I would, therefore, dismiss these petitions and discharge the rules. There will be no order as to costs.

Dulat, J.

DULAT, J.,—I agree.

FULL BENCH

APPELLATE CRIMINAL

Before Khosla, Harnam Singh and Falshaw, JJ.,

RAM RACHHPAL—*Convict-Appellant*

versus

THE STAE,—*Respondent.*

Criminal Appeal No. 253 of 1953

1953

Nov. 16th

Indian Evidence Act (I of 1872)—Section 27—Accused, while in police custody, making a statement that he had torn currency chest slip and thrown it at a named place—Accused then leading the police to that place and picking up the torn pieces therefrom—Statement whether admissible in evidence against the accused. Section 27—Interpretation of.

Held (per Full Bench), that the information given by the accused person is admissible in evidence if it leads to the discovery of a relevant fact whether the actual recovery is made by the police acting on the information or by the accused in pursuance of the information. The statement in the present case is, therefore, admissible in evidence.

Held (per Khosla J.) (*1*) that there are two reasons for admitting the statement. In the first place the recovery is made as a result of the knowledge possessed by the accused and this knowledge is expressed first in the form of a statement and then in the form of pointing out. The source is really one. It is not so much that the matter forms one transaction as that the discovery is made as the result of information from one source. The other reason is that the truth of the statement made is guaranteed by the pointing out and also by the recovery.

(2) The giving of information and the discovery of the fact must be connected by a causal relationship; one must follow as the logical consequence of the other, that is, the discovery must be made as the result of the information given. This link takes the form of a statement made to the police and the pointing out by the accused and the two are nothing more than two different

manifestations of the same thing. The knowledge possessed by the accused takes the form of information given to the police and then it takes the form of pointing out by the accused persons. There is an immediate and direct causal relationship between information and discovery. Therefore it makes no difference whatsoever whether the accused points out the place or not as long as the pointing out was anticipated in the information given by the accused.

(3) There is no doubt that a strict interpretation must be placed on the wordings of section 27 of the Evidence Act but this interpretation must not be inconsistent with common sense and with the intention of the Legislature as expressed in the statute.

Case law reviewed.

Case referred by Hon'ble Mr. Justice Harnam Singh,— vide *his order, dated the 9th June 1953, to the above Full Bench.*

J. G. SETHI, R. L. KOHLI and H. L. SIBBAL, for—*Appellant*

K. S. CHAWLA, Assistant Advocate-General, and MANMOHAN SINGH, for—*Respondent.*

JUDGMENT

KHOSLA, J. The facts from which the present reference to a Bench of three Judges has arisen are briefly these. One Ram Rachhpal who was employed as a Sub-Treasurer in a Government Treasury was accused of criminal misappropriation punishable under section 409, Indian Penal Code. During the investigation of the case Ram Rachhpal made a statement to the police which is contained in a memorandum, Ex. P.H. Khosla, J.

After making this statement Ram Rachhpal led the police party to a place mentioned in the memorandum and from this place several pieces of torn paper were recovered. These when joined showed that the document which had been destroyed was a "currency chest slip". These pieces were taken into possession and were later produced as evidence against the accused at the trial. The prosecution also produced the memorandum, P.H., in which the statement made by the accused

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had been recorded, and proved it under the provisions of section 27 of the Indian Evidence Act as information given by the accused leading to the discovery of a fact. Ram Rachhpal was convicted and sentenced to five years' rigorous imprisonment and a fine of Rs. 10,000. He filed an appeal against his conviction and sentence to this Court and the appeal in the first instance came up before my brother, Harnam Singh, J. Mr. Sethi who appeared on behalf of the convict, contended that the statement made by the accused person could not be proved as it was not this statement which had led to the recovery of the pieces of the currency chest slip, for the recovery of these pieces was made by the accused pointing out the spot where they were lying. Two judgments of Weston, C.J., were cited by Mr. Sethi and although there was a Division Bench decision of this Court in *State* v. *Lehna Singh* (1), in which a contrary view had been taken, Harnam Singh, J., thought that a more authoritative decision of this question was necessary. He, therefore, referred the following question for the consideration of a Bench of three Judges :—

> "Whether the statement of the accused contained in the memo, Exhibit P.H., may be proved under section 27 of the Indian Evidence Act in view of the fact that the accused led the police to the place from where the torn pieces of the currency chest slips were recovered?"

