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### Abstract:-

There is general principal in the Indian criminal justice System that confessions of an accused person to any police officer cannot be used as evidence against such accused. The above doctrine in the present day perception of the society of the police, this rule appears to be a salutary safeguard for the citizens. The issue relating to the ambit and scope of section 27 of Act in application to various situations has been a matter of diverse opinions before the law courts, thereby at times rendering it very difficult to use it in an effective and judicious manner for the advancement of the cause of justice.

## CONFESSION TO POLICE AND RECOVERY (UNDER SECTION 27 EVIDENCE ACT,)



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### INTRODUCTION

Section 27 of the Act incorporates the doctrine of confirmation by subsequent facts. This doctrine is based on the idea that if a fact is actually discovered on the basis of such information some guarantee is afforded thereby that the information is true and it can be safely allowed to be given in the evidence. There is, however, an exception made in the Evidence Act to this rule. Under section 27, so much part of such a confession statement can be proved in the court of this statement provides information leading to the discovery of a fact. The recovery of weapons of crime, stolen property etc, which link the criminal with his criminality is done by taking recourse to this important exception to the rule. The investigating officer ought to handle such confessions and recoveries made thereafter with great care. Unless the procedure laid down is followed with integrity and in a transparent manner, it is difficult for the court trying the case to base a conviction of this evidence.

Some details of the legal provisions and procedural safeguard are discussed below under sections 25 and 26 of Evidence Act which lay down the rule that the confession to the police are not admissible in the evidence are given below along with section 27 which is in the nature of an exception to the above rule.

#### Section 25

Confession to police officer not to be proved. No confession made to a police officer, shall be proved as against a person accused of any offence.

#### Section 26

Confession by accused while in custody of police not to be proved against him- 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.

#### Explanation:

In this section "Magistrate" does not include the head of village discharging magisterial functions in the presidency of Fort-St-Gorge or elsewhere, unless such headman is a Magistrate exercising the power of a Magistrate under code of criminal procedure 1882 (10 of 1882) (Now Cr. PC 1973) (2 of 1974)

#### Section 27

How much of information received from accused may be proved. Section 27 provides that "when any fact is proved to be 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.

During investigation of the officers against person or property, the recovery of the incriminating link between the crime and the criminal is established by resorting to Section 27 Evidence Act. This is a very intricate and complex step of investigation. The defence lawyer finds this step to be the weakest point in the arsenal of the prosecution and attacks the entire procedure from various angles.

In the case of *Amit Singh Bhikam Singh Thakur Vs State of Maharashtra* The Supreme Court has laid down the following principles for applicability of section 27.

- (1) The fact of which evidence is sought to be given must be relevant to the issue.
- (2) The fact must have been discovered.
- (3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.
- (4) The person giving the information must be accused of any offence.
- (5) He must be in the custody of a police officer.
- (6) The discovery of a fact in consequence of information received from an accused in custody must be proved to.
- (7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

#### APPLICATION OF SECTION 27 EVIDENCE ACT

Section 27 of Evidence Act, starts with the word "Provided". It is thus a proviso to section 26, which prohibits the proving, in the court of any confession made in the police custody by any person accused of an offence. The two sections should have been combined into a single and section 27 should have formed a "Proviso" to Section 26.

This section authorizes police to prove so much of such information as relates directly to the fact thereby discovered. In other words, what is allowed to be proved is "Information." Strictly speaking, the fact of recovery of any weapon of offence or any stolen property at the instance of the accused person should not be admitted in evidence.

In practice, however, proof of the recovery of such articles or items is always adduced in evidence. In this procedure, what matters most is the memorandum prepared by the investigating officer and the evidence of the witnesses to the recovery. The memorandum may contain the detail statement of the accused person but only that part of this statement which relates directly to the fact thereby discovered can

be admitted in evidence. For instance, if the accused States that he committed murder by causing stab-wounds and has concealed the knife used for murder and knife concealed the sands of a river, only this part of the statement that he has concealed the knife will be admitted in the court as evidence.

In *Himachal Pradesh Vs Jeet Singh*<sup>2</sup>. The supreme court held that there is nothing in section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the article was made from any place which is "open or accessible to others." It is fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to other it would vitiate the evidence under section 27 of Act. Any object can be concealed in place which is open or accessible to others. For illustration, if the article is buried on the main road side or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. The person who hid it alone knows where it is until he discloses that fact to any other person.

