

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

Sessions Case No.41/2021

FIR No.95/2020

PS Gokalpuri

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

State

Versus

- 1. Mohd. Shahnawaz @ Shanu
S/o Mohd. Rashid
R/o H. No.528, Gali No. 22,
Phase-10, Shiv Vihar, Delhi.**
- 2. Mohd. Shoaib
S/o Islam
R/o H. No. 93, Gali No. 5/2,
Behind Rajdhani School,
Babu Nagar, Delhi.**
- 3. Shahrukh
S/o Salauddin
R/o B-262, Gali No. 7,
Near Shiv Mandir,
Babu Nagar, Delhi.**
- 4. Rashid
S/o Riyajuddin
R/o A-22, Gali No. 1, Chaman Park,
Shiv Vihar Tiraha, Delhi.**

5. **Azad**
S/o Riyasat Ali
R/o 824, Gali No. 9,
Old Mustafabad, Delhi.
6. **Ashraf Ali**
S/o Anisul Haq
R/o H. No. A-18, Chaman Park,
Indira Vihar, Delhi.
7. **Parvez**
S/o Riyajuddin
A-30/6, Gali no.1, Mahalaxmi
Enclave, Babu Nagar, Delhi.
8. **Md. Faisal**
S/o Raheesuddin
R/o H. No. F-14, Gali No. 1, Babu Nagar,
Main Brijpuri Road, Delhi.
9. **Rashid @ Monu**
S/o Khalil
R/o H. No. 259, Gali No. 7, Shiv Mandir,
Shakti Vihar, Delhi.
10. **Mohd.Tahir**
s/o Sh.Mohd.Umar
r/o 16, Gali no.6,
Old Mustafabad, Delhi.

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 25.02.2020 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 F block, Main Brijpuri Road, Bhagirathi Vihar, Delhi.

3. The FIR in this case has been registered on 03.03.2020 on the complaint of 28.02.2020 submitted by Sh.Jagdish Prasad wherein he stated that the rioters had completely burnt the auto spare parts shop run by his son Shekhar Bhardwaj situated at Brijpuri Road on 25.02.2020 at about 11.00 a.m. He has further stated that on account of violent protests which had started on Brijpuri Road on 24.02.2020, he alongwith his two brothers had remained in the said shop throughout the night intervening between 24.02.2020 and 25.02.2020. At about 11.a.m. on 25.02.2020, they saw a large mob armed with stones and other weapons, which attacked the shop. The mob threw petrol bomb into the shop as a result of which the whole shop got totally burnt. He alongwith his two brothers somehow managed to escape from the rear gate and saved their lives.

4. As per the prosecution case, the complainant Jagdish Prasad, his son Shekhar Bhardwaj, his nephew Jitender Singh, Ct.Sanjay, Ct.Vipin and HC Hari Babu are the eye witnesses to

the incident of violence that had taken place on Brijpuri Road, Bhagirathi Vihar, Delhi on 25.02.2020. All these witnesses have specifically named the accused in their statements stating that they were present in the mob which had seen the accused looting, damaging and setting ablaze the properties including the shop of the complainant in Brijpuri Road, Bhagirathi Vihar, Delhi.

5. During the course of investigation, it came to be known that all the 10 accused are in custody in another case bearing FIR no.39/20 of PS Gokalpuri. Accordingly, the IO visited Mandoli Jail on 16.04.2020 and after seeking permission from the Duty MM, he interrogated accused Shahnawaz @ Shanu and arrested him in this case. Similarly, accused Azad , Shahrukh, Shoaib @ Chutwa, Rashid @ Raja, Ashraf Ali, Parvez and Mohd.Tahir were interrogated in Mandoli Jail on 22.04.2020 and were arrested in this case. All these accused are stated to have made separate disclosure statements admitting their involvement in this case. Accused Mohd.Faisal and Rashid @ Monu, who were lodged in Tihar Jail, were interrogated by the IO on 25.04.2020 and were arrested in this case. They too are stated to have made their respective disclosure statements admitting their involvement in this case.

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

7. It is argued by the Ld.Special PP that apart from the three

police officials, Ct.Sanjay, Ct.Vipin and HC Hari Babu, there are three public witnesses including the complainant Sh.Jagdish Prasad, who had seen and identified the accused amongst the mob at the time of incident when auto parts shop belonging to his son was set ablaze. He submitted that the mob, of which the accused were a part, had resorted to such type of violence, vandalization and setting ablaze of properties belonging to members of Hindu Community on 24.02.2020 and 25.02.2020 in Chaman Park, Brijpuri Road, Shiv Vihar Tiraha and Bhagirathi Vihar in pursuance to a conspiracy. It is his submission that there is sufficient material on record to frame charges against the accused.

