

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 704 of 2005**

- Bhothar Ram, S/o Kayaram, aged about 51 years, R/o Village Lallati, P.S. Batouli, District Surguja (CG)

---- Appellant**Versus**

- State Of Chhattisgarh, through P.S. Batouli, District Surguja

---- Respondent

For Appellant : Shri A.K. Prasad, Advocate.
For Respondent/State : Shri Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

Judgment On Board By

Justice Prashant Kumar Mishra

25/10/2016

1. The appellant has assailed the legality and validity of the impugned judgment of conviction under Section 302 of the IPC and sentence of life imprisonment which has been awarded to him by the trial Court in ST No.379/99 for committing murder of deceased Etwa Ram.
2. The prosecution case, as projected in the FIR, is that at about 3.30 pm on 6.9.99 Budha Ram @ Shivnarayan (PW-5) came back to his house after collecting fire woods from the nearby forest. At that

time deceased Etwa Ram Korwa and the appellant came from the school side and went towards the well of Hiran Uraon. The appellant suddenly pushed the deceased into the well. Apart from (PW-5) Shivnarayan, the incident was also witnessed by Shivilal (PW-6). Shivnarayan informed about the incident to (PW-7) Chamru Ram, Panch and thereafter Shivnarayan, Mangru Ram (PW-8), Nandlal, Bajru went towards the well and brought out the dead body. Thereafter Nandlal and Mangru Ram went to the house of the deceased and informed his daughter-in-law Urmila (PW-2), on which she came to the place of occurrence and witnessed the dead body. Merg intimation (Ex.-P/14) was recorded at 18.00 hours on 6.9.99 upon information given by co-accused Roop Sai, who has been acquitted by the trial Court. FIR (Ex.-P/16) was recorded at 20.15 hours on 7.9.99. During investigation, the police recorded the statements of other witnesses and postmortem of the dead body was performed by PW-1 Dr. Roop Singh Parihar, who submitted his report vide Ex.-P/2, opining that the death has occurred on account of Asphyxia due to drowning and precipitated by injury. The time passed since death is between 20 to 32 hours and the nature of death depends upon circumstantial evidence.

3. In the charge-sheet filed against the appellant and co-accused Roop Sai, (PW-5) Shivnarayan and (PW-6) Shivilal were cited as eyewitness whereas (PW-2) Urmila, (PW-3) Nandlal and (PW-7) Chamru Ram were cited as witnesses to whom Shivnarayan and Shivilal had immediately informed about the incident and thus, they being witnesses in the part of same transaction, their statements are admissible in evidence.
4. Despite (PW-5) Shivnarayan and (PW-6) Shivilal turning hostile and refusing to support the prosecution even in cross-examination,

the trial Court has convicted the appellant on the evidence of (PW-2) Urmila and (PW-3) Nandlal.

5. Shri A.K. Prasad, learned counsel for the appellant would argue that the statements of Nandlal (PW-3) and Urmila (PW-2) are wholly unbelievable apart from being in the nature of hearsay evidence. It is also argued that the trial Court has wrongly relied upon the principle of *res gestae* to believe the statements of these two witnesses.
6. Per contra, Shri Rajendra Tripathi, learned Panel Lawyer would argue that the principles contained under Section 6 of the Evidence Act popularly known as *res gestae* would apply with full force in the facts and circumstances of the case, therefore, the statements of Nandlal (PW-3) and Urmila (PW-2) are not in the category of hearsay evidence but it is admissible in evidence, therefore, there is no infirmity in the impugned judgment of conviction.
7. The seminal question falling for consideration is whether the prosecution has brought forth such cogent and reliable evidence, which is otherwise admissible in evidence under the principle of *res gestae* so as to sustain conviction.
8. Before proceeding to evaluate the statements of witnesses, it would be apt to remember the principle enshrined under Section 6 of the Evidence Act. The said provision is reproduced hereunder for ready reference:-

“6. Relevancy of facts forming part of same transaction.- Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

9. The principle on which the provision referred above is based is popularly defined as *res gestae*. It has been defined in Black's Law Dictionary as follows:-

“(Latin: 'things done') The events at issue, or other events contemporaneous with them. In evidence law, words and statements about the *res gestae* are usually admissible under a hearsay exception (such as present sense impression or excited utterance).”

10. Section 6 of the Evidence Act is thus an exception to the general rule whereunder hearsay evidence, which is otherwise inadmissible, becomes admissible. However, for bringing such hearsay evidence within the ambit and scope of Section 6 what is required to be established is that it must be almost contemporaneous with the acts and there could not be any interval which would allow fabrication. In other words, the statement forming part of *res gestae* must be made contemporaneously with the act or immediately thereafter.

