



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

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CNR No. DLNE01-000976-2021
State v. Dinesh & Ors.
SC No.126/21, FIR No.124/20, PS Gokalpuri
Judgment dated 10.05.2023

Sessions Case No.	:	126/2021
Under Section	:	143/147/148/454/380/436/427/380 read with Section 149 IPC & 188 IPC.
Police Station	:	Gokalpuri
FIR No.	:	124/2020
CNR No.	:	DLNE01-000976-2021

In the matter of: -

STATE

V E R S U S

1. DINESH

S/o. Sh. Jagannath Yadav,
R/o. E-22, Gali No.3,
Bhagirathi Vihar, Gokalpuri, Delhi.

2. SANDEEP

S/o. Late Sh. Dalbir Singh,
R/o. E-24, Gali No.3,
Bhagirathi Vihar, Delhi.

3. TINKU

S/o. Sh. Ashok Kumar,
R/o. H.No.E-51, Gali No.02,
Bhagirathi Vihar, Gokalpuri, Delhi.

...Accused persons

Complainants:

1. AAKIL SAIFI

S/o. Sh. Yaseen Saifi,
R/o. H.No. E-167, Main Nala
Road, Bhagirathi Vihar, Gokul
Puri, Delhi.

2. IRFAN

S/o. Sh. Abdul Rahman Khan
R/o. H.No.C-272, Gali No.16,
Old Mustafabad, Delhi.

Date of Institution : 02.09.2020

Date of reserving Judgment : 20.04.2023

Date of pronouncement : 10.05.2023

Decision : Acquitted

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

J U D G M E N T

THE CASE SET UP BY THE PROSECUTION: -

1. The above named accused persons have been chargesheeted by the police for having committed offences punishable under Section 147/148/149/380/188/427/436 IPC, on the basis of two complaints made by complainants: - (i) Aakil Saifi, S/o Sh. Yaseen; and (ii) Irfan, S/o. Sh. Abdul Rahman Khan, regarding incidents of riot carried out by the riotous mob in their respective premises situated in Bhagirathi Vihar.
2. Brief facts of the present case are that on 04.03.2020 FIR was registered at PS Gokalpuri pursuant to receipt of a written complaint dated 02.03.2020 (recorded vide DD No.9-A) from one Aakil Saifi, s/o. Sh. Yaseen Saifi. Aakil Saifi alleged that in the night of 24.02.2020 between 3-4 O'clock, a riotous mob looted all precious wood, articles of steel 304 and 202 as well as tool box from his tenanted shop under the name and style of "Saifi Fabrication & Furniture Steel Gate Grill Railing". This shop was situated at property no. E-167, Main Nala Road, Bhagirathi Vihar, Delhi-110094. Investigation of the present case was handed over to first IO/ASI Gajraj Singh.
3. Thereafter during the course of investigation, ASI Gajraj Singh visited E-167, prepared site plan at the instance of complainant Aakil Saifi and recorded his statement. On 13.03.2020, ASI Gajraj Singh called crime team and got inspected and photographed E-167. ASI Gajraj obtained photographs as well as inspection report and recorded statement of crime team officials.

4. Thereafter, further investigation of the present case was assigned to IO/SI Dinesh Kumar. During further investigation on 15.03.2020, a complaint vide Diary No.368 was received by IO from another complainant Irfan, S/o. Sh. Abdul Rahman. In his complaint, Irfan alleged that on 24.02.2020 at around 5 PM, due to riots he closed his shop/stitching factory situated at property no. A-168, Gali No.3, Bhagirathi Vihar, Delhi. On 26.02.2020, his relative being resident of Bhagirathi Vihar, telephonically informed complainant about smoke coming out from his aforesaid factory. It was further alleged that on 27.02.2020 at about 11 AM, complainant was again informed by someone that his aforesaid factory was set on fire and everything had been burnt. His said complaint was clubbed with the instant FIR.
5. During further IO/SI Dinesh Kumar visited A-168, prepared site plan at the instance of complainant Irfan and recorded his statement. IO called crime team, got inspected A-168 and photographed it. IO obtained photographs as well as inspection report and recorded statements of crime team officials. IO also recorded statement of land lord of property no. A-168, namely Azmat Ali.
6. In his statement, Azmat Ali stated that he had given ground floor of his property no. A-168 to Irfan and Irfan was running a stitching factory therein since last two years. Azmat Ali further stated that first floor of said property was also given on rent to a family and on its top floor he was also running a stitching factory with three stitching machines, under tin-shaded room. It was further stated by him that three workers also used to reside there,

