

DLNE01-001097-2021



**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

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Sessions Case No.	:	140/2021
Under Section	:	147/148/149/188/427/436 IPC
Police Station	:	Khajuri Khas
FIR No.	:	220/2020
CNR No.	:	DLNE01-001097-2021

In the matter of: -

STATE

V E R S U S

SH. NOOR Mohammad @ NOORA

S/o. Sh. Munna Mauji,
R/o. A-1, Gali No.6, Milan Garden,
Sabhapur Village, Sonia Vihar, Delhi.

.....Accused

Complainant : **SMT. SEEMA ARORA**
W/o Sh. Sundar Lal Arora,
R/o B-3/6, Yamuna Vihar, Delhi.

Date of Institution : 30.06.2020

Date of reserving order : 19.10.2022

Date of pronouncement : 02.11.2022

Decision : **Acquitted of all the charges.**

(Section 437-A Cr.P.C. complied with by accused)

J U D G M E N T

THE CASE SET UP BY THE PROSECUTION: -

1. The above named accused has been charge-sheeted by the police for having committed offences punishable under Section 147/148 /149/188/427/436 IPC.
2. Brief facts of the present case are that on 04.03.2020, FIR was registered on the basis of written complaint dated 28.02.2020

(received vide DD No.23-B dt.29.02.2020) at PS Khajuri Khas, Delhi, which was made by Smt. Seema Arora. Complainant alleged that on 25.02.2020, between 03:00 PM to 05:00 PM, her showroom situated at E-17, Khajuri Khas, Main Karawal Nagar Road, Delhi, was set ablaze by the rioters, who were around 100 to 150 in numbers. Complainant also alleged that she suffered financial loss/damage to the tune of around Rs.12.40 lacs. This complaint was assigned to ASI Jamshed Ali, who prepared rukka and got FIR registered, at PS Khajuri Khas, Delhi.

3. During investigation, ASI Jamshed Ali proceeded to the spot of incident and prepared its rough site plan and also seized various exhibits from the spot. Two more complaints regarding the incident of fire in aforesaid building no. E-17, were also received in the police station. One complaint was lodged by Sh. Vishal Arora alleging therein that the rioters had vandalized the Hall No.5 and 6 in the said building which were owned by him. Another complaint was lodged by Sh. Sundar Lal Arora alleging therein that the rioters had set on fire his shop in the said building due to which he had suffered loss to the tune of about Rs. 8 lacs. Since, both these complaints were also related to the incident of vandalism and arson in building no. E-17, Khajuri Khas, Main Karawal Nagar Road, Delhi, same were clubbed with the present FIR.
4. During further investigation, accused Noor Mohammad @ Noora was identified by beat Ct. Rohtash and one of the complainants namely Sh. Vishal Arora, as one of the rioters who indulged into

vandalism and arson in the area of E-Block, Main Karawal Nagar Road, Khajuri Khas including building no. E-17. IO recorded statement of both these witnesses. Accordingly, accused was arrested, in the present case. After completion of investigation, on 30.06.2020 a chargesheet was filed before Duty ACMM (North East), Karkardooma Courts, Delhi, against accused Noor Mohammad @ Noora, for offences punishable under Section 147/148/149/188/427/436 IPC. On 30.01.2021, ld. CMM (North East), Karkardooma Courts, Delhi, took cognizance of offences punishable under Section 147/148/149/ 427/436 IPC. However, ld. CMM (N/E) declined to take cognizance of offence under Section 188 IPC, for want of complaint under Section 195 Cr.P.C. Thereafter, on 22.02.2021, case was committed to the sessions court. Thereafter, on 29.11.2021, first supplementary chargesheet adding Section 34 IPC along with complaint under Section 195 Cr.P.C., was filed before ld. CMM (N/E), which was committed to the sessions court vide order dated 06.12.2021.

