



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

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CNR No. DLNE01-003772-2021
State v. Javed
SC No.387/21, FIR No.79/20, PS Dayalpur
Judgment dated 24.08.2023

Sessions Case No.	:	387/2021
Under Section	:	147/148/427/435/436 IPC r/w. Sec. 149 IPC and Sec. 188 IPC
Police Station	:	Dayalpur
FIR No.	:	79/2020
CNR No.	:	DLNE01-003772-2021

In the matter of: -

STATE

V E R S U S

SH. JAVED

S/o. Shri Dinni Khan,
R/o. H.No. 2005, Gali No.19,
New Mustafabad, Delhi.

.....Accused

Complainants :

- 1. SH. RAJIV SHARMA**
S/o. Sh. Shyam Bihari,
R/o. H.No. 350, Gali No.6,
Moonga Nagar, Delhi-94.
- 2. SH. JAVED KHAN**
S/o. Sh. Baleddin Khan,
R/o. H.No.B-134, Gali No.2,
Chandu Nagar, Karawal Nagar,
Delhi.
- 3. SH. JAMEER AHMAD**
S/o. Sh. Nanhe Khan,
R/o. H.No.276-B, Gali No.4,
Moonga Nagar, Delhi.
- 4. MOHD. MUZAHID**
S/o. Mohd. Izhar,
R/o. B-244, Gali No.2,
Chandu Nagar, Delhi.
- 5. MASTER SALMAN**
S/o. Sh. Ali Hasan,
R/o. H.No.10, Gali No.5,
B-Block, Chand Bagh, Delhi.

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Date of Institution : 13.07.2020
Date of reserving order : 09.08.2023
Date of pronouncement : 24.08.2023
Decision : Acquitted.

(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. As per the prosecution case, an information was received from the Control Room in the Police Station Dayalpur on 25.02.2020 at about 2:45 PM, to the effect that the riots were taking place in Gali No. 6, Munga Nagar near R.P. Public School and several persons were injured. The information was recorded as GD No. 31A and was assigned to ASI Hira Lal for action. ASI Hira Lal reached the spot of incident and found a mob comprising of about 1000 to 1100 persons present there. SHO PS Dayalpur along with other staff was also present at the spot and was trying to prevail upon the mob to maintain peace and order. The persons in the mob were armed with rods, petrol bombs etc. No injured was found at the spot. Meanwhile, the mob became more violent and started pelting stones as well as petrol bombs, as a result of which the neighboring houses as well as R.P. Public School caught fire. The police fired teargas cells in order to control the mob and also fired gun in the air.
2. On the basis of his observations at the spot, ASI Hira Lal prepared rukka and FIR u/s 147/148/149/427/436 IPC and Section 3/4 PDPP Act was registered. The investigation was

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entrusted to ASI Hira Lal. He contacted the informant Rajiv Sharma who had made a call at Telephone No. 100 and recorded his statement. Thereafter, four separate complaints were received in the police station, as under: -

- 2.1. Complaint dated 29.02.2020 (recorded vide DD No.53-B dated 29.02.2020 and Dy. No.35 dated 02.03.2020) of Javed, wherein he alleged that on 25.02.2020 at around 5 PM, as informed by local residents, the rioters had broken the shutter of his Institute, which was running under the name and style of M/s Mission Guide Institute. This institute was running in property bearing no. A-97, on 2nd and 3rd Floor, near Sherpur Chowk, Delhi. It was further alleged that rioters entered into aforesaid institute, damaged and set ablaze the same as well as all the goods lying therein.
- 2.2. Complaint dated 29.02.2020 (recorded vide DD No.47-B and Dy. No.30 dated 02.03.2020) of Md. Muzahid, wherein he had mentioned that on 25.02.2020 a riotous mob had broken the shutter of his shop, situated at B-22, Gali No. 6/2, Nehru Vihar near Maavi Hospital, where he used to do work related to Steel and Iron Grills. It was further alleged that that mob had looted a number of goods lying therein as well as set ablaze his two motorcycles bearing registration No. DL5SAQ6029 make and model Splendor and DL7SU7096 make and model Bajaj Caliber, after removing the same outside his shop. It was further alleged that they also looted steel pipes and cash amount of Rs.1,75,000/- breaking the counter of said shop. It was further alleged by Md.

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Muzahid that they also looted working machines and tools lying therein.

- 2.3. Complaint of Zamir Ahmed dated 28.02.2020 (recorded vide Dy.No.2256/G.D/NE dated 02.03.2020; Dy. No.06-Z/CMTS dated 16.03.2020, SHO PS Dayalpur; Dy.No.R-75, dated 09.03.2020, ACP Gokalpuri, N.E.; Dy. No.R-107 dated 03.03.2020 Compt/NE, Office of DCP, N.E.), wherein he alleged that on 25.02.2020, the rioters had looted his rented shop situated in Gali No.9, Munga Nagar, New Building, Karawal Nagar Road, Delhi, where he used to sell the coolers. It was further alleged that rioters looted coolers and cooler items worth Rs.15-16 lakh.
- 2.4. Complaint dated 17.03.2020 (recorded vide DD No.46-B dated 18.03.2020) of Master Salman, wherein he had alleged that he had suffered a bullet injury on his right leg on 25.02.2020 in the morning, when he was coming out of the Mosque after offering Namaz and he became unconscious.
3. All the above-mentioned complaints were clubbed with this FIR and were jointly investigated. During the course of the investigation, rough site plan of the place of incidents were prepared by the IO.
4. Statement u/s 161 Cr.P.C of Ct. Pawan Kumar was recorded on 14.04.2020, who claimed to have witnessed the riotous incidents involved in this case and had identified the accused Javed as one of the rioters. On the basis of his statement, accused Javed was arrested from his residence on the same day i.e. on 14.04.2020. He allegedly made a disclosure statement admitting therein that

