

**IN THE COURT OF VINOD YADAV: ADDL. SESSIONS JUDGE-03:
(NORTH-EAST): KARKARDOOMA DISTRICT COURTS: DELHI**

Sessions Case No.202/2021

State V/s Rohit

FIR No.32/2020

PS Gokalpuri

U/s 147/148/149/188/380/427/341/436 IPC

23.08.2021

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri D.K Bhatia, Ld. Special PP for the State alongwith
IO, ASI Gajraj Singh.

Shri Vimal Kumar Singh, Ld.Counsel for accused Rohit.

ORDER ON CHARGE

The matter is listed for consideration on charge today. I have heard arguments advanced at bar by both the sides and perused the entire material on record.

2. (i) The facts of the case in brief required for the present are that FIR in the matter was registered on 26.02.2020 on the basis of GD No.180A (dated 24.02.2020) regarding a riotous mob consisting of about 400-500 persons, armed with dandas and iron rods (sarias) blocking the main Gokalpuri Road and thereafter setting on fire some shops and vehicles in the area of Ganga Vihar and A, B, C and D Blocks of Gokalpuri, Delhi-94 on 24.02.2020.

(ii) Thereafter on 07.03.2020, a written complaint was received from one Anwar Ali, S/o Shri Ashiq Ali (registered vide Diary No.349) regarding vandalizing, looting and putting on fire his house No.A-19 (first and second floors) by the riotous mob in the evening of 24.02.2020. The said complaint was clubbed with the instant case FIR.

(iii) Another written complaint dated 11.03.2020 was made by Shri Ashiq Ali, S/o Shri Isliamuddin (registered vide Diary No.352) regarding

vandalizing, looting and putting on fire his House No.A-23, Gokalpuri by the riotous mob on 24.02.2020. The said complaint was also clubbed with the instant case FIR.

(iv) Thereafter, on 02.04.2020 one more complaint of similar nature was received from one Irshad, S/o Shri Umar Daraj, wherein he stated that in the evening of 24.02.2020 a riotous mob after committing vandalism and looting of various articles from his house No.A-21 (first floor), Gokalpuri had set the same on fire. His complaint was also clubbed with the instant case FIR.

3. The learned counsel for the accused has made a strong pitch by submitting that there is no incriminating material available on record against the accused and as such he is entitled for discharge in the matter on account of the following reasons:

(i) It is argued that the accused has been falsely implicated in the matter by the investigating agency, being resident of the same area/locality. His false implication is further evident from the fact that there is an “*unexplained delay*” of about two (02) days in registration of FIR, as the alleged incident(s) took place on 24.02.2020; whereas, the case FIR in the matter was registered on 26.02.2020. He has specifically pointed out that the investigating agency has miserably failed to answer as to why it did not register FIR on 24.02.2020 itself despite registration of GD No.180A on the said date itself and waited till 26.02.2020. Accused is a student of B.Lib (Bachelor of Library Science) and his entire career will be marred by false implication.

(ii) Out of the alleged riotous mob of 400-500 persons, only accused has been chargesheeted in the matter. Till date, the investigating agency has not been able to identify/apprehend any other accused person in the matter, which is very surprising and clearly points out towards his false implication.

(iii) All the three complainants, i.e Anwar Ali, his father Aashiq Ali and Irshad did not specifically name the accused in their respective initial handwritten complaints, however, later on at the instance of investigating agency complainant Irshad has falsely implicated him vide his supplementary statement recorded on 02.04.2020. Even PW Shahnawaz, who had made call at number 100 had also not specifically named/identified the accused vide his statement recorded under Section 161 Cr.P.C on 17.07.2020. No recovery of any sort has been effected from any of the accused persons.

(iv) It is further argued that accused was initially arrested in case FIR No.148/2020, PS Gokalpuri and thereafter merely on the basis of disclosure statement made by him in the said case, his arrest has been formally effected in the instant matter. The statements of witnesses, i.e Ms.Farha and her brother Shoaib and evidence (mobile video-clip) collected by the investigating agency in case FIR No.148/2020 cannot be read/used against the applicant in the instant case, which is in total violation of Article 20 (2) of the Constitution of India under the doctrine of “**Double Jeopardy**”. Even the said mobile clip provided by PW Shoaib (in case FIR No.148/2020) is of very small duration and no explicit reliance can be placed thereupon. Even the statement of PW Smt.Chander Kala, W/o Shri Radhey Shyam, who is “**chachi**” of accused does not inspire confidence and same is not applicable in the facts and circumstances of the case in hand.

(v) It is contended that HC Mahesh Chand and HC Jahangir Khan are “**planted witnesses**” as had they witnessed the incident, they would have immediately reported the matter to the Police Station on 24.02.2020 itself and should not have waited till the recording of their statements under Section 161 Cr.P.C in the matter on 26.02.2020 by the IO. No

cogent/plausible explanation in this regard has come from the side of prosecution.

