



2026:CGHC:10684

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 653 of 2005**

**Reserved on 11/02/2026**

**Delivered on 02/03/2026**

1 - Buddha Prakash Soni (Died) Through Legal Heirs-

1.1 - Kamal Soni S/o. Late Buddha Prakash Soni. R/o Mochiwara, Near Sankhat Bhawan, Behind Fort, Tehsil And District Churu (Rajasthan)

1.2 - Deepak Soni S/o Late Buddha Prakash Soni, R/o Mochiwara, Near Sankhat Bhawan, Behind Fort, Tehsil And District Churu (Rajasthan)

1.3 - Smt. Kiran Devi Soni W/o Late Buddha Prakash Soni, R/o Mochiwara, Near Sankhat Bhawan, Behind Fort, Tehsil And District Churu (Rajasthan)

**... Appellants(s)**

**versus**

1. State Of Chhattisgarh Through District Magistrate, Raigarh
2. Ganeshram Kewat S/o Setram Kewat Aged About 19 Years Occupation Labour R/o Village Kekrabhata P.S. Dabhara
3. Radheshyam Chandra S/o Lakhanlal Chandra Aged About 25 Years Occ. Agriculturist R/o Village Kansha P.S. Kharsia
4. Amrit Lal Satnami S/o Sudhram Satnami Aged About 19 Years Occupation Agriculture/labour R/o Village Badhanpali.
5. Nazirkhan S/o Asarkhan Musalman Aged About 19 Years Occupation Agriculture/ Labour R/o Village Uchabhinda, Dabhara.
6. Joshikram Chouhan S/o Shobharam Chouhan Aged About 30 Years Occ. Labour R/o Village Kekrabhata Dabhara.
7. Subbadas Mahant S/o Teejdas Mahant Aged About 21 Years Occ. Labour R/o Village Uchabhinda, P.S. Dabhara.

8. Shivlal @ Sanju Chouhan S/o Dayalu Chouhan Aged About 19 Years  
Occupation -Labour R/o Village Kekrabhata P.S. Dabhara.

... Respondent(s)

For Appellant (s)	:	Mr. Amit Soni, Advocate
For Respondent(s)	:	Mr. Sanjeev Pandey, Dy. AG along with Mr. Manish Kashyap, Panel Lawyer

**Hon'ble Shri Justice Narendra Kumar Vyas**

**CAV JUDGEMENT**

1. This criminal appeal under Section 454 of Cr.P.C. has been filed against the order dated 21.07.2005 passed by Fourth Additional Sessions Judge (FTC), Raigarh in Criminal Case No. 63 of 2005, whereby the application filed by the appellant/complainant under Section 452 of CrPC arising out of the judgment dated 14.06.2005 passed in Sessions Case No. 141/2004 has been rejected in which all the accused have been acquitted of the charges by the trial Court. During pendency of the appeal, complainant Buddha Prakash Soni expired, therefore, his legal representatives are substituted in his place as appellants.
2. Facts of the case, in brief, are that, a Criminal Case No. 141 of 2004 was initiated against the accused/respondents for commission of offence under Sections 395 and 412 of IPC on the complaint of the complainant alleging that on 15.08.2003 at about 7.00 PM in the evening, when he was returning to village from Bhatgaon market with his son Kamal Soni on the motorcycle and they reached near Bodri road then the accused/respondents who were seven in number committed robbery of 15 kg silver, 5 tola gold and cash Rs. 4000/- total worth of Rs. 1 lakh from his possession.

