
(2002) 02 CAL CK 0016
In the Calcutta High Court
Case No : Criminal Appeal No. 487 of 1989

Rameswar Hembram

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Evidence Act, 1872 — Section 3, 6, 60
Penal Code, 1860 (IPC) — Section 302

Citation : (2002) 1 CALLT 566

Hon'ble Judges : Sujit Barman Roy, J; Malay Kumar Basu, J

Bench : Division Bench

Advocate : Ranjan Roy, for the Appellant; Sudipta Moitra, for the Respondent

Final Decision : Dismissed

Judgement

M.K. Basu, J.—This criminal appeal is directed against the judgment and order dated 18th September, 1989 passed by Sri B.U. Mukherjee, addl. Sessions Judge, 5th Court, Midnapur in the Sessions Case being No. S.T. III of March, 1989 of that Court under which he found the accused appellant guilty u/s 302 IPC and convicted him thereunder and sentenced him to suffer under Imprisonment of life and to pay a fine of Rs. 5,000/-i.d, further rigorous Imprisonment for six months. The prosecution case briefly stated was as follows.

The accused Rameswar Hembram used to reside in the village Murakata under P.S. Narayangarh with his family consisting of his wife, Delho Hembram, (the deceased) and his two sons and three daughters. In the night of 2nd/3rd June, 1998, his co-villagers heard cries of his widow-daughter, Raimoni, and others and came to his house and found Delho lying dead in the courtyard of that house. They found Injuries on her head and other parts of the body. Raimoni told them that her father Rameswar had a quarrel with her mother, the deceased, in sequel of which Rameswar struck Delho with an axe causing the said injuries on her person and thereafter he fled. The said villagers conducted a search for

Rameswar and located him in the field, but, before they could catch him, he came running to his house and went inside a room thereof and after bolting it from Inside he shouted saying that since his wife had disobeyed him, he had assaulted her by an axe. Thereafter the Incident was reported to police by one Mantu Murmu, a co-villager who filed his ezahar before the O.C. Narayangarh P.S. on that morning, that is, the 3rd June 1998. The police started Investigation on the basis of this FIR. When the officer visited the P.O., Rameswar gave a statement before him confessing that he had committed the murder and had thrown the weapon of offence in a tank called Karpura. Pursuant to his statement the police recovered from that tank the said weapon, namely, an axe. After completing the Investigation police submitted chargesheet against him u/s 302 IPC. The case was committed to the Court of Sessions by the learned Magistrate. The learned trial Judge framed the charge against the accused u/s 302 IPC on the basis of the documents u/s 173 Cr.PC. The accused pleaded not guilty when the charge was read over and explained to him. The trial commence before the learned Addl. Sessions Judge. The prosecution adduced evidence both oral and documentary evidence. It examined 14 witnesses in all. The defence did not adduce any evidence. From the trend of cross-examination and the statement of the accused u/s 313 Cr. PC the defence case appeared to be one of innocence. The learned trial Judge after hearing the arguments of both sides and considering the materials on records passed the Impugned Judgment of conviction and sentence as mentioned above.

2. Being aggrieved by the said judgment and order the convict has preferred the present appeal challenging the findings of the trial Court as erroneous, Illegal and liable to be set aside.

3. The learned trial Judge framed two points for determination. First, whether the accused committed murder by intentionally causing the death of Delho Hembram as alleged and secondly, whether the accused was proved guilty of the offence alleged and, whether he was liable to be convicted. In answering both the points against the accused learned Judge has found that although there was no direct evidence against the accused, no eyewitness deposing that he saw the accused to assault the deceased with an axe, yet there was strong circumstantial evidence in support of prosecution charge. The circumstances which according to the learned trial Judge were found established from the evidence are as follows. (1) Raimoni and other children of the deceased shouted and raised hue and cry; (ii) the people of the neighbourhood ran to the house on hearing such cries; (iii) the children of the accused, particularly Raimoni, disclosed to the persons assembled there at that time that the accused Rameswar had assaulted Delho and had fled away; (iv) Rameswar was found absent in his house at that dead hours of the night; (v) on a search being conducted by the villagers Rameswar was found in the field; (vi) when the villagers saw him and chased him he ran Into his house and going into a room he closed the door from inside of that room; (vii) he disclosed from that closed room in loud voice that he had assaulted his wife; (viii) after police came he confessed before them that he had

thrown away the weapon of offence in the Karpura tank; (ix) an axe was recovered from the said tank in pursuance of his statement and on his saying; (x) the doctor's opinion that the deceased had sustained Injuries from sharp-cutting weapons on her person as a result of which she the and the doctor's evidence that the injuries which he found on the dead body of the deceased could have been Inflicted by the axe, which was materially exhibited, when the same was shown to the doctor.