he had indulged in rioting and arson at Sherpur Chowk, Delhi near R. P. Public School on 25.02.2020. Thereafter, statements of other material witnesses were recorded. It is mentioned in the charge-sheet that the medical examination of injured/complainant Salman could not be got conducted in LNJP Hospital, as the same had been designated as Covid Centre.

5. After completion of investigation, on 13.07.2020 a chargesheet was filed by IO/ASI Hira Lal before Duty MM-03, (North East), Karkardooma Courts, Delhi, against accused Javed for offences punishable under Section 147/148/149/427/435/436/120-B IPC and Section 3/4 of PDPP Act. On 17.12.2020, Id. CMM (N/E) took cognizance of aforesaid offences, and the case was committed to the court of sessions vide order dated 29.10.2021. Thereafter, on 22.11.2021, first supplementary chargesheet with addition of Section 188/307/380/454 IPC, along with complaint u/s. 195 Cr.P.C. and certain documents, was filed by IO/SI Navdeep Sandhu before Id. CMM, North East District, Karkardooma Court, Delhi. On 04.12.2021, Id. CMM (N/E) sent this supplementary chargesheet to the court of sessions. Thereafter on 12.09.2022, second supplementary chargesheet was filed by IO directly before this court.

CHARGES: -

6. On 26.02.2022, charges were framed against accused Javed for offences punishable under Section 147/148/427/435/436 IPC read with Section 149 IPC, to which he pleaded not guilty and claimed trial. The charges were framed in following terms: -

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“That on 25.02.2020 at about 2.00 to 6.00 pm at Munga Nagar, Main Karawal Nagar Road near R.B. Public School within the jurisdiction of PS Dayalpur, 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 in violation of the Proclamation issued under Section 144 IPC by the competent authority and committed rioting and you knew being member of the aforesaid unlawful assembly that an offence was likely to be committed in prosecution of that common object and thereby you all along with your other associated (unidentified) committed offences punishable under Section (s) 147/148 IPC read with Section 149 IPC and within my cognizance.

***Secondly**, on the aforesaid date, time and place, you being member of unlawful assembly along with your associates (unidentified) committed mischief and thereby caused loss or damage to the complainants namely Javed, Mohd. Mujahid & Jameer Ahmed to the amount of fifty rupees or upwards and as such committed offence punishable under Section 427 IPC read with Section 149 IPC and within my cognizance.*

***Thirdly**, on the aforesaid date, time and place, you being member of unlawful assembly along with your associates (unidentified) committed mischief by fire or any explosive substance with the intent to cause damage to property to the amount of one hundred rupees or upwards of the complainants namely Javed Khan, Mohd. Mujahid & Jameer Ahmed as such committed offence punishable under Section 435 IPC read with Section 149 IPC and within my cognizance.*

***Fourthly**, on the aforesaid date, time and place, you being member of unlawful assembly along with your associates (unidentified) committed mischief by fire or any explosive substance with the intent to destroy the tuition center of the complainant namely Javed Khan at A-97, 2nd & 3rd Floor, near Sherpur Chowk, Delhi and as such committed offence punishable under Section 436 IPC read with Section 149 IPC and within my cognizance.”*

7. Thereafter, on 24.08.2022, additional charge was framed against aforesaid accused for offence punishable under Section 188 IPC, to which also he pleaded not guilty and claimed trial. The charge was framed in following terms: -

“That, on 25.02.2020 at about 2 p.m. to 6 p.m. at Munga Nagar, Main Karawal Nagar Road, near R.B.Public School, within

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the jurisdiction of PS Dayalpur, 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: -

8. Prosecution examined 10 witnesses in support of its case, as per following descriptions: -

Sl. No. & Name of Witness	Role of witness & Description of his testimony and proved documents	Proved documents/ case properties
PW1/Sh. Pooran Singh	<p>He was resident of H.No.330, Gali No.5, Moonga Nagar, Delhi-94.</p> <p>Around 1-1.5 years back (from 12.09.2022) on 25th date, at about 2-2.30 PM, he was present at his aforesaid home, which was in a gali after 3-4 houses from Karawal Nagar Road. On that day, PW1 found a mob on the road from Chand Bagh Pulia up to gali no.4. PW1 witnessed pelting of stones from both the sides and told police about the same. PW1 had also seen sword and lathi in the hands of members of the mob.</p> <p>On the point of identification of accused, he did not support the case of prosecution and was declared hostile.</p>	
PW2/Sh. Shyam Sahani	<p>He was resident of H.No.352, on the corner of Gali No.6, Karawal Nagar Road, Chand Bagh, Delhi.</p> <p>On 25.02.2020, at about 2 PM, PW2 saw a mob at Chand Bagh Pulia up to Gali No.4, Moonga Nagar. The said mob was pelting stones towards Moonga Nagar. At about 3 PM, PW2 left his aforesaid home and went to gali no.6 to the house of his known person.</p> <p>On the point of identification of accused, he did not support the case of prosecution and was declared hostile.</p>	