3. During investigation, memorandum statements of the accused/ respondents under Section 27 of the Indian Evidence Act were recorded and on the memorandum statement of the accused silver and gold ornaments were recovered from their possession as per property seizure which were exhibited as Ex.P-20, Ex.P-27, Ex.P-17, Ex.P-23, Ex.P-24 and Ex.P-18, Ex.P 19. The complainant identified the article under (Ex.P-8) on 21.07.2004. Jeweller Rajesh Kumar Soni has identified the silver and gold articles under (Ex.P-21) and issued certificate of 13<sup>th</sup> articles (Ex.P-21). According to which, total weight of articles was 1380 gram worth of Rs. 11,000/-.
4. The details of property seized from each of the accused as per property seizure memos are given in the tabulate form as under:-

Sr. No .	Statements of Accused under Section 27 of the Evidence Act.	Property seized
1.	Ganeshram Kewat	1. एक जोड़ी की पैर पट्टी झालर घुंघरू वाली पेच लगा मार्का खुशबू वजन 120 ग्राम की 1200 रु 2. एक जोड़ी चांदी की की पैर पट्टी घुंघरू वाली वजन 45 ग्राम की 450 रु 3. 3 नग बिछिया चांदी की लाल रंग की मीना लगा हरा गुलाबी रंग की बूंद वाली मीना लगा वजन 12 ग्राम की 120 रु 4. एक चांदी की अंगूठी लाल रंग की नग लगा हुआ । वजन तीन ग्राम की 30 रु
2.	Radheshyam Chandra	1. एक जोड़ी घुघरी वाली पायल पुराना चांदी का वजन 140 ग्राम करीब 2. एक जोड़ी पैर पट्टी पेच वाली पुराना चांदी का वजन 70 ग्राम करीब 3. एक जोड़ी पैर पट्टी चांदी का पुराना मीना लगा वजन 50 ग्राम करीब 4. एक जोड़ी पैर पट्टी मीना लगा पतला साइज चांदी का पुराना वजन 24 ग्राम करीब

		<p>5. एक जोड़ी पैर पट्टी मीना लगा नंग लगा चांदी का पुराना वजन करीब 30 ग्राम</p> <p>6. 15 नग चांदी का पैर पट्टी अलग-अलग जोड़ी का साइज डिजाइन अलग 2 है। जिसमें 3 नग में मीना लगा एक नग में टिकलीझूल 2 नग पेच वाली 9 नग कड़ा वाली है। वजनी करीबन 380 ग्राम</p> <p>7. एक नग चैन वाली पैर पट्टी टुटा हुआ चांदी का वजन 10 ग्राम</p> <p>8. एक चांदी का गला का बनाया थक्का लोरी चौकर वजनी 700 ग्राम करीब कीमती 7000 रु साइज 11 ग 2</p>
3.	Amrit Lal Satnami	<p>1. 2 नग चांदी की चूड़ी डिजाइनदार वजनी 35 ग्राम की 350 रु</p> <p>2. 3 नग पैर में पहने वाले चांदी की बिछिया लाल हरा गुलाबी रंग की मीना लगा हुआ एक साथ चैन में फंसे हुए वजन 12 ग्राम की 120 रु</p> <p>3. एक चांदी की अंगुठी अंग्रेजी के टी लिखा हुआ जमीन रंग काले रंग डिजाइनदार वजन 3 ग्राम 30 रु</p>
4.	Nazirkhan	<p>1. एक प्लास्टिक की झोला (नायलोन) जिसमे सफेद हत्था नीला रंग की धारी बना है पकड़ने की स्थान फटा हुआ है।</p> <p>2. प्लास्टिक झोला के अंदर एक सफेद प्लास्टिक डिब्बा में रखा हुआ चांदी सरीखे धातू से बनी जेवर भरी है।</p> <p>3. एक जोड़ी चांदी के पायजेब वजनी करीबन 320 ग्राम है। 5.5, जैसे डिजाईन बना है घुंघरू लगा है।</p> <p>4. एक जोड़ी चांदी का लच्छा वजनी करीबन 3.40 ग्राम जिसकी बीच में ईट छाप डिजाईन बना है 3 परत है।</p> <p>5. एक चांदी का हाफ करधन वजनी करीबन 125 ग्राम जिसमे लाल एवं हरे रंग की मीना लगा हुआ है।</p> <p>6. 8 नग चांदी का पायल एक नग जिसकी जोड़ में त्थ लिखा है गोल डिजाईन बना हुआ है एक नग पायल शरद 100 लिखा है एक जोड़ी सिगल लरीवाला जिसमे अग्रवाल लिखा हुआ एक जोड़ी पायल जिसमें कैलाश लिखा है एक जोड़ी पायल जिसमे त्च मार्क 100 अग्रवाल लिखा हुआ लाल हरा मीना लगा है।</p> <p>7. दो नग चांदी की चैन जिसमें 'ऐऐ' डिजाइन बनी है एक मोटी एक पतली है। वजनी करीबन 50 ग्राम है।</p> <p>8. तीन नग चांदी की बिछिया जिसमे एक में गुलाबी रंग का नग लगा एक में हरे गुलाबी मीना लगा जिसमे त्चश्रण मार्क एक</p>

