

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

RIOTS CASE

CNR No.		<u>DL-SH01-001626-2022</u>
FIR No.	:	139/2020
Under Section	:	143/144/145/147/148/149/302/120B/153A/ 505/188 IPC & 27 Arms Act
Police Station	:	Welcome
Sessions Case No.	:	67/2022

State

..... Prosecution

Versus

- (1) **Imran @ Cheera**
S/o Sh. Shahjade
R/o H.No. E-49/D-90, Janta Colony, Welcome, Delhi.
- (2) **Asif**
S/o Sh. Ashik Ali
R/o H.No. 65/80, Welcome, Delhi.
- (3) **Mohd. Shahzad**
S/o Mohd. Kafeel Ahmad
R/o H.No. D-26, Gali No. 8, Kardampuri Extension, Delhi.
- (4) **Md. Shariq**
S/o Sh. Naeem Ahmad
R/o H.No. B-6/124, Gali No.5, Kabir Nagar, Delhi.
- (5) **Mohd. Imran**
S/o Md. Dilshad
R/o H.No. B-14/33, Gali No. 5, Kabir Nagar, Delhi.

.... Accused persons

Dated : 24.09.2022

ORDER ON CHARGE

1. 1.1 Vide this order, I shall dispose of the question of charge against the (05) accused persons namely Imran @ Cheera, Asif, Mohd. Shahzad, Mohd. Shariq and Md. Imran.

1.2 The main charge-sheet under Section 143/144/145/147/148/149/302/120B/153-A/505/188 IPC was filed on 10.07.2020 against accused persons namely Imran @ Cheera and Asif. Supplementary charge-sheet for offences under Section 153-A IPC, 505 IPC & 188 IPC was filed alongwith FSL report on 24.12.2020 against the said two accused persons.

1.3 Supplementary charge-sheet under Section 143/144/145/147/148/149/302/120B IPC & 27 Arms Act was filed on 30.01.2021 against accused persons namely Shahzad and Mohd. Shariq. Thereafter, supplementary charge-sheet for offences under Section 153-A IPC & 188 IPC was filed against the said two accused persons on 10.08.2021.

1.4 Supplementary charge-sheet under Section 143/144/145/147/148/149/505/302/120B/174A IPC & Section 27 Arms Act was filed on 14.12.2021 against accused Mohd. Imran. Supplementary charge-sheet in respect of FSL report and for offence under Section 188 IPC against accused Mohd. Imran was filed on 16.07.2022.

1.5 Cognizance of all the offences were taken by the Ld. Metropolitan Magistrate. The compliance of Section 207 Cr.P.C regarding supply of the copies

of the charge-sheet was done and thereafter, matter was committed to the Sessions Court on 02.03.2022.

2. THE ARGUMENTS OF THE PROSECUTION

2.1 The present case was registered on the complaint of SI Amit Bhardwaj, PS Welcome. The gist of incident is that on 25.02.2020 at 17:47 hours, a DD Entry No. 56A was lodged at Police Station Welcome mentioning that an unknown person aged 40 years r/o unknown has been brought to GTB hospital from Mata Mandir near Maujpur Red Light in unconscious condition. From the perusal of the MLC, it has come to notice that patient brought in casualty by unknown in unconscious state, alleged history of assault by mob at Maujpur Red Light told by another patient namely Diwakar. During the course of investigation of case FIR No. 94/20 PS-Welcome, the deceased was identified as Prem Singh s/o Jagdish r/o C-376, Gali No. 03, Birjपुरi Delhi. Postmortem of deceased was got conducted at GTB Hospital. From the perusal of PM report, it came to light that the death of the deceased was caused by injury sustained from a sharp weapon.

2.2 Initially, the FIR No. 94/2020, P.S. Welcome was registered and there were three deceased in the said FIR namely Istiaq Khan, Prem Singh and Muddishir for which separate FIRs bearing FIR No. 138/20, FIR No. 139/20 & 140/20 were registered at P.S. Welcome.

2.3 During the investigation, it became clear that the incident of stabbing of deceased Prem Singh took place at Main Maujpur Road, in front of C-12, Yamuna Vihar.

2.4 In FIR no. 143/2020 under Section 143/144/147/148/149/326 IPC and 27 Arms Act, PS Welcome, two persons namely Imran @ Cheera s/o Shahjad r/o E-49/8-90 Janta Colony Welcome Delhi and Asif s/o Ashik Ali r/o H.No. 65/80 Welcome Delhi were arrested in that case. The dossiers of the arrested persons were obtained.

