

**Dev Raj Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/901290](http://sooperkanoon.com/901290)

**Court :** Jammu and Kashmir

**Decided On :** May-07-2004

**Reported in :** 2004(3)JKJ668

**Judge :** Permod Kohli and; Y.P. Nargotra, JJ.

**Acts :** Evidence Act - Section 27

**Appeal No. :** Cr. Appeal No. 9/2000 and Confirmation No. 24/2000

**Appellant :** Dev Raj

**Respondent :** State

**Advocate for Def. :** S.C. Gupta, AAG

**Advocate for Pet/Ap. :** Harbans Lal, Amicus curie

**Disposition :** Appeal allowed

**Judgement :**

**Permod Kohli, J.**

1. This criminal appeal and reference arises out of judgment dated 4-4-2000, whereby the accused/appellant has been convicted for the commission of offences Under Sections 302/201 RPC and the order dated 11-4-2000 whereby the accused/appellant has been awarded sentence to undergo life imprisonment for

offence Under Section 302 RPC and further to undergo simple imprisonment for six months Under Section 201 RPC. Both the sentences were ordered to run concurrently.

2. Briefly stated the prosecution story is that on 21-11-1992 at about 6.30 PM deceased Vishwa Nath was sitting in a shop at Salal Kotli with one Krishan Lal, when accused Dev Raj came there and asked the deceased to accompany him to his house to enable him to make payment in cash or kind. Vishwa Nath accompanied Dev Raj, but did not return home. In the next morning search was carried out. The wife of the deceased namely, Bimla Devi approached her brother Krishan Lal S/O Daya Ramon the belief that her husband might have stayed at his house on the previous night because the deceased while going with accused had passed through his house and collected torch, left the bag and informed Bimla Devi that he is going with Dev Raj accused to his house to collect the fodder in lieu of the money payable by the accused. When Bimla Devi accompanied with Krishan Lal reached the house of Dev Raj accused and enquired about Vishwa Nath, the accused informed them that though he had come with him but he parted away in between. While returning from 'Dev Raj's house they noticed blood in the land of Sansar Chand, which is on the back-side of accused Dev Raj's house and raised an alarm. Some people assembled and Dev Raj was called there. Accused again told them that he has no knowledge about the whereabouts of Vishwa Nath. On insistence of the people, accused said to have confessed that he has murdered Vishwa Nath and thrown the dead body in the river Chenab. Suran Chand, brother of the deceased lodged report with the Police Station, Reasi at about 2.30 PM on 22-11-1992. On this report, FIR No. 177/92 was registered and investigation commenced. Accused was arrested on the same day. During the course of investigation, the accused made disclosure statement on 23-11-1992 and on his disclosure the dead body of the deceased was recovered from the lake of river Chenab in a gunny bag. Police also recovered the weapon of offence and blood stained clothes of the accused from his house. The accused is said to have made a confessional statement in presence of the wife of the deceased, her brother Krishan Lal and number of other villagers. Based upon the evidence collected during the investigation a charge-sheet was produced in the court of Judicial Magistrate 1st Class, Reasi, who committed the case for the trial of

accused to the Court of Addl. Sessions judge, Reasi, who convicted the accused vide the impugned judgment and sentenced him to undergo life imprisonment and simple imprisonment, as stated above.

3. Prosecution has produced PWs Suram Chand, Jugal Kishore, Bimla Devi, Krishan Lal S/O Vijay Raj, Krishan Lal S/O Daya Ram, Kartar Singh, Paras Ram, Baldev Suingh, Dhani Ram, Shiv Dutt, Mohd Shaffi Patwari, Dr. K.R. Gandotra and Abdul Hamid SI as witnesses in the case to bring home the guilt against the accused. Amongst the prosecution witnesses Suram Chand and Paras Ram are the brothers of the deceased, Jugal Kishore is the cousin, Bimla Devi wife and Krishan Lal S/O Daya Ram, brother in law (wife's brother).

4. After the conclusion of the prosecution evidence statement of the accused Under Section 342 Cr.P.C. was recorded. The accused denied having accompanied the deceased Vishwa Nath. He however, admitted that police took him near the river and took some photographs. He also admitted that the shop of Natha Ram fell in the way between the shop of deceased and his house. He has denied the recovery and disclosure statement said to be made by him. The accused did not lead any defence evidence.

