

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

Sessions Case No.284/2021

FIR No.107/2020

PS New Usmanpur

U/s 147/148/149/188/120B/436/380/455 IPC

State

Versus

- 1. Raj Kumar
S/o Mithai Lal
R/o H. No. A-34/1, Gali No. 1,
Punjabi Coly Sade Char Pusta Gamri Ext.
Delhi.(A-1)**

- 2. Manish Sharma @ Monu @ Deepak @ Pinchar
S/o Vishnu Sharma
R/o H. No. C-1/A, Gali No. 2,
Gamri, Delhi.(A-2)**

- 3. Raj Kumar @ Siwainya
S/o Nathu Singh
R/o H. No. C-4/20 Galil No. 7,
Pipal Wali Gali,
Gamri, Delhi.(A-3)**

4. **Ishu Gupta**
S/o Haribabu Gupta
R/o H. No. C-44/38, Gali No. 7,
Sudamapuri, Delhi.(A-4)

5. **Prem Prakash @ Kake**
S/o Sarwan Kumar
R/o H. No. A-14, Gali No. 2,
Sade Char Pusta
Punjabi Coly Gamri, Delhi. (A-5)

ORDER ON THE POINT OF CHARGE:-

1. The above named accused have been charge-sheeted by the police for having committed offences u/s 147/148/149/188/120B/436/380/455 IPC.

2. It is the case of the prosecution that on 25.02.2020 at about 11:30 pm, a mob consisting of several 100 rioters who were armed with rods, pipes, stones, petrol bottles etc. and raising slogans “Jai Shree Ram”, were coming from Ghonda Road towards New Usmanpuri where the complainant Firoz Khan resides in H. No. C-22/1, Gamri Road, Sudamapuri, Delhi and runs a medical store on the ground floor of the same. Upon seeing the mob, the complainant locked the main gate of the house and went alongwith his family to the house of his uncle which is in front of his house. The mob gathered near Azizia

Mosque. They broke open the shutter of the complainant's medical store and also main gate of his house and looted the medical store as well as the house. The complainant was watching all this from the roof of a house nearby. The mob left after vandalizing his house, three adjacent shops and some other adjacent houses. It is stated that the rioters took away medicines and cosmetics worth about Rs. 22 lacs to Rs. 23 lacs as well as Rs. 25,000/- which were lying in the shop. They are also alleged to have taken away Rs. 9 lacs in cash and jewelery worth of Rs. 4,50,00/- belonging to the complainant's wife from the second floor of the house.

3. The complainant submitted a written complaint in this regard in Police Station on 28.02.2020 on the basis of which, FIR was registered. Investigation of the case was assigned to SI Amit Kumar who proceeded to the crime spot and prepared its rough site plan at the instance of the complainant.

4. It appears that accused Ishu Gupta and Prem Prakash @ Kake had been arrested in another case FIR No. 89/2020 PS New Usmanpur. In that case, the IO had taken into possession a DVR in which the CCTV footage of the riots in the area was recorded which was then transferred into a pen drive. Accused Ishu Gupta and Prem Prakash @ Kake are stated to have made a disclosure statement in that case admitting their involvement in the incident

involved in the instant case also. On the basis of their disclosure statement and at their pointing out, accused Raj Kumar @ Siwainya and Manish Sharma @ Monu @ Deepak @ Pinchar were also arrested in the instant case.

5. As per the further case of prosecution, the complainant Firoz Khan had reached the police station on 15.03.2020 to hand over certain documents to the IO. On that day, the photographs of the above four accused arrested in this case were shown to him and he identified them saying that all of them were part of the mob which looted and burnt his shop. On 31.03.2020, HC Vikas is stated to have sent a video to the IO SI Amit Kumar, which had gone viral on the social media and which was related to the looting and stone pelting incident on the medical store of the complainant. Thereafter, accused Raj Kumar s/o Mithai Lal is stated to have been arrested in this case on 31.03.2020 at the instance of a secret informer.

6. On the basis of above noted evidence collected during the course of investigation, charge-sheet has been filed.

7. I have heard the Ld. Special PP as well as the Ld. Defence counsels and have perused the entire material on record.

8. 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.

9. Since, the instant case is the outcome of the riotous incident in which a large number of persons were involved, the observations of the Hon'ble Supreme Court in Masalti & Ors. v. State of UP, AIR (1965) SC 202 become relevant in which the principle as to how a criminal Court should deal with the evidence pertaining to the commission of offence involving in a large number of offenders and large number of victims, has been laid down. It has been held that when a criminal Court has to deal with the evidence pertaining to the commission of offence involving a large number of offenders and large number of victims, the normal test is that the conviction should be sustained only if it is supported by two or more witnesses who give a consistent account of the incident in question. When an unlawful

assembly or a large number of persons take part in arson or in a clash between two groups, in order to convict a person, at least two prosecution witnesses have to support and identify the role and involvement of the persons concerned.

10. In the instant case, it is evident from the perusal of the entire charge-sheet that there is only one witness i.e. the complainant Firoz Khan who is stated to have identified the accused herein as the assailants who were part of the mob which vandalized, looted and burnt his shop. Even he too had not identified them directly from the mob at the time of the incident. He is stated to have identified them as assailants from their photographs which were shown to him in the police station on 15.03.2020. There is no other witnesses who has identified, either directly or indirectly, the accused to be the assailants.

11. Hence, even if the evidence sought to be adduced by the prosecution in the instant case against the accused remains unrebutted during the trial, conviction of the accused cannot be ordered in view of the law laid down by the Hon'ble Supreme Court in the above noted judgment in Masalti's case which mandates that there should be at least two prosecution witnesses to identify the role and involvement of the accused in the incident in question. There is only one witness i.e. the complainant but he too has not described the role of the accused

in the incident. Charges cannot be framed against the accused upon taking into account the material annexed with the chargesheet on the basis of which there is no possibility of the conviction of the accused at the final stage. It would be a sheer wastage of judicial time if the charges are to be framed against the accused upon consideration of the evidence on record on the basis of which he has to be acquitted later on.

12. Hence, there is no sufficient evidence on record on the basis of which charges can be framed against the accused. Accordingly, all the accused are hereby discharged. Their bail bonds are released and their respective sureties are also discharged.

13. Before parting with, I may note that material on record does clearly indicate that riotous incident in question has taken place wherein the shop as well as house of the complainant was vandalized and looted. This Court is not insensitive towards the mental agony and the financial loss suffered by the complainant due to this incident. However, the sensitivity or the emotions alone are not the factors to be taken into consideration by the court while deciding the fate of any accused. These cannot take place of evidence. There should be sufficient and legally admissible evidence on the basis of which charges can be framed against an accused, which is lacking in the instant case. The

perusal of the charge-sheet does not indicate whether or not were any efforts made by the IO to trace any other witness to the incident in question. It is not clear as to whether the IO chose not to find out any other witness or whether no other person came forward who had seen the incident in question.

14. In view of the these facts and circumstances of the case, where accused are being let off not because the incident in question had not happened or the accused appear to have been falsely implicated but merely for the reason that there is no sufficient evidence produced against them, let the DCP North-East District conduct an enquiry into the manner in which the investigation was conducted by the IO in this case to find out whether or not there had been any deliberate attempt to shield the offenders and submit a report to this Court on the next date of hearing.

Announced in the open Court

(VIRENDER BHAT)
ASJ-03(NE)/KKD COURTS/22.11.2021