

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

Sessions Case No. 136/2020

FIR No. 149/2020

PS Gokalpuri

U/s 144/147/148/149/153A/505/302/201/120B/34 IPC

State

Versus

- 1. Lokesh Kumar Solanki @ Rajput
S/o Sh. Yogender Kumar
R/o B-18/5, Ganga Vihar, Delhi.**
- 2. Pankaj Sharma
S/o Late Sh. Rajveer Sharma
R/o C-162, Gali No. 3,
Bhagirathi Vihar, Delhi.**
- 3. Sumit Chaudhary @ Badshah
S/o Sh. Om Prakash
R/o A-367, Gokalpuri, Delhi.**
- 4. Ankit Chaudhary @ Fauzi
S/o Sh. Raj Kumar
R/o G-14, Ganga Vihar,
Gokalpuri, Delhi.**
- 5. Prince @ D.J. Wala
S/o Sh. Mahender Singh
R/o C-23, Gali No. 6,
Bhagirathi Vihar, Delhi.**

6. **Rishabh Chaudhary @ Tapas**
S/o Sh. Yogender Singh
R/o F-53, Gali No. 1, Ganga Vihar, Delhi.
7. **Jatin Sharma @ Rohit**
S/o Sh. Gauri Shankar Sharma
R/o B-48, Gali No. 1, Ganga Vihar, Delhi.
8. **Vivek Panchal @ Nandu**
S/o Sh. Pramod Kumar Panchal
R/o D-106, Gali No. 3 / 4,
Ganga Vihar, Delhi.
9. **Himanshu Thakur**
S/o Harender Singh
R/o C-121, Gali No. 3,
Bhagirathi Vihar, Delhi.
10. **Tinku Arora S/o Sh. Ashok Kumar**
R/o H. No. E-51, Gali No. 2,
Bhagirathi Vihar, Delhi.
11. **Sandeep @ Mogli S/o Dalbir Singh**
R/o H. No. E-24, Bhagirathi Vihar, Delhi.
12. **Sahil @ Babu S/o Sh. Rakesh Sharma**
R/o H. No. D-138, Gali No. 11,
Bhagirathi Vihar, Delhi.

ORDER ON THE POINT OF CHARGE:-

1. The above named accused have been charge-sheeted by the police in this case for the offences u/s

144/147/148/149/153A/505/302/201/120B/34 IPC.

2. It is the case of the prosecution that the accused were members of an unlawful assembly on 25.02.2020 and 26.02.2020, the object of which was to take revenge of the death of the several Hindus during riots and to teach Muslims a lesson, and in order to achieve the said object, they hatched a conspiracy in furtherance to which they bludgeoned to death innocent persons namely Aas Mohammad.

3. In this case, the criminal machinery was set into motion on receipt information in the police station Gokalpuri on 01.03.2020 at 14:34 Hrs. to the effect that a dead body is in the Nala (drain) near Ganga Vihar Public School. The information was recorded in DD No. 26A and assigned to ASI Manveer Singh for necessary action. The body was moved to GTB Hospital where it was declared brought dead by the doctor. The body was identified on 09.03.2020 as that of Aas Mohammad S/o Md. Tehsin. The postmortem of the dead body had already been conducted in the said hospital on 06.03.2020 and as per postmortem report, as many as 14 external injuries were found on the body of the deceased. The cause of death has been opined as head injury and its complications due to blunt force impact.

4. It is mentioned in the charge-sheet that on 07.03.2020,

three persons namely Mohit Sharma, Shivam Bhardwaj and Dimple Pal were apprehended during the course of the investigation in case FIR No. 35/2020. Their mobile phones were seized and the data in the same was checked. A look into Whatsapp data in the phone of the Mohit Sharma and Shivam Bhardwaj revealed that they were the members of the Whatsapp group “Kattar Hindu Ekta”. Accused Lokesh Solanki was found to be a member of this group and messages had also been sent into group by him.

