(2016) 16 Supreme Court Cases 701

(BEFORE RANJAN GOGOI, PRAFULLA C. PANT AND UDAY U. LALIT, JJ.)

DHAL SINGH DEWANGAN .. Appellant;

Versus

STATE OF CHHATTISGARH .. Respondent.

Criminal Appeals Nos. 162-63 of 2014†, decided on September 23, 2016

A. **Criminal Trial — Circumstantial Evidence — Murder not proved beyond reasonable doubt — Hearsay evidence, defective and incomplete investigation and unreliable circumstantial evidence — Conviction for murder and death sentence, *per majority*, set aside — Appellant-accused found unconscious with murder knife and murdered bodies of his wife and 5 daughters in two rooms in their home and hearsay evidence that PW 6 (mother of accused) was shouting that accused had killed his wife and 5 daughters**

— Hearsay evidence of PWs 1, 2, 3 and 5 (villagers) that PW 6 was shouting that his son had killed his wife and 5 daughters, was not spontaneous in view of distance from place of occurrence and time when she shouted — House of appellant, according to the record, was at a distance of 100 yd from Gandhi Chowk, where these witnesses are stated to have found PW 6 crying aloud incriminating appellant — PW 6 though on the night of crime also stated before police that his son had killed his wife and 5 daughters, later in court turned back from her statement and was declared hostile — Circumstantial evidence on other counts also suffered from defects and insufficient to convict appellant

— Burden on accused to explain how murder took place, held (per majority) cannot be taken as a circumstance against appellant in present case — Explanation of appellant-accused that he knew nothing about murder as he was unconscious cannot be called, "absence of explanation" or "false explanation" when appellant was unconscious and prosecution failed to place on record what made appellant unconscious, what was probable cause of unconsciousness and whether appellant was falsely projecting it — Neither any doctor who had examined him was called as witness, nor were any case papers of such examination made available — So this circumstance cannot be taken as a factor against appellant

— As vital witnesses were not examined, evidence of PWs 1, 2, 3 and 5 not reliable — Three persons, namely, *J*, *G* and *C* were the primary sources of information about crime, hearing from whom PWs 1, 2, 3 and 5 came to appellant's house — But said three vital witnesses were not examined by the prosecution — Said non-examination goes to the root of the matter and raises serious doubt

† From the Judgment and Order dated 8-8-2013 of the High Court of Chhattisgarh at Bilaspur in Crl. Ref. No. 4 of 2013 and Crl. A. No. 563 of 2013

— PW 14 doctor opined that the knife recovered could have caused the fatal injuries to deceased, but prosecution did not gather fingerprints from house or even on iron knife allegedly used for committing murder

— Circumstance of bloodstained clothes not conclusive evidence — Police not immediately seizing clothes from crime spot — Appellant was sent to Primary Healthcare Centre as he was unconscious and thus, clothes were seized later — Further seizure did not mention word "lungi" but uses expression "Istamali" — Further arrest memo mentions his clothes to be "full pants and shirt" and further mentions, "nothing found on the person of the accused except clothes worn by him" — As per serological report "lungi" was stained with blood of human origin — It is not clear how "lungi" could be seized if appellant was in full pants and shirt — Further possibility that his clothes had otherwise got stained with blood cannot be ruled out — Thus this circumstance not conclusive against appellant

— Circumstance that house was bolted from inside also not conclusive, as the house had a verandah and courtyard open to sky and rooms were not locked

— Circumstances did not exclude every other hypothesis except guilt of accused — Thus case not proved beyond reasonable doubt — Conviction set aside — Appellant directed to be released if not required in any other crime (Paras 7 to 11, 17 to 20 and 24 to 32)

— Per Pant, J. (dissenting), evidence of PWs 1, 2, 3 and 5 is res gestae and admissible under S. 6, Evidence Act — Ss. 6, 7, 8 and 9 of the Evidence Act, 1872 deal with the relevancy of facts not in issue but connected with the facts in issue — The provisions contained therein provide as to when the facts though not in issue are so related to each other as to form components of the principal fact — The facts which are closely or inseparably connected with the facts in issue may be said to be part of the same transaction

— Further, from evidence of PW 4 (father-in-law of appellant) it is clear that appellant had motive to kill his wife and 5 daughters — Quarrel between appellant and his wife had already started in the marriage ceremony at Nagpur — Appellant's wife (PW 4's daughter) had complained about behaviour of appellant to PW 4 — On the other hand PW 6 (mother of appellant) had no motive to kill her daughter-in-law and her five granddaughters — Had it been so she could have been easily overpowered by appellant

— Further, inconsistency with regard to clothes not sufficient to doubt prosecution story — Seizure memo was not immediately made and it does not mention about word "lungi"

— Further, irregularity in investigation, a regular flaw — Justice should be done despite such defects

— Further, prosecution story is true — Nobody's case that dacoity or robbery took place — Simple reply of appellant under S. 313 CrPC that he knew nothing about murder (when he himself was found with the dead bodies and knife) makes prosecution story stronger — PW 6 turning hostile not difficult to understand as she was going to lose her only son

— Further, discrepancy in general diary entry in police station cannot affect prosecution story — Absence of detailed information in general diary and minor deviations in statement of witnesses cannot be said to be a reasonable doubt — And court cannot close its eyes to ring of truth in prosecution evidence — General diary entries are summary entries relating to movement of police or information given to police regarding any offence — Thus non-mention of present murder in general diary before police proceeded to crime spot cannot be fatal to prosecution story

— Further, benefit of doubt to which accused is entitled should be reasonable doubt and not every doubt — What has to be borne in mind is that the penumbra of uncertainty in evidence before a court is generally due to nature and quality of that evidence — A scientific or mathematical exactitude cannot be expected while dealing with such evidence or arriving at a true conclusion

— Thus, conviction for murder should be affirmed — There is no room for reasonable doubt in the present case that appellant committed murder of his wife and five daughters on 19-2-2012 between 10.00 and 11.00 p.m. in his house (Paras 33 to 53)

B. **Evidence Act, 1872 — S. 6 — Rule of res gestae as exception to general rule that hearsay evidence not admissible — Rationale behind rule of res gestae, key expressions and requirements, explained — Statements attributed to PWs 3 and 5, held (*per majority*) do not satisfy requirements of rule of res gestae — Both in terms of distance and time, spontaneity and continuity were lost — Statements of PWs 1 and 2 also suffer on same count, thus their statements cannot be relied on to convict appellant (Paras 24 and 25)**

C. **Criminal Trial — Circumstantial Evidence — Scope of conviction based on circumstantial evidence, reiterated (*per majority*) (Para 26)**

Gentela Vijayavardhan Rao v. *State of A.P.*, (1996) 6 SCC 241 : 1996 SCC (Cri) 1290; *Krishan Kumar Malik* v. *State of Haryana*, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61; *Sharad Birdhichand Sarda* v. *State of Maharashtra*, (1984) 4 SCC 116 : 1984 SCC (Cri) 487; *State of W.B.* v. *Mir Mohammad Omar*, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516, *relied on*

Dhal Singh Dewangan v. *State of Chhattisgarh*, SLP (Cri) No. 8307 of 2013, order dated 17-1-2014 (SC); *H.P. Admn.* v. *Om Prakash*, (1972) 1 SCC 249 : 1972 SCC (Cri) 88; *Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580, *referred to*

R. v. *Lillyman*, (1896) 2 QB 167 : (1895-99) All ER Rep 586 (CCR); *Teper* v. *R.*, 1952 AC 480 : (1952) 2 All ER 447 (PC); *Shivaji Sahabrao Bobade* v. *State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033; *Hanumant Govind Nargundkar* v. *State of M.P.*, 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129; *R.* v. *Kritz*, (1950) 1 KB 82 (CCA), *cited*

