

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

CRIMINAL APPEAL NO.1235 OF 2012

J U D G M E N T

(per Hon'ble Sri Justice Sanjay Kumar)

By judgment dated 29.07.2011 passed in Sessions Case No.250 of 2008, the I Additional Sessions Court, Chittoor, convicted the sole accused therein of offences under Sections 302, 201, 436 and 506 IPC in relation to the murder of his grand parents, Venkatesappa (D1) and Munemma (D2); the screening of the evidence of these two murders; commission of mischief by setting fire to the hayrick and cattle shed in front of the house of one Subbanna; and criminal intimidation by threatening one Suresh, Santoshwari and Jamuna. He was however acquitted of the charge under Section 307 IPC of attempting to murder P.W.1. The sole accused was sentenced to imprisonment for life apart from payment of a fine of Rs.100/-, in default of which he was to suffer simple imprisonment for three months, for his conviction under Section 302 IPC (two counts). He was further sentenced to imprisonment for life and payment of a fine of Rs.100/-, in default of which he was to suffer simple imprisonment for three months, for the offence under Section 201 IPC along with rigorous imprisonment for 10 years and payment of a fine of Rs.100/-, in default of which he was to suffer simple imprisonment for one month, for the offence under Section 436 IPC. Lastly, he was sentenced to rigorous imprisonment for one year for the offence under Section 506 IPC. Aggrieved by his convictions and sentencing, the sole accused is in appeal under Section 374(2) CrPC.

It was the prosecution's case that on the intervening night of 14/15.03.2008 at about 2.30 AM, the sole accused committed the

murder of his grandparents, D1 and D2, by beating them with an iron rod on their heads and then throttling them to death. He thereafter attempted to cause evidence of his heinous act to disappear by pouring kerosene and setting fire to the dead bodies. He also attempted to attack P.W.1 with a torch, thereby injuring him, apart from committing acts of mischief by setting fire to the hayrick and cattle shed of one Subbanna and also causing criminal intimidation by threatening those who gathered there, viz., Suresh (L.W.4), Santoshwari (P.W.2) and Jamuna (P.W.4). On 15.03.2008 at about 7.45 AM, the Inspector of Police, Kuppam (P.W.14), received information from the Sub-Inspector of Police, Ramakuppam Police Station, about this incident. He then rushed to Doddigutta fields near Gernipalli Village where he obtained Ex.P1 written complaint from P.W.1. He then registered Crime No.13 of 2008 on the file of Ramakuppam Police Station under Sections 302, 436 and 506 IPC. Ex.P11 is the FIR. He then called a photographer, Ramesh (L.W.13), and reached the scene of the offence. There, he secured the presence of P.Ws.1 to 5 and others and conducted an inquest over the dead body of D1. Upon his instructions, the Assistant Sub-Inspector of Police conducted an inquest over the body of D2. Exs.P4 and P5 are the inquest reports. He also got the scene of the offence photographed by Ramesh (L.W.13) and prepared a rough sketch of the scene of the offence. Ex.P12 is the rough sketch. During the inquest, he seized horse gram, coriander seeds, iron rod, kerosene bottle and burnt ash (M.Os.3 to 7). He also recorded the statements of P.Ws.1 to 5, Jayarami Reddy (L.W.2) and Suresh (L.W.4). He sent a requisition to the Medical Officer, Government Hospital, Kuppam, to come and conduct the post-mortem examination of the bodies at the spot. He then went to the house of Subbanna at 3.00 PM and prepared a

rough sketch (Ex.P13). There, he seized burnt sugarcane, burnt ash, burnt grass, a burnt tree and a burnt Atlas cycle (M.Os.8 to 12) under Ex.P7 mahazar. He then went to the house of P.W.1 and prepared a rough sketch (Ex.P14). There, he seized a cement-coloured pant, cream-coloured shirt, a torch and an electric wire (M.Os.1, 2, 13 and 14) under Ex.P8 mahazar. He also secured the presence of P.Ws.6 and 7, Chenga Reddy (L.W.8), Anantha Reddy (L.W.10) and Razak (L.W.12) and recorded their statements. He also examined the photographer, Ramesh (L.W.13), and recorded his statement. He got P.W.1 sent to the Government Hospital, Kuppam, for treatment and then returned to Ramakuppam Police Station. While he was there, P.W.8 produced the accused before him at about 7.30 PM on that day. In the presence of P.W.10 and Ramachandra (L.W.18), he interrogated the accused and recorded his confessional statement. The accused was arrested at 10.30 PM and produced before the Court on the next day. After completion of the investigation and receipt of necessary certificates, the successor-in-office of P.W.14 laid the charge-sheet.