		<p>बिछिया ईट छाप वजनी जूमला करीब 10 ग्राम है।</p> <p>9. एक चांदी की तार में काले रंग की प्रिस्टल मोती की माला वजनी करीबन 20 ग्राम</p> <p>10. एक चांदी का गौठला दाना वजनी 1 ग्राम होगा।</p> <p>11. एक चांदी की पायल वजनी ) ग्राम है।</p> <p>12. पायल की चांदी की घुंघरू वजनी करीबन ) ग्राम है।</p> <p>13. दो नग सोने की नथनी जिसमें दोनों में लाल रंग का नंग लगा हुआ है वजनी करीबन 1 ग्राम है।</p> <p>14. दो सोने की नाक की फुल्ली फेंसी डिजाइन की वजनी ) ग्राम है।</p> <p>15. एक सोने की छोटी नाक की फुल्ली जिसमें सफेद रंग अमेरिकन डायमंड नग लगा हुआ है वजनी करीबन ) ग्राम है।</p> <p>चांदी की जेवर की जूमला वजनी 1100 ग्राम है।</p>
5.	Joshikram	<p>1. एक बाक्सर मोटर सायकल ज्ञ बजाज कम्पनी की जिसका मेहरून कलर है रजिस्ट्रेशन न० ब्ळ13.1189 है चेसिस न० वथ्ठळ्ळः 36422 एवं इंजन न० वथ्ठ वळ्ळः67029 है।</p> <p>2. एक प्लास्टिक की छोटी डिब्बा जिसमें चांदी सरिखे धातू के जेवर भरी है जोसिक के पेंट की दाये जेब में से निकालकर देने पर। जेवर निम्नानुसार है।</p> <p>3. एक जोड़ी चांदी की पायल वजन करीबन 80 ग्राम जिसमें त्झैच्च लिखा हुआ है एक पायल में लकड़ी लगी है।</p> <p>4. एक चांदी का पायल वजनी करीबन 50 ग्राम त्श्र 1 लिखा हुआ कलर वाली है।</p> <p>5. एक नग चांदी का पायल वजनी करीबन 20 ग्राम जिसमें शरद 100 लिखा हुआ कलर वाली है।</p> <p>6. एक चांदी की मंगलसूत्र वजनी करीबन 50 ग्राम जिसमें पान छाप का लॉकेट मीना घुंघरू लगा हुआ गुलाबी हरा लाल रंग की है।</p> <p>7. एक चांदी की चैन वजनी 10 ग्राम जिसमें जोड़ परे ।। लिखा है।</p> <p>8. दो नग चाबी कड़ा वजनी 25 ग्राम मीना लगा है।</p> <p>9. तीन जोड़ा बच्चों का चुड़ा वजनी 12 ग्राम है।</p> <p>10. एक गोठलर चांदी का वजनी 1 ग्राम होगा।</p> <p>11. चार नग चांदी का चन्द्रमा वजनी 4 ग्राम है।</p> <p>12. तीन अंगूठी जिसमें गुलाबी नग लगी है वजनी 10 ग्राम (चांदी की) है।</p>

