P.W. 8 and P.W. 28 both on 1-2-67 as well as on 2-2-67 could be relied upon. Even the handing over of the shoes and socks it was observed cannot be treated as having been discovered because the accused was wearing them at the time when he handed them over to the police, and also that it was difficult to believe that the accused will have the coat, sweater and blanket which are said to have blood stains on them recovered because he could have discarded them in the same way as he is said to have done with his pants. Moreover the coat and the sweater were not shown to belong to the accused by independent and reliable evidence.

For these reasons the alleged discoveries or the recoveries of the coat, the sweater, the blanket, shoes and socks were rejected. Even with respect to the discovery of the dagger the High Court thought that Amar Chand P.W. 8 was not an independent witness, that Bhag Singh P.W. 12 who was just a worker at the bakery claimed to be present casually did not inspire confidence, nor in the absence of independent witnesses who could have been easily procured could the other evidence be relied upon. The identification of the dagger by Ganga Singh P.W. 11 before the Magistrate was also not accepted because there was nothing to show that the dagger was the one which was purchased by the accused nor is it possible to distinguish the dagger in question from the other 3 daggers with which it was mixed up. Similarly the evidence relating to the recovery of the account books and vouchers was disbelieved. The thumb impressions on the flask and the glass panes was rejected on the ground that no particulars were set out by the Director of the Finger Prints Bureau except the stereotyped statement that there was a similarity of more than 12 points. On this aspect the High Court observed as follows

"If the accused also had handled the flask, as suggested by the prosecution, his finger impressions also would be on the flask, and there would be quite a good number of finger impressions on the flask. But curiously only three finger impressions, and that too of the accused, are

772
said to be present on the flask. This in our Opinion, is a very suspicious feature. Further, the existence of the finger-marks is said to have been noticed even at the earliest stage of the inquest, and that too not by any expert but by the any vestigating Officer, I.C. Gupta, Amar Chand and Baldev Krishan as though they anticipated the presence of the finger-marks. There is thus no clear proof that the finger-marks alleged to have been found on the flask and the glass pane were those of the accused, and we hold accordingly".

In possession of articles which bear incriminating blood stains and Court has undoubted power to interfere with the findings of fact, no distinction being made between judgments of acquittal and conviction, though in the case of acquittals it will not ordinarily interfere with the appreciation of evidence or on findings of fact unless the High Court "acts perversely or otherwise improperly" (See State of Madras v. Vaidyanatha Iyer) (1). The case against the accused as already stated depends entirely on circumstantial evidence the credibility of which is very much in issue. It is well established that circumstantial evidence consists in various links in a chain, which if complete, leads to the undoubted conclusion that the accused and accused alone could have committed the offence with which he is charged. It is said that this evidence is much more dependable than direct evidence provided that no link in the chain is missing. While it is possible that each of these links may not by itself incriminate the accused or be conclusive against him the linking of all of them may forge the chain in arriving at that conclusion

The evidence that accused had ill will against the deceased furnishing a motive, that he was last seen in the company of the deceased, that he was present in the room of the

deceased at or about the time he was murdered, that he was subsequently found in possession of articles which bear incriminating 'blood stains and that he had hidden the dagger with blood stains thereon and certain other articles which were discovered on the information furnished by him, all of which if believed leads to the conclusion that he was the murderer. In appreciating the evidence against the accused the prime duty of a court is firstly to ensure that the evidence is legally admissible, that the witnesses who speak to it are credible and have no interest in implicating him or have ulterior motive.

At the very outset an attempt was made on behalf of the defence to suggest that it was P.W. 2 who was the murderer and not the accused. This suggestion was made to him in the committal court as also in Sessions Court but it was denied. It was submitted that P.W. 2 had a motive to do away with the deceased because he

(1) [1958] S.C.R. 580, 587.

