

**inder Kant Jha Vs. State**

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**Court :** Delhi

**Decided On :** Aug-16-1991

**Reported in :** 1992CriLJ916; 45(1991)DLT328

**Judge :** Malik Sharief-ud-Din and; V.B. Bansal, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 236 of 1987

**Appellant :** inder Kant Jha

**Respondent :** State

**Advocate for Pet/Ap. :** Neelam Grover and; R.K.Bahri, Advs

**Judgement :**

**Malik Sharief-ud-Din, J.**

(1) This appeal is directed against the order of the learned Additional Sessions Judge, Delhi dated October 12, 1987 convicting the appellant and one Kishori under Section 302/34 Indian Penal Code and sentencing them to imprisonment for life. They were further required to pay each Rs. 100.00 as fine in default of which two months' further imprisonment was imposed. Both the persons had been charged for having committed murder of one Vinod Kumar son of Ganesh Jha, Public Witness 12.

(2) First we have a look at facts. Inder Kant Jha is a resident of village Khatuaha, district Samastipur, Bihar, while the other appellant Kishori Lal belongs to district Madhubani, Bihar. The deceased Vinod Kumar was doing a joint business with appellant Inder Kant Jha. They used to purchase chappals and shoes in Delhi and sell the same in their native village. For this purpose the deceased had taken a sum of Rs. 2,000.00 from his father, Ganesh Jha, Public Witness 12. In Delhi the deceased and both the convicts together with one Sattu Mehto, who is a proclaimed offender, had taken a portion of the first floor of a house of one Puran Singh at a monthly rental of Rs. 300.00 at 24, Rampura, Gadarion Wali Gali, Delhi. On July 24, 1986 between 9.00 to 9.30 p.m. the deceased along with the accused is alleged to have left the tenanted premises while he was under the influence of liquor. Khubi Ram son of the landlord is alleged to have seen them together going towards railway lines. At about mid night the two appellants along with Sattu Mehto are alleged to have returned back and knocked at the door. Khubi Ram opened the door and enquired from them as to when the fourth-man (deceased) would be returning. This enquiry was directed with a purpose so that Khubi Ram had not to open the door all over again. It is alleged that this query was not answered by the accused who looked nervous. It is further alleged that the deceased did not return and appellants vacated the tenanted premises after about 10/15 days.

(3) On receiving information that a dead body is floating in a ganda nala near Vikram Flour Mills one Sahib Singh Verma who was then a Municipal Councillor informed the police about it. Pursuant to this information Si Didar Singh came to the scene and recovered the dead body.

(4) The prosecution case further is that thereafter Inder Kant Jha appellant came to live with one Ram Ashish who also hails from district Samastipur, Bihar. It is also alleged that within a few days thereafter the accused Inder Kant Jha disclosed before Ram Ashish that he had a dispute with the deceased on some money transaction and that he had murdered the deceased and Kishori and Sattu Mehto were also with him. He is further alleged to have disclosed to him that his dead body was, thrown in a ganda nala. Ram Ashish thereafter is said to have met Vinod son of Dewan Jha who also hails from district Samastipur and is alleged to

have told him to inform the father of the deceased that Inder Kant Jha, appellant, has murdered his son.

(5) On receipt of this information Ganesh Jha, father of the deceased, came to Delhi and met Ram Ashish. He went to the police station Lawrence Road where he identified the dead body from the photographs. Rest of the prosecution story is in respect of disclosures alleged to have been made by the appellant Inder Kant Jha and we do not propose to go into these as they have no evidentiary value.

(6) There is no need for us to go into the details of the post mortem in respect of the injuries sustained by the deceased and the cause of his death. This is so because there is no controversy regarding the injuries sustained by the deceased and the cause of his death.

