



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

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<b>Sessions Case No.</b>	<b>:</b>	<b>38/2021</b>
<b>Under Section</b>	<b>:</b>	<b>143/147/148/149/188/380/436/454 IPC</b>
<b>Police Station</b>	<b>:</b>	<b>Gokalpuri</b>
<b>FIR No.</b>	<b>:</b>	<b>133/2020</b>
<b>CNR No.</b>	<b>:</b>	<b>DLNE01-000464-2021</b>

**In the matter of:** -

**STATE**

**V E R S U S**

**1. Sahil @ Babu**

S/o Sh. Rakesh Sharma,  
R/o. H.No. D-138, Gali no.11,  
Bhagirathi Vihar, Delhi;

**2. Dinesh @ Michael**

S/o Sh. Jagannath Yadav,  
R/o. H.No.E-22, Gali no.3,  
Bhagirathi Vihar, Delhi;

**3. Tinku**

S/o Sh. Ashok Kumar,  
R/o. H.No. E-51, Gali No.2,  
Bhagirathi Vihar, Delhi;

**4. Sandeep @ Mogli**

S/o Sh. Dalveer Singh,  
R/o. H.No. E-24, Gali no.3,  
Bhagirathi Vihar, Delhi;

**5. Vikas Kashyap**

S/o Late Sh. Chandernal,  
R/o. H.No. E-87, Main Nala Road,  
Bhagirathi Vihar, Delhi;

**6. Sonu @ Golu Kashyap**

S/o Late Sh. Chandernal,  
R/o. H.No. E-87, Main Nala Road,  
Bhagirathi Vihar, Delhi.

**...Accused persons**

**Complainants:**

**1. SHAHID**

S/o. Sh. Sakruddin,  
R/o. E-101, Bhagirathi  
Vihar, Delhi.

**2. Razuddin**

S/o. Mohd. Isak,  
R/o. E-167 and E-166, Gali  
No.13, Nala Road,  
Bhagirathi Vihar, Delhi-94.

Date of Institution : 15.06.2020  
Date of reserving order : 03.07.2023  
Date of pronouncement : 06.07.2023  
**Decision : Acquitted.**

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

**J U D G M E N T**

**THE CASE SET UP BY THE PROSECUTION: -**

1. The above-named accused persons have been charge-sheeted by the police for having committed offences punishable under Section 147/148/149/188/380/436 IPC, on the basis of two complaints made by complainants: - (i) Shahid, S/o Sh. Sakruddin and (ii) Razuddin, S/o Mohd. Ishak, regarding incidents of riot carried out by the riotous mob in their shop/house situated in Bhagirathi Vihar.
2. Brief facts of the present case are that on 04.03.2020 present FIR was registered at PS Gokalpuri, pursuant to receipt of a written complaint dated 02.03.2020 from one Shahid S/o. Sh. Sakruddin. Shahid alleged that in the intervening night of 24/25.02.2020 between 3AM to 4AM, a riotous mob after committing criminal trespass in his rented shop bearing No. E-101, situated at Bhagirathi Vihar, Delhi-94, had looted various articles lying therein including steel glass fitting tool, cash and other necessary documents. Thereafter, investigation of the present case was handed over to SI L.N. Sharma.

3. During the course of investigation, SI L.N. Sharma visited E-101 and prepared site plan at the instance of complainant Shahid. On 07.03.2020, SI L.N. Sharma called crime team, got inspected and photographed the aforesaid spot. He recorded supplementary statement of complainant Shahid, wherein complainant took name of Babu @ Sahil as one of the members of riotous mob. Complainant also mentioned the additional stolen articles i.e. 2 Kharad machines, 5 sugarcane juicer machines, 142P steel glass fitting, 214A sliding gate wheel, one welding machine, pillar pipe driller machine, 2 motors of 2HP, cutting die, tools, precious papers and cash amount of Rs.18000/-, stating that he had not mentioned these articles in his complaint. During further investigation, SI L.N. Sharma also recorded statement of eyewitnesses namely HC Hari Babu and Ct. Rakesh. Thereafter, further investigation of the present case was assigned to ASI Ramdass.
4. During further investigation, IO/ASI Ramdass came to know about arrest of accused Sahil @ Babu in FIR No.106/20 by SI Ashish and this accused had confessed his involvement in the incident of the present case. After obtaining permission from senior officer, IO interrogated and formally arrested accused Sahil @ Babu in the present case. IO obtained copy of age verification report and CDR report in respect of this accused from SI Ashish. IO also obtained acknowledgement from FSL Rohini, video clip in a CD from SI Ashish and after discussion with senior officers, he added Section 436 IPC in the present case.