5. During further investigation, it was revealed that the said Whatsapp group was created on 25.02.2020 by using mobile phone No. 9560860823 which is allotted in the name of Smt. Babita W/o Jitender which was being used by her son Ritik Gupta. The address of the subscriber as C-167, Gali No. 1, Bhagirathi Vihar, Gokalpuri, Delhi was found to be non existent in the area and hence neither Babita nor her son Ritik could be traced. Initially, there were 125 members in the group and 47 of them had exited the group by 08.03.2020. Mobile phones of various members of the group were seized and sent to FSL for forensic examination. Mobile phone of one of them namely Deepak Singh was found having more posts/chats related to the said group “Kattar Hindu Ekta”.

6. Accused Lokesh Kumar Solanki came to be arrested in

case FIR No. 35/20 on 08.03.2020 during a raid from C Block, Bhagirathi Vihar, Delhi. He is stated to have admitted that he was a member of the said Whatsapp group “Kattar Hindu Ekta” and used to send messages to the group. His mobile phone of make Redmi, Model Y 2 with Dual IMEI No. 860980041243736 and 860980041243744 with SIM bearing mobile number 7557497409 was recovered from his possession and was seized. Upon checking the said phone, it was found that he had deleted all the messages of the said group and he had left the group on 02.03.2020. He is also stated to have disclosed the names of his team members/associates/co-accused who were also later on arrested in that case. Upon interrogation, all the accused were arrested in this case also.

7. After completion of the investigation, charge-sheet was filed in the Court of Ld. CMM who committed the case to the Court of Sessions. Pertinent to note here that Ld. CMM, vide order dated 16.09.2020, has refused to take cognizance of offences u/s 153A IPC and u/s 505 IPC in the absence of the requisite complaint u/s 196 Cr. P.C.

8. It may be noted here that the Ld. Counsels appearing for the accused have conceded the charges for the offences u/s 144/147/148/149/302/34 IPC. However, they vehemently disputed that the offence in question had been committed in

pursuance to any conspiracy and submitted that the charge u/s 120B IPC is not made out on the basis of material on record. On the other hand, Ld. Special PP submitted that there is sufficient material on record to frame charges for the offence u/s 120B IPC also against the accused.

9. Accordingly, I have heard Ld. Special PP as well as Ld. Defence counsels in detail on the aspect of the charge of conspiracy.

10. Ld. Special PP took me through the entire Whatsapp chats exchanged between the members of the Whatsapp group in "Kattar Hindu Ekta" which have been annexed alongwith the charge-sheet, particularly the following portion:-

"2/26/20, 9:45 AM - Binni: sare taiyaar rho

2/26/20, 8:29 PM - Binni: Bhai taiyaar rho kaam start hone vala hai

2/26/20, 8:29 PM - Binni: taiyaar rho sare

2/26/20, 8:30 PM - Binni: puliya se pipeline ki trf aarge hai suer

2/26/20, 8:44 PM - +91 97168 29847: Aane du in mullo ka suar bna denge

2/26/20, 10:22 PM - +91 70539 44604: Bhaio ye danga q ho raha h nale par abhi jo hua tha

**2/26/20, 10:22 PM - +91 70539 44604: Jhoripur nale
par**

**2/26/20, 10:24 PM - +91 96435 06209: Dikat lag rhi he 6
no me sab ready rhena**

**2/26/20, 11:39 PM - +91 75574 97409: Bhai Mai Ganga
Vihar se lokesh Solanki hu agr kisi ko koi problem ho
or wha log Kam pde to bta dena Mai apni Puri Ganga
Vihar ki team k sath aayunga Sara Saman hai humare
pass goli bandook sab kuch**

