Both the accused shall be released on the same bail on which they were released in the Court of the Magistrate. A fresh bail bond to be executed by both the accused before the Registrar, High Court. One surety for Rs. 10,000 to be given by each accused and a personal recognizance to the same extent also to be given by each.

1951

THE STATE OF BOMBAY v. RAMGOPAL GANPATRAI

Vyas J.

Order set aside.

K. B. S.

APPELLATE CRIMINAL

Before Mr. Justice Bavdekar and Mr. Justice Chainani.

RANGARAO DNYANU NIKAM (ORIGINAL ACCUSED), APPELLANT *v.* STATE.*

1951

June 28

Indian Evidence Act (I of 1872), s. 27—Statement by accused in police custody—"As relates distinctly to the fact thereby discovered"—Meaning of—How much of such statement admissible in evidence.

Under s. 27 of the Indian Evidence Act, 1872, only that portion of the statement made by an accused in custody of the police can be proved against him which led to the discovery of the fact deposed to and which relates distinctly to the fact discovered, that is to say, only that portion of the accused's statement can be admitted which was the direct or immediate cause of the discovery of the fact deposed to.

The accused, while in custody of the police made a statement to the police that one month previously he had kept a hand-grenade, that it was kept in the cattle-shed of a friend of his, that he would take it out and give it to the police. Subsequently, he took the police and the Panchas to the place and took out a hand-grenade from behind a stone and produced it before the police. On the question whether the statement of the accused was admissible in evidence against him.

Held, that the portion of the accused's statement that he had kept the hand-grenade one month previously was not admissible in evidence as it could not be said to have led directly to the discovery of the fact that the hand-grenade had been kept in the cattle-shed of his friend.

Kottayya v. *Emperor*,[1] explained and followed, *Queen-Empress* v. *Nana*,[2] *Sukhan* v. *The Crown*[3] and *Emperor* v. *Ganu Chandra*,[4] referred to.

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* Criminal Appeal No. 356 of 1951.

[1] (1946) 49 Bom. L. R. 508, s. c. L. R. 74 I. A. 65.
[2] ((1889) 14 Bom. 260.
[3] (1929) 10 Lah. 283, F. B.
[4] (1931) 34 Bom. L. R. 303.

1951

RANGRAO DNYANU v. STATE

Chainani J.

Criminal Appeal against the conviction and sentence passed by B. D. Nadkarni, Sessions Judge, South Satara, Sangli.

The accused Rangrao (appellant) who was in police custody in connection with a dacoity made the following statement to the police in the presence of Panchas:

"One month ago I kept a bomb (hand-grenade). I have kept that bomb in the eastern wall of the dung-pit in the dilapidated cattle shed of my friend Shamrao Namdev Nikam of Chinchani. I will take it out and give it to you."

The accused took the police and Panchas to the place mentioned in his statement, and there removed a stone from the corner of a wall and took out a hand-grenade. Then from a heap of stones he took out two live revolver cartridges and produced them before the police.

On these facts, the accused was sent up for trial for having committed offences under s. 19 (*f*) of the Indian Arms Act, 1878, and under s. 5 of the Indian Explosive Substances Act, 1908. The defence of the accused was one of denial of possession. He contended that as he and Shamrao were related, he used to go to Shamrao's place frequently and that the latter had told him that he had collected hand-grenades and other arms and that he showed him the places where he had kept them. The accused denied that he had himself kept the articles at the places which he had pointed out to the police or that he was in possession of or had control over them.

The Sessions Judge disbelieved the defence of the accused and convicted him under the aforesaid Acts and sentenced him to three years' rigorous imprisonment.

The accused appealed to the High Court.

K. S. Daundkar, for the appellant.

D. V. Patel, for the Government Pleader for the State.

CHAINANI J. This is an appeal by the accused against his conviction under s. 19 (*f*) of the Indian Arms Act and under s. 5 of the Indian Explosive Substance Act and the sentences passed upon him by the Sessions Judge, South Satara.