8. Ld.Defence Counsels argued that the statements of the complainant, his nephew Jitender Singh and his son Shekhar Bhardwaj recorded on 03.03.2020 are afterthought as well as fabricated. It is pointed out that the complainant in his written complaint submitted in the PS on 28.02.2020 did not mention the name of any assailant and hence how could he name the accused as assailants in the statements dt.03.03.2020. It is also pointed out that the perusal of the said complaint submitted by the complainant reveals that his son Shekhar Bhardwaj was not present in the shop at the time of incident and therefore, the statement of the said witness Shekhar Bhardwaj is totally false and unreliable. The Ld.Counsels argued that this is a clear case of false implication of the accused on the basis of improved

statements of the witnesses.

9. The Ld.Counsel for the accused Mohd.Tahir also submitted that as per the CDR of his mobile phone which has been obtained by the police itself, he was not present in the Chaman Park area on 25.02.2020 and these CDRs show his presence at Vijay Park, Yamuna Vihar from 24.02.2020 till 28.02.2020. According to the Ld.Counsel for the accused, the distance between Vijay Park and Bhagirathi Vihar is about 2 k.m.

10. The Ld.Counsel appearing for the accused Mohd.Shahnawaz, Azad and Parvez further argued that the statements of the police witnesses Ct.Sanjay, Ct.Vipin and HC Hari Babu are not trustworthy at all for the reason that they have neither lodged any DD regarding the incident nor had given any information to the PS regarding the incident till 08.04.2020 on which date their statements have been record. The Ld.Counsel further submitted that these three police officials have been cited as witness as witnesses in as many as 12 riot related cases which clearly indicates that they are stock witnesses.

11. On behalf of the accused Azad, Mohd.Faisal and Mohd.Rashid @ Monu, it is also argued that they had been identified by a single witness alone as per the prosecution case itself and there being no other corroborative evidence against them, they are liable to be discharged in view of the parameters set by the Hon'ble Supreme Court of India in '*Masalti Vs State of*

U.P' AIR 1965 SC 202'

12. Submissions made by Ld.Special PP and the Ld.Defence Counsels have been considered. Record perused.

13. The complainant Jagdish Prasad and his nephew Jitender have given the version of the incident step by step in the following words:

*“ Riots had started in Chaman Park, Brijpuri Road, Shiv Vihar Tiraha and Bhagirathi Vihar Area from 2 p.m. on 24.02.2020. We alongwith Ram Charan and Gopi Chand had stayed in our workshop , Shekhar Bhardwaj Auto Parts at F-1, gali no.6, Main Brijpuri Road, Bhagirathi Vihar, Delhi on the night intervening between 24.02.2020 and 25.02.2020. At that time, the officials of local PS had been deployed in that area but on account of large number of rioters, police was unable to control them. There was intermittent pelting of stones upon our shop. We somehow spent the night in the workshop in terrified state. On 25.02.2020 at about 10-11 a.m., the rioters became more violent and started damaging the houses/shops in the area. There were around 100-150 rioters in front of our shop and the mob started pelting stones on our shop. Some people in the mob were having wooden rods in their hands, some were having stones in their hands and some were having petrol bomb like thing in their hands which exploded on being thrown and caused fire. The rioters hit the lock of our shop with kicks, stones, rods etc. in order to break. All the rioters were raising slogans against Hindus and were saying “**we would throw out***

these infidels from the country, would kill them and would kidnap the daughters of Hindus”. The mob was raising slogans “Hindu Murdabad” and were hurling abuses. They were exhorting each other against Hindus. The rioters broke open the lock of our shop, came inside the shop and indulged in loot, damage and setting ablaze it. We went to the rear portion of the shop. We tried to prevail upon the rioters but they did not listen to us. Some of the rioters had hidden their faces by cloth or helmets whereas faces of some of them were clearly visible. We knew some of the rioters whose names are 1. Shahnawaz @ Shanu 2.Rashid @ Raja and 3.Parvez. When we came out of the said shop, we found that Shekhar Bhardwaj had also reached the spot. Thereafter, we went home.....”.

