

**IN THE COURT OF VINOD YADAV: ADDL. SESSIONS JUDGE-03:
(NORTH-EAST): KARKARDOOMA DISTRICT COURTS: DELHI**

Sessions Case No.115/2021

State V/s Ashraf Ali & Anr.

FIR No.63/2020

PS Karawal Nagar

U/s 147/148/149/188/186/326/326A/353/332/34 IPC

28.08.2021

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri R.C.S Bhadoria, Ld. Special PP for the State.

IO absent.

Shri Salim Malik, Ld. Counsel for accused Ashraf Ali alongwith accused produced physically in Court from JC.

Shri Z. Babar Chauhan, Ld. Counsel for accused Parvez alongwith accused produced physically in Court from JC.

ORDER ON CHARGE

The matter is listed for consideration on the point of charge. I have heard arguments advanced at bar by both the sides and perused the entire material on record.

2. (i) Before advertng to the arguments advanced at bar, it would be appropriate to have a brief overview of the facts of the case in hand. The case FIR in the matter was registered on 27.02.2020, pursuant to receipt of a written complaint, dated 27.02.2020 from Constable (GD) Srinivasa Rao Chintu of 65th Battalion (BN), SSB Bettiah (Bihar), wherein he stated that on 24.02.2020, his said company/BN was deployed for maintaining law and order duty in the North-East area of Delhi. He further stated that on 25.02.2020, between 3.30 PM to 4.00 PM, when he alongwith other personnel/staff members of his BN was present/stationed with anti-riots equipment near Hanuman Mandir, Shiv Vihar, a riotous mob attacked them with glass bottles, acids and bricks, as a result of

which they sustained injuries and were removed to LNJP Hospital for medical treatment.

(ii) On the same day, i.e on 27.02.2020, IO also recorded the statements under Section 161 Cr.P.C of Constable (GD) Mukesh Singh, Constable (GD) Manikandan, HC (GD) G. Nalloorum and SI Mohit (Coy. Commander), 65th BN, SSB, who at the relevant time were lying stationed with complainant/ Constable (GD) Srinivasa Rao at the spot/scene of crime (SOC).

(iii) Thereafter, during the course of investigation, on 07.03.2020, another written complaint (vide Diary No.635) of somewhat similar nature was received from Constable Ravinder Yadav (No.2763/NE). His said complaint was clubbed with the instant case FIR.

3. The learned counsel(s) for both the accused persons in unison made a strong pitch *inter alia* submitting that the instant matter is a perfect recipe for discharge of accused persons on account of the following reasons:

(i) It is argued that accused persons have been falsely implicated in the matter by the investigating agency, being resident(s) of the same area/locality. Their false implication is further evident from the fact that there is an “*unexplained delay*” of about two (02) days in registration of FIR, as the alleged incident took place in the afternoon of 25.02.2020; whereas, the case FIR in the matter was registered on 27.02.2020. The accused persons have neither been specifically named in the FIR nor any specific role has been assigned to them in the matter.

(ii) Neither the complainant/Constable (GD) Srinivasa Rao Chintu nor his colleagues/other staff members of 65th BN, SSB have specifically named/identified the accused persons in their respective statements. Even Constable Ravinder Yadav also did not specifically name/identify the accused persons in his written complaint dated 07.03.2020. Moresoever, no recovery of any sort has been effected from them.

(iii) Out of the alleged riotous mob of 150-200 persons, only the accused persons have been chargesheeted in the matter. Till date, the investigating agency has not been able to identify/apprehend any other accused person in the matter, which is very surprising and clearly points out towards their false implication.

(iv) It is emphasized that PW Ajeet Kumar Tomar is a “**planted/introduced witness**” in as much as his alleged statement under Section 161 Cr.P.C was recorded in the matter on 21.04.2020 (i.e a day after formal arrest of accused persons on 20.04.2020 in Mandoli Jail); whereas, the incident in question had occurred on 25.02.2020 and no cogent/plausible explanation for the delay in recording the statement of said witness has come from the side of investigating agency which casts a serious doubt upon the credibility of said witness. The said eye witness even did not make a call at number 100 on the date of alleged incident. As a sequel thereto, it is further contended that in connected case FIR No.61/2020, PS Karawal Nagar (**Dinesh murder case**) statement of PW Ajeet Kumar Tomar was recorded on 18.03.2020, however, at that time he did not specifically name the accused persons in the instant matter and instead named them only on 21.04.2020, which clearly points that he is an “**introduced witness**” and accused persons having been falsely implicated in the matter on his alleged statement dated 21.04.2020.

