

**Dilbagh Singh Vs. State**

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**Court :** Delhi

**Decided On :** May-13-2014

**Judge :** Sanjiv Khanna

**Appellant :** Dilbagh Singh

**Respondent :** State

**Judgement :**

\* + IN THE HIGH COURT OF DELHI AT NEW DELHI Crl. Appeal No.83/2014  
Reserved on:

29. h April, 2014 Date of Decision:

13. h May, 2014 % DILBAGH SINGH Through ....Appellant Mr. V. Madhukar, Mr. Sachin Dev Sharma and Ms. Anita Cowshish, Advocates. Versus STATE Respondent Through Ms. Rajdipa Behura, APP. CORAM: HONBLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G. P. MITTAL SANJIV KHANNA, J.

The appellant stands convicted for murder of Karamjeet under Section 302 of the Indian Penal Code, 1860 (IPC, for short) by the impugned judgment dated 8th June, 2012 in Sessions Case No.9/11 arising out of FIR No.339/2010, P.S. K.N.K. Marg. By order on sentence dated 27th July, 2012, the appellant has been sentenced to rigorous imprisonment for life, pay fine of Rs.10,000/-, and in default/failure to pay fine undergo rigorous imprisonment for six months. Benefit of Section 428 Cr.P.C. has been granted.

2. The impugned judgment/prosecution case primarily relies upon extra judicial confession made by the appellant before father, mother and brother of the deceased Karamjeet, namely Charanjeet Singh (PW3), Surjeet Kaur (PW4) and Paramjeet (PW5). It is claimed that Karpal Singh (PW8) and Surjeet Kaur @ Rita (PW10) were present at that time and had heard the appellant making the confession. Prosecution relies upon the principle of last seen and on the said aspect reference is made to the testimony of Kulwant Singh (PW6).

3. Surjeet Kaur @ Rita (PW10) did not substantially support the prosecution case on the extra judicial confession. PW10 accepted that she was/is related to the appellant and had met appellant at about 9.00 PM on 21st October, 2010 outside the house of the deceased after Karamjeets body was recovered from Haiderpur Nahar. The appellant had requested PW10 to call mother of the deceased Karamjeet and told her that he would pay Rs.2,000/- to them (the parents) as he had quarrelled with Karamjeet. The appellant was in perplexed state. PW10 was cross-examined by the Public Prosecutor but denied suggestions on the extra judicial confession. What is apparent from the statement of PW10, is that the appellant had told Surjeet Kaur (PW4) mother of the deceased that he would pay Rs.2,000/- to them as he had quarrelled with the deceased. He neither accepted nor stated that he had murdered or injured the deceased. It is further stated by PW10 that the appellant was in perplexed state or condition at that time i.e. at about 9.00 PM on 21st October, 2010. On the same day at about 5 P.M. body of Karamjeet had been recovered from Haiderpur Nahar. The appellant knew the deceased and was a neighbour, therefore, the assertion that the appellant was perplexed and had offered Rs.2000/- does not appear to be incriminating circumstance individually and by itself.

4. Charanjeet Singh (PW3), father of the deceased claimed and testified that Karamjeet used to assist him in welding at his shop situated at Sector 16, Rohini. On 20th October, 2010, appellant who was residing in his neighbourhood had come to his house and had stated that he had murdered his son Karamjeet after giving him danda blows and then thrown his dead body in a drain. PW3 later learnt about recovery of dead body of his son from the police. PW3 was cross-examined by the Additional Public Prosecutor wherein he accepted as correct that the

appellant had come to their house in search of his son Karamjeet i.e. the deceased. He had a danda in his hand and thereafter when the dead body of his son was found, the appellant tendered apology for murdering Karamjeet. The appellant gave them an option to either get him punished or accept Rs.2000/for his sons (Karamjeet) cremation. PW3 declined and did not accept money. Trial Court has made a specific observation that PW3 appeared to be a person of low intelligence. PW3 was not crossexamined.