The matter has been argued at considerable length before us and we have had the advantage of examining a large number of cases in which a similar point arose. Before coming to these cases, however, I should like to make a few observations on the wording of section 27 , Indian Evidence Act. This section reads :—

> "Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused

(1) A.I.R. 1953 Punjab 101

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 requiring special attention are—

(1) "in consequence of"

(2) "so much ..... as relates distinctly"

(3) "Thereby discovered".

In the case before us we are concerned more particularly with the words "in consequence of". This section contemplates that an accused person has in his possession some knowledge. He communicates this knowledge to the police, and in consequence of such communication a new fact is discovered and when this happens the information communicated by the accused person may be proved even though his statement or the information given by him amounts to a confession, but only so much of the information can be proved as relates distinctly to the fact which is discovered. In other words, the giving of information and the discovery of the fact must be connected by a causal relationship; one must follow as the logical consequence of the other, that is, the discovery must be made as the result of the information given. On this point there can hardly be any dispute, and the words of the section are quite clear. The difficulty which has arisen in the present case is due to the fact that after giving information the accused pointed out the spot where the pieces of paper lay, and therefore, the pointing out intervened between the giving of information and the discovery of the 'fact'. The question which we have to consider is whether this intervention is suffiicient to destroy the causal relationship between the giving of information and the discovery of the 'fact'. If I may use a metaphor in order to clarify the position there is a gap between the giving of information by the accused and the discovery of the fact. This gap is

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bridged over by causal relationship and the relationship must be direct and immediate. If some extraneous circumstance intervenes the bridge will not be continuous and so the discovery will not be in consequence of the information, and, that being so, the information cannot be proved under section 27.

The argument of Mr. Sethi may, therefore, be briefly put in this way. The discovery of the pieces of paper was made in consequence of the pointing out by the accused and not in consequence of an information given by him. Had the accused kept quiet and merely taken the police to the place from where the pieces of paper were recovered, the discovery would have been made notwithstanding the fact that the accused had remained silent. Therefore the discovery was not made on any information given by the accused. Mr. Sethi has stressed the point that the consequence must be direct and immediate and not indirect and remote. Mr. Sethi has also drawn our attention to section 8 of the Evidence Act, and has contended that the pointing out by the accused and anything he may say at that time, are relevant as conduct under section 8 and if a statement made by him at the time of pointing out is relevant under section 8 a statement made by him before pointing out cannot be relevant under section 27.

Law must be interpreted from a practical view point and in relation to the facts of a particular case. Abstract theorizing is a pursuit which is not likely to prove fruitful, and we must consider in what manner the provisions of section 27 can be applied to an actual case. I can best illustrate my meaning by giving one or two instances. If the accused gives false information of the whereabouts of an incriminating article, and nothing is recovered as a consequence of this information, the statement made by the accused cannot be proved simply for the reason that it has not led to any discovery. Take again the case of an accused person who makes a statement

that someone else whom he names knows about the facts of the case. This someone else is questioned and he says that a third person is in a position to reveal certain facts which have a bearing on the case, and the police, on examining this third person, are led to the discovery of a relevant fact. In this case although the discovery was made in consequence of information supplied by the accused person, the discovery cannot be said to be a direct and immediate result of the information, for the police had to question two other persons and the causal relationship between information and discovery consists of a chain containing several links, whereas section 27 contemplates a chain of one link only. In a case, however, where the accused person gives information regarding the whereabouts of a fact and in pursuance of this information takes the police party to the spot already indicated by him and the fact is discovered, there is really only one link connecting information and discovery and that link is the knowledge in posession of the accused. This link takes the form of a statement made to the police and the pointing out by the accused and the two are nothing more than two different manifestations of the same thing. The knowledge possessed by the accused takes the form of information given to the police and then it takes the form of pointing out by the accused person. There is an immediate and direct causal relationship between information and discovery.