		<p>13. तीन पुरुष अंगूठी चांदी की वजनी जुमला 9 ग्राम दो में नग है एक चौकोर है।</p> <p>14. दो नग लेडिस अंगूठी वजनी करीबन 10 ग्राम जिसमे एक में लाल रंग का नग लगा एक सादा है।</p> <p>15. एक नग कान का झुमका वजनी करीबन 3 ग्राम जिसमें चैन लगी हुई है।</p> <p>16. एक बिछिया चांदी की ईट छाप है वजनी 2 ग्राम है।</p> <p>17. एक चांदी की लॉकेट 1 ग्राम जिसमे लाल, हरा, नीला मीना लगा हुआ है।</p> <p>18. एक कान का टाप्स ) ग्राम सिम्पल गोलाकार है।</p>
6.	Subbadas Mahant	<p>1. तीन नग चांदी का पैर पट्टी जिसमे एक जोड़ी 2 नग सादा एवं 1 नग घुंघरू वाली पेच लगा ळै लिखा वजन 145 ग्राम की 1450 रु।</p> <p>2. 2 नग चांदी का अंगूठी हरा लाल रंग का मीना लगा हुआ । बिछिया डिजाइन का वजन 3 ) ग्राम की 30</p> <p>3. एक नग चांदी का बिछिया लाल गुलाबी हरे रंग का मीना लगा फुल डिजाइन का वजन 2 ग्राम की 20</p> <p>4. एक लोहे का चाकू नुकीला धारदार</p>
7.	Shivlal @ Runjhu	<p>1. एक में जुड़े 3 नग पैर में पहनने का बिछिया चांदी का मीना लगे वजन 7 ग्राम की 70 रु</p> <p>2. 2 नग चांदी की अंगूठी नग लगा एक लम्बा नग एक गोल नग लगा है वजन 4 ग्राम की 40 रु</p> <p>3. 2 नग चांदी के चाबी छलला घुंघरू वाली मीना लगा वनज 28 ग्राम की 280 रु</p>

5. During trial, the complainant filed an application under Section 457 CrPC for handing over seized property on supurdnama before learned Chief Judicial Magistrate, Raigarh claiming ownership on the count that the applicant is goldsmith and the property seized by the Police from the accused is deteriorating, therefore, it may be handed over to him. One of the accused namely Radhey Shyam Chandra who was charged for committing robbery has filed objection contending that he has no objection to hand over the

property which has been seized on the memorandum statement of Nasir Khan dated 19.06.2004 from Radhey Shyam Chandra as well as all the property seized from him except from No. 1 to 8 as the said property belonged to accused Radhey Shyam Chandra. It has also been contended that the seized property are disputed, therefore, its identification is necessary and has prayed for rejection of the application so far as the property seized from accused Radhey Shyam Chandra. Learned CJM has rejected the same vide order dated 25.09.2024.

6. The appellant after judgment of the criminal trial has moved an application for handing over the property on supurdnama before the learned Additional Sessions Judge under Section 452 CrPC which was registered as Miscellaneous Criminal Case No. 63 of 2005. Learned 4<sup>th</sup> Additional Sessions Judge vide impugned order dated 21.07.2005 has rejected on the count that earlier the trial Court has rejected the application under Section 457 CrPC and the learned Sessions Court while disposing of the criminal trial No. 141 of 2004 has not given any decision with regard to disposal of the property but in para-60 of its judgment has granted liberty to the appellant to take recourse of civil suit and accordingly it has rejected the application filed by the appellant. Being aggrieved with this order, the appellant has preferred this appeal.
7. Learned counsel for the appellant would submit that the applications under Section 452 and 457 CrPC are independent proceedings and even if their application under Section 451 CrPC has been rejected by the trial Court it does not affect their right as proceeding under Section 451 CrPC is during custody and disposal of the property pending the trial and its intermediate

order whereas Section 452 CrPC is final order which has been passed for disposal of the property after conclusion of trial, as such there is no rider to decide the case by the Session Court under Section 457 CrpC. He would further submit that order under Section 451 Crpc is intermediate order. He would further submit that even other wise the order under Section 452 Crpc is interlocutory order, therefore, it merges with the final order. To substantiate this submission, he has referred to the judgments in the case of **Surjeet Kumar Jain vs. State of Chhattisgarh reported 2021 SCC Online Chh 2464**, judgment of Madhya Pradesh High Court in the case of **Dheerendra Dwivedi @ Dheeru vs. State of MP in Criminal revision No. 2078 of 2020 decided on 17.12.2020** and also referred the judgment of High Court of Delhi in the case of **Sandeep Singh vs. State of NCT of Delhi and another, reported in 2022 SCC Online Del 1466**.

