

**IN THE COURT OF SH. AMITABH RAWAT,  
ADDITIONAL SESSIONS JUDGE-03  
(SHAHDARA), KARKARDOOMA COURT, DELHI**

|                          |   |                                 |
|--------------------------|---|---------------------------------|
| <b>CNR No.</b>           |   | <b><u>SH01-00-0145-2021</u></b> |
| <b>FIR No.</b>           | : | 95/2020                         |
| <b>Under Section</b>     | : | 147/148/149/427/436/188 IPC     |
| <b>Police Station</b>    | : | <b>Jyoti Nagar</b>              |
| <b>Sessions Case No.</b> | : | <b>03-2021</b>                  |

**STATE**

*V E R S U S*

**1. Suraj**

S/o. Sh. Vijay Singh

R/o. H.No. D-748, Gali No.3, Ashok Nagar, Delhi.

**2. Yogender Singh**

S/o Sh. Chhote Singh,

R/o H.No. 326, D-1 Block, Ashok Nagar, Delhi

**.....ACCUSED**

|                            |                    |
|----------------------------|--------------------|
| Date of Institution        | : 07.05.2020       |
| Date of reserving judgment | : 07.06.2022       |
| Date of pronouncement      | : 07.06.2022       |
| <b>Decision</b>            | <b>: Acquitted</b> |

**J U D G M E N T**

1. The present judgment is the culmination of the criminal proceedings initiated against the accused Suraj and Yogender Singh in reference to the charge-

sheet filed against him under Section 147/148/149/188/427/436 Indian Penal Code (IPC, in short) based upon the First Information Report lodged on the written complaint of complainant Md. Salim.

**2.** In brief, the case of the prosecution is that the present FIR No. 95/20 was registered on the written complaint dated 05.03.2020 of Md. Salim who stated that he used to run a shop by the name of AMAN CAB SERVICE at D-540, Gali No.5, Ashok Nagar, Shahdara, Delhi. He locked his shop in the evening of 24.02.2020 and his shop was burnt on 25.02.2020 at around 1.30 PM by the rioters. Upon the endorsement on the complaint, the present FIR was registered.

During investigation, site plan and seizure memo were prepared and photographs of the burnt property was taken. It is the case of the prosecution that among the rioters were accused Suraj and Yogender Singh who had burnt the shop of the complainant. The prosecution had relied upon the statement of alleged eye-witnesses namely HC Ravinder and public witness Rakesh. On the strength of the statements of the said witnesses, accused Suraj and Yogender Singh, who were already in custody in FIR No. 55/20, P.S. Jyoti Nagar on 09.03.2020, the said two accused persons were arrested. The accused persons gave disclosure statement admitting his culpability in the offences covered by the present case. On completion of investigation, charge-sheet was filed in the Court.

**3.** After compliance of provisions of Section 207 of Code of Criminal Procedure, the present case was committed to Court of Sessions, which in turn, assigned the case to this Court for trial in accordance with law.

4. Vide order on charge dated 10.11.2021, charges under Section 147 IPC, 148 IPC, 427 IPC, 436 IPC read with Section 149 IPC & Section 188 IPC read with Section 149 IPC were framed against the accused persons to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution has examined a total of 05 witnesses. PW-1 Md. Salim is the complainant. PW-2 is HC Ravinder, the eye-witness. PW-3 Sh. Dev Kumar, public witness who had given a PCR call to the police regarding the riots in general. PW-4 Md. Talib who had described the incident of burning in Gali No.5, Ashok Nagar, Delhi in general. PW5 is ASI Devender, the Investigating Officer who conducted the investigation of the present case.

All the witnesses were cross-examined by the Ld. Defence Counsel.

6. It is important to mention here that the sole eye-public witness namely Rakesh was dropped from the list of witnesses vide order dated 30.04.2022 after the said witness was found not to be living at the address mentioned in the charge-sheet and summons report remained unserved on multiple occasions.

Accused persons had admitted the FIR without admitting the contents of the same as also the Prohibitory Order under Section 188 IPC.

7. On conclusion of the prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded on 07.06.2022 in which they denied the prosecution version in its entirety and claimed that they are innocent. Both

accused have stated that they have been falsely implicated in this case. However, accused persons did not opt to lead evidence in his defence.