5. During further investigation, IO clubbed another written complaint (vide Diary No.346) of Rajjudin, S/o. Mohd. Ishak in the present case. In his complaint, Rajjuddin alleged that on 24.02.2020, at about 9 O'clock, a riotous mob after breaking open his H.No. E-167 and E-166, Gali No.13, Nala Road, Bhagirathi Vihar, Delhi-94, looted various articles lying therein. Thereafter, they put the same on fire, as a result of which he suffered financial loss to the tune of around 2.5 lac.
6. After completion of investigation, on 15.06.2020 a chargesheet was filed by IO/ASI Ramdass, before Duty MM (North East), Karkardooma Courts, Delhi, against accused Sahil @ Babu and Dinesh @ Micheal, for offences punishable under Section 147/148/149/380/436 IPC. Thereafter, on 27.11.2020 first supplementary chargesheet was filed by IO impleading additional accused namely Tinku and Sandeep @ Mogli for aforesaid offences and also adding Section 188 IPC, before Id. CMM (N/E). Thereafter, Id. CMM (N/E) took cognizance of offences punishable under Section 147/148/149/188/380/436 IPC vide order dated 07.12.2020. Thereafter, case along with first supplementary chargesheet was committed to the court of sessions on 06.01.2021. Thereafter, on 18.10.2021 second supplementary chargesheet along with one CD containing video clip, FSL reports and other documents, was filed before Id. Link MM (N/E). This supplementary chargesheet was sent to the court of sessions on 22.10.2021. Thereafter, on 18.02.2022 third supplementary chargesheet impleading additional accused persons namely Vikas Kashyap and Sonu Kashyap @ Golu,

along with other documents, was filed before Id. CMM (N/E). This supplementary chargesheet was sent to the court of sessions vide order dated 21.03.2022. Thereafter, on 05.09.2022 IO filed fourth supplementary chargesheet along with complaint u/s. 195 Cr.P.C. against additional accused Vikas Kashyap and Sonu Kashyap @ Golu, certificate under Section 65-B of I.E. Act and other documents, directly before this court.

**CHARGES: -**

7. On 26.08.2021, charges were framed against accused Dinesh Yadav @ Michael, Sahil @ Babu, Sandeep @ Mogli and Tinku for offences punishable under Section 143/147/148 IPC read with Section 149 and 188 IPC as well as for offences punishable under Section 380/436/454 IPC read with Section 149 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in following terms: -

*“That in the intervening night of 24/25.02.2020 in the area of nala road, Bhagirathi Vihar, Delhi-94 within the jurisdiction of PS Gokalpuri, all of you along with your other associates (unidentified) from a particular community formed an unlawful assembly, the object whereof was to commit robbery 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 in violation of the Proclamation issued under Section 144 Cr.P.C by the competent authority, committed rioting and you all knew being members of the aforesaid unlawful assembly that an offence was likely to be committed in prosecution of that common object and thereby committed offences punishable under Section(s) 143/147/148 IPC read with Section 149 IPC and Section 188 IPC and within my cognizance.*

*Secondly, in the intervening night of 24/25.02.2020 between 3.00 AM to 4.00 AM, at shop no.E-101 (rented), Bhagirathi Vihar, Delhi-94, you all being members of said unlawful assembly in furtherance of your common object along with your other associates (unidentified) committed lurking house-trespass in the said shop, belonging to complainant Shahid, S/o Shri Sakruddin to*

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*commit offences and committed theft of various articles lying therein like steel grill fittings etc. and thereby committed offences punishable under Section 454/380 IPC read with Section 149 IPC and within my cognizance.*