SS-D/57617/SR

Advocates who appeared in this case :

Colin Gonsalves, Senior Advocate [Shreeji Bhavsar, Himanshu Agarwal, Ms Preeti Pratishruti Dash, Satya Mitra, Surya Kant (Amicus Curiae), Atul Jha, Sandeep Jha and Dharmendra Kr. Sinha, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. SLP (Cri) No. 8307 of 2013, order dated 17-1-2014 (SC), *Dhal Singh Dewangan* v. *State of Chhattisgarh* 704*e-f*
2. (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61, *Krishan Kumar Malik* v. *State of Haryana* 715*c*, 716*c-d*
3. (2000) 8 SCC 382 : 2000 SCC (Cri) 1516, *State of W.B.* v. *Mir Mohammad Omar* 723*f-g*
4. (1996) 6 SCC 241 : 1996 SCC (Cri) 1290, *Gentela Vijayavardhan Rao* v. *State of A.P.* 714*a-b*, 716*d*
5. (1984) 4 SCC 116 : 1984 SCC (Cri) 487, *Sharad Birdhichand Sarda* v. *State of Maharashtra* 717*a*, 718*b-c*
6. (1980) 2 SCC 684 : 1980 SCC (Cri) 580, *Bachan Singh* v. *State of Punjab* 726*a*
7. (1973) 2 SCC 793 : 1973 SCC (Cri) 1033, *Shivaji Sahabrao Bobade* v. *State of Maharashtra* 717*b-c*
8. (1972) 1 SCC 249 : 1972 SCC (Cri) 88, *H.P. Admn.* v. *Om Prakash* 724*e*
9. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129, *Hanumant Govind Nargundkar* v. *State of M.P.* 718*g*, 719*a*
10. 1952 AC 480 : (1952) 2 All ER 447 (PC), *Teper* v. *R.* 714*f-g*
11. (1950) 1 KB 82 (CCA), *R.* v. *Kritz* 725*b-c*
12. (1896) 2 QB 167 : (1895-99) All ER Rep 586 (CCR), *R.* v. *Lillyman* 714*e-f*

The Judgment† of the Court was delivered by

UDAY U. LALIT, J. (*On behalf of Gogoi, J. and himself; Pant, J. dissenting*)— These appeals by special leave challenge the judgment and order dated 8-8-2013 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Reference No. 4 of 2013 and in Criminal Appeal No. 563 of 2013 affirming the conviction of the appellant under Section 302 IPC and confirming the sentence of death awarded by the Sessions Judge, Durg in Sessions Trial No. 96 of 2012. The appellant was awarded death sentence on six counts for having caused the deaths of his wife and five daughters on 19-2-2012. While granting special leave to appeal by order dated 17-1-2014[1] this Court stayed the execution of death penalty till the disposal of the present appeal.

2. The appellant along with his wife Thaneshwari aged about 32 years and five daughters, namely, Nisha, Lakshmi, Sati, Nandini and Sandhya, aged 15, 14, 13, 8 and 5 years respectively and his mother Kejabai (examined as PW 6 in the trial) was residing in Village Mohandipat, Police Station Arjunda, Chhattisgarh. Their house, a single-storey structure with five rooms, a verandah and a courtyard, opened in a gali. Opposite to this house, were the houses of

† **Ed.**: Lalit, J. delivered the judgment of the Court on behalf of Gogoi, J. and himself. Pant, J. delivered a dissenting opinion.

1 *Dhal Singh Dewangan* v. *State of Chhattisgarh*, SLP (Cri) No. 8307 of 2013, order dated 17-1-2014 (SC), wherein it was directed:

"Leave granted. There shall be stay of execution of death penalty till the disposal of the appeal. The petitioner be kept in custody."

Aman Dewangan, Khemlal Dewangan and Derha Dewangan. On either side of their house the immediate neighbours were Bhan Singh Dewangan on one side and Yogendra Sahoo on the other. The appellant with his wife and two daughters had gone to attend a marriage at Nagpur on 11-2-2012 and had returned to the village at about 4-5 p.m. on 19-2-2012. After having dinner everyone had gone to sleep by about 8.00 p.m. Nisha, Lakshmi, Sati and Nandini were with their grandmother Kejabai in one room while the appellant, his wife and daughter Sandhya had slept in the adjoining room.

3. According to the prosecution, at about 1.30 a.m. on 20-2-2012 a report vide General Diary Entry No. 671 was made by PW 1, Ishwar Pradhan and PW 2, Santosh Kumar, Village Kotwar. The entry Ext. P-37 was certified in the general diary by PW 13, Sub-Inspector Krishna Murari Mishra and was to the following effect:

> "The information is related to the Station Officer, K.M. Mishra, Kotwar and Ishwar Pradhan, s/o Avadh Pradhan, age 38 years, r/o Mohandipat, are present at Police Station Mohandipat and stated that sounds of shouting are coming out from the house of Dhal Singh Dewangan of Village Mohandipat so that it is expected that incident like beating has taken place inside the house. In order to verify the abovesaid incident, I departed to the place of occurrence along with my staff, 1373, 358, 252, 1316, R. 683, 1512, 664 mayak 320 and handed over the work of the police station to HCM-1118.
>
> sd/-
> Illegible
> Station Officer Arjunda,
> Distt. Balod, Chhattisgarh"

4. According to the prosecution, the police immediately reached the village and thereafter recorded dehati nalishi, Ext. P-18 at the instance of PW 6 Kejabai who allegedly informed that at about 10.00 p.m. on 19-2-2012 she woke up after hearing cries of her daughter-in-law Thaneshwari and had thereafter seen the appellant attacking his wife and five daughters with a sharp-edged object. This dehati nalishi, Ext. P-18 was recorded at about 3.00 a.m. on 20-2-2012, whereafter PW 13 Sub-Inspector Krishna Murari Mishra sent dead bodies of Thaneshwari, Nisha, Lakshmi, Sati, Nandini and Sandhya to the mortuary at Gunderdehi. According to PW 13, the bodies of Thaneshwari, Nisha, Lakshmi, Sandhya and Sati were lying in a room marked as Room No. 4 in the site map, Ext. P-25 and the appellant was found lying in one corner of the same room in an unconscious position with an iron knife lying near his left hand. The body of Nandini was lying in Room No. 1, as mentioned in the site map, Ext. P-25. PW 13 also sent the appellant in an ambulance to Primary Health Centre, Arjunda with a Constable.

5. PW 7, Dr Ajay Pal Chandrakar, Medical Officer, Primary Health Centre, Gunderdehi, conducted post-mortem on the dead bodies of Sati, Nisha and Sandhya on 20-2-2012. The post-mortem began at 10.40 a.m.

5.1. In his post-mortem report, Ext. P-27, PW 7 found following injuries on the dead body of Sati:

"(*i*) One deep incised wound at the back side of joint of skull and neck in the size of 6" × 3".

(*ii*) One incised wound over right hand at the base of middle finger and index finger to wrist joint, of size 5" × 2.5"."

Both the injuries were caused by sharp-edged weapon. In his opinion, cause of death was cardiorespiratory arrest due to excessive bleeding on account of the said injuries. All the injuries were ante-mortem and the death was homicidal in nature.

5.2. PW 7 also conducted post-mortem on the body of Nisha and found the following injuries:

"(*i*) One deep incised wound at the joint of skull and neck region of size 7" × 4".

(*ii*) One incised wound at the joint of right hand wrist of size 4" × 3".

(*iii*) One incised wound below the right hand elbow joint of size 3" × 1".

(*iv*) One incised wound over right arm of size 2" × 2"."

All the injuries were ante-mortem and caused by sharp-edged weapon. Cause of death was opined as cardiorespiratory arrest due to excessive bleeding on account of the said injuries and the death was homicidal in nature.

