

State V/s Ashok Kumar etc.: SC No.51/2021: FIR No.158/2020:  
PS Dayalpur

***IN THE COURT OF SH. VIRENDER BHAT:  
ADDL. SESSIONS JUDGE-03:  
NORTH-EAST DISTRICT: KARKARDOOMA COURTS:  
DELHI***

**Sessions Case No.51/2021  
FIR No.158/2020  
PS Dayalpur  
U/s 144/147/148/149/188/302/120B/34 IPC**

**State**

**Versus**

- 1. Ashok Kumar  
S/o Sh. Diwan Singh  
R/o D-10/245, Brij Puri,  
Delhi.**

Also at:-  
**D-4/28, Gali No. 4,  
Brijpuri, Delhi. ....(A-1)**

- 2. Ajay @ Monu  
S/o Sh. Surender Singh  
R/o D-10/213, Gali No. 10/14,  
Brijpuri, Delhi. ....(A-2)**

- 3. Subham  
S/o Sh. Vijay Singh  
R/o D-10/392, Gali No. 10,  
Brijpuri, Delhi. ....(A-3)**

4. **Arif @ Mota**  
**S/o Sh. Babu Khan**  
**R/o D-7, Gali No. 2,**  
**Brijpuri, Delhi. ....(A-4)**
  
5. **Jitender Kumar**  
**S/o Sh. Virender Singh**  
**R/o D-14/377,**  
**Brijpuri, Delhi. ....(A-5)**

**ORDER ON THE POINT OF CHARGE:-**

1. As per the case of the prosecution four persons namely Mehtab S/o Sh. Munna Khan, Ashfaq Hussain S/o Sh Agaz Hussain, Zakir S/o Sh. Shabbir Ahmad and Jamil S/o Sh. Samsul Haq were brought to GTB Hospital on 26.02.2020 in the evening hours in injured and unconscious state. Upon examination by the Doctors, all the four were declared brought dead. Upon local enquiry, it was found that the these four persons had got injured during communal riots that had erupted in North-East, Delhi on 24.02.2020 subsequent to Anti CAA protests. Accordingly, an FIR No. 77/20, u/s 147/148/149/436/302/120B/34 IPC was registered at PS Dayalpur on 28.02.2020.

2. Initially, investigation was entrusted to Insp. Hukam Singh of PS Dayalpur but later on the same was transferred to the Special Investigation Team (SIT) which was constituted in Crime

Branch, Delhi to investigate all the riots-cum-murder cases. Thereafter, the investigation was assigned to Insp. Lokender. Observing that these four deceased were killed during the communal riots, he thought it proper to register four separate murder cases and accordingly upon seeking approval of the senior officers, four separate FIRs were registered as under:-

(i) *FIR No. 158/2020, u/s 147/148/149/302/120B/34 IPC dated 21.03.2020, PS Dayalpur regarding murder of Zakir S/o Sh. Shabbir Ahmad.*

(ii) *FIR No. 159/2020, u/s 147/148/149/302/120B/34 IPC dated 21.03.2020, PS Dayalpur regarding murder of Ashfaq Hussain S/o Sh. Agaz Hussain.*

(iii) *FIR No. 163/2020, u/s 147/148/149/302/120B/34 IPC dated 21.03.2020, PS Dayalpur regarding murder of Mehtab S/o Sh. Munna Khan.*

(iv) *FIR No. 160/2020, u/s 147/148/149/302/120B/34 IPC dated 22.03.2020, PS Gokalpuri regarding murder of Jamil S/o Sh. Samsul Haq.*

3. The instant case relates to FIR No. 158/2020 regarding the murder of Zakir. Investigation of this FIR alongwith the other two FIRs bearing No. 159/2020 and 163/2020 was entrusted to Insp. Surender Singh of Crime Branch, Delhi.

4. During the course of investigation, it was found that all the four incidents leading to the death of above named four deceased had taken place in the area adjacent to Brijpuri Pulia, Brijpuri Road on 25.02.2020. Since, the witnesses were reluctant to come forward and cooperate with the investigation due to surcharged communal atmosphere and spectre of violence, details of PCR calls received during the ensuing riots from 24.02.2020 to 26.02.2020 were collected and scrutinized. During the analysis of these PCR calls, it was found that a call has been received at PCR on 25.02.2020 on 6:10 pm regarding the death of four persons from Mobile No. 7827195918. The subscriber of this mobile number was found to be Mr. Shashikant Kashyap. His statement was recorded and it emerged that he was an eye witness to all the four incidents of killing.

5. The entire prosecution case rests upon the eye witness account of Shashikant Kashyap, CCTV footage captured by the CCTV cameras installed at Chawla Kiryana Store main Brijpuri Road and the CDRs of the mobile phone of the above named witness as well as the accused which showed their location near

the aforesaid place of incident during the riots on 25.02.2020.

