



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % Reserved on: 27th February, 2023
 + Decided on: 26th June, 2023
 + **CRL.A. 1420/2019**

NIKHIL RANA Appellant
 Represented by: Mr. Rajiv Mohan (through VC),
 Ms.Nitika Panchali and Mr. Rehan
 Khan, Advs.

versus

STATE Respondent
 Represented by: Mr. Prithu Garg, Addl. PP for State
 Insp. Subhash Kumar and SI Shivom,
 PS Gazipur

+ **CRL.A. 194/2020**

SANJAY KUMAR Appellant
 Represented by: Mr.Pradeep Teotia, Advocate.

versus

STATE Respondent
 Represented by: Mr. Prithu Garg, Addl. PP for State
 Insp. Subhash Kumar and SI Shivom,
 PS Gazipur

+ **CRL.A. 221/2020**

STATE Appellant
 Represented by: Mr. Prithu Garg, Addl. PP for State
 Insp. Subhash Kumar and SI Shivom,
 PS Gazipur

versus

NIKHIL RANA & ORS. Respondents
 Represented by: Mr. Rajiv Mohan (through VC),
 Ms.Nitika Panchali and Mr. Rehan
 Khan, Advs for respondent Nos.1 and
 2/Nikhil Rana and Satbir Rana.
 Mr. Sunil Dalal, Senior Advocate
 along with Mr. Kartik Gadi,



Advocate for the respondent-3/Parth Sharma.

Mr. Vikas Sharma, Advocate for respondent Nos.4 and 5/Brijesh and Rupesh.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By way of Crl.A. No.1420/2019, appellant Nikhil Rana challenges the judgment of learned Trial Court dated 1st October, 2019, wherein the appellant was held guilty for murder of one Vinod Pahlwan (deceased); and also the order on sentence dated 1st November, 2019, wherein the appellant was directed to undergo imprisonment for life along with fine of ₹1 lakh, in default whereof, simple imprisonment for six months for offence punishable under Section 302 of the Indian Penal Code, 1860 ('IPC'); sentenced to the period undergone along with fine of ₹5 lakhs in default whereof, simple imprisonment for one year for offence punishable under Section 201 of IPC; sentenced to rigorous imprisonment for five years along with fine of ₹50,000/- in default whereof simple imprisonment for three months for offence punishable under Section 27 of the Arms Act, 1959; and was also sentenced to period already undergone along with fine of ₹50,000/- in default whereof simple imprisonment for three months for offence punishable under Section 25 of the Arms Act. Two other accused persons Parth Sharma and Satbir Rana @ Ghenta were also found guilty and were sentenced to the period already undergone along with fine of ₹5 lakhs in default whereof simple imprisonment for one year for offence punishable



under Section 201 IPC; simple imprisonment for six months along with fine of ₹50,000/- in default whereof simple imprisonment for three months for offence punishable under Section 202 IPC. Satbir Rana @ Ghenta was also found guilty for offence punishable under Section 203 IPC and was sentenced to period already undergone along with fine of ₹50,000/- in default whereof simple imprisonment for three months. However, no appeal was filed by accused Parth Sharma and Satbir Rana @ Ghenta. Two other accused persons Brijesh and Rupesh were also found guilty for offence punishable under Section 174A IPC and were sentenced to period already undergone along with fine of ₹1 lakh in default whereof simple imprisonment for six months.

2. By CrI.A. No.194/2020, appellant Sanjay Kumar, who was the complainant, challenges the impugned judgment and order on sentence to the extent that the accused persons were acquitted for offences punishable under Section 120B IPC read with Section 302 IPC and prays that the appellant Nikhil Rana and the accused persons be held guilty for hatching a criminal conspiracy to murder the deceased.

3. By way of CrI.A. No.221/2020, the State also challenges the impugned judgment and order on sentence and prays that all the five accused persons be held guilty for offence punishable under Section 120B IPC read with Section 302 IPC. The State also prays for enhancement of sentence of accused Nikhil Rana for offences punishable under Section 201 IPC and Sections 25/27 Arms Act; of accused Parth Sharma for offence punishable under Sections 201/202 IPC; of accused Satbir Rana @ Ghenta



for offence punishable under Sections 201/202/203 IPC and of accused Brijesh and Rupesh for offence punishable under Section 174A IPC.

4. Brief facts of the prosecution case are that on 21st July, 2014, at about 10.00 PM Sanjeev Trehan (PW-22) made a PCR call (Ex.PW-5/A) from his mobile informing that an accident had taken place near the Gazipur main toll tax booth situated in Delhi but towards the UP side of the booth, on which DD No.63B (Ex.PW-4/A) was recorded. On receipt of information, ASI Ram Naresh (PW-21) reached the spot and found one Swift car bearing No.DL 5CJ 4166 at the spot with its front wheels on the divider and one boy present at the driver seat in an injured condition with blood oozing out from his neck. Injured was immediately shifted to LBS Hospital. At the hospital, the injured was declared “brought dead” and his body was sent to mortuary for post-mortem examination. Complainant Sanjay Kumar (PW-3), who was the elder brother of the injured, received the information from the police regarding the condition of his brother on which he went to the hospital where he was informed about the death of his brother and he identified the body in the mortuary. Thereafter, PW-3 went to the spot where he met Satbir Rana who informed him that the offence was committed by three Muslim boys namely Nazim, Shakir and Rashid (initial suspects). Accordingly, the complainant gave a statement to the police (Ex.PW-3/A) naming these initial suspects as the possible perpetrators of the offence. On the basis of Sanjay’s statement, *rukka* (Ex.PW-23/A) was recorded, on which FIR No.507/2014 dated 22nd July, 2014 under Sections 302/120B/201/202/34 IPC and Section 25/27 Arms Act was registered at PS Gazipur (Ex.PW-17/B).



