

***IN THE COURT OF SH. VIRENDER BHAT: ASJ-03
NORTH-EAST DISTRICT: KARKARDOOMA COURTS: DELHI***

Sessions Case No. 318/2021

FIR No. 35/2020

PS Sonia Vihar

U/s 143/147/149/435/436/427/34 IPC

State

Versus

- 1. Ajay
S/o Sh. Dal Chand
R/o H. No. 1797, Circular Road,
B-Block, Near Bhagat Ji Mandir,
1st Pusta, Sonia Vihar, Delhi.**
- 2. Ashutosh
S/o Sh. Bhapunder Singh
R/o H. No. C-2/795, Gali No. 14,
2nd Pusta, Sonia Vihar, Delhi.**
- 3. Kuldeep
S/o Sh. Sher Bahu Shirvastav
R/o H. No. C-50, In front of Halwai Wali Gali,
2nd Pusta, Sonia Vihar, Delhi.**
- 4. Utkarsh Kushwaha
S/o Sh. Vinod Kumar Kushwaha
R/o H. No. B-1402, Gali No. 19,
1st Pusta, Sonia Vihar, Delhi.**

5. **Rohit Saxena**
S/o Sh. Ram Bahadur
R/o H. No. C-2/808, Gali No. 14,
2nd Pusta, Sonia Vihar, Delhi.
6. **Raj @ Dheeraj**
S/o Sh. Nanhe Lal
R/o H. No. B-65, Gali No. 1,
1st Pusta, Sonia Vihar, Delhi.
7. **Harender Rawat**
S/o Sh. Basant Rawat
R/o 2227, Gali No. 35, B-Block,
1st Pusta, Sonia Vihar, Delhi.
8. **Vishwajeet**
S/o Sh. Ajay Singh
R/o H. No. A-616, Gali No. 13,
Pocket-3, Sonia Vihar, Delhi.
9. **Hunny @ Anil**
S/o Sh. Rang Pal Singh
R/o H. No. B-2236, Gali No. 33,
1st Pusta, Near Bhagat Ji Mandir,
Sonia Vihar, Delhi.

ORDER ON THE POINT OF CHARGE:-

1. The above named nine accused have been charge-sheeted by the police for the offences u/s 143/147/149/427/435/436/427/34 IPC.

2. It is the case of the prosecution that all the nine accused were members of unlawful assembly on 25.02.2020 during the protests for and against CAA/NRC, which resorted to rioting and committed vandalization as well as arson thereby damaging/setting ablaze the shops and vehicles in Sonia Vihar area.

3. As per further case of the prosecution, SHO PS Sonia Vihar alongwith staff including SI Jagpal Singh reached 2nd Pusta Market upon receiving the information about the riotous incidents that had taken place there. HC Sanjeev was already present there and upon seeing the police party, the violent mob dispersed towards the streets and situation was taken under control. SI Jagpal Singh and HC Sanjeev inspected the area and found that the shop of M/s Bobby Hair Dresser at B-Block, Gali No. 16, Main Market and Shop No. B-133 of Irshad in the same market had been set on fire. A Maruti Car bearing Registration No. DL5C F4870 of Silver Colour was in damaged condition on the road and nearby shops belonging to a particular community had been vandalized. SI Jitender clicked the photographs of the spot from his mobile phone. Nobody came forward to give statement about the incidents of the vandalization and arson. Hence, SI Jagpal Singh recorded the statement of HC Sanjeev on the basis of which FIR was registered.

4. Copies of the DD entry numbers 38A, 42A, 44A, 100A,

101A, 103A, 104A, 105A, 106A, 107A, 108A and 109A which were recorded in pursuance to the PCR calls made on 25.02.2020 and DD entry No. 23A dated 28.02.2020 were obtained and attached with the file. The IO SI Jagpal Singh prepared rough site plan of the incident spot on 26.02.2020 at the instance of HC Sanjeev. Thereafter, he issued notices u/s 160 Cr. P.C to following victims of violence and recorded their statements:-

(i) Sh. Sahid Deshwal, whose Maruti Omni Car bearing Registration No. DL5CF4870 was damaged and CCTV camera broken by the rioters on 25.02.2020 at 12:45 pm.