Therefore in my view it makes no difference whatsoever whether the accused points out the place or not as long as the pointing out was anticipated in the information given by the accused. The case would be otherwise if the accused mentions one place in his statement and leads the police to another place or if the police discovers the fact without using the information given by the accused. This might happen in the case of an accidental discovery by the police or discovery consequent upon information given by somebody else. For instance if the police do not believe a statement made by an accused person and decide

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not to act upon it; later they receive the same information from another source upon which they decide to act, and, upon so acting, discover the fact they were searching for, then in this case it cannot be said that there was any causal relationship between information given by the accused and the discovery of the fact although in the light of what transpired subsequently the statement made by the accused is found to be a true one. The important point in my view is that information and pointing out proceed from the same person.

The matter may be viewed from another angle. Section 27 constitutes a proviso, or an exception to the provisions of sections 24, 25 and 26 which bar confessions made by accused persons in certain cases. Section 24 makes a confession caused by inducement, threat or promise irrelevant in criminal proceedings. Section 25 bars the proof of a confession made to a police officer and section 26 excludes from evidence confessions made while the accused person is in custody of the police. Under section 27 a confession made by an accused person to the police is admissible notwithstanding the fact that the person may be in police custody, and it is clear, therefore, that section 27 deals with an exceptional case and the exceptional case arises when the confession contains information which leads to the discovery of a relevant fact. The reason why a confession made by an accused person in circumstances contemplated by sections 24, 25 and 26 is barred is that there is no guarantee of truth attaching to such a confession. If the accused person is threatened into making a confession or induced to make a confession on promise of some benefit the confession may well be false. Similarly if the accused is in police custody or is making a statement to the police he may do so out of fear. Such confessions are, therefore, not to be proved under the Evidence Act, but where the accused while making his confession gives information which actually leads to the discovery of a

fresh relevant fact, then there is a guarantee that the statement made by the accused was correct for it is immediately corroborated in a most convincing manner by an independent circumstance, namely, the discovery of a relevant fact. Therefore it may be said that in the peculiar circumstances set out in section 27 we can be sure that the accused is speaking the truth and, therefore, what he says can be proved against him. Now where an accused person gives information regarding the whereabouts of an incriminating article and after giving this information proceeds to the spot to recover it and the article is in fact recovered it is clear that his original information is amply corroborated by the subsequent recovery or discovery. The fact that he himself goes to the spot only further strengthens the belief that what he said was true. This act of the accused does not in any way derogate from the value of the original information. In fact it adds to it and the guarantee of truth contemplated by the framers of section 27 is all the greater. If it is safe to admit in evidence a statement made by the accused "I have hidden the weapon of offence in A.'s field" it should be all the safer to admit this statement if in pursuance of it he himself recovers the pistol. The discovery of the relevant fact is accepted as independent corroboration of the information given by the accused and his conduct in pointing out the place from where an article is recovered is even further, stronger and more convincing corroboration of his statement. Therefore a case of the type which we have under consideration rests on stronger grounds and the information contained in Ex. P. H. is clearly admissible under section 27.

Mr. Sethi has stressed the point that as section 27 constitutes an exception to sections 24, 25 and 26 it must be interpreted strictly and narrowly as all exceptions to statutes must be. Further since section 27 makes a confessional statement admissible in evidence a liberal interpretation would react to the detriment of the subject.

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There is no doubt that a strict interpretation must be placed on the wordings of section 27 but this interpretation must not be inconsistent with common sense and with the intention of the Legislature as expressed in the statute, I have already mentioned above that the only reason why a confessional statement is admissible under section 27 is that the discovery of a relevant fact is a guarantee of its veracity, and bearing this circumstance in view, the pointing out of the place by the accused person should not make any difference to the case. Nor will it mean that section 27 is being interpreted too liberally or unjustly. I cannot, therefore, construe the pointing out by the accused as an impediment in the way of the admission of the previous information given by the accused.

