



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 06th September, 2022**
Decided on: 28th September, 2022

+ **CRL.A. 891/2017**
MONU SINGH Appellant
Represented by: Mr. M.L. Yadav, Advocate.

versus
STATE Respondent
Represented by: Ms. Shubhi Gupta, APP for the
State with ACP Ved Prakash,
Special Cell NR/STF &
Inspector Sandeep Kumar.

+ **CRL.A. 103/2018**
ROHAN CHAUHAN & ANR. Appellant
Represented by: Mr. Mehul Sharma & Mr. Yash
Tyagi, Advocates.
versus
STATE Respondent
Represented by: Ms. Shubhi Gupta, APP for the
State with ACP Ved Prakash,
Special Cell NR/STF &
Inspector Sandeep Kumar.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

MUKTA GUPTA, J.

1. By the Crl.A. 891/2017, appellant Monu Singh, and by Crl.A.103/218, appellants Rohan Chauhan and Mohit Chauhan challenge the impugned judgment dated 13th July, 2017, whereby they have been convicted for murder of one Trilok; and order on sentence dated 21st July, 2017, directing all the three convicts to undergo rigorous imprisonment for life alongwith



fine of Rs.5,000/- each, and in default simple imprisonment for 3 months, for offence punishable u/s. 302 r/w 34 Indian Penal Code (“IPC”); and also directing convicts Rohan & Mohit to undergo rigorous imprisonment for 3 years alongwith fine of Rs.3,000/- each, and in default whereof, simple imprisonment for 1 month for offence punishable u/s.27 Arms Act. Accused Anuj Kumar Sharma was acquitted of charges u/s.25 Arms Act & S.201 IPC vide the impugned judgment.

2. Learned counsel for the appellant Monu Singh assails the conviction on the grounds that although the eye witnesses of the incident were Ct. Sunil (PW-6) and Ct. Deepak Yadav (PW-22), however the FIR was not registered on their statements but on the statement of Dinesh Tokas (PW-5). SI Manoj Yadav (PW-35) stated that when he reached the spot, Ct. Sunil and Ct. Deepak Yadav were present, however instead of recording their statement, he alongwith Ct. Vijay Pal (PW-33) went to the hospital. This shows that Ct. Sunil and Ct. Deepak Yadav were not the eye witnesses, however were later shown as eye witnesses.

3. It is contended on behalf of appellant Monu Singh that Ct. Sunil is not a reliable witness as his testimony is neither corroborated by the other eye witness Ct. Deepak Yadav (who was later declared hostile) nor by the medical evidence. As per Ct. Sunil, the deceased had received 2 gunshot injuries, but as per the PM Report (Ex.PW28/A), the deceased received 4 gunshot injuries. Further, Ct. Sunil despite being a home-guard did not try to save the deceased and rather fled away from the spot. Version of Ct. Sunil cannot be further relied upon as he himself stated that he ran away from the spot and even could not clarify whether he ran away on foot or vehicle.



4. As per the appellant Monu, Dinesh Tokas did not give any description of the assailants in the FIR and his presence after the incident is highly doubtful. As per Dinesh Tokas, he received a call from Ravinder (PW-7) that somebody had shot his father and only when he was going towards the complex and had reached the gate of sports complex that he saw three boys running towards the village. This evidence of Dinesh Tokas is unreliable and concocted. Further, Dinesh Tokas mentioned about one Sardarji who was the plant operator of the swimming pool, but he has not been cited as a witness by the prosecution. Dinesh Tokas had initially raised his suspicion on Jitender Tokas and Deepak Tokas, however no credible investigation was done on that aspect. Further, blood stained clothes of Dinesh Tokas & Joginder (PW-23) as also the Honda City Car were not seized by the Police.

5. It is further contended that the appellant Monu rightly refused TIP as the prosecution witnesses Ct. Sunil and Ravinder also stated that the appellant had been shown to the witnesses before the TIP. Even as per the case of the prosecution, the appellants were taken to the place of occurrence and to the rented room after their apprehension in the night of 6th June, 2011 at around 11.15 PM and hence their refusal to undergo TIP was justified. Further, Ravinder during his examination-in-chief stated that he saw two boys quarrelling with deceased and identified them as Monu and Rohan. It is contended that as per the prosecution case, it was Monu and Mohit who were quarrelling with the deceased and Rohan came in the scene at a later time, and therefore Ravinder is an unreliable and concocted witness.

