

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

CNR No. DLNE01-000458-2021

SC No. 50/21

State v. Mohd. Shahnawaz @ Shanu & Ors.

FIR No. 53/20

PS Gokulpuri

U/s. 147/148/380/427/436 r/w. Sec. 149 IPC & Sec.188 IPC

09.05.2023

ORDER ON SENTENCE

1. Vide this order, I shall decide the sentence against convicts **1.** Mohd. Shahnawaz @ Shanu, **2.** Mohd. Shoaib @ Chhutwa, **3.** Shahrukh, **4.** Rashid @ Raja, **5.** Azad, **6.** Ashraf Ali, **7.** Parvez, **8.** Md. Faisal and **9.** Rashid @ Monu, in this case.
2. Briefly stated, all these convicts have been held guilty for offences punishable under Section 147/148/380/427/436 read with Section 149 IPC as well as under Section 188 IPC. They have been held guilty against the charges that during the night intervening between 24.02.2020 and 25.02.2020, at Chaman Park, Shiv Vihar, Tiraha Road, Delhi from 12 midnight onwards they all belonging to Muslim community along with their other associates (unidentified) formed an unlawful assembly, the object whereof was to cause maximum damage to the persons belonging to Hindu community as well as their properties and to create fear & insecurity in the minds of the members of Hindu community and this mob including aforesaid convicts committed vandalism, theft and mischief by fire in the House No. A-49A. They all had

assembled in violation of prohibitory order passed by Id. DCP (N/E) under Section 144 Cr.P.C.

Arguments on behalf of Convicts

3. **Sh. Salim Malik**, Id. counsel for convicts Mohd. Shoaib @ Chhutwa, Shahrukh and Rashid @ Raja, argued that convict Mohd. Shoaib @ Chhutwa has the responsibility of his mother and one unmarried brother. His father is not alive. He has no property. He was an auto driver. Neither is there any previous complaint, nor FIR nor conviction against this convict. Id. counsel requested a lenient view for him.
4. In respect of convict Shahrukh, Id. counsel argued that he has the responsibility of his wife, one daughter aged 5 years, one son aged 3 years and one another son aged 1 year. He was an auto driver. Neither is there any previous complaint, nor conviction against this convict. He is in custody since 18.03.2020. Id. counsel requested a lenient view for him.
5. In respect of convict Rashid @ Raja, Id. counsel argued that he has the responsibility of his wife, one son and two daughters. There is no previous involvement in any case. No property is owned by him and he was residing in a tenanted property. He is the sole bread earner of his family. His father is suffering from heart disease. He is in custody since 19.03.2020. He was granted parole custody on 06.08.2021. Id. counsel requested a lenient view for him.
6. **Sh. Abdul Gaffar**, Id. counsel for convicts Ashraf Ali, Md. Faisal and Rashid @ Monu argued that convict Ashraf Ali is

father of four minor children, out of which three are daughters and one is son. He is sole bread earner of his family. He was not arrested previously in any other case. There is no property in his name.

7. In respect of convict Md. Faisal, ld. counsel argued that he is unmarried and has completed 23 years of age. He has no criminal antecedents. Prior to his arrest, he used to run electrical goods shop. He has family responsibility.
8. In respect of convict Rashid @ Monu, ld. counsel argued that prior to his arrest, he was an auto driver. He has no previous involvement. He has the responsibility of father and mother.
9. **Mohd. Dilshad**, ld. counsel for convicts Mohd. Shahnawaz @ Shanu, Azad and Parvez, argued that convict Mohd. Shahnawaz is unmarried person and his father is no more. He has the responsibility of his mother. He has no criminal history.
10. In respect of convict Azad, ld. counsel argued that he is the sole bread earner of his family and he has the responsibility of wife and one daughter, who is suffering from neck problem.
11. In respect of convict Parvez, ld. counsel argued that he has no previous criminal history. He is sole bread earner of his family, having responsibility of his wife and three children. He is residing separately from other family members.

