



CLIPPING THE WINGS OF THE PROSECUTION IN A CRIMINAL TRIAL - AN ERRONEOUS EXCLUSION OF 'MENTAL FACTS' FROM SECTION 27 OF THE INDIAN EVIDENCE ACT

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Abstract *Section 27 of the Indian Evidence Act, 1872 carves an exception to the general prohibition on the proof of confessions. It states that when a 'fact' is discovered in consequence of receipt of information from a person who is accused of an offence and is in police custody, the information to that extent becomes admissible. Over the years though, the word 'fact' has been consistently misunderstood to mean only a physical object, thereby excluding mental facts. In this paper, it is argued that this proposition of law is incorrect. Firstly, this paper shows that the precedential basis for this proposition of law is erroneous and then it shows why and how mental facts are included within the scope of the word 'fact' in Section 27. As the discussion in the paper will show, this interpretation of 'fact' is important as it can have a considerable impact on the scope of evidence that can be introduced by the prosecution in a criminal trial.*

I. INTRODUCTION

In India, confessions are of prime importance in the course of police investigations and also to prove the commission of an offence. They provide valuable

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clues for an effective investigation of a case and constitute vital links to secure the conviction of an accused.¹ Thus, the stipulation of the law on confessions, their admissibility, the extent of their admissibility, the circumstances under which they are admissible and the like, is important both from the perspective of the prosecution as well as the accused. When it comes to confessions, the Indian Evidence Act, 1872 ('the Act') creates two categorical prohibitions. It says that no confession made to a police officer shall be proved as against the person who makes it² and also that no confession made in the custody of a police officer shall be proved unless it is made in the immediate presence of a Magistrate.³

However, Section 27 of the Act also carves out an exception to these prohibitions⁴ when a fact is discovered in consequence of the information received from a person who is in the custody of a police officer and is accused of an offence. In these circumstances, so much of such information, whether or not it amounts to a confession, as relates distinctly to the fact thereby discovered, may be proved.⁵

The principle that this provision embodies is that evidence as to a confession or to other statements made by a person accused of an offence to a police officer or in police custody is considered to be tainted. However, if the truth of that information is assured by the discovery of a fact, it may be said to be untainted and thus, to the extent that it relates directly to the fact discovered the information becomes provable.⁶ In the scheme of the Act, this is a critical provision because it allows a pathway for the prosecution to prove what is otherwise impermissible to be proved, namely, parts of a confession or of information conveyed to a police officer or in police custody.⁷

Though for the prosecution to do so, there are certain conditions that need to be met.⁸ They are as follows. A fact should be discovered. It should be discovered in consequence of the receipt of the information. The information that is sought to be made admissible must relate distinctly to this fact that is discovered. Evidently, the ability of the prosecution to prove some portion of the confession or information is contingent on the 'discovery' of a 'fact'. In spite of that, while the other words and phrases in this provision have attracted considerable

¹ K. Sreedhar Rao, *Criminal Justice System-Required Reforms*, 43(2) JOURNAL OF THE INDIAN LAW INSTITUTE 155, 163 (2001); Ministry of Home Affairs, Committee on Reforms of Criminal Justice System 122 (2003).

² Section 25, Indian Evidence Act, 1872.

³ Section 26, Indian Evidence Act, 1872.

⁴ Vepa Sarathi, *Law of Evidence* 145-46 (6th edn., 2006); Ratanlal & Dhirajlal, *The Law of Evidence* 525 (23rd edn., 2010).

⁵ Section 27, Indian Evidence Act, 1872.

⁶ Sarathi, *supra* note 4, at 145; V. Nageswara Rao, *The Indian Evidence Act* 174 (2012).

⁷ M.C. Sarkar & S.C. Sarkar, *Law of Evidence* 523 & 527 (15th edn., 1999); G.S. Pande, *Law of Evidence* 151 (5th edn., 2005).

⁸ *Id.*; M. Monir, *Principles and Digest of the Law of Evidence* 330 (12th edn., 1999).

litigation and judicial scrutiny over the years,⁹ the position of law on the meaning of the word ‘fact’ has consistently been said to be well settled by commentators and authors.¹⁰

There is consensus that it was settled by a decision of the Privy Council in *Pulukuri Kottayya v. King Emperor* (*Pulukuri*)¹¹ and has been followed by the Supreme Court ever since. The word ‘fact’ as used in Section 27 has been understood to mean a physical object as well as the place where that object was found and the knowledge of the accused as to this location. It does not include a mental condition or a state of affairs.¹²

Nevertheless, in a recent case, *State (NCT of Delhi) v. Navjot Sandhu*,¹³ (*Afzan Guru*), the Supreme Court was asked to consider whether facts such as mental conditions and the state of things are excluded from the scope of Section 27. The Supreme Court analysed the body of law on this issue. It described *Pulukuri* as a locus classicus on the issue, analysed the judgment and came to the conclusion that it was an authority for the proposition that the word ‘fact’ as used in Section 27 is not limited to a material object, but also includes the place from where it was found and the knowledge of the accused as to its existence at that place.¹⁴ After that, the court looked into the various Supreme Court decisions on this issue. It noted that the proposition laid down in *Pulukuri* had been followed consistently. Importantly, according to the court, the dictum had also been followed to hold that mental facts are not included within the word ‘fact’ in Section 27.

Thus, the court concurred with the abovementioned juristic view. What follows is that only when a physical object is discovered can the prosecution prove the corresponding portions of the confession or other information. From the standpoint of evidence law, this dictum is important because it considerably restricts the evidence that the prosecution can rely upon.

In this paper, it shall be contended that the view expressed in *Afzan Guru* and projected as the apt interpretation by commentators and authors, on the scope of the word ‘fact’ in Section 27 is incorrect. The word ‘fact’ does include mental

⁹ See Sarathi, note 4, at 149; Surendra Malik & Sudeep Malik, *Supreme Court on Evidence Act* 385, 402, 403, 405, 408 (2013); Law Commission of India, 185th Report on the Review of the Indian Evidence Act, 1872 144-171 (2003). Some of the words and phrases used in Section 27 that have been litigious over the years are ‘in consequence of’, ‘relates distinctly’, ‘so much of such information’ and so on.

¹⁰ Sarkar, *supra* note 7, at 542-43; Batuk Lal, *The Law of Evidence* 791 (6th edn., 2012); Malik, *supra* note 9, 402-03; Pande, *supra* note 7, at 145-46; Rao, *supra* note 6, 177; Ratanlal & Dhirajlal, *supra* note 4, at 526-532.

¹¹ *Pulukuri Kottayya v. King Emperor*, 1946 SCC Online PC 47.

¹² Sarkar, *supra* note 7, at 542; Batuk Lal, *supra* note 10, at 791, 798; Malik, *supra* note 9, at 391; Monir, *supra* note 8, at 337; Pande, *supra* note 7, at 146; Rao, *supra* note 6, 177; Ratanlal & Dhirajlal, *supra* note 4, at 497 & 532; P.M. Bakshi, *Basu’s Law of Evidence* 1114 (7th edn., 2003).