773

wanted to appropriate to himself the money and property of the deceased. To this end he was cross-examined with the object of establishing that he and the deceased had purchased jointly a land near Chhail and that the deceased was in possession of large sums of money and that P.W. 2 used to receive all the amounts from the loans advanced by the Finance Company and to avoid any liability for these amounts the murder was committed with the object of taking away the accounts and destroying the evidence relating there to. It was further suggested that because of this motive he and P.W. 8 who admitted that he considered P.W. 2 as his superior and P.W. 13 Bhag Singh who is the brother-in-law of P.W. 2 being the wife's brother, were interested in shifting the offence to the accused by taking a prominent part during the investigation and became the main witnesses for proving the several incriminating circumstances against him.

While it is not the function of this Court to determine who other than the person who has been charged with the murder had committed it, the line which the defence adopted was to establish that the witnesses referred to above had an interest in implicating the accused or at any rate to create uncertainty and doubt sufficient to give the benefit to the accused. It is not beyond the ken of experienced able and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during trial by cross-examination or by the marshalling of that evidence in the manner in which the emphasis is placed thereon. 'But what has to be borne in mind is that the penumbra of uncertainty in the evidence before a Court is generally due to the nature and quality of that evidence. It may be the witnesses are lying or where they are honest and truthful, they are not certain. It is therefore difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which in other words means that the prosecution must prove its case against an accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which the accused is entitled is reasonable doubt-the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fidgets though unwittingly it may be or is afraid of the logical consequence if that benefit was not given. Or

as one great Judge said it is "not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism". It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law

774

would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwarting it altogether. It is for this reason the phrase has been criticised. Lord Goddard C.J. in Rex v. Kritz(1) said that when in explaining to the juries what the prosecution has to establish "a Judge begins to use the words "reasonable doubt" and to try to explain what is a reasonable doubt and what is not, he is much more likely to confuse the jury than if he tells them in plain language "It is the duty of the prosecution to satisfy you of the prisoner's guilt" ". What in effect this approach amounts to is that the greatest possible care should be taken by the Court in convicting an accused who is presumed to be innocent till the contrary is clearly established which burden is always in the accusatory system, on the prosecution. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond 'reasonable doubt'. This then is approach.

The High Court thought, there was force in the suggestion of the learned Advocate for, the accused that P.W. 2 had a clear motive to take away the registers and vouchers of the Company to make such use of them as would suit him and also to murder the deceased. On the contrary the evidence of P.W.; 2 shows that he was a friend of the deceased. He had been a Manager in the Himachal Pradesh State Cooperative Bank when the deceased was the General Manager. There is nothing to show that during that period the deceased and, he were, on inimical terms or there was any disagreement between them of such a nature as would imply that he bore ill will towards the deceased. On the other hand both of them had jointly purchased a land, and when the deceased started the Himprasth Finance Company P.W. 2's wife was made a Director in that Company because P.W. 2 being an employee in a State Cooperative Bank could not take interest therein. At the time of the incident it appears, that P.W. 2 was living in Simla and according to him he had regard for the deceased and as he was his General Manager he used to go to him almost daily in the morning and in the evening. He further says he must have visited him hundred times inside the house, and on the evening of the 30th January, 67, the deceased and he went for an evening stroll as usual and at 9.30 p.m. that day he left him near the Nagina Singh Building, after which the deceased went away to take his food towards the Lower Bazar side and he went away to his house. P.W. 2 knew of the financial position of the deceased which was according to the loan ledger entries of the Himprasth Finance Company

775

Rs. 1157.71 np. as on 31-12-66, that there was a credit amount of Rs. 14,000 as on 29-11-66 which was not withdrawn till then; that certain amounts were also borrowed for the marriage of his daughter from Rawal Chand of Sanjouli whom he knew well and that from the accounts it appeared that there was only Rs. 6.10 np. as cash in hand of the Company which may be in the hands of P.W. 13. He further states that he used to be present in every meeting of the