**2/26/20, 11:40 PM - +91 75574 97409: Bhai Pura
support hai abhi Hindu bhaiyo ko**

**2/26/20, 11:40 PM - +91 75574 97409: Bilkul bhai
Ganga Vihar gokulpuri jhoripur sb sath hai tumhare**

2/26/20, 11:41 PM - +91 97739 29196: 15 k Dane h kya

2/26/20, 11:41 PM - +91 97739 29196: Kisi Bhai k pass

**2/26/20, 11:41 PM - +91 95992 45196: Monty Nagar.vcf
(file attached)**

**2/26/20, 11:41 PM - +91 95992 45196: Bahi ad kro bhai
ktr hindu h**

2/26/20, 11:41 PM - +91 95992 45196: Yeh

2/26/20, 11:41 PM - +91 75574 97409: Pistol hai

2/26/20, 11:42 PM - +91 75574 97409: Humare pass

2/26/20, 11:42 PM - +91 97739 29196: Faltu h kya

**2/26/20, 11:42 PM - +91 97739 29196: Bhai goli h Kya
315 ki**

**2/26/20, 11:44 PM - +91 75574 97409: Tumhare Bhai ne
abhi 9 bje k krib b.vihar m 2 mulla mare hai**

**2/26/20, 11:44 PM - +91 75574 97409: Or nale m feka
hai**

**2/26/20, 11:44 PM - +91 97168 29847: Bilkul Lokesh
bhai**

2/26/20, 11:44 PM - +91 75574 97409: Apni team k sath

2/26/20, 11:44 PM - +91 70539 44604: Haa bhai

2/26/20, 11:45 PM - +91 97168 29847: Ha

**2/26/20, 11:45 PM - +91 75032 34804: Rajput bhai
bhagirath vihar me bande bhej do**

**2/26/20, 11:45 PM - +91 75574 97409: Bhai abhi thodi
aarhe hai hum sab raily lekr**

2/26/20, 11:45 PM - +91 75574 97409: B.vihar m

**2/26/20, 11:45 PM - +91 97739 29196: Koi dikkt na h
Bhaiyo**

**2/26/20, 11:49 PM - +91 75574 97409: Vinay tumhe pta
hai na tumhara Bhai sbse aage rhta hai aise kamo m”**

11. It was submitted by the Ld. Special PP that perusal of the above messages sent on the said group by its various members clearly reveal that they had hatched a conspiracy to take revenge

from the members of the Muslim community of the violence committed upon the members of the Hindu community and in furtherance to the object of that conspiracy, an innocent person namely Amir Khan, was killed brutally on 26.02.2020. He would also refer to the statement of witnesses Nisar Ahmed who stated that the accused were exhorting Hindus to come out from their homes, to bring out the Muslims from their homes in Bhagirathi Vihar, to kill them and to rob/usurp their homes.

12. Ld. Defence counsels in unison argue that even if the Whatsapp chats in the group “Kattar Hindu Ekta” are presumed to be correct, then also no case for the charge of criminal conspiracy is made out for the reason that these Whatsapp chats do not indicate any agreement between the members of the group to commit any unlawful act much less murder of any Muslim. They also pointed out that it is the case of prosecution itself that only one accused Lokesh Solanki was the member of that group and had been sending messages to the group whereas none of the remaining 13 accused was member of the said group and therefore, it does not lie in the mouth of the prosecution to claim that any conspiracy had been hatched between accused Lokesh Solanki and the remaining accused on Whatsapp group to commit any unlawful act.

13. Sections 120 A and 120 B of the Indian Penal Code make

conspiracy a substantive offence and renders the mere agreement to commit an offence punishable. The elements of a criminal conspiracy have been stated to be :-

- (a) an object to be accomplished,
- (b) a plan or a scheme embodying means to accomplish that object,
- (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement or by any effectual means, and
- (d) in the jurisdiction where the statute required an overt act.

14. The offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of the two or more to do an unlawful act by unlawful means. The essential ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore,

the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved by direct evidence or by circumstantial evidence or by both.

15. Like most crimes, conspiracy also requires an act (*actus reus*) and an accompanying mental state (*mens rea*). The agreement constitutes the acts, and the intention to achieve the unlawful object of that agreement constitutes the required mental state. To convict a person for the offence of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy. A major problem arises in connection with the requirement of an agreement in determining the scope of a conspiracy - who are the parties and what are their objectives. This determination is critical, since it defines the potential liability of each accused.

16. Where the factum of conspiracy is sought to be inferred from the circumstances, the prosecution has to show that the circumstances give rise to a conclusive and irresistible inference of an agreement between two or more persons to commit an offence. The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirator for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. It has to be shown

that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched.