¹³ *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600.

¹⁴ *Id* at 120-125.

conditions, states of things, relations of things and other non-physical aspects. To have a correct interpretation is important in that it would have an impact on several prosecutions and police investigations by broadening the scope of evidence that is admissible before a court of law. To make this argument, this paper will be divided in four parts.

In the *first* part, this paper will examine the decision in *Pulukuri*. This decision will be contextualised by discussing the various High Court decisions that preceded it and the context will then be used to analyse the judgment of the Privy Council. Consequently, in this part, it will be shown that the scope of the word ‘fact’ in Section 27 was never settled by *Pulukuri*. In the *second* part, this paper will look at the various decisions of the Supreme Court post-*Pulukuri* on this issue. An analysis of these decisions will show that whenever asked to consider whether Section 27 covers mental facts or not, the court has either relied on *Pulukuri* or avoided the question altogether. Thus, the position has not even been settled by the apex court. Consequently, in the first two parts the paper displaces the basis for decision in *Afzan Guru* and shows that this decision has not conclusively clarified the law.

In the next two parts, the paper examines *why* and *how* mental facts are covered by Section 27. In the *third* part, Section 27 will be interpreted alongside Section 3 using both the literal as well as the golden rules of statutory interpretation. What this part will elucidate is that the word ‘fact’ in Section 27 is not limited to physical objects, but covers non-physical objects as well. However, even then, questions would persist as to the practical application of the provision and the possibility of abuse of its expanded scope by state authorities. In the *fourth* part, the paper illustrates the working of Section 27, showing how the discovery of a mental fact may take place. In the process, it addresses the concerns as to the potential abuse of this provision. Therefore, this paper concludes with the submission that the word ‘fact’ in Section 27 covers mental facts and that the dominant view on its narrow scope must be revisited.

II. WEAK PRECEDENTIAL BASIS

To show that *Pulukuri* never settled the position of law on the scope of the word ‘fact’ as used in Section 27, this Part will *first* analyse the decisions of various High Courts on this issue prior to the decision in *Pulukuri*. This is important to lay out the context in which the Privy Council analysed Section 27 and also to assess the primary concern of the court in that case. *Secondly*, this Part will examine the decision in *Pulukuri* and show how it has not settled the law on the meaning of the word ‘fact’ as used in Section 27.

A. High Court Decisions before Pulukuri

Among the first few decisions that touched upon the scope of the word ‘fact’, was the decision of a Full Bench of the Bombay High Court in *Sukhan v. Crown* (‘Sukhan’).¹⁵ In this case, the prisoner was accused of the murder of a boy, who had been wearing certain ornaments when he had disappeared. In police custody, the prisoner conveyed to the police officer the information, “*I had removed the karas, pushed the boy into the well, and pledged the karas with Allah Din.*” Subsequent to this information, the karas were recovered from Allah Din and were proved to be the karas that the boy had worn at the time of disappearance. The question to be answered by the court was as to the extent to which the aforesaid information could be proved against the accused.¹⁶

The Chief Justice, speaking for the majority, said without assigning any reasons that the phrase ‘fact discovered’ in Section 27 referred only to material and not mental facts.¹⁷ Hence, the information that could be proved would have to relate distinctly to the fact that the karas were in the possession of Allah Din and not to the karas simpliciter. The majority held that only the part of the statement that the accused had “*pledged the karas with Allah Din*” (sic) was admissible. The fact that the karas had been removed and the boy had been pushed into the well could not be proved.¹⁸ Moreover, it was held that the ingenuity of a police officer or the folly of an accused could not be the basis to circumvent the protection conferred by Sections 24, 25 and 26 of the Evidence Act.¹⁹

The dissent of Justice Forde took a different approach. There was no comment on the scope of the word ‘fact’. Instead, the judge took the example of the statement, “*I stabbed A at place B*”. He went on to say that the only information with the police before this statement was made was that A had disappeared. As a result of the statement, the police went to place ‘B’ and found ‘A’ stabbed and on the point of death. As per the judge, the fact discovered was that ‘A’ had died because of a stab wound. What had led to the discovery of that fact was the statement of the accused, “*I stabbed A at place B*”. However, according to the judge, the opinion of the majority and the body of law existing previously would only allow the phrase “*A at place B*” to be proved. To him, this was no information and would certainly not have led to the discovery of any fact.²⁰ Along these lines, he differed from the view of the majority.

Thus, the dissenting opinion did not focus on the ambit of the word ‘fact’. Instead, it focussed on the scope of the ‘information’ that would motivate the

¹⁵ *Sukhan v. Crown*, 1929 SCC OnLine Lah 141 : AIR 1929 Lah 344.

¹⁶ *Id* at ¶1-3.

¹⁷ *Sukhan v. Crown*, 1929 SCC OnLine Lah 141 : AIR 1929 Lah 344, ¶6.

¹⁸ *Sukhan v. Crown*, 1929 SCC OnLine Lah 141 : AIR 1929 Lah 344, ¶7.

¹⁹ *Sukhan v. Crown*, 1929 SCC OnLine Lah 141 : AIR 1929 Lah 344, ¶15.

²⁰ *Sukhan v. Crown*, 1929 SCC OnLine Lah 141 : AIR 1929 Lah 344, ¶41-43.

police to discover a fact. It was the incriminating portions of the information that motivated the police and hence, those portions must be allowed to be proved. This view also found resonance in a subsequent decision of the Madras High Court, *Athappa Goundan, In re*.²¹

However, another decision of the Bombay High Court in *Ganu Chandra Kashid v. Emperor* ('Ganu Chandra')²² took a different view. The appellants herein were convicted for dacoity. The main evidence against them was the stories of the approvers and their own confessions. The court was asked to see whether the confessions were duly corroborated for the purpose of Section 27. All the accused persons, barring one, volunteered to show the place where their share in the stolen property was buried. The trial court judge held the entire statement (including the portions that spoke about the stolen nature of the property and the share of each of the accused in it) to be admissible. It did so because the information gave the police notice that all the property was stolen and had directly led to the production of the property.²³

This finding was over-ruled by the High Court in appeal. Both judges said that the entire statement would not be admissible. The concurring opinion of Justice Broomsfield is noteworthy in that it offers a more detailed explanation. He said that the parts, "share of property" and "stolen in the Dahiwadi dacoity" were to be excluded on the ground that they did not directly relate to the discovery of property. Only the part of the statement where the accused said that they would show where the property was buried would be relevant and could be proved.²⁴ In *Ganu Chandra* thus, the Court took a view contrary to that taken by the minority in *Sukhan* and in *Athappa Goundan*. However, it did not consider the meaning of the word 'fact'. Justice Beaumont merely said that the 'fact' in Section 27 must relate to some concrete fact.²⁵

In *Afzan Guru*, the Supreme Court discusses these decisions when examining *Pulukuri*. It says that one of the issues before the courts in *Sukhan* and *Ganu*

²¹ *Athappa Goundan, In re*, 1937 SCC OnLine Mad 76 : ILR 1937 Mad 695. While considering a similar question, the court expressed its view on the scope of information that must be allowed to be proved as follows,

"Further, it is undisputed that the information must set the police in motion, because it is in consequence of it that the discovery is made. Would the police be set in motion merely by the statement of the accused that he threw a bichuva into the back room of his hut if there is no evidence that it is the instrument of the crime? If there is no evidence aliunde, then the police will not be set in motion unless the fact discovered is connected with the case under investigation and if it is the accused's statement which connects the fact discovered with the offence and makes it relevant, then even though that statement amounts to a confession of the offence, it must be admitted because it is that that has led directly to the discovery of the fact."