14. From the statements of these two witnesses, which corroborate each other in entirety, it is manifest that accused Shahnawaz @ Shanu, Rashid @ Raja and Parvez were the members of an unlawful assembly which attacked the Auto Parts workshop belonging to Shekhar Bhardwaj on 25.02.2020 and set it ablaze. Both of them were present in the workshop at that time and thus, had the opportunity to see and recognize the rioters. These three accused were known to them previously and thus, there would have been no difficulty to identify them in the mob.

15. According to these two witnesses, they alongwith Gopi Chand (brother of Jagdish Prasad and father of Jitender) had spend the night in the workshop due to riots in the area whereas

Shekhar (son of Jagdish Prasad) had gone home. They have stated that when they fled from the rear side of the workshop on seeing the mob, they found the Shekhar too had reached the spot. Shekhar Bhardwaj too has stated that he spent the night at home and reached his workshop on 25.02.2020 at about 10 or 11 a.m. and saw rioters numbering about 100-150 armed with rods, stones and something akin to petrol bomb which upon throwing caused blasts. He also had recognized these three accused Shahnawaz @ Shanu, Rashid @ Raja and Parvez in the mob which had attacked his workshop. Thus, he too has corroborated the version of his father and cousin. There does not appear any contradiction in the details of the riotous incident given by these three witnesses.

16. It is true that the statements of these three witnesses were recorded on 03.03.2020 but the delay in this regard does not appear to be deliberate. The complaint was submitted by Jagdish Prasad with PS on 28.02.2020 which, as mentioned in the chargesheet, was marked to Inspector Bineet Kumar Pandey for necessary action. He is stated to have made endorsement on the complaint on 02.03.2020 and accordingly, the FIR was registered on 03.03.2020. After the registration of the FIR, investigation was commenced and the statements of witnesses were recorded. Hence, it can not be said that there was any inordinate or contumacious delay in recording the FIR or in recording the statements of these three witnesses. One has to bear in mind that

in the aftermath of the riots in North East Delhi between 25.02.2020 and 27.02.2020, a deluge of complaints from riot victims were received in the police stations in the North East District which made it an uphill task for the police force to examine the complaints to know which of the offences are made out and then to register the FIRs. In such circumstances, delay of three days in registering the FIR and in recording the statements of witnesses would appear to be reasonable and justified to any prudent person.

17. Prima-facie, at this stage there does not appear any ground to disbelieve the version of these three witnesses. They have taken the names of only three accused whom they already knew and had seen them in the mob. If they had any intention to falsely implicate any person in this case, they would have taken the names of all the accused and not only of the three accused. This indicates the truthfulness of their statements and makes their statements trustworthy.

18. From the utterances of the rioters comprising the unlawful assembly, as mentioned by these witnesses in their statements, it is limpid that the object of the assembly was to create fear & panic in the minds of the people belonging to Hindu Community, threaten them to leave the country and to loot as well as burn their properties.

19. So far as the police witnesses Ct.Sanjay, Ct.Vipin and HC Hari Babu are concerned, their statements have been recorded on 08.04.2020 i.e. after more than a month of registering the FIR. As per their statements, they were present on duty in F block, Main Brijpuri Road, Bhagirathi Vihar on 25.02.2020 to control the rioters and saw a riotous mob comprising of 1000-1500 persons armed with rods, stones, petrol bombs etc.committing arson, robbery on Brijpuri Road as well as setting on fire the houses/shops. They had also seen the rioters vandalizing and setting ablaze the Shekhar Bhardwaj's Auto Parts Shop in F block, Gali no.6, Main Brijpuri Road, Bhagirathi Vihar, Delhi. Ct.Sanjay had recognized accused Mohd.Faisal, Shahnawaz, Ashraf Ali & Rashid @ Raja in the mob. Ct.Vipin had identified accused Mohd.Shoaib @ Chutwa, Rashid @ Monu, Shahnawaz & Shahrukh whereas HC Hari Babu had identified accused Parvez, Mohd.Tahir, Shahnawaz & Azad in the mob.

20. The fact that these three police witnesses had recognized different sets of the accused in the mob participating in the riotous acts, indicates that they are truthful and reliable. In case they or the IO wanted to frame the accused falsely in this case, it was easy to mention the names of all the 10 accused in the statements of these three witnesses. The contents of their statements show at this stage that they have stated only what they had seen and nothing else. Their statements nowhere indicate that they are planted or stock witnesses. They were on duty in the

area in question and had the opportunity to see the mob closely and to watch their acts. On the issue of delay in recording 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.

