

**IN THE COURT OF VINOD YADAV: ADDL. SESSIONS JUDGE-03:
(NORTH-EAST): KARKARDOOMA DISTRICT COURTS: DELHI**

Sessions Case No.199/2021

FIR No.87/2020

State V/s Arun Kumar @ Munna Etc.

PS Dayalpur

U/s 143/147/148/149/427/436/379/411/302/120-B/34 IPC r/w Section 3/4 PDPP Act

30.07.2021

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Manoj Chaudhary, Ld. Special PP for the State alongwith IO, Inspector Manoj Kumar.

Shri Rajeev Tiwari, Ld. Counsel for accused persons namely Arun Kumar @ Munna, Aman Kashyap, Ashish @ Goli, Pradeep Rai, Devender Kumar and Krishan Kant.

-

Shri Prince Bhardwaj, Ld. Counsel for accused Rahul Bhardwaj.

All the accused persons present on bail through VC.

ORDER ON CHARGE

The matter is listed for arguments on the point of charge. I have heard arguments advanced at bar by both the sides on two consecutive dates, spreading across several sessions and perused the entire material on record.

2. The facts of the case in brief required for the present are that case FIR in the matter was registered on 01.03.2020 at PS Dayalpur, wherein one person namely Monish S/o Shri Ali Sher, R/o A-70, Raja Vihar Colony, Sameypur Badli was got admitted in GTB Hospital on 25.02.2020 by some unknown persons, who was declared brought dead. Considering the sensitivity of the case, investigation thereof was transferred to SIT/Crime Branch.

3. The arguments advanced by learned counsels for the accused persons can be summarized as under:

(a) It is argued that accused persons have been falsely implicated in the matter by the investigating agency as they are residents of the same area/locality, where the alleged incident had taken place. The false implication of accused persons is further evident from the fact there is an “*unexplained delay*” of about five (05) days in registration of FIR in this case, as the alleged incident took place on 25.02.2020; whereas, the case FIR in the matter was registered on 01.03.2020. The accused persons have not been specifically named in the FIR.

(b) It is very strenuously argued that identification of accused persons by public witness Shashi Kant is of no consequence as he is a “**stock/planted witness**” which is apparent from the fact that besides the case in hand, he is also a witness in several other cases being case FIRs No.158/2020, 159/2020, and 163/2020, all pertaining to PS Dayalpur and even there is considerable delay in recording the statement of this witness. As a sequel thereto, it is contended that even the identification of accused persons namely Aman Kashyap, Ashish @ Goli, Devender Kumar, Pradeep Rai and Arun Kumar @ Munna by PW Manoj Kaniyal is also of no consequence as his statement under Section 161 Cr.P.C was recorded on 30.03.2020; whereas, the alleged incident had happened on 25.02.2020 and the prosecution has not been able to accord any plausible explanation for the said delay. On this account, PW Manoj Kaniyal has also been termed as a “**planted witness**”. As a corollary thereof, it is further contended that even the identification of accused persons by police witnesses is of no consequence, as firstly their statements are highly belated and secondly none of the police witness had made a call at number 100 on the date of alleged incident.

(c) It is next contended that the accused persons are not seen/visible in any CCTV footage/video-clip and their CDR location is of no help to the

investigating agency as all the accused persons are residents of the same area/locality and CDR does not show real time location of the user, it shows only approximate location.

(d) It is emphasized in unison that the alleged recoveries (danda, sword, stick etc.) effected from the accused persons is “**planted**” which factum is evident from the FSL report, wherein it has been categorically mentioned that no blood could be detected thereupon.

(e) It is further very vehemently argued that there are grave contradiction(s) in the police version, as on the one hand it is stated that police was extremely busy in controlling the riotous mob on the date of alleged incident, therefore, no policeman was free/available to take the victim to hospital; whereas, in the statements of police witnesses recorded by IO on 01.04.2020, it is stated that injured/victim was taken to GTB Hospital jointly by Constable Piyush, Constable Rohit and HC Naresh Tyagi in an auto-rickshaw. Even the alleged auto-rickshaw driver and one person from the public who is alleged to have accompanied the injured/victim to GTB Hospital have not been made witness(es) in the matter.