for whom TV, fridge, bed etc. were kept there. It was further stated by him that on 24.02.2020 when he was present at his aforesaid stitching unit, he heard that the atmosphere around his said house had turned scary. Azmat Ali accordingly closed his unit by 5-6 PM and asked his workers to go to their respective villages, who used to reside there. Azmat Ali also went back to his house bearing no. A-207, Gali No.5, Bhagirati Vihar, Delhi. After 2-3 days, he came to know that vandalism had taken place at A-168. After 4-5 days he went to said property and found the lock of his unit in broken condition. All the articles like TV, fridge, bed etc. were found in broken condition and the sewing machines were missing. Azmat Ali also found that the ground floor of his aforesaid building had been put on fire. It was further stated by him that his tenant Irfan Khan had given complaint in writing to the police, therefore, he did not give any complaint to the police. IO visited A-168 and seized some burnt articles.

7. During further investigation, IO recorded statement of police witnesses namely HC Sanoj and Ct. Vipin, who took name of accused Dinesh @ Michael, Mogli and Tinku. Both of them stated about involvement of named persons in the incident of the present case, being part of the mob. Thereafter, IO added Section 436 IPC in the present case.
8. IO also obtained video clip with FSL opinion, acknowledgment and other documents from SI Ashish Garg, who had already placed the same in FIR No.106/20. In this video accused persons were allegedly seen indulged in the riots. During further investigation, IO came to know about arrest of accused Dinesh

Yadav @ Michael by ASI Manvir in FIR No.78/20 and about arrest of accused Sandeep @ Mogli by ASI Ram Dass in FIR No.133/20. IO formally arrested accused Dinesh Yadav on 04.06.2020 and accused Sandeep @ Mogli on 29.08.2020. Thereafter, IO also added Section 188 IPC in the present case. IO also recorded statement of eyewitnesses Nisar Ahmad and his two sons namely Sahil Malik and Suhail.

9. After completion of investigation, on 02.09.2020 a chargesheet was filed before Id. MM (North East), Karkardooma Courts, Delhi, against accused Dinesh and Sandeep, for offences punishable under Section 147/148/149/380/188/427/436 IPC. Thereafter, on 01.12.2020 first supplementary chargesheet was filed by SI Dinesh Kumar against accused Tinku for aforesaid offences, before Id. Duty MM-01 (N/E). Thereafter, Id. CMM (N/E) took cognizance of aforesaid offences vide order dated 24.12.2020. Vide this order, Id. CMM (N/E) declined to take cognizance of offence under Section 188 IPC, for want of complaint under Section 195 Cr.P.C. Thereafter, case along with first supplementary chargesheet was committed to the sessions court on 08.02.2021. On 12.07.2022 second supplementary chargesheet along with FSL report, was filed before Link MM (N/E), which was sent by Id. CMM (N/E) to the sessions court vide order dated 18.08.2022. Thereafter, on 09.01.2023 third supplementary chargesheet alongwith complaint under Section 195 Cr.P.C. and other documents, was filed directly before this court.

CHARGES: -

10. On 27.08.2021, charges were framed against accused Dinesh Yadav @ Michael, Sandeep @ Mogli and Tinku for offences punishable under Section 143/147/148/454/380/436/427/380 IPC read with Section 149 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in following terms: -

“That in the intervening night of 24/25.02.2020 in the area of main nala road, Bhagirathi Vihar, Delhi-94, within the jurisdiction of PS Gokalpuri, all of you alongwith your other associates (unidentified) from a particular community formed an unlawful assembly, the object whereof was to cause maximum damage to the property and persons belonging to the other community and committed criminal trespass vandalism, theft and arson in the shops, houses and other properties of the persons from other community by the use of force or violence in prosecution of the common object of such assembly and thereby committed offences punishable under Section(s) 143/147/148 IPC read with Section 149 IPC and within my cognizance.

Secondly, in the intervening night of 24/25.02.2020 between 3.00 AM to 4.00 AM, at shop No.E-167 (rented and by the name of Saifi Fabrication & Furniture Steel Gate Grill Railing), main Nala Road, Bhagirathi Vihar, Delhi-94, you all being members of said unlawful assembly in furtherance of your common object alongwith your other associates (unidentified) committed lurking house-trespass in the said shop, belonging to complainant Aakil, S/o Shri Yasin, to commit offences and committed theft of various articles lying therein like expensive wooden blocks, steel 304 & 202 and tool box etc. and thereby committed offences punishable under Section(s) 454/380 IPC read with Section 149 IPC and within my cognizance.

