A SANJAY @ KAKA

v.

THE STATE (NCT OF DELHI)

FEBRUARY 7, 2001

B [K.T. THOMAS AND R.P. SETHI, JJ.]

Evidence Act, 1872;

Section 27—Disclosure statement—Admissibility of—Accused committed C *robbery in a house in consequence of which deceased was stabbed to death—Accused apprehended on the basis of extra-judicial confession made to a witness—Disclosure statements of accused led to recovery of weapon of offence, blood stained clothes and stolen property belonging to deceased—Accused convicted on circumstantial evidence—Correctness of—Held : Disclosure statements do not implicate the accused with the commission of* D *crime but refer only to the nature of property recovered—Such property is proved to be the property of deceased, stolen after the robbery and murder—Besides Section 27, court can draw presumption under Section 114, illustration (a) and Section 106—Hence, conviction upheld.*

The appellants-accused were convicted by the Designated Trail Court E **on circumstantial evidence under Sections 392/34, 397 and 302 besides Section 5 of the Terrorist and Disruption Activities (prevention) Amendment Act, 1993. Hence this appeal.**

According to the prosecution, the accused entered a house to commit F **robbery in consequence of which one S was stabbed to death. The accused made disclosure statements under Section 27 of the Evidence Act, 1872 pursuant to which the weapon of offence, blood stained clothes and stolen property belonging to the deceased were recovered. One of the accused made an extra-judicial confession to PW-5 based on which the accused persons were apprehended.**

G **On behalf of the accused persons it was contended that the disclosure statements were hit by Sections 24 to 26 of the Evidence Act in view of the worlds "after commission of the offence" and "looted property" appearing in them.**

H **Dismissing the appeal, the Court**

HELD : 1. In this case after the arrest of one of the accused, the extra-judicial confession made by him to P W-5 and recording the statement of P W-5 the investigating officer apprehended the other accused persons. In his interrogation one of the accused made a confessional statement, a major portion of which is inadmissible in evidence being hit by Sections 24 to 26 of the Evidence Act, 1872. [916-F]

2. Even if the objectionable words i.e. "after the commission of the offence" and "looted property" are deleted, the appellants cannot be conferred with any benefit, which would entitle them to acquittal. It is not disputed that consequent upon the disclosure statements made, the articles mentioned therein were actually recovered at their instance from the place where such articles had been hidden by them. The mere use of the words "looted property" in relation to the articles seized which were found to have been taken away after the commission of the crime of murder and robbery would not change the nature of the statement. The words do not implicate the accused with the commission of the crime but refer only to the nature of the property hidden by them, which were ultimately recovered consequent upon their disclosure statements. Hyper technical approach would defeat the ends of justice and have disastrous effect. The property recovered consequent upon the making of the disclosure statements has been proved to be the property of the deceased, stolen after the commission of the offence of robbery and murder.[917-D-G]

2.2 Besides Section 27, the courts can draw presumptions under Section 114, Illustration (a) and Section 106 of the Evidence Act. [917-H]

Pulukuri Kottaya v. *Emperor,* AIR (1947) PC 67; *State of U.P.* v. *Deoman Upadhyaya,* AIR (1960) SC 1125; *Mohamed Inayatullah* v. *State of Maharashtra,* AIR (1976) SC 483; *Erabhadrappa alias Krishnappa* v. *State of Karnataka,* [1983] 2 SCR 552; *State of Maharashtra* v. *Damu, S/o Gopinath Shinde* [2000] 6 SCC 269; *Gulab Chand* v. *State of MP,* [1995] 3 SCC 574; *Mukund alias Kundu Mishra* v. *State of MP,* [1997] 10 SCC 130; *Ronny alias Ronald James Alwaris* v. *State of Maharashtra,* [1998] 3 SCC 625; *Baijur* v. *State of MP,* AIR (1978) SC 522; *State of Rajasthan v. Teja Ram,* JT (1992) 2 SC 279 and *Gura Singh* v. *State of Rajasthan,* JT [2000] Supp. 3 SCC 528, referred to.

