

Ishwar vs State

Ishwar vs State

SooperKanoon Citation : sooperkanoon.com/1257248

Court : Delhi

Decided On : May-26-2026

Judge : Hon'Ble Mr. Justice Navin Chawla,Hon'Ble Mr. Justice Ravinder Dudeja

Appeal No. : CRL.A./502/2003

Appellant : Ishwar

Respondent : STATE

Advocate for Pet/Ap. : Mr. Hemant Baisla, Mr. Hemant Kumar Niranjana, Ms. Shikha, Ms. Neha Yadav, Mr. Aman Usman, Mr. Manvendra Yadav, Mr. Atiq Ur Rehman, Mr. Vinayak Bhandari, Ms. Teesta Mishra, Mr. Sushant Singh, Mr. Aman Usman, Mr. Manvendra Yadav, Mr. Atiq Ur Rehman

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.03.2026

Pronounced on: 26.05.2026

+ CRL.A. 502/2003 ISHWARAppellant Through: Mr. Hemant Baisla, Mr. Hemant Kumar Niranjana, Ms. Shikha, Ms. Neha Yadav, Advs.

versus

STATERespondent Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Mr. Atiq Ur Rehman, Advs. and Insp. Kishore Kumar, PS Vasant Kunj North. + CRL.A. 528/2004 KULDEEP @ KALLUAppellant Through: Mr. Vinayak Bhandari, Panel Counsel, DHCLSC with Ms. Teesta Mishra and Mr. Sushant Singh, Advs.

versus

STATERespondent Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Mr. Atiq Ur Rehman, Advs. and Insp. Kishore Kumar, PS Vasant Kunj North.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. These two appeals have been filed by the appellants against the

judgment of conviction dated 05th April, 2003 and the order on

sentence dated 19th April, 2003 passed by the learned Additional

Signed By:VAISHALI CRL.A. 502/2003 & CRL.A. 528/2004 Page 1 of 29

Sessions Judge, New Delhi [trial court], in Sessions Case No. Station Vasant Kunj. Since both appeals emanate from the same FIR, involve

identical questions of fact and law, and assail the common impugned judgment, they are being disposed of together by this common judgment.

Factual Matrix

2. Prosecution case, in brief, is that on 27th March, 1999 at about

6:50 AM, an information was received at Police Station, Vasant Kunj that the body of a Police Constable was lying near Rajokri Pahari. The information was recorded vide DD No. 9-A [Ex. PW-10/A4]. The DD entry was entrusted to SI Prahlad Yadav (PW-8), who along with Constable Jalvir Singh reached at the spot. Subsequently, Inspector Mohd. Iqbal (PW-20), the then SHO, PS Vasant Kunj, also reached there and found that the body of Constable Rambir, in police uniform, was lying in a five feet deep pit with a heavy stone lying near the head of the deceased. On inspection of the body, it was found that there were two holes on the left side of the shirt worn by the deceased with corresponding holes in the baniyan (vest) and two corresponding holes on the body of the deceased Constable Rambir. The name plate in the name of Constable Rambir was found near the body, which was stained with blood. The body and clothes were smeared with blood. There was also a burn injury mark on the left elbow of the deceased.

3. An Election ID Card [Ex. PW-6/A] in the name of Kuldeep

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 2 of 29

(appellant) was found lying at a distance of five feet from the body on the northern side. Blood was found on the ground. One empty cartridge was found at a distance of three feet from the blood. The left shoe of make Bata of the deceased was found at a distance of 300 feet on the northern side. Blood was also found at a distance of about 20 feet on the eastern side near the electric pole. The blood was also seen on two bricks, which were lying at the spot.

4. Crime Team was called for inspection of the spot. The Crime

Team Photographer took the photographs of the scene of crime. Exhibits were lifted from the spot and duly sealed. Inspector Mohd. Iqbal (PW-20) prepared the Rukka [Ex. PW-20/A], on the basis of which, FIR was registered at PS Vasant Kunj under Sections 302/201 IPC. Exhibits were then deposited in the Malkhana and body was sent for post-mortem.

5. Next day, that is, 28th March, 1999, a secret information was

received at PS Vasant Kunj that Kuldeep @ Kallu was present at Rajendra Park, Kachchi Colony, Gurgaon. The Investigating Officer [IO] Inspector S.K. Patil (PW-16) along with police staff searched for Kuldeep near the house of accused Ishwar Singh at Rajendra Park. Accused Kuldeep and Ajay were overpowered, while their associate, whose name was disclosed by accused Kuldeep as Darshan, managed to escape. Upon interrogation, accused Kuldeep and Ajay confessed their guilt. They were arrested. Their disclosure statements were recorded. In his disclosure statement (Ex PW-4/A), accused Kuldeep stated that he can get the incriminating articles recovered. Pursuant to the said disclosure, he led the police to Ishwars house, and at his

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 3 of 29

instance, the weapon of offence, that is, country made pistol (Desi Katta) (Ex. PW-4/G) was recovered from a brass Tokery lying on the Taand of the house. He also got recovered a blue colour LML Vespa Scooter, without number plate (Ex. PW-4/B), belonging to deceased Constable Rambir, from the room of Ishwars house. He also got recovered a blood stained white shirt (Ex. PW-4/E), which was hanging on a wire in the courtyard of Ishwars house.