8. He would further submit that one of the accused has not claimed the entire property, therefore, finding recorded by the trial Court to go for civil proceedings is illegal and is liable to be set aside. He would further submit that confessional part of the accused lead to discovery used for purpose of disposal of the property and the stolen property recovered at the instance of the accused is disclaimed by him and the accused were given benefit of doubt, as such property should be returned to the owner. To substantiate this submission he has referred to the judgments of Hon'ble Supreme Court in the case of **Mahesh Kumar vs. State of Rajasthan, 1990 Supp SCC 541(2)**, **Prakash Vernekar vs. State of Goa and Another reproted 2007 SCC Online Bom 1244**, **Vishnu Kumar Agarawal vs. State of UP reported 2022 SCC Online All 1766**, **Prakash Chandra Jain vs. Jagdish**

**and another reported 1957 SCC Online MP 118, Satish Ramakant Naik vs. State of Goa through Public Prosecutor and another reported 2019 SCC Online Bom 4887** and would pray for allowing the appeal.

9. Learned counsel for the respondent No.2 Mr. Arun Shukla would submit that the impugned passed by the trial Court is legal, justified and the respondent No. 2 is claiming right over the seized property. He would further submit that the appellant has not submitted any bills or document of purchase to demonstrate that he is the ownership of the property and in absence of any documentary evidence on record it cannot be said that the complainant/appellant is the owner of the property, as such he is not entitled to get possession of the property after conclusion of the trial, therefore application under Section 452 of CrPC has rightly been rejected by the trial Court. He would further submit that entitlement of the appellant itself is doubtful unless and until absolute ownership of the seized material is prima-facie proved, as such he is not entitled to take possession on the looted property and would pray for dismissal of the appeal.
10. On the other hand learned counsel for the State supporting the judgment of the trial Court would submit that learned trial Court declined possession of the seized property which is legal, justified and which does not warrant interference by this Court. He would further submit that even interlocutory order passed by the trial Court under Section 451 CrPC before the Magistrate has not been challenged, as such it has attained finality and even if interlocutory order is not binding proceeding under Section 452 Crpc but it has some legal value which cannot lose sight of the fact by ignoring the same unless cogent material is brought by the appellant. In the present

case, the appellant has not produced any bill, voucher to demonstrate that he has purchased the silver and gold items from which he has made ornaments. He would further submit that the complainant/appellant has stated that 5 KG gold and 15 tolas silver have been looted by the accused whereas only 1100 gram ornaments were seized as per seizure memo, as such there is large discrepancy in the details of the seized property and the contents made in the FIR, therefore, there is serious doubt over the correctness and genuineness of the claim and would pray for dismissal of the appeal.

11. I have heard learned counsel for the parties and perused the records.
12. From the submission made by the counsel for the parties, the point merged for determination by this Court is whether the order passed by the Sessions Court declining claim of the appellant under Section 452 CrPC and directing the appellant to take recourse of civil law is legal, justified or not ?
13. For better understanding the point of determination, it is expedient for this Court to extract Sections 451 and 452 CrPC.

**Section 451 CrPC - Order for custody and disposal of property pending trial in certain cases:-**When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation- For the purposes of this section, "property" includes -

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

**Section 452 CrPC Order for disposal of property at conclusion of trial.**

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by

destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in Sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