5. On the basis of the prosecution evidence, the trial Court formulated opinion that offence against the accused has been established. With a view to arrive at the conclusion the trial Court noticed the following circumstances:-

(i) On 21-11-1992 the deceased accompanied the accused to his home and the deceased left his bag at his home and took a torch. This circumstance, is supported by PWs Bimla Devi, Krishan Lal S/O Daya Ram, Paras Ram and Dhani Ram alias Natha Shah;

(ii) Vishwa Nath did not return home on the same night and next morning his wife PW Bimla Devi went to the house of her brother Krishan Lal S/O Daya Ram and told him about his (deceased) nor returning home;

(iii) PWs Bimla Devi, Krishan Lal and later PWs Jugal Kishore, Paras Ram, Suram Chand went to the house of accused and enquired from the accused regarding

whereabouts of Vishwa Nath deceased who pleaded ignorance;

(iv) PWs found a pool of blood in the land of Sansar Chand near the house of accused and got suspicious;

(v) They again went to the house of accused and made frantic inquiries and later accused told them that he had done away with the life of Vishwa Nath;

(vi) That many people assembled including brothers, wife and PWs Baldev, Ishar dass etc and the accused on enquiring again stated that he had murdered Vishwa Nath and thrown away the body in lake Chenab.

(vii) Police was informed which came on spot, arrested the accused and accused in police custody made a disclosure that he had thrown the body in the lake Chenab and had kept the clothes including weapon in his house;

(viii) The dead body was recovered at the instance of the accused from a point to which accused indicated by pointing his finger and the clothes and weapon of offence were also recovered on the 'Nishandehi' of the accused from his house.

(ix) The doctor PW confirms the injuries on the persons of the deceased top have been caused with a sharp edged weapon and also points that injuries on the person of deceased were possible with sharp edged weapon i.e. 'sickle' shown to him by the police.

6. While arriving at the conclusion the trial Court also noticed that the accused has not been able to show that the prosecution witnesses bore any animosity against him and were not telling the truth. It is further observed by the trial court that the accused has failed to explain why the witnesses were deposing against him in the statement Under Section 342 Cr.P.C

7. We have heard the learned counsel for the parties and perused the record on the file.

8. Indisputably, there is no direct evidence. It is not the case of the prosecution that any of the witness has seen the occurrence i.e. the accused committing murder of the deceased. The entire prosecution story revolves around the

circumstantial evidence and the alleged extra-judicial confession. The trial Court has based conviction upon the circumstantial evidence and has noticed 9 circumstances quoted hereinabove. We have carefully considered the circumstances noticed by the trial Court and we deal with the same hereinafter.

(I): The first circumstance is that the deceased accompanied the accused on 21-11-1992. He left the bag at his home and took a torch. Four witnesses have been cited to support this circumstance. PW Bimla Devi wife of the deceased is the only witness, who has stated that the deceased came home on the evening of 21-11-1992. He left his bag and took a torch and informed the witness that he is going with Dev Raj accused to recover his money by collecting the leaves and fodder. PW Bimla Devi did not see the accused accompanying the deceased nor the accused entered their house. The other witness is PW Krishan Lal S/O Daya Ram. This witness is the brother-in-law of the deceased. According to this witness he was sitting in the shop of Vishwa Nath deceased, when Dev Raj accused came and asked him to accompany to his home for taking the amount. Vishwa Nath closed his shop and all the three there-after went to the shop of Natha Ram (Dhani Ram). Witness purchased some articles from the shop of Natha Ram, whereas accused and the deceased left that place. This witness accompanied the deceased and the accused only upto the shop of Natha Ram and there-after the witness has no knowledge whether the deceased actually went to the house of Dev Raj or not. PW Dhani Ram, who is a shopkeeper has also supported the statement of Krishan Lal only to the extent that he saw all the three persons when Krishan Lal entered his shop and the deceased Vishwanath and Dev Raj accused passed through his shop. This witness has also no knowledge or information other than that the deceased and the accused were seen in front of his shop alongwith PW Krishan Lal. As far as PW Paras Ram is concerned, he is not the witness who had seen the deceased and the accused on the previous night. He for the first time came on the scene on the morning of 22-11-1992 when he accompanied PW Bimla Devi to the house of PW Krishan Lal, to enquire about the deceased.

(II): As far this circumstance is concerned, admittedly the deceased did not return home and PW Bimla Devi went to the house of Krishan Lal next morning to enquire about the deceased.

