

Idea Embraced in Section 27 of the Indian Evidence Act, A Revision

(By Abdul Khader Kunju S, Asst. Public Prosecutor, Alappuzha, Kerala)

Introduction

Extrapolating the admissible part from the statement of the accused in terms of section 27 of the Indian Evidence Act (the Act) is always an intriguing discovery for the court. We have plenitude of precedents pertaining to this provision, but, it seems, over the years the law expounded by the pioneers is being ignored gradually, and hence a rereading is necessitated, I think. There is no dispute that the core of the section 27 of the Act is the 'fact discovered', but, at times, the interpretations given by the Constitutional courts as to the issue the 'fact discovered' are abstract. Let me say first that the point under discussion is no more a *res integra* in the wake of the famous and oft quoted decision in *Pulukuri Kottayya v. Emperor*¹ (*Kottayya, for short*). Though this decision is a pre-Constitutional one, our Supreme Court reiterated that it is a locus classicus². The Supreme Court in a judgement even defended *Kottayya*³.

Our point of discussion arises from the meaning given by the Supreme Court in different cases as to the legal aspect, the 'fact discovered'. In some cases the Court opined that the 'fact discovered' is not the physical object produced, but the knowledge of the accused, on whose information the physical object is recovered. In some cases the Court held that the 'fact discovered' is the physical object produced. In yet another set of cases, the Court said that a discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence⁴. In *Inspector of Police, Tamil Nadu vs. Balaprasanna*⁵, it was held that *"[A]t one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Pulukuri Kottaya's case"*. In *State (N.C.T. of Delhi) vs. Navjot Sandhu*⁶, the Court observed that *"[W]e are of the view that Kotayya's case is an authority for the proposition that 'discovery of fact' cannot be equated to the object produced or found. It is more than that. The discovery of fact*

1 AIR 1947 PC 67

2 State of Rajasthan vs. Bhup Singh [(1997)10 SCC 675],
Anter Singh vs. State of Rajasthan (2004 Cri LJ 1380)

3 Pandurang Kalu Patel v. State of Maharashtra (2002 Cri LJ 1003)

4 Udai Bhan vs. The State of Uttar Pradesh (AIR 1962 SC 1118), Mohmed Inayatullah vs. The State of Maharashtra (AIR 1976 SC 483)

5 2008 Cri LJ 4332

6 AIR 2005 SC 3820

arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place". In a recent judgment the Supreme Court observed that it is a settled legal position that the facts need not be self-probatory and the word 'fact' as contemplated in Section 27 of the Evidence Act is not limited to 'actual physical material object'⁷. (Emphasis added).

The above propositions made differently with respect to the aspect 'fact discovered' within the meaning of section 27 of the Act create an idea that material object is also a fact within the meaning of this section. Let's examine exactly what it would be.

Only Information Can be Proved.

In view of the rudimentary principles let's quote the section first.

"27. How much of information received from accused may be proved.—*Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.*" This section runs as a proviso to the last preceding sections.

Hence, to invoke this provision of law, to say simply, (1) there must be a person accused of an offence, (2) he must be in custody of the police, (3) he must have given some information, whether it amounts to a confession or not, to the police, (4) in consequence to the information so received, discovery of some fact must have been made, (5) the fact so discovered must be deposed by the police officer and (6) that information must be 'distinctly' related to the fact so discovered. If all these conditions are satisfied '**so much of the information**' given by the accused may be proved.

'Fact' Under the Act.

Section 3 of the Act interprets the term 'fact'. It means (1) any thing, state of things, or relation of things, capable of being perceived by the senses; (2) any mental condition of which any person is conscious. The illustration to the second clause makes clear that any mental element including that a person holds certain knowledge (regarding something) also is a fact. So, in addition to the tangible materials, mental conditions also are facts within the meaning of the Act.

What is Permitted to be Proved?

The principle laid down in s. 27 of the Act is confirmation by subsequent events. It permits the police to prove some *information* given by the accused. What, in fact, that information is? This information, according to s. 27, must be distinctly related to the fact discovered by them in consequence of that information given by the accused. Some of the meanings of the word 'distinctly' are 'directly', 'indubitably' and

⁷ Asar Mohammad vs. The State of U.P (AIR 2018 SC 5264)



'unmistakably'. So the information must be directly or undoubtedly related to the fact discovered. That's why the discovery of a fact is envisaged. Discovery has its usual meaning that something was there but not known to others, and when it is revealed it is discovered. So, by the discovery of the fact there occurs some reliability that the information given by the accused was correct, and hence the police are permitted to prove that information. This is the way the information is confirmed.

Fact-Physical or Mental?

Should the 'fact discovered' be a material capable of being perceived by senses such as a weapon of offence, the body of a slayed, a contraband article, a stolen good, an odour or an illicit object? Or be it a mental fact such as the knowledge of the accused that a particular person is involved in a criminal conspiracy, or a particular place was used for hatching conspiracy etc.? Else could that fact be of both.

Suppose an accused gives information that he hid the knife used for the murder in a dig, and as a consequence of which the police finds it. In this case he admits before the police that the knife was used for the murder. Based on the information a knife was found. So, after the recovery of the knife, can the court conclude that the murder is proved? Or is it affords a guarantee that that particular knife was used for the murder?

In the first sense, consider the knife (the material object) is the 'fact discovered'. Then the facts related to the knife, its past user, its state of affairs etc. also becomes relevant since the section provides for the proof of the information relates distinctly to that fact. If other facts connected with the knife can be proved, the facts close to that knife such as the factum of murder also can be proved. Is this permitted by law?

In the second sense, consider that the 'fact discovered' is the mental fact that the knowledge of the accused regarding the place from where the object was produced and the accused knew that place, and also he kept it there (when authorship of concealment also finds place). Now, it can be seen that the information directly relates to the 'fact discovered' emanates from the information provided, that is the said knowledge of the accused.

It is worthwhile to note that the proposition the 'fact discovered' is the knife has been ruled out in **Kottayya**. The Privy Council comments that the knife was discovered long ago. It was also observed in **Kottayya** that if this be the effect (the 'fact discovered' being the knife) 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.⁸ Thus, **Kottayya** clears that the 'fact discovered' is only the mental element of the informer that he knew the place where the material object is found, referring to the material object (physical fact). Reference to the material object does not attribute that the physical fact also comes within the category of 'fact discovered'. This is clear from the statement of John Beaumont, J that it is *fallacious* to treat the "fact discovered"

⁸ Pulukuri Kottayya, para 9

within the section as equivalent to the object produced.⁹

So, I think, attributing that material fact also would come within the meaning of 'fact discovered' is beyond the real scope of section 27. Then the doubt which may arise is could there be the 'fact discovered' in the absence of the material recovered? Generally 'No'. It is, therefore, the 'fact discovered' is the mental element of the knowledge of the accused regarding the place where the material was found with reference to the material object recovered.

Conclusion.

As the physical fact is not at all the 'fact discovered' within the meaning of section 27 of the Act, stamping that material object also as a 'fact discovered' either by saying that material fact also *includes* in the 'fact discovered' or the 'fact discovered' *is not limited to* mental fact is misreading of section 27 of the Act, I humbly opine. Hence let's expect that the law in regard will be replenished.

⁹ Pulukuri Kottaya AIR 1947 PC 67 Para 10