

(2002) 05 AHC CK 0149**Allahabad High Court****Case No:** Criminal Appeal No. 2494 of 2001

Bijendra Singh

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision: May 14, 2002**Acts Referred:**

- Evidence Act, 1872 - Section 114, 25, 26, 27
- Penal Code, 1860 (IPC) - Section 201, 302, 364, 376(2)

Citation: (2002) CriLJ 3671**Hon'ble Judges:** J.C. Gupta, J; Imtiyaz Murtaza, J**Bench:** Division Bench**Advocate:** I.M. Khan and G.K. Srivastava, for the Appellant; A.G.A., for the Respondent**Final Decision:** Allowed**Judgement**

Imtiyaz Murtaza, J.

The present appeal has been filed against the judgment and order dated 30-7-2001 passed by X Addl. Sessions Judge, Aligarh in Session Trial No. 1193 of 1999 whereby the appellant is convicted u/s 364 I.P.C. and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs. 5000/-; u/s 376(2) I.P.C. and sentenced to undergo rigorous imprisonment for life and a fine of Rs. 5000/-; u/s 201 I.P.C. and sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs. 5.000/- and u/s 302 IPC and sentenced to death.

2. The brief facts of the case are that complainant Bijendra Singh resides in front of P.A. Batalian in mohalla Sukhrawali police station Quarsi district Aligarh along with his family. One constable Subhash Singh of 45 Batalian comes to his house to take milk. On 29-1-1998 at about 9.00 a.m. Subhash along with Bijendra Singh Solanki constable of the same Batalian came to his house. The complainant's elder daughter Km. Laxmi works as a Nurse in Ravi Rai Hospital and next to her Km. Shimla works of tailoring. Constable Bijendra Singh Solanki asked him about the

marriage of his daughter and promised to get her married. He agreed and Solanki further told him that he will get them married on the side of Bihar. He had refused on the ground that all his relatives live nearby. It is further stated that Bijendra Solanki had threatened him. It is further stated that on 30-1-1998 in the evening complainant and his wife Smt. Shakuntala Devi and daughter Babli aged about 5 years were sleeping and the other children had gone in the house of his neighbour Ved Kumari for watching T.V. At about 10.00 p.m. the wife of complainant woke up and found that Babli was not on the cot: She was searched and then they went to see Subhash Singh and he met them but Bijendra Solanki was not there. When they were searching Rajendra Singh, Ram Veer and Rajesh Singh told him that they had seen Bijendra Singh Solanki loitering in front of his house at 8.30 p.m. It is stated in the report that Bijendra Solanki had abducted and murdered her and the dead body had been concealed. The written report was lodged by Bijendra Singh at police station, Quarsi on 31-1-1998 at 6.35 a.m. The distance of police station is 2 kilometres. The dead body of deceased Babli was recovered on 1-2-1998 from a wheat field. The post mortem was conducted by P.W. 4, Dr. Shahid Mohammad on 2-2-1998. He had found the following ante-mortem injuries on the body of deceased :-

1. Lacerated wound 4 cm x 4 cm muscle and bone deep on left side cheek part of cheek with the muscles and skin absent from the wound ;
2. Circular teeth bite marks 2 cm x 2 cm on the middle of forehead just above the Nose;
3. Multiple abrasion like finger nail marks in an area of 5 cm x 2 cm on just below Chin;
4. Circular teeth bite marks 2 cm x 2 cm on the left side Chest just above Nipple;
5. Abrasions 2 cm x 2 cm on the Rt. Side Inguinal region lower part just lateral to la-bia majaro;
6. Abrasion 2 cm x 1/2 cm on the left side Inguinal region lower part just lateral to la-bia majaro.
7. Abrasion 3 cm x 2 cm on the inner aspect of labia minam up to vagina; Tearing in the way that vaginal canal & Ant, canal joins each other, hymen lacerated, faecal matter present in the junction of orifices of vagina and Avol Canal, side prepared and sent for hytopathological examination to {paper torn} presence of spermatozoa both sides labia majarn swollen Abrasions on both sides, neck 2 1/2 cm x 1 1/2 cm on Rt. Side 1 1/2 x 1/2 cm on left side of neck on cut sections echhymosis sent, Hyoid bone fractured, clotted blood present and thyroid cartilage.
3. The cause of death described as shock and Asphyxia as a result of ante-mortem injuries and the case was investigated by P.W.6 Sunil Kumar Tyagi who had investigated the case and submitted charge sheet against the appellant and one

Subhash. The case was committed to the Court of Session in usual manner and the Sessions Judge framed charge u/s 364/376(2)/302/201 IPC against appellant and one Subhash.