6. Accused Ajay got his blood stained shirt and jeans/pant (Ex.

PW-4/D) recovered from the Taand of Ishwars house. All the recovered articles were sealed and seized by the IO in the presence of accused Ishwar Singh.

7. Accused Ishwar Singh was also arrested for the commission of

offence under Section 212 IPC for knowingly harbouring the co- accused persons and for allowing the accused to conceal the scooter of the deceased and the weapon used in the commission of offence at his house.

8. During further investigation, accused Gopal was apprehended

and arrested from Uttam Nagar Bus Stand on the pointing out by his wife and brother-in-law. On interrogation, he gave disclosure statement (Ex. PW-8/G) and got recovered his blood stained shirt and pant (Ex. PW-4/E) from the Taand of Ishwars house.

9. After completion of investigation, charge sheet was filed

against the accused persons under Sections 302/201/120-B/186/353/332 IPC and under Sections 25/27/54/59 Arms Act, 1959.

10. Charge under Section 302/34 IPC and under Section 201/34

IPC were framed against accused Kuldeep, Ajay and Gopal, while

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 4 of 29

separate charge under Section 212 IPC was framed against accused Ishwar. They pleaded not guilty and claimed trial.

11. In order to substantiate the charge, prosecution examined 22

witnesses. Statements of accused were recorded under Section 313 of the Code of Criminal Procedure, 1973 [Cr.P.C.], wherein, they denied all the incriminating evidence appearing on record against them. They preferred not to lead any evidence in their defence.

12. Vide judgment dated 05th April, 2003, the learned Trial Court

convicted the accused Kuldeep for the offence punishable under Section 302/201 IPC and accused Ishwar under Section 212 IPC. Accused Ajay and Gopal were given the benefit of doubt and were accordingly acquitted.

13. The learned Trial Court was of the view that the recovery of

scooter of the deceased and country made pistol is admissible against Kuldeep under Section 27 of the Evidence Act, the country made pistol was further connected by the report of Ballistic Expert with the empty cartridge recovered at the spot and with the bullet found in the body of the deceased. According to the learned Trial Court, such evidence of the prosecution cannot be discarded and there was nothing which was in contradiction to the hypothesis of innocence of accused Kuldeep, and therefore, held that the case of the prosecution against accused Kuldeep stands fully proved.

14. With regard to accused Ishwar, the learned Trial Court found

that the recovery of country made pistol, the scooter of the deceased and the blood stained clothes were made from his house. The scooter of the deceased was without a number plate and was not such a small

thing which could have hidden anywhere unnoticed. Accused Ishwar therefore cannot claim that he had no knowledge about these articles, and thus, inferred that accused Ishwar had full knowledge about the commission of offence and that he was concealing and shielding the real culprits and the incriminating articles connected with the alleged offence with intention to screen the actual offender from legal punishment.

15. As far as co-accused Ajay and Gopal are concerned, the learned

Trial Court found that the only evidence against them was the recovery of their blood stained clothes, which were not corroborated by any other circumstances to connect them with the offences alleged against them.

16. Vide order on sentence dated 19th April, 2003, accused Kuldeep

was sentenced with imprisonment for life for the offence punishable under Section 302 with fine of Rs. 20,000/-, and in default, to undergo Rigorous Imprisonment for 02 years. He was sentenced to imprisonment for 05 years with fine of Rs. 5,000/- under Section 201 and in default, was directed to undergo 06 months Rigorous Imprisonment. Convict Ishwar was sentenced with Rigorous Imprisonment for 04 years with fine of Rs. 10,000/- under Section 212 and in default of payment of fine, he was directed to undergo 01 year Rigorous Imprisonment.

17. Feeling aggrieved, the appellants have preferred the present

appeals. The sentence awarded to the appellants Ishwar and Kuldeep was suspended vide orders dated 21st January, 2004 and 14th February, 2006, respectively.

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 6 of 29

Submissions on behalf of Appellant Kuldeep @ Kallu in CRL.A.

18. Learned counsel appearing on behalf of appellant Kuldeep @

Kallu submitted that the impugned judgment suffers from serious inconsistencies and improbabilities, rendering the conviction of the appellant unsustainable in law. It was contended that the prosecution case, insofar as the present appellant is concerned, is based entirely on circumstantial evidence, and no direct evidence whatsoever has been brought on record to establish that it was the appellant who fired upon or caused the death of Constable Rambir.

19. Learned counsel submitted that the prosecution itself projected

a case of joint involvement of several accused persons and sought to attribute motive and active participation to more than one accused. However, despite this, the learned Trial Court proceeded to convict the present appellant while acquitting the other accused persons without properly recording a convincing distinction in respect of the incriminating circumstances.

