

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 26th August, 2009*
 Judgment Delivered on: 1st September, 2009

+ **CRL.A.885/2005**

GHANSHYAM @ JAVED ...Appellant
Through: Mr.Ranbir Singh Kundu and
 Mr.Rajiv Sirohi, Advocates.

Versus

STATE ...Respondent
Through: Ms.Richa Kapoor, APP.

WITH

CRL.A.721/2005

KISHORE KUMAR ...Appellant
Through: Mr.Kaushal Kaushik, Advocate.

Versus

STATE Respondent
Through: Ms.Richa Kapoor, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

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1. The appellants Kishore Kumar and Ghanshyam have preferred respective appeals against the impugned judgment and order of sentence dated 29.7.2005, whereby accused Ghanshyam has been convicted for the offence punishable under Sections 186/353/332/302/411, read with Section 34 of the IPC as also under Sections 25 & 27 of the Arms Act; Kishore Kumar has been convicted for the offence punishable under Sections 186/353/332/302 read with Section 109 IPC as also for the offence punishable under Section 411 read with Section 34 IPC. Both the appellants have been sentenced separately for each of the offences; convict Ghanshyam has been sentenced to undergo rigorous imprisonment for life and a fine of Rs.5000/-, in default of payment of fine, further rigorous imprisonment for six months for the offence punishable under Section 302 of the IPC; convict Kishore has been sentenced to undergo rigorous imprisonment for life and a fine of Rs.5000/-, in default of payment of fine further rigorous imprisonment for six months for the offence punishable under Section 302 read with Section 109 of the IPC. Both the convicts have been further sentenced to undergo rigorous imprisonment for three months for the offence punishable under Section 186 read with Section 34 of the IPC; rigorous imprisonment for one year for the offence punishable under Section 353 read with Section 34 of the IPC; rigorous imprisonment for two years for the offence

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punishable under Section 323 read with Section 34 IPC; rigorous imprisonment for two years for the offence punishable under Section 411 IPC; rigorous imprisonment for two years for the offence punishable under Section 471 of the IPC. Convict Ghanshyam has been further sentenced to undergo rigorous imprisonment for one year and a fine of Rs.1000/-, in default of payment of fine further rigorous imprisonment for one month for the offence punishable under Section 25 of the Arms Act; rigorous imprisonment for three years and a fine of Rs.2000/-, in default of payment of fine further rigorous imprisonment for two months for the offence punishable under Section 27 of the Arms Act. Benefit of Section 428 Cr.P.C. has been granted to both the convicts.

2. The facts as culled out by the prosecution are that on 07.1.2001, Inspector Rishi Dev PW-21 posted as SHO Police Station Civil Lines along with Const.Rajender and Const.Ramesh Chand PW-17, reached Punjabi Basti, Club Road where they were joined by the deceased SI Vinod Kumar and Const.Bijinder PW-18. They proceeded towards Majnu Ka Tila in their Gypsy and reached Magazine Road at about 6.35PM. A white maruti car having number plate of DL-9CC-1595 was noticed standing in suspicious circumstances. Two persons were sitting in the car, one of whom was on the driver seat. PW-21 directed his staff to check the car.

As soon as the staff reached near the car, the occupants started

running. The police party chased the said occupants and after a distance of about 50 to 60 yards SI Vinod managed to apprehend one of the two occupants whose name later on was revealed as Ghanshyam. The second person, Kishore Kumar was apprehended by PW-18. The appellant Kishore exhorted Ghanshyam and shouted "Maar Goli"; upon which Ghanshyam fired shot at SI Vinod Kumar who fell down on the ground. PW-17 ran after Ghanshyam who, however, managed to escape. Kishore Kumar was apprehended at the spot.

3. The PCR van reached the spot. ASI Santokh Singh PW-12, posted Incharge of PCR Van Suger-53 along with H.C. Desh Pal PW-28, on receipt of intimation at 6.35 PM about firing at Majnu Ka Tila had reached the spot where they found a crowd gathered; SI Vinod Kumar was lying in an injured condition, PW-17 Const.Bijinder was also injured. PW-12 and PW-28 removed both the injured to the Trauma Centre, Civil Lines. Const.Rohtash Kumar PW-25 working as Duty Constable at Trauma Centre informed the local Police Station, Civil Lines that SI Vinod Kumar and Const.Bijinder had been brought to the hospital in an injured condition. This information was recorded in DD No.14 Ex.PW-4/A by ASI Yadav Chandra PW-14. The rukka Ex.PW-4/E was endorsed by PW-4 pursuant to which he had recorded the formal FIR i.e. FIR No.7/2001 Ex.PW-4/C, under Sections 186/353/323/307/411/471 read with Section 34 of the IPC CrI. A. No.885/2005 and CrI. A.No.721/2005

as also Sections 25 & 27 of the Arms Act. SI Mukesh Tyagi PW-19 had also reached the spot. He was joined by Const.Satinder PW-20 who had accompanied ASI Kesar Lal. The crime team was summoned. The photographer Const.Praduman Kumar PW-24 took six photographs of the spot negatives of which are Ex.PW-24/1 to Ex.PW-24/6. On 08.1.2001, at the Trauma Centre, he took three photographs Ex.PW-21/P to Ex.PW-21/R of the dead body from different angles; negatives of which are Ex.PW-2/7 to Ex.PW-PW-2/9. The rough site plan Ex.PW-20/B of the place of occurrence was prepared and thereafter the site plan to scale Ex.PW-11/A was prepared by Inspector Devinder Singh PW-11. The blood stained earth and earth control was lifted from the spot and seized vide memo Ex.PW-19/A. The MLCs of SI Vinod and Const.Bijinder Ex.PW-21/C and Ex.PW-21/D were collected; SI Vinod was declared brought dead. The clothes of the deceased were also seized vide memo Ex.PW-18/A.