*Thirdly, on 24.02.2020, at about 9.00 PM, at House(s) No. E-167 and E-166, Gali No.13, nala road, Bhagirathi Vihar, Delhi-94, you all being members of said unlawful assembly in furtherance of your common object along with your other associates (unidentified) committed lurking house-trespass in the said house belonging to complainant Rajjuddin, S/o Mohd. Ishak to commit offences and committed theft of various articles lying therein and thereafter also committed mischief by fire or explosive substance with the intent to destroy the aforesaid house of said complainant and thereby committed offences punishable under Section(s) 454/380/436 IPC read with Section 149 IPC and within my cognizance.”*

8. On 27.04.2022, charges were framed against accused Vikas Kashyap and Sonu Kashyap @ Golu, for offences punishable under Section 143/147/148 IPC read with Section 149 and 188 IPC as well as for offences punishable under Section 454/380/436 IPC read with Section 149 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in following terms: -

*“That in the intervening night of 24/25.02.2020 in the area of Nala Road, Bhagirathi Vihar, Gokulpuri, Delhi-94 within the jurisdiction of PS Gokalpuri, you both alongwith your co-accused & other associates (unidentified) from a particular community formed an unlawful assembly, the object whereof was to commit robbery 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 in violation of the Proclamation issued under Section 144 Cr.P.C by the competent authority, committed rioting and you all knew being members of the aforesaid unlawful assembly that an offence was likely to be committed in prosecution of that common object and thereby committed offences punishable under Section(s) 143/147/148 IPC read with Section 149 IPC and Section 188 IPC and within my cognizance.*

*Secondly, in the intervening night of 24/25.02.2020 between 3.00 AM to 4.00 AM, at shop no.E-101 (rented), Bhagirathi Vihar, delhi-94, you all being members of said unlawful assembly in furtherance of your common object along with your other associates*

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*(unidentified) committed lurking house-trespass in the said shop, belonging to complainant Shahid S/o Shri Sakruddin to commit offences and committed theft of various articles lying therein like steel grill fittings etc, and thereby committed offences punishable under section(s) 454/380 IPC read with section 149 IPC and within my cognizance.*

*Thirdly, on 24.02.2020, at about 9.00 PM, at House (s) No. E-167 and E-166, Gali No. 13, Nala Road, Bhagirathi Vihar, Delhi -94, you all being members of said unlawful assembly in furtherance of your common object along with your other associates (unidentified) committed lurking house-trespass in the said house belonging to complainant Rajuddin S/o Mohd. Ishak to commit offences and committed theft of various articles lying therein and thereafter also committed mischief by fire or explosive substance with the intent to destroy the aforesaid house of said complainant and thereby committed offences punishable under section(s) 454/380/436 IPC read with Section 149 IPC and within my cognizance.”*

**DESCRIPTION OF PROSECUTION EVIDENCE: -**

9. Several witnesses were dropped on the basis of admission of documents u/s 294 Cr.P.C. and prosecution examined 9 witnesses in support of its case, as per following descriptions: -

<b>Sl. No. &amp; Name of Witness</b>	<b>Role of witness &amp; Description of documents</b>	<b>Proved documents/ case properties</b>
<b>PW1/Shahid</b>	He was complainant in the present case. PW1 went to PS Gokalpuri and had given his application regarding incident taken place in the intervening night of 24/25.02.2020, at about 3-4 AM, wherein his shop consisting two machineries to manufacture tools situated at E-101, Main Nala Road, Bhagirathi Vihar, was looted and all the main articles including steel fitting, tool for cutting dye, two machines, other tools, drilling machine etc. were taken away. PW1 identified his signature at circle X on Ex.PW1/A. However, he declined to have seen	<b>Ex.PW 1/A</b> (application of PW1)