Upon committal, the Sessions Court framed the following charges against the sole accused:

‘FIRSTLY that you on or about intervening night of 14/15-3-2008 at about 2-30 A.M. at the house of the deceased No.1-Venkatesappa and the deceased No.2 Munemma (wife of the deceased No.1) in Doddigutta, near Garnepalle, did commit two murders by intentionally causing the death of the above said deceased No.1 and No.2 by beating them with an iron rod on their heads and throttling them to death and that you thereby committed an offence punishable under Sec.302 of the Indian Penal Code (under two counts) and within my cognizance;

SECONDLY that you on or about the same date, time and place as mentioned in the charge No.1 supra, knowing or having reason to believe that certain offence, to wit two murders punishable with death or imprisonment for life and fine has been committed, did cause certain evidence of the said offences to disappear, to wit, poured kerosene and set fire to the dead bodies of the deceased No.1 Venkatesapa and the deceased No.2 Munemma, with an intention to screen yourself from legal punishment and thereby you have committed an offence punishable under Sec. 201 IPC and within my cognizance;

THIRDLY that you on or about the same date, time and place as mentioned in the charge No.1 supra did commit an act to wit beat the defacto complainant M.Venkatrama Reddy, with a torch with such intention or knowledge and under such circumstances, that if by that act you had caused the death of the said M.Venkatrama Reddy you would have been guilty of murder and you have caused hurt to him by the said act and thereby committed an offence punishable under Sec.307 IPC, and within my cognizance;

FOURTHLY that you on or about the same date, time and place as mentioned in the charge No.1 supra committed mischief by setting fire to the hay-rick and cattle shed of Subbanna with an intention to destroy the same and thereby committed an offence punishable under Sec.436 IPC and within my cognizance and

LASTLY that you on or about the same date, time and place as mentioned in the charge No.1 supra committed criminal intimidation by threatening Suresh, Santhoswari and Jamuna with dire consequences to kill them and you thereby committed an offence punishable under Sec.506 IPC and within my cognizance.'

The sole accused however denied the charges and claimed to be tried. The prosecution thereupon examined 15 witnesses and marked in evidence 15 documents. Material Objects 1 to 14 were also marked. No evidence was adduced by the defence.

Now, a look at the salient points emerging from the evidence:

P.W.1, a resident of Saginekuppam Village of Ramakuppam Mandal, stated that he knew the accused and the deceased. The accused was the grandson of the deceased, being the son of their daughter. He stated that his residential house was situated in his fields and he along with his parents and his younger sister lived there. Speaking about the events on the fateful day, he said that at about 3.00 AM on 15.03.2008, while they were sleeping in the house, they heard a dog barking and he, his father and his sister came out of the house and found the accused holding a stick. The stick was covered with a cloth and the cloth portion was set on fire, whereby it became a handmade torch. The accused was trying to set fire to the hayrick situated by the side of their house. He only had a towel around his waist and was holding the torch in his right hand. He was wearing a wire around his waist with a burning cloth tied to one end of the wire like a tail. P.W.1 snatched the torch from the hands of the accused and while doing so, he sustained burn injuries on his left hand and his clothes were also burnt. At that time, the accused declared that he had killed his grandparents just then and had set fire to them and would kill them also if they did not leave him. They then raised cries and Chenga Reddy (L.W.8) and P.W.6, who owned land beside their land, came there and when they raised cries, the accused ran away from that place. Then, they all went to the house of the deceased and found the bodies of D1 and D2 half-burnt and still on fire. By that time, Suresh (L.W.4), a cousin of D1, came running with his wife (P.W.2). Suresh (L.W.4) told him that the accused had set fire to their house and hayrick also. By that time, the bodies were burnt to ashes. P.W.1 went to the Government Hospital at Kuppam and after getting treated, he gave a complaint at Ramakuppam Police