20. Learned counsel further submitted that the motive, as sought to

be projected by the prosecution, cannot be attributed to the present appellant. It was argued that even if the prosecution version is taken at face value, the alleged grievance or prior animosity was far stronger, if at all, in the case of the co-accused persons than in the case of the present appellant. It was stated that motive assumes greater importance in cases of circumstantial evidence and in support of his argument, the learned counsel relied upon *Shankar Vs. State of Maharashtra*, (2023) 19 SCC 553 and *Vaibhav Vs. State of*

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 7 of 29

Maharashtra, (2025) 8 SCC 315.

21. Referring to the disclosure of accused Gopal, it is submitted that

prosecution itself attributed motive to the co-accused Gopal rather than the appellant Kuldeep. Kuldeep had no independent motive, no previous animosity against the deceased to commit his murder.

22. It was next submitted that the only incriminating circumstance

against the appellant Kuldeep is the alleged recovery of his election identity card from a place approximately five feet away from the dead body. Learned counsel argued that this circumstance has been given undue weightage by the learned Trial Court.

23. Learned counsel contended that even assuming that the election

identity card was indeed recovered from the vicinity of the dead body, such recovery could, at the highest, suggest possible presence of the appellant at or around the area of incident. It was submitted that mere presence of appellant by itself is not sufficient to establish the commission of the crime by him.

24. According to learned counsel, despite the importance assigned

to this alleged recovery, no photograph of the identity card at the spot has been produced, which materially weakens the reliability of this circumstance. Learned counsel submitted that where the entire case rests upon circumstantial evidence, each link must be proved with utmost certainty, and an unsupported assertion regarding recovery of an identity card cannot be elevated to the status of a conclusive incriminating circumstance. It was argued that in cases of circumstantial evidence, the chain of circumstances must remain unbroken and must only point towards the guilt of the accused. In

support, reliance is placed on Prakash Vs. State of Rajasthan, (2013) 4 SCC 668 and Raju Vs. State of Rajasthan, (2024) 14 SCC 444.

25. It was further submitted that the shirt of accused Kuldeep was

sent to FSL for forensic examination to determine the presence of blood. The FSL Report, even though, indicates the presence of human blood on the shirt, does not confirm the blood group, and therefore, forensic report does not support the prosecution case.

26. The learned counsel further argued that the learned Trial Court

convicted the appellant only on the ground of recovery of weapon of offence and the scooter of the deceased at his instance. It was argued that the alleged recovery, may at best, attribute knowledge to the accused but does not establish that the appellant actually used the gun and committed the crime. There is no clinching evidence, like his fingerprints on the said weapon to fully establish that the appellant used the recovered weapon. In support, reliance was placed on Rajendra Singh and Ors. Vs. State of Uttaranchal, 2025 SCC Online

SC 2148.

27. It was submitted that the learned Trial Court failed to properly

appreciate that the case against the appellant is essentially built on circumstantial evidence and that in a case resting solely on circumstantial evidence, the Court is required to ensure that the chain is so complete that it excludes every possible hypothesis consistent with innocence. According to learned counsel, in the present case, such a complete chain is conspicuously absent. On these submissions, learned counsel prayed that the CRL.A. 528/2004 be allowed and the conviction and sentence of appellant Kuldeep @ Kallu be set aside

and he be acquitted of all charges. Submissions on behalf of Appellant Ishwar in CRL.A. 502/2003

28. Learned counsel appearing on behalf of appellant Ishwar

assailed the impugned judgment primarily on the ground that his conviction under Section 212 IPC is founded on conjecture and surmises.

29. It was submitted that the entire prosecution case against Ishwar

is that certain incriminating articles, namely the scooter of the deceased, the weapon of offence (desi katta), and blood-stained clothes, were recovered from his house. It was contended that even if such recoveries are assumed for the sake of argument, the same do not automatically establish the mens rea or conscious harbouring required under Section 212 IPC.

30. It was further argued that the prosecution has failed to prove

that the appellant had knowledge or reason to believe that the persons allegedly visiting or staying at his premises had committed the murder of a police constable. Learned counsel submitted that this essential mental element cannot be presumed merely because the prosecution asserts recovery of certain articles from a premises allegedly associated with the appellant Ishwar.

31. Learned counsel strongly contended that the recovery

proceedings are wholly doubtful as there was no public witness associated at the time of the alleged recovery. It was further submitted

that even the local police station of the area where the alleged recovery was made was not informed in advance that the investigating team from Delhi had arrived there for apprehension and recovery

Signed By:VAISHALI CRL.A. 502/2003 & CRL.A. 528/2004 Page 10 of 29

proceedings.

32. It was further argued that the appellant Ishwar was not arrested

from his house at all. According to the defence, the appellant was apprehended approximately three kilometres away from his residence, while he was returning from work. This, according to learned counsel, undermines the prosecution theory that he was found in possession of or had conscious control over the recovered articles.