4. The learned trial Judge has relied upon the principles enunciated by the apex Court in *Shibaji Saheb Rao v. State of Maharashtra* reported in 1973 SC 2622 where it has been observed by their Lordships that our Juris prudential enthusiasts for presumed Innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. The learned trial Judge has also relied upon the guide-lines fixed by Their Lordships in the said case regarding the manner in which the testimonies of the rustic and unsophisticated villagers could be examined and analysed. The learned Judge has found that from the evidence of the prosecution witnesses, namely, P.Ws. 1 to 4 it can be seen that they found the dead body of Delho Hembram lying on the courtyard of the house of the accused in a pool of blood with sharp-cutting injuries on her person and since the accused in his statement u/s 313 Cr.PC has not denied such facts, nor he has denied the evidence that the villagers assembled in his house on hearing the cries and at that dead hour of the night he was not seen in his house, all this should be taken to have constituted a definite of circumstantial evidence. The further finding of the learned trial Judge is that although Raimoni (P.W. 13) departed from her original stand and deposed before the Court in her examination-in-chief without making any Incriminating statement against her father so that she has been declared hostile by the prosecution, the co-villagers who came to this spot Just after the occurrence had made some statements to the effect that Raimoni had declared before them when they assembled at the P.O. just after the occurrence that her father, Rameswar, assaulted her mother, Delho Hembram, in sequel of a quarrel between the two and such statements of those witnesses should be treated as relevant and admissible as *res gestae* under the provisions of Section 6 of the Evidence Act. Learned trial Judge has equated the illustration "A" of that Section 6 as follows : where "A" accused of the murder of "B" by beating him, whatever was said or done by "A" 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 Learned Judge has given the reasoning that under this Illustration (a), statement of a person who had seen the actual occurrence and uttered spontaneously and simultaneously with the incident or so soon thereafter as to make it reasonably certain that the speaker was still under the stress of the excitement caused by him having seen the incident is a relevant fact. According to learned trial Judge this illustration is fully applicable to the facts of the instant case where Raimoni was the person who had seen the actual occurrence and uttered spontaneous shouts under the impression and stress of the excitement caused by the occurrence and hence her statement is very much

admissible as *res gestae* u/s 6 of the Evidence Act. Although here Raimoni herself had not said that she made such statements to others, this is available from the testimony of the other witnesses. According to the learned Judge, since Raimoni did not withdraw her alleged statement to the neighbours, but she simply remained silent about her alleged making of such a statement to others and did not positively say that she did not make any statement to others, this should be regarded as a fit case where the principle of *res gestae* would apply as it is nor a mere narration of a prior event in this respect learned Judge has relied upon a decision reported in *Bhaskaran Vs. State of Kerala*, . Besides that, the learned trial Judge has found the statements of the neighbours to the effect that they had heard Raimoni declaring that her father had assaulted her mother and had fled to the field as admissible in terms of the provisions of Section 137 read with Section 60 of the Evidence Act. In this regard he has placed a reliance on a decision reported in 1984 Cri LJ 209 (Bom. High Court) wherein the admissibility of evidence actually heard by witness was taken into consideration. In that case the witness who was a relative and neighbour of the accused, hearing the daughter of the accused calling her and shouting that her father was assaulting her mother and that at her instance the mother of the accused came up to the house of the accused and in such circumstances the Court held that her evidence was admissible as direct evidence, though it was not known whether the daughter or the mother of the accused was interrogated during the investigation or not. According to learned trial Judge, the facts of the present case were almost identical with those of the above mentioned case under reference and relying thereupon he has held that since the villagers heard the daughter of the accused as well as the victim to declare that her father assaulted her mother and had fled away, it was very much admissible and relevant. The next point supporting the establishment of the prosecution charge, according to the learned trial Judge, is the evidence of the different witnesses of the locality to the effect that after making a search they found the accused in the field Just after the night broke into the dawn remaining unshaken in their cross-examination and being supported by the admission of the accused in his statement u/s 313 Cr.PC to the effect that he had gone to the field at that time. Learned judge has found in this a very strong circumstances emerging against the accused.