5. Surjeet Kaur (PW4) mother of the deceased, on the other hand claimed that in the morning on 18th October, 2010, the appellant who was residing in their neighbourhood had come to their house with a danda and enquired of Karamjeet to which PW4 had replied that Karamjeet was downstairs. On that day i.e. 18th October, 2010, Karamjeet did not return. The very next day i.e. on 19th October, 2010, PW4 went to the house of the appellant and enquired about her son but the appellant expressed ignorance. When PW4 warned that she would go to the police station to lodge a report, the appellant had advised her to lodge a missing persons report. After two days, Karamjeets dead body was recovered from Haiderpur Nahar. PW4 claimed that thereafter the appellant had come to their house with a PCR van and told them that he had come with them for his safety. PW4 asserted that the appellant told her that he was the culprit and he could be either punished or a panchayat could be held and even offered to pay Rs.2000/- for the cremation of their son, which they refused to accept. PW4 was cross-examined but has reiterated that on 18th October, 2010 in the morning the appellant had come to their house with a danda and had enquired about the deceased. Thereafter deceased Karamjeet did not return. In the cross-examination, she was confronted with certain portions of her statement under Section 161 Cr.P.C. ( Ex. PW4/DA). She accepted as correct that it was not mentioned in Ex. PW4/DA that the appellant had come to their residence along with PCR Van and stated that they had come for his safety. In the deposition recorded on 14th November, 2011, PW4 has stated that the appellant had called No.100 for his safety, when he had come to their residence. She accepted as correct that she had no knowledge of any type of dealing/deal between her deceased son Karamjeet and the accused. She denied that the deceased was a drug or liquor addict. She has admitted that prior to 20th October, 2010, no complaint was filed that her son was missing. Her

statement was recorded by the police on 1st November, 2010 and before the said date no policeman had come to her residence for making enquiry. As per the police version, statements of Charanjeet Singh (PW3), Paramjeet (PW5) and Karpal Singh (PW8) under Section 161 Cr.P.C. were recorded on 31st October, 2010.

6. Paramjeet (PW5) deposed that on 18th October, 2010 in the morning, the appellant who was residing in the neighbourhood, had come to their house and enquired about the deceased. Thereafter PW5 left for his job. After two days, dead body of his brother Karamjeet was found in Haiderpur Nahar and he had reached there with his parents and identified body of his brother Karamjeet. On the same night at about 12/1 AM, the appellant had come to their house with a PCR and confessed before his mother in his presence that he had given a danda blow on the head of the deceased, as a result the deceased Karamjeet fell in Haiderpur Nahar. The appellant accepted that he was responsible for the death of Karamjeet. The appellant had stated that he could Crl.Appeals 83/2014 could be called and even offered Rs.2000/- for Karamjeets cremation. They refused to accept money. In the cross-examination, PW5 reiterated that the appellant had come to their house on 18th October, 2010 with a danda and enquired about Karamjeet. He was confronted with his statement made under Section 161 Cr.P.C. (Ex. PW5/DA) on the said aspect as this fact was not recorded therein, but PW5 did not change his stance. His statement that the appellant had come at 12/1 AM with the PCR etc. was also not specifically recorded in his statement under Section 161 Cr.P.C. However, it was recorded that the appellant had met him and his parents and stated dear sister please forgive me for the wrong. They may call panchayat or get him arrested. He reiterated that the appellant had visited their house in the midnight on 20th October, 2010 (the date 20th October, 2010 appears to be an incorrect recollection, of which no benefit can be given to the appellant as the dead body was recovered on 21st October, 2010). PW5 stated that his statements were recorded by the police on 21st October, 22nd October and 31st October, 2010.

7. This brings us to the statement of Karpal Singh (PW8) who claimed that he had come to the house of the deceased after being informed about his murder/death.

The appellant was standing near the staircase of the house. PW8 had seen the appellant who looked perplexed and confused and he was stating that he had given a danda blow on the head of the deceased who had fallen down. The appellant accepted his mistake and offered to call the biradari or to hold a meeting in Gurudwara where any punishment could be given to him. PW8, however, refused stating that he was no one to give punishment. Appellant then offered to pay Rs.2000/- for the last rites of the deceased, which was again refused. Appellant had conjectured and suggested that they could implicate one Dalbir Singh with whom there was litigation/dispute and that he would support them. In the cross-examination, PW8 deposed that he reached the house of the deceased Karamjeet at 6 6.15 PM and parents of the deceased, their children and neighbours were present. He noticed that the appellant was also present and had confessed that he had given a danda blow as a result of which the deceased fell down. Crl.Appeals 83/2014 Section 161 Cr.P.C. (Ex. PW8/A) like the appellant had not stated that he had made a mistake, meeting of the panchayat could be held in a Gurudwara etc. were confronted. Similarly in Ex. PW8/A, it was not stated that the appellant wanted that Dalbir Singh to be implicated. PW8 claimed that his statements by the police were recorded twice, on 22nd October and 31st October, 2010.