14. From the above stated provisions of CrPC, it is quite vivid that proceeding under Section 451 and 452 works in different sphere as Section 451 CrPC operates for custody and disposal of the property pending trial in certain cases whereas Section 452 CrPC operate for disposal of the property at conclusion of the trial. It is also clear that at the time of considering the application under Section 451 CrPC, the documents relating to seizure are not available as at these documents get approved after completion of trial by exhibiting the same in the course of proceeding or by examining the witnesses of the seizure memo, as such while dealing with the application during the trial the person who intends to claim the property has to prove his claim by strong and cogent evidence whereas after trial the complainant examined, the seizure memo are duly proved by examining the witnesses

and the accused has also opportunity to explain the circumstances of availability of the property on his memorandum statement recorded under Section 27 of the Evidence Act then only entitlement of the person is determined, therefore, rejection of the application under Section 451 CrPC is not having any adverse affect while deciding the application under Section 452 CrPC after completion of the trial. Even otherwise, order passed under Section 451 CrPC is interlocutory order and in view of well settled legal position of law that interlocutory order does not culminate right of any party, as such the trial court has committed illegality while taking into consideration the order passed under Section 451 CrPC by the Judicial Magistrate First Class while dismissing the application under Section 452 CPC.

15. The Hon'ble Supreme Court in the case of **Rajendra Kumar Sitaram Pande and others vs. Uttam and another reported 1999(3) SCC 134** has held as under:-

6. Discretion in the exercise of revisional jurisdiction should, therefore, be exercised within the four corners of Section 397, whenever there has been miscarriage of justice in whatever manner. Under sub-section (2) of Section 397, there is a prohibition to exercise revisional jurisdiction against any interlocutory order so that inquiry or trial may proceed without any delay. But the expression "interlocutory order" has not been defined in the Code. In *Amar Nath & Ors. vs. State of Haryana* 1978(1) SCR 222, this Court has held that the expression "interlocutory order" in Section 397(2) has been used in a restricted sense and not in a broad or artistic sense and merely denotes orders of purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the right of the parties cannot be said to be an "interlocutory order".

16. From perusal of the order impugned passed by the learned Session Judge while rejecting the application has not taken into consideration the seizure

memos Ex.P-20, ExP-27, Ex.P-17, Ex.P-23, Ex.P-24, Ex.P-18 and Ex.P-19 which were the seizure memo prepared on the memorandum statement recorded under Section 27 of the Evidence Act of the accused namely Ghanshyam Kenwat, Radhey Shyam Chandra, Amrit Lal Satnami, Nazir Khan, Joshikram, Subhas Mahant, Shiv Lal @ Runjhu as detailed above. Even accused including Radhey Shyam in their statement recorded under Section 313 CrPC have not stated anything regarding ownership of the property seized as well as seizure of the property from them.

17. Though it is well settled legal position that as per Section 27 of the Evidence Act, it is quite vivid, 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. Section 27 of the Evidence Act, has recently come up for consideration before the Hon'ble Supreme Court in the case of **Neelu @ Nilesh Kosti vs. State of Madhya Pradesh reported in 2026 INSC 173** wherein the Hon'ble Supreme Court has held in paragraph 20,21,22 and 23 as under:-

20, It is trite that Section 25 and 26 of the Evidence Act stipulate that confession made to a Police Officer is not admissible. However, Section 27 is an exception to Section 25 and 26 and serves as a proviso to both these sections. Section 27 of the Evidence Act reads as follows:

“27. How much of 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.” The scope and ambit of Section

27 have been examined by this Court in Delhi Administration vs. Bal Krishan and Others reported in 1972 (4) SCC 659.

21) Elucidating on what constitutes "discovery of fact" under Section 27 of the Evidence Act, this Court in Udai Bhan vs. State of Uttar Pradesh reported 1962 SCC Online SC 229 observed as follows :

"11. Thus it appears that Section 27 does not nullify the ban imposed by Section 26 in regard to confessions made by persons in police custody but because there is the added guarantee of truthfulness from the fact discovered the statement whether confessional or not is allowed to be given in evidence but only that portion which distinctly relates to the discovery of the fact. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence. ...." (Emphasis supplied).