I shall now proceed to consider the cases on the subject. The most considered view on the subject has been expressed by the Bombay High Court in a Full Bench decision of five Judges in *Queen-Empress* v. *Nana* (1). The matter was placed before a Bench of five Judges because in a previous decision *Queen-Empress* v. *Kamalia and another* (2),a Division Bench had taken the view that where the prisoner himself produces an incriminating article the recovery was made by his own act and not on any information given by him and so the information could not be proved under section 27. The Bench which considered the case *Queen-Empress* v. *Nana* (1), included Jardine J., who had sat on the Bench before which *Kamalia's case* (2), came up, and all five Judges unanimously expressed the view that information given by the accused leading to the discovery of stolen property from a field was admissible in evidence even where the accused had pointed out the place where the property was. Jardine, J., added a note explaining his position and the change effected in his views since he had heard *Kamalia's case* (2). The provisions of section

(1) I.L.R. 14 Bom. 260
(2) I.L.R. 10 Bom. 595

8, Evidence Act, were considered in *Queen Empress* v. *Nana*. (1), The Judges then observed :—

> "As regards section 27, it has been contended that it is not applicable, as the property, it is said, was not discovered in consequence of the information given by the accused to the police, but by the act of the accused himself on the spot; and the case of *Queen-Empress* v. *Kamalia*, (2), following the expression of opinion by Straight, J., in *Empress of India* v. *Pancham* (3), was cited as an authority for that view. It is clear, however, that it was upon the infromation which the statement gave the police that they accompanied the accused to the spot where the earthen pot was disinterred by the accused, containing the property, and it is equally clear that if it had not been for this information, the property would not have been discovered, and it is, therefore, in accordance with the ordinary use of such terms to say that the discovery of the property in this case was 'the consequence' of the information. It set the police in motion, the immediate consequence being that the police asked the accused to show them the spot, and accompanied him there; but such a proceeding on the part of the police was with the view to the discovery of the property, and was the natural consequence of the information they had received from him, and so connected it with the final result, viz., the discovery of the property as a *causa causans*."

(1) I.L.R. 14 Bom. 260
(2) I.L.R. 10 Bom. 595
(3) I.L.R. 4 All. 198

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The learned Judges then went on to refer to certain authorities which they approved of and observed :—

> "Whether the statement made by the accused is of such a detailed description as to enable the police themselves to discover the property, or only of such a nature as to require his assistance in discovering the exact spot where the property is, cannot, in our opinion, affect the question. In both cases there is the guarantee afforded by the discovery of the property for the correctness of the accused's statement, and which is presumably the ground of the admission of the exception to the general rule : see Taylor on Evidence, section 824. The distinction sought to be drawn appears to us, therefore, to be without substance."

In *Ganu Chandra Kashid* v. *Emperor*, (1), a Division Bench of the Bombay High Court followed the principle laid down in *Queen-Empress* v. *Nana* (2). In that case too the accused gave information regarding the whereabouts of stolen property and then proceeded to point it out. The statement made by the accused was held to be admissible. A Full Bench consisting of three Judges of the Bombay High Court again considered this matter in *Rama Shidappa Thorali and others* v. *The State* (3), and relying upon the principles laid down in *Nana's case* (2) held the statement made by an accused person to be admissible even when the accused had himself pointed out the spot from where the property was recovered.

Three cases of the Madras High Court dealing with this matter were cited before us. In all of them the principle laid down in *Nana's case* (2),

(1) A.I.R. 1932 Bom. 286
(2) I.L.R. 14 Bom. 260
(3) A.I.R 1952 Bom. 299

was approved and followed. The first case is a Single Bench decision by Sadasiva Aiyer, J., in *Manjunathaya* v. *Emperor* (1). The learned Judge observed in this case :—

> "I cannot accept the argument that the Police or somebody under the directions of the Police did not take the property from the place where the first accused himself took the property out of the rubbish heap indicates that the statement is not connected with the discovery and is, therefore, inadmissible in evidence."

The second case is *In re Sogiamathu Padayachi* (2). The learned Judge who heard this case does not refer to *Nana's case* (3), but referring to some other cases he expressed the view that:—

> "The statement of an accused while in Police custody that he had in posession certain stolen property is admissible in evidence even though he himself produces the property, and it makes no difference whether the accused himself digs out the property from the place where it is hidden or whether on information given by him someone else digs up the ground and produces the property."

The third case is *Queen-Empress* v. *Commer Sahib* (4). In this case the prisoner made a statement and then took the Police party to a village and demanded certain clothes from a person with whom he had previously deposited them. It was held that the information given by the prisoner was admissible in evidence.

