ALLAHABAD HIGH COURT

Baldeo

Vs

Emperor

(Collister, J.)

23 .02. 1940

JUDGMENT

Collister, J.

1. This is a reference arising out of Criminal Appeal No. 563 of 1939. There are three appellants and they have appealed from their conviction under Section 302, I.P.C. Their names are Baldeo, Lakhan and Tirmal. Evidence was admitted at the trial to the effect that Tirmal, while in custody of the police, stated to the second officer that the knife with which he and the other two appellants had murdered the deceased was at his house and that he could give it to the police officer if he were taken to the house. It is in evidence that Tirmal was thereafter escorted to his house and he unearthed a knife from under a heap of rice straw. The knife had stains of blood on it which was subsequently found to be of human origin. The following question has been referred to this Full Bench:What portion, if any, of the statement to the effect that 'the knife with which he and Baldeo and Lakhan, had murdered Maharaj Singh was at his house under a heap of pyal' alleged to have been made by the appellant Tirmal, to the Sub-Inspector or Police, Rafiq Ahmad, is admissible in evidence under Section 27, Evidence Act?

2. The order of reference gives some indication of the conflict of authority in respect to the scope, object and interpretation of Section 27, Evidence Act; but it is unnecessary to discuss those authorities because I am of opinion, for reasons which will appear, that if the relevant Sections of the Code of Criminal Procedure and the Evidence Act, are reviewed in the light of a recent decision of their Lordships of the Privy Council, it must be held that no part of the aforesaid statement is admissible in evidence. The case in question is 1. Pakala Narayana *Swami v. Emperor*[1] A person who was subsequently accused of the offence under investigation had made a statement to the police which contained a damaging admission, and one of the questions before the Board was whether that statement was admissible. Their Lordships held that the words "any person" in Section 162, Criminal P.C., in their ordinary meaning would include a person who might subsequently be accused of the offence which was being investigated. It was argued before their Lordships that to give Section 162, Criminal P.C., this construction would be to repeal Section 27, Evidence Act. In this connection it was observed that the words of Section 162, ... may therefore pro tanto repeal the provisions of the Section which would otherwise apply. If they do not, presumably it would be on the ground that Section 27, Evidence Act, is a 'special law' within the meaning of Section 1(2), Criminal P.C., and that Section 162 is not a specific

provision to the contrary. Their Lordships express no opinion on the topic, for whatever be the right view, it is necessary to give to Section 162 the full meaning indicated.

3. Thus, it has now been authoritatively laid down that Section 162, Criminal P.C., excludes from evidence a statement made by a person who is subsequently put on his trial; and this will apply equally to a person who at the time is actually in custody of the police. It seems to me that this pronouncement of their Lordships creates a new situation in respect to Section 27, Evidence Act, at least so far as this High Court is concerned. In the light of that decision we have to determine the question which their Lordships mentioned but did not decide, namely whether Section 27, Evidence Act, is or is not saved from the application of Section 162, Criminal P.C., by Section 1(2) of the Code, which an acts that:It (the Code) extends to the whole of British India; but in the absence of any specific provision to the contrary nothing herein contained shall affect any special or local law now in force....

4. What we have to see, therefore, is whether a "special provision to the contrary" is or is not contained in Section 162. That Section reads as follows:(1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it, nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:
Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by Section 145, Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination:Provided further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.(2) Nothing in this Section shall be deemed to apply to any statement falling within the provisions of Section 32, Clause (1), Evidence Act 1872.

5. It is obvious that there is no express provision affecting Section 27, Evidence Act. But the word used is "specific," not "express." Having in view the pronouncement of their Lordships of the Privy Council to the effect that Section 162, Criminal P.C., includes in its operation a statement made by an accused person, the question which falls to be considered is whether or not such a statement as would otherwise be admissible under Section 27, Evidence Act, is also shut out; or, in other words, whether Section 162, Criminal P.C., contains a "specific provision to the contrary" within the meaning of Section 1(2). The provisions of Section 27, Evidence Act, before being embodied in the Act, found place in Section 150, Criminal P.C. of 1861. In the Criminal Procedure Code of 1882(10 of 1882) it was enacted in Section 162 that:

No statement other than a dying declaration made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced to writing, be signed by the person

making it or be used as evidence against the accused.Nothing in this Section shall be deemed to affect the provisions of Section 27, Evidence Act, 1872.

