

**DISCOVERY AND/OR RECOVERY AT THE INSTANCE OF THE  
ACCUSED**

By

*Sri S.M. Deka*

Director

North Eastern Judicial Officers'  
Training Institute (NEJOTI)

**Sri Ghanashyam Das was convicted and sentenced to undergo imprisonment for life on proof of having committed the murder of one Gobinda Das. The aforesaid conviction and sentence rendered by the Sessions Judge, Kamrup was affirmed by the High Court as also the Supreme Court but with a significant shift in the appreciation of the evidence. One piece of incriminating circumstance relating to recovery of the “khukri” which was the murder weapon, at the instance of Ghanashyam was totally eschewed from consideration by the Sessions Judge and the High Court on the ground that no information was recorded by the investigating officer so as to attract Section 27 of the Evidence Act. But the Supreme Court acting on the evidence of the investigating officer and another witness to the effect that the accused led them to the spot and pointed out the place where the “khukri” was thrown, which fact stood confirmed by its recovery held that the evidence as above could be looked into as conduct of the accused under Section 8 of the Evidence Act. This case, GHANASHYAM DAS- Vs- STATE OF ASSAM reported in (2006)2 SCC (Cri.) 331 and (2005) 13 SCC 387 decided on the 27<sup>th</sup> of July 2005 appears to have rid the path of justice of an overgrowth after quite a long time and is the provocation for what follows. This writing attempts at a survey and understanding of the law as to discovery and/or recovery at the instance of the accused both under Section 27 and/or Section 8 of the Evidence Act.**

**1. THE OVER GROWTH**

**Before India attained independence, precisely on the 5<sup>th</sup> of February, 1947 the privy council delivered the reasons for its order dated the 19<sup>th</sup> of December 1946 allowing the appeal in PULUKURI KOTAYYA AND OTHERS -Vs- KING-EMPEROR, AIR 1947 P.C. 67, 74 1A 65. Two points argued before the Privy Council related to (1)**

infringement of the provisions of Section 162 of the Code of Criminal Procedure and (2) Construction of Section 27 of the Evidence Act. On the second point if one reads the Judgment closely it becomes clear that the Privy Council is concerned mainly with the extent of admissibility of the two Mediator nama Ex. P in relation to accused No.6 and Ex. Q1 in relation to accused No.3 there. These statements proved by the mediator and the Sub-Inspector of Police contained detailed account of the murder besides the statement about concealment of the stick and the spear and offering to show it to police. The Privy Council emphasized that information given must relate distinctly to the fact discovered which embraces the physical object, the place wherefrom it is produced and the knowledge of the accused as to this. Therefore according to the Privy Council dissecting the statements only admissible portion that can be considered as legal evidence would be the production of the stick and the spear from the places known to the two accused. The Privy Council also emphasized in this case that the evidence within Section 27 of the Evidence Act relating to discovery at the instance of the accused in custody of police is mostly circumstantial in nature "except in cases in which the possession, or concealment, of an object constitutes the gist of the offence."

But so overwhelming is the influence of PULUKURI (Supra) as a precedent on Section 27 of the Evidence Act that for the most part of half a century since its birth the Courts confronted with evidence of discovery and/or recovery at the instance of the accused under custody appears to have closed its eyes and minds to prescription of the statute that is the other provisions of the Evidence Act bearing on the matter and also deduced certain ideas not to be found in PULUKURI (Supra). The result was like the evidence in Ghanashyam's case as appreciated by the Sessions Judge and the High Court. The pages of law Reports are replete with decisions born in the shadow of PULUKURI (Supra). Ghanashyam (Supra) alongwith a few other cases of the Supreme Court served to clear the path of law too overgrown with obstructions flowing from mis-appreciation of the true ratio of PULUKURI (Supra).

The word "information" in Section 27 of the Evidence Act without any qualifying prefix would comprise information either verbal or in writing or by gestures. PULUKURI (Supra) was a case of written information. Most courts deduced that only written information will fulfill the requirements of Section 27. PULUKURI (Supra) had no occasion to consider evidence of the accused physically leading the police to the spot and then pointing out the place of concealment of the fact discovered therefore, as a matter of precedent it cannot be contended on the basis of PULUKURI (Supra) that such evidence was inadmissible because of absence of a written record.