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<b>Sl. No. &amp; Name of Witness</b>	<b>Role of witness &amp; Description of documents</b>	<b>Proved documents/ case properties</b>
	Sahil or the rioters. He was declared hostile by the prosecution on this point.	
<b>PW2/Ct. Rakesh &amp; PW5/ASI Hari Babu</b>	<p>On 24.02.2020, they were on arrangement duty along with other staff at E-Block, Nala-road, Bhagirathi Vihar.</p> <p>PW2 and PW5 along with other officials were at a distance of about 50-60 meters away from property no. E-101, where they found a mob of around 40-50 persons. PW2 and PW5 identified all accused persons in the mob, who were known to both these witnesses since prior to this incident. Persons in this mob were holding danda and were pelting stones on the police officials. This mob threw petrol bomb like material on H.No. E-166 and E-167 and set aforesaid property on fire.</p> <p>PW5 had also seen all accused persons in the mob, which vandalized the shop in property no. E-101 at about 3-4 AM of this night. PW5 saw accused Golu and Babu entering the aforesaid shop, after shutter of the shop was broken by the mob. PW2 and PW5 identified all accused persons before the court.</p>	
<b>PW3/Dr. C.P. Singh</b>	<p>On 05.05.2020, he was assigned one sealed parcel with seal of 'AK' containing a CD of Moserbear Company having one video file in MP4 format.</p> <p>PW3 examined that video file and prepared the report after examination of the video. PW3 compared the photocopy of this report with the original placed in the case file of FIR No.106/20, PS Gokalpuri and found it to be the true copy of the same. PW3 identified his signatures at point X on the same.</p> <p>On 21.09.2021, aforesaid CD was</p>	<p><b>Ex.PW3/A &amp; Ex.PW3/B</b> (true copies of original report prepared by PW3 in FIR No.106/20) &amp; <b>Ex.PW3/ Article-1</b> (One CD placed in this case,</p>

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	again sent to FSL, Delhi, to prepare 36 mirror copies of it. Accordingly, PW3 prepared 36 mirror copies of the same. Thereafter, a report was prepared by PW3 in this respect in the FIR No.106/20. PW3 identified his signatures at point X on true copy of the original report Ex.PW3/B(OSR).	from 36 copies prepared)
<b>PW4/HC Pradeep</b>	On 24.02.2020, an order passed by DCP, North East u/s 144 Cr.PC was received through Dak in the morning and on the directions of SHO, PW4 obtained loud hailer from malkhana and announced the proclamation u/s. 144 Cr.P.C. in the jurisdictional area of PS Gokalpuri i.e. Johripur Extension, Ganga Vihar, Chaman Park, Indira Vihar, Bhagirathi Vihar, Sanjay Colony, Gokalpuri and Gokalpuri Village.	
<b>PW6/HC Mohit</b>	On 07.03.2020, he was posted as photographer in Crime Team (NE), Delhi and had accompanied ASI Mahavir to E-101, nala road, Bhagirathi Vihar.  PW6 took 7 photographs of that place and obtained prints of those photographs through a Private Lab and deposited in his office. PW6 issued a certificate u/s.65-B of I.E. Act in this regard, bearing his signature at circle X.	<b>Ex.PW6/A</b> (Certificate u/s. 65-B of I.E. Act issued by PW6)  <b>Ex.PW6/P1</b> to <b>Ex.PW6/P7</b> (photographs clicked by PW6)
<b>PW7/Sahil Malik</b>	On 24.02.2020, he was residing at E-61/1, Bhagirathi Vihar. On that day, since about 5:30-6 PM, he found a mob of around 50-60 persons assembled on main nala road, Bhagirathi Vihar and making noise and raising slogan of 'Jai Shri Ram'. At about 9 PM, this mob started intercepting Muslim passers-by and assaulting them. PW7 saw that motorcycles of such passers-by were being set on fire by the mob. PW7 called thrice at 100 number.	