8. Arguments on behalf of the accused Suraj & Yogender by Sh. Deepak Mohan and Sh. Nishant Kumar Tyagi, Ld. Counsels for the accused and for prosecution by Sh. Rajeev Krishan Sharma, Ld. Special Public Prosecutor for the State, were heard at length.

9. Before I begin to analyze the case of the prosecution on the touchstone of the evidence that came on record, I would underscore the cardinal principle of criminal juris-prudence that a criminal case has to be proved beyond reasonable doubt against an accused if he is to be pronounced guilty.

10. There is another salutary legal principle that it is the quality of the evidence and the testimony of the witnesses which matters and not the quantity.

Section 134 of the Indian Evidence Act :-

**134. Number of witnesses--** No particular number of witnesses shall in any case be required for the proof of any fact.

Hon'ble Supreme Court of India in case of *Yanob Sheikh Alias Gagu Vs. State of West Bengal, reported In (2013) 6 SCC 428* has observed that in order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative.

11. Coming now to the facts of the case :-

(A) It is the prosecution version that the complainant Md. Salim gave a complaint Ex. PW1/A on 05.03.2020 at the Police Station, Jyoti Nagar when ASI Devender was on duty and stated that rioters had damaged his shop and removed the articles and burnt the articles as well as shop on 25.02.2020 at 1/1.30 PM. PW5/ASI Devender made an endorsement Ex.PW5/A on his complaint and handed over the same to the Duty Officer for lodging of an FIR. After registration of the case, the case was handed over to ASI Devender who conducted the investigation. I.O/ASI Devender prepared the seizure memo Ex. PW1/B of partly burnt plastic empty can with odor of petrol. He also prepared the site plan Ex. PW1/C and took the four photographs mark X1, X2, X3 & X4 of the burnt property.

I.O/ASI Devender met one Rakesh Kumar on 06.03.2020 and he told him that two persons namely Suraj and Yogender were present at the spot at the time of the incident on 25.02.2020 during riots.

On 09.03.2020, when I.O reached the Police Station Jyoti Nagar and saw Suraj and Yogender being already arrested in FIR No. 55/2020, P.S. Jyoti Nagar by ASI Vijay who stated that they had made a disclosure about their involvement in the present case.

After interrogation, the I.O/PW5 called PW2/HC Ravinder to the Police Station and he identified accused persons. I.O asked HC Ravinder to bring Rakesh Kumar to the Police Station. Rakesh came with HC Ravinder and duly identified both the accused persons. Accused persons were arrested vide arrest memos Ex. PW2/A & PW2/B respectively.

**12.** (a) PW1 Md. Salim is the complainant in the present matter. He is the initiator of the present FIR. As per his testimony in the court, he used to run a shop by the name of AMAN CAB SERVICE at D-540, Gali No.5, Ashok Nagar, Shahdara, Delhi. He locked his shop in the evening of 24.02.2020 and he returned to his shop on 26.02.2020 and came to know that his shop was burnt and ransacked on 25.02.2020 in the riots.

What emerges from the said testimony of PW1 is that he is not an eye-witness to the offence of rioting, unlawful assembly or in more concrete terms, the identification of accused persons Suraj and Yogender Singh in the present case.

(b) The most important witness in the present case was public witness Rakesh, who as per the prosecution, had identified both the accused persons as involved in the case of riots. However, he was not produced by the prosecution as he remained untraceable. He was not only independent but also public eye-witness.

(c) The other eye-witness adduced by the prosecution is PW2/HC Ravinder. He has deposed that on 25.02.2020, he was the Beat Officer of Ashok Nagar, P.S. Jyoti Nagar and during patrolling at around 1 to 1.30 PM near Gali No.5, Ashok Nagar, rioters were ransacking, arsoning and looting the shops. He tried to apprehend them but could not do so. However, he identified two rioters by their face as they lived in Ashok Nagar. He informed ASI Devender about the identification. Later, on 09.03.2020, when he had gone to Police Station as normal routine, two persons were sitting outside the lock-up and he identified them as the one who had committed rioting on 25.02.2020. He informed this to ASI Devender

who then asked him to bring Rajeev from D-1 Block, Gali No.14, Ashok Nagar, Delhi. He brought Rajeev with him and he also identified two accused persons as involved in the riots on 25.02.2020 at Ashok Nagar. Thereafter, I.O/PW5 ASI Devender interrogated and later arrested the two accused persons.