5. The other circumstances also having been testified to from the prosecution evidence, according to the learned trial Judge, go a long way in establishing the guilt of the accused. These are that the accused came back to his house having been chased by the villagers and took shelter to a room and bolted it from inside and therefrom he declared that since his wife did not obey his words he had assaulted her by an axe. Learned trial Judge holds that since these facts are proved beyond any shadow of doubt from the testimonies of P.Ws 1, 2, 3, 4 & 6, there can be no doubt that they should be taken as having formed a strong chain of circumstances pointing to the guilt of the accused. Moreover, the extra judicial confession of the accused Rameswar Hembram as stated above according to learned Judge, constitutes another very strong ground for saying that the

prosecution charge has been substantiated. Learned Judge has not found any substance in the contention of the defence that the extrajudicial statement as allegedly made by the accused cannot be relied upon because of the fact that it was made, if at all. In the presence of the village-chowkidar and since the Chowkidar, for all practical purposes was a police officer such confessional statement was inadmissible in evidence. Because, according to him the criterion in this respect is whether the presence of the police personnel exerts any Influence or feat in the mind of the accused and whether thereby he has been prompted to make such a confession before the public and unless it is shown that such presence of the police personnel really controlled the mind of the accused leading him to make the confession, the mere presence of such an officer at the material time cannot render the extrajudicial confession Inadmissible in evidence. According to the learned Judge, in the present case there was practically no scope for the accused being under any such influence while making the extrajudicial confession before the members of the public, inasmuch as, evidently the accused having been chased by the members of the public rushed into a room of his house and bolted the door from inside to evade apprehension by the villagers and while he was making his confessional statement from that closed room, he was not seeing anybody present there outside his room and thus there was no question of his being under any pressure due to the presence of the village chowkidar. Besides that, learned trial Judge has relied upon a decision of Madhya Pradesh High Court reported in Mahto Vs. State of Madhya Pradesh, to apply the principle that the extrajudicial confession before a village-chowkidar is admissible u/s 25 of the Evidence Act on the logic that the village-chowkidar having had to perform certain functions which are performed by the police does not become a police officer. He has also relied upon another ruling reported in Kundan Lal and Another Vs. Basant Rai, wherein it has been held that confession to a chowkidar is not a confession to a policeman within the meaning of Section 25 of the Evidence Act and still another ruling reported in (1947) Madras 788 (P. 66 of Law of Evidence. 13th Edition by Ratanlal & Dhirajlal) wherein the decision is that the Section 25 of the Evidence Act refers only to a police officer and Its provisions should not be extended to other classes of officers merely on the ground of similarity of functions. Learned Judge has also referred to a Division Bench judgment reported in ILR (1964) A.P. 905 which has enunciated similar principles. Relying on these dictates of different High Courts the trial Judge has come to the finding that a chowkidar is not to be treated as a police officer and as such the extra-judicial confession made by the accused to the members of the village-public in the presence of the village-chowkidar is not hit by Section 25 of the Evidence Act and is admissible in evidence and it constitutes another piece of evidence supporting the prosecution charge that the accused had inflicted a blow by an axe on the person of his wife in sequel to a difference of opinion between them.

6. That apart, another strong circumstances has been found by the learned trial Judge in the recovery of the weapon of offence by the accused himself. P.Ws. 2 &

6, the eyewitnesses, and P.W. 14 the I.O. of the case have stated that the accused after having been arrested by police brought out from a local pond, named Korpura pukur, an axe as the weapon of offence. These statements of these witnesses have been corroborated by the contents of the Seizure List marked as Exbt. 2 which has been prepared in the presence of witnesses. Learned Judge after having considered the fact and also having considered the provisions of Section 27 of the Evidence Act which refers to information and consequent discovery, came to the finding that since the discovery of the weapon of offence was in consequence of the statement made by the accused, this would only pinpoint the involvement of the accused in the commission of the offence, apart from the fact that the further confessional statement of the accused at the time when the said recovery of the axe was made to the effect that he dropped the same in the watery portion of the Korpura pukur after having committed the offence is admissible as evidence. Learned trial Judge has also taken into consideration the evidence of the Medical Officer who held the post mortem examination of the dead body that the injuries found on the person of the victim could be caused by a sharp-cutting weapons like the axe which has been marked as material Exbt. 1. In the result, the learned Judge has come to the conclusion that from the reasons discussed by him the charge against the accused had been found to be proved beyond any reasonable doubt and therefore, he passed the impugned order of conviction and sentence as stated above.

In this appeal we are to consider whether the prosecution (in this case has proved the following three points :

1. The death of the victim Delho Hembram, the wife of Rameswar Hembram;
2. That the death was caused by the appellant Rameswar Hembram;
3. That the appellant committed murder of his wife by Intentionally causing her death.