5. Dr. Vinay Kumar Singh conducted the post-mortem examination on the body of the deceased on 22nd July, 2014 and vide his report Ex.PW-16/A opined:

“1) Firearm entry wound, 1.4 x 1.2 cm over right side lower end of pinna with singeing, burning and blackening present in surrounding area of 3x1.5 cm margins irregular and inwards directed left, 153 cm above heel and 13 cm from mid line.

2) Firearm entry wound, 1.8 x 1.5 cm over right antero medial side of neck with singeing, burning and blackening in surrounding area of 2.5x2 cm, margins irregular and inwards directed backward inward right to left, 147 cm above heel and 3 cm from mid line.

3) Firearm entry wound, 1.5 x 1 cm over right lateral side of neck, no singeing, burning and blackening present, 157 cm above heel and 7 cm from mid line, directed inward downward and right to left.

4) Firearm exit wound, 1.5 x 0.9 cm over left mandibular region, 150 cm above heel and 8cm from mid line, margin inverted.

5) Firearm exit wound, 1.8 x 1 cm over left mandibular region, 149 cm above heel and 6 cm from mid line, margins inverted.

Opinion: *Time since death was about 14 to 20 hours prior to postmortem examination and cause of death was shock and hemorrhage due to firearm injury. All injuries were antemortem in nature and recent in duration. Injury no. 1, 2 and 3 individually and collectively are sufficient to cause death in ordinary course of nature.”*

6. IO/Insp. Vijay Kumar (PW-34) was handed over the investigation and when no evidence was found against the initial suspects, SIT was constituted for investigating the matter. After analyzing the material gathered, SIT concluded that the initial suspects were not involved in the



present case. Thereafter, IO/Insp. Vijay Kumar further investigated and found that enmity existed between the deceased and Satbir and Nikhil Rana on account of *pradhani* of Gazipur Dairy Farm and also for sale of a plot in Gazipur. Accordingly, Satbir and Nikhil Rana became the prime suspects and on analysis of their CDRs, Parth Sharma was also found to be involved in the matter. On 15th October, 2014, Satbir Rana, Nikhil Rana and Parth Sharma were called for interrogation after which they were arrested. Upon completion of investigation, charge-sheet was filed and all the three accused were charged for offence punishable under Section 120B read with 302 IPC; separate charge under Sections 302/201 IPC and Sections 25/27 Arms Act were framed against Nikhil Rana; separate charge under Sections 201/202 IPC were framed against Satbir Rana and separate charge under Section 202 IPC was framed against Parth Sharma.

7. To prove its case the prosecution examined 36 witnesses and defence evidence in the form of three witnesses were also examined.

8. Learned counsel for the appellant Nikhil Rana assails the impugned judgment on the ground that the case of prosecution is based on circumstantial evidence where the chain is not complete and the facts on record do not establish the guilt of the appellant. It was contended that the learned Trial Court erred in relying upon the CDR and the location chart of the accused persons Nikhil Rana and Parth Sharma, and thereby draw an adverse inference against these two accused persons. It was submitted that no inference can be drawn from the exhibited CDRs that the mobile phone of the accused was switched off at any point of time, just because their existed a time gap between the calls in the CDRs. It was further contended



that the recovery of weapon of offence from the house of the appellant is doubtful and that there are major contradictions in the testimony of witnesses Rajvir Singh (PW-6), Kiran Pal (PW-29) and Inspector Vijay Kumar (PW-34) in this regard, which would entitle the appellant to the benefit of doubt. It was further contended that there exists a valid doubt on the genuineness of the ballistic report. It was pointed out that one fired cartridge case and two fired bullets were recovered from the car of the deceased on 30th July, 2014 although the car had been seized on the day of incident itself i.e. 21st July, 2014. It was also pointed out that there was a considerable delay in forwarding the exhibits to the FSL which in itself is also suspicious. Further, it was pointed out that as per the prosecution, the cartridge case recovered from the car of the deceased was without any percussion cap, and as per the ballistic report, these cartridge cases were test fired. It was contended that the report was therefore, unbelievable because in the absence of pin mark on percussion cap on the said cartridge case and comparison examination of striking of test fired cartridge case, there is no other means to ascertain whether the cartridge case in question was fired from the weapon or not. It is also not mentioned in the said ballistic report whether the cartridge case recovered from the car was compared with the cartridge case of the test fired cartridges, and in the absence of such comparison, no opinion could be formed, and no inference against the appellant can be drawn. It was further contended that the prosecution failed to bring on record any corroborative evidence or witness raising a strong suspicion against the appellant to prove the alleged motives i.e. losing *Pradhani* elections and dispute viz. property No.C-42, Gazipur Dairy Farm,



to commit the offence. It was also submitted that it is settled law that motive however, strong, cannot take place of proof.

9. On the other hand, learned APP for the State submits that the prosecution was able to establish the guilt of the accused persons Satbir Rana, Nikhil Rana and Parth Sharma beyond reasonable doubt to conspire to murder the deceased by a country made pistol and thus, the impugned judgment is liable to be set aside and all these accused persons are liable to convicted and sentenced in accordance with law. Learned APP for the State relied upon the following facts:

