

DLNE01-000987-2021



**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

INDEX		
Sl. No.	HEADINGS	Page Nos.
1	Description of Case & Memo of Parties	2
2	The case set up by the Prosecution	2-4
3	Charges	4-5
4	Description of Prosecution Evidence	5-10
5	Plea of accused under Section 313 Cr.P.C.	11
6	Arguments of Defence & Prosecution	11-12
APPRECIATION OF FACTS AND EVIDENCE		
7	Unlawful Assembly and Riots	12
8	Identification of accused	12-14
9	Conclusion and Decision	14

CNR No. DLNE01-000987-2021
State v. Noor Mohammad @ Noora
SC No. 125/2021, FIR No. 170/2020, PS Khajuri Khas
Judgment dated 24.11.2022

Sessions Case No.	:	125/2021
Under Section	:	147/148/149/188/436/452 IPC
Police Station	:	Khajuri Khas
FIR No.	:	170/2020
CNR No.	:	DLNE01-000987-2021

In the matter of: -

STATE

V E R S U S

SH. NOOR MOHAMMAD @ NOORA

S/o. Sh. Munna Mauji,
R/o. Milan Garden, near Mangal Bazar,
Soniya Vihar, Delhi.

.....Accused

Complainants :

SH. SANJAY KUMAR GOYAL

S/o. Sh. Mani Ram Goyal,
R/o. Mohalla Ghanti,
Kasba/Village/PS Oon,
District Shamli (U.P.)

Date of Institution : 30.06.2020

Date of reserving order : 18.11.2022

Date of pronouncement : 24.11.2022

Decision : Acquitted of all the charges.

(Section 437-A Cr.P.C. complied with by accused)

J U D G M E N T

THE CASE SET UP BY THE PROSECUTION: -

1. The above-named accused has been charge-sheeted by the police for having committed offences punishable under Section 147/148/149/188/436/452 IPC.
2. Brief facts of the present case are that on 02.03.2020, FIR was registered on the basis of written complaint dated 28.02.2020

(received vide DD No.46-B), made by one Sh. Sanjay Kumar Goyal. Complainant alleged that in the late night of 24.02.2020, a riotous mob had criminally trespassed into his medical shop bearing no. E-251/B, in the name and style of “Goyal Medicos” situated in Gali No.4, Khajuri Khas, Main Karawal Nagar Road, Delhi-110094. Complainant further alleged that bad elements of the society from this mob, had forcefully pored petrol inside his aforesaid shop and set the same on fire. He further alleged that all his furniture and medicines kept inside aforesaid shop were burnt, as a result of which he suffered huge financial loss of Rs. 15 lacs.

3. During investigation, SI Vipin Kumar recorded statement of complainant and on the basis of his statement, SI Vipin Kumar added Section 452 IPC in the present case. During further investigation, accused Noor Mohammad @ Noora was identified as one of the members of the mob, which indulged into the riot covering this incident of 24.02.2020. Accordingly, accused was arrested in this case.
4. After completion of investigation, on 30.06.2020 chargesheet was filed by SI Vipin Kumar, before Duty ACMM (North East), Karkardooma Courts, Delhi, against accused for offences punishable under Section 147/148/149/188/436/452 IPC. On 30.01.2021, ld. CMM (North East), Karkardooma Courts, Delhi, took cognizance of offences punishable under Section 147/148/149/436/452 IPC. However, ld. CMM (N/E) declined to take cognizance of offence under Section 188 IPC, for want of complaint under Section 195 Cr.P.C. On 12.02.2021, case was

committed to the sessions court. Thereafter, on 22.12.2021, a supplementary chargesheet along with a complaint under Section 195 Cr.P.C., was filed by SI Deepak Chandra, before Id. Link ACMM (N/E), which was committed to the sessions court vide order dated 06.01.2022.

