

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI

Criminal Appeal No.75 of 2011

DATED:4-08-2017

Between:

Kaside Rajender ... Appellant

And

The State, through Circle Inspector of Police
Karimnagar-II Town ... Respondent

COUNSEL FOR THE APPELLANT: Mr. Karamchand,
for Mr. K.K. Vijaya Azad

COUNSEL FOR THE RESPONDENT: Public Prosecutor (TS)



THE COURT MADE THE FOLLOWING:

JUDGMENT: (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

The sole accused in Sessions Case No.87 of 2010 on the file of the Principal Sessions Judge, Karimnagar, filed this appeal assailing his conviction for the offence under Section 302 of the Indian Penal Code (IPC) and sentencing for imprisonment for life, and also to pay a fine of Rs.3,000/- and in default to suffer rigorous imprisonment for a period of one year.

2. The prosecution has laid charge sheet against the appellant with the following allegations. One Gangamma (hereinafter referred to as "the deceased"), a native of Ananthapur Town, married P.W.7 on 20.12.1995 and they were blessed with one son – Kranthi Hasan (LW.8). The deceased had been working as Staff Nurse in District Head Quarters Hospital, Karimnagar, since ten years. The appellant, who is a native of Karimnagar and is the owner and driver of a lorry, married one Rekha of Nanded, in the year 1998 and they were blessed with two male children and in the year 2005 the said Rekha divorced the appellant due to harassment. The appellant developed acquaintance with the deceased and married her on 20.8.2006, they lived happily for a period of four months and later he used to harass her mentally and physically for money, as she is an employee. The appellant used to beat the deceased indiscriminately on which the latter decided to take divorce. She fled O.P. No.40 of 2009 before the Court of the Senior Civil Judge, Karimnagar, and though notices were sent to the appellant, he refused to acknowledge the same. The deceased also approached the Police on some occasions and lodged written complaints with regard to the harassment of the appellant.

3. On 09.10.2009 at 9.30 a.m. P.W.1 – Corporator of 12th Division of Municipal Corporation, Karimnagar, lodged Ex.P.1 - complaint before

P.W.10 – Sub-Inspector of Police, Karimnagar Police Station, stating that the deceased and the appellant were living in a rented house of P.W.2, that on 09.10.2009 at 8.30 a.m., P.W.1 came to know that the appellant killed his wife by hitting her with a drainage pipe and throwing a stone on her, that on knowing the same, P.W.1 went to the scene and caused enquiry, that he came to know that they used to quarrel with each other because of their family disputes, that the deceased decided to give divorce to the appellant because of his harassment, that in that connection she approached the Court and the Police, and that the appellant, who disliked the deceased giving divorce to him, had decided to kill her. That on the date of the incident in the premises of the rented house, the appellant came to the deceased, and by uttering as to why she is giving divorce to him and approaching the Police, he took the drainage pipe available there and beat her on her head due to which the deceased collapsed and that he also took a stone and threw on her head, resulting in grievous head injury and her instantaneous death. That the incident was witnessed by P.Ws.3, 4 and 5, who are also the tenants of the house of P.W.2, that on the alarm raised by them, the appellant fled away from the spot. Thus P.W.1 requested the Police for taking necessary action against the appellant.

4. Based on the contents of the aforesaid report, P.W.10 registered a case in Crime No.335 of 2009 under Section 302 IPC and issued express FIRs (First Information Report) to all the concerned. On receipt of the express FIR, P.W.11 – the Circle Inspector of Karimnagar Town, took up further investigation of the case, examined P.W.1 and recorded his statement. P.W.11 rushed to the scene of offence, examined P.Ws.2 to 5, observed the scene of offence, and drafted the findings thereon in the

crime details form, in the presence of P.W.9 and another – mediators. Inquest over the body was conducted in the presence of P.W.9 and two others on 09.10.2009 from 10.30 hours to 12.30 hours and the body was shifted to the Government Head Quarters Hospital, Karimnagar, for post-mortem examination. P.W.8 – the Doctor, who conducted the post-mortem examination, opined that the cause of the death is “head injury because of intra-cranial haemorrhage”. On the information by the Police, P.W.7 – first husband of the deceased, and her son Juturi Kranthi Hasan - (LW.8), Veerappaneni Balamma - mother (LW.9), Veerappaneni ramani - younger sister (LW.10), Veerappaneni Nagarjuna - younger brother of the deceased (L.W.11), came to Karimnagar from Ananthapur. They were examined on 10.10.2009 and their statements were recorded and the dead body was handed over to them. The bloodstained earth, control earth, broken pieces of drainage pipe, bloodstained stone, and wearing apparels of the deceased were seized and they were sent to the Director, Regional Forensic Science Laboratory, Karimnagar, for analysis and report, through the Court. On 16.10.2009, P.W.11 arrested the appellant at Bus Stand, Karimnagar and on interrogation, he voluntarily confessed that he killed the deceased due to stained marital relations, and he was remanded to judicial custody. P.W.8 – Magistrate recorded the statements of P.Ws.2 and 3 – eyewitnesses to the incident, and committed the case to the Court of Sessions.