- i. That the Swift car of the victim was inspected by the forensic team on 30th July, 2014 from which one empty cartridge case with the engraving “KF 7.65”, one fired bullet head from the front passenger seat and one fired bullet head from inside the window/door pane of the passenger side seat was recovered (Ex.PW-29/C). Appellant Nikhil Rana got recovered a country made pistol and one magazine having two live cartridges from an almirah at his house (Ex.PW-6/D). As per the ballistic report (Ex.PW-36/A), the live cartridges recovered from the appellant’s house were test fired and on microscopic examination, it was found that the two bullets recovered from the deceased’s car and bullet recovered from victim’s body were fired using the country made pistol recovered at the instance of the appellant, and that the striation marks were also same.
- ii. From the analysis of the CDR of mobile number of Nikhil Rana, it emerges that he had called Parth Sharma at about 6.44 PM and 7.40 PM on the day of incident and during both these calls, his location



was at A-12/224, Harijan Basti, Rajveer Colony, Gharoli Extension and after 7.40 PM his phone was switched off and it was switched back on at about 9.45 PM when his location was B-34, Road No.2, Gazipur Dairy Farm. The CDR and the location chart analysis of Parth Sharma reveals that his location at the time of both the abovesaid calls was A-52, Jitar Nagar and at about 8.32 PM his location was around A-12/224, Harijan Basti, Rajveer Colony, Gharoli Extension i.e. Nikhil Rana's location, and after 8.32 PM his phone was switched off and it was switched back on at about 10.12 PM at which time his location was at A-61, Gali No.4, Jagat Puri.

iii. From the testimonies of deceased's wife Babita (PW-2), brother Manoj Kumar (PW-1) and Sanjay Kumar (PW-3) and Phool Kumar (PW-9), the motive of Satbir Rana and Nikhil Rana to murder the deceased becomes apparent. It was deposed by these witnesses that around 1st-2nd October, 2013, when Phool Kumar was going to the house of the deceased, Satbir Rana and Nikhil Rana stopped Phool Kumar and started abusing him on which Manoj and Sanjay intervened and during this incident, Satbir Rana's wife Asha threatened them and stated "*agar tum Vinod ke dam par ucchal rahe ho to Vinod ko apne bhatijo se chutki me udwa dungi*". There was also a dispute between the deceased and the accused persons regarding sale of plot No.C-42, Gali No.4, Gazipur Dairy Farm. Satbir Rana had prepared forged documents in respect of sale of the said plot and had threatened the deceased to not get involved in the transaction of sale of the



said plot as deposed by Bhawar Singh (PW-7), however, the deceased did in fact got the sale of this plot executed in favour of sons of Bhawar Singh on 3rd July, 2014, for which Satbir Rana wanted to take revenge. Furthermore, it was deposed by PW-1, PW-2, PW-3, PW-6, PW-8 and PW-9 that there was enmity between the deceased and Satbir Rana on account of deceased being elected as the *Pradhan* of Residential Welfare Society named 'Samaj Sudhar Samiti' replacing Satbir Rana who was the erstwhile *Pradhan*.

iv. The conduct of Satbir Rana after the incident points towards his involvement in the conspiracy to murder the deceased. He arrived at the spot immediately after the incident though he did not receive any information from any of the members of the deceased's family, and he did not give any explanation as to how did he become aware about the incident. He falsely implicated three Muslim boys namely Nazim, Shakir and Rashid, and he also failed to explain his basis of blaming these three boys. Even the conduct of Nikhil Rana after the incident was fishy as after the incident, Nikhil who used to keep his hair long, got his hair cut from FM Zone saloon being run by Mohd. Nazim.

v. From the medical evidence on record, i.e. the deceased's MLC (Ex.PW-25/A) and the post-mortem report (Ex.PW-16/A), the cause of death of the deceased was found to be shock and



hemorrhage due to firearm injury which were individually and collectively sufficient to cause death.

10. Learned APP for the State submitted that the ballistic expert in his cross-examination deposed that the opinion, regarding the three bullets having been fired from the recovered weapon, was based on comparison of the striation marks under the Comparative Microscope and to elaborate the same, reliance was placed on the decision in (2016) 2 DLT (Cri.) 820 Rohit Sehrawat vs. State and (1978) 3 SCC 86 Ramnathan vs. State of Tamil Nadu. It was further submitted by learned APP for the State that the present case was based on circumstantial evidence against all the three accused persons and that in cases of conspiracy, there would hardly be any direct evidence as the same is hatched in secrecy, and in this regard reliance was placed on the decision in (2009) 163 DLT 658 Rakesh Kumar vs. State.

11. Counsel for complainant Sanjay Kumar contended that there were three clear motives for the accused persons to murder the deceased i.e. sale of plot No.C-42, Gazipur Dairy Farm, loss of *Pradhani* elections and the grudge of accused that Phool Kumar started working with the deceased for which quarrel also took place between Satbir and Phool Kumar, wherein the family members of deceased also intervened. It was contended that immediately after murder, Satbir turned up at the scene of crime and tried to get into the good books of the deceased's family and accused the three Muslim boys and diverted the investigation towards those three boys, however, after thorough investigation, they were found to be not involved in the present matter. It was pointed out that the weapon of offence was recovered from the house of accused Nikhil Rana and Satbir for which no



cogent explanation was given by the accused persons. It was contended that once the weapon of offence was recovered from the accused person, the onus to provide an explanation falls on such accused persons in terms of Section 106 of the Indian Evidence Act, 1872. It was further contended that comparison of two bullets in the absence of percussion cap is also possible as there are other methods to do the same like comparison of injector marks, ejector marks, striations etc., and reliance was placed on the decision in 1957 SCR 187 Kalua vs. State of Uttar Pradesh and Ramnathan (supra).

12. Having heard the counsels for all the parties and perusing the record, the following evidence emerges.

13. Manoj Kumar (PW-1) deposed that there was enmity between his elder brother/deceased and Satbir Rana and Nikhil Rana. He stated that on 1st-2nd October, 2013 one person named Phulwa (Phool Kumar), who was a property dealer was coming to meet the deceased, when Satbir stopped and started abusing Phulwa. He and his elder brother Sanjay and wife of the deceased Babita intervened and arguments ensued between them. Thereafter, Asha, wife of Satbir came out and said “*agar tum Vinod ke dam par ucchal rahe ho to Vinod ko apne bhatijo se chutki me udwa dungi*”. Thereafter, in January, 2014, Satbir was removed from the post of *Pradhan* and the deceased was elected as *Pradhan*. He also stated that his brother/deceased told him that Satbir Rana told the deceased not to involve in the dairy plot, otherwise it would not be good for him and if anyone dared, he would kill that person. He also stated that after the murder of his brother/deceased, Satbir instigated him against Nazim, Shakir and Rashid.