(v) It is contended that no “**chemical report**” has been obtained/filed in the matter to prove that the liquid which was allegedly thrown upon the complainant and his colleagues was “**acid**” or not. Except taking opinion upon the MLC of Constable Ravinder Yadav, no opinion on the MLCs of injured/complainant Constable (GD) Srinivasa Rao Chintu and his colleagues/other injured staff members had been obtained. As such, it is contended that the “**nature of injuries**” are not known in the matter.

(vi) It is next contended that there is no CCTV footage/video-clip of the alleged incident available on record to confirm the presence of accused persons at the spot/SOC on the date and time of incident.

(vii) The accused persons were initially arrested in some other case FIRs and thereafter based on their disclosure statement(s), they have been falsely implicated in the instant matter.

(viii) The police case against the accused persons is false on account of absence of judicial “**Test Identification Parade**” (TIP), when they are sought to be identified from amongst a large number of so called rioters. Reference in this regard has been made to the judgment of “*Usmangani @ Bhura Abdul Gaffar & Anr. V/s State of Gujarat*”, decided on 09.08.2018 by Hon’ble Supreme Court in *Crl.Appeal No.1041/2061* to emphasize that *identification of a few select persons in a large mob by a witness, in the absence of TIP cannot inspire the confidence of Court.*

4. (i) Per contra, learned Special PP for the State has very vehemently argued that on 24.02.2020 some unscrupulous elements hatched a large scale conspiracy and carried out riots in the area of North-East District of Delhi. The communal riots continued for two days unabated, resulting in large number of deaths of innocent persons and loss of property worth crores of rupees. A large number of persons were also rendered seriously injured.

(ii) **As regards the case in hand**, it is submitted that based upon the disclosure statement made by accused persons in case FIR No.61/2020, PS Karawal Nagar (**Dinesh murder case**), they were formally arrested in the instant matter in Mandoli Jail on 20.04.2020. It is further submitted that the distance between the place of incident(s) in case FIR No.61/2020, PS Karawal Nagar and the instant matter is quite nearby and belongs to people of the same community.

5. The evidence available against the accused persons has been specified as under:

(a) Role of accused persons	They have been found to be “ active member of the riotous mob ” on the date and time of incident, who took active participation in attacking the police personnel on duty present at the spot/SOC and causing injuries by throwing acid upon them.
(b) Ocular evidence	Both the accused persons have been categorically identified by independent witness PW Ajeet Kumar Tomar vide his statement recorded under Section 161 Cr.P.C on 21.04.2020.
(c) Medical Evidence	The MLC of Constable Ravinder clearly shows that he sustained “ grievous injuries ” in the matter while discharging his official duties at the spot/SOC at the relevant time.
(d) Involvement in other cases	Besides the case in hand, accused persons are also involved in several other cases of rioting in the area, including case FIR No.61/2020, PS Karawal Nagar (Dinesh murder case).

6. (i) As regards the contentions of the learned counsel(s) that the complainant did not specifically name/identify the accused persons in his written complaint and there being delay in registration of FIR, it is argued that the communal riots in North-East Delhi were very unprecedented; people were very much scared; police personnel were busy in maintaining law and order duty, rescuing the victims and stopping further damage to the life, limb and property(ies) in the area; there was curfew like atmosphere at or around the area and the people were so shocked and traumatized that it took several days for them to muster courage to come out and report the matter to the police when the situation became normal. It is contended that since the police personnel remained

busy in maintaining law and order, the matters were not promptly reported to the police station. As a sequel thereto, it is contended that owing to communal flare-up in North-East Delhi, the 65th BN of complainant was urgently summoned from Bihar to Delhi at or around 23.02.2020 that too at a very short notice and as such, it is very difficult for the complainant and his colleagues to get acquainted with the area/locality and as such, they could not specifically name/identify the accused persons in the matter. It is further submitted that accused persons have been categorically named/identified by independent witness PW Ajeet Kumar Tomar vide his statement recorded under Section 161 Cr.P.C on 21.04.2020 and at this stage, the said statement cannot be thrown out of the Court merely on account of some delay therein. As a sequel thereto, it is contended that this is not the appropriate stage to dwell upon the said issue(s) and the same would be taken care of during the course of trial.

(ii) As regards non-availability of any CCTV footage in the matter, it is emphasized that dreary days of 24.02.2020 and 25.02.2020 saw parts of North-East Delhi gripped by a communal frenzy, reminiscent of carnage during the days of partition. The rioters had broken down virtually every CCTV in the vicinity and had damaged the DVRs thereof on 24.02.2020 and 25.02.2020 and as such, it is quite possible that on this account no CCTV footage is available in the matter.

7. Lastly, it is submitted that at the stage of consideration on charge, the court is not supposed to meticulously judge the evidence collected by the investigating agency and has to take *prima facie* view thereupon.