**1. THE TRAIL TO GHANASHYAM (SUPRA) AND BEYOND – THE HEPTAD**

Perhaps the earliest reported case from the Supreme Court blazing a new trail on the aspect of recovery at the instance of the accused as in GHANASHYAM (Supra) is the Three Judge decision RAMKISHAN MITHANLAL SHARMA AND OTHERS –Vs- STATE OF BOMBAY. AIR 1955 S.C. 104 rendered on the 22<sup>nd</sup> October, 1954. There far from recording any information given by the accused the investigating officer even did not care to divulge any oral information. The investigating officer Hujur Ahmed Khan deposed that accused No.1 made certain statements in consequence of which he took accused No.1 and 2 to Itawa and leaving accused No.2 the party proceeded to Bhagwasi with accused No.1 and he there pointed out Baliram who at the instance of Accused No.1 dug out from a mud house a tin box containing three revolvers and two tins containing live cartridges. Another piece of evidence from the police officer was this. On reaching Bagwasi “..... The 1<sup>st</sup> accused took us to a certain house where he pointed out witness Kamala (wife of 1<sup>st</sup> accused). At the instance of the accused witness Kamala brought from somewhere outside that house a steel box..... when it was opened I found six big bundles and five smaller bundles of hundred rupee G.C. Notes.” It was contended that the expression “in consequence of certain statement made by accused No. 1 and “at the instance of accused No.1” came within the ban of Section 27 of the Evidence Act. Rejecting the contention the Supreme Court held thus :

“ If the police officer wants to prove the information or a part thereof, the Court would have to consider whether it relates to the fact thereby discovered and allow proof thereof only if that condition was satisfied. If however, the police officer does not want to prove the information or any part thereof, Section 27 does not come into operation at all.”

It was further held that since the police officer did not want to prove any information, the operation of Section 27 was not attracted and prima-facie there was nothing to prevent that evidence being admitted against accused No.1

During the course of arguments in the case the view to the contrary expressed in an unreported Division Bench Judgment of the Bombay High Court disagreeing with the observation of Rankin C.J. in DURLAV NAMASUDRA –Vs- EMPEROR, AIR 1932 Cal 297 was pressed for acceptance. Rankin C.J. observed thus :

**“There seems to me to be nothing in Section 24 or 25 to prevent evidence being given :In consequence of something said by the accused I went to such an such place and there found the dead body of the deceased’. In cases under Section 27 the witness may go further and give the relevant part of the confession.”**

The view expressed by Rankin C.J. was preferred by the Supreme Court to the one to the contrary expressed by the Division Bench of the Bombay High Court. There can be no doubt that the Supreme Court in RAMKISHAN (Supra) charted a new course within Section 8 of the Evidence Act, unhindered by PULUKURI (Supra) although the Section itself has not been mentioned. It is necessary to state that the third Judge forming the Three Judge Bench in this case expressed some reservation on the view of evidence of recovery taken by the other two Judges. It is surprising that RAMKISHAN (Supra) is rarely cited. This again may be a sign of the overwhelming influence of PULUKURI (Supra).

2.1. On the 7<sup>th</sup> December 1971 the Supreme Court decided H.P. ADMINISTRATION -Vs- OM PRAKASH, AIR 1972 S.C. 975. The case dealt with a blend of several written record of the information provided by the accused as also of physically leading the police to the place and discovering the fact. After discussing at considerable length the law laid down in PULUKURI (Supra) , the Supreme Court had to decide the admissibility of a statement of the accused that he had purchased the weapon from Ganga Singh PW-11 and that he would take them to him. The accused did lead the police and witnesses to the “Thari” of PW-11 had pointed him out to them. The Supreme Court concluded thus :-

**“ 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. But even apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW-11 and pointed him out and as corroborated by PW-11 himself would be admissible under Section 8 of the Evidence Act as**

conduct of the accused. (*underlining supplied.*)

2.2. Next in the line is PRAKASH CHAND -Vs- STATE (DELHI ADMINISTRATION), AIR 1979 S.C. 400 decided on the 20<sup>th</sup> day of November, 1978. In that case after noticing the distinction between the conduct admissible under Section 8 of the Evidence Act and the statement made to a police officer during investigation which is hit by Section 162 of the Code of Criminal Procedure the Supreme Court proceeded to state the law in these words :-