Himprasth Financiers and he used to write: the Minutes Book. There is no suggestion that these Account Books were manipulated or that the entries therein were, not made contemporaneously with the transactions which they evidenced. There is therefore no justification for holding that either P.W. 2, or P.W. 8 or P.W. 13 notwithstanding their close connection with the deceased and the Himprasth Finance Company were inimically disposed towards the deceased or towards the accused. No adverse inference can be drawn as contended by the learned Advocate for the accused, against P.W. 2 that the circumstance point out to him- as being concerned with the murder or against the other two witnesses that they were supporting P.W. 2 with the object of exculpating him from any charge that may be levelled against him. The suggestion that P.W. 2 wanted to appropriate the property of the deceased or do away with the cash from the loans which were, being paid to him directly had no rationale. to support it, because firstly the deceased had one married daughter another unmarried, and secondly that he had nephews who, in the absence, of the daughters would have inherited his property. A suspicion was sought to be aroused because P.W. 2 did not send for the daughters but sent for the nephews which was with the object of dividing the properties of the deceased in league with them. P.W. 2 said that he did not know the address of the daughters of deceased and therefore he sent for the nephews, as such no sinister motive can be attributed to him. P.W. 28 the Investigating Officer had known that P.W. 2, P.W. 8 and P.W. 13 were the only persons closely connected he found some finger prints on the flask and the window panes, he out of abundant caution took their finger prints also on that very day long before the accused was suspected as being involved in the murder. It was only after the investigating Officer examined P.W. 7 the Proprietor of Mansarovar Hotel at about 8.30 p.m. on the day the murder was discovered that he came to know that the accused had met the deceased outside the Hotel after he had taken his meals that night. The various Panchnamas of seizures that the Investigating Officer prepared in the presence of P.W. 2, P.W. 8 and P.W. 13 cannot be assailed merely on the ground that they were connected with the deceased or with Himprasth Finance Company. The fact that a key and a button

776

was recovered or that the flask or the window panes had finger prints were found in the room where the deceased was murdered are, unassailable nor has any doubt been raised to discredit these recoveries. All that is said by the learned Advocate is that P.W. 28, being an experienced Investigator had created evidence and the Account Books, vouchers, tea-poy cloth, a canvas bag, blanket of the deceased were shown as missing in order to plant them subsequently on the accused. But at the time when these seizures were made the part played by the accused if any was not known, and if at all P.W. 2, P.W. 8 and P.W. 13 who were witnesses to the panchnama had not been cleared from suspicion. We are not unaware that Section 27 of the Evidence Act which makes the information given by the accused while in custody leading, to the discovery of a fact and the fact admissible, is liable to be abused and for that reason great caution has to be exercised in resisting any attempt to circumvent, by manipulation or ingenuity of the Investigating Officer, the protection afforded by Sec. 25 and Sec. 26 of the Evidence Act. While considering the evidence relating to the recovery we shall have to exercise that caution and care

which is necessary to lend assurance that the information furnished and, the fact discovered is credible.

As already stated, on 1st February 1967 the coat, sweater, shoes and socks of the accused and a blanket of the deceased were recovered in the presence of P.W. 2, P.W. 5, P.W. 8 and P.W. 28. After this they proceeded to the place indicated by the accused and recovered the blood stained dagger from under a stone, which was witnessed by them.. P.W. 2 did not accompany the party as according to him he had to go to make arrangements for the funeral of the deceased. On the way to the place from where the dagger was to be recovered, the party met one Bhag Singh P.W. 12 who also accompanied them to the place of recovery and in the presence of Roshan Lal who I was not examined) Amar Chand, P.W. 8, Bhag Singh, P.W. 12, and P.W. 28, the dagger was recovered and a Memo Ex. P. 28 was prepared and attested by the aforesaid witnesses. The High Court rejected the evidence of these recoveries under Ex. P. 6/A and P. 28 because P.W. 2, P.W. 8, P.W. 13 and Roshan Lal the driver of P.W. 2, were all connected with the deceased and are not therefore independent or impartial witnesses. It thought that the Investigating Officer should have called independent and impartial witnesses preferably, and if possible, from the locality, as it could not be said that they were not available or if available would not be willing to be witnessed and that in any case calling of the same persons to witness several searches or recoveries, is objectionable, and would render the search or the recovery doubtful and suspect, if not invalid.