(III): PW Bimla Devi has stated in her statement that she went to the house of PW Krishan Lal, her brother to enquire about the deceased thinking that he might have stayed at his house last evening. There is nothing in her statement to show that she accompanied Paras Ram and Suram Chand, the other brothers of the deceased and Jugal Kishore, a cousin. Even PW Krishan Lal in his statement has stated that PW Bimla Devi came to his house to enquire about his brother-in-law and both of them went to the house of Dev Raj. It is only Suram Chand PW who has stated that he alongwith Paras Ram and wife of deceased PW Bimla Devi left for the house of the accused on the next morning. As far PW Jugal Kishore is concerned he has not stated as to how he reached the house of Dev Raj accused. He has nowhere stated that he accompanied PW Bimla Devi or any of the brothers of the deceased. There is nothing in the evidence of PWs Paras Ram and Sansar Chand to show that they accompanied PW Bimla Devi to the house of Krishan Lal or they assembled in the house of PW Krishan Lal and went together to the house of accused. Nothing has been brought on record in the evidence to show that they were together and decided to go to the house of Dev Raj accused to enquire about the deceased.

(IV): It has come in the prosecution evidence that blood was found in the land of Sansar Chand, which is nearer to the house of the accused. According to all the witnesses, the pool of blood was found while returning back from the house of accused Dev Raj. None of the witness has deposed why they were unable to notice the blood, while going to the house of Dev Raj. There is also no material to show whether it was enroute the house of Dev Raj or a different route which was adopted by them on their return from Dev Raj's house. It has also not been disclosed that site was so prominent that it could be easily noticed and how they were the only persons who have noticed the same and not the other villagers. Nothing has been revealed by the prosecution in this regard.

(V, VI, VII, VIII): The accused is said to have made confessional statement of having killed the deceased Vishwa Nath in presence of PWs Bimla Devi, Paras Ram, Jugal Kishore Suram Chand, Baldev Singh, Ishar Dass and a number of other villagers. The prosecution cited only the relations of the deceased as witnesses, namely, PWs Jugal Kishore, Krishan Lal S/O Daya Ram, Paras Ram to

establish the alleged extra-judicial confession. One of the witnesses named is Ishar Dass in whose presence allegedly confession was made but from the charge-sheet it appears that there is no prosecution witness with the name of Ishar Dass. The only independent witness is PW Baldev Singh, Numberdar. This witness has deposed that from presence of blood in the land of Sansar Chand, they suspected Dev Raj to have committed murder of the deceased Vishwanath. His further statement is on being asked the accused initially denied his involvement in the commission of offence, however, on inquiry he informed the gathering that he has committed the murder and also admitted having thrown the dead body into lake of River Chenab. The witness has further deposed that police came on spot and made inquiries. Accused admitted his guilt before the police also and the police recovered blood stained clothes and sickle from his house on 22-11-1992. This witness has further stated that Krishan Lal S/O Daya Ram came to his house and informed that Vishwanath and Daya Ram had gone together on the evening of 21-11-1992 but Vishwa Nath did not come back. He and Krishan Lal went to the house of accused Dev Raj. Many persons were present there. Version of this witness is contrary to the story of PWs Bimla Devi and Krishan Lal who have stated that they came together as PW Bimla Devi approached Krishan Lal and they together approached Dev Raj accused. It has not come in their evidence that both of them i.e. PWs Bimla Devi and Krishan Lal came to PW Baldev Singh and search was carried out alongwith him as is the deposition of Baldev Singh.

As far the recovery of sickle and blood stained clothes are concerned, according to PW Baldev Chand, recovery was made on 22-11-1992. However, from the seizure-memo exhibit EXPW-A, EXPW-B it is evident that the weapon of offence and clothes of the accused were recovered and seized by the police on 23-11-1992.

As far the recovery of dead-body from the lake of river Chenab is concerned, it was recovered on 23-11-1992. This has come in the statement of PW Baldev Singh, who has stated that on 22-11-1992 when the police went to river it was late evening and dark, it came back and on the next morning the police recovered the dead body from River Chenab. As far other witnesses are concerned, particularly,

Krishan Lal S/O Daya Ram, Paras Ram and Suram Chand they have stated that the dead body was recovered from River Chenab on the same day when the accused was arrested i.e. on 22-11-1992. Contrary to this version of the witnesses, the Investigating Officer, namely Abdul Hamid, SI in his statement has stated that the disclosure statement was made by the accused on 23-11-1992 and the dead body was recovered on the said date. He has also stated that the weapon of offence and the blood stained clothes of the accused were also recovered on 23-11-1992 at 4.30 AM. The disclosure statement EXPW-G was also prepared on 23-11-1992 which bears the signatures of the accused, PW Krishan Lal S/O Daya Ram, and PW Baldev Singh as marginal witnesses. It has also come in the statement of PW Kartar Singh that the accused initially gave Nishandehi on one spot, but nothing was recovered and there-after the accused gave Nishandehi on another spot from where the dead body was recovered. There is complete disharmony amongst these witnesses on all material facts.