4. The prosecution had produced in all 7 witnesses. P.W. 1 Bijendra Singh Yadav is the complainant of the case and father of deceased Babli. P.W.2 is Km. Shimla Devi daughter of complainant. P.W.3 Rajesh Yadav, had seen Brijesh Solanki Loitering near the house of the complainant. P.W. 4 Dr. Shahid Mohammad has conducted the post mortem on the dead body of Babli. P.W. 5 Bachchan Singh is the scribe of the report and is witness of recovery of the dead body on the pointing out of the accused and recovery of the clothes of the deceased. P.W.6 Sunil Kumar Tyagi is Station House Officer and also the Investigating Officer of the case. He had recorded the statement of the complainant at the police station and also the statement of scribe. On reaching the village he had examined the house of complainant and prepared Naksha Najri Ext. Ka-7 and after that he had recorded the statement of Km. Laxmi and Km. Shimla and after recording their statements he recorded the statement of Subhash Yadav and had received information that Bijendra Solanki had washed his blood stained clothes which were taken into possession and prepared its Fard Ext. Ka-8 and had also prepared the site plan which is Ext. Ka-9. After the request was made to the P.A.C. Commandant both the constables were sent to police station and after that the Investigating Officer had recorded the statement of complainant's wife Shakuntala Devi, Rajesh and Raju. The statement of constables were recorded but they had not given any statement. They were sent back to P.A. C. On 1-2-1998, statements of Ram Veer, Rajendra Singh were recorded and both the constables were brought to the police station for interrogation. In this presence of Harish Chandra Saxena, S.I. and Asha Ram Yadav, S.I., the accused confessed their crime and admitted that after committing rape they had murdered the girl. "The confession was entered in the G.D. on 1-2-1998 by head moharrir Chandra Pal, a carbon copy of which is Ext. Ka-10. It is further stated that Bijendra and Subhash were brought for the recovery of the dead body. Bachchan Singh and Mahavir Singh were also taken as a witness and on Aligarh Ramgarh road in the forest of Quarsi in the field of Babu dead body was recovered and 150 yards away from the dead body the Frock of the deceased was recovered on the pointing out of accused and Fard thereof were prepared which are Exts. Ka-4 and Ka-5. After the said recovery accused were arrested and signatures of both the accused were obtained in the recovery memo. The inquest was prepared on the direction of Investigating Officer by Harish Chandra Saxena and Panchayatnama Ext. Ka-11, letter Ext. Ka-12 Lash Chalan Ext. Ka-13, letter to Chief Medical Officer Ext. Ka-14 Pratisar Narikshak Ext. Ka-15, Photo lash Ext. Ka-16 and Namona mohar Ext. Ka-17, plain and blood stained earth was also collected by the Investigating Officer, Site plan of recovery of dead body was also prepared which is Ext. Ka-16 and after recording the statements of the accused and witnesses charge sheet was submitted by the Investigating Officer. P.W. 7 is Harish Chandra Saxena who had prepared the recovery memos

and the inquest report and Fard on the direction of the Investigating Officer.

5. P.W.1, Bijendra Singh has stated in Court that he lives in front of P.A.C. Batalian in Sukhrawali and he does the business of selling milk and Subhash Yadav Purchased milk from his house. On 29-1-1998 he came to his house for purchasing milk and again at 9.00 a.m. he came along with Bijendra Solanki another constable of P.A.C. Bijendra Solanki has asked about the marriage of his daughter but he had told him that he will not marry his daughter on the side of Behar. He wants to marry his daughter nearby place where all his relatives resides. It is alleged that both the persons have threatened him and they had left the house. He has further stated that on 30-1-1998 he along with his wife and daughter Babli aged about 5 to 7 years were sleeping and the other children Rajesh and Shimla, Laxmi had gone to the house of his neighbour for watching T.V. His wife woke him up at about 10.00 p.m. and told him that Babli is not in the house. They had searched Babli and enquired from several places and later on he had sent his son Rajesh to enquire from Subhash and Bijendra Solanki. It is stated that when his son returned and informed him that Subhash was lying on a cot in sleeping position and Bijendra Solanki was not there. After that it is stated that Ram Veer and Rajendra Singh had informed him that at about 8.30 p.m. Subhash and Bijendra Solanki were loitering. The report was written by Bachchan Singh on dictation which is Ext. Ka-1. He has further stated that dead body was recovered on 1-2-1998 and inquest was prepared and he has signed on it.