4. From the spot the maruti car, suspected to be stolen property was taken into possession vide memo Ex.PW-18/G. Accused Kishore Kumar who had been apprehended at the spot was arrested and his personal search was taken in the presence of PW-18 vide memo Ex.PW-18/C. His disclosure statement Ex.PW-18/D was recorded.

5. On the following day i.e. 08.1.2001, the post mortem of the deceased SI Vinod was conducted by doctor Ashok Jaiswal PW-23 who had noted the following injuries:

“An oval punctured wound 2.2 cm x 1.6 cm on left upper chest on third inter costal space 6 cm from left nipple at 10: clock position, 6 cm below inner end of cievicte, medial border 4 cm from midline. The margins were inverted with singeing of chest hairs at its upper margins with blackening around it over an area 1.2 to 1.8 cm. There was tattooing seen on left upper chest and around punctured wound over an area 7 cm x 10 cm. Entry wound of fire arm projectile which was packed with gauge pieces. No other external injuries seen on the body.”

6. He opined the cause of death as haemohrrage shock consequent to injury no.1; which was an ante mortem entry wound caused by a fire arm projectile fired from near contact range. The dead body was identified by Dev Karan Yadav PW-2 father-in-law of the deceased, Om Prakash PW-3 father of the deceased as also by his neighbour SI S.S. Tyagi PW-15. The fired bullet retrieved from the dead body was handed over by PW-23 to PW-21 which was seized and sealed in a parcel having seal of KLS and deposited in the Malkhana. Accused Kishore Kumar made a subsequent disclosure statement Ex.PW-18/G and disclosed his involvement in

the commission of the theft of Maruti car bearing no.DL-2CF-4756 which had been seized from the spot.

7. On 10.1.2001 investigation of this case was handed over to ACP Bhag Singh PW-40. On 13.01.2001, PW-40 along with SI Ram Avtar PW-37, PW-17 and PW-18 reached near Police Station Seema Puri where they were informed that there was a secret information about accused Ghanshyam who would be coming to a petrol pump near Hapur on Garh Road. After about 10-15 minutes, on the signal of the informer accused Ghanshyam was apprehended and identified by PW-17 and PW-18 as the assailant of SI Vinod Kumar and Cont.Bijinder on 07.1.2001. His personal search Ex.PW-17/A was prepared and he pointed out the place of occurrence vide memo Ex.PW-18/H.

8. He made three disclosure statements Ex.PW-35/C, Ex.PW-37/A and Ex.PW-8/A. No recovery was effected pursuant to the first disclosure statement. In pursuance of his second disclosure statement recorded on 16.1.2001 accused Ghanshyam took the police party to the house of Zulfikar but no recovery was effected from there; he then led the police party to the house in which C-27 was written and after taking the keys of the room from a small temple under the staircase he opened the room and got recovered two bags i.e. a black colour and a green colour bag. Photocopy of the RC of a maruti car bearing number DL-2CF-4756 belonging to CrI. A. No.885/2005 and CrI. A.No.721/2005

one Bijinder Aggarwal was also recovered besides cash of Rs.1,15,000/- and one gold chain as also one blood stained shirt and pant which were taken into possession vide memo Ex.PW-37/C, Ex.PW-37/D, Ex.PW-37/E, and Ex.PW-37/F. The third disclosure statement of accused Ghanshyam was made on 24.01.2001 and pursuant thereto in the presence of Renu Khanna PW-8 and Ram Charan PW-14 he got recovered one deshi katta with two live cartridges which were taken into possession vide memo Ex.PW-8/C.

9. The finger prints had been lifted from the spot by N.K. Sharma PW-1; Q1 to Q3 were the chance prints lifted from the left front door of the car, Q4 and Q5 were the chance prints lifted from the left rear door of the car, Q6 was the chance print lifted from the looking mirror near driving seat, Q7 was the chance print taken from the right side rear door of the car, along with the specimen finger prints of both the accused persons were sent to finger print expert Shri Sanjay Kumar Jha PW-36 who after examination opined that chance print Q3 is identical with the finger impression of Kishore Kumar and the chance print Q6 is identical with the right thumb mark of the finger impression of Ghanshyam. His report is Ex.PW-36/A.

10. The CFSL Expert Mr.K.C.Varshney PW-39 had examined the three parcels i.e. crime fired bullet, the country made pistol and the two cartridges which had been sent to him for examination and

had opined that the striation marks on the bullet marked EB-1 proved that it was discharged through the country made pistol Ex.F-1 which had been got recovered by Ghanshyam.

11. Mr. Bijinder Aggarwal was the owner of the Maruti car bearing no.DL-2CF-4756. He was examined as PW-5. He had deposed that on 19.12.2000 he had parked his car at about 9.30 PM and when he came out after 30/45 minutes he found that his car was missing. Matter was reported to the police and FIR No.318/2000 under Sections 379/411 IPC was thereafter registered in Police Station Roop Nagar by HC Tejwati PW-6. The ownership of the vehicle in the name of PW-5 was proved by Sh.A.K.Singh PW-7. The number plate of the vehicle had been changed and the original number plate was replaced by the number plate DL-9CC-1595. This has come in the deposition of Const.Mahinder PW-22.