Station. He identified Ex.P1 as the said complaint. He also identified M.O.1 and M.O.2 as his burnt clothes. In his cross-examination, P.W.1 stated that it was only on the basis of the statement of the accused that he had killed his grandparents that they came to know that he had killed them. He further stated that immediately after the incident, he went to Kuppam Hospital for treatment and got himself admitted. He further stated that he went to Ramakuppam Police Station at about 9.30 AM and the police recorded his complaint. He said that it was true that the accused was mentally unsound and he would be wandering from place to place.

P.W.2, the wife of Suresh (L.W.4), stated that D2, the grandmother of the accused, was the senior maternal aunt of her husband. The deceased were residing in a house near their house at Doddigutta. The accused was the son of Nagamma, daughter of D1 and D2. As the son of D1 and D2 was working at Kuppam Government Hospital, they had brought the accused to their house for their support. The accused was demanding money from D1 and D2 saying that he wanted to do business but they did not give him any money. In that connection, he was harassing them. She and her husband advised the accused not to harass D1 and D2 for money as they did not have any. On 15.03.2008 at about 2.00 AM, she, her husband, her sister (P.W.4) and her son were sleeping in their house and when her son started crying, they woke up and found that thick smoke was coming from the flames in front of their house, i.e., from the roof of their house and also from the hayrick. They came out and saw the accused there with a long iron rod to which a cloth piece was covered at one end with flames, like a torch, and he was holding a wire in his left hand. When they questioned him, the accused told them that he killed his grandparents and set fire to their bodies and

that as they supported his grandparents, he had set fire to their house and hayrick. He also threatened to kill them if they caught him. When they tried to do so, he ran away towards the house of D1 and D2. They put out the fire on their hayrick and house and then went to the house of D1 and D2. By that time, the bodies of D1 and D2 were burnt to ashes. P.W.1, his father and his sister were also present there apart from Chenga Reddy (L.W.8). P.W.1 informed them that the accused came to their house and set fire to their hut and hayrick and when he tried to catch the accused, he sustained burns on his hand. In her cross-examination, P.W.2 stated that the accused came to their house after setting fire to the house of P.W.1. She admitted that she had not seen the accused killing his grandparents but denied that the accused was wandering from place to place due to unsound mind. She also admitted that they had differences with the accused by the date of the incident.

P.W.3, the younger sister of P.W.1, supported the version put forth by him. She said that the deceased used to live in a house near their fields and that the accused was their grandson and was being brought up by them. At about 3.00 AM on 15.03.2008, upon hearing the barking of a dog, she woke up and she, along with P.W.1 and their father, came out of the house. They found the accused holding a torch in his right hand and in his left hand he was holding a wire to which a cloth was tied and the cloth bundle was set on fire. The accused tried to set fire to their cattle-shed and P.W.1 tried to catch him. Thereupon, the accused assaulted P.W.1 with the torch and P.W.1 suffered burns on his left hand. When they raised cries, Chenga Reddy (L.W.8) and his son (P.W.6), whose house was by the side of their house, came there. The accused stated that he had killed his grandparents and set fire to them and threatened that he would

kill them also. When they raised cries, the accused escaped. They all went to the house of D1 and D2 and by that time, the dead bodies of D1 and D2 had become black due to burns. Meanwhile, Suresh (L.W.4), his wife (P.W.2) and P.W.4 came there. They informed them that the accused had set fire to the hayrick and also to their house and escaped when Suresh (L.W.4) tried to catch him. P.W.1 went to the Government Hospital, Kuppam, for treatment. P.W.1 gave a complaint at Ramakuppam Police Station. In her cross-examination, P.W.3 said that P.W.1 went to the hospital in the early hours of 15.03.2008 and was there for about one hour. She admitted that they came to know about the killing of D1 and D2 by the accused only on the basis of his own statement.