6. P.W. 2 Km. Shimla Devi is the daughter of the complainant. She has stated that on 10-1-1998 at about 9.00 a.m. Subhash and Bijendra Solanki came at the house and they had talked about her marriage and her sister's marriage with her father. It is stated that when his father and mother had refused to marry them on the side of Bihar and both of them had become annoyed and threatened them. On 30-1-1998 she along with her brother and sister Laxmi had gone to see the film in the house of her uncle. It is stated that about 11.00 and 11.30 p.m. her father and mother came in the house and enquired about Babli and they told them that Babli is not there. They had gone to see Subhash and Bijendra Solanki. When her brother returned he informed that Subhash is in the Barrack and he was perturbed and prior to that at about 7.00 and 8 p.m. both were seen loitering near the house and on 1-2-1998 dead body of Babli was recovered.

7. P.W.3 Rajesh is the son of complainant. He has stated that Subhash used to come to his house for purchasing milk. On 29-1-1998 Subhash and Bijendra Solanki had purchased milk and again at 9.00 p.m. they had come to his house and told that his sisters will be married in Bihar Side. His father rejected the offer and both of them had become annoyed. On 29-1-1998 at about 8.00 p.m. both were found loitering near their house and at about 9.00 p.m. he along with his sisters had gone to watch T.V. in the house of their uncle. At about 11.00 and 11.30 p.m. his father came to the house of his uncle and enquired about Babli then he started searching for her and

then he had gone to enquire from Subhash and Brijesh Solanki along with Raju, Nawab, Dinesh and Subhash was present in the Barrack but Brijesh Solanki was not there. Subhash was sleeping and when he woke up he was perturbed and sweating and when he was asked about Babli he has stated that she had not come there. He has further stated that his father had lodged the report. He has further stated that his father has approached Subhash and enquired about the daughter. It is stated that Subhash had told that the girl could be found but he is not sure whether she is alive or dead.

8. P.W. 5 Bachchan Singh is the scribe of the report. He had written the report on the dictation of Bijendra Singh and he had signed it which is Ext. Ka-1. He has further stated that on Sunday he along with Mahavir was going to Quarsi and the police personnel had called them. Bijendra Solanki and Subhash were also there and they had recovered the dead body of Babli and after the recovery of the dead body both the accused had got recovered the Frock about 150 yards away from the dead body. The inquest was prepared and recovery memo of the dead body and other documents like Fard Baramdagl Lash, plain and blood stained earth were prepared.

9. P.W. 6 Sunil Kumar Tyagi has stated that he was posted as Station House Officer at Police Station Quarsi on 31-1-1998 and the case was registered in his presence and he was entrusted with the investigation of the case. He had recorded the statement of the complainant at the police station and had also recorded the statement of scribe of the FIR and he had prepared site plan (Ext. Ka-7) of the place from where the girl was abducted. He had recorded the statement of Km. Laxmi and Km. Shimla and thereafter he recorded the statement of Constable Subhash Yadav and he had received information that Bijendra Solanki had washed his blood stained clothes. He had prepared the recovery memo Ext. Ka-8 and he had also prepared the site plan of the place from where he had recovered bloodstained cloth of accused Bijendra Solanki and prepared site plan Ext. Ka-9. he had also recorded the statement of recovery witnesses. He had met the Commandant of P.A.C. and took both the persons to the police station for enquiry. He had gone to the house of the complainant and recorded the statement of complainant and his wife Smt. Shakuntala Devi and witnesses Rajesh and Raju. He came to the police station and also interrogated Bijendra Singh and Subhash Yadav and both were sent to P.A.C. On 1-2-98 he had recorded the statement of Ram Veer, Rajendra Singh and Sukhrawali. He had brought both the constables to the police station for interrogation and in the presence of S.I. Harish Chandra Saxena and S.I. Raja Ram Yadav both were interrogated and both had confessed to have committed rape and murdered the deceased and had prepared G.D. No. 20 at 12.55 p.m. which is Ext. Ka-10. He brought both the constables Brijendra Singh and Subhash Yadav for recovery of the dead body and had also collected the witnesses Bachchan Singh and Mahavir Singh in the forest of Quarsi on Aligarh and Ram Garh road. In the field of Babu constables had got recovered the dead body and about 150 yards away from the recovery of the dead body on the pointing out of Bijendra Singh Frock of

deceased was recovered and recovery memo was prepared and other relevant documents were also prepared by the Investigating Officer. Inquest report Ext. Ka-11, Chalan lash Ext. Ka-13, letter to C.M.O. Ext. Ka-14, letter to C. O. Ext. Ka-15, Photo lash Ext. Ka-16, Seal Ext. Ka-17. Plain and blood stained earth was recovered and Fard was prepared which Ext. Ka-6. He had also prepared the site plan Ext. Ka-18 and he had also recorded the statement of the recovery memo and inquest memo and after concluding the investigation he has submitted the charge-sheet Ext. Ka-19. He had also proved the chick FIR No. 29/98 dated 31-1-98 at 6.35 which was prepared by Head Moharrir Chandra Pal on the basis of the FIR of the complainant entered at G.D. No. 11 which Exts. Ka-21 and Ka-22. In the cross-examination he had admitted that after recovery of the dead body both the constables Subhash Yadav and Bijendra Singh were arrested. He has stated that the Frock which was recovered near the dead body was not identified before the Magistrate or by the complainant or his family members. He has stated that he cannot tell that whether the blood stained earth and Frock were sent to the chemical examination.

10. P.W.7 S.I. Harish Chandra Saxena has stated that the dead body of Babli was recovered on the pointing out of Bijendra Singh and Subhash Yadav on 1-2-98 and the recovery memo was prepared which is signed by him and the Station House Officer. The recovery memo of plain and blood stained earth was prepared and the recovery memo was in his writing which is Ext. Ka-6. He has also prepared the inquest report on the direction of Station House Officer which is in his writing.

11. On examination of evidence on record the learned Sessions Judge has found that the prosecution case against the appellant Bijendra Singh has been proved beyond reasonable doubt and treating the case to be rarest of rare case the trial Court has awarded on the appellant extreme penalty of death but co-accused Subhash Yadav has been acquitted as the case against him has been found to be not free from doubt.

12. We have heard learned counsel for the appellant and learned A.G.A. for the State.

13. Learned counsel for the appellant submitted before us that the circumstances from which conclusion of guilt of accused-appellant was sought to be drawn by prosecution have not been established beyond reasonable doubt and further that the circumstances on which reliance has been placed or not conclusive in nature and the chain of evidence has remain incomplete inasmuch as every hypothesis consistent of innocence of the appellant has not been excluded. It was further argued that the trial Court had relied upon in (sic) admissible evidence. On the contrary the learned A.G.A. supported the judgment of the trial Court and argued that the proved circumstances which have emerged out in this case are so clinching that no other reasonable view is possible accepting to hold the appellant guilty. Undisputedly there is no direct evidence of the commission of rape and murder of

deceased Babli at the hands of appellant and the prosecution case entirely rests upon circumstantial evidence. It will be appropriate to summarise the circumstances relied upon by the prosecution. The circumstances are as follows :-

- (1) On 29-1-98 the appellant along with Subhash Yadav came at the house of complainant Brijendra Singh and talked about the marriage of his daughters and on his refusal the appellant had threatened him.
- (2) Complainant had sent some people for searching his daughter to the house of appellant in P.A.C. Colony and appellant was not there and Subhash Yadav was in perturbed condition,
- (3) The dead body of Babli was recovered on the pointing out of appellant in a field in Quarsi on Aligarh Ramgarh road.
- (4) On 31-1-98 police had recovered washed cloth and shoes of the appellant; and
- (5) On 1-2-98 Frock of Babli, which she was wearing at the time of occurrence was recovered on the pointing out of appellant.

14. Finding the above circumstances established, the learned Sessions Judge was of the opinion that no other view was possible except that the appellant was guilty of committing rape and murder of deceased Babli. As the prosecution case entirely rests upon circumstantial evidence the principles governing appreciation of evidence in such cases have to be kept in mind :-

15. The Apex Court in the case of Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, held that first of all it is necessary to find out whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as "clear and cogent" and secondly, whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the accused is guilty of the offence of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him.

16. In the celebrated cases of Sharad Birdhichand Sarda Vs. State of Maharashtra, the Hon"ble Supreme Court has pointed out five golden principles constituting of the proof of a case based on circumstances. They are :

- (1) the circumstances from which conclusion of guilt is to be drawn should be fully established; i.e. the circumstances concerned "must" or "should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held in Shivaji Sahabroo Bobade and Another Vs. State of Maharashtra .
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency,

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused;

17. In G.V. Raju v. State of Andhra Pradesh 1994 JIC 16 (21), a note of caution was given by the Apex Court that while dealing with the cases resting upon circumstantial evidence alone, there is always a danger that conjecture or suspicion may take the place of proof Gravity of offence cannot by itself over weigh so far as legal proof is concerned. When the main link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner establish the guilt of the accused beyond all reasonable doubts. It is at this juncture, the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes unconsciously it may happen to be a short step between moral certainty and legal proof.

18. In a recent decision in V.C. Rao v. Ponna Satyanarayana (2000) 41 All Cri C 210 : AIR 2000 SC 2138, it was held that the cumulative effect of the proved circumstances must be such as to negate the innocence of the accused and to bring home the offender beyond any reasonable doubt.

19. In another decision in Gade Lakshmi Mangraju @ Ramesh Vs. State of Andhra Pradesh, the Apex Court has laid down that one circumstance by itself may not unerringly point to the guilt of the accused. To acquit the accused on that basis is not a safe method for appreciating a case based on circumstantial evidence. It is the cumulative result of all the circumstances alleged and proved, which matters. It is not open to call out one circumstance from the rest for the purpose of giving a different meaning to it.

20. Bearing all these principles in mind, we now proceed to examine the evidence on record to find out whether the circumstances relied upon by the prosecution have been established by cogent, succinct and reliable evidence and secondly whether the circumstances so established are such as cannot be explained on any hypothesis except the guilt of the accused and whether the proved circumstances provide a complete chain and unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.

21. As regards the first circumstance that on 29-1-98 the appellant along with Subhash Yadav came at the house of complainant Brijendra Singh and talked about the marriage of his daughters and on his refusal the appellant had threatened him, it is submitted that appellant along with Subhash Yadav had threatened the complainant in case he does not agree to marry his daughter towards the side of Bihar. This circumstance is not only against the appellant but also against Subhash

Yadav, who has been acquitted by the trial Court. This circumstance can only provide a motive for the appellant but at the same time it can hardly be sufficient motive for the crime like commission of the present one and at the same time this was the motive for acquitted Subhash Yadav also.

22. As regards the second circumstance that complainant had sent some people for searching his daughter to the house of appellant in P.A.C. Colony and appellant was not there and Subhash Yadav was in perturbed condition, there is nothing abnormal in the absence of appellant from his house at a particular point of time. On the other hand the circumstance is wholly against Subhash Yadav who was said to be in a perturbed condition and he has already been acquitted by the Sessions Judge.

23. The third circumstance relied upon by the Sessions Judge is the recovery of the dead body on the pointing out of the appellant in a field in Quarsi on Aligarh Ramgarh road, the recovery of the dead body of deceased Babli is on the joint pointing out of the appellant and acquitted accused Subhash Yadav. Recovery being on the joint pointing out and it has hardly any evidentiary value u/s 27 of the Evidence Act. Section 27 of the Evidence Act reads as under :

How much information received from accused may be proved-provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

24. Section 27 of the Evidence Act is in the nature of proviso to Sections 25 and 26. Such statements which have been made admissible u/s 27 are generally termed as disclosure statements leading to the recovery of facts which are presumably in the exclusive knowledge of the maker. This provision 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 therefore, it can be safely allowed to be given in evidence.