(7) On consideration of the arguments advanced and on a thorough perusal of the material we may at once state that the entire prosecution case rests essentially on two pieces of evidence. One is in respect of the last seen and the second is extra judicial confession allegedly made by Inder Kant Jha appellant before Ram Ashish, Public Witness 11. We may note that there is no extra judicial confession by appellant Kishori Lal and the only evidence against him is last seen and the accomplice's evidence in the form of extra judicial confession by appellant Inder Kant Jha made to Ram Ashish, Public Witness 11.

(8) In our view the evidence of last seen by itself does not lead to the irresistible inference that the accused are responsible for the commission of the crime. In any case its value will depend upon the facts and circumstances of each case. In the present case the support to the last seen evidence is sought to be derived from the testimony of Khubi Ram, Public Witness 5 son of the landlord of the accused.

(9) While discussing the facts of the case we have made a reference to the nature of the testimony tendered by Public Witness 5. According to him the police has met him two months after the accused had vacated their house. There is no doubt that the accused have admitted that they had rented a portion of the house of Khubi Ram, Public Witness 5. There is also no evidence that Khubi Ram, Public Witness 5 is in any way inimical towards the appellants. However, what makes his

testimony suspect is that his statement was recorded almost two months after the incident. We may note that even according to the learned trial Judge there had been no break through in the case till the time the father of the deceased Ganesh Jha came to Delhi and identified the photographs of his deceased son. From the evidence of Ganesh Jha, Public Witness 12, it is clear that he came to Delhi only on September 29, 1986 and it was only at that stage that Khubi Ram, Public Witness 5, was brought into the picture. This fact by itself in our view renders his testimony a suspect.

(10) The next piece of evidence led by the prosecution is in respect of extra judicial confession alleged to have been made by appellant Inder Kant Jha before Ram Ashish, Public Witness 11. According to Ram Ashish within a few days from the date appellant Inder Kant Jha came to live with him .an extra judicial confession was made before him to the effect that appellant Inder Kant Jha has killed the deceased with the help of Kishori and Sattu Mehto and had thrown the dead body in a ganda nala. Public Witness 11 Ram Ashish would also like the Court believe that soon thereafter he asked Vinod Jha, Public Witness 13, to inform the father of the deceased that appellant Inder Kant Jha has murdered his son. Pw 11 however, admits that he did not inform the police about this extra judicial confession. Together with the testimony it is necessary to take notice of the testimony of Public Witness 13, Vinod Jha, According to him Ram Ashish, Public Witness 11 told him to inform the father of the deceased that his son has been murdered by Inder Kant Jha. There is one more aspect to the evidence of both these witnesses and it is in respect of the fact that Public Witness 11, Ram Ashish had not informed Vinod Jha about the particulars of the house in which he was residing, nor were these particulars known to Public Witness 13, Vinod Jha. It is also important to note that Ganesh Jha, Public Witness 12, father of the deceased, was not supplied the particulars of Ram Ashish, Public Witness 11, by Vinod Jha, Public Witness 13. It is also important to note that the statement of Vinod Jha under Section 161 Cr.P.C. has never been recorded. Vinod Jha has made it clear that only one day before tendering his testimony in Court the police had met him.

(11) In our view the evidence tendered by Public Witness 11 and Public Witness 13 is neither reliable nor trust-worthy for the following reasons : It would be seen