Arguments on behalf of Prosecution

12. **Sh. D.K. Bhatia**, ld. Special PP for State argued that more than 600 FIRs were lodged for different incidents in North-East District, in which huge number of public properties were

destroyed. More than 50 persons were killed. Some group of people hatched a conspiracy, when President of U.S.A. namely Mr. Donald Trump had come to India, to cause communal riots. Convicts joined unlawful assembly and disobeyed the prohibitory order issued under Section 144 Cr.P.C. dated 24.02.2020. It was further argued that convicts had violated due process of law and order. They should have kept themselves closed in their houses. It was further argued that in different parts of North-East District, large number of people came out on the road with lathi, danda, stone and they joined the unlawful assembly with particular aim to destroy the property of the persons belonging to Hindu Community, to kill and to injure them. It was further argued that a message should go to the masses by giving severe punishment to these convicts. It was further argued that maximum punishment should be awarded to the convicts.

Punishment provided in Law

13. The punishment provided for the offences for which the convicts have been held guilty, are as follows: -
 - 13.1. Section 147 IPC - Imprisonment of either description for a term which may extend to two years, or with fine, or with both.
 - 13.2. Section 148 IPC - Imprisonment of either description for a term which may extend to three years, or with fine, or with both.
 - 13.3. Section 380 IPC - Imprisonment of either description for a term which may extend to seven years, and fine.
 - 13.4. Section 427 IPC - Imprisonment of either description for a term which may extend to two years, or with fine, or with both.
 - 13.5. Section 436 IPC - Imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and fine.

- 13.6. Section 188 IPC - Imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Victim Impact Report

14. A victim impact report was submitted by Id. Secretary, DLSA, North East, Delhi, in pursuance to the judgment passed by High Court of Delhi, in the case of **Karan v. State, Criminal Appeal No. 352/2020**, decided on 27.11.2020. As per this report, in the incident, the victim's house was set ablaze by the mob including convicts during Delhi Riots in 2020, causing a monetary loss of Rs.35 lacs to the victim Rekha Sharma. It is also reported that the victim had received a compensation of Rs.2,50,000/- from the office of SDM.
15. The convicts submitted affidavits of their assets and income in the format of Annexure-A. The particulars given by the convicts in their affidavit have been verified through SDM/Police/Prosecution and after considering the same, paying capacity of the convicts was assessed as under: -
- 15.1. Convict **Shahnawaz @ Shanu** was running a Pan (Betel Leaf and Tobacco) shop and used to earn Rs.10,000/- per month from that shop. The convict has bank account which has no balance in it. The convict possesses no movable and immovable property registered in his name.
- 15.2. Convict **Mohd. Shoib @ Chhutwa** was a driver by profession who used to earn Rs.15,000/- per month from that profession. The convict has no bank account, nor does he possess any movable and immovable property in his name.
- 15.3. Convict **Shahrukh** was a driver by profession who used to earn Rs.15,000/- per month before his conviction. The convict has no bank account, nor does he possess any movable and immovable property in his name.

- 15.4. Convict **Rashid @ Raja** used to make gate grills and earn Rs. 25,000/- per month before his conviction. The convict has no bank account, nor does he possess any movable and immovable property in his name.
- 15.5. Convict **Azad** was an electrician by profession, who used to earn Rs.15,000/- per month before his conviction. The convict does not possess any movable or immovable property in his name.
- 15.6. Convict **Ashraf Ali** was a hawker by profession, who used to sell clothes and earn Rs. 10,000/- per month before his conviction. The convict does not possess any movable and immovable property in his name.
- 15.7. Convict **Parvez** was a motor mechanic by profession, who used to earn Rs. 15,000/- per month before his conviction. The convict possesses a 149 sq. feet house and Hero Honda Splendor (Model 2013) bike in his name. He also has a bank account in Oriental Bank of Commerce.
- 15.8. Convict **Md. Faisal** used to sell electrical appliances and earn Rs. 20,000/- per month before his conviction. The convict does not possess any movable or immovable property in his name.
- 15.9. Convict **Rashid @ Monu** was an auto driver by profession, before his conviction. His income is not stated in the report. The convict does not possess any movable or immovable property in his name.