6. In the alternative, it is submitted that even as per the case of the prosecution, the role assigned to Monu Singh was that he guarded the place of incident from some distance at the gate when the actual firing took place.



Monu Singh was not present at the place where firing took place. Thus, it cannot be said that Monu Singh shared the common intention. Further, no recovery whatsoever has been affected from Monu Singh. Reliance is placed on the decision of the Hon'ble Supreme Court in CrI.A. 1053/2015 Shishpal @ Shihu Vs. The State (NCT of Delhi) decided on 11th July, 2022.

7. On behalf of the other two appellants Rohan and Mohit, it is contended that on the same set of evidence though the appellants have been convicted, however co-accused Anuj from whom also arms were recovered has been acquitted. No public witness was associated at the time of arrest of the appellant and the alleged recovery of cartridges and seizure of bullets and therefore, the same are doubtful. Though it is the case of the prosecution as stated by HC Jagpal (PW-17) that Mohit and Rohan were arrested in a gap of 2 to 4 minutes, however arrest memo shows a difference of approximately half an hour in their arrest. It is further contended that the testimony of Dinesh Tokas is doubtful as although he is stated to have taken the deceased to the AIIMS Trauma Centre, however, as per DD No.8A, the deceased was taken to the hospital by Joginder. To corroborate the version of these witnesses that they took the deceased in their car, the car was neither examined nor blood stains picked up from the car. The prosecution version is highly unbelievable and the alleged recoveries have been planted on the appellants. Though it was the case of Ct. Sunil that the relatives Jitender Tokas @ Jeetu and Deepak Tokas @ Sunny were involved in the murder of his friends, however no investigation was carried out on that aspect nor was this aspect considered by the learned Trial Court. The prosecution has failed to prove its case beyond reasonable doubt in view of the contradictions in the



testimony of the witnesses and the chain of circumstances not being complete. Hence, the appellants be acquitted.

8. The investigation was set into motion on a PCR call made by the eye witness Ct. Sunil Kumar, recorded vide DD No.3A on intervening night of 02-03.06.2011 at 12.23 am regarding incident of firing at Munirka Sports Complex. SI Manoj Yadav (PW-35) alongwith Ct. Naval (PW-9) reached the spot and found 4 empty cartridges, 3 live cartridges and blood on the floor. SI Manoj Yadav then sent a wireless message to call the crime team to the spot and in the meanwhile, Insp. Vijay Pal (PW-33) reached the spot. At the spot, Insp. Vijay Pal was informed by the two home guards that the victim was moved to the hospital. At the same time information was received from the trauma center at the police station. Thereafter, Insp. Vijay Pal along with SI Manoj Yadav reached the trauma center where they met Dinesh Tokas and Joginder. Statement of Dinesh Tokas was recorded and sent to police station through Ct. Naval (PW-9), on which, FIR No.165/2011 dated 03.06.2011 was registered u/s.302/34 IPC & S.25/27 Arms Act (Ex.PW 8/A).

9. Dinesh Tokas stated that he runs gyms and swimming pool on contracts. The contract work at Baba Gang Nath Sports Complex, DDA Multi gym/ swimming Pool at Munirka, Delhi was in the name of his father Sh. Trilok Singh Tokas. On 2nd June 2011, he got the news that he was getting the contract of DDA swimming pools for 7 out of the 9 places and this fact was also known to other people. His Uncle Gyan Singh Tokas's sons Jitendra Tokas and Deepak Tokas @ Sunny had also filed the tender for the swimming pools but they did not get even one contract. He stated that his father spent most of the time at the swimming pool of Baba Gang Nath