12. Since both these cases i.e. FIR No.7/2001 under Sections 307/302/353/186/332/411/471 read with Section 34 IPC and Sections 25/27/54 & 59 Arms Act and FIR no.318/2000 under Sections 379/411 IPC had arisen out of the same incident they were ordered to be clubbed together to avoid conflict of judgment. The impugned judgment has decided the fate of both these FIRs.

13. In the statement of accused persons recorded under Section 313 of the Cr.P.C. both of them pleaded innocence.

Accused Kishore Kumar had stated that he had been picked up from
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his house on 07.1.2001 and he was taken to Magazine Road where he was asked to put the palms of his both the hands on the maruti car which was already there and thereafter a false case has been planted upon him. Accused Ghanshyam also pleaded innocence. He had stated that the witnesses have deposed falsely as the victim was a police official.

14. Two witnesses have been produced in defence. Both of whom are shop keepers in the vicinity of Majnu Ka Tila. They both stated that on 02.1.2001 Kishore Kumar was not in the vicinity and not involved in the present case.

15. The trial Judge while convicting the accused has relied upon the testimony of the eye witnesses i.e. PW-18, PW-17 and PW-21 of whom PW-18 was also the injured. The report of the finger print expert identifying the finger impressions of both the accused on the maruti car found at the spot was the additional incriminating circumstance qua both the accused. Kishore Kumar had been apprehended at the spot; Ghanshyam had been absconding and he had been apprehended six days later; he had got recovered his blood stained pant which had the same blood group as that of the deceased; a deshi katta and the cartridges got recovered at his instance was the most lethal circumstance held against him as the bullet which had been retrieved from the dead body of SI Vinod Kumar had as per the CFSL report, been fired from the same
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weapon. In the second FIR i.e. FIR No.318/2000 under Sections 379/411 IPC, both the accused having been found to be in possession of the blue coloured maruti car, a stolen property, whose original number plate had been replaced with a fake number plate had led to their conviction under Section 411 IPC.

16. On behalf of the accused persons, it has been submitted that the testimony of the eye witnesses i.e. PW-17 and PW-21 is suspect as they were not present at the site; they have been roped in as witnesses only to build up a foolproof case as the victims of this case are police officials. Attention has been drawn to the versions of PW-12 and PW-28 i.e. the police officials of the PCR who had reached spot and removed the victims to the hospital; it is submitted that PW-12 categorically had admitted that he had not seen any police official at the site; if senior police officials i.e. of the rank of an Inspector were present at the spot, there is no answer as to why they had not accompanied the injured to the hospital and their presence had not been noted; the said witnesses have been planted. On behalf of accused Kishore, it has been argued that the only role attributed to him is that of exhorting Ghanshyam with "Maar Goli"; these words by themselves are not sufficient to nail Kishore for the offence of murder. It is submitted that no recovery has been effected from Kishore and the only other incriminating circumstance held against him is the report of finger print expert for

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which Kishore has given a valid explanation in his statement under Section 313 Cr.P.C., wherein he had stated his palm impressions had forcibly been put on the maruti car to solve a blind murder case as he was in the bad books of the police and has been labelled as a B.C. (bad character) of the area. Qua Ghanshyam, it has been argued that once the testimony of eye witnesses is discarded, the only other circumstance is of the recovery of the deshi katta which is demolished in view of the versions of PW-8 and PW-14 who are the stock witnesses of the police and their presence at the time of recovery is highly improbable; once this recovery stands demolished, the subsequent report of the CFSL would obviously have no value. The defence of the accused has all along been that he has been falsely implicated as the victims are police officials.

17. We have perused the record and noted the rival submissions of the parties

18. The first question to be answered is as to whether PW-17 Const.Ramesh and PW-21 Inspector Rishi Pal were eye witnesses to the incident or they have been planted as eye-witnesses. To appreciate this argument we shall have to examine the versions of the eye witnesses, the other witnesses who had joined investigation at the spot, as also the documents which had been prepared contemporaneously.

19. ASI Santokh Singh PW-12 and HC Deshpal PW-28 both posted in the PCR were the first persons who had reached the spot and removed the injured to the hospital. PW-12 has deposed that on 07.1.2001 at about 6.35 PM while posted In-charge of PCR Van sugar 53, on receipt of information he went to Majnu Ka Tila where he found two injured persons and took them to the Trauma Centre. In his cross-examination he has stated that the injured were lying on the road and the public persons helped him in removing the injured in his vehicle; he did not notice, if any, police official were present there or not. PW-28 has corroborated the version of PW-12 and has stated that on receipt of information at 6.35 PM about firing in the market at Majnu Ka Tila he along with ASI Santokh Singh rushed to the spot i.e. B-41, Majnu Ka Tila where they found SI Vinod Kumar lying in an injured condition from a shot fired at him; Const.Bijinder was also in an injured condition; they were removed in the PCR van to the Trauma Centre, Civil Lines. In his cross-examination, he has stated that when they reached there no police official was present; thereafter SHO and other staff of the Police Station reached there.