From the said examination-in-chief and cross-examination of PW2 HC Ravinder, few things emerge out clearly. Firstly, he was the Beat Officer and was on patrolling duty on 25.02.2020 when the present incident of rioting occurred. He admitted in his cross-examination that there is no document to show his departure or patrolling duty on 25.02.2020 at Ashok Nagar, Police Station Jyoti Nagar.

Secondly, though he stated that he identified two accused persons by their face on 25.02.2020 as living in Ashok Nagar, yet he deposed in cross-examination that he did not make any DD entry or any complaint regarding his identification of two accused persons involved in the riots on 25.02.2020 as stated by him in his chief.

Thirdly, PW2/HC Ravinder deposed that ASI/I.O PW5 Devender asked him to bring Rajeev to the Police Station on 09.03.2020 after both accused persons namely Suraj and Devender were apprehended and arrested in Police Station Jyoti Nagar in FIR No. 55/2020. The said witness in his cross-examination stated that he did not record any DD entry when he went to bring the eye-witness Rajeev to the Police Station on 09.03.2020.

Fourthly, it is very strange that I.O sent PW2/HC Ravinder to bring **Rajeev** to the Police Station without PW2 knowing the exact address of the said

witness Rajeev. As per PW2, I.O/ASI Devender had told him that Rajeev used to run an egg rehri at Ashok Nagar. This becomes all the more suspicious given the fact that as per PW5/ASI Devender, he had asked PW2 to bring **Rakesh** to the Police Station. When asked by the Court on a court question, PW2 admitted that the name and address of the persons shown as eye-witness in his examination-in-chief is different from one mentioned in his statement Ex. PW2/X recorded by PW5. The conduct of the witness was recorded at that time.

Added to the whole material and crucial omission in the testimony of witnesses particularly PW2/HC Ravinder is the fact that the public independent eye-witness Rajeev, (as per PW2) or Rakesh (as per PW5) were never produced by the prosecution.

The whole prosecution story becomes all the more circumspect given the fact that though the public witness Rakesh, as per prosecution, came to the Police Station on 09.03.2020 and identified both accused persons namely Suraj and Yogender and thereafter, I.O/PW5 ASI Devender arrested both the accused persons, yet despite the presence of said eye-witness and his identification of accused at the Police Station leading to their arrest, he was not made a witness to the arrest memo Ex. PW2/A & PW2/B (as admitted by PW5/IO as well).

Thus, the testimony of PW2 regarding presence and participation of accused persons in the burning of shop of complainant Salim on 25.02.2020 at D-540, Gali No.5, Ashok Nagar, Delhi is not credit-worthy to convict the accused persons.



**13.** In the light of the testimonies of the said witnesses of the prosecution and their careful scrutiny, it is well apparent that the prosecution has been able to prove that incident of rioting and burning of shop at D-540, Ashok Nagar, Delhi belonging to the complainant Md. Salim was proved by the complainant/PW1 and I.O/PW5 ASI Devender. However, the prosecution has miserably failed to prove its case against accused persons. The critical public independent eye-witness Rakesh has not been produced by the prosecution and even otherwise the identity and existence of Rakesh in view of the testimony of PW2/HC Ravinder is in grave doubt. The testimony of PW2/HC Ravinder, in the light of aforesaid discussion, does not pass muster for believing him to prove the presence and involvement of accused persons in the present incident of riots.

All throughout the testimonies, the prosecution has not been able to bring home the concept of common intention of the rioters involving the alleged accused persons for the purpose of Section 149 IPC.

**14.** As can be made out on the cumulative reading of the entire testimonies of all the witnesses, the identification of accused persons is not established at all.

**15.** In view of the above stated discussion, prosecution has not been able to prove its case against the accused persons as no material has come up against them, which is worthwhile to connect the accused persons to the offences of rioting with deadly weapons (under Section 147 IPC & 148 IPC), mischief of causing fire and destruction of shop of complainant (under Section 427 IPC & 436 IPC) or disobedience to the Prohibitory Order under Section 144 Cr.P.C (under Section 188 IPC) covered by the present case. Consequently, the prosecution has

failed to prove the charges against the accused persons.

**16.** In these circumstances, accused Suraj and Yogender Singh are acquitted of all the offences punishable under Section 147/148/427/436 IPC read with Section 149 IPC & Section 188 IPC read with Section 149 IPC.

Announced in the open court  
today i.e. 07.06.2022

**(Amitabh Rawat)**  
**Additional Sessions Judge-03 (Shahdara)**  
**Karkardooma Courts, Delhi**