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Sl. No. & Name of Witness	Role of witness & Description of his testimony and proved documents	Proved documents/ case properties
PW3/Sh. Jameer Ahmed	<p>He was one of the complainants, in this case and was residing at H.No. 276B, gali no.4, Moonga Nagar.</p> <p>On 25.02.2020, during noon time, he was telephonically informed by some unknown person, regarding vandalism taken place in his shop, which was situated at the corner of gali no.9, on the ground floor in Moonga Nagar. Next day, when PW3 visited his aforesaid shop, he found that shutter of his shop was in broken condition and many articles from his shop were missing. Some articles were lying in burnt condition on the road and some articles were lying scattered in the shop.</p> <p>PW3 gave a complaint to police in this regard. PW3 identified his signature at circle X on the same.</p> <p>PW3 also got his shop photographed from a person through mobile phone of that person, had taken print of those photographs form him and handed over the same to the police. Police also took photographs of his shop from his mobile phone.</p> <p>On the point of identification of accused, he was not relied by prosecution.</p>	Ex.PW 3/A (complaint of PW3)
PW4/ Mohd. Mujahid	<p>He was also one of the complainants of this case.</p> <p>He gave a complaint to police on 29.02.2020, regarding missing of all the articles from his shop for welding work situated at property no. B-22, gali 5/6, Nehru Vihar, Sherpur Chowk, Delhi.</p>	Ex.PW-4/A (complaint of PW4); Ex.PW4/B (certificate u/s 65B of IE Act) &

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Sl. No. & Name of Witness	Role of witness & Description of his testimony and proved documents	Proved documents/ case properties
	<p>Shop was closed by him in the evening of 23.02.20; He came to shop on 26.02.2020 and found his Hero Honda motorcycle in burnt condition near Maavi Hospital and another motorcycle of Bajaj Company in damaged condition. Both were parked by PW4 inside said shop. Documents and registers kept inside said shop were burnt, though shop was not burnt. PW4 identified his signature at circle X on his complaint.</p> <p>PW4 took 25 photographs of his shop from his Samsung mobile phone, obtained print of the same and handed over to the police. PW4 also identified his signature at circle X on certificate u/s 65B of IE Act.</p> <p>On the point of identification of accused, he was also not relied upon by the prosecution.</p>	<p>Ex.PW-4/P-1 to Ex.PW-4/P-25 (25 photographs took by PW4 from his Samsung Mobile phone).</p>
PW5/Ct. Ankit	<p>On 24.02.2020, at about 8.15 AM, PW5 received a call from Reader to SHO regarding passing of an order by DCP, North East u/s 144 Cr.PC. On instructions of Reader to SHO, PW5 announced that order in the area of PS Dayalpur. PW5 asked his companion police official to bring loud hailer from the PS and he did so. Thereafter, PW5 took a TSR auto from Shiv Vihar Tiraha and made announcement of proclamation u/s 144 Cr.PC in the area of Brijpuri Pulia; Mustafabad; Brijpuri T point; Brijpuri; Chand Bagh; 25 foota road Mustafabad; old Mustafabad; Babu Nagar; and Mahalaxmi Enclave.</p>	
PW6/SI Ravi Punia	<p>On 09.09.2022, further investigation of the present case was entrusted to him, on the instruction of SHO. PW6 was handed over the file by MHC(R).</p>	<p>Ex.PW6/A (site plan prepared by PW6 at the</p>

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	<p>On 10.09.2022, PW6 visited house of witnesses Zamir and Mujahid; obtained certificate u/s 65B of IE Act from them in respect of photographs already submitted by them in this case and prepared a combined site plan at the instance of Zamir, Mujahid and Salman. PW6 identified his signature at point X on that site plan.</p> <p>On 05.12.2022, PW6 again obtained print of photographs as taken by witness Mujahid in his Samsung mobile phone and certificate u/s 65B IE Act in that respect.</p>	instance of Zamir, Mujahid, Salman)
PW7/SI Navdeep	<p>On 01.09.2021, present case was marked to him for further investigation and he obtained case file from MHC(R).</p> <p>PW7 called one of the PCR callers namely Narayan Pratap to the Police Station and recorded his statement.</p> <p>PW7 had recorded supplementary statement of complainants namely Mujahid, Javed and Salman, on separate dates, who had submitted colour print of photographs of their respective shops, as taken by them. PW7 obtained certificate u/s 65B IE Act in respect of those photographs from all these three persons.</p> <p>PW7 also obtained a complaint u/s 195 Cr.PC. in respect of violation of order u/s 144 Cr. PC. PW7 prepared a supplementary charge sheet and filed aforesaid materials alongwith statement of two other witnesses namely Shyam Sawhney and Puran Sawhney, which were already recorded by the previous</p>	<p>Ex.PW7/A (site plan related to shop of Javed Khan);</p> <p>Ex.PW7/B (site plan related to shop of Mujahid);</p> <p>Ex.PW7/C (site plan related to place of occurrence with Salman Master);</p> <p>Ex.PW7/D (site plan related to shop of Zamir</p>