33. It was submitted that the appellant had no occasion to know

whether any person had visited his residence in his absence, and that the prosecution has not established that he was physically present at the time the alleged concealment took place.

34. Learned counsel argued that Section 212 IPC requires a

conscious act of harbouring or concealment, coupled with knowledge of the offence committed by the principal offender. It was urged that even if it were assumed that some person had come to the appellants house, the mere fact of their presence cannot establish criminal liability unless it is shown that the appellant Ishwar knew that they had committed the murder of a police officer or that he intentionally provided shelter to them to screen them from punishment.

35. It was also submitted that the appellant Ishwar had no criminal

antecedents, no independent motive, and no personal grudge against the deceased. Learned counsel argued that the prosecution has failed to show why the appellant would voluntarily expose himself to grave criminal liability by harbouring such offenders.

36. Learned counsel contended that the learned Trial Court erred in

convicting the appellant merely because the house was linked to him,

Signed By:VAISHALI CRL.A. 502/2003 & CRL.A. 528/2004 Page 11 of 29

without first establishing the essential legal ingredients of conscious harbouring, guilty knowledge, and intention to protect the offenders. It was therefore submitted that the appeal CRL.A. 502/2003 be allowed and the conviction of Ishwar under Section 212 IPC to be set aside.
Submissions on behalf of State

37. Per contra, learned Additional Public Prosecutor [APP] for

the State supported the impugned judgment, passed by the learned Trial Court, stating that conviction is based on a well-reasoned finding upon due appreciation of evidence.

38. Learned APP submitted that the deceased Constable Rambir

was on official duty at the relevant time, and that the prosecution has established that he was intercepted and murdered while discharging his public duty. It was submitted that the body of the deceased was found near Rajokri Pahari and the investigation at the scene led to the recovery of certain articles including the election identity card of accused Kuldeep, which was recovered from the vicinity of the dead body. It was submitted that this was not an isolated recovery and that once the election identity card of accused Kuldeep was found near the body, the investigating

agency naturally proceeded to verify his whereabouts and movements.

39. Learned APP submitted that the police thereafter went to the

residence/location of Kuldeep and found that he had gone to Gurgaon at the house of accused Ishwar, and thereafter the accused persons were apprehended. This conduct, as per learned APP further reinforced the prosecution case and connected the appellant Ishwar with the subsequent recoveries.

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 12 of 29

40. It was further submitted that the prosecution has also proved

recovery of the scooter of the deceased, which, though unnumbered, bore clear identifying features including the logo/mark of Delhi Police and the name of the constable written upon it, thereby leaving no doubt as to its identity. It was argued that the recovery of scooter from the house of accused Ishwar is a highly incriminating circumstance and cannot be dismissed as accidental.

41. Learned APP also submitted that the prosecution recovered the

desi katta, and the ballistic report confirmed that the same as the weapon of offence. The ballistic report corroborated the prosecution version regarding use of that firearm in the commission of the offence. Learned APP further submitted that the recovery of blood-stained clothes from the same house is another important circumstance which links the accused persons with the commission of the offence and the subsequent attempt to screen themselves from punishment.

42. The cumulative effect of the circumstances, it was argued,

forms a complete chain pointing only towards the guilt of the accused. In response to the appellant Kuldeeps argument regarding motive, learned APP submitted that in a case where the chain of circumstantial evidence is complete, motive assumes a secondary role. It was argued that even if the defence seeks to suggest that some co-accused may have had a stronger motive, that by itself does not exonerate the present appellants where independent incriminating circumstances stand proved against them.

43. The learned APP argued that the absence of photograph of the

election identity card does not weaken the prosecutions case, as

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 13 of 29

recovery has been duly established through police testimonies and the seizure memo. Regarding the white shirt and the forensic report, it was contended that the prosecution cannot be discredited merely because blood group was not found on the same. The Court, it was emphasized, should assess the evidence as a whole rather than focusing on isolated aspects of the case.

44. In response to the submissions advanced on behalf of appellant

Ishwar, learned APP submitted that the offence under Section 212 IPC is fully made out from the evidence on record. It was argued that the concealment of the deceaseds scooter, weapon of offence, and blood-stained clothes at the premises linked to Ishwar clearly demonstrates knowledge, assistance, and intention to protect the offenders.

45. It was further argued that the absence of public witnesses is not

fatal where the police witnesses are otherwise reliable and the recoveries are duly documented. It is thus submitted that the learned Trial Court rightly appreciated the evidence and convicted the appellants, and therefore, the appeals are liable to be dismissed being devoid of merit. Analysis and Reasoning:

46. We have considered the rival submissions. There is no dispute

to the homicidal nature of the death. On receipt of DD no. 9A (Ex. PW 10/A4) regarding the information that a body of a police constable was lying near Rajokri Pahari, SI Prahlad Yadav (PW-8) along with Constable Jalvir Singh were the first ones to reach the spot. They were followed by Inspector Mohd. Iqbal (PW-20), SHO, Police Station Vasant Kunj along with SI Balram (PW-6), where they found the body

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 14 of 29

of the deceased Constable in uniform lying in the pit. They recovered a name plate bearing the name of Constable Rambir Singh under the body. The body was sent to Safdarjung Hospital for post mortem through SI Subey Singh (PW-5). The body was later identified by Mani Ram (PW-1), older brother of Rambir Singh.