8. Thus, in the present case, we find that Charanjeet Singh (PW3), Surjeet Kaur (PW4), Paramjeet (PW5) father, mother and brother of the deceased and their relative Karpal Singh (PW8), are all claiming that the appellant had made an extra judicial confession, that he had killed the deceased Karamjeet. In addition, we have testimony of Surjeet Kaur @ Rita (PW10) which is as noticed above, different and is not referring to confession as such. In the present case, we feel that the purported extra judicial confession made by the appellant is unreliable, unbelievable and not trustworthy, for it to be taken into consideration as a substantive evidence. Our reasons are set out below.

9. Surjeet Kaur (PW4) and Paramjeet (PW5) have testified that the appellant had come to their house on 18th October, 2010 with a danda and had enquired about deceased Karamjeet. As per the prosecution version, dead body of the deceased Karamjeet was found in Haiderpur nahar on 21st October, 2010 at about 4.43 PM.

On taking out the dead body, on the basis of the visiting card and call made, it was ascertained that it was Karamjeet. Parents of the deceased came and identified the body. Surjeet Kaur (PW4) and Paramjeet (PW5) claimed that the appellant on the same day after dead body was recovered, came to their house at night with a PCR van for his safety and confessed and admitted his guilt. The said version cannot be construed to be natural and normal. A murderer or a killer would not come with police in the PCR van and confess to the mother Surjeet Kaur (PW4) and brother Paramjeet (PW5). PW4 even testified that the appellant had called No.100 for his safety when he made the extra judicial confession. If this was true and correct, the police officers present would have acted immediately and arrested the appellant and/or informed the police station. The said version is unbelievable and lacks credibility. We are not persuaded to accept as alleged, the appellants pietistic to confess but with police protection for personal safety. It sound illogical and rather farcical to accept that the appellant had offered Rs.2000/to the parents/brother of the deceased to keep quiet and not implicate the appellant, but confessed that he had committed the murder. The version given by Charanjeet (PW3) and Karpal Singh (PW8) on the face of it, ex-facie, is improbable and doubtful. PW5 has stated that the appellant had come to their house at 12/1 AM (midnight). The aforesaid fact was reiterated in the cross- examination by Paramjeet (PW5). However, Karpal Singh (PW8) claimed that he had reached the house of the deceased at 6/6.15 PM and at that time the appellant was present there. Surjeet Kaur (PW10) had given the time as 9 PM. The aforesaid time difference possibly, can be explained as a discrepancy due to imperfect recollection, but creates doubt when read with the deposition on presence of PCR and the call made by the appellant at No.100, as deposed by PW4 and PW5. If the testimony of Surjeet Kaur (PW4) and Paramjeet (PW5) is to be believed then the appellant had made all preparations for his security and safety and with police protection had come to confess and redeem his guilty conscience. This is contradictory and cannot be reconciled. CrI.Appeals 83/2014 implausible behavior. There is no explanation why police did not take immediately action and arrest the appellant. As per the prosecutions version the appellant was arrested nearly a month thereafter on 17th November, 2010 [see testimony of Insp. Ram Kishan (PW15)].

10. Insp. Ram Kishan (PW15) stated that the appellant was called to the police station on 17th November, 2010 and interrogated and thereafter, arrested. Disclosure statement is inadmissible and inconsequential since there was no recovery. PW15 accepted that money might have been a motive, but he had not investigated the said aspect. He had called the appellant and his family members before 17th November, 2010 once. He could not state whether the appellant had remained in police station from the date of the recovery of the dead body yet he went on to add that he had not called the appellant.

11. SI Deepak Sangwan (PW17), the first Investigating Officer had stated in his cross-examination that he had never met the appellant during the investigation of the case and in fact stated that he had not conducted any investigation on the basis of statement made by the parents of the deceased that they suspected the appellant.