(ii) Sh. Shakir Qureshi, whose Meat Shop in Gail No. 7, Sonia Vihar, Delhi was vandalized and damaged by the rioters on 25.02.2020 at about 12:30 pm.

(iii) Sh. Aslam, whose Saloon in Gali No. 6, Main Market, Sonia Vihar was vandalized by the rioters on 25.02.2020 at about 12:35 pm.

(iv) Md. Muslim, whose Shop in Gali No. 2, Main Market, Sonia Vihar was vandalized by the rioters on 25.02.2020 at about 12:40 pm.

(v) Sh. Ishtaq, whose Shop M/s Altaf Communication was vandalized by the rioters on 25.02.2020 in Gali No. 3, Main Market, Sonia Vihar at about 12:45 pm.

(vi) Sh. Irshad, whose Shop at B-123, Main Market, Sonia Vihar was vandalized and set ablaze by the rioters on 25.02.2020 at about 12:20 pm.

(vii) Md. Ali, whose Shop M/s Bobby Hair Cutting at 2nd Pusta, Sonia Vihar was vandalized and set ablaze by the rioters on 25.02.2020 at about 12:35 pm.

5. Thereafter, the IO seized the burnt articles from the shops of the victims Irshad and Md. Ali. On 26.02.2020, the IO seized the burnt Maruti Omni Car of Sahid Deshwal and deposited the same with the Malkhana. The incidents spot was got photographed on 27.02.2020.

6. Charge-sheet further mentions that during further investigation of the case, the IO received a video clip from public domain which he saved in the computer. After preparing its mirror images, he saved the video clip in a pen drive which he deposited with the Malkhana on 22.02.2020. He also took various screen shot of the video clip. Letter was sent to PWD

office, ITO for furnishing CCTV footages dated 25.02.2020 from 10 am to 4 pm of Box ID Nos. 701409, 701408, 701404, 701415, 701410, 701361, 701439 and 401416. It is stated that Sahid Deshwal produced a pen drive before the IO on 06.03.2020 which contained the CCTV footages of the incidents. He also produced the requisite certificate u/s 65B of Indian Evidence Act alongwith the pen drive. The IO prepared the copies/mirror images of the footages contained in the pen drive, seized the original pen drive and deposited the same with the Malkhana.

7. The video footage in the pen drive was shown to HC Sanjeev who identified a boy wearing green check shirt and Army Dress as Ajay whom he already knew. The IO took the screen shot of the footage where Ajay was seen. Thereafter, the said boy named Ajay was apprehended from 1st Pusta near Bhagati Mandir at the instance of HC Sanjeev. Upon making enquiries from him and being satisfied about his role in the incident, he was arrested. He is stated to have got the shirt, which he was wearing at the time of incident, recovered from his house which was seized by the IO.

8. On 15.03.2020, the IO showed the mirror image of the pen drive which had been provided to him by Sahid Deshwal, to Ct. Ankit who identified one boy wearing yellow colour full sleeves T-shirt and having stones in his hand as Ashutosh. Thereafter, the

said boy Ashutosh was apprehended from 1st Pusta, Sonia Vihar at the instance of Ct. Ankit. Upon getting satisfaction about his role in the incident, he was arrested in this case.

9. An external hard disc having capacity of 1 TB containing the CCTV footages of the cameras installed by the Delhi Government was collected by Ct. Satpal from PWD office, ITO, Delhi on 21.03.2020 and he handed over the same to the IO who seized the same and deposited it in the Malkhana. The CCTV footage was shown to HC Sanjeev on the computer on 31.03.2020 who identified one boy wearing white and yellow colour T-shirt as Kuldeep. The said boy Kuldeep was apprehended from 2nd Pusta, Sonia Vihar at the instance of HC Sanjeev and thereafter was arrested in this case. Similarly, Ct. Parvinder also identified one boy named Utkarsh Kushwaha in the said video footage on 05.04.2020. The said boy was also apprehended from 2nd Pusta, Sonia Vihar at the instance of Ct. Parvinder and after making enquiries, he was arrested in this case. HC Sanjeev and Ct. Parvinder are also stated to have identified two more boys namely 'S' (who was later on declared CCL) and Rohit in the said video footage who also were subsequently apprehended from 2nd Pusta, Sonia Vihar at their instance and later on were arrested in this case.

