

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1537 OF 2018

TAQDIR

Appellant

VERSUS

STATE OF HARYANA

Respondent

WITH

SPECIAL LEAVE PETITION (CRIMINAL) No.9260 OF 2018

ARUN

Petitioner

VERSUS

STATE OF HARYANA

Respondent

WITH

SPECIAL LEAVE PETITION (CRIMINAL) No. _____ OF 2022
(Arising out of Diary No.41453 of 2018)

JYOTI PRAKASH

Petitioner

VERSUS

STATE OF HARYANA

Respondent

AND

SPECIAL LEAVE PETITION (CRIMINAL) No. _____ OF 2022
(Arising out of Diary No.10962 of 2019)

KULDEEP @ BHANDARI ETC.

Petitioners

VERSUS

STATE OF HARYANA

Respondent

J U D G M E N T

Uday Umesh Lalit, J.

CRIMINAL APPEAL NO.1537 OF 2018

1. This appeal by special leave has been filed by accused Taqdir (original accused no.1) challenging the judgment and order dated 30.07.2018 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No.CRA-D-177-DB of 2016 (O/M).

2. The case of the prosecution in brief is as under:

- a. The appellant Taqdir had contested panchayat elections against one Rakesh alias Kala; and the appellant having lost the elections, bore a grudge against said Rakesh.
- b. On 21.06.2010, said Rakesh was admitted as Indoor Patient in Delhi Hospital, Bahadurgarh in connection with certain medical issues. On that day, at about 11 a.m. onwards, an incident of shootout occurred in the room where said Rakesh was admitted.

- c. According to the First Information Report lodged by PW3 Dharambir, father of said Rakesh, PW3 had gone to the hospital alongwith his nephew Surender son of Tarif Singh. As they were to enter the hospital premises, he saw some of the accused persons standing outside the hospital on their motorcycles with the ignition on. Soon thereafter, he found other set of the accused coming out of the hospital with firearms. After having seen said PW3 and his nephew Surender, they started firing indiscriminately with an intention to kill those two persons while proclaiming that they had already committed murder of Rakesh by firing upon him.
- d. On this reporting, crime pursuant to First Information Report No.215/2010 dated 22.06.2010 in respect of the offences punishable under Sections 148/149/302/307/449/120-B of the Indian Penal Code, 1860 and under Section 25 of the Arms Act, 1959, was registered with Police Station City Bahadurgarh.
- e. During the course of investigation, the hard-disk of the computer system pertaining to eight CCTV Cameras installed in the premises of the hospital was taken in custody from PW12 Mr. Ranjeet Singh, Marketing Manager, Delhi

Hospital, under a panchnama by the investigating machinery.

The panchanama was signed by all the concerned including PW12 Ranjeet Singh and the panchanama Ex.PW12/A bore his signatures.

- f. The services of PW19 Mr. Sanjay Nag, a hardware engineer were requisitioned by the police to take out the hard-disk from said computer system and he also signed the panchanama Ex.PW12/A.
- g. On 10.01.2011, the data concerning the incident was transferred from the hard-disk of said computer system on to a Pendrive and a Compact Disc by PW19 Sanjay Nag.
- h. The Pendrive and the Compact Disc were also brought on record as Exs.P86 and P87, while the hard-disk itself was produced as Ex.P23.

3. The material recovered from eight CCTV Camera footages, hard-disk and Pendrive showed the way the incident had developed and the role played by some of the accused. As per recorded CCTV version, the incident had occurred as under:-

“First Floor

1. 10.43.01 : Kuldeep alias Bhandari goes upstairs.
2. 10.43.05 : Kuldeep alias Bhandari standing in front of the gate.

Wearing white T-shirt with blue stripe over shoulder.

3. 10.44.02: Kuldeep alias Bhandari comes inside.
4. 10.44.33 : Kuldeep alias Bhandari goes outside.
5. 10.47.58: Kuldeep alias Bhandari standing at the reception.
6. 10.49.35: Kuldeep alias Bhandari comes inside.
7. 10.49.51 : Kuldeep alias Bhandari goes outside while talking on mobile phone.
8. 11.02.18 : Kuldeep alias Bhandari comes inside.
9. 11.06.45 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun seen coming.
10. 11.06.47 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun come inside. Kuldeep alias Bhandari, Anil and Arun wearing white colour T-shirt while Jyoti Prakash wearing white shirt.
11. 11.06.49 : Jyoti Prakash going upstairs towards the room of deceased.
12. 11.07.35 to 11.08.31: Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun go to the Deluxe room. One of them takes out firearm. After monitoring, all come back.
13. 11.08.41 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun again go to the Deluxe Room.
14. 11.09.14, 11.09.15, 11.09.16: Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun come out running. Anil, Jyoti Prakash and Arun carrying firearms in their hands. All the four running downstairs.

Deluxe Room

1. 11.02.34 : Kuldeep alias Bhandari watching from the gate of lobby.
2. 11.07.37 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun moving towards the room of deceased, assessing the situation and then leaving in a hurry.
3. 11.08.47 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun again entering the lobby, moving towards the room of deceased one after another and of all four, the first three so moving were holding firearms in their hands.

4. 11.09.07, 11.09.08 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun coming running out of room and leaving the lobby."

4. After completion of investigation, 27 persons were tried in Sessions Case No.131 of 2013 (RBT) in the court of Additional Sessions Judge, Jhajjar, while one accused named Mukesh remained absconding.

5. The prosecution relied upon the eye-witness account through the original complainant as well as the material available in the form of copies, namely, Exs.P86 and P87 alongwith the requisite certification in terms of Section 65-B of the Indian Evidence Act, 1872 in support of its case.