22) The aforesaid legal position was comprehensively reiterated and elaborated upon by this Court in Bodhraj Alias Bodha and Others vs. State of Jammu and Kashmir 2002 (8) SCC 45, wherein the question of whether evidence relating to recovery is sufficient to fasten guilt on the accused was examined at length. This Court held that for evidence under Section 27 to be admissible, the information must emanate from an accused who is in police custody. The Court elucidated that the basic idea embedded in Section 27 is the doctrine of confirmation by subsequent events when a fact is discovered on the strength of information obtained from a prisoner, such discovery serves as a guarantee of the truthfulness of the information supplied. The Court further observed that whether the information is confessional or non-inculpatory in nature, if it results in the discovery of a fact, it becomes reliable information. Significantly, it was held that the mere recovery of an object does not constitute the discovery of fact envisaged in the section. Relying on the Privy Council's decision in Pulukuri Kottayya and Others vs. King Emperor AIR 1947 PC 67, the Court held that the "fact discovered" embraces not merely the object recovered, but the place from which the object was produced and the knowledge of the accused as to its existence, and that the information given must relate distinctly to that effect.

23) When the present case is examined in the light of the aforesaid principles, it is evident that the recovery of the dead body satisfies all the essential requirements of Section 27 of the Evidence Act. Pursuant to the memorandum statement recorded, while the appellant was in Police custody, the dead body of Archana @ Pinki was discovered from a well near Tasaali Dhaba, Indore Bypass Road. The body was found stuffed in a sack, as deposed by the panch witnesses who were

present at the time of recovery. The recovery panchnama establishes that the recovery was made at the precise location disclosed by the appellant. As laid down in *Udai Bhan* 4 (2002) 8 SCC 45 5 AIR 1947 PC 67: 1946 SCC OnLine PC 47 (supra), the discovery of a fact includes the object found, the place from which it is produced, and the knowledge of the accused as to its existence. In the present case, the information given by the appellant while in Police custody distinctly relates to the fact discovered, namely, recovery of the dead body of the deceased concealed in a sack and thrown in a specific well. This constitutes a "distinct fact" as contemplated under Section 27 of the Evidence Act, as the recovery of the body from that precise location could only have been made on the basis of information furnished by someone who had personal knowledge of its disposal. The recovery embodies the "doctrine of confirmation by subsequent events" as explained in *Bodhraj* (supra)—the actual discovery of the body from the exact location disclosed by the appellant is a guarantee that the information supplied by him is true. The fact discovered embraces the place from where the object was recovered (the well near Tasaali Dhaba) and the knowledge of the appellant as to its existence at that location. This information is not within public domain or capable of discovery through routine investigation. These circumstances constitute a formidable link in the chain pointing towards the culpability of the appellant.

18. Considering the aforesaid legal position and the facts of the case, the information given by the accused in the police custody regarding silver and gold ornaments distinctly related to the fact discovered under Section 27 of the Evidence Act as the recovery of gold and silver ornaments from the precise location could only have been made on the basis of information furnished by someone who had personal knowledge about it. Thus it cannot be held that the property was seized from the accused persons as the memorandum statement of the accused for proceeding under Section 452 CrPC is piece of evidence for the purpose of considering and deciding who is best person entitle to possession of the property. The Hon'ble Supreme Court in the case of **Mahesh Kumar vs. State of Rajasthan reported in 1990 supp SCC 541** has held that leading to the discovery by the accused

can be made use of for purpose of and the disposal of property under Section 452 of the Code. The Hon'ble Supreme Court has held as under:-

2. In the facts and circumstances of the present case, we are satisfied that the direction made by the learned Single Judge of the Rajasthan High Court for the forfeiture of the amount of Rs 20,000 (Rupees twenty thousand) to the State is wholly unwarranted. It is now accepted principle that the confessional part of the statement made by the accused leading to discovery within the meaning of Section 27 of the Evidence Act, 1872 or Section 162 of the Code of Criminal Procedure, 1973 can be made use of for purpose of and the disposal of property under Section 452 of the Code. There is a long line of decisions laying down the principle and we would refer to only a few of them.