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<b>Sl. No. &amp; Name of Witness</b>	<b>Role of witness &amp; Description of documents</b>	<b>Proved documents/ case properties</b>
	<p>On that night, PW7 did not see any incident except the incident taking place in one shop, which was situated after 3 properties from his house. In that house, scissors were manufactured and the shop was vandalized during night time.</p> <p>PW7 identified faces of accused Babu, Michael, Mogli and Tinku in this mob and PW7 also identified them before this court.</p>	
<b>PW8/SI L.N. Sharma</b>	<p>On 04.03.2020, after registration of FIR in the present case, he was handed over a complaint of PW1/Shahid, by DO ASI Yashbir. PW8 was given copy of FIR with certificate u/s. 65B of IE Act.</p> <p>On that day, at about 5 PM, PW8 visited E-101, Nala-road, Bhagirathi Vihar and met complainant Sahid (PW1) there. PW8 found the shutter of the shop in broken and open condition and the entire shop was empty. PW8 prepared site plan at the instance of PW1. PW8 identified his signature at circle X on the site plan.</p> <p>On 07.03.2020, PW1 visited PW8 in the police station and told PW8 that he knew one accused i.e. accused Sahil @ Babu. He also mentioned about the articles, which were damaged in the incident.</p> <p>On the same day at about 8:30 PM, PW5 and PW2 met PW8 in the PS and informed him about knowing the incident probed in this case. They also told PW8 about name of accused Babu and of five more accused persons. PW8 could take name of accused Vikas, Tinku, Mogli and Michael only,</p>	<b>Ex.PW8/A</b> (site plan prepared by PW8 at the instance of PW1 at E-101).

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<b>Sl. No. &amp; Name of Witness</b>	<b>Role of witness &amp; Description of documents</b>	<b>Proved documents/ case properties</b>
	<p>stating that he did not remember another name.</p> <p>On 07.03.2020, PW8 called crime team at the place of incident and they inspected and took photographs of this place. On 15.03.2020, reader to SHO gave another complaint made by Razuddin, regarding burning of house no. E-166/167, Bhagirathi Vihar. That complaint was clubbed in this case on the grounds of proximity of place and time of incident.</p> <p>Thereafter, on 19.03.2020, on the instructions of SHO, PW8 handed over case file to MHC(R).</p>	
<b>PW9/ASI Ram Dass</b>	<p>On 19.03.2020, he received the case file of this case from MHC(R) for further investigation. On same day, he came to know about arrest of accused Sahil @ Babu by SI Ashish Garg, in FIR No.106/20, PS Gokalpuri. PW9 obtained documents of arrest of accused Sahil @ Babu from SI Ashish Garg. PW9 formally arrested accused Sahil @ Babu vide arrest memo, which is Ex.A5 (admitted document) and personal search memo, which is Ex.A7 (admitted document). PW9 identified his signatures at point X on the same.</p> <p>On 04.06.2020, he came to know about arrest of accused Dinesh @ Michael by ASI Manveer, in FIR No.78/20 and PW9 obtained documents of his arrest from ASI Manveer. PW9 formally arrested accused Dinesh @ Michael in the present case. PW9 identified his signature at point X on arrest memo, which is Ex.A-6 (admitted document) and he also identified his signature on personal search memo at point X, which is Ex.A-8 (admitted document). PW9 prepared the chargesheet against accused Sahil @ Babu and Dinesh @ Michael and filed it in the court. On 28.08.2020, accused Sandeep @ Mogli surrendered in</p>	

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<b>Sl. No. &amp; Name of Witness</b>	<b>Role of witness &amp; Description of documents</b>	<b>Proved documents/ case properties</b>
	<p>the police station and was arrested by PW9. PW9 identified his signature at point X on arrest and personal search memo of this accused, which are Ex.A-17 and Ex.A-19 (admitted document), respectively.</p> <p>On 31.08.2020, PW9 received information about surrender of accused Tinku before the court. PW9 visited court in Mandoli Jail with Ct. Dinesh and arrested accused Tinku in the present case. PW9 identified his signature at point X on arrest and personal search memo of this accused, which are Ex.A-18 and Ex.A-20 (admitted documents), respectively. PW9 prepared supplementary chargesheet against accused Tinku and Sandeep @ Mogli and filed the same before the court.</p> <p>On 07.01.2021, PW9 obtained complaint u/s. 195 Cr.P.C. from DCP North East, which is Ex.A-31 (admitted document). PW9 added section 188 IPC in this case.</p> <p>PW9 recorded statement of Ajiruddin and of Sahil Malik on 11.09.2021 and 13.09.2021, respectively. PW9 also obtained PCR forms of calls made by these two callers. Sahid and Rajuddin were called by PW9 on 14.09.2021, when Sahid handed over photographs of his shop with a list of looted articles. Rajuddin handed over 9 photographs of his property along with certificate u/s 65 B I.E. Act. He also handed over GPA and electricity bill of his property. PW9 recorded statement of both these persons. PW9 added section 436 IPC in this case.</p> <p>PW9 filed 2<sup>nd</sup> supplementary chargesheet in this case. On 03.12.2021, Insp. Jagdish had made DD Entry No.6-A regarding making accused Vikash Kashyap and Golu Kashyap bound down in FIR No.134/21. Thereafter, on 31.12.2021, PW9 reached house of both these accused persons at E-87, Nala Road, Bhagirathi Vihar and served notice u/s 41 A Cr.P.C. upon them and bound down both these accused to</p>	

