

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

Sessions Case No.163/2020

FIR No.58/2020

PS Karawal Nagar

U/s 302/147/148/149/323/341/326/365/395/120B IPC

State

Versus

- 1. Vishal Kumar @ Golu
S/o Ghan Shyam
R/o A-34/2, Gali No. 3/ 4,
Ambika Vihar, Shiv Vihar,
Delhi. (A-1)**
- 2. Hemant Pratap Singh @ Himanshu
S/o Brijander Singh
R/o B-16, Gali No. 3 /2,
Ambika Vihar, Shiv Vihar,
Delhi. (A-2)**
- 3. Ashish Kumar
S/o Mange Ram
R/o C-9, 33 Foota Road,
Ambika Vihar, Shiv Vihar,
Karawal Nagar, Delhi. (A-3)**
- 4. Gaurav
S/o Mange Ram
R/o C-9, 33 Foota Road,
Ambika Vihar, Shiv Vihar,
Karawal Nagar, Delhi. (A-4)**

ORDER ON THE POINT OF CHARGE:-

1. The instant case relates to an incident that occurred on 26.02.2020 in Karawal Nagar area during the riots which unleashed an atmosphere of terror, destruction, loss of innocent lives as well as of property in North-East District. In the incident in question a poor and innocent workman Suleman S/o Yunus was killed in utmost brutal and diabolical manner. The accused are alleged to have been members of the unlawful assembly which had attacked the deceased, his friends Sanober & Mamur and their co-worker Sunil Kumar. The deceased & his brother, belonging to Muslim community were thrashed and beaten. Sanober received severe injuries but managed to save his life whereas deceased Suleman was beaten mercilessly and then thrown in the drain, taking him for dead. Later on, he breathed his last in the hospital.

2. Prosecution case, in brief, is that the deceased Suleman, his friends Sanober & Mamur and their co-worker Sunil were working on a construction site in a School near T.B. Hospital, Karawal Nagar, Delhi under on Contractor namely Yusuf. On 25.02.2020, Yusuf had asked them to leave work and return to their respective homes as riots had broken out in Delhi. On 26.02.2020 at about 8:30 am when they reached near Maa Bhagwati Memorial School on their way to Loni Bus Stand, a

mob of about 30-40 persons apprehended them. The persons in the mob were having dandas and rods in their hands. Mamur managed to escape from the spot. The mob asked their ID cards. Upon seeing their ID cards, some persons in the mob asked Sunil to leave the spot but he denied and told the mob that he will go with Sanober and Suleman. The mob forced Sunil to run away after beating him. Thereafter, the mob started beating Sanober and Suleman mercilessly. Someone from the mob hit an iron on Sanober's head. He fell unconscious. The mob continued to beat Suleman. When Sanober regained consciousness, he managed to escape while the mob was busy assaulting Suleman. Their mobile phones were robbed by the mob. Thereafter, the mob took Suleman towards Prem Vihar pulia via 33 feet road passing through Ambika Vihar and Panchal Vihar. They kept hitting and prodding him with dandas and rods. The mob crossed Prem Vihar pulia and stopped near SBM Toilet on Ganda Nala patri opposite Mangal Bazar Road, Radhey Radhey Chole Bhatore and Ghoongat Emporium. The mob continued to assault Suleman mercilessly with dandas, rods, kicks and fists on his face, head chest, abdomen and other body parts. When he fell unconscious, the mob threw him on the junction point of Colony sewer in Ganda Nala near the wall of drain and the toilet. Later on some public persons spotted him there and called police. PCR Van B-56 reached the spot. In-charge PCR Van ASI Kulbir removed him to GTB Hospital and got him admitted there at 10.16 am

vide MLC No. D-8/26 where he died during treatment.

3. Two calls had been received in th PCR from Pankaj Rai (mobile no. 8588819036) informing that the mob had killed a person near Shiv Vihar, 33 Feet Road near Hari Om Hotel. The same were received in PS Karawal Nagar at 10.14 am and recorded as DD No. 36 B & 40 B which were marked to HC Pursushottam. Another call was received in the PCR at 9.38.39 am from Sumit Chaudhary S/o Pankaj Raj (mobile no. 955553165) to the effect that a person is lying in the drain in Shiv Vihar, Aman Vihar puliya, Mangal Bazar Road, Karawal Nagar who is still alive. This call was assigned to PCR Van B-56 and the In-charge ASI Kulbir reached the spot within 9 minutes. He took the injured to GTB Hospital and got him admitted there at 10.16 am vide MLC No. D 8/26.