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	<p>IO.</p> <p>PW7 also visited and inspected place of crime related to incidents of Javed, Zamir, Mujahid and Salman. PW7 had prepared separate site plans of all these four places of occurrence and placed them in the case file.</p> <p>PW7 identified his signature at point X on the site plan related to shop of Javed Khan, Mujahid, Zamir Ahmed and to place of occurrence with Salman Master.</p> <p>PW7 had also prepared a composite site plan, bearing his signature at point X.</p>	<p>Ahmed) & Ex.PW7/E (composite site prepared by PW7).</p>
PW8/ ASI Hira Lal	<p>On 25.02.2020, during noon time, DO handed him over DD no.31A regarding riot taken place near RP Public School, Chand Bagh Pulia, for taking further action.</p> <p>PW8 alongwith Ct. Pawan reached RP Public School and found a mob of around 1000-1500 persons at Chand Bagh Pulia. This mob was raising slogan against NRC/CAA. This mob was equipped with weapon like lathi, danda, petrol bomb etc. After some time, SHO Tarkeshwar Saheb reached that place and he tried to disperse that mob, but the mob became more aggressive. The SHO had asked the mob not to assemble together and asked the mob to go back to their respective places, but the mob did not relent and listen to him. After some time, that mob became more aggressive and the mob started pelting lathi, danda, petrol bomb on the shops on the side of Moonga Nagar as well as on the police</p>	<p>Ex.PW8/A (rukka prepared by PW8);</p> <p>Ex.PW8/B (site plan prepared by PW8);</p> <p>Ex.PW8/C & Ex.PW8/D (arrest and personal search memo of Javed);</p>

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Sl. No. & Name of Witness	Role of witness & Description of his testimony and proved documents	Proved documents/ case properties
	<p>party. Police party including PW8 was present at Chand Bagh Pulia.</p> <p>After coming back to PS, PW8 prepared rukka, on the basis of aforesaid DD entry and got the FIR registered. PW8 identified rukka appearing from point A to A1, bearing his signature at point X.</p> <p>After registration of FIR, DO handed over rukka with copy of FIR to PW8 for further investigation. Thereafter, PW8 again went back to RP Public school and prepared site plan of that place. PW8 identified his signature at circle X on said site plan.</p> <p>On 29.02.2020, reader to SHO handed over complaint of Javed for further action. PW8 clubbed that complaint in the present case, because incident reported in that complaint was near to RP Public School. Subsequently, PW8 received another complaint of Mujahid, Javed and one another complainant, which were also clubbed in the present case for the same reasons. Complainant Javed had reported about setting fire in his Institute. Mujahid had reported about burning of his 2 motorcycles, loot and arson in his shop of fabricator. One complaint was received in respect of shop of cooler and 4th complaint was made by Salman regarding firing at him. PW8 met all these complainants and visited their respective shops several times.</p> <p>On 14.04.2020, PW8 arrested accused Javed in this case, on the identification</p>	

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	<p>of Ct. Pawan, who had seen him in the mob. PW8 recorded statement of Ct. Pawan in this case on 14.04.2020 and that of informant Rajeev Sharma on whose information, DD no.31-A was recorded. PW8 had prepared arrest memo and personal search memo of accused Javed. PW8 identified his signature at circle X on the same.</p> <p>PW8 prepared chargesheet and filed it before the court. The 3 complainants had furnished list of articles, which were damaged in their respective incidents.</p> <p>PW8 had recorded statement of Rajiv, Shyam, Javed s/o Balledin, Mujahid s/o Izhar, Jameer s/o Nanhe Khan, Ct. Pawan and Ct. Saudan.</p> <p>Complainants Javed and Mujahid had handed over photographs. PW8 had given notice u/s 160 Cr.P.C. to Javed, Mujahid & Jameer. PW8 had collected MLC of Salman from LNJP hospital.</p> <p>Complaints Ex.PW3/A & Ex.PW4/A were received by PW8. PW8 identified accused in the court.</p>	
PW9/Ct. Pawan	<p>On 25.02.2020, on assignment of his duty at Chand Bagh Pulia, he reached there on duty at about 11 AM and prior to that PW9 was in PS. Ct. Saudan and outer force were also there on duty with PW9 at that place.</p> <p>PW9 saw a mob of around 100 persons there, which had been increasing. At about 2 PM, this mob consisted of about 800-900 persons. 5-7 persons were leading this mob and at about 2 PM, they started vandalizing the vehicles parked on main road near Chand Bagh Pulia. They were carrying danda, petrol bombs, iron rod etc.</p>	