²² *Ganu Chandra Kashid v. Emperor*, 1931 SCC OnLine Bom 50.

²³ *Id* at ¶ 3-4.

²⁴ *Ganu Chandra Kashid v. Emperor*, 1931 SCC OnLine Bom 50, ¶ 20-21.

²⁵ *Ganu Chandra* at ¶ 4.

Chandra was whether Section 27 was confined to material objects.²⁶ As is evident from the above analysis, this issue was not framed in either of the two cases. There is only an assertion in one of the opinions in each judgment that the word ‘fact’ refers to a concrete/tangible object.

The meaning of ‘fact’ was analysed by the Madras High Court in *King Emperor v. M. Ramanujam* (‘Ramanujam’).²⁷ In this case, the prisoner was accused of murdering a woman. He had wrapped the body of the woman in a coir mattress, packaged the mattress and then dispatched the package by train. Nobody claimed the package at the destination station. The stench from the package increased and hence, it was opened. It was thus that the dead body was discovered. The accused was identified as the person who had dispatched the package. On arrest, he made a statement which led the police to the shop from where the coir mattress was purchased. The shop owner (P.W. No. 10) and another witness (P.W. No. 11) who had delivered the mattress identified it as one sold to the accused.²⁸

Now, the entire statement made by the accused was a confession that was made in police custody and was thus, hit by Section 26. The only way a portion of the statement could be proved was if it were encompassed by Section 27. The prosecution thus contended that the fact discovered in consequence of the prisoner’s statements was that he purchased a mattress from P.W. No. 10 on January 12, and had it carried from the shop by the coolie woman, P.W. No. 11.²⁹ The defence argued that this could not be a ‘fact’ as contemplated by Section 27.

Justice Cornish held that the word ‘fact’ as used in Section 27, must be read along with the definition in Section 3 and thus, can be construed to include a “state of things” as well. He said,

If the thing purchased has been proved to have been sold and has been identified as the thing sold to the prisoner, all the conditions necessary to the discovery of the fact of purchase are forthcoming. I think that the discovery of the purchase of a mattress by the prisoner on January 12, was the discovery of a relevant fact in consequence of the confessional statements made by the prisoner to P.W. No. 42 and that the statements distinctly related to the fact discovered.³⁰

In a concurring opinion, Justice Burns examining the meaning of the word ‘fact’ in Section 27 observed,

²⁶ *Afzan Guru* at ¶ 124.

²⁷ *King Emperor v. M. Ramanujam*, 1934 SCC Online Mad 428.

²⁸ *Id* at ¶ 2-11.

²⁹ *Ramanujam* at ¶ 15.

³⁰ *Ramanujam* at ¶ 15.

Nothing can be easier to understand than the words “any fact,” and I am not prepared to hold that they mean less than they say. I shall therefore not discuss any of the numerous cases cited by Mr. T.R.V. in which the learned Judges have gone the length of holding that the only facts contemplated by Section 27 are actual physical material objects. There if no warrant for any such limitation.³¹

The minority opinion differed with the majority on this point. The judge said,

...‘discovery’ may either mean the purely mental act of learning something which was not known before to a person, as the mere mental act of becoming aware of something after hearing it stated or the physical act of finding upon search or inquiry something or material fact the existence or the exact locality of which was unknown till then. It is in the latter sense that the word is used in this section, that is, in the sense of a finding upon a search or inquiry of articles connected with the crime or other material fact, the reason being that it is only this kind of discovery which proves that the information in consequence of which the discovery was made is true and not fabricated.³²

The minority opinion thus concurred with the view taken by the majority in *Sukhan* and by Justice Beaumont in *Ganu Chandra*. Moreover, unlike *Sukhan*, it assigned reasons for the same. Notably, the position adopted by the majority in this case was also followed in a subsequent decision of the Madras High Court in *Ravupalli Ramamurty v. Emperor* (‘Ravupalli’).³³ Although these two decisions of the Madras High Court directly relate to the question before the court in *Afzan Guru*, they were not discussed by the Supreme Court.³⁴ This omission is discussed in greater detail in the next part.

The above discussion of the decisions of the various High Courts shows that there was a difference of opinion on two points: *one*, the scope of the word ‘fact’ as used in Section 27; and *two*, the scope of the information that can be made admissible on the ground that it led to the discovery of a fact i.e., whether it must be confined to the fact eventually discovered or whether it must cover all such information that motivated the police to undertake the discovery. Notably, the second point was independent of the first. The validity of a view on the extent of information admissible in law would not depend on whether the word ‘fact’ included a mental fact.³⁵ It would make a difference only in deciding the portions of the information that were admissible in the context of a case.

³¹ *Ramanujam* at ¶ 26.

³² *Ramanujam* at ¶ 47.

³³ *Ravupalli Ramamurty v. Emperor*, 1939 SCC OnLine Mad 183 : AIR 1941 Mad 290, ¶ 8-9.

³⁴ *Afzan Guru* at ¶ 123, 130.

³⁵ *Afzan Guru* at ¶ 124. The fact that these were points that concerned the courts in these cases was also noted by the Supreme Court in *Afzan Guru*. Moreover, the Supreme Court also observed

B. Decision of the Privy Council

In *Pulukuri*, the Privy Council was asked to consider the admissibility of information conveyed by the accused under Section 27. It was asked to decide whether the view taken by the High Court on this point was correct.

In this case, the accused had been convicted for murder and had been sentenced to death.³⁶ In custody, one of the accused had made a statement to the police. He said that all the co-accused had beaten the victims to death, but that three people who were with the victims had managed to escape. The accused hid the spear used by an accomplice along with a stick of his in a particular house in the village. He volunteered to show that house to the police. Finally, the accused said that all their actions were performed at the instigation of Pulukuri Kottayya.³⁷

The High Court had taken the view that this entire statement was admissible under Section 27. The Privy Council overruled the decision of the High Court on this point and held that only the portion of the statement that the accused had hidden the spear along with a stick of his in a particular house in the village and the portion that indicated the said location to the police were admissible.³⁸

To arrive at this view, the Privy Council clarified the position of law on Section 27. It considered the arguments made on behalf of the prosecution and observed,

...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.³⁹

that the two points were independent and different.