CHARGES :-

5. On 03.03.2022, charges were framed against accused Noor Mohammad @ Noora for offences punishable under Section 147/148/427/436 IPC read with Section 149 IPC, in following terms: -

“That on 25.02.2022 at about 3.00 pm to 5.00 pm at E-17, Khajuri Khas, main Karawal Nagar Road near Chand Bagh Pulia, Karawal Nagar within the jurisdiction of PS Khajuri Khas, you being member of unlawful assembly along with other associates (unidentified), formed an unlawful assembly and used

force or violence in prosecution of a common object of such assembly and committed rioting and also set on fire the showroom of Seema Arora besides causing damage to the articles lying therein and thereby you committed offences punishable under Section(s) 147/148/427/436 IPC read with Section 149 IPC and within my cognizance.”

6. Thereafter, on 03.08.2022, additional charge was framed against accused Noor Mohammad @ Noora for offence punishable under Section 188 IPC, in following terms: -

“That, on 25.02.2022 between 3.00 p.m. to 5.00 p.m. at E-17, Khajuri Khas, main Karawal Nagar Road, near Chand Bagh Pulia, Karawal Nagar, within the jurisdiction of PS Khajuri Khas, you accused being member of an unlawful assembly alongwith your other associates (unidentified) was present at aforesaid place, in prosecution of the common object of such unlawful assembly and in violation of the proclamation issued u/s 144 Cr.PC by the competent authority/DCP, North East vide order dated 24.02.2020 bearing no.10094-170 X-1, North East, Delhi dt.24.02.2020, which was duly announced in all the localities of District North East and, thereby you committed offence punishable under Section 188 IPC and within my cognizance.”

DESCRIPTION OF PROSECUTION EVIDENCE: -

7. Prosecution examined 8 witnesses in support of its case, as per following descriptions: -

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
PW-1/ Smt. Seema Arora	She is complainant in the present case. She narrated developments from 23.02.2020 upto 25.02.2020. PW1 gave a complaint in PS and	Ex.PW1/A (complaint of PW1)

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	identified her signature at point A on the same.	
PW-2/ Sh. Vishal Arora	<p>He is son of PW1. He also gave a separate complainant in the present case. PW2 identified his signature at point A on the same. He also deposed about receiving information of arson in this building.</p> <p>PW2 had also collected some of the half-burnt goods lying on the spot and handed over the same to IO, who seized the same vide memo. PW2 identified his signature at point A on the same. PW2 did not identify anyone in the mob.</p>	<p>Ex.PW2/A (complaint of PW2) & Ex.PW2/B (seizure memo of some of the half-burnt goods lying on the spot, collected by PW2)</p>
PW-3/HC Manoj Kumar	He had produced attested print out of PCR forms with regard to the calls received in the control room on 25.02.2020, against event ID Nos. 932788, 924621 and 925658. PW3 also identified seal and sign of ACP CPCR Rajpal Dabas, at point A on the same.	Ex.PW3/A (colly. 9 pages) (PCR forms produced by PW3.)
PW-4/ Ct. Devender	<p>In February 2020, he was posted at PS Khajuri Khas, as reader to SHO.</p> <p>On 24.02.2020, he received copy of order under Section 144 Cr.P.C., issued by DCP, North-East, through Dak/rider.</p> <p>On the direction of SHO, PW4 announced proclamation under Section 144 Cr.P.C. in the</p>	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	area of PS Khajuri Khas, through loud speaker.	
PW-5/Sh. Sunder Lal Arora	<p>He is also one of the complainants and husband of PW1/Smt. Seema Arora, who narrated incident dated 25.02.2020, in the present case.</p> <p>PW5 gave a written complaint dated 28.02.2020 in PS and identified his signature at circle X, on the same.</p> <p>On the point of identification of accused, PW5 did not support the case of prosecution.</p>	Ex.PW5/A (complaint of PW5)
PW-6/ Ct. Rohtash	<p>On 02.04.2020, he was posted at PS Khajuri Khas. On that day, IO/ASI Chander Prakash was interrogating one boy in the PS. PW6 identified that boy as part of mob, which indulged in rioting, looting and arsoning on 25.02.2020. PW6 had seen that boy while damaging property no. E-17 and shops therein, as accused was not wearing any mask. PW6 told this fact to IO/ASI Chander Prakash. He came to know name of this boy as Noor Mohammad @ Noora.</p> <p>PW6 was witness to arrest of accused. He identified his signature at circle X on the same.</p> <p>PW6 identified accused before the court.</p>	Ex. A-5 (admitted document) (arrest memo of accused)

