

IN THE COURT OF MS. VRINDA KUMARI,
ADDITIONAL SESSIONS JUDGE-02, SOUTH
DISTRICT, SAKET COURTS, NEW DELHI

CNR No. DLST01-003100-2019

SC NO. 303 OF 2019

FIR NO. 35/2019

PS SANGAM VIHAR

U/s 302/307/34/174A IPC & 25/27/54/59 ARMS ACT

IN THE MATTER OF

State

Versus

- (i) Rakesh @ Raka**
S/o Sh. Ashok,
R/o House No, 15/227,
Dakshinpuri, New Delhi.
- (ii) Imran**
S/o Sh. Mohd. Shabuddin,
R/o House No. B-6,
Sangam Vihar, New Delhi.
- (iii) Ashu Gupta**
S/o Sh. Chaman Lal Gupta,
R/o House No. D-5/297,
Sangam Vihar, New Delhi.
- (iv) Manoj Kumar @ Hathodi**
S/o Sh. Parmanand,
R/o House No. H-364,
Dakshinpuri, New Delhi.
- (v) Inder Kumar @ Indu**
S/o Sh. Radhey Shyam,
R/o House No. B-289,
Sangam Vihar, New Delhi.

(vi) Shanu @ Kala
S/o Sh. Anwar Ahmad,
R/o House No. B-52,
Sangam Vihar, New Delhi.

(vii) Nitin Joshi
S/o Sh. Daya Krishan Joshi,
R/o A-92, J. J. Colony,
Khanpur, New Delhi.

..... Accused

ORDER ON CHARGE

1. Vide this Order, I shall decide the point of charge in the present case.

2. I have heard detailed arguments and have perused the records carefully.

3. During the arguments addressed by both the parties, it was submitted that there are several consistencies and contradictions in the case of prosecution. It has further been submitted that the FSL report does not prove that the bullet that hit the deceased was fired by the country made pistol carried out by accused Manoj Kumar @ Hathodi.

4. Ld. Additional PP for State has argued that the FSL result shows that bullets were fired in the present case. It is further submitted that there is sufficient material on record to frame charge against the accused persons.

5. I have considered the rival contentions.

6. The present case involves rioting by two groups (all accused) who were carrying *lathi dandas*. There is a specific allegation that accused Manoj Kumar @ Hathodi and one Shanu @ Kela of other group were firing shots at each other. Both the groups also assaulted each other with *lathi danda*. One of the shots fired hit the deceased Kanhiya Lal who was a passerby. The FSL Result shows that one of the bullets was fired from the seized country made pistol point 0.315 bore while the other two spent cartridges were not fired from the seized *katta*. The above-said seized *katta* was used by accused Manoj @ Hathodi and was recovered at the instance of CCL 'M A'. There is a specific allegation in the statement of an eye-witness, namely, Balwinder Singh that the deceased died because of the shot fired by accused Manoj @ Hathodi.

7. Contentions of Ld. Counsels for the accused persons are a matter of trial. Materials on record disclose a grave suspicion against the accused persons and accused Manoj @ Hathodi.

8. In **Sajjan Kumar Vs. CBI (2010) 9 SCC 368**, Hon'ble Supreme Court of India has held as follows:

“17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles

emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the

offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

8. In view of above discussion, prima facie, there is sufficient material on record to frame charge against the accused persons as follows :

(i) All accused, namely, Rakesh @ Raka, Imran, Ashu Gupta, Manoj Kumar @ Hathodi, Inder Kumar @ Indu, Shanu @ Kela and Nitin Joshi : (a) offences punishable u/s 148 IPC, (b) u/s 307/149 IPC (alternatively) u/s 307/34 IPC, (c) u/s 302/149 IPC (alternatively) u/s 302/34 IPC;

(ii) Accused Manoj Kumar @ Hathodi : offence punishable u/s 302 IPC.

**PRONOUNCED IN OPEN COURT ON THIS 14th DAY OF
DECEMBER 2022**

**(Vrinda Kumari)
ASJ-02, South District
Saket Courts, New Delhi.**