

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

RIOTS CASE

SC No. 54-2021

FIR No. 116/2020

P.S. Jafrabad

U/S. 147/148/149/336/120B/307 IPC

State Vs. Md. Juber & Others

State

..... Prosecution

Versus

- (1) **Md. Juber**
S/o Rizwan
R/o H.No. 5B/26, Gali No.6, Guruwara Mohalla, Maujpur, Delhi.
- (2) **Md. Aamir**
S/o Sh. Suwale Md.
R/o H.No. C-6, Gali No.20, Subhash Mohalla, Ghonda, Delhi
- (3) **Samshuddin**
S/o Sahbuddin
R/o H.No. H.No. 5B/26, Gali No.6, Guruwara Mohalla, Maujpur, Delhi.
- (4) **Md. Barik**
S/o Ahmad Hussain
R/o H.No. H.No. 227, F/F, Gali No.9, Gurudwara Mohalla, Maujpur, Delhi.

.... Accused persons

ORDER ON THE POINT OF CHARGE

1. The present order shall decide the question of charge against 04 (four) accused persons namely Md. Juber, Md. Aamir, Samshuddin and Md. Barik.

The charge-sheets were filed against Md. Juber, Md. Aamir, Samshuddin

and Md. Barik under Section 147/148/149/336/307/120B IPC & 27 Arms Act;

2. (a) It is the case of the prosecution that the accused persons namely Mohd. Juber, Amir, Samshuddin and Mohd. Barik alongwith others formed an unlawful assembly and in prosecution of their common object on 26.02.2020 at about 10.30 pm at Chudi gali, Maujpur, Delhi fired at Vinod Kumar, Vijay, Man Mohan and Varun.

(b) Public witnesses Vinod Kumar, Vijay, Man Mohan and Varun had given statements that on 26.02.2020 they were present in their houses and armed rioters had attacked them and they were also firing. The rioters were roaming in the area and shouting Allah-ho-Akbar and people were terrified.

(c) Supplementary statements were also recorded by which it was specifically stated by Vinod Kumar, Vijay, Man Mohan and Varun that when armed rioters were shouting Allah-ho-Akbar and were roaming in the gali then they saw the rioters who with an intention to kill them fired at them. They became terrified and rushed inside their houses. Public witness Man Mohan has identified accused Juber and Aamir vide his statement recorded on 17.03.2020 at PS-Jafrabad as being part of aggressive armed rioters covered in the present case. Similarly, he has identified Samshuddin and Barik vide his statement dated 31.03.2020.

3. Ld. Counsel for the accused persons has argued that there were contradictions in the statement of witnesses and thus charges should not be framed.

4. I have heard Ld. Special Public Prosecutor for the State and Ld. Counsel for the accused persons.

5. Before discussing the factual narrative of the case as adumbrated in the charge-sheet, it would be useful to refer to Section 228 Code Of Criminal Procedure (Cr.P.C in short) which provides for framing of charge.

Section 228 Code Of Criminal Procedure, 1973

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

(a) It has been held in catena of judgments that at the time of framing of charge, only prima facie case has to be seen and whether the case is beyond reasonable doubt is not to be seen at this stage. It is not required that detailed reasons must be recorded at the stage of charge.

(b) Hon'ble Supreme Court of India in a case titled as ***Bhawna Bai vs. Ghanshyam And Others.***, (2020) 2 Supreme Court Cases 217 held as follows :-

16. After referring to Amit Kapoor, in [Dinesh Tiwari v. State of Uttar Pradesh and another](#) (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 Cr.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

17.For framing the charges under Section 228 CrI.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in *Knati Bhadra Shah and another v. State of West Bengal* (2000) 1 SCC 722, while exercising power under Section 228 CrI.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused- respondent Nos.1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-respondent Nos.1 and 2 under [Section 302 IPC](#) read with [Section 34 IPC](#) and the High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside.

(c) In the context of the present case, what is therefore required to be seen at this stage is whether the prima facie case is made out or not or to say, if there are grounds for presuming that accused had committed any offence. The reference point for arriving at any conclusion is the charge-sheet which is culmination of the investigation conducted by the police.

6. From the strength of the statement of all three public witnesses Vinod Kumar, Man Mohan and Varun, it is clear from their statement that armed rioters had formed unlawful assembly and in prosecution of their common object on 26.02.2020 at about 10.30 pm at Chudi gali, Maujpur, Delhi fired at Vinod Kumar, Vijay, Man Mohan and Varun. It has come categorically in their statements that all four accused persons had fired at them with an intention to kill them. Witness Man Mohan has categorically identified all four accused persons namely Md. Juber, Md. Aamir, Samshuddin and Md. Barik as part of said armed rioters mob. Thus, for the purpose of charge u/s. 147,148, 307 r/w section 149 IPC, prosecution has met its case.

Regarding section 336 IPC, there is no necessity to frame charge under Section 336 IPC (**Act endangering life or personal safety of others**) as charge u/s. 307 IPC is specifically made out on the strength of their statement. Moreover, the said accused persons themselves did not fire nor was pistol or bullet recovered in the present case. As far as charge u/s. 120 B IPC is concerned, there is nothing on record to show prior meeting of the minds for the purpose of criminal conspiracy but there was an armed unlawful assembly of riotous mob consisting of accused persons and which had fired at the public witnesses with an intention to kill them. Thus, there was a firing by the said riotous mob consisting of accused persons in prosecution of their common object to do rioting and to kill three witnesses. Thus, accused persons are liable u/s. 149 IPC but discharged of the offence punishable u/s. 120B IPC.

5. Thus, on the basis of material on record, I am of the opinion that there are grounds for presuming that the accused persons namely Md. Juber, Md. Aamir, Samshuddin and Md. Barik have committed offences under Section 147,148, 307 read with Section 149 IPC. However, the accused persons are discharged of the offences punishable u/s. 336/120B IPC. Ordered accordingly.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 13.12.2021