Sanwat Khan v. *State of Rajasthan,* AIR (1956) SC 54 and *Tulsiram Kanu* v. *State* AIR(1954) SC 1, cited.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.

664 of 2000.

From the Judgment and Order dated 29.5.2000/30.5.2000 of the Tada Court (D.C.II), Delhi in S.C. No. 188/95 in F.I.R. No. 155 of 1990.

With

Criminal Appeal Nos. 682 and 683 of 2000.

R.K. Jain, Sushil kumar, Anoop Choudhry, Ajay Bhalla, Ms. Abha R. Sharma and B.V. Balaram Das for the appearing parties.

The Judgment of the Court was delivered by :

SETHI, J. In the broad day light and in the capital city of the country, the appellants and one Mohabat Ali, the four young desperados entered the premises No. F-8/5, Model Town, Part-II, Delhi to commit robbery, in consequence of which Smt. Sheela was stabbed to death. The occurrence which took place on 20th June, 1990 is not the isolated act so far as the law and order and life and liberty of the people of the capital city and other parts of the country are concerned. By killing the deceased and subjecting Amarjeet Sharma to the threat of being killed by pointing a revolver at him, the resistance of the commission of the intended crime was immobilised. After registration of the First Information Report and completion of the investigation, charge-sheet was filed against the accused persons under Sections 302, 394, 397, 398, 342, 120B and 411 IPC besides Sections 25, 27, 54 and 59 of the Arms Act and Section 5 of the Terrorist and Disruption Activities (Prevention) Amendment Act, 1993 (hereinafter referred to as "TADA (P) Act").

The trial court found appellant Vinod guilty of offences under Section 392/34, 397 and 302 IPC, besides Section 5 of the TADA(P) Act. He was sentenced to imprisonment for life and a fine of Rs. 2,000 for the offence under Section 302 IPC, for seven years rigorous imprisonment for the offence under Sections 397, 392/34 and was also sentenced to rigorous imprisonment for five years and a fine of Rs. 2,000 for the commission of offences under Section 5 of TADA (P). Accused Mohabat Ali was convicted for the offences under Sections 392/34 IPC and Section 5 of the TADA (P) Act and was sentenced to rigorous imprisonment for five years and a fine of Rs. 2,000 on each count. Appellants Nawabuddin and Sanjay Moley were sentenced to five years rigorous imprisonment and a fine of Rs. 2,000—each for the commission of offence under Sections 392/34 IPC. Various sentences were also imposed in

case of default of payment of fine. All the sentences were directed to run concurrently. A

Aggrieved by the judgment of the Designated Trial Court, the appellants have filed the present appeals contending that no case is made out against anyone of them and the trial court committed a mistake of law for basing its findings and conviction on the evidence which was not only shaky and unreliable but also inadmissible in evidence under the relevant provisions of law. B

The facts, as disclosed in the First Information Report and the evidence led by the prosecution, are that on 20th June, 1990 an anonymous call was received at the Police Control Room with respect to the commission of murder in Model Town, Part-II area of the city of Delhi. This information was recorded vide DD No.13-A whereafter Harbans Singh, Police Inspector of Police Station Model Town along with his staff rushed to the spot where he found the dead body of a woman lying in the pool of blood with multiple injuries, apparently caused by sharp edged weapon. He also noticed household goods including clothes scattered all around. *Three* jewellery boxes, without jewellery, were found lying in the room. One Amarjeet Sharma met the Police Inspector and gave a statement to the effect that he was employed as a domestic servant in that house for the last five to six days. According to him, at about 2.00 p.m. when he was preparing food in the kitchen, he heard the sound of door bell. When Smt. Sheela, his employer, opened the door, two young boys aged 18-19 and 19-20 years came inside pushing her. One of them inflicted multiple knife injuries on the person of Smt. Sheela as a consequence of which she fell down on the floor. The other intruder put revolver on the neck of the said Amarjeet Sharma and made him stand in silence in a corner of the room. The culprits cut telephone wires and searched for goods lying in the room. They removed the Kangan and Necklace worn by Smt. Sheela and kept all jewellery, cash and other goods in two briefcases. In the process of inflicting the injuries on the person of Smt. Sheela, the clothes of the culprits got blood stains. One of the culprits was described as short-statured and the other long-statured person. The culprits shut Amarjeet Sharma in an Almirah. After committing the offences, the aforesaid two boys left the place. He managed to get out of the Almirah with great difficulty and came down. He raised an alarm, upon which the people collected. Formal case was registered on the basis of the statement of the aforesaid domestic servant. During investigation appellant Sanjay Moley, the nephew of the deceased was arrested and on his interrogation other accused apprehended. All the accused made disclosure C D E F G H