Thirdly, in the intervening night of 24/25.02.2020, at time unknown, at premises (Silaai Karkhaana) bearing No.A-168 (ground floor) (rented), Gali No.3, Bhagirathi Vihar, Delhi-94, you all being members of the said unlawful assembly in furtherance of your common object alongwith your other associates (unidentified) committed mischief by fire or explosive substance with the intent to destroy the aforesaid "silaai karkhaana" belonging to complainant Irfaan, S/o Shri Abdul Rehman Khan and thereby committed an offence punishable under Section 436 IPC read with Section 149 IPC and within my cognizance.

Fourthly, on the aforesaid date, at time unknown, at premises bearing No. A-168 (second floor having tin shed room and silaai

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karkhaana), Gali No.3, Bhagirathi Vihar, Delhi-94, you all being members of the said unlawful assembly in furtherance of your common object alongwith your other associates (unidentified) committed lurking house-trespass in the said premises belonging to one Azmat Ali, S/o Arad Ali, by breaking open its locks to commit offences and indulged in vandalism and also committed theft of various articles lying therein like sewing machines etc. and thereby committed offences punishable under Section(s) 454/427/380 IPC read with Section 149 IPC and within my cognizance.”

11. Thereafter, on 16.01.2023, additional charge was framed against aforesaid accused persons for offence punishable under Section 188 IPC, to which also they pleaded not guilty and claimed trial. The charge was framed in following terms: -

“That in the intervening night of 24/25.02.2020 till morning hours of 25.02.2020, in and around the area of Main Nala Road, Bhagirathi Vihar, Delhi-94, within the jurisdiction of PS Gokalpuri, all of you being member of an unlawful assembly alongwith your other associates (unidentified) were 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 all committed offence punishable under Section 188 IPC and within my cognizance.”

DESCRIPTION OF PROSECUTION EVIDENCE: -

12. Prosecution examined 24 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
PW1/Shri Akil Saifi	He was one of the complaints. On 25.02.2020, PW1 received a phone call from one of the neighbourers of his tenanted shop under the name and style of “Saifi Fabricators, Furniture, Steel Gate, Grill & Railing Shop” situated at E-167, main Nala Road,	Ex.PW1/A (complaint of PW1); Ex.PW1/B (site plan prepared at the instance of PW1) &

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Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>Bhagirathi Vihar, Delhi-94, that his aforesaid shop was robbed in the intervening night of 24/25.02.2020 at about 3-4 AM. PW1 reported the matter and gave his complaint to the police.</p> <p>On 27.02.2020, police came to his shop and prepared site plan at his instance. Police also took six photographs.</p> <p>PW1 identified his signature at point A on his complaint and site plan dated 27.02.2020.</p>	<p>Ex.PW1/C (photographs taken at the instance of PW1)</p>
PW2/Shri Azmat Ali	<p>He was owner of house bearing no. A-168, Gali No.3, Bhagirathi Vihar, Delhi, where separate stitching units were running by him as well as his tenant Irfan. On 24.02.2020 due to scary atmosphere, PW2 closed aforesaid premises by 5-6 PM. After 2-3 days, PW2 came to know that vandalism had taken place in his unit at second floor.</p> <p>PW2 went to his aforesaid building after 4-5 days and found the lock of his unit in broken condition. All the articles like TV, fridge, bed etc. were found in broken condition and the sewing machines were missing. PW2 also found that the ground floor of his aforesaid building had been put on fire. His tenant Irfan Khan had given complaint in writing to the police.</p>	
PW3/HC Mahesh	<p>On 31.08.2020 he being MHC(M) at PS Gokalpuri, made entry in register no.19 vide entry no.366, regarding deposit of a sealed pullanda by SI Dinesh Kumar. PW3 also produced the original pullanda before the court.</p>	<p>Ex.PW3/A (OSR) (relevant extract of entry made by PW3 in register no.19).</p>
PW4/Ct. Rahul	<p>He was witness to formal arrest of accused Dinesh by IO/SI Dinesh</p>	<p>Ex.PW4/B (arrest memo of</p>

