



In The High Court for the States of Punjab and Haryana
At Chandigarh

CRA-D-157-DB-2005 (O&M)
Date of Decision:- 03.02.2025

Shivji ... Appellant

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Ashwani Bhardwaj, Advocate, for the appellant.
Mr. Ranvir Singh Arya, Addl. A.G. Haryana.

GURVINDER SINGH GILL, J.

1. Appellant Shivji assails judgment dated 25.01.2005 passed by Sessions Judge, Kurukshetra and order dated 27.01.2005 whereby he has been held guilty and sentenced as under:-

Section	Sentence
302 IPC	To undergo life imprisonment and to pay a fine of Rs.1000/-. In default of payment of fine he will further undergo rigorous imprisonment for two months
324 IPC	To undergo rigorous imprisonment for 1 year



2. The matter arises out of FIR No.40 dated 01.05.2003, Police Station Babain, under Sections 302, 324, 323 of IPC (Ex.PQ/2) lodged on the statement (Ex.PQ) made by complainant Begu Mehto, which came to be recorded when the police, upon receipt of information from the hospital regarding admission of Begu Mehto and Vinod Mehto in injured condition, visited the hospital. Begu Mehto stated that he along with his younger brother Kishori Mehto (deceased), his brother-in-law (*jija*) Vinod Mehto and his uncle's son-in-law namely Rattan Dev Mehto had come to village Prahladpur for doing labour work in the fields of Partap Singh about six or seven months back and they used to reside at the '*kotha*' (housing) of tubewell situated in the fields of Partap Singh. About four months ago Shivji who was son of complainant's aunt also joined them for doing labour work. About 3/4 days back Shivji had asked him to settle the accounts with regard to labour work upon which they all had told him that the same would be settled as the work would be completed in another 3/4 days and upon which they could distribute the amount. However, Shivji objected to the same. On 01.05.2003, when the complainant and others including Shivji had returned to '*kotha*' at tubewell after harvesting the crop they all took their meals and slept at the tubewell. However, at about 11/11.30 pm he heard cries of his brother Kishori upon which he, Vinod Mehto and Rattan Dev Mehto saw that Shivji who was carrying a sugar-cane cutter in his hand was inflicting injuries to complainant's brother Kishori Mehto. When the



complainant along with Vinod Mehto and Rattan Dev Mehto tried to stop Shivji, they were also inflicted injuries by Shivji with the help of said sugar-cane cutter. Vinod Mehto and Rattan Dev Mehto rushed towards village Prahladpur to inform others and in the meantime Shivji ran away from the spot. Although, the complainant tried to nab Shivji and chased him, but he managed to escape. When the complainant went back to (*kotha*) tubewell, he saw that his brother had been inflicted injuries and was writhing in pain and ultimately breathed his last. After about 30 minutes Vinod Mehto and Rattan Dev Mehto came there along with Partap Singh and others from the village. Shortly thereafter Raj Pal came there in a car and took complainant Begu Mehto, Vinod Mehto and Rattan Dev to Civil Hospital, Babain. Rattan Dev Mehto was further referred to Lok Nayak Jai Parkash (LNJP) Hospital, Kurukshetra. Complainant alleged that Shivji had murdered his brother Kishori Mehto on account of non-settlement of the accounts and had also caused injuries to them.

3. Pursuant to lodging of the FIR, the police went to the spot and prepared the inquest report Ex.PC. The dead body of Kishori Mehto was got subjected to post mortem examination Ex.PB. The medical record pertaining to injured Begu Mehto, Vinod Mehto and Rattan Dev Mehto and also of the deceased Kishori Mehto was collected. Blood stained clothes of Begu Mehto and of Vinod Mehto, a jute piece of cloth were taken into possession. A rough site plan Ex.PR of



the place of occurrence was prepared. Statement of witnesses were recorded in terms of Section 161 Cr.P.C. Blood stained clothes of Rattan Dev Mehto were also taken into possession. The accused was arrested from '*jungle*' (forest) on 01.05.2003. Upon interrogation, he disclosed that he had concealed his blood stained clothes in the jungle and pursuant to the said disclosure statement he got the same recovered. It is further the case of prosecution that on 02.05.2003 the accused made a disclosure statement Ex.PY as regards his having concealed the sugar-cane cutter in the fields of Partap Singh. Pursuant to the said statement the accused led the police party to the disclosed place and got the sugarcane cutter recovered which was taken into possession vide recovery memo Ex.PY/1. Upon completion of investigation a challan was presented against the accused in the Court of learned Judicial Magistrate 1st Class, Kurukshetra on 10.06.2003, who committed the case to the Court of Sessions vide order dated 24.07.2003. Charges were framed against the accused for offence punishable under Sections 302, 323 and 324 of IPC by learned Sessions Judge, Kurukshetra on 01.08.2003 to which accused pleaded not guilty and claimed trial.