777

Further having held this it nonetheless said that there was no injunction against the same set of witnesses being present at the successive enquiries if nothing could be urged against them. In our view the evidence relating to recoveries is not similar to that contemplated under Sec. 103 of the Criminal Procedure Code where searches are required to be made in the presence of two or more inhabitants of the locality in which the place to be searched is situate. In an investigation under Sec. 157 the recoveries could be proved even by the solitary evidence of the Investigating Officer if his evidence could otherwise be believed. We cannot as a matter of law or practice lay down that where recoveries have to be effected from different places on the information furnished by the accused different sets of persons should be called in to witness them. In this case P.W. 2 and P.W. 8 who worked with the deceased were the proper persons to witness the recoveries as they could identify some of the things that were missing and also they could both speak to the information and the recovery made in consequence thereof as a continuous process. At any rate P.W. 2 who is alleged to be the most interested was not present at the time of the recovery of the dagger.

P.W. 5's evidence was not considered to be independent, because the High Court thought that he was known to P.W. 28 from before. This by itself in our view will not justify the rejection of his evidence. That apart there is nothing in his evidence to show that P.W. 28 knew him before he came to Simla while he was living in Kaithal. The witness stated that the S.H.O. was never posted at Kaithal but knew the Daroga (SHO) from 2/3 months before that date. He had not met P.W. 28 before he arrived at Simla. It was suggested to him that Daroga had come and sat in his shop at the Mandi but that was denied. He however stated that the Daroga used to ask his 'hal chal' sometime and used to wish him and that was all. Witness also denied having seen P.W. 2 and

P.W. 8 before that day and came to know their names only when he went to Anandale. The brothers of P.W. 5 were at Kaithal doing business' but here again there was nothing to connect the brothers with P.W. 28 and though P.W. 28 admits that his own brothers Roshan Lal and Malik Harbans Lal reside in Kaithal and one of them has some lands there, he was not on good terms with them and denies that they had any connection with P.W. 5. From this evidence it is clear that apart from the fact that P.W. 28 had known P.W. 5 after he had come to Simla which is not unusual for a Police Officer, there is nothing to indicate that P.W. 5 could be subservient to P.W. 2, 8. It is not unknown that in some instances where persons are made to witness Panchnamas they have resiled from them while giving evidence in Court, probably either due to

778

the pressure exerted by the police at that time or they have been won over by the defence. Nothing of that nature is apparent in this case and the comment of the High Court that a reading of the evidence of P.W. 5 gives the impression that he is a person willing to be pliable agent of the police and cannot be regarded as an independent or impartial witness has in our view no justification.

It is said that P.W. 12 Bhag Singh was just a worker at the bakery and while he pretends to be present there casually at the spot from where the dagger was taken out, the Investigating Officer said he had summoned him on the suggestion of the Head Constable; as such his evidence 'does not inspire confidence-.' We do not think that this is a sufficient reason for discarding the evidence of P.W. 5 because when P.W. 28 says he summoned Bhag Singh through the constable it does not negative the statement of Bhag Singh that he was casually present and could have been called 'by him through the Head Constable. In our view there is no reason to hold that the evidence of these persons P.W. 2, P.W. 5, P.W. 8 and P.W. 12 can be said to suffer from any infirmity or that they had not witnessed the information given by the accused as per Exhibits P. 6, P. 6/A or P. 28 or the recoveries made by him as a consequence of that information.

Thereafter on the information furnished by the accused that he had purchased the weapon from Ganga Singh P.W. 11 and that he would take them to him, they went to the thari of P.W. 11 where the accused pointed him out to them. It is contended that the information given by the accused that he purchased the dagger from P.W. 11 followed by his leading the police to his thari and pointing him out is inadmissible under Sec. 27 of the Evidence Act. In our view there is force in this contention. A fact discovered within the meaning of Sec. 27 must refer to a material fact to which the information directly relates. In order to render the information admissible the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made. What is the fact discovered in this case? Not the dagger but the dagger hid under the stone which is not known to the police. (See Pulukuri Kotayya & Ors. v. King-Emperor) (1). But thereafter can it be said that the information furnished by the accused that he purchased the dagger from P.W. 11 led to a fact discovered when the accused took the police to the thari of P.W. 11 and pointed him out? A single Bench of the Madras High Court in Public

(1) 74 India Appeals p. 65.