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	<p>appear before the court. Thereafter, PW9 prepared supplementary chargesheet against both these accused Vikas Kashyap and Golu Kashyap and filed the same before the court.</p> <p>PW9 identified all accused persons before the court.</p>	
<p><b>Admitted documents under Section 294 Cr.P.C.</b></p> <p>Endorsement on rukka as <b>Ex.A-1</b>; FIR as <b>Ex.A-2</b>; GD no.22A as <b>Ex.A-3</b>; certificate u/s 65B of I.E. Act as <b>Ex.A-4</b>; arrest memo of accused Babu @ Sahil as <b>Ex.A-5</b>; arrest memo of accused Dinesh @ Michael as <b>Ex.A-6</b>; personal search memo of accused Babu @ Sahil as <b>Ex.A-7</b>; personal search memo of accused Dinesh @ Michael as <b>Ex.A-8</b>; GD no.77A as <b>Ex.A-9</b>; GD no.118A as <b>Ex.A-10</b>; GD no.32A as <b>Ex.A-11</b>; GD no.40A as <b>Ex.A-12</b>; GD no.83A as <b>Ex.A-13</b>; GD no.134A as <b>Ex.A-14</b>; GD no.39A as <b>Ex.A-15</b>; GD no.77A as <b>Ex.A-16</b>; arrest memo of accused Sandeep @ Mogli as <b>Ex.A-17</b>; arrest memo of accused Tinku as <b>Ex.A-18</b>; personal search memo of accused Sandeep @ Mogli as <b>Ex.A-19</b>; personal search memo of accused Tinku as <b>Ex.A-20</b>; three PCR forms (each running in three pages) as <b>Ex.A-21</b> (colly), <b>Ex.A-22</b> (colly) &amp; <b>Ex.A-23</b> (colly); GD no.137A as <b>Ex.A-24</b>; GD no.282A as <b>Ex.A-25</b>; GD no.341A as <b>Ex.A-26</b>; PCR form (running in three pages) as <b>Ex.A-27(colly)</b>; GD no.246A as <b>Ex.A-28</b>; GD nos.90A and 50A as <b>Ex.A-29</b> and <b>Ex.A-30</b>; complaint u/s. 195 Cr.P.C. as <b>Ex.A-31</b>; complaint of Rajuddin as <b>Ex.A-32</b>; site plan prepared at the instance of Rajuddin as <b>Ex.A-33</b>; 9 photographs given by Rajuddin as <b>Ex.A-34/P1 to Ex.A-34/P-9</b> and certificate u/s. 65-B of I.E. Act as <b>Ex.A-35</b>; complaint u/s. 195 Cr.P.C. (in respect of accused Sahil, Dinesh, Sandeep and Tinku) as <b>Ex.A-36</b>; SOC report dated 07.03.2020 as <b>Ex.A-37</b>; FSL acknowledgements of case acceptance dated 05.05.2020 and 06.09.2021 as <b>Ex.A-38</b> &amp; <b>Ex.A-39</b>; copy of road certificate regarding exhibit send to FSL as <b>Ex.A-40</b>; notice u/s. 41-A Cr.P.C. to accused Sonu @ Golu Kashyap as <b>Ex.A-41</b>; notice u/s. 41-A Cr.P.C. to accused Vikas Kashyap as <b>Ex.A-42</b>; prohibitory order u/s. 144 Cr.P.C. as <b>Ex.A-43</b> and complaint u/s. 195 Cr.P.C. (in respect of accused Vikas Kashyap and Golu Kashyap) as <b>Ex.A-44</b>.</p>		

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

10. Accused persons denied all the allegations and pleaded innocence taking plea that they were falsely implicated in this case by the investigating agency. They also took plea that they were falsely arrested in this case only to work out this case. They also took plea that they were not present at the spot on the day of incident. Accused persons did not opt to lead any evidence in their defence.