“ What is excluded by Section 162 Criminal Procedure Code is the statement made to a police officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a police officer during the course of an investigation. For example the evidence of the circumstances, simpliciter that an accused person led a police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct under Section 8 of the Evidence Act, irrespective of whether any statement of the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act. (*Underlining supplied.*)

2.3. In BAHADUL -Vs- STATE OF ORISSA, AIR 1979 S.C. 1262 decided on the 16<sup>th</sup> January, 1979, the High Court relied on the production of a Tangia (axe) by the accused before police admissible as conduct under Section 8 of the Evidence Act in the appeal by the convicted accused. The Supreme Court observed that since the accused made no statement under Section 27 of the Evidence Act the recovery of the Tangia would not be admissible under Section 27 of the Evidence Act and in the circumstances of that case mere production of the Tangia would not be sufficient to convict the accused. Thus the case failed on a matter of appreciation of the evidence and not on a question of

law that failing Section 27 of the Evidence Act, Section 8 cannot apply.

2.4. After over twenty six years of the last case came GHANASHYAM (Supra) on the 27<sup>th</sup> of July, 2005. Soon thereafter on the 4<sup>th</sup> August 2005 the Supreme Court delivered the Judgment in the sensational case popularly known as the Parliament attack case reported as STATE (N.C.T. of Delhi ) -Vs- NAVJOT SANDHU, AIR 2005 S.C. 3820. One can read in depth consideration and discussion on the law under Section 27 and that under Section 8 of the Evidence Act relating to discovery and recovery at the instance of the accused in custody in this case. Para 13 and 14 of the Judgment (AIR Report) extending from pages 3868 to 3879 considers the general principles of law in this regard starting from PULUKURI (Supra). Then in para 18, 19, 20 and 21, the Judgment considers the law as applied to individual cases respectively of accused Md. AFZAL SHAUKAT, SARGILANI and AFSAN GURU alias NAVJOT. There are three very detailed disclosure statements Ex. PW 64/1 by accused Md. AFZAL, Ex PW 66/14 by accused AFSAN GURU, Ex PW 66/13 by accused SAR GILANI. Considerable portion of the disclosure statements having been found to be on the wrong side of the law in PULUKURI (Supra) could not be admitted but evidence relating to physical leading of the police and pointing out of nine shops wherefrom explosives, transport and other articles used during the planning and execution of the attack on the Parliament and of the two hideouts of the terrorists were admitted as conduct under Section 8 of the Evidence Act. Some other features of NAVJOT (Supra) would be considered later.

2.5. Lastly on the 8<sup>th</sup> August 2005 the Supreme Court reiterated the same law in A.N. VENKATESH AND ANOTHER -Vs- STATE OF KARNATAKA, AIR 2005 S.C. 3809. Para 9 of the Judgment mentions PRAKASH CHAND (Supra) then proceeds further thus :-

**“Even if we hold that the disclosure statement made by accused appellants (Ex- P 14 AND 15 ) is not admissible under Section 27 of the Evidence Act still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and 4 the spot mazhar witness that the accused had taken them to the spot and pointed out the place where the dead-body was buried, is an admissible piece of evidence under**

**Section 8 as the conduct of the accused.** (*Underlining supplied*).

**3. THE TWO THAT MISSED THE TRAIL**

During the period from the 22<sup>nd</sup> October, 1954 when RAMAKISHAN (Supra) was decided by the Three Judge Bench of the Supreme Court to the 8<sup>th</sup> of August 2005 the date of A.N. VENKATESH (Supra) the matter of discovery and/or recovery at the instance of the accused in custody reached the Supreme Court several times. As far as reported cases go the seven cases from the Supreme Court indicated in para 2 above could presumably have attracted more Company. Notice of two such cases may now be taken.