12. There is another factor which creates grave doubt on the extra judicial confession. Charanjeet (PW3) had affirmed that the appellant had confessed giving a danda blow on the head and then the deceased was thrown in a drain. Surjeet Kaur (PW4) simply stated that the appellant confessed that he was a culprit and he should be punished or panchayat could be called and that he offered Rs.2000/-. However, Karpal Singh (PW8) stated that the confession was made before both the parents at the same time in his presence and the appellant had given danda blow on the head as a result of which the deceased fell down. He did not depose as to the presence of Paramjeet (PW5). Paramjeet (PW5) stated that the appellant had confessed having given a danda blow on the head of his brother Karamjeet who fell in the Haiderpur Nahar. Thus PW3, PW5 and PW8 have deposed that the appellant had confessed giving danda blow. However, Surjeet Kaur (PW4) has not been very specific but has stated that on 18th October, 2010 the appellant had come to their residence with a danda. CrI.Appeals 83/2014 not corroborated and is contrary to the post mortem report as to the cause of death. The deceased did not die due to head injury but due to asphyxia consequent upon anti mortem throttling and smothering by hands. The post mortem was conducted by Dr. Bhim Singh (PW9) who has deposed that he had conducted post mortem on 22nd October, 2010 and had found the following

injuries on the body of the deceased:

1. Multiple contused abrasions both sides of neck three number in left side measuring 2 cm X15 cm each and contused abrasions 2.3 cm X15 cm.
2. Contusion of both lips with teeth mark on inner side present.
3. Contusion 1.8 cm X1cm. over the tip of nose.
4. Contusion 3 cm X2cm over left side of forehead. On internal examination of the head, he noticed an extra vasation of blood in scalp layer below injury No.4 but the skull bones were intact. The brain was found to be congested. The hyoid bone was fractured on the right side with extra vasation of blood in subcutaneous tissues and muscles on both sides of the neck. The cause of death was due to asphyxia consequent upon ante mortem throttling and smothering by hands. The said report is clear and categorical and statement of PW9 to this effect was not challenged.

13. Post mortem report on the cause of death is totally contrary to the so-called confession as to how the death was caused. PW9 opined and it stands recorded in the post mortem report (Ex. PW9/A) that the death had occurred 40 hours prior to the examination. Ex. PW9/A records that the post mortem was conducted on 22nd October, 2010 at 11.15 AM. This could mean that the time of death was 7.00 PM on 20th October, 2010. At the risk of repetition it may be appropriate to notice that Surjeet Kaur (PW5) and Paramjeet (PW5) have stated that the appellant had come to their house on 18th October, 2010 enquiring about Karamjeet the deceased. PW5 has stated that he left for work, it means that the appellant come to their house in the morning of 18th October, 2010 with a danda. Thus there is substantial time difference/gap between morning of 18th October, 2010 and evening of 20th October, 2010 when as per the post mortem report (Ex. PW9/A), Karamjeet was throttled and he died. Ex. PW9/A does not state that deceased Karamjeet died due to drowning. He had died before his body was thrown in Haiderpur Nahar.

14. What is equally disturbing is the time gap between the date and time when the post mortem was conducted i.e. 22nd October, 2010 at 11.15 AM and the date on which the FIR (Ex. PW7/B) was recorded i.e. 30th October, 2010 at 22:40 Hrs. The FIR was not recorded immediately after dead body of Karamjeet was recovered or even after purported statements referring to extra judicial confessions to PW3, PW5 and PW8, were allegedly made on 22nd October, 2010. The FIR is based upon the DD entry No.28/A dated 21st October, 2010 regarding recovery of dead body which was later identified as that of Karamjeet. FIR does not refer to extra judicial confession of the appellant.

15. It is claimed and stated that the post mortem report was collected on 30th October, 2010 and therefore, the FIR was registered on the said date and time. This cannot be a justification and good explanation for the apparent delay, though the delay by itself, as the appellant has not been named would not be fatal. However, it creates doubt on the manner and mode in which the investigation was conducted. This in the present case has affected credibility of the evidence i.e. extra judicial confession relied upon by the prosecution.

16. Interestingly, as per the prosecution case, Charanjeet (PW3), Paramjeet (PW5) and Karpal Singh (PW8) had made statements on 22nd October, 2010 stating and mentioning about extra judicial confession made by the appellant and these statements along with the brief facts were sent with the inquest papers to Dr. Bhim Singh (PW9). The brief facts do not mention the name of the appellant. The post mortem report (Ex. PW9/A) under the heading/column Brief History as per the inquest paper records alleged history of having found the dead body from Haiderpur Water Treatment plant approximately at 5 PM; last seen alive on 19th October, 2010 at about 5 PM.