**ARGUMENTS OF DEFENCE**

11. I heard ld. Special PP as well as ld. Amicus Curiae and ld. counsel for accused persons and have perused the entire material on the record.
12. **Sh. Rakshpal Singh**, ld. counsel for accused Sandeep @ Mogli and Amicus Curiae for Sahil, Dinesh and Tinku alongwith **Sh. Sunil Kumar Verma**, ld. counsel for accused Vikas Kashyap and Sonu Kashyap @ Golu, argued that present case is for two incidents, but both complainants did not identify any accused. It was further argued that PW7/Sh. Sahil Malik did not say anything about two incidents of this case. It was further argued that PW5/ASI Hari Babu also did not say about role of accused in incident taken place at E-101. PW2 and PW5 were examined after receiving the complaints. They did not report these incidents in PS on their own and they are planted witnesses. It was further argued that accused persons were named as they were known to the witnesses. It was further argued that there is no footage showing presence of accused in the incidents.

### **ARGUMENTS OF PROSECUTION**

13. Per contra, **Sh. R.C.S. Bhadoria**, ld. Special PP for State argued that FIR in the present case was registered on the basis of complaint of PW1/Shahid. It was further argued that complaint of Razuddin and photographs of his house are admitted documents. Photographs are Ex.A-34/P-1 to Ex.A-34/P-9. It was further argued that PW2/Ct. Rakesh, PW5/ ASI Hari Babu and PW7/Sahil Malik, are witnesses to incidents and PW7 was PCR caller also. PW2 and PW5 identified all accused as member of the mob. It was further argued that PW7's testimony proves presence of accused persons in E-block in the mob. It was further argued that PW3/Dr. C.P. Singh proved a CD of video of E-Block, showing presence of accused persons.

### **APPRECIATION OF FACTS AND EVIDENCE**

#### **UNLAWFUL ASSEMBLY & RIOT**

14. PW2, PW5 and PW7 are the relevant witnesses, who vouched for having seen a mob on Nala Road, Bhagirathi Vihar from evening till late night of 24.02.2020. PW2 and PW5 vouched for having seen incident at E-101 as well as at E-166/167 Bhagirathi Vihar. PW1 was complainant in respect of vandalism and loot at E-101, while complaint given by Rajuddin in respect of vandalism, arson and loot at E-166/167 was admitted u/s 294 Cr.P.C. being Ex. A32. Both these complainants stated that they were not present at their respective premises at the time of incident. However, they stated about getting information that their premises were attacked by the rioters and about finding these premises in vandalized condition. Both claimed that their articles



were missing from such premises.

15. According to PW6, he visited E-101, Nala Road, Bhagirathi Vihar on 07.03.2020 and took seven photographs of this property. He proved those photographs and certificate u/s 65 B I.E. Act. First IO/PW8 deposed that he visited E-101 on 04.03.2020 and found shutter of this shop in broken condition. He also found shop to be empty. Photographs Ex. PW6/P1 to PW6/P7 as taken by PW6, show that this shop was vandalized. Similarly photographs Ex. A34/P1 to A34/P9 as furnished by Rajuddin, show that fire took place inside the property no. E-167.
16. However, except for PW2 and PW5, there is no witness to claim having seen these incidents. As far as testimony of these two witnesses are concerned, PW 2 deposed that at about 9 AM, he along with PW5 was present at E block, Nala Road, Bhagirathi Vihar. He saw a mob of about 40-50 persons in front of E-101. The persons from this mob were throwing some articles, which used to burst into fire. They were also pelting stones. He did not say any thing being done in E-101 by this mob. He said that this mob threw petrol bomb like material in E-166/167 and set that property on fire. However, in his cross examination by defence, he said that he had seen incident at both these properties on this day.
17. PW5 deposed that on 24.02.2020, he was on duty with PW2 since 8 AM. At about 9 PM they were present at Gali No. 13, E block, Bhagirathi Vihar. There was a mob of about 40-50 persons in that gali, which was indulging into vandalism in the houses in that gali. Mob was also throwing inflammable substance on the

houses. This mob vandalized two houses bearing no. E-166 & 167 in his presence. Mob broke open the gate and by throwing inflammable substance, they set these properties on fire. Thereafter, this witness saw another incident at about 3-4 AM at the property no. E-101, on Nala Road. The mob vandalized this shop, breaking the shutter.