P.W.4 stated that she, P.W.2 and Suresh (L.W.4) lived in the same house. P.W.1, P.W.3 and their father lived in a house nearby. She stated that she knew the accused, who was also related to her, and that he was the grandson of the deceased. They were also residing in a house near their house. The accused was asking for money from his grandparents saying that he wanted to do business but they did not consider his plea. On 15.03.2008 at about 2.30 AM, while she, P.W.2 and Suresh (L.W.4) were sleeping in their house, they woke up and found thick smoke coming from their house. They found that their house and hayrick had been set on fire and the accused was there with a torch in his hand. When Suresh (L.W.4) tried to catch him, the accused ran away towards his house. They then put out the fire. The accused had threatened to kill them just in the same way he had killed his grandparents. They then went to the house of the deceased and found that the bodies of D1 and D2 were burnt. P.W.1, P.W.3, Jayarami Reddy (L.W.2), Chenga Reddy (L.W.8) and P.W.6 came there. P.W.1, P.W.3 and Jayarami Reddy (L.W.2) told

them that the accused had set fire to their house and hut and that P.W.1 sustained burns on his hand. In her cross-examination, P.W.4 stated that by the time they came out of their house, the accused was holding a torch in his hand but she did not know from where he came to their house.

P.W.5, the son of the deceased and maternal uncle of the accused, stated that the accused was the son of his younger sister. He said that on 15.03.2008 at about 2.30 AM, he received a phone call from Suresh (L.W.4) who informed him that the bodies of his parents were set on fire by the accused at their house and that the accused also set fire to the house of Suresh (L.W.4). He and his family members went to the village and by that time, the dead bodies had become black due to burns. Suresh (L.W.4) told him that the accused was quarreling with the deceased demanding money for doing business and that he had advised the accused not to pick up quarrels with them and that the accused had set fire to the house of P.W.1 and also to the house of Suresh (L.W.4). He also told him that when they tried to catch him, the accused escaped. In his cross-examination, P.W.5 stated that he had no personal knowledge about the incident but denied that the accused was of unsound mind. He denied that he had any land disputes with the accused and that he was giving false evidence due to his enmity with him.

P.W.6 stated that Chenga Reddy (L.W.8) was his father and that their house was at a distance of one furlong from the house of the deceased. The house of P.W.1 and the house of Suresh (L.W.4) were also in the same locality. He said that he knew the accused who was being brought up by his grandparents. On 15.03.2008 at about 3.00 AM, while he and his father were sleeping in their house, they heard the cries of P.W.1. They then went to the house of P.W.1 and

by the time they reached there, the accused had run away from that place. P.W.1 had burn injuries on his hand. P.W.1 told them that upon hearing the barking of a dog, they woke up and found that the accused had set fire to their house and when P.W.1 tried to catch him, he sustained burn injuries. Then, they also saw the flames coming from the house of the deceased and went there. They found the dead bodies of D1 and D2 burning. They also observed the house of Suresh (L.W.4) burning. On hearing their cries, Suresh (L.W.4) and his family members came out of the house. In his cross-examination, P.W.6 stated that by the time he reached the house of P.W.1, the accused had already escaped and it was only on the basis of the information given by P.W.1 and others that he came to know that the accused had set fire to their house.

P.W.7 turned hostile and did not support the prosecution's case that he had witnessed the accused quarreling with his grandparents for money to do business.

P.W.8, the Panchayat Secretary of Baiyappa Reddlapalli, Ramakuppam Mandal, stated that on 15.03.2008 during the evening time while he was at his house, the accused came there and informed him that he had killed his grandparents by burning them and requested his help. He also told him that he had set fire to the houses of neighbours, including Jayarami Reddy (L.W.2), the father of P.W.1, and that they had chased him but he escaped. P.W.8 stated that he produced the accused before the police and submitted his report (Ex.P3). In his cross-examination, P.W.8 denied the suggestion that he was giving false evidence due to a grudge against the accused.

P.W.9, a witness to the inquest proceedings, confirmed that the police seized M.Os.3 to 7 in her presence and prepared Exs.P4 and P5 inquest reports.