The Calcutta High Court considered this matter in *The Deputy Legal Rememb rancer* v.

(1) 2 C.W.N. 257
(2) 27 Cr. L.J. 394
(3) I.L.R. 14 Bom. 260
(4) I.L.R. 12 Mad. 153

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Chena Nashve, (1). In this case the Judges referred to *Nana's Case* (2) and held that where an accused person makes a statement and then points out a spot from where stolen property is recovered his statement is admissible in evidence. To the same effect is the decision in *Amiruddin Ahmed* v. *Emperor* (3). The Judges held that though the accused had himself produced the stolen articles, so much of his anterior statements as led to the discovery were admissible under section 27 of the Evidence Act. *Queen-Empress* v. *Nana* (2) is referred to in this case.

The Punjab Chief Court and the Lahore High Court have taken exactly the same view in a number of cases. The first of these, cited before us is *Isher Singh* v. *Emperor* (4), heard by Scott-Smith and Shadi Lal, JJ. Three other cases are *Emperor* v. *Mela* (5), heard by Zafar Ali and Jai Lal, JJ., *Karam Din* v. *Emperor* (6), in which this point arose only indirectly, and *Nawab Din, v. Emperor* (7). This Court has also expressed the same view in two Division Bench cases *The State* v. *Mohinder Singh* (8), and *The State* v. *Lehna Singh* (9).

It is thus seen that there is a long sequence of decisions in which it has been laid down that the information given by the accused person is admissible in evidence if it leads to the discovery of a relevant fact whether the actual recovery is made by the Police acting on the information or by the accused himself in pursuance of the information. As against these cases some Judges have expressed the contrary view and I shall now briefly notice these cases.

The earliest decision is *Empress of India* v. *Pancham* (10). In that case a person was accused

(1) 2 C.W.N. 257
(2) I.L.R. 14 Bom. 260
(3) I.L.R. 45 Cal. 557
(4) 17 Cr. L.J. 183
(5) 29 Cr. L.J. 967
(6) A.I.R. 1929 Lah. 338
(7) A.I.R. 1933 Lah. 516
(8) A.I.R. 1953 Pb. 81
(9) A.I.R. 1953 Pb. 101
(10) I.L.R. 4 All. 198

of the murder of a girl. A Division Bench of the Allahabad High Court held that the statement regarding the girl's anklets was not admissible in evidence because no fresh fact had been discovered. The *ratio decidendi* in this case was not that the accused had pointed out the spot himself but that the spot was already known to the Police, being the spot from where the body had been recovered. Therefore the further information given by the accused regarding the anklets did not lead to the discovery of any fresh fact and that case, therefore, is distinguishable from the case before us. *Queen-Empress* v. *Kamalia* (1), was a case in which a Division Bench of the Bombay High Court held that when a prisoner produces stolen property himself the discovery is the result of the prisoner's own act and not of any information given by him. So a statement regarding the whereabouts of such property is not admissible in evidence. The point now before us was considered directly in that case and the decision was given by Birdwood and Jardine, JJ. I have already observed above that in the Full Bench case *Queen-Empress* v. *Nana* (2), which came up before five Judges of the Bombay High Court, Jardine, J. dissociated himself from the view expressed in *Kamalia's case* (1), and it may, therefore, be assumed that the view expressed in *Kamalia's* case (1) was disapproved and the contrary view has prevailed in the Bombay High Court until the present day. It is only necessary to mention two other cases cited before us *Adu Shikdar* v. *Queen Empress* (3) and *Santa Singh* v. *The Crown* (4). These two cases do not, properly speaking, support Mr Sethi's contention. There are, however, two Single Bench decisions of Weston, C.J., of this Court, in which the clear view expressed was that when an accused makes a statement, and then points out the spot from where some property is recovered, the previous statement is not admissible in evidence. The

(1) I.L.R. 10 Bom. 595
(2) I.L.R. 14 Bom. 260
(3) I.L.R. 11 Cal. 635
(4) 171 P.L.R. 1913.