14. Babita (PW-2) stated that her husband/deceased used to go to Blue Gym at Vaishali around 7.00 PM and used to come back around 9.00 PM. On 27th July, 2014, her husband/deceased did not come back, on which she asked her *jeth* Sanjay and *devar* Manoj to call her husband/deceased, but the mobile phone was found switched off. Around 9.45-10.00 PM someone made a call to Sanjay and informed that the deceased had met with an accident, on which Sanjay and Manoj went to LBS Hospital and she went after sometime. She corroborated the version of PW-1 qua the incident dated 2nd October, 2013, the election of *Pradhan* and regarding the dispute of the plot at Gazipur Dairy Farm. She further stated that on 22nd July, 2014, she saw Nikhil Rana having long hair upto shoulders but, on the next day his hair were cut short.

15. Sanjay Kumar (PW-3) deposed that the deceased was his younger brother. He stated that on 21st July, 2014, at about 6.00-6.30 PM, the deceased left for gym and at about 9.30 PM when he called the deceased, his phone was found switched off. At about 10.25 PM, he received a call from LBS Hospital and he was told that his brother/deceased was in serious condition and asked him to come to the hospital. At the hospital, he came to know that his brother was shot and was declared dead in the hospital. Thereafter, he went to the spot i.e. near MCD Toll Tax at NH-24 where Satbir was present who told him that Nazim, Shakir and Rashid had murdered the deceased by shooting and Satbir instigated him against the said three boys. He also corroborated the version of PW-1 regarding the incident dated 2nd October, 2013, dispute regarding plot No.C-42, Gazipur Dairy Farm and the *panchayat* election of 2014. In his cross-examination,



he stated that Satbir instigated him to lodge FIR against Nazim, Shakir and Rashid and that Satbir was instrumental in putting *dharna* at NH-24. He also stated that after three days of murder of Vinod, Satbir asked him whether he had sold Plot No.C-42 and for what amount and told him that the plot belonged to Satbir. Satbir also lured him that he would give plot C-42 to him after which he got suspicious that Satbir was probably involved in the murder of his brother/deceased.

16. Rajvir Singh (PW-6) deposed that he was informed about the incident by Sanjay on which he rushed to the spot i.e. NH-24, where Satbir met him and told him that deceased was shot dead by one Nazim, Shakir and Rashid. He further stated that it was Satbir who insisted Sanjay to lodge report against Nazim, Shakir and Rashid for murder of deceased. He also identified the body (Ex.PW-6/A). He further stated that on 15th October, 2014 at about 5.00 PM, some police officials came along with Nikhil Rana and asked him to join the investigation. He agreed, and thereafter, Nikhil Rana took them to B-63, Gali No.6, Gazipur Dairy Farm and at the second floor at his room, Nikhil Rana took out one pistol and mobile phone from a wooden almirah of his room. Nikhil also took out magazine from the pistol and there were two live cartridges in the magazine. Thereafter, the said pistol was seized by the police (Ex.PW-6/D). In his cross-examination, he stated to have known Nazim, Shakir and Rashid who were the residents of D Block. He stated that in June, 2014, these three boys assaulted him on which he sustained injury on his hand and a FIR was also registered against them and that he compromised the said case.



17. Sant Ram (PW-8) deposed that in the month of January, 2014 a meeting was held where Nem Pal Pandat ji felicitated Vinod by offering garland on account of being elected as *Pradhan* and in that meeting, Satbir was also present who threatened Vinod by saying “*tune meri pardhani kaise chhini, mein tujhe dekh lunga, saale tujhe mein jaan se maar dunga*”, on which he intervened and pacified both of them. Thereafter, in the month of March-April, 2014 a meeting was held regarding sale of property No.C-42, where also Satbir told Vinod to stay away from that deal and threatened to kill him otherwise. He further stated that on 3rd July, 2014 he agreed to purchase the said property from Darshan Singh through Vinod. Thereafter, on 21st October, 2014, he received a call from Sanjay who informed him that the deceased was murdered. Thereafter, he went to the hospital and from the hospital went to the spot where after sometime of arrival, Satbir also reached the spot and caught hold of two persons Rashid and Shakir and started beating them alleging that they had murdered the deceased. He also stated that it was on the insistence of Satbir that Sanjay lodged report with the police against Rashid and Shakir.

18. Phool Kumar (PW-9) deposed that he suspected that deceased was killed due to deal regarding property No.C-42 at Gazipur Dairy Farm. He stated that the said property was sold to Bhawar Singh through him and the deceased. Thereafter, he was declared hostile as he was suppressing some facts.

19. ASI Ram Naresh (PW-21) deposed that on the intervening night of 21st-22nd July, 2014, he was on PCR duty and on receipt of information, he along with his staff reached the spot, where he saw one Swift car No.DL



5CJ 4166 standing with front tyres on the divider and one boy present at the driver seat in an injured condition with blood oozing out from his neck. Thereafter, he removed the said boy to his PCR van and took him to LBS Hospital.

20. ASI Yashpal Singh (PW-23) deposed that on 21st July, 2014 at about 10.05 PM, he received an information regarding an accident on NH-24 Road coming from Ghaziabad, U.P. He along with Ct.Sanjeev reached the spot and found right front tyres of grey colour Swift car No. DL 5CJ 4166 was on the divider and window glass of the driver seat was broken. He found blood on the left side seat of the driver and also on the carpet of the left side seat. Thereafter, he went to the LBS Hospital, where he was informed that the injured was declared brought dead and was shifted to the mortuary. He recorded the statement of Sanjay (Ex.PW-3/A), who informed him that the deceased was his brother and accordingly, he prepared the *rukka* (Ex.PW-23/A) and got the FIR registered. Thereafter, the witness was declared hostile as he was resiling from his earlier statement.