5. As the plea of the appellant was one of denial, he was subjected to trial during which the prosecution examined P.Ws.1 to 11 and got Exs.P.1 to P.16 marked and produced M.Os.1 to 8. On behalf of the defence, no evidence was adduced. On consideration of the oral and documentary

evidence, the trial Court has disposed of the case in the manner as stated above.

6. Mr. Karamchand, learned counsel representing Mr. K.K. Vijaya Azad, learned counsel for the appellant, advanced the following submissions. The prosecution failed to prove the guilt of the accused beyond all reasonable doubt; that the solitary testimony of P.W.2 was not corroborated by the evidence of any other witness and thereby the prosecution failed to prove the involvement of the appellant in the commission of the offence beyond reasonable doubt; that P.W.10 – the Sub-Inspector of Police, who registered the FIR admitted that the time of registration of the FIR was not mentioned and that the FIR having reached the jurisdictional Magistrate at 3.00 p.m., it is reasonable to presume that it was ante-timed, giving scope for false implications; that the Court below has wrongly applied the doctrine of *res gestae* by applying Section 6 of the Indian Evidence Act, 1872, as regards the evidence of P.W.1, a hearsay witness; and that alternatively the appellant is liable for conviction for the offence under Section 304 Part-II IPC.

7. Opposing the above submissions, Sri C. Pratap Reddy, learned Public Prosecutor for the State of Telangana, sought to support the judgment of the trial Court.

8. We have given our earnest consideration to the respective submissions of the learned counsel for the parties with reference to the evidence on record.

9. As could be seen from the case of the prosecution, the incident allegedly took place at 8.00 a.m. on 09.10.2009. P.W.1 – a Corporator of the Karimnagar Municipal Corporation, gave Ex.P.1 report which was allegedly received by P.W.10 at 9.30 a.m. According to the said witness,

on registering Crime No.335/2009 for the offence under Section 302 IPC, he has issued Ex.P.10 - FIR, sent the original FIR to the Additional Judicial Magistrate of First Class, Karimnagar and intimated the same to P.W.11 – the Circle Inspector of Police.

10. As regards the submission of the learned counsel for the appellant regarding the alleged delay in registration of FIR and its reaching the Court, no doubt, P.W.10 in his evidence admitted that he has not mentioned the time of registration of the FIR. However, he has stated that at 9.30 hours P.W.1 came to the Police Station and submitted Ex.P.1 based on which he has registered the FIR and sent the same to the jurisdictional Magistrate. In his cross-examination, he has stated that within one hour of registration of the FIR, he has dispatched the original FIR to the Magistrate and that according to his information, it was received at 10.30 a.m. However, a perusal of Ex.P.10 - FIR shows that it was received by the Court at 3.00 p.m. It is true that the unexplained delay in the FIR reaching the Court may give rise to a presumption that it might have been ante-timed. One needs to remember that the day of occurrence happened to be a working day for the Court and it is common knowledge that all the Judicial Officers would go to Bench at 10.30 a.m. As noted hereinbefore, Ex.P.10 contains an endorsement that it was received at 3.00 p.m. These facts would suggest that though the FIR might have been sent by P.W.10 at 10.30 a.m., the Magistrate might have made endorsement of its receipt around lunch time. Ordinarily, in faction cases even a few hours of delay may be fatal, for, it may give rise to false implications. In a case of this nature, such a contingency is completely ruled out. In the instant case, we do not see delay either in registration

of Ex.P.10 – FIR or its reaching the Court, even if there is any such delay, there is no scope for any false implications.