2.5 During investigation, witness Raman Kohli was shown the photographs/dossiers of the suspects. Raman Kohli was shown the dossiers of the suspects/accused Imran @ Cheera and Asif. He identified both the accused and told that they are the same persons who were part of the mob which had stabbed the deceased Prem Singh on 25.02.2020 at around 12:30pm near C-12, Yamuna Vihar. He identified Imran as the person who had chased the deceased Prem Singh and held him and Asif as the person who had also chased him and stabbed him with knife. His statement in this regard was recorded under Section 161 CrPC.

2.6 During further investigation, witness Diwarkar Dubey was shown the dossiers of the suspects/accused Imran @ Cheera and Asif. He identified both the accused and stated that they are the same persons who were part of the mob who had thrown stone at him on 25.02.2020 at around 12:00am near Maujpur Babarpur Metro station. He identified Imran as the person who was carrying a desi kata and Asif as the person who was carrying a knife at the time of riots. His statements were also recorded under Section 161 CrPC.

2.7 The accused persons namely Asif and Imran @ Cheera were interrogated and arrested in the present case.

2.8 The accused persons took the police party at the scene of the crime i.e. Main Maujpur Road, under footover bridge in front of C-12 Yamuna Vihar. Separate pointing out memos were prepared.

2.9 The witness Ct. Pushkar posted at PS Welcome told that on 25.02.2020 he was on law and order duty at Kabir Nagar and Main 66 foota Road, Maujpur. He identified both the accused persons namely Imran @ Cheera & Asif and told that they are the same persons who were part of mob which was rioting on 25.02.2020 at Main Maujpur Road. He identified Imran as the person who was carrying a desi kata and Asif as the person who was carrying a knife at the time of riots. Because of chance identification of accused persons by the witnesses, the accused persons were not subjected to Judicial TIP. His statement under Section 161 CrPC was recorded separately. They admitted their role in the disclosure statement.

2.10 There are three other public witnesses namely Manish Pahwa, Ashok Jain and Pramod who have identified the accused Mohd. Shariq, Shahzad and Imran as part of the armed mob which was rioting on Main Jafrabad Road on 25.02.2020 and in prosecution of common object stabbed Prem Singh on C-12, Yamuna Vihar, ultimately leading to his death.

Ct. Pushkar has also identified all three accused persons

2.11 Another accused Imran was absconding and as per a video recovered from mobile of accused Shahzad, Imran is seen being treated at Hospital. Doctor Jitender Giri has also identified Shahzad, as the person, who had accompanied Imran at the time of treatment.

The prosecution sanction under Section 196 Cr.P.C for the offences under Section 153-A IPC against accused persons was obtained. Complaint under Section 195 Cr.P.C was also filed.

It was prayed that charges in all the sections be framed against all the accused persons.

3. Ld. Counsel for the accused persons had argued that the present case is fit for discharge as the accused persons are not named in the FIR and they were arrested later on. It was also submitted that the statement of witnesses are not believable and they were recorded at very late stage. The statement of witnesses have been recorded multiple times and cannot be believed. Moreover, no judicial TIP of accused persons was conducted to substantiate the prosecution case. Even the CDR location of the accused would not prove their presence at the spot. Also the police witnesses are interested witnesses and their testimonies cannot be relied upon.

4. Arguments on the point of charge were heard at length on behalf of both prosecution and accused persons. The record has been painstakingly scrutinized.

5. **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 sub- section (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.

6. **6.1.** 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.

6.2. 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.

7. Hon'ble Supreme Court of India in the case of State of Rajasthan Versus Ashok Kumar Kashyap in Criminal Appeal No. 407 of 2021 (Arising from SLP (Crl.) No. 3194 of 2021) observed that :

23. In the case of P. Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

24. In the recent decision of this Court in the case of M.R. Hiremath (supra), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an

application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N.v. N. Suresh Rajan [State of T.N.v. N. Suresh Rajan, (2014) 11 SCC 709, advertent to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

“29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

.....It was held that as observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.”

8. The perusal of the charge-sheet including the supplementary charge-sheets, reveal the following :-

(i) The present case pertains to the murder of deceased Prem Singh on 25.02.2020 at around 12.30 PM on Main Jafrabad Road, C-12, Yamuna Vihar, Delhi. As per the Postmortem Report, the death of the deceased was caused by injury sustained from a sharp weapon.

