

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 20/12/2016****Judgment Delivered on : 30/01/2017****Criminal Appeal No. 789 of 2001**

Narendra Verma Aged 19 years S/o Late Agnu Verma, R/o Raja Talab, Shastri Chowk, Raipur, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh, Through Police Station, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Uttam Pandey, Advocate.
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

C.A.V. Judgment**Per Deepak Gupta, Chief Justice**

1. This appeal by the convicted Accused/Appellant is directed against the judgment dated 03.07.2001 delivered by the learned Sessions Judge, Raipur in Sessions Trial No. 29 of 2000 whereby he has convicted for the offences punishable under Section 302 read with Section 382 of the Indian Penal Code. The Accused was sentenced to undergo life imprisonment for the offence of murder and five years rigorous imprisonment for the offence punishable under Section 382 IPC. Both the sentences were ordered to run concurrently.
2. The prosecution story, briefly stated is that the deceased Yogesh and accused Narendra Verma had a dispute 4-5 days prior to the occurrence.

It is alleged that due to this dispute, the accused was harbouring enmity against the deceased and on the night intervening 6-7 September 1999, the accused murdered the deceased by stabbing him. The body of the deceased was recovered early in the morning on 7.9.1999 Israil Joseph (PW-2) intimated the police and on the basis of this intimation, FIR (Exhibit P/3) was recorded. Thereafter, the accused was arrested. His memorandum statement under Section 27 of the Indian Evidence Act were recorded and on the basis of this statement, the weapon of offence *i.e.* the Khukhri and the articles of the deceased which had been stolen from the house of deceased were recovered. Finger prints of the accused were also found on the cupboard of the deceased. Postmortem of the deceased was conducted and thereafter, the accused was charged for having committed the aforesaid offences. After trial, he has been convicted and sentenced as above. Hence this appeal.

3. We have heard learned counsel for the Appellant and have gone through the entire records.
4. It is not disputed that the deceased was murdered in the night intervening 6-7 September, 1999. His body was found just outside his house on the next morning. However, none has witnessed the occurrence and the case against the accused is based on circumstantial evidence. The main issue is whether the circumstantial evidence has been proved and linked in such a fashion that the entire circumstances lead to the unerring conclusion *i.e.* it was the accused alone who committed murder of the deceased. In case, there is any doubt or there is a chance of any other person having committed the offence, then the accused will have to be given the benefit of doubt. We shall deal with each of the circumstances separately.

5. Previous Enmity – The first circumstance relied upon by the police is that there was previous enmity between the deceased and the accused. The prosecution story is that deceased-Yogesh used to work in a Pool Club. On 02.9.1999 at about 12 noon, he returned from the Pool Club to his home for lunch. He parked his Luna near the door of his room. At that time, Geeta, sister of the accused alongwith few other girls were playing there. Geeta asked the deceased if she could ride his Luna. He refused to give her his Luna. He then went inside his house. In the meantime, the girls who were playing outside were repeatedly starting the Luna. Thereafter, Yogesh came out of his room and parked the Luna absolutely next to his door. After having lunch, when Yogesh wanted to come out, he found that the door had been bolted from outside. He then asked these girls to open the door. The girls refused saying that they had not bolted the door and therefore, they would not open it. Yogesh asked some other person to open the door. Thereafter, when Yogesh came out of the room, he slapped Geeta. Geeta went crying to call her brother i.e. accused Narendra Verma and complained to him that she had been beaten by Yogesh. Then the accused came and abused Yogesh. There was a physical fight between them. In this scuffle, Yogesh lost his gold chain which he was wearing. He however came to know about the chain being lost after the fight was over. Yogesh suspected that his chain had been taken away by the accused and therefore asked the accused to return the same. The accused refused saying that he did not have the chain. Thereafter, Yogesh went to the Police Station and lodged a report with regard to the quarrel and loss of gold chain in the scuffle. Entry in this regard was made in the *Rojnamchasanha* at serial No. 108 on 02.09.1999. Thereafter, on the next date i.e. 03.09.1999, Geeta, sister of the accused made a complaint which was entered in the *Rojnamchasanha* at serial No. 153 alleging that it was Yogesh who had

beaten her brother i.e. the accused. She also stated that Yogesh was not wearing any gold chain when the fight took place. The aforesaid facts are not disputed.