8. I have given thoughtful consideration to the arguments advanced at bar by both the sides. I have also carefully gone through the chargesheet filed in the matter.

9. The law with regard to framing of charge is fairly settled now. In the case of “**Kallu Mal Gupta V/s State**”, **2000 I AD Delhi 107**, it was held that while deciding the question of framing of charge in a criminal case, the Court is not to apply exactly the standard and test which it finally applied for determining the guilt or otherwise. This being the initial stage of the trial, the court is not supposed to decide whether the materials collected by the investigating agency provides sufficient ground for conviction of the accused or whether the trial is sure to culminate in his conviction. **What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence.**

10. Furthermore, in case titled as, “**Umar Abdula Sakoor Sorathia V/s Intelligence Officer Narcotic Control Bureau**”, **JT 1999 (5) SC 394** it was held that, “it is well settled that at the stage of framing charge, the Court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record, the court could come to the conclusion that the accused would have committed the offence, the court is obliged to frame the charge and proceed to the trial”.

11. It is well-settled law that at the time of framing of charge the FIR and the material collected by the investigating agency cannot be sieved through the cull ender of the finest gauzes to test its veracity. A roving inquiry into the pros and cons of the case by weighing the evidence is not expected or even warranted at the stage of framing of charge (reliance **Sapna Ahuja V/s State**”, **1999V AD Delhi p 407**).

12. (i) Now, reverting back to the case in hand. Though, there is no CCTV footage/video-clip of the incident available on record, however, at this stage we have the statement dated 21.04.2020 of PW Ajeet Kumar Tomar, vide which he has not only given categorical account of the incident in question, but has also

named/identified the accused persons to be part/member of the riotous mob taking active participation in the rioting activity. At this stage, his aforesaid statement cannot be brushed aside/discarded merely because there has been some delay in recording thereof or the complainant has not specifically named them. The learned Special PP has been able to accord cogent explanation with regard to delay in registration of FIR and recording the statements of witnesses in the matter.

(ii) As regards the argument of the learned defence counsel(s) regarding the judicial TIP, it is hereby observed that in view of the law laid down by the Hon'ble Supreme Court in **Usman Gani** (supra), ideally speaking the police should have got conducted judicial TIP of the accused persons from all the victim police officials, as they have been allegedly identified from amongst a large mob and they were not known to the victims, however, their identification by PW Ajeet Kumar Tomar cannot be brushed aside at this stage and efficacy or otherwise thereof shall be looked into at the time of trial.

(iii) I find substance in the argument of learned defence counsel(s) that absence of report regarding the nature of injuries upon the MLCs of victim Constable(s) Srinavasa Rao, Mukesh Singh, Manikandan and G. Nalloperum is fatal to the case of prosecution. I also find substance in the argument that for want of chemical analyst's report regarding the substance to be acid or something else, again a jolt is caused to the case of police. This may be on account of defective investigation, but at this stage, the same cannot be held to be effecting the credibility of the opinion given by doctor on the MLC of victim Constable Ravinder Yadav. The case of the police cannot be thrown to dustbin on account of defective investigation by the IO as well as due to lack of supervision of the investigation by the supervisory officers like ACP of the Sub-Division and DCP of the District (reference "**Karan Singh V/s State of Haryana**", 2013 (12) SCC 529: AIR 2013 SC 2348).

13. As regards the contention of learned counsel(s) that accused persons are not seen/visible in any CCTV footage, I find substance in the submissions of learned Special PP that rioters had broken down virtually every CCTV in the vicinity and had damaged the DVRs thereof on 24.02.2020 and 25.02.2020 and as such, it is quite possible that on this account no CCTV footage is available in the matter. The aforesaid factum has also been taken due note of by Hon'ble High Court of Delhi while dismissing the regular bail applications of two accused persons namely Sameer Khan and Kasim in case FIR No.65/2020, PS Dayalpur (**IB Officer Ankit Sharma murder case**) vide detailed order dated 03.05.2021 (passed in Bail Applications No.1344/2021 and 1166/2021). The observations made by Hon'ble High in the said order are re-produced hereunder: To quote:

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21. It is a matter of fact, in such like cases where large mob is involved in riots and illegal activities causing harm to public property, peace and life, statement of eye witnesses and corroborative evidence plays a vital role and at the time of considering the bail application of accused, it would be too soon to analyse the testimony of eye witnesses and public witnesses to arrive at a conclusion as to whether any case is made out against the accused or not. Non availability of technical evidence such like CCTV footage etc. cannot be accepted as a ground for non-availability of direct evidence, as it is a matter of record that CCTV cameras installed in the areas in question were either broken or hidden by the mob. At the time of grant of bail only a prima facie opinion has to be formed and the facts and circumstances of this case do not persuade this Court to keep a lenient view towards the petitioners. Petitioners have been playing hide and seek with the prosecution. Charge sheet in the FIR in question has already been filed and trial is in progress. Petitioners will have an opportunity to make their case at the appropriate stage during the course of trial.