4. The prosecution in order to substantiate its case examined as many as 15 Pws. The gist of their testimonies is being briefly referred to herein under:-

PW-1-Dr. Surender Kumar, medical officer, LNJP Hospital, Kurukshetra stated that he along with Dr. C.R.Khatri and Dr.



G.D.Mittal had conducted the post-mortem examination on the dead body of Kishori Mehto. He described the three injuries found on the dead body in detail and proved the post mortem report as Ex.PB. He opined that the cause of death was haemorrhage and shock as a result of injuries caused to the deceased which were sufficient to cause death in ordinary course of nature.

PW-2-Dr. N.P. Singh, had medico legally examined Khalifa (also referred to as Rattan Dev Mehto) and proved the MLR Ex.PF wherein the seven injuries found on his person have been recorded as under:

- “1. Incised wound 3 cm x 1 cm. present over the right side of face starting from the right ear tagus, obliquely placed over the cheek, Bleeding was present. Advised for x-ray.
2. Incised wound 6 cm. x 2 cm. present over the posterio medial aspect of right fore arm in the middle. Bleeding was present. Advised for x-ray.
3. Incised wound 5 cm. x 2 cm. present over the posterio lateral aspect of right elbow joint. Bleeding was present. Advised for x-ray.
4. Incised wound 5 cm. x 1 cm. over the medial aspect of right wrist joint and extend upto the medial aspect of hand. Bleeding was present. Advised for x-ray.
5. Incised wound starting from the lateral aspect of fifth toe of right foot and extending upto the middle of foot, active bleeding was present and going upto the heel. Advised for x-ray.
6. Incised wound starting from the middle finger of left hand, posterior aspect going upward and laterally upto the medial part of hand, upto wrist joint. Bleeding was present. Advised for x-ray.
7. Incised wound over the palmer aspect of thumb of right hand on distal phalanx upto the Inter phalangeal joint. Bleeding was present. Advised for x-ray.”



PW-3-Dr. Baldev Singh stated that on 01.05.2003 he had medico legally examined Begu Mehto and proved MLR Ex.PH wherein the five injuries found on his person have been recorded as under:

- “1. An incised wound 5 x .5 cm. On occipital region. Profusely bleeding. Bone deep.
2. Incised wound 2 x 2 cm. present on left index finger on back side. Skin deep. No limitation of joint movements.
3. Incised wound 6 x 5 cm. Bone deep present on front side of left side of knee joint and left leg over upper 1/3rd. No limitation of joint movements.
4. An abrasion 0.5 x 0.3 cm. red in colour present on left shoulder joint on front side.
5. An incised wound 2 x 0.5 cm. bone deep present on left knee joint. No limitation of joint movements.”

He further stated that on the same day he had also medico legally examined Vinod Mehto and while proving the MLR in respect of Vinod Mehto as Ex.PJ he stated that the following injuries were found on his person:

- “1. An incised wound 2.5 x 0.3 cm. on back of right hand, Bleeding, with surrounding diffuse swelling oblique in direction. Limitation of hand movement present.
2. An incised wound on left knee joint 3 x 0.3 cm. with surrounding diffuse, tender swelling. Limitation of joint movement present.
3. An incised wound 2 x 0.4 cm. diameter present on right knee joint, red in colour.”

PW-4-SI Sudhir Kumar stated that on 02.06.2003 he was posted as SI/SHO at Police Station Babain and upon completion of investigation he had prepared report under Section 173 Cr.P.C.