6. Thus, under that Section the provisions of Section 27, Evidence Act, were expressly saved. In the later Act of 1898(5 of 1898), before it was amended by the Act of 1923, there was no such saving proviso in Section 162, the reason obviously being that Section was only concerned with statements which had been taken down in writing. Section 162 of the amended Act, however, relates both to written and to oral statements; but it is significant that the proviso saving Section 27, Evidence Act, was not re-introduced. In Section 1 of the Act of 1882 it was enacted that nothing in the Act should affect any special law in the absence of a specific provision to the contrary (which is identical with the provision to be found in Section 1(2) of the Act now in force); but notwithstanding this the Legislature deemed it necessary to except Section 27, Evidence Act, in express terms in Section 162, Criminal P.C., of that year and this suggests that, if there had been no such express proviso, a statement made by an accused person to a police officer under Section 27, Evidence Act, would have been barred by Section 162. In the amended Act now in force this saving proviso in respect to Section 27 has, as I have already said, been omitted and I must assume that it has been intentionally omitted. In this Act, that is, the Act now in force there are two references to the Evidence Act. In Section 162 it is provided (1) that the statement of a witness taken and reduced to writing under this Section may be used to contradict a witness for the prosecution in the manner provided in Section 145, Evidence Act, and (2) that:Nothing in this Section shall be deemed to apply to any statement falling within the provisions of Section 32(1), Evidence Act, 1872.

7. Presumably, the Legislature thought it necessary to insert these two provisos in order to save Section 145, Evidence Act, quoad statements made by prosecution witnesses to a police officer in the course of an investigation and in order to save Section 32(1), Evidence Act, in respect to a statement made by a person to a police officer in the course of investigation as regards the cause of such person's death. If it was necessary to have special provisos in Section 162, Criminal P.C., in order to preserve Section 145 and Section 32, Evidence Act, it is difficult to understand why, if the Legislature intended that Section 27, Evidence Act, should remain unaffected, a special proviso was not enacted in respect thereto, particularly when we find that such a proviso found place in Section 162 of the Act of 1882, which was concerned with both oral and written statements, as is the case in the present Act. Then there is Section 157, Evidence Act, to be considered. That Section provides:In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.

8. This Section of the Evidence Act has not been expressly affected by Section 162, Criminal P.C., but it will not be disputed that Section 162 operates as a bar to the admissibility of a statement made by a witness to a police officer in the course of investigation for the purpose of corroborating such witness in Court. At this stage I propose to mention some authorities upon this subject. The first three are anterior to the Privy Council decision *in Pakala Narayana Swami v. Emperor(Supra)* but they are nevertheless relevant to the question before us. In *Faujdar v. Emperor*[2] it was held by a Bench of this Court that Section 162, Criminal P.C., as amended by Act 18 of 1923 does not alter the provisions of Section 27, Evidence Act, in regard to statements made by accused persons. This view was based on three grounds. The first was that Section 162, Criminal P.C., was not intended to include statements by accused persons; but in the light of the

recent decision of their Lordships of the Privy Council that view can no longer prevail. The second ground was concerned with the intention of the Legislature. At p. 1521 the learned Judges say:We consider that if the Legislature had intended to alter the provisions of Section 27, Evidence Act, the Legislature would have repealed that Section or amended it. We do not think it at all probable that the Legislature would have proceeded to enact provisions in Section 162, Criminal P.C., which would be contrary to what was laid down in Section 27, Evidence Act.

9. Further on they say:

We note that in Section 162 there is a reference to two Sections of the Evidence Act, Sections 145 and 32, cl.

(1). Therefore in enacting Section 162, Criminal P.C., the Legislature had in mind the provisions of the Evidence Act.

10. The third ground was that the Evidence Act is a special Act and that in Section 162, Criminal P.C., there is no "specific provision to the contrary" within the meaning of Section 1(2), Criminal P.C. At the end of their judgment the learned Judges say:If therefore the Legislature had intended to modify or alter the provisions of Section 27, Evidence Act, by anything provided in Section 162, Criminal P.C., the Legislature would have made a specific provision to that effect. There is no such specific provision to that effect, and therefore the conclusion is that the Legislature did not intend to modify Section 27, Evidence Act, by anything provided in Section 162, Criminal P.C.