47. Dr. Chanderkant (PW-10) who conducted the post mortem

examination on the body of Constable Rambir Singh found 18 ante mortem injuries and according to him, the injuries number 5, 6 and 7 were caused by fire arm. He proved the post mortem report Ex. PW10/A. As per his opinion, the cause of death was shock, haemorrhage, head injury and fire arm injury. He deposed that injuries number 5, 15, 16 and 17 each individually and collectively were sufficient to cause death in ordinary course of nature.

48. PW-10 Dr. Chanderkant, who had conducted the post mortem,

was not cross-examined. The defence did not even suggest that the injuries recorded in the post mortem report could be self-inflicted or accidental. Even, the nature of injuries do not admit of such a possibility. Hence, the medical evidence leaves no room for doubt that the death of Constable Rambir Singh was homicidal in nature.

49. The entire case of the prosecution rests on circumstantial

evidence as there is no eye witness of the occurrence. The prosecution relies upon the following circumstances to prove the guilt of accused Kuldeep: i. Recovery of Election ID Card (Ex. PW 6/A) belonging to the accused Kuldeep from the place of occurrence. ii. Recovery of the weapon of offence, that is, the country

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 15 of 29

made pistol (Ex. PW 4/G), shirt of accused Kuldeep (Ex. PW 4/C) having blood mark on it and scooter of Constable Rambir Singh (Ex. PW 4/B) from the house of accused Ishwar. iii. The FSL result (Ex. PW 18/B) confirming the presence of human blood on the shirt of accused Kuldeep. iv. Ballistic report (Ex. PW 21/A) which proves that the fired empty cartridge recovered from the spot was fired from the country made pistol.

50. It is well settled law that where the case rests entirely on

circumstantial evidence, the chain of evidence must be complete so that every hypothesis of innocence is excluded but the one proposed to be proved, and that such circumstance must show that the act has been done by the appellants/accused. In the light of the said principle, we shall now analyse as to whether the prosecution has been able to prove the guilt of against the appellants.

51. In order to prove the circumstance of recovery of the election

ID card of Kuldeep, the prosecution relies upon the testimonies of PW-6 SI Balram, PW-8 SI Prahlad Yadav, PW-16 Inspector SK Patil and PW-20 Inspector Mohd. Iqbal. They all consistently deposed that the election ID card in the name of Kuldeep Singh was lying about five feet from the north side from the body. There is no cross-examination worth the name challenging the recovery of the election ID card from the spot.

52. PW-13 Babulal, LDC from the election office proved that the

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 16 of 29

election ID card Ex. P1 was issued by the Election Commission in the name of Kuldeep son of Kishan Chand. The deposition of PW-13 thus proves that the recovered election ID card belonged to accused Kuldeep.

53. The only challenge raised before us is that the election ID card

is not visible in any of the photographs taken at the spot which, according to the learned defense counsel, makes the recovery doubtful and there is a possibility that ID card has been planted by the IO.

54. We are not impressed by the aforesaid argument of the defence.

Even though the election ID card is not visible in any of the photographs of the spot, we find that rukka Ex. PW 20/A, which was prepared at the spot itself by PW-20, records the factum of recovery of election ID card bearing number DL/03/031/234248 in the name of Kuldeep Singh son of Kishan Chand from the spot. The rukka was the earliest document prepared by the Investigating Officer at the spot. The mention of recovery of election ID card of Kuldeep in the rukka and seizure memo prepared at the spot, much before the arrest of accused Kuldeep, rules out the possibility of planting of election ID card.

55. In his statement recorded under Section 313 Cr.P.C., accused

Kuldeep did not render any satisfactorily explanation of the recovery of his election ID card from the spot. He simply denied that the recovery of election ID and just stated that the same was planted. If election ID card was not recovered from the spot, it was incumbent upon the accused to explain how the police got possession of his ID card. Simply saying that the ID card was planted is not sufficient.

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 17 of 29

Hence, in our view prosecution has been able to successfully prove the recovery of election ID card of accused Kuldeep from the place of occurrence.

56. The second circumstance relates to the recovery affected at the

instance of appellant Kuldeep. The evidence reveals that pursuant to his disclosure statement Ex. PW-4/A, the investigating agency recovered the country made pistol (Desi Katta), the scooter belonging to the deceased, and blood stained clothes of Kuldeep.