5.3. PW 7 thereafter conducted post-mortem on the body of Sandhya and found one incised wound on the back of neck of the deceased at the joint of skull in the size of 6" × 2", from the left to right side of neck region and all blood vessels were cut. He opined that the cause of death was excessive bleeding on account of above injury and shock due to cardiorespiratory arrest. All the injuries were ante-mortem, caused by sharp-edged weapon and death was homicidal in nature.

6. On the same day, PW 14, Dr Chandrabhan Prasad, Block Medical Officer, Community Health Centre Gunderdehi performed post-mortem on the bodies of Thaneshwari, Lakshmi and Nandini.

6.1. PW 14 vide post-mortem report, Ext. P-64 noticed the following injuries on the dead body of Thaneshwari:

"(*i*) Deep incised wound below left lower costal region of size 1" × ¼", intestines visible through wound;

(*ii*) Deep incised wound below right costal region of size 2" × 1" horizontal, intestines visible;

(*iii*) Deep incised wound over left lower costal region horizontal, of size 2" × ½";

(*iv*) Deep incised wound over left dorsal hand of size 3" × 2" horizontal;

(*v*) Deep incised wound over left axillary fossa of size 1" × ½";

(*vi*) Deep incised wound over right dorsal hand of size 3" × ½" horizontal;

(*vii*) Deep incised wound over left temporal region of skull of size 2" × ½";

(*viii*) Deep incised wound over right dorsal and palm hand of size 5" × 4", carpal bone cut;

(*ix*) Deep incised wound over left side of nose;

(*x*) Deep incised wound over left eyebrow obliquely placed up to nose of size 4" × 2"."

According to him, the cause of death was acute haemorrhagic shock due to multiple injuries, all the injuries were ante-mortem and the death was homicidal in nature.

6.2. PW 14 also conducted autopsy over the dead body of Lakshmi and in post-mortem report, Ext. P-65, he noticed the following injuries:

"(*i*) Deep incised wound over right dorsal hand of size 2" × ½" × ½", whole face and hand bloodstained;

(*ii*) Deep incised wound over left buttock of size 2" × ½";

(*iii*) Deep incised wound over left cheek of size 1" × ½";

(*iv*) Deep incised wound over right nose up to ear;

(*v*) Deep incised wound over right wrist of size 1" × ½";

(*vi*) Nape of neck 50% cut;

(*vii*) Deep incised wound over right face of size 2" × ½";

(*viii*) Deep incised wound over right shoulder of size 1" × ½"."

The cause of death was acute haemorrhagic shock due to multiple injuries, all the injuries were ante-mortem and the death was homicidal in nature.

6.3. PW 14 also conducted post-mortem over the dead body of Nandini vide Ext. P-66, wherein he found that there was one deep incised wound over occipital region of size 5" × ½" × ¼". The cause of death was acute haemorrhagic shock due to head injury which was ante-mortem and the death was homicidal in nature.

7. The dehati nalishi, Ext. P-18 recorded at 3.00 a.m. led to the registration of FIR, Ext. P-51 dated 20-2-2012 bearing No. 18 of 2012 at about 4.10 p.m. On 20-2-2012 the appellant was brought back to the police station at about 6.30 p.m. whereafter vide Ext. P-16 the clothes of the accused which were stated to have bloodstains were taken in custody. The accused was arrested vide arrest memo, Ext. P-62 on the same day.

8. During the investigation, statements of various witnesses were recorded. On 6-3-2012 PW 6 Kejabai was produced before the Judicial Magistrate, First Class, Gunderdehi, at the request of the police to record her statement under Section 164 of the Code of Criminal Procedure, 1973 ("the Code", for short), which statement was recorded as under:

"States on affirmation … my name is Smt Kejabai, w/o Dan Singh, occupation agriculture/labour, r/o Mohandipat, Police Station Arjunda, District Balod (Chhattisgarh).

On oath:

(1) Last month about on date 12-13, my son and my son's wife went to Nagpur at marriage function. After 8-10 days, they came to Mohandipat being dispute. They went to Pallekalan from there. Thereafter, they came to Mohandipat at 4.45 p.m. in the evening. That day was Sunday. After taking meal and all slept, at night about 10.00 p.m. I heard a sound like a cat howling. I was afraid and went towards daughter-in-law's room. I saw there, dead body of younger child. Thereafter, I ran away shouting. I returned home yet. I came together with some people and saw the son was fainted and saw the dead bodies of children. I want to say just this.

Typing has been done as per my direction. Narration is correct and accepted.

sd/-	sd/-
Illegible	Illegible
6-3-2012	6-3-2012
Srikant Srivastava	Srikant Srivastava
JMFC, Dondalohara	JMFC, Dondalohara
Distt. Chhattisgarh	Distt. Chhattisgarh

I, Kejabai Dewangan have signed voluntarily, read out and understood."

Thus, as against the version in dehati nalishi, Ext. P-18 implicating the appellant, her statement before the Magistrate did not directly attribute anything to the appellant.

9. On 19-3-2012 a sealed packet containing an iron knife along with requisition, Ext. P-61 was sent to PW 14 Dr Chandrabhan Prasad seeking his opinion whether the injuries suffered by deceased Thaneshwari, Nisha, Lakshmi, Nandini, Sati and Sandhya could be caused by that knife. It was of iron metal with total length of 40 cm and the length of the blade was 5 cm. The knife was stained with blood. A report in the affirmative was given by PW 14 on the back side of the requisition, Ext. P-61 under his signature.

10. After completing the investigation, charge-sheet, Ext. P-74 was filed on 27-4-2012 against the appellant for the offence punishable under Section 302 IPC on six counts. The prosecution examined 14 witnesses in support of its case, the noteworthy being:

10.1. ***PW 1 Ishwar Pradhan***, Sarpanch of the village stated that around 10.30 p.m. on 19-2-2012, PW 2 Santosh, Village Kotwar came to his house and told him that the appellant had killed his wife and daughters. Thereafter, PW 1 reached Gandhi Chowk (stated to be at a distance of 100 yards from the house of the appellant) where he found PW 6, Kejabai sitting in the square with PW 2 Santosh Kumar, PW 3, Neel Kanth, PW 5, Dan Singh. According to the witness, PW 6, Kejabai told them that the appellant had killed his wife and children whereafter they went to the house of the appellant and saw that blood was lying near the door of the room of the appellant. They locked the door of the house. Then along with PW 2 Santosh, Village Kotwar and one Chait

Ram Sahu, this witness went to Police Station Arjunda and gave information which was extracted in the general diary at Ext. P-37. The witness further stated that after the police reached the village, they entered the house and took the appellant to the hospital in an ambulance as he was in an unconscious condition. Thus, the primary source of information of the witness was PW 2 Santosh, Village Kotwar and after reaching Gandhi Chowk he had heard PW 6 Kejabai implicating the appellant. Though he went to the police station thereafter, Ext. P-37 extract of the general diary entry does not disclose any awareness of the essential features or details of the crime or the fact that the murders had taken place.

10.2. ***PW 2 Santosh***, Village Kotwar, stated that Jeevan Dewangan, neighbour of the appellant came to his house at about 11.00 p.m. and told him that the appellant had murdered his wife and daughters with an iron knife, whereafter he along with PW 1 Ishwar Pradhan and PW 3 Neel Kanth had gone to the house of the appellant. They found the wife and children of the appellant lying dead and the appellant in an unconscious condition. Thereafter, he along with PW 1 Ishwar Pradhan and one Vijay went to the police station and gave relevant information. According to the witness, by the time they came back, the police had already reached the village and PW 6 Kejabai had disclosed to the police that it was the appellant who had killed his wife and five children. The witness further stated that the appellant was moved to the hospital in an ambulance as he was unconscious. The source of information for this witness was one Jeevan Dewangan. Going by the version of this witness, he and PW 1 were already aware that the wife and children were lying dead in the house of the appellant before they reached the police station. However, extract Ext. P-37 of the general diary does not disclose any such knowledge or awareness.

