



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

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CNR No. DLNE01-000606-2021
State v. Sandeep Kumar
SC No.81/21, FIR No. 82/20, PS Karawal Nagar
Judgment dated 27.10.2023

Sessions Case No.	:	81/2021
Under Section	:	147/148/149/427/436/380/454/188 IPC
Police Station	:	Karawal Nagar
FIR No.	:	82/2020
CNR No.	:	DLNE01-000606-2021

In the matter of: -

STATE

V E R S U S

SH. SANDEEP KUMAR

S/o. Sh. Ramesh Chand,
R/o. H.No. 230, Gali No.11, Phase-9,
Shiv Vihar, Karawal Nagar, Delhi.

...Accused

Complainant

: SH. RASHID,

S/o. Sh. Shabbir, R/o. H.No.
A-55, Gali No.11, Phase-10,
Shiv Vihar, Karawal Nagar,
Delhi-94

Date of Institution : 16.07.2020

Date of reserving judgment : 18.10.2023

Date of pronouncement : 27.10.2023

Decision : Acquitted.

(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 147/148/149/427/436/380/454/188 IPC.
2. Brief facts of the present case are that on 29.02.2020, FIR was registered at PS Karawal Nagar, pursuant to receipt of a written complaint from one Rashid, S/o. Sh. Shabbir, R/o. H.No. A-55,

Gali No.11, Phase-10, Shiv Vihar, Karawal Nagar, Delhi-94. In his complaint, Rashid alleged that in the night of 25.02.2020, a riotous mob after attacking his said house had looted all the articles, clothes & jewellerys, lying therein and thereafter, set the same on fire. It was further alleged by Rashid that the riotous mob had also put his motorcycle make and model Hero Honda Passion Pro bearing registration no. DL-5SAK-5389 on fire. HC Purshottam was assigned investigation of the present case.

3. During investigation, IO/HC Purshottam prepared site plan at the instance of complainant Rashid, got the spot/SOC photographed and recorded the statement of witnesses including complainant. During this exercise, statement of HC Patil, who at the relevant time was posted as Beat Officer in the area/locality, was also recorded and the name of accused accordingly came into picture. Thereafter on 08.03.2020, further investigation of the present case was assigned to SI Mandeep Kukana.
 - A. During further investigation on 17.04.2020, IO/SI Mandeep arrested accused Sandeep in the present case, from his house bearing no. H.No. 230, Gali No.11, Phase-9, Shiv Vihar, Karawal Nagar, Delhi-94, at the instance of HC Patil. Thereafter on 22.06.2020, further investigation of the present case was assigned to SI Ankit.
 - B. During further investigation, IO/SI Ankit added Section 188 IPC in the present case for violation of proclamation of prohibitory order u/s. 144 Cr.P.C. issued by DCP/North-East. IO also added Section 380 IPC and 454 IPC on the basis of subsequent statement of complainant Rashid and statement of his land lord

Mr. Ramji Lal. IO also seized aforesaid bike of the complainant in the present case.

4. After completion of investigation, on 16.07.2020 a chargesheet was filed by IO/SI Ankit Kumar before Duty MM (North-East), Delhi, against accused Sandeep Kumar for offences punishable under Section 147/148/149/427/436/380/454/188 IPC. On 11.12.2020, ld. CMM (N/E) took cognizance of offences punishable under Section 147/148/149/380/427/436/454 IPC. Vide this order, ld. CMM (N/E) declined to take cognizance of offence under Section 188 IPC for want of complaint under Section 195 Cr.P.C. Thereafter, the case was committed to the court of sessions vide order dated 21.01.2021.
5. Thereafter on 21.12.2021, first supplementary chargesheet along with complaint under Section 195 Cr.P.C and certain documents, was filed by IO before ld. CMM (N/E). Ld. CMM (N/E) sent this supplementary chargesheet to the court of sessions vide order dated 03.01.2022.