10. Accused Harender Rawat is stated to have already been

arrested in case FIR No. 137/20, PS Khajuri Khas. During interrogation in that case, he is stated to have revealed about his involvement in the riotous incidents in the Main Pusta Market, Sonia Vihar. Accordingly, he was formally arrested in this case on 11.04.2020 upon obtaining permission in this regard from the concerned Ld. Magistrate. Accused Raj @ Dheeraj is stated to have apprehended from 1st Pusta, Sonia Vihar on 11.04.2020 at the instance of secret informer. He is stated to have admitted his involvement in this case and accordingly was arrested.

11. After completion of the investigation, charge-sheet was submitted against accused Ajay, Ashutosh, Kuldeep, Utkarsh, Rohit, Raj @ Dheeraj and Harender Rawat.

12. Thereafter, upon arrest of the accused Hunny @ Anil and Vishwajeet, a supplementary charge-sheet was filed against them. Accused Hunny @ Anil is stated to have been identified as rioter in the CCTV footage by Ct. Parvinder and HC Sanjeev and thereafter, he was apprehended from Bulandsahar, UP at the instance of secret informer. Accused Vishwajeet is stated to have arrested in pursuance to his disclosure statement made in case FIR No. 107/20, PS Khajuri Khas wherein he had admitted his involvement in the instant case.

13. I have heard Ld. Special PP as well as Ld. Defence

counsels appearing for the accused and have also perused the entire material on record.

14. Ld. Special PP argued that there is sufficient material on record against all the accused in the form of ocular evidence as well as electronic evidence and therefore, the charges are liable to be framed against all of them.

15. Ld. Counsels appearing for the accused argued in unison that all the accused have been falsely implicated in this case without there being any iota of legally admissible evidence against them on record. They would submit that there is no eye witness who had seen any of these accused indulging in rioting at the incident spots and the case of the prosecution is based upon the statements of the police witnesses only who are stated to have identified the accused from a video clip and not directly at the spot. It is argued that the statements of these police witnesses namely HC Sanjeev, Ct. Ankit and Ct. Parvinder are totally unreliable even at this stage. They would also argue that the source of the video clip in question is also totally doubtful and therefore, the same also cannot be taken into consideration even at this stage. According to Ld. Counsels, charges, cannot be framed against the accused on the basis of such doubtful and legally inadmissible material. They prayed for discharge of all the accused.

16. It needs note here that at the time of deciding the charges against the accused, the Court is not expected to go deep into the probative value of material on record. At this stage, the Court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise of the accused. The Court is not supposed to decide whether the material collected by the investigating agency provides sufficient grounds for conviction of the accused or whether the trial is sure to culminate in his conviction. What is required to be seen at this stage is whether, the conviction of the accused is reasonably possible if the material on record remains unrebutted or whether there is strong suspicion which may lead the Court to think that there is ground for presuming that the accused has committed the offence.

17. Since, the instant case is the outcome of the riotous incident in which a large number of rioters were involved, the observations of the Hon'ble Supreme Court in Masalti & Ors. v. State of UP, AIR (1965) SC 202 become relevant in which the principle as to how a criminal Court should deal with the evidence pertaining to the commission of offence involving in a large number of offenders and large number of victims, has been laid down. It has been held that when a criminal Court has to deal with the evidence pertaining to the commission of offence involving a large number of offenders and large number of victims, the normal test is that the conviction should be sustained

only if it is supported by two or more witnesses who give a consistent account of the incident in question. When an unlawful assembly or a large number of persons take part in arson or in a clash between two groups, in order to convict a person, at least two prosecution witnesses have to support and identify the role and involvement of the persons concerned.

