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profits against a lambardar lies at the instance of an owner who has been dispossessed by other people whose names are recorded in the revenue papers, and that such a person himself should obtain possession through the civil court against the trespassers before he can be entitled to maintain the suit.

For these reasons we consider that the decree of the lower court was correct and we dismiss this second appeal with costs.

APPELLATE CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

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March, 18

EMPEROR *v.* CHOKHEY*

Arms Act (XI of 1878), section 19(f)—Possession and control of arm—Person hiding and burying a gun on railway land—Evidence Act (I of 1872), section 27—Statement by person in police custody leading to discovery of material evidence—How much of such statement can be proved.

Section 27 of the Evidence Act intends that the minimum portion of a confession made to a police officer or of information given to him should be admitted in evidence which might reasonably be held to relate distinctly and positively to the fact discovered and which is necessary to be proved in order adequately to explain such discovery. So, where an accused person in the custody of a police officer said to him "I have buried a gun at such and such a place", not only the fact of the discovery of the gun but also the statement of the accused that he had buried the gun at that place was admissible in evidence.

The statement of the accused, made to the police officer, that he himself had buried the gun at a certain place and the fact that he took the police officer to that place and unearthed the gun were sufficient to establish his possession of and control over the gun, notwithstanding that the place was railway land and within the railway fencing and accessible to the public, and his conviction under section 19(*f*) of the Arms Act was valid.

*Criminal Appeal No. 822 of 1936, by the Local Government, from an order of Ali Muhammad, Sessions Judge of Mainpuri, dated the 2nd of July, 1936.

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The Government Advocate (Mr. *Muhammad Ismail*), for the Crown.

Mr. *Sukumar Dutt*, for the respondent.

COLLISTER and BAJPAI, JJ.:—Chokhey was convicted by a Magistrate on a charge under section 19(*f*) of the Arms Act and was sentenced to rigorous imprisonment for 18 months. He appealed to the Sessions Judge, who allowed his appeal and set aside the conviction. The Local Government has appealed to this Court from the order of acquittal.

It appears that a man named Bihari gave information about certain burglaries and dacoities and implicated the respondent, who was thereupon arrested. The respondent gave certain information to Nasir Ali Khan, the sub-inspector of Shikohabad, and took him to a place near a cabin of the railway station at Shikohabad. He then dug up the ground at that spot and produced a gun. The recovery note was attested by certain persons, including Pandit Chheda Lal, who came into the witness-box and gave evidence. The only two witnesses in the case were the sub-inspector and Pandit Chheda Lal. The respondent denied having been in possession of the gun or having produced it, but was unable to explain why he had been implicated.

The learned Judge observes:

"So far as the facts of the recovery of the gun are concerned, I think that it has been sufficiently established in this case. But I think that the conviction of the appellant is not sustainable on legal grounds. As provided by the Arms Act, the unlicensed arm should have been found in the possession and control of the accused in order to convict him under section 19(*f*) of the Arms Act. The place from which the gun was recovered was not in the possession of the accused. It was recovered from the railway premises within the railway fencing. It was a place accessible to the public and a path was running close by. Anyone else could have taken away the gun by digging out the ground. Hence it could not be said to be under his control. It is possible that someone else within the knowledge of the accused might have concealed the gun there, and so the mere knowledge of the concealment of an unlicensed gun could not bring him under the purview of law."

The learned Judge, relying on three reported cases,

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respondent. Those cases are *Gian Chand* v. *Emperor* (1), *Lakhan Singh v. Emperor* (2) and *Emperor* v. *Kaul Ahir* (3). The *ratio decidendi* in those cases was that when a weapon is found on premises occupied by several persons, no individual from among them can be convicted under the Arms Act unless it is proved that the weapon thus found was in his own particular possession or control. In none of the above mentioned cases was there any question of the applicability of section 27 of the Evidence Act. In the case which is now under appeal the applicability of that section is vitally in question, but it has been totally overlooked by the learned Judge.

Sub-Inspector Nasir Ali Khan states that Chokhey had informed him that he had a gun which he had buried in the ground near a cabin of the railway station at Shikohabad and he then took the sub-inspector to that place and unearthed the gun. That he did give such information to the sub-inspector is in the circumstances very probable and we can find no good reason to disbelieve the sub-inspector on this point. That the respondent dug up the gun is conclusively proved by the evidence of this police officer and Pandit Chheda Lal. It is, however, contended on behalf of the respondent that the statement which led to the recovery of the weapon is not admissible in evidence as against the respondent and that all that is therefore proved against him is that he knew the whereabouts of the gun. It is argued that this will not suffice for a conviction and that the view taken by the Judge is correct. We find ourselves unable to agree with this contention.