³⁶ *Pulukuri* at 66.

³⁷ *Pulukuri* at 78.

³⁸ *Pulukuri* at 79.

³⁹ *Pulukuri* at 76-77.

Moreover, the Privy Council also considered the views taken by various High Courts and held,

A contrary view has, however, been taken by the Madras High Court, and the question was discussed at length in a Full Bench decision of that Court in *Athappa Goundan, In re*⁴⁰ where the cases were referred to. The Court, whilst admitting that the weight of Indian authority was against them, nevertheless took the view that any information which served to connect the object discovered with the offence charged was admissible under Section 27... The Court was impressed with the consideration that as the objects produced were not in themselves of an incriminating nature their production would be irrelevant unless they were shown to be connected with the murder, and there was no evidence so to connect them apart from the confession. Their Lordships are unable to accept this reasoning. The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into Section 27 something which is not there, and admitting in evidence a confession barred by Section 26... In their Lordships' opinion *Athappa Goundan, In re*⁴¹ was wrongly decided, and it no doubt influenced the decision now under appeal.⁴² (emphasis supplied)

Evidently, the question of whether the word 'fact' as used in Section 27 includes a mental fact was never raised in *Pulukuri*.

The court was asked to consider only one of the two points which had been a bone of contention before the High Courts, namely, the extent of information admissible under Section 27. The prosecution contended that any information relating to the physical object discovered must be made admissible.⁴³ It is this contention that was rejected by the court. To allow such information, including information of an incriminating nature or information that connected the fact discovered with the offence would negate the protection offered by the preceding sections. Section 27 would become a convenient way to make confessions (whether obtained in police custody or by force) admissible.⁴⁴ Therefore, the court took the view that the information must relate distinctly to the fact discovered.

Nevertheless, in light of the fact that the High Court decisions on this point were placed before it, the court was also aware of the scenario wherein the

⁴⁰ 1937 SCC OnLine Mad 76 : ILR 1937 Mad 695.

⁴¹ 1937 SCC OnLine Mad 76 : ILR 1937 Mad 695.

⁴² *Pulukuri* at 77-78.

⁴³ *Pulukuri* at 76.

⁴⁴ *Pulukuri* at 76.

information related distinctly to the fact discovered may be too narrow to be of any consequence. It is in that context that the court seems to have said that the fact discovered would not only be the physical object, but also the place from where it was recovered and the knowledge of the accused as to this location. This proposition was not in course of an examination of the scope of the word, 'fact' as used in Section 27.

Importantly, the court did not comment on this point either. It only said that normally the Section came into operation when a weapon or a dead body was discovered.⁴⁵ It did not say that this was the scope of Section 27 or that the word 'fact' was confined to these things. It did not even discuss the only High Court decision (*Ramanujam*) that considered the inclusion of mental facts in detail, the conflict between that decision and the opinion of the Chief Justice in *Sukhan* or the reasons in favour of the inclusion of mental facts within the ambit of the word 'fact'. The primary concern of the Court seems to have been to stem the potential misuse of the word 'information' as used in Section 27.⁴⁶

In *Afzan Guru*, the Supreme Court acknowledged that the Privy Council was not asked to consider whether the word 'fact' in Section 27 is confined only to physical objects.⁴⁷ However, it went on to conclude that *Pulukuri* is an authority for the proposition that the 'fact discovered' in Section 27 would not only be the physical object, but also the place from where it was recovered and the knowledge of the accused as to this location.⁴⁸ What the Court did not note was that this is the proposition only when the admissibility of information vis-à-vis a physical object is under consideration. If one were to speculate, it is perhaps this lapse that influenced the analysis of the previous apex court decisions in *Afzan Guru*. These decisions will be discussed in the next part.

Overall then, a historical analysis of the High Court decisions discussed above and of *Pulukuri* tells us that the law on whether mental facts were excluded from the word 'fact' used in Section 27 and thereby the meaning of the word 'fact' was not settled by the Privy Council. *Sukhan*, *Ramanujam* and *Ravupalli* continued to be the main decisions on this point, but they provided two conflicting opinions. *Sukhan* said that 'fact' in Section 27 was only limited to concrete objects and the other two decisions held that it included mental facts as well. Notably, this state of affairs continued even after independence.

⁴⁵ *Pulukuri* at 76.

⁴⁶ See Vepa Sarathi, *supra* note 4, at 153.

⁴⁷ *Afzan Guru* at ¶ 124.

⁴⁸ *Afzan Guru* at ¶ 125.

III. THE JOURNEY OF SECTION 27 THROUGH THE SUPREME COURT

While there have been several instances when the Supreme Court has had to answer questions on Section 27, including those dealing with the word ‘fact’,⁴⁹ there have only been a few occasions when the court has had to consider whether mental facts are covered by Section 27.

One of the first cases when the court considered the admissibility of information vis-à-vis a mental fact was *Jaffar Hussain Dastagir v. State of Maharashtra* (‘Jaffar Hussain’).⁵⁰ In this case, one part of the statement that was sought to be made admissible under Section 27 had led to the discovery of a fact already known to the police. Hence, it was inadmissible.⁵¹ The other part only led to the discovery of the whereabouts of the accused. According to the court, this was not a fact related to the commission of the offence and hence, the information was inadmissible.⁵² What is noteworthy is that the court did not consider the information to be inadmissible because the fact was not a physical object, but in the nature of a ‘state of things’.

⁴⁹ *Lachhman Singh v. State*, AIR 1952 SC 167. In this case, the statement made by the accused was that they had thrown the dead body into a said river. The defence contended that this was too broad a statement to lead to any discovery. The Court observed that the accused had led the police to the spot where they had thrown the body. Hence, the statement was admissible.

Prabhoo v. State, AIR 1963 SC 1113. In this case, the one of the witnesses put forth by the prosecution had said that the accused did not make any statement. He produced the murder weapon voluntarily. The other witness said that the accused only said that he had used the weapon to commit the murder. As a consequence, there was no information to be made admissible under Section 27.

Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC 828 : AIR 1976 SC 483. In this case, the accused had been charged with the theft of three drums of phosphorous. In custody, made the following statement, ‘I will tell the place of deposit of the three Chemical drums which I took out from the Haji Bunder on 1st August.’ Following *Pulukuri*, the Supreme Court said that only the first half of the statement (‘I will tell the place of deposit of the three chemical drums’) would be admissible.

Sanjay v. State (NCT of Delhi), (2001) 3 SCC 190 : AIR 2001 SC 979. In the present case the appellants and one another person committed a robbery in broad daylight, in the consequence of which the deceased was stabbed to death. The evidence against the accused was circumstantial. The most important circumstance was the disclosure statements of the accused that led to the recovery of weapon of offence, of blood-stained clothes and of the stolen property. This piece of evidence was challenged on the ground that it was inadmissible. What the defence counsel disputed was the admissibility of the phrase, “after the commission of the offence” and of the adjective “looted” preceding the word “property”. In light of these phrases, the entire disclosure statement was said to be inadmissible. The court refused to accept a general argument of this nature. It said that a hyper-technical approach must be avoided when considering the admissibility of information under Section 27.