CHARGES :-

5. On 31.08.2021, charges were framed against accused Noor Mohammad @ Noora for offences punishable under Section 143/147/148/454/436 IPC read with Section 149 IPC, to which he pleaded not guilty and claimed trial. The charges were framed in following terms: -

“That in the late night of 24.02.2020, exact time unknown, in the area of E-Block, Khajuri Khas, main Karawal Nagar Road, Delhi-110094, within the jurisdiction of PS Khajuri Khas, you being from a particular community alongwith your other associates (unidentified) formed an unlawful assembly, the object whereof was to cause maximum damage to the property and persons belonging to the other community and commit criminal trespass and arson in the shops, houses and other properties of the persons from other community by the use of force or violence in prosecution of the common object of such assembly and thereby committed offences punishable under Section(s) 143/147/148 IPC read with Section 149 IPC and within my cognizance.

Secondly, on the aforesaid date, exact time unknown, at shop No.E-251/B (by the name of “Goyal Medicos”), Gali No.4, Khajuri Khas, main Karawal Nagar Road, Delhi-94, you being member of said unlawful assembly in furtherance of your common object alongwith your other associates (unidentified) committed lurking house-trespass in the said shop/medical store, belonging to complainant Sanjay Kumar Goyal, S/o Shri Maniram Goyal, to commit offences and thereafter committed mischief by fire or explosive substance with the intent to destroy the aforesaid shop and thereby committed offences punishable under Section(s) 454/436 IPC read with Section 149 IPC and within my cognizance.”

6. Thereafter, on 20.07.2022, additional charge was framed against accused Noor Mohammad @ Noora for offence punishable under

Section 188 IPC, to which he pleaded not guilty and claimed trial. The charge was framed in following terms: -

“That, in the late night of 24.02.2020 in the area of E-block, Khajuri Khas, main Karawal Nagar Road, Delhi-94, within the jurisdiction of PS Khajuri Khas, you being member of an unlawful assembly alongwith your other associates (unidentified) was present at aforesaid place, in prosecution of the common object of such unlawful assembly and in violation of the proclamation issued u/s 144 Cr. PC by the competent authority/DCP, North East vide order dated 24.02.2020 bearing no.10094-170 X-1, North East, Delhi dt.24.02.2020, which was duly announced in all the localities of District North East and, thereby you committed offence punishable under Section 188 IPC and within my cognizance.”

DESCRIPTION OF PROSECUTION EVIDENCE

7. Prosecution examined 10 witnesses in support of its case, as per following descriptions: -

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
PW1/ Smt. Chhavi Kansal	She was resident of Chandu Nagar, Karawal Nagar, and she had made a telephone call at 100 number from mobile no. 9582788487 on 24.02.2020, regarding pelting stones, setting on fire and damaging the shops and houses in her area, by a huge mob.	
PW2/Smt. Mamta Pathak	She was resident of E-253/D, Gali No.12, Khajuri Khas, and she had made a telephone call at 100 number from mobile no. 9811547055 on 24.02.2020 at 02:00-02:30 PM, regarding pelting stones and committing arson, by the rioters.	
PW3/ASI Ram Prasad	On 02.03.2020, he was posted as Duty Officer from 04:00 PM till 12 midnight. On that day, at about 09:25 PM, PW3 received rukka from SI Vipin Kumar and registered FIR in the present case. PW3 handed over original rukka and copy of FIR to SI Vipin Kumar.	Ex.PW3/A (FIR) & Ex.PW3/B (certificate u/s 65-B of I.E. Act)

CNR No. DLNE01-000987-2021
State v. Noor Mohammad @ Noora
SC No. 125/2021, FIR No. 170/2020, PS Khajuri Khas
Judgment dated 24.11.2022

