

transaction in view of his finding as to consideration. In any case, refusal to confirm the transaction on the grounds given by him is not justified.

Bashesar  
Dayal  
v.  
Custodian-  
Custodian-  
Property

For these reasons, I accept this petition and set aside the order of the Deputy Custodian-General, dated 15th September, 1956. It will now be open to him to decide the application of the petitioner for confirmation of the transaction dated 17th February, 1948, in accordance with law. In the circumstances, I would leave the parties to bear their own costs.

Bishan Narain, J.

R.S.

REVISIONAL CRIMINAL

Before G. D. Khosla, C.J., and Shamsher Bahadur, J.

DEVI RAM,—Petitioner

versus

THE STATE,—Respondent

Criminal Revision No. 310-D of 1959

*Indian Evidence Act (I of 1872)—Sections 25, 26 and 27—Respective scope of—Confessional statement by a person leading to discovery of some fresh material at the time when he was neither an accused person nor in police custody—Whether can be proved against him when subsequently he is accused of an offence.*

*Held*, that under section 25 of the Indian Evidence Act a confession, which is made to a police officer, cannot be proved against the person who is accused of an offence. This section does not set out anything regarding the state of the person who is making the confession. It is not necessary that the confession should be made when he is in police custody, nor is it necessary that he must be an accused person. The section merely means that when an accused person is being tried, a confession, which he, on a previous occasion, made to a police officer, cannot be proved against him. It is not specified that the accused

1966

August 4th

person must have been an accused person at the time of making the statement, nor need he have been in police custody. Section 25 applies to a case where a confessional statement is made by a person who was not an accused person at the time of making the statement but is being tried subsequently. Section 26 deals with the case of a person who is in police custody at the time he makes the statement. It, therefore, follows of necessity that he must be an accused person, because only an accused person could be in the custody of police when he is making a confessional statement. Therefore, when a confessional statement is made by an accused person who is in police custody, that statement is inadmissible in evidence unless it is made in the immediate presence of a Magistrate.

*Held*, that section 27 of the Indian Evidence Act apparently provides an exception to sections 25 and 26, but a careful reading shows that it is not really an exception to section 25 at all but only an exception to section 26, because section 27 contains the phrase "in the custody of a Police Officer". The confessional statement, therefore, which is being considered in section 27, is a statement which is made by a person in police custody. It is also made by a person "accused of an offence". Such confessional statements are admissible in evidence provided they have led to the discovery of a fresh fact. If the statement is made by a person who is a stranger or is a prosecution witness, then such statement is not admissible in evidence despite the fact that it amounts to a confession and does lead to the discovery of a new fact and the maker of the statement is subsequently accused of committing the offence.

*Petition under section 439, Criminal Procedure Code, for revision of the order of Shri P. P. R. Sawheny, Additional Sessions Judge, Delhi, dated 20th August, 1959, affirming that of Shri R. M. Vats, Magistrate, 1st Class, Delhi, dated 2nd June, 1959, convicting the petitioner.*

*Charge : Under section 409 of, Indian Penal Code.*

*Sentence : Two years Rigorous Imprisonment and to pay a fine of Rs. 2,000, or in default to undergo further Rigorous Imprisonment for a period of nine months.*

S. S. SHARMA, ADVOCATE, for the Petitioner.

BISHAMBAR DAYAL, ADVOCATE, for the Respondent.

## JUDGMENT

KHOSLA, C.J.—This matter has been referred to us by Grover, J., because it raised an important question regarding the interpretation to be placed on the provisions of section 27 of the Indian Evidence Act. The main matter for our consideration is whether a confessional statement made by a person, which leads to the discovery of some fresh material, can be proved against that person when he is subsequently accused of an offence. At the time he made the confessional statement he was neither an accused person nor was he in police custody.

Khosla, C. J.

The facts briefly are that on the 28th of June, 1958, the petitioner, Devi Ram, who is a peon of the Delhi Corporation, was entrusted with a sum of money (Rs. 10,249.53 nP.) which he had to deposit in the Zonal Office, Shahdara. The petitioner set out on his bicycle on the morning of the 28th of June and later at 1 p.m. he made a report to the police that he had been waylaid by three persons who had thrown him down from his bicycle, robbed him of the bag containing the sum of money entrusted to him and also inflicted a knife injury on his hand. The petitioner was examined by a doctor who found two simple injuries on his person. Both of them were incised wounds skin deep. One of them was one inch long and the other one was only  $\frac{1}{4}$ " long. One injury was on the palm of the left hand and the other on the left thigh. There was a corresponding cut on his trousers. The police took up the investigation of the case, and on the morning of the 29th the petitioner is alleged to have made a statement that he had handed over the money to his co-villager, Raghbir Singh. In pursuance of this statement the petitioner was taken to the village and there