that the accused persons are alleged to have vacated the house of Public Witness 5, Khubi Ram, within the 10/15 days of the date of incident. According to Public Witness 11 Ram Ashish thereafter Inder Kant Jha, appellant, came to live with him and within a few days alleged extra judicial confession was made before him by the appellant. In normal course if the accused had left the house of Khubi Ram within 10/15 days of the date of incident and within five days thereafter he had made an extra judicial confession before Ram Ashish, Public Witness 11, Ram Ashish would in the natural course of events be keen in the first place to go and see where the dead body was thrown. In the second place he would not keep it as a closely guarded secret but would have definitely informed the law enforcing agency. We say so particularly in view of the fact that he is very keen that the information should be communicated to the father of the deceased. In our view it is to provide an Explanationn for this lapse that Public Witness 13 Vinod Jha has been brought into the picture. Ram Ashish, Public Witness 11, would like us to believe that he instead of informing the police asked Vinod Jha, Public Witness 13, to communicate this information to the father of the deceased i.e. Ganesh Jha, Public Witness 12. Vinod Jha, Public Witness 13, states that he gave whatever information he was asked to communicate. But on a perusal of the testimony of Public Witness 12, Ganesh Jha, there is not even an indication that Vinod Jha Public Witness 13, had told Ganesh Jha, Public Witness 12, that his son Vinod Jha has been killed by appellant Inder Kant Jha. In other words even if it is assumed that Vinod Jha informed the father of the deceased about the murder of his son, the fact as to who killed the deceased was not communicated clearly indicating that it has not known to Public Witness 13 Vinod Jha. If that is the state of evidence the evidence of Ram Asihsh, Public Witness 11 that he had told Vinod Jha, Pw 13, that appellant Inder Kant Jha was the murderer does not appear to be true. Ganesh, Jha, Public Witness 12, father of the deceased, does not say that he was told about Inder Kant Jha appellant having killed his son.

(12) There is another reason on the basis of which the testimony of Ram Ashish, Public Witness 11, in our view does not carry any conviction. On the broad facts of this case it appears that within 20 days of incident extra judicial confession was allegedly made by the appellant before Public Witness 11 and soon thereafter PW11 deputed Public Witness 13 to communicate this information to Ganesh Jha,

Pw 12. According to Ganesh Jha, Public Witness 12, immediately on the next morning after receiving the information he came to Delhi. From the evidence it emerges that Ganesh Jha Public Witness 12, has reached Delhi only on September 29, 1986. If the testimony of Public Witness 11, Ram Ashish, were truthful then PW12 Ganesh Jha was expected to be in Delhi in the first week of August at the most. That is not so.

(13) We may recall that there had been no progress made in the case till September, 29, 1986, the day when father of the deceased came to Delhi. It was only thereafter that Public Witness 11 Ram Ashish and Public Witness 5 Khubi Ram were brought into the picture. There is no indication otherwise that the last seen evidence or the extra judicial confession was in existence till then. It was almost two months after the incident that this evidence surfaced and to escape the fact as to why Public Witness 11 behaved in such an un-natural and abnormal manner Pw 11 Vinod Jha was brought into picture. Public Witness 11 Ram Ashish maintains that it was Ganesh Jha, Public Witness 12, who had brought the police to his house. There is no evidence that he had given his address to Public Witness 12 Ganesh Jha nor is there any evidence that Ganesh Jha knew about his address. One is surprised as to how under these circumstances it was possible for Ganesh Jha to take the police to the house of Public Witness 11. It seems to us that all this evidence was brought into existent only on September 29, 1986, after the arrival of Public Witness 12 Ganesh Jha to Delhi and after the identification of the dead body. It was at that stage that a fast solution to the case was worked out. In the light of these facts the extra judicial confession alleged to have been made by Inder Kant Jha before Pw 11 is neither reliable nor trustworthy.

(14) There is no evidence connecting the appellant with the commission of this crime. As far as appellant Kishori is concerned, he has made no extra judicial confession. In our view there is no legal evidence connecting the appellants with the commission of this crime. The trial Court's observation that Ram Ashish, PW11, should be believed as he has no enmity with the appellants faults. In our view in the absence of enmity the Court cannot shirk its duty in assessing the evidence with a view to find out where the truth lies. If an extra judicial confession is made under inducement or threat it has no evidentiary value. But if no

inducement or threat is pleaded it is still the duty of the Court to find out whether it is truthful and reliable or not. In this case, to borrow the expression of the Supreme Court, the evidence is too shaky, suspect and fragile to furnish a sound foundation for conviction. For these reasons we allow this appeal and acquit the appellant. He shall be released forthwith if not required in some other case.

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