(ii) As per statement of public witness Diwakar Dubey recorded under Section 161 Cr.P.C, he had left his home on 25.02.2020 at around 10.00 AM for Bhajanpura for making some collection in relation to his work and when he

reached at around 11-12.00 PM at Maujpur Chowk, Main Jafrabad Road, he saw 200-300 Muslim rioters doing rioting. They were armed with lathi, danda, sword, big knives, pistol, desi katta and they were stabbing and firing at Hindus passing through the said place. They were also doing stone pelting at the Hindus. They were shouting “Allah-ho-Akbar” and other religious slogans. At the top of their voices, they were sloganeering these kaafirs want to evict us from the country and kill these kaafirs. He hid behind Metro Pillar near Babarpur, Maujpur Metro Station. The rioters went towards the Footover Bridge and he upon seeing the opportunity, he started going towards Gokulpuri. At the same time, the rioters while rioting again came back towards Babarpur Maujpur Metro Station. To save his life, he started running towards Gali No. 14, Krishna Colony and then somebody from the rioters hit him with a stone on the right side of his head. He fell down. One person who was wearing clothes like a laborer and police put him in a police vehicle at Maujpur Chowk and took him to GTB Hospital. After some time, he saw the same person who had saved him and wearing clothes like a laborer as brought to the GTB Hospital in an injured condition. He identified that person on that day and later before the Investigating Officer from the photographs shown and his name was disclosed as Prem Singh S/o Jagdish. He stated that he can identify those rioters if they are either brought before him or their photographs are shown to him.

Diwakar Dubey had, later, on 10.04.2020, duly identified accused Imran and Asif from the dossier containing the photographs. He stated that these two accused were involved in the riots in the present case and stated that Asif was holding a big knife while Imran was having one desi katta.

(iii) Statement of Raman Kohli was also recorded on 08.04.2020 and he

stated that he provides vehicle/cab for school and he parks his cabs in front of BSES Office, C-12, Yamuna Vihar, Delhi. On 25.02.2020, when riots were taking place, he had removed one cab from the BSES Office and when reached to remove his other vehicles, he saw 100-250 rioters on the Main Jafrabad Road in front of/near C-12, Yamuna Vihar. All rioters were of Muslim community and were having sword, big knives, desi katta, lathi, pistols, stones, etc. and were doing rioting and attacking all passing by Hindus. They were shouting “ Allah-ho-Akbar” “ Maar do kaffiron ko” and other religious slogans. At around 12.30 PM, one person on the Jafrabad Road going from Gokulpuri towards Babarpur Maujpur Metro Station was attacked by the rioters. That person in order to save his life, rushed towards C-12, Yamuna Vihar. Some persons from that rioters attacked him with knives and sword and he was hit with the knife on his body and that person limped and fell on the footpath in front of BSES Office in a blood stained injured condition. Some persons there put clothes around his stomach and one person took his motorcycle towards near C-1, Yamuna Vihar from where an ambulance took him to the hospital. He identified the deceased from the photographs shown to him. He also stated that he can identify the rioters who had participated and killed the deceased (Prem Singh).

Through another supplementary statement dated 10.04.2020, witness Raman Kohli from the dossier of photographs shown duly identified Imran and Asif as participants in the present rioting incident and in the killing of Prem Singh. He ascribed the role of accused Imran as one who ran after him and held him while possessing a desi katta with the role of accused Asif being also who ran after the deceased and stabbed him with a big knife.

(iv) There is also police witness Ct. Pushkar who has identified the said two

accused persons as participants in the present rioting incident on 25.02.2020 at the Main Jafrabad Road.

(v) Public witness Manish Pahwa, Ashok Jain and Raman Kohli also gave their statement under Section 161 Cr.P.C stating that they were present at around 12.30 PM in front of BSES Office, C-12, Yamuna Vihar Road on 25.02.2020 when fully armed rioters coming from Kardampuri towards Main Jafrabad Road and they were after one person who they surrounded and stabbed with knife. He identified the deceased from the photo shown as also accused Shehzad, Imran and Shariq from the photo in their CAF Form. The accused persons were shouting religious slogans of “ Allah-ho-Akbar” and “ kill the kaffirs” while deceased was being stabbed.

The said witnesses namely Manish Pahwa, Ashok Jain and Pramod also identified the said two accused persons namely Shahzad and Mohd. Shariq during their police custody when they had come at the spot at C-12, Yamuna Vihar.