A statements in consequence of which the .32 bore revolver with six cartridges, a knife, blood stained clothes, scooter and the looted property were recovered from their houses and the places where they had stated to have hidden.

After their conviction and sentences only three of the four accused have filed the present appeals. Mohabat Ali, convict has chosen not to B challenge the verdict of the Designated Trial Court.

We have heard at length S/Shri R.K. Jain and Sushil Kumar, Senior Advocates appearing for appellants Sanjay and Nawabuddin and Shri V.Ramasubramaniam, Amicus Curaie for appellant Vinod. The learned counsel appearing for the appellants have vehemently argued that in the absence of C direct evidence in the form of eye-witnesses, the trial court was not justified in recording the conviction against the appellants and sentencing them to various imprisonments. According to them the circumstantial evidence relied upon by the prosecution was shaky and inadmissible. Otherwise also the circumstances relied upon by the prosecution were not sufficient to connect D the appellants with the commission of the crime for which they were charged, convicted and sentenced.

The circumstances relied upon by the prosecution and held proved by the trial court are:

E "(i) Motive

(ii) Medical Evidence

(iii) Disclosure statement of accused persons.

(iv) Recovery of stolen property from the accused persons.

F (v) Recovery of blood stained shirt from accused vinod.

(vi) Recovery of weapon of offence from accused Vinod.

(vii) Extra judicial confession of accused Sanjay Moley.

(viii Last seen circumstances in respect of accused Sanjay and G Nawabuddin."

The most important circumstances to connect the accused with the commission of crime are the disclosure statements made by them and the recovery of weapon of offence, blood stained clothes and stolen property made in consequence thereof besides extra judicial confession of accused H Sanjay, the circumstance of his being seen in the company of Nawabuddin

under suspicious circumstances and observance of his unusual behaviour. The circumstances proving the motive and the medical evidence connecting the accused with the commission of crime are dependent upon the proof of the other circumstances i.e., disclosure statements, recoveries and the extra judicial confession.

The accused were arrested in consequence to the clue provided by Trilochan Singh (PW13) and Sheetal Grover (PW5) in response to the public assistance sought by the police on Public Address System. Sheetal Grover (PW5) stated that the appellant Sanjay who was his friend came to his shop in the evening of 20th June, 1990 at about 5-6 p.m. He was in worried mood. Upon enquiry he told the witness that being in need of money he along with his three friends went to the house of his aunt with a view to commit theft. He further told that while he and one of his friends stood outside the house of his aunt, the other went inside the house to commit theft. Those who went inside after coming back out of the house told Sanjay, appellant that they had committed the murder of his aunt. After knowing about the death of his aunt, the aforesaid accused got scared and worried. He came to the witness for seeking his help. The witness told him that he should go to the police and make his genuine statement there. On the same night the witness was called in the police station where his statement was recorded.

Assailing the testimony of PW5, Shri R.K. Jain, learned Senior Counsel appearing for Sanjay, appellant, submitted that the statement of the witness is fabricated, after-thought and unreliable. According to him, there was no cause or occasion for Sanjay to go to the witness for making the aforesaid extra judicial confession as, according to him, they did not have such relations between them which could prompt the aforesaid accused to confide with the witness. He has further submitted that as the accused Sanjay was in the police station at the time when statement of PW5 was recorded and despite statement permitted to go home, the story of the accused making the extra-judicial confession stood falsified.

