

**IN THE COURT OF SH. AMITABH RAWAT,
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI**

RIOTS CASE

CNR No.		<u>DL-SH01-001541-2021</u>
FIR No.	:	54/2020
Under Section	:	147/148/149/302/120-B IPC
Police Station	:	Crime Branch
Sessions Case No.	:	75/2021

STATE

.....PROSECUTION

V E R S U S

1. Anwar Hussain

S/o Abrar Qureshi,
R/o Dargah Ke Pass Makan,
Janta Colony, Delhi

2. Kasim

S/o Wahid Beg,
R/o H.No. 395, Gali No. 10,
Kachi Kardampuri, Delhi

3. Shahrukh @ Rinku

S/o Mohd. Ismail,
R/o Vijay Pandit Ka Makan,
Harun Basti, Kardampuri, Delhi

4. Khalid Ansari

S/o Sadeen Ansari,
R/o 391-B, Gali No.7,
Kardampuri, Delhi

.....ACCUSED PERSONS

09.11.2021

ORDER ON THE POINT OF CHARGE

1. **1.1.** The present case First Information Report pertains to police station Crime Branch and arraigned in the charge-sheet are four accused persons namely Anwar Hussain, Kasim, Khalid Ansari and Shahrukh @ Rinku under Section 147/148/149/302/120-B/34 IPC.

2. Cognizance was taken under Section 147/148/149/302/120-B/34 IPC against all the four accused persons vide order dated 26.11.2020.

3. **3.1.** As per the charge-sheet, on 25.02.2020 at about 1.45 PM vide DD No. 29A telephonic information was received regarding admission of Deepak in GTB Hospital. Patient was brought dead in main casualty. Statement of Vicky Sharma was recorded who stated that on 25.02.2020, he met Sunil, his old acquaintance alongwith his village friend Deepak at Mandoli Chungi at around 11.00 AM. The three of them started roaming around and reached at Gokul Pur Flyover and saw crowd towards the Flyover leading to Maujpur. He stopped at the road near Pulia while Sunil and Deepak with the crowd crossed the Pulia towards the Service Road behind Naala, Ambedkar College and at around 1.30 PM, the crowd suddenly came running back but he did not see Sunil and Deepak. He reached the Service Road after crossing Pulia and on left road, he heard noise “ pakad liya-pakad liya” (caught-caught). Deepak was brought in unconscious and injured condition by the crowd. He had injuries on his face and stomach. He brought him to GTB Hospital and doctors declared him dead.

Durving investigation, the site plan was prepared. Postmortem of the

deceased Deepak was done on 27.02.2020 at GTB Hospital. The cause of death was “hemorrhagic shock due to ante-mortem injury to the brain and abdominal organ and blood vessel”. On 04.03.2020, the case was entrusted to the Crime Branch for investigation.

During investigation, Public Witness Kirti Raj Tiwari and Mohd. Khalid @ Babli, public witnesses were examined who stated that on 25.02.2020 at around 1.00 PM, armed rioters at Kardampuri Pulia gathered on the Ganda Naala Pulia in front of Dispensary and were pelting stones towards Road No. 66. After some time, another mob came from Yamuna Vihar side which compelled the Kardampuri rioters to move backward, but the rioters of Kardam Puri stationed themselves in front of Dispensary. They were shouting religious slogans like 'Allah hu Akbar'. He saw a mob around 100/200 persons mostly young Kardampuri residents carrying stones, cudgel, sticks, knives and iron rods, etc. on the service road and were attacking the mob that came from Road No. 66 on the service road in front of dispensary. During the riots, they caught one person who came from 66 Foota Road in front of Dispensary. He was beaten mercilessly and stabbed by Anwar Hussain, Khalid Ansari, Kasim, Shahrukh, Rais, Saddam, Adnan, Aamir, Raja, Afsar, Salim, Munna, etc., who are resident of vicinity with dandas, rods and knives and deceased was left on road as dead. After a while, crowd from the Road No. 66 came and took away the injured from there. The rioters from Kardam Puri again came to his parking and put it on fire. He know some of the rioters very well as they used to roam around there. Thereafter, he ran away from there as the rioters were very violent.

During investigation, Ct. Monu & HC Rewati Prasad were also examined.

They have also described the incident and taken the name of accused persons.

During the present investigation, four accused persons namely Anwar Hussain, Kasim, Khalid Ansari and Shahrukh @ Rinku were arrested on 12.03.2020, 20.03.2020, 02.04.2020 & 03.04.2020 respectively.