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	<p>There were shops on the side of Moonga Nagar on main Karawal Nagar road. This mob vandalized the shops also and set the shops on fire, by sprinkling petrol bombs. They had set on fire one coaching centre, one cooler shop, one grill shop situated on main Karawal Nagar road.</p> <p>In these shops, PW9 had properly seen the mob, while they were setting them on fire. At that time, PW9 was on main road in front of gali no.4, Moonga Nagar. Ct. Saudan was standing at some distance from him towards Chand Bagh Pulia. This mob fled away after setting aforesaid shops on fire.</p> <p>PW9 knew accused Javed in that mob by name, as he was resident of Mustafabad and he used to come to PS Dayalpur sometimes. PW9 had seen him in the area of Moonga Nagar also on several occasions. Name of accused was told to PW9 by other staff of PS as well as by companions of Javed during his visit to PS. PW9 had seen accused Javed setting vehicles and shops on fire, on main Karawal Nagar road.</p> <p>On 14.04.2020, PW9 again saw accused Javed, when PW9 visited New Mustafabad alongwith IO/ASI Hira Lal. On that day, IO told PW9 that someone was to be arrested. They had gone to house of Javed in gali no.19 and after reaching his house, IO had called accused Javed by his name and accused Javed came out of his house and then PW9 had seen him. At that time, PW9 informed IO that he had seen accused Javed in the riot on 25.02.2020 and that he was involved in vandalism at Chand Bagh Pulia at about 2 PM. IO handed over custody of accused to PW9 and PW9 prepared arrest memo and some other documents. Signature of PW9 was obtained by IO on arrest memo and personal search memo of accused Javed. PW9 identified his signature at circle Y on Ex.PW8/B, Ex.PW8/C and Ex.PW8/D.</p> <p>Site plan (Ex.PW8/B) was prepared on same day after</p>	

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	<p>coming back to PS in the presence of PW9. They came back to PS alongwith accused. Statement of PW9 was recorded by IO in the gali before coming to PS. A school namely, R.P. Public School was also burnt on 25.02.2020 at about 2-2.30 PM. This school was also burnt by those 5-6 persons, who were leading aforesaid mob. Accused Javed was carrying petrol bomb and danda. They tried to pacify this mob, but they did not relent.</p> <p>PW9 identified accused Javed in the court.</p>	
PW10/ Javed Khan	<p>He was running a coaching Institute in the name of Mission Guide Institute at A-97, Chandu Nagar, near Sherpur Chowk, on 2nd Floor, Delhi. On 25.02.2020, classes were going on in that institute, but PW10 had not gone to aforesaid institute.</p> <p>From the video being circulated on social media like Facebook, PW10 came to know that properties and shops were vandalized by the rioters. His institute was situated on Main Karawal Nagar Road.</p> <p>On 28.02.2020, PW10 visited aforesaid institute and found that several articles of his institute were burnt outside the institute, shutter was in damaged condition and other articles inside the institute were also completely damaged. PW10 made call at 100 number.</p> <p>On 29.02.2020, PW10 visited PS Dayalpur and gave a written complaint to the police, in this respect. PW10 had taken photographs of his institute through his mobile phone and had</p>	<p>Ex.PW10/A (complaint of PW10);</p> <p>Ex.PW10/B (certificate u/s. 65-B of I.E. Act issued by PW10) &</p> <p>Ex.PW10/P1 to Ex.PW10/P8 (8 photographs of institute of PW10).</p>

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	submitted the same to the police. PW10 identified his signature at circle X on second page of his said complaint and certificate under Section 65-B of I.E. Act.	
<u>Admitted documents under Section 294 Cr.P.C.</u> GD No.31A as Ex.A-1 , FIR as Ex.A-2 ; certificate u/s. 65-B of I.E. Act as Ex.A-3 ; GD No.69A as Ex.A-4 ; prohibitory order u/s. 144 Cr.P.C. as Ex.A-5 ; and complaint u/s. 195 Cr.P.C. as Ex.A-6 .		

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

9. Accused Javed took plea in his statement under Section 313 Cr.P.C. that he was falsely implicated in this case by the investigating agency in order to work out the case. He challenged his identification by the witnesses in this case taking plea that they deposed falsely against him being interested to show that the case was solved. He further took plea that he was not present in the mob at the spot on the day of incident. He denied all the allegations and pleaded innocence. He did not lead defence evidence.

ARGUMENTS OF DEFENCE & PROSECUTION

10. **Sh. Anis Mohd.**, ld. counsel for accused Javed argued that it is duty of the prosecution to prove the case beyond doubts. It was further argued that PW9/Ct. Pawan in para 3 of his testimony, stated that he again saw Javed. Surprisingly, IO did not tell him that Javed was to be arrested in this case. It was further argued

that accused Javed was arrested after a long gap. PW9 did not give satisfactory answer about his duty on 25.02.2020. It was further argued that only one accused is here in the case, hence, conspiracy cannot be there. Other PWs did not support the case of prosecution. It was further argued that PW9 is not credible witness. Reliance was placed on the case of **Tahir v. State (Delhi) (1996) 3 SCC 338**, to indicate that the rule of prudence requires a careful scrutiny of evidence of police witness as they remain interested in the result of the case projected by them.