11. Adverting to the oral evidence let in by the prosecution, P.W.1 in his evidence deposed that he knew the deceased, who was working as staff nurse in Civil Hospital, Karimnagar, that the appellant and the deceased were residing as tenants in the house of P.W.2, that the death of the deceased occurred on 09.10.2009, that on that day he returned home after walking at about 8.00 a.m., that P.W.2 called him over mobile and informed about the death of the deceased and that within five minutes thereafter he has reached the house of P.W.2 and found the deceased lying dead in the backside of the said house with her head broken and bleeding. He has further deposed that his enquiries with P.W.2 revealed that a quarrel between the deceased and the appellant was going on and in that process the appellant might have killed the deceased and that on receiving the said information he has informed the same to the Police. He has also deposed that he was examined by the Police. In his cross-examination, P.W.1 stated that he has himself written Ex.P.1. He has also admitted that at 8.30 a.m. on 9.10.2008 he has learnt that the appellant, who was residing as a tenant in the compound of P.W.2, took up a mud sanitary pipe and hit on the head of the deceased and that he has also picked up a big stone (*banda rai*) and threw on her head due to which the deceased died on the spot lying in a pool of blood. This witness was treated hostile. During the cross-examination by the Public Prosecutor he has admitted that he has stated before the Police that he was informed by P.W.2 and others that at 8.00 a.m. on 9.10.2009, when the deceased was going to a nearby kirana shop, the appellant has questioned the deceased regarding her demand for divorce, abused her

stating how dare she has complained to Police against him and that so stating he has picked up a drainage pipe and hit on her head and after she fell down, he picked up a big stone and threw on her head, due to which she has received bleeding injuries and died on the spot. Nothing material could be elicited from the cross-examination by the defence counsel.

12. P.W.2, who is the key witness, is a landlady of the room in which the deceased was living as a tenant. She clearly deposed that at 8.00 a.m. when the deceased was leaving her room to purchase eggs, the appellant stopped and assaulted her with a pipe and stone. She has further stated that when she heard the cries, she came out and witnessed the appellant hitting the deceased on her head due to which the latter fell down and he picked up a big stone and threw it on her head, resulting in her death. She has also stated that the incident was witnessed by P.Ws.3, 4 and 5, who are also the tenants of her house. She further deposed that there used to be quarrels between the appellant and the deceased and the former was taking money from the latter. She also stated that she has sent a word for P.W.1 about the incident and she narrated to him what all she has witnessed and that thereupon P.W.1 has called the Police, who examined her and recorded her evidence. In the cross-examination, it was suggested to P.W.2 that the deceased, her mother, sister and brother belong to Valmiki caste, which is a Backward Caste (BC) and that with the help of the witness, they have obtained false caste certificates as Scheduled Tribes (STs) and got allotted house sites to them, which was published in the newspapers. These suggestions were denied by P.W.2. It was also suggested to the witness that she has not seen the appellant killing the deceased and that she was giving false

evidence being aggrieved with the former, as he has got paper publications made about the mother, sister and brother of the deceased obtaining false ST caste certificates through the witness though they are BCs. P.Ws.3, 4 and 5, who are also the tenants of the house of P.W.2, did not support the case of the prosecution. Therefore, they were treated hostile. They denied what they have stated in their Section 161 CrPC statements marked as Exs.P.3 to P.5.

13. P.W.10 – the Sub-Inspector of Police who registered the FIR and sent the same to the jurisdictional Magistrate spoke about the said fact. P.W.11 – Investigating Officer spoke about his taking up the investigation on his coming to know about the incident on 09.10.2009, his conducting inquest over the dead body from 10.30 a.m. to 12.30 p.m., and his seizing the material objects, including the drainage pipe, bloodstained stone, blood stained nighty and petticoat of the deceased. He has also spoken about his sending the dead body for post-mortem examination to P.W.8, his examining the list witnesses, including those who were examined before the Court, and also recording of the statements of P.Ws.2 and 3 under Sections 164 CrPC by the Additional Judicial Magistrate of First Class, Karimnagar. He has further deposed that on 16.10.2009 at 4.00 p.m., he has arrested the appellant. He also spoke about the alleged confession of the appellant during his interrogation, his receiving Ex.P.16 – forensic science laboratory report and filing of the charge sheet.

