

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

Sessions Case No. 312/21

FIR No.98/20

**U/s 109/114/147/148/149/186/188/332/353/427/436/34 IPC &
3 /4 PDPP Act**

PS Khajuri Khas

State

Versus

- 1 Ikram s/o Abdul Salam
r/o C-105, Gali no.1, Chand Bagh, Delhi.**
- 2 Mustaqueem s/o Shamsuddin
r/o Gali no.1, Wasd No.8, Near Auliya Masjid,
Chand Bagh, Delhi.**
- 3 Sarfaraz s/o Arfan
r/o H.No.F-187, Gali no.11, Khajuri Khas,
Delhi.**
- 4 Firoz s/o Babuddin
r/o B-1/3, Main 20 Futa Road, Chand Bagh,
Delhi.**
- 5 Gulfam s/o late Ramjani
r/o B-34, Gali no.2, Chand Bagh, Delhi.**
- 6 Javed s/o Jafruddin
r/o H.No.1092, Gali no.13, Rajiv Nagar,
Mustafabad, Delhi & House no.128, Gali no.2,
Moonga Nagar, Main Karawal Nagar, Delhi.**
- 7 Anas s/o Idrish
r/o Gali no.1, Sanjay Chowk, Mustafabad,**

Delhi.

- 8 Shoaib Alam s/o Mustafa Hussain
r/o A-10, Main 20 Futa Road, Chand Bagh,
Delhi.**
- 9 Gulfam @Zubair s/o Mohd.Ahmed
r/o F-546, Khajuri Khas, Main
Karawal Nagar Road, Delhi**
- 10 Saddam @ Ikrar s/o Hazi Shabuddin
r/o F-594, Gali no.17, Khajuri Khas,
Main Karawal Nagar Road, Delhi.**

ORDER ON THE POINT OF CHARGE:-

1. The above named nine accused have been charge-sheeted by the police for the offences u/s 109/114/147/148/149/186/332/353/427/435/436/34 IPC and section 3/ 4 PDPP Act.
2. The case of the prosecution is that these accused were members of the riotous unlawful assembly which indulged in vandalization and arson in Khajuri Khas and Bhajanpura areas on 24.02.2020 from 12 p.m.onwards and thereby set ablaze various shops, rehris as well as police booth Bhajanpura. Several public persons as well as police personnels are stated to have got injured in stone pelting resorted to by the said mob.
3. Further case of the prosecution is that accused Mustaqueem, Sarfarz, Ikram and 'A'(who was later on declared

CCL) were apprehended at the spot by the police personnels.

4. The FIR has been recorded on the basis of statement of HC Anil Kumar, who alongwith other staff was on duty in the abovenoted areas on that day to control the riots and maintain law and order. Thereafter, the abovenamed 4 rioters were arrested on 25.02.2020. One private videographer had been hired by the police, who is stated to have videographed the incident. In the video footage provided by the said videographer to the police, HC Rahul is stated to have identified Firoz, who was accordingly arrested on 06.03.2020. In his disclosure statement, accused Firoz is stated to have disclosed the names of his four associate rioters as Gulfam, Javed, Anas and Shoaib Alam, who were then arrested on 07.03.2020. All of them are seen in the video footage as members of the unlawful assembly and pelting stones.

5. Chargesheet further mentions that the complaint of Mahesh Pal was received in the PS on 01.03.2020 wherein he had stated that his showroom in Khajuri Khas was vandalized on the intervening night of 24.02.2020 and 25.02.2020. The complaint was clubbed with the FIR in this case. Another complaint was received from Sanchit Khanna on 06.03.2020 wherein he had stated that his motorcycle which he had parked near the police post on 24.02.2020 was vandalized by the riotous mob. His complaint was clubbed with the FIR in this case.

6. The DVD of the above riotous incident dt.24.02.2020

prepared by the private photographer alongwith certificate u/s 65 of Indian Evidence Act was seized by the IO. Inspector Pawan Kumar, SHO PS Khajuri Khas also produced one pendrive containing images/video of the riotous incident dt.24.02.2020 which also was seized by the IO. It is stated that accused Mustaqueem was identified as a rioter in the said video. The DVD as well as pendrive was sent to FSL for forensic examination.