10.3. ***PW 3 Neel Kanth*** stated that at about 12.00 midnight Ganga Ram Sahu and Chait Ram knocked the door of his house and informed him that the appellant had killed his wife and five daughters. The witness reached Gandhi Chowk where he found PW 6 Kejabai crying loudly that the appellant had killed his wife and five children. All the villagers thereafter went to the house of the appellant and found that there were bloodstains in the verandah. PW 1 Ishwar Pradhan was then sent along with PW 2 Santosh and Chait Ram to make a report to the police. According to the witness the police reached the village after an hour and thereafter they went to the house of the appellant. The wife and the children of the appellant were lying dead while the appellant was lying in an unconscious condition. According to the version of this witness, everyone was aware of the fact that the murders had taken place. Yet, the reporting vide Ext. P-37 is otherwise.

10.4. ***PW 4 Anjor Singh Dewangan***, father-in-law of the appellant stated that he had come to know from the villagers that the appellant had killed his wife and five daughters. This witness did not say that he had heard PW 6 Kejabai implicating the appellant.

10.5. ***PW 5 Dan Singh Dewangan***, stepfather of the appellant stated that at about 12 midnight PW 2 Santosh, Chait Ram and Ganga Ram came and called

him. They also awoke PW 1 Ishwar Pradhan. According to the witness he went towards the house PW 6 Kejabai along with PW 1 Ishwar Pradhan and found that PW 6 Kejabai was crying aloud that the appellant had killed his wife and five daughters. According to the witness after seeing the place of incident PW 1 Ishwar Pradhan, PW 2 Santosh, Village Kotwar and Chait Ram went to the police station to lodge the report. This witness also stated that when the police came they found the wife and five daughters of the appellant lying dead and the appellant was lying unconscious.

10.6. ***PW 6 Kejabai*** in her examination stated as under:

> "My son Dhal Singh's wife's name is Thaneshwari Bai. My son the accused and Thaneshwari Bai had five daughters whose names are Sandhya, Nisha, Lakshmi, Sati, Nandini. My son was involved in the work of cutting and selling chicken. My daughter-in-law Thaneshwari and abovestated five girls are dead. They died during Mahashivratri of this year.
>
> Incident occurred about 8 months back. Before the incident, my son Dhal Singh, daughter-in-law Thaneshwari and their two daughters had gone to Nagpur to attend the marriage of brother-in-law and sister-in-law of my son and they came back on Sunday. They came back to home at around 5 o'clock in the day. Incident occurred on same day. We went to sleep at 8 o'clock in the night after taking dinner I and four girls were sleeping in my room. My son, the accused, daughter-in-law Thaneshwari and youngest daughter Sandhya were sleeping in another room. I woke up in the night and reached to verandah for drinking water. I saw the girl Sandhya lying unconscious in the front of room of my son Dhal Singh. Thereafter, opening the door of the house I fled crying outside on the road. I don't know what I was crying because I was not in conscious state of mind. As I was crying outside like mad, the villagers came there. I cannot tell the facts stated by me to the villagers. I don't know if I had come back to the village because I was not in conscious state of mind."

The aforesaid statement, though generally consistent with her statement under Section 164 of the Code, was against the assertions made in dehati nalishi, Ext. P-18. She was declared hostile and was permitted to be cross-examined by the Public Prosecutor. She denied having stated about the incident to PW 1 Ishwar Pradhan, PW 2 Santosh, Village Kotwar, PW 5 Dan Singh and to other villagers as well as to the police, as alleged. She accepted her statement given under Section 164 of the Code.

11. The medical evidence on record was unfolded through PW 7 Dr Ajay Pal Chandrakar and PW 14 Dr Chandrabhan Prasad, as stated above. PW 13 Sub-Inspector Krishna Murari Mishra proved extract of the general diary entry at Ext. P-37 and site map, Ext. P-25. He said that he had found the appellant lying in an unconscious condition and had sent him to the Primary Health Centre, Arjunda with a Constable. In his statement under Section 313 of the Code of Criminal Procedure, the appellant claimed innocence and submitted that he knew nothing as he was unconscious.

12. After considering the evidence on record, the Sessions Court, District Durg by its judgment and order dated 23-4-2013 in Sessions Case No. 96 of 2012 found the appellant guilty of offence punishable under Section 302 IPC on six counts. Though the statement of PW 6 Kejabai in court had not attributed any criminal act to the appellant, in the opinion of the trial court, her version implicating the appellant, as spoken to by PWs 1, 2, 3 and 5 would be admissible under Section 6 of the Evidence Act. Placing reliance on those statements of PWs 1, 2, 3 and 5 as well as failure on the part of the appellant in not offering any explanation how the crime was committed, the trial court found that the prosecution was successful in bringing home the case against the appellant. Having thus convicted the appellant on six counts under Section 302 IPC, by a separate order of even date, the trial court awarded death sentence to the appellant, subject to confirmation by the High Court in terms of Chapter XXVIII of the Code.

13. The reference under Section 366 of the Code for confirmation of death sentence was registered as Criminal Reference No. 4 of 2013 in the High Court of Chhattisgarh at Bilaspur. The appellant also filed an appeal against his conviction and sentence vide Criminal Appeal No. 563 of 2013. The reference as well as the appeal were dealt with and disposed of by the High Court vide its judgment and order dated 8-8-2013. It was observed by the High Court as under:

> "*23.* Minute examination of the evidence, oral and documentary available on record, makes it clear that on 19-2-2012 the appellant-accused had killed his wife and five daughters by causing them number of injuries on their vital parts by chopper/knife used for cutting hen.
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> *24.* As per deposition of Kejabai (PW 6), on the fateful night, the appellant-accused was the only male member in his house and he was sleeping along with his wife Thaneshwari and youngest daughter Sandhya, whereas Kejabai was sleeping with his four daughters in a separate room and door of the house was bolted from inside. Thus the possibility of entry by some stranger in the house of the appellant-accused is not there. Since the appellant-accused was the only inmate of the house, it is for him to explain as to how six dead bodies have been found there. However, no such explanation has been offered by him in his statement under Section 313 CrPC. As per Section 106 of the Evidence Act, it is the duty of the accused to explain the incriminating circumstance proved against him while making a statement under Section 313 CrPC. Keeping silent and not furnishing any explanation is an additional link in the chain of circumstances to sustain the charges against him. Furthermore, as per FSL Report, Ext. P-69 blood was found on the clothes of the appellant-accused and the weapon of offence chopper/knife and as per serological Report, Ext. P-72, the blood present on the clothes and the knife was found to be human blood.
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> *25.* The evidence of Kejabai (PW 6) also makes it clear that upon seeing the dead body of Sandhya, she came out of the house screaming. This witness has expressed her ignorance as to the things disclosed by her to the

villagers. However, from the statements of PW 1, PW 2, PW 3 and PW 5, it is apparent that immediately after the incident, Kejabai informed them that it is the appellant-accused who killed his wife and five daughters. These witnesses have categorically stated that immediately after the incident they came to know about the commission of murder by the appellant-accused and they also remained firm in their cross-examination."

14. The High Court further found the statements of PWs 1, 2, 3 and 5 admissible under Section 6 of the Evidence Act and stated as under:

"*27*. After minute examination of the evidence of PW 1, PW 2, PW 3 and PW 5, we are of the considered view that the same is admissible under Section 6 of the Evidence Act as res gestae. For these witnesses, there was no occasion for concoction or improvement by any means at that juncture. The fact that immediately after seeing the dead body Kejabai came out of the house and narrated the incident to the villagers has been duly proved by these witnesses."

