

**IN THE COURT OF SH. AMITABH RAWAT,  
ADDITIONAL SESSIONS JUDGE-03  
(SHAHDARA), KARKARDOOMA COURT, DELHI**

<b>CNR No.</b>		<b><u>SH01-00-1063-2021</u></b>
<b>FIR No.</b>	:	102/2020
<b>Under Section</b>	:	143/147/149/454/427/395 IPC
<b>Police Station</b>	:	<b>Welcome</b>
<b>Sessions Case No.</b>	:	<b>42-2021</b>

**STATE**

**V E R S U S**

**Suresh @ Bhatara**

S/o. Sh. Ram Chander

R/o. JB-6/138, Welcome, Delhi.

**.....ACCUSED**

Date of Institution : 02.07.2020

Date of reserving judgment : 25.06.2021

Date of pronouncement : 20.07.2021

**Decision : Acquitted**

**J U D G M E N T**

1. The present judgment is the culmination of the criminal proceedings initiated against the accused Suresh @ Bhatara in reference to the charge-sheet filed against him under Section 143/147/149/395/454 Indian Penal Code (IPC, in short) based upon the First Information Report lodged on the written complaint of complainant Asif.

2. In gist, the case of the prosecution is that the present FIR No. 102/20 was registered on the written complaint dated 28.02.2020 of Asif who stated that on 25.02.2020 at Shop No. 27/5, Main Babarpur Road, Delhi, owned by Sh. Bhagat Singh and given on rent to him, Sh. Bhagat Singh (owner of the shop), saw 15-20 rioters on 25.02.2020 at around 4.00 PM, coming at the said shop. The rioters were carrying sariya and lathi, broke open the locks and shutter. The shop was looted and details of the items which were looted was mentioned in the complaint. Sh. Bhagat Singh had also given a statement under Section 161 Code of Criminal Procedure (Cr.P.C, in short) that Asif had closed the shop due to riots around and on 25.02.2020, when he heard commotion outside his house, he saw 15-20 people armed with danda and sariya and inciting others to damage and loot the said shop because it was owned by a Muslim and he tried to explain them but without any result. He was threatened with consequences if he intervened. Sh. Bhagat Singh then ran to Police Chowki where he met Beat Officer HC Sunil and apprised him of the said incident. HC Sunil immediately came back with him to his shop and on seeing them, the rioters ran away from there. HC Sunil has corroborated the said statement of Sh. Bhagat Singh. After the case was registered on 28.02.2020, the accused Suresh @ Bhatara was arrested on 07.04.2020. The accused gave disclosure statement admitting his culpability in the offences covered by the present case. On completion of investigation, charge-sheet was filed in the Court.

3. After compliance of provisions of Section 207 Code of Criminal Procedure, the present case was committed to Court of Sessions, which in turn, assigned the case to this Court for trial in accordance with law.

4. Vide order on charge dated 09.03.2021, charges under Section 143 IPC,

147 IPC, 427 IPC, 454 IPC read with Section 149 IPC & Section 395 IPC were framed against the accused to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution has examined a total of 07 witnesses. PW-1 Asif is the complainant. PW-2 is Sh. Bhagat Singh, the eye-witness. PW-3 Sh. Hemant Gupta, public witness. PW-4 HC Sudesh Kumar was working as Duty Officer. PW-5 is ASI Satish who had made endorsement on the complaint of complainant. PW-6 is HC Sunil who went to the spot on the asking of PW2 and identified the accused at the spot and joined the investigation conducted by SI Nishant. PW-7 is SI Nishant Chaudhary, the Investigating Officer who conducted the investigation of the present case.

All the witnesses were cross-examined by the Ld. Defence Counsel.

6. On conclusion of the prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded on 25.03.2020 in which he denied the prosecution version in its entirety and claimed that he is innocent. He has stated that he has been falsely implicated in this case as he was called to the Police Station, Welcome and thereafter, implicated in this false case. He was made to sign on certain blank papers. However, accused did not opt to lead evidence in his defence.

7. Arguments on behalf of the accused by Sh. Rajeev Pratap Singh, Ld. Legal Aid Counsel for the accused and for prosecution by Sh. Saleem Ahmed, Ld. Special Public Prosecutor for the State, were heard at length.