In the case of *Queen-Empress* v. *Nana* (4) a certain person was charged under section 411 of the Indian Penal Code with having dishonestly received stolen property. He informed the police that he had buried the property in a field and he then took the police

(1) A.I.R., 1933 Lah., 314.
(2) (1934) 35 Cr.L.J. (Oudh), 973.
(3) (1932) I.L.R., 55 All., 112.
(4) (1889) I.L.R., 14 Bom., 260.

officials to the spot and with his own hands unearthed a pot which contained the property. It was held by a Full Bench of the Bombay High Court that the accused's statement that he had buried the property in a field was admissible under section 27 of the Evidence Act inasmuch as it set the police in motion and led to the discovery of the property.

The next authorities with which we shall deal are from the Punjab. In the case of *Isher Singh* v. *Emperor* (1) the accused told the police that he had buried a weapon in his field and he then took the inspector of police and other persons to that field and dug out a revolver. It was held by a Bench of the Punjab Chief Court that the accused's statement that he had buried the revolver was admissible in evidence. The case of *Queen-Empress* v. *Nana* (2) was referred to and followed.

In the case of *Ali Ahmad* v. *The Crown* (3) the accused persons stated that they had buried certain weapons and in consequence of that information the said weapons were discovered; and it was held by a learned Judge of the Lahore High Court that the information so given was admissible under section 27 of the Evidence Act. The case of *Isher Singh* v. *Emperor* (1) was followed.

In the case of *Naurang Singh* v. *Emperor* (4) a revolver was found in a well which the accused had pointed out to the police as being the place in which he had thrown the weapon. It was held that when an article the possession of which is forbidden by the Indian Arms Act has been discovered by reason of information given by an accused person, his conviction based upon that evidence is valid. The case of *Isher Singh* v. *Emperor* (1) was again referred to and followed.

The case of *Sukhan* v. *The Crown* (5) was decided by a Full Bench of seven Judges. A certain person was tried under section 302 of the Indian Penal Code on a

(1) (1915) 33 Indian Cases, 823. (2) (1889) I.L.R., 14 Bom., 260.
(3) A.I.R., 1923 Lah., 434. (4) A.I.R., 1927 Lah., 900.
(5) (1929) I.L.R., 10 Lah., 283.

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charge of having murdered a boy. The boy had been wearing certain ornaments, but they were no longer on the body when it was recovered from a well. In the course of the investigation the accused said: "I had removed the *karas*, had pushed the boy into the well, and had pledged the *karas* with Allah Din." In consequence of the information thus given the *karas* were recovered from Allah Din and were identified as those which the boy had been wearing when alive. Five of the learned Judges were of opinion that the statement by the accused that he had pledged with Allah Din the *karas* subsequently recovered from the latter was admissible under section 27 of the Evidence Act, but that the rest of the incriminating statement could not be received in evidence. The other two learned Judges went even further and were prepared to admit also the statement of the accused that he had removed the *karas* (i.e., from the person of the murdered boy).

In the case of *Superintendent of Legal Affairs* v. *Bhaju Majhi* (1), decided by a Bench of the Calcutta High Court, GRAHAM, J., expressed the opinion that the provisions of section 27 of the Evidence Act must be very strictly construed, care being exercised to see that the purpose and object of sections 25 and 26 and the safeguards provided in section 27 are not rendered nugatory by any lax interpretation. LORT-WILLIAMS, J., went so far as to hold that all that could be stated in evidence was that in consequence of information received from the prisoner certain facts had been discovered, thus to that extent fixing the prisoner with knowledge. He expressed agreement with the dissentient judgment of MAHMOOD, J., in the case of *Queen-Empress* v. *Babu Lal* (2).