⁵⁰ *Jaffar Hussain Dastagir v. State of Maharashtra*, (1969) 2 SCC 872.

⁵¹ *Id* at ¶ 4.

⁵² *Jaffar Hussain* at ¶ 5, 11.

However, it did so in a case soon thereafter. In *H.P. Admn. v. Om Prakash* ('Om Prakash'),⁵³ the respondents had been acquitted by the Himachal Pradesh High Court of the charge of murder. The case against the accused was premised on four pieces of circumstantial evidence. One of these pieces of evidence was the information provided by the accused that he had purchased the dagger (the murder weapon) from P.W. 11, the seller. The accused had even led the police to the shop of the seller and pointed out the seller to them. In light of that, the prosecution contended that the information was admissible under Section 27. The court did not find merit in the stance taken by the prosecution.⁵⁴

The court said that the 'fact' discovered under Section 27 must pertain to a material fact to which the information relates.⁵⁵ The court differentiated the decision of the Full Bench of the Madras High Court in *Ramanujam* on the ground that the word 'fact' in that case was not restricted to a material object. The position of law had changed since then, after the decision in *Pulukuri* which had settled the meaning of the word 'fact'.⁵⁶

As to the discovery of a witness or of a fact of purchase, the court said,

What 'Makes the information leading to the discovery of the witness admissible is the discovery from him of the thing sold to him or hidden or kept with him which the police did not know until the information was furnished to them by the accused. A witness cannot be said to be discovered if nothing is to be found or recovered from him as a consequence of the information furnished by the accused and the information which disclosed the identity of the witness will not be admissible.⁵⁷ (emphasis supplied)

Notably, the court did not take note of the fact that the question of whether a mental fact was excluded from the word 'fact' as used in Section 27 was never answered in *Pulukuri*. *Pulukuri* had not even considered the decision in *Ramanujam*. As shown previously, the decision in *Pulukuri* analysed a different point, namely, the extent of information admissible when a physical object was discovered. Furthermore, *Pulukuri* did not even say that the discovery a physical object was mandatory to invoke Section 27. Therefore, the Supreme Court had erred in holding that the position of law since *Ramanujam* had changed and that *Pulukuri* had settled the question of the inclusion of mental facts under Section 27.

⁵³ *H.P. Admn. v. Om Prakash*, (1972) 1 SCC 249.

⁵⁴ *Id* at ¶ 13-14.

⁵⁵ *Om Prakash* at ¶ 14.

⁵⁶ *Om Prakash* at ¶ 13.

⁵⁷ *Om Prakash* at ¶ 14.

Although the court in *Afzan Guru* observed that the question of whether ‘fact’ in Section 27 was confined to only physical objects was not raised or answered by the court in *Pulukuri*, it held that the court in *Om Prakash* had settled the question of whether mental facts are included in Section 27.⁵⁸ It did not take note of the fact that the basis for the conclusion arrived at in *Om Prakash* was erroneous. Instead, it also relied on *Om Prakash* to not delve into the merits of the decision in *Ramanujam*.⁵⁹ Effectively thus, the reasons provided by the court in *Ramanujam* were not dealt with by the court in both, *Om Prakash* and *Afzan Guru*.

A continuation of this approach was then seen in *Earabhadrapa v. State of Karnataka* (‘Earabhadrapa’).⁶⁰ Even though this was a case where the only fact discovered was the ornaments stolen from the deceased victim – not a case involving a mental fact – the court when explaining the position of law on Section 27 cited *Pulukuri* and said that the word ‘fact’ as used therein only referred to concrete or material objects.⁶¹ This statement was not supported by any rationalisation. It was only a bald statement as found in the majority opinion in *Sukhan*. Nevertheless, it was cited in *Afzan Guru* to hold that the apex court had duly concluded that mental facts are excluded from the ambit of Section 27.⁶²

A contrasting viewpoint seems to have been adopted by the court in *State of Maharashtra v. Damu* (‘Damu’).⁶³ In this case, the accused made a statement that he had carried the dead body on his motorcycle to the location from where it was finally recovered.⁶⁴ The dead body had been found at that place even before this statement was made. Hence, it could not constitute a fact discovered pursuant to the information conveyed.⁶⁵ What was discovered according to the court was the fact that the accused had carried the dead body to the spot on his motor cycle. This fact was discovered on account of the recovery of a broken glass piece from the location that was found to be a piece of the tail lamp of the accused’s motorcycle.⁶⁶

There are two aspects that must be noted about this case. *One*, the fact which was discovered in the opinion of the court was not a physical object. It was more in the nature of a ‘state of things’ or a ‘mental condition of which any person was conscious’. In *Afzan Guru* though, the court did not take note of this. Instead, it said that *Damu* was a continuation of the proposition in *Pulukuri* and *Om*

⁵⁸ *Afzan Guru* at ¶ 129-133.

⁵⁹ *Afzan Guru* at ¶ 130.

⁶⁰ *Earabhadrapa v. State of Karnataka*, (1983) 2 SCC 330.

⁶¹ *Id* at ¶ 7.

⁶² *Afzan Guru* at ¶ 136.

⁶³ *State of Maharashtra v. Damu*, (2000) 6 SCC 269.

⁶⁴ *Id* at ¶ 34.

⁶⁵ *Damu* at ¶ 7, 9.

⁶⁶ *Damu* at ¶ 36, 37.

Prakash in that a piece of the tail lamp (a material object) had been found.⁶⁷ It did not look into the exact fact that was said to have been discovered.

Two, the investigation of the police only pointed towards the discovery of the fact that the accused had travelled to the spot on his motorcycle. The information that he had carried the dead body in the process did not relate distinctly to this discovery. The fact that there was a dead body on that motorcycle in the course of the said journey had not been discovered. Nevertheless, the court held that bit of the information to be admissible and therein seems to have diverged away from the law laid down in *Pulukuri*. However, even if only the truncated information is considered, the corresponding fact is that the accused went to the spot from where the dead body was found on his motorcycle. Even this fact does not fit into the description of ‘fact’ in *Pulukuri* – it is not in the nature of a physical object or the place where it was found or the knowledge of the accused as to this. Implicitly thus, the court seems to have said that the scope of the word ‘fact’ in Section 27 is not as curtailed as suggested by previous benches in *Earabhadrapa* and *Om Prakash*.⁶⁸

Overall thus, whenever the court has been asked to deal with the inclusion of mental facts in Section 27, it has either mistakenly relied on *Pulukuri* to answer the question or has not answered it altogether. Further, it has not considered why such facts should be excluded, whether they can be discovered, how such discovery can be proved, and how the discovery of a mental fact can be demarcated from the conveyance of information.