20. PW-21 has deposed that on 07.1.2001 he was posted as SHO, Civil Lines. He along with Const. Rajinder i.e. his driver and Const. Ramesh, PW-17 while investigating the FIR No. 367/2000 of Police Station, Civil Lines reached the Punjabi Basti where they met
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SI Vinod and Const. Bijinder who joined them in their vehicle and they all went to Majnu Ka Tila. They reached Magazine Road at 6.35 PM. Opposite B-Block, Majnu Ka Tila, a blue coloured maruti car having number plate of DL-9CC-1595 was noticed, standing in suspicious circumstances. PW-21 parked his government gypsy ahead of the Maruti car and asked his staff to check the car. Two persons were sitting in the car and one was in the driver seat whose name later on was revealed as Ghanshyam. As soon as his staff went to check the car, the occupant of the car started running towards B-Block. The staff i.e. the deceased SI Vinod, Const.Ramesh and Const.Bijinder chased the accused with PW-21 following them. At a distance of about 50-60 yards SI Vinod apprehended Ghanshyam and ten paces behind Const. Bijinder apprehended accused Kishore. Accused Kishore exhorted Ghanshyam by shouting " Maar Goli"; Ghanshyam fired a shot at SI Vinod which struck him on the left side of his chest and he fell down. Const.Ramesh ran after Ghanshyam but he managed to escape. Five minutes later i.e. at about 6.45 PM, the PCR Van came to the spot and removed the injured i.e. SI Vinod and Const.Bijinder to the hospital. Message of the incident was flashed on the wireless to the ACP, Civil Lines. SI Mukesh Tyagi PW-19, ASI K.L.Meena, Const.Satinder PW-20, Const.Dharambir, Const. Virender also reached the spot. PW-21 sent ASI K.L. Meena, Const. Dharambir

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and Const. Virender for search of Ghanshyam. SI Mukesh Tyagi and Const. Satinder were directed to remain at the spot. He i.e. PW-21 prepared the rukka and sent it through Const. Ramesh for the registration of the FIR. The crime team including photographer reached the spot at about 7.35 PM and the scene of occurrence was photographed, the maruti car was inspected. SI N.K. Sharma PW-1, In-Charge of the crime team gave PW-21 his report Ex.PW-1/A. At 7.45 PM Const. Parminder PW-26 reached the spot and handed over the copy of the DD No.4A to him regarding the admission of SI Vinod Kumar at the Trauma Centre. Const. Sant Ram PW-15 thereafter delivered copy of DD No.15A regarding admission of Const. Bijinder at the Trauma Centre to PW-21. Blood stained earth and earth control were lifted from the spot vide memo Ex.PW-19/A. MLCs of SI Vinod and Const. Bijinder Ex.PW-21/C and Ex.PW-21/D were collected. SI Vinod was declared brought dead. Statements of the witnesses were recorded. Accused Kishore Kumar was interrogated and arrested; his disclosure statement Ex.PW-18/D was recorded; case property was deposited in the Malkhana. In his cross-examination, he has stated that he was at a distance of 7 to 8 steps from the car when the accused persons started running; he has admitted that it was a thickly populated area where the incident had occurred and there are shops on the ground floor. He has stated that entrance to the street of B-Block

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market was at a distance of 6-7 yards from the car and between the gali and car, there is a road and central verge which does not have a partition. He has stated that he along with Const.Bijinder, Ramesh and ASI Santokh Singh had lifted SI Vinod Kumar into the PCR van; his clothes had not become blood stained; he has further stated that SI Vinod had caught hold of accused Ghanshyam from behind; at that time he had seen the revolver in the hand of Ghanshyam; immediately after firing the shot Ghanshyam had become free and had fled; two minutes after the firing, all the shops had closed. He returned back to the spot from the Trauma Centre at about 9.45 PM and remained there till midnight. He admitted that he had not received information at the spot that SI Vinod had been brought dead at the Trauma Centre.

21. The second eye witness is Const.Ramesh Chand PW-17. He has deposed on the same lines as PW-1 and has corroborated his version. He has deposed that on 7.1.2001, he along with PW-21 joined by Const.Bijinder Singh PW-18 and SI Vinod, the deceased, had reached Majnu Ka Tila at about 6.30 PM. They noted one Maruti car no. DL-9CC-1595 parked in suspicious circumstances; when they proceeded towards the car, the occupants of the car started running. Const.Bijinder apprehended one of the said two persons and SI Vinod caught the other. At that time, one of the two persons whose name later on was revealed as

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Kishore Kumar exhorted Ghanshyam 'Maar Goli' upon which he had fired shot at SI Vinod which struck on his chest and he fell down; PCR van came and removed SI Vinod and Const.Bijinder to the hospital. He further deposed that SI Mukesh with staff also reached the spot and he i.e. PW-17 took the tehrir for the registration of the FIR. In his cross-examination PW-17 has admitted that the place of the incident is a crowded place and there are shops on the ground floor; the gali where the incident had taken place is about 15 to 20 feet wide and the shops which were opened at that time were in the process of closing; 25-30 persons had collected at the spot. He has admitted that Majnu Ka Tila falls in the jurisdiction of PP Majnu Ka Tila. SI Vinod had immediately fallen down after receiving the gun shot; Ghanshyam was chased by him up to 40-50 paces but he managed to flee; when he i.e. PW-17 returned to the spot he saw scratches on the hands and knees of Const.Bijinder. He reiterated that PCR van had removed the injured to the hospital, he could not recollect as to whether he had helped PCR staff to lift the injured in the PCR van. He admitted that his clothes had become blood stained but the same had not been seized by the Investigating Officer. He stated that PCR van had come to the spot within 3 to 4 minutes of the incident; he categorically stated that neither he himself, nor the SHO had accompanied the injured in the PCR to the hospital. He denied the suggestion that he and PW-21 had not

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accompanied the injured to the Trauma Centre for the reason that they were not present at the spot. He admitted that Kishore is a B.C. of the area.