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reasons given by Weston, C.J., do not appear to me to be sound and it is significant that these views were never expressed by him when he was a member of the Bombay High Court obviously for the reason that the Full Bench decision in *Nana's case* (1) was binding upon him. In Criminal Revision No. 961 of 1951 Weston, C.J., was considering the case of a man who gave information regarding the whereabouts of a rifle and a pistol and then led the police to the place from where these articles were recovered. He observed :—

> "In such circumstances I myself have always been unable to understand how section 27 can apply to the statement, which is in no way the cause of the articles being found. I am aware that there are certain rulings which on the argument that the matter forms one transaction hold that the discovery can be said to be in consequence of the information given. I prefer, however, the view I have set out."

Weston, C.J., gave no reasons for preferring the view and his decision is really based upon a personal preference. As I have stated above there are two reasons for admitting the statement. In the first place the recovery is made as a result of the knowledge possessed by the accused and this knowledge is expressed first in the form of a statement and then in the form of pointing out. The source is really one. It is not so much that the matter forms one transaction as that the discovery is made as the result of information from one source. The other reason is that the truth of the statement made is guaranteed by the pointing out and also by the recovery. The view expressed by Weston, C.J., therefore, appears to me to be erroneous. In Criminal Revision No. 883, of 1951, Weston, C.J., took the same view, but in this case, too, he did not give any reasons.

(1) I.L.R. 14 Bom. 260

I am, therefore, of the opinion that the answer to the question referred to us must be in the affirmative.

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FALSHAW, J.—I have had the advantage of perusing the judgment which my learned brother Khosla, J., proposes to deliver, and agree entirely with the view he has expressed. There is undoubtedly something to be said for the other view, but the fact remains that throughout the history of the High Courts in India only a tiny minority of learned Judges has placed the narrow construction on the words of section 27 that if an accused makes a statement and then follows it up with active participation in the recovery of the object concerned, his statement becomes inadmissible because his act intervenes between it and the recovery. On the other hand to my mind, much more natural and reasonable construction of the words in the section was laid down many years ago by five learned Judges of the Bombay High Court, and as far as we would discover this view had never since been dissented from or even challenged in any reported case, until Weston, C.J., expressed the opposite view in some recent decisions without fully discussing the matter. In fact the position has been clearly set out by Sir John Beaumont in the Privy Council decision in *Pulukuri Kotayya* v. *Emperor* (1), which was actually cited by Mr. Sethi. This decision was not really relevant, as it concerned how much of a statement made by an accused was admissible, and not whether the statement as a whole became inadmissible because an act of the accused intervened between the statement and the recovery. Sir John Beaumont, a former Chief Justice of the Bombay High Court, has observed, "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 ac-

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(1) I.L.R. 1948 Mad. 1

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cused." This may be an *obiter dictum*, but it clearly states the accepted view of the law, and it is only on very rare occasions that the point now under consideration has been raised on behalf of the accused.

I cannot express my own view more clearly than I did in *The State* v. *Lehna Singh* (1), where I summed the matter up as follows:—

> "It would certainly appear to me to be taking a very narrow view of the meaning of the words "discovered in consequence of information" to hold that when an accused says that he has hidden a certain object in a certain place, and then takes the police there and produces the object from the hiding place, the recovery is not in consequence of the statement, since it is clear that without the statement there would be no recovery. According to this narrow view the statement would be admissible only if, after the accused had made it, the police left him where he was and then themselves went to the place mentioned by the accused and found the object for themselves, but I cannot believe that it was the intention of the law that the fact that the accused himself also assisted in the recovery would make the statement, which preceded and, in the ordinary sense of the word, led to it, inadmissible....."

I, therefore, agree that the question framed should be answered in the affirmative.

Harnam Singh, J.

HARNAM SINGH, J.—I agree that the answer to the question referred to us for decision should be in the affirmative.

In this reference the question of law that arises for decision turns upon the construction of

(1) A.I.R. 1953 Punj. 101

section 27 of the Indian Evidence Act, 1872, hereinafter referred to as the Act.