The last mentioned case was decided by a Bench of five Judges of this Court. Two persons had given information to the effect that they had stolen a cow and

(1) (1929) I.L.R., 57 Cal., 1062. (2) (1884) I.L.R., 6 All., 509.

a calf and had sold them to a certain individual at a particular place. It was held by four of the learned Judges (MAHMOOD, J., dissenting) that section 27 of the Evidence Act is a proviso not only to section 26, but also to section 25, and that therefore so much of the information given by the accused to the police officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered, might be proved. MAHMOOD, J., was of opinion that section 27 of the Evidence Act was not a proviso to section 25, but only to section 26 and that therefore the statement in question was wholly inadmissible in evidence. BRODHURST, J., at pages 518-519 gives an illustration in explanation of his view, from which it would appear that in his opinion if a person gave himself up to a police officer and made a full confession, in the course of which he stated that the knife with which he had committed a murder was in a certain well along with the body of the murdered man, the whole of the above quoted portion of the confession would be admissible against the prisoner under section 27 of the Evidence Act, including the statement that he had committed the murder. STRAIGHT, J., and OLDFIELD, J., did not go to this length. At page 514 OLDFIELD, J., observed that in the case before them proof would be confined to the statement of the police official that the accused persons told him that they had sold a cow and a calf to a certain person; and the same view was expressed by STRAIGHT, J., at the bottom of page 549 and top of page 550.

Then there is the case of *Emperor* v. *Panchu* (1), in which KNOX, J., quoted the following observations of WEST, J., in *Reg.* v. *Jora Hasji* (2):

"It is not all statements connected with the production or finding of property which are admissible; those only which lead immediately to the discovery of property, and so far as they do lead to such discovery, are properly admissible. Other statements connected with the one thus made evidence, and so

(1) (1915) 13 A.L.J., 1077(1078). (2) (1874) 11 Bom., H.C.R., 242.

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mediately, but not necessarily or directly, connected with the fact discovered are not to be admitted, as this would rather be an evasion than a fulfilment of the law, which is designed to guard prisoners accused of offences against unfair practices on the part of the police. For instance, a man says: 'You will find a stick at such and such a place. I killed Rama with it.' A policeman, in such a case, may be allowed to say he went to the place indicated, and found the stick; but any statement as to the confession of murder would be inadmissible."

There are other authorities, but it is not necessary to discuss them. It appears to us that the language of the section and the trend of authority support the view which we are about to express. Section 27 of the Evidence Act reads as follows: "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."

In the present case the sub-inspector's evidence shows that the respondent was in his custody at the time when he gave the information. What he said was that he had a gun which he had buried in the ground near a cabin of the Shikohabad railway station. It seems to us that the intention of the legislature in enacting section 27 of the Act was that the minimum portion of a confession made to a police officer or of information given to him should be admitted into evidence which might reasonably be held to relate distinctly and positively to the fact discovered and which is necessary to be proved in order adequately to explain such discovery. In the present case the respondent's statement that he had buried a gun related distinctly to the fact subsequently discovered, and if any words of such statement are to be excluded there will be nothing left to explain the recovery of the gun. The prosecution cannot be restricted to proving that the respondent said that a gun lay buried at a certain place, for that is not what he said.

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What he said was "I have buried a gun at such and such a place." In our opinion, therefore, the respondent's statement to the sub-inspector that he himself had buried a gun at a certain place is admissible in evidence. This statement and the fact of the respondent having taken the sub-inspector to the place indicated and having unearthed a gun establish his possession of and control over this weapon. It is true that the gun "was recovered from the railway premises within the railway fencing", but the respondent had taken the precaution of burying it, and although "the place was accessible to the public and a path was running close by", no member of the public could have ordinarily got at the gun inasmuch as it was concealed from view, whereas the accused could have access to it at opportune moments, and in the eye of law he must be deemed to be in possession and control of the gun.

In the result we allow this appeal and set aside the order of acquittal. We convict Chokhey under section 19(*f*) of the Arms Act and sentence him to be rigorously imprisoned for 18 months.

APPELLATE CIVIL

Before Mr. Justice Thom and Mr. Justice Rachhpal Singh

MUHAMMAD HASAN (PLAINTIFF) *v.* GAJADHAR PRASAD AND OTHERS (DEFENDANTS)*

1937 *March*, 30

Election—Membership of Court of Wards—Common law of Parliamentary elections whether applicable in India—Disqualification of elected candidate—Whether the candidate next on the poll becomes automatically elected thereupon—Rules of the Agra Province Zamindars' Association, rule 25—Specific Relief Act (I of 1877), section 42—Declaration in a case not falling within the section—Jurisdiction.

According to the principles of English common law as applied to Parliamentary elections, it is necessary that the electors who voted for the disqualified candidate must have had notice of

*First Appeal No. 217 of 1935, from a decree of Brij Behari Lal, Civil Judge of Allahabad, dated the 1st of March, 1935.