Sports Complex for overlooking and taking care of the same and used to stay there and sleep there at night and DDA had deputed two men from the Delhi Home Guards on 3 shifts of 8 hours each. Yesterday on 2nd June 2011 at about 4.30 pm, he visited the swimming pool and left at around 7.30-8 pm for his home, and his father stayed at the sports complex only. Like every day, he went to check the swimming pool at around 12-1 am in the night to the sports complex with his friend Jogender from Vasant Kunj, Priya Cinema. When he was around the main gate of the Sports Complex Baba Gang Nath Mandir in his car, Ravinder who worked as a cleaner, called Deepak on his mobile from his own mobile phone and told him that uncle Trilok had been shot. At the same time, Dinesh saw three boys running towards the village and at the gate Ravinder told him that these three boys were running after having shot uncle. Dinesh immediately, with the help of his friend Jogender, picked up his father and took him to AIIMS Trauma Centre Hospital, where the doctor declared his father dead. He suspected that both sons of his uncle Gyan Singh, Jitender Tokas @ Jeetu and Deepak Tokas @ Sunny, were involved in the murder of his father because this time also, they did not get any contract from DDA for the swimming pools. He also stated that he can identify the three boys.

10. On 4th June 2011, one secret informer informed that one Rohan @ Vikram residing in the Munirka area, had left the area with his wife and two young boys. Thereafter on 6th June 2011, mobile phone location of Rohan was found to be in Dakshin Puri and accordingly, Rohan & Mohit were arrested near the Dakshin Puri bus stand. One pistol of .32 bore with 2 live cartridges were recovered from Rohan (Ex.PW 12/B) and another pistol of .32 bore with 5 live cartridges were recovered from Mohit (Ex.PW 12/D).



They disclosed that the pistols were given to them by Anuj, who was apprehended from ISBT at the instance of Rohan, and 3 kattas of .315 bore, 1 desi katta of .12 bore, 2 knives, 2 magazines, 6 live cartridges of .12 bore, 3 live and 1 empty cartridge of .32 bore, 7 live cartridge and 2 empty cartridge of .315 bore were recovered from Anuj (Ex.PW 26/K). Thereafter, Monu was arrested from Ashok Vatika Loni at the instance of Rohan.

11. Dr. Tejaswi (PW-28) from AIIMS conducted the post mortem on 3rd June 2011 and gave his report (Ex.PW28/A) and found the following injuries on the deceased:-

- i. Lacerated wound measuring 2.1cm X 0.3cm, horizontally oriented was present on the right side of the forehead, 5cm from the mid line and 4.5 cm above the right eye ball.*
- ii. Lacerated wound measuring 1.5cm X 0.3cm X 0.3cm obliquely oriented was present, 1 cm from midline and 1cm above the right eyebrow on the right side of the head.*
- iii. An oval shaped gunshot entry wound measuring 0.7cm X 0.6cm was present on the front of the left side of the neck, 2.5cm from the midline and 3.5cm above the left clavicle. This wound was situated 156cm from the left heel. The entry wound was surrounded by “abrasion collar” of 0.3 cm to 0.2 cm around its circumference. It was more pronounced from 7 o’ clock to 11 o’ clock of the wound. The direction of the track was downwards, backwards and to the left side, injuring the neck muscle, left common carotid artery and the partially deformed bullet designated as bullet no. 1 was retrieved on the left upper back in the trapezius muscle.*
- iv. Firearm “entry wound” measuring 2.1cm X 0.9 cm ovally shaped was present Just over left nipple. It was situated 140 cm from the left heel. It was surrounded by abrasion ring of 0.2cm. The direction of the wound track was backward, medially and slightly downwards injuring the left 5th rib, left ventricle, inter ventricular septum, right ventricle, lower lobe of the left lung and the bullet*



was retrieved in the pedicle of the Dorsal-10 vertebra and was designated as bullet no.2.

