

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

RIOTS CASE

SC No. 172-2021

FIR No. 58/2020

P.S. Jyoti Nagar

U/S. 147/148/149/427/436/34 IPC

State Vs. Amir & Others

State

..... Prosecution

Versus

- (1) **Amir**
S/o Sh. Nafis
R/o Gali No.18, Brij Puri Pulia, Mustafabad, Delhi.
- (2) **Amir**
S/o Sh. Abrar
R/o H.No.336, Gali No.19, Kardam Puri, Delhi.
- (3) **Saddam**
S/o Alam Gir
R/o H.No.202, Gali No.6, Kardam Puri, Delhi.
- (4) **Mohd. Rahis**
S/o Mohd. Yonus
R/o H.No.419, Gali No.8, Kardam Puri, Delhi.
- (5) **Akram**
S/o Sh. Munan Khan
R/o H.No.174, Gali No.3, New Kardampuri, Delhi.
- (6) **Wasim**
S/o Saleem
R/o Gali No.7, New Kardampuri, Delhi.

.... Accused persons

11.01.2022

ORDER ON THE POINT OF CHARGE

1. The present order shall decide the question of charge against 06 (six) accused persons namely i) Amir S/o Nafis, ii) Amir S/o Abrar, iii) Saddam S/o Alam Gir, iv) Mohd. Rahis S/o Mohd. Yunus, v) Akram S/o Munan Khan and vi) Wasim S/o Saleem.

The charge-sheet was filed against the above mentioned accused persons under Section 147/148/149/427/436 IPC. The cognizance was taken of the offences u/s. 147/148/149/427/436/34 IPC by the Ld. MM against all the accused persons vide order dated 25.11.2020.

2. (a) It is the case of the prosecution that there was a DD entry no.47A received on 25.02.2020 at 2.36 pm at PS Jyoti Nagar by which HC Rajkumar and Ct. Sonu reached at the parking lot behind Ambedkar college, Kardam Puri, Delhi where they found rioters and two tractors and 3-4 reharis were lying in burnt condition. Fire brigade and senior officers were informed and 600-700 rioters were sloganaring and were armed with rods and explosive material. They were warned to remove themselves and after sometime they all ran away. The ruqqa was prepared which led to the registration of the present FIR. Later on, during investigation statement of Kirti Raj Tiwari, Shahid and Firoz Khan were recorded.

(b) Public Witness Kirti Raj Tiwari stated that he works at the MCD parking behind Ambedkar College and on 25.02.2020 during communal riots, rioters/unlawful assembly armed with iron rod, sarias explosive material had burnt vehicles and damaged and burnt reharis parked at the said MCD parking. Two Vehicles i.e. (tractor) no. HR-13M 3487 engine no.AA0093, Chesis no.00094 of Mahendra company and HR-13N 6650 engine no.A3087, Chesis no.03238 of Swaraj company, belonging to Shahid and Firoz Khan were burnt.

(c) It was submitted by Ld. Special Public Prosecutor that on the

identification of secret informer, accused persons Amir S/o Nafis, Amir S/o Abrar, Saddam and Mohd. Rahis were apprehended and arrested. They have made disclosure statements about their involvement in the present case. Subsequently, on the disclosure of the said accused persons and secret information, other two accused persons namely Akram and Wasim were also arrested.

(d) It was further submitted that the present case is of ransacking and arsoning of property by an armed unlawful assembly, in prosecution of their common object and which committed mischief of burning of the parked vehicles and reharies. It was prayed that charges may be framed against them.

3. Ld. Counsels for the accused persons have argued that this is a case of discharge of all the accused persons.

4. I have heard Ld. Special Public Prosecutor for the State and Ld. Counsels for the accused persons and also perused the entire charge-sheet containing the statements of witnesses and documents annexed with the charge-sheet.

5. Before discussing the factual narrative of the case as adumbrated in the charge-sheet, it would be useful to refer to Section 228 Code Of Criminal Procedure (Cr.P.C in short) which provides for framing of charge.

Section 228 Code Of Criminal Procedure, 1973

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for

the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

(a) It has been held in catena of judgments that at the time of framing of charge, only prima facie case has to be seen and whether the case is beyond reasonable doubt is not to be seen at this stage. It is not required that detailed reasons must be recorded at the stage of charge.

(b) Hon'ble Supreme Court of India in a case titled as **Bhawna Bai vs. Ghanshyam And Others.**, (2020) 2 Supreme Court Cases 217 held as follows :-

16. After referring to Amit Kapoor, in *Dinesh Tiwari v. State of Uttar Pradesh and another* (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 CrI.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

17.For framing the charges under Section 228 CrI.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in *Knati Bhadra Shah and another v. State of West Bengal* (2000) 1 SCC 722, while exercising power under Section 228 CrI.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused- respondent Nos.1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-respondent Nos.1 and 2 under Section 302 IPC read with Section 34 IPC and the

High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside.

(c) In the context of the present case, what is therefore required to be seen at this stage is whether the prima facie case is made out or not or to say, if there are grounds for presuming that accused had committed any offence. The reference point for arriving at any conclusion is the charge-sheet which is culmination of the investigation conducted by the police.

6. The present case pertains to the ransacking and burning of two tractors i.e. (tractor) no. HR-13M 3487 engine no.AA0093, Chesis no.00094 of Mahendra company and HR-13N 6650 engine no.A3087, Chesis no.03238 of Swaraj company belonging to Shahid and Firoz Khan and some reharis at the parking lot, behind Ambedkar college, Kardam Puri, Delhi on 25.02.2020 at 2.36 pm by rioters/unlawful assembly armed with rods and explosive material, in prosecution of their common object. From the DD entry and the statements of the witnesses, Kirti Raj Tiwari, Shahid and Firoz Khan and other police witnesses, it is clear that the offences u/s. 427 and 436 IPC r/w Section 149 IPC was committed by hundreds of rioters. Section 34 IPC is not attracted at all as the case propogated and stated in the charge-sheet is based upon the application of Section 149 IPC. But, what this court is required to adjudicate, at this moment, is whether the said accused persons namely Amir S/o Nafis, Amir S/o Abrar, Saddam, Mohd. Rahis, Akram and Wasim can be charged for the said offences u/s. 147/148/149/427/436/34 IPC in the context of the investigation culminated in the present charge-sheet. The only incriminating material against the said six accused persons is the disclosure statements made by them consequent to their arrest. Disclosure statements, by itself, has no value in the eyes of law.

There is no witness, whether public or police, who had identified the

accused persons while committing the present offences covered in the present charge-sheet. Ld. Special Public Prosecutor has also not put forth in his arguments any incriminating material/evidence against the said accused persons.

7. Based upon the contents of the entire charge-sheet including the annexures, I am of the opinion that there is no worthwhile material at all to frame charges against any of the accused persons in respect of the offences covered in the present case. Thus, all the six accused persons Amir S/o Nafis; Amir S/o Abrar; Saddam; Mohd. Rahis; Akram and Wasim are discharged of all the offences punishable u/s. 147, 148, 427, 436 read with Section 149 IPC. Ordered accordingly.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 11.01.2022