6. This Court is not going into the question whether the accused had snatched the gold chain of Yogesh or not but from the above facts, it stands proved that there was enmity between the two which had gone to the extent of lodging complaint and counter complaint against each other in the police station. Here, it would be pertinent to mention that Ramchandra Shukla, Head Constable, (PW-13) has stated that Yogesh had lodged a report on 02.09.1999 (Exhibit P-24A) at the police station at 5:45 pm. Next day, on 03.09.1999, Geeta, sister of the accused had lodged a report (Exhibit P-25A) with regard to the same occurrence. He had informed his employer i.e. owner of the Pool Club Anil Thaurani (PW-8) about this fight. Gulab Chand (PW-4) is the brother of Israil Joseph (PW-2). Israil Joseph is married to the sister of Yogesh. According to Gulab Chand, Yogesh had telephoned him and he was scared as to what would be the result. Therefore, the prosecution has proved the motive for the crime. Therefore, it stands proved that a fight had taken place between the two. It would also be apparent that Yogesh was afraid that something would happen to him.

7. Murder of the deceased: The deceased left the pool club where he was working, at about 11 pm on 6.9.1999. This has been stated by Anil Thaurani (PW-8) owner of the pool club. Next day in the morning, the body of the deceased was found which was sent for postmortem which was conducted by Dr. Sanjay (PW-15). He found the following injuries on the person of the deceased:

"Injuries 1. Abrasion present on left side of forehead situated 3.0 cm above the medial end of left supra orbital margin size 0.5 cm diameter irregular.

2. Abrasion present on right side of forehead situated 2.5 cm above the midpoint let supra orbital margin size 0.5 cm diameter irregular.
3. Stab incised wound present on right side of chest anteriorly situated 16.0 cm below the suprasternal notch and 6.5 cm right lateral to midline size 2.0x0.5 cm obliquely vertical, upper end broad, lower end acute going for a depth of 9.0 cm upto right lung anteriomedial aspect, direction, form anterior to posterior from lateral to medial, above downwards.
4. Stab incised wound present on right side of abdomen anteriorly situated 28.5 cm below the suprasternal notch and 8.0 cm right lateral to midline size 2x0.5 cm obliquely vertical upper end acute lower end broad going for a depth of 7.0 cm upto gallbladder duodenum pancreas direction from anterior to posterior from lateral to medial above downwards.
5. Stab incised wound present on right lateral aspect of abdomen in midline situated 7.5 cm above the level of iliac creast size 1.5x0.5 cm obliquely vertical, lower end acute, upper end broad going for a depth of 5.0 cm upto posterolateral aspect of right lobe, direction lateral to medial, posterior to anterior from below upwards.
6. Stab incised wound present on back left side situated 16.0 cm above the level of iliac creast and 6.0 cm medial to left posterior axillary line size 1.5 x 0.5 cm obliquely vertical lower end broad, upper end acute going for a depth of 8.0 cm upto upper pole of left kidney direction from posterior to anterior from above downwards.
7. Incised wound present on posteriomedial half of right elbow joint skin deep size 2.5 cm x 0.5 cm transverse.
8. Incised wound present on anterior aspect of left thigh situated 9.0 cm above the upper end of patella in midline size 3x1.0 cm transverse slicing present on lower margin, flapping on upper margin.
9. Stab incised wound present on anteriolateral aspect of right leg situated 6.0 cm below the tibia tuberosity and 5.0 cm lateral to midline size 2.5 x 0.3 cm obliquely vertical upper end acute lower end broad going for 3.0 cm depth in subcutaneous plane.
10. Stab incised wound present on lateral aspect of left shoulder at mid size 2x0.5 cm vertical upper end acute, lower end broad going for 4.0 cm depth in muscle.
11. Incised wound present on anterior aspect of left arm situated 4.5 cm below the level of anterior axillary line fold and 3.0 cm lateral to anterior axillary line size 1.5 x 0.5 cm slicing upward slicing downwards.
12. Stab incised wound present 3.5 cm below the anterior axillary fold in anterior axillary line on left arm size 1x0.3 cm vertical upper end broad lower end acute going for a depth of 1.5 cm in muscle.

13. Incised wound present on left arm situated 3.0 cm below the level of anterior axillary fold and 5.0 cm lateral to anterior axillary line size 0.8 x 0.1 cm tailing laterally.

14. Multiple friction abrasion present on left knee joint anteriorly in an area of 3.0 cm diameter. Echymosis present underneath all injuries.