11. In the written submissions filed on behalf of prosecution by **Sh. Madhukar Pandey**, Id. Special PP for State, it was submitted that PW1/Pooran Singh confirmed presence of mob and occurrence of rioting near Chand Bagh Pulia on 25.02.2020 at about 2-2:30 PM. It was further submitted that PW5/Ct. Ankit confirmed that from 24.02.2020, proclamation under Section 144 Cr.P.C. was imposed in that area and same was duly announced by him in the area of PS. It was further submitted that PW6/SI Ravi Punia proved site plan Ex.PW6/A and PW7/SI Navdeep proved site plans Ex.PW7/A, Ex.PW7/B, Ex.PW7/C, Ex.PW7/D and Ex.PW7/E. It was further submitted that PW8/ASI Hira Lal proved rukka Ex.PW8/A, site plan Ex.PW8/B, arrest and personal search memo of accused Javed as Ex.PW8/C and Ex.PW8/D, respectively. It was further submitted that PW9/Ct. Pawan categorically named accused Javed, who was part of the rioting mob, which committed riot, vandalism and arson on 25.02.2020. It was further submitted that accused Javed was

arrested in the present case by IO, on the basis of identification by PW9. It was further submitted that prosecution solely relied upon the police witnesses in support of this case, because public witnesses became hostile during trial due to fear of their life, as they have to reside, run business and live in that particular society or place where incidents of riots took place. It was further submitted that turning hostile of the public witnesses could not affect the case of prosecution, as the testimony of police witness PW9 as produced by the prosecution clearly establishes the case and the involvement of the accused persons in the present case. The reliance was placed on the case of **Pramod Kumar v. State (Government of NCT of Delhi), (2013) 6 SCC 588** wherein, the Hon'ble Apex Court held that: -

“.....The witnesses from the Department of Police cannot be per se be said to be untruthful or unreliable. It would depend upon the veracity, credibility and unimpeachability of their testimony.”

12. Ld. Special PP also relied upon the case of **Kashmiri Lal v. State of Haryana; (2013) 6 SCC 595**, wherein Supreme Court observed that: -

“.....there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence.....”

13. Ld. Special PP further submitted that sole testimony of PW9/Ct. Pawan is sufficient to prove that the accused was rioting as a part of the mob on that particular day at the spot of incident. In support of his contention, ld. Special PP also relied upon case of **State of Maharashtra v. Ramlal Devappa Rathod & Ors. (2015) 15 SCC 77**, and referred to the observations that: -

“26. We do not find anything in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 :(1965) 1 Cri LJ 226: (1964) 8 SCR 133] which in any way qualifies the well- settled principle that the conviction can be founded upon the testimony of even a single witness if it establishes in clear and precise terms, the overt acts constituting the offence as committed by certain named assailants and if such testimony is otherwise reliable'... The test adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202: (1965) 1 Cri LJ 226: (1964) 8 SCR 133] as a rule of prudence cannot mean that in every case of mob violence there must be more than one eyewitness.”

14. The prosecution also stressed on the settled law that “*on mere irregularity on the part of IO, accused cannot be acquitted*”. Reliance was placed on the judgment delivered by Supreme Court in the case of **State of Karnataka v. K Yarappa Reddy (1999) 8 SCC 715** wherein it was held that: -

"19..... It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.”

APPRECIATION OF FACTS AND EVIDENCE

UNLAWFUL ASSEMBLY AND RIOT

15. For the purpose of ready reference, the description of complaints clubbed and proved in this case is reproduced, which is as under:-

Srl. No.	Name of Complainant	Exhibit Mark of Complaint	Place of incident
1	Rajiv Sharma	-	PCR Caller
2	Javed Khan	-	Mission Guide Institute, Main Road, Chandu Nagar.
3	Jameer Ahmad	Ex.PW3/A	Cooler Shop situated in H.No.1, gali no.9, Moonga Nagar, Delhi.
4	Md. Mujahid	Ex.PW4/A	Shop for welding work situated at property no. B-22, gali 5/6, Nehru Vihar, Sherpur Chowk, Delhi.
5	Salman	-	He received gun-shot injury on his right leg, near a mosque on main Karawal Nagar Road.

16. First of all, I shall discuss the complaint of Salman. As per complaint and 1st statement recorded u/s 161 Cr.P.C., Salman had been shot on his thigh by 3 boys on 25.02.2020 at about 8AM, when he had come out of Mosque at gali no. 1, Moonga Nagar and was going towards Chand Bagh Pulia. Thus, it was not an act of a riotous mob, rather the culprits were 3 boys only. GD no. 31A was recorded on 25.02.2020 in the afternoon at 2.44PM. This FIR was registered on the basis of this GD and observations of subsequent visit of IO/PW8 at the place near R.P. Public School. The FIR was in respect of riot by a mob. In that situation,

clubbing of complaint made by Master Salman regarding gunshot injury caused by 3 boys much prior in time to the call/information for registration of this FIR, was misconceived and not in consonance with law. This illegality was continued in order to report this complaint in the chargesheet in this case, despite the fact that neither Salman had identified accused as one of the culprits, nor IO met any other witness to this incident, who would have claimed having seen accused as one of three boys involved in this incident. On 12.09.2021, Master Salman was again examined u/s 161 Cr.P.C. by SI Navdeep, when he gave a slightly different description of incident, to say it was mob of some boys, which attacked on him with lathi and danda and that when he was trying to run away, he was shot on his thigh. But, at the same time Salman denied involvement of any person in the photographs shown to him by this IO. Charges were framed for incidents within time frame from 2 PM to 6 PM on 25.02.2020, still, prosecution continued to pursue his complaint in this case. On 01.09.2022, this court raised question over relevance of Salman as witness, on the parameters of charges framed in this case and then Salman was dropped as witness in this case. Thus, the net result is that complaint of Salman and incident related to him remained with inconclusive investigation and without any legal resolution. As already observed herein before, investigation of his incident was illegally clubbed in this case on the pretext of proximity of place of incident. No care was taken regarding alleged time of incident. IO/PW8 deposed that he did not conduct

any investigation in respect of firing at Salman. Therefore, this complaint requires further investigation.

