

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

Sessions Case No.84/21

FIR No.134/20

PS New Usmanpur

U/s 308/147/148/149 IPC & 27 Arms Act

State

Versus

- 1. Surender Soni @ Shyam
s/o Sh.Harihar Soni
r/o H.No.O-22, Gali no.16, 2nd
Brahampuri, Delhi.**
- 2. Shiva
s/o Sh.Ram Jeevan
r/o H.No.M-28, Gali no.13,
Brahampuri, Delhi.**
- 3. Nitin
s/o Sh.Dori Lal
r/o H.No.M-30, Gali no.13,
Brahampuri, Delhi.**

ORDER ON CHARGE:-

1. The above named accused have been charge-sheeted by the police for having committed offences u/s 147/148/149/308 IPC and 27 Arms Act.

2. As per the case of the prosecution, an information was received in the PS New Usmanpur on 27.02.2020 at about 9.46 p.m. from the Duty Constable in RML Hospital to the effect that one Azim s/o Shamimuddin aged about 34 years, who had suffered injuries during the riots, has been brought to the hospital by his paternal aunt (Bua) and is under treatment vide MLC no. E-43167/20. The information was recorded as GD no.46 A and was entrusted to SI Amit Kumar for suitable action. Accordingly, SI Amit Kumar alongwith Ct.Akram visited RML Hospital where they found injured Azim Ansari under treatment. SI Amit Kumar collected his MLC and proceeded to record the statement of the injured but the injured Azim Ansari expressed his inability to talk properly on account of the injuries on his head.

3. The IO SI Amit Kumar recorded the statement of the injured Azim Ansari on 06.03.2020 in which he stated that on 25.02.2020 at about 3.00 a.m in the morning, when he was present in his house, he heard commotion from gali no.13, Brahampuri, Delhi. He left his house and came in the gali. He saw a mob consisting of 20-25 persons coming from the side of New Bal Jyoti Public School towards gali no.13, Brahampuri, Delhi and chanting slogans “*Jai Shree Ram*” loudly. They were pelting stones and committing vandalization. The persons in the mob were armed with rods, stones etc. Some of them were armed with weapons and were continuously firing from the weapons as well as pelting stones. He further stated that the mob reached near Al-Matin Mosque in gali no.13, Brahampuri, Delhi and in the meanwhile, someone from the mob threw a stone on his head

as a result of which he suffered injuries and started bleeding. He became unconscious and his neighbours brought him home. He has stated that on account of tensed situation as well as riots, he was unable to leave his house and therefore, could not receive treatment of his injuries. Ultimately, he was taken to RML Hospital by his family members on 27.02.2020 and admitted there.

4. On the basis of the statement of Azim Ansari, FIR was registered on 07.03.2020. Investigation was entrusted to SI Amit Kumar. He prepared rough site plan of the incident spot at the instance of the injured Azim Ansari. He also obtained CCTV footage of the camera installed near the incident spot from PWD. Upon analysis of the CCTV footage, one rioter was identified as Surender Soni @ Shyam having a folding stick in his hand. It came to be known that he was admitted in the hospital vide MLC no.646/20. Another rioter was found armed with a pistol in his hand. Accordingly, notice u/s 160 Cr.PC was served upon Surender Soni @ Shyam. Upon making enquiry from him and upon being identified as a rioter by the complainant Azim Ansari, he was arrested in this case. His disclosure statement was recorded wherein he disclosed the names of his associate rioters as Nitin and Shiva. The CCTV footage was sent to FSL for forensic examination. None of the other rioters could be traced.

5. Accordingly, chargesheet was submitted before the Ld.CMM qua accused Surender Soni @ Shyam.

6. Further investigation was continued to trace more eye witnesses to the incident and to nab other rioters. Beat Ct.Anuj told the IO that he knows Nitin and Shiva, whose names were disclosed by accused Surender Soni @ Shyam in his confessional statement. The IO showed him the CCTV footage of the incident in question wherein Ct.Anuj identified the person with pistol in his hand as Shiva and another person wearing blue colour lower and having sword in his hand as Nitin. Since both these accused Shiva and Nitin did not join the investigation, NBWs were got issued against them which also could not be executed and consequently, process u/s 82/83 Cr.PC was got initiated against them. Ultimately, they were declared proclaimed offenders by the Ld.CMM.

7. On 02.04.2020, the IO got information from SIU-I, Crime Branch Daryaganj to the effect that the accused Shiva and Nitin have been arrested u/s 41.1(C) Cr.PC and they have admitted their involvement in the instant case. They were produced before the concerned Magistrate in Karkardooma Courts where the IO interrogated them upon seeking permission from the Ld.MM and thereafter formally arrested in this case. Both the accused were remanded to one day's police custody. However, neither the pistol nor the sword could be recovered at their instance. Accordingly, section 201 IPC was added to the FIR. Thereafter, sections 188/307 IPC were also added to the FIR.

8. After completion of further investigation, supplementary

chargesheet was submitted in this case. FSL result in respect of the CCTV footage was also annexed to the supplementary chargesheet.

9. I have heard the Ld.Special PP, the Ld.Counsels for the accused and have perused the entire material on record.

10. The Ld.Special PP submitted that there is sufficient material on record for framing of charges against all the three accused. To buttress his submission, he would refer to the various statements of the complainant Azim Ansari and those of Ct.Anuj. He also relied upon the FSL result in respect of the CCTV footage of the incident in question saying that same has been found to be continuous and without any indication of alteration.