7. The death of Delho Hembram is admitted. Almost all witnesses of the locality have stated that they saw the deadbody of Delho Hembram lying on the courtyard of Rameswar's house with bleeding Injuries. What is more, the P.W, 12 Dr. S.S. Mandal, Medical Officer then attached to the Midnapur Sadar Hospital has stated that he held the post mortem examination of the deadbody of Delho Hembram as identified by the police constable. This Medical Officer has further stated that on examination he found a number of injuries on the person of the deceased. He has describe those injuries which may be quoted as follows :-

1. One deep Incised cut wound over the face transversely placed at the level just above the tip of the nose extending on both sides of the face of about 4" and 4/1/4" in length and 1/1/3" in width, bone deep 3/1/4th" inch.
2. One incised cut wound over the right side of the skull bone just above the right ear saggiterily placed of above 3 1/2" X 1/3rd" X 1/2".
3. One Incised cut wound over the dorsal aspect of the palm obliquely placed

from above--downwards and towards the little finger.

8. On dissection I found the following :-

1. Depressed communicated fracture of right squamous part of temporal bone with extraction of brain matter through It. This injury corresponds to injury No. 2 mentioned at the beginning.

2. In corresponding to the injury No. 1 on dissection I found that maxillary sinuses of both sides were cut.

3. In connection with the Injury No. 3 on dissection I found all muscles upon and beneath the dorsal aspect of the right palm were cut upto 1/2 inch. Death, in my opinion, was due to the effect of antl mortem wounds, homicidal in nature and caused by heavy sharp-cutting weapon."

9. These Injuries according to the Doctor could be inflicted by an axe like the Mat Exbt. I. The witness gives this opinion when the same was shown to him. These P.W. 12 has then opined that the death of the victim was due to the effect of the abovementioned Injuries which were ante mortem and homicidal in nature being caused by a sharp-cutting weapon. As against such opinion of the medical expert there has been practically no challenge in his cross-examination from the side of the defence and thus it is established that the victim, Delho Hembram, died of the Injuries Inflicted on her person as found by the Doctor discussed above.

10. The next point for our scrutiny, therefore. Is who inflicted these injuries. In other words, it is to be ascertained from the materials on record whether the prosecution has been able to substantiate its charge that the accused, Rameswar Hembram, inflicted these injuries on the person of the deceased and thereby caused her death. As we have seen, the prosecution in order to prove its charge has examined as many as 14 witnesses in all. Of these witnesses the P.W. 11 is a police constable who accompanied the I.O. of the case to the place of occurrence and thereafter escorted the deadbody of Delho hembram for post mortem for post mortem examination by the doctor of the Sadar Hospital and who also identified the deadbody before the post mortem surgeon. P.W. 12. as we have already seen, is the doctor who held the post mortem of the deadbody of the deceased. P.W. 14 Narayan Ch. Saha is the Sub-Inspector of police who Investigated Into the case. All the other 11 witnesses happen to be witnesses of the locality. Of them, however, P.Ws. 5,7,8 & 10 have not stated anything. They were tendered by the prosecution for cross-examination, but the defence declined " to cross-examine them. Out of the remaining eyewitnesses P.W. 1 Mantu Murum appears to be the informant. His evidence is that on the morning following the night of occurrence he heard cries coming from the house of Rameswar, his house being about 100 cubits away from the house of the Rameswar. He at once rushed to the house of Rameswar and saw that the deadbody of Rameswar's wife Delho Hembram was lying on the courtyard of that house with marks of Injuries on her head up to the side over nose as well as on the back of her right palm. These Injuries appeared to him to have been Inflicted

by sharp-cutting weapons. At that time a number of villagers had assaulted there and he heard from Raimani, the daughter of the deceased, as well as from those neighbours that on the previous night quarrel had taken place between Rameswar and his wife and during such quarrel Rameswar assaulted his wife with an axe and after so assaulting he ran away towards the field. The further testimony of P.W. 1 is that he along with other villagers then went out in search of Rameswar and found him in the field and when they tried to catch hold of him, he ran towards his house and after coming to his house he entered into a room and bolted its door from Inside and from that closed room he declared that since his wife had not obeyed his words, he has assaulted her by means of an axe." P.W. 1 then says that he being accompanied by his co-villagers Satyeswar Pramanick thereafter went to the Narayangarh P.S and lodged an FIR there narrating the incident The police officer recorded his statement as per his dictation and thereafter he signed on the FIR. Since this P.W. 1 is the informant, it is necessary to see whether his substantive evidence conforms to the statements made by him in his FIR. On a close comparison of his statement as P.W. 1 with his statement made in the FIR (Ebt. 1) we find that his testimonies before the Court tally with his statement in the FIR so far as the chief particulars are concerned. However, Mr. Roy, learned lawyer for the appellant, has pointed out that in his FIR he has stated that on hearing the cries he went to the house of the deceased in the midnight, while in his deposition he has mentioned the time of this going there on hearing the cries as "morning" and such a discrepancy according to Mr. Roy assumes significance, because it shows that he is not deposing the truth. However, we are not every Impressed by this argument for the reason that to an undereducated villager particularly when he is deposing before the Court after a considerable lapse of time the difference between the terms "midnight" or "last part of the night" or "dawn" need not be overemphasised. He has uttered the word "morning" and by such an expression we cannot eliminate the possibility that he was meaning "early in the morning" which is in the neighbourhood of "midnight". The distinction between the two particularly before the villagers sometimes becomes so thin that they often casually treat them as Interchangeable terms. At any rate, we do not think that this minor discrepancy should be allowed to outweigh the consistency with which the P.W. 1's deposition and his statements in the FIR are otherwise found to run. Another feature of P.W. 1's evidence to which Mr. Roy draws our attention is his statement in the cross-examination to the effect that Satyeswar Babu narrated the Incident to the police officer at the thana who recorded them and this P.W. 1 signed on the FIR after the police officer had recorded such statements. It is argued that this shows that this P.W. 1 was a mere name-lender and the statements of the FIR were actually made by another person named Satyeswar Pramanick who accompanied the P.W.1 to the thana and therefore, the statements of the FIR are totally unworthy of reliance. This contention also cannot be accepted for two reasons. First, the clear statement of the P.W. 1 in his examination-in-chief is that he narrated the incident before the police officer who recorded his statement as per his dictation and then he put his signature at the