17. Now, I shall take up other incidents as probed in this case. Rajiv Sharma was only a PCR caller, who did not suffer any injury or damage. As per IO/PW8, this person did not state about any particular incident. PW3/Jameer and PW4/Mujahid were the other complainants and victim of riot. PW3 had shop of cooler and PW4 had shop of iron grill. None of these two victims were present at the time of incident at their respective shops. Therefore, their testimony is relevant for limited purpose to show that before riots on 25.02.2020, they had closed their shops, and they received information about vandalism in their shops during riots. PW8 and PW9 were the police officials, who deposed about a mob indulging into riot at the place near shop of PW3. Shop of PW4 was situated at a different place from the place of riot as deposed by these two police officials. PW8 did not say about remaining at that place i.e. near R. P. Public School, though PW9 vouched for the same. PW9 deposed about witnessing vandalism at cooler shop, coaching institute, grill shop etc, stating that these shops were situated near to each other. However, site plan prepared by PW6/SI Ravi Punia shows that grill shop of PW4 was situated at a distance of about 800 meters from this school. Moreover, this grill shop was located in a different gali, beyond Sherpur Chawk. It was not so projected by IO//PW8 or PW9 that this same mob had moved beyond Sherpur Chawk. Therefore, even if it is assumed that coaching center of Javed and cooler

shop of PW3 were vandalized by this mob, which allegedly came from the side of Chand Bagh Pulia, there is no evidence on the record at all to infer that same mob went up to shop of PW4. Thus, once again I find that incident taken place at the shop of PW4 was not properly investigated and liability of that incident was put upon aforesaid mob in a mechanical manner.

18. As per charges framed in this case, places of riot were alleged to be near R.P. Public School and charges referred to damages caused to the properties of Javed, Mohd. Mujahid and Jameer Ahmed. All these victims i.e. PW10/Javed Khan, PW4/Mohd. Mujahid and PW3/Jameer Ahmad, were not present at their respective properties, at the time of alleged incidents. However, they were informed by different persons about vandalism at their respective properties, on 25.02.2020 itself. PW10 visited his institute on 28.02.2020 and found that several articles of his institute, were burnt outside the institute. Shutter of his institute was in damaged condition. Other articles inside his institute were found in completely damaged condition. Similarly, PW4 stated that he visited his shop of welding work on 26.02.2020 (as per date referred by him). He found articles missing from his shop. According to him, he had parked two motorcycles inside his shop. One was found in burnt condition near Maavi hospital, while other motorcycle was found in broken and damaged condition inside the shop itself. His shop was also not burnt, though certain documents and registers were burnt inside the shop. PW3 had also visited his shop on 26.02.2020 and he found

shutter of his shop in broken condition. Many articles were missing from his shop. Some articles were lying in burnt condition on the road and some articles were lying scattered in the shop. Even he did not find any mark of fire inside his shop.

19. PW6/SI Ravi Punia had prepared a site plan showing all places of incidents probed in this case. Said site plan was proved as Ex.PW6/A. As per this site plan, institute of PW10 and shop of PW3, were situated in Main Karawal Nagar Road on the opposite of R.P. Model Public School.
20. Prosecution examined PW1/Sh. Pooran Singh, PW2/Sh. Shyam Sahani, PW8/ASI Hira Lal and PW9/Ct.Pawan, as the witnesses who according to prosecution, had seen the riot. According to these witnesses, they saw rioters on the main Karawal Nagar Road, since about 2PM. The rioters were vandalizing and setting ablaze the shops on the side of Moonga Nagar. The shops of PW3 and PW10 were on the same side. Thus, on the basis of combined reading of testimonies of these witnesses and testimonies of PW3 and PW10, it becomes much probable that shops of PW3 and PW10 were vandalized and articles of PW3 were taken away by a mob of rioters. However, it is also apparent that their shops were not set ablaze.

IDENTIFICATION OF ACCUSED JAVED

21. Next question for determination would be whether accused was part of the mob during incidents at the aforesaid shop and institute? For answer to this question, only PW9/Ct.Pawan is the relevant witness. PW9 claimed that he saw accused in the mob,

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which indulged into riots on that road. However, his credibility has been questioned, therefore, it is necessary to refer to relevant part of their testimonies.

22. In the testimony of PW8/ASI Hira Lal, it has come as under: -

“..... On 14.04.2020, I arrested accused Javed in this case, at the identification of Ct. Pawan. He was arrested, because Ct. Pawan had seen him in the mob. I had recorded statement of Ct. Pawan in this case on 14.04.2020. His statement was recorded once only in this case.”