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	<p>in PS Gokalpuri. At that time, accused Dinesh Yadav @ Michael was in police lock-up, being arrested in FIR No.78/20, PS Gokalpuri. PW4 identified his signature at point A on the arrest memo.</p> <p>PW4 identified accused Dinesh before the court.</p>	<p>accused Dinesh)</p>
PW5/Ct. Vikas Tomar	<p>On 18.07.2020, he along with SI Manish, Incharge Crime Branch had visited A-168. PW5 took photographs and I/C conducted inspection of the spot. PW5 had taken photographs of the premises of PW1, which were identified by PW1 and were exhibited as Ex.PW1/C. PW5 furnished certificate u/s. 65-B of I.E. Act in respect of those photographs, which is Ex.A-10 (admitted document).</p>	
PW6/ASI Mahavir	<p>On 13.03.2020 on the direction of IO/ASI Gajraj Singh, he visited E-167 along with Ct. Vikas and got the spot photographed and prepared his report. PW6 identified his signature at point A on the same. PW6 handed over photographs and his report to ASI Gajraj.</p>	<p>Ex.PW6/A (Inspection report prepared by PW6 at E-167)</p>
PW7/ASI Rakesh Sharma	<p>On 04.03.2020 he being Duty Officer from 12:00 midnight to 8 AM, at PS Gokalpuri, registered FIR in the present case on the basis of rukka Ex.PW1/A, on the directions of Insp. Bineet Kumar Pandey. PW7 identified his endorsement at point B on the rukka. PW7 also executed certificate u/s. 65-B of I.E. Act in this respect, bearing his signature</p>	<p>Ex.PW7/A (Copy of FIR) & Ex.PW7/B (certificate u/s. 65-B of I.E. Act executed by PW7).</p>

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Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	at point A.	
PW8/ASI Gajraj Singh	<p>On 04.03.2020 investigation of the present case along with original rukka and copy of FIR, was handed over to him by ASI Rakesh Sharma on the direction of Insp. Bineet Kumar Pandey. PW8 identified his signature at point B on site plan Ex.PW1/B, which was prepared by him at the instance of victim Akil Saifi.</p> <p>On 13.03.2020, PW8 got inspected the spot i.e. E-167 through ASI Mahavir and obtained inspection report from him. Ct. Vikas also accompanied the team, who took photographs of the spot. ASI Mahavir handed over the photographs to PW8.</p> <p>On 20.03.2020, further investigation of the case was marked to SI Dinesh Dogra and PW8 handed over the case file to MHC(R).</p>	
PW9/Ct. Vipin	<p>On 24.02.2020 he alongwith HC Sanoj and other police staff was on arrangement duty at Johripur puliya, Bhagirathi Vihar, MCD Toll Tax area, to control the riots. On that day, at about 2 PM, PW9 saw a riotous mob of about 200-300 persons from Hindu community, who were having dandas, stones, etc. They were stopping the passers-by and after ascertaining their identity, if found to be from Muslim community, they were beating them, putting their vehicles on fire and throwing the same in the ganda nala.</p> <p>PW9 being Beat Officer of the said area, was acquainted with few persons present in the said riotous mob. PW9 identified accused Dinesh @ Michael, Sandeep @ Mogali and Tinku in that mob and before the court.</p>	
PW10/HC Sanoj	<p>On 24.02.2020 he alongwith Ct. Vipin and other police staff was on arrangement duty at Johripur puliya, Bhagirathi Vihar area, to control the riots. On that day, at about 2 PM, PW10 saw a riotous mob of about 150-200 persons from Hindu community, who</p>	

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	<p>were having dandas, stones, etc.</p> <p>This witness deposed exactly on the lines of PW9.</p>	
PW11/Insp. Manish	<p>On 18.07.2020 being Incharge Crime Team, North East District, he along with IO/SI Dinesh Kumar, Ct. Mohit and Ct. Vikas, visited A-168. PW11 inspected the said house and gave his report, bearing his signatures at point A. Ct.Vikas had taken photographs of the said house i.e. Ex.PW2/A, which were identified by PW2. PW5 furnished certificate u/s. 65-B of I.E. Act in respect of same, which is Ex. A-9 (admitted document).</p>	Ex.PW11/A (report given by PW11)
PW12/ASI Ramdass	<p>On 29.08.2020, he had arrested accused Sandeep @ Mogali in FIR No.133/2020, PS Gokalpuri. PW12 had handed over his disclosure statement to SI Dinesh/IO of the present case, who interrogated accused Sandeep @ Mogali in this case.</p> <p>PW12 identified accused Sandeep @ Mogali.</p>	
PW13/Sahil Malik	<p>On 24.02.2020 at about 5/5:30 PM, he and his other family members were present at first floor of his house bearing No.E-61/1, Nala Road, Bhagirathi Vihar, Delhi. PW13 saw gathering of 200-250 rioters at E-Block, Bhagirathi Vihar, Delhi, which was chanting slogan of “Hindu Ekta Zindabaad”. Some of the persons had installed a sound system and indulged into sloganeering, which continued till late night. PW13 constantly watched the said activity. The mob started stopping the vehicles and checking the identity documents. After some time, they started throwing the vehicles in nala after putting the same on fire. This continued for whole of the night.</p> <p>On 25.02.2020 at about 8/8:30 AM, the said mob set the house of neighbour of PW13 namely Illiyas at E</p>	