3.2. It was also argued by Ld. Special Public Prosecutor that another important critical witness in the present case is Sunil Kumar who stated that on 25.02.2020 one unlawful assembly of Muslims coming from Kardampuri Pulia and shouting Allah Ho Akbar was trying to cross the Pulia Gokulpur. The said armed unlawful assembly caught hold of Deepak who was mercilessly beaten. He stated that he was hiding behind a wall behind the Naala and was seeing through the gap of the wall. He has identified all the four accused persons by name. He further stated that he was terrified and came back to his home and came to know that Deepak had died. Thereafter, after his cremation, he had gone to his village and he had given his statement on 25.05.2020. After recording his statement, it was also submitted by Ld. Special Public Prosecutor that the Test Identification Parade (TIP) proceedings of all the accused persons was sought to be conducted by public witness Deepak. However, accused persons namely Kasim, Khalid Ansari and Anwar Hussain have refused to take part in the TIP proceedings whereas accused Shahrukh @ Rinku duly participated in the TIP proceedings and was duly identified by the public witness. The murder was done as part of criminal conspiracy. It was thus, submitted by Ld. Special Public Prosecutor that the charge were liable to be framed under Section 147/148/149/302/120-B/34 IPC against all the accused persons.

4. It was argued on behalf of the accused persons that there is no CCTV footage of the date of the incident implicating the accused persons. The name of the accused is not given in the FIR. The witness have identified the accused persons by name and no further TIP proceedings are conducted or identification done of the said accused person by the said witness. The conduct of the deceased as also witnesses is dubious as they were roaming around during riots which is not probable. Moreover, the statement of witness were recorded quite late in the day which discredit the case of the prosecution. Hence, all the accused persons must be discharged.

5. Arguments on the point of charge were heard at length on behalf of both prosecution and accused persons. The record has been painstakingly scrutinized.

6. **Section 228 Code Of Criminal Procedure, 1973**

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

7. 7.1. It has been held in catena of judgments that at the time of framing of charge, only prima facie case has to be seen and whether the case is beyond reasonable doubt is not to be seen at this stage. It is not required that detailed reasons must be recorded at the stage of charge.

7.2. Hon'ble Supreme Court of India in a case titled as ***Bhawna Bai vs. Ghanshyam And Others.***, (2020) 2 Supreme Court Cases 217 held as follows :-

16. After referring to Amit Kapoor, in [Dinesh Tiwari v. State of Uttar Pradesh and another](#) (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 Cr.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

17.For framing the charges under Section 228 Cr.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in [Knati Bhadra Shah and another v. State of West Bengal](#) (2000) 1 SCC 722, while exercising power under Section 228 Cr.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused- respondent Nos.1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-respondent Nos.1 and 2 under [Section 302 IPC](#) read with [Section 34 IPC](#) and the High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside.

8. Hon'ble Supreme Court of India in the case of State of Rajasthan Versus Ashok Kumar Kashyap in Criminal Appeal No. 407 of 2021 (Arising from SLP (CrI.) No. 3194 of 2021) observed that :

23. In the case of P. Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

24. In the recent decision of this Court in the case of M.R. Hiremath (supra), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N.v. N. Suresh Rajan* [*State of T.N.v. N. Suresh Rajan*, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

“29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and

hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

.....

.....It was held that as observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.”

9. After hearing Ld. Counsels for the parties and perusing the charge-sheet and supplementary charge-sheet alongwith accompanying record, I am of the view that as far as the stage of charge is concerned, prosecution case has ample merits.

10. 10.1. The present case FIR was registered for the offence of the murder of deceased Deepak on 25.02.2021 at around 1.30 PM near Service Road, Ganda Naala behind Ambedkar College, Kardampuri, Jyoti Nagar, Delhi.

10.2. The FIR was registered on receipt of DD No. 29A and the statement of Vicky Sharma. As per the said statement of Vicky Sharma, he was present on 25.02.2020 at around 11.00 AM alongwith Sunil and Deepak and while roaming in the area, they reached at Gokul Pur Flyover and saw crowd towards the Flyover leading to Maujpur. He stopped at the road near Pulia while Sunil and Deepak with the crowd crossed the Pulia towards the Service Road behind Naala, Ambedkar College and at around 1.30 PM, the crowd suddenly came running back

but he did not see Sunil and Deepak. He reached the Service Road after crossing Pulia and on left road, he heard noise “ pakad liya-pakad liya” (caught-caught). Deepak was brought in unconscious and injured condition by the crowd. He had injuries on his face and stomach. He was mercilessly beaten and was taken to the GTB Hospital where he was declared dead.

Postmortem of the deceased was done on 27.02.2020 at GTB Hospital. The cause of death was “hemorrhagic shock due to ante-mortem injury to the brain and abdominal organ and blood vessel”.