57. PW-19 HC Ram Kumar deposed that on the night intervening

26th/27th March, 1999, he along with Constable Rambir (deceased) and Constable Himmat Singh were on picket duty near Rajokri Oil Mill from 12.00 midnight to 4.00 am. He further deposed that on the instructions of the SHO, Constable Rambir went to take round on his scooter towards Pahari, but did not return. Thereafter, the body of Constable Rambir was recovered from the pit of old crusher, but his scooter was not found there.

58. PW-16 Inspector SK Patil, the then Additional SHO, Police

Station, Vasant Kunj, deposed that on 28.03.1999, while he along with SI Prahlad Singh, ASI VP Singh, HC Vijay Pal and other staff members had gone to Rajokri Pahadi area in connection with the investigation of this case, they received a secret information that Kuldeep, who was absconding from his house, had gone to Rajindera Park, Gurgaon at the house of Ishwar Singh with his luggage. Upon receipt of this information, they reached at Gurgaon and tried to ascertain the house of the Ishwar in Rajindera Park. However, the house of Ishwar in kachi colony was found locked. He deposed that

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 18 of 29

they kept a watch and at about 3/3:15 PM, they spotted three boys coming towards the house of Ishwar. When they gave signals to them for stopping, they tried to escape. They managed to apprehend Kuldeep and Ajay but the third boy named Darshan managed to escape. He further deposed that both the apprehended accused were separately interrogated. Accused Kuldeep initially denied his involvement but upon being shown his photo ID card, he admitted his guilt. Both accused were arrested and were brought to Police Station Vasant Kunj. Upon interrogation they gave separate disclosure statements Ex. PW 4/A and Ex. PW 8/C. He further deposed that pursuant to the disclosure statements of the accused, they again reached at Rajindera Park, Gurgaon at the house of Ishwar and at that time, Ishwar and his wife were present at the house. He deposed that accused Kuldeep led the police party in a room of the house and got recovered a country made pistol which was lying in a brass tokari placed on the tand. He prepared the sketch of the pistol which is Ex. PW 4/F, whereafter the pistol was sealed in a parcel with the seal of MI and taken into possession vide memo Ex. PW 4/G. PW-16 further deposed that accused Kuldeep had also got recovered a scooter without number plate belonging to deceased Rambir Singh. On the front portion of the scooter DP and R.Sharma were written with red paint. The scooter Ex. P7 was taken into

possession vide memo Ex. PW4/B.

59. PW-16 further deposed that accused Kuldeep had also got

recovered a white coloured shirt which was hanging with a wire in the courtyard after wash. They spotted some washed blood stains on the

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 19 of 29

shirt. The shirt was sealed in a parcel and taken into possession vide memo Ex. PW 4/C.

60. PW-4 SI V.P. Singh and PW-8 SI Prahlad Yadav, who were

also the witnesses of recovery, supported the testimony of PW-16 and their testimonies are more or less the same, as deposed by PW-16.

61. In cross-examination PW-16 stated that at the time of arrest of

accused persons, the Gurgaon Police was not informed. He denied the suggestion that accused Kuldeep made no disclosure statement or that no recovery was effected at his instance. PW-8 SI Prahlad Yadav in his cross-examination stated that the disclosure statement of the accused Kuldeep was recorded first followed by that of accused Ajay. According to him, the disclosure statement of accused Ajay was recorded half an hour after recording the disclosure statement of accused Kuldeep. He admitted that the house of Ishwar was in Haryana which is outside the jurisdiction of Delhi. He admitted that they did not obtain any warrant to enter into or to make search from the house. He stated that when they reached the house of accused Ishwar, the house was lying open. He further stated that they had requested some passersby, but none of them joined the investigation. He confirms that Ishwar and his wife were present in the house. In further cross-examination, PW-8 stated the accused Kuldeep in the custody of the police, entered into the house of

Ishwar. First of all, the country made pistol was recovered from the house on the pointing out of Kuldeep. Thereafter, accused Kuldeep got recovered the scooter and his shirt hanging on a wire in the courtyard. Thereafter, accused Ajay got recovered his clothes from the room of the house. He further

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 20 of 29

stated that 2-3 persons from the neighbourhood of the house were also requested to join the investigation but they declined. He could not tell their names. He stated that no notice was give to them upon their refusal. In further cross-examination, he stated that scooter was parked inside the room from which the country made pistol was recovered. He denied the suggestion that the accused did not make any disclosure statement or that no recovery was effected at his instance.

62. On perusal of the testimonies of the recovery witnesses, it is

evident that such testimonies are cogent and straightforward. Nothing material has been pointed out from the cross-examination which may affect their credibility.

63. Sections 25 and 26 of the Evidence Act, 1872 stipulates that

confession made to police officer is inadmissible in evidence. Further, Section 27 is an exception to Sections 25 and 26 and serves as a proviso to both these sections. Section 27 of the Evidence Act partially lifts the ban to the admissibility of the confession inasmuch as the statement, whether confession or not, is allowed to be given in evidence but the portion, only which distinctly relates to a discovery of fact, is admissible. The discovery of the fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence.