Ld. Special Public Prosecutor has filed one judgment in support of his case i.e. *Baldev Singh & Ors. vs. State of HP, Crl. Revision No. 190 of 2008* dated 29.04.2017 delivered by Hon'ble High Court of Himanchal Pradesh.

8. Before I begin to analyze the case of the prosecution on the touchstone of the evidence that came on record, I would underscore the cardinal principle of criminal juris-prudence that a criminal case has to be proved beyond reasonable doubt against an accused if he is to be pronounced guilty.

9. There is another salutary legal principle that it is the quality of the evidence and the testimony of the witnesses which matters and not the quantity.

Section 134 of the Indian Evidence Act :-

**134. Number of witnesses**-- No particular number of witnesses shall in any case be required for the proof of any fact.

Hon'ble Supreme Court of India in case of *Yanob Sheikh Alias Gagu Vs. State of West Bengal, reported In (2013) 6 SCC 428* has observed that in order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative.

10. Coming now to the facts of the case :-

(A) It is the prosecution version that the complainant Asif gave a complaint on 28.02.2020 at the Police Station, Welcome, when ASI Satish Kumar was on emergency duty, stating that he runs a LED Television repairing shop at 27/5, Main Road, Babarpur, Delhi and the same is on rent. On 25.02.2020 at

about 4.00 PM, large unlawful assembly came, armed with lathi and iron rods and attacked the shop, breaking open the shop by shattering the shutter. His land-owner Bhagat Singh came out and saw the rioters breaking the shutter of the shop and he went to the Babar Pur Police Booth to inform the police and HC Sunil came to the spot instantly. By that time, the rioters had looted the shop. He gave description of the LED items which were robbed by the rioters.

(B) On his written complaint dated 28.02.2020, the present FIR was registered under Section 143/147/149/392/454 IPC. During investigation, it was found that complainant Asif had taken the said shop from one Bhagat Singh. The damaged items in the shop were taken into police possession vide seizure memo on 29.02.2020.

(C) The present accused Suresh @ Bhatara was arrested on 07.04.2020 on the information of a secret informer. Pointing out memo was prepared, the shop owner Bhagat Singh identified the accused as the same person who committed the ransacking and dacoity on 25.02.2020 at his shop.

(D) Based upon the strength of the charge-sheet and the statement of the witnesses, the charges were framed against the accused for the offence under Section 143/147/427/454 IPC read with Section 149 IPC as also separately for the offence under Section 395 IPC.

**Section 141.Unlawful assembly**

An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—

*First.*—To overawe by criminal force, or show of criminal

force, <sup>1</sup>[the Central or any State Government or Parliament or the

Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

*Second.*—To resist the execution of any law, or of any legal process; or

*Third.*—**To commit any mischief or criminal trespass, or other offence; or**

*Fourth.*—**By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or**

*Fifth.*—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

**143. Punishment.**—Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**147. Punishment for rioting.**—Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.**—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

**391. Dacoity--**When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing attempting or aiding, is said to commit “dacoity”.

**395. Punishment for dacoity.**—Whoever commits dacoity shall be punished with 1[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**425. Mischief.--**Whoever with intent to cause, or knowing that he is

likely to cause, wrongful loss or damage to the general public or to a person, causes the destruction of any property, or any such change in any property or within the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

**427. Mischief causing damage to the amount of fifty rupees.—**Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.—**Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

**11.** Let us now test the case on the touchstone of the evidence that came on record. The prosecution has examined as many as 07 witnesses in the present matter.

**PW-1 Asif** is the complainant of the case;

**PW-2 Sh. Bhagat Singh** is the landlord of PW1 Asif and the alleged eye-witness;

**PW-3 Sh. Hemant Gupta** is another public witness, though not of the riots and offence in question;

**PW-4 HC Sudesh Kumar** was working as Duty Officer;

**PW-5 ASI Satish**, police personnel who was on emergency duty on 28.02.2020, who made endorsement on the complaint of complainant Asif Ex

PW5/A;

**PW-6 HC Sunil** is the police personnel on duty at Police Booth Babar Pur Bus Terminal at Police Station Welcome on 25.02.2020 who reached the spot alongwith PW2 Bhagat Singh, who was also part of the investigating team headed by I.O/SI Nishant Chaudhary;

**PW-7 SI Nishant Chaudhary** is the Investigating Officer who gave details of the investigation conducted by him.

**12.** (a) PW1 Asif is the complainant in the present matter. He is the initiator of the present FIR. As per his testimony in the court, on 24.02.2020, he was in his shop of T.V repairing at Shop No. 27/5, Main Road Babarpur, Delhi and when the news of riots spread, he closed his shop and left for home. He is the tenant of PW2 Bhagat Singh. PW2 Bhagat Singh called him up on 25.02.2020 and told him about rioters breaking open the shutter of the shop and looting and ransacking of the same.