bottom of the FIR. Against this a statement Just in the opposite direction cannot be allowed to be admitted. The same question cannot be put to a witness twice in order to take out a different answer. Moreover, even while giving such answers in his cross-examination the witness does not forget to add that the police officer made enquires from him before recording the statements. This means in effect that he also made statements before the police officer. In this connection we should not be unmindful of what actually happens in case of the rustic fellows. P.W. 1 here was narrating the Incident. Satyeswar Pramanick was by his side and the police officer might put some queries to him also for the purpose of verifying the statements made by the P.W.1 before the police officer. A combined reading of the P.W. 1's statement in the examination-in-chief and that in his cross-examination mentioned above would lead us to such a position. What he has stated in his cross-examination as above appears to be the result of his some such confusion. What he has stated in his examination-in-chief should be accepted.

11. Now the question is what is practically testified to by this P.W. 1 and how far his testimony goes to support the case of the prosecution. The prosecution case is that the co-villagers assembled at the house of the accused on hearing shouts coming out therefrom and going there they found the deadbody of Delho Hembram, the wife of the accused, but they did not find the accused and the daughter of the accused, Ralmanl, told them that at that night while she was sleeping, she woke up on hearing cries and coming out of her room she found her father, Rameswar, assaulting her mother, Delho, with an axe thereby causing bleeding Injuries on her person and further that as soon she raised alarm on seeing this, her father ran away. The pw. 1 has fully supported this case of the prosecution by making the statements in her examination-in-chief which we have already discussed. But the question is Whether these statements of the pw. 1 that he heard Raimani to say all this has any leg to stand upon in view of the fact that Raimani (P.W. 13) has departed from her original stand and has not made any such statement before the Court in her examination-in-chief, thereby rendering the rules of hearsay violated. Under such rules the statement of a witness that he heard from another person any fact can not go into evidence, unless that other person deposes before the Court that he/she made such a statement to that witness. Here Raimoni having stated that she did not make any such statement to them, their testimony that they heard it from Raimoni cannot be admitted into evidence. An exception to this rule has been provided by what is known as the principle of Res gestae which is laid down u/s 6 of the Evidence Act it is to be noted in this connection that such statement has been made not only by the pw. 1, but also as many as three co-villagers who gathered at the place of occurrence just after the occurrence and appear to have corroborated him by giving similar versions. To them also Raimoni stated that she had seen her father to assault her mother with an axe and when she (Raimoni) raised alarm, her father ran away.

12. Mr. Moitra argues that this is a fit case where the principle of res gastae as

enshrined under the provisions of Section 6 of the Evidence Act forming an exception to the rule of hearsay would apply. According to him, the statement made by Raimoni (the daughter of the appellant and the deceased) who had seen the appellant to give the fatal blow to the deceased with an axe was made before the villagers including pws. 1 to 4 who assembled at the P.O. Just after the occurrence so that there was no gap or interval to give rise to any scope for embellishment. In support of his contention Mr. Moitra refers to a number of decisions reported in (1) Chhotka Vs. The State, : Badruddin Rukonddim Karpude and Others Vs. State of Maharashtra, , (3) Sawal Das Vs. State of Bihar, and (4) Dhagamwar Narsingh Vs. S.S. Grewal, . Under some of these Judgments, even where the Informant was not examined, the Information was found to come within the ambit of Section 6, Evidence Act and was admitted into evidence. In the opinion of Mr. Moitra, here though Raimoni (P.W. 13) has departed from her earlier statements and has denied that she gave any such version before the said P.Ws. to the effect that she had seen her father to assault her mother with an axe, the fact that those P.Ws have stated that they rushed to the P.O. shortly after the incident of assault took place when Raimoni gave a description of how her mother were lying dead with bleeding Injuries on her person implicate her father, such statement of Raimoni to them is to be treated as a part of the same transaction in which she saw the occurrence with her own eyes.