- 3.1. UDAI BHAN -Vs- STATE OF UTTAR PRADESH, AIR 1962 S.C. 1116** decided on the 29<sup>th</sup> day of January 1962 was a case, like GHANASHYAM (Supra), of no information leading to discovery given to the police (See para 3 of the Judgment). The accused there brought out from a pond near his field a tin box and handed it over to sub-Inspector Virendralal Singh. He also handed over a key from a bunch of keys in his possession (see para 5 of the Judgment). This obviously should have been categorized as conduct within Section 8 of the Evidence Act. Yet through a partial reading of LACHHMAN SINGH -Vs STATE, AIR 1952 S.C. 167 since the case was one where there was a recorded disclosure statement in addition to the physical leading and pointing out by the three accused there, it was held that "the contention as to the non-applicability of Section 27 is without substance and must be repelled." Surprisingly though RAMKISHAN (Supra) was mentioned only as approving PULUKURI (Supra) its true ratio as discussed earlier was not appreciated. A case of recovery squarely falling within Section 8 of the Evidence Act as conduct of the accused thus was categorized as discovery within Section 27 of the Evidence Act.
- 3.2. The other case is SURESH CHANDRA BAHRI -Vs- STATE OF BIHAR, AIR 1994 S.C. 2420** decided on the 13<sup>th</sup> July 1994. In that case in relation to accused Gurbachan Singh the investigating officer deposed that during the course of investigation the accused took him near Khad Gaddha hillock and at his instance unearthed the spot pointed out by him and a piece of blanket, a piece of Saree worn by the deceased and a rope, all proved to be connected to the deceased and the accused who were husband and wife were discovered and seized. Arguments were advanced that in the absence of any disclosure statement by accused Gurbachan the discovery would not be

admissible. However, the Supreme Court instead of placing the evidence within Section 8 of the Evidence Act as in the decisions in the heptad indicated in para 2 did not look beyond Section 27 of the Evidence Act and on appreciation of evidence of the investigating officer and other witnesses accommodated the recovery within the latter section.

#### 4. THE EVIDENCE OF DISCOVERY AND/OR RECOVERY

Section 27 uses the words “discovered in consequence of information received”. In course of time this was paraphrased as information leading to discovery. Generally speaking investigating agencies began to understand this as apart from other ingredient, meaning physically leading the police by the accused to the place of concealment of the incriminating articles. Because of this evidence of discovery under Section 27 in most cases broadly consists of two parts. The first part is the evidence of recorded information emanating from the accused in custody. The second part is evidence of leading by the accused of the police with or without witnesses to the place of concealment and then production of the article or articles. In some cases only the information is not recorded but the police officer deposes about the oral information emanating from the accused. In all other respects it is similar to the first kind. The third kind of case may consists of evidence of physically leading and pointing out by the accused and no evidence of any information at all. The cases in the heptad from the Supreme Court noticed hereinabove say that information Written or Oral or no information at all does not matter as long as the evidence of physical leading by the accused, pointing out and recovery at the instance of the accused are established on the evidence. As regards the first two categories, the provisions of Section 27 do not support any quarrel between Written and Oral information. It is all a matter of credibility of the information and as such belongs to the domain of appreciation of evidence and not of any principle of law. But because of the plethora of Judgments from the Supreme Court and the High Courts dealing with cases involving Written information often mistakes are committed by using such Judgments as laying down the law that only Written Information is admissible under Section 27 and not oral information. Faced with an information be it written or oral the Courts have to dissect the information/statement to select the part distinctly related to the discovery of the fact which only is admissible under Section 27 when the fact is discovered in consequence thereof. To facilitate this dissection some Judgments go to the extent of observing that the statements must not only be written but also be in the exact words of the accused. Examples are PHUSU KOIRI –Vs- STATE OF ASSAM 1986 CRI.L.J. 1057, a Division Bench Judgment of the Gauhati High Court dated the 11<sup>th</sup> February 1985 relied on by

the Sessions Judge in GHANASHYAM'S case and what has been observed in para 22 of the PANDAV KOYA -Vs- STATE OF ASSAM, 2006 (1) GLT 267 decided on the 21<sup>st</sup> of September 2005 by another Division Bench of the Gauhati High Court. Incidentally in the later case, the Division Bench failing the written record of information relied on the conduct of the accused in leading the police and pointing out the place of where the dead body lay under Section 8 of the Evidence Act. This would be in conformity with the law laid down in the heptad of decisions of the Supreme Court indicated in para 2 hereinabove. It is time to go back to NAVJOT (Supra) for a closer look.