CHARGES: -

6. On 05.08.2021, charges were framed against accused Sandeep Kumar for offences punishable under Section 147/148/427/436/380/506/454 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 night of 25.02.2020, exact time unknown, in the area at or around Phase-10, Shiv Vihar, Karawal Nagar, Delhi-110094, within the jurisdiction of PS Karawal Nagar, 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, commit vandalism, theft and arson in the

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shops, houses and other properties of the persons from other community, put on fire their vehicles and use force and 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, in the night, exact time unknown, at House No.A-55, Gali No.11, Phase-10, Shiv Vihar, Karawal Nagar, Delhi-94, you being member of said unlawful assembly in furtherance of your common object alongwith your other associates (unidentified) vandalized/damaged the said house belonging to complainant Rashid, S/o Shri Shabbir, committed theft of various articles lying in the said house and thereafter committed mischief by fire or explosive substance with the intent to destroy the aforesaid house of complainant and thereby committed offences punishable under section(s) 427/380/436 IPC read with Section 149 IPC and within my cognizance.*

***Thirdly**, on the aforesaid date and place, in the night, exact time unknown, you being member of said unlawful assembly in furtherance of your common object alongwith your other associates (unidentified) committed mischief by fire or explosive substance by setting on fire motorcycle (make Hero Honda, model Passion Pro) bearing Regn. No.DL5SAK/5389, belonging to complainant Rashid, S/o Shri Shabbir and thereby committed an offence punishable under Section 435 IPC read with Section 149 IPC and within my cognizance.”*

DESCRIPTION OF PROSECUTION EVIDENCE: -

7. Prosecution examined 9 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/HC Mithlesh	On 29.02.2020, he was working as Duty Officer from 8 AM till 8 PM at PS Karawal Nagar. On that day at about 04:50 PM, HC Purushottam had handed over rukka to PW1 for registration of FIR. PW1 accordingly, registered FIR in the case. After registration of FIR, PW1 made endorsement on rukka from point X to X, bearing his signatures at point Y.	Ex.PW1/A (Rukka); & Ex.PW1/B (certificate u/s. 65-B of I.E. Act in support of the printout of the FIR)

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	PW1 identified his signature at point A on his certificate u/s 65B of I.E Act in support of the printout of the FIR. On the directions of the SHO, PW1 handed over FIR to HC Purshottam for investigation.	
PW2/Ct. Pankaj	<p>On 17.04.2020, he joined investigation of this case alongwith IO. On that day, PW2 alongwith IO/SI Mandeep and HC Patil visited house of accused Sandeep and found him present in the house.</p> <p>PW2 was witness to arrest and personal search of accused Sandeep by SI Mandeep, on the identification of HC Patil. PW2 identified his signature at point A on the arrest and personal search memo of accused Sandeep. Thereafter, they brought accused to the PS.</p>	Ex.PW2/A & Ex.PW2/B (arrest and personal search memo of accused Sandeep, respectively)
PW3/Sh. Rashid	<p>In February 2020, he was residing at A-55, gali no.11, Phase X, Shiv Vihar with his wife and children. In the intervening night of 24/25.02.2020, there had been noise in his locality by a mob, as informed to him telephonically by his children. PW3 came back to his home at 9 PM on 24.02.2020. At that time, some noise was being made by some boys in the gali. After having dinner, PW3 went to sleep and during midnight, he woke up because of loud noise coming from 25 foota road. PW3 left his home immediately alongwith his family to the place of his uncle at Loni, Ghaziabad (U.P).</p> <p>PW3 came back to aforesaid address after 3-4 days and he found that his m/cycle bearing no.DL-5SAK-5389 which was parked in the gallery, was completely in burnt condition. PW3 went upstairs to the first floor, where he resided and he found that all the articles</p>	<p>Ex.PW3/A (certificate u/s 65-B of I.E. Act of PW3 in respect of photographs); &</p> <p>Ex.PW3/B-1 to Ex.PW3/B-11 (photographs)</p>