14. As could be seen from the oral evidence discussed above, P.W.2 is an eyewitness. Being the landlady residing in the same premises in which the offence has taken place, her presence at the scene of occurrence can be taken as a natural. From her evidence it appears that on hearing the cries of the deceased she came out, witnessed the appellant hitting the

deceased with a drainage pipe on her head and after she fell down, he has picked up a big stone, threw the same on her head and killed her. No suggestion was put to the witness that she was not present at the scene of offence at the time of occurrence. A suggestion was put to her that she had not seen that it was the appellant who killed the deceased. When it was suggested to P.W.2 that the deceased, her mother, her sister and her brother, who belong to Valmiki caste which was BC in Anantapur District, came down to Karimnagar, and that she helped them in obtaining caste certificates as if they are ST community and also to get the house sites allotted, she has denied the said suggestion. She has however admitted that a news report was published in the newspapers that false caste certificates were obtained by the said persons and that the appellant has given a complaint in the Police Station against the mother, sister and brother of the deceased about their obtaining fake caste certificates. It was not suggested to P.W.2 that in the news report it was alleged that the appellant has helped the said three persons in obtaining false caste certificates or getting the house sites allotted to them or that a criminal complaint was given against her also. Except the suggestion that as the appellant has got a news item published as discussed above, no evidence has been adduced to substantiate the said suggestion. In the absence of such evidence, there is no reason for P.W.2 to nurse any grievance against the appellant in order to go to the extent of falsely implicating him in the case.

15. Even though the evidence of P.W.2 is not supported by any other witness except P.W.1, the law is well settled that the evidence of the sole eyewitness can be relied upon for convicting the accused provided the Court is satisfied that his/her evidence is natural and does not suffer from

serious contradictions. In *Sunil Kumar v. State (Govt. of NCT of Delhi)*¹, the Supreme Court held that “there is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short “the Evidence Act”). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.” In *Namdeo v. State of Maharashtra*² the Supreme Court reiterated the said view observing that “it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.” In *Kunju v. State of Tamil Nadu*³, this view has been reiterated by the Supreme Court placing reliance on its various earlier judgments. In the case on hand, the tenor of the evidence of P.W.2 sounds natural and we do not see any reason why her testimony can be doubted.

16. Apart from the evidence of P.W.2, even the circumstances also rule out the possibility of anybody else killing the deceased. The defence has come out with a fanciful theory that P.W.7, former husband of the

¹ (2003) 11 SCC 367

² (2007) 14 SCC 150

³ (2008) 2 SCC 151

deceased, got the deceased killed by sending hired killers from Anantapur. P.W.7 deposed that he is a native of Anantapur and Valmiki by caste, that he has been working as Security Guard since 1999, that he himself has visited the deceased for about ten times coming from Ananthapur, that he has visited the deceased even when she was working at Godavarikhani, that he used to speak to P.W.2 whenever he visited his wife and that on receipt of the information about the death of his wife, he directly came from Ananthapur to Government Hospital, Karimnagar. It was suggested to P.W.7 that he along with his brother Rajanna, elder sister and other relatives visited Gadavarikhani, where the divorce was effected between him and the deceased at that place and that thereafter the deceased married the appellant. This suggestion was denied by the witness. It was suggested to him that as the deceased was earning Rs.15,000/- per month while he was earning Rs.3,000/- per month, he has nursed a grievance against the deceased and therefore he has himself killed her. A contradictory suggestion was followed immediately after the said suggestion that the witness has got the deceased killed by sending hired killers from Anathapur. Interestingly, no such suggestion was put to P.W.2. Even in his Section 313 CrPC examination, the appellant did not take this stand. Thus, the said stand taken obviously as an afterthought at the stage of examination of P.W.7 was abandoned later. If P.W.7 has killed the deceased, there was no reason for P.W.2 to depose against the appellant. Apart from Ex.P.1 in which the appellant was named as responsible for the death of the deceased, in Ex.P.8 - inquest report also the witnesses expressed that it is only the appellant who killed the deceased. Nowhere in Ex.P.8 a suspicion was raised against P.W.7. If P.W.7 was really involved in killing of the deceased, there is no reason for

the Police to spare him and falsely implicate the appellant. While the discussion undertaken hereinbefore is enough to sustain the conviction against the appellant, there remains the aspect of *res gestae*.

17. We find from the judgment of the lower Court that this doctrine was discussed in the context of considering the evidence of P.W.1. Section 6 of the Indian Evidence Act, 1872 (for short, “the Act”) which embodies the doctrine of *res gestae*, reads as under:

“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.”