13. In our view the above contention is full of force and substance. The essence of the doctrine of *res gestae* 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. In *G.V. Rao v. State of A.P* reported in 1996 SC 2791 corresponding to *Gentela Vijayavardhan Rao and another Vs. State of Andhra Pradesh*, it has been held by the apex Court as follows. "The rationale in making certain statements on fact admissible u/s 6 of the Evidence Act is on account of 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 part of the same transaction. In other words, such statement must have been made contemporaneously with the acts which constitutes the offence or 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*." In our present case what transpires from the evidence is that when Raimoni woke up in that night on hearing her mother's cries and came outside of the kitchen where she was sleeping, she found her father, Rameswar, the appellant to assault her mother, the deceased, at the courtyard of their house with an axe and seeing this she cried and hearing her cries those villagers came there running. It is also in evidence that those witnesses woke up from their slumber on hearing the shouts coming from the house of the accused. This means that they are next door neighbours and to come to the place of occurrence from their respective houses would consume no time. So it goes without saying that the perpetration of the assault, raising of alarm by Raimoni, fleeing of the accused, assembling of the villagers in the P.O and the said declaration by Raimoni before them about

how her mother died are parts of the same transaction. The unchallenged evidence of these witnesses shows that their coming to the spot and hearing of the words of Raimoni were almost immediate so that there was hardly any time gap sufficient to enable the daughter to fabricate any such story, apart from the fact that it is absolutely Improbable that being a daughter of both the assailant and the victim the girl in such a devastated state would go the cook up a story like that before her neighbours particularly when both the assailant and the victim were no other than her own parents.

14. Of the rulings relied upon by Mr. Moitra the judgment of the apex Court reported in *Sawal Das Vs. State of Bihar*, is found to be relating to Identical facts and circumstances. In this case the appellant, his father and his mother were charged for murder of appellant's wife. Immediately after the wife was pushed Inside the room and her cries of "Bachao Bachao came from inside the room, her children were heard crying and uttering words that their mother was either being killed or had been killed. But the children and the maid-servant were not produced as witnesses in the trial Court. Under such circumstances it has been held by the Hon'ble Court that the evidence of witnesses about what children said or did was admissible u/s 6 although the said children were not examined. In the second decision cited by Moitra in *Badrudin Rukonddim Karpude and Others Vs. State of Maharashtra*, The Supreme Court has held under similar circumstances that where in a prosecution for murder apart from the witnesses whose testimony could not be relied on there was evidence of other witnesses also, supported by the testimony of a wholly independent witness, that the names of the accused were mentioned to him as the assailants of the deceased while HC : 37 beating of the deceased was in progress, the information conveyed to such witness being part of the *res gestae* was admissible and the accused in question may be convicted on the basis of corroboration furnished by the evidence of such witness. In this case under reference also the eyewitness did not depose in the Court. Another witness who heard from that eyewitness Just after the occurrence that the accused persons were the assailants of the deceased gave evidence and his hearsay was found to be admissible as part of *res gestae* and according to Their Lordships, this evidence lent a very Important corroboration to the other evidence in support of the culpability of the accused persons. We find no reason why this principle would not be attracted to our present case where the circumstances are almost identical. In the third decision which is of a Division Bench of this High Court referred to by Mr. Moitra also the doctrine of *res gestae* was given recognition and applicability by Their Lordships under circumstances akin to those in the instant case. This Judgment was reported in *Chhotka Vs. The State*, . Here it was held that Section 6 appeared to provide for proof of statements which were more or less of a collateral nature and the subsidiary facts which were so connected with the facts in issue as to form part of the same transaction were relevant. It was further observed that the requirement was that the statement sought to be admitted must have been made contemporaneously with the act or immediately after it and not at such an

interval of time from it as to allow fabrication or to reduce the statement to a mere narrative of the past event.