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	<p>viz. Fridge, cooler, washing machine, double bed, almirah were lying scattered in damaged and burnt condition. Jeweleries of his wife were missing.</p> <p>On same day, PW3 visited PS Karawal Nagar and handed over a written complaint, which was prepared at his instance by his friend. The complaint was written at the instance of PW3 and he had signed that complaint. PW3 had handed over 11 photographs of his aforesaid residence, which were taken by PW3 from his mobile phone.</p> <p>Police had made enquiry from PW3 regarding mobile phone etc. and had obtained his signature on those particulars. PW3 identified his signature at point X on certificate u/s 65 B of I.E. Act.</p>	
<p>PW4/HC Purshottam</p>	<p>On 29.02.2020, at about 03:30 PM, DO handed over one complaint made by Rashid s/o Sabbir and referred that complainant to him, who was also present in PS. PW4 prepared rukka on the basis of complaint of Rashid and handed it over to DO for registration of FIR. After registration of FIR, DO handed over original rukka alongwith copy of FIR to PW4 for further investigation. PW4 identified his endorsement on the rukka appearing from point A to A-1 bearing his signature at point Z1. On same day, PW4 alongwith aforesaid complainant visited H.No. A-55. PW4 prepared site plan of this house, bearing his signature at circle X.</p> <p>On same day during evening time, HC Patil met PW4 in the PS and informed him about seeing the incident at</p>	<p>Ex.PW4/A (endorsement of PW4 on rukka); & Ex.PW4/B (site plan prepared by PW4)</p>

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	<p>aforesaid house and also about identifying one person among the rioters. PW4 recorded his statement u/s 161 Cr.P.C. Thereafter on the instructions of SHO, file of this case was handed over to MHC(R).</p>	
<p>PW5/Ct. Ajay</p>	<p>On 25.02.2020, he was on law and order arrangement duty at Shiv Vihar Tiraha, since about 9-10 AM. On that day at about 7 PM, PW5 was going alone towards PS Karawal Nagar from Shiv Vihar Tiraha via nala road between phase-10 Shiv Vihar and Johripur. While going to PS, PW5 saw a mob of about 30-40 persons in gali no.11, Phase-10, Shiv Vihar. That mob was carrying danda etc. and they were entering the houses in that gali and were vandalizing the articles therein (<i>tod phod kar rahe the</i>).</p> <p>In that mob, PW5 knew accused Sandeep by his face, as PW5 had seen him in the area of Phase-9 and Phase-10, Shiv Vihar, but PW5 did not know his name.</p> <p>On 01.08.2020, SI Ankit was showing photographs of several persons to all staff in the PS. PW5 was also there in the PS. After going through those photographs, PW5 found photo of accused Sandeep as he had seen accused in aforesaid mob. PW5 informed SI Ankit accordingly and SI Ankit told his name as 'Sandeep'. SI Ankit prepared one identification memo and PW5 had signed over the same. The photographs identified by PW5 was encircled at point A and his signature appears at circle X on the sheet of photograph as well as memo.</p> <p>PW5 had seen accused Sandeep entering one house and accused was carrying</p>	<p>Ex.PW5/A (colly 2 sheets) (identification memo alongwith photographs of 9 persons)</p>

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	danda. The mob was also indulging into arson.	
PW6/ASI Patil Kumar	<p>On 24.02.2020, he was on duty at Shiv Vihar Tiraha, since 8 AM. On 25.02.2020 also, PW6 was on duty at Shiv Vihar Tiraha as well as in his beat area i.e. Phase-9 and Phase-10, Shiv Vihar. On that day also, PW6 came for duty at 8 AM and remained on duty till about 9 PM. On that day, at about 7 PM, PW6 was present in gali no.11, Phase-10, Shiv Vihar. In that gali, there was a mob of about 30-40 persons. That mob was setting the houses on fire and vandalizing the same. The gate of property A-55 in that gali, was already broken and the mob was setting a m/cycle parked inside that property on fire. The mob was also throwing petrol bomb alike material on that property, which was bursting into fire.</p> <p>PW6 identified accused Sandeep in that mob and before the court, as PW6 knew him since prior to this incident. Accused Sandeep used to work in furniture shop in Shiv Vihar. On 17.04.2020, one secret informer informed PW6 that accused Sandeep was present in his house on that day. Prior to that day, accused Sandeep was absconding. PW6 informed SI Mandeep about said information. Thereafter, PW6 alongwith Ct. Pankaj accompanied IO/SI Mandeep to the house of accused Sandeep, bearing no.230, gali no.11, phase-9, Shiv Vihar, where accused Sandeep was found present at home. IO arrested and personally searched accused Sandeep in this case, vide arrest memo Ex.PW2/A and personal search memo Ex.PW2/B. PW6 and Pankaj had also signed on those memos. PW6 identified his signature at circle X on Ex.PW2/A and Ex.PW2/B.</p> <p>On 25.02.2020, there was a meeting point at Shiv Vihar Tiraha, where all the staff of his PS used to meet. HC Ravinder, Ct. Anuj, Ct. Ajay, were those staff on duty on that day, who were patrolling in their respective beat areas and sometimes, they used to patrol some areas together, where there was more mob. The aforesaid mob in gali no.11 was carrying weapons like danda, lathi, iron rod and some inflammable object. PW6 had seen accused Sandeep carrying a danda at that time. Accused was breaking the glass of property no.A-55. Some</p>	