779

Prosecutor v. India China Lingiah & Ors. (1), and in re

Vellingiri (2), seems to have taken the view that the information by an accused leading to the discovery of a witness to whom he had given stolen articles is a discovery of a fact within the meaning of Sec. 27. In Emperor v. Ramanuja Ayyangar(3), a Full Bench of three Judges by a majority held that the statement of the accused "I purchased the mattress from this shop and it was this woman (another witness) that carried the mattress" as proved by the witness who visited him with the police was admissible because the word 'fact' is not restricted to something which can be exhibited as a material object. This judgment was before Pulukuri Kotayya's case (4) when as far as the Presidency of Madras was concerned the law laid down by the Full Bench of that Court, in Re Athappa Goundan prevailed. It held that where the accused's statement connects the fact discovered with the offence and makes it relevant, even though the statement amounts to a confession of the offence, it must be admitted because it is that has led directly to the discovery. This view was over-ruled by the Privy Council in Pulukuri Kotayya's case(5) and this Court had approved the Privy Council case in Ramkishan Mithanlal Sharma v. The State of Bombay(6).

In the Full Bench judgment of seven Judges in Sukhan v. The Crown (7), which was approved by the Privy Council in Pulukuri Kotayya's case(8), Shadi Lal, C.J., as he then was speaking for the majority pointed out that the expression 'fact' as defined by Sec. 3 of the Evidence Act includes not only the physical fact which can be perceived by the senses but also the psychological fact or mental condition of which any person is conscious and that it is in the former sense that the word used by the Legislature refers to a material and not to a mental fact. It is clear therefore that what should be discovered is the material fact and the information that is admissible is that which has caused that discovery so as to connect the information and the fact with each other as the 'cause and effect'. That information which does not distinctly connect with the fact discovered or that portion of the information which merely explains the material thing discovered is not admissible under Sec. 27 and cannot be proved. As explained by this Court as well as by the Privy Council, normally Sec. 27 is brought into operation where a person in police custody produces from some place of concealment some object said to be connected with the, crime of which the informant is the accused. The concealment of the fact which is not known to the police is what is discovered by the information and lends assurance that

- (1) AIR 1954 Mad. 333. (2) AIR 1950 Mad 613.
(3) AIR 1935 Mad. 528. (4) 74 1. A. 64.
(5) ILR 1937 Mad 695. (6) [1955] (1) SCR 903.,
(7) ILR Vol. X Lahore 283.

780

the information was true. No witness with whom some material fact, such as the weapon of murder, stolen 'property or other in eliminating article is not hidden sold or kept and which is unknown to the Police can be said to be discovered as a consequence of the information furnished by the accused. These examples however are only by way of illustration and are not exhaustive. What 'Makes the information leading to the discovery of the witness admissible is the discovery from him of the thing sold to him or hidden or kept with him which the police did not know until the information was furnished to them by the accused. A witness cannot be said to be discovered if nothing is to be found or recovered from him as a consequence of the

information furnished by the accused and the- information which disclosed the identity of the witness will not be admissible. But even apart from- the admissibility of the information under Sec. 27, the evidence of the Investigating Officer and the panchas that the accused had taken them to P.W. 11 and pointed him out and as corroborated by P.W. 11 himself would be admissible under Sec. 8 'of the Evidence Act as conduct of the accused.