PW-5-Head Constable Jeet Singh is a formal witness who tendered his affidavit Ex.PN in evidence wherein he deposed that on 01.05.2003 he was posted as MHC in Police Station Babain and on the said day ASI Ashok Kumar deposited parcels in respect of the clothes of injured namely Begu Mehto, Vinod Mehto and Rattan Dev Mehto and also of the deceased Kishori Mehto, a piece of jute cloth etc. which had been taken into possession by the police. He further stated that on 02.05.2003 a parcel containing clothes of Shivji accused was also deposited with him and that on 8.5.2003 all the said parcels were sent through Constable Balbir Singh for delivering the same at FSL Madhuban which were accordingly delivered. He further stated that as long as the said parcels remained in his custody the same were not tampered with.

PW-6-Constable Balbir Singh tendered his affidavit Ex.PO in evidence wherein he deposed that on 8.5.2003 MHC handed over sealed parcels pertaining to clothes etc. to him which he further deposited in the office of FSL Madhuban the same very day and that as long as the said parcels remained in his custody the same were not tampered with.

PW-7-Constable Kamal Kumar stated that on 01.05.2003 ASI Mahabir Singh handed over copies of FIR to him which he delivered the same day to the Illaqa Magistrate and to the police officer without any delay.



PW-8-ASI Mahabir Singh stated that on 01.05.2003 when he was posted as ASI at Police Station Babain, statement/*ruqa* (Ex.PQ) was received on the basis of which FIR (Ex.PQ/2) was lodged.

PW-9-Bhim Singh, Patwari Halqa Ramsaran Majra stated that he had prepared a site plan of the place of occurrence and proved the same as Ex.PR.

PW-10-Dharampal stated that on 01.05.2003 he at the instance of police, went to the spot and had taken photographs which he proved as Ex.PS/1 to 7 along with negatives PS/8 to 14.

PW-11-Ram Kumar, Junior Engineer proved his certificate Ex.PT wherein he certified that 11 KV Feeder was running on 2 phase supply from 18.30 to 24.00 hours on 30.04.2003.

PW-12-Head Constable Narender Singh stated that on 01.05.2003 he was posted at Police Station Babain and that a piece of jute cloth had been seized from the spot in his presence and that even the clothes of injured Begu Mehto and Vinod Mehto were taken into possession vide recovery memo Ex.PU which was signed by him and also by Begu Mehto. He stated that he had remained associated with ASI Ashok Kumar during the course of investigation of the case and had attested various documents, recovery memos prepared during the course of the same. He is also a witness to the disclosure statement of accused Ex.PY and the recoveries made pursuant thereto at the instance of accused.



PW-13-Partap Singh stated that about 8 months prior to 30.4.2003 Begu Thekedar, Vinod cook, Khalifa alias Rattan Dev, Shivji (accused) and Kishori had harvested his paddy crop and also the sugarcane crop and they used to stay at his tubewell. He stated that on the night intervening 30.4.2003 and 01.05.2003 Vinod and Rattan Dev alias Khalifa came to him and woke him during night and they both were in injured condition and disclosed to him as well as to his son Raj Pal that Shivji had inflicted injuries to them as well as to Begu Mehto and Kishori Mehto. He further stated that they called Sarpanch and Sarup Chand and other respectables and went to the spot where they found Kishori Mehto who had succumbed to his injuries. He further stated that Begu Mehto who was also present there was crying and he disclosed that Shivji had inflicted injuries to all of them on account of settlement of accounts.

PW-14-Raj Pal who is son of Partap Singh stated identically as stated by his father i.e. PW-13 Partap Singh.

PW-15-ASI Ashok Kumar who was the Investigating Officer of the present case stated in detail in respect of the investigation conducted by him. He stated about the preparation of the inquest report, collection of the medical record, recovery of blood stained clothes of the injured and also of the deceased and also as regards the arrest of the accused and his disclosure statement and the recoveries made thereafter.



5. Upon conclusion of prosecution evidence, the entire incriminating evidence was put to the accused in terms of Section 313 Cr.P.C. to enable him to explain the same, but the accused denied the entire prosecution case in toto and pleaded false implication. The accused however, did not lead any evidence in his defence.
6. The trial Court upon considering the evidence on record returned its finding to the effect that the prosecution has established its case and accordingly held the accused guilty for offence under Sections 302 and 324 IPC vide judgment dated 25.01.2005 which is being challenged in this appeal.
7. Learned counsel for the appellant while assailing the impugned judgment vehemently argued that it is a case where neither complainant Begu Mehto who was injured and nor the other two persons who were also injured in the same incident namely Vinod Mehto and Rattan Dev alias Khalifa have been examined by the prosecution and that in the absence of said evidence, the accused could not be held guilty solely on the basis of medical evidence or on the testimony of PW-13 Partap Singh and his son Raj Pal (PW-14) who admittedly had not witnessed the occurrence in question. Learned counsel thus submitted that the impugned judgment, as such, could not sustain and is liable to be set aside and consequently the appellant is entitled to be acquitted.