4. Upon receipt of DD No. 36 B and 40 B, HC Purushottam reached Aman Vihar Nala and upon enquiries came to know that an injured person who was lying besides SBM Toilet Aman Vihar Nala and was still alive. He found that people belonging to one particular community were pelting stones over the people belonging to other community and were also having stones, dandas and rods with them. Upon seeing the police reach the spot, mob dispersed and PCR Van took the injured person to the hospital.

5. Thereafter, a call was received in the police station from Duty Ct. Mahesh in GTB Hospital on the same day i.e. 26.02.2020 at 2.14 pm to the effect that an unknown person admitted in the Hospital vide MLC No. 8/26 from Ganda Nala, Aman Vihar had died during treatment. The call was recorded at DD No. 74 B and its contents were conveyed to HC Purushottam. Accordingly, HC Purushottam visited GTB Hospital, collected documents related to the dead body, prepared Rukka and got the FIR registered u/s 147/148/149/302 IPC. After registration of the FIR, investigation was entrusted to Insp. Prakash Roy. He recorded the statements of ASI Kulbir as well as the eye witnesses Sumit Chaudhary, Pankaj Raj, Umesh Kumar, Vidit etc.

6. The IO visited the incident spot and prepared its site plan at the instance of HC Purushottam. Dead body had already been deposited in GTB Hospital mortuary. On 27.02.2020, the deceased was identified as Suleman S/o Yunus by his elder brother Yusuf. Thereafter, postmortem of the dead body was conducted by a Board of Doctors. The postmortem proceedings were got videographed. Exhibits handed over by the Board after the postmortem were seized by the IO.

7. Thereafter, further investigation of the case was transferred to the SIT of Crime Branch and was entrusted to Insp. Satish Kumar on 05.03.2020 but later on same was handed over to Insp.

Manoj Kumar on 20.04.2020.

8. During the course of investigation, CCTV cameras installed at M/s Jai Durga Jewellers, B-276, Main 33 Feet Road, Prem Vihar, Shiv Vihar, Delhi were checked and in the recording, a mob was seen pushing and taking away a boy towards Prem Vihar Pulia, Ganda Nala but the faces of the person in the mob were not clear. Statement of Santosh, the owner of M/s Jai Durga Jewellers, was recorded. The IO summoned the FSL team to the spot which examined the CCTV footage. The IO got footage of one hour from 8:30 am to 9:30 am in a pen drive and seized the DVR at the instance of the FSL team. The IO also got developed the photographs of some of the rioters seen in the CCTV footage which was shown to various persons and informers near the place of occurrence. Thereafter, the IO recorded the statements of the Sanober, Yunus, Yusuf and Sunil Kumar. The FSL team is stated to have inspected both the spots i.e. Maa Bhagwati Memorial School from where the riots had started and the spot in front of Mangal Bazar Road, Aman Vihar, Karawal Nagar where Suleman was thrown in the Ganda Nala but nothing fruitful was found. The team took the photographs of the crime scene from different angles.

9. The postmortem report of deceased Suleman was received on 13.03.2020 which reveals that he had suffered as many as 17

injuries by blunt objects all over his body. The cause of his death was opined as shock due to ante mortem head injury produced as a result of blunt force impact.

10. CCL Avdesh was first to be apprehended in this case at the instance of a secret informer who claimed to be knowing to all the boys who were involved in the present incident. The identity of the other assailant revealed by the secret informer was Hemant Pratap @ Himanshu who alongwith co-accused Vishal Kumar @ Golu came to be arrested in this case on 28.03.2020. They are stated to have pointed out the place of occurrence and also got recovered rod/bamboo sticks used by them during the course of incident as also the clothes worn by them at the time of commission of offence.

11. Another CCL Lakshay Gupta @ Chintu was apprehended on 29.03.2020 at the instance of accused Vishal Kumar @ Golu.

12. Accused Hemant Pratap @ Himanshu has stated to have produced one mobile phone of make Redmi Note 5 Pro from his house which was checked and certain videos related to riots were found saved in it. The same was seized by the IO. Accused Himanshu and Vishal are stated to have refused to take part in TIP proceedings.