21. Insp. Ramdeen Singh (PW-32) deposed that the investigation of the present case was marked to him on 22nd July, 2014 and he went to the mortuary of LBS Hospital and after identification of the body by Sanjay and Rajvir (Ex.PW-6/A and Ex.PW-6/B respectively), he sent the body for post-mortem examination. Thereafter, the investigation was handed over the SHO of the police station. Thereafter, the witness was declared hostile as he was not disclosing some facts. In his cross-examination, he stated that he seized one Samsung mobile phone (Ex.PW-23/B) produced by ASI Yashpal at the LBS Hospital. He further stated that he had seized the exhibits



collected by FSL expert from the Swift car (Ex.PW-29/A). He also stated to have seized the ammunition recovered on 30th July, 2014 (Ex.PW-29/B and Ex.PW-29/C). He further stated to have seized the swift car bearing No.DL 5CJ 4166 along with a broken piece of the bumper of the car (Ex.PW-32/A and Ex.PW-32/B respectively).

22. SI Kiran Pal (PW-29) deposed that he had joined the investigation on 30th July, 2014 and went to the FSL to call the FSL team for inspection of the Swift car. In the car, one fired cartridge case was lying at the footrest of the driver seat and one bullet led was noticed on the backrest of the adjoining seat of the driver seat. Bloodstains were also noticed on the cover of the front seats of the car. The fired cartridge case, bullet led, piece of seat cover with bloodstains and other seat cover for comparison were all seized (Ex.PW-29/A).

23. Insp. Vijay Kumar (PW-34) deposed that on 2nd August, 2014, he took over the investigation of the case. He stated that a SIT was constituted on the orders of senior officers regarding investigation of the present case and after analysis, it was concluded that the suspects namely Nazim, Shakir and Rashid were not involved in the present case. During investigation, it was found that there was enmity between the deceased and his cousin Satbir Rana and Nikhil Rana. On 30th September, 2014, one Ravi Chopra came to the police station and informed him that the deceased was his friend and that both the deceased and Nikhil Rana used to go to the Blue Gym. He stated that after recording the statement of Ravi Chopra, Satbir Rana and Nikhil Rana became prime suspects. CDRs of Nikhil, Satbir and Parth Sharma were analyzed and thereafter, notice under Section 160 Code of Criminal



Procedure, 1973 ('Cr.P.C.') were served and all the three accused persons were interrogated. Thereafter, on 15th October, 2014, all the three accused persons were called at the police station where after interrogation, all the three accused persons Parth Sharma (Ex.PW-29/G-1), Nikhil Rana (Ex.PW-29/H-1) and Satbir Rana (PW-29/I-1) were arrested and their disclosure statement (Ex.PW-29/D, Ex.PW-29/E and Ex.PW-29/F respectively) were recorded. Nikhil Rana led the police to his house at second floor at B Block, Gali No.6, Gazipur Dairy Farm from where he got recovered a pistol along with magazine from underneath the clothes kept in a wooden almirah and on checking, the magazine was found to contain two live cartridges with 'KF 7.65' engraved on the tip; and one Nokia mobile phone was also recovered. The pistol was seized (Ex.PW-6/D) and Nokia phone was also seized (Ex.PW-6/E). Thereafter, Parth led the police to his house and in front of his house one motorcycle bearing No.DL 5SBJ 2606 make CBZ was found parked and one Nokia mobile phone was also produced from a room of his house both of which were seized (Ex.PW-29/J). Supplementary disclosure statement of Nikhil was also recorded (Ex.PW-27/A). Nikhil had also disclosed that weapon of offence along with five cartridges were provided by Brijesh and accordingly, a raiding team was constituted and Nikhil led the team to the house of Brijesh and Rupesh at Village Nizampur, Bulandshehar, but they could not be found and later they were declared proclaimed offender. After completion of investigation, charge-sheet against Parth, Nikhil and Satbir was filed.

24. N.B. Bardhan (PW-36) conducted the FSL examination and prepared the Firearm Examination report dated 16th February, 2015 (Ex.PW-36/A)



and opined that the cartridge case without percussion cap (Ex.C-1) had been fired from the 7.65mm country made pistol (Ex.W-1). It was further opined that the two fired bullets of 7.65mm (Ex.BC-1 and BC-2) and one 7.65mm bullet (Ex.BC-3) found from the body of the deceased had been fired from the 7.65mm country made pistol (Ex.W-1). It was also noted in the report that two other 7.65mm cartridges (Ex.C-2 and C-3) were test fired in the laboratory from the 7.65mm country made pistol (Ex.W-1) remnants of which were returned.

25. In their respective statements under Section 313 Cr.P.C., Nikhil Rana and Satbir Rana stated that they had no knowledge about the incident. They denied that no agreement dated 3rd July, 2014 was executed regarding property No.C-42, Road No.4 at Gazipur Dairy Farm and that the said agreement was forged document. They further stated that they were innocent and did not commit any crime. They further stated that they were falsely implicated in the present case at the instance of Sanjay (PW-3) as after the death of the deceased, Sanjay had an evil eye on their property at C-42, Gazipur Dairy Farm, and by falsely implicating them, Sanjay wanted to grab the said property. They never had any dispute or differences with the family of the deceased. They also stated that all the recoveries in the present case were fake and articles were planted.

26. Accused Parth Sharma in his statement under Section 313 Cr.P.C. stated that he was innocent and was falsely implicated in the present case.