7. Upon obtaining requisite complaint u/s 195 Cr.PC, section 188 IPC was added to the FIR.

8. After completion of investigation, chargesheet was prepared and submitted in the court of the Ld.CMM. However, further investigation was continued to trace more witnesses and nab more rioters.

9. Accused Gulfam@ Zubair is stated to have been arrested in this case on 29.06.2020 at the instance of HC Rahul. Thereafter, a supplementary chargesheet was filed qua the said accused. Report of the FSL with regards to the abovenoted DVD and pendrive was also annexed with the supplementary chargesheet.

10. Accused Saddam @Ikrar is stated to have been arrested in this case on 19.02.2021 on the identification of Ct.Rahul. Accordingly, second supplementary chargesheet was filed qua him.

11. I have heard the Ld. Special PP as well as Ld. Defence counsels appearing for the accused and have also perused the entire material on record.

12. Ld.Special PP submitted that the three accused namely, Mustaqueem, Sarfraz and Ikram were arrested from the spot itself and were later on identified as rioters by several police witnesses. He further submitted that the remaining 7 accused were also arrested and implicated in this case after they had been properly identified as rioters by the police witnesses as well as public witnesses. He pointed out that all the accused can also be seen in the video footages of the riotous incident taking active part in vandalization and arson at the spot in question. According to the Ld.Special PP, there is sufficient material on record to frame charges against all the 10 accused.

13. Ld.Counsels appearing for accused Sarfraz and Firoz submitted that they have nothing to say on the aspect of charge and concede framing of charges against these two accused.

14. On behalf of remaining accused, it was argued by their Ld.Counsels that they have been falsely implicated in this case without there being any legally admissible evidence against them. It was submitted by the Ld.Counsel for accused Saddam @Ikrar that neither has he been named in the FIR nor has any specific role in the incident been attributed to him by any of the witnesses. Ld.Counsel for accused Gulfam@Zubair argued that

he is a resident of same locality which is the only ground for his arrest in this case. He submitted that no witness except police official HC Rahul has identified this accused and the statement of HC Rahul is not trustworthy as it has been recorded very belatedly.

15. Ld.Counsel for accused Ikram submitted that he is a tailor by profession and was going to deliver clothes to his clients on the fateful day and as soon as he reached the spot in question, he was apprehended and falsely implicated in this case.

16. Ld.Counsel for accused Mustaqueem argued that there is no evidence that this accused had held out any exhortation or inducement to commit any offence and therefore, section 109 IPC is not made out against him. It is also his submission that since none of the police personnel has suffered injuries, offence u/s 332/353 IPC is not made out at all. He also argued that there is no proof of this accused sharing common object of the assembly with other members of the assembly and charges can not be framed against him for his mere presence in the assembly.

17. Ld.Counsel for accused Anas, Javed, Shoaib Alam and Gulfam s/o Late Ramjani argued that no witness has identified them as rioters and they have been arrested merely on the basis of disclosure statement of co-accused Firoz which is not admissible in evidence.

18. Thus, the Ld.Counsels for these accused urged this court to

discharge them.

19. As already noted hereinabove, Ld.Counsels appearing for accused Sarfraz and Firoz have conceded framing of charges against them. Accused Sarfraz was one of the rioters, who was apprehended at the spot. The remaining two rioters, who are stated to have been apprehended at the spot are Ikram and Mustaqueem. As many as 9 police officials have identified these three accused namely, Sarfraz, Ikram and Mustaqueem as the members of the unlawful assembly on 24.02.2020 which was responsible for vandalization and arson in Karawal Nagar in which the police booth Karawal Nagar was set ablaze. All these 9 police officials namely, HC Avneesh, Inspector Pawan, SI Bhisim Rana, HC Rahul, Ct.Sandeep, Ct.Bhupender, Ct.Vikram, Ct.Amit and Ct.Chander Pratap have suffered injuries in the stone pelting resorted to by the riotous mob. Their MLCs are on record which depict the injuries sustained by them in the incident. Thus, it is prima-facie evident that these police officials were present on duty at the spot and had the occasion to see and identify the rioters. It is manifest from the statements of these police officials that accused Sarfraz, Ikram and Mustaqueem were the members of the above riotous mob. There is nothing on record to suggest at this stage that these three accused were only bystanders and did not share the common object of the assembly which was to commit vandalization and arson or that they had at any point of time dis-associated from the unlawful assembly. Hence, charges are liable to be framed against Ikram and Mustaqueem also.