22. The last eye witness who has been examined by the prosecution is the injured HC Bijinder PW-18. He has deposed that on 7.1.2001 he along with SI Vinod was on duty at Punjabi Bagh, Tilak Road when they met Insp.Rishi Dev along with Const.Ramesh. They joined them in their gypsy and went to Magazine Road, Majnu Ka Tila; they found a blue Maruti car having number plate DL-9CC-1595 standing on Magazine Road, which appeared to be suspicious. They proceeded to check the car, the occupants of the car started running towards the Majnu Ka Tila market; they were chased; SI Vind apprehended Ghanshyam and he i.e. PW-18 apprehended Kishore Kumar; Kishore Kumar exhorted Ghanshyam to fire, upon which Ghanshyam fired a shot upon SI Vinod; a PCR van came to the spot and removed HC Bijinder and SI Vinod to the hospital where they were medically examined and SI Vinod was declared dead at the hospital; duty constable Rohtash handed over the wearing apparels of the deceased to the IO. In his cross-examination, he has admitted that 25-30 persons gathered at the spot. The PCR van had come near the place where SI Vinod was lying in an injured condition and he accompanied SI Vinod in the PCR van to the hospital. He has admitted that he had also received

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bleeding injuries; he returned to the spot after 30-35 minutes. He met Insp.Rishi Dev at the Trauma Centre but he cannot recollect the time. He admitted that accused Kishore is a B.C. of their area.

23. To appreciate these versions let us examine the site plan. The rough site plan Ex.PW-21/B was prepared by Inspector Rishi Dev and site plan to scale Ex.PW-11/A was thereafter prepared by Insp.Devinder Singh at the pointing out of PW-18. On Ex.PW-11/A the place of occurrence i.e. where Ghanshyam had fired at SI Vinod, the point where Inspector Rishi Devi, Const.Ramesh and Const.Bijinder were stationed at that time has been depicted at points C,G,F,E respectively. Point J is the place where the maruti car had been stationed. PW-21 had deposed that he had parked his gypsy in front of the maruti car. It has further come in the deposition of PW-21 that the place of incident was about 74 paces away from the point where his gypsy had been parked; he had himself measured this distance and this has been corroborated in the version of PW-11 who had prepared this site plan. 74 paces away would be an approximate distance of 40 meters. Ex.PW-11/A further shows that both the vehicles i.e. the maruti car and the police gypsy were ahead of the break in the divider of the central verge i.e. if the gypsy had to reach the spot it would have to take a 'U' turn. Placement of the PCR van has not been depicted in either of the two site plans but the very fact that the PCR van had reached

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the spot within two to three minutes of the information of the incident received by it shows that it had access to the spot faster than when the police vehicle could have reached there.

24. From the versions of the eye-witnesses it is clear that as soon as the incident of fire occurred SI Vinod fell down at the spot, accused Ghanshyam had been chased by PW-17 but he managed to flee. Accused Kishore was apprehended at the spot. Const. Bijinder had also sustained injuries. Public persons numbering more than 25-30 had also collected; it was a 15-20 feet wide gali having shops on either side as also residential houses. Incident had occurred at 6.30 PM and being the winter season i.e. the month of January, the sun had set; shops were in the process of closing; the scene had become chaotic. PW-12 and PW-28 had on receipt of information about the incident reached the spot within 3 to 4 minutes, upon seeing the sight of their colleague lying injured in a pool of blood and also another police official having sustained injuries, their immediate thought was to rush the injured to the nearest hospital which was the Trauma Centre at Civil Lines. In this situation, if PW-12 did not notice the presence of any police official at the spot, is not so unusual or extraordinary that this circumstance by itself would be sufficient to hold that PW-17 and PW-21 were not at the spot. All this had happened within a span of 5 to 7 minutes i.e. the occurrence of the incident and the reaching

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of the PCR van at the spot; within this period one of the two assailants had also managed to flee away from the scene and the police present at the spot were chasing him. Argument of defence counsel i.e. to discard the versions of PW-17 and PW-21 only on this admission of PW-12 is in our view without any force.

25. Another extension of the present argument is that there is no explanation as to why the FIR registered at 7.35 PM was for the offence punishable under Section 307 IPC when the MLC of the victim SI Vinod Kumar had shown that he had been brought dead; it is argued that this was obviously for the reason that the SHO was not at the spot and that is why even up to the time of the registration of the FIR he did not know that SI Vinod Kumar had been declared brought dead. Let us now examine this submission.

26. PW-21 had remained at the spot to conduct the investigation and deal with the apprehended accused i.e. accused Kishore. Const. Parminder Singh PW-26 has deposed that on 7.1.2001 at 6.55 PM he had handed over DD No.14A Ex.PW-21/A to the SHO i.e. PW-21 at the place of occurrence. This version establishes that PW-21 was at the spot as early as 6.55 PM. PW-27 has deposed that at 7.05 PM he had handed over DD No.15A to PW-21 at the spot. PW-21 had dispatched the rukka through PW-17 at 7.35 PM for the registration of the FIR which had been registered initially under Section 307 of the IPC as till that time PW-21 did not

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know that the injured SI Vinod had died; he has in fact admitted in his cross-examination that till he remained at the spot, he did not come to know that SI Vinod had succumbed to his injuries.