Thus, as per the inquest report and the post mortem report, the deceased was last seen alive on 19th October, 2010 at about 5 PM. The Additional Public Prosecutor was asked to point out any paper or document enclosed with the inquest report which states that the deceased was last seen on 19th October, 2010 at 5.00 PM. The Additional Public Prosecutor could not point out any paper or document in which the said factual position was mentioned. The contention of the appellant is

that the inquest papers which purportedly included statements of PW3, PW5 and PW8 recorded by the police on 22nd October, 2010 are not reliable and possibly tampered with. Prima facie, there appears to be merit in the said contention, in view of the facts noticed and when we read the testimony of SI Deepak Sangwan (PW17) who had stated that he had recorded statements of father Charanjeet (PW3), brother Paramjeet (PW5) and one relative - Karpal Singh (PW8), of the deceased, on the next day, but he did not interrogate or verify facts from the appellant. Further, as per the death report (Ex. PW17/A), inquest papers were received in the hospital on 22nd October, 2010 at 11.15 AM, though the dead body was received a day earlier i.e. on 21st October, 2010 at 7.30 PM.

17. This brings us to the evidence of last seen as deposed to by Kulwant Singh (PW6). His statement under Section 161 Cr. P.C. was recorded on 1st November, 2010. In his cross-examination, he has accepted that the police had enquired from him only on 1st October, 2010 (sic. it should be 1st November, 2010). He further accepted that he did not earlier disclose to anyone that on 19th October, 2010 at about 5/6 PM he had seen the appellant and the deceased abusing each other on some money transaction. In his cross-examination, PW6 testified that he was maternal uncle of the appellant and the deceased was his nephew. We are not inclined to accept the deposition of Kulwant Singh (PW6) because of the long time gap and it appears that he was a tutored witness. The deceased was his nephew, thus he would have been certainly aware that his dead body was found on 21st October, 2010 and the fact that he was missing from 18th/19th October, 2010. If he had seen the appellant and the deceased on 19th October, 2010 at 5/6 PM, normally and naturally he should have informed the parents and brother of the deceased and the police. PW3, PW4 and PW5, i.e., the parents and the brother of the deceased, have not spoken a word about Kulwant Singh (PW6) or the factum that he had seen the deceased and the appellant together. The date and time mentioned by Kulwant Singh (PW6) tallies with the time mentioned in the post mortem report (Ex. PW9/A) which refers to inquest papers but the inquest papers did not include statement of Kulwant Singh (PW6). PW6 has stated that he met the police only on 1st November, 2010 (incorrectly recorded in the cross-examination as 1st October, 2010, which is not possible). Thus, we are of the opinion that testimony of Kulwant Singh (PW6) should not be accepted and this witness was

propped up to fill the gaps in the prosecution case.

18. It was argued by the counsel for the appellant that there is time gap between 5 6 PM on 19th October, 2010 and the time of death mentioned in post mortem report (Ex. PW9/A) i.e. 7.00 PM on 20th October, 2010. The time of death mentioned in post mortem report is approximate but as noticed above, we have doubt about the statement of Kulwant Singh (PW6). The time gap between the time of death as recorded in the post mortem report and last seen, is a relevant factor but as the time mentioned in the post mortem report is an estimate, the appellant is entitled to a limited advantage and benefit for the said reason. However, as per the statements of mother and brother of the deceased Surjeet Kaur (PW4) and Paramjeet (PW5), Karamjeet was last seen on 18th October, 2010. It is not indicated and explained by Charanjeet (PW3), Surjeet Kaur (PW4) and Paramjeet (PW5), father, mother and brother of the deceased, why they did not make any police report when the deceased did not return for 2-3 days. In nutshell, we find and observe that the evidence produced by the prosecution is not credible, reliable and trustworthy. There are gaps in the chain to hold that the appellant was the perpetrator.

19. In view of the aforesaid discussion, we are inclined to grant benefit of doubt to the appellant. The appeal is accordingly allowed. The conviction of the appellant under Section 302 IPC for murder of the deceased Karamjeet is set aside. The appellant will be released forthwith unless required to be detained in accordance with law in any other case. The appeal is disposed of. (SANJIV KHANNA) JUDGE (G. P. MITTAL) JUDGE May 13, 2014 Kkb/VKR

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