15. Mr. Roy, however, has strongly disputed the application of the doctrine of res gestae to the facts of the present case. According to him, the word, "Bystanders" occurring in the illustration "a" of Section 6 means the persons who are present at the time of the occurrence and therefore, it is required here for the purpose of applying the provisions of Section 6 of Evidence Act that the pw. 13 Raimont ought to have stated in her evidence that she reported the occurrence to such people assembled there, but since the P.W. 13 has not spoken a single word in this regard, the doctrine of res gestae cannot be attracted to this case. But this is not at all correct in order to apply the doctrine of res gestae it is never required that the person who witnessed the occurrence and from whom other people heard about the occurrence Just after the occurrence was over must have stated in his or her evidence that he or she had reported such a fact to them. That is a requirement of the rule of hearsay. The doctrine of res gestae on the other hand is an expansion of the rule of hearsay and the question of its application arises only when the eyewitness does not depose or testifies to such a fact that he or she reported the incident to those others. The essence of the principle of res gestae is that since the hearing by the witness concerned about the occurrence from the mouth of the eyewitness who has not given deposition about the occurrence before the Court was immediately after the occurrence so much so that it formed part of the same transaction and the said eyewitness had no time or scope to cook up any false story. So Mr. Roy's contention that omission of P.W. 13, the eyewitness, to depose that she reported the incident to those villagers will stand in the way of the doctrine of res gestae being applied is without any merit. In support of this argument Mr. Roy has referred to a decision reported in Mahendra Vs. The State of Madhya Pradesh, . It has been held here that only the statements or remarks made by persons who were eyewitness as to the occurrence would alone be admissible and therefore a statement of a witness who had come to the spot of murder after the occurrence to the effect that the persons present there were signed that the accused had killed the deceased without indicating whether they had actually witnesses the murder is only hearsay and not admissible u/s 6. Clearly this case is distinguishable from our Instant case. In this case under reference the statement of the witness in question was to the effect that the persons present there were saying that the accused had killed the deceased, but they did not say whether they had witnessed the occurrence with their own eyes. This omission rendered the statements of the "persons present there" hearsay. But in our present case the statement of the witnesses concerned are that Raimoni told them that on hearing cries she woke up and came out of her room and found her father assaulting her mother. Therefore, these witnesses (P.Ws. 1, 2 & 4) have made it abundantly clear that they heard about the occurrence from an eyewitness and therefore, here there cannot be any impediment in the way of applying the provisions of Section 6 of Evidence Act, Moreover, the Interpretation of the word "By-

standers" by Mr. Roy also is not acceptable. This word has been used in the illustration (a) of Section 6 to mean the eyewitness from whom the witness who would come to the place of occurrence Just after the occurrence would hear about the occurrence. Mr. Roy in support of his argument cites another decision which is reported in Chhagan Dame Vs. The State of Gujarat, . But this case also has little applicability to our present case. Here the circumstances were totally different. A girl at the scene told the witness in question that the person found standing at the P.O. with a knife Just after the occurrence was the father of the deceased. Here this evidence was of no avail because that girl never said that the said person who was found standing with a knife assaulted the deceased. Therefore, we are of the firm view that this is a fit case where the doctrine of res gestae would be attracted and the testimony of the P.ws, 1, 2 & 4 being treated as part of the same transaction in which the occurrence took place would be relevant and admissible and acceptable in aid of the prosecution.

16. Apart from the application of the doctrine of res gestae there are certain circumstances -the combination of which forms a chain that is of no less significance in the matter of proof of the charge against the appellant. These circumstances are as follows:

1. Although Raimoni (P.W. 13) has deviated from her original version as alleged, in her examination-in-chief she has admitted that on the night of occurrence, prior to the occurrence, her father and mother along with the other members of the family were present;
2. Delho Hembram, the deceased, met with an unnatural death in the midnight at her house after having received bleeding injuries on her head and other parts of her body;
3. Raimoni, the daughter of the deceased, shouted and on hearing her cries a good number of co-villagers came running to the house of the appellant immediately;
4. they found the dead body of Delho Hembram lying on the Courtyard of the house with bleeding injuries on her person, but they did not find the appellant present in his house;
5. After hearing from Raimoni they went out in search of the appellant and they discovered him in the field;
6. On sight of them the appellant ran and came to his house and took entry into a room of that house and bolted the door of that room from inside;
7. Some of the neighbours Informed police and the police officers after coming to the P.O. took out the appellant from the closed room;
8. An axe was recovered from within a pond by the appellant himself as the instalment of assault and as per the opinion of the Medical Officer who held post mortem examination of the dead body the injuries found on the body of the

deceased could be caused by such an axe.

