

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

Sessions Case No.45/2021

FIR No.142/2020

PS Gokalpuri

U/s 147/148/149/436/454/392/452/188/153A/427/506 IPC

State

Versus

- 1. Mohd. Shahnawaz @ Shanu @ Ansari
S/o Mohd. Rashid
R/o H. No.528, Gali No. 22,
Phase-10, Shiv Vihar, Delhi. (A-1)**

- 2. Mohd. Shoaib @ Chhutwa
S/o Islam
R/o H. No. 93, Gali No. 5/2,
Babu Nagar, Mustafabad,
Delhi. (A-2)**

- 3. Shahrukh
S/o Salauddin
R/o B-262, Gali No. 7,
Near Shiv Mandir,
Babu Nagar, Delhi. (A-3)**

4. **Rashid @Raja**
S/o Riyajuddin
R/o A-22, Gali No. 1, Chaman Park,
Delhi. (A-4)

5. **Azad S/o Riyasat Ali**
R/o 824, Gali No. 9,
Old Mustafabad, Delhi. (A-5)

6. **Ashraf Ali**
S/o Anisul Haq
R/o H. No. A-18, Chaman Park,
Indira Vihar, Delhi. (A-6)

7. **Parvez**
S/o Riyajuddin
H. No. A-30/6, Gali No. 1,
Mahalaxmi Enclave, Babu Nagar, Delhi &
Mohalla Patua, PS Chaudpur,
Distt. Bijnour, UP. (A-7)

8. **Md. Faisal**
S/o Raisuddin
R/o H. No. F-14, Gali No. 1, Babu Nagar,
Main Brijpuri Road, Delhi. (A-8)

9. **Rashid @ Monu**
S/o Khalil
R/o H. No. 259, Gali No. 7, Shiv Mandir,
Shakti Vihar, Delhi. (A-9)

10. Mohd. Tahir
S/o Mohd. Umar
R/o H. No. 16, Gali No. 6,
Old Mustafbad, Delhi. (A-10)

ORDER ON THE POINT OF CHARGE:-

1. The above named accused have been charge-sheeted by the police for having committed offences u/s 147/148/149/436/454/392/452/188/153A/427/506 IPC.

2. It is the case of the prosecution that all the above named accused constituted an unlawful assembly on 24.02.2020 and in furtherance to the object of the assembly, they resorted to violence and looted as well as set ablaze the properties belonging to members of Hindu community in Chaman Park, Shiv Vihar Tiraha.

3. The FIR in this case has been registered on the complaint of Narender Kumar on 04.03.2020. He has stated in his complaint that on 24.02.2020 at about 2.30 pm when he was present in his house No. C-3/C-2, Chaman Park, Brikpuri, Shiv Vihar Tiraha, Delhi, a mob consisting of about 1500 rioters armed with lethal weapons reached there. They started damaging the shops on the ground floor of the house. At about 3.45 pm about 50-60 rioters climbed to the upper floor of the house and

threatened the complainant and his family members to leave the house otherwise they would be burnt alive. Thereafter, they damaged and looted articles lying in the house including 15 Tolas of Gold and 1 ½ KG Silver and Rs. 2 lacs in cash They also burnt three double beds, one sofa set, TV and Refrigerator, Cooler, laptop etc. which was in the house. Upon seeing all this, complainant alongwith his children left the house in order to save their lives and took refuge in the house of a relative.

4. During the course of investigation, the IO visited the spot and prepared its rough site plan. He recorded the statements of the complainant. He summoned the crime team to the spot of incident which inspected and photographed the spot. On 30.03.2020, two more complaints submitted by Poonam Johar and Rinku were clubbed with this FIR as the place of occurrence of both these complaints was nearby. The statement of Poonam Johar was recorded by the IO but the other complainant Rinku could not be traced. Statements of the eye witnesses Ct. Vipin and HC Hari Babu were recorded on 08.04.2020. Statement of another eye witness Shyam Sunder was recorded on 10.04.2020.

5. It came to be known to the IO that the accused have been arrested in another case FIR No. 39/2020, PS Gokalpuri and are in custody. Accordingly, the IO visited Mandoli Jail on 16.04.2020 and upon seeking permission from the Ld. Duty MM,

he interrogated the accused namely Mohd. Shahnawaz. On 22.04.2020, other accused namely Azad, Shahrukh, Mohd. Shoiab @ Chhutwa, Rashid @ Raja, Ashraf Ali, Parvez and Mohd. Tahir were formally arrested in this case from Mandoli Jail. The remaining two accused namely Mohd. Faisal and Rashid @ Monu, who had been lodged in Tihar Jail, Delhi, were arrested in this case by the IO on 25.04.2020. All the accused are stated to have made separate disclosure statements admitting their involvement in the instant case.

6. After taking further usual steps in the investigation of this case, charge-sheet was submitted.

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

8. It was argued by the Ld. Special PP that apart from the electronic evidence in the form of CCTV footage and the CDR location of the mobile phone of the accused, there are three eye witnesses namely HC Hari Babu, Ct. Vipin and Shyam Sunder who had seen all the nine accused committing violence as well as looting and setting ablaze the properties belonging to members of Hindu community in Chaman Park, Shiv Vihar Tiraha and therefore, there is sufficient material on record to frame charges against the accused.

9. It was argued by the Ld. Defence counsels that the statements of two eye witnesses of the prosecution i.e. HC Hari Babu and Ct. Vipin has been recorded on 08.04.2020 whereas the statement of this eye witnesses Shyam Sunder was recorded on 10.04.2020 i.e. after about 1 ½ months of the incident and the prosecution has failed to explain the delay in recording their statements. It is argued that these two witnesses have been planted later on conveniently by the police in order to implicate the accused falsely in this case and therefore, their statement are not reliable at all. It is also argued that these two police officials have been cited as witnesses in as many as 12 riot related cases which clearly indicates that they are stock witnesses. Thus, it is submitted that the statements of these witnesses cannot be considered at all even at this stage. On these contentions, Ld. Defence counsels sought discharge of all the accused.

10. The submissions made on behalf of both the parties have been considered. Material on record perused.

11. If the electronic evidence relied upon by the prosecution in this case is discounted, still there are three eye witnesses to the incident i.e. Ct. Vipin, HC Hari Babu and Shyam Sunder. As per their respective statements, they had seen all the nine accused committing violence, looting as well as damaging and setting ablaze the properties belonging to Hindu community in Chaman Park, Shiv Vihar Tiraha. It is true that their statements have been

recorded after about more than a month of the incident in question. But their eye witness account of the incident cannot be ignored at this stage merely for the reason that their statements had been recorded after such delay. The manner in which they have narrated the incident in their statements does not indicate that they are planted witnesses or that they had not seen the incident in question with their own eyes. On this aspect of the delay in recording of their statements, I am convinced by the submission of the Ld. Special PP that the delay had occasioned only on account of peculiar circumstances. It was pointed out by him that a large number of complaints had been received in the police station in the aftermath of the riots and the police officials were busy in examining the complaints and at the same time in maintaining peace in the area as well as in instilling sense of safety amongst the victims. He also pointed out that soon after the situation had become normal to some extent, there was outbreak of Covid-19 Pandemic which resulted in complete lock down in the second week of March, 2020 which also resulted in delay in recording the statements of the witnesses. Keeping these circumstances in view, it cannot be said that the delay in recording the statements of two witnesses was intentional or contumacious and therefore, the accused cannot claim discharge merely on this score. It is evident that the delay in recording the statements of these witnesses was occasioned due to the situation which prevailed in the area during and after the incidents of

rioting. Therefore, it would be against the demands of justice to discard the statements of these two witnesses at this very stage when the charges are to be decided against the accused. The truthfulness or otherwise of their statements can be assessed during the trial of the case.

12. The contention on behalf of the accused that the statements of the two police officials cannot be considered even at this stage for the reason that they have been cited as witnesses in 12 riot related cases which indicate that they are the stock witnesses for the police, has been noted only to be rejected. It is possible that more than one incidents of crime, which had taken place in same locality, happened before the eyes of a police official who had been deputed to that particular area for maintaining law & order. Hence, there is no illegality in citing that police official as a witness in all those cases. Only caution would be that the version of the incident given by that police official needs to be scrutinized minutely in every such case in order to see as to whether or not the same is prima-facie probable and reliable. As already noted hereinabove, the narration of the incident given by the two police officials Ct. Vipin and HC Hari Babu in this case nowhere reflects at this stage that they were not present at the spot of incident or that they are planted or stock witnesses. They were posted as beat staff of the area in question and were present on duty on the day of incident i.e. 24.02.2020. Therefore, it cannot be said that they had no opportunity or occasion to be at

the spot of incident on 24.02.2020 and to witness the incident. Their statements prima-facie appear to be probable and reliable at this stage.

13. 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.

14. In the case at hand, the material on record prima-facie discloses the commission of offences of rioting, looting and setting ablaze the shop of the complainant by the accused. Undoubtedly, if the evidence collected during the course of investigation as annexed with the charge-sheet remains unrebutted, the conviction of the accused is reasonably possible. Thus, there is no escape from the conclusion at this stage that the accused were members of unlawful assembly, the object of

which was to cause riots, vandalism and destruction of the properties etc. No case for their discharge is made out. It is, thus, held that the charges u/s 147/148/436/454/392/452/427/506 IPC r/w Section 149 IPC are liable to framed against all the accused.

15. It may be noted that the accused had been charge-sheeted for having committed offences u/s 153A and 188 IPC also. However, the Ld. CMM vide order dated 23.12.2020 had declined to take cognizance of the said offences in the absence of sanction u/s 197 Cr. P.C (qua offence u/s 153A IPC) and complaint u/s 195 Cr. P.C (qua offence u/s 188 IPC). Therefore, accused cannot be charged with the said offences.

Announced in the open Court

(VIRENDER BHAT)
ASJ-03(NE)/KKD COURTS/03.12.2021