(vi) Statement of Dr. Jitender Giri was also recorded where he stated that on 25.02.2020 when he was on emergency duty at Jyoti Nursing Home at B-32, East Jyoti Nagar at around 1.30 PM, two boys brought one Imran with them. Imran was hit with a gunshot injury. After giving first aid, he was referred to GTB Hospital. Accused Shehzad had brought him and was also making a video in the hospital. He identified Shehzad after he was brought to the hospital and shown to him during the investigation.

(vii) Accused Imran absconded and he was declared a proclaimed offender on 02.03.2021 by the Court of Sh. Fahad Uddin, Ld. MM, Shahdara, KKD Courts, Delhi. After he was arrested, he was duly identified by three public witnesses

namely Ashok Jain, Manish Pahwa and Pramod and as part of the mob which was rioting at 66 Foota Road and which had chased and stabbed Prem Singh under Foot-over bridge in front of C-12, Yamuna Nagar, Delhi. He was carrying a stick in his hands and he alongwith other rioters were raising religious slogans against the Hindu community.

Witness Ct. Pushkar also identified three accused persons namely Shehzad, Mohd. Shariq and Imran vide his statement under Section 161 Cr.P.C.

Thus, on the basis of the contents of the charge-sheet duly supported by the statement of the witnesses, it has come on record that on 25.02.2020 at about 12.30 PM a riotous mob (unlawful assembly) consisting of 100-250 Muslim rioters persons including the accused persons namely Imran @ Cheera, Asif, Shehzad, Shariq and Mohd. Imran armed with danda, big knives, sword, stones, pistol, desi katta, etc. were doing rioting, attacked and stabbed the deceased Prem Singh leading to his death by the unlawful assembly in prosecution of common object, thus, attracting Section 143 IPC (**Punishment for being a member of unlawful assembly**), 144 IPC (**Joining unlawful assembly armed with deadly weapon**), 147 IPC, (**Punishment for Rioting**), Section 148 IPC (**Rioting armed with deadly weapon**), Section 302 IPC (**Murder**) read with Section 149 IPC (**Every member of unlawful assembly guilty of offence committed in prosecution of common object**).

All accused persons were part of the specific religious Muslim community as per the statement of witnesses and were constantly shouting "Allah-ho-Akbar", " Maro kaffiron ko", " Kaffir wants to evict us from the country and kill these

kaffir" and while shouting the said slogans attacking every Hindu who was passing by and chased and stabbed the deceased Prem Singh in the present case. Hence, all accused persons are also liable to be charged for the offences 153A IPC (Promoting enmity between different religious groups) and 505 IPC (Public mischief) though without invoking Section 149 IPC.

By assembling at the said point despite the promulgation of Prohibitory Order under Section 144 Cr.P.C, they have also committed the offence under Section 188 IPC. The complaint under Section 195 Cr.P.C was also filed.

9. The stabbing of deceased Prem Singh by knife by accused Asif attracts Section 27 of Arms Act against him. However, all other accused persons cannot be charged for the offence under Section 27 Arms Act and thus, they are accordingly discharged under Section 27 of Arms Act. Section 145 IPC (Joining or continuing in unlawful assembly, knowing it has been commanded to disperse) is also not made out. Also there is no material on record to show the criminal conspiracy as postulated for Section 120B IPC as the offence are stated to have been done by the accused persons in prosecution of their common object. Thus, all the accused persons are also discharged for the offence under Section 120-B IPC.

10. The contention of the accused that witnesses cannot be believed or their statements as recorded late, hence can't be relied upon, cannot be a basis for discharge as it is a matter of trial.

Moreover, FIR is not an encyclopedia but the beginning point of

investigation and not naming accused in FIR, that too during the period of riots, does not discredit the case of the prosecution at all.

11. Thus, on the basis of material on record, I am of the opinion that there are grounds for presuming that all the accused persons namely accused persons namely Imran @ Cheera, Asif, Mohd. Shahzad, Mohd. Shariq and Md. Imran have committed offences under Section 143, 144, 147, 148, 188, 302, IPC read with Section 149 IPC; they have also separately committed offence under Section 153A IPC, & 505 IPC while accused Asif is also liable to be charged additionally for the offence under Section 27 Arms Act.

Ordered accordingly.

(Announced & Dictated in open court)

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 24.09.2022