

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 53 of 2012**

(Arising out of Judgment dated 12.12.2011 passed in Sessions Trial No. 17 of 2011 by the learned 1st Additional Sessions Judge, Balodabazar, District Raipur)

Prakash Verma S/o Late Kumar Verma, aged 19 years, Labour Worker, Resident of Palari, Police Station Palari, District Raipur, Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh, Through the Police Station House Officer, Palari, District Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Janak Ram Verma, Advocate.
For Respondent	:	Shri R.K.Gupta, Deputy Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****20/11/2017**

1. We have heard the learned counsel for the Appellant and the learned Deputy Advocate General in this appeal against the conviction and sentence imposed on the accused for an offence punishable under Section 302 of the Indian Penal Code; for short 'the IPC'.
2. The allegations against the accused-Prakash, who at the relevant date was around 19 years of age, is that he killed his father Kumar Verma, at about 10 pm on 18.03.2010. The FIR statement was rendered by Mohan Verma (PW-15), the son of Kumar Verma through his first wife. Accused-Prakash is the son of Kumar Verma through his second wife, Firan Bai (PW-8). Human Bai (PW-5) is the

daughter of Firan Bai and Kumar Verma. The prosecution built up the case against the accused on the basis of the testimony of the first informant, Mohan Verma (PW-15) who testified that he had seen Kumar Verma being beaten up by the accused-Prakash in the night of 18.03.2010, and on the subsequent day while returning from the Talab, he saw that Kumar Verma was dead. This is relied on by the trial Court as the potentially incriminating evidence against the accused.

3. The learned counsel for the Appellant argued that the finding of the Court below and the consequential conviction and sentence are unsustainable in the light of the oral and documentary evidence on record and legitimate inferences which are available on the facts and in the circumstances of the case. He argued that the accused is entitled to benefit of doubt, in any event, on the basis of the material evidence, facts and circumstances. It is also argued that the material evidence tilts in favour of the acquittal of the accused at least for the reason that on preponderance of probabilities, the accused has been able to establish that the defence version set up by him outweighs the allegations of the prosecution. The learned counsel for the Appellant argued that the evidence on record tends to indicate, among other things, that the situation could be one of suicide by the victim, following the mobs chasing him. This argument is buttressed by the evidence to the effect that the victim was under the influence of alcohol at the relevant time, which fact is established through the postmortem report and the Doctor who conducted the postmortem. It is also the version of the other material witnesses that the victim-Kumar Verma was a habitual consumer of alcohol. Learned counsel for the Appellant argued that there is no reason to disbelieve the version of Human Bai (PW-5), daughter of the deceased, though she was declared hostile since her version gains support from the testimony of Madho Das (PW-3), a local Kotwar and Kejuram Verma (PW-4), who are independent witnesses. Reference was made by the Appellant's counsel to the decisions of the Apex Court including in **Narendra Singh v. State of Madhya Pradesh**;

(2004) 10 SCC 699. He argued for the position that when two views are possible in such a case and when there is no continuous chain of events which have been established to point at the guilt of the accused, there could not be any conviction.

4. The learned Deputy Advocate General, supporting the impugned judgment of conviction and the sentence imposed on the accused argued that the findings rendered by the Court of Session are available on the basis of materials, including the clinching evidence of the prosecution witnesses coupled with the scientific evidence in the form of postmortem report.
5. The alleged weapon of offence is a belt which was recovered as per Exhibit P-4 memorandum. That belt did not contain any blood stain. It is recovered as a common article. The version given by Mohan Verma (PW-15) in the FIR statement which is part of the First Information Report (Exhibit P-13) is that the accused caused death of the victim by throttling using a rope which was kept inside the house. This was not corroborated by him in his testimony. The testimony of Human Bai (PW-5), the daughter of Kumar Verma through Firan Bai (PW-8) second wife assumes critical importance. Material evidence on record prove that the house in which Human Bai stayed after being widowed was put to fire on the night of the incident. Human Bai (PW-5), after being declared hostile by the prosecution and on being cross-examined by the prosecution, stood to say that she and her children were in their house while it was set on fire. The fact that the said house was set on fire and her statement that fire extinguishment was supported by fire engines do not find any contradiction. She spoke on oath that she saw her father Kumar Verma (the deceased) running away from her house after it was set ablaze. Her statement regarding what happened thereafter appears to be corroborated by statement of Madho Das (PW-3) who is a local Kotwar. He and Keju Ram (PW-4) establishes the fact that hearing the cries of Human Bai (PW-5), the local people rushed to her house which was set ablaze, and essentially followed and had beaten up Kumar Verma (the deceased). This

chain of transactions which is established through the evidence of Madho Das (PW-3), Kejuram Verma (PW-4) and Human Bai (PW-5) goes a long way in tilting the preponderance of probability in favour of the accused, establishing such version which is fairly acceptable in defence. We say this more particularly because there is nothing brought out by the prosecution in the cross-examination of PW-3, which would tend to indicate that she had nurtured any hostile animus either against her father Kumar Verma or against her half-brother Mohan Verma, who rendered the FIR and gave evidence as PW-15. There is also no reason that could be attributed to her to go to the extent of speaking in favour of her brother Prakash who allegedly had killed their father, Kumar Verma.

6. The appreciation of evidence in the case, as noted above, unequivocally tends to indicate that the ocular evidence of Human Bai (PW-5) relating to what happened to her home, coupled with the testimony of PW-3 and PW-4 taken together, outweighs the circumstances which would otherwise be available on the basis of the version given by Mohan Verma (PW-15). In this context, it is also worthwhile to notice that Dr. F.R.Nirala (PW-14), whose opinion is that the death was due to suffocation, corroborates the postmortem report (Exhibit P-21) which shows 16 injuries including fractures, contusion and different other injuries on the different parts of the body of the deceased, Kumar Verma. Those injuries cannot be treated as those which could, in the common course of human conduct, be attributed to a singular transaction as between the deceased and accused and that too, with a belt as a weapon, as attempted to be projected by the prosecution. Not only that, even if one were to assume that the accused killed the victim by throttling him with the belt which is a common article, there are 16 injuries noted in the postmortem report including fractures, which have not been explained by the prosecution to exclude all other probabilities and thereby confirm that the finger of accusation points exclusively at the accused-Appellant.
7. Hence, on the basis of the legal evidence on record, the Appellant-accused was

entitled to the benefit of doubt and consequentially was eligible to be acquitted by the Court of Session.

8. In the result, the impugned judgment of conviction and order of sentence passed on 12.12.2011 in Sessions Trial No. 17 of 2011 by learned 1st Additional Sessions Judge, Balodabazar, District Raipur, is set aside and the accused-Appellant is acquitted of the charges. He be set at liberty forthwith unless wanted in any other case, subject to the conditions stipulated under Section 437-A CrPC.

9. The appeal is allowed.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-
(Sharad Kumar Gupta)
JUDGE