25. The position of law in relation to Section 27 of the Act was elaborately made clear by the Privy Council in the famous case of *Pulukuri Kottaya v. Emperor* AIR 1947 PC 67, wherein it was held :

Section 27, which is not artistically recorded, provides an exception to 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 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 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 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 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 Section 26, added by Section 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.

26. In Mohmed Inayatullah Vs. The State of Maharashtra, the Apex Court held that the 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 words "distinctly", "indubitably", "strictly", "unmistakably". The words have been advisedly used to limit and define the scope of provable 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.

27. The Apex Court in *Earabhadrappa, alias Krishnappa v. State of Karnataka* held that for the applicability of Section 27 of the Evidence Act two conditions are prerequisite, viz. (i) information must be such as has caused discovery of the fact, and (ii) the information must "relate distinctly" to the fact discovered. u/s 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 that nature of presumption under Illustrations (a) to (s) of Section 114 of the Evidence Act. The Court can, therefore, presumes 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 circumstances 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 :

There is no controversy that the statement made by the appellant Ext. P-35 is admissible u/s 27 of the Evidence Act. u/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.

28. The Apex Court in a recent decision in *State of Maharashtra v. Damu Gopinath Shinde* JT (2000) 5 375 : AIR 2000 SC 1691 has held that 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, but if 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 the section. The decision of the Privy Council in *Pulukuri Kottaya v. Emperor* AIR 1947 PC 67, is the most quoted authority 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."

29. In the latest decision in *Pandurang Kalu Patil and Another Vs. State of Maharashtra*, it was held that the object of making a provision in Section 27 was to permit a certain portion of the statement made by an accused to a police officer admissible in evidence whether or not such statement is confessional or

non-confessional. Nonetheless, the ban against admissibility would stand lifted if the statement distinctly related to a discovery of fact. The fact can be discovered by the Investigating Officer pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. Recovery or even production of object by itself need not necessarily result in discovery of fact. Discovery of a fact cannot be equated with recovery of the object though the latter may help in the final shape of what exactly was the fact discovered pursuant to the information elicited from the accused.

30. Keeping all these principles in this view we have examined the evidence relating to the recovery of the dead body and Frock of the deceased pursuant to the disclosure statement made by the appellant. A perusal of the recovery memos indicates that at the time of recoveries the appellant was not in custody. On the other hand it is the own case of the prosecution that after the confession and the recovery of the dead body both the constables were arrested. As regard the recovery of the Frock a perusal of the memo of recovery does not indicate that appellant was the author of concealment of frock. In the recovery memo there is no such confessional statement. On the other hand it was found in an open place which was accessible to all and sundry. Apart from this P.W. 5 Bachchan Singh has stated in court that "Phir lash baramad honey key stan sey 150 gaj aagey tube well ki naali sey in dono muljimanon ney mrataka ki frock ke baramad karaya tha." He has further stated that "Virendra ki Larki Babli Gayab ho gai thi Uski lash Vijendra Singh Solanki wa "Subhash Yadav hazir adalat muljiman ki nishan dehi par baramad hui thi tatha inhi abhiyukton dwara mrataka dwara pahni hui frock ko baramad karaya tha tatha daroghaji ney likha parhi ki thi." Thus as per the statement of this witness recoveries of dead body and frock of the deceased were also made on the joint pointing out of the appellant and acquitted accused Subhash Yadav. Once Subhash Yadav has been acquitted, the evidence of recovery of the aforesaid objects cannot be used safely for holding the appellant guilty. The Sessions Judge has also relied upon the circumstance that on 31-1-1998 the police had recovered washed clothes and shoes of the appellant and it is stated that blood stains were washed. This circumstance itself has no legal value unless it was sent for serological examination. The police had not sent the recovered clothes and shoes for the serological test to indicate that the blood stained were washed by the appellant.

31. The co-accused Subhash Yadav is already acquitted by the Sessions Judge and there being no other evidence against the appellant his conviction cannot be sustained. We therefore hold that against the appellant also the prosecution has failed to prove its case beyond all reasonable doubt.

32. In the result the appeal is allowed. The judgment and order dated 30-7-2001 passed by Addl. Sessions Judge, Aligarh are set aside. The appellant is acquitted. He is in jail. He shall be set at liberty forthwith unless he is wanted in some other case.