In brief the facts giving rise to the reference are these: On the 1st of February 1950, Ram Rachhpal, accused, gave information to Bakhshi Jai Dev, P.W. 29, that he had torn the currency chest slip and thrown the torn pieces in the bushes on the Railway Road, opposite the tahsil building. Bakhshi Jai Dev prepared memo, Exhibit P.H., about the information given to him by the accused. Going with Bakhshi Jai Dev and other members of the police party to the bushes on the Railway Road, opposite the tahsil building Ram Rachhpal picked up the torn pieces of the currency chest slip, Exhibit P.D., and gave those pieces to Bakhshi Jai Dev, P.W. 29. In the Court of first instance evidence was examined with regard to the information given by the accused contained in the memo, Exhibit P.H., and with regard to the recovery of 27 torn pieces of the currency chest slip. Memo, Exhibit P.J., evidences the recovery of the torn pieces of the currency chest slip.

In arguments it is said that the information contained in the memo, Exhibit P.H., cannot be proved under section 27 of the Act for it was by the *act* of the accused and not from the *information* given by him, the discovery of the torn pieces of the currency chest slip took place.

In construing section 27 of the Act Sir Shadi Lal, C.J. (Harrison, Tek Chand, Dalip Singh and Agha Haidar, JJ., concurring), said in *Sukhan* v. *The Crown* (1) :—

> "The language of section 27, when analysed, shows that the Legislature has prescribed the following two limitations in order to define the scope of the information provable against the accused :— (1) The information must be such as has caused the discovery of the fact. This condition follows from the phrase "discovered in consequence of information" and also from the expression

(1) I.L.R. 10 Lah. 283

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"thereby discovered" used by the Legislature with reference to the fact. In other words, the fact must be the consequence, and the information the cause of its discovery. The information and the fact should be connected with each other as cause and effect. If any portion of the information does not satisfy this test, it should be excluded. (2). The information must 'relate distinctly' to the fact discovered. The word 'relate' means 'to have reference to' or 'to connect' and the the word 'distinctly' means 'clearly, unmistakably, decidedly or indubitably'. To put it in a different language, the information must be clearly connected with the fact. ******* These conditions, when combined, lead us to the conclusion that only that portion of the information is provable which was the *immediate or proximate* cause of the discovery of the fact."

From the orders recorded by Fforde and Jai Lal, JJ., in *Sukhan* v. *The Crown* (1), it is plain that Their Lordships were in substantial agreement with Sir Shadi Lal, C.J., in regard to the analysis of section 27 of the Act cited above.

In *Pulukuri Kottaya* v. *King Emperor* (2), Sir John Beaumont delivering the judgment of Their Lordships of the Privy Council said :—

"The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely

(1) I.L.R. 10 Lah. 283
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allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments said to be connected with crime of which the informant is accused."

In *Pulukuri Kottaya* v. *King Emperor* (1) Their Lordships of the Privy Council expressed their agreement with the construction placed upon section 27 of the Act in *Sukhan* v. *The Crown* (2).

In Empress of India v. *Pancham* (3), decided in 1882 one Pancham accused of the murder of a girl gave information to a Police Officer that he had thrown the girl's anklets at the scene of murder and would point them out. On the following day he accompanied the Police Officer to the place where the girl's body had been found and pointed out the anklets. Pancham was convicted by the Court of Session and sentenced to death. In the High Court the appeal came up for hearing before Stuart, C.J., and Brodhurst, J. In considering the matter Stuart, C.J. thought that the conviction should be affirmed while Brodhurst, J., thought that the conviction should be quashed on the ground that the evidence was insufficient for conviction. In that situation the case was laid before Straight, J.. In delivering his opinion Straight, J., said :—

"It is obvious that the anklets were not discovered in consequence of what he had said, for on the contrary the appellant himself went with the Police and pointed out the spot where they were lying. In short it was by his own *act*, and not from any *information* given by him, that the discovery took place. It seems

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(3) I.L.R. 4 All. 198

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to me that the obvious intention of the Legislature in passing the provisions contained in sections 25 and 26 of the Evidence Act was to deter the police from extorting confessions, by rendering such confessions absolutely inadmissible in proof, unless made in the immediate presence of a Magistrate. It is manifest that the prohibition laid down in these two sections must be strictly applied, and any relaxation of it in accordance with the proviso to section 27 should be sparingly admitted and only to the extent of so much of the accused's statement as directly and distinctly relates to the fact alleged to have been discovered in consequence of it."