3. In *Queen Empress v. Tribhovan Manekchand* a Division Bench of the Bombay High Court laid down that the statement made to the police by the accused persons as to the ownership of property which was the subject matter of the proceedings against them although inadmissible as evidence against them at the trial for the offence with which they were charged, were admissible as evidence with regard to the ownership of the property in an enquiry held by the Criminal Procedure Code. The same view was reiterated in *Pohlu v. Emperor* where it was pointed out that though there is a bar in Section 25 of the Evidence Act, or in Section 162 CrPC for being made use of as evidence against the accused, this statement could be made use of in an enquiry under Section 517 CrPC when determining the question of return of property. These two decisions have been followed by the Rajasthan High Court in *Dhanraj Baldeokishan v. State* and the Mysore High Court in *Veerabhadrapappa v. Govinda*. In the present case, the amount in question was seized from the accused in pursuance of statements made by them under Section 27 of the Evidence Act. The High Court as well as the courts below have found the property to be the subject of theft and the acquittal of the accused is upon benefit of doubt. The accused persons disclaimed the stolen property and there is no reason why the same should not be returned to the owner i.e. the complainant to whom it belongs.

19. The High Court of Madhya Pradesh in the case **Kamarlal and another vs. State of**

**M.P. and another reported in 1992 SCC Online M.P. 246** has held as under:-

9. The learned counsel appearing on behalf of the complainant-accused has placed reliance on a decision of this court of *Babulal v. State of M.P* (1989 C.Cr.J 11) wherein it has been observed that the power of the criminal court under S. 452, Cr.P.C. to make an order for the disposal of the property at the

conclusion of the trial is summary in nature and on order so made does not adjudicate upon the civil rights of the parties and the persons aggrieved are free to file a civil suit for enforcement off their rights in the property and that the provisions under the law do not bar statement of the accused made to the police officer during investigation being used to determine the person to whom custody of the property could be delivered.

(10.) In the instant case, the argument of the learned counsel for the petitioners-Accused is that that the property in dispute belongs to the Accused persons and the police seized the property from the Accused persons and implanted the same for the purpose of seizure in pursuance of memorandum under S. 27 of the Evidence Act. This argument in my opinion, has no legs to stand. If the police had seized the property belonging to the Accused persons from them, it was but natural that they would have made complaint of such highhandedness on the part of police at some forum. It was also expected in that circumstances that the Accused persons would, from the very outset make a claim to the property as belonging to them but they advisedly kept silent for some time even after the complainant made an application under S. 452 of the Cr. P.C. The Accused persons also denied any seizure of the property from them in the examination of the Accused. In these circumstances, no claim has been established of the Accused over the property which was the subject matter of the alleged offence of theft. In fact, the Accused persons have been acquitted because they were not found to be in possession of the property which was allegedly seized from them. Moreover, as observed in the case of Babulal (supra) the disposal of property u/S. 452, Cr. P.C. is summary in nature and subject to proper adjudication of civil rights of the parties in a civil suit by the person aggrieved. In view of the discussions aforesaid, I do not find any force in this revision, which is, therefore, dismissed. Revision dismissed.

20. Similar views have also been taken by the High Court of Kerla in the case of **Thampi Chettiar Arjunan Chettiar vs. State and another reported in 1995 Criminal Law General 1185, High Court of Bombay in the case reported in 2007 SCC Online Bombay 1214 and Allahabad High Court also in the case of Vishnu Kumar Agrawal vs. State of U.P. and others reported in 2022 SCC Online All 1766.**
21. In view of above stated facts and law on the subject, I am of the view that the learned Sessions Court has committed illegality in passing the order dated

21.07.2005 in Misc. Case No. 63 of 2005 rejecting the application for supurdnama under Section 452 CrPC after completion of trial and acquittal of accused. Consequently, the impugned order dated 21.07.2005 is set aside and the application filed by the appellant under Section 452 CrPC is allowed and the Sessions Court is directed to hand over the property as detailed in supurdnama Ex.P-20, ExP-27, Ex.P-17, Ex.P-23, Ex.P-24, Ex.P-18 and Ex.P-19 to the legal heirs of the appellant subject to the satisfaction of the Sessions Court, Raigarh by imposing usual conditions upon the owner of the property at the time of handing over to them.

22. Accordingly, the instant appeal is allowed.

Sd/-

**(Narendra Kumar Vyas)**  
**Judge**