Devi Ram  
v.  
The State  

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Khosla, C. J.

he asked Raghbir Singh to produce the bag which he had entrusted to him the previous evening. Raghbir Singh brought out the bag, and from this bag almost the entire sum of money, which had been entrusted to the petitioner, was recovered. The petitioner was then sent up to stand his trial upon a charge under section 409, Indian Penal Code. The evidence against him consisted of—

- (1) his own confessional statement which led to the recovery of almost the entire embezzled money from Raghbir Singh ;
- (2) the statement of Raghbir Singh that the bag containing the money had been entrusted to him by the petitioner on the day of occurrence;
- (3) the recovery of the money itself; and
- (4) the circumstance that the report made by him was obviously false, because the injuries, which he sustained, were not explained by the sort of assault which he alleged was made upon him.

Upon this evidence the trial Court and the learned Sessions Judge, who heard the appeal, found the petitioner guilty. He moved this Court on the revision side, and it was argued on his behalf that the statement, which he made to the police officer on the 29th morning, was inadmissible in evidence, because at the time he made the statement he was not an accused person, nor was he in police custody, and, therefore, in terms, section 27, Indian Evidence Act, could not apply to his case.

We have examined the case from all aspects and we find that even if the statement is left out

of consideration, there is ample material to warrant the conviction of the petitioner, but since the question of the interpretation of section 27 is an important one and there is an apparent conflict of decisions on the matter, we have taken pains to consider this aspect of the case and have heard the learned counsel for the petitioner and the learned counsel for the State at some length. We have been led through the various decisions which have a bearing on the matter and we find that the statement, which the petitioner made, cannot be admitted in evidence under section 27 of the Indian Evidence Act.

Devi Ram  
v.  
The State  

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Khosla, C. J.

In order to understand the full significance of section 27, it is necessary to consider the two previous sections also, because section 27 is an exception grafted on the provisions of sections 25 and 26. These three sections are in the following terms :—

“25. No confession made to a Police Officer shall be proved as against person accused of any offence.”

“26. No confession made by any person whilst he is in the custody of a Police Officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.”

“27. Provided that, when any fact is deposited 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.”

Devi Ram  
v.  
The State

Khosla, C. J.

Under section 25 a confession, which is made to a police officer, cannot be proved against the person who is accused of an offence. This section does not set out anything regarding the state of the person who is making the confession. It is not necessary that the confession should be made when he is in police custody, nor is it necessary that he must be an accused person. The section merely means that when an accused person is being tried, a confession, which he, on a previous occasion, made to a police officer, cannot be proved against him. It is not specified that the accused person must have been an accused person at the time of making the statement, nor need he have been in police custody. This meaning of section 25 has been accepted by Courts and there are rulings to the effect that section 25 applies to a case where a confessional statement is made by a person who was not an accused person at the time of making the statement but is being tried subsequently. Section 26 deals with the case of a person who is in police custody at the time he makes the statement. It, therefore, follows of necessity that he must be an accused person, because only an accused person could be in the custody of police when he is making a confessional statement. Therefore, when a confessional statement is made by an accused person who is in police custody, that statement is inadmissible in evidence unless it is made in the immediate presence of a Magistrate. Section 27, however, apparently provides an exception to these two sections, but a careful reading shows that it is not really an exception to section 25 at all but only an exception to section 26, because section 27 contains the phrase "in the custody of a Police Officer". The confessional statement, therefore, which is being considered in section 27, is a statement which is made by a person in police custody. It is also made by a

person "accused of an offence". Now, if we consider these two phrases together, it follows inevitably that the person, when he made the statement, was an accused person and he was also in police custody. To place any other interpretation upon the wording of section 27, would be to do violence not only to its spirit but also to its language, and, therefore, it is quite clear that only those confessional statements are being considered under section 27 which are made by accused persons while they are in police custody. Such confessional statements are admissible in evidence provided they have led to the discovery of a fresh fact. If the statement is made by a person who is a stranger or is a prosecution witness, then such statement is not admissible in evidence despite the fact that it amounts to a confession and does lead to the discovery of a new fact. In the present case we find that the petitioner was not an accused person. He was in the position of a prosecution witness who had made a report of having been robbed on the previous day. When he began making the statement on the 29th morning, his position was still that of a prosecution witness. When he finished making the statement, he had, no doubt, implicated himself, and the police may have begun to treat him as an accused person and, in a sense, he could also be said to have been in police custody, because when he had finished making the statement, the police must have placed restrictions upon his movements. But this state of affairs prevailed only after he had completed making his confessional statement. When he began making it and when he was in the course of making it, he could not be said to be an accused person, nor could it be said that he was in police custody. That being so, section 27 could not make that statement admissible in evidence. This matter was considered by

Devi Ram  
v.  
The State  

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Khosla, C. J.