What emerges from the said testimony is that he is not an eye-witness to the offence of rioting, dacoity, unlawful assembly or in more concrete terms, the identification of accused Suresh @ Bhatara in the said offence.

(b) PW1 Asif, thereafter, gave details of the stolen articles from his shop to the police which was exhibited as PW1/A. He testified that the police officials came to his shop, prepared the site plan exhibited as Ex. PW1/B on 28.02.2020 after he gave the complaint. He, later on, identified the case property in the court premises exhibited as Ex. PW1/D in terms of the seizure memo Ex. PW1/C. The



seizure memo was prepared on 29.02.2020.

(c) PW3 Hemant Gupta, a public witness, joined the investigation in the present case. As per his testimony, he is the resident of 20E/1, Main Babarpur Road, Shahdara, Delhi-110032. Investigating Officer came to his shop-cum-home on 01.03.2020 in relation to the two CCTV cameras installed outside his shop. One hard disc was obtained by the Investigating Officer vide seizure memo Ex. PW3/A and the same was identified in the court vide Ex. PW3/Article-1. PW3 in his cross-examination deposed that the hard disc given by him to the Investigating Officer was not sealed in his presence and even the said recording of 25.02.2020 was not opening in the hard disc.

(d) PW4 HC Sudesh Kumar was the Duty Officer at Police Station, Welcome on 25.02.2020. He deposed that ASI Satish handed over a written complaint at about 6.40 PM on the said date with an endorsement on it. Accordingly, the present FIR was got registered and exhibited as Ex. PW4/A. The endorsement on the back side of tehrir was exhibited as Ex. PW-4/B. The case was handed over to SI Nishant Chaudhary for further investigation. He also proved the certificate under Section 65-B of Evidence Act which was exhibited as Ex. PW-4/C.

(e) PW-5 ASI Satish deposed that he was posted on emergency duty as ASI at P.S. Welcome on 28.02.2020. The complainant Sh. Asif came to the Police Station and handed over a written complaint to him. He made an endorsement on the said complaint exhibited as Ex. PW5/A.

(f) PW-6 HC Sunil has deposed in the court that on 25.02.2020, he was posted as HC at Police Station Welcome. On that day, he was on duty at Police Booth, Babarpur Bus Terminal. At 4.00 PM, on that day, one person approached him and told him that 15-20 people armed with lathis and sariyas have come to his shop and are breaking the shutter of the said shop at Shop No. 27/5, Main Babarpur Road, Delhi. Thereafter, he immediately rushed to the spot in his bike. When he reached the shop, the broken articles were lying scattered inside the shop and also outside the shop. On seeing him, they all ran away from the spot. There was one person in that group whom he recognized as he was the BC (Bad Character) of their Police Station. His name was Suresh Bhatura. The witness correctly identified the accused in the Court.

He further deposed that thereafter, on 01.03.2020, I.O/SI Nishant had taken his statement.

He deposed that on 07.04.2020, he was sitting with SI Nishant in the Police Station regarding the case and one secret informer approached them and told them that one person who was involved in rioting in this case, is standing at Photo Chowk, Welcome. He told them that his name is Suresh @ Bhatura and who is the BC of their Police Station. He told them if they were to reach in time, he can be apprehended. Thereafter, after taking permission from the SHO, he alongwith SI Nishant went to the spot alongwith the secret informer. Secret informer pointed out towards one person standing at Photo Chowk and he also identified him as Suresh @ Bhatura at that time. Upon seeing them, he tried to flee but they managed to apprehend him. He confessed to his involvement in the riots and his disclosure statement was recorded as Ex. PW6/A. They arrested him at the spot.