18. In the instant case, admittedly, there is no statement of any eye witness who has identified accused Raj @ Dheeraj and Harender Rawat as members of the unlawful assembly on 25.02.2020 which had committed rioting, vandalization and arson in Sonia Vihar area. It is clear case of no evidence qua these two accused. Therefore, both of them are liable to be discharged.

19. So far as accused Ajay, Rohit Saxena, Kuldeep and Utkarsh are concerned, it is evident from the perusal of the entire material on record that there is only one witness (namely HC Sanjeev) who is stated to have identified these accused as assailants i.e. the members of riotous mob which committed vandalization and arson in Sonia Vihar area. Even the said witness also had not identified these accused directly at the spot from the riotous mob. He is stated to have identified these accused as the rioters from the video footage shown to him by the IO on 15.03.2020. There is no other witness who has

identified, either directly or indirectly, these accused to be the assailants.

20. Hence, even if the evidence sought to be adduced by the prosecution against these five accused remains unrebutted during the trial, their conviction cannot be ordered in view of the Rule laid down by the Hon'ble Supreme Court in the above noted judgment in Masalti's case which mandates that there should be at least two prosecution witnesses to identify the role and involvement of the accused in the incident in question. Charges cannot be framed against these accused upon taking into account the material annexed with the charge-sheet on the basis of which there is no possibility of their conviction at the final stage. It would be sheer wastage of judicial time if the charges are to be framed against the accused upon consideration of the evidence on the basis of which they have to be acquitted later on.

21. Hence, there is no sufficient evidence on record on the basis of which charges can be framed against these four accused. Accordingly, they too are liable to be discharged.

22. As regards the accused Ashutosh, Vishwajeet and Hunny @ Anil, they have been identified as rioters by more than one witness. Accused Ashutosh has been identified by Ct. Ankit & complainant Sahid Deshwal, accused Vishwajeet by Ct.

Parmninder & complainant Sahid Deshwal and accused Hunny @ Anil by Ct. Parvinder & HC Sanjeev. It is true that these three accused have been identified by these witnesses in the CCTV footage of the riotous incident and not directly at the spot but there is nothing to disbelieve the genuineness of the said footage at this stage. The CCTV footage produced by Sahid Deshwal is duly supported by his certificate u/s 65B of Indian Evidence Act whereas the another footage has been obtained from a Government Agency i.e. PWD through proper channel and procedure. The video footages prima-facie appear to be legally admissible and cannot be discarded without testing their authenticity during trial.

23. It was argued by the Ld. Counsel appearing for accused Ashutosh, Vishwajeet and Hunny @ Anil that since they are not seen in the video footage putting any house/shop/vehicle on fire, charges u/s 435 IPC and 436 IPC cannot be framed against them. The argument has been noted only to be rejected. The material on record prima-facie establishes at this stage that these three accused were members of unlawful assembly on 25.02.2020 which vandalized the movable or immovable properties belonging to complainant Sahid Deshwal, Shakir Qureshi, Aslam, Md. Muslim and Ishtaq as well as set ablaze the shops belonging to complainant Irshad and md. Ali. Therefore, the charges u/s 435/436 IPC r/w Section 149 IPC are liable to be framed against them besides the charges for other offences for

being members of the above noted unlawful assembly and having knowledge that the offences would be committed by the members of the said assembly.

24. In the light of the above discussion, accused Ajay, Rohit Saxena, Kuldeep, Utkarsh, Raj @ Dheeraj and Harender Rawat are hereby discharged of all the offences. However, it is held that the charges u/s 143/147/427/435/436 IPC r/w Section 149 are liable to be framed against accused Ashutosh, Vishwajeet and Hunny @ Anil.

Announced in the open Court.

(VIRENDER BHAT)
ASJ-03(NE)/KKD COURTS/28.03.2022