11. In *Chinna Thimmappa v. Talukunta Thimmappa*[3] (which was a Full Bench reference as to whether the words "any such statement" in para. 1 of Clause (1) of Section 162, Criminal P.C., cover only written statements or oral statements as well) Ramesam J. deals at page 973 with the effect of Section 162, Criminal P.C., on Section 27, Evidence Act, and says: It seems to me that Section 162 relates generally to the admissibility of statements and it says that statements described in that Section are inadmissible. Section 27 relates to a more particular matter. It creates an exception to the general inadmissibility of statements made to a police officer, namely where the statement consists of information received from the accused in custody in consequence of which a certain fact is discovered. On the principle that a general rule is affected by a special rule and not the special by the general rule, I am of opinion that Section 27 is not affected by Section 162, Criminal P.C., but Section 162(Criminal P.C.) is affected by Section 27, Evidence Act.

12. In Syamo *Maha Patro v. Emperor*[4] the question before the Court was whether the expression "statement made by any person" in Section 162, Criminal P.C., includes a statement made by a person accused of the offence under investigation and it was held that it did-a view which has now been confirmed by the Judicial Committee. At page 912 Reilly J. while considering Section 27, Evidence Act, observes:... the argument from Section 27 is easily answered by the application of the principle that general provisions do not derogate from special provisions.

13. The next three authorities which we shall refer to are subsequent to the Privy Council decision. They are: *Emperor v. Mayadhar Pothal*[5] *In re Morranna*[6] and *In re Subbiah Tevar*[7] In all these cases reference is made to the decision of their Lordships of the Privy Council and in

each of them it was held that Section 162, Criminal P.C., is no bar to the admissibility of a statement made by an accused person to a police officer in the course of investigation when it is made in the special circumstances provided for in Section 27, Evidence Act. In *Emperor v. Mayadhar Pothal*[8] the learned Judges cited with approval *Chinna Thimmappa v. Talukunta Thimmappa*[9] and *Syamo Maha Patro v. Emperor (1932) 19 AIR Mad 391(Supra)* which I have already mentioned; and at page 454 Rowland J. observes:Undoubtedly it has long been an unquestioned practice in all the High Courts that statements made to a police officer in the circumstances provided for in Section 27, Evidence Act, have teen treated as admissible in evidence notwithstanding that they may have been made to an investigating officer during the progress of an investigation.
In re Morranna (1939) 26 AIR Mad 840(Supra) at page 841 the learned Judges say:It has been the opinion of several learned Judges of this Court that the provisions of Section 27 have not been repealed by Section 162, Criminal P.C., see the case in *Chinna Thimmappa v. Talukunta Thimmappa(1928) 15 AIR Mad 1028* (Supura) and the case in *Syamo Maha Patro v. Emperor (1932) 19 AIR Mad 391(Supra)* The ground on which the opinion has been based is that Section 27 embodies the special rule while Section 162, Criminal P.C., is the general rule and the latter, according to the principle referred to by the Judicial Committee, does not derogate from the former. We do not think that the aforesaid judgment in Privy Council Appeal No. 81 of 19381. Pakala Narayana Swami v. Emperor (1939) 26 AIR PC 47 prevents us from following the decisions and precedents of this Court.

14. The last case which I shall mention is In *re Subbiah Tevar (1939) 26 AIR Mad 856. At p. 951(Supra)* we find the following observation:This Section (i.e. Section 162, Criminal P.C.) is clearly wide enough to include statements made to a police officer which would be admissible under Section 27 as constituting information in consequence of which some fact has been discovered. But it has been held by this High Court and by other High Courts in a long series of decisions that Section 162 does not shut out statements which are admissible under Section 27, Evidence Act. That must now be regarded as settled law. Learned counsel contends however that this settled law has been abrogated by a recent decision of the Judicial Committee of the Privy Council in 1. Pakala Narayana Swami v. Emperor (1939) 26 AIR PC 47. We have examined that decision very carefully and we do not think that it disturbs the course of decisions of this and other Courts.