27. MLC Ex.PW-21/C of SI Vinod shows that the patient had been removed to the hospital at 6.50 PM through PW-12 and PW-18. The patient was unconscious and his pulse and blood pressure could not be recorded; IPPVE Ambu Bag and external cardiac massage was administered to the patient for more than 30 minutes, but the patient could not be revived. It was thereafter that he was declared dead. This document clearly evidences that the patient had been admitted to the hospital at 6.50 PM and in spite of efforts for more than half an hour to revive him he could not be revived; these efforts had continued up to 7.25-7.30 PM; even otherwise there cannot be exact exactings of time when depositions are made in court and five minutes here or there are of little consequence when the situation as a whole is reviewed. It was for this reason that when the rukka was sent by PW-21 at 7.35 PM, FIR had been directed to be registered under Section 307 of the IPC only.

28. We are thus not inclined to accept the submission of the learned defence counsel that the presence of PW-17 and PW-21 on the spot is suspect. All the eye-witnesses i.e. PW-17, PW-18 and PW-21 have corroborated one and another on material aspects.

They are all police officials and there is nothing which has shaken

their credibility in their lengthy cross-examination. Merely because PW-12 had not noted any police official in the crowd which had gathered at the spot of the incident is no reason to hold that PW-17 and PW-21 were not present there; the immediate urgent thought in the minds of PW-12 and PW-28 was that the bleeding victim should be given first aid forthwith. PW-12 not noting the presence of any police official in a span of 2 to 3 minutes when he removed the injured to the hospital is of little consequence. Through the testimony of PW-26 it has also been established that PW-21 was at the spot as early as at 6.55 PM. Incident is of 6.35 PM. PW-21 was thereafter embroiled in the further investigation of the case; crime team had been summoned; dog squad had reached; rough site plan was prepared, the photographer had been called at the spot; investigation was in progress. PW-21 has also explained this in his version on oath. It was only natural that after this initial investigation PW-21 went to the hospital to find out the fate of his injured colleague where he learnt that SI Vinod had succumbed to his injuries. This is also substantiated by the version of PW-25 Const.Rohtas, the duty Constable at the Trauma Centre; who had handed over the clothes of the deceased to the SHO who had come to the hospital within one hour of the admission of the injured i.e. by about 7.45 PM-8.00 PM.

29. In appreciating the evidence of an eye witness, the approach of the court is to see whether the evidence of the witness as a whole is reliable and has a ring of truth in it. Minor discrepancies of trivial matters not touching the core of the case, hyper-technical approach by taking sentences turn out of context here and there, not going to the root of the matter would not be proper. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. The presumption that a person acts honestly and legally applies as much in favour of a police officer as of other persons. It is not proper and permissible to doubt the evidence of police officers. Judicial approach must not be to distrust and suspect their evidence on oath without good and sufficient grounds therefor. In Karamjit Singh vs. State AIR 2003 SC 1311, it has been held by the Supreme Court that the testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. Testimony of an injured witness is entitled to greater weight. His presence at the time and place of occurrence cannot be doubted and in the instant case no such argument has also been propounded before us qua the presence of PW-18. It is unlikely that an injured would spare the

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real assailant and implicate an innocent person; unless there are cogent and convincing grounds and in the absence of any material infirmity to discard his evidence, his testimony cannot be repelled. This has been held by the Supreme Court in Mer Dhana Sida vs. State of Gujrat AIR 1985 SC 386.

30. In our view, versions of PW-17, PW-18 and PW-21 inspire confidence. Presence of PW-17 and PW-21 has been established at the spot; PW-18 was the injured eye-witness. The minor discrepancies and contradictions pointed out by the learned defence counsel not touching the core of the case and witnesses not expected to possess a photographic memory, the powers of observation differing from person to person has to be kept in mind. All of them have categorized the specific role of exhortation i.e. 'Maar Goli' on accused Kishore, pursuant to which Ghanshyam had fired the shot on SI Vinod which hit him on the left side of his chest. The post-mortem report Ex.PW-23/A has also corroborated this ocular version and the injury which was fatal was the result of fire arm projectile fired from near contact range on the left upper chest of the victim. On scrutiny of the testimony of the aforesaid witnesses it is established that their versions are clear, cogent and inspire confidence.

31. N.K. Sharma PW-1 Finger Print Expert in the crime team had reached the spot at 7.00 PM. He found the maruti car bearing CrI. A. No.885/2005 and CrI. A.No.721/2005

no.DL-9CC-1595 parked near the spot. He lifted finger prints from the car and the photographs of the same were taken by Const. Pramod Kumar in his presence. Report Ex.PW-1/A was handed over by PW-1 to the Investigating Officer PW-21 who has also corroborated this version on oath and has stated that SI N.K. Sharma gave him the report Ex.PW-1/A which he had kept on record. In his cross-examination, PW-1 stated that he remained at the spot for two hours and till that time he was not given the FIR number by the police. He has further deposed that the negatives of the chance prints were deposited at the office of the Finger Prints Bureau for further examination.

32. Sanjay Kumar Jha PW-36 had on 17.1.2001 received the chance prints with specimen finger prints of the accused Ghanshyam and Kishore as also of the owner of the vehicle Bijinder Aggarwal PW-5 for comparison with the lifted chance prints. As per his report Ex.PW-36/A, he opined that the chance print mark Q3 is identical with the right middle finger S1 on the finger impression slip of Kishore. This corroborates the version of the eye witnesses that Kishore was sitting on the front left side of the driver seat; Q3 was the chance print which had been taken from the left front door of the car. Ex.PW-36/A further opined that chance print Q6 was identical with the right thumb mark S2 on the finger impression slip of Ghanshyam. The other prints could not be developed. PW-36 in
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his deposition has stated that the science of finger prints is an accurate science and there is no question of any omissions in comparison.