We have critically analysed the statement of the aforesaid witness and do not find any substance in the submissions made on behalf of the aforesaid accused. The witness, PW5 has categorically stated "I developed friendship with accused Sanjay in the last 1 and half years of this incident". The common friend of the witness and the accused was one Dharmender Dhingra. In his statement, recorded under Section 313 Cr.P.C., the appellant Sanjay has not specifically denied his friendship with PW5. No suggestion was made to the

A aforesaid witness for allegedly making wrong statement and thereby roping in the said accused with the commission of the crime. Admittedly, PW5 is a shopkeeper and has no axe to grind with the appellant Sanjay. Why did he go to the witness to make clean his breast, is a fact only known to the accused for which he has not given any explanation. We have no hesitation to believe the statement of Sheetal Grover (PW5) that the accused Sanjay had B in fact come to him on 20th June, 1990 about 5-6 p.m. and confided with respect to the offence of robbery and murder committed by him and others on that day. There is nothing in the deposition of any of the witness that the police had known about the commission of the offence and involvement of Sanjay before the statement of Sheetal Grover (PW5) recorded by the police C at about 9.00 p.m.

We cannot accept the contention of Shri Jain to hold that the accused was present in the police station when the statement of PW5 was recorded and that the investigating officer had permitted the said accused to go home despite the statement of the witness. PW5 has categorically stated that he D closed his shop at about 7.30/8.00 p.m. on 20th June, 1990 and reached his house in half an hour's time. He further stated that "on 20th June, 1990 the police people came to my house at 8-9 p.m. to call me to the police station". SI Virender Singh PW24 has stated that Sanjay, appellant was interrogated in the police station on 20th June, 1990 at about 8 p.m. and let off after E interrogation. He was directed to come again in the morning at 10.00 a.m. on the next day. By reading both the statements together it transpires that after his interrogation Sanjay appellant was permitted to go home on 20th June, 1990 at 8.00 p.m. Statement of Sheetal Grover (PW5) was recorded after 9.00 p.m. in the police station, obviously when the said accused had left for his home. Picking up the words "accused Sanjay was present in the police station F at that time" from the statement of PW5, the learned counsel has tried to make a mountain out of the mole. The aforesaid sentence appears in the context when the police came at the residence of the witness and "on enquiry, had told us that my presence was required in the police station about a statement in regard to Sanjay, accused. Accused Sanjay was present in the police G station at that time". There is no confusion in our mind that at the time the police party left the police station for contacting PW5 at about 7.30 and 8.00 p.m., Sanjay, appellant was present in the police station. He was directed to go home as by that time there was nothing against him as per the statement of SI Virender Singh (PW24).

H The testimony of PW5 in this regard does not suffer from any

contradiction to absolve the appellant Sanjay of his criminal liability with respect to the commission of the crime for which he has been convicted and sentenced. As to why the said accused was not arrested on the same night, the defence has not sought any explanation from the IO. One of the reasons for not arresting accused Sanjay immediately after recording the statement of PW5 may be that the investigating officer knew that the said accused had to appear in the police station on the next morning at 10.00 a.m. for which specific directions had been given to him. Be that as it may, this alleged omission of not arresting the accused during the night time cannot be made a basis for discrediting the testimony of PW5.

We are satisfied that Sheetal Grover (PW5) is an independent witness and his testimony inspires confidence which has been relied upon by the trial court. We see no reason to disbelieve the statement of Sheetal Grover (PW5) insofar as it relates to the making of the extra-judicial confession by appellant Sanjay before him. The defence has utterly failed to bring on record any circumstance which could be made a basis for discrediting the testimony of the aforesaid witness. However, the effect of the statement of the accused before the witness would be tested in the light of other circumstances and the whole conspectus of the prosecution case.

There is no dispute that after the statement of Sheetal Grover (PW5) and interrogation of Sanjay appellant, the other accused involved in the crime were apprehended and arrested. During the course of interrogation the accused persons made statements which led to the recovery of the weapon of offence, stolen property and other incriminating material. It is also admitted that Smt. Sheela met with a homicidal death on account of about 24 injuries inflicted on her person with a sharp edged weapon like the knife, the weapon of offence seized in the present case.