15. It was argued on behalf of the appellant that as stated by all the prosecution witnesses including the investigating officer, the appellant was found in an unconscious condition and was removed to the hospital but no medical reports were placed on record by the prosecution. The High Court dealt with the submission as under:

"*30*. We also find no force in the argument of the counsel for the appellant that the police has not produced medical report of the appellant clarifying his position as to how he fell unconscious when bodies of the deceased persons were recovered from his house and what treatment was given to him in hospital. It appears that during killing of six persons and after seeing their blood, the appellant-accused might have got tired or lost his mental balance. In such a situation, even if the appellant was lying unconscious near the dead bodies, it hardly makes any difference for proving his involvement in commission of the offence. It is not the case of the defence that some third person had entered the house, assaulted the appellant and then committed murder of six persons."

16. Having affirmed the conviction of the appellant as recorded by the trial court, the High Court observed that the instant case did satisfy the parameters laid down by this Court and was the "rarest of rare cases" justifying capital punishment. The High Court thus confirmed the death sentence awarded to the appellant.

17. In this appeal challenging the correctness of the orders of conviction and sentence, we have gone through the entire record and considered rival submissions. The matter principally raises two questions: (*a*) whether the statements of PWs 1, 2, 3 and 5 are admissible under Section 6 of the Evidence Act and could be relied upon, and (*b*) whether the circumstances on record satisfy the principles laid down by this Court in its various judgments as regards appreciation of cases based on circumstantial evidence.

18. The evidence of witnesses PWs 1 and 2 discloses that the primary source of their knowledge about the crime was Jeevan Dewangan who had disclosed it to PW 2, who in turn disclosed it to PW 1. Similarly, the source of information about the crime for PW 3, was the disclosure by Ganga Ram Sahu and Chait Ram. Chait Ram had also gone along with PWs 1 and 2 to the police station. However, none of these three persons, namely, Jeevan Dewangan, Ganga Ram Sahu and Chait Ram were examined by the prosecution. No reason for their non-examination is placed on record. The non-examination of these persons goes to the root of the matter and raises serious doubts.

19. According to PWs 1 and 2, after receipt of information about the crime, they had reached Gandhi Chowk where PW 6 Kejabai was crying aloud that the appellant had killed his wife and children. Thereafter PWs 1 and 2 along with Chait Ram went to the police station and at their instance information was recorded in the general diary at Ext. P-37. The extract of the general diary entry is completely silent about any relevant features regarding the crime or the role of the appellant and in fact shows lack of knowledge about the crime. All that it says is that they had heard sounds of shouting coming from the house of the appellant. It is not the case of the prosecution, that the recording vide Ext. P-37 was in any way incorrect. The version of PWs 1 and 2 in court is thus completely inconsistent with the contemporaneous record, namely, extract Ext. P-37. If they were aware that the appellant had killed his wife and daughters even before they reached the police station, as they now claim in court, the nature of their reporting would have been completely different. The fact that their reporting did not disclose any essential features of the crime is accepted on record and their reporting was also never treated as FIR in the matter. We find it extremely difficult to rely on the testimony of PWs 1 and 2 and would presently eschew from our consideration the statements of these two witnesses.

20. We are now left with PWs 3 and 5. Even according to PW 3 his source of knowledge about the crime was disclosure by Ganga Ram Sahu and Chait Ram. He further said that after reaching Gandhi Chowk he found PW 6 Kejabai was crying aloud that it was the appellant who had killed his wife and five children. To similar effect is the assertion of PW 5. These two witnesses also claim that the villagers had sent PWs 1 and 2 with Chait Ram to make a report to the police. But unlike PWs 1 and 2, these witnesses themselves had not gone to the police station and therefore their version needs to be considered independently. The question that arises is whether such assertions on part of PWs 3 and 5 come within Section 6 of the Evidence Act and could be relied upon?

21. Before we deal with the applicability of Section 6 of the Evidence Act to the facts of the present case, we may quote Section 6 and Illustration (*a*) below the said section:

> "**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.

Illustrations

(*a*) *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."

22. In *Gentela Vijayavardhan Rao* v. *State of A.P.*[2], a bus was set on fire which resulted in the death of 23 passengers. The statements of two seriously injured fellow passengers were recorded by the Magistrate as it was thought that they might succumb to their injuries, in which event their statements could be pressed into service under Section 32 of the Evidence Act. Fortunately, they survived. But while answering the question whether those statements could now be relied upon under Section 6, this Court found that there was appreciable interval between the criminal act and the recording of their statements by the Magistrate and as such the statements could not be relied upon with the aid of Section 6. It was observed: (SCC pp. 246-47, paras 15-16)

"*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. In *R.* v. *Lillyman*[3] a statement made by a raped woman after the ravishment was held to be not part of the res gestae on account of some interval of time lapsing between the act of rape and the making of the statement. Privy Council while considering the extent up to which this rule of res gestae can be allowed as an exemption to the inhibition against hearsay evidence, has observed in *Teper* v. *R.*[4] thus: (*Teper case*[4], All ER p. 447 G-H)

'The rule that in a criminal trial hearsay evidence is admissible if it forms part of the res gestae is based on the propositions that the human utterance is both a fact and a means of communication and that human action may be so interwoven with words that the significance of the action cannot be understood without the correlative words and the dissociation of the words from the action would impede the discovery

2 (1996) 6 SCC 241 : 1996 SCC (Cri) 1290
3 (1896) 2 QB 167 : (1895-99) All ER Rep 586 (CCR)
4 1952 AC 480 : (1952) 2 All ER 447 (PC)

of the truth. It is essential that the words sought to be proved by hearsay should be, if not absolutely contemporaneous with the action or event, at least so clearly associated with it that they are part of the thing being done, and so an item or part of the real evidence and not merely a reported statement.'

The correct legal position stated above needs no further elucidation.

16. Here, there was some appreciable interval between the acts of incendiarism indulged in by the miscreants and the Judicial Magistrate recording statements of the victims. That interval, therefore, blocks the statements from acquiring legitimacy under Section 6 of the Evidence Act. The High Court was, therefore, in error in treating Exts. P-71 and P-75 as forming part of res gestae evidence."

23. In *Krishan Kumar Malik* v. *State of Haryana*[5], while testing the veracity of the version of the prosecutrix that she was subjected to rape, the fact that she had ample opportunity and occasion to disclose to her mother and sister soon after the criminal act, in which case their statements could have lent assurance, was taken into account. This Court observed as under: (SCC pp. 138 & 139, paras 33 & 37)

"*33*. As per the FIR lodged by the prosecutrix, she first met her mother Narayani and sister at the bus-stop at Kurukshetra but they have also not been examined, even though their evidence would have been vital as contemplated under Section 6 of the Evidence Act, 1872 (for short "the Act") as they would have been res gestae witnesses. The purpose of incorporating Section 6 in the Act is to complete the missing links in the chain of evidence of the solitary witness. There is no dispute that she had given full and vivid description of the sequence of events leading to the commission of the alleged offences by the appellant and others upon her. In that narrative, it is amply clear that Bimla Devi and Ritu were stated to be at the scene of alleged abduction. Even though Bimla Devi may have later turned hostile, Ritu could still have been examined, or at the very least, her statement recorded. Likewise, her mother could have been similarly examined regarding the chain of events after the prosecutrix had arrived back at Kurukshetra. Thus, they would have been the best persons to lend support to the prosecution story invoking Section 6 of the Act.

* * *

37. Section 6 of the Act has an exception to the general rule whereunder hearsay evidence becomes admissible. But as for bringing such hearsay evidence within the ambit of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there could not be an interval which would allow fabrication. In other words, the statements said to be admitted as forming part of res gestae must have been made

5 (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61

contemporaneously with the act or immediately thereafter. Admittedly, the prosecutrix had met her mother Narayani and sister soon after the occurrence, thus, they could have been the best res gestae witnesses, still the prosecution did not think it proper to get their statements recorded. This shows the negligent and casual manner in which the prosecution had conducted the investigation, then the trial. This lacunae has not been explained by the prosecution. The prosecution has not tried to complete this missing link so as to prove it, beyond any shadow of doubt, that it was the appellant who had committed the said offences."