In *Queen-Empress* v. *Kamalia and another*, (1), Jardine, J. (Birdwood, J., concurring), followed the rule laid down by Straight, J., in *Empress of India* v. *Pancham* (2).

In *Queen-Empress* v. *Nana* (3), an identical question was considered by five Judges of the Bombay High Court. In that case the police patel gave evidence :—

> "We asked Nana where the property was. He replied that he had kept it, and would show. He said that he had buried the property in the fields. We then followed Nana. (We, i.e., the chief constable and the *Panch*). Nana went and stood at the place where the property was buried, and with his own hand disinterred the earthen pot in which the property was kept."

In *Queen-Empress* v. *Nana* (3), counsel for the appellant maintained that as the property was not discovered in consequence

(1) I.L.R. 10 Bom. 595
(2) I.L.R 4 All. 198
(3) I.L.R 14 Bom. 260

of the *information* given by the accused to the Police but by act of the accused himself on the spot, the information was not receivable in evidence under section 27 of the Act. In that case *Queen-Empress* v. *Kamalia and another* (1), and *Empress of India* v. *Pancham* (2), were cited to be authority for the view put forward.

In deciding the matter Sargent, C.J. (Bayley, Scott and Parsons, JJ., concurring), said:—

> "It is clear, however, that it was upon the information which the statement gave the police that they accompanied the accused to the spot where the earthen pot was disinterred by the accused containing the property, and it is equally clear that, if it had not been for this information, the property would not have been discovered, and it is, therefore, in accordance with the ordinary use of such terms to say that the discovery of the property in this case was "the consequence" of the information. It set the Police in motion, the immediate consequence being that the Police asked the accused to show them the spot, and accompanied him there; but such a proceeding on the part of the Police was with the view to the discovery of the property, and was the natural consequence of the information they had received from him, and so connected it with the final result, viz., the discovery of the property as a *causa causans*."

In concurring with Sargent, C.J., Jardine, J., who gave the judgment in *Queen-Empress* v. *Kamalia and another* (1), said:—

> "I am convinced by the ceasoning of the learned Chief Justice, that the taking to the field and the later unearthing of the property were natural consequences of Nana's first statements."

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In Wharton's Law Lexicon '*causa causans*' is defined to be the last link in the chain of causation. In this connection *Cullerne* v. *London and Subarban General Permanent Building Society,* (1) may be seen. If so, the argument may be that the information contained in the memo. Exhibit P.H., was not the '*causa causans*' of the discovery, but only a *causa sine qua non.*

In 1889 *Queen-Empress* v. *Nana* (2) was decided. From that time, upwards of sixty years, to the present, thousands of cases arising under section 27 of the Act have been decided by the Courts of this country on the basis of the rule laid down in that case. In *Santa Singh* v. *The Crown* (3), *Queen-Empress* v. *Kamalia and another* (4) was followed. In that case *Queen-Empress* v. *Nana* (2). was not cited. Again, by Act XV of 1941, the words "or to affect the provisions of section 27 of that Act" were added in sub-section (2) of section 162 of the Code of Criminal Procedure, hereinafter referred to as the Code. Indeed, before the amendment of section 162 (2) of the Code by Act XV of 1941 section 162 (2) of the Code had already been amended to the same effect by U.P. Act IX of 1940, N.W.F.P. Act VIII of 1940 Punjab Act II of 1940 and Bombay Act XII of 1941. Presumably, the Legislature accepted the construction placed upon section 27 of the Act in *Queen-Empress* v. *Nana* (2), to be correct when it enacted Act XV of 1941. That being the position of matters, I would, in the words of Lord O'Hagan said in *Dudgeon* v. *Pembroke* (5), say that if the public interest requires a change in the law so well established, it should be made by the authority of the Legislature. In my judgment the case of *Queen-Empress* v. *Nana* (2) is decisive of the question arising in this reference.

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(1) (1890) 25 Q.B.D. 485 at 488-489
(2) I.L.R. 14 Bom. 260 (F.B.)
(3) 171 P.L.R. 1913
(4) I.L.R. 10 Bom. 595
(5) (1876-77) 2 A.C. 284