The most important circumstance for the prosecution in the case is the disclosure statements of the accused persons and recoveries of the stolen property, blood stained shirt and weapon of offence consequent upon such statements. The admissibility of the statements made by the accused persons to the police is challenged on twin grounds, i.e., (i) factually no such statement was made, and (ii) the statement made was inadmissible in evidence.

Section 25 mandates that no confession made to a police officer shall be proved as against a person accused of an offence. Similarly Section 26 provides that confession by the accused person while in custody of police cannot be proved against him. However, to the aforesaid rule of Sections 25

A to 26 of the Evidence Act, there is an exception carved out by Section 27 providing 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. Section 27 is a proviso to Sections 25 and 26. Such statements B are generally termed as disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker. Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given C in evidence.

As the Section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the D aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27.

E

The position of law in relation to Section 27 of the Act was elaborately made clear by *Sir John Beaumont in Pulukuri Kottaya and others* v. *Emperor,* AIR (1947) PC 67 wherein it was held:

> "Section 27, which is not artistically worded, provides an exception to F 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 discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police Officer must G 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 consequence 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 H 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 S. 26, added by S. 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 admissible since they do not relate to the discovery of the knife in the house of the informant."

A B C D E F G H

A In *State of Uttar Pradesh* v. *Deoman Upadhyaya,* AIR (1960) SC 1125 this Court held that Sections 25 and 26 were manifestly intended to hit an evil, viz., to guard against the danger of receiving in evidence testimony from tainted sources about statements made by persons accused of offences. These sections form part of a statute which codifies the law relating to the relevancy of evidence and proof of facts in judicial proceedings. The State B is as much concerned with punishing offenders who may be proved guilty of committing of offences as it is concerned with protecting persons who may be compelled to give confessional statements. Section 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of truth of the statement made C by him and the legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. In that case the High Court had acquitted the accused on the ground that his statement which led to the recovery of gandasa, the weapon D of offence, was inadmissible. The accused Deoman had made a statement to hand over the gandasa which he stated to have thrown into a tank and got it recovered. The trial court convicted the accused for the offence of murder. The Full Bench of the High Court held that Section 27 of the Evidence Act which allegedly created an unjustifiable discrimination between persons in E custody and persons out of custody offending Article 14 of the Constitution, was unenforceable. After the opinion of the Full Bench a Division Bench of the Court excluded from consideration the statement made by the accused in the presence of the police officer and held that the story of the accused having borrowed a gandasa on the day of occurrence was unreliable. The accused was acquitted but at the instance of the State of U.P., the High Court F granted a certificate to file the appeal in this Court. This Court did not agree with the position of law settled by the High Court and decided to proceed to review the evidence in the light of that statement in so far as it distinctly related to the fact thereby discovery being admissible. Dealing with the conclusions arrived at by the High Court and on the facts of the case, this G Court observed:

> "The High Court was of the view that the mere fetching of the gandasa from its hiding place did not establish that Deoman himself had put it in the tank, and an inference could legitimately be raised that somebody else had placed it in the tank, or that Deoman had seen H someone placing that gandasa in the tank or that someone had told

him about the gandasa lying in the tank. But for reasons already set out the information given by Deoman is provable insofar as it distinctly relates to the fact thereby discovered; and his statement that he had thrown the gandasa in the tank is information which distinctly relates to the discovery of the gandasa. Discovery from its place of hiding, at the instance of Deoman of the gandasa stained with human blood in the light of the admission by him that he had thrown it in the tank in which it was found therefore acquires significance, and destroys the theories suggested by the High Court."

In *Mohmed Inayatullah* v. *The State of Maharashtra,* AIR (1976) SC 483 it was held that expression 'fact discovered' includes not only the physical object produced but also place from which it is produced and the knowledge of the accused as to that. Interpreting the words of Section "so much of the information" as relates distinctly to the fact thereby discovered, the Court held that the word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of proveable information. The phrase "distinctly" relates "to the fact thereby discovered". The phrase refers to that part of information supplied by the accused which is the direct cause of discovery of a fact. The rest of the information has to be excluded.