Recommendations of Delhi Legal Services Authority North East

16. It is further reported that the victim claimed to have suffered a pecuniary loss of Rs. 35 Lakh, but has no supportive documents to corroborate the claim. Thus, it is recommended that the court may order reasonable compensation to be paid by the convicts cumulatively.

APPRECIATION OF LAW, ARGUMENTS AND FACTS

17. In **Manoj Pratap Singh v. State of Rajasthan, (2022) 9 SCC 81**, Hon'ble Supreme Court referred to some aggravating and mitigating circumstances. The court was though dealing with

question of desirability of death sentence in that case, but the possible aggravating and mitigating circumstances can be looked into as per peculiar facts and circumstances of each case. The criteria were termed as “crime test and criminal test”.

CRIME TEST

18. The Preamble of our Constitution refers to our resolve to constitute our nation into a secular country and it also refers to our resolve to promote among the citizens “**FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation”. Thus, fraternity is one of the cherished objectives, which we as a nation intend to achieve. Our society is multifaceted society and fraternity is essential requisite to ensure integrity of our society and nation. Any challenge to fraternity among citizens is thus, challenge to integrity of our nation. Besides that, growth of our society from all perspectives including economic, cultural and political growth, also depends upon level of fraternity among citizens of our nation.
19. Communal riot is that menace, which poses serious threat to sense of fraternity among the citizens of our nation. Communal riots are treated as one of the most violent forms of public disorder that afflicts society. It leads to not only loss of life and property, but also causes great damage to social fabric. During communal riots, innocent ordinary people get caught into the circumstances beyond their control, which leads to the violation of human rights as well. In this case also, the convicts indulged into communal riots, which had its impact upon, not only limited to the people residing in the affected area, rather it affected the

mind set of people beyond limits of territory in the society. Thus, impact of the crime committed by the convicts in this case, is not limited to loss caused to the complainant only. Rather their acts left a deep scar over the social fabric, and economy and stability of our nation. The alleged acts instilled sense of insecurity among the people, while jeopardizing the communal harmony in the society.

CRIMINAL TEST

20. The victim impact report submitted by Id. Secretary, DLSA (North-East) mentions paying capacity of the convicts. This report is based upon enquiry conducted with assistance of SDM and local police, into financial background and condition of each convict. Except for Parvez, none of the other convicts are reported to own any movable or immovable property. The report shows that all the convicts were not having very sound and stable financial background. They all had been in the low-income group of the society.
21. As far education is concerned, Ashraf having passed 10th class, is the most literate person among the convicts, though his income is among the lowest ones. Thus, all the convicts were not well educated as well.
22. There is no report of involvement of any convict in other criminal cases, prior to riots. Though it is matter of record of this court itself that besides this case, all the convicts were charge-sheeted in other cases of riot as well. Some of those cases are still pending trial.

23. The overall assessment of given background of the convicts show that they were prone to be utilized by others for any nefarious job and purpose. In **Lokeman Shah v. State of W.B., (2001) 5 SCC 235**, while dealing with a case of riots, Hon'ble Supreme Court made some observations, which are relevant in this case also. The observations are: -

“25. The last and the only remaining aspect is regarding the sentence. The appellants had neither any previous enmity with the victims nor even any acquaintance with them. It is an admitted fact that they acted in a rage of fury blindfolded by communal frenzy. We are aware that in most of the communal riots the participants are by and large illiterate and indoctrinated people. When the literate leaders try to keep themselves away, without participating in the perpetration of crimes though, perhaps, some such persons would fan up the communal frenzy by their utterances in the minds of the ignorant poor people who in a deranged fury rush into the streets prowling for prey. It was an unfortunate plight of the people who are ignorant about the real sublime thoughts of religions that they threw themselves into the cauldron of communal delirium which was burning up to the boiling point. That was a time when the minds of the rioters turned demented and no sensible thoughts would enter into them. The leaders and the society have not played their part to teach them that religions are not meant for killing fellow human beings. If ignorance had promoted people to take up cudgels in the name of religion for indulging in carnage or murders, they are no doubt liable to be convicted and sentenced for the offence committed by them. But we have great difficulty to treat such a case as rarest of the rare cases in which the alternative sentence of life imprisonment can unquestionably be foreclosed.”