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	<p>block, on fire. Thereafter, they entered into house of PW13 and set the ground floor thereof on fire. They took out motorcycle of PW13 and also set the same on fire. PW13 went upstairs and from there he went to the house of his neighbour and saved himself. Thereafter, police rescued PW13 with his family members. PW13 identified accused Michael, Mogli and Tinku as part of the aforesaid riotous mob at E-Block on 24.02.2020 and PW13 had given such statement before IO also. PW13 knew them since long time.</p> <p>PW13 identified accused Michael, Mogli and Tinku before the court.</p>	
PW14/SI Ashish	<p>He was witness to formal arrest of accused Sandeep @ Mogli by IO/SI Dinesh Kumar in the present case. PW14 identified his signature at point A on his arrest memo.</p> <p>PW14 identified accused Sandeep @ Mogli before the court.</p>	Ex.PW14/A (arrest memo of accused Sandeep @ Mogli)
PW15/ASI Manveer	<p>He was witness to formal arrest of accused Tinku by IO/SI Dinesh Kumar in the present case. PW15 identified his signature at point A on his arrest memo.</p> <p>PW15 identified accused Tinku before the court.</p>	Ex.PW15/A (arrest memo of accused Tinku)
PW16/SI Dinesh	<p>On 16.03.2020 he received case file from 1st IO/Sh. Gajraj. On 21.03.2020 a complaint vide Diary No.368 was received by PW16 from one complainant Irfan, which was clubbed with the present case.</p> <p>On 30.03.2020, PW16 recorded</p>	<p>Ex.PW16/A (Site plan prepared by PW16 at the instance of Irfan);</p> <p>Ex.PW16/B (seizure memo</p>

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	<p>statement of HC Sanoj and Ct. Vipin. On 15.05.2020 PW16 prepared site plan at the instance of Irfan. PW16 identified his signature at point A on the same. PW16 also recorded statement of Irfan and Amjat Ali.</p> <p>On 04.06.2020, PW16 formally arrested accused Dinesh in the present case vide arrest memo Ex.PW4/B. PW16 identified his signature at point A on the same. PW16 also recorded statement of Ct. Rahul.</p> <p>On 19.07.2020, he recorded statements of Nisar, Shoaib and Sahil. On 19.08.2020, PW16 alongwith Irfan visited A-168 and lifted some quantity of ashes and burnt clothes from the spot and seized the same vide a seizure memo. PW16 identified his signature at point A. PW16 recorded statement of Irfan at the spot.</p> <p>On 29.08.2020, PW16 formally arrested accused Sandeep @ Mogli vide arrest memo Ex.PW14/A, in this case. PW16 identified his signature at point A on the same. Investigation qua accused Dinesh and Sandeep, was complete and therefore, PW16 filed charge-sheet against them.</p> <p>On 01.09.2020, PW16 formally arrested accused Tinku vide arrest memo Ex.PW15/A, in this case. PW16 identified his signature at</p>	prepared by PW16 at A-168)