8. Opposing the appeal, learned State counsel submitted that the complainant and injured could not be examined as they were natives of Nepal and apparently being scared after murder of Kishori, they did not chose to come back and that under these circumstances the Court was well within its powers to base conviction on the basis of other evidence which was sufficient to establish the guilt of the accused. It has been submitted that apart from the medical evidence, statement of PW-13 Partap Singh and PW-14 Raj Pal would clinch the matter, as their statements would be admissible in terms of the provisions of Section 6 of Indian Evidence Act as it is before them that the two injured had appeared immediately after the occurrence during night and had disclosed about the occurrence and thereafter the aforesaid two PWs in the company of Sarpanch visited the place of occurrence where the dead body was found with multiple injuries. Learned counsel submitted that since there is hardly any time-gap between the occurrence and disclosure of the incident by the injured to PW-13 and PW-14 namely Partap Singh and Raj Pal, who were the most natural persons whom the injured would have approached under the given circumstances, the said disclosure made by the two injured to Partap Singh and Raj Pal would be in the nature of *res gestae* evidence and would be admissible and since the medical evidence also lends corroboration, the conviction as recorded by the trial Court is fully justified.



9. This Court has considered rival submissions and have also perused the record of the case.
10. As far as the factum of homicidal death of Kishori is concerned, the prosecution has examined PW-1 Dr. Surender Kumar who, in his post mortem examination report had recorded the following injuries:
- “1. An incised wound starting from left cheek at the level of angle of mouth going upwards and posteriorly on the temporo parietal area going upto left parietal eminence, cutting all the soft tissues, underlying bones and brain.
 2. An incised wound present on the left clavicular region starting from 1 cm. Lateral to base of neck and second rib, cutting the clavicul, first and second ribs and underlying vessels and soft tissues, going upwards and laterly upto medial angle of stabula.
 3. Incised wound 5 cm x 2 cm. obliquely placed on the lateral aspect of left arm in the middle. It was bone deep. Clotted blood was present in and around all the wounds.”
11. A perusal of aforesaid description of injuries reveals that two out of three injuries were caused with incised weapon on vital parts of the body i.e. on the head and neck. The doctor has opined the cause of death to be a result of haemorrhage and shock on account of the injuries in question. Nothing substantial was put to the doctor during the course of his cross-examination so as to doubt his veracity or his opinion. As such, there is no room to doubt that Kishori had been done to death with the help of some sharp edged weapon.
12. Similarly the factum of existence of injuries on Begu Mehto, Vinod Mehto and Rattan Dev @ Khalifa also stands fully established from the testimonies of PW-2 Dr. N.P.Singh and PW-3 Dr. Baldev Singh



who had duly described the injuries found on their body in detail and proved the MLRs. All the injuries are in the nature of incised wounds which is in tune with the prosecution version that injuries had been inflicted with sugar-cane cutter. Nothing substantial could be elicited during their cross-examination from which any sort of doubt could be raised as regards their deposition. It is thus held that the prosecution has fully established the fact that Begu Mehto, Vinod Mehto and Rattan Dev had been inflicted injuries with some incised weapon.

13. However, neither the injured complainant Begu Mehto nor injured witnesses i.e. Vinod Mehto and Rattan Dev have been examined by the prosecution. As such, the prosecution is mainly left with the testimonies of PW-13 and PW-14 namely Partap Singh and Raj Pal to whom the injured had narrated the occurrence. It is not in dispute that the deceased as well as three injured namely Begu Mehto, Vinod Mehto, Rattan Dev and accused were working for Partap Singh (PW-13) in his fields. It is also not in dispute that the deceased as well as the injured and accused were staying on the '*kotha*' of the tubewell in the fields of Partap Singh (PW-13) for whom they were working. Under these circumstances the act of two injured in immediately rushing to the house of Partap Singh after the incident had taken place is quite natural. Their act was spontaneous and there is no time-gap between the incident and the disclosure made by injured to Partap Singh and to Raj Pal. Partap Singh (PW-13) and Raj Pal (PW-14) were cross-examined at length, but they remained firm on their



statements. Their statements pertain to a fact relevant to the case.