Section 6 of the Act is an exception to the general rule whereunder, hearsay evidence is inadmissible. For bringing such hearsay evidence within the ambit of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there could not be an interval which would allow fabrication. In other words, the statements said to be admitted as forming part of *res gestae* must have been made contemporaneously with the act or immediately thereafter (See *Krishan Kumar Malik vs. State of Haryana*⁴).

In *Dhal Singh Dewangan v. State of Chattisgarh*⁵, the Supreme Court held as under:

The general rule of evidence is that hearsay evidence is not admissible. However, Section 6 of the Evidence Act embodies a principle, usually known as the rule of res gestae in English law, as an exception to hearsay rule. The rationale behind this section is the spontaneity and immediacy of the statement in question which rules out any time for concoction. For a statement to be admissible under Section 6, it must be contemporaneous with the acts which constitute the offence or at least immediately thereafter. The key expressions in the section are “... so connected ... as to form part of the same transaction”. The statements must be almost contemporaneous as ruled in the case of Krishan

⁴ (2011) 7 SCC 130

⁵ (2016) 16 SCC 701

Kumar Malik [Krishan Kumar Malik v. State of Haryana : (2011) 7 SCC 130] and there must be no interval between the criminal act and the recording or making of the statement in question as found in Gentela Vijayavardhan Rao case [Gentela Vijayavardhan Rao v. State of A.P., (1996) 6 SCC 241] . In the latter case, it was accepted that the words sought to be proved by hearsay, if not absolutely contemporaneous with the action or event, at least should be so clearly associated with it that they are part of such action or event. This requirement is apparent from the first illustration below Section 6 which states “whatever was said or done ... at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact”.

18. Applying the legal principles underlying this doctrine to the present case, P.W.1 receiving phone call at 8.00 a.m., his arriving at the scene of offence within five minutes, his gathering the details as to how the appellant has killed the deceased from P.W.2 - the eyewitness, and his informing the Police through his cell phone would not only form part of the same transaction pertaining to the offence, but they are contemporaneous with the act which constitutes the offence or at least immediately thereafter. The above mentioned aspects are clearly associated with time, place and circumstances with the offence which thereby form integral part of the same transaction. Therefore, we have no hesitation to hold that the testimony of P.W.1 satisfies the doctrine of *res gestae* and thereby it lends corroboration to the evidence of P.W.2.

19. On the above analysis, we hold that the prosecution was able to succeed in proving that the appellant has caused the death of the deceased.

20. Coming to the alternative submission of the learned counsel, it was alleged in the charge sheet that the deceased decided to give divorce to the appellant vexed over his harassment. Many times she approached the Courts and the Police. It was further alleged that on 09.10.2009 at 8.00 hours while the deceased was going to kirana shop and when she was

within the premises of the rented house, the appellant came and uttered as to why she was giving divorce to him and why she was approaching Police, and by taking a drainage pipe available from the ground beat her on her head upon which she collapsed. The fact that the appellant did not carry any weapon shows that he did not nurse premeditated intention of killing the deceased. From the circumstances brought out by the prosecution, it would appear that the appellant has confronted the deceased on the latter's attempts to obtain divorce and approaching the Police, not only got intimidated by those acts of the deceased but also deprived himself of self-control and used an earthen drainage pipe available at the scene of offence and beat the deceased. That when the deceased fell down due to the said blow he threw a boulder on her head. These facts show that the appellant has developed the intention to kill the deceased at the spur of the moment after losing his self-control. Therefore, in our opinion, the act of the appellant falls within Section 304 Part I IPC. As regards the sentence we are of the opinion that the ends of justice would be met if the appellant is sentenced to rigorous imprisonment for a period of ten years.

21. For the aforementioned reasons, the Criminal Appeal is partly allowed. The conviction recorded against the appellant in the impugned judgment is altered from the offence under Section 302 IPC to that of the offence under Section 304 Part-I IPC. The appellant is accordingly convicted and sentenced to suffer ten years rigorous imprisonment. The sentence of fine imposed against the appellant is, however, confirmed.

A perusal of the record shows that by order dt.16.12.2016 this Court has granted bail to the appellant as he has served more than five years of the sentence, following the order of this Court in *Batchu Ranga*

*Rao v. State of A.P.*⁶ Therefore, the appellant shall surrender himself before the Superintendent, District Jail, Warangal, forthwith to serve the balance sentence.

C.V. NAGARJUNA REDDY, J

J. UMA DEVI, J

04-08-2017

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Note: L.R. copies to be marked.
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⁶ 2016 (3) ALT (Crl.) 505 (DB)(AP)