13. During the course of further investigation, the IO deposited MLC and injured Suleman in GTB Hospital for subsequent opinion about the nature of injuries suffered by him and the same were opined to be “grievous”.

14. Thereafter, further investigation of the case was assigned to Insp. Rajiv Ranjan. He deposited mobile phone got recovered by accused Hemant Pratap @ Himanshu in CERT, Ministry of Information and Technology, Govt. of India for retrieving data from it. The clothes worn by the above named accused on the date of incident at the time of incident and weapons of offence recovered at their instance were sent to FSL on 28.04.2020 for tracing blood stain on them and for matching the same with the blood sample of the deceased. It is stated that from the photographs developed from the CCTV footages related to the incident in question, it is clear that both these accused namely Hemant Pratap @ Himanshu and Vishal Kumar @ Golu were present in the mob and played active role in the crime.

15. On the basis of evidence collected during the course of investigation so far, charge-sheet was filed before the Ld. CMM on 24.06.2020 while keeping open the investigation, qua other suspects and also for submitting the scientific evidence upon receipt of FSL reports.

16. Further prosecution case is that on 27.10.2020, Insp. Manoj Kumar visited the area Shiv Vihar, Karawal Nagar, Delhi to trace some more rioters. He shows CCTV footage and still photographs of the rioters to the passersby and local residents. On that very day, a secret informer met him who, after watching CCTV footage, identified a boy seen therein wearing a black track suit as Neeraj Kumar R/o H. C-24, Gali No. 3, Aman Vihar, Shiv Vihar, Karawal Nagar, Delhi. Said Neeraj was traced and examined. He mentioned in his statement that he could identify accused Hemant Pratap @ Himanshu, Vishal Kumar @ Golu, Ashish and Gaurav (Ashish's brother) who were present in the mob on 26.02.2020 at 8:45 am at 33 Feet Road, Shiv Vihar, Delhi. When the CCTV footage was shown to him, he identified these four accused in that also. Accordingly, both these accused namely Gaurav and Ashish were arrested on 28.02.2020. They are stated to have made separate disclosure statements admitting their involvement in the instant case.

17. Thereafter, a supplementary charge-sheet was filed qua these two accused. Sanction u/s 196 Cr. P.C for prosecution of all the four accused u/s 153A IPC has also been filed alongwith the supplementary charge-sheet.

18. I have heard the Ld. Special PP as well as the Ld. Defence counsels and have perused the entire record.

19. Ld. Special PP submits that in the incident in question, an innocent person namely Suleman was brutally killed by riotous mob near Prem Vihar pulia within the jurisdiction of PS Karawal Nagar and later on his dead body was thrown into dirty drain (ganda nala). He argued that as per the eye witness account of Sanober, Sunil and Neeraj, all the four accused were part of the said riotous mob which caused the death of deceased Suleman. He argued that in the CCTV footage related to the incident recorded by the CCTV camera installed at M/s Jai Durga Jewellers, B-276, Main 33 Foota Road, Prem Vihar, Delhi, a group of persons is seen prodding and pushing the deceased towards Prem Vihar pulia, Ganda Nala. He pointed out that all the above witnesses have identified the four accused in this CCTV footage. It is further argued that the witness Neeraj had identified the four accused amongst riotous mob during the course of incident also apart from identifying them in the video footage. According to the Ld. Special PP, there is sufficient evidence to frame charges against the accused.

20. Ld. Defence counsels argued that the accused have been implicated falsely in this case and none of them had any role in the death of the deceased Suleman. It is argued that all the accused are seen barehanded in the CCTV footage which indicates that they did not share the object of the unlawful

assembly and at best were there only as bystander. It was further argued that even if the prosecution case is assumed to be true for the sake of arguments, common object of unlawful assembly does not appear to be causing death of any person. It was pointed out that in case the common object of the unlawful assembly would have been to cause death, Sanober would not have been allowed to run away from the spot after regaining consciousness. All the Ld. Defence counsels prayed in unison for the discharge of the accused.

21. It needs note here that at the time of deciding the charges against the accused, the Court is not expected to go deep into the probative value of material on record. At this stage, the Court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise of the accused. 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.