4. Per contra, learned Special PP on instructions submitted that the present matter relates to the recent occurrence of riots in North-East Delhi and the case in hand was registered on 01.03.2020 at PS Dayalpur, wherein one person namely Monish S/o Shri Ali Sher, R/o A-70, Raja Vihar Colony, Sameypur Badli was got admitted in GTB Hospital on 25.02.2020 by some unknown persons. It is further submitted that later on the case stood transferred to Crime Branch and during the course of investigation CDR details of mobile number 8744814196 belonging to deceased Monish was obtained from service provider and analyzed. During analysis of said number, it was revealed that

mobile phone of deceased Monish was working on 25.02.2020 till 17:07 hours and his last location was found to be at Brijpuri, Bhagirathi Vihar. Upon scrutiny of the calls, it was revealed that last call was made on deceased's mobile phone from number 8296486286 which was found registered in the name of one Ibrahim S/o Shri Gulsher, who was stated to be the cousin of deceased Monish. It is further stated that during the course of investigation, statement of said Ibrahim was recorded U/s 161 Cr.P.C, wherein he stated that his cousin Monish told him over phone that on the fateful day he (Monish) was coming back from Sameypur Badli after meeting his father and was carrying sweets and when he reached at Yamuna Vihar Bus Stand he found that riots had erupted in the area and his cousin Monish tried to reach at his uncle's house at Old Mustafabad. It is further argued that from the analysis of last call records of deceased's mobile phone, it is apparent that he might have sustained injuries at main Brijpuri Road while heading towards the residence of his uncle at New Mustafabad. It is further argued that during the course of investigation, on 30.03.2020 an independent eye witness namely Manoj Kaniyal had identified deceased Monish through his photo from the footage of CCTV camera lying installed at GTB Hospital, who also disclosed that deceased was carrying sweets with him at the time of incident. This eye witness further accounted that a mob of people comprising the accused persons started beating deceased with laathi/danda/talwar and also pelted stones, as soon as they came to know that deceased belonged to muslim community. This eye witness further stated that deceased tried to escape, but fell on the ground and later on the police staff deployed at Brijpuri picket rushed to save him and sent him to hospital.

5. It is further argued that during scrutiny of the PCR calls, one caller by the name of Shashikant was identified, who had made several PCR calls regarding eruption of riots at Brijpuri and death of several persons, including that of deceased Monish. Said caller Shashikant was examined by the police and his statement U/s 161 Cr.P.C and U/s 164 Cr.P.C was recorded, wherein he

categorically disclosed the names of accused persons, as the persons who all had given beatings to the deceased and taken away his mobile phone.

6. The role of accused persons and the specific evidence available against them have been specified as under:

(a) Evidence against accused Aman Kashyap

Role of accused Aman Kashyap	He was an active member of the riotous mob that caught hold of the deceased and hit him with stone.
Oral Evidence	Identified by public witness Shashi Kant vide his statement(s) recorded under Section 161 and 164 Cr.P.C. Also identified by another public witness Manoj Kaniyal. He has also been identified by police witnesses namely HC Ashok, HC Naresh Tyagi, Constable Piyush, Constable Vineet, Constable Deepak and Constable Rohit.
Technical Evidence	The CDR analysis qua his mobile phone established his location at the spot/SOC on the date of incident.
Recovery	One sword used by applicant during riots recovered from his house.

(b) Evidence against accused Arun Kumar @ Munna

Role of accused Arun Kumar @ Munna	He was an active member of the riotous mob that had caught hold of the deceased and hit him with sword, wooden sticks (laathis & danda), stones and bricks.
Oral Evidence	Identified by public witness Shashi Kant vide his statement(s) recorded under Section 161 and 164 Cr.P.C. Also identified by another public witness Manoj Kaniyal. He has also been identified by police witnesses namely HC Ashok, HC Naresh Tyagi, Constable Piyush, Constable Vineet, Constable Deepak and Constable Rohit.
Technical Evidence	During the course of investigation, it emerged that this accused occasionally used the mobile phone of his brother Raj Kumar (921098994), CDR analysis whereof established his location in the vicinity of Brijpuri on the date of incident.
Recovery	One sword used by applicant during riots recovered

	from his possession.
--	----------------------

(c) Evidence Against accused Ashish @ Goli

Role of accused Ashish @ Goli	He was an active member of the riotous mob that caught hold of the deceased and he hit him with wooden stick (danda).
Oral Evidence	Identified by public witness Shashi Kant vide his statement(s) recorded under Section 161 and 164 Cr.P.C. Also identified by another public witness Manoj Kaniyal. He has also been identified by police witnesses namely HC Ashok, HC Naresh Tyagi, Constable Piyush, Constable Vineet, Constable Deepak and Constable Rohit.
Recovery	The wooden stick (danda) used by the applicant during riots recovered from his house.

(d) Evidence against accused Devender Kumar

Role of accused Devender Kumar	He was an active member of the riotous mob that caught hold of the deceased and hit him with brick and stone.
Oral Evidence	Identified by public witness Shashi Kant vide his statement(s) recorded under Section 161 and 164 Cr.P.C. Also identified by another public witness Manoj Kaniyal. He has also been identified by police witnesses namely HC Ashok, HC Naresh Tyagi, Constable Piyush, Constable Vineet, Constable Deepak and Constable Rohit.
Technical Evidence	The CDR analysis qua his mobile phone established his location at the spot/SOC on the date of incident.

(e) Evidence Against accused Pradeep Rai

Role of accused Pradeep Rai	He was an active member of the riotous mob that caught hold of the deceased and he hit the deceased with stone.
Oral Evidence	Identified by public witness Shashi Kant vide his statement(s) recorded under Section 161 and 164 Cr.P.C. Also identified by another public witness Manoj

	Kaniyal. He has also been identified by police witnesses namely HC Ashok, HC Naresh Tyagi, Constable Piyush, Constable Vineet, Constable Deepak and Constable Rohit.
Technical Evidence	The CDR analysis qua the mobile phone of applicant confirmed his location at the SOC on the date of incident.
Recovery	Recovery of one sword from the possession of accused.

(f) Evidence against accused persons namely

Krishan Kant Dhiman and Rahul Bhardwaj

Role of accused persons namely Krishan Kant Dhiman and Rahul Bhardwaj	(i) They were active members of the riotous mob that caught hold of the deceased and pelted stones. (ii) When deceased Monish fell on the ground accused Rahul Bhardwaj picked up his mobile phone and passed on to accused Krishan Kant Dhiman. After taking out both the SIM cards from the said phone, they threw the same in drain and sold the said mobile phone to one Rishi Sharma for Rs.1,000/-, who further sold the same to one Gyanender Shukla.
Oral Evidence	Identified by public witness Shashi Kant vide his statement(s) recorded under Section 161 and 164 Cr.P.C. Statement of PW Rishi Sharma to the effect that he had purchased the said mobile from the said two accused persons. Statement of PW Gyanender Shukla that he had purchased the said mobile from Rishi Sharma for Rs.2,000/-.
Recovery	Recovery of mobile phone of deceased Monish, which was stolen by the accused persons and sold to one Rishi Sharma.

7. (i) As regards the contention of the learned counsel(s) that there is delay in recording of FIR in the matter, it is argued that the riots at or around the scene of crime were “*very fierce*” from 23.02.2020 till 26.02.2020. Several persons were injured; public and private property(ies) worth crores of rupees were vandalized, arsoned and torched. There was curfew like atmosphere at or around

the area. The police officials of PS Dayalpur remained busy in law and order duty and as such, delay in recording of FIRs took place.

(ii) As regards the delay in recording the statements of public witness(es) in the matter, it is submitted that the **witnesses were not known to the investigating agency** and on account of highly tense environment/situation in the area, the public witnesses feared to come out of their houses and once the situation attained normalcy the complainants and witnesses started pursuing their complaint(s).

(iii) As regards non-availability of any CCTV footage in the matter, it is emphasized that dreary days of 24.02.2020 and 25.02.2020 saw parts of North-East Delhi gripped by a communal frenzy, reminiscent of carnage during the days of partition. The rioters had broken down virtually every CCTV in the vicinity and had damaged the DVRs thereof on 24.02.2020 and 25.02.2020 and as such, it is quite possible that on this account no CCTV footage is available in the matter.

(iv) As regards the contention of learned counsel(s) that PW Shashi Kant Kashyap is a “**planted witness**”, it is contended that this argument is in total ignorance of the fact that this witness had duly made call at number 100, meaning thereby that his presence at the spot/SOC is quite natural as it does not appeal to the senses that he had made call at number 100 by simply sitting at his residence. As a sequel thereto, it is contended that his statement(s) recorded under Section 161 Cr.P.C and 164 Cr.P.C cannot be brushed aside/discarded at this stage because the same are yet to be tested at the anvil of trial.

(v) As regards the contention of learned counsels that recoveries of weapon(s) effected from the accused persons is “**planted**”, it is contended that prosecution had taken subsequent opinion from the FSL and nature of injuries sustained by deceased had “**matched**”, meaning thereby that such injuries can be inflicted by the weapon(s) like sword, dandas/sticks and laathis recovered from the possession of accused persons in the matter.

8. It is further argued that the identity of deceased has been duly established/confirmed through CCTV footage lying installed at the GTB Hospital and also by his father. Even the “**chemical analysis report**” of the blood stains found on the undergarments worn by deceased at the time of incident had matched with the blood of his father.

9. Lastly, it is submitted that at the stage of consideration on charge, the court is not supposed to meticulously judge the evidence collected by the investigating agency and has to take *prima facie* view thereupon.

10. I have given thoughtful consideration to the arguments advanced at bar by both the sides. I have also carefully gone through the chargesheet filed in the matter.

11. The law with regard to framing of charge is fairly settled now. In the case of “**Kallu Mal Gupta V/s State**”, **2000 I AD Delhi 107**, it was held that while deciding the question of framing of charge in a criminal case, the Court is not to apply exactly the standard and test which it finally applied for determining the guilt or otherwise. This being the initial stage of the trial, the court is not supposed to decide whether the materials collected by the investigating agency provides sufficient ground for conviction of the accused or whether the trial is sure to culminate in his conviction. **What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence.**

12. Furthermore, in case titled as, “**Umar Abdula Sakoore Sorathia V/s Intelligence Officer Narcotic Control Bureau**”, **JT 1999 (5) SC 394** it was held that, “it is well settled that at the stage of framing charge, the Court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record, the court could come to the conclusion that the

accused would have committed the offence, the court is obliged to frame the charge and proceed to the trial”.

13. It is well-settled law that at the time of framing of charge the FIR and the material collected by the investigating agency cannot be sieved through the cull ender of the finest gauzes to test its veracity. A roving inquiry into the pros and cons of the case by weighing the evidence is not expected or even warranted at the stage of framing of charge (reliance **Sapna Ahuja V/s State**”, **1999V AD Delhi p 407**).

14. (i) Now, reverting back to the case in hand. Though, the accused persons are not seen/visible in any CCTV footage/video-clip, however, at this stage we have the ocular evidence of PW Shashi Kant in the form of his statements recorded under Sections 161 Cr.P.C as well as under Section 164 Cr.P.C. **The presence of PW Shashikant is quite natural at the spot/SOC. I find substance in the submissions of learned Special PP that PW Shashi Kant is not a “statue” who was merely lying stationary at one place and instead his bonafide cannot be doubted at this stage because he had duly made call to the PCR by dialing number 100 which is contemporaneous to the time of commission of incident in the matter.** His aforesaid statement(s) cannot be brushed aside/discarded at this stage, merely because there has been some delay in recording of his statement or that he is witness in multiple cases. His said statements are yet to be tested at the anvil of trial. **Ocular evidence is considered the best evidence, unless there are strong reasons to doubt it.** At this stage, defence has not been able to put forth any reason worth to disbelieve/discard the ocular evidence of this witness by doubting his presence at the spot/SOC on the date and time of incident.

(ii) Even the statement of another PW Manoj Kaniyal cannot be thrown into dustbin straightway at this stage. He has categorically identified the deceased to be present at the spot/SOC on the date of incident and beaten by the riotous mob of which the accused persons were part/members thereof.

15. As regards the contention of learned counsel(s) that the accused persons are not seen/visible in any CCTV footage, I find substance in the submissions of learned Special PP that rioters had broken down virtually every CCTV in the vicinity and had damaged the DVRs thereof on 24.02.2020 and 25.02.2020 and as such, it is quite possible that on this account no CCTV footage is available in the matter. The aforesaid factum has also been taken due note of by Hon'ble High Court of Delhi while dismissing the regular bail applications of two accused persons namely Sameer Khan and Kasim in case FIR No.65/2020, PS Dayalpur (**IB Officer Ankit Sharma murder case**) vide detailed order dated 03.05.2021 (passed in Bail Applications No.1344/2021 and 1166/2021). The observations made by Hon'ble High in the said order are re-produced hereunder:
To quote:

xxxxx

21. It is a matter of fact, in such like cases where large mob is involved in riots and illegal activities causing harm to public property, peace and life, statement of eye witnesses and corroborative evidence plays a vital role and at the time of considering the bail application of accused, it would be too soon to analyse the testimony of eye witnesses and public witnesses to arrive at a conclusion as to whether any case is made out against the accused or not. Non availability of technical evidence such like CCTV footage etc. cannot be accepted as a ground for non-availability of direct evidence, as it is a matter of record that CCTV cameras installed in the areas in question were either broken or hidden by the mob. At the time of grant of bail only a prima facie opinion has to be formed and the facts and circumstances of this case do not persuade this Court to keep a lenient view towards the petitioners. Petitioners have been playing hide and seek with the prosecution. Charge sheet in the FIR in question has already been framed and trial is in progress. Petitioners will have an opportunity to make their case at the appropriate stage during the course of trial.