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	PW3 identified his endorsement from points X to X, bearing his signature at point Y. PW3 also identified his signature at point A on FIR and his certificate under Section 65-B of I.E. Act, in support of aforesaid FIR.	
PW4/ASI Ratan Lal	On 24.02.2020, he was posted as DD Writer at PS Khajuri Khas from 12 midnight till 08:00 AM on 25.02.2020. During aforesaid period, PW4 recorded GDs No.229A at 03:55 PM; 226A & 227A at 03:57 and 222A 04:02 PM, as received from police control room. PW4 identified his signature at point A, on them. PW4 had recorded these GDs while working in the extra time after the expiry of his duty period.	Ex.PW4/A to Ex.PW4/D (attested copies of GDs No. 229A, 227A, 226A & 222A, respectively, recorded by PW4)
PW5/ HC Bani Singh	On 01.03.2020, he shot a video of the burnt shop of victim Sh. Sanjay Kumar Goel from mobile phone of Ct. Rohtash.	
PW6/HC Manoj Kumar	He proved attested print out of PCR forms with regards to call received in control room on 24.02.2020, against event ID Nos.917288, 917230, 917218 and 917205, bearing seal and sign of ACP CPCR Rajpal Dabas at point A.	Ex.PW-6/A (colly) (PCR forms)
PW7/HC Devender	In February 2020, he was posted at PS Khajuri Khas, as reader to SHO. On 24.02.2020, he received copy of order under Section 144 Cr.P.C., issued by DCP, through Dak/rider. Copy of said order is Ex. A-1 (admitted	

CNR No. DLNE01-000987-2021
State v. Noor Mohammad @ Noora
SC No. 125/2021, FIR No. 170/2020, PS Khajuri Khas
Judgment dated 24.11.2022

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	document) On the direction of SHO, PW7 announced proclamation under Section 144 Cr.P.C. in the area of PS Khajuri Khas, through loud speaker. A complaint under section 195 Cr.P.C was made by the DCP/NE against all rioters for violation of aforesaid order, which is Ex. A-3 (Admitted document).	
PW8/ SI Vipin Kumar	On 02.03.2020, he received complaint of Sh. Sanjay Goel from reader to SHO. PW8 prepared rukka on the back of this complaint from point A to A-1 in his handwriting. PW-8 identified his signature at circle X, on the same. On 04.03.2020, PW8 was assigned investigation of the present case by SHO. PW8 obtained copy of FIR with original rukka from the duty officer and visited the place of incident i.e. E-251/B. Complainant met PW-8 and PW-8 made enquiry from him and recorded his statement. PW-8 prepared the site plan at the instance of Sanjay Goel and took the screen shot of that location on Google map; seized one burnt box vide seizure memo. PW8 identified his signature at circle X on site plan and seizure memo of burnt box. The sealed pullanda was sent to FSL for examination by the SHO concerned and forwarding letter dated 17.09.2021 issued by FSL to SHO, is Ex. A-11 (admitted document) and examination reports dated 14.09.2020	Ex.PW8/A (complaint of Sanjay Goel); Ex.PW8/B (site plan); Ex.PW8/C (seizure memo of burnt box); Ex.PW8/D (seizure memo of DVD received by PW8 from Ct. Rohtash)

CNR No. DLNE01-000987-2021
State v. Noor Mohammad @ Noora
SC No. 125/2021, FIR No. 170/2020, PS Khajuri Khas
Judgment dated 24.11.2022

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	and 17.09.2021 are Ex. A-13 and Ex.A-12 (admitted documents) On 11.03.2020, Ct. Rohtash informed PW8 that on 01.03.2020, HC Bunny had prepared video of shop of complainant by using the mobile phone of Ct. Rohtash and Ct. Rohtash handed over the DVD containing that video to the PW-8. PW-8 seized that DVD vide a seizure memo, bearing his signature at circle X. PW8 also obtained certificate u/s 65-B of I.E. Act from Ct. Rohtash. On 25.03.2020, PW8 had recorded statement of 4 PCR callers namely Amit, Sunil, Mamta Pathak and Chhavi Kansal. PW8 formally arrested accused Noora in the presence of Ct. Rohtash and complainant Sh. Sanjay Goel. PW8 identified his signature at circle X on the arrest memo, which is Ex.A-2 (admitted document). PW8 prepared chargesheet and filed the same before the court. PW8 identified accused Noora before the court.	
PW9/ Sh. Sanjay Kumar Goyal	He is the complainant in the present case. On 28.02.2020, PW9 made a complaint to police at PS Khajuri Khas. PW9 gave another written complaint at PS Khajuri Khas and identified his signature at circle X on the same.	Ex.PW9/A (complaint dated 28.02.2020 made by PW9); Ex.PW9/B (another