Devi Ram  
v.  
The State  

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Khosla, C. J.

Abdul Qadir, J., in *Jalla v. Emperor* (1). In that case the dead body of a person was discovered as the result of a statement made by a person who was not in police custody and who was not an accused person. The police subsequently decided to prosecute him, and his confessional statement, which had led to the discovery of the dead body, was sought to be proved. Abdul Qadir J., took the view that this statement could not be proved, because it did not come within the purview of section 27, Indian Evidence Act. A similar question came up for consideration before the Lahore High Court in *Chetu v. Emperor* (2), and Teja Singh, J., took the same view. He held that a confessional statement made by a person at a stage when he is not accused of any offence, and as a result of which certain articles are recovered, is not admissible in evidence against that person under section 27 when he is subsequently sought to be prosecuted in respect of those articles. A Division Bench of the Andhra High Court took precisely the same view in *In re Malladi Ramaiah and another* (3). Head-note (a), which reproduces substantially the decision of the Court, is in the following terms :—

“Before the provisions of section 27, Evidence Act, are attracted, two essential requirements should be satisfied, namely, that the person making the statement is accused of any offence and is also in the custody of a police officer. It is only then that the information leading to the discovery could be received in evidence. If either of the two conditions is not complied with, the statement

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(1) A.I.R. 1931 Lah. 278.  
(2) A.I.R. 1948 Lah. 69.  
(3) A.I.R. 1956 Andh. 56.



would fall outside the purview of that section."

Devi Ram  
v.  
The State

With this observation I agree with great respect.

Khosla, C. J.

Our attention has been drawn to a decision of a Special Bench of the Patna High Court in *Santokhi Beldar and another v. Emperor* (1). In this case the facts were that a certain person was found to have been murdered. Nobody was suspected, but during the course of the investigation the Tahsildar told the police that Santokhi Beldar had come to him and confessed to the murder. Santokhi Beldar was thereafter produced before the police and he made a confessional statement which led to the discovery of certain fresh facts. Santokhi Beldar and some other persons were then prosecuted for the murder, and the statement, which Santokhi Beldar had made to the Sub-Inspector of Police, was proved in evidence against him. It was argued on that occasion that this statement was not admissible in evidence as it did not fall within the purview of section 27 of the Indian Evidence Act. The Special Bench of the Patna High Court, however, took the view that the statement was admissible in evidence because Santokhi Beldar had, by his confessional statement, made himself into an accused person and when he appeared before the Sub-Inspector of Police at the instance of the Tahsildar, he was not a free agent, at liberty to go where he liked, he was virtually in police custody and remained so thereafter. As far as the particular facts of that case are concerned, the view taken by the Special Bench is perfectly correct. Santokhi Beldar had, by appearing before the Tahsildar and speaking to him about the murder which he had committed, changed his status from that of an innocent person

(1) A.I.R. 1933 Pat. 149.

Devi Ram  
v.  
The State  
Khosla, C. J.

to a person who was suspected or accused of the crime of murder. Thereafter he was taken to the Sub-Inspector of Police—he was taken not as an innocent person or as a witness but as an accused person who was confessing to his own crime. When his interrogation began he was already an accused person and he was also in police custody, because in view of what he had stated to the Tahsildar, the police would not have allowed him to go anywhere he liked. That being so, Santokhi Beldar could be considered to be an accused person in the case and also a person in police custody. Therefore, as far as the facts of that particular case are concerned, the decision of the Special Bench was perfectly correct, but with great respect to the learned Judges, the proposition, which they laid down, is not of universal application and, considered in the abstract, it does violence to the wording of section 27, because it cannot be said that every time a self-confessing person offers to discover some new fact, he immediately becomes an accused person and a person in police custody. The petitioner before us, for instance, was clearly a prosecution witness in a case against some unknown persons who, he had alleged, had robbed him. When he began making his statement, he could, by no stretch of meaning, be termed as an accused person or a person in police custody. The proposition laid down by the Special Bench was considered by a Division Bench of the Bombay High Court in *State v. Memon, Mohamad Husain Ismail and another* (1), and Patel J., who wrote the judgment, pushed the argument to its ultimate conclusion and made the observation—

“We are therefore of opinion that the words information received from ‘a person

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(1) A.I.R. 1959 Bom. 534.

accused of any offence' in section 27 cannot be read to mean that he must be an accused when he gives the information but would include a person if he became subsequently an accused person at the time when that statement is sought to be received in evidence against him."