27. As noted above, case of the prosecution is not based on the eye witness evidence but on circumstantial evidence. The main incriminating circumstances against the accused as claimed by the prosecution are motive;



Satbir Rana misguiding the complainant to lodge FIR against the other accused; accused Nikhil Rana getting his hair cut after the incident; Nikhil Rana's and Parth Sharma's mobile phones being switched off at the time of alleged offence; and recovery of weapon of offence at the instance of Nikhil Rana.

28. From the evidence of the prosecution, it is evident that there was animosity between the family, firstly, because the deceased was elected as *Pradhan* of the Committee instead of Satbir and one plot which was sought to be sold through Satbir was sold through deceased Vinod. In this regard, statements of Babita, wife of the deceased, Manoj Kumar, Sanjay Kumar and Phool Kumar are relevant besides PW-6, PW-7 and PW-8. From the evidence of these witnesses, it can be safely held that there was animosity amongst the two families, however, conviction cannot be based merely on the proof of motive.

29. The next circumstance relied upon by the prosecution is the manner in which Sanjay Kumar (PW-3), elder brother of the deceased was misled by Satbir Rana to implicate Nazim, Shakir and Rashid for the offence of murder of Vinod. Sanjay Kumar deposed before the Court that at the spot, Satbir Rana informed him that the offence has been committed by the three boys namely Nazim, Shakir and Rashid, the initial suspects. According to Sanjay Kumar, Satbir Rana also stated him that the above-said three boys committed murder of deceased and asked him to get FIR lodged by naming them. Satbir Rana got residents of locality assembled at highway so that the police might arrest the three boys, the initial suspects. According to Sanjay Kumar, he gave the complaint Ex.PW-3/A naming these suspects as



possible perpetrators of the incident on the instigation of Satbir Rana. Though in his deposition before Court, Sanjay Kumar stated that when he reached at the spot, he found Satbir Rana who told him that Nazim, Shakir and Rashid committed the murder of Vinod by shooting him, however, in the Rukka Ex.PW-3/A, there is no reference to the information being received from Satbir Rana. Rather, Sanjay Kumar in the Rukka stated that his brother Vinod had an argument with Nazim and Shakir who were then living at Ghazipur Dairy farm, D Block because they had inflicted an injury to the son of the paternal uncle Lala @ Rajveer. He further stated in the Ruqqa that for the said incident, FIR No. 437/14 was registered at P.S.Ghazipur and that one or two days after the incident, Nazim, Shakir and their associate Rashid had come to their home and threatened his brother Vinod claiming that they would soon finish him off and thus, he suspected that Nazim, Shakir and Rashid inflicted fire arm injuries on his brother due to which he died. Thus, the introduction of Satbir Rana as a person instigating Sanjay Kumar (PW-3) with regard to the involvement of Nazim, Shakir and Rashid in the offence is clearly an improvement on the earlier statement and hence, this version of the complainant Sanjay Kumar cannot be relied upon.

30. The prosecution also heavily relied upon the fact that the mobile phones of Nikhil Rana and Parth Sharma were switched off at the relevant



time. The relevant entries of the two mobile phone numbers as per the call detail records are as under:

CDR AND LOCATION ANALYSIS OF MOBILE NUMBER

01145300004	Airtel	Delhi	21/07/2014 04:36:54 PM	41	CALL-IN	149_51381	B-34, Road No.2, Ghazipur Dairy Farm, Delhi-110096,
8527366582	Airtel	Delhi	21/07/2014 06:44:38 PM	53	CALL OUT	249_45048	A-12/224, Harijan Basti, Rajveer Colony, Gharoli Extension, Delhi.-110096,
8527366582	Airtel	Delhi	21/07/2014 07:40:52 PM	57	CALL OUT	249_45048	A-12/224, Harijan Basti, Rajveer Colony, Gharoli Extension, Delhi.-110096,
9650391939	Airtel	Delhi	21/07/2014 09:45:21 PM	22	CALL IN	149_51383	B-34, Road No.2, Ghazipur Dairy Farm, Delhi-110096,
9711757187	Airtel	Delhi	21/07/2014 11:16:45 PM	14	CALL-IN	249_45048	A-12/224, Harijan Basti, Rajveer Colony, Gharoli Extension, Delhi.-110096,
9711757187	Airtel	Delhi	21/07/2014 11:18:27 PM	1	SMS-IN	249_45048	A-12/224, Harijan Basti, Rajveer Colony, Gharoli Extension, Delhi.-110096,
9643877409	Airtel	Delhi	21/07/2014 11:20:01 PM	28	CALL-IN	249_45048	A-12/224, Harijan Basti, Rajveer Colony, Gharoli Extension, Delhi.-110096,
9643877409	Airtel	Delhi	21/07/2014 11:21:27 PM	129	CALL-IN	249_45048	A-12/224, Harijan Basti, Rajveer Colony, Gharoli Extension, Delhi.-110096,
9540688857	Idea	Delhi	21/07/2014 11:43:50 PM	16	CALL- Out	149_8671	Ashok Kumar,17/5 & 17/6, Jalevi Chauk Kalyanpuri New Delhi-110045,
9868543884	MTNL	Delhi	21/07/2014 11:53:13 PM	15	CALL- Out	149_8671	Ashok Kumar,17/5 & 17/6, Jalevi Chauk Kalyanpuri New Delhi-110045,
9868543884	MTNL	Delhi	21/07/2014 11:54:21 PM	38	CALL- Out	149_8671	Ashok Kumar,17/5 & 17/6, Jalevi Chauk Kalyanpuri New Delhi-110045,

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9871944979 OF NIKHIL RANA



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**CDR AND LOCATION ANALYSIS OF MOBILE NUMBER
8527366582 OF PARTH SHARMA**

