

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

RIOTS CASE

CNR No	<u>DL-SH01-002124-2021</u>
Sessions Case No.	97/2021
FIR No.	84/2020
Police Station	Jyoti Nagar
Under Sections	147/148/149/188/427/436/IPC

STATE

.... Prosecution

Versus

- (1) **Shahrukh @ Rinku**
S/o Mohd. Ismile
R/o Vijav Pandit Ka Makan,
Gali No.1. Harijan Basti,
Kardam Puri, Delhi.
- (2) **Ashwani @ Kale**
S/o Rajesh Kumar
R/o H.No.1. Gali No.1.
Harijan Basti, Kardam Puri,
Delhi.
- (3) **Ashu**
S/o Sh. Aakil
R/o H.No. 138, Gali No.8
Kardam Puri, Delhi.
- (4) **Zuber**
S/o Sh. Vizer Khan
R/o H.No. 302, Gali No.15
near Azad Chowk,
Kardam Puri, Delhi.

..... Accused Persons

Date of Institution	: 09.05.2020
Date of reserving judgment	: 10.11.2022
Date of pronouncement	: 10.11.2022
Decision	: Acquitted

J U D G M E N T

1. The present judgment pertains to accused persons namely Shahrukh @ Rinku, Ashu, Zuber and Ashwani @ Kale who were charge-sheeted under Section 147/148/149/427/436 Indian Penal Code (IPC, in short) based upon the First Information Report lodged on the complaint of complainant Kirti Raj Tiwari.

2. As per the charge-sheet, the case of the prosecution is that the the present case was registered on the written complaint dated 02.03.2020 of complainant Kirti Raj Tiwari, as per which, he runs a MCD parking near Ambedkar College, Delhi. On 25.02.2020 at around 2.00 PM, when he was present at the parking site, 100-250 rioters came and started ransacking and burning tractors and rehris. He called the police at 100 number and the rioters ran away after the police arrived. Later, at 4.30 PM, again rioters came and burnt six tractors and 55-60 fruit rehris in the parking. They also burnt horse-carriage near the dispensary on the service road and ransacked one school bus no. HR-69-A-5148 near the dispensary.

During the investigation, the site plan was prepared and photographs of the burnt items were taken. Seizure memos of the burnt tractors and reharis were prepared on 02.03.2020. Statements of persons whose tractors and rehries were burnt and were recorded under Section 161 Cr.P.C.

As per the charge-sheet, a secret informer intimated on 08.03.2020 that four rioters who were involved in ransacking and burning in the MCD parking near Ambedkar College, Delhi are standing at Kardampuri and can be apprehended. They were accordingly apprehended and they disclosed their name as Shahrukh @ Rinku, Ashwani @ Kale, Ashu and Zuber. They made disclosure about their participation in the riots. On the instance of Shahrukh @ Rinku, two white plastic cane which had smell of petrol were recovered and seized. The accused persons were identified by complainant Kirti Raj Tiwari and public witness Khalid. On completion of investigation, charge-sheet was filed in the Court.

3. After compliance of provisions of Section 207 of Code of Criminal Procedure, the present case was committed to Court of Sessions, which in turn, assigned the case to this Court for trial in accordance with law.

4. Vide order on charge dated 18.08.2022, charges under Section 147 IPC, 148 IPC, 188 IPC, 427 IPC, 436 IPC read with Section 149 IPC were framed against accused persons namely Shahrukh @ Rinku, Ashwani @ Kale, Ashu and Zuber to which they pleaded not guilty and claimed trial. Accused Kasim and Khalid Ansari were discharged of all the offences in the present case.

5. The prosecution examined two public witnesses namely PW1 Sh. Kirti Raj Tiwari and PW2 Khalid. Prosecution evidence was closed vide order dated 10.11.2022. Statement of accused was dispensed with.

6. Arguments on behalf of the accused persons by their respective Ld. Counsels and for prosecution by Sh. Rajeev Krishan Sharma, Ld. Special Public Prosecutor for the State, were heard.

7. The testimony of two public witnesses namely PW1 Kirti Raj Tiwari and PW2 Khalid were sufficient enough not to proceed with further evidence. These were the only two witnesses who had identified the accused as per the prosecution case in the charge-sheet. The testimonies of the said two witnesses is reproduced for analysis of the evidence.

PW-1 Sh. Kirti Raj Tiwari is the complainant/eye-witness. His testimony is being reproduced as under :-

"I am running a parking, duly allotted by MCD, which is just adjacent to the Ambedkar College, near Yamuna Vihar, Delhi.