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	<p>point B on the same. Thereafter, PW16 prepared supplementary charge-sheet qua accused Tinku and filed the same before the Id. CMM.</p> <p>PW16 identified accused Dinesh, Sandeep and Tinku before the court.</p>	
PW17/Nisar Ahmed	<p>On 25.02.2020 at about 7.00 AM, from the roof of his house bearing no. E-61/1, Bhagirathi Vihar, Delhi, he saw hindu rioters which started assembling at a distance of about 25 meters from his house. They were indulging into hooliganism (shor-sharaba). At about 8:45 AM, a large number of hindu rioters attacked the shop of his neighbourer namely Illiyas, vandalized the main gate, thereafter, robbed the same and put it on fire. Thereafter, the rioters proceeded towards the house of PW17.</p> <p>PW17 saw accused Michael and other persons, broke open the main gate of his house. Sonu Kutte wala, the resident of his neighbourhood, broke open the shutter of godown of PW17 at the ground floor. Then, almost 50 persons entered into his house and they were being led by Gaurav Dabra, his neighbourer. They committed robbery in godown of PW17. PW17 and his family members went and concealed themselves on the roof of his house. Rioters also robbed the dowry articles of PW17's daughter-in-law and the articles of his sons. They took out the wooden articles of his house on the road outside and put them on fire in the gali. They also tried to enter at the roof of his house. PW17 had bolted the door of third floor to block their entry towards him. Thereafter, PW17 and his family members jumped over to the house of his neighbourers and saved themselves. The Hindu neighbourers helped PW17 with a ladder to climb down to their house.</p>	

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	PW17 kept on changing his place of hiding in the houses of Hindu neighbourers. In the meantime, the rioters took out three motorcycles belonging to PW17 i.e. one Splendor bearing registration no.DL5S-CF-8277; Bullet bearing registration no.DL13-SX-8196; and Platina bearing registration no. DL-5SBP-4310 and put the same on fire in the gali. Finally, PW17 shifted with his family to Idgah Camp.	
PW18/Sh. Irfan	<p>In the month of February, 2020, he was running a factory of ready-made garments situated at A-168, Gali No. 3, Bhagirathi Vihar, Delhi, which was vandalized and set ablaze by the rioters during the riots. PW18 had received the information about the incident after about three days on telephone from somebody. With the help of Army personnel, PW18 visited the factory and found that the same was completely burnt.</p> <p>PW18 identified his signature at point A on his complaint (Ex.PW16/C), which was submitted by him in the police station, in respect of aforesaid incident. PW18 also identified his signature at point B on site plan (Ex.PW16/A). PW18 had taken photographs (Ex.PW2/A (colly.)) of his burnt factory which were later on handed over to the IO by PW18.</p>	
PW20/Sh. Praveen Kumar	<p>He was working as Alternate Nodal Officer in Reliance Jio Infocom since January, 2018.</p> <p>PW20 produced CDR and CAF of mobile no.7678210206 for period w.e.f. 20.02.2020 to 28.02.2020 in physical form under his certification and signature.</p> <p>PW20 identified his initial with official stamp on the first as well as last page at point X on the</p>	<p>Ex.PW20/A (CDR consisting of 16 pages);</p> <p>Ex.PW20/B (certified copy of printout of E-KYC of Ms. Simran);</p> <p>Ex.PW20/C (certificate under Section 65-B of I.E. Act)</p>

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Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>CDR consisting of 16 pages.</p> <p>PW20 also identified his initial with official stamp at point X on the certified copy of printout of E-KYC in the name of Ms.Simran d/o. Sh. Ashok Kumar and on the certificate u/s 65B of I.E.Act.</p> <p>PW20 also identified his initial with official stamp on all four pages at point X on certified copy of location chart consisting of 4 pages.</p>	<p>&</p> <p>Ex.PW20/D (certified copy of location chart).</p>
PW21/Sh. Suhail	<p>On 25.02.2020 at about 10 AM, on hearing noise of destruction of shutter on the ground floor of his home bearing no. H.No. E-61/1, he alongwith his father and brother Sahil went to the 3rd floor of his house and from there they went to the house situated just on the back side of his house. The resident of that house had arranged a stair from second floor of his house and using that stair PW21 alighted on the second floor of the house.</p>	
PW22/Sh. Pawan Singh	<p>He was working as Alternate Nodal Officer in Vodafone Idea Ltd. since September, 2018. PW22 produced certified copy of CDR, CAF, certificate u/s 65B of I.E.Act and Cell ID Chart in respect of mobile phone nos. 8377013535 and 8588902696 for period w.e.f. 23.02.2020 to 29.02.2020 in physical form.</p> <p>PW22 identified his signature with official stamp on both sides of the sheet at point X on CDRs of mobile nos. 8377013535 and 8588902696.</p> <p>PW22 identified his signature</p>	<p>Ex.PW22/A and Ex.PW22/B (CDR of mobile phone nos. 8377013535 and 8588902696, respectively);</p> <p>Ex.PW22/C (certified copy of printout of EKYC in the name of Sehjad Khan);</p> <p>Ex.PW22/D (OSR) (certified copy of original</p>