9818594790	21/07/2014 03:15:27 PM	95	CALL-IN	152_5741	Mr. Kalra, A-61, Gali No. 4, Jagatpuri, Delhi
1426B8A6C0 219A4S	21/07/2014 05:47:26 PM	0	SMT		
9818594790	21/07/2014 05:50:21 PM	70	CALL-IN	152_5741	Mr. Kalra, A-61, Gali No. 4, Jagatpuri, Delhi
9818594790	21/07/2014 06:30:30 PM	77	CALL-IN	152_5741	Mr. Kalra, A-61, Gali No. 4, Jagatpuri, Delhi
9871944979	21/07/2014 06:44:38 PM	54	CALL-IN	152_43302	Mr. Nafis Ahmed, A-52, Jitar Nagar
9871944979	21/07/2014 07:40:52 PM	57	CALL-IN	152_43302	Mr. Nafis Ahmed, A-52, Jitar Nagar
01122440205	21/07/2014 07:55:26 PM	2	CALL-IN	152_16206	Plot No. X-25, Karkardooma, Institutional Area, Delhi- 110092
01122440205	21/07/2014 08:32:15 PM	5	CALL-IN	249_45048	A-12/224, Harijan Basti, Rajveer Colony, Gharoli Extension, Delhi-110096
9871944979	21/07/2014 10:12:04 PM	0	SMT	152_5741	Mr. Kalra, A-61, Gali No. 4, Jagatpuri, Delhi
9871944979	21/07/2014 10:12:08 PM	0	SMT	152_5741	Mr. Kalra, A-61, Gali No. 4, Jagatpuri, Delhi
9650391939	21/07/2014 10:12:23 PM	0	SMT	152_5741	Mr. Kalra, A-61, Gali No. 4, Jagatpuri, Delhi
01122440205	21/07/2014 10:12:27 PM	0	SMT	152_5741	Mr. Kalra, A-61, Gali No. 4, Jagatpuri, Delhi
9818584790	21/07/2014 10:41:58 PM	19	CALL-IN	152_5741	Mr. Kalra, A-61, Gali No. 4, Jagatpuri, Delhi

31. A perusal of the calls details of Nikhil Rana reveals that there is no call or SMS between 9:45:21 pm to 11:16:45 pm on 21st July 2014 on his mobile phone whereas perusal of Parth Sharma's call details reveal that there is no call or SMS between 8:32:15 pm to 10:12:04 pm on 21st July

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2014 on his phone. Further, comparing the two phones together there is no call on either of them for nearly 27 minutes between 9:45:21 pm to 10:12:04 pm. Further neither prior to incident nor after the incident location of Nikhil Rana and Parth Sharma is at the same place. Merely because no call is reflected in the mobile CDR data of the two accused for nearly half an hour for both the accused, nor is there any SMS, the same may not lead to the only inference that the two phones were switched off for the said period, for the reason, there may be no call or SMS otherwise sent to the person at the relevant time, which fact is also fortified on a reading of the call details records of Nikhil Rana and Parth Sharma. Thus no adverse inference can be drawn on this count against the accused.

32. PW-11 in his deposition stated that Nikhil Rana was his regular customer and that one or two days after the murder, Nikhil Rana came to his shop for getting his hair cut short whereas earlier, Nikhil Rana had long hair. Further, this witness (PW-11) denied having met the police on 17th October 2014 or having made the statement to the police on the said date, thus, much credence cannot be given to this statement. Further, even if it is held to be true that Nikhil Rana got cut his hair short, it itself is not a circumstance which can be treated against him, for the reason, there being no eye-witness who stated that a boy with long hair had inflicted the gunshot injury to the deceased.

33. This brings to the most crucial evidence of the prosecution which is the recovery of the weapon of offence at the instance of the appellant Nikhil and the ballistic report. As regards the recovery of the country-made pistol with two live cartridges is concerned, as per the case of the prosecution, the



two live cartridges were recovered from underneath the clothes kept in a wooden almirah fixed to the wall at the instance of Nikhil Rana. In his disclosure statement, Nikhil Rana stated that he could get the pistol used in the offence, recovered from his almirah. PW-29 SI Kiran Pal, in his deposition only stated that the disclosure statement of Nikhil Rana was recorded vide Ex.PW-29/E and in pursuance of his disclosure statement, Nikhil Rana took him and I.O. to his house in B-Block, Gazipur Dairy Farm. He pointed out his house and at his instance, they reached in a room of second floor of the said house where one almirah fitted with wall was pointed out by him and took out one pistol and one mobile phone make Nokia kept under the clothes in almirah. Pistol was checked by the IO which was loaded with two live cartridges in the magazine and was taken into possession along with the mobile phone. From the CDR record, the prosecution has not proved that after the alleged incident, Nikhil changed his mobile handset and thus, the same was kept concealed and was not in use and thus, was recovered at his instance pursuant to the disclosure statement.

34. It may be noted that the victim's car was seized on the intervening night of 21st/22nd July 2014 after the incident took place at about 10 p.m. on 21st July 2014 and deposited in the Malkhana. The said car was subsequently inspected by Forensic team on 30th July 2014 and from the car, one empty cartridge case having engraving "KF 7.65" was recovered from between the clutch and the brake of the car, one fired bullet head was recovered after tearing the seat cover of the front passenger seat and one fired bullet head was recovered from inside the door/window pane of the



passenger side's seat. As per the post-mortem report Ex.PW-16/A, the bullet which caused injury No. 3 was recovered from the body of the deceased which was seized vide seizure memo Ex.PW-24/B. Further, the prosecution, to link this evidence has relied upon the evidence of N.B.Bardhan (PW-36), the Ballistic expert who stated that he examined the two live cartridges with one empty cartridge case, three fired bullets and on the basis of microscopic examination, it was opined that the two bullets recovered from the victim's car and the bullet recovered from the victim's body has been fired using the country-made pistol recovered at the instance of Nikhil Rana. The relevant portion of the Ballistic expert report Ex.PW-36/A is reproduced hereunder:

"6. Description of exhibits contained in the parcel:-

1. Parcel Ex. No. 1: It contained following exhibits:-

- (i) One 7.65mm cartridge case (marked C/I by me) without its percussion cap.;*
- (ii) Two 7.65mm fired bullets (marked BC/1 & BC/2 respectively by me).*

2. Parcel Ex. No. 2; It contained following exhibits:-

- (i) One 7.65mm country made pistol (marked W/1 by me) with its empty magazine (marked M/1 by me).*
- (ii) Two 7.65mm cartridges (marked C/2 & C/3 respectively me).*

3. Parcel Ex. No. 4; It contained one 7.65mm fired bullet (marked B....by me) said to have been recovered from the body of the deceased.