- v. Firearm entry wound measuring 1.3cm X 0.8cm was present on the right side of the abdomen, 6.5cm from midline and 3 cm below the right costal margins. This wound was situated 124cm above the right heel. The wound was surrounded by a zone of abrasion ring measuring 0.3-0.2cm in circumference of the wound. The direction of the wound track was downwards, backwards and to the left side, involving the abdominal muscle, perforating stomach, loops of the small intestine and the mesentric vessels, penetrating the left ilial plank and the bullet designated as bullet no.3 was located on the left gluteus maximus muscle.*
- vi. Firearm entry wound measuring 0.9cmX0.8cm was present on the midline in the abdomen and was situated 9cm above the pubic symphysis (106 cm from the heels). The direction of the track was downwards, backwards and slightly to the left side, injuring loops of the intestine, perforating the bladder, pelvic diaphragm, and the bullet was seen in the medial compartment of the upper part of the thigh. In spite of the repeated efforts, this bullet could not be retrieved both by myself and by the consultant on duty, a second X-Ray was ordered and bullet was seen however, further tracing of this bullet was not done due to extreme mutilation and possible disarticulation of the left limb itself.*

12. As per Dr. Tejaswi, the cause of death was “hemorrhagic shock” and its complications due to fire arm injury. All injuries were ante mortem in nature and injuries no. iii, iv, v, vi were individually and in combination sufficient to cause death in ordinary course of life.

13. Chargesheet in this case was filed by Insp. Ved Prakash (PW-39) and the three convicts were charged with offences punishable u/s. 120B IPC, 302/120B IPC, 201/120B IPC and accused Anuj (acquitted) was charged with offences punishable under Sections 25 Arms Act & 201 IPC.



14. To prove its case, the prosecution examined 43 witnesses. Case of the prosecution primarily rests upon the following testimonies and circumstances:

i. Ct. Sunil who was the eye witness gave a detailed account of the manner of incident. Ct. Sunil deposed that he was on duty with Deepak Yadav at the Sports Complex. No outsider was allowed at the sports complex after 10 pm. At about 11.15 pm, he alongwith Deepak Yadav and deceased went for a round, when they saw two persons sitting on the swings. Deceased asked the boys regarding the timings of the complex, then slapped one of them twice, kicked, abused and threatened to get them behind bars. The two boys were allowed to leave the complex after sometime. Thereafter, Brahm came to the complex at around 12 am, and Ct. Sunil and Ct. Deepak Yadav opened the gate. Brahm asked them to leave the gate open as Dinesh Tokas was coming in 5-7 minutes. In the meanwhile, those two boys alongwith one other person entered from the gate. The boy who was slapped by deceased showed his pistol to Ct. Sunil and took him behind the bushes, as also Deepak Yadav. Appellant Monu went to call deceased from inside and thereafter, the boy who was slapped by Trilok fired at him and then the third person Rohan shot at Trilok and at that time Monu was standing at the gate. Ct. Sunil stated that he got scared and ran towards the pool where he met Ravinder to whom he told about the incident, who called at no.100. Thereafter, Ct. Sunil went to the police station and at the main gate he met Deepak Yadav.



ii. Presence of Ct. Sunil at the spot is corroborated by the deposition of Retd. Captain Ranbir Singh (PW-18) who stated that 6 home guards were deputed for the sports complex out of which Ct. Sunil & Ct. Deepak Yadav were on duty from 10 pm – 6 am on the day of incident, the attendance register (Ex.PW37/B) and the duty chart (Ex.PW-39/L)

iii. Dinesh Tokas deposed that on the night of 2nd June, 2011 at about 12:10 he reached the sports complex accompanied by his friend Joginder Tokas. When he was about 40-50 meters from the sports complex, he received a call from Ravinder, who was employed at the swimming pool that someone had shot his father. He speeded his car to the gate of swimming pool where he saw 3 persons running out of the gate towards the village. He then picked up his father (deceased) and took him to AIIMS Trauma Center in his car, where his father Trilok was declared brought dead. He identified the three appellants as the persons running out of the gate of the complex towards Munirka village. Ravinder reached there and stated that the three persons who just fled had shot his father. He initially expressed his suspicion on his cousins in the FIR as there was no enmity with anyone. In cross-examination he stated that he did not see the car of Brahm when he first reached the complex, but found it parked when he came back to the complex from the hospital. He also stated that the police did not take his blood stained clothes and that he had left his car at the hospital as the tires got busted. He also stated



that one Sardarji used to work as Plant Operator at the swimming pool.