CNR No. DLNE01-000987-2021
State v. Noor Mohammad @ Noora
SC No. 125/2021, FIR No. 170/2020, PS Khajuri Khas
Judgment dated 24.11.2022

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	PW9 had handed over photographs of burnt shop, taken by him from his mobile phone make Gioni, to the police. PW-9 also filed certificate u/s. 65-B of Indian Evidence Act and identified his signature at circle X. PW9 identified his signature at point Y on arrest memo of accused i.e. Ex. A-2. PW9 also identified his signature at point Y on seizure memo dated 04.03.2020, of burnt box. On the point of identification of accused, he did not support the case of prosecution.	written complaint of PW9); Ex.PW9/C (certificate u/s. 65-B of Indian Evidence Act, issued by PW9); Ex.PW-9/P1 to Ex.PW-9/P4 (photographs of burnt shop, taken by PW9 from his mobile)
PW10/ Ct. Rohtash	In February 2020, he was posted at PS Khajuri Khas. On 24.02.2020, he was on duty from 07:00 AM and he came back to PS from duty at about 10-10:30 PM. PW10 remained in E block throughout the day. PW10 had witnessed damaging of properties and arson in E block as well as on the main road, Karawal Nagar, by the rioters. PW10 was present near Lakhpat School, E-block and saw that a mob of around 150-200 persons were coming from Chand Bagh and Munga Nagar side and thereafter mob had burnt the Goyal Medical Store situated on the main road. PW10 did not know anyone in that mob, but he had seen faces of some persons, who had not	Ex.PW10/A (certificate u/s 65-B of IE Act issued by PW10 in respect of video, prepared by PW5 from the mobile phone of PW10)

CNR No. DLNE01-000987-2021
State v. Noor Mohammad @ Noora
SC No. 125/2021, FIR No. 170/2020, PS Khajuri Khas
Judgment dated 24.11.2022

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	covered their faces. On 02.04.2020, at about 10-10:15 AM, PW10 visited PS and saw that SI Vipin was interrogating one person in a room covered with glass adjacent to DO room. PW10 recognized accused Noor Mohammed @ Noora, as being part of the mob on 24.02.2020 in E block, Khajuri Khas, which had committed riots. PW10 was witness to arrest of accused by IO/SI Vipin. PW10 identified his signature at circle Z on arrested memo of Noora. On 01.03.2020, PW10 along with PW5 visited the main Karawal Nagar road, E block for making of video of burnt properties including the Goyal Medical Store and videos were prepared by the PW5 from the phone of PW10. On 11.03.2020, PW10 had handed over a DVD, wherein videos were transferred from his phone, to PW8/SI Vipin. PW-10 also issued certificate u/s 65-B of IE Act and handed over the same to PW8. PW10 identified his signature at circle X on the same. PW10 identified his signature at circle Z on seizure memo of burnt box which is Ex.PW-8/C.	

PLEA OF ACCUSED UNDER SECTION 313 CR.P.C.

8. Accused Noor Mohammad @ Noora denied all the allegations and pleaded innocence, taking plea that he was falsely arrested in case FIR No. 221/20. He further took plea that complainant and Ct. Rohtash wrongly identified him in the police station on 02.4.2020. He further took plea that he was falsely implicated by the police in the present case and contents with respect to his identification are false. He further took plea that this is a false case which has been slapped upon him to work out the same. He opted not to lead any evidence in his defence. Thereafter, DE was closed and matter was fixed for final arguments.
9. I heard ld. Special PP and ld. defence counsel for accused and I have perused the entire material on the record.

ARGUMENTS OF DEFENCE & PROSECUTION

10. **Sh. Akhtar Shamim**, ld. defence counsel for accused Noor Mohammad @ Noora argued that complainant/PW9 did not identify accused Noora. He further argued that PW10/Ct. Rohtash was witness of identification of accused, however, point out memo Ex.PW10/D-1 shows that PW10 had already seen accused on 01.04.2020 i.e. prior to his identification in this case on 02.04.2020. But PW10 did not divulge involvement of accused in the present case on 01.04.2020. He further argued that statement of PW10 and identification of accused by PW10 on 02.04.2020, were apparently an after thought story. He further argued that there is no credible evidence on the record against accused in the present case. He further argued that site plan itself mentioned a different property number.