15. Further on the learned Judges say:We may observe that it has been recently held specifically by learned Judges of this Court that though Section 162, Criminal P.C., applies to statements made by accused persons, nevertheless Section 27 Evidence Act, is a 'special law' which is not derogated from by the general rule enacted in Section 162.

16. They then refer to Chinna Thimmappa v. Talukunta Thimmappa (1928) 15 AIR Mad 1028 and Syamo Maha Patro v. Emperor (1932) 19 AIR Mad 391 It will be observed that in none of the cases which I have referred to above-except to some extent in the Allahabad case-has there been any mention or discussion of the points which have been exercising our minds and which constrain me to take a different view as regards the effect of Section 162, Criminal P.C., on Section 27, Evidence Act. The decision in the three cases which are subsequent to the pronouncement of their Lordships of the Privy Council proceeds mainly on the principle generalia specialibus non derogant and also on the principle of stare decisis. In Maxwell's Interpretation of statutes, Edn. 7 p. 157 the learned author, after referring to a number of cases,

says:In all these cases, the general Act seemed intended to apply to general cases only and there was nothing to rebut that presumption. But if there be in the Act or in its history something showing that the attention of the Legislature had been turned to the earlier special Act and that it intended to include the special cases within the general Act, or something in the nature of either Act to render it unlikely that any exception was intended in favor of the special Act, the maxim under consideration ceases to be applicable.

17. It seems to me that if (as I have attempted to do) we carefully examine the language of Section 162, Criminal P.C., if we consider the express reference to Section 145 and Section 32(1), Evidence Act, and the analogy of Section 157 of that Act, to whose provisions there is no reference in Section 162, Criminal P.C., and if we attach due significance to the omission of the Legislature to re-introduce in the present Act the saving proviso in respect to Section 27, Evidence Act, the logically inescapable conclusion is that Section 162, Criminal P.C., contains provisions plainly and directly, and therefore specifically, affecting Section 27, Evidence Act, quoad statements made under that Section by an accused person to a police officer in the course of an investigation. In other words, there is a "specific provision to the contrary" within the meaning of Section 1(2), Criminal P.C. In Chitaley's Criminal Procedure Code, Vol. 1, p. 797, the learned commentators say:It is therefore submitted that if this Section be construed as applying to accused persons, it will clearly have the effect of superseding Section 27, Evidence Act.

18. I agree with their conclusion, though I do not find the grounds on which it is based altogether convincing. It is not for the Court to speculate as to whether or not it was the intention of the Legislature in 1923 that Section 162, Criminal P.C., should apply to statements made by witnesses only. Upon the language of that Section, to which its ordinary meaning must be given, the Judicial Committee has held that it must include statements made by any person at all, whether a witness or an accused; and I must assume that was the intention of the Legislature. For the reasons which I have given therefore I find myself logically forced to the view that no portion of the statement referred to us, having been made to police officer in the course of an investigation, is admissible in evidence under Section 27, Evidence Act. I express no opinion as to what portion of the statement would be admissible under Section 27, Evidence Act, if the whole statement were not excluded under Section 162, Criminal P.C.
Allsop, J.

19. I agree with my brother Collister that the whole statement referred to this Bench is excluded from evidence under the provisions of Section 162, Criminal P.C. After the decision of their Lordships of the Privy Council in 1. Pakala Narayana Swami v. Emperor (1939) 26 AIR PC 47 the only question which is open is whether Section 162 contains specific provisions within the meaning of Section 1(2), Criminal P.C., affecting the special law dealing with the subject of the admissibility of evidence namely the Evidence Act. It seems to me to be quite clear that Section 162, if it means anything at all, must mean that statements which would be admissible as evidence under the Evidence Act must be excluded if made to a police officer in the course of an investigation. The exceptions mentioned show that the Legislature had the provisions of the Evidence Act in mind. Once it has been held that the provisions of Section 162 apply to statements made by persons who are afterwards accused of an offence, there is no logical reason that I can see for distinguishing the provisions of Section 27, Evidence Act, from the provisions of any other Section of the Act. All the Sections are part of the same special law. By the Code of Criminal Procedure of 1882, statements made to a police officer in the course of an investigation