iv. Ravinder deposed that Ct.Sunil informed him that Trilok was shot, upon which he called Dinesh Tokas son of Trilok. He stated that he saw the three persons running out of the complex gate towards Munirka Village. However, he identified Monu and Rohan as the ones who first quarreled with Trilok. He stated that at the time of incident, he was engaged in cleaning the pool and its surroundings, but denied having heard the sound of gun fire. He stated that he and Dinesh Tokas took deceased to the hospital.

v. The appellants refused to participate in the TIP proceedings whereafter they were identified by Dinesh Tokas (PW-5), Ct. Sunil Kumar (PW-6), Ravinder Pandey (PW-7) & Joginder Singh Tokas (PW-23) in the police station. Appellant Rohan Chauhan was produced before Ld. MM, Saket on 7th June 2011 in muffled face and an application was filed by Investigating Officer with a request for conducting TIP. However, appellant Rohan Chauhan refused to participate in the TIP proceedings claiming that he had been shown to the witnesses (Ex.PW-39/C). Likewise, appellant Mohit Chauhan and Monu Singh also refused TIP on 7th June 2011 claiming that they had been shown to the witness (Ex.PW-39/D and Ex.PW-39/E, respectively.) Dinesh Tokas, Ravinder Pandey and Joginder Singh Tokas identified Rohan and Mohit on 8th June 2011 at the Police Station. Dinesh Tokas further identified Monu Singh on 19th July 2011 at Saket Court. Ravinder Pandey and



Joginder Singh Tokas identified Monu Singh on 8th June 2011 at the police station only through photograph. Ct. Sunil Kumar stated that he saw Rohan & Mohit 5-6 days or 6-7 days after the incident at the police station and had seen a photo of Monu Singh at the police station. Nothing has been elicited from the cross-examination of these witnesses that the appellants were shown to them before the appellants refused the TIP.

vi. Factum of homicidal death is duly proved by the post mortem Report Ex.PW28/A, as noted above.

vii. Presence of Rohan Chauhan & Monu Singh at the spot (in the area of Munirka) on the date & time of incident is corroborated through CDR analysis chart (Ex.PW 39/J).

viii. The three appellants came to the complex with an intention to kill the deceased Trilok Singh as two of them were armed with pistols. Arms and ammunition were recovered from Rohan vide Ex.PW12/B and Mohit vide Ex.PW12/D.

ix. Pistols and cartridges recovered from Rohan and Mohit matched with cartridge cases found on the spot and bullets recovered from the body of the deceased as per the FSL examination (Ex.PW39/Q), which confirmed the use of those weapons by the appellants in the commission of the offence of murder of Trilok.

x. Ravinder Tokas stated that Rohan and his wife had been his tenant for about 7-8 months from the date of incident. Mohit & Monu had come to live with Rohan on the evening of 2nd June



2011. He also stated that all three convict and Rohan's wife left the rented premises in the early morning of 3rd June 2011.

15. The defence of the appellants in their statements under Section 313 CrPC is in denial and that they have been falsely implicated in this case. Both Rohan Chauhan and Mohit Chauhan stated that they were lifted from their house. They further stated that they refused the TIP as they were shown to the witnesses in the police station. Monu Chauhan stated that he was lifted from his house at Ghaziabad and that he was also shown to the witnesses in police station. No defence evidence was led by any of the appellants.

16. As per the crime scene, four spent cartridges seized vide Ex. PW21/A, three live cartridges seized vide Ex.PW21/B, one sikka (coin), which was the front portion of the bullet and a pair of blood stained slippers were seized vide Ex.PW21/C. As per the post mortem report, four bullets were found in body, out of which, bullet Nos. 1, 2 & 3 were retrieved and bullet No. 4 could not be retrieved. According to the post mortem Doctor, bullet Nos. 1, 3 and 4 were identical whereas bullet No. 2 was different.