33. It is relevant to state that none of the aforesaid witnesses have been given any suggestion by the defence counsel that their palm impressions had been planted on the vehicle; the defence of the accused Kishore in his statement under Section 313 Cr.P.C. that he was forced to put his palm impression on the maruti car is clearly an afterthought and is not convincing. If this was the case, this defence would have been adopted by Kishore right from the inception and not four years later in the year 2005 when his statement, under Section 313 Cr.P.C., was recorded.

34. This piece of evidence has established that both the accused Ghanshyam and Kishore were seated in this Maruti car bearing No. DL-9CC-1595 on 07.1.2001 recovered at the spot; presence of both the accused at the spot stands proved. This vehicle was the subject matter of a theft case and on the complaint of Bijinder Aggarwal PW-5 FIR No.318/2000 Ex.PW-5/A had already stood registered on 21.12.2000 at Police Station Roop Nagar.

35. Accused Kishore had been apprehended at the spot. He had made his disclosure statement Ex.PW-18/D; no recovery had been effected at his instance.

36. Accused Ghanshyam had been arrested on 13.1.2001 pursuant to secret information which had been received by ACP Bhag Singh PW-40 who had been handed over the investigation of this case on 10.1.2001. PW-40 accompanied by SI Ram Avtar PW-37, PW-18, PW-17 reached East Delhi where they were joined by SI Inder Pal PW-35. A raiding party was organized and at the pointing out of secret informer accused Ghanshyam was apprehended and identified by PW-17 and PW-18 as the assailant of the incident of 07.1.2001. Accused Ghanshyam made his disclosure statement Ex.PW-35/C and his personal search was taken vide memo Ex.PW-18/H. His arrest memo attested by PW-35 and PW-18 is Ex. PW-35/B.

37. Accused Ghanshyam made a second disclosure statement on 16.1.2001 and disclosed that he could get the weapon of offence recovered. He led the police party to the house of Julfikar who was not present in his house. Thereafter he took the police team to a home numbered C-27 but the actual number of this house was 340/12 and was located in Gali No.1, Friends Colony. This house belonged to Sudhir Kumar a friend of the accused and this has been testified by Mahesh Yadav PW-9. Thereafter in the presence of SI Ram Avtar PW-37 accused Ghanshyam took out the keys of a room from a small temple under the staircase and opened

the lock of the room and from inside the room he got recovered two bags, one of green colour and another of black colour. Photocopy of the Registration Certificate of a vehicle in the name of Bijinder Aggarwal as also a sum of Rs.1,15,000/- in cash and one gold chain with the locket of Goddess Durga were recovered. Ex.PW-37/C is seizure memo of this Registration Certificate. That this number plate has been replaced by a fake number plate i.e. DL-9CC-1595 has been testified by Const.Mahender Singh PW-22 and has been corroborated by the owner of the vehicle, PW-5. Blood stained pant and shirt of the accused were taken into possession vide separate memo Ex.PW-37/C and Ex.PW-37/D.

38. On 24.1.2001 accused was taken on police remand under the orders of the Court and pursuant to his third disclosure statement Ex.PW-8/A he got recovered the weapon of offence which was used in this case; i.e. a deshi katta with one empty cartridge case and two live cartridges; sketch of the deshi katta is Ex.PW-8/B. This weapon along with the cartridges was sealed in a pullanda with the seal of BSJ i.e. the initials of the Investigating Officer ACP Bhag Singh and was taken into possession vide memo Ex.PW-8/C. This exhibit was deposited in the Malkhana on 24.1.2001 itself and this has been testified by H.C. Phool Chand PW-13 Malkhana Incharge on the relevant date. PW-13 had deposed that on 29.1.2009 vide RC No.17/21 the katta and the cartridges were sent to CFSL, Malviya Crl. A. No.885/2005 and Crl. A.No.721/2005

Nagar through SI Ram Avtar PW-37. This also finds corroboration in the testimony of PW-37. The CFSL vide its report Ex.PW-40/C and Ex.PW-40/D has certified that on 29.1.2001 ten sealed parcels duly sealed were received in the CFSL. The deshi katta and the two live cartridges and one empty cartridge contained in parcel no.9 and parcel no.10 sealed with the seal of BSJ were also received in the Biology Division and thereafter, on 2.2.2001, were transmitted to the Ballistic Division. Parcel no.6 had also been received in the Biology Division which was the fired bullet having seal of KLS IC SUBZI MANDI which was the bullet which had been retrieved from the dead body of SI Vinod Kumar and handed over by the Post Mortem Doctor PW-13 to Investigating Officer on 08.1.2001. This fired bullet duly sealed had thereafter been deposited on 08.1.2001 itself with PW-13. The Ballistic Division vide its report Ex.PW-39/A and through the testimony of Dr.K.C.Varshney, PW-39 has established that on the examination of the fired bullet and the country made pistol .315 inches bore, the test fired bullet Ex.EB1 had been fired through the country made pistol .315. It had further been opined that the individual characteristics of the striation marks on Ex.EB1 and on the fired bullets TB1 to TB4 were found identical. This report Ex. PW-39/A is dated 22.1.2001.