Thus, it has come on record that deceased Deepak was murdered by armed unlawful assembly on 25.02.2020 at around 1.30 PM. By the manner of their mobilization and intent as construed from their conduct, the said unlawful assembly can be said to have conducted itself for riots and other offences like murder of deceased Deepak, in prosecution of their common object. The conspiracy is also writ large by the calculated attack on the victim by the unlawful assembly.

10.3. There are other public witnesses namely Kirti Raj Tiwari, Deepak, Mohd. Khalid @ Babli and Shyam Narain who have given similar statements implicating accused persons in the offence of riots and murder of Deepak. Witness Kirti Raj Tiwari stated that they were working at EDMC Parking behind Ambedkar College and when they were present on 25.02.2020 at around 1.30 PM, crowd of 100-200 people near Kardam Puri Ganda Naala in front of Dispensary was rioting. The Muslim crowd of Kardampuri, picked one boy towards Road No. 66 while chanting Allah Hu Akbar and mercilessly beaten the boy with danda and

pathar, when the crowd from the other community from Road No. 66 came then, the Muslim crowd left the boy and started destroying Rehri and arsoning of the property. He stated that he knew some persons in that unlawful assembly who were armed and given the name of the present accused persons. Police witness Ct. Monu and HC Revati Prasad have also identified the accused persons as part of the armed riotous mob.

The said witnesses certainly have named the accused persons in their statement and though the judicial TIP has not been conducted but simply on this ground, these statement cannot be ignored and disregarded. The said statements will be tested during the trial.

10.4. The most important witness in the present case would be Sunil Kumar who is an eye-witness to the entire incident and has given the complete picture as to how the deceased Deepak was killed by the armed Muslim mob consisting of accused persons. He stated that on 25.02.2020 one Muslim unlawful assembly coming from Kardampuri Pulia and shouting Allah Ho Akbar, was trying to cross the Pulia Gokulpur. The said armed unlawful assembly caught hold of Deepak who was mercilessly beaten. The witness stated that he was hiding behind a wall behind the Naala and was seeing the entire murder through the gap in the wall. He has identified all the four accused persons by name. He further stated that he was terrified and came back to his home and came to know that Deepak had died. Thereafter, after his cremation, he had gone to his village and he had given his statement only on 25.06.2020.

He stated that he could not save deceased due to fear and number of rioters.

He stated that, if shown, he can identify the persons who attacked on deceased Deepak.

His statement was recorded on 25.06.2020 though incident is of 25.02.2020. The delay in recording his statement is attributed to the fact that he was under shock and had gone to his village and due to Covid situation, he had returned later and given his statement. Again Sunil a public witness/friend of the deceased having witnessed such a horrific individual crime and the general nature of the riots, and added to it, Covid situation prevailing in the country, can be understood to have given the statement late. Significantly, it is not as if the statement of Sunil Kumar has suddenly emerged out of blue in the month of June. In fact, the present case was registered and statement of Vicky Sharma recorded on 25.02.2020 itself and the said statement contemporaneous with the murder incident mentions that Sunil was present alongwith Vicky Sharma and the deceased Deepak. Thus, it lends authenticity to the present of said witness Sunil on the day of incident and eye-witness testimony of Sunil.

Moreover, judicial TIP proceedings was conducted of all the said accused persons in relation to the said public witness Sunil and only one agreed while the rest declined to undergo the judicial TIP and an adverse inference will have to be drawn against the said accused persons for their refusal to participate in the said TIP proceedings. One accused namely Shahrukh @ Rinku who did participate in the TIP proceedings, was duly identified in the TIP by the said witness.

Thus, for the purpose of charge, the prosecution has been able to satisfy the Court that an unlawful assembly including accused persons in prosecution of their

common object had committed riots and hit the deceased Deepak with deadly weapon causing his death. Since the unlawful assembly fully armed and in that pursuit, they had chased, apprehended and killed the deceased and from their conduct, it can be said that it was a case of criminal conspiracy.

11. In terms of the statement of the witnesses under Section 161 Cr.P.C and other material available in charge-sheet, accused persons namely Anwar Hussain, Kasim, Shahrukh @ Rinku and Khalid Ansari were part of the unlawful assembly which committed violence in prosecution of the common object of rioting and murdered the deceased Deepak, and committed criminal conspiracy, thus, charges under Section 147 IPC, 148 IPC, 302 IPC, read with Section 149 IPC and under Section 302 IPC read with Section 120-B IPC are made out.

12. Thus, on the basis of material on record, I am of the opinion that there are grounds for presuming that the accused persons namely Anwar Hussain, Kasim, Shahrukh @ Rinku and Khalid Ansari have committed offences under Section 147 IPC, 148 IPC, 302 IPC, read with Section 149 IPC and under Section 302 IPC read with Section 120-B IPC.

Ordered accordingly.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 09.11.2021