On 25.02.2020, at about 1-1.30 PM, a crowd consisting of hundreds of people came from Nala side, crossed the dispensary and came towards the parking. They were aggressive and broke open the tin-shades through which the parking was covered and entered forcibly into the parking lot. The aggressive crowd ransacked the parked vehicles, tractors and rehris and set fire to them in the parking. Around 60-70 rehris, 5-6 tractors were ransacked and burnt. There were two school bus which were ransacked but not burnt. After seeing this, I just came aside and made phone call to the PCR and requested for immediate help. The Police Officials and Fire Officials also came to the spot. When I came back to the spot after arrival of the police and fire officials, the rioters had gone.

I was terrified on that day and left for home and after 2-3 days, I went to Police Station to lodge the FIR. Police

recorded my complaint which is now exhibited as Ex. PW1/A bearing my signature at point A.

During investigation, I had gone to Police Station and my statement was recorded. I had given the statement stating what I have stated above. I had clearly told the IO that I cannot identify any person from the rioters who had come to the parking lot and committed the offences. I had not given the name of any person who had indulged in the said violence and riots.

At this stage, Ld. Special Public Prosecutor seeks permission to cross-examine the witness as he is resiling from his earlier statement.

Heard. Granted.

Xxxxx by Ld. Special Public Prosecutor for the state.

I had never told the IO that accused Shahrugh @ Rinku used to park the vehicle in my parking and he used to force me to park his vehicle free cost and that is why I knew him. I did not tell the police that accused Ashwani @ Kale, Ashu S/o Akhil and Zuber used to sit in the parking and consume drugs. It is incorrect to suggest that all the said accused persons were named by me as participating in riots covered by the present case. It is incorrect to suggest that I am retracting from my earlier statement due to undue pressure or coercion. It is also wrong to suggest that I am willingly not naming the accused persons".

PW-2 Sh. Khalid, another eye-witness. His testimony is also being reproduced as under :-

"I am working as a Chowkidar in the MCD parking adjacent to Ambedkar College, Kardampuri, Delhi.

On 25.02.2020 in noon time, a big crowd consisting of hundreds of people came from Yamuna Vihar side and entered into the parking forcibly and by breaking the barricade of the said parking. The said crowd started throwing the rehris, set fire on the tractors and parked vehicles. After seeing the aggressive crowd, I alongwith

another chowkidar (Mullaji) ran away from the spot to save our life. The owner of the parking probably made the call at 100 number.

I came back after 2-3 hours of the incident and by that time, the crowd had left the spot. I saw that parked vehicles, rehris and tractors which were burnt by the crowd. I had not seen anyone who damaged and burnt the parking lot.

At this stage, Ld. Special Public Prosecutor seeks permission to cross-examine the witness as he is resiling from his earlier statement.

Heard. Granted.

Xxxxx by Ld. Special Public Prosecutor for the state.

It is wrong to suggest that I had stated to the police that I identified four persons out of the crowd namely Ashwani @ Kale, Zuber, Shahrukh @ Rinku and Ashu. It is wrong to suggest that I had stated to the police that all the said persons used to come in the parking to consume drugs or that on the day of incident Rinku & Ashu were carrying white color petrol cane while Zuber and Ashwani were having danda in their hands. It is incorrect to suggest that I had stated to the police that all four persons were residents of Kardampuri. It is incorrect to suggest that I am retracting from my earlier statement due to undue pressure or coercion. It is also wrong to suggest that I am willingly not naming the accused persons".

Both the witnesses were cross-examined by the Ld. Defence Counsels.

8. The present case is of burning of tractors and rehris and ransacking of school buses on 25.02.2020 at about 1-1.30 PM at EDMC parking lot near Ambedkar College, Kardampuri, Delhi. PW1 & PW2 have deposed regarding the said incident of rioting, however, in their examination-in-chief,

they have categorically deposed that they had never identified any rioters at the time of incident nor they had ever stated or told the IO about the identification of accused persons as involved in the present matter. Both the said witnesses categorically denied the suggestion by the Ld. Prosecutor that the four accused persons were involved in the present case of rioting. In fact, the witnesses deposed that they had never known the said accused persons. Thus, the said two witnesses who were not only natural but also alleged eye-witnesses, as per the prosecution, have not deposed anything incriminatory against the accused persons.

9. Hence, considering the testimony of PW1 & PW2, there is nothing, as per the evidence, to link the four accused persons to the present case of rioting as investigated in the present case.

10. In view of the above stated discussion, prosecution has not been able to prove its case against both the accused persons beyond reasonable doubt which is the touchstone of criminal law. Hence, all four accused persons namely namely Shahrukh @ Rinku, Ashu, Zuber and Ashwani @ Kale are acquitted of all the offences punishable under Section 147/148/188/427/436 IPC read with Section 149 IPC.

Pronounced & Dictated in the
open court today i.e. 10.11.2022

(Amitabh Rawat)
Additional Sessions Judge-03 (Shahdara)
Karkardooma Courts, Delhi