24. The general rule of evidence is that hearsay evidence is not admissible. However, Section 6 of the Evidence Act embodies a principle, usually known as the rule of *res gestae* in English law, as an exception to hearsay rule. The rationale behind this section is the spontaneity and immediacy of the statement in question which rules out any time for concoction. For a statement to be admissible under Section 6, it must be contemporaneous with the acts which constitute the offence or at least immediately thereafter. The key expressions in the section are "… so connected … as to form part of the same transaction". The statements must be almost contemporaneous as ruled in *Krishan Kumar Malik*[5] and there must be no interval between the criminal act and the recording or making of the statement in question as found in *Gentela Vijayavardhan Rao case*[2]. In the latter case, it was accepted that the words sought to be proved by hearsay, if not absolutely contemporary with the action or event, at least should be so clearly associated with it that they are part of such action or event. This requirement is apparent from the first illustration below Section 6 which states "whatever was said or done … at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact".

25. Considered in the aforesaid perspective, we do not find the statements attributed to PW 6 Kejabai by PWs 3 and 5 to be satisfying the essential requirements. The house of the appellant, according to the record, was at a distance of 100 yards from Gandhi Chowk, where these witnesses are stated to have found PW 6 Kejabai crying aloud. Both in terms of distance and time, the elements of spontaneity and continuity were lost. PW 6 Kejabai has disowned and denied having made such disclosure. But even assuming that she did make such disclosure, the spontaneity and continuity was lost and the statements cannot be said to have been made so shortly after the incident as to form part of the transaction. In the circumstances, we reject the evidence sought to be placed in that behalf through PWs 3 and 5. Even if we were to accept the version of PWs 1 and 2, the same would also suffer on this count and will have to be rejected.

26. We are therefore left with certain pieces of circumstantial evidence and have to see if those circumstances bring home the case of the prosecution. The principles how the circumstances be considered and weighed are well settled

5 *Krishan Kumar Malik* v. *State of Haryana*, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61
2 *Gentela Vijayavardhan Rao* v. *State of A.P.*, (1996) 6 SCC 241 : 1996 SCC (Cri) 1290

and summed up in *Sharad Birdhichand Sarda* v. *State of Maharashtra*[6] as under: (SCC p. 185, paras 153-54)

"*153*. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra*[7] where the observations were made: (SCC p. 807, para 19)

'*19*. … Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.' (emphasis in original)

(*2*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(*3*) the circumstances should be of a conclusive nature and tendency,

(*4*) they should exclude every possible hypothesis except the one to be proved, and

(*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.'

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

27. We now consider the circumstances which have weighed with the courts below:

(*a*) The appellant was the only male member residing with his mother, wife and five daughters.

(*b*) The house in question which opened in a gali was bolted from inside on the fateful night.

(*c*) The appellant was found lying unconscious in a room where there were five dead bodies with another dead body in the adjoining room.

6 (1984) 4 SCC 116 : 1984 SCC (Cri) 487
7 (1973) 2 SCC 793 : 1973 SCC (Cri) 1033

(*d*) A knife, which could possibly have caused injuries to the deceased, was lying next to his left hand.

(*e*) His clothes, "lungi" to be precise, were found to be having bloodstains with blood of human origin.

(*f*) He had offered no explanation how the incident had occurred and as such a presumption could be drawn against him under Section 106 of the Evidence Act.

In the face of these circumstances, according to the courts below, the only possible conclusion or hypothesis could be the guilt of the appellant and nothing else. The absence of any explanation on part of the appellant was taken as an additional link in the chain by the High Court.

28. In *Sharad Birdhichand Sarda case*[6], the absence of explanation and/or false explanation or a false plea was considered in the context of appreciation of a case based on circumstantial evidence. It was observed: (SCC pp. 184 & 187-88, paras 150, 151 & 161)

"*150*. The High Court has referred to some decisions of this Court and tried to apply the ratio of those cases to the present case which, as we shall show, are clearly distinguishable. The High Court was greatly impressed by the view taken by some courts, including this Court, that a false defence or a false plea taken by an accused would be an additional link in the various chain of circumstantial evidence and seems to suggest that since the appellant had taken a false plea that would be conclusive, taken along with other circumstances, to prove the case. We might, however, mention at the outset that this is not what this Court has said. We shall elaborate this aspect of the matter a little later.

151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.

* * *

161. This Court, therefore, has in no way departed from the five conditions laid down in *Hanumant case*[8]. Unfortunately, however, the High Court also seems to have misconstrued this decision and used the so-called false defence put up by the appellant as one of the additional circumstances connected with the chain. There is a vital difference between

6 *Sharad Birdhichand Sarda* v. *State of Maharashtra*, (1984) 4 SCC 116 : 1984 SCC (Cri) 487

8 *Hanumant Govind Nargundkar* v. *State of M.P.*, 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129

an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the court. Where the prosecution is unable to prove any of the essential principles laid down in *Hanumant case*[8], the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor General."

29. Even otherwise, the fact that the appellant was lying unconscious at the scene of occurrence is accepted by all the prosecution witnesses including the investigating officer, who sent the appellant to Primary Health Centre for medical attention. Since he was sent by the investigating officer himself, the prosecution ought to have placed on record the material indicating what made him unconscious, what was the probable period of such unconsciousness and whether the appellant was falsely projecting it. However, nothing was placed on record. Neither any doctor who had examined him was called as witness, nor any case papers of such examination were made available. In the absence of such material, which the prosecution was obliged but failed to place on record, his explanation cannot be termed as false. The explanation that he knew nothing as he was unconscious cannot be called, "absence of explanation" or "false explanation". So the last item in the list of circumstances cannot be taken as a factor against the appellant.

30. Coming to the circumstance at Sl. No. (*e*) as mentioned above, the clothes of the accused were not seized immediately at the place of occurrence. He was first sent to Primary Health Centre for medical attention and later in the day was brought back to the police station, where the seizure took place. The seizure memo, Ext. P-16 does not mention the word "lungi" but uses the expression "Istamali". Even if "Istamali" is taken to be "lungi", the arrest memo, Ext. P-62 mentions his clothes to be "full pants and shirt" and further mentions, "nothing found on the person of the accused except clothes worn by him". According to the FSL report, Ext. P-69 and the serological report, Ext. P-72 what was sent for examination and analysis was a lungi which was found to be stained with blood of human origin. It is not clear how lungi could be seized if the appellant was in "full pants and shirt" and there was nothing else on his person. The constable who had taken the appellant to Primary Health Centre and who could have thrown better light on this aspect, was not examined. Apart from the fact that the clothes were not seized immediately at the place of occurrence, if the appellant was found lying in the room in an unconscious state with five dead bodies around, the possibility that his clothes had otherwise got stained with blood which was spotted everywhere including the verandah cannot be ruled out. In our view, therefore, this circumstance is not conclusive in nature and tendency which could be considered against the appellant.