64. The evidence clearly proves that the recovery of the scooter

without number plate on which Delhi Police and R. Sharma was written with red paint, the recovery of country-made pistol and the shirt of Kuldeep was a direct consequence of information supplied by the accused Kuldeep. When the accused himself leads the police to get

Signed By:VAISHALI CRL.A. 502/2003 & CRL.A. 528/2004 Page 21 of 29

the scooter, country made pistol and the shirt recovered, requirement of discovery stands satisfied. Absence of corroboration from independent public witnesses is not fatal. In Appabhai And Anr. Vs. State of Gujrat, AIR 1988 SC 696, the Supreme Court recognised the practical difficulties in securing public witnesses and held that the trustworthy official testimony is sufficient. In the present case, we find that the testimonies of police witnesses with regard to recovery to be consistent and straight forward. The prosecution has therefore, been able to prove the aforesaid recovery at the instance of accused Kuldeep.

65. The recovery of missing scooter of the deceased at the instance

of appellant Kuldeep is a significant circumstance. It establishes that he not only participated in the crime, but also dealt with the property of the deceased after the commission of the offence. The fact that the scooter was removed from the scene of crime and later recovered at the instance of appellant Kuldeep, clearly indicates his involvement and an attempt to screen the offence.

66. The recovery of weapon of offence, that is, country made pistol

(Desi Katta) further strengthens the prosecution case. The same was sent to FSL. The FSL Report Ex. PW-21/A proves that the country made pistol was in working order and the empty cartridge (EC-1), recovered

from the spot, was fired through the country made pistol. The recovery of the empty cartridge from the scene of crime and the subsequent linkage with the recovered weapon thus establishes a direct connection with the appellant and points out the manner in which the offence was committed.

Signed By:VAISHALI CRL.A. 502/2003 & CRL.A. 528/2004 Page 22 of 29

67. The shirt recovered at the instance of appellant Kuldeep was

sent to FSL. The FSL Result Ex. PW-18/B confirms the presence of human blood on the shirt. However, it does not confirm the blood group. The argument, that No reaction or inclusive result with regard to the blood group may weaken the prosecution case, cannot be accepted. Rather, it was for the accused to explain the presence of blood on the shirt recovered at his instance. Moreover, this is not the sole circumstance against appellant Kuldeep, which may be regarded as insufficient.

68. As per prosecution narrative, the motive for commission of

murder was that Constable Rambir was keeping surveillance on the activities of the accused persons, which led to hostility and provided reason for his murder. However, no evidence was led to prove the same. The motive remained embedded only in the disclosure statement of the accused, which is inadmissible in evidence. Motive is an emotion which impels a person to commit the crime. It is an important link in a case based on circumstantial evidence for proving the guilt of the accused, and therefore, the absence of motive in certain circumstances may weigh in favour of the accused. The Honble Supreme Court in the case of Subhash Aggarwal Vs. State of NCT of Delhi, 2025 INSC 499, after considering various decisions, observed as under:- 20. The declaration in the cited decisions and the decisions relied on therein, is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a

strong motive does not by

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 23 of 29

itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances are very convincing and provide an unbroken chain leading only to the

conclusion of guilt of the accused and not to

any other hypothesis; the total absence of a motive will be of no consequence.

69. The argument that the alleged motive emerging from the

disclosure statements point more towards Gopal than Kuldeep is, in any event, not decisive. The disclosure statements are not substantive evidence of motive. The learned Trial Court did not convict Kuldeep solely on motive but on the basis of cumulative effect of the other circumstances proved on record against him. Motive though relevant, is not a sine qua none in every case. Even if, the other accused may have had a stronger motive against the deceased, that by itself does not exonerate Kuldeep, particularly, in the light of other circumstances proved against him.

70. The contention of the defence that the other co-accused persons

have been acquitted, does not weaken the case against the appellant Kuldeep. The evidence against him is specific and distinct. The recovery of his identity card at the spot and the recoveries effected at his instance are circumstances which directly implicate him and distinguish his case

from that of the acquitted accused.

71. Upon joining the circumstances proved, we find that the

recovery of election ID card from the spot gave clue to the investigating agency that accused Kuldeep was involved in the

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 24 of 29

commission of crime. Following the same, accused Kuldeep was apprehended on the basis of secret information near the house of accused Ishwar. He later, made a disclosure statement, which led to the recovery of country made pistol, scooter of the deceased and his shirt from the house of accused Ishwar. The country made pistol has been connected with empty cartridge recovered from the spot soon after the occurrence.

72. In our view, the aforesaid circumstances, particularly the

recovery of election ID card of Kuldeep from the scene from crime, subsequent apprehension of the accused, recovery of the deceaseds scooter, recovery of weapon of offence and the recovery of blood stained shirt, when considered cumulatively, they form a complete and consistent chain pointing only towards the guilt of accused Kuldeep. There is no other reasonable hypothesis emerging from the record consistent with his innocence.