were excluded, but an exception was expressly made of statements relevant under Section 27, Evidence Act. There was a provision in that Act identical with that now contained in Section 1(2). The Legislature clearly thought that statements admissible under Section 27, Evidence Act, would be excluded if an express exception was not made in their favor. By the Code of Criminal Procedure of 1898, no statements made to a police officer were excluded. It was only the writing, if they were reduced to writing, which could not be used. It was therefore unnecessary to make any exception in favor of statements admissible under Section 27, Evidence Act. When statements were again excluded in 1923, no exception was made in favor of those admissible under Section 27. The proposition to be derived from the maxim generalia specialibus non derogant is in my judgment the same as that set forth in Section 1(2), Criminal P.C.

20. If it had not been for the provisions of Section 162, Criminal P.C., I should have considered that the whole statement referred to us was admissible. The condition precedent for the admissibility of a statement or information given by a person accused is that it should lead to the discovery of a fact. Once that condition is satisfied, so much of the statement or information is admissible as relates to the fact. A fact by definition includes a thing, or a state of things or a relation of things capable of being perceived by the senses. One of the facts discovered in consequence of the information contained in the statement referred to us was the relation between the knife and the house and the heap of pyal, but another was the thing itself, that is, the knife. All information given about the knife would therefore be admissible and one piece of information about it was that it had been used by Tirmal, Baldeo and Lakhan to murder Mahraj Singh.

21. In view however of the provisions of Section 162, Criminal P.C., I agree that no part of the statement is admissible.

Braund, J.

22. The question referred to this Full Bench was, at the time of its reference, intended to cover only the point of how much of the information given by the appellant, Tirmal, to the police which led to the discovery of the knife in his 'kothri' could be proved. In view however of the observations of the Judicial Committee of the Privy Council in 1. Pakala Narayana Swami v. Emperor (1939) 26 AIR PC 47 upon the possible effect of Section 162(1), Criminal P.C., on Section 27, Evidence Act, the question has emerged whether, in the circumstances in which it was given, any part at all of that statement can now be proved. Their Lordships of the Judicial Committee expressly left this point open. But it is impossible to ignore the doubt which, in view of their Lordships' observations must inevitably exist as to whether, in a case in which information given by an accused person to a police officer in the course of an investigation leads to the discovery of a 'fact,' any part of that information is any longer open to proof under Section 27, Evidence Act. The actual terms of the question set out in the reference itself are fortunately large enough to cover this.

23. It will be convenient first to see, from the history of the present Section 162(1), Criminal P.C., how the question has arisen. The provisions which are now to be found in Section 27, Evidence Act, originally formed, with very slight differences, part of the Criminal Procedure Code itself (S. 150, Criminal P.C., 1861). Upon the passing of the Evidence Act in 1872, however, they took their place, and have since remained, in that Act in the form of the present

Section 27 and were removed from the Criminal Procedure Code. Section 162, Criminal P.C. of 1882 was much shorter than the present Section. It provided that:No statement, other than a dying declaration, made by any person to a police-officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or be used as evidence against the accused.

24. It had reference therefore both to statements made to police officers which were reduced to writing and to statements made to police officers which were not reduced to writing. The language of the prohibition of the Section is worth noticing in view of the much wider words used in the present Section. It was that such statements should not "be used as evidence against the accused." The most significant part of the Section however for the present purpose is the express saving of Section 27, Evidence Act, 1872, which immediately followed. When the Criminal Procedure Code of 1898 was enacted Section 162 was altered. It ran, so far as is material, thus:No statement made by any person to a police-officer in the course of an investigation under this chapter shall, if taken down in writing, be signed by the person making it, nor shall such writing be used as evidence....

25. It is apparent that this effected an alteration of the law, because only statements in writing were thenceforth to be shut out from use as evidence. Apparently, an oral statement to a police officer might be used as evidence. For this reason, no doubt, it was no longer considered necessary expressly to save Section 27, Evidence Act, because, so far as Section 162, Criminal P.C., then went, there was nothing in it to prevent oral information given to a police officer being used as evidence.