Therefore, while in the previous part it was observed that the Privy Council had not settled the debate on the scope of the word ‘fact’ in Section 27, it follows from the analysis in this part that the question has not even been answered by the Supreme Court. In *Afzan Guru*, the court heavily relied on this jurisprudence to decide the issue and thus, the basis for its decision is erroneous. As a consequence, it is also erroneous to opine that the law has been conclusively clarified when it comes to mental facts vis-à-vis Section 27.

⁶⁷ *Afzan Guru* at ¶ 139.

⁶⁸ Subsequently, there have been decisions where the court has been asked to consider the extent of information admissible under Section 27 vis-à-vis physical objects [*Anter Singh v. State of Rajasthan*, (2004) 10 SCC 657; *Amitsingh Bhikamsingh Thakur v. State of Maharashtra*, (2007) 2 SCC 310 : AIR 2007 SC 676; *Aftab Ahmad Anasari v. State of Uttaranchal*, (2010) 2 SCC 583 : AIR 2010 SC 773]. Though these cases did not involve a question on the exclusion of any fact from the ambit of Section 27, the Supreme Court when discussing the position of law on Section 27 simply reiterated the understanding that the Privy Council adopted of the word ‘fact’ to answer the question before it in *Pulukuri*. This understanding has been passed off as the meaning of the word ‘fact’. The court has in these cases referred to the place where the object was found and the knowledge of the accused as to this, as mental facts. However, as with the previous cases, it has not considered whether mental facts other than these are excluded from the ambit of Section 27 and if yes, then why.

IV. A STUDY OF THE WORD ‘FACT’ IN SECTION 27

In this part, this paper proceeds to analyse the meaning of the word ‘fact’ in Section 27 based on an interpretation of the provisions of the Act. Section 27 of the Act says,

“Provided that, when any fact is deposed to as discovered in consequence of information received from such 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.”⁶⁹

Section 27 only uses the word ‘fact’. There is no prefix attached to the word—there is no differentiation made between facts in the nature of tangible objects and other facts. To understand the word fact, reference will then have to be made to Section 3 of the Act. Section 3 defines the word fact as,

‘Fact’ means and includes- (1) any thing, state of things, or relation of things, capable of being perceived by the senses; (2) any mental condition of which any person is conscious.⁷⁰

When this definition is read along with Section 27, it follows that any thing, state of things or relation of things that can be perceived, or any mental state of which one is conscious can be discovered in consequence of the information received under Section 27. Section 27 does not only cover physical objects. It includes pure mental facts as well.

This conclusion follows from the application of what is popularly known as the literal rule of interpretation, namely, a statute must be construed in the ordinary and natural meaning of the words and sentences used therein.⁷¹ However, this is not the only rule of statutory interpretation. There are two other rules – the mischief rule and the golden rule. The mischief rule says that the judiciary must identify the mischief that the legislature sought to suppress and the remedy that it provided to do so. It must then interpret the statute in such a way as to suppress the mischief and to advance the remedy.⁷² A perusal of the “*The Indian Evidence Act with an Introduction on the Principles of Judicial Evidence*” by James Stephens,⁷³ the author of the Act, shows that there was no identifiable mischief or defect vis-à-vis Section 27 for which common law did not provide that

⁶⁹ Section 27, Indian Evidence Act, 1872.

⁷⁰ Section 3, Indian Evidence Act, 1872.

⁷¹ J. Langan, *Maxwell on the Interpretation of Statutes 28-29* (15th edn., 2007).

⁷² *Id* at 40.

⁷³ J.F. Stephens, *The Indian Evidence Act with an introduction on the principles of judicial evidence 15, 16, 126* (1872).

the framers of the legislation sought to suppress.⁷⁴ Therefore, the mischief rule of interpretation would not apply here.

What could apply though is the golden rule of interpretation. As explained by Parke J. in *Becke v. Smith*,

It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.⁷⁵

Therefore, one could deviate from a literal rule of interpretation in case an application of that rule would lead to a manifest absurdity or repugnance. Adopting the rationale in *Pulukuri*, an argument could thus be made that a literal interpretation of Sections 27 and 3 would lead to, a manifest inconsistency with the Sections 25 and 26 and the principles embodied therein.⁷⁶

In *Pulukuri*, the court said that all or any information vis-à-vis the fact discovered could not be admissible. To arrive at this conclusion, the court relied not only on the phrase ‘as relates distinctly’ mentioned in Section 27, but also discussed the underlying purpose. It said that if all that were needed to lift the ban imposed on confessions by the preceding sections was the inclusion in the confession of information related to an object discovered, ‘the persuasive powers of the police’ would prove equal to the occasion. The ban on confessions would have no effect.⁷⁷ Argumentation of this nature could also be adopted to sustain a challenge to the literal interpretation of the word ‘fact’ and to contend for the application of the golden rule.

While the argument is certainly forceful to limit the width conferred on the word ‘information’, it does not carry the same force in the context of the word

⁷⁴ In fact, Section 27 was similar to Section 150, Code of Criminal Procedure, 1861. Hence, it cannot be said that Section 27 sought to suppress a mischief that was not adequately addressed by common law.

In India, as in the England, external aids such as legislative history, official reports, white papers, speeches in the Legislature, materials surrounding the enactment of the statute and so on, can be relied on as a tool to identify the mischief that was sought to be remedied by Parliament. G.P. Singh, *Principles of Statutory Interpretation* 231-26 (12th edn., 2010).

⁷⁵ *Becke v. Smith*, (1836) 2 M & W 191 : 150 ER 724.

⁷⁶ See Singh, *supra* note 72, at 144-45. The author says that in the course of interpretation, it is incumbent that a head-on collision between two sections of the statute should be avoided and whenever possible, efforts should be made to harmonise the conflict. This must be done because Parliament would not want to take with the one hand what it has given with the other. It is this principle that could be used to challenge a literal interpretation of the word ‘fact’ in Section 27.

⁷⁷ *Pulukuri* at 76-77.

‘fact’. In the context of ‘information’, the fears of the court stemmed from the fact that discovery of any one object that was important in the factual matrix of the case could be used to include all information, including incriminating information (information that associated the accused with the commission of the offence, that showed the guilt of the accused, that connected the object to the offence and so on). These fears do not arise in the context of the word ‘fact’.

They would have legitimacy only if the discovery of a mental fact were co-terminus with the receipt of the information, i.e., if the very communication of any information was tantamount to the discovery of a mental fact insinuated in that information. In that scenario, confessions made to police officers and in police custody would become admissible because they would contain several mental facts that would be discovered as soon as the confession was made. Then, the situation could potentially be worse than that envisaged in *Pulukuri* as one would not even need to recover any object.

However, these fears are not well founded in the context of the word ‘fact’ and do not lead us away from a literal interpretation of the statute. This becomes evident when the Section is broken down into its elements. For information to be admissible under Section 27, two steps need to be satisfied.