The accused was arrested on March 12, 1950, in connection with some other offence. On March 20, 1950, he informed the Police Sub-Inspector, witness Bajirao Joshi, in the presence of

panchas that he was in possession of a bomb, that he had concealed it in the compound of the dilapidated wada of Shamrao Nikam in the village of Chinchani and that he would point out the place at which he had kept the bomb. He then took the police and the panchas to the wada of Shamrao Nikam. There he removed a stone from the corner of one of the walls and took out a hand-grenade. Thereafter from a heap of stones he took out two live revolver cartridges and produced them before the police. On these facts, the accused was subsequently sent up for trial for committing offences under s. 19 (*f*) of the Indian Arms Act and under s. 5 of the Indian Explosive Substances Act. He pleaded not guilty to the charges. He stated that he and Shamrao were related that he, therefore, used to go to Shamrao's wada frequently, that Shamrao had told him that he had collected hand-grenades and other arms and that he subsequently showed to him the places at which he had kept them. He, therefore, denied that he had himself kept the articles at the places which had been pointed out by him or that he was in possession of or had control over them. The learned Sessions Judge disbelieved the plea of the accused, having regard to the statement which he had made before the police and the panchas before he pointed out the places at which the articles were found. In that statement the accused had stated that he had concealed the bomb at the place. The learned Sessions Judge, therefore, convicted the accused under s. 19 (*f*) of the Indian Arms Act and under s. 5 of the Indian Explosive Substances Act, and sentenced him to three years' rigorous imprisonment. The accused has appealed against his conviction and the sentence passed upon him.

The principal point which arises for consideration in this appeal is whether the statement of the accused that he had concealed the articles in Shamrao's wada is admissible in evidence. Section 27 of the Indian Evidence Act, which is an exception to ss. 24, 25 and 26 of this Act, provides 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."

The words, "so much of such information" and "distinctly" are very important. They limit what may be proved against the accused. The whole of the statement of the accused is,

1951

RANGRAO DNYANU v. STATE

Chainani J.

therefore, not admissible under this section, but only that portion of it can be proved against him which has led to the discovery of the fact deposed to and which relates distinctly to the fact discovered, that is to say, only that portion of the accused's statement can be admitted which was the direct or immediate cause of the discovery of the fact deposed to. Anything which is not directly or clearly connected with or which is not the immediate cause of the discovery is not admissible. In *Queen Empress* v. *Nana*[1] it was held that only that portion of the accused's statement can be admitted in evidence as sets the police in motion and leads to the discovery of the property. In some cases a view was formerly taken that where the admissible portion of an accused's statement cannot be separated from the inadmissible portion, the whole of the statement must be admitted under s. 27 of the Indian Evidence Act. This view was expressly dissented from by a full bench of the Lahore High Court in *Sukhan* v. *The Crown.*[2] As pointed out by Chief Justice Shadilal in his judgment in this case, the protection given by ss. 24, 25 and 26 of the Indian Evidence Act cannot be dependent upon the ingenuity of the police officer or the folly of the prisoner in composing the sentence which conveys the information. In *Emperor* v. *Ganu Chandra*[3] a bench of this Court consisting of the Chief Justice Sir John Beaumont and Mr. Justice Broomfield held that where the accused gives his information in the form of a compound statement, the Judge must, before he records it as evidence or leaves it to the jury, divide the sentence into what are really its component parts and only admit that part which has led to the discovery of the particular fact. *Sukhan* v. *Crown* and *Emperor* v. *Ganu Chandra* were approved by the Privy Council in *Kottaya* v. *Emperor*,[4] in which their Lordships of the Privy Council had to construe s. 27 of the Indian Evidence Act. In the course of their judgment, their Lordships observed (p. 514) :

".....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 s. 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in

(1) (1889) 14 Bom. 260, F. B.
(2) (1929) 10 Lah. 283, F. B.
(3) (1931) 34 Bom. L. R. 303.
(4) (1946) 49 Bom. L. R. 508, S. C. L. R. 74 I. A. 65.

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."

In this case the statement made by the accused was in the following terms :

"One month ago I had kept a bomb (hand-grenade). I have kept that bomb in the eastern wall of the dung pit in the dilapidated cattle shed of my friend Shamrao Namdev Nikam at Chinchani. I will take it out and give it to you."

This statement can be divided into four parts, that the accused had kept a bomb one month previously; that the bomb had been kept in a wall of the manure pit in the dilapidated cattle shed of Shamrao; that it had been kept there by the accused; and that the accused would take it out and give it to the police. The fact discovered in this case was that the bomb had been kept in the cattle shed of Shamrao and that the accused knew about it. The only parts of the accused's above statement, which can be said to have directly led to the discovery of this fact, are the second and the fourth, in which it is stated that the bomb had been kept in Shamrao's cattle shed and that the accused would take it out and hand it over to the police. The other portions of the statement that the accused had kept the bomb there one month previously cannot be said to have led directly to the discovery of the above fact. This fact would have been discovered, even if the only information given by the accused had been that a bomb was lying in Shamrao's wada and that he would point out the place where it had been concealed. In our opinion, therefore, the portions of the accused's statement that he had kept the bomb one month previously in Shamrao's cattle shed are not admissible in evidence.