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	<p>persons in that mob were wearing helmet and some had tied handkerchief over their face. Accused Sandeep was not wearing anything on his face. The motorcycle burnt by that mob, was Hero Passion Pro, bearing no. DL-5S AK 5389. Statement of PW6 was recorded by IO on 29.02.2020 and 17.04.2020.</p>	
<p>PW7/SI Mandeep</p>	<p>On 08.03.2020, he obtained file of this case from MHC(R) on directions of SHO for further investigation. PW7 went through the file. In this case, accused Sandeep was absconding.</p> <p>On 17.04.2020, HC Patil informed PW7 that accused Sandeep wanted in this case was available at his house on that day and he could be apprehended on raid. Accordingly, PW7 alongwith HC Patil and Ct. Pankaj went to H.No. 230, gali no.9, Phase-10, Shiv Vihar, where accused Sandeep was present and on the identification of HC Patil, PW7 apprehended and arrested accused Sandeep at that place, vide arrest memo Ex.PW2/A and personal search memo Ex.PW2/B. PW7 identified his signature at circle Y on Ex.PW2/A. PW7 also identified Ex.PW2/B, which was prepared in his handwriting. Thereafter, accused was brought to PS and was lodged in lock-up. PW7 recorded statement of HC Patil and Ct. Pankaj. Next day, accused was produced before Duty MM at Mandoli Jail and accused was sent to J/C. On 22.06.2020, PW7 handed over case file to MHC(M) on the instructions of SHO.</p> <p>PW7 identified accused Sandeep before the court.</p>	
<p>PW8/SI Ankit</p>	<p>On 22.06.2020, on the instructions of SHO, he received file of this case from MHC(R). On same day, PW8 placed copy of Order u/s 144 Cr.P.C. on the record and added Section 188 IPC in the case. On 24.06.2020, PW8 recorded statement of complainant Rashid s/o Sabir & his landlord Ramji Lal. Ramji Lal handed over electricity bill of his property, which was seized by PW8 vide a memo, bearing signature of PW8 at circle X.</p>	<p>Ex.PW8/A (seizure memo of electricity bill given to PW8 by Ramji Lal);</p> <p>Ex.PW8/B (seizure memo of burnt</p>