We then come to the recovery on the second February, of Pant, the Account Books and the vouchers. These however, cannot in our view be relied upon because P.W. 28 had information relating to them which had been furnished by the accused more than 24 hours before and the description given by him was that they could have been discovered. At any rate the long delay does not lend assurance to the discovery. It appears from the application made on the 2nd February to the Magistrate that the accused was arrested on 1-2-67 and at his instance and from his possession one sweater, one coat and one blanket blood stained, have been recovered and in addition one blood stained warm pant, one duster, one bag containing 5 registers are still to be 'recovered on the pointing out of the accused but the remand of the, accused is due to expire at 1 p.m. and accordingly it was requested that a further remand for 7 days be given and the a caused made over to the police and orders be passed. The accused is alleged to have given the information that he had hid them under the stone slab near Krishna Nagar Ganda Nala which he had thrown away in the sewage and which he said will point out and get them recovered. The recovery itself is under E P.7, to which P.W. 2, P.W. 13 and Manohar Lal P.W. 14 who was picked up on the 'rasta when he was summoned by the constables are witnesses. According to P.W. 14 the Thandar was going ahead and went down to the Nala, when the constable summoned him and he went there. He further says that the Thanedar sent a constable down. The accused had a talk with Thanedar. The constable took out from below a stone slab five registers in a bag, the accused was standing on a stone. At ibis

781

stage the prosecutor sought permission to cross-examine the witness and it 'Was given. In the cross-examination he denied in signed the Memo at the spot and said that he had signed' it at the Thana. He also said it was incorrect to suggest that the Memo was read over to him and he signed it. Whether the articles recovered were planted at the place from where, they were alleged to be recovered or not as suggested by the learned Advocate for the accused, the evidence referred to certainly goes against the prosecution version that the Account Books, vouchers and the pant were recovered at the instance of the accused. The Police appears to have known the place from where these articles were alleged to have been recovered and therefore it cannot be said 'that they were discovered as a consequence of the information furnished by the accused.

After excluding the recoveries made tinder Ex. 7 namely the Account Books etc. the evidence against the accused which remains to be considered is, the motive, the recovery of the button, the finger prints on the flask and the window panes, blood stained coat, sweater, shoes and socks alleged to be of the accused, blanket, the dagger and the deceased being last seen alive in his Company. As we have already noticed the High Court had rejected the evidence of motive but in our view it failed to consider one aspect which is important namely that the accused wanted to be reemployed with the Himprasth Finance Company and though the other Directors

were willing, the deceased was not. It is true that the initial illwill which he may have had against the deceased when he suspended him in 1964 may have been forgotten because the deceased subsequently extended his sympathy and employed him in his Finance Company. The accused was not satisfied with the conditions of his service and wanted an increase in the pay which the Company was not prepared to give causing him to resign. This itself may have given him cause to nurse a grievance against the deceased because he was the person who was in charge of the affairs of that Company in which he had a dominant voice but when he wanted to be reappointed the deceased definitely put his foot down and refused to entertain him which would certainly create ill will in him against the deceased on the occasion but if he does not continue to do so or positively obstructs or is against his being given any benefit even on one such occasion it may give rise to a sense of grievance against him. The springs of human action and conduct are unfathomable because what motivates them is difficult to postulate. At any rate where personal interest is involved, it is too much to expect objectivity in a person's relationship with others who are unobliging or considered to be hostile to him. There are many with

782

greater cause who may not venture to do away with those that give occasion for it but experience has shown that even with lesser motive persons have committed more dastardly crimes; that is why in view of these imponderable, motive by itself is not sufficient to determine culpability. It has to be judged with positive evidence relating to incriminating facts and circumstances proved in a case against an accused. It is contended strenuously that there is no evidence to establish that the accused was with the deceased at the time when he was murdered. This contention seems to have found favour with the High Court which has held that though the deceased was last seen alive in the Company of the accused it is not sufficient to indicate that he had gone with the deceased into the Nagina Singh Building and was with him at the time when the murder was committed. The evidence of P.W. '7 is positive that he had seen the accused in the company of the deceased after the deceased had his meals at about 9.30 or so. This witness was the first to give information to P.W. 28 which was at about 8.30 p.m. on 31st January. The High Court does not disbelieve this evidence. In so far as P.W. 9 is concerned it is said that he is a mere casual or chance witness. Even if the reasons given by the High Court for disbelieving his evidence is accepted it cannot negative the fact of the accused being seen in the company of the deceased at about 9.30 or 9.45 p.m. on 30th January when he was the last one to have seen him alive. That the accused was in the room with the deceased is established by the fact that his finger prints were on the flask and the window panes and that a coat button of his was found in the room. It was however contended on behalf of the accused that these finger prints were not blood stained nor do they indicate that the accused was present at the time when the offence was committed because the evidence shows that he was seeking to get reemployment and the possibility of his having visited the deceased earlier in the day or a few days before the offence when the finger prints could have been found on the flask and the window panes cannot be ruled out. Secondly it was urged that the report of the finger print expert as the High Court has held does not furnish the reasons for the opinion that they belonged to the accused. On the first of these contentions