Such like evidence is normally referred to as *res gestae* evidence.

14. The term *res gestae* has not been defined or used in Indian Evidence Act 1872 (herein-after referred to as ‘the Act’) or under the Bhartiya Sakshya Adhiniyam 2023 (BSA 2023) wherein similar provisions are incorporated in Section 4. The principle embodied in Section 6 of the Act, is usually referred to as the *res gestae* doctrine. Section 6 reads as under:

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.

15. At this stage it is also apposite to refer to the general principle as regards admissibility of evidence, as embodied in section 60 of the Act (section 55 under BSA 2023). Section 60 reads as under :

“60. Oral evidence must be direct. - Oral evidence must, in all cases, whatever, be direct; that is to say, -

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds : Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the



grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

16. Section 60 lays that oral evidence must be direct inasmuch as the person who gives evidence must have directly heard, seen or sensed the fact. Evidence is direct when it goes straight to establish the main fact in issue. To put it differently, the testimony must be of the person who perceived the fact through medium of his own senses. So, the general rule of evidence is that hearsay evidence is not admissible. However, Section 6 of Indian Evidence Act (Section 55 of BSA 2023) is an exception to the said general rule. Under Section 6 of Indian Evidence Act, even hearsay evidence becomes admissible.
17. Undisputedly, in the present case, eye-witnesses have not come forward. The testimony of PW-13 Partap Singh and PW-14 Raj Pal is hearsay inasmuch as they had not seen the occurrence but had heard about it from Vinod Mehto and Rattan Dev alias Khalifa. Their evidence therefore, would fall in the category of evidence labeled hearsay evidence. Section 60 of the Act envisages rejection of evidence which is not direct but Section 6 of Evidence Act would be



an exception. In Gentela Vijayvardhan Rao and another v. State of Andhra Pradesh, (1996) 6 SCC 241, it was observed:-

"15. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of *res gestae* recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue "*as to form part of the same transaction*" becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of *res gestae*."

18. In Sukhar v. State of U.P., (1999) 9 SCC 507, Hon'ble Apex Court while interpreting the scope of provisions of Section 6 of the Evidence Act, 1872 observed that it is an exception to the general rule whereunder the hearsay evidence becomes admissible, but such evidence must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. It was thus held that the statements sought to be admitted, therefore, as forming part of *res gestae*, must have been made contemporaneously with the acts or immediately thereafter and that the essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in



issue "as to form part of the same transaction" that it becomes relevant by itself.

19. Examining the facts in the present case in the light of ratio of judgments referred to above, the statements made by PW-13 and PW-14 even though hearsay evidence would fall in the exception carved out of Section 6 of Evidence Act being *res gestae* evidence and would be admissible.
20. Having held the said evidence to be in the nature of *res gestae* the next question before this Court is as to whether in a given case where there is no other substantive evidence to support the case of the prosecution, can conviction be based on the basis of *res gestae* evidence. In the instant case, as mentioned above none of the three injured have stepped into the witness box. Other than PW-13 Partap Singh and PW-14 Raj Pal, this Court is left with the medical evidence which is in the nature of corroborative evidence only. The disclosure statement allegedly made by accused and the recovery is effected thereof is again an evidence which on its own is again insufficient as would be in the nature of a corroborative piece of evidence.
21. Hon'ble the Supreme Court in Nathuni Yadav v. State of Bihar, 1997(1) RCR (Criminal) 624 (SC): AIR 1997 Supreme Court 1808 has held that any former statement made by a witness at or about the time when the incident took place becomes usable as of corroborative value under Section 157 of the Evidence Act. Though such statements



are not part of the main transaction, they have a probative value for corroborative purposes if such statements have been made without delay. It has been further clarified in this case that Section 157 must receive a pragmatic and liberal construction. The principle is that the time interval between the incident and the utterance of the statement should not be such as to afford occasion for reflection or even contemplation. If the time interval was so short as between the two that the mind of the witness who made the statement was well connected with the incident without anything more seeping into, such statement has a credence, and hence can be used, though not as substantive evidence, as corroborating evidence, on the principle adumbrated in Section 157 of the Evidence Act.