One is that there should be a communication of information and *two* is that in consequence of the receipt of the information, a fact should be discovered.⁷⁸ When both these conditions are satisfied, then, so much of the information as relates distinctly to the fact thereby discovered is admissible. Therefore, Section 27 demarcates the receipt of information from the discovery of fact. That the two stages are not co-terminus is indicated by the use of phrases ‘in consequence of’ and ‘thereby discovered’. These phrases show that the discovery is a process that is to take place after the information has been conveyed. Therefore, the fears cited by the court in *Pulukuri* would not arise in the context of the inclusion of ‘mental facts’ in the word ‘fact’ as used in Section 27. To complete this argument though, it is important to understand how a mental fact can be discovered. This will be done in the next part, using some decisions that have grappled with this question.

V. SECTION 27 IN OPERATION

While the Supreme Court has not conclusively laid down the law, there have been a few High Court decisions⁷⁹ and a recent decision of the Supreme Court⁸⁰ wherein information leading to the discovery of a ‘mental fact’ has been held to be admissible. While these decisions do add strength to the proposition that

⁷⁸ Section 27, Indian Evidence Act, 1872.

⁷⁹ *Infra* notes 79, 84 and 94.

⁸⁰ *Infra* note 89.

‘mental facts’ are covered by Section 27, what they also show is how a mental fact can be discovered.

In *Firoz Abdul Latif Ghaswala v. State Govt. of NCT of Delhi* (‘Firoz’),⁸¹ the Delhi High Court was confronted with a situation wherein the police had received information that two LeT operatives (the appellants) were coming to Delhi with explosives. Based on this information, the operatives were apprehended. The explosives that they were carrying were seized. Both the arrest and the seizure were done in accordance with the requisite procedure.⁸² When in custody, the accused informed the police that the explosives were meant to be supplied to a man who was to meet them at 7:30 in the evening outside Jawaharlal Nehru Stadium. The police reached that location at that time. The man concerned arrived there in a car, was identified by the accused and was ultimately killed in an encounter. The police recovered a slip of paper from his body and further investigation led them to uncover many more explosive substances that had been hidden at a few destinations in the city.⁸³

Before the High Court, one of the questions to be answered was whether the information supplied by the appellants to the police was admissible under Section 27. Like previous Supreme Court decisions, the court did not delve into the controversy of whether the facts discovered were mental facts and hence, the information related to those facts was inadmissible. Instead, the court directly went into an analysis of the facts discovered and the corresponding information admissible. Eventually, the information was held to be admissible under Section 27. However, this case is important to demarcate the discovery of a fact from the receipt of information.

The Court said that the facts discovered in the present case were the co-accused who was killed in the encounter and the fact that he was waiting for the appellants outside Jawaharlal Nehru Stadium at 7:30 in the evening.⁸⁴ Admittedly, both these facts are not in the nature of material objects. The second fact is evidently in the nature of a ‘state of things’. That being the case, the court did not equate the communication of information with the discovery of such a fact. Instead, the fact was discovered when the police went to the Jawaharlal Nehru Stadium in the evening and found the co-accused waiting.⁸⁵ Thus, the fact was discovered after the information had been communicated.

A similar observation may also be made in the context of a decision of the Kerala High Court in *State of Kerala v. Babu* (‘Babu’).⁸⁶ In this case, the accused

⁸¹ *Firoz Abdul Latif Ghaswala v. State Govt. of NCT of Delhi*, 2012 SCC OnLine Del 4596.

⁸² *Id* at ¶ 5 & 6.

⁸³ *Firoz* at ¶ 7.

⁸⁴ *Firoz* at ¶ 17.

⁸⁵ *Firoz* at ¶ 17.

⁸⁶ *State of Kerala v. Babu*, 2008 SCC OnLine Ker 707 : ILR (2008) 3 Ker 527.

had been charged with the offence of murder. When in custody, he informed the police that he had purchased the sodium cyanide (the means through which the deceased had been poisoned according to the post-mortem report) from a certain shop. Subsequently, he took the police to that shop.⁸⁷ The shop-owner told the police that the accused had visited his shop twice, had told him that he needed the cyanide for colouring certain gold ornaments and had thus purchased one kilogram of sodium cyanide.⁸⁸ The question before the court was whether the information communicated to the police on this aspect was admissible under Section 27. According to the court, the fact discovered was that the accused had purchased the sodium cyanide from that shop owner.

Evidently, the fact involved in this case is a mental condition of which an individual is conscious. This is acknowledged by the court as well. Interestingly though, the court says that mental facts are covered by Section 27.⁸⁹ While the view may be contrary to what has popularly been considered to be the correct position of law and may hence be questioned, what is noteworthy is the distinction of the stage of communication of information from that of discovery of the mental fact. The mental fact was discovered when the police went to the shop from where the cyanide was purchased and questioned the shop-owner and not when the accused made a statement to the police.⁹⁰ Therefore, when applying Section 27, the communication of information was treated differently from the discovery of a mental fact.

An application of this type has also been evidenced in the decision of the Supreme Court in *Mehboob Ali v. State of Rajasthan* ('Mehboob Ali').⁹¹ In this case, the accused (Mehboob and Firoz) had been convicted for the possession and use of counterfeit currency and for criminal conspiracy. While Mehboob and Firoz had been arrested based on information disclosed by a co-accused, they made a statement to the police that they had obtained the forged currency notes from another co-accused (Anju Ali) and would help the police identify Anju Ali. Subsequently, they went with the police to Delhi and identified him. The police arrested Anju Ali and recovered counterfeit currency from his possession. Further investigation led to many more arrests and the uncovering of an entire racket.⁹²

In appeal before the Supreme Court, Mehboob and Firoz contended that the statements made by them were not admissible under Section 27 because no counterfeit currency was recovered from their possession.⁹³ In other words, they submitted that there was no material object recovered pursuant to the information

⁸⁷ *Id* at ¶ 3.

⁸⁸ *Babu* at ¶ 14.

⁸⁹ *Babu* at ¶ 43.

⁹⁰ *Babu* at ¶ 35.

⁹¹ *Mehboob Ali v. State of Rajasthan*, (2016) 14 SCC 640.

⁹² *Mehboob Ali* at ¶ 7.

⁹³ *Mehboob Ali* at ¶ 7.

disclosed by them. The fact of how the currency was procured was a mental fact related to the material object. However, because the material object was a *sine qua non* for the application of Section 27, information pertaining to the mental fact was inadmissible.

In response to this contention, the Supreme Court said,

For application of Section 27 of Evidence Act, admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the discovery, only that would be part of legal evidence and not the rest.