11. Per contra, **Ms. Simran Chawla**, Adv. appearing for Sh. R.C.S. Bhadoria, Id. Special PP for State argued that PW9/Sh. Sanjay Kumar Goyal proved burning of his shop. She further argued that PW10/Ct. Rohtash proved identification of accused as member of mob. She further argued that prosecution proved commission of incident and identification of accused, in the present case.

APPRECIATION OF FACTS AND EVIDENCE

UNLAWFUL ASSEMBLY & RIOTS

12. Testimonies of PW1, PW2, PW9 and PW10 mention about a mob consisting of more than 5 persons, which indulged into vandalism and arson in the area covering E Block, Khajuri Khas, Delhi on 24.02.2020. The evidence of PW5, PW9 and PW10 further establishes that medical shop being run by PW9 was in fact burnt. The photographs Ex. PW9/P3 read with certificate Ex. PW9/C also confirm that this shop was burnt. The factum of an unlawful assembly committing riot has not been challenged by the defence. Therefore, I have no hesitation to conclude that there was an unlawful assembly which used explosive/inflammable substance to burn the shop of PW9.

IDENTIFICATION OF ACCUSED

13. The foremost question is that whether accused Noor Mohammad @ Noora was also involved in the aforesaid incident, as a member of above-mentioned unlawful assembly? To establish identity of accused as member of above-mentioned mob, prosecution produced two witnesses i.e. PW9 and PW10. However, PW9/complainant turned hostile to the case of prosecution and deposed that incident at his shop did not take

place in his presence. Therefore, he did not identify the accused as member of the mob, which set his shop on fire. Such testimony of the complainant was in deviation to the allegation made in his complaint Ex. PW9/A. This complaint was written by PW9 himself. He alleged in this complaint that he was present in his shop and a mob forcefully trespassed into his shop and set it on fire. Be that as it may be, the fact remains that PW9 did not identify the accused as rioter.

14. Next witness is PW10/Ct. Rohtash. This witness in his examination in chief stated that he was on duty near Lakhpat School and at a distance of about 15 meters from shop in question. He saw a mob setting this shop on fire on 24.02.2020 after 10 AM. He had identified some faces in that mob. Subsequently, on 02.04.2022, he saw IO/SI Vipin interrogating a person in the police station. At that time PW10 identified that person and informed IO that said person was involved in the riots in E block, Khajuri Khas on 24.02.2020. He came to know name of that person as Noor Mohammad from the IO. During his cross examination, PW10 deposed that after riot and before 02.04.2020 he did not see accused at any place. However, on being confronted with a pointing out memo prepared in FIR221/20 of same police station, on 01.04.2020, PW10 admitted that it was signed by him. As per this pointing out memo Ex. PW10/D1, SI Sandeep had prepared it in the presence of PW10 and accused herein had allegedly pointed out E-4 Khajuri Khas to SI Sandeep and PW10 on 01.04.2020. Thus, this memo shows that PW10 had already seen and met accused prior to 02.04.2020. Still, PW10

did not divulge to SI Sandeep that accused was also involved in the incident at Goyal medicos. Thus, identification by PW10 becomes doubtful evidence and it is not safe to rely upon the same. Thus, I do not find credible evidence to show that accused was part of the mob, which set the shop of PW9 on fire.

CONCLUSION & DECISION

15. In view of my foregoing discussions, observations and findings, I find that charges levelled against the accused in this case are not proved beyond reasonable doubts. Hence, accused Noor Mohammad @ Noora is acquitted of all the charges levelled against him in this case.

Announced in the open court **(PULASTYA PRAMACHALA)**
today on 24.11.2022 **ASJ-03 (North- East)**
(This order contains 14 pages) **Karkardooma Courts/Delhi**