In *Earabhadrappa alias Krishnappa* v. *State of Karnataka,* [1983] 2 SCR 552 it was held that for the applicability of Section 27 of the Evidence Act two conditions are pre-requisite, *viz.,* (i) information must be such as has caused discovery of the fact, and (ii) the information must 'relate distinctly' to the fact discovered. Under Section 27 only so much of the information as distinctly relates to the fact really thereby discovered, is admissible. While deciding the applicability of Section 27 of the Evidence Act, the Court has also to keep in mind the nature of presumption under Illustration (a) to (s) of Section 114 of the Evidence Act. The Court can, therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relations to the facts of the particular case. In that case one of the circumstance relied upon by the prosecution against the accused was that on being arrested after a year of the incident, the accused made a statement before the police leading to the recovery of some of the gold ornaments of the deceased and her six silk sarees, from different places which were identified by the witness as belonging to the deceased. In that context the court observed:

A "There is no controversy that the statement made by the appellant Ex.P-35 is admissible under S. 27 of the Evidence Act. Under S. 27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word 'fact' means some concrete or material fact to which the information directly relates."

B In a latest judgment this Court in *State of Maharashtra* v. *Damu, S/o Gopinath Shinde & Ors.*, [2000] 6 SCC 269 has held that the Section 27 was based on the doctrine of confirmation by subsequent events and giving the section actual and expanding meanings, held:

> C "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 in 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, D but it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in section. The decision of the Privy Council in *Pulukuri Kottaya* v. *Emperor,* AIR (1947) PC 67 is the most quoted authority E 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."

F In this case after the arrest of Sanjay appellant, the extra- judicial confession made by him to PW5 and recording the statement of PW5 the investigating officer apprehended the other accused persons. In his interrogation Vinod appellant made a confessional statement, a major portion of which is inadmissible in evidence being hit by Sections 24 to 26 of the Evidence Act. However, the relevant portion which was used for recovery of G the stolen property is as under:

> "I got gold jewellery and watches which are lying at my house at Shakarpur. I can point out the same and get them recovered. Both shirts are lying at my house, one pant at the residence of my friend at Madipur, and I am wearing the pant which I washed (after commission H of the offence). I can get recovered the Dagger and Katta from my

house at Shakarpur and also above mentioned things." A

In his disclosure statement accused Mohabat Ali had stated:

"I got gold jewellery, watches, cameras and clothes which are lying at my home. The revolver and kirpan used in the commission of the offence are also lying in my house. I can recovered the (looted) B property and the weapon of offence from my house at Mangolpuri. I can also get arrested Ramkishan, the seller of the revolver."

The relevant portion of statement of accused Nawabuddin is as under:

"I took jewellery and watches of my and Sanjay's share to my residence. C Sanjay dropped me on scooter. I can get recovered the (looted) property from my residence."

Raising objections to the words "after commission of the offence" appearing in the disclosure statement of Vinod and "looted property" in the statement of Nawabuddin, the learned counsel for the appellants submitted D that the whole of the statement was hit by Sections 24 to 26 of the Evidence Act and Section 162 of the Code of Criminal Procedure. We are not inclined to accept such a general statement. Even if the objectionable words (bracketed above) are deleted, the appellants cannot be conferred with any benefit which would entitle them to acquittal. It is not disputed that consequent upon the disclosure statements made, the articles mentioned therein were actually E recovered at their instance from the place where such articles had been hidden by them. The mere use of the words "looted property" in relation to the articles seized which were found to have been taken away after the commission of the crime of murder and robbery would not change the nature of the statement. The words do not implicate the accused with the commission F of the crime but refer only to the nature of the property hidden by them which were ultimately recovered consequent upon their disclosure statements. Hypertechnical approach, as projected by the defence counsel, would defeat the ends of justice and have disastrous effect. The property recovered consequent upon the making of the disclosure statements has been proved to be the property of the deceased, stolen after the commission of the offence G of robbery and murder.