26. The next step was the re-introduction by the Amending Act of 1923 into the Criminal Procedure Code of 1898 of the prohibition against the use of any statement made to a police officer during an investigation whether it had been reduced to writing or not. In other words, there was a reversion in this respect to the position under the Act of 1882. But the significant thing was that the express 'saving' of Section 27, Evidence Act, was not at the same time re-introduced by the Amending Act of 1923. The next point to be observed about both the Act of 1882 and the present Act is that the Section (Section 1(2)) relating to the 'extent' of the Acts is the same in both. It provides:...; but in the absence of any specific provision to the contrary nothing herein contained shall affect any special or local law now in force....

27. It appears to me therefore to follow that, when the Act of 1882 cut out both written and oral statements made by any person to a police officer from that class of things that might be "used as evidence against the accused," it was considered then either that Section 27, Evidence Act, was not a "special law" or, if it was, that the provisions of Section 162, as it then stood, did constitute a "specific provision to the contrary" within the meaning of Section 1(2). For otherwise, there could have been no object in expressly saving Section 27, Evidence Act, again by a proviso to Section 162, itself. It would not have stood in any need of salvation, having already been saved by Section 1(2). I think therefore that in dealing with the question now before this Bench I am entitled to bear in mind both that Section 162 of the Act of 1882 was regarded as a "specific provision to the contrary" within the meaning of Section 1(2) of that Act and also that, when the position as it had been under the 1882 Act was restored by the Amending Act of 1923, the saving of Section 27, Evidence Act, was not re-introduced with it. I do not overlook that what we are dealing with is the construction of Section 1(2) of the Act of 1898 as it now stands and not with

the Act of 1882. But, if an ambiguity exists in the Act of 1898, I feel entitled to look for assistance to the earlier Act and to ask myself whether, if the Legislature on the face of the 1882 Act treated the then provisions of Section 162 as "a specific provision to the contrary," it has not also intended to do so by the still more definite provisions of the present amended Section 162 of the present Criminal P.C.

28. The question before us has been supplied by the Judicial Committee of the Privy Council itself. It is whether Section 27, Evidence Act, has been saved from the operation of Section 162, Criminal P.C., by Section 1(2) of the latter Act. If Section 162 of the present Criminal Procedure Code is a "specific provision" that Section 27 is to be "affected" by it, then, obviously, Section 27, Evidence Act, can no longer operate to the extent, at any rate, by which it is "affected" by Section 162. If it is not such a "specific provision," then Section 27, Evidence Act, remains "unaffected" by it. There is I think, no doubt that Section 27, Evidence Act is a "special law."

29. I have, I confess, entertained some doubt as to what exactly the words "specific provision" mean. I think, first, that they must denote something different from the words "express provision." For a provision of a statute to be an "express" provision affecting another statute or part of it, it would have, I think, to refer in so many words to the other statute or to the relevant portion of it and also to the effect intended to be produced on it. Failing this, it could hardly be said to be 'express.' If that was what had been required in this case, I should have been unable to find anything in Section 162, Criminal P.C., amounting to an 'express provision' affecting any part of the Evidence Act. But the word "specific" denotes, to my mind, something less exacting than the word "express." It means, I think, a provision which "specifies" that some "special law" is to be "affected" by that particular provision. A dictionary meaning of the verb 'to specify' as given in Murray's New English Dictionary, is "to mention, speak of or name (something) definitely or explicitly; to set down or state categorically or particularly...." and a meaning of the adjective 'specific' in the same dictionary is "precise...definite, explicit...exactly named or indicated, or capable of being so, precise, particular." What I think the words 'specific provision' really mean therefore is that the particular provision of the Criminal Procedure Code must, in order to "affect" the "special... law," clearly indicate, in itself and not merely by implication to be drawn from the statute generally, that the "special law" in question is to be affected without necessarily referring to that "special law" or the effect on it intended to be produced in express terms. Lord Hatherley in Thomas *Challoner v. Henry W.F. Bolikow (1878) 3 AC 933. at p. 938(Supra)* has defined the word "specific" in common parlance of language as meaning "distinct from general." In Khaw *Sim Tek v. Chuab Hooi Quoh Nooh (1922) 9AIR PC 212 at p. 126(Supra)* the Privy Council referring to the words "specific purpose" in a statute used this language:A specific purpose, within the meaning of Section 10, must, in their Lordships' opinion, be a purpose that is either actually and specifically defined in the terms of the will or the settlement itself or a purpose which, from the specified terms, can be certainly affirmed....