22. A Division Bench of Hon'ble Patna High Court in 1991 CrLJ 335(Patna DB) Shayam Nandan Singh vs. State of Bihar set aside the conviction of an accused which was based on *res gestae* evidence while holding that such like evidence could be used only either to corroborate or contradict a witness and could not be held to be a substantive piece of evidence. The relevant extract from the said judgment is reproduced herein under:

“10. Learned counsel for the appellants has submitted that the only circumstance the trial Court could have used against the accused-appellants was that they (P.Ws.) saw the accused persons fleeing away but that circumstance itself is not incriminating one and, therefore, does not in any way implicate the accused persons and that the learned trial Court has illegally taken into consideration the evidence of P.Ws. 1, 2 and 4 about what they learnt from



Mungeshwari Devi, the first informant regarding the alleged occurrence after they had reached at the place of occurrence. It may be mentioned that the learned trial Court has held that these three P.Ws. learnt regarding the manner in which the murder of Surji Devi had been committed by the accused persons through the informant Mungeshwari Devi, and he has taken into consideration this circumstance also in coming to the conclusion regarding the guilt of these accused persons.

11. The learned counsel for the appellants has submitted that the FIR cannot be looked into for any purpose if the persons on whose statement it was recorded is not examined as a P.W. as the statement contained in the F.I.R. can be used only to contradict or **corroborate** the first informant and none-else.
12. Learned counsel for the state on the other hand has drawn my attention to a decision of the Supreme Court in the case of **Bandela Nagaraju v. State of A.P. 1984 CriLJ 674** and has rightly submitted that the F.I.R. in the present case can be used under Section 6 of the Evidence Act (hereinafter called as 'the Act'). Section 6 of the Act provides that the 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. Illustration (a) of Section 6 of the Act reads thus :

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

In the present case on the facts of the prosecution case Mungeshwari Devi the first informant had accompanied her daughter to the field and the entire occurrence had taken place in her presence and thereafter on hearing alarm the persons including P.Ws. 1, 2, 4 and 5 reached there to whom she narrated about the occurrence and disclosed the names of the accused persons and immediately thereafter she went to the police station with them situated at the distance of 12 Kms. from the place of occurrence and lodged F.I.R. (Exhibit-2). Thus, whatever was said by her to the



P.Ws. or in the F.I.R. (Exhibit-2) after the occurrence forms part of the same transaction and thus is relevant fact under Section 6 of the Act.

13. But it has been rightly submitted by the learned counsel for the appellants that the statement made by the first informant Mungeshwari Devi to the P.Ws. and in the F.I.R. cannot be used as **substantive** piece of evidence. The statement of Mungeshwari Devi to those P.Ws. and in the F.I.R. could have been used as **corroborative** evidence under Section 157 of the Act, if Mungeshwari had been examined as a witness in the trial. Section 157 of the Act reads as follows :-

"In order to **corroborate** the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

It is apparent that two things are required for this section to apply. The first is that a witness should have given testimony with respect to some fact and the second is that he should have made a statement earlier with respect to the same fact at or about the time when the fact took place or before any authority legally competent to investigate the fact. In the present case the very first condition is not fulfilled as Mungeshwari Devi being dead could not be examined as a witness in the trial.

14. Under these circumstances, whatever has been said by P.Ws. 1, 2, 4 and 5 regarding the occurrence including the motive for the occurrence, as they learnt from Mungeshwari Devi cannot be used as evidence against the accused as substantive piece of evidence.

(emphasis supplied)"

23. The aforesaid judgments leave no manner of doubt that evidence in the shape of *res gestae* can only be used either to contradict or to corroborate and cannot be treated as a substantive evidence much less to hold an accused guilty. In the present case, there being no



substantive evidence inasmuch as none of the injured came forward to depose in the Court, it is certainly unsafe to base conviction solely on the basis of hearsay evidence which may otherwise be admissible in terms of Section 6 of Evidence Act. As such, we find that the case of the prosecution has suffered a serious jolt on account of non-examination of the three injured eye-witnesses and in the absence of their examination, the charges framed against the accused cannot be said to have been substantiated, even if medical evidence is on record. Consequently, the conviction of the accused cannot sustain and is liable to be set aside.

24. The appeal, as such, is accepted and the impugned judgment dated 25.01.2005 and order dated 27.1.2005 are set aside and the accused is acquitted of all the charges framed against him.

(GURVINDER SINGH GILL)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

03.02.2025
Mohan

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No