22. As per the prosecution case, Sanober, Sunil and Mamur were with the deceased Suleman and when they were attacked by a mob near Maa Bhagwati Memorial School. It is in pursuance to this attack, the deceased Suleman had suffered fatal injuries on account of which he breathed his last in the hospital and Sanober had suffered grievous injuries whereas Sunil and Mamur had escaped. Both Sanober and Sunil have given clear, categorically and consistent step by step account of the series of events which occurred after they were attacked by the mob. It is stated by them that they alongwith the deceased used to work under one Contractor Yusuf at a construction site in School in Karawal Nagar near T.B. Hospital. On 26.02.2020 when they all were going to Loni Bus Stand and reached near Maa Bhagwati Memorial School at 8.30 am, a mob of 30 to 40 boys having lathis, dandas and roads in their hands stopped them and asked for their identity cards. Since, Mamur was 15 to 20 steps behind them, he could flee away on sensing the danger. The mob directed Sunil to run away from the spot but when he insisted for remaining there with Suleman and Sanober, they started beating them and compelled him to flee away from the spot. The mob started beating Suleman and Sanober. As a result of beating, Sanober lost consciousness and when he regained the same, he saw riotous mob beating Suleman and taking him towards Prem Vihar pulia by pushing him with sticks.

23. When the CCTV footage of the incident captured by the CCTV installed at M/s Jai Durga Jewellers near the spot of incident, was shown to Sanober and Sunil, they identified all the four accused to be present in the mob attacking them and thereafter prodding and pushing Suleman towards Ganda Nala.

24. As per the version of the witness Neeraj, he had seen 40 to 50 rioters beating, pushing and prodding a boy towards Prem Vihar pulia on 26.02.2020 at 8.45 am when he had came out of his house to fetch milk. He had identified the accused Hemant Pratap @ Himanshu, Vishal Kumar @ Golu, Gaurav and Ashish amongst those rioters. He knew all of them as they resided in his neighbourhood. Later on, he identified the four accused in the above noted CCTV footage also.

25. Having regard to the version of the incident given by all the above witnesses namely Sanober, Sunil and Neeraj coupled with CCTV footage, it is prima-facie evident that the four accused were part of riotous mob, few members of which were armed with weapons and the mob attacked Sanober, Suleman and Sunil thereby causing grievous injuries to Sanober & Suleman as a result of which Sanober fell down unconscious but Suleman was conscious. The mob continued to beat him and was pushed by sticks etc. towards Prem Vihar pulia and thrown into the dirty drain. It is apparent at this stage that the “common object” of the

unlawful assembly was to attack and kill the members of different community i.e. Muslim community. The “common object” of this kind of riotous of which the accused herein were part, can be easily inferred from the CCTV footage and from the detailed version of the incident given by the above named witnesses. The ocular version of the incident given by these three witnesses and the electronic evidence in the shape of CCTV footage cannot be discarded at this stage in the absence of any cogent and reasonable ground. Hence, no case for discharge of the accused is made out.

26. The argument that the accused were bare handed does not hold any water. In the video footage and the still photographs placed on record alongwith the charge-sheet, all the four accused are seen prodding & pushing the deceased with sticks. It is also difficult to say at this stage that the “common object” of the unlawful assembly was not to kill anyone, as sought to be argued on behalf of the accused. What is evident that Sanober defied death by dint of providence only. When he regained consciousness, the rioters were busy in beating Suleman and he got the opportunity to run away to save himself or otherwise he too would have met the same fate as his friend Suleman. It further appears that after beating Suleman mercilessly, the rioters took him for dead and accordingly pushed his body in the dirty drain. The intention was, manifestly, to kill him.

27. It is, thus, found that there is prima-facie sufficient evidence on record to frame charges for the offences u/s 147/148/149/153A/323/326/341/365/395/302 IPC r/w Section 149 IPC against all the accused.

28. So far the charge for criminal conspiracy u/s 120B IPC is concerned, the material on record does not indicate any prior meeting of minds between the accused and other rioters to commit riotous incident at or around Prem Vihar pulia. What is apparent from the record at this stage is that there was an unlawful assembly, of which the accused herein were a part, and which resorted to violence in which they attacked the deceased Suleman and his friend Sanober. In the absence of any substantial evidence to indicate the hatching of any criminal conspiracy by the accused, charge u/s 120B IPC cannot be framed.

29. Hence, it is held that the charges u/s 147/148/149/153A/323/326/341/365/395/302 IPC r/w Section 149 IPC are liable to be framed against all the accused.

Announced in the open Court

(VIRENDER BHAT)
ASJ-03(NE)/KKD COURTS/08.12.2021