

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

Sessions Case No.77/2021

FIR No.234/20

PS Khajuri Khas

U/s 147/148/149/188/392/436/395/412/34 IPC

State

Versus

- 1 Sumit s/o Uday Singh
r/o H.No.2, Bhim Gali,
Main Road, Karawal Nagar,
Delhi.**
- 2 Naresh s/o Dhanpal Parihar
r/o H.No.3, Gali no.1, Main Road,
Karawal Nagar, Delhi.**
- 3 Uday Singh s/o Bhim Singh
r/o H.No.2, Bhim Gali, Main Road,
Karawal Nagar, Delh.**
- 4 Darshan s/o Uday Singh
r/o H.No.2, Bhim gali, Main Road,
Karawal Nagar, Delhi.**
- 5 Vinod Kumar s/o Mahavir Singh
r/o H.No.8, Bhim Gali, West Karawal
Nagar, Delhi.**
- 6 Devraj s/o Mahavir Singh
r/o H.No.8, Bhim Gali, Karawal
Nagar, Delhi.**

ORDER ON CHARGE:-

1. The above named five accused have been charge-sheeted by the police for having committed offences u/s 147/148/149/188/392/436/395/412/34 IPC.

2. In this case, the FIR has been registered on the basis of complaint dt.02.03.2020 received in the PS from Atikul Rehman in which it was stated that his factory situated in H.No.7, gali no.1, A block, West Karawal Nagar was looted and set ablaze by rioters on 25.02.2020 at about 8.00 p.m.

3. Thereafter, another complaint dt.04.03.2020 from Yakoob was received in the PS in which it was stated that the lock of his tyre shop bearing shop no.1, Bhim Gali, opposite Luvkush Hospital, Karawal Nagar, was broken open, the goods lying therein taken away and most of the goods were burnt outside the shop. He had specifically stated in the complaint that his landlord Uday Singh alongwith his two sons committed vandalization and arson in his shop. Since the shop of complainant Yakoob was found to be in the vicinity of the factory of the Atikul Rehman, the complaint of Yakoob was clubbed with the FIR.

4. The IO visited the incident spots and prepared combined rough site plan. He also summoned the crime team which inspected and photographed the spot. Statements of PCR callers

were recorded. Advertisement was published in the newspapers wherein appeal was made to the general public to come forward for identification of the rioters and to provide any important information relating to the riots.

5. It is stated that the complainant Yakoob handed over a CD to the IO in which accused Sumit was seen indulging in the riotous incident. The video was analyzed and again appeal was made to the general public to identify the rioters seen in the video. However, no public persons came forward to identify the rioters on account of Covid-19.

6. Accused Sumit is stated to have been arrested on 27.06.2020 on the identification of Ct.Sandeep and Ct.Satender. He was remanded to 3 days police custody during the course of which he is stated to have made disclosure statement admitting his involvement in the incidents in question. The Air Tank and Air Pressure Pump which had been stolen from the shop of Yakoob are stated to have been recovered at the instance of accused Sumit.

7. Accordingly, chargesheet was submitted before the Ld.CMM against accused Sumit. However, it appears that investigation was further continued to trace more witnesses and to nab further rioters.

8. During the course of further investigation, frame to frame

photographs of Naresh, Sumit, Uday Singh, Vinod and Devraj were taken at FSL, Rohini on 26.11.2021 and were received by the IO in a sealed cover. Same were then sent alongwith the pendrive containing the video footage of the riotous incident to the FSL, Rohini for the expert opinion.

9. The viral video showing the riotous incidents were shown by the beat officers of PS Khajuri Khas to local residence of the area to identify the rioters. After the number of Corona infections slowed down, the investigation gained speed and the remaining five accused namely, Naresh, Darshan, Uday Singh, Vinod and Devraj were arrested on 15.02.2021, on 15.10.2020 and on 31.10.2020. Statements of material witnesses were recorded. Thereafter, supplementary chargesheet was filed qua these five accused.

10. I have heard the Ld.Special PP, Ld.Counsels appearing for the accused and have perused the entire material on record.

11. It was submitted by the Ld.Special PP that the accused have been identified as rioters not only by the complainant Yakoob but also by the two police officials namely, Ct.Sandeep and Ct.Satender, who were on duty in Bhim gali, Karawal Nagar on 25.02.2020 to control the riots. It is his submission that all the accused were previously well known to the complainant Yakoob and the abovenamed two police officials and therefore, it was not difficult for them to recognize the accused in the riotous unlawful

assembly. He also pointed out that all the accused are clearly seen in the viral video, which had been received by the complainant Yakoob on the whatsapp, indulging in vandalization and arson in the shop of complainant Yakoob and the factory of complainant Atikul Rehman. According to the Ld.Special PP, there is sufficient material on record to frame charges against the accused.