Besides Section 27, the courts can draw presumptions under Section 114, Illustrations (a) and Section 106 of the Evidence Act. In *Gulab Chand* v. *State of M.P.*, [1995] 3 SCC 574 where ornaments of the deceased were recovered from the possession of the accused immediately after the occurrence, H

this Court held:

"It is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced. It has been indicated by this Court in *Sanwat Khan* v. *State of Rajasthan,* AIR (1956) SC 54 that no hard and fast rule can be laid down as to what inference should be drawn from certain circumstances. It has also been indicated that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. A note of caution has been given by this Court by indicating that suspicion should not take the place of proof. It appears that the High Court in passing the impugned judgment has taken note of the said decision of this Court. But as rightly indicated by the High Court, the said decision is not applicable in the facts and circumstances of the present case. The High Court has placed reliance on the other decision of this Court rendered in *Tulsiram Kanu* v. *State,* AIR (1954) SC 1. In the said decision, this court has indicated that the presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act has to be drawn under the 'important time factor'. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case. In the instant case, it has been established that immediately on the next day of the murder, the accused Gulab Chand had sold some of the ornaments belonging to the deceased and within 3-4 days , the recovery of the said stolen articles was made from his house at the instance of the accused. Such close proximity of the recovery, which has been indicated by this Court as an 'important time factor', should not be lost sight of in deciding the present case. It may be indicated here that in a latter decision of this Court in *Earabhadrappa* v. *State of Karnataka,* [1983] 2 SCC 330, this Court has held that the nature of the presumption and Illustration (a) under Section 114 of the Evidence Act must depend upon the nature of evidence adduced. No fixed time-

limit can be laid down to determine whether possession in the recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. In our view, it has been rightly held by the High Court that the accused was not affluent enough to possess the said ornaments and from the nature of the evidence adduced in this case and from the recovery of the said articles from his possession and his dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the commission of the said offence can be drawn against the appellant. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration (a) of Section 114 Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments."

In the instant case also, the disclosure statements were made by the accused persons on the next day of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties, on the same day. To the same effect are the judgments in *Mukund Alias Kundu Mishra & Anr.* v. *State of M.P.*, [1997] 10 SCC 130 and *Ronny Alias Ronald James Alwaris & Ors.* v. *State of Maharashtra,* [1998] 3 SCC 625. In the latter case the Court held:

"Apropos the recovery of articles belonging to the Ohol family from the possession of the appellants soon after the robbery and the murder of the deceased (Mr. Mohan Ohol, Mrs. Ruhi Ohol and Mr. Rohan Ohol) which possession has remained unexplained by the appellants, the presumption under Illustration (a) of Section 114 of the Evidence Act will be attracted. It needs no discussion to conclude that the murder and the robbery of the articles were found to be part

A of the same transaction. The irresistible conclusion would, therefore, be that the appellants and no one else had committed the three murders and the robbery."

The disclosure statements by the accused persons stand established by the testimony of Satish Khanna (PW22) and the investigating officer. The B trial court was, therefore, justified in relying upon the circumstances of the disclosure statements of the accused persons and consequent recovery of stolen property, blood stained shirt of Vinod appellant besides weapon of offence. We find no substance in the submission of the learned defence counsel that as no independent witnesses were associated with the recoveries, C a doubt is created in the prosecution version. Satish Khanna (PW22) is the natural witness being brother of the deceased to be present during the investigation when the accused are stated to have made the statements within the meaning of Section 27 of the Evidence Act. Otherwise also there is no reason to disbelieve the testimony of the IO Harbans Singh (PW25).

D A faint attempt was made by the counsel for the appellants to persuade us to hold that the recoveries were doubtful because according to them prosecution had failed to ascertain the details of the stolen property and get it identified only after the recovery. Mrs. Renu Moley, PW17 who is the daughter of the deceased has deposed in the Court that she was called in the E police station on 21st June, 1990 and enquired about the articles missing from her house. After checking she found missing 8 gold bangles, 6 other gold bangles, 6 pairs of ear-rings of gold, 6 pairs of tops, three pairs of ear-jhumkas, one Mangalsutra, one ginni, two golden rings, two idols of Lord Ganesha and Goddess Lakshmi made of silver, the plates of silver on which Air India was engraved, one lady set of silver, 8 wrist watches, 4 cameras, 1 F electric shaver, 5 sarees, 20 suit-pieces, 6 gents suit-pieces, stitched shirt, two big bags of leather and one small bag. She has again stated that after the recovery of the property from the accused persons she identified the articles and found them to be belonging to her mother, which were stolen on the day of her murder. We do not agree with the counsel for the appellants that the G recovery of the articles had preceded the making of the disclosure statements.

