

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

Sessions Case no.93/2021

FIR no.64/2020

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

PS Gokalpuri

State

Versus

- 1. Dinesh
S/o Sh. Jagannath Yadav
R/o E-22, Gali No. 3,
Bhagirathi Vihar, Delhi. (A-1)**
- 2. Sahil
S/o Sh. Rakesh Sharma,
R/o H. No. D-138, Gali No. 11,
Bhagirathi Vihar, Delhi. (A-2)**
- 3. Sandeep @ Mogli
S/o Late Sh. Dalveer Singh,
R/o H. No. E-24, Gail No. 3,
Bhagirathi Vihar, Delhi. (A-3)**
- 4. Tinku
S/o Sh. Ashok Kumar
R/o H. No. E-51/2, First Floor,
10 Feet Gali,
Bhagirathi Vihar, Delhi. (A-4)**

Date of institution of case : **03.09.2020**
Date of hearing of final arguments : **18.12.2021**
Date of pronouncement of judgment : **07.01.2022**

J U D G M E N T :-

BRIEF FACTS OF THE CASE:

1. The above named accused have been facing trial for the offences u/s 143/147/148/380/436/ IPC r/w section 149 IPC.
2. It is the case of the prosecution that the accused were present in an unlawful assembly on 26.02.2020, the object of which was to commit robbery and arson in the houses, shops and other properties belonging to the persons from other community by use of force or violence and in violation of the proclamation issued u/s 144 Cr. P.C by the competent authority. It is further case of the prosecution that in furtherance to the common object of the assembly, accused alongwith other members of the assembly committed theft in the house of Afzal Saifi R/o C-170, Main Nala Road, Bhagirathi Vihar, Delhi and then set it ablaze with intention to destroy the same. They also committed theft in the Shop No. 171, D-Block, Gali No. 11, Bhagirathi Vihar, Delhi belonging to Sh. Shoiab.

3. The FIR in this case was registered on 29.02.2020 on the basis of a written complaint received in the police station from the complainant Afzal Saifi wherein it was stated that the rioters had looted his house on 26.02.2020 at 8 am and then set it on fire. The investigation was entrusted to ASI Sushil Kumar who proceeded to the incident spot and prepared its site plan at the instance of the complainant. Crime Team was summoned to the spot on 13.03.2020 which inspected the spot and took its photographs. Thereafter, the investigation of this case was assigned to ASI Ram Dass.

4. The IO made enquiries from the two eye witnesses HC Sanoj and Ct. Vipin on 22.03.2020 and recorded their statements wherein they named all the four accused as the assailants. The search for the accused was commenced. Meanwhile another complaint lodged by Sh. Shoiab was received in the police station on 25.03.2020 with regards to the theft committed in his shop by the rioters in the night intervening between 25.02.2020 and 26.02.2020. The complaint was clubbed with the FIR in this case.

5. It came to be known to the IO that accused Dinesh @ Michael had been arrested on 03.06.2020 in another case FIR NO. 78/2020, PS Gokalpuri by ASI Manvir Singh and had made disclosure statement disclosing therein that upon being agitated

by the violent incidents against his Hindu brothers in Jafrabad, Mauzpur, Bhajanpura area etc., he alongwith his associates namely Vikas Kashyap, Golu Kashyap, Sahil @ Babu, Mogli, Tinku, Ashok and Rinku and other 40 to 50 persons had beaten the Muslims in Ganga Vihar, Johripur, Bhagirathi Vihar and also set ablaze their vehicles on 24.02.2020, 25.02.2020 and 26.02.2020. Accordingly, accused Dinesh @ Michael was interrogated by the IO in this case and was formally arrested on 05.06.2020. He is stated to have made disclosure statement admitting his involvement in this case also. Search was continued for the other accused. It came to be know that accused Babu @ Sahil had been arrested by SI Ashish Garg in case FIR No. 106/2020 and he is lodged in Tihar Jail. Upon obtaining permission from the concerned Ld. Duty Magistrate, accused Babu @ Sahil was interrogated by the IO on 16.07.2020 in Tihar Jail and was formally arrested in this case. He is stated to have admitted his involvement in this case.

6. Statements of witnesses Rahis and Smt. Sushila, who had made calls at telephone number 100 regarding the incident involved in this case, were recorded by the IO. Since, the remaining assailants namely Vikas Kashyap, Golu Kashyap, Ashok and Rinku could not be traced, charge-sheet was filed qua the arrested accused Dinesh @ Michael and Babu @ Sahil before the concerned Ld. Magistrate.

7. Later on, accused Sandeep @ Mogli is stated to have surrendered in the police station on 28.08.2020 and was arrested in this case. Thereafter, the IO got knowledge that accused Tinku has been arrested in another case FIR NO. 106/2020. Accordingly, he was interrogated regarding his role in this case and was arrested in this case too. Accordingly, a supplementary charge-sheet was filed qua these two accused.