it may be observed that there is no evidence that he had been to see the deceased earlier that day or had seen him before that day as would probably these finger prints being still present on the 31st January. The evidence merely points out to the fact that the accused was seeking reemployment in the Company and the deceased was unwilling to give him employment. It is a long way from this circumstance to infer that he had been in the room earlier. The second contention is in our view equally untenable. The report regarding the Finger Print is that of the

783

Director of the Finger Print Bureau which under Sec. 510 Criminal Procedure Code can be used as evidence in any enquiry or trial without examining the person who gave the report just in the same way as the report of the Chemical Examiners or of the Chief Inspector of Explosives is evidence. Under sub. sec. (2), however the Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the subject matter of his report. The addition of the report of the Director of Finger Prints Bureau and of the Chief Inspector of Explosives in Sec. 510 was made by Sec. 99 of Act 26 of 1955 and unless the Court or the Public Prosecutor or the accused require the summoning and examining of any person as to the subject matter of his report that report can be acted upon. It is however submitted that while the report may be admissible the opinion will have to be justified. Neither the decision of a Single Judge of Andhra Pradesh High Court in re. Godaverthy Bheshyakaravcharvulu(1)., nor that of the Madras High Court case in re. Marudai, support this contention. The reason why the reports of the Director of the Finger Print Bureau is treated as evidence 'Without examining the persons giving the report is that the comparison and identification of Finger Prints has now developed into a science and the results derived therefrom have reached a stage of exactitude. As long as the report shows that the opinion was based on observations which lead to a conclusion that opinion can be accepted, but should there be any doubt it can always be decided by the calling of the person making the report; when once the report is proved; neither the prosecution nor the accused nor yet the Court thought it necessary to require the person making the report to be examined. In this case, however, the photographs of the finger prints were taken on the very day when the flask and the glass pane were seized. After these material objects were sent to the Finger Print Bureau they were again photographed and compared with the finger prints taken of P.W. 2, P.W. 13 and P.W. 8 and the accused. In so far as the Finger Prints of the accused are concerned though somewhat smudged they were said to be readably clear and in each of the finger impressions found on the flask and the window pane there were more than 12 points of similarity i.e. matching ridge characteristic details in their identical sequence, without any discordances in their comparable portion and the corresponding portion of the left thumb impression, middle finger impression, left index finger, right middle finger of Om Prakash the accused. It was also stated that so many points of similarity cannot be found to occur in the impressions of different thumbs and fingers and they are therefore of one and the same person. In respect

(1) AIR 1960 A.P. 164.

(2) AIR 1960 Madras 370.