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14. Even recently the Hon'ble High Court of Delhi, while dismissing the bail application of accused Pankaj Sharma in case FIR No.35/2020, PS Gokalpuri, vide order dated 21.05.2021 (passed in Bail Application

No.1264/2021) has been pleased to observe as under:

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24. The plea of petitioner that similar to those cases, there is no CCTV footage in the present case and so, petitioner's involvement in the offence is not proved, cannot be accepted, as there may not be technical evidence in the form of CCTV footage but the call detail record of petitioner shows his presence at the spot of crime on the day of incident and his participation in "Kattar Hindu Ekta" whatsapp group, is still under scrutiny. Besides, PCR call record, statement of eye witnesses and other witnesses, dissuades this Court to keep a lenient view for petitioner. Moreover, each case has to be seen in the peculiar facts of the said case and observations made in one case are not binding on another.

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15. (i) It is pertinent to note here that it is permissible for the Court to sift and weigh the evidence for the limited purpose of finding out whether or not *prima facie* case against the accused has been made out or not. The material to determine *prima facie* case would depend upon the facts of each case. However, it is not expected to decide the credibility and truthfulness of the available material at the stage of consideration on charge. The disputed defence of accused cannot be taken into consideration at this stage. Sufficiency of material or evidence is not required for framing of charges, unless Court finds that the materials are completely and absolutely absent for the purpose of trial. It is well settled that when there is evidence indicating strong suspicion against the accused, the Court will be justified in framing of charge and granting an opportunity to the prosecution to bring on record entire evidence for the purpose of trial.

(ii) Even recently the Hon'ble Supreme Court in **Criminal Appeal No.873/2021**, titled as, "**Saranya V/s Bharathhi & Anr.**" (DOD 24.08.2021) has been pleased to lay down as under:

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7.1 In the case of Deepak (supra), to which one of us (Dr. Justice D.Y. Chandrachud) is the author, after

considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460; State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198; and Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605, it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for “presuming” that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, take at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not.

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16. It is really painful to note here that a large number of cases of riots have been pending consideration on charge before this Court and in majority of cases the IOs have not been appearing in Court, either physically or through video-conferencing at the time of consideration on charge. I have also been given to understand that they have not been briefing the learned Special PPs for arguments of charge. In the morning of the date of hearing on charge, they simply e-mail pdf of the chargesheet to the learned Special PP and leave it upon him to argue the matter on charge as it is, without giving him an opportunity to go deep into the facts and the investigation conducted in the matter. It is further painful to note that in a large number of cases of riots, the standard of investigation is very poor. After filing of chargesheet in the Court, neither the IO nor the SHO nor the aforesaid supervising officers bother to see as to what other material is required to be collected from the appropriate authority in the matters and what steps are required to be taken to take the investigation to a logical end. They don't even

bother to care for the queries of learned Special PPs, if any, regarding the chargesheet and the further investigation which is supposed to have been conducted in the matters. This case is a glaring example, wherein injured persons/victims are police personnel itself, yet the IO did not bother to collect the sample of acid/corrosive substance and to have its chemical analysis, particularly when Section 326-A IPC has been invoked in the matter. The IO has further not bothered to collect the opinion about the nature of injuries upon the victims, particularly when the provision of Section 332 IPC have been invoked. The supervising officers have miserably failed to supervise the investigation, as contemplated under Delhi High Court Rules, especially Rule Nos.10, 13 and 14 of Part A, Chapter 11, Volume-III as also Rule 3 Volume III Chapter 12. The learned Illaka Magistrate also failed to monitor the investigation during the course of remand proceedings before taking cognizance in the matter. It is noticed that after filing the half-baked chargesheets in Court, the police hardly bothers about taking the investigation to a logical end. The accused persons, who have been roped in multiple cases continue to languish in jails as a consequence thereof. It is high time that the DCP of North-East District and other higher officers concerned take notice of the aforesaid observations and take immediate remedial action required in the matters. They are free to seek the assistance of experts in this regard, failing which there is likelihood of injustice being caused to the persons involved in these cases.

17. In view of the aforesaid discussion, I am of the considered opinion that *prima facie* there is enough material on record to frame charges against the accused persons under requisite sections. Let charges under appropriate sections be framed against both the accused persons. Put up the matter at 2.00 PM for getting the charges signed from the accused persons and fixing the dates of trial.

18. A copy this order be sent to the Commissioner of Delhi Police for his reference and directing taking of remedial steps, as contained in paragraph No.16 hereinabove.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/28.08.2021