8. The remaining assailants have not been identified or traced so far.

9. On 03.08.2021, charges were framed against all the four accused u/s 143/147/148/380/436/ IPC r/w section 149 IPC. They denied all the charges and claimed innocence. Accordingly, trial was held. The prosecution has examined as many 14 witnesses to establish the charge against the accused.

10. The accused were examined u/s 313 Cr. P.C on 11.11.2021 wherein they denied all the incriminating facts and circumstances put to them and claim false implication. However, they have chosen not to lead any evidence in defence.

11. I have heard the Ld. Special PP as well as the Ld. Defence counsels and have also perused the entire oral as well as documentary evidence.

12. The two complainants Afzal Saifi and Shoiab have been examined as PW-1 and PW-2 respectively. Since, their properties had been looted/burnt in their absence, they have not named any of the assailants.

13. PW-1 has deposed that due to riots in the North-East Delhi, which started on 24.02.2020, he alongwith his family members left their house on 26.02.2020 at 7 am and went to reside with a known person in C- Block, Bhagirathi Vihar. When they returned to their house on 29.02.2020, they saw the same in burnt condition. The goods lying in the house were either stolen or burnt. His Hero Honda Motorcycle bearing Registration No. DL 5S 1885 had also been burnt and thrown in the drain in front of the house. He immediately lodged a complaint in the police station which is Ex.PW1/A. Upon receipt of a notice from the police, he had given information about the extent of damage caused to the house in the incident which is Ex.PW1/F. PW-2 has deposed that he had locked his shop as usual on 25.02.2020 and gone to his residence. He received a call on 26.02.2020 from a friend informing him that his shop has been looted. On account of the volatile atmosphere around his shop, he did not go there till 29.02.2020. When he visited his shop on 29.02.2020, he took its four photographs with his mobile phone which he approved as Ex.PW2/A (Colly.). When the atmosphere became little peaceful, he lodged a complaint in the police station regarding the incident

which he proved as Ex.PW2/B. He had also given to the police information about the extent of damage caused to his shop which he proved as Ex.PW2/E.

14. It is established from the testimony of these two witnesses that the house belonging to PW-1 had been robbed and burnt between 26.02.2020 and 29.02.2020 and the shop of PW2 had been robbed in the night intervening between 25.02.2020 and 26.02.2020.

15. PW-3 is the resident of F-51, Gali No. 6, Bhagirathi Vihar, Delhi. As per her deposition, there are only two houses belonging to the members of Hindu Community in that area including her house. She stated that on 26.02.2020 at 10 pm, there were 25 to 30 armed rioters belonging to Muslim Community creating ruckus in the street. She felt scared and made a call at telephone number 100. She could not identify any of the rioters. PW-5 is the resident of D-98, Gali No. 6, Bhagirathi Vihar, Delhi. On 26.02.2020 at 9 pm, he heard noise of crowd chanting the slogans "Jai Shree Ram". He deposed that the persons in the crowd were more than 50 in number and were wearing masks. Therefore, he was unable to say as to which religion did they belong. He felt scared and made a call at telephone number 100. He could not identify any of the rioters.

16. According to the prosecution case, PW-8 Ct. Vipin and PW12 HC Sanoj are the two eye witnesses to the incident of rioting involved in this case and had seen/identified the accused participating in the riotous incidents. Hence, their deposition needs a detailed scrutiny.

17. PW-8 has deposed that he was the Beat Officer of MCD Toll Tax, Johripur Pulia and Bhagirathi Vihar area and was posted alongwith other police police officials in the said area on 25.02.2020 and 26.02.2020 from morning till late night. SI Ashish Garg, SI Dinesh, SI Ram Dass, HC Sanoj and Ct. Rakesh ets. were also with him. He noticed a crowd of about 200 to 250 rioters, who were Hindus, at the corner of the Bhagirathi Vihar. They were committing vandalism, mischief by fire and looted the houses belonging to the persons from other community. He deposed that the rioters were moving towards the Birjpuri Pulia and were carrying dandas, lathis etc. On account of shortage of police staff, it was getting difficult to control the rioters. He further deposed that on 26.02.2020 at 9 am, he saw that the rioters entering into the House No. C-170, Main Nala Road, Bhagirathi Vihar, Delhi. The rioters vandalized it and looted the said house and they put it on fire. He alongwith other police personnel tried to control the rioters but could not do so on account of their sheer numbers. He stated that most of rioters had covered their faces but 4 to 5 rioters had not covered their faces

who were clearly seen by him and other staff members. Thereafter, the rioters moved to other places for commission of illegal activities.

18. As per his further testimony, he identified 6 to 7 rioters in the CCTV footage, whom he had seen at the above spot. He identified all the four accused saying that they were rioters whose faces were not covered at the time of above incident. He knew them prior to the incident, being the Beat Officer of the area.