8. There are as many as 7 stab wounds and three incised wounds alongwith some abrasions etc. Perusal of the postmortem report clearly indicates that the deceased was brutally stabbed to death. Therefore, there is no doubt that the death was homicidal in nature.
9. Evidence of discovery of body: Israil Joseph (PW-2) is brother-in-law of the deceased. He states that on 7.9.1999, some ladies came to his house and informed him that his brother-in-law had been murdered and his body was lying in the drain. Thereafter, he alongwith his younger brother Gulab Chand (PW-4) went to the spot just near the room where Yogesh was staying. The body was lying face down in the drain. The clothes of the deceased were covered with blood. Thereafter, he went to lodge the report (Exhibit P-3). The police came to the spot and prepared Panchnama with regard to the body. The prosecution has also produced one witness Kirtan Sahu (PW-7) who states that he was the neighbour of the deceased. He states that sometime at night, when he was half asleep, he heard somebody saying "*bachao-bachao*". He got scared because he felt something serious had happened. Next morning, he saw the body of Yogesh in the drain. This was in the direction from which he heard the sound the previous night. He then informed the landlady Pratima Jain that his dead body was lying. The statement of this witness is not very helpful except that he saw the body of the deceased for the first time in the morning. Kammu Ram Thakur (PW-6), has also given similar version and similar version has also been given by Abdul Jabbar (PW-3), Gulab Chand (PW-4), Rajesh Kumar (PW-5) elder brother of the deceased.

Therefore, it is apparent that about 6-7 am in the morning, these persons had come to know that the deceased had been murdered. This evidence however is not of any help to us in deciding as to who murdered the deceased.

10. Recovery of incriminating evidence: G.S.Bambra (PW-18) is the Investigating Officer. He states that on 7.9.1999, he was the incharge of Police Station, Civil Lines. At 6:30 am, Israil Joseph came to the police station and gave mereg intimation (Exhibit P-32) on the basis of which the FIR (Exhibit P-3) was recorded. The witness immediately went to the spot and prepared a map (Exhibit P-15). He also prepared a Panchnama with regard to the body of the deceased in presence of PW-1 and PW-2. He then sent the body for postmortem. This witness further states that on 7.9.1999, he had arrested and questioned the accused. The accused made a statement (Exhibit P-5) and on the basis of this statement, a Khukhri used by the accused to murder the deceased was recovered from the cupboard of the deceased. On the basis of this statement, the police recovered one walkman (Article-A), some cash (Article E-1 and E-2), one Siko wrist watch (Article-B), two gold rings (Article C-1 and C-2), some coins (Article-D) which the accused had kept in a polythene bag and hidden in the dry grass of the false ceiling of the house. The police also recovered a pair of pants, shirt and slipper from his house.

11. Abdul Jabbar (PW-3) is one of the witness to this recovery. In his examination in chief, he states that the accused was never questioned by him in his presence. However, in the very next line, he states that in his presence, the accused had told the police that he had kept all the articles i.e. the wrist watch, walkman, some cash, gold rings of Yogesh in his house. He also stated that that the accused had kept the knife in the cupboard of Yogesh. Then he again states that in his presence, the

accused did not give any statement to the police about recovery of walkman, gold ring etc. He states that he alongwith the police officials went to the house of the accused. The accused went inside and brought the walkman, one wrist watch, two gold rings, cash of Rs. 1400 in currency notes and some coins. Thereafter, this witness signed the memorandum (Exhibit P/5). He then states that the accused told the police that he had kept the knife under the clothes in the cupboard of Yogesh and on his directions, the police took out the knife from the cupboard of Yogesh and on his directions, the police took out the Khukhri from the cupboard of Yogesh. The Khukhri was seized vide memo (Exhibit P-7) which is signed by him. In cross-examination, he states that when he came out in the morning, the house of the deceased had already been sealed and the police was present. He states that he works as a Clerk in MPEB and that he went for his duty at 8 am and came back at about 5 pm. Great emphasis has been laid on his statement by learned counsel for the accused that since according to the police, recoveries were made much earlier. In the memorandum, the time given is 3 pm. It has been urged that since he returned at 5 pm, his version that the recoveries were made in his presence cannot be believed. In cross-examination, the witness also states that he signed the memorandums (Exhibit P-5 to P-8) at the asking of the police. He did not read them. With regard to the time given in the memorandum, he states that the police had written the documents and he had signed after 5 pm and he could not give any explanation as to why time given in the documents (Exhibit P-5 to P-8) is 3 pm, 4 pm, 4:45 pm and 4:15 pm respectively. With regard to the recovery of Khukhri, this witness states that the accused had told that he had hidden the Khukhri inside the house of Yogesh in a cupboard and after he made a statement, the police officials went to the house and came back with the Khukhri.

