

***IN THE COURT OF VIRENDER BHAT: ADDL. SESSIONS
JUDGE-03(NORTH-EAST): KKD COURTS: DELHI***

SC no.06/2021

FIR No.240/2020

PS Khajuri Khas

U/s 147/148/149/188/392/427/435/436/451 IPC

State

Versus

**1 Mithhan Singh
s/o Samay Singh
r/o H.No.C-430, Gali no.29,
Khajuri Khas, Delhi.**

**2 Jony Kumar
s/o Mithhan Singh
r/o H.No.C-430, Gali no.29,
Khajuri Khas, Delhi.**

ORDER ON THE POINT OF CHARGE:-

1 The above named two accused have been chargesheeted in this case for offences u/s 147/ 148/ 149/ 188/ 392/427/435/436/451 IPC .

2 According to prosecution case, the accused were part of violent mob on 25.02.2020 in E block, Khajuri Khas, Delhi

which resorted to stone pelting and burning of vehicles as well as setting ablaze the private and public properties.

3 It was submitted by the Ld.Special PP that apart from complainant Israfil , whose cash and jewellery articles were looted and thereafter his house was damaged and set on fire , there are other eye witnesses to the incident namely, Mohd.Tayyub, Mehboob Alam, Shadab and Mohd.Akram, who had seen these two accused in the mob thereby damaging and setting ablaze their houses as well as Fatima Masjid. He argued that in view of clear cut statements of these witnesses, who knew the two accused very well as all of them reside in neighborhood to each other, it is manifest that the two accused had resorted to vandalizm, stone pelting and burning of private and public properties. Accordingly, the Ld.Special PP prays that charges be framed against both the accused.

4 Ld.Counsel for the accused would argue that the FIR in this case has been registered on 04.03.2020 on the basis of complaint of Israfil but the delay in registration of the FIR has nowhere been explained in the entire chargesheet. He pointed out that the statements of above witnesses have been recorded on 08.03.2020 i.e. after delay of about 10 days from the date of incident, which delay has remained to be explained by the prosecution. He would argue that all the above witnesses have been planted in this case later on by the police and therefore,

their statements can not be trusted even at this stage. It is his submission that the two accused are totally innocent and have been falsely implicated in this case by the police. He urges this court for the discharge of both the accused.

5 I have considered the submissions made by the Ld.Special PP as well as by the Ld.Counsel for the accused and have perused the entire material on record.

6 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.

7 In the instant case, the complainant Israfil has stated that Mithhan Singh and his son Jony Kumar were part of the violent mob who were raising slogans “ Jai Shree Ram” on 25.02.2020

near his house and then set ablaze his house. She climbed upon the roof of Fatima Masjid to save his life and therefrom saw that the mob started damaging the mosque and setting it on fire. He further stated that Mithhan Singh brought one small gas cylinder from his house which he handed over to his son Jony Kumar and exhorted him to throw the same into the mosque whereupon Jony Kumar threw the cylinder into the mosque and thereafter both of them alongwith other persons in the mob started throwing bottles containing inflammable material upon the houses belonging to a particular community.

8 Similarly, Mohd.Tayyub, had also seen both the accused in the violent mob which pelted stones upon his house on 25.02.2020 in C block, Gali no.29, Khajuri Khas. The statements of witnesses Mehboob Alam, Shadab and Mohd.Akram, are also on the same lines as that of Israfil.

9 All these witnesses have clearly stated that they knew both the accused very well, who used to reside in their neighborhood. Hence, it would not have been difficult for them to identify the two accused in the mob. The manner in which the witnesses have narrated the incident of rioting, stone pelting and setting ablaze the properties by the mob nowhere indicates at this stage that these witnesses were the planted witnesses. It is not the argument of the Ld.Counsel for the accused that these witnesses had any kind of animosity with the accused for which reason they might

have implicated the accused falsely in this case.

10 It is true that these witnesses had not come forward to lodge a complaint with the police or to get their statements recorded soon after the incident. However, it has to be borne in mind that this case is an off shoot of communal riots which erupted in North East District on 24.02.2021 and continued till 26.02.2020 when the situation was brought under control by the police and paramilitary force. There had been several instances of rioting, killing, vandalism, setting ablaze movable or immovable properties etc.by the members of each community. There was an atmosphere of terror and trauma which prevailed in the area for several days even after the riots. In these circumstances, the delay of about one week in reporting the incident to the police would appear justified to any prudent person and can not be considered fatal to the prosecution case at this stage.

11 The eye witness account of the incident given by above witnesses can not be ignored at this stage merely for the reason that their statements had been recorded after the delay of one week from the date of incident. It was submitted by the Ld.Special PP that the public witnesses like the ones in the instant case, had become so terrified that they were reluctant to come forth and present their version of the incident before the Investigating Agency.

12 Keeping these facts and circumstances in mind, it can not be said that the delay in recording the statements of these witnesses was intentional or contumacious and therefore, the accused can not claim discharge in this case merely on this score. It appears that the delay in recording the statements of these witnesses was occasioned on account of the situation which prevailed in the are during and after the incident of rioting. Further, the truthfulness or otherwise of these witnesses can be assessed only during the trial of this case.

13 In the light of the above discussion, it is held that charges u/s 109/114/147/148/149/427/392/427/436/451 IPC are liable to be framed against the accused Mithhan Singh whereas charges u/s 147/148/149/392/427/451/436 IPC are liable to be framed against accused Jony Kumar.

**Announced in open court
today on 20.11.2021**

**(Virender Bhat)
ASJ-03(NE)/KKD Courts**