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
PW-7/ ASI Jamshed Ali	<p>On 04.03.2020, he was posted in the PS Khajuri Khas as reader to SHO. On that day, at about 12 p.m., SHO handed over him one complaint of PW-1/Smt. Seema Arora for getting FIR registered. On receipt of that complaint, PW7 prepared rukka and handed over the same to Duty Officer, for registration of FIR. After registration of FIR i.e. Ex. A-1 (admitted document), Duty Officer handed over copy of FIR and original rukka to PW7, for investigation.</p> <p>PW7 identified his rukka and his signature appearing at circle X, on the back side of complaint Ex.PW1/A.</p> <p>On 05.03.2020, PW7 met complainants PW1, PW2 and PW5 at E-17, Khajuri Khas and prepared the site plan of E-17 at the instance of PW5/Sh. Sunder Lal Arora. PW7 identified his signature at circle X. PW7 had also recorded statement of complainants PW1, PW2 and PW5.</p> <p>PW7 also identified his signature at circle X on seizure memo Ex.PW2/B, vide which he had lifted some articles viz. Burnt camera, broken title, burnt setup</p>	<p>Ex.PW7/A (rukka prepared by PW7) & Ex.PW-7/B (site plan dated 05.03.2020)</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>box, one piece of pipe and some pieces of glass.</p> <p>Thereafter, on 06.03.2020, PW7 deposited the case file in Record Room on the direction of SHO.</p>	
PW8/ ASI Chander Prakash	<p>On 09.03.2020, he was posted at PS Khajuri Khas. On that day, on the directions of SHO, case file was handed over to him for further investigation.</p> <p>PW8 met complainants PW2/Sh. Vishal Arora and PW5/Sh. Sunder Lal Arora and obtained electricity bill of the property no. E-17 and filled bond under Section 170 Cr.P.C.</p> <p>On 02.04.2020, PW8 interrogated accused for the purpose of this case. At that time, PW6/Ct. Rohtash also came there and he identified accused, being involved in the incident at E-17, Khajuri Khas on 25.02.2020. Thereafter, PW8 arrested accused Noora in the present case, vide arrest memo Ex. A-5 (admitted document). PW8 also identified his signature at circle X on Ex.A-5. When PW8 was interrogating accused in the PS, PW2/Sh. Vishal Arora and PW5/Sh. Sunder Lal Arora, had come to PS and identified accused as the person who was involved in the incident at their property. PW8 recorded their statement under Section 161 Cr.P.C.</p> <p>On 02.06.2020, PW8 got inspected the scene of crime by Crime Team, North East. ASI Mahavir and photographer Shri Bhagwan visited the spot. Photographs were taken of the property bearing no. E-17 and SOC was prepared and handed over to PW8 by ASI Mahavir. PW8 also obtained copy</p>	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>of order passed by DCP, North East u/s 144 Cr.PC and placed the same on the record. PW8 also placed on the record the letter sent to fire brigade and response received from them. PW8 also obtained copy of DD entries and PCR forms related to this case and placed on the record. Subsequently, PW8 examined 3 PCR callers namely, Gyas, Faizan and Sanjay Sharma, on 06.06.2020.</p> <p>After completion of investigation, PW8 prepared chargesheet and filed it before the court.</p>	

PLEA OF ACCUSED UNDER SECTION 313 CR.P.C.