39. Thus through the testimony of PW-13 Malkhana

Incharge, PW-23 Post Mortem Doctor, PW-40 the Investigating
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Officer and PW-39 the Ballistic Expert, it has been proved that the bullet which had been retrieved from the body of SI Vinod Kumar had been fired from the same fire arm which accused Ghanshyam had got recovered on 24.1.2001.

40. Learned defence counsel has, however, challenged this recovery of the weapon of offence. Attention has been drawn to recovery memo Ex.PW-8/C. It is stated that witnesses to the said recovery i.e. Smt.Renu Khanna PW-8 and Sh.Ram Chander PW-14 are stock witnesses of the police and it is highly improbable that they had met the Investigating Officer per chance; it is stated that this has come in their deposition that they were well known to the Investigation Officer and they have deposed falsely at his behest.

41. Let us now examine this document Ex.PW-8/C as also versions of PW-8 and PW-14 who had attested this document. Smt.Renu Khanna PW-8 stated that she is a social worker; on 24.1.2001 at about 4.30 PM when she was taking a walk at the Delhi University area and passing through Police Station Maurice Nagar; she met Inspector Bhag Singh who was looking perplexed; he stated that he was involved in solving a murder case and he requested her to help him; she joined him at the Police Station; after 15 minutes Ram Charan PW-14 an employee of Delhi University who had come to give information about some program to Inspector Bhag Singh reached there; Inspector Bhag Singh

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requested him also to participate in the case. Accused Ghanshyam was produced in a muffled face and he confessed that he had killed SI Vinod Kumar with a country made pistol and that the said pistol was lying opposite Hanuman Mandir on the Ring Road towards the Eastern Side and he could get it recovered; he led the police team to a place opposite the Hanuman Mandir on the Ring Road towards Eastern Side wherefrom under a slope of the road which was covered with stone he retrieved a loaded pistol having a used cartridge and as also two live cartridges. The accused picked up these articles and handed them over to Inspector Bhag Singh which were taken into possession vide memo Ex.PW-8/C. PW-8 has further deposed that after sealing all the said articles the seal was handed over to her. She has further deposed that on 28.1.2001 she had come to the police station and brought the seal which was embossed on the FSL Form and thereafter the same was returned back to her. In her lengthy cross-examination nothing has been elicited which could shake her credibility; she has admitted that inspector Bhag Singh is known to her since she is a social worker. She admitted that the writing work was done by the police near the Peepal Tree.

42. To the same effect is the version of PW-14 Ram Charan who has also been subjected to a lengthy cross-examination. He has admitted that Inspector Bhag Singh is known to him and he is

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working as driver with Mr. K.K. Pandey who was posted in the Registrar's office of Delhi University and he had come to inform Inspector Bhag Singh about a program of the University. He admitted that this is his first case and he never appeared as a witness in any other case. He further admitted that when he reached the Police Station, Smt. Renu Khanna was already sitting there. Nothing could shake the credibility of this witness either.

43. It is relevant to state that none of the aforesaid witnesses have been suggested that they are deposing falsely for any ulterior purpose or motive or that they were stock witnesses of the police as is the argument now propounded before us. We are satisfied that the recovery of the deshi katta and the cartridges stands proved; there is also no possibility of the tampering of the said exhibits as the seal after use had been handed over to PW-8 who is an independent person; all safeguards to exclude the possibility of tampering of these exhibits have been adhered to.

44. The aforementioned testimony of the eye witnesses, the report of the Finger Print Expert, the recovery of the deshi katta at the instance of Ghanshyam and the report of ballistic expert coupled with the fact that Ghanshyam had absconded for six days has established that accused Ghanshyam and Kishore in

furtherance of their common intention had murdered SI Vinod and caused injuries on the person of Const.Bijinder.

45. M.S.Upadhyay PW-34 DCP North has proved the sanction Ex.PW-34/A under Section 39 of the Arms Act accorded by him for prosecution of accused Ghanshyam. The offence under Sections 25 and 27 of the Arms Act qua accused Ghanshyam stands proved.

46. Maruti vehicle i.e. DL-9CC-1595 was a stolen property; the owner of the vehicle was PW-5; RC of the said vehicle had been got recovered by accused Ghanshyam on 16.1.2001; this vehicle was in occupation of both the accused and is evident from the eye witnesses account, corroborated by the report Ex.PW-1/B of the Finger Print Expert. They had replaced the original number plate with a fake number plate knowing it to be a fabricated document. Conviction of the accused under Sections 411 and 471 of the IPC is also maintained.

47. Co-accused Kishore has been convicted for the substantive offences under Section 302, with the aid of Section 109 of the IPC which in our view is a mis-interpretation of the legal provision. Section 107 of the IPC defines abetment; an abettor is a person, who does not himself commit a crime but aids, instigates or

encourages another person to commit the crime. Section 34 of the IPC embodies the doctrine of joint liability in doing a criminal act, the essence of that liability being the existence of a common intention; they are all principal offenders. In our view Ghanshyam and Kishore were joint criminals, directly liable equally for their joint crime. Accused Kishore is accordingly convicted along with co-accused Ghanshyam for substantive offences under Sections 302/353/332/186 with aid of Section 34 of the IPC.

48. The appeals in our view have no merit. The convictions and the sentences as directed by the trial Judge are maintained with partial modification that accused Kishore is convicted with the aid of Section 34 and not under Section 109 of the IPC. Appeals are disposed of accordingly. Appellants are on bail. Their bail bonds and surety bonds are cancelled. They shall surrender forthwith to suffer remaining sentence.

(INDERMEET KAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

1st September, 2009
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