P.W.10 confirmed that the accused was interrogated by the police in his presence during the evening hours of 15.03.2008.

P.W.11, a Civil Assistant Surgeon, Area Hospital, Kuppam, stated that she examined the accused at 10.50 PM on 16.03.2008 and found the following injuries:

1. Multiple scalds on the right fore arm.
2. Burns on the left index finger and left thumb.
3. Lacerated injuries 1 x 1 cm. on both right and left great toes.

She confirmed that the injuries were simple in nature and that Ex.P6 was the certificate issued by her. In her cross-examination, P.W.11 stated that she did not remember whether the accused was in a sound state of mind at that time and that she did not conduct any examination to test whether he was in a sound state of mind.

P.W.12 was a witness to the inquest proceedings and confirmed that he attested Exs.P4 and P5 inquest reports. He also confirmed that during the course of the inquest, the police seized M.Os.3 to 7. He further stated that after the inquest, they went to the house of Subbanna, the father-in-law of P.W.2, and the police seized M.Os.8 to 12 under Ex.P7 mahazar. They then proceeded to the house of P.W.1 where the police seized M.Os.1, 2, 13 and 14 under Ex.P8 mahazar. He certified that he attested Exs.P7 and P8 also.

P.W.13, a Civil Assistant Surgeon at Area Hospital, Kuppam, confirmed that he conducted the post-mortem examination of the bodies of D1 and D2. As regards the body of D1, he stated that it was totally burnt on the posterior side and the anterior part of the body was partially burnt. He found a laceration of 2 cms. over the left temporal region of the scalp. He found mild bleeding present subdurally on the side of the injury and the hyoid bone was fractured. He opined that D1 appeared to have died due to throttling.

Ex.P9 is the certificate issued by him. As regards the body of D2, he stated that the body was totally burnt except for a small part near the neck. Both the upper and lower limbs were turned to ash. He however confirmed that the hyoid bone was fractured and opined that the deceased appeared to have died due to throttling. Ex.P10 was identified by him as the post-mortem certificate of D2.

P.W.14, the Investigating Officer, spoke of the various steps taken by him. In his cross examination, he admitted that none of the witnesses had actually seen the accused killing his grandparents. But as per his investigation, the accused was demanding money from them and there were no other disputes between them. He also confirmed that when the accused was produced before him, he had external injuries on his body. He stated that it was not correct to say that when the accused was produced before him, he was of unsound mind and in an intoxicated condition. He also admitted that he did not try to ascertain whether the accused was in a fit state of mind by sending him for medical examination.

P.W.15, a Civil Assistant Surgeon at Area Hospital, Kuppam, stated that she examined P.W.1 on 15.03.2008 at 4.00 PM and found the following injuries:

1. Burns on left forearm on medial side of a length of 10 cm. No depth present and only skin is involved.

She confirmed that the injured had sustained 10% burns but the injury was simple in nature. She identified Ex.P15 as the certificate issued by her.

On the strength of the aforestated oral and documentary evidence, the Sessions Court relied upon the evidence of P.W.8 and the extrajudicial confession made by the accused and concluded that the accused had killed his grandparents. As sufficient evidence was

also let in to show that the accused set fire to the bodies thereafter, the Sessions Court found that he had committed the offence punishable under Section 201 IPC. The Sessions Court further found that adequate evidence was let in to prove the acts of mischief committed by the accused in relation to setting fire to the hayrick and cattle shed of Subbanna, father-in-law of P.W.2, and accordingly convicted him of the said charge. As no evidence was available to infer any attempt on the part of the accused to kill P.W.1, the Sessions Court held the charge under Section 307 IPC unproved. As regards the charge of criminal intimidation, the Sessions Court took note of the argument advanced by the learned counsel for the defence that the accused was of unsound mind but found that none of the witnesses stated so, and more particularly P.W.2. As there was no other material to show that the accused was of unsound mind at the time of commission of the offence, the Sessions Court held that the general exception under Section 84 IPC was not applicable. In the result, the accused was held guilty of all the charges except the charge under Section 307 IPC and sentenced accordingly.