30. In *Henderson v. Bank of Australasia*[10] in dealing with a deed of settlement of a company which required notice of a general meeting of the shareholders to "specify" the objects for holding the meeting, Mr. Justice Chitty referred to "specific notice" as requiring a notice "which specifies the business to be done, or the objects of the meeting" and which is a fair notice, intelligible to the minds of ordinary men, the class of men who are shareholders in the Company and to whom it is addressed.

31. It would, no doubt, be possible to multiply illustrations of analogous uses of the words "specify" and "specific." But this is I think sufficient to show that, while requiring something less than what is "express," they nevertheless require something which is plain, certain and intelligible and not merely a matter of inference or implication to be drawn from the statute generally. That, to my mind, is what is meant by the word "specific" in Section 1(2), Criminal P.C. And it remains to see whether, using it in this sense, there is any 'specific provision' in Section 162, Criminal P.C., which 'affects' Section 27, Evidence Act.

32. Nothing, I think, could be more plain, certain and intelligible and, indeed, more "specific" than a provision that a particular statement, or class of statements, is not to be used "for any purpose." It is as plain, certain and intelligible a prohibition as any prohibition could be. It is true that an exception is provided by the Section itself. But that, if anything, makes the prohibition more certain still. Though I have been most reluctant to take a view which conflicts with a decision of other Judges of this Court and also with the views of some Judges of other Courts in India, I cannot bring myself to think that Section 162 Criminal P.C., is anything less than a "specific provision" which "affects" Section 27, Evidence Act. It is, as I have endeavoured to show, a "specific provision" and it does in fact "affect" Section 27, Evidence Act. There is, I think, no more to be said about it, except that the history of the Section which has been set out earlier in this judgment, if it is permissible to use it for the purpose, serves to confirm this view. And, if any further confirmation were needed, it is, I think, to be found in the express saving of Sections 145 and 32(1), Evidence Act, which (unlike Section 27) Section 162, Criminal P.C., has thought fit expressly to preserve. Had these Sections remained unaffected by Section 162, I have difficulty in seeing why it should have been necessary still further to protect them.

33. This view of the matter is in direct conflict; with a two Judge decision of this Court in *Faujdar v. Emperor (1933) 20 AIR All 440(Supra)* with two recent cases of the Madras High Court In r*e Morranna*[11] and with a recent decision of the Patna High Court in *Emperor v. Mayadhar Pothal*[12] If the view I have expressed is the right one, I regret that I am compelled respectfully to disagree with In re *Morranna (1939) 26 AIR Mad 840(supra)* In *re Subbiah Tevar (1939) 26 AIR Mad 856*(supra) and *Emperor v. Mayadhar Pothal (1939) 26 AIR Pat 577(Supra)* and to think that the case in this Court, so far as it deals with this point, ought no longer to be taken to represent the law in these provinces. It is right to say that I do not think that the point was ever exhaustively considered in any of these cases.

34. I have only to add that I regret the more being compelled to take this view of the matter as it deprives this Bench of the opportunity of considering the interesting question of what was the "fact discovered" and to what extent the information in question related distinctly to it. Upon the view we have taken, this question does not arise and I particularly desire not to be taken to express or imply any opinion upon it. I think that this reference ought to be answered by saying that no part of the information given by the appellant, Tirmal, to the Sub-Inspector of police, Rafiq Ahmad, is admissible in evidence under Section 27, Evidence Act.

35. Our answer to the reference is that no portion of the statement of Tirmal in question before us is admissible in evidence under Section 27, Evidence Act.

Cases Referred.

1(1939) 26 AIR PC 47
2(1933) 20 AIR All 440
3(1928) 15 AIR Mad 1028
4(1932) 19 AIR Mad 391
5(1939) 26 AIR Pat 577
6(1939) 26 AIR Mad 840
7(1939) 26 AIR Mad 856
8(1939) 26 AIR Pat 577
9(1928) 15 AIR Mad 1028
10(1890) 45 Ch D 330 at p. 337
11(1939) 26 AIR Mad 840 and I LR (1939) Mad 947
12(1939) 26 AIR Pat 577