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	<p>On 11.07.2020, PW8 visited house of complainant Rashid. He pointed out to his burnt m/cycle and PW8 seized it vide a memo, bearing signature of PW8 at circle X. Rashid also handed over 11 photographs of his house and bike, which were also seized, vide separate memo, bearing signature of PW8 at circle X. PW8 recorded statement of Rashid on that day.</p> <p>On 13.07.2020, PW8 filed main charge-sheet in this case before the court. On 01.08.2020, PW8 had shown collage of photographs of several rioters to the police officials of his PS, who were on duty during riots. Ct. Ajay identified photograph of accused Sandeep, stating that he had seen him among the rioters in gali no.11, phase X. PW8 prepared identification memo Ex.PW5/A, bearing signature of PW8 at circle Y. PW8 also identified his signature at circle Y on aforesaid collage. PW8 recorded statement of Ct. Ajay on same day.</p> <p>On 02.11.2020, he obtained certificate u/s. 65B of IE Act from Rashid in respect of photographs already furnished by him. PW8 recorded his statement. On 16.11.2021, PW8 received complaint u/s 195 Cr.P.C. from DCP office and placed the same on the record. PW8 also recorded statement of Ct. Ravinder on this day. On 09.12.2021, PW8 verified ownership of the bike of Rashid from RTO office, Loni Road. PW8 also obtained documents of compensation given to Rashid from the office of SDM, Karawal Nagar and placed them on the record. On 15.12.2021, PW8 filed a supplementary charge-sheet before the court.</p>	<p>motorcycle of complainant Rashid); & Ex.PW8/C (11 photographs of his house and bike)</p>
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PW9/HC Ravinder	On 24.02.2020, he was working as Reader to SHO at PS Karawal Nagar. That day at about 9 AM a copy of order passed by DCP, North-East u/s. 144 Cr.P.C. was received by SHO in PS. On the instruction of SHO, PW9 made diary of that order and pronounced that order through loud hailer covering the area of East Kamal Vihar, West Kamal Vihar, Nanak Dairy, Yamuna Dairy, Mukund vihar, New Sabhapur, Kalighata Road, Karawal Nagar Chowk, Panchal Vihar, Shiv Vihar, Shiv Vihar Tiraha, Jagdamba Colony Johripur, Sunny Bazaar Road Johripur, Shanti Nagar, OP Block Shiv Vihar and Ambika Vihar.	
<u>Admitted documents under Section 294 Cr.P.C.</u> Copy of register no.19 as Ex.A-1 ; prohibitory order u/s. 144 Cr.P.C. as Ex.A-2 ; complaint u/s. 195 Cr.P.C. as Ex.A-3 ; sanction order of Govt. of NCT of Delhi dt. 20.03.2020, whereby sanction was conveyed for Rs.16,00,000/- to riot victims related to Karawal Nagar, as Ex.A-4 ; and R/C of vehicle bearing no. DL-5SAK-5389 as Ex.A-5 .		

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

8. Accused Sandeep Kumar denied all the allegations and pleaded innocence, taking plea in his statement under Section 313 Cr.P.C. that witnesses had deposed falsely against him at the instance of IO, being interested to show that the case was solved. He further took plea that he was not present at the spot at the time of incident. Accused further took plea that he has been falsely implicated in the present case by the investigating agency. He further took plea that he was falsely arrested in this case only to work out the case. Accused did not opt to lead any evidence in his defence.

ARGUMENTS OF DEFENCE AND PROSECUTION

9. **Sh. V. S. Dhangar**, ld. counsel for accused Sandeep Kumar argued that complainant did not say anything about the accused. It was further argued that PW5/Ct. Ajay did not give any statement prior to 01.08.2020, when photo of accused was identified by him. He was planted by IO. It was further argued that PW6/ASI Patil Kumar did not take any photo or video of incident. PW6 did not make complaint or DD entry, before FIR was registered. It was further argued that no danda or other article was recovered from accused.
10. Per contra, **Sh. Nitin Rai Sharma**, ld. Special PP for State argued that PW6/ASI Patil Kumar and PW5/Ct. Ajay identified accused among the rioters. It was further argued that statement u/s. 161 Cr.P.C. of PW6 was recorded on same day i.e. on 29.02.2020, when FIR was registered. Thus, there was no delay. It was further argued that PW5 confirmed seeing PW6 on Nala Road at around 06:00-06:30 PM and PW6 also said that he met PW5 in gali no.11. It was further argued that PW3/Sh. Rashid stated that other houses were also burnt. It was further argued that police had no motive to falsely implicate accused.