21. The contention on behalf of the accused that the statements

of these 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 three police officials Ct. Sanjay, 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. 25.02.2020. Therefore, it cannot be said that they had no opportunity or occasion to be at the spot of incident on 25.02.2020 and to witness the incident. Their statements prima-facie appear to be probable and reliable at this stage.

22. The submission of the Ld.Counsel for accused Mohd.Tahir that as per the CDR of his mobile phone, he was present at his house in Vijay Park, Yamuna Vihar from 24.02.2020 to

28.02.2020 continuously and hence he could not have been present in F block, Bhagirathi Vihar (the crime spot in this case) on 25.02.2020, is sans any merit. The Ld.Counsel himself stated that the distance between the two spots is mere 2 k.ms. It would not take a person more than 8-10 minutes to cover this distance by any vehicle and not more than 20 minutes to cover it on foot. The distance is not too much to hold with certainty that there was no possibility for this accused to reach the spot of incident. Moreover, it is also possible that he might have left the mobile phone at his house while coming to the incident spot which was being used by some other family members. All these aspects can be determined finally and with certainty only after the trial of the case.

23. The arguments that since accused Shoaib @ Chutwa, Shahrukh, Ashraf Ali, Azad, Faisal, Rashid @ Monu and Mohd.Tahir have been identified in the mob by only one witness, which does not meet the criteria set by the Apex Court in *Masalti's Case (Supra)* and thus they are liable to be discharged, is without any force. The case at hand is not a case where there is only a single witness who had recognized the accused participating in the riotous acts. There are 10 accused in this case and different accused have been identified by different witnesses. All the six prosecution witnesses, who have identified the accused, have given identical version of the riotous incident involved in this case. All of them corroborate each other's

version in entirety. Hence, the accused can not seek discharge merely on the ground that he has been identified by only one witness and not by other five witnesses. On this aspect, I find it appropriate to refer to the following observations of the Supreme Court in ***Duleshwar vs State of M.P (2020) 11 SCC 40*** wherein it was observed as under:

15.01. Thus, it is the quality of evidence that matters and not the quantity; and even the testimony of a single witness may be sufficient to establish the identity of an accused as member of an unlawful assembly but, when the size of assembly is quite large and many persons have witnessed the incident; and when a witness deposes in general terms, it would be useful to adopt the test of consistency of more than one witness so as to remove any doubt about identity of an accused as a member of the assembly in question. However, even if adopting such a test of consistency, what is to be looked for is the “consistent account of the incident” and the requirement of consistency can not be overstretched as if to search for repetition of each and every name of the accused in each and every testimony. In other words, the comprehension of overall evidence on record is requisite; and mere counting of heads or mere recitation of names or omission of any name in the testimony of any particular witness can not be decisive of the matter. In such facts and circumstances, even the relevance of the corroborating facts and factors like that of recovery of weapons or any other articles correlated with the crime in question can not be ignored altogether”.

24. Thus, for framing charge against the accused in case

involving riotous incidents committed by an unlawful assembly, it is not necessary that every assailant/accused should have been identified as a member of that assembly by all the prosecution witnesses. As held in *Binay Kumar Singh vs State of Bihar (1997) 1 SCC 283*, even the testimony of one single witness, if wholly reliable, is sufficient to establish the identity of an accused as a member of unlawful assembly

25. 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.

26. In the case at hand, the material on record prima-facie discloses that the accused were the members of an unlawful assembly on 25.02.2020 which had been formed with the object to create fear & panic amongst the people belonging to Hindu Community, to threaten them to leave the country and to cause

arson, loot etc. as well as to set ablaze the shops/houses belonging to them. The material on record also discloses the commission of offences of rioting, looting and setting ablaze the workshop 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 which resorted to vandalization, rioting etc. and in the process robbed & set ablaze the workshop belonging to the complainant's son. No case for their discharge is made out. It is, thus, held that the charges u/s 147/148/436/452/454/392/427 r/w Section 149 IPC are liable to framed against all the accused.

27. It may be noted here that the accused has also been chargesheeted for having committed offences u/s 188 and 153A IPC. However, the Ld.CMM vide order dt.23.12.2020 had declined to take cognizance of these offences in the absence of sanction u/s 196 Cr.PC and complaint u/s 195 Cr.PC. Therefore, the accused can not be charged with these two offences.

Announced in the open Court

(VIRENDER BHAT)
ASJ-03(NE)/KKD COURTS/13.12.2021