[See State Vs. Nalini (1999) 5 SCC 253, Yakub Razak Menon Vs. State of Maharashtra (2013) 13 SCC 1, Isher Singh Vs. State of A.P. (2004) 11 SCC 585, State (NCT of Delhi) Vs. Navjot Sandhu (2005) 11 SCC 600, State of Karnataka Vs. J. Jayalalitha (2017) 6 SCC 263, Firozuddin Basheeruddin Vs. State of Kerala (2001) 7 SCC 596]

17. In the instant case, the only evidence with regards to hatching of the conspiracy by the accused is the chats on the Whatsapp group “Kattar Hindu Ekta”. The Most relevant portion of the chats, upon which the prosecution relies, has been reproduced hereinabove in Paragraph No. 10. Perusal of these Whatsapp chats nowhere indicates that this group had been formed for any particular illegal object i.e. to kill the persons belonging to Muslim community as well as to vandalize/burn their properties and that the members had agreed with each other that they would accomplish any such unlawful object of the conspiracy. Careful analysis of these chats would reveal that the members were keeping themselves ready for any attack from other community. In the message sent by accused Lokesh Solanki on 26.02.2020 at 11:39 pm, he is assuring the members that he would be there with them in case of any need or a

problem. In another message posted by him at 11:44 pm on the same day, he is boasting of having killed two people belonging other community and having thrown them in the drain but he neither asks the other members also to do the same nor has any other member shown his willingness to indulge in such horrendous act. In the messages posted in the group form one mobile No. 9773929196, the person concerned is asking for the bullet rounds for his pistol.

18. There is nothing in these Whatsapp chats to lead this Court to any conclusive or irresistible inference that the members of the group had agreed for any particular unlawful object and for accomplishment of that unlawful object. At best, these Whatsapp chats would indicate that the members were preparing themselves for their own defence against an onslaught to be launched against them and they were seeking each other's help. The messages posted in the group nowhere indicate that the members had formed the requisite mental state to launch an offensive against the members of the other community and to commit vandalization/arson of their properties and to kill them. It would be a totally far-fetched conclusion to say that these Whatsapp chats are indicative of the meeting of minds between the members of the group for accomplishment of any unlawful object agreed between them.

19. Moreover, it is the prosecution case itself that only one of the accused namely Lokesh Solanki was the member of the above referred Whatsapp group. Neither of the remaining accused was a member of the said group. In these circumstances, it is unfathomable as to how an agreement between all the accused to do an illegal act can be inferred merely from the message posted in the said Whatsapp group. There is no other material on record to suggest or indicate that the accused herein had hatched a conspiracy and had agreed with each other to accomplish the object of the conspiracy. Ld. Special PP has failed to point out any evidence on record to show that the remaining accused other than accused Lokesh Solanki were aware about the formation of the Whatsapp group “Kattar Hindu Ekta”, about the messages posted by the members of the said group or about any conspiracy alleged to have been hatched by the members of that group. In the absence of any such material on record, these accused cannot be linked to the said Whatsapp group at all. Therefore, the charge of the conspiracy must fail on this score also.

20. Ld. Special PP has also relied upon the statement of Nisar Ahmed who has stated that the accused were asking Hindus to come out of their homes, to bring out the Muslims from their homes in Bhagirathi Vihar, to kill them and to rob/usurp their homes. Even if the statement of this witness is taken on its face

value, still it only indicates exhortation by the accused and nothing more. Exhortation or inducement to commit a crime is altogether different from an agreement to commit a crime, which is essence of the offence of criminal conspiracy. Mere exhorting others to come out and indulge in criminal activities does not tantamount to any agreement between the person who holds out exhortation and the person to whom the exhortation is held out, to commit a crime.

21. Keeping in mind the above discussion, this Court is of the opinion that the offence of criminal conspiracy is not made out against the accused on the basis of material on record. Hence, the accused are hereby discharged of the said offence u/s 120B IPC.

22. Therefore, the charges for the offences u/s 144/147/148/302 IPC r/w Section 149 IPC are liable to be framed against all accused

Announced in the open Court.

(VIRENDER BHAT)
ASJ-03(NE)/KKD COURTS/15.03.2022