8. Accused Noor Mohammad @ Noora denied all the allegations and pleaded innocence, taking plea that he was falsely arrested in this case and was falsely implicated in the present case by the investigating agency to solve the case. He opted not to lead any evidence in his defence. Thereafter, DE was closed and matter was fixed for final arguments.
9. I heard ld. Special PP and ld. defence counsel for accused and I have perused the entire material on the record.

ARGUMENTS OF DEFENCE & PROSECUTION

10. Sh. Akhtar Shamim, ld. defence counsel for accused Noor Mohammad @ Noora argued that prosecution cited three complainants i.e. PW1/Smt. Seema Arora, PW2/Sh. Vishal Arora and PW5/Sh. Sundar Lal Arora, in the present case, who were joint owner of building/property no. E-17, Chand Bagh, Khajuri

Khas, Delhi. He further argued that in her testimony, PW1 mentioned about incidents dated 23.02.2020 and 24.02.2020, though, charges were framed for incident dated 25.02.2020, in the present case. Ld. counsel further argued that in their testimony PW1 and PW2 said that they saw news on T.V. and PW1 and PW5 went to building on 25.02.2020. He further argued that in his testimony, PW5 said that he was in shop on 25.02.2020. Ld. counsel further argued that complaints of PW1 and PW2, are dated 28.02.2020 and received in PS on 29.02.2020 and complaint of PW5 is undated and same was received in PS on 29.02.2020, but all of them said that they gave complaint on 28.02.2020. Ld. defence counsel further argued that PW1 was not cross-examined by ld. Special PP and hence, prosecution accepted her version, which means no incident took place on 25.02.2020. He further argued that none of PW1, PW2 and PW5, identified accused in the present case. Ld. counsel further argued that PW6/Ct. Rohtash is the only witness to identify accused, but he is a planted witness. He further argued that police did not make video related to this case and statement of PW6 was not recorded prior to 02.04.2020. He further argued that PW6 has been examined as witness in many cases of E-Block, against same accused. He further argued that PW6 identified same accused in different cases in police station, at different time on same day. He could have stated at 1st instance about all the incidents wherein he could identify accused. Ld. counsel further argued that in his testimony IO/PW8/ASI Chander Prakash mentioned that prior to 09.03.2020, he did not have any video

related to this case, though, in his testimony PW6 deposed that he had informed SHO and IO about identifying faces of rioters, on 25.02.2020, itself.

11. Per contra, Sh. Naresh Kumar Gaur, Id. Special PP for the State argued that there is nothing unnatural in identification of accused at police station. PW6/Ct. Rohtash was beat officer and he could have seen faces of the rioters. He further argued that in the given situation/atmosphere, it was not possible to make video by police in such tensed condition. He further argued that their focus was only to control the mob and to rescue the victims of that mob. Id. Special PP further argued that PW4/Ct. Devender had announced proclamation order under Section 144 Cr.P.C. dated 24.02.2020, in the area of PS Khajuri Khas, through loud speaker. He further argued that despite announcement of aforesaid proclamation, accused came out of home and joined the mob.
12. In rebuttal, Sh. Akhtar Shamim, Id. defence counsel argued that information regarding identification of accused, should have been recorded in the police station in some manner.

APPRECIATION OF FACTS AND EVIDENCE

UNLAWFUL ASSEMBLY & RIOTS

13. Testimonies of PW2, PW5 and PW6 mention about the mob, which indulged into vandalism and arson in the area covering E-17, Khajuri Khas, Main Karawal Nagar Road, near Chand Bagh Pulia, Karawal Nagar on 25.02.2020. This fact has not been challenged by the defence. PW1, PW2 and PW5 testified about damage to their shop and aforesaid property, respectively. Their

evidence read along with testimony of PW6, show that such damage was caused by a riotous mob having more than 5 persons. Though PW2 also proved some photographs of aforesaid burnt building, but he did not prove certificate under Section 65-B, Indian Evidence Act, in support of such photographs. This omission on the part of prosecution, to obtain requisite certificate from the concerned photographer and prove the photographs accordingly, leaves no option for this court but to ignore the photographs. Nonetheless, the testimonies of above-mentioned witnesses, in absence of any dispute, are sufficient to prove that there was an unlawful assembly, which committed riot in that area and vandalized the property no. E-17, Khajuri Khas. The mob also set on fire shops cum office situated on ground and first floor of this property.