In *Balmshish Singh Vs State of Punjab*<sup>3</sup> this was said that if there is only this evidence against the accused that he had shown that place where the dead boy was thrown, then it cannot be said that it is such a decisive fact that proves his guilt. If produces a serious suspicion against him, nothing more than that because he him-self having not participated in the murder could learn about that It was possible to know where the dead body was thrown. In addition to this that part of the river where the limbs of human body and broken teeth were lying, seeing which anybody could guess that the dead body was thrown there.

In other important case *State of Maharashtra Vs. Dama Gopinath Shinde*<sup>4</sup>. The Supreme Court held that the basic idea embodied in section 27 of Evidence Act the doctrine of confirmation by subsequent events. In this case the fact discovered by investigation officer that the accused had carried the dead body of a Child to the spot on motor cycle. No doubt the recovery of dead body of child from canal was antecedent to the information which the investigation officer has obtained. If nothing more was recovered pursuant to and subsequent to obtaining information from the accused, there would not have been any discovery of fact at all. But when broken piece of glass was recovered from the spot and that piece was found to be part of the tail lamp of motor cycle of the co-accused alleged to be used to carry the deceased child. The Supreme Court said that it can safely be held that the investigation officer discovered the fact that the accused had carried the dead body on that particular Motor cycle up to the spot. Thus, the information supplied by accused would be admissible But information of accused will be supporting evidence not evidence under Section 27 of Evidence Act. In this case the Supreme Court has also laid down the limitation of admissibility of information admissible under Section 27.

The Witnesses to the recovery are of prime importance in such cases. All the precautions laid down for conducting search ought to be followed very meticulously. Beside the main witnesses, there should be a few other people to watch the proceedings. Further, the investigation officer should conduct the proceedings in a demonstrative way. He should ask the witnesses and the other people around, whether they are able to take notice of the proceedings. This will ensure that the witnesses to the recovery are not in a position to depose anything other than what has been seen by them and recorded in the memorandum prepared under Section 27 of Evidence Act. In practice, it would be seen that the witnesses are under moral pressure of the people present around them at the time of recovery to stick to their statements conforming to the record made in the memorandum.

#### **RECOVERY SHOULD BE PROVED:-**

Any statement which did not partake the character of a confession statement envisaged by section 27 would not be admissible in view of the bar of section 162 Cr. PC. The recovery article should be proved with actual word used by accused. Section 162 protects the person making statement during police investigation under duress of inducement the code allows police officer to record statement of witnesses with view to facilitating investigation of the offence. But if such statements are made under duress or inducement, they are rendered inadmissible in evidence because they cannot to be free and fair statements made voluntarily.

The discovery under section 27 should be a palpable Physical fact secondly it should be finding of something which had been partly or wholly concealed and which might have not been found out, except as a consequence of the statement.

Generally a police officer should reproduce the contents of the statement made by the accused under Section 27 of the Evidence Act, in court by refreshing his memory under Section 159 of the Evidence Act from the memo. Before prepared memo by the investigating officer at the times, the statement had been made to him or in his presence and which was recorded at the same time or soon after the making of it. Where the police officer swears that he does not remember the exact words used by the accused from lapse at time or a like cause or even when where he does not positively say so but it is reasonably established from the surrounding circumstances, that it could hardly be expected in the natural course of human conduct that he could or would have a precise of dependable recollection of the same then under section 160 of the evidence Act, it would be open to witness to rely on the document it self and swear that contents thereof are correct. According to section 159 and 160 of the evidence Act, when a witness is being examined then at the time of occurrence any note written by himself or written after the occurrence by himself can be used by him to refresh his memory.

In *Geejaganda Somaiah Vs State of Karnataka*<sup>5</sup> the Supreme Court has advised to be cautious that

no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provision of section 27 of the evidence Act.

**CONCLUSION**

The object of Section 27 it appears that any irrelevant evidence by any person should not be admissible only that fact which is relevant should be admitted in evidence showing the guilt of the accused. But facts which are not relevant to the guilt should not be admitted. If on the basis of the information or statement received from the accused, something is found and it is connected with the offence of the accused then that part of the statement would be admissible in evidence. In the above discussion main questions is that how much part of the confession will be relevant. Only that part of the information will be relevant with which the fact has been searched or found out and the remaining part is inadmissible and irrelevant. The statement of co-accused is inadmissible in the evidence against other accused.

**FOOTNOTES;**

- 1.AIR 2007 SC 676
- 2.AIR 1999 SC 1293
- 3.AIR 1971, SC 2016
- 4.AIR 2000 SC 1691
- 5.AIR 2007 SC 1355