

State V/s Mohd. Shahnawaz @ Shanu & etc.: SC No.49/2021:  
FIR No.85/2020: PS Gokalpuri

***IN THE COURT OF VIRENDER BHAT:  
ADDL. SESSIONS JUDGE-03:  
NORTH-EAST DISTRICT: KARKARDOOMA COURTS: DELHI***

**Sessions Case No.49/2021  
FIR No.85/2020  
PS Gokalpuri  
U/s 147/148/149/188/380/427/436 IPC**

**State**

**Versus**

- 1. Mohd. Shahnawaz @ Shanu  
S/o Mohd. Rashid  
R/o H. No. 528, Gali No. 22,  
Phase-10, Shiv Vihar, Delhi. ....(A-1)**
  
- 2. Mohd. Shoaib  
S/o Islam  
R/o H. No. 93, Gali No. 5/2,  
Babu Nagar,  
Mustafabad, Delhi. ....(A-2)**
  
- 3. Sharukh  
S/o Salauddin  
R/o B-262, Gali No. 7,  
Near Shiv Mandir,  
Babu Nagar, Delhi. ....(A-3)**

- 4. Rashid**  
**S/o Riyajuddin**  
**R/o A-22, Gali No. 1,**  
**Chaman Park,**  
**Delhi. ....(A-4)**

**ORDER ON THE POINT OF CHARGE:-**

1. The above named accused have been charge-sheeted by the police for having committed offence u/s 147/148/188/149/427/436 IPC.

2. As per the case of the prosecution, a complaint was received in the Police Station on 02.03.2020 from the complainant Ram Charan Sharma wherein it was stated that the two shops forming part of House No. F-1, Main Brijpuri Road, Bhagirathi Vihar, Delhi owned by him were looted, damaged and burnt by rioters at about 10:30 am on 25.02.2020. It was further mentioned in the complaint that he had rented one of the shops to Jitender Kumar Sharma who was running a medical store therein and his nephew Shekhar Bhardwaj was doing business of auto parts and repairs in another shop. On the basis of the contents of the said complaint, FIR was registered and investigation was entrusted to SI Dheerender.

3. SI Dheerender inspected the crime spot and prepared its

rough site plan. Thereafter, further investigation of this case was handed over to SI Satyadev. On 07.04.2020, statements of two eye witnesses Const. Vipin and HC Hari Babu were recorded by the IO who specifically named the four accused as having been part of the riotous mob which looted, damaged and set ablaze the houses as well as the shops on Brijpuri Road, Bhagirathi Vihar, Delhi. They claimed that being Beat Staff posted in the said area, all the four accused were known to them prior to the incident in question.

4. During the course of investigation, it came to be known that all the four accused had been arrested by the Crime Branch in connection with case FIR No. 39/2020. Accordingly, upon obtaining requisite permission from the concerned Magistrate, IO interrogated them in Mandoli Jail in connection with this case and thereafter formally arrested them. They are stated to have made confessional statement admitting their role in the incident in question.

5. It is further mentioned in the charge-sheet that the IO had obtained the CCTV footage with regards to the camera installed on the wall of the Rajdhani Public School facing towards Shiv Vihar, Main Road, from the IO Insp. Surender Singh who was investigating the case FIR No. 39/2020. It is stated that in this CCTV footage, accused Mohd. Shoiab and Sharukh are seen

having wooden rods in their hands and resorting to vandalism as well as stone pelting. It is further alleged that after the incident, the rioters had damaged the other CCTV cameras installed around the incident spot and therefore, no other CCTV footage video clip could be obtained.

6. After completion of the of the investigation, charge-sheet has been submitted by the police.

7. It is pertinent to note here that the Ld. Magistrate has taken cognizance of offences punishable u/s 147/148/147/380/427/436 IPC only. Cognizance qua the offence u/s 188 has been declined for the reason that no complaint u/s 195 Cr. P.C has been received in the Court.

8. I have heard the Ld. Special PP as well as the Ld. Defence counsels.

9. It was submitted by the Ld. Special PP that in view of the statements of the three public witnesses namely Sh. Jitender S/o Sh. Gopi Chand Sharma, Sh. Shekhar Bhardwaj S/o Sh. Jagdish Prasad and Sh. Jagdish Prasad S/o Late Sh. Deep Chand coupled with the statements of two police witnesses namely Const. Vipin and HC Hari Babu, it is evident that the four accused were part of the riotous mob which had resorted to loot, damaging and setting

ablaze of properties on Main Brijpuri Road and in the process had looted as well as burnt the two shops belonging to the complainant Ram Charan Sharma. He would contend that there is prima-facie sufficient evident on record to frame charges against the accused. He argued that apart from the evident qua which cognizance has been taken in this case, offence u/s 392 IPC, u/s 454 IPC and 506 IPC are also attracted to this case and accordingly charges for these offences may also be framed against the accused.