The arrest memo and search memo was prepared by I.O/SI Nishant vide memo Ex. PW6/A-1 & PW6/B respectively. Then, they took him to the shop i.e. 27/5, Main Babarpur Road, Delhi and he identified the shop as the one which he had ransacked vide pointing out memo Ex. PW6/C. He then took them to Playboy Store situated in the area of P.S. Shahdara and told them that they had ransacked and set fire to the shop during riots. Then, he took them to Mazid Automobile Shop at 100 Foota Road, Gali No.10, Jyoti Nagar, Delhi. They then came back to the Police Station. I.O recorded his statement.

(g) PW7 SI Nishant Chaudhary, the Investigating Officer of the case. He has deposed about the investigation and supported the prosecution version. His testimony is being reproduced as under :-

*"I am the investigating officer in this case. On 28.02.2020, I was posted at Police Station Welcome. When I was present on that day, ASI Satish handed over me FIR No. 102/20, P.S. Welcome, complaint of Asif and tehrir.*

*Asif had given the complaint that on 25.02.2020 during riots in Delhi, some unidentified persons entered into his shop at 27/5, Main Babarpur Road, Delhi and ransacked and looted the said shop. He had said that Bhagat Singh, the owner of the shop had told him about the same. He also provided a list of the robbed items.*

*The complaint of Asif is already exhibited as Ex. PW1/A and the endorsement on the back side of the tehrir is exhibited as Ex. PW4/A.*

*Thereafter, I went to the spot alongwith complainant Asif on that day. I prepared the site plan already Ex. PW1/B at the instance of the complainant and the same bears my signatures at point B.*

*On the next day i.e. 29.02.2020, I again went to the spot with the complainant and he showed me the broken articles in the said shop. I prepared the seizure memo already Ex. PW1/C and bearing my signatures at point B. The owner of the shop Sh. Bhagat Singh was present at the time of the seizure. I did not record any statement on that day.*

*On 01.03.2020, I again went to the spot and recorded the statement of Bhagat Singh, the owner of the shop. Thereafter, in further investigation, I made efforts to find CCTV footage of the incident and I found one CCTV footage at the*

shop no. 20-E/1, Main Babarpur Road, of Hemant Gupta, which was just across the shop of the complainant. I seized the hard disc of the DVR of the said CCTV and prepared the seizure memo already Ex. PW3/A bearing my signatures at point B. Hemant Gupta gave me a Certificate under Section 65-B of Indian Evidence Act and the same is already Ex. PW3/B. Thereafter, I recorded the statement of HC Sunil. HC Sunil told me that on 25.02.2020, he was on duty during riots at Babarpur Terminal. At about 4.00 PM, one person rushed to him and told him 15-20 persons had entered his shop and doing ransacking and destruction of the shop. HC Sunil immediately went to the spot alongwith that person namely Bhagat Singh and the said unlawful assembly started running on seeing them. HC Sunil identified one person in that crowd and disclosed his name as Suresh @ Bhatura who is also Bad Character of the Police Station Welcome.

Thereafter, I tried to locate Suresh @ Bhatura but could not find him. On 07.04.2020, one secret informer approached me and told me that one Suresh @ Bhatura who is involved in the present case, is standing near Photo Chowk, Welcome. I informed the SHO. I took HC Sunil in the raiding party and went to Photo Chowk. The secret informer indicated one person as Suresh @ Bhatura at the said chowk. HC Sunil also identified Suresh @ Bhatura as the one involved in the present incident on 25.02.2020. I alongwith HC Sunil overpowered Suresh @ Bhatura. I then arrested Suresh @ Bhatura and prepared the arrest memo already Ex. PW6/A1 bearing my signatures at point B. I conducted the personal search and prepared the personal search memo already Ex. PW6/B bearing my signatures at point B. Suresh @ Bhatura made his disclosure about his involvement in the present case and other cases and the disclosure statement is already Ex. PW6/A bearing my signature at point B. I alongwith HC Sunil went to the shop of Asif and the accused pointed out the shop no. 27/5, Main Babarpur Road, Delhi wherein the ransacking and looting was done by him with others and the pointing out memo was prepared which is already Ex. PW6/C bearing my signature at point B. Bhagat Singh, the owner of the shop was also present at that time and he also identified Suresh @ Bhatura on seeing him. I recorded the statement under Section 161 Cr.P.C of Bhagat Singh.

I can identify the accused Suresh @ Bhatura.