12. Ld.Defence Counsels argued in unison that the accused have been falsely implicated in this case. It is argued that even though the FIR has been registered on the basis of complaint of Atikul Rehman yet no investigation appears to have conducted with regards to the riotous incident in which his factory was vandalized and set ablaze. So far as the complaint of Yakoob is concerned, it is submitted that same does not disclose commission of the offence u/s 436 IPC and therefore, the instant case can not be tried by this court. It was further argued that the single combined chargesheet could not have been filed with regard to two separate riotous incidents for which reason also, the instant chargesheet deserves to be rejected. The Ld.Counsels further submitted that the statements of Ct.Sandeep and Ct.Satender with regards to the identification of accused Sumit, Darshan, Uday Singh, Naresh, Vinod and Devraj have been recorded on 01.10.2020 i.e.more than 7 months after the occurrence of the incident in question and therefore, they appear to be planted witnesses at this stage itself. Thus, it is argued that no reliance can be placed upon the statements of these two

witnesses. The Ld.Counsels urge this court to discharge all these accused.

13. Complainant Yakoob has specifically stated in his complaint that his landlord Uday Singh alongwith his two sons (namely accused Sumit and accused Darshan) were involved in vandalization of his shop and theft of goods from his shop on 24.02.2022. Though he had mentioned the date of incident as 24.02.2020 in the said complaint dt.04.03.2020, he clarified in the subsequent communication addressed to the SHO that the actual date of incident is 25.02.2020. He had also handed over the video clip of the riotous incident, which had gone viral, in the shape of a CD alongwith photographs to the IO on 18.03.2020. Thereafter, during the course of investigation of the case subsequent to the filing of the initial chargesheet, he had handed over to the IO another video, which he had received on whatsapp, in a pendrive which was seized by the IO vide memo on 24.11.2021. In the said video footage, the complainant Yakoob as well as the two police officials Ct.Sandeep and Ct.Satender have identified all the six accused. It is the statement of Ct.Sandeep and Ct.Satender that they had seen all the six accused in the riotous mob on 25.02.2020 which had committed vandalization and arson in the tyre shop of complainant Yakoob and factory of Atikul Rehman.

14. The above video footage had been sent to FSL for forensic examination and report of FSL examination is still to be

received. Be that as it may, there is nothing on record which may persuade this court to doubt the authenticity of video footage at this stage when charges are to be decided against the accused. Apart from having been identified in the said video footage, the complainant Yakooob had identified accused Uday Singh alongwith his two sons namely, Sumit and Darshan at the time of incident itself on 25.02.2020. Similarly, Ct.Sandeep and Ct.Satender had also identified all the six accused in the unlawful assembly on 25.02.2020 itself which had committed vandalization and arson in the shop of the complainant Yakooob and factory of complainant Atikul Rehman. So far as the delay of about 7 months in recording the statements of Ct.Sandeep and Ct.Satender is concerned , it has been explained in the chargesheet that soon after the registration of the FIR, Covid-19 Pandemic had surfaced due to which investigation had slowed down. It is further stated that when the Covide -19 cases started decreasing after a few months, the investigation gained speed and more culprits were identified. Since this is a case arising out of unprecedented large scale communal riots that had taken place in North East District, Delhi from 24.02.2020 to 26.02.2020 involving very large number of rioters and also keeping in mind the situation arising out of Covid-19 Pandemic as well as the subsequent nation worldwide Lockdown imposed by the Government of India, the statements of witnesses Ct.Sandeep and Ct.Satender can not be disbelieved at this stage merely on account of delay. Their veracity can be more properly ascertained after subjecting them to cross examination during the trial of the

case. It would be travesty of justice to disbelieve either the viral video or the statements of these two witnesses at this stage where charges are to be decided against the accused.

15. It needs note here that at the time of deciding the charges against the accused, the Court is not expected to go deep into the probative value of material on record. At this stage, the Court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise of the accused. The Court is not supposed to decide whether the material collected by the investigating agency provides sufficient grounds for conviction of the accused or whether the trial is sure to culminate in his conviction. What is required to be seen at this stage is whether, the conviction of the accused is reasonably possible if the material on record remains unrebutted or whether there is strong suspicion which may lead the Court to think that there is ground for presuming that the accused has committed the offence.

16. In the instant case, it is prima-facie evident that if the material on record remains unrebutted, the conviction of the accused is reasonably possible. The argument that offence u/s 436 IPC is not disclosed in this case does not have any merit for the reason that the factory of complainant Atikul Rehman has not only been vandalized but also set ablaze. Further, there does not appear to be any illegality or irregularity in filing of single combined chargesheet with regards to the two riotous incidents involving the shop of the complainant Yakoob and factory of

Atikul Rehman for the reason that both the incident spots are in close proximity to each other as depicted in the site plan filed alongwith the chargesheet.

17. In the light of above discussion, it is held that no case for discharge of any of the accused has been made out. Charges for the offences u/s 147/148/395/436 IPC r/w section 149 IPC are liable to be framed against all the accused. Further charges for the offence u/s 412 IPC are also liable to be framed against accused Sumit.

**Announced in Open
Court on 11.04.2022**

**(VIRENDER BHAT)
ASJ-03(NE)/KKD COURTS/DELHI**