17. As per the FSL report, (Ex.PW39/Q) the cartridge cases collected from the crime scene and the bullets recovered from the body of the deceased were from the pistols recovered from Rohan and Mohit. Relevant result of examinations were as under:-

“7. The individual characteristic marks of country made pistol marked exhibit ‘F3’ present on the crime cartridge cases marked exhibit ‘EC1’, ‘EC6’ and ‘EC7’ were compared with test cartridge cases fired through country made pistol marked exhibit ‘F3’ under a comparison microscope. After thorough examination and comparison, firing pin and breech face marks present on exhibit ‘EC1’, ‘EC6’ and ‘EC7’ were similar with firing pin & breech face marks present on test cartridge cases.



Hence, it is opined that cartridge cases marked exhibit 'EC10, 'EC6' and 'EC7' have been fired through the country made pistol marked exhibit F3.

8. The individual characteristic marks of improvised pistol marked exhibit 'F1' present on the crime cartridge case marked exhibit 'EC2' were compared with test cartridge cases fired through improvised pistol marked exhibit 'F1' under a comparison microscope. After thorough examination and comparison firing pin and breech face marks present on exhibit 'EC2' were similar with firing pin & breech face marks present on test cartridge cases. Hence, it is opined that cartridge case marked exhibit 'EC2' has been fired through the improvised pistol marked exhibit 'F1'.

9. The individual characteristic marks of improvised pistol marked exhibit 'F2' present on the crime cartridge case marked exhibit 'EC3' were compared with test cartridge cases fired through improvised pistol marked exhibit 'F2' under a comparison microscope. After thorough examination and comparison, firing pin and breech face marks present on exhibit 'EC3' were similar with firing pin & breech face marks present on test cartridge cases. Hence, it is opined that cartridge case marked exhibit 'EC3' has been fired through the improvised pistol marked exhibit 'F2'.

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11. The individual striation marks present on crime bullet marked exhibit 'EB2' were compared with recovered test bullets fired through country made pistol marked 'F3' under a comparison microscope. After thorough examination and comparison, individual striation marks present on exhibit bullet marked 'EB2' were similar with individual striation marks present on test bullet. Hence, it is opined that exhibit bullet marked 'EB2' had been discharged through country made pistol marked 'F3'.

12. The individual striation marks present on crime bullet marked exhibit 'E83' were compared with recovered test bullets fired through improvised pistol marked 'F2' under a



comparison microscope. After through examination and comparison, individual striation marks present on exhibit bullet marked 'E83' were similar with individual striation marks present on test bullet. Hence, it is opined that exhibit bullet marked 'E83' had been discharged through improvised pistol marked 'F2'.

13. The individual striation marks present on crime bullet marked exhibit 'EB4' were compared with recovered test bullets fired through improvised pistol marked 'F1' under a comparison microscope. After through examination and comparison, individual striation marks present on exhibit bullet marked 'EB4' were similar with individual striation marks present on test bullet. Hence, it is opined that exhibit bullet marked 'EB4' had been discharged through improvised pistol marked 'F1'.

18. Contention of learned counsels for the appellants that since the eye witnesses of the incident were Ct. Sunil and Ct. Deepak Yadav, FIR ought to have been registered on their statements and not on the statement of Dinesh Tokas, deserves to be rejected, for the reason, when the police officer reached the spot, Ct. Sunil and Ct. Deepak Yadav were not found at the spot and at the hospital, Dinesh Tokas, son of the deceased was found who was also an eye witness to the extent of seeing the three accused running away from the spot. It is trite law that First Information Report is recorded to set the investigation into motion and at that stage, the investigating agency was not required to pick and choose the best witness on whose statement, the FIR ought to be registered. Further, the contention that since FIR was not recorded on the statements of Ct. Sunil and Ct. Deepak Yadav, thus, they were not the eye witnesses, is also liable to be rejected, for the reason, the prosecution has proved the presence of Ct. Deepak Yadav and Ct. Sunil at the Sports Complex from the testimony of Captain Ranbir Singh who stated