IDENTIFICATION OF ACCUSED

14. The foremost question is that whether accused Noor Mohammad @ Noora was also involved in the aforesaid incident, as a member of above-mentioned unlawful assembly? To establish identity of accused as member of above-mentioned mob, prosecution relied upon testimony of PW2/Sh. Vishal Arora, PW5/Sh. Sundar Lal Arora and PW-6/Ct. Rohtash. On the point of identification of accused, PW2 and PW5 did not support the case of prosecution. PW5 turned hostile in respect of giving any statement before police on 05.03.2020 regarding identifying some of the rioters on seeing them. He was cross examined by ld. prosecutor, but to no avail. According to PW6, he saw accused in that mob, which damaged aforesaid property and shops in the

afore said property. According to PW6, accused was not wearing any mask though other persons were wearing mask. PW6 also stated that he did not know accused since prior to that incident and he had only identified his face.

15. It is matter of record that in their respective complaint, complainants PW1, PW2 and PW3 did not name accused as one of the rioters nor did they say that they had seen and could identify any of the rioters. As per testimony of IO/PW8, PW6 told him about involvement of accused in the riot for the first time on 02.04.2020. Though, the investigation of this case was entrusted to PW8 on 09.03.2020, but IO/PW8 did not examine PW6 prior to 02.04.2020. In his cross-examination, IO/PW8 deposed that in this case prior to 09.03.2020, he had no information related to this case.
16. PW6 though claimed that he had informed SHO and IO about identifying some faces on 25.02.2020 itself, but same was not formally recorded anywhere. May be during that time on account of tensed situation because of ongoing riots, it was not done so. However, proceedings of 02.04.2020 regarding interrogation of accused in other case and coincidental visit of PW2 and PW5 as well as PW6 to that place in police station at the same time, resulting into identification of accused as one of the culprits in the incident in question, does not inspire confidence to rely upon the same. Therefore, I do not find it safe to rely upon sole identification by PW6, so as to presume involvement of accused in the incident in question. Hence, I find that evidence on record

is not reliable and sufficient, to establish presence of accused in the mob, which indulged into riot and incident investigated in this case.

17.In the case of **Masalti v. State of U.P., AIR 1965 SC 202**, hon'ble Supreme Court had laid down a test for appreciation of evidence related to identification of accused persons in the unlawful assembly, wherein it was observed that four witnesses should give consistent account against the accused in cases of mob violence. Subsequently, in the case of **State of Maharashtra v. Ram Lal Devappa Rathod & Ors. (2015) 15 SCC 77**, hon'ble Supreme Court again explained the rule of prudence as laid down in the case of **Masalti** (supra) and observed that said rule of prudence does not apply when culpability of accused against whom there are specific allegations of overt acts, is in question and such rule applies only when culpability of those accused are involved, who are being made vicariously liable under Section 149 IPC for being members of an unlawful assembly and sharing its common object, without proof of any overt acts against them.

18.The evidence on the record, do not qualify the test as laid down in above mentioned legal principles, as there is no evidence of any kind of overt act against the accused herein, nor is there consistent testimony of four witnesses regarding identification of accused in riotous mob.

CONCLUSION & DECISION

- 19.** In view of my foregoing discussions, observations and findings, I find that charges leveled against the accused in this case are not proved beyond reasonable doubts. Hence, accused Noor Mohammad @ Noora is acquitted of all the charges levelled against him in this case.

Announced in the open court
today on 02.11.2022
(This order contains 16 pages)

(PULASTYA PRAMACHALA)
ASJ-03 (North- East)
Karkardooma Courts/Delhi