8 *Hanumant Govind Nargundkar* v. *State of M.P.*, 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129

31. The site map, Ext. P-25 shows the house to be a single-storey structure with a verandah and courtyard open to sky. Though the door of the house which opened in the gali was stated to have been bolted from inside, the rooms were not locked and the possibility of a person/persons other than the inmates of the house getting into the house cannot be ruled out. Furthermore, the fact that the appellant was lying unconscious and no material having been placed on record clearly indicating that the appellant was falsely projecting to be unconscious, the hypothesis that the appellant could be innocent is a possibility. The prosecution did not gather the fingerprints either in the house or even on the iron knife which was allegedly used for committing the offence in question. If the fingerprints on the knife were to be that of the appellant alone, such factor could certainly have weighed against the appellant. However, the absence of such conclusive material coupled with other circumstances on record do suggest reasonable possibility of the hypothesis of innocence of the accused. The law regarding appreciation of cases based on circumstantial evidence is clear that the chain of evidence must be so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must exclude every possible hypothesis except the one to be proved, namely, the guilt of the accused. In our view, the circumstances at Sl. Nos. (*a*), (*b*), (*c*) and (*d*) mentioned above do not form a complete chain of evidence as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant nor do the circumstances exclude every possible hypothesis except the guilt of the accused.

32. In the circumstances, we hold that the prosecution, on the basis of admissible evidence on record, has not proved its case against the appellant. The appellant, therefore, deserves to be acquitted. Concluding thus, we allow these appeals, set aside the judgments of conviction and sentence recorded by the courts below against the appellant and acquit him of all the charges levelled against him. The appellant be set at liberty immediately unless his custody is required in any other case.

PRAFULLA C. PANT, J. (*dissenting*)— I have the benefit of going through the draft judgment of Hon'ble Mr Justice Uday Umesh Lalit. With great regard, I beg to differ with his Lordship, on the point that the prosecution has failed to prove the charge against the appellant.

34. The prosecution story, medical evidence on record, and the statements of witnesses of facts have already been narrated by his Lordship Justice Lalit. Briefly stated, the prosecution story is that on 19-2-2012 between 10.00 to 11.00 p.m. the appellant Dhal Singh Dewangan has committed murder of his wife Thaneshwari and five minor daughters, namely, Nisha, Lakshmi, Sati, Nandini and Sandhya with a knife. PW 6 Kejabai, mother of the appellant, came out of the house at about 10.30 p.m. shouting that the accused is assaulting his wife and daughters. PW 1 Ishwar Pradhan, Sarpanch of the village, on receiving information about it through PW 2 Santosh Kumar Mahar, went to the spot, whereafter he along with Santosh Kumar Mahar and two others went to Police Station Arjunda (Distt. Balod, Chhattisgarh). The police, on their information, made Entry No. 671 in the general diary and PW 13

Krishna Murari Mishra, Station House Officer, rushed to the spot at about 1.30 a.m. i.e. in the wee hours of 20-2-2012. A dehati nalishi (Ext. P-18) at the instance of PW 6 Kejabai was registered at about 3.00 a.m. and the crime relating to offence punishable under Section 302 of the Penal Code (IPC) was investigated. The dead bodies were sealed and inquest report prepared by the police. The autopsy on three of six dead bodies, namely, that of Sati, Nisha and Sandhya was conducted on 20-2-2012 by PW 7 Dr Ajaypal Chandrakar. The post-mortem examination of rest of the three dead bodies, namely, that of Thaneshwari, Lakshmi and Nandini was done by PW 14 Dr Chandrabhan Prasad, on the very day (20-2-2012). The bloodstained knife, bloodstained clothes and bloodstained soil, etc. were seized by the police and witnesses interrogated. On completion of the investigation charge-sheet was filed against the appellant for trial in respect of the offence punishable under Section 302 IPC. The case was committed to the Court of Session for trial. After the charge was framed, total fourteen prosecution witnesses were examined.

35. Out of the prosecution witnesses, PW 1 Ishwar Pradhan, Sarpanch, PW 2 Santosh Kumar Mahar, PW 3 Neelkanth Sahu, PW 4 Anjor Singh and PW 5 Dan Singh Dewangan have given evidence as to the fact that when they reached the square of the village, they saw that PW 6 Kejabai was shouting and crying loudly about the incident, and told that the appellant has killed his wife and daughters. The appellant was in the house.

36. The relevant portion of the statement of PW 1 Ishwar Pradhan, Sarpanch of the village, is reproduced below:

> "… I returned to my house at around 10.30 p.m. Santosh Kumar Mahar (PW 2), the Village Kotwar, came to my house and told me that Dhal Singh had cut his wife and children in his house. On receiving this information I reached Gandhi Chowk on my motorcycle. I met Santosh Kumar, the Kotwar, Neelkanth Sahu, Dan Singh Dewangan, Kejabai and Jhaggar … who all were sitting in the square. Kejabai told there that Dhal Singh has cut his wife and children in his house. On hearing this I didn't believe, therefore, I suggested that lets go to the spot and see. Then we went to the house of Dhal Singh. Blood was lying near the door of the room where Dhal Singh (was) slept. We locked the door of the house. Dhal Singh was present in his house …. After locking the door, I, (with) Santosh Kumar, the Kotwar and Chaitram went to Police Station Arjunda and gave information.
>
> The police came to Village Mohandipat along with us. SP … also reached there. The police (interacted) with Kejabai there. Kejabai told that the accused Dhal Singh has cut his wife and children with knife. The police entered (in) the house and we kept standing outside the house. We called ambulance No. 108 there and took Dhal Singh to the hospital in it because he was in half (un)conscious condition…."

37. PW 2 Santosh Kumar Mahar has narrated the incident as under:

> "… The incident occurred on 19-2-2012 at 11.00 p.m. Jivan Dewangan, the neighbour of accused, came to my house and told that the accused

has murdered his wife Thaneshwari and daughters with iron knife used for cutting chicken. Thereafter, I, (with) Neelkanth Sahu, (and) Ishwar Pradhan, the Sarpanch went to the house of accused. We went inside the room and saw that the accused was present in the room of his wife. His wife was lying dead there. The four children were also lying dead there. Wife of the accused was lying dead on the cot and four children were lying on the ground. The accused was lying there in unconscious condition. One iron knife was also lying by his side, and one child was lying in the room of her grandmother. She (the granddaughter) was also dead and back of her neck was cut. Hands, legs and necks of the wife and children were cut. Blood was found on the room and verandah.

Then I went to Police Station Arjunda along with Sarpanch and Vijay and gave information about the incident. … The police personnel enquired about the incident from the neighbours and Kejabai, the mother of the accused. Kejabai was behaving like mad, but she told that the accused has cut and killed his wife and five children. The police personnel sent the accused to the hospital in ambulance No. 108….

… The police seized one knife, bottle of liquor, bloodstained pillow, plain earth, blood smeared earth from the place of incident in the night of the incident….”

The witness has also proved the seizure memo (Exts. P-1 and P-2). The witness has further proved the inquest report and other documents.

38. PW 3 Neelkanth Sahu, corroborating the above facts, states that he came to know about the incident at about midnight through Gangaram Sahu and Chaitram Yadav, who knocked his door. When he opened the door, he was told that Dhal Singh has killed his wife and five daughters. They further told him that Kejabai, mother of the accused, has told about the incident. He further told that when he reached Gandhi Chowk, Kejabai was already present there and crying loudly. This witness also corroborates that Kejabai told him that Dhal Singh has killed his five children and wife.

39. PW 5 Dan Singh Dewangan has also narrated the incident and stated that he got information about the incident at about midnight. He further told that when he went to the house of Kejabai along with Sarpanch, Kejabai was telling that the accused Dhal Singh had cut his wife and five children with the knife. Corroborating the fact that the incident was got reported through Sarpanch to the police, this witness has also stated that the deceased Thaneshwari was lying dead on the cot and the four children were lying dead on the ground. The accused was also there lying on one side. One girl was lying in the room in which Kejabai used to sleep. One knife was also lying by the side of the accused.

40. The above statements of the witnesses have been read in evidence by the trial court and the High Court with the aid of Section 6 of the Evidence Act, 1872. My Lord Uday Umesh Lalit, J. has opined that these statements do not fulfil the requirement of spontaneity and continuity, and as such, cannot be read with the aid of Section 6 of the Evidence Act, particularly when Jivan

Dewangan, Gangadhar and Jhaggar, who told them about what PW 6 Kejabai was disclosing, were not examined.