...It is apparent that on the basis of the information furnished by accused Mehboob Ali and Firoz other accused, Anju Ali was arrested. The fact that Anju Ali was dealing with forged currency notes was not to the knowledge of the Police. The statement of both accused has led to discovery of fact and arrest of co-accused not known to police. They identified him and ultimately statements have led to unearthing the racket of use of fake currency notes. Thus the information furnished by the aforesaid accused persons vide information memos is clearly admissible which has led to the identification and arrest of accused Anju Ali and as already stated from possession of Anju Ali fake currency notes had been recovered.

...the fact has been discovered by Police as to the involvement of accused Anju Ali which was not to the knowledge of the Police. Police was not aware of accused Anju Ali as well as the fact that he was dealing with fake currency notes which were recovered from him. Thus the statement of the aforesaid accused Mehboob and Firoz is clearly saved by section 27 of the Evidence Act. The embargo put by section 27 of the Evidence Act was clearly lifted in the instant case. The statement of the accused persons has led to the discovery of fact proving complicity of other accused persons and the entire chain of circumstances clearly makes out that accused acted in conspiracy as found by the trial court as well as the High Court.⁹⁴

As in the cases cited in Part II, the Supreme Court did not analyse the meaning of the word 'fact' or whether a 'mental fact' was excluded from the scope of Section 27. Nevertheless, the court quoted the definition of the word 'fact' as used in Section 3⁹⁵ and said that the facts discovered were the identity of Anju

⁹⁴ Mehboob Ali at ¶ 13-15.

⁹⁵ Mehboob Ali at ¶ 14.

Ali and that Anju Ali was dealing in counterfeit currency. Both these facts were not in the nature of physical or material objects. The second fact was in the nature of a mental condition or a 'state of things'. However, these facts were not discovered simply on the receipt of the information. They were discovered when the accused identified Anju Ali and on subsequent investigation of Anju Ali.

Therefore, what follows from an examination of these few cases is how the discovery of a mental fact takes place. In the working of the provision, discovery is an independent process that is triggered by the receipt of information. Only when the element of discovery is established, does the information which triggered it and which distinctly relates to it become admissible. It is immaterial for these purposes whether the fact concerned is a physical object or a mental condition or a state of things. Discovery would nonetheless have to be established.⁹⁶ In the absence of a discovery, the '*persuasive powers*' of the police would not account for much because the information disclosed (even that which clearly pointed towards incriminating circumstances) would stay inadmissible. Moreover, it is for the court to decide whether a fact has been discovered. As seen from the few cases before us, discovery may take place by finding a witness or by identification of a co-accused or by a chain of circumstances.

As a consequence, the fears that could lead to an application of the golden rule of interpretation are addressed. In the previous part, it was shown that the separation of discovery from receipt is an in-built mechanism contained in the statute to protect against the scenario where a confession would be admissible because it is laced with mental facts. In this part, the working of this mechanism was illustrated and thus, it was shown that the mechanism does not follow from an impracticable interpretation of the statute. Therefore, the literal interpretation of Sections 27 and 3 must be upheld.

What this part also shows is that mental facts can well be discovered. These mental facts can be mental conditions of which an accused is conscious as in

⁹⁶ This was seen in *Sivankutty v. State of Kerala*, 2012 SCC OnLine Ker 31724 ('Sivankutty'). The statement made by the informant-accused was that the weapons had been handed over by him to another co-accused. Subsequently, the weapons spoken about were located and hence, the statement was admitted. However, there was a noteworthy observation made by the court. The court said that the statement by itself did not lead to any discovery. A subsequent confirmation of the statement was necessary (¶ 64).

On this point it is important to take note of *Sarif Mohammad v. State of H.P.*, (2003) 1 Shim LC 195. In this case, the information provided by the informant-accused that he along with the co-accused had met four extremists under a bush at a said location and that he could take the police to that location was not allowed to be proved by the court. Necessarily, the fact involved here would have been the knowledge of the meeting with the four extremists and of the place of that meeting- a mental fact. However, this fact was never discovered in the course of subsequent investigation. Because no discovery took place, the information was not admitted (¶ 51). Therefore, this case is an illustration of the fact that courts do not equate the communication of information with the discovery of a fact when the fact involved is a mental fact. Discovery must be established separately.

*Babu and Sivankutty*⁹⁷ or they can be states of things as in *Firoz* or *Mehboob Ali*. Therefore, the opinion of the minority in *Ramanujam* is countered. The meaning of the word ‘fact’ does not need to be curtailed because physical objects have an added characteristic of tangibility, that is, they can be found in tangible terms.

VI. CONCLUSION

Confessions are an important piece of evidence, both in the course of police investigations and at the stage of trial. In fact, they are one of most oft used types of evidence. Under the law though, confessions made to a police officer and information conveyed when in police custody cannot be proved. The only way some portion of a confession or such other information can be made admissible is when it leads to a discovery of fact. The information that relates directly to the fact discovered can be proved. Naturally, this is an important provision from the perspective of the prosecution and the police. However, the consensus among jurists and the courts over the years has been that this exception can be invoked only when the fact discovered is a physical object.

In this paper, the validity of this consensus was challenged. The consensus is based on an opinion of the Privy Council in *Pulukuri*, the subsequent opinions of the Supreme Court and finally, the decision of the apex court in *Afzan Guru*. In the first two parts of this paper, the basis for this consensus was challenged.

It was shown that *Pulukuri* had never settled the law on whether mental facts are excluded from the scope of Section 27. Instead, it had settled the law on another controversial point (the scope of the word ‘information’) that had attracted divergent opinions from the High Courts. Subsequently, it was shown that decisions of the Supreme Court, too, had not answered this question. They had either relied erroneously on the opinion in *Pulukuri* or had not dealt with the question altogether. In *Afzan Guru*, the court did not independently assess whether mental facts are a part of the word ‘fact’ as used in Section 27. It relied on the decision in *Pulukuri* and on the subsequent opinions of the Supreme Court. Therefore, the basis for its decision was erroneous and it cannot be said to have clarified the law.

After establishing that the question of exclusion of mental facts from Section 27 has not been conclusively settled, this paper analysed whether mental facts are covered by this provision. It undertook a literal interpretation of Sections 27 and 3 to show that mental facts are included. However, the paper acknowledged that the literal rule of interpretation can be deviated from. Therefore, it considered whether the mischief rule or the golden rule of interpretation can be applied. While it found the mischief rule to be non-applicable, a case could be made out for the application of the golden rule.

⁹⁷ See note 94.

To do so, one could adopt the rationale applied in *Pulukuri* and say that the inclusion of mental facts would effectively negate the prohibitions imposed by the previous sections. It would dilute the protection available to the accused and lead to the use of extra-legal means to extract confessions. The paper countered this argument by showing how the statute itself addresses this concern. It also showed how the statute did not do this in an impracticable manner by illustrating the working of the provision. The protection that is offered by corroboration through physical objects in popular understanding would not be compromised. Hence, even the golden rule of interpretation is non-applicable. For all these reasons, it is submitted that mental facts are covered by the word 'fact' as used in Section 27 and it is thus important that the position of law on this issue be re-considered.