22. With aforesaid observations, these petitions are dismissed, while making it clear that any observation made herein shall not influence trial of the prosecution case.

xxxxx

16. Even recently the Hon'ble High Court of Delhi, while dismissing the bail application of accused Pankaj Sharma in case FIR No.35/2020, PS Gokalpuri, vide order dated 21.05.2021 (passed in Bail Application No.1264/2021) has been pleased to observe as under:

xxxxx

24. The plea of petitioner that similar to those cases, there is no CCTV footage in the present case and so, petitioner's involvement in the offence is not proved, cannot be accepted, as there may not be technical evidence in the form of CCTV footage but the call detail record of petitioner shows his presence at the spot of crime on the day of incident and his participation in "Kattar Hindu Ekta" whatsapp group, is still under scrutiny. Besides, PCR call record, statement of eye witnesses and other witnesses, dissuades this Court to keep a lenient view for petitioner. Moreover, each case has to be seen in the peculiar facts of the said case and observations made in one case are not binding on another.

xxxxx

17. The learned Addl. PP has further been able to accord cogent explanation with regard to delay in registration of FIR and recording the statements of witnesses in the matter. This Court cannot loose sight of the fact that the public witnesses were not known to the IO/investigating agency, the investigating agency had to deploy its human intelligence and technical expertise which took considerable time. There was curfew like situation prevailing in the area/locality, which scared the persons/witnesses and they could not muster courage to report the matter to the police. However, in the first week of March' 2020 when the situation was brought under normalcy, then witnesses started coming forward to report about the culprits in the matter.

18. (i) The identity of deceased is duly established/confirmed through CCTV footage lying installed at the GTB Hospital as well as by his father Ali Sher. *Prima facie*, the CDR locations of the applicants nails their presence at the spot/SOC on the date and time of incident. The mere assertion on behalf of

accused persons that since their residences are located/situated in the vicinity of the spot/SOC and as such, the CDR location is of no consequences to the prosecution; it is noted that the same will not suffice as it is quite apparent from their CDR details that they have been on **constant move/shuffle from one spot to another spot**. Be that as it may, this is not the appropriate stage to dwell upon the said issue and the same will be taken care of during the course of trial.

(ii) Even the mobile phone of deceased stood recovered/seized in the matter. PW Rishi Sharma has categorically stated that he had purchased the said mobile phone from accused persons namely Krishan Kant Dhiman and Rahul Bhardwaj for a sum of Rs.1,000/- (Rupees One Thousand Only).

(ii) The subsequent opinion obtained by the prosecution from FSL clearly depicts that the nature of injuries sustained by the deceased could be possible by the weapons (swords, dandas/sticks) recovered at the instance of accused persons.

19. (i) It is pertinent to note here that it is permissible for the Court to sift and weigh the evidence for the limited purpose of finding out whether or not *prima facie* case against the accused has not been made out or not. The material to determine *prima facie* case would depend upon the facts of each case. However, it is not expected to decide the credibility and truthfulness of the available material at the stage of consideration on charge. The disputed defence of accused cannot be taken into consideration at this stage. Sufficiency of material or evidence is not required for framing of charges, unless Court finds that the materials are completely and absolutely absent for the purpose of trial. It is well settled that when there is evidence indicating strong suspicion against the accused, the Court will be justified in framing of charge and granting an opportunity to the prosecution to bring on record entire evidence for the purpose of trial.

(ii) In view of the aforesaid discussion, I am of the considered opinion that *prima facie* there is enough material on record to frame charges against all

the accused persons under requisite sections. The prosecution could not establish the material with regard to offences punishable under Section 188/427/436 IPC as well as Section 3/4 PDPP Act.

20. (i) Separately, charge under Sections 143/147/148/302 IPC read with Sections 149 IPC and 120-B IPC have been framed against all the accused persons.

(ii) Furthermore, separately additional charge under Section 379/34 IPC has been framed against accused persons namely Krishan Kant Dhiman and Rahul Bhardwaj.

(iii) Let all the accused person remain present in Court alongwith their counsel(s), bearing in mind the Covid-19 appropriate behaviour on **31.07.2021**. The Reader attached to the Court is directed to explain the contents of charge to the accused persons in vernacular in presence of their counsel(s), if the counsels are present in Court and then obtain their signatures thereupon.

21. List the matter for fixing the date for prosecution evidence (PE) on 31.07.2021.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/30.07.2021