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Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>with official stamp at point X on the certified copy of printout of EKYC in the name of Sehjad Khan s/o Asgar Khan; on the certified copy of original CAF in the name of Krishna w/o Dalbir Singh in respect of mobile no.8588902696; on the certificate u/s.65-B of I.E. Act and on the certified copy of Cell ID Chart.</p> <p>PW22 also identified his signatures with official stamp at point X-1 on certified true copy of identity proof Krishna in the form of Election I-Card.</p>	<p>CAF in the name of Krishna in respect of mobile no. 8588902696);</p> <p>Ex.PW22/E (certificate u/s.65-B of I.E. Act);</p> <p>Ex.PW22/F (certified copy of Cell ID Chart) &</p> <p>Ex.PW22/D (certified true copy of identity proof Krishna i.e. Election I-Card).</p>
PW23/HC Pradeep	<p>On 24.02.2020, being Reader to SHO, he received an order passed by DCP, North East u/s 144 Cr.PC through Dak and had shown the same to SHO. On the directions of SHO, PW23 announced that order in the area of PS Gokalpuri i.e. Johripur Extension, Ganga Vihar, Chaman Park, Indira Vihar, Bhagirathi Vihar, Sanjay Colony, Gokalpuri and Gokalpuri Village, through loud hailer.</p>	
PW24/Sh. Mahendra Singh	<p>Being Junior Forensic/Assistant Chemical Examiner in Cyber Forensic Division, FSL, Rohini, he had conducted examination of one mobile phone make Realme alongwith one sim card of Airtel company on 29.11.2022, for retrieval of data. PW24 retrieved the data from said phone for the period w.e.f 24.02.2020 till</p>	<p>Ex.PW24/A and Ex.PW24/B (examination report prepared by PW24 and certificate u/s. 65-B of I.E. Act) &</p> <p>Ex.PW24/</p>

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	<p>26.02.2020 and copied the same in a compact disc.</p> <p>PW24 prepared a report in respect of aforesaid process. PW24 also prepared a certificate u/s 65B of IE Act for the purpose of copying the data from the primary source of mobile phone and sim card in the compact disc. PW24 had put his signature on that compact disc alongwith FSL number i.e. SFSL/DLH/14913/CO/2449/22. That compact disc was also endorsed with 'CD-1'</p> <p>PW24 sealed this CD alongwith his report in a parcel, with his seal of 'FSL CFD Delhi'. Thereafter this sealed parcel was deposited with his division.</p> <p>PW24 identified his signature at circle X on his report as well as certificate u/s 65B of IE Act.</p>	Article1(CD-1).
<p>Admitted documents under Section 294 Cr.P.C.</p> <p>Prohibitory order u/s. 144 Cr.P.C. as Ex.A-1; CDR of mobile no.7678210206 for the period 20.02.2020 to 28.02.2020 as Ex.A-2 (colly.16 pages); CDR of mobile no.8377013535 for the period 23.02.2020 to 29.02.2020 as Ex.A-3 (colly.6 pages); Bharti Airtel Limited Cell ID Chart of mobile no.8377013535 & 8588902696 as Ex.A-4 (colly.4 pages); certificate u/s. 65-B of IE Act issued from Vodafone Idea Limited, Reliance Jio Infocomm Ltd., Bharti Airtel Limited as Ex.A-5, Ex.A-6 & Ex.A-7, respectively; complaint u/s. 195 Cr.P.C. as Ex.A-8; certificates u/s. 65-B of IE Act issued by Ct. Vikas Tomar (Photographer/ Mobile Crime Team) in respect of 13 photographs taken at A-168, as Ex.A-9 and in respect of 7 photographs taken at E-167, as Ex.A-10 and consolidated site plan dated 14.08.2022 as Ex.A-11.</p>		

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

13. Accused persons denied all the allegations and pleaded innocence, taking plea that they were falsely implicated in this case by the investigating agency. They also took plea that they were falsely arrested in this case only to work out this case. Accused persons did not opt to lead any evidence in their defence.

ARGUMENTS OF DEFENCE

14. I heard ld. Special PP as well as ld. counsel/ld. Amicus Curiae for accused persons and I have perused the entire material on the record.
15. **Sh. Rakshpal Singh**, ld. counsel for accused Sandeep @ Mogli and ld. Amicus Curiae for accused Dinesh @ Michael and Tinku argued that none of the witnesses except PW9 and PW10 were relevant for incidents in question. It was further argued that PW9 and PW10 did not depose that they saw accused persons in the intervening night of 24/25.02.2020. They made general statement only, which is irrelevant in this case. PW9 and PW10 were planted witnesses and their evidence is not credible.