6. It was submitted by the Ld. Special PP that the witness Shashikant Kashyap has very lucidly mentioned the details of the incidents in which one of the above named deceased had fell down after sustaining injury near Gali No. 2 whereas remaining three were brutally beaten in Gali No. 10 near Chawla Kiryana Store by violent mob. He pointed out that this witness had identified the accused Ashok Kumar, Ajay @ Monu, Subham and Jitender Kumar to be present in the said mob which had caused fatal injuries to all the four deceased. According to the Ld. Special PP, Shashikant Kashyap is an absolutely trustworthy witness and in view of his statement alongwith CCTV recordings and the CDRs of the mobile phones, charges are made out against these four accused for the offence u/s 144/147/149/302/120B/34 IPC.

7. So far as the accused Arif @ Mota is concerned, Ld. Special PP submits that he belongs to Muslim Community and was present with another faction of mob comprising of persons belonging to Muslim Community which had also resorted to violence. He fairly submitted that this accused was not involved in murder of the above four deceased and therefore, charge u/s 302 IPC is not made out against him.

8. Ld. Counsel for accused Arif @ Mota was also fair enough to concede charges against this accused other than charge u/s 302 IPC. Even otherwise also, it is the case of prosecution itself that this accused was in the mob consisting of people belonging to Muslim Community which was not involved in the killing of the deceased. Hence charge u/s 302 IPC is not made out against him.

9. On behalf of other accused, it was vehemently contended that Shashikant Kashyap is not a reliable witness. It is argued that since the said witness is not seen in any photograph or CCTV footage of the spot of incident where the deceased is stated to have been killed by the mob, his presence at the spot becomes doubtful. It is further pointed out that as per CDR of mobile phone of this witness, his location at the time of incident is at Brijpuri Pulia whereas the incident is stated to have taken place in Gali No. 10 which is far away from Brijpuri Pulia and therefore, this fact also indicates that the said witness was not present at the spot where the deceased is stated to have been killed. Relying upon these lacunas/contradictions in the prosecution case, it is argued that charges cannot be framed against these four accused in a serious case of murder on the basis of such nature of the material on record and therefore, they are liable to be discharged.

10. The law with regards to the framing of charge is fairly

settled. At the time of deciding the charges against the accused, the Court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise of the accused. This being initial stage of the trial, the Court is not supposed to decide whether the material collected by the investigating agency provides sufficient grounds for conviction of the accused or whether the trial is sure to culminate in his conviction. What is required to be seen at this stage is whether, the conviction of the accused is reasonably possible if the material on record remains unrebutted or whether there is strong suspicion which may lead the Court to think that there is ground for presuming that the accused has committed the offence. If on the basis of material on record, the Court comes to the conclusion that the accused would have committed the offence, the Court is obliged to frame the charges against him. At this stage, the Court is not expected to go deep into the probative value of material on record and the material collected by the investigating agency cannot be sieved through the cull-ender of the finest gauzes to test its veracity. However, it is permissible for the Court to sift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case has been made out against the accused. It is also well settled that when there is evidence indicating strong suspicion against the accused, the Court will be justified in framing of charges and granting an opportunity to the prosecution to prove the guilt of the accused. (C. Kallumal Gupta

Vs. State (2000) (I) AD Delhi 107, Umar Abdullah Sakoor Sorathia Vs. Intelligence Narcotic Control Bureau JT (1999) 5 SC 394, Sapna Ahuja Vs. State (1999) (V) AD Delhi 407).

11. The observations of the Supreme Court of India on the aspect of the framing of charges against an accused in a very recent case in Criminal Appeal No. 873 of 2021, titled as Saranya Vs. Bharathhi & Anr., decided on 24.08.2021 are also relevant and are reproduced herein below:-

xxxx

*7.1 In the case Deepak (supra), to which one of us (Dr. Justice D.Y. Chandrachud) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor Vs. Ramesh Chander (2012) 9 SCC 460; State of Rajasthan Vs. Fatehkaran Mehdu (2017) 3 SCC 198; and Chitresh Kumar Chopra Vs. State (Government of NCT of Delhi) (2009) 16 SCC 605, it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for “presuming” that accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, take at their face*



*value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence record the accused charge-sheeted or against whom the charge is framed is likely to be convicted or not.*

xxxx

12. In the instant case, as already noted hereinabove, one Shashikant Kashyap is eye witness to the incident. I have gone through his entire statement recorded by the investigating officer. He has stated that on 25.02.2020 at about 4 pm or 5 pm when he was present in his house in Brijpuri, he heard commotion from outside and went out of the house to enquire about the reason for the commotion. When he reached main road, he saw large number of Hindus gathered near Chawla Store outside Gali No. 10 main Brijpuri Road and a crowd consisting of Muslims near Farooqui Masjid on the side of Brijpuri Pulia who were raising slogans against the CAA/NRC and were armed with weapon rods, swords etc. The Hindus in the crowd were also armed with rods, scissors, swords etc. He knew some of those namely Monu, Deepak, Subham, Rahul, Jitender, Praveen etc. He knew Arif @ Mota who was present in the crowd consisting of Muslims and