10. Ld. Counsel appearing for the accused had argued that all the accused have been falsely implicated in this case only for the reason that they are residents of the same area/locality where the said incident is stated to have taken place. It is pointed out that there is unexplained delay of more than one month in recording the statements of the alleged eye witnesses to the incident and therefore, their version cannot be believed. It is further argued that there is unexplained delay in recording the FIR also. They pointed out that the incident is stated to have taken place on 25.02.2020 whereas the FIR has been registered on 02.03.2020. He further argued that the accused had been initially arrested in case FIR No. 39/2020, PS Gokalpuri and were later on arrested in this case falsely merely on the basis of their fabricated disclosure statements. It is also submitted that the witnesses Const. Vipin and HC Hari Babu are planted witnesses and in case

they had actually witnessed the incident on 25.02.2020, they would have reported the matter immediately to the police station and would not have remained silent till 07.04.2020 on which date their statements have been recorded in this case. Ld. Counsel urged this Court to discharge all the four accused.

11. I have heard the submissions made by the Ld. Special PP and the Ld. Defence counsels and have perused the entire material on record.

12. It is true that there is a delay of about five days in lodging the complaint and registration of the FIR in this case. However, it is to be noted here that this case is an offshoot communal riots which had erupted in North-East Delhi on 24.02.2020 and continued till 26.02.2020 when the situation was brought under control by the police and para-military force. There had been instances of rioting, killing, looting, vandalizing, setting ablaze movable and immovable properties etc. by the members of each community against each other. There was an atmosphere of terror and trauma which prevailed in the area for several days even after these riots. In these circumstances, the delay of five days in reporting the incident to the police station would appear justified to any prudent person and cannot be considered fatal to the prosecution case.

13. Apart from the two police witnesses Const. Vipin and HC Hari Babu, there are three eye witnesses to the incident involved in this case. These are Jitender, Jagdish and Shekhar Bhardwaj. All the three claim to have witnessed the incident in which the two shops belonging to the complainant had been looted and set ablaze by the mob of which the four accused were a part. They specifically named and identified all the four accused during their statements to the police. The eye witness account of the incident given by these witnesses cannot be ignored at this stage merely for the reason that their statements had been recorded after a delay of about more than one month from the date of incident. As submitted by the Ld. Special Public Prosecutor, the public witnesses like the ones in the instant case, had become so terrified that they were reluctant to come forth and present their version of the incident before the investigating agency. It is also pointed out by the Ld. Special Public Prosecutor that soon after the situation had become normal to some extent, there was outbreak of Covid-19 Pandemic which resulted in complete lock-down from second week of March, 2020 and this too resulted in delay in recording the statements of public witnesses. Keeping these circumstances, in view, it cannot be said that the delay in recording the statements of these witnesses was intentional or contumacious and therefore, the accused cannot claim discharge in this case merely on this score. It appears that the delay in recording the statements of the witnesses was occasioned on

account of the situation which prevailed in the area during and after the incident of rioting. The truthfulness or otherwise of the statements of these witness can be assessed only during the trial of the case.

14. 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.

15. In the case at hand, material on record prima-facie discloses the commission of offence of rioting, looting and setting ablaze the shops of the complainant by the accused. It is evident that if the evidence collected during the course of investigation and annexed with the charge-sheet remains unrebutted, the conviction of the accused is reasonably possible.



There is no escape from the conclusion at this stage that the accused were members of an unlawful assembly, the object of which was to cause riots, vandalism, destruction of property etc. No case for their discharge is made out.

16. I feel in agreement with the submissions of the Ld. Special PP that the offence u/s 454 IPC and u/s 392 IPC are also made out against the accused. It was vehemently argued by the Ld. Counsels for the accused that since the details of the goods robbed/stolen from the shops in question have not been given, the ingredients of Section 392 IPC are not fulfilled and hence the accused cannot be charged with the said offence. The arguments has been noted only to be rejected. It has been specifically stated by the complainant in his complaint as well as by the witnesses Jitender and Shekhar Bhardwaj, who were running business in the shops in question that the accused alongwith other rioters had looted their shops after breaking open their locks, damaged the shops and thereafter set them ablaze. Their statements clearly indicate that all the goods lying in the shop had been looted/robbed by the mob of which the four accused were part. The fact that Jitender and Shekhar Bhardwaj have not given the details of the goods lying in their respective shops which were looted/robbed by the mob, cannot be taken into mean that there was no incident of looting/robbery. Jitender has also stated that when he tried to stop the rioters, they attacked him but he ran

away to save himself. From the statements of Shekhar and Jagdish, it is evident that on account of violent acts of the mob, fear of instant death and hurt got instilled in them due to which they immediately ran away from the spot. Prima-facie, the ingredients of the offence u/s 392 IPC are fulfilled in this case and therefore, the offence u/s 392 IPC is also made out against the accused.

17. Considering the entire material on record as well as the above discussion, it is held that the charges u/s 147/148/149/392/427/436/454 IPC are liable to be framed against all the accused.

**(VIRENDER BHAT)**  
**ASJ-03(NE)/KKD COURTS/02.11.2021**