11. In the matter of **Badruddin Rukonddim Karpude and others Vs. State of Maharashtra**¹, it is held by the Supreme Court that where in a prosecution for murder apart from the witnesses whose testimony could not be relied on there was evidence of other witnesses also, supported by the testimony of a wholly independent witness, that the names of the accused were mentioned to him as the assailants of the deceased **while beating of the deceased was in progress** the information conveyed to such witness being part of the *res gestae* was admissible and the accused in question could be convicted on the basis of corroboration furnished by the evidence of such witness.

¹ AIR 1981 SC 1223

(Emphasis supplied)

12. In the matter of **Javed Alam Vs. State of Chhattisgarh and Another**², the Supreme Court dealt with the principle to hold thus in paragraph-19:-

“**19.** Section 6 of the Evidence Act is an exception to the rule of evidence that hearsay evidence is not admissible. The test for applying the rule of res gestae is that the statement should be spontaneous and should form part of the same transaction ruling out any possibility of concoction. In **Gentela Vijayavardhan Rao Vs. State of A.P.**³ it was held in para 15 as follows: (SCC pp.246-47)

Section 6 of the Evidence Act and some of the succeeding sections embody the rule of admission of evidence relating to what is commonly known as res gestae. They are in the nature of exception to “hearsay” rule. Section 6 permits proof of collateral statements which are so connected with the facts in issue as to form part of the same transaction. Whether the statement made by a witness was a part of the same transaction or not is to be considered in the light of the circumstances of each case. The principle is that it should be so intimately connected with the fact in issue as to be a spontaneous utterance inspired by the excitement of the occasion or a spontaneous reaction thereof, there being no opportunity for deliberately fabricating the statement. In other words, the statement which is a part of res gestae does not narrate a past event, but it is the event itself speaking through a person thus excluding the possibility of any design behind it.”

(Emphasis supplied)

13. Yet again in the matter of **Krishan Kumar Malik Vs. State of Haryana**⁴ the same principle has been reiterated.

² (2009) 6 SCC 450

³ (1996) 6 SCC 241

⁴ (2011) 7 SCC 130

14. The principle of *res gestae* is thus well settled that a hearsay evidence, which is otherwise inadmissible, becomes admissible when the facts are informed to the witness during the course of the incident or immediately thereafter so that not much time is left in the interregnum to fabricate the evidence. The evidence in the nature of *res gestae* can also be used as corroboration to the statements of any other evidence whether circumstantial or direct.
15. In the present case, the first prosecution version appearing in the merger intimation would not throw much light on the evidence in the nature of *res gestae*. In Dehati Nalishi (Ex.-P/15), it is said that Shivnarayan informed about the incident to Chamru Ram and thereafter the dead body was brought out from the well. To deviate from this, FIR would state that after the dead body was taken out from the well, Nandlal and Mangru Ram went to the house of the deceased and informed his daughter-in-law Urmila (PW-2) about the incident. In the case diary statement (Ex.-P/8) of Chamru Ram (PW-7) recorded on 7.9.99 itself, he has stated that he was informed about the incident by Shivilal. However, case diary statements of 2 other witnesses namely, (PW-3) Nandlal and (PW-2) Urmila have not been exhibited, therefore, they are not part of the record. Since (PW-3) Nandlal has supported the prosecution in examination-in-chief but has denied the case of the prosecution in cross-examination, it would be highly unsafe to credit his statement to draw corroboration for the prosecution case.
16. (PW-2) Urmila has supported the case of the prosecution insofar as the evidence in the nature of *res gestae* is concerned, however, neither in the FIR nor in the Dehati Nalishi it has come that this witness was informed about the incident immediately after occurrence. In the FIR, it is mentioned that after the occurrence

the villagers assembled and brought out the dead body from the well and thereafter Nandlal and Mangru Ram went to the house of the deceased and informed Urmila. Even if her statement would support the prosecution, it may not fall within the sweep of a statement in the nature of *res gestae* because firstly, as per FIR, she was informed by Nandlal and Mangru Ram and secondly, in her Court statement, she speaks about having received information from Mangru Ram (not an eyewitness) and Shivnarayan (PW-5). The other evidence in the nature of *res gestae* i.e. (PW-7) Chamru Ram has turned hostile and not supported the case of the prosecution. The other 2 witnesses who were presented by the prosecution as eyewitnesses namely, (PW-5) Shivnarayan and (PW-6) Shivlal have also turned hostile and not supported the case of the prosecution. Therefore, in the ultimate analysis, it is found that neither eyewitnesses would support the prosecution case nor the statement of (PW-2) Urmila or (PW-3) Nandlal would fall within the ambit of *res gestae* so as to rely such statement for convicting the appellant.

17. For the foregoing reasons, we find that the impugned judgment of conviction suffers from legal infirmity, therefore, it deserves to be and is hereby set aside. The appeal is accordingly allowed. The appellant is on bail. His bail bonds shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the CrPC. He shall appear before the higher Court, as and when directed.

Sd/-
Judge
 (Prashant Kumar Mishra)

Sd/-
Judge
 (Anil Kumar Shukla)

HEADLINES

Applicability of principles of *res gestae* explained and reiterated.

