

***IN THE COURT OF VIRENDER BHAT: ADDL. SESSIONS
JUDGE-03(NORTH-EAST): KKD COURTS: DELHI***

SC no.383/21

FIR No.69/20

PS Shastri Park

U/s 109/114/147/379/427/411 IPC

State

Versus

Krishan @ Tota

s/o Mange Ram

r/o H.No.81, Old Garhi Village,

North East, Delhi

ORDER ON THE POINT OF CHARGE:-

1 The above named accused has been chargesheeted by the police in this case for offences u/s 147/ 148/ 149/379/436/411 IPC.

2 According to prosecution case, on 24.02.2020 at about 12.30 p.m. around 40-50 persons were resorting to violence in Bhajanpura area and there was atmosphere of riots between two groups; one of which was in support of the amendments to the Citizenship Act and the other was against the amendments. The persons in the violent mob were having wooden rods, iron rods,

stones, bricks etc. in their hands. They were coming from Bhajanpura side towards Khajuri Chowk. The complainant Mohd.Jamil alongwith his acquaintances namely, Rahis Ahmed, Abdul Haziz, Shagir Ahmed, Liyakat Ali, Istekar, Rahis Islam and Saminuddin had set up their carts (rehries) upon which they were selling vegetables and fruits. Upon seeing the violent mob, they got frightened and started running away. While running away from the spot when they looked behind, they saw that their carts were looted and then burnt by the violent mob.

3 A written complaint regarding the above incident was submitted in the PS by the complainant Mohd.Jamil on 29.02.2020 on the basis of which FIR was registered and the investigation was assigned to SI Shailender Tiwari. The IO proceeded to the spot of incident, inspected and photographed it. There was no CCTV camera installed around the area and therefore, no video footage could be collected. He recorded the statements of the complainant and other victims. The crime team was summoned which also inspected the spot. Notice u/s 91 Cr.PC was sent to all the News Channels asking them to furnish any video footage or News clipping regarding the said incident, if in their possession.

4 It is alleged that one Mohit Nagar, who had been arrested in another FIR bearing no.67/20 of PS Shastri Park on 16.04.2020, was identified by the complainant Jamil to be one of

the assailants, who was present in the mob which vandalized and burnt their carts. Upon interrogation, accused Mohit Nagar was arrested in this case, who is stated to have made disclosure statement admitting his own involvement as well as involvement of accused Krishan @ Tota, Monu Kabadi , Kuldeep, Ashok and Bharat Bhushan in the incident in question. Accused Mohit Nagar is stated to have got recovered looted fruit crates from his house which were seized by the IO. Thereafter, accused Krishan @ Tota also came to be arrested in this case. He is stated to have refused to participate in the TIP. The other assailants, who were named by accused Mohit Nagar in his disclosure statement are stated to be still absconding as they could not be traced.

5 Initially, the chargesheet was filed in this case on 14.06.2020. Later on, after further investigation during the course of which statements of several other witnesses were recorded, supplementary chargesheet was filed on 27.09.2021 wherein offences u/s 188/435/395 IPC also were further added in the case. The order dt.27.09.2021 passed by the Ld.CMM shows that the accused Mohit Nagar has been declared as a CCL and accordingly, a separate PIR was filed against him before the Ld.JJB, V, Shahdara.

6 In view of the same, case has been committed to this court for trial qua accused Krishan @ Tota only.

7 I have heard the Ld.Special PP as well as the Ld.Defence Counsel. I have also perused the entire material on record.

8 The Ld.Special PP argued that the complainant Mohd.Jamil alongwith his colleagues namely, Rahis Ahmed, Abdul Haziz, Shagir Ahmed, Liyakat Ali, Istekar, Rahis Islam and Saminuddin whose carts were vandalised and burnt by the violent mob are the eye witnesses to the incident. He submitted that they did not know the names of the assailants and accordingly, they did not take any names in their initial statements dt.29.02.2020. He pointed out that in these statements they have clearly stated that they can identify the assailants, if shown to them. He further argued that when the photograph of the accused was shown to them on 22.06.2020 after his arrest, they all identified him to be one of the assailants present in the mob which damaged and burnt their carts. He relied upon the statements of these witnesses recorded on 22.06.2020. It is his submission that there is sufficient evidence on record to frame charges against the accused.

9 The Ld.Counsel for the accused vehemently argued that there is no cogent and reliable evidence on record to frame charges against the accused. He referred to the statement of the complainant Mohd.Jamil dt.06.03.2020 wherein he has stated that he did not know or recognize any person in the violent mob. According to the Ld.Counsel, the statements of the complainant

and the other victims recorded on 22.06.2020 are manipulated and therefore, no reliance can be placed upon them. He prays for discharge of the accused in this case.

10 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.

11 In the instant case, it is not disputed that the complainant and the other victims were not knowing any person in the mob which vandalised and burnt their carts. However, it can not be disputed at this stage on the basis of the material on record that they were not the eye witnesses to the incident. The complainant in his written complaint submitted in the PS on 29.02.2020 has mentioned that he can identify some of the persons present in the mob, if shown to him. It is true that in the statement u/s 161

Cr.PC dt.06.03.2020, the complainant has mentioned that he did not know or recognize any person in the violent mob but that can not be taken to imply that he could not have identified any of the assailants present in the mob, if shown to him later on. The statements of the complainant and the other victims recorded on 22.06.2020 clearly indicate that they had identified the accused Krishan @ Tota from his photograph to have been part of the mob which damaged and burnt their carts. I do not find any reason to discard these statements at this very stage. The probative value of these statements can not be gone into at this stage and would be seen only after the trial of a case.

12 Hence, in view of the material and evidence on record, no case for discharge of the accused has been made out. Accordingly, charges for the offences u/s 147/148/149/427/435/395/188 IPC are liable to be framed against the accused.

**Announced in open court
today on 22.11.2021**

**(Virender Bhat)
ASJ-03(NE)/KKD Courts**