4. Parcel Ex. No. 6; It contained nine small brown envelopes and four transparent polythene packets stated to contain samples lifted from the car bearing Registration No. DL5CJ4166. Only following five packets are required to be examined in Ballistics Division for bullet hole and GSR analysis.



Details are as under:-

- (i) One brown envelope marked H2, contained a stained piece of mat.*
- (ii) Cotton swab said to have been collected from hole H1.*
- (iii) Control swab for H1.*
- (iv) Cotton swab said to have been collected from hole H2.*
- (v) Control swab for H2.*

XXX

XXX

XXX

8.Results of examination:-

On the basis of examination carried out in the Laboratory with scientific aids, followings are the results of examination:

- (i) The 7.65 mm country-made Pistol (marked W/1) contained in Parcel Exhibit No.2 is designed to fire 7.65 mm cartridges and is, therefore, "Fire-arm" as defined in the Arms Act, 1959, is in working order and had been fired through.*
- (ii) On the basis of Microscopic examination conducted under the Comparison Microscope, it is opined that the 7.65 mm cartridge case (marked C/1) contained in Parcel Exhibit No.1 had been fired from the 7.65 mm country made Pistol (Marked W/1) contained in Parcel Exhibit No.2 in question.*
- (iii) On the basis of Microscopic examination conducted under the Comparison Microscope, it is opined that two 7.65 mm bullets (marked BC/1 & BC/2 respectively) contained in Parcel Exhibit No.1 and one 7.65 mm bullet (Marked BC/3) contained in Parcel Exhibit No.4 had been fired from the 7.65 mm country made Pistol (Marked W/1) contained in Parcel Exhibit No.2 in question.*
- (iv) The two 7.65 mm cartridges (marked C/2 & C/3 respectively) contained in the Parcel Exhibit No.2 are "Ammunitions" as defined in the Arms Act, 1959 and were live ones.*



- (v) *On the basis of Physical Examination of the mat piece contained in Parcel Exhibit No.6, it is opined that bullet hole could not be observed on it.*
- (vi) *On the basis of Physical and Chemical Examinations conducted in the laboratory, it is opined that No Gun Shot Residue could be detected on the cotton swabs contained in parcel Exhibit No.6*

NOTE:-

- (i) *This report shall not be re-produced without the written approval of Director, CFSL, New Delhi except by the Judicial courts and Investigating authorities related to the case.*
- (ii) **THIS REPORT IS ADMISSIBLE UNDER SECTION 293 Cr.P.C.**
- (iii) *Four parcels marked Exhibit No. 3 to 6 were first examined in Biology Division of this laboratory.*
- (iv) *After Biological examination, two parcels marked Exhibit No. 4 & 6 alongwith parcels marked Exhibit No. 1 & 2 were examined in the Ballistics Division of this laboratory.*
- (v) *Two 7.65 mm cartridges (marked C/2 & C/3 respectively) contained in Parcel Exhibit No. 2, were test fired in the laboratory from 7.65 mm country made pistol (marked W/1) also contained in parcel Exhibit No. 2. Remnants are being return in the same parcel.*
- (vi) *After examination, the above mentioned four parcels were re-sealed with the seals of "NBB, PSO (BALL), CFSL, CBI, NEW DELHI" and returned to the Forwarding Authority alongwith two parcels marked Exhibit No. 3 & 5 with the seals of Biology Division of the Laboratory".*

35. As noted above, no reasoning has been given in the report as to how the empty cartridge case stated to have been recovered from the victim's car was found to have been fired from the weapon of offence. Even PW-36 in his deposition has not stated anything on this count. Further, in the absence of the percussion cap, no opinion in this regard could have been given. As



regards the report of three fire bullets are concerned based on the comparison of the striation marks under the comparative microscope alone, it has been concluded that the three bullets have been fired from the weapon allegedly recovered at the instance of Nikhil Rana. Thus, even accepting the fact that the bullets found in the car and from the body had been fired from the pistol recovered, however, the manner of the recovery of the pistol and the report of bullets based only on the striation marks and there being no other evidence except the evidence of motive, this Court finds that the chain of circumstances relied upon by the prosecution do not prove beyond reasonable doubt that Nikhil Rana committed the murder of the deceased. Hence, the impugned judgment of conviction and order on sentence qua Nikhil Rana is set aside.

36. The State and the complainant has also filed the appeals seeking conviction of all the accused including Satbir Rana, Parth Sharma, Brijesh and Rupesh with the aid of Section 120-B IPC, however, in view of the evidence as noted above and there being no evidence of conspiracy forthcoming, this Court finds no merit in the appeals filed by the State and the complainant.

37. Consequently, the conviction of Nikhil Rana for the offences punishable under Sections 302 IPC, 201 IPC & 25/27 of the Arms Act is set aside as also the order on sentence.

38. CrI.A. 1420/2019 is disposed off. CrI.A. Nos. 194/2020 and 221/2020 are dismissed.

39. Appellant Nikhil Rana who is in custody is directed to be released forthwith, if not required in any other case.



40. Copy of the judgment be uploaded on the website of this Court as also be sent to the Superintendent, Tihar Jail for intimation to the appellant, updation of records and necessary compliance.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023/‘vn’