#### 4. NAVJOT (SUPRA) REVISITED

In NAVJOT (Supra) Ex. PW 66/13 was the disclosure statement of accused S.A.R. GILANI. A few samples of information narrated in EX. PW 66/13 reads thus : Particular cell phones belonged to accused Afzal and Shaukat, that names of the deceased terrorist were so and so, that a particular hideout was arranged by accused Shaukat to accommodate terrorist Mohmmad and that explosives and police Uniforms were arranged. Discovery of a fact according to PULUKURI (Supra) comprises the object, the place wherefrom it was produced and the knowledge of the accused in that regard. Obviously the samples above would not fit the prescription of PULUKURI (Supra) because no object could be discovered in consequence of the said disclosure statement. On top of it GILANI also did not accompany police to any of the hideouts wherefrom incriminating articles were seized. He only pointed out the house of the accused Shaukat who was in the same locality. Because of this before the Supreme Court twofold arguments advanced to interpret Section 27 afresh untrammelled by PULUKURI (Supra) were (1) that considering the definition of "fact" in Section 3 of the Evidence Act "discovery of a fact" in Section 27 should be interpreted to include not only material fact but also mental fact such as mental state or knowledge in relation to certain things- concrete or non concrete. (2) that it is not necessary that the discovery of the fact should be by the person making the disclosure statement or directly at his instance and subsequent discovery by police with the aid of the disclosure statement should also be put against the accused making the disclosure statement under Section 27 of the Evidence Act.

The Supreme Court because of the status of PULUKURI (Supra) as a locus classicus which has not been questioned in the decisions of the highest court in the pre or post independence era and till date was not inclined to stretch the meaning of discovery of fact to pure mental fact as in GILANI'S disclosure statement.

However, the Supreme Court answered the second contention noted above thus :-

**“There is one more point which we would like to discuss, i.e. whether pointing out a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative. Though in most of the cases the person who makes the disclosure himself leads the police officer to the place where an object is concealed and points out the same to him, however, it is not essential there should be such pointing out in order to make the information admissible under Section 27. It could well be that on the basis of the information furnished by the accused the investigating officer may go to the spot in the Company of witnesses and recover the material object.”**

### **5.1. Joint Disclosure.**

**Though as early as on the 21<sup>st</sup> March, 1952 in LACHHIMAN SINGH -Vs- STATE, AIR 1952 S.C. 167 the Supreme Court expressed reservations about the correctness of the view of several High Courts that Section 27 does not countenance joint disclosure by several accused NAVJOT (Supra) serves to dispel the cloud over the matter. Admissibility of information furnished by both accused Afzal and Shaukat leading to the discovery of hideouts of the deceased terrorist, recovery of laptop, a mobile phone and Rs.10 Lac in cash from the truck they were found in Srinagar were in issue. It may be stated that the two accused Afzal and Shaukat together led the police to two hideouts and nine shops and pointed out the hideouts and shops. The Supreme Court spoke thus on the matter :-**

**“Joint disclosure to be more accurate simultaneous disclosure, per se, are not inadmissible under Section 27. “A person accused” need not necessarily be a single person, but it could be plurality of accused ..... If information is given one after the other without any break, almost simultaneously and if such information is followed up by pointing out the material things by**

both of them, we find no good reason to eschew such evidence from the regime of Section 27 ..... Admissibility and credibility are two distinct aspects..... whether and to what extent such simultaneous disclosure could be relied upon by Court is really a matter of evaluation of evidence.”

The Supreme Court quoting para 5 from MD. ABDUL HAFEES -Vs- STATE OF ANDHRA PRADESH, AIR 1983 S.C. 367 observed that “there is nothing in this Judgment which suggests that simultaneous disclosures by more than one accused do not at all enter into the arena of Section 27, as a proposition of law.”

The above from NAVJOT (Supra) on the matter of joint disclosure would appear to clash not only with judgments of several High Courts but also with SUKHVINDER SINGH -Vs- STATE OF PUNJAB, (1994) 5 SCC 152 decided on the 12<sup>th</sup> of May 1994. However going by the detailed discussion in NAVJOT (Supra) in this regard the later statement of the law is the better law. Cases from the High Courts like Md. AKALU SHEIKH -Vs- STATE OF ASSAM 1996(11) GLT 400 decided on the 21<sup>st</sup> June 1996 and more recently BAKUL BORA AND ANOTHER -Vs- STATE OF ASSAM 2004(3) GLT 396 decided on 21<sup>st</sup> June 2004 would have to be read as Judgment on facts and not as Judgments eschewing altogether joint disclosures from the regime of Section 27 of the Evidence Act.

## 5.2 *Signature on the Disclosure Statement.*

Ex PW 64/1 is the disclosure statement of accused Md. Afzal. The statement has been signed by Md. Afzal. The Supreme Court observed, “In fact it is not required to be signed by virtue of the embargo in Section 162(1). The fact that the signature of the accused Afzal was obtained on the statement does not, however, detract from its admissibility to the extent it is relevant under Section 27”.