73. Insofar as appellant Ishwar is concerned, his case stands on a

different footing. He was not convicted as a principal assailant but under Section 212 IPC for harbouring the offenders. The charge framed against him states that he harboured the co-accused after having knowledge or reason to believe that they had committed the murder of a police constable and kept in his house the scooter of the deceased and blood

stained clothes with an intention to screen them from legal punishment.

74. The evidence, certainly, shows that these incriminating articles,

that is, scooter of the deceased, weapon of offence and blood stained clothes were recovered from the house of accused Ishwar in his

Signed By:VAISHALI CRL.A. 502/2003 & CRL.A. 528/2004 Page 25 of 29

presence. The recovery of such articles cannot be regarded as accidental or innocent.

75. The deceaseds scooter is not an ordinary article of a neutral

character. Even though, the scooter was not bearing the number plate, it bore identifying features including the Delhi Police logo and the name of the deceased Constable. Such article could not have innocently or accidentally found their way into the appellants premises without raising suspicion. The concealment of the scooter of the victim and the recovery of blood stained clothes and the weapon of offence in the house of accused Ishwar is a strong circumstance that accused Ishwar intended the evidence of commission of offence to disappear with a view to screen the offender from legal punishment. Section 212 IPC reads as under:-
212. Harboursing offender- Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, if a capital offence-shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; if punishable with imprisonment for life, or with imprisonment-and if the offence is punishable with [imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment

which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for

Signed By:VAISHALICRL.A. 502/2003 & CRL.A. 528/2004 Page 26 of 29

the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both. [Offence in this section includes any act committed at any place out of [India], which, if committed in [India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in [India].] Exception.-This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

76. Upon a plain reading of the Section, it is apparent that Section

212 of IPC applies to harbouring of a person who has actually committed the offence. In order to bring home Section 212 IPC, the prosecution must prove:-

(i) that the offence has been committed by the person

harboured,

(ii) that such offence is punishable with

a) death or imprisonment for life or imprisonment not exceeding 10 years or imprisonment from 01 to 10 years,

(iii) that the accused has harboured or concealed the offender,

(iv) that the accused then knew him to be the offender or had

reason to believe him to be so, and

(v) that the accused thereby intended to screen such offender

from legal punishment.

77. There is no evidence in the present case to prove that accused

Ishwar had harboured accused Kuldeep. Accused persons were

Signed By:VAISHALI CRL.A. 502/2003 & CRL.A. 528/2004 Page 27 of 29

admittedly not arrested from the house of accused Ishwar. No witness from the neighbourhood or from the vicinity have been examined to prove that accused Ishwar gave shelter to the accused persons in his house on the fateful day. Thus, there is no evidence that accused Ishwar had harboured the offenders in his house except in the referred disclosure statement, which is inadmissible in evidence. The ingredients of Section 212 IPC are, therefore, not attracted. However, it is evident that accused Ishwar had facilitated the co-accused persons to conceal the scooter of the victim, the blood stained clothes and the weapon of offence in his house, which may attract Section 201 IPC which provides punishment for causing disappearance of evidence of offence to screen the offender. But, no such charge under Section 201 IPC was framed against accused Ishwar, and therefore, he cannot be convicted for the offence under Section 201 IPC, which provides for higher punishment than the one prescribed in Section 212 IPC.

Conclusion:

78. The chain of circumstances proved on record, leads to an

irresistible conclusion that appellant/accused Kuldeep alone committed the murder of Constable Rambir Singh. We find no infirmity in the impugned judgment of conviction of appellant Kuldeep @ Kallu under Sections 302/201 IPC. The sentence imposed is proportionate and commensurate with the offences committed. We,

therefore, find no ground to interfere with the Trial Court judgment

insofar as appellant Kuldeep @ Kallu is concerned, and hence, Crl. A. awarded by the Trial Court against appellant Kuldeep @ Kallu is

Signed By:VAISHALI CRL.A. 502/2003 & CRL.A. 528/2004 Page 28 of 29

hereby affirmed.

79. So far as accused Ishwar is concerned, Crl. A. 502/2003 is

allowed and the impugned judgment of the Trial Court dated 05th April 2003, thereby, convicting him under Section 212 IPC and the

Order on Sentence dated 19th April, 2003 is set aside.

80. Appellant Kuldeep @ Kallu is directed to surrender before the

Jail Superintendent within a week from today to serve the remaining sentence. In the event of failure to surrender, appropriate steps shall be taken by the State/Trial Court to ensure that the appellant Kuldeep @ Kallu is taken into custody to serve the remaining sentence.

81. Copy of this judgment be sent to the learned Trial Court and the

concerned Jail Superintendent for information and necessary action.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

May 26th, 2026/RM/AK

Signed By:VAISHALI CRL.A. 502/2003 & CRL.A. 528/2004 Page 29 of 29

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com