12. Other witnesses to the recovery is Kammu Ram Thakur (PW-6). He states that in the morning, the police had not questioned the accused in his presence. Later the same day, in the evening, the police brought the accused to the spot and at that time, the accused told the police that he had kept the Khukhri in the cupboard of the deceased under the clothes. He also told the police that one walkman, wrist watch, two gold rings, some currency notes, some coins which he had taken from the house of the deceased had been hidden by him in a polythene bag in the grass of the false ceiling of the house. The witness has proved the memorandum statement (Exhibit P-5) in this behalf which is signed by this witness. Thereafter, the police officials recovered one Khukhri from the house of Yogesh as per the memorandum (Exhibit P-5). Other articles i.e. walkman, two rings, currency notes etc. were produced by the accused from his own house to the police vide memorandum (Exhibit P-6) which is also signed by this witness.

13. The combined reading of the statement of the Investigating Officer and these two witnesses clearly indicate that the accused had made memorandum statement (Exhibit P-5) and on the basis of this, the Khukhri was recovered. It may be true that the Khukhri was not taken out by the accused but the police would have no reason to know that the Khukhri was kept under the clothes in a cupboard in the house of deceased. As far as other articles i.e. walkman, wrist watch, currency notes, gold rings are concerned, they have been produced by the accused himself from his house. There can be no identification of currency notes or the coins but the walkman, Siko wrist watch, gold rings have been identified to be those of the deceased by his brother Rajesh Kumar (PW-5). It is true that the brother states that in the morning when he searched the cupboard of the deceased, he found these articles missing but at that time, he did not find

any Khukhri. It has been argued by learned counsel for the Appellant that the Khukhri must have been planted later because this witness did not find the Khukhri when he searched the cupboard in the morning. We are not impressed with this argument because if the Khukhri had been kept hidden under the clothes, this witness, who is the brother of the deceased would have roughly searched for major missing items and not for each and every small items.

14. In view of the above discussion, we are clearly of the view that the police has been able to prove the recovery of Khukhri as well as recovery of items i.e. Siko wrist watch, walkman, currency notes, coins, and gold rings. It has also been proved that the walkman, Siko wrist watch and the gold rings belonged to the deceased.

15. Finger print of the accused: Another important evidence is Sanat Kumar Jain (PW-10). He states that on 7.9.1999, on the asking of the police, he went to the spot. He lifted the finger prints from the steel cupboard. He found one finger print near the keyhole. On comparison, this finger print matched with the finger prints of the accused. On a question whether he found any other matching finger prints in the cupboard, the witness states that other than the finger prints which he lifted, he could not find any other appropriate finger print in the cupboard. He admits that in a cupboard lying in a room, where many people reside, finger print of different persons can be found. By the time, this witness reached the spot, this cupboard had been opened by many persons. It had been opened by Rajesh Kumar (PW-5) brother of the deceased. This witness reached the spot at 7-8 am. It may be true that by that time, Rajesh Kumar (PW-5) had opened the cupboard but merely because no other appropriate finger print was found is not a ground to hold that this witness has planted the finger print. Admittedly, the accused and the deceased did not have good

relationship. Therefore, the accused could not have been on a visiting terms with the deceased. As such, the fact that his finger print was found on the cupboard goes against him.

16. Recovery of cover of Khukhri etc.: S.S.Shukla (PW-14), states that they recovered the cover of Khukhri alongwith a small brass lock. To ascertain whether this cover and lock are of the same Khukhri used to kill the deceased, these two items being Exhibit P-26 and P-28, respectively were sent to Dr. Sanjay Dadu alongwith a query whether this Khukhri was used to inflict stab wounds. Dr. Sanjay Dadu (PW-15) in his statement has stated that on receipt of these items on 10.09.1999, he had compared them. He compared the items on 14.09.1999 and found that the cover and lock was of the same Khukhri. He also found that the injuries caused on the person of the deceased could have been caused by this Khukhri. He issued report (Exhibit P-29). Dr. Dadu has also stated that this in his statement in the Court. This itself establishes that this Khukhri was used to inflict stab wounds on the deceased.

17. We are not going into the other evidence but the evidence led by the prosecution proves the following circumstances : (i) motive – due to the earlier incident which had taken place on 02.09.1999; (ii) recovery of Khukhri at the instance of the accused, recovery of the articles belonging to the deceased i.e. walkman, Siko wrist watch, gold rings etc.; (iii) the Khukhri was blood stained though it is not stated that it was human blood; (iv) the opinion of the Doctor that the stab wounds would have been caused by this Khukhri; (v) finger prints of the accused being lifted from the steel cupboard.

18. In our view, the aforesaid circumstances are more than sufficient to prove the guilt of the accused and the prosecution has proved the case beyond reasonable doubt. The learned Trial Court was fully justified in convicting

the Accused/Appellant and we find no error in the judgment of the trial Court.

19. In view of above discussion, the appeal is dismissed. The Appellant is on bail. He is directed to surrender or be taken into custody forthwith to serve out the remaining part of the sentence.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE