

CNR No. DLNE01-003840-2021
State v. Javed etc.
SC No.398/21, FIR No.100/20, PS Dayalpur
Order on charge dated 17.11.2023

DLNE010038402021



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

CNR No. DLNE01-003840-2021
SC No. 398/21
State v. Javed etc.
FIR No. 100/20
PS Dayalpur

U/s. 147/148/149/380/454/427/436 IPC as well as 188 IPC.

In the matter of: -

STATE

Versus

- 1. Javed**
S/o. Sh. Dinni Khan,
R/o. H.No.2005, Gali No.19,
New Mustafabad, Delhi.
- 2. Gulfam**
S/o. Md. Sayeed,
R/o. H.No.338/D, Gali No.5,
Munga Nagar, Delhi.
- 3. Pappu @ Mustkeem**
S/o. Sh. Wali Khan,
R/o. H.No.A-1/26, Gali No.1,
Nehru Vihar, Delhi.

... Accused Persons

17.11.2023

ORDER ON THE POINT OF CHARGE

Vide this order, I shall decide the question of charges against accused 1. Javed, 2. Gulfam, and 3. Pappu @ Mustakeem, in this case.

1. Briefly stated, present case was registered on the basis of a complaint of complainant Aftab s/o Sh. Jahid Ali r/o C-91, gali no.1, Moonga Nagar, Delhi-94. In his complaint, Sh. Aftab alleged that he was running his shop on rent at A-20, gali no.2, Chand Nagar, Main Karawal Nagar road, wherein he used to sell new bicycles and used to repair old bicycles. It was further alleged that on 25.02.2020, rioters looted his abovesaid shop and took out all the articles kept therein and set on fire the same. He further alleged that in that incident he suffered a loss of Rs. 6 lacs.
2. On the basis of his written complaint, on 03.03.2020, ASI Ram Prakash registered FIR in this case u/s.147/148/149/427/436 IPC, which was assigned to SI Rajeev Kumar for investigation.
3. During the course of investigation of this case, SI Rajeev Kumar prepared site plan at the instance of complainant Aftab. Thereafter, IO/SI Rajeev Kumar prepared unscaled site plan of place of incident i.e. Main Wazirabad road, Chand Bagh, Delhi. It came to the knowledge of IO that at service road between Chand Bagh colony and main Wazirabad road, there had been protest against CAA/NRC since last 1.5- 2 months and the said mob consisted of persons from only one community, which had

committed vandalizm. IO also came to know that the rioters had looted shops of both the communities and set them on fire.

4. During the course of investigation, complaints of 17 more complainants were also received, which were also clubbed with this FIR for investigation.
5. During further investigation, all the accused persons namely Javed, Gulfam and Pappu @ Mustakeen were arrested in the present case.
6. After completion of investigation, on 14.07.2020, a chargesheet was filed by IO/SI Rajiv Kumar against accused Javed, Gulfam and Pappu @ Mustkeem, for offences punishable u/s. 147/148/149/427/436 IPC, before Duty MM (N/E), Karkardooma Court, Delhi. On 03.12.2020, ld. CMM (N/E), Karkardooma court, Delhi, took cognizance of aforesaid offences. On 02.11.2021, ld. CMM (N/E) committed the case to the court of sessions.
7. On 21.01.2021, first supplementary chargesheet along with complaint u/s. 195 Cr.P.C. with addition of Sections 188/380/454 IPC and other documents, was filed before ld. CMM (N/E). Thereafter, ld. CMM (N/E) sent this supplementary chargesheet to the court of sessions vide order dated 27.01.2022. On 14.03.2023, second supplementary chargesheet along with certain documents was filed directly before this court.
8. On 26.08.2023, third supplementary chargesheet along with certain documents was filed directly before this court. In this

supplementary chargesheet, prosecution took fresh stand that after analysis of 17 complaints clubbed for investigation in this case; date, time and place of occurrence of incidents as reported in complaint of Mohd. Zuber, Shabudeen **(there are two complaints of Shabudeen)**, Mohd. Umar, Omvati and Rafiq, were found different from the date, time and place of FIR registered in this case. An application was filed to return these complaints, stating that same would be investigated separately, which was allowed. These complaints were ordered to be returned back along with documents attached with these complaints, vide order dated 26.08.2023.

9. As per last supplementary chargesheet as well as according to ld. Special PP and IO, this case is to be prosecuted in respect of eleven complaints including FIR i.e. complaint of Aftab, Abrar Ahmad, Md. Imtiyaaz, Dharmendra Kumar, Shahjad Ali, Md. Sahil Azad, Md. Makbool, Vinod, Asif Ansari, Sameena and Sameer.
10. In their respective complaints: - **(i) complainant Abrar Ahmad** alleged that on 25.02.2020, his shop under the name and style of “SMK Computer & Printing Palace” situated in S. Market, H.No.120A, Gali No.1, Yadav Gali, Main Karawal Nagar Road, Chandu Nagar, Delhi, was looted and set ablaze by the rioters and he suffered loss up to Rs.2.50-3 lakh; **(ii) complainant Dharmendr Kumar** alleged that on 25.02.2020, rioters vandalized and set ablaze his shop/office under the name and style of “Shree Balaji Enterprises” situated at 144/42, Gupta

Building Dev Tower, Chandu Nagar, Delhi-94; **(iii) complainant Shahjad Ali** alleged that on 25.02.2020, rioters entered his shop under the name and style of M/s. Hashmi Traders (Store of Yunani and Ayurvedic Medicines) situated in property no.120-A, Yadav Gali, Chandu Nagar, Karawal Nagar Road, Delhi, breaking its shutter with the help of hammer and saria and they took away all the goods and necessary documents kept therein and set ablaze his shop, in which he suffered loss of Rs.7-8 lacs; **(iv) complainant Md. Imtiyaz** alleged that on 25.02.2020, rioters looted his grocery shop situated at property no.120-A, Yadav Gali, Chandu Nagar, Karawal Nagar Road, Delhi-94, in which cash of approx. 35-40,000/- as well as a machine worth Rs.4 lakh were kept; **(v) complainant Md. Sahil Azad** alleged that on 25.02.2020, some rioters entered his shop situated in Khasra No.50, Shop No.1, Chandu Nagar, near Indraprasth Public School, Sherpur Chowk by breaking its shutter and took away around 80 mobile phones, two photocopier machines and other goods; **(vi) complainant Md. Maqbool** alleged that on 25.02.2020, around 100-150 persons attacked on his shop under the name and style of “Maqbool Auto Service Centre” situated in Khasra No.144 Gupta Market, near Aggarwal Sweet, Chandu Nagar, looted it and set the same on fire and they also took away four bikes and spare parts worth Rs.3.80 lacs, wherein he suffered loss of Rs.6-7 lacs; **(vii) complainant Vinod** alleged that on 25.02.2020, looted his hotel/dhaaba situated at 120-A, Chandu Nagar, Main Karawal Nagar, Delhi and set the furnitures

on fire, wherein he suffered loss of around Rs.4 – 4.5 lacs; **(viii) complainant Asif Ansari** alleged that on 25.02.2020, rioters looted his shop meant for mobile and money transfer situated in property no.A-95, Yadav Gali, Chandu Nagar, Karawal Nagar Road, Delhi-94 and set ablaze the goods kept therein and they also looted cash amount of Rs.1.5 lacs as well as mobile and mobile accessories worth Rs.1,00,000/- and other goods worth Rs.50,000/-; **(ix) complainant Sameena** alleged that on 25.02.2020, rioters vandalised his house bearing no. A-4, Gali No.05, Chandu Nagar, Gokulpuri, North-East, Delhi and looted jewellery worth Rs.1,60,000/-, silver worth Rs.15,000/-, metal utensils worth Rs.30,000/- and cash of Rs.40,000/-; **(x) complainant Sameer** alleged that materials worth Rs.2.50/- lacs were looted from his shop situated at H.No.B-91, Gali No.5, Nehru Vihar near Tukmirpur Govt. School and rioters set ablaze the materials left outside the shop.

Arguments of Defence: -

11. **Sh. Abdul Shamim Khan**, ld. counsel for accused Gulfam Javed and Pappu @ Mustkeem, argued that accused have been falsely implicated in this case and a false case has been planted upon them.

Arguments of Prosecution: -

12. Per contra, **Sh. Madhukar Pandey**, ld. Special PP for State argued that witnesses identified all three accused persons, who had committed the incidents probed in this case. He referred to statements of eye witnesses namely Kapil & Bhai Sahab. In his

written synopsis, ld. Special PP referred to the facts of the case and mentioned calendar of evidence to show the evidence against the accused persons. It was further submitted that all accused persons are responsible for the incidents being prosecuted in this case as they were seen in that mob by witnesses, though at different times. Ld. S.P.P. submitted that the testimony of complainant and public witnesses cannot be discarded.

Appreciation of arguments, facts and law: -

13. I have perused the statements of the witnesses and other materials placed on the record. First of all, I shall refer to the provisions dealing with the alleged offences and other relevant offences.
- Section 148 IPC provides punishment for committing riot being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.
 - Section 149 IPC provides liability of each member of unlawful assembly for any offence committed by any member of that assembly in prosecution of the common object of that assembly or within knowledge of members of that assembly to be likely committed in prosecution of that object.
 - Section 188 IPC provides punishment for disobedience to order duly promulgated by public servant. Section 188 IPC provides punishment for disobedience to order duly promulgated by public servant.
 - Section 380 IPC provides punishment for committing theft in any building, tent or vessel, used as a human dwelling, or used for the custody of property.
 - Section 427 IPC provides punishment for committing mischief and thereby causing loss or damage to the amount of fifty rupees or upwards.

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- Section 435 IPC provides punishment for committing mischief by fire or any explosive substance intending to cause or knowing it to be likely that it will cause damage to any property to the amount of Rs.100/- or upwards.
- Section 436 IPC provides for punishment for committing mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property.
- Section 450 provides for punishment for committing house-trespass in order to the committing of any offence punishable with imprisonment for life.
- Section 454 IPC provides punishment for lurking house trespass or house breaking in order to commit offence.

14. I shall refer to the victim wise details of incidents being prosecuted in the present case, which is as under: -

Victim wise incidents being prosecuted in the present case			
Srl. No.	Name of victim/ complainant	Place of incidents	Date and Time of incidents
1	Aftab	Bicycle shop situated at A/20, Gali No.2, Chandu Nagar, Main Karawal Nagar Road	25.02.2020 at 6-7 PM
2	Abrar Ahmed	SMK Computer & Printing Palace situated at S. Market H.No. 120-A, Gali No.1, Yadav Gali, Main Karawal Nagar Road, Chandu Nagar, Delhi.	25.02.2020 at 5-6 PM
3	Dharmender Kumar	Shree Balaji Entrprises Shop meant for repair of	25.02.2020 at

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Victim wise incidents being prosecuted in the present case			
		computer printer and its refiling, situated at 144/42, Gupt Building, Dev Tower, Chandu Nagar, Main Karawal Nagar Road, Delhi	4-5 PM
4	Shahjad Ali	M/s. Hashmi Traders/Store of Yunani and Ayurvedic medicines, situated in property no.120-A, Yadav Gali, Chandu Nagar, Karawal Nagar Road, Delhi.	25.02.2020 at 5-6 PM
5	Md. Imtiyaz	Ration shop situated in property no.120-A, Yadav Gali, Chandu Nagar, Karawal Nagar Road, Delhi-94	25.02.2020 at 5-6 PM
6	Md. Sahil Azad	Mobile shop situated in Shop No.1, Khasra No.50, Chandu Nagar, near Indraprasth Public School, Sherpur Chowk.	25.02.2020 at 5-6 PM
7	Md. Makbool	Maqbool Auto Service Centre situated in Khasra No.144 Gupta Market, near Aggarwal Sweet, Chandu Nagar	25.02.2020 at 4-5 PM
8	Vinod	Hotel/Dhaaba situated at 120-A, Chandu Nagar, Main Karawal Nagar, Delhi.	25.02.2020 at around 4-5 PM
9	Asif Ansari	Shop meant for mobile and money transfer situated in property no.A-95, Yadav	25.02.2020 at around 5-6 PM

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Victim wise incidents being prosecuted in the present case			
		Gali, Chandu Nagar, Karawal Nagar Road, Delhi-94	
10	Sameena	H.No.A-4, Gali No.05, Chandu Nagar, Gokalpur, North East Delhi, Delhi-94	25.02.2020 at around 5-6 PM
11	Sameer	Shop situated at H.No.B-91, Gali No.5, Nehru Vihar near by Tukmirpur Govt. School	25.02.2020

15. As per prosecution, following witnesses identified accused persons in the incidents probed in the present case: -

Srl. No.	Name of public/police witnesses	Accused identified/named by public witness
1.	Ct. Piyush	1. Javed, 2. Gulfam & 3. Pappu @ Mustakeem
2.	Sh. Bhai Sahab	4. Javed, 5. Gulfam & 6. Pappu @ Mustakeem
3.	Sh. Kapil	7. Javed, 8. Gulfam & 9. Pappu @ Mustakeem

16. In his statement recorded u/s 161 Cr.P.C. on 15.04.2020, Ct. Piyush stated that on 25.02.2020 he was discharging his duty at Wazirabad Road and Chandu Nagar, Main Karawal Nagar Road, to control the riot. He further stated that at around 5-6 PM, some persons in the mob of around 1500-2000, started setting ablaze the shops situated at Chandu Nagar, Main Karawal Nagar Road

and nearby shops. They also set ablaze the vehicles parked on the road. They also set ablaze the shop no.A/20 in gali no.2, Chandu Nagar. Ct. Piyush identified Javed Malik resident of Mustafabad, accused Gulfam resident of Moonga Nagar and accused Pappu @ Mustakim resident of Nehru Vihar, Dayalpur; among the aforesaid mob. Ct. Piyush further stated that accused Gulfam was having iron rod in his hand, accused Javed Malik was having petrol bomb bottle in his hand and accused Pappu @ Mustakim was having danda in his hand. Ct. Piyush further stated that these accused persons set ablaze the goods of the shop by sprinkling the petrol upon them and also committed vandalism and arson in the nearby shops. Ct. Piyush further stated that aforesaid three boys were leading the mob in aforesaid vandalism and arson and had run away thereafter.

17. In his subsequent statement dated 06.05.2020, Ct. Piyush identified accused Gulfam and Javed before IO.
18. In his statement recorded u/s. 161 Cr.P.C. Dated 06.05.2020 witness Bhai Sahab narrated about his own incident which allegedly took place on 24.02.2020 in gali no.5. Next day i.e. on 25.02.2020, at around 6-7 PM this witness identified accused persons in the mob of rioters in his gali. These persons were having danda, petrol bomb bottles and iron rods in their hands. Bhai Sahab further stated that these persons started vandalising and setting ablaze the shops on the road. He stated that same persons committed vandalism and arson in bicycle shop situated in gali no.2, Chandu Nagar. This witness identified accused Javed

Malik resident of Mustafabad, accused Gulfam resident of Munga Nagar and accused Pappu @ Mustakim resident of Nehru Vihar, as member of aforesaid mob.

19. In his statement dated 06.05.2020 recorded u/s. 161 Cr.P.C. witness Kapil stated about same facts as stated by witness Bhai Sahab and the subsequent incident. He further stated that on 25.02.2020, he went to the house of Bhai Sahab and at about 6-7 PM he had seen same rioters again in the gali of Bhai Sahab. This mob had set on fire a bicycle shop in gali no.2 of Chandu Nagar.
20. As per statement given by complainant Abrar Ahmad, Sameer and Makbool, they had closed their shops on 24.02.2020 on hearing news of riots. On 25.02.2020, they came to know about loot and arson in their respective shops by the rioters.
21. As per statement given by complainants Mohd. Imtiyaz, Sahil Azad, Vinod, Asif Ansari and Dharmender Kumar they had not opened their shop/dhaaba since 24.02.2020 and both of them came to know about incidents at their shops/office on 25.02.2020.
22. As per statement given by complainant Shahzad Ali rioters had attacked on this shop on 25.02.2020. They vandalised articles in his shop and set the remaining articles on fire. However, from the statement of this complainant, it is not revealed, if he himself had witnessed this incident or the same was so informed to him by someone else.
23. In the subsequent statement dated 30.03.2020, Mohd. Imtiyaz stated that on 25.02.2020, rioters attacked on his shop, looted the

same and set it on fire, but due to large persons being there in the mob, he could not identify anyone in that mob.

24. As per statement given by complainant Sameena, on 25.02.2020 rioters attacked on her house, vandalised it and looted the articles from her house. She left her house with family to save their lives and after the riots when she came back, she found her house in burnt condition. However, this witness also did not say anything about seeing and identifying the rioters. There is no complete description of the facts, if this complainant had left her house at the time of the incident or at some different time. However, in her subsequent statement dated 20.01.2021, this complainant stated that she had left her house on 24.02.2020 and someone had informed from her neighbourhood that her house was vandalized and set ablaze by the rioters on 25.02.2020 between 5-6 PM. In fact, on the same date IO examined other complainants namely Sameer, Vinod, Asif Ansari, Aftab, Abrar Ahmad, Mohd. Imtiyaz, Dharmender Kumar, Shahzad, Sahil Azad and Makbool also. The common part of statement of all these complainants was that each one of them were informed by their neighbours about date and time of incident at their respective places on 25.02.2020 between 4 to 6 PM.
25. Thereafter, IO again examined complainants Aftab, Shahzad Ali, Dharmender and Sameer on 09.02.2023 when they disclosed name of the persons who had given information to them about date and time of incident at their respective places. The common

feature of all these statements was that none of the informers to these complainants were reportedly available to these witnesses.

26. On the record, IO placed several site plans including one composite site plan, to show the proximity of these places being on and near Main Karawal Nagar Road. However, proximity of place of incidents in itself cannot be a ground to presume that all the incidents as reported by additional complainants, had also taken place at the same time or that same mob was behind those incidents. It is matter of knowledge for this court that in FIR No.116/20 of same PS investigated by same IO, same kind of incidents were reported to have taken place in the same area on 24.02.2020. The statement of three star witnesses of the prosecution as already mentioned herein-above, show that they referred to incident taken place in the bicycle shop situated in gali no.2, Chandu Nagar. IO neither asked them nor did they say anything in respect of witnessing the incident at the places of additional complainants.
27. The statement given by the additional complainants show that their knowledge about time and date of incident was based on information given to them by some different persons. Unfortunately, during initial period of investigation IO did not try to find out their particulars and to examine them, so as to ascertain the actual time and date of incident in question. At a much belated time i.e. on 09.02.2023 IO asked about particulars of such informers from the additional complainants. But by this time, the complainants showed their inability to furnish

particulars of present whereabouts of those informers. The statements dated 09.02.2023 cannot be a basis to make the hearsay evidence of the additional complainants regarding time and date of incidents at their respective places, to be the relevant evidence to establish the time and date of such incidents. In these circumstances, I find that there is no evidence on the record to even confirm the time and date of incident at the respective places of the respective additional complainants. I also find that the star witnesses of the prosecution for identification of accused persons, did not say anything about witnessing the incident reported by additional complainants. Thus, the stand of the prosecution to prosecute all the aforesaid additional complaints with the FIR lodged in this case, is found to be fallacious. The additional complaints were not completely investigated to even confirm the date and time of such incidents, on the basis of relevant evidence. IO simply relied upon the hearsay evidence of the additional complainants and clubbed these complaints in this case. In my opinion conclusion on investigation on the additional complaints are incomplete and they could not be clubbed for prosecution in this FIR. These additional complaints do require further and thorough investigation to reach a particular conclusion. Hence, SHO is directed to take up all the above-mentioned additional complaints for further investigation separately, in accordance with law in order to take them to a logical conclusion.

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28. However, on the basis of statement of star witnesses of the prosecution and the complaint as well as statement of Aftab, I find that the shop of Aftab was vandalised by a mob of rioters including the accused persons herein. The photographs of his shop as placed on the record do not show any burn mark in the shop, so as to make out a case of offence u/s. 436 IPC. The allegations made by this complainant make out a case of theft of his bicycles, apart from damaging the bicycles in the shop and setting the bicycles on fire. It is also apparent that the accused persons violated the order u/s. 144 Cr.P.C. as issued by Id. DCP (N/E) in North-East District. Accordingly, a case is made out against accused persons for offences punishable u/s. 148/380/427/435/454 IPC r/w. Section 149 IPC and u/s. 188 IPC. Accused persons are discharged for offence u/s. 436 IPC in the present case.

Ordered accordingly.

Announced in the open court **(PULASTYA PRAMACHALA)**
today on 17.11.2023 **ASJ-03(North East)**
(This order contains 16 pages) Karkardooma Courts/Delhi

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State v. Javed etc.
SC No. 290/21, FIR No. 116/20, PS Dayalpur
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**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

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U/s.147/148/149/188/380/436/454/427/436 IPC

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- 1. Javed**
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- 2. Gulfam**
S/o. Md. Sayeed,
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- 3. Pappu @ Mustkeem**
S/o. Sh. Wali Khan,
R/o. H.No.A-1/26, Gali No.1,
Nehru Vihar, Delhi.

... Accused Persons

17.11.2023

ORDER ON THE POINT OF CHARGE

Vide this order, I shall decide the question of charges against accused **1. Javed, 2. Gulfam, and 3. Pappu @ Mustakeem**, in this case.

- 1.** Brief facts of the present case are that, first complainant Sh. Zameer Ahmed, S/o. Sh. Nanney Khan, R/o. 276-B, Gali No.4, Munga Nagar, Dayalpur, Delhi, made a complaint dated 28.02.2020 (received vide DD No.36A dated 04.03.2020 and Dy. No.65 dated 03.03.2020). In his complaint, Sh. Zameer Ahmed alleged that he had taken a shop on rent in gali no.9 Moonga Nagar, Neeli Building, Karawal Nagar Road and was selling coolers. He alleged that on 24.02.2020 in between 11 AM to 12 PM, after hearing some noise, he closed his aforesaid shop and came to his house. On 25.02.2020, in the morning he came to know that rioters had broken the shutter of his aforesaid shop and looted coolers and cooler accessories worth Rs.15-16,00,000/-.
- 2.** On the basis of this complaint, on 04.03.2020, ASI Ram Prakash registered FIR in this case u/s.147/148/149/427 IPC and investigation was carried out by IO/SI Rajiv Kumar.
- 3.** During investigation of this case, IO prepared site plan of place of occurrence i.e. Munga Nagar, Main Road Karawal Nagar, Delhi, at the instance of aforesaid complainant and recorded his statement u/s. 161 Cr.P.C. As per chargesheet, rioters had also looted and set on fire other shops in that area and several complaints were received in the PS regarding loot/arson of shops

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as well as damaging/setting on fire the vehicles. IO clubbed 22 other complaints for investigation in this case and recorded statement u/s. 161 Cr.P.C. of those complainants/shopkeepers/owners of vehicles, in the present case.

4. During the course of further investigation, IO recorded statement of Ct. Piyush, who was performing his duty at the place of occurrence. Ct. Piyush had seen the incident of the present case and identified accused Jawed, Gulfam and Pappu among the rioters, who were already known to him. IO also recorded statement of public witnesses namely Sh. Bhai Sahab and Sh. Kapil, who had also identified aforesaid three accused persons, because these were same three accused persons, who along with their friends had also assaulted Sh. Bhai Shahab on 24.02.2020 at Bharat Dairy Cut.
5. During further investigation, IO was informed by ASI Rajender about arrest of accused Gulfam and Pappu @ Mustkeem in FIR No.86/20, PS Dayalpur. He was further informed by ASI Hira Lal about arrest of accused Javed in FIR No.79/20, PS Dayalpur. All these accused persons had allegedly confessed their involvement in the incident of the present case. Thereafter, IO interrogated and formally arrested them in the present case.
6. After completion of investigation, on 03.08.2020 a chargesheet was filed by IO/SI Rajiv Kumar, against accused Javed, Gulfam, and Pappu @ Mustakeem, for offences punishable u/s. 147/148/149/427/436 IPC, before Duty MM (N/E), Karkardooma Court, Delhi. On 02.12.2020, Id. CMM (N/E), Karkardooma court,

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Delhi, took cognizance of aforesaid offences. On 23.08.2021, ld. CMM (N/E) committed the case to the court of sessions.

7. On 17.12.2021, first supplementary chargesheet along with complaint u/s. 195 Cr.P.C. with addition of Sections 188/380/454 IPC and other documents, was filed before ld. CMM (N/E). Thereafter, ld. CMM (N/E) sent this supplementary chargesheet to the court of sessions vide order dated 04.01.2022. On 14.03.2023, second supplementary chargesheet along with certain documents was filed directly before this court.
8. On 26.08.2023, third supplementary chargesheet along with certain documents was filed directly before this court. In this supplementary chargesheet, prosecution took fresh stand that after analysis of 22 complaints clubbed for investigation in this case; date, time and place of occurrence of incidents as reported in complaint of Subhash Gupta, Mohd. Yusuf, Firoz, Chand, Haider Yusuf, Geeta, Waseem, Imran, Govardhan, Yamin, Sabir Ali, Irshad Ahmed, Rashid and Asif, were found different from the date, time and place of FIR registered in this case. An application was filed to return these complaints, stating that same would be investigated separately, which was allowed. These complaints were ordered to be returned back along with documents attached with these complaints, vide order dated 26.08.2023.
9. As per last supplementary chargesheet as well as according to ld. Special PP and IO, this case is to be prosecuted in respect of eight complaints including FIR i.e. complaint of Zameer Ahmed,

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Suraj, Ankit Aggarwal, Shyam Sahani, Rajinder Kumar, Suresh Chand, Sheshpal and Somnath Sachdeva.

10. In their respective complaint: - **(i) complainant Suraj** alleged that on 24.02.2020 at around 12 PM rioters had looted and set on fire his tea stall and Khokha, situated outside gali no.6, Moonga Nagar; **(ii) complainant Ankit Aggarwal** alleged that in the violence of 24/25.02.2020 his shop in the name and style of “Aggarwal Stationers” was looted and thereafter, set on fire; **(iii) complainant Shyam Sahni** alleged that in the violence dated 24/25.02.2020 his tea stall in the name and style of “Shyam Tea Stall” situated in H.No.347 C-1, Gali No.6, Karawal Nagar Road, was looted, vandalised and set ablaze and he suffered loss of Rs.5/6 lakh; **(iv) complainant Rajinder Kumar** alleged that on 24.02.2020 at about 12 PM, rioters looted and set ablaze his khokha/shop situated in outside gali no.6, Moonga Nagar; **(v) complainant Suresh Chand** alleged that on 24.02.2020, his khokha/shop meant for betel, beedi, cigarette, situated outside gali no.5, Moonga Nagar, was looted and set ablaze by the rioters; **(vi) complainant Sheeshpal** alleged that in Delhi riot dated 24.02.2020, rioters had looted his tea shop situated at H.No.275/4, Moonga Nagar, Karawal Nagar and set ablaze main counter as well as toffees, biscuits, Kurkure kept therein and he suffered loss of approx Rs.25,000/-; and **(vii) complainant Somnath Sachdeva** alleged that on 24.02.2020 at around 02:30 PM, rioters had looted all the documents, cash amount of Rs.50,000/- and set on fire his shop no.276/5 as well as three

storey building, wherein materials worth Rs.20,00,000/- and self, sofa, bed, dressing etc. were kept, which turned into ash.

11. I heard ld. Special PP and ld. defence counsels on the point of charge. I have perused the entire material on the record.

Arguments of Defence: -

12. **Sh. Abdul Shamim Khan**, ld. counsel for accused Gulfam Javed and Pappu @ Mustkeem, argued that accused have been falsely implicated in this case and a false case has been planted upon them.

Arguments of Prosecution

13. Per contra, **Sh. Madhukar Pandey**, ld. Special PP for State argued that witnesses identified all three accused persons, who had committed the incidents probed in this case. He referred to statements of eye witnesses namely Kapil & Bhai Sahab. In his written synopsis, ld. Special PP referred to the facts of the case and mentioned calendar of evidence to show the evidence against the accused persons. It was further submitted that all accused persons are responsible for the incidents being prosecuted in this case as they were seen in that mob by witnesses, though at different times.

Appreciation of arguments, facts and law: -

14. I have perused the statements of the witnesses and other materials placed on the record. First of all, I shall refer to the provisions dealing with the alleged offences and other relevant offences, which are as follows: -

- Section 148 IPC provides punishment for committing riot

being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.

- Section 149 IPC provides liability of each member of unlawful assembly for any offence committed by any member of that assembly in prosecution of the common object of that assembly or within knowledge of members of that assembly to be likely committed in prosecution of that object.
- Section 188 IPC provides punishment for disobedience to order duly promulgated by public servant.
- Section 380 IPC provides punishment for committing theft in any building, tent or vessel, used as a human dwelling, or used for the custody of property.
- Section 427 IPC provides punishment for committing mischief and thereby causing loss or damage to the amount of fifty rupees or upwards.
- Section 435 IPC provides punishment for committing mischief by fire or any explosive substance intending to cause or knowing it to be likely that it will cause damage to any property to the amount of Rs.100/- or upwards.
- Section 436 IPC provides for punishment for committing mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property.

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- Section 450 provides for punishment for committing house-trespass in order to the committing of any offence punishable with imprisonment for life.
- Section 454 IPC provides punishment for lurking house trespass or house breaking in order to commit offence.

15. I shall refer to the victim wise details of incidents being prosecuted in the present case, which is as under: -

Victim wise incidents being prosecuted in the present case			
Srl. No.	Name of victim/ complainant	Place of incidents	Date and Time of incidents
1	Zameer Ahmed	Neeli Building, Gali No.9, Moonga Nagar, Karawal Nagar, Delhi	24.02.2020 at about 1 PM to 2 PM
2	Suraj	Tea Shop and Khokha, Corner of the Gali No.6, Moonga Nagar, Delhi	24.02.2020 at about 12 Noon to 1 PM
3	Ankit Aggarwal	Aggarwal Stationers and Book Depot, Shop No. 333, Gali No.5, Moonga Nagar, Delhi	24.02.2020 at around 1 PM to 2 PM
4	Shyam Sahani	Tea Stall situated at Shop No. 347 C-1, Gali No.6, Moonga Nagar, Karawal Nagar Road, Delhi	24.02.2020 at about 1 PM to 2 PM
5	Rajinder Kumar	Tea Stall at the corner of Gali No.6, Moonga Nagar, Delhi	24.02.2020 at about 12 Noon to 1 PM
6	Suresh Chand	Shop situated in Gali No.5, Moonga Nagar, Delhi	24.02.2020 at about 1 PM to 2 PM

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Victim wise incidents being prosecuted in the present case			
7	Sheshpal	Tea Stall situated in H.No. 275/4, Moonga Nagar, Delhi	24.02.2020 at about 1 PM to 2 PM
8	Somnath Sachdeva	Sachdeva Furniture at 276/5, Moonga Nagar, Chand Bagh, Delhi	24.02.2020 at about 2 PM to 2:30 PM

16. As per prosecution, following witnesses identified accused persons in the incidents probed in the present case: -

Srl. No.	Name of public/police witnesses	Accused identified/named by public witness
1.	Ct. Piyush	1. Javed, 2. Gulfam & 3. Pappu @ Mustakeem
2.	Sh. Bhai Sahab	4. Javed, 5. Gulfam & 6. Pappu @ Mustakeem
3.	Sh. Kapil	7. Javed, 8. Gulfam & 9. Pappu @ Mustakeem

17. In his statement recorded u/s 161 Cr.P.C. on 10.03.2020, Ct. Piyush stated that on 24.02.2020 he was discharging his duty at Wazirabad Road and Moonga Nagar Road, Chandu Nagar, Main Karawal Nagar Road, to control the riot. There was a mob of around 1500 persons. He further stated that at around 11-12 PM, some persons in the mob started setting ablaze the shops situated at Chandu Nagar, Main Karawal Nagar Road and nearby shops. They also set ablaze the vehicles parked on the road. Ct. Piyush identified Javed Malik resident of Mustafabad, accused Gulfam

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resident of Moonga Nagar and accused Pappu @ Mustakim resident of Nehru Vihar, Dayalpur; among the persons in the aforesaid mob. Ct. Piyush further stated that some boys were having bottles full of petrol in their hands, who had set ablaze shop in Neeli Building situated at Moonga Nagar, Gali No.9, Karawal Nagar Road. They also committed vandalism in a bicycle shop situated in Gali No.2, Chandu Nagar and set it on fire. They also started vandalism and arson in nearby shops. It was further stated that aforesaid three boys were leading the mob in aforesaid vandalism and arson.

- 18.** In his subsequent statement dated 06.05.2020, Ct. Piyush identified accused Gulfam before IO. Thereafter, on 05.07.2020, he again identified accused Javed and Pappu in Mandoli Jail before IO.
- 19.** In his statement recorded u/s. 161 Cr.P.C. dated 10.03.2020 witness Bhai Sahab stated that on 24.02.2020 in between 11 AM to 12 PM, he along with his friend Kapil came out on the road, on hearing noise from outside. He saw that some rioters were vandalising and setting ablaze shop in Neeli Building situated in gali no.9, Moonga Nagar, Karawal Nagar Road. Thereafter, he narrated about his own incident, which allegedly took place on same day in gali no.5. Next day i.e. on 25.02.2020, at around 6-7 PM this witness again saw and identified those assailants including accused persons. These persons were having danda, petrol bomb bottles and iron rods in their hands. Bhai Sahab further stated that these persons started vandalising and setting

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ablaze the shops on the road. He stated that same persons were involved in the incident of vandalism and arson committed in the shop of Neeli Building situated in Moonga Nagar, Gali No.9, Karawal Nagar Road. They committed vandalism and arson in bicycle shop situated in gali no.2, Chandu Nagar. This witness identified accused Javed Malik resident of Mustafabad, accused Gulfam resident of Munga Nagar and accused Pappu @ Mustakin resident of Nehru Vihar, as part of said mob.

20. In his statement dated 10.03.2020 recorded u/s. 161 Cr.P.C. witness Kapil stated about same facts as stated by witness Bhai Sahab, as related to incident at Neeli Building on 24.02.2020 between 11 AM to 12 PM and the subsequent incident. He further stated that on 25.02.2020, he went to the house of Bhai Sahab and at about 6-7 PM he had seen same rioters again in the gali of Bhai Sahab.
21. None of the complainants were themselves present at the time of incident taken place at their respective places. Complainant Somnath stated that he got information on 24.02.2020 at about 02:30 PM about incident at his shop of furniture. In his subsequent statement dated 25.12.2020, he stated that he had closed his shop at about 11:30 AM and he was given information on same day at about 2-02:30 PM by his neighbours.
22. Complainant Suraj stated that rioters had set ablaze his tea stall on 24.02.2020 at about 12 PM. In his subsequent statement, he referred to getting such information from neighbours of his shop on 25.02.2020 at about 8-9 AM.

23. Complainant Ankit Aggarwal in his statement dated 30.03.2020 stated that incident took place in his shop of stationery on 25.02.2020. However, in his subsequent statement dated 05.12.2020, he stated that on 24.02.2020 at about 3 PM he had seen smoke rising up from his shop and on 25.02.2020 he visited his shop at about 9 AM and found his shop in completely burnt condition. The neighbours informed him that his shop was burnt by rioters on 24.02.2020 at about 2 PM.
24. Similarly, complainant Shyam in his statement dated 30.03.2020 stated that he had closed his shop on 24.02.2020 and on 25.02.2020 he received information about incident at his shop. In the subsequent statement dated 10.12.2020, he modified his statement to say that he had not opened his tea shop on 24.02.2020 and during his visit on 25.02.2020 to his shop at 9 O'clock he found his shop in burnt condition and his neighbours informed him that it was so done on 24.02.2020 between 1-2 PM.
25. Complainant Rajinder also in his statement dated 30.03.2020 stated that his shop was burnt on 24.02.2020 at about 12 O'clock. Subsequently, he added that on same day he had come back to see his shop at 12-1 PM and his shop was found in burnt condition.
26. Complainant Suresh Chand in his statement dated 30.03.2020 stated that he received information about arson at his shop from others on 25.02.2020 at about 9 AM. In his subsequent statement, he referred to timing of incident as 24.02.2020 between 1-2 PM with reference to the information given by his neighbours. Same

statement was given by complainant Sheeshpal, who was also running a tea stall.

27. IO had recorded statement of all these complainants again on 09.02.2023 and in these statements Zameer Ahmed, Suresh Chand referred to some Chhola Bhatore vendor as source of their information. Shyam Sahani referred to fruit vendor as source of his information and according to them none of these persons were available now, having gone back to their respective native places.
28. On the record, IO placed several site plans including one composite site plan, to show the proximity of these places being on and near Main Karawal Nagar Road. However, proximity of place of incidents in itself cannot be a ground to presume that all the incidents as reported by additional complainants, had also taken place at the same time or that same mob was behind those incidents. The statement of star witnesses of the prosecution as already mentioned herein-above, show that they referred to incident taken place in Neeli Building and a bicycle shop in gali no.2, Chandu Nagar. IO neither asked them nor did they say anything in respect of witnessing the incident at the places of additional complainants.
29. The statement given by the additional complainants show that their knowledge about time and date of incident was based on information given to them by some different persons. Unfortunately, during initial period of investigation IO did not try to find out their particulars and to examine them, so as to

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ascertain the actual time and date of incident in question. At a much belated time i.e. on 09.02.2023 IO asked about particulars of such informers from the additional complainants. But by this time, the complainants showed their inability to furnish particulars of present whereabouts of those informers. The statements dated 09.02.2023 cannot be a basis to make the hearsay evidence of the additional complainants regarding time and date of incidents at their respective places, to be the relevant evidence to establish the time and date of such incidents. In these circumstances, I find that there is no evidence on the record to even confirm the time and date of incident at the respective places of the respective additional complainants. I also find that the star witnesses of the prosecution for identification of accused persons, did not say anything about witnessing the incident reported by additional complainants. Thus, the stand of the prosecution to prosecute all the aforesaid additional complaints with the FIR lodged in this case, is found to be fallacious. The additional complaints were not completely investigated to even confirm the date and time of such incidents, on the basis of relevant evidence. IO simply relied upon the hearsay evidence of the additional complainants and clubbed these complaints in this case. In my opinion conclusion on investigation on the additional complaints are incomplete and they could not be clubbed for prosecution in this FIR. These additional complaints do require further and thorough investigation to reach a particular conclusion. Hence, SHO is directed to take up all the above-

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mentioned additional complaints for further investigation separately, in accordance with law in order to take them to a logical conclusion.

- 30.** However, on the basis of statement of star witnesses of the prosecution and the complaint as well as statement of Zameer Ahmed, I find that the shop of Zameer Ahmed was vandalised by a mob of rioters including the accused persons herein. The photographs his shop as placed on the record do not show any burn mark in the shop, so as to make out a case of offence u/s. 436 IPC. The allegations made by this complainant make out a case of theft of his coolers as well as burning of his coolers from his shop, apart from damaging the shutter of his shop. It is also apparent that the accused persons violated the order u/s. 144 Cr.P.C. as issued by Id. DCP (N/E) in North-East District. Accordingly, a case is made out against accused persons for offences punishable u/s. 148/380/427/435/452 IPC r/w. Section 149 IPC and u/s. 188 IPC. Accused persons are discharged for offence u/s. 436 IPC in the present case.

Ordered accordingly.

Announced in the open court **(PULASTYA PRAMACHALA)**
today on 17.11.2023 **ASJ-03(North East)**
(This order contains 15 pages) Karkardooma Courts/Delhi