Devi Ram  
v.  
The State

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Khosla, C. J.

With great respect to Patel, J., his observation does not follow logically from the decision of the Patna Special Bench, although, in a sense, he has drawn assistance from the abstract proposition which the Special Bench pronounced. The observation of Patel, J., in my view does violence to the provisions of section 27, because section 27 clearly contemplates a person making a statement while he is in police custody. Such a person must obviously be an accused person. It cannot be a person who is subsequently accused of an offence. Therefore, the observation, which I have cited above, lays down, in my view, incorrect law and an erroneous interpretation of section 27. I am, therefore, of the view that the two decisions of the Punjab High Court and the decision of the Andhra High Court lay down the correct law and that section 27 makes only such confessional statements admissible which are made by accused persons while they are in police custody provided, of course, the statements lead to the discovery of some fresh facts.

In this view of the matter, the confessional statement made by the petitioner to the police must be left out of consideration. There is, however, ample material against him to justify his conviction. "Proof" has been defined in section 3 of the Indian Evidence Act, and a fact can be said to have been proved when "after considering the

Devi Ram  
v.  
The State  

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Khosla, C. J.

matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists”.

The facts in this case are that a large sum of money was entrusted to the petitioner. The evidence is that in such cases the peon was supposed to travel by bus. The petitioner did not do so, but instead travelled by bicycle. He says that he was set upon by three persons whom he did not know. Their faces were muffled, but he was able to give their description to the police subsequently. These persons followed him and made him fall down from the bicycle. One of them applied some chemical to his nose which made him lose his senses. He was also inflicted an injury upon his hand. Subsequently it was found that he had two injuries, both simple and of a very minor nature. When questioned about the second injury, he said that he did not remember. He apparently meant to reply that this injury was inflicted upon him after he had become unconscious. Before twenty-four hours had elapsed, the money was recovered from Raghbir Singh, a co-villager of the petitioner. Raghbir Singh himself appeared in Court and stated that the petitioner had handed over the bag containing the money to him. Raghbir Singh did not claim the money to be his own. When we consider the nature of the report made by the petitioner and the facts alleged by him, we are driven to the conclusion that his story was a false one. It is impossible to believe that three persons could have attacked him in this manner and taken away his bag containing the money and yet inflicted two minor injuries only which, in the opinion of the doctor, could well have been self-inflicted. These men were entirely unknown

to him. Their faces were, no doubt, muffled, but if one of them had belonged to his village and was a person, who was well-known to him as Raghbir Singh, he could not have failed to recognise him despite Raghbir Singh's attempt to muffle his face and conceal his identity. Therefore, it is quite clear that the petitioner was not set upon by Raghbir Singh, and if he was, then the petitioner was not an innocent victim, but a willing accomplice of Raghbir Singh. It follows, therefore, that Raghbir Singh's statement that the money was given to him by the petitioner, must be believed. No man would willingly disclaim such a large amount of money if it belonged to him. The recovery of Rs. 9,821 is an undisputed fact. This money clearly does not belong to Raghbir Singh. Therefore, it must have been given to him by someone; and that someone, Raghbir Singh says, is the petitioner. There is, therefore, no reason to disbelieve Raghbir Singh in this respect. If once we hold that the petitioner gave this money to Raghbir Singh, then it follows of necessity that he did so guiltily and with criminal intent, because after giving it to Raghbir Singh, he made a false report of robbery to the police. There is, therefore, in my view, sufficient material on the record to prove the petitioner's guilt. The circumstances of the case can lead only to one conclusion, namely, the petitioner embezzled the money by handing it to Raghbir Singh, who was his friend and who could be trusted and then inflicting two minor injuries upon his person, he made a false report. In this view of the matter, the conviction and the sentence awarded to the petitioner must be upheld and this petition dismissed.

Devi Ram,  
v.  
The State,

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Khosla, C. J.

SHAMSHER BAHADUR, J.—I agree.

R.S.