19. In the cross-examination, he admitted that the DD entries with regards to leaving the police station (departure entry) and returning to the police station (arrival entry) of both the dates i.e. 25.02.2020 and 26.02.2020 are not on record. He deposed that he had been the Beat Officer of the concerned area since 2018 and knew all the four accused by name as well as by their appearance prior to the incident. He admitted that he did not make any call to the police station either on 25.02.2020 and 26.02.2020 with regards to the above rioting. He also had not got any DD entry recorded in this case on both these dates after returning to the police station. He deposed that he and other police officers present at the spot on both dates had been passing all the facts with regards to the riots to the police station from time to time. He admitted that he had not communicated the names of the accused as well as other rioters to the investigating officer prior

to 22.03.2020 on which date his statement has been recorded in this case u/s 161 Cr. P.C. He also stated that he was not shown any video footage recording the incident involved in this case. He was shown video footage related to some other place by the SHO after about 20 days of the dates of incidents in this case.

20. As per the testimony of PW-12, he too was the Beat Officer of the area comprising of MCD Toll Tax, Johripur Pulia and Bhagirathi Vihar and was posted in this area alongwith other police officials from 24.02.2020 to 26.02.2020 from morning till late night. SI Ashish Garg, SI Dinesh, ASI Ram Dass, Ct. Vipin (PW-8) and Ct. Rakesh etc. were alongwith him. His remaining examination-in-chief is identical to that of PW-8, which has been mentioned hereinabove. He too identified all the four accused to be amongst the rioters who had not covered their faces at the time of above incident.

21. Incidentally, his cross-examination too is also totally identical to that of PW-8 and hence need not be repeated here.

22. What comes out from the perusal of the testimonies of these two star witnesses of the prosecution is that they had watched only one rioting incident involved in this case in which the house of PW-1 was robbed and set ablaze. They had not seen the another incident in which the shop of PW-2 was looted by the

rioters. That apart, the manner in which PW-8 and PW-12 claim to have identified the accused as being amongst the rioters who looted & set on fire the house of PW-1, creates doubt in the mind of Court.

23. Both these witnesses PW-8 and PW-12 have deposed that all the four accused were present in the unlawful assembly on 26.02.2020, which committed rioting and also indulged in loot & arson in the house of PW-1. They claim that all the four accused were known to them prior to the date of incident and hence they could identify them in the mob. Intriguingly they did not inform either their senior officers or the IO of this case about the fact that they knew some of rioters who were involved in the rioting incidents in Bhagirathi Vihar on 26.02.2020. In the instant case, the FIR was registered and the investigation commenced on 01.03.2020. Both these witnesses were posted in the same Police Station Gokalpuri in which the FIR was registered. It was not difficult for them to find out the officer to whom investigation of this case was entrusted and then to apprise the IO about the identity of the rioters. They have maintained eerie silence till 22.03.2020 when their statement u/s 161 Cr. P.C was recorded by the IO in this case in which they named some of the rioters including the accused herein.

24. Neither PW-8 nor PW-12 has explained the reason which

precluded them from disclosing the names of the accused to the IO or to any senior officer till 22.03.2020. PW-7 was the initial IO of this case. The investigation of this case remained with him till 21.03.2020 when it was assigned PW-14. PW-7 has not deposed anything about having traced any eye witness. PW-14 has deposed that he took over the investigation of this case on 21.03.2020 and recorded the statement of eye witnesses (PW-8 and PW-12) on 22.03.2020. There is nothing in his testimony to indicate as to how he came to know that PW-8 and PW-12 are the eye witnesses to the incident involved in this case. It appears that PW-8 and PW-12 have been introduced as eye witnesses in this case dramatically all of a sudden on 22.03.2020.

25. Furthermore, the deposition of these two witnesses PW-8 and PW-12 reveals that they had identified the rioters including the accused herein from a CCTV footage which had been shown to them much later. However, they have not revealed the date, on which this CCTV footage was shown to them, in their chief examination. In the cross-examination, they have stated that the video footage was shown to them by the SHO about 20 days after the incident date. The SHO who showed the CCTV footage to them has not been examined as a witness. The two IOs Pw-7 and PW-14 are silent on this aspect. More importantly, it has come out in the cross-examination of PW-8 and PW-12 that the video footage shown to them was of some other place and not of the

place of incident involved in this case. No such CCTV footage has been placed on record in this case. Therefore, it is difficult to believe that these four accused were seen in any such video footage and were identified by PW-8 and PW-12. Moreover, even if it is assumed that the accused were seen in such video footage then also it does not advance the prosecution case on the aspect of identity of the accused for the reason that the footage, admittedly, was of some other place and not of the place of incident in this case.

26. In view of the nature of evidence lead by the prosecution, as discussed hereinabove, the identification of the accused as rioters who committed loot & arson in the house of PW-1 on 26.02.2020 becomes intensely doubtful. This court feels absolute loath to place any trust upon the testimony of PW-8 & PW-12 on the aspect of identification of the accused as rioters.

27. Hence, the prosecution has failed to prove charges against the accused beyond any reasonable doubt. Resultantly, all the accused are liable to be acquitted and are hereby acquitted as such.

Announced through VC.

(VIRENDER BHAT)
ASJ-03(NE)/KKD Courts/07.01.2022