(IX). The injuries on the dead body of the deceased have been certified by the Doctor, who has also opined that these injuries were possible with the weapon of offence.

9. Taking note of the above circumstances the only evidence noticed and relied upon by the trial Court against the accused and made basis for his conviction is that the accused was last seen with the deceased when they left the shop. They were last seen only upto the shop of Natha Ram (Dhani Ram) and there-after none of the witnesses have seen them together. As far the statement of PW Bimla Devi the deceased came home to leave the bag and collect the torch. Even PW Bimla Devi did not see the accused with the deceased. Whether they left together or not is a mystery in absence of there being any positive evidence to this effect. In our view this circumstance is not enough to entail conviction . In case Inderjit Singh and Anr. v. State of Punjab, AIR 1991 SC 1674, the Apex Court considering this type of circumstance held as under:

'x x x x In number of cases, it has been held that the only circum- stance namely that the deceased was last seen in the company of the accused by itself is not sufficient to establish the guilt of the accused. It is no doubt that the deceased's

death was homicidal but since there is no direct witness connecting any of the appellants with the crime we should fall back on the circumstantial evidence and we are of the view that circumstances relied upon by the prosecution are hardly sufficient to establish the guilt of the accused.'

10. The other basis for conviction as held by trial Court is extra-judicial confession.

11. As far the extra-judicial confession is concerned, there is no independent witness in whose presence the extra-judicial confession was made. Even on this count, there is substantive contradiction between the statement of the prosecution witnesses. PW Baldev Singh, the only independent witness not related to the deceased has stated that the accused admitted his guilt at the site of blood in presence of large number of people. The question arises who were the other persons? If so many villagers were present, the prosecution must have named them. No such independent witness has been named or produced. The witnesses to alleged extra-judicial confession are PWs Bimla Devi, and Krishan Lal. According to these witnesses the accused made confession when they again went to his house. This story is not supported by PW Paras Ram, Suram Chand and Jugal Kishore. According to these PWs accused was called at the road where he is said to have made confession. There is no uniformity in the statements of the prosecution witnesses. It is also settled proposition of law that extra-judicial confession in itself is not sufficient to connect a person with the commission of crime. It has been held by the Apex Court in case *Makhan Singh v. State of Punjab* AIR 1988 SC 1705 that the extra judicial confession is a very weak piece of evidence.

12. It has also come in the evidence of the Doctor that when the weapon of offence was brought to him it has not sealed. As far recovery of dead body from the river is concerned, it is an open place and it cannot be said that the accused alone had the access to the same. The disclosure statement made Under Section 27 of the Evidence Act and the recovery of the dead body along without other corroborative circumstantial evidence cannot be made the basis for conviction. The Apex Court in *Makhan Singh's* case (Supra) also observed as under:

'Then we are left with the recovery of the dead bodies. Investigating Officer SI Puran Singh (PW-8) admitted in cross-examination that after recording the statement of Amrik Singh he could not know the correct place where the bodies and other articles were kept buried and concealed. This clearly indicates that he could get some information from the statement of Amrik Singh, As seen earlier, the field is an open place surrounded by other Fields and according to Nihal Singh, the adjacent field is his own as he had taken it on lease and therefore, it cannot be said that any one else could not have known about the bodies being buried in the field. The Investigating Officer himself admitted that after recording the statement of Amrik Singh he knew that the bodies were buried in the field but he felt that information was not sufficient. It cannot therefore, be said that the place from where the bodies were recovered was such a place about which knowledge could only be attributed to the appellant and none else. Since the exclusive knowledge to the appellant cannot be attributed, the evidence under section 27 cannot be said to be a circumstance against the appellant.'

13. In order to establish that the accused alone was responsible for the murder based upon the recovery of blood stained clothes, it is necessary that it must be established that the group of blood found on the blood stained clothes was that of the deceased. The prosecution has not proved by any legal evidence that the blood found on the clothes of the accused was of the same group as that of the deceased.

14. After carefully examining the evidence and the circumstances as indicated in the prosecution evidence and relied upon by the trial Court, we are of the considered opinion that the conviction of the accused on the available evidence is not justified. The prosecution has failed to establish the circumstances connecting the accused with the commission of offence. We accordingly allow this appeal, set aside the conviction and sentence awarded by the trial Court and acquit the accused. The accused is in judicial custody. He is directed to be set free in the above case.

15. Reference is answered accordingly.