11. Ld.Counsels appearing for the accused argued in unison that they have been falsely implicated in this case without there being any legally admissible evidence against them. It is pointed out that there is a delay of 10 days in registration of FIR which has remained to be explained by the prosecution. It is also argued that the conduct of the injured Azim Ansari appears to be extremely doubtful for the reason that he is stated to have suffered serious injuries on his head on 25.02.2020 but surprisingly, he did not seek treatment for his injuries for two complete days and was admitted in far away RML hospital on 27.02.2020. The Ld.Counsel submitted that such conduct of the

injured manifest that he had not suffered injuries on 25.02.2020 and may have got injured in some other incident that took place on 27.02.2020. It is also pointed out that the injured Azim Ansari did not name any of the assailants in his initial statement dt.06.03.2020 on the basis of which FIR was registered. He also did not mention in the statement that he can identify any of the assailants but still he is stated to have identified accused Surender Soni @ Shyam in the PS on 09.03.2020 as one of the rioters. It is vehemently argued that identification of the accused by complainant Azim Ansari and Ct.Anuj can not be accepted even at this stage as the same appears to be tutored and wholly unreliable.

12. 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.

13. Since, the instant case is the outcome of the riotous incident in which a large number of rioters were involved, the observations of the Hon'ble Supreme Court in Masalti & Ors. v. State of UP, AIR (1965) SC 202 become relevant in which the principle as to how a criminal Court should deal with the evidence pertaining to the commission of offence involving in a large number of offenders and large number of victims, has been laid down. It has been held that when a criminal Court has to deal with the evidence pertaining to the commission of offence involving a large number of offenders and large number of victims, the normal test is that the conviction should be sustained only if it is supported by two or more witnesses who give a consistent account of the incident in question. When an unlawful assembly or a large number of persons take part in arson or in a clash between two groups, in order to convict a person, at least two prosecution witnesses have to support and identify the role and involvement of the persons concerned.

14. At the outset, it may be noted here that the Ld.CMM vide order dt.22.12.2020 has refused to take cognizance of offence punishable u/s 27 Arms Act in the absence of the requisite sanction u/s 39 of the said Act. Cognizance has been taken by the Ld.CMM of the offences u/s 147/148/149/308 IPC only.

15. Perusal of the chargesheet would reveal that upon analysis of the CCTV footage recorded by the CCTV cameras installed by PWD near the incident spot i.e.gali no.13, Brahampuri, one of

the rioters having a folding stick in his hand was identified as Surender Soni @ Shyam. Accordingly, notice u/s 160 Cr.PC was served upon him and he appeared in the PS on 09.03.2020. Upon making enquiries from him, he was arrested in the instant case on the same day. Perusal of the statement u/s 161 Cr.PC of complainant Azim Ansari recorded on the same day i.e.09.03.2020 would reveal that he had appeared in the PS on that day to enquire about his complaint and identified the accused Surender Soni @ Shyam, who was present in the PS, as one of the members of the mob which had thrown stone upon him. There is nothing on record to show as to who had identified the person with folding stick in his hand seen in the CCTV footage as Surender Soni @ Shyam in the first instance pursuant to which notice u/s 160 Cr.PC was served upon him. No statement of any eye witness to this effect can be found on record. It is also to be noted here that the complainant Azim Ansari has nowhere mentioned in his statement dt.06.03.2020, on the basis of which FIR was registered, that he had identified any of the rioters in the mob in gali no.13 and that he can identify those later on also, if shown to him. It is for this reason probably that the CCTV footage was not shown to him for identification of the rioters. In these circumstances, the identification of accused Surender Soni @ Shyam as a member of unlawful assembly which committed vandalization in gali no.13, Brahampuri on the night intervening between 24.02.2020 and 25.02.2020 during which a stone had hit the complainant Azim Ansari, appears to be immensely doubtful even at this stage. There is no other witness, who has identified,

either directly or indirectly the said accused to be one of the members of the unlawful assembly.

16. So far as the remaining two accused namely, Nitin and Shiva are concerned, they appear to have been arrested in this case on the basis of the disclosure statement of co-accused Surender Soni @ Shyam, which is not admissible in evidence. That apart they were identified by Ct.Anuj also in the abovenoted CCTV footage. Thus, there is only one witness, who is stated to have identified these two witnesses as the assailants i.e.the members of the riotous mob which committed vandalization in gali no.13, Brahampuri. Even the said witness too had not identified these two accused directly at the spot from the riotous mob. As noted herein above, he is stated to have identified them as rioters from the video footage shown to him by the IO on 15.05.2020. There is no other witness, who has identified, either directly or indirectly these two accused as the assailants.

17. Hence, even if the evidence sought to be adduced by the prosecution against these accused remains unrebutted during the trial, their conviction cannot be ordered in view of the Rule laid down by the Hon'ble Supreme Court in the above noted judgment in Masalti's case which mandates that there should be at least two prosecution witnesses to identify the role and involvement of the accused in the incident in question. Charges cannot be framed against these accused upon taking into account the material annexed with the charge-sheet on the basis of which there is no

possibility of their conviction at the final stage. It would be sheer wastage of judicial time if the charges are to be framed against the accused upon consideration of the evidence on the basis of which they have to be acquitted later on.

18. Hence, there is no sufficient evidence on record on the basis of which charges can be framed against these three accused. Accordingly, they are liable to be discharged.

19. In view thereof, all the three accused are hereby discharged of all the offences. Their bail bonds are released and sureties are discharged.

20. File be consigned to Record Room.

**Announced in the Open Court
on 02.04.2022**

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