APPRECIATION OF FACTS AND EVIDENCE

UNLAWFUL ASSEMBLY AND RIOTOUS ACTS

11. As far as an unlawful assembly being responsible for the alleged riotous act is concerned, testimony of the complainant/PW3 is of limited help in this regard. He was not present at his house at the time of incident. He came back to his house after 3-4 days from 25-02-2020 and at that time he found his motor-cycle in completely burnt condition. He also found his articles on the first

floor of the house in vandalized and burnt condition. He also alleged that jewelries of his wife were missing. So, even if it is accepted that his house was vandalized and jewelries were looted, still it is not established from the evidence of PW3 that a mob was behind this incident. In the complaint of PW3, it is mentioned that a mob did this, but apparently such plea was not based on personal knowledge of PW3.

12. PW5/Ct. Ajay and PW6/ASI Patil were the other witnesses, who were produced with claim to be eye witness of this incident. However, PW5 did not mention specifically anything about this incident. He made a general statement that he saw a mob of 30-40 persons in gali no. 11 at about 7 PM, while indulging in vandalism and arson. He projected himself to be a chance witness, stating that he was going to police station when he saw this mob. On the other hand, PW6 deposed that he reached gali 11 on receiving information from public about assembly of a mob in this gali. According to PW6, this information was received by him at Shiv Vihar Tiraha and at that time no other police official was present there. He stated that he reached gali 11 in about 3 minutes and it was around 7 PM when he was in this gali and when he saw a mob of around 30-40 persons.
13. PW5 and PW6 both deposed about meeting each other. However, according to PW5, he met PW6 on nala road at about 6-6.30 PM. While PW6 deposed that PW5 met him in gali no. 11, after PW6 reached there. PW5 deposed that he met PW6 before leaving for police station. That means that PW5 did not meet PW6 in gali no. 11 during ongoing riot in this gali, if any. It is otherwise

impractical that two police officials from same police station, would be present at a spot where riot is going on, and any of them will still have any kind of confusion of witnessing such riot together. It does not make sense that if both these police officials were there in gali no. 11, when riot was ongoing, then they would take different position there, especially when both of them were working together in same police station. It is not the case presented by any of these two police witnesses that they were separated because of any particular reason.

14. In the back drop of above-mentioned discrepancy in the testimony of both these witnesses, it is doubtful to believe that any of them were actually present at gali no. 11 or that any of them actually saw any mob at that place. Therefore, though there is evidence in the form of testimony of PW3 and PW4 and photographs proved by PW3 that house of PW3 was vandalized and some of his household articles with his motor-cycle were burnt, but formation of an unlawful assembly in gali no. 11 and being responsible for aforesaid incident is not proved beyond doubts.

IDENTIFICATION OF ACCUSED SANDEEP KUMAR

15. In foregoing paragraph, I have already expressed doubt over PW5 and PW6 being actually present in gali no. 11 at the time of incident probed in this case. Both these witnesses claimed having seen and identified accused in that mob. But, when presence of these two witnesses is doubtful at that place, then there cannot be any question of relying upon their identification of accused in the mob. Moreover, the statement of PW6 as recorded u/s 161

Cr.P.C. mentions name of accused and it was so recorded on 29-02-2020. PW5 was also working in same police station. If he actually was at gali no. 11 and PW 6 also actually saw the incident, then PW5 would have been mentioned in the statement of PW6 as recorded on 29-02-2020, being co witness of this incident. IO would have been informed by PW6 itself that PW5 was also present there. If PW5 and PW6 had identified the same one person in the mob, then in natural course of action, they would have discussed and shared such information among themselves. Thus, there could not have been a situation that PW5 would not be examined by that IO or that he would confirm having seen accused as late as on 01-08-2020. Therefore, for these additional reasons also, I do not find testimony of PW5 and PW6 to be reliable.

CONCLUSION

16. My foregoing discussion and observations lead me to hold that prosecution though established the incident of vandalism, loot and setting ablaze of some household articles and a motor-cycle of PW3, but it failed to prove a mob being responsible for the same and presence of accused in such mob, beyond reasonable doubts.

DECISION

17. In view of my foregoing discussions, observations and findings, accused Sandeep Kumar is hereby acquitted of all the charges leveled against him in this case.

Announced in the open court (PULASTYA PRAMACHALA)
today on 27.10.2023 ASJ-03 (North- East)
(Judgment contains 16 pages) Karkardooma Courts/Delhi