- 18.** If I compare the testimony of both these witnesses, then I find huge gap of timing of the incidents in their statements. PW2 talked about 9 AM, while PW5 talked about 9 PM, in respect of incident at E-166/167. Testimony of PW2 gives impression that incident at E-101 and E-166/167 took place one after another. Though PW5 gave different timing of both these incidents. PW5 was also confronted with his statement given to IO under Section 161 Cr.P.C., wherein time of 3 AM was mentioned commonly for incidents at both the aforesaid properties. PW5 did not say that he had mentioned same timing of both incidents, before IO. On perusal of statement of PW2 as recorded under Section 161 Cr.P.C., I find that same time of 3 AM was commonly mentioned therein for both the incidents. Though as already mentioned herein before, PW2 talked about time of 9 AM. Even if I presume that 9 AM as mentioned in the testimony of PW2 could be a case of typographical mistake, still his testimony does not mention about time of 3 AM in respect of incident at E-101. On the contrary, it shows that according to PW2, both incidents took place one after another.
- 19.** In such circumstances, it is difficult to rely upon claim of PW2 and PW5 about having seen both the aforesaid incidents. In that

situation it remains a matter of circumstantial evidence only, to say that both the incidents probed in this case, were actually caused by a mob. The defence did not challenge version of PW1 about getting information that his shop was vandalized by a mob. Defence did not dispute that Rajuddin made complaint of incident at his house. On the basis of aforesaid unchallenged evidence, it can be safely presumed that both these properties were attacked. E-101 was vandalized and articles lying there were removed, while fire was thrown or set inside property no. E-167 and some articles lying there would have been removed. Testimony of PW7 also becomes relevant here to show that on that Nala Road, a mob had been rioting at least since that evening till late night. Keeping in view such evidence, it can be presumed that both these incidents would have been caused by an unlawful assembly i.e. a riotous mob.

### **IDENTIFICATION OF ACCUSED PERSONS**

20. In order to establish that all accused persons herein were part of the mob responsible for both the incidents at E-101 and E-166/167, prosecution relied upon PW1, PW2, PW5 and PW7. PW1 did not support the case of prosecution in respect of witnessing the rioters. In respect of PW2 and PW5, I have already observed herein above that it is difficult to rely upon their claim to have seen both these incidents. In that situation, there cannot be any question of relying upon their identification of the accused persons as member of the concerned mob. PW7 though identified accused Babu, Michael, Mogli and Tinku as member of the mob, which was present on the Nala Road and which had

vandalized a shop near house of PW7. But prosecution did not establish if the said shop was E-101. The description of this shop as given by PW7, does not match with the description given by PW1, who was shopkeeper of E-101. Moreover, reported time of incident at E-101 was at about 3 AM, though PW7 deposed that he had seen riotous acts till about 11-11.30 PM only. Accused being shown part of the mob at some point of time on that road, cannot be sufficient when police registered separate cases on the basis of specific incidents of riots. It was duty of prosecution to show that all the accused persons were part of the mob, which indulged into vandalism, arson and loot at the two specific properties of this case.

21. PW1 deposed that he was informed about time of incident by his neighbour. But such neighbour of PW1 was not traced and examined by IO. In such circumstances, I find that prosecution has failed to prove beyond reasonable doubts that accused persons herein were part of the mob, which was responsible behind both the incidents probed in this case.

### **CONCLUSION & DECISION**

22. In view of my foregoing discussions, observations and findings, I find that charges levelled against the accused persons in this case are not proved beyond reasonable doubts. Hence, all the accused persons are acquitted of all the charges levelled against them in this case.

Announced in the open court (PULASTYA PRAMACHALA)  
today on 06.07.2023 ASJ-03 (North- East)  
(This order contains 20 pages) Karkardooma Courts/Delhi