784

of a thumb impression compared with the right thumb

impression of Om Prakash the expert had found not less than 10 points of similarity and even with respect to this his opinion was that SO many points of similarity cannot be found to occur in the impressions of different thumbs and fingers and are therefore identical or are, of one and the same person. There appears to be no difficulty in coming to the conclusion from the report that 'the points of similarity are those which can be accepted as a positive finding. The absence of these Finger Prints being blood stained is not indicative of the accused not being there before the murder We have it in evidence that the curtain near the door showed that blood stained hands severe wiped thereon. That apart the button which was recovered gives a direct clue to the presence of the accused at the time when the offence was committed. 'it. is seen from Ex. P. 6/A that the upper button of the 3 small buttons on the cuff of the coat recovered from the accused was missing and the button recovered from the room where the deceased was murdered matches the button and supplies the missing one. The report of the Forensic expert is that on a comparison of that button with the button of the accused's coat establishes that it is the similar one. For this reason the accused had denied that the coat and the sweater belonged to him and the learned Advocate on his behalf has urged in support of that-plea that these were not recovered from the accused and the recovery memos were all fake and were written subsequently. Accused in the statement under Sec. 342 in answer to question 19, that he had signed the recovery Memos dealing with the sweater, coat and blanket said that it was incorrect. He further said that he was made to sign three- blank papers in the Thana and that he was filing a copy of the application in this connection made by while he was in the judicial lock up. Again in answer to question 35 whether he has anything else to say he stated categorically that on the 1st February '67 he was taken to the Thana at 5 p.M. on the 2nd February he was produced before the Court where a remand was taken and that on 7-2-67 the S.H.O. 'obtained his signatures on three blank papers in respect of which 'he had sent an application after he was taken to the judicial lock up. This statement goes counter to the facts stated ill the application of remand made to the Magistrate on 2-2-67-which was earlier extracted. A perusal of that remand application would show that these recoveries had already been made on the 1st and so there could be no question of his signatures been taken on the blank papers on the 7th for purposes of cooking up the recovery Memos which according to the accused Were-not recovered on the 1st. The coat. and the sweater were recovered from his room while the shoes and socks from his person as the was wearing- them, There can be no doubt of the ownership being that of the accused.

785

respect to which similar contentions were raised. Where a person who is not a hardened criminal is burdened with the guilt of a gruesome crime, is confronted with as-' tell tale finding the possibility of his making a clean breast of what is weighing heavily on him cannot be ruled out. It is difficult to generalise as to what a man may or may not do after committing a ghastly murder nor can there be an infallible test to determine the course of human reaction, conduct or behaviour in a given situation which might manifest itself in various ways. In case when the accused was confronted with the button of his coat he gave information leading to the incriminating discoveries. Whether the knife could have been properly identified by P.

W. 11 in the identification held before the Magistrate there can be little doubt, if we believe his evidence, the accused hid purchased a knife that day, which is similar in nature to the one he was selling. There is no reason why P.W. II should not be, believed on this aspect. He says that it was purchased by the accused at the noon time on the day when Mahatma Gandhi had died on the 30th for Re. 1/- and that the police had; brought the accused to his shop on the 3rd day after the dagger was purchased. He further says that the accused used to go to him previously for the mending of his knife and scissors though the witness admits that he had not purchased any dagger from him previously. In cross-examination he admitted frankly that he was having his thari without permission of the municipality and that he was challenged and fined almost every month though from the last 8 months the police have not challaned but the Municipal Committee have challaned him. He also admitted that once about 23/24 years ago he was convicted in a theft case and was sentenced to rigorous imprisonment and his history sheet was closed 21 or 22 years ago. At the time of giving evidence he is about 35 years and even making an approximation of the age he must have been 13 or 14 years when the offence for which he was convicted was committed. This admission seemed to have weighed with the High Court that his antecedents were such as to justify their not relying upon his evidence. They also found it difficult to believe that when he had not put any special mark on the dagger he could identify it from amongst three similar ones. In this connection it may be remembered that P.W. It was making the knives which he was selling and it is not unknown that persons who make knives or other implements can recognise them with some amount of certainty even though special identification marks may not be present. Be that as it may, even if the identification is discarded there is nothing to doubt his statement that he knew the accused before the 30th January 1967

786

and that about noon on that day he had purchased a dagger from him.- It is not unreasonable to infer that the dagger which he purchased is the dagger which was recovered on the information furnished by the accused himself on the second day after his purchase and that dagger 'Contained human blood. One other important circumstance against the accused is the blanket that was found in his house which had. human blood stains thereon. The murder of the deceased was in January in the coldest months in Simla and the possibility of the accused having taken a blanket to cover himself also 'fits in with the other evidence adduced by the prosecution. There is in our view no justification for the High Court in jettisoning this cogent evidence of a conclusive nature on mere conjectures and. on the omnibus ground that the witnesses were not independent or impartial which as we have shown is without justification. In our view the evidence in this case is.- sufficient to justify the conviction of the accused for an offence of murder. We, accordingly set aside the judgment of acquittal of the High Court, convict the accused under Sec. 302 and sentence him to life imprisonment.

V.P.S.

Appeal allowed.

787