At this stage, it may be noted that the sentence imposed by the Sessions Court under Section 201 IPC is erroneous as the maximum period of imprisonment that can be visited thereunder is only upto seven years. Therefore, the sentence of life imprisonment passed by the Sessions Court for the offence under Section 201 IPC is unsustainable in law.

Sri S.Nagender, learned counsel for the appellant/sole accused, would state that there was sufficient evidence to indicate that the appellant/sole accused was of unsound mind. Learned counsel would point out that the very fact that the accused was wearing only a towel and had a wire around his waist with a cloth bundle tied to

its end like a tail, which was set on fire, would indicate this. He would further point out that P.W.1 admitted in his cross-examination that the accused was of unsound mind. He would therefore argue that the convictions and sentences visited upon the appellant/sole accused are unsustainable in law and that the general exception under Section 84 IPC ought to have been extended to him.

It appears that during the course of the Sessions Case, the accused was treated for unsoundness of mind. The Sessions Court recorded the details thereof in Para 32 of the judgment under appeal. However, the trial commenced only after he was discharged from the Government Hospital (Mental Care), Hyderabad, on 30.12.2010. But even thereafter, in April, 2011, he was admitted in the Institute of Mental Health, Hyderabad, for treatment.

Section 329 CrPC provides that if at the trial before the Court of Sessions, it appears to such Court that the person being tried is of unsound mind and is consequently incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness and incapacity and if the Court, after considering such medical and other evidence as may be produced before it, is satisfied of the fact, it shall record a finding to that effect and postpone further proceedings in the case.

In the case on hand, though it has come on record that the appellant/sole accused did undergo treatment for unsoundness of mind during brief spells, the Sessions Court did not opine that he was incapable of making his defence, whereby it had to exercise its discretion under Section 329 CrPC.

On the other hand, the record reflects that when the charges were framed against him and were put to him, the appellant/sole accused stated that he had not committed the offence. Further, the

cross-examination of the prosecution's witnesses by the learned counsel for the defence would have been upon the instruction of the appellant/sole accused. There is thus no evidence of any incapability on his part to consult with or instruct his counsel on a proper defence. The appellant/sole accused was also subjected to examination under Section 313 CrPC and even at that stage, no plea was taken that he was incapable of answering such questions owing to unsoundness of mind. Apart from answering each question put by the Sessions Court to the effect that it was a lie, the appellant/sole accused also said that he lived in Ramakuppam and that he knew nothing. When he was questioned as to the quantum of sentence, he stated that he had not committed any crime and that there was no one to look after him.

As regards the applicability of the general exception under Section 84 IPC, it may be noted that this provision states that nothing is an offence which is **done** by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. It is no doubt true that in the event this general exception under Section 84 IPC is attracted, the Court must extend the benefit thereof to the accused. It would be enough for the defence to put forth a plea in this regard and adduce sufficient evidence of legal insanity, as opposed to medical insanity, whereupon the duty is cast upon the Court to give such benefit to the accused, if facts establish its applicability on a preponderance of probabilities. (See **SURENDRA MISHRA V/s. STATE OF JHARKAND**¹)

However, as the appellant/sole accused was not subjected to medical examination immediately after his apprehension to know the

¹ (2011) 11 SCC 495

state of his mind at that time, it is too late in the day for this Court to gather evidence of the same, as what is of relevance is the state of mind of the accused at the time of commission of the act. Similarly, as the Sessions Court did not think it necessary to exercise its discretion under Section 329 CrPC and as the material on record does not, even at this stage, demonstrate any incapacity on the part of the appellant/sole accused to face the trial or put forth his defence effectively, no benefit of doubt can be extended to him on that ground also. Significantly, none of the family members of the accused agreed with the suggestion put to them that he was of unsound mind. Only a stray sentence to this effect by P.W.1 is now sought to be taken advantage of to support the plea that the accused should be given the benefit of Section 84 IPC. We are not convinced.

On a cumulative analysis of the facts of the case, this Court finds no cause made out to extend the benefit of Section 84 IPC to the appellant/sole accused. Sufficient evidence has not been placed before this Court to support such a plea even at this late stage.