6. The Trial Court by its judgment and order dated 30.01.2016 found that only 10 accused persons were guilty of the offences alleged to have been committed by them, while other 17 accused persons deserved to be acquitted. The Trial Court vide its order dated 01.02.2016 *inter alia* imposed sentence of life imprisonment for the offences punishable under Sections 302/120-B/149 of the IPC.

7. The convicted accused being aggrieved filed appeals challenging their conviction and sentence in the High Court. All the appeals were considered together and were dealt with by a common judgment and order dated 30.07.2018, which is presently under challenge.

8. According to the High Court, the electronic evidence in the form of CCTV footages was completely supported by the requisite requirements of law and could be read as evidence on record. The High Court was of the view that

four assailants had stormed into the hospital and into the room occupied by the deceased; and as evident from the CCTV footages; and the accused were carrying arms with them; and by using those firearms they had caused the death of the deceased Rakesh alias Kala. The High Court further found that the present appellant Taqdir was the brain behind the entire episode and was the main conspirator, at whose instance, the offence was committed. The relevant discussion on the point was as under:

“Now, we come to the role of Taqdir. Accused Taqdir had lost the elections of Sarpanch to Rakesh alias Kala on 12.6.2010 and was nursing a grudge against him.

Accused Mukesh is stated to be the person, who arranged for hired assassins to commit the crime. The said 4 assailants otherwise had no personal enmity with deceased. Accused Mukesh belongs to the party of Taqdir.

So far as criminal conspiracy is concerned, it is always to be inferred from circumstances.

Accused Taqdir had a motive and accused Mukesh, who was found involved in the crime, was man of party of Taqdir. He was involved in the commission of crime with said 4 assailants and as per investigation; he fled away with them from the spot in a stolen Santro car. The said Santro car was stolen 2 days before the crime i.e. on 20.6.2010. Accused Taqdir lost elections on 12.6.2010. It appears that conspiracy was hatched, as suspected by Dharambir (complainant), to eliminate Rakesh alias Kala. A robbery of a mobile phone and money was committed and a Santro car was stolen, which was ultimately used in the crime.

In this case, Jitender (PW5) who had seen Taqdir entering into a criminal conspiracy, turned hostile and did not support prosecution case.”

9. The High Court however granted benefit of doubt to five convicted accused but maintained the conviction and sentence of the original accused Nos.1 - Taqdir, 4 - Kuldeep @ Bhandari, 5 – Anil, 19 – Jyoti Prakash, and, 28 - Arun.

10. In this appeal, we heard Mr. Dharamraj Olhan, learned Advocate in support of the appeal, and, Mr. Amit Kumar learned Advocate for the State.

11. It was submitted by the learned counsel for the appellant that the absconding accused Mukesh was later apprehended and separately tried; and that by subsequent order dated 20.05.2019 passed by the concerned Trial Court, said accused was acquitted of the charges levelled against him. It was further submitted that merely because the appellant had lost in the elections that by itself could not be categorized as a motive to be the foundation for the crime in question. Apart from such slender thread of motive, there was nothing against the appellant nor was it the case of the prosecution that the appellant was part of the group of four assailants who had stormed into the hospital.

12. We see force in the submissions advanced by the learned counsel for the appellant and find the material on record to be completely inadequate to return a finding of guilt against appellant Taqdir with the aid of Section 120-B of the IPC, read with Sections 302/307 IPC.

13. We, therefore, give benefit of doubt to the appellant Taqdir. We allow the appeal, set-aside the orders of conviction and sentence recorded against him.

14. The appellant Taqdir shall be set at liberty unless his custody is required in connection with any other crime.

SLP (CRIMINAL) No.9260 OF 2018; SLP (CRIMINAL) No. _____ OF 2022 arising out of Diary No.41453 of 2018); and, SLP (CRIMINAL) No. _____ OF 2022 Arising out of Diary No.10962 of 2019.

15. Delay condoned.

16. These Special Leave Petitions have been preferred by four assailants, namely, Arun – original accused no.A-28 [SLP (Crl.) No.9260 of 2018]; Jyoti Prakash – original accused no.A-19 [SLP (Crl.) Diary No.41453 of 2018]; and, Kuldeep @ Bhandari and Anil – original accused nos.4 and 5 [SLP(Crl.) Diary No.10962 of 2019], who, as discussed in the earlier part of the Judgment, had stormed into the hospital and had caused the death of Rakesh alias Kala.

17. The sequence of events captured by the CCTV cameras which were stored in the hard-disk and reproduced as Exs.P86 and P87, duly accompanied by the requisite certification under Section 65-B of the Indian Evidence Act, 1872, clearly showed the role played by all these assailants. Some of the images definitely showed that they were having firearms in their possession; they entered the room of the deceased and came out in a short while. The sequence of events completely stand corroborated by the injuries suffered by the deceased.

18. A feeble attempt was made by the learned counsel for these petitioners that the hard-disk itself was not played in the Court. It is true that what was actually played in the Court was the version available from Exs.P86 and P87. But the hard-disk was always part of the record and was available in Court. At

no stage, any objection was raised or a request was made that the hard-disk itself be played in the Court. In any case, the requisite certification having accompanied Exs.P86 and P87, the Courts below were not in error in relying upon the CCTV footages available through these sources.

19. The involvement and the culpability of these petitioners having clearly been made out, we see no reason to entertain their Special Leave Petitions, which are dismissed.

20. The SLP petitioners shall serve out the sentence awarded to them.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi;
March 02, 2022.