At this stage, the witness points out towards the accused Suresh @ Bhatura who is standing in the doc (correctly identified).

Later on, during investigation, I had sent the hard disc to the FSL for analysis. I had also recorded the statement of HC Sunil on the day when I had arrested the accused.

After the completion of the investigation qua the present accused, I prepared the challan and filed it in the court.

*I can also identify the case property, if shown, to me.”*

(h) PW-2 Sh. Bhagat Singh, is the material witness in this case being an eye-witness. His testimony is being reproduced as under :-

*“I am retired personnel from Indian Air Force. I have a shop at 27/5, Main Road Babarpur, Delhi which I have given on rent to Asif. Asif used to run the shop of LED repairing from the said shop. I also reside on the back side of the said shop.*

*On 25.02.2020 at around 4.00 PM, I heard a lot of noise outside and I came to the front of the shop. I saw that around 15-20 people holding dandas in their hands were breaking the shutter. I tried to explain them that it is my shop and they should not damage my shop. They did not listen and thus, I went to the nearby Police Chowki and met HC Sunil Kumar and apprised him of the situation. HC Sunil Kumar came on the bike to my shop and I also followed him on foot. When I reached the spot i.e. my shop, I saw that rioters had run away and the broken articles/TV were lying in the street. Other LEDs had been taken away as it was not found inside the shop. Thereafter, with the help of other people, we collected the broken articles and put it inside the shop. Thereafter, I called my tenant on phone regarding the incident.*

*On 29.02.2020, I.O had come and prepared seizure memo already Ex. PW1/C bearing my signature at point B.*

*On 07.04.2020, I.O alongwith HC Sunil Kumar had brought one person to my home. They and even that person was telling me that he was involved in the ransacking of my shop. I cannot identify that person as it is more than one year now.*

*At this stage, Ld. Special Public Prosecutor seeks permission to declare the witness as hostile and cross-examine the witness on material facts and on the point of identity of the accused.*

*Heard. Allowed.*

***He was cross-examined by Sh. Saleem Ahmed, Ld. Special Public Prosecutor for State.***

*At this stage, statement of witness dated 01.03.2020 is shown and read over to him in Hindi and same is now mark X.*

*I had not stated to the I.O that I can identify the persons who had ransacked my shop. The witness is confronted with statement under Section 161*

*Cr.P.C, which is already mark X, from point A to A where it is so recorded. It is incorrect to suggest that I have made any such statement.*

*At this stage, statement of witness dated 07.04.2020 is shown and read over to him in Hindi and same is now mark Y.*

*I have never identified any person as involved in ransacking of my shop on 07.04.2020. The witness is confronted with statement under Section 161 Cr.P.C, which is already mark Y, from point B to B where it is so recorded. It is incorrect to suggest that I have made any such statement.*

*At this stage, the attention of the witness is drawn towards the accused present in the court today with the suggestion that the accused present in the court today is the same person who had committed rioting on 25.02.2020 and later on identified by him on 07.04.2020 but the witness denies the same stating that he cannot exactly identify the accused present in the court.*

*It is wrong to suggest that I have been won over by the accused and that is why I am intentionally not identifying him, or that disclosing the true facts of the case and deliberately deposing falsely on oath.*

***In his cross-examination, he stated that it is correct that when I had reached my shop after meeting HC Sunil Kumar, the rioters had already run away. Volunteered. HC Sunil Kumar had reached prior to me. HC Sunil Kumar had used tear gas to disperse the rioters and when I reached all the rioters had already run away.***

**13.** Against the deposition of the witnesses in the present matter, it would be apposite to underscore the relevancy of the witnesses and the quantity of their testimony in the light of the statutory provision. The prosecution is relying on the testimony of PW2 Bhagat Singh, PW6 HC Sunil besides the Investigating Officer (I.O) for the purpose of proving the offence as also the identification of the accused.