20. Accused Saddam @ Ikrar, though was arrested on 19.02.2021, yet he has been identified as a member of the above referred unlawful assembly by HC Rahul and Ct.Vikram. It has already been noted hereinabove that these two police officials were on duty at the incident spot to control the riots and infact had sustained injuries due to stone pelting by the members of the unlawful assembly. Thus, they having come face to face with the members of the unlawful assembly, had enough opportunity to see and identify the rioters. The identification of accused Saddam @ Ikrar as the rioter by these two police officials can not be doubted at this stage. The veracity of the statements of these two police officials on this issue can only be ascertained properly after the trial. Thus, the charges are liable to be framed against this accused also.

21. Same can be said about accused Gulfam @ Zubair also. Apart from identification by HC Rahul, he has been identified by one public witness namely, Pradeep Verma also. It was argued by Ld.Counsel for this accused that the statement of Pradeep Verma is not trustworthy even at this stage for the reason that it has been recorded on 01.02.2021 i.e.almost one year after the incident and the said witness has identified the accused from the video footage and not directly at the spot. I do not find any force in the said argument. It is true that the said witness Pradeep Verma has identified accused Gulfam @ Zubair alongwith some other co-accused in the video footage of the incident which was

shown to him by the IO in the PS. However, it is to be noted that as per the statement of this witness, accused Gulfam @ Zubair was not a stranger to him. Accused was known to him prior to the incident. He has clearly mentioned in the statement that accused Gulfam @ Zubair is seen in the video footage at 46:15 minutes pelting stones on the police party. So far as the video footage is concerned, same was prepared by witness Amit, who had been deputed with the police party on 24.02.2020 by his employer Prem Singh on the orders of the DCP. Statements of both Amit and Prem Singh are on record. There is DD no.24 B regarding the arrival of the videographer Amit in PS on 24.02.2020. Thereafter, he accompanied the police party to the spot and shot the video of the incident. He has stated that in the evening, he handed over the camera to Prem Singh. As per the statement of Prem Singh, he downloaded the video in his computer system and prepared two DVDs which he handed over to police officials. He has also issued a certificate u/s 65(B) of Indian Evidence Act in support of the DVDs. It is also to be noted herein that the DVD was sent to the FSL for forensic examination and as per the report of the FSL, there was no indication of any alteration in the video shots.

22. Hence, there is sufficient evidence on record in support of the genuineness of the video footage in which accused Gulfam @ Zubair has been identified as a rioter by witness Pradeep Verma. There is nothing on record to doubt the authenticity of the video footage at this stage or to doubt the statement of the witness

Pradeep Verma. Therefore, the charges are liable to be framed against accused Gulfam @ Zubair also.

23. So far as remaining four accused namely, Anas, Javed, Shoaib Alam and Gulfam s/o Late Ramjani are concerned, they were arrested on the basis of the disclosure statement of accused Firoz. There is only witness regarding their identification as rioters i.e. Pradeep Verma, who has identified them in the abovenoted video footage. There is no other witness, who has either directly or indirectly seen or identified these four accused as members of the unlawful assembly on 24.02.2020. Therefore, the evidence with regards to the identification of these four accused as rioters does not pass the muster set by the Supreme Court of India in Masalti & Ors. v. State of UP, AIR (1965) SC 202, wherein it has 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.

24. Therefore, there is no sufficient material on record to frame charges against these four accused and they are liable to be

discharged.

25. The argument raised on behalf of accused Mustaqueem that offence u/s 332/353 IPC is not made out, does not hold any water. As already noted hereinabove, as many as 9 police officials have suffered injuries in the incident and the MLCs of all them are on record. However, I feel in agreement with the Ld.Counsel that the offence u/s 109/114 IPC is not made out against any of the accused.

26. Resultantly, it is held that charges for the offences u/s 147/148/186/188/332/353/427/436 IPC r/w section 3 /4 PDPP Act r/w section 149 IPC are liable to be framed against accused Sarfraz, Firoz, Ikram, Mustaqueem, Gulfam @Zubair and Saddam @ Ikrar.

27. Accused Gulfam s/o late Ramjani, Javed, Anas and Shoaib Alam are hereby discharged of all the offences. Their bail bonds are released and sureties are discharged.

**Announced in the open Court
On 04.04.2022.**

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