In *Kottaya's* case referred to above, the Privy Council also considered what portions of the statements made by the accused in that case could be admitted in evidence. The statement

1951

RANGRAO DNYANU v. STATE

Chainani J.

of accused No. 3 in that case was, "I stabbed Sivayya with a spear, I hid the spear in a yard in my village. I will show you the place." The Privy Council held that except the first part "I stabbed Sivayya with a spear", the whole of the statement was admissible. The portion of the statement that the accused had hidden the spear was admitted in evidence. The Privy Council took the same view with regard to the statements made by the other accused. Mr. Patel on behalf of the prosecution has, therefore, strongly urged that in this case the portion of the accused's statement that he had kept the bomb in Shamrao's cattle shed should also be admitted in evidence. All the facts of *Kottaya's* case are not given in the printed report of it. It is, therefore, not possible to say whether the question as to who had hidden the articles at the places pointed out by the accused was of any importance in that case. It does not also appear that any arguments were addressed to the Privy Council on this point whether the accused's statement that they had themselves concealed the articles were admissible in evidence. In any case, the Privy Council have in their judgment clearly stated that the fact discovered in such cases is the place from which the object is produced and the knowledge of the accused as to this and that the information given by the accused, which can be admitted in evidence, must relate distinctly to this fact. The Privy Council have also observed that information as to the past history of the object is not related to its discovery. The information given by the accused that he himself had kept the bomb in Shamrao's cattle shed cannot be said to relate distinctly to the fact discovered in this case, which is that the bomb had been kept in Shamrao's cattle shed and that the accused knew about it. It relates to the past history of the bomb and shows how the bomb had come to be in Shamrao's Wada and who had concealed it there. The view, which we are taking, is therefore in accordance with the decision of the Privy Council, if we have regard to the tests, which the Privy Council have laid down in the same case for determining as to what portion of the accused's statement can be proved against him under s. 27 of the Indian Evidence Act.

In this case if the accused's statement that he had kept the bomb in Shamrao's cattle shed is excluded from evidence, as we consider that it should be, the only remaining evidence against him is that he had knowledge of the places where the hand-grenade and the cartridges had been concealed. The evidence shows that Shamrao's Wada in which these articles

were found was in a dilapidated condition. It is therefore possible that the articles had been hidden there by Shamrao or some other person and that the accused only knew about this. It would therefore not be right to infer from the fact that the accused knew where the articles had been hidden that he had hidden them there. It cannot therefore be stated definitely that the accused himself was in possession of these articles.

1951

RANGRAO DNYANU v. STATE

Chainani J.

The convictions of the accused and the sentence passed upon him are therefore, set aside and he is acquitted.

Conviction and sentence set aside.

K. B. S.

APPELLATE CRIMINAL

Before the Honourable Mr. M. C. Chagla, Chief Justice, and Mr. Justice Gajendragadkar.

STATE *v.* SIMON KAITAN FERNANDEZ (ORIGINAL ACCUSED No. 1).*

Criminal Procedure Code (Act V of 1898), s. 103—Panch witness—Rule for appreciating evidence of—Prohibition Act (Bombay Act XXV of 1949), s. 66 (b).

June 29

In order that the Court should attach importance to the evidence of Panch witnesses it is essential that they should be independent witnesses unbiased and without being in any way under the control of the Police. If it is established that a Panch witness is likely to be a pliable agent in the hands of the Police, or is likely to be amenable to the influence of the Police, or he may be looked upon as a Police agent, it is clear that the evidence of such a witness cannot be relied upon. In deciding whether the evidence of a Panch witness should be believed or not, his status and position in life, the fact whether he is in the habit frequently of acting as a Panch and the nature of the evidence given by him are to be considered.

Criminal Appeal against the conviction and sentence passed by J. M. Barot, Esquire, Presidency Magistrate, 4th Court, Bombay.

Accused No. 1 (the appellant) was the owner of a tailoring shop at Dongri. His shop was raided by the Police on August 19, 1949 in the presence of two Panchas when 17½ drams of rectified spirit was found in the rear portion of the shop. The accused and his wife were prosecuted under s. 66 (*b*) of the Prohibition Act.

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* Criminal Appeal No. 211 of 1951.