ARGUMENTS OF PROSECUTION

16. Per contra, **Sh. R.C.S. Bhadoria**, ld. Special PP for State argued that PW9 and PW10 identified accused persons. PW13 also identified accused persons in his cross-examination and therefore, it is proved that accused persons were involved in the incidents prosecuted in this case.

APPRECIATION OF FACTS AND EVIDENCE
UNLAWFUL ASSEMBLY & RIOT

17. On perusal of testimony of PW1, PW2 and PW18, it emerges on the record that property no. E-167 and A-168 were vandalized and some articles lying there were looted. It also emerges on the record that ground floor of A-168 was set ablaze. PW1, PW2 and PW18 were the victims of such incidents. However, these witnesses were not present at these places at the time of incident. Hence, their statement that such incident was caused by a mob of rioters, is based on hearsay only. These witnesses stated that they had been informed by some persons about vandalism and arson at their respective places. They did not disclose particulars of those informers nor IO found out their particulars. The evidence of these victims cannot be the basis to say that these incidents were caused by a mob.
18. Apart from aforesaid victims, prosecution and Id. Special P.P. relied upon evidence of two beat constables PW9 and PW10, as well as father-son duo PW13 and PW17, to prove the incidents probed in this case. PW9 and PW10 deposed that they were on duty at Johripur pulia, Bhagirathi Vihar on 24.02.2020. Both of them referred to seeing a mob at 2 pm. However, the place of incidents in this case were away from Johripur pulia. These witnesses did not say anything about the incidents taken place at E-167 and A-168, Bhagirathi Vihar. Even the time of incident at E-167 and A-168 is alleged to be in the intervening night of 24 and 25 February. Therefore, witnessing a mob at 2 pm of 24.02.2020 does not establish anything about the incidents probed in this case.

19. PW13 and PW17 were residents of E-61/1, Nala Road, Bhagirathi Vihar. None of these two witnesses deposed any thing about incidents at E-167 or A-168. They either mentioned incident at their own house or house of their neighbour Illiyas. PW17 admitted in his cross examination that he did not see incident at the places of three victims of this case. Therefore, evidence of these two witnesses also does not help in reaching to any conclusion about incidents at E-167 or A-168.
20. As far as PW13 is concerned, from his evidence I also find that identification of accused by this witness was based on leading him to do so during his cross-examination conducted by Id. Special PP. However, the relevant facts in respect of which this witness was cross-examined by Id. Special PP, were not asked from this witness during his examination-in-chief at all. Without seeking any answer from this witness on those facts, he was straightaway given suggestions by Id. Special PP, which was a wrong practice. Such kind of evidence cannot be relied upon by the court even otherwise.
21. There may be strong possibility that incidents at E-167 and A-168 were caused by a mob. However, possibility cannot become evidence in itself and it has remained a matter of presumption of prosecution, based on hearsay evidence or on the basis of possibility only, that there was a mob behind these incidents. It is well settled legal proposition that presumption/strong suspicion cannot be a substitute of evidence. Therefore, for want of any evidence on the record, I am unable to say that there was a mob behind both the incidents probed in this case.

IDENTIFICATION OF ACCUSED PERSONS

22. The next question is that whether accused persons herein were involved in the aforesaid incidents? As already mentioned herein above, though prosecution examined and relied upon evidence of PW9, PW10, PW13 and PW17, but these witnesses did not say any thing about witnessing the incidents probed in this case. It is case of the prosecution that accused persons were member of the mob, which vandalized both properties. However, prosecution even could not prove that there was a mob behind these incidents. In that situation, the inevitable conclusion is that there is no evidence on the record to show involvement of the accused persons in the incidents at E-167 and A-168, Bhagirathi Vihar.

CONCLUSION & DECISION

23. In view of my foregoing discussions, observations and findings, I find that charges levelled against the accused persons in this case are not proved at all. Hence, accused Dinesh Yadav @ Michael, Sandeep @ Mogli and Tinku, are acquitted of all the charges levelled against them in this case.

Announced in the open court (PULASTYA PRAMACHALA)
today on 10.05.2023 ASJ-03 (North- East)
(This order contains 23 pages) Karkardooma Courts/Delhi