was leading them. He further stated that after some time both the communities started pelting stones on each other. When the Muslims outnumbered Hindus, the later retracted and the Muslim rioters set ablaze the houses and shops belonging to Hindus. They also beat some boys near Chawla Store. He stated that when he reached the police picket near Aggarwal Sweet with the help of the police, he saw that some rioters had caught hold of a boy and were beating him mercilessly by rods, stones, kicks, fists etc. and that boy fell down injured on that very spot. After some time, when an alarm was raised that force is coming, he again reached near Chawla Store where Muslim rioters started going back. At the same time, the rioters including accused Ajay @ Monu who was armed with a Sword, accused Subham who was armed with a Palta, accused Ashok Kumar who had tied scissor with a wooden rod and accused Jitender who was pelting stones and Praveen etc. who were armed with rods and sharp edged weapons attacked three Muslim boys and after some time those boys fell down in injured condition on that place and perhaps died. He stated that he made a telephonic call at number 100 several times regarding this incident. Thereafter, the situation worsened and on getting scared, he returned his home.

13. It is not in dispute that all the three Muslim boys had succumbed to the injuries sustained by them and later on one of them was identified as Zakir.

14. It is important to mention here that this witness has given his mobile number as 7827195918 in his aforesaid statement.

15. There is a DD No. 515A recorded in PS Gokalpuri on 25.02.2020 at 6:10 pm in the following words:-

*“Ek Ladka Jala Diya Hai. Do Ko Lathiyo Se Mar  
Diya Gaya Hai Or Ek Ladka Brijpuri Main Road  
Aggarwal Sweet Per Mara Pada Hai”*

16. The caller on the basis of whose call this DD has been recorded, has given his Mobile No. 7827195918. This is the mobile number of witness Shashikant Kashyap which confirms to a large extent that he was present at the spot of incident and made a call at telephone number 100 with regards to the incident of killing, as mentioned by him in his above referred statement. Had he not been present at the spot of incident and had he not witnessed the incident as stated by him, he would not have made any call at telephone number 100. In view of the same and also considering the manner in which he has narrated the entire incident in which four members of Muslim community including Zakir were killed, it is difficult to accept at this stage that he was not present near crime spot and had not witnessed the killings.

17. It may also be noted here that apart from the eye witness

account of Shashikant Kashyap, all the four accused are also seen amongst rioters near the spot of incident on 25.02.2020 in the CCTV Camera Footage from the CCTV installed at Chawla Kiryana Store at main Brijpuri Road. The location of the mobile phones of all the four accused has also been found near the spot at the time of the incident.

18. It was argued that the incident is stated to have been taken place near Gali No. 10 Brijpuri whereas the location of the witness Shashikant Kashyap from the CDR of his mobile phone appears near Brijpuri Pulia and therefore, he could not have witnessed the incident of killing. The arguments is found to be without any force. As per the site plan placed on record alongwith charge-sheet, there is a distance of approximately 100 meters only between the spot near Gali No. 10 and Brijpuri Pulia. It is not clear as to where exactly is the Cell Phone Tower of any Cellular Company in that area but it needs to be noted here that a mobile phone tower normally caters to an area of much more than 100 meters radial distance from its location. Hence any person with a mobile phone even if standing within the radial distance of more than 100 meters from any mobile phone tower would catch the signal from that tower which implies that any person with a mobile phone standing near Gali No. 10 would definitely catch signal from the mobile phone tower erected near or around Brijpuri Pulia. Hence, the presence of the witness

Shashikant Kashyap at the spot of incident cannot be doubted at this stage merely on the basis of his location which comes out from analysis of the CDR of his mobile phone.

19. There is no escape from the conclusion at this stage that the accused were members of an unlawful assembly, the object of which was to cause riots, vandalism, destruction of property etc. and were part of the riotous mob which killed the deceased Zakir. They were identified by the eye witness Shashikant and have been specifically named by him. Electronic evidence produced alongwith charge-sheet shows their presence at the place of incident and in the the mob.

20. Thus the material on record prima-facie discloses commission of offence of rioting, murder etc. by the accused. It is evident that if the evidence collected during the course of investigation and annexed to the charge-sheet remains unrebutted the conviction of the accused is reasonably possible. No case for their discharge has been made out.

21. However, I may note that there is nothing on record to suggest that the deceased Zakir was killed in pursuance to any conspiracy hatched by the accused. It appears that the accused developed the common intention to kill the accused at the spur of the moment during the riotous clashes between their community and the person belonging to another community. The material on

record does not indicate any prior agreement between the accused to kill deceased Zakir, which is the sine qua non for the charge of conspiracy. Therefore, the charge of criminal conspiracy u/s 120 B IPC is not made out against the accused.

22. Hence, charges are liable to be framed against the accused as under:-

- (i) *U/s 144/147/148/149 IPC against all the accused;*
- (ii) *U/s 302/149/34 IPC against the accused Ashok Kumar, Ajay @ Monu, Subham and Jitender Kumar.*

**(VIRENDER BHAT)**  
**ASJ-03(NE)/KKD COURTS/30.10.2021**