This was a case of death in the riots, but for the purpose of this case, the aspect of psychology and possible mental condition of persons involved in the communal riots, is relevant.

24. The defence counsels referred to reformation and sought lenient approach in sentencing. Mr. Gaffar pleaded for probation as well. However, if I take into account the assessment of both tests (crime test and criminal test) together, then I find that

repercussion of crime in this case does not allow to invoke reformatory theory of sentence. Moreover, though reformation is most ideal aim, but even for that purpose there must be some indication appearing from the conduct of the convict. It cannot be demanded just to escape the consequences of misdeeds. In the present case, sentence must be based on consideration balancing the impact of crime on the society and background of the convicts.

COMPENSATION

25. As far as compensation to the complainant/victim is concerned, it is mentioned in the victim impact report that though complainant claimed loss of Rs. 35 lacs, but she could not substantiate the same through any document. Complainant has been paid a compensation of Rs. 2.5 lacs by Delhi Government. After riots in question, government did constitute a body for assessment and award of compensation to the victims. Accordingly, aforesaid compensation has been paid to the complainant herein. It is not easy task for a victim to substantiate the loss through documents in all the cases, especially if everything was burnt. At the same time, any claim of loss may not be true account of loss. In such cases, a notional amount is fixed by the court, while keeping in view the nature of incident. In this case, apparently convicts do not have sufficient capacity to pay handsome compensation to the complainant. However, since already process of enquiry for payment of compensation is already undertaken by government, hence, I do not find requirement to refer the matter under section 357A Cr.P.C. to DLSA.

Period of Custody Undergone till date

26. As per record, period of custody undergone by the convicts till date, are as follows: -

Srl. No.	Name of Convicts	Period of Custody till date		
		Year(s)	Month (s)	Day(s)
1	Mohd. Shahnawaz @ Shanu	3	0	15
2	Mohd. Shoaib @ Chhutwa	1	10	27
3	Shahrukh	2	1	26
4	Rashid @ Raja	1	4	29
5	Azad	2	1	03
6	Ashraf Ali	3	0	15
7	Parvez	3	0	15
8	Md. Faisal	1	10	23
9	Rashid @ Monu	1	1	16

DECISION

27. Keeping in view the discussion held herein above, and period of custody of the convicts during trial, convicts are sentenced as under: -
- 27.1. All the convicts shall undergo simple imprisonment for a period of one year for offence punishable under Section 148 IPC. No separate sentence is being awarded under Section 147 IPC.
- 27.2. All the convicts shall undergo simple imprisonment for a period of three years for offence punishable under Section 380 IPC and each convict shall pay a fine of Rs. 1000/-. In default of payment

CNR No. DLNE01-000458-2021
State v. Mohd. Shahnawaz @ Shanu etc.
SC No. 50/2021, FIR No.53/2020, PS Gokalpuri
Order on Sentence dated 09.05.2023

of fine each such convict shall undergo simple imprisonment for a period of six months.

27.3. All the convicts shall undergo simple imprisonment for a period of one year for offence punishable under Section 427 IPC.

27.4. All the convicts shall undergo rigorous imprisonment for a period of seven years for offence punishable under Section 436 IPC and each convict shall pay a fine of Rs. 20000/-. In default of payment of fine, each such convict shall undergo simple imprisonment for a period of one year six months. An amount of Rs.1.5 lacs shall be disbursed to the complainant/victim as compensation from the fine recovered under this Section.

27.5. All the convicts shall undergo simple imprisonment for a period of six months for offence punishable under Section 188 IPC.

28. All the fines shall be recoverable as per Section 421 read with 431 Cr. P.C. Convicts shall be entitled for benefit u/s. 428 Cr.P.C. All the sentences shall run concurrently.

Ordered accordingly.

Announced in the open court (PULASTYA PRAMACHALA)
today on 09.05.2023 ASJ-03 (North- East)
(This order contains 12 pages) Karkardooma Courts/Delhi