Quite apart from the fact that there are judgments from the High Courts holding absence of the signature of the accused on the disclosure statement as a factor affecting its admissibility and/or creditability even the Supreme Court itself held similarly in an earlier case. In JACKARAN SINGH -VS- STATE OF PUNJUB, AIR 1995 S.C. 2345 decided on the 20<sup>th</sup> day of April 1995. The Supreme Court held with regard to Ex P-

9, the disclosure statement there that – “ The absence of the signatures or the thumb impression of an accused on the disclosure statement recorded under Section 27 of the Evidence Act detracts materially from the authenticity and reliability of the disclosure statement.”

In fact none of the two Supreme Court cases on this aspect discusses the correct law applicable to the matter. The correct law is the provision of Section 162(2) of the Code of Criminal Procedure. The embargo in Section 162(1) Cr. P.C. has been lifted by Section 162(2) in regard two kinds of statement to police during investigation and these are statements under Section 32(1) and Section 27 of the Evidence Act. The upshot is signing by the accused of the disclosure statement is permissible and does not offend the law. But signing is not a requirement of law.

### 5.3. *Facts already discovered by Police*

To widen the sweep of Section 27 in Order to accommodate the discovery of the shops wherefrom articles like packets of Silver Powder and packets of Sawan Dry Fruits source of which were admittedly known to the police from other evidence it was argued that although the physical object might have already been discovered or known to be at a place, the police may not have any clue to the “state of things” that surrounded the physical object. In such a case discovery of the “state of things” that surrounded the physical object already discovered by police would be within the meaning of discovery of the fact in Section 27. The Supreme Court while conceding that there are certain gray areas in PULUKURI (Supra) was not inclined to extend the sweep of Section 27 in the manner contended but accepted the evidence as conduct of the accused in leading the police to the two respective shops and pointing out the salesman from whom the articles were purchased. Thus though the Judgments from various High Courts even a few from Supreme Court repeatedly held that things already discovered cannot be rediscovered through a disclosure statement emanating from the accused that will be correct in so far as Section 27 is concerned. Under Section 8 the rediscovery by leading police and pointing out if believed can still be held against the accused as conduct.

### 5.4. *Identification of the deceased terrorists.*

One of the circumstances against accused Afzal is that he knew the deceased terrorists. He was taken by Inspector H.S. Gill to the mortuary of the Lady Hardinge

medical College, there he identified the dead bodies of five terrorists and gave out their names. That is in the evidence of Gill PW 76. On such evidence the Supreme Court held thus :- “ Identification by a person in custody of another does not amount to making a statement falling within the embargo of Section 162 Cr.P.C.. It would be admissible under Section 8 of the Evidence Act as a piece of evidence relating to conduct of the accused in identifying the dead bodies of the terrorists.”

Unfortunately though RAMKISHAN (Supra) was mentioned in another connection in NAVJOT (Supra) the above will be in the teeth of what has been unanimously held by the Three Judge Bench in RAMKISHAN (Supra) with regard to identification and Section 161 Cr.P.C. It was held there that identification has two aspects one mental recognition and other conveying that recognition verbally in writing or by gestures. The latter part will be a statement within the embargo in section 162 Cr.P.C. It has to be emphasized that accused Afzal did not lead police to the mortuary but it was the other way round.

There thus can be little doubt that the earliest, RAMKISHAN (Supra) and the near latest, NAVJOT (Supra) of the cases in the heptad serve to give a new focus and direction to the law regarding discovery and/or recovery at the instance of an accused in custody.

## 6. THE CONCLUDING COMMENTS.

Faced with the new direction emphasized in the cases in the heptad more explicitly in NAVJOT (Supra) the Courts may be tempted to hold statements in several judgments of the High Courts as per incuriam. There may appear a conflict between judgments in this regard emanating from even the same High Courts. For example what has been stated in para 22 of PANDAV KOYA (Supra) appear to clash with the later judgment in PARIMAL MAZUMDER -Vs- STATE OF ASSAM 2006 Cri.L.J. 2296 decided on the 29<sup>th</sup> of November 2005. The apparent discordance would disappear if such judgments are read as judgments on facts pertaining to the domain of evaluation of the evidence and not as laying down a legal proposition.