As regards the convictions visited upon the appellant/sole accused under various provisions, and more importantly Section 302 IPC, it has to be noticed that the case rests on circumstantial evidence as there was no eyewitness to the actual event. Be it noted that sufficient evidence was adduced by the prosecution in support of the fact that the appellant/sole accused was quarreling with his grandparents for money to do business. This fact, in itself, indicates that he was not of unsound mind at that time. P.W.2 spoke of how her husband, Suresh (L.W.4), and she advised the accused not to trouble his grandparents for money as they did not have any. The motive for the offence is therefore established.

That apart, the evidence of various related and unrelated witnesses of the accused was that he declared before them that he had killed his grandparents. P.W.1, P.W.2, P.W.3 and P.W.4 all stated so. It is but natural that the appellant/sole accused, having committed the heinous act just prior thereto, and still in the throes of such passion, would proclaim what he had done to those he wished to intimidate. As this statement was allegedly made by the accused in their presence immediately after the commission of the dastardly act, the provisions of Section 6 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') would stand attracted and the doctrine of *res gestae* would come into play. Section 6 reads thus:

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.

Further, Illustration (a) to Section 6 of the Act of 1872 would squarely apply to the case on hand. This illustration reads as under:

'A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.'

The consistent evidence of P.W.1, P.W.2, P.W.3 and P.W.4 on the aspect of the appellant/sole accused declaring what he had done is therefore sufficient to prove his guilt. That apart, the evidence brought on record clinchingly establishes an unbroken chain of events pointing unerringly at his guilt and no other.

Further, Sri S.Nagender, learned counsel, would contend that, as some of the witnesses stated that the bodies of D1 and D2 were

reduced to ashes, the question of any post-mortem examination being conducted would not arise. He would further contend that it was very irregular on the part of the police and the medical authorities to conduct a post-mortem examination at the spot and, therefore, no credence should be given to the findings of such post-mortem examination.

However, it is brought out from a conspectus of the oral evidence that the bodies were burnt black and one or two witnesses also stated to the effect that they were reduced to ashes. This was confirmed to some extent by P.W.13, who stated that the body of D2 was totally burnt except for a small part near the neck and her upper and lower limbs were turned to ashes. As regards the body of D1, P.W.13 stated that the posterior side was totally burnt, while the anterior part of the body was partially burnt. It was because of the fragile state that the bodies were in, that P.W.14 rightly summoned the medical personnel concerned to come to the spot to do the post-mortem examination. This Court therefore finds no illegality in this exercise. Significantly, the finding of the post-examination was that the hyoid bones of both D1 and D2 were fractured, indicating that they were throttled.

There were, no doubt, minor discrepancies in the witnesses' evidence and the same are but natural given the lapse of time since the incident and the date of their depositions. As to when Chenga Reddy (L.W.8) and his son, P.W.6, arrived at the scene and as to whether the accused first burnt the house of P.W.1 or the house of Suresh (L.W.4) are issues of minor relevance and the varying testimony of witnesses on these aspects is not sufficient in itself to discard or dilute the prosecution's case.

As regards the issue of P.W.1 going to the hospital for treatment of his burns, it appears that he went to the hospital by himself in the morning though there is no evidence of what treatment was given to him at that time, but P.W.14 again sent him for treatment in the afternoon and he was then examined by P.W.15 at about 4.00 PM on that day. There is therefore no contradiction or inconsistency on this aspect of the matter.

On the aforestated analysis, this Court finds no ground to interfere with the conviction of the appellant/sole accused on the various charges held proved against him by the Sessions Court. However, as already pointed out *supra*, the sentence visited upon the appellant/sole accused in so far as his conviction under Section 201 IPC cannot be sustained and it is accordingly reduced to rigorous imprisonment for a period of three years apart from payment of a fine of Rs.100/-, in default of which he shall suffer simple imprisonment for three months.

The appeal is accordingly allowed only to that extent and the conviction of the appellant/sole accused under Sections 302, 201, 436 and 506 IPC and the other sentences imposed upon him by the Sessions Court are confirmed. All the sentences shall run concurrently as per Section 427(2) CrPC.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

16th FEBRUARY, 2018

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