**14.** As referred to above, it is not quantity but the quality of the testimony of the witnesses that matters in a criminal trial. The factum of the Shop No. 27/5, Main Babarpur Road, Delhi owned by PW2 Bhagat Singh and given on rent to PW1 Asif and being broken open and looted on 25.02.2020 is proved by his

testimony. The rioting outside and inside his shop on 25.02.2020 by a group of 15-20 people holding dandas in their hands is also proved. The dacoity having been committed in the shop on 25.02.2020 at 4.00 PM is also corroborated by the testimony of PW6 HC Sunil Kumar who came to the said shop on the asking of PW2 Bhagat Singh. Thus, there is no denial that an unlawful assembly gathered outside the shop of the complainant committed riot, ransacking of the shop with dandas and sariyas and committed robbery in the said shop. Therefore, the ingredients of the offence of unlawful assembly, rioting, dacoity (robbery by theft) and mischief by the unlawful assembly consisting of more than 05 persons in prosecution of that object is also proved, as such. However, the crucial question is the identification of the accused and his role in the present offence of rioting by the unlawful assembly and the dacoity and other offences enunciated above.

**15.** Therefore, the testimony of PW2 Bhagat Singh is most crucial for this case. PW2 Bhagat Singh in his examination-in-chief did not state anything about the identification of the present accused Suresh @ Bhatara on 25.02.2020. In fact, he stated that on 07.04.2020, Investigating Officer alongwith HC Sunil Kumar had brought one person to his home and they told him that he was involved in the ransacking of his shop on 25.02.2020. He further deposed that he even cannot identify that person in the court as it is more than one year.

**16.** Ld. Special Public Prosecutor, thereafter, sought permission to cross-examine his own witness and in the said cross-examination, PW2 categorically stated that he had never stated to the Investigating Officer that he can identify the person who had ransacked his shop. He denied having made any statement mark X to the Investigating Officer. In fact, he also deposed that he never identified any

person as involved in ransacking of his shop on 07.04.2020. When the attention of the witness was drawn towards the accused, the witness denied the identification.

In his cross-examination by the Ld. Counsel for accused, PW2 deposed that when he reached his shop after meeting HC Sunil, the rioters had already run away and HC Sunil Kumar had reached the shop prior to him. Thus, from the testimony of PW2, it is indubitably clear that not only PW2 had never identified the accused on the date of the incident on 25.02.2020 but not even on 07.04.2020 when the accused is, as per the prosecution, apprehended and brought before the said witness. Likewise, the said primary star witness has not identified the accused in the Court also.

17. On the careful perusal of the testimony of the PW6 HC Sunil Kumar, it transpired that he also reached the spot in his bike on 25.02.2020 after one person had approached him on that day. When, he reached the shop, broken articles were lying scattered inside and also outside the shop. On seeing him, they all ran away and he identified one person by the said group as Suresh @ Bhatara (Bad Character of the area). On 07.04.2020, one secret informer told him and SI Nishant Chaudhary that one person who was involved in rioting is standing at Photo Chowk, Welcome and his name is Suresh @ Bhatara. They went to the spot and on the pointing out of the informer, apprehended the accused. PW6 HC Sunli Kumar has also deposed that he identified the accused Suresh @ Bhatara. He was arrested and personally searched by I.O/SI Nishant vide arrest memo and search memo Ex. PW6/A-1 & PW6/B. They took him to the looted shop and PW2 identified the accused.



Careful scrutiny of the evidence brings to light the fact that the testimony of PW5 & PW2 are contradictory on the material terms of the identification of the accused and his apprehension. The testimony of PW6 or PW7 that the accused was taken to the PW2 for identification and who was identified by PW2, is denied by PW2 himself.

Though, PW6 deposed that he identified the accused at the time of the riots itself on 25.02.2020, yet, he never put this in writing anywhere. In fact, he deposed in his cross-examination that on 25.02.2020 or till 01.03.2020, he did not record any DD entry or any complaint or intimation to anyone regarding the involvement of accused Suresh @ Bhatara in the present case.

**18.** PW7 the Investigating Officer Nishant Chaudhary also deposed similarly as PW6. However, he never deposed that even PW6 had told him that he had identified the accused Suresh @ Bhatara as participating in the riots in question before 01.03.2020 or the reason for not sharing such a crucial information.

**19.** PW7/IO SI Nishant Chaudhary also deposed in cross-examination that PW-6 HC Sunil had not made any complaint regarding the incident from 25.02.2020 to 28.02.2020. He also deposed that articles seized from the spot i.e. Shop No. 27/5, Main Babarpur Road, Delhi concerned shop were not sealed. He also deposed that the shop is at the ground floor while there is one more floor above the said shop.