41. However, in my opinion, in the facts and circumstances of the case, non-examination of Jivan Dewangan, Gangaram and Jhaggar is not sufficient for not relying on the statements of PW 1 Ishwar Pradhan, PW 2 Santosh Kumar Mahar, PW 3 Neelkanth Sahu and PW 5 Dan Singh Dewangan with the aid of Section 6 of the Evidence Act, 1872. The courts below have rightly appreciated the entire chain of circumstances that has been narrated by these witnesses, particularly when they have told what PW 6 Kejabai herself told them at the square, when they reached there. The testimony of PW 1 Ishwar Pradhan, PW 2 Santosh Kumar Mahar, PW 3 Neelkanth Sahu and PW 5 Dan Singh Dewangan is admissible in evidence as being part of the *res gestae*. Sections 6, 7, 8 and 9 of the Evidence Act, 1872 deal with the relevancy of facts not in issue but connected with the facts in issue. The provisions contained therein provide as to when the facts though not in issue are so related to each other as to form components of the principal fact. The facts which are closely or inseparably connected with the facts in issue may be said to be part of the same transaction.

42. It is also relevant to mention here that PW 4 Anjor Singh Dewangan, father-in-law of the appellant, has stated that deceased Thaneshwari was his daughter. He further told that he had also gone to Nagpur to attend the marriage in which the appellant and Thaneshwari were present. The witness has further stated that his daughter complained there about the behaviour of the appellant. He further told that the accused used to say that his family has become large with daughters only. PW 4, Anjor Singh Dewangan further told that the quarrel took place between the couple in Nagpur itself. He further told that after the marriage, the appellant, Thaneshwari and their daughters came back to their house. The above statement makes it clear that the appellant had the motive for committing the murder of his wife and daughters. The only other inmate in the house i.e. PW 6 Kejabai had no motive to commit the crime, and had she attempted, she could have been easily overpowered by the appellant and the six deceased.

43. As to the lapses in the investigation pointed out by the learned Senior Counsel for the appellant regarding the fact that clothes of the accused were not seized immediately and seizure memo (Ext. P-16) does not mention the word "lungi", I do not think it sufficient to doubt the credibility of the prosecution story. In para 41 of *State of W.B.* v. *Mir Mohammad Omar*[9], this Court has observed as under: (SCC p. 394)

> "*41.* ... Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit the accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or

9 (2000) 8 SCC 382 : 2000 SCC (Cri) 1516

defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation."

44. Normally, it is not the duty of the accused to explain how the crime has been committed. But in the matters of unnatural death inside the house where the accused had his presence, non-disclosure on his part as to how the other members of his family died, is an important reason to believe as to what has been shown by the prosecution through the evidence on record is true. It is nobody's case that any dacoity or robbery had taken place in the fateful night of the incident. There are six members of the family who have been killed brutally. Simple reply by the accused in his statement under Section 313 CrPC that he did not know as to how the incident happened, particularly when he was in the house, does certainly make easier to believe the truthfulness of the evidence that has been adduced by the prosecution in support of charge against him. As far as the statement of PW 6 Kejabai is concerned, she has turned hostile. But the reason as to why she has turned hostile is not difficult to be found out. She was going to lose the only son left with her.

45. As to the fact that in the general diary entry (Ext. P-37) there is no mention of commission of murder of his wife and children by the appellant, it is sufficient to say that the general diary entries are summary entries relating to movement of police, or relating to the fact that some information regarding an offence has been given at the police station. The doubts created in the present case on the ground that what more could have been mentioned in the general diary, or that there are minor variations in the statements of PW 1 Ishwar Pradhan, PW 2 Santosh Kumar Mahar, PW 3 Neelkanth Sahu and PW 5 Dan Singh Dewangan, cannot be said to be reasonable doubt. And this Court cannot close its eyes to the ring of truth in the prosecution evidence.

46. In *H.P. Admn.* v. *Om Prakash*[10], in para 7, this Court has observed as under: (SCC pp. 257-58)

"7. … It is not beyond the ken of experienced, able and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during trial by cross-examination or by the marshalling of that evidence in the manner in which the emphasis is placed thereon. But what has to be borne in mind is that the penumbra of uncertainty in the evidence before a court is generally due to the nature and quality of that evidence. It may be the witnesses as are lying or where they are honest and truthful, they are not certain. It is therefore, difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which in other words means that the prosecution must prove its case against an accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which

10 (1972) 1 SCC 249 : 1972 SCC (Cri) 88

the accused is entitled is reasonable doubt — the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy — though unwittingly it may be — or is afraid of the logical consequences, if that benefit was not given. Or as one great Judge said it is "not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism". It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwarting it altogether. It is for this reason the phrase has been criticised. Lord Goddard, C.J., in *R.* v. *Kritz*[11], KB at p. 90, said that when in explaining to the juries what the prosecution has to establish a Judge begins to use the words "reasonable doubt" and to try to explain what is a reasonable doubt and what is not, he is much more likely to confuse the jury than if he tells them in plain language. "It is the duty of the prosecution to satisfy you of the prisoner's guilt." What in effect this approach amounts to is that the greatest possible care should be taken by the court in convicting an accused who is presumed to be innocent till the contrary is clearly established which burden is always in the accusatory system, on the prosecution. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond reasonable doubt."

47. In the light of the law laid down, as above, on careful scrutiny of the evidence on record, in my opinion, there is no room for reasonable doubt in the present case as to the truthfulness of the evidence adduced against the appellant that he has committed murder of his wife and five daughters on 19-2-2012 between 10.00 and 11.00 p.m. in his house.

48. In the above circumstances, I concur with the view taken by the trial court and the High Court that it is proved on record beyond reasonable doubt that accused Dhal Singh Dewangan has committed murder of his wife and five daughters. As such, the conviction deserves to be upheld.

49. Now, I come to the issue of sentence. Mr Colin Gonsalves, learned Senior Counsel appearing for the appellant, submitted that the High Court has erred in affirming the death sentence awarded by the trial court. He further contended that no adequate opportunity was given to the convict to present the mitigating circumstances. He further argued that the burden of proof to show the impossibility of reformation of the accused was on the State.

50. On the other hand, the learned counsel for the State submitted that it is one of the rarest of rare cases. It is further submitted that considering the brutality of the offence, the convict deserves no leniency and the courts below have rightly awarded/confirmed the death sentence.

11 (1950) 1 KB 82 (CCA)

51. I have carefully considered the aggravating and mitigating circumstances in the present case in the light of law laid down by this Court on the point. In *Bachan Singh* v. *State of Punjab*[12], in para 206, this Court has given examples of some of the mitigating circumstances which include the probability of the accused not committing criminal acts of violence as would constitute a continuing threat to society, and the probability that the accused can be reformed and rehabilitated.

52. In the instant case, the State has failed to show that the appellant is a continuing threat to the society or that he is beyond reformation and rehabilitation. Both the courts below, in my opinion, appear to have been influenced by the brutality and the manner in which the crime is committed. But this Court cannot ignore the fact that there are no criminal antecedents of the appellant. Also, it cannot be said that he is continuing threat to the society or that he cannot be reformed or rehabilitated. It is also pertinent to mention here that the accused is from socially and economically disadvantaged strata of the society. Therefore, considering all the facts, circumstances and the established principle of law laid down by this Court, in the present case, sentence of imprisonment for life would meet the ends of justice.

53. Accordingly, the appeals are partly allowed. The conviction of the appellant under Section 302 IPC stands affirmed. However, the sentence of death is set aside, instead the appellant is sentenced to imprisonment for life.

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12 (1980) 2 SCC 684 : 1980 SCC (Cri) 580