that out of six home guards deputed at the Sports Complex, Ct. Sunil and Ct. Deepak Yadav were on duty from 10 pm to 6 am on the day of incident and he also exhibited the attendance register as Ex.PW18/A which corroborated his version. Hence, the testimony of Ct. Sunil cannot be discarded merely because FIR was not registered at his instance. Ct. Sunil has also clarified that after the incident, he got terrified and thus, ran away from the spot, which corroborates the statement of SI Manoj Yadav that when he reached at the spot, he did not find any eye witness and went to the hospital. Presence of Ct. Sunil is also proved from DD No. 3A at 12.23 am on the intervening night of 2-3rd June 2011 informing that at Munirka Sports Complex, someone has fired four rounds and someone is injured. Further, the PCR van reached at 12.35 at night and informed that the injured has received gun-shot injury and is being taken to the hospital. Further, merely because Ct. Deepak Yadav has turned hostile to the identity of the witnesses, the testimony of Ct. Sunil cannot be discarded. The fact that the investigating agency did not trace the 'Sardarji' who was the plant operator of the swimming pool and cite him as a witness, does not affect the credibility of the deposition of Ct. Sunil and Dinesh Tokas, the two eye witnesses.

19. As noted above, the claim of the appellants was that they refused to undergo TIP as they were shown to the witnesses. The appellants were arrested on 6th June, 2011. On 7th June 2011 itself, Inspector Ved Prakash filed the application for conducting the TIP which notes that the appellants were produced in muffled faces on 7th June 2011. From the testimony of the witnesses as noted above, it is evident that they had identified the accused in the police station only after the TIP was refused. Inspector Ved Prakash, the then SHO, P.S.Vasant Vihar who took over the investigation on 4th June 2011 has deposed about the efforts made to trace the appellants and that



since Rohan @ Vikram was a tenant in one of the houses at Munirka and his phone number was available, his location was traced from the mobile phone and also investigation was carried out from the relatives and it was found that the phone number of Rohan was operational in Dakshinpuri, Delhi and thus, with the help of a secret informer, the area was zeroed down and appellants Rohan and Mohit were apprehended while they were heading towards bus stand, Dakshinpuri. One pistol each with seven live cartridges were recovered from Rohan and Mohit which were seized and they were arrested on 6th June 2011 at 6.30 pm and 7 pm respectively. On the same night, though they were taken to the place of incident and the room, however, the same was at midnight and in the cross examination, suggestion was given that they were shown to the witnesses at the night intervening 6/7th June 2011 when they were taken to the flat, which was denied by the witnesses.

20. Contention of learned counsel for the appellant Monu Singh that Monu Singh was only guarding the spot and had not fired and thus, cannot be held to have shared the common intention, cannot be accepted. As per the deposition of Ct. Sunil the eye witnesses, after the deceased had slapped one of accused, the three accused reached the spot together and two of them were armed with weapon of offence. Further the boy who was slapped took Ct. Sunil on one side and Monu called the deceased from inside whereafter he was shot hence, it cannot be said that appellant Monu Singh did not share the common intention with the other two accused. Undoubtedly, Monu Singh and Rohan Chauhan were apprehended together, however, after completing the necessary formalities, the time when they were actually arrested, is



mentioned in the two arrest memos which thus has a difference of approximately half an hour.

21. Considering the facts noted above, this Court is of the view that the testimonies of Ct. Sunil and Dinesh Tokas who have duly identified the three accused along with the witnesses Ravinder and Joginder Singh Tokas, are corroborated by recoveries made at the instance of the appellants Rohan Chauhan and Mohit. Further as per the FSL report, the bullets recovered from the body of the deceased and the cartridge cases found at the spot were fired from the fire arms recovered at the instance of Rohan Chauhan and Mohit and the call details analysis of the appellants show their presence in the area where the offence took place at the relevant time, thereby proving the charges against the appellants beyond reasonable doubt.

22. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence.

23. Appeals are accordingly dismissed.

24. Copy of the judgment be sent to the Superintendent Jail for updation of record and intimation to the appellants.

(MUKTA GUPTA)
JUDGE

(ANISH DAYAL)
JUDGE

SEPTEMBER 28, 2022

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