17. These circumstances have been established by the evidence adduced by the prosecution and even if for the sake of argument for a moment we ignore the statements made by the above mentioned P.Ws. about what they heard from Raimoni, even then prosecution evidence will not suffer any deficiency and on the basis of this circumstantial evidence also the charge against the appellant can very well be taken to have been established. For, all the three tests of such class of evidence have been satisfied here: (i) the circumstance sought to be relied upon described above are cogently and firmly established; (ii) they unerringly point towards the guilt of the accused and (iii) all the circumstances taken cumulatively are found to form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant and none else. Another test is that cumulative effect of the facts must be not only consistent with the guilt of the accused, but also must be incompatible with the innocence of the accused or incapable of being reasonably explained on any other hypothesis than that of the guilt of the accused.

18. The theory of "Last seen together", more specifically, will come to be applied. As per the daughter's evidence as mentioned above the appellant stayed in the house along with the deceased on that night of occurrence, prior to the occurrence, but Just after the occurrence he vanished and, what is more, on search by the villagers he was found in the field alone at that dead hours of the night. Again, on seeing them he fled. These facts coupled with his conduct that he was fighting shy of his co-villagers and he ran into his house being chased by those villagers and entering into a room of that house he bolted the door from inside of that room while the villagers gathered outside that room are enough to lead us to the conclusion that none but this accused had committed the murder of his wife. It is to be noted that the evidence of Raimoni (P.W.13) that her father stayed in the house on that night along with her mother and other members of the family prior to the occurrence remains totally unchallenged in her cross-examination. In the evidence there is absolutely no suggestion from the defence that there was any chance of entry of any third person in that house at that hour of the midnight when the Incident took place. It has been contended by Mr. Roy that admittedly the deceased's children being two sons and three daughters were staying in that house besides the accused and the deceased and therefore then remained the possibility of the deceased's being murdered by any of them and hence the Inference that the accused committed the murder cannot be said to be irresistible or. In other words, the circumstances cannot be said to pinpoint the accused alone as the murderer. But this argument is not acceptable. Here, the circumstances which are being relied upon are touching the appellant alone and not any other member of that family. It was the appellant and not any other member of that family who was found as for the evidence to have fled from the house in the dead hours of that night Just after the brutal death of his wife and it was him again who took shelter in a closed room after avoiding arrest by the villagers and who took out an axe as the weapon of assault from within a nearby

pond and so on and so forth. So, it is not correct to say that there is room for doubt or scope for drawing an inference in to the opposite direction favouring the accused.

19. Still another branch of evidence which the prosecution relies on is the extra-judicial confession of the appellant. As we have already discussed above, the P.W. 1 has substantiated in his examination-in-chief what he stated in his F.I.R., viz., that the accused declared from within the closed room that since his wife had not obeyed him he had assaulted her with an axe. P.W. 1 made such a statement in the very FIR which was filed just after the occurrence and it cannot be said that this co-villager had any reason to concoct a false story against the accused. In his cross-examination there has been absolutely no suggestion even to the effect that he had any enmity with the accused or had any kind of interest in giving false evidence against the accused. There is also no challenge against the FIR from the side of the defence that it was a concocted document. The question is, therefore, why the statement of this P.W. 1 should be disbelieved when it is in perfect corroboration of his earlier statement made in the FIR. It cannot be said that P.W.2 has contradicted him. On the other hand, we find that the P.W.2 has rather rendered his testimony believable by saying that he (P.W.2) heard the accused saying something concerning his wife, but he did not remember what he said. There is nothing wrong in his having forgotten the exact words uttered by the accused but that he made some statements about the wife being testified to by this witness goes a long way in lending support to the above testimony of the P.W. 1 that the appellant expressly confessed that he had assaulted his wife with an axe.

20. It has been contended by Mr. Roy that there has been no evidence on record that the person who they confessed from within a closed room was no other than the accused, Rameswar or that the voice was his and it becomes all the more necessary to ensure such aspects inasmuch as nobody was in a position to see who was actually making such utterances, particularly when as her prosecution evidence other persons, viz., the sons of the accused were also staying at the house at that times. This argument cannot be accepted for the reason that it is abundantly in evidence that it was this appellant who went into that room of the house and bolted the door from Inside and, what is more, police came there and brought him out therefrom after breaking open door. Vide the evidence of P.W.4 and P.W.6 whose statements to the above effect remain totally unchallenged in the cross-examination. Therefore, there is no room for doubt that in that closed room any person other than Rameswar might be present or might utter the above mentioned confessional words.

21. Thus, we have no hesitation in our mind to hold that the evidences on record discussed above have the effect of establishing the guilt of the appellant to our entire satisfaction beyond any shadow of reasonable doubt and the learned trial Judge has rightly found him guilty of the offence of murder with which he was charged, since from the nature of the injuries caused it is clear that his Intention

was to cause death to her.

In the result, we find nothing to Interfere with the Impugned findings of the Court below and accordingly the same be affirmed and the criminal appeal be dismissed.

S. Barman Roy, J.

22. I agree.