..... Ct. Pawan had told me on 27.02.2020 that he had seen some persons in the riot including accused Javed. I had got FIR registered in this case on 28.02.2020.

Q: When you had already been told about Javed by Ct. Pawan on 27.02.2020, then why did not you mention his name in the FIR got registered by you on 28.02.2020?

A: Confirm nahi ho ratha tha. (Witness has been asked to explain what was not confirmed, but he has not given answer to the same, despite repeating the questions again and again.)

..... I had arrested accused Javed from H.No. 1005, gali no.19, New Mustafabad. He was standing in front of his house. He was arrested somewhere around 6.30 p.m. and Ct. Pawan and Ct. Saudan were present with me.

***(this part of testimony was recorded after lunch-break).**.....I had informed SHO about information given by Ct. Pawan to me. However, I wrongly mentioned the date of 27.02.2020 and Ct. Pawan had informed me about seeing Javed on 14.04.2020. I did not check the place of presence of Ct. Pawan, from where he claimed to have seen Javed After telling about date of 27.02.2020, as the date of getting information from Ct. Pawan, I realized this mistake immediately thereafter. It is correct that at that time, I did not mention about realizing my mistake. It is wrong to suggest that subsequently I checked the case file and consulted SPP and on the basis of the same, I changed my version about the date.”*

23. In the testimony of PW9/Ct. Pawan, it has come as under: -

“.....This mob vandalized the shops also and set the shops on fire, by sprinkling petrol bombs. They had set on fire one coaching centre, one cooler shop, one grill shop situated on main Karawal Nagar road. In these shops, I had properly seen the mob, while they were setting them on fire. At that time, I was on main road in front of

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gali no.4, Moonga Nagar.

On 14.04.2020, I saw him again, when I visited New Mustafabad alongwith IO of this case namely, ASI Hira Lal. On that day, IO had told me that someone was to be arrested, but he did not tell me who was to be arrested. We had gone to the house of Javed in gali no.19, but I do not remember his house number. After reaching his house, IO had called him by his name and Javed came out of his house and then I saw him. At that time, I informed IO that I had seen Javed in the riot on 25.02.2020 and that he was involved in vandalism at Chand Bagh pulia at about 2 p.m.

..... I cannot tell the exact distance, but shop of cooler would be around 40-50 meters away from coaching centre. The grill shop would be at a distance of about 20-25 meters away from coaching centre. There were other shops also in between these 3 shops/centre. I can not tell the nature of those shops.

..... The companion of Javed, who informed his name to me in PS, was my known person, but I do not know his name, as I had never asked his name. He had become my acquaintance during duty of patrolling, wherein we used to come into contact with several persons and become closer to some. Said person was one of those closed persons to me. This person had told me name of Javed, somewhere in between September to December 2019, as introducing him as his friend.”

24. On comparison of testimony of IO/PW8 and PW9 regarding arrest of Javed, it is clear that both had given different description of the same. PW8 went to arrest Javed, even without such statement there being on the record of PW9, so as to name Javed as one of the rioters. IO and PW9 contradicted each in respect of manner of arrest of Javed. IO was probably making artificial statement in respect of the time of getting knowledge about involvement of accused Javed in the incidents being probed in this case. That could be reason for him to first claim that Ct. Pawan/PW9 had told him about involvement of Javed on 27.02.2020 itself, but he could not say about the reasons for not mentioning name of Javed in the FIR. It is also apparent that

taking advantage of a break in recording of his evidence, subsequently he changed his version, so as to make it in accordance with record of this case.

25. Similarly, PW9 went on to give wrong description of location of the grill shop (shop of PW4), while saying that it was situated at main Karawal Nagar road, near other shops i.e. shop of cooler (shop of PW3) and institute. Shop of PW4 was located in a different area of Nehru Nagar. Such false claim of PW9 shows that even he made artificial statement regarding having properly seen the mob at the time of incidents in question. When PW9 was examined by IO and made a witness in this case, then it must have been told to him by IO as to for which particular kind of shops, this case was all about. Thus, PW9 went on to make blank claim, even without realizing that one of this shop was located somewhere else.

CONCLUSION

26. My foregoing discussion and observations lead me to hold that prosecution though established the incident of riot, and vandalism, but it failed to prove presence of accused in the unlawful assembly responsible for such incidents, beyond reasonable doubts. It is also established on the record that charge sheet was filed for multiple incidents in this case, in mechanical manner and without actually investigating such incidents properly. There was no evidence of offence u/s 436 IPC and such Section was also invoked without ascertaining the actual situation.

DECISION

27. In view of my foregoing discussions, observations and findings, accused Javed is hereby acquitted of all the charges leveled against him in this case.
28. In view of observations made in para 16, 17 and 26 of this judgment, matter is referred back to SHO to take further steps in respect of incidents reported by Salman and PW4/Mujahid, in accordance with law.

Announced in the open court **(PULASTYA PRAMACHALA)**
today on 24.08.2023 **ASJ-03 (North- East)**
(This order contains 29 pages) **Karkardooma Courts/Delhi**