Learned counsel appearing for the appellants Sanjay and Nawabuddin then submitted that even if the disclosure statements and the recoveries are admitted, their clients can at the most be convicted for the commission of offence under Section 411 IPC. We do not agree with this submission as well H in view of the fact that the murder and robbery in the instant case were part

of the same transaction and the accused from whom the recoveries were made, consequent upon their disclosure statements, did not offer any explanation regarding their possession of the stolen properties. Drawing a presumption under Section 114 of the Evidence Act it can safely be held that the aforesaid two accused persons were atleast guilty of the offence of robbery punishable under Section 392 IPC on the assumption that they were not armed with any deadly weapon and not aware of Vinod appellant being armed with dagger. The trial Court was, therefore, justified in holding that "the circumstances enumerated above together complete the chain of circumstances to prove the guilt of the accused persons in so far as the offence of robbery is concerned. Infact the disclosure statements of the accused persons and huge recoveries from them at their instance by itself is a sufficient circumstance on the very next day of the incident which clearly goes to show that the accused persons had joined hands to commit the offence of robbery". The Court also rightly held that, "Recent and unexplained possession of stolen properties will be taken to be presumptive evidence of the charge of murder as well. (See *Baijur* v. *State of Madhya Pradesh,* AIR (1978) SC Page 522. Also see *Eara Bhadrappa's* case (supra). In the case of *Gulab Chand* v. *State of Madhya Pradesh,* [1975] SCC page 574 quoted its earlier decision in Tulsi Ram's case with approval that the presumption permitted to be drawn under illustration 114(a) of the Evidence Act has to be read alongwith 'important time factor'. If the ornaments in possession of the deceased are found in possession of the person soon after the murder, a presumption of killing may be permitted. In the said case before the Supreme Court ornaments belonging to the deceased had been sold by accused Gulab Chand of that case and within 3-4 days the recovery of the stolen articles was made from his house at the instance of the accused. The court held that such close proximity of the recovery which has been indicated by the court as 'important time factor' should not be lost sight of". On the basis of the evidence led in the case and keeping in view the whole conspectus of the case the trial court rightly concluded that accused Vinod in the process of committing robbery used deadly weapon, namely, dagger and killing Smt. Sheela while the other three accused persons have participated in the commission of crime of robbery and actually removed huge articles including jewellery from the house of the deceased.

Shri Ramsubramaniam, Advocate, appearing as Amicus Curaie for accused Vinod submitted that as the prosecution has failed to prove the origin of blood found on the pant and shirt of vinod appellant, he could not be held guilty of the offence of murder. Repelling such contention this Court

in *State of Rajasthan* v. *Teja Ram & Ors.*, JT (1992) 2 SC 279 held:

> "Failure of the Serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood in unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused."

Following *Teja Ram's* case this Court again in *Gura Singh* v. *State of Rajasthan,* JT (2000) Suppl. 3 SC 528 held:

> "We do not find any substance in the submissions of the learned counsel for the appellant that in the absence of the report regarding the origin of the blood, the trial court could not have convicted the accused. The Serologist and Chemical Examiner has found it that the Chadar (sheet) seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with the lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument. The trial court as well as the High Court were, therefore, justified in holding this circumstance as proved beyond doubt against the appellant."

By producing positive evidence, the prosecution established that appellant Vinod was in possession of a fire arm and cartridges in a Notified Area of Delhi vide notification No. F. 25(3) 87-HP dated 20.10.1987 and thus guilty of the offence punishable under Section 5 of the TADA (P) Act besides the offence of murder punishable under Section 302 IPC.

We do not find any merit in these appeals which are accordingly dismissed

V.S.S. Appeals dismissed.