PW7, in the cross examination, has also deposed that he had inadvertently left out to mention the name of the witnesses to show the deposition

of the seized articles in the malkhana. He further deposed that he did not record any statement of any witnesses from 02.03.2020 till 06.04.2020 in the present case.

When his attention was drawn towards the statement of PW-6 HC Sunil dated 07.03.2020, he stated that it is a typographical error as the statement is of 07.04.2020. He further deposed in his cross-examination that he does not remember whether he made any departure entry before leaving the police station on 07.04.2020 at about 9.00 pm on receiving the secret information regarding the accused being available at Photo shop, Welcome. He also admitted the suggestion that photographs of the accused is already affixed in the police station as he was the bad character of the area. He also deposed that DVR obtained from PW-3 was not having any facility of recording and he has not seen any footage of the incident in the said DVR.

**20.** In the light of the testimonies of the said witnesses of the prosecution and their careful scrutiny, it is well apparent that the prosecution has miserably failed to prove its case, forget about beyond reasonable doubts. All the major witnesses are at variance with each other on material terms impacting the prosecution version. It is indeed proved from the testimony of the witnesses that the offence as stated out in the charge-sheet happened i.e formation of unlawful assembly of 15-20 people, rioting, ransacking the shop of the complainant i.e. Shop No. 27/5, Main Babarpur Road, Delhi.

**21.** There is no testimony worth it salt which connect the accused to the present offence in question. Though the glaring inconsistencies in the testimony

of the prosecution witnesses have been adumbrated above; however, I may again summarize them and put it in the following manner :-

i) PW1 Asif, the complainant, is not an eye-witness to the incident of the rioting and other connected offences in question of 25.02.2020.

ii) PW2 Bhagat Singh, the witness on whom the prosecution relied upon the most, denies having ever identified the accused either on 25.02.2020 when the alleged incident of rioting, dacoity, mischief by the unlawful assembly took place or even on 07.04.2020 when police officials PW5 & PW6 came to him with one apprehended individual.

iii) PW2 categorically denied the identification of the accused in the court as well. He specifically deposed that PW6 & PW7 told him that the accused was involved in the rioting and not the other way around.

In fact, as per PW2 he informed the police and PW6 HC Sunil Kumar had reached the spot even before he had reached the shop.

The testimony of PW2 is, by itself, fatal to the prosecution case.

iv) The seized articles from the shop in question of Asif was not sealed by the IO. The entry showing the deposition of such seizure memo of seized articles in the malkhana was also not proved by the prosecution.

v) PW7/SI Nishant Chaudhary The investigating officer seized DVD of the video footage of the neighbor (PW3 Hemant Gupta) of the complainant vide

Ex.PW3/Article-1 and as per the IO himself he did not see any recording of the incident in question and there is no recording in the said footage which could have a consequence on the bearing of this case.

vi) PW6 in his deposition has stated that he identified the accused Suresh Bhatara on 25.02.2020 itself at the time of rioting. It is untenable. If PW6 had identified the accused at the time of rioting itself, then why he did not record any entry to the said fact on the said date or even till the FIR was filed on 28.02.2020. PW6 also never gave anything in writing to the concerned police station stating that he had identified the accused. He has admitted that till 01.03.2020 he never gave any statement regarding the involvement of the accused in the present offence of rioting and other offences.

It is also important to note that accused is stated to be bad character of the area and this fact was known to all the police officials and despite this, it was not reduced into writing till 01.03.2020, and this is not believable. No departure entry on 07.04.2020 showing receipt of any secret information about the accused or proceeding to the spot by the PW7/IO and PW6/HC Sunil for apprehending the accused was filed on record.

**22.** As can be made out on the cumulative reading of the entire testimonies of all the witnesses, the identification of accused is not established at all. The investigation carried out is way short of the desired one.

**23.** In view of the above stated discussion, prosecution has not been able to prove its case against the accused as no material has come up against him, which is incriminating in nature. Consequently, the prosecution has failed to prove the

charges against the accused.

**24.** In these circumstances, accused Suresh @ Bhatara is acquitted of all the offences punishable under Section 143/147/427/454 IPC read with Section 149 IPC & Section 395 IPC.

Announced in the open court  
today i.e. 20.07.2021

**(Amitabh Rawat)**  
**Additional Sessions Judge-03 (Shahdara)**  
**Karkardooma Courts, Delhi**