4. Per contra, the learned Special PP for the State has very vehemently argued that on 24.02.2020 some unscrupulous elements hatched a large scale conspiracy and carried out riots in the area of North-East District of Delhi. The communal riots continued for two days unabated, resulting in large number of deaths of innocent persons and loss of property worth crores of rupees. It is submitted that initially the accused was arrested in case FIR No.148/2020, PS Gokalpuri and thereafter on the basis of disclosure statement made by him in the said case, his arrest was effected in the instant matter. It is further submitted that the distance between the place of incident(s) in case FIR No.148/2020, PS Gokalpuri and the case in hand is quite nearby and belongs to people of the same community.

5. The evidence available against the accused has been specified as under:

(a) Role of accused	He has been found to be “ active member of the riotous mob ” on the date and time of incident that took active participation in rioting, vandalizing and arson in the area/locality in question on the date and time of incident.
(b) Ocular evidence	(i) Complainant Irshad has duly identified the accused vide his supplementary statement dated 02.04.2020. (ii) He has also been named/identified by PW Smt.Chander Kala, who is none other but the real “Chachi” of accused vide her statement dated 03.06.2020. (iii) His presence at the spot/SOC on the date of

	<p>incident has also been confirmed by police witnesses namely HC Mahesh Chand and HC Jahangir Khan vide their statements recorded under Section 161 Cr.P.C on 26.02.2020. The said police witnesses were lying posted as “Beat Officers” in the area/locality in question at the relevant time.</p> <p>(iv) He has further been identified by PWs Shoaib and his sister Ms.Farha in connected case FIR No.148/2020, PS Gokalpuri.</p>
(c) Technical Evidence	<p>Accused is clearly seen/visible taking active part in the rioting activity in the mobile video-clip provided by PW Shoaib in connected case FIR No.148/2020, PS Gokalpuri.</p>
(d) Involvement in other cases	<p>Besides the case in hand, he is also involved in several other cases of rioting in the area of PS Gokalpuri.</p>

6. (i) As regards the contentions of the learned counsel that the three complainants did not specifically name the accused in their respective written complaints and there being delay in registration of FIR, it is argued that the communal riots in North-East Delhi were very unprecedented; people were very much scared; police personnel were busy in maintaining law and order duty, rescuing the victims and stopping further damage to the life, limb and property(ies) in the area; there was curfew like atmosphere at or around the area and the people were so shocked and traumatized that it took several days for them to muster courage to come out and report the matter to the police when the situation became normal. It is contended that since the police personnel remained busy in maintaining law and order, the matters were not promptly reported to the police station. Except for the statements of police personnel, there is hardly any statement of victim(s)/public witnesses which could throw light as to whether the

same unlawful assembly of rioters from a particular religion operated on 24.02.2020 as well as on 25.02.2020. It is submitted that complainant Irshad has duly named/identified the accused vide his supplementary statement dated 02.04.2020, which cannot be ignored at this stage.

(ii) The learned Special PP has next argued that further investigation in the matter is on and efforts are being made to identify the other rioters involved in the incident(s) in the particular area of PS Gokalpuri.

(iii) As regards using mobile video-clip of PW Shoaib (being subject matter of case FIR No.148/2020, PS Gokalpuri), it is argued that accused was initially arrested on 03.06.2020 in case FIR No.148/2020 on the basis of a mobile camera footage provided by the said witness, wherein he is clearly seen/visible being part/member of the riotous mob and actively taking part in vandalizing, rioting and arsoning of public and private property in the area in question at the relevant time. It is argued that the place of incident(s) in the instant case and case FIR No.148/2021 are quite nearby and same unlawful assembly had been operating in both the area(s) at the relevant time and as such, there is no illegality in using the said mobile video-clip in the present case. It is submitted that this is not the proper stage to dwell upon the said issue and same would be seen during the course of trial.

7. Lastly, it is submitted that at the stage of consideration on charge, the court is not supposed to meticulously judge the evidence collected by the investigating agency and has to take *prima facie* view thereupon.

8. I have given thoughtful consideration to the arguments advanced at bar by both the sides. I have also carefully gone through the chargesheet filed in the matter.

9. The law with regard to framing of charge is fairly settled now. In the case of “**Kallu Mal Gupta V/s State**”, 2000 I AD Delhi 107, it was held that

while deciding the question of framing of charge in a criminal case, the Court is not to apply exactly the standard and test which it finally applied for determining the guilt or otherwise. This being the initial stage of the trial, the court is not supposed to decide whether the materials collected by the investigating agency provides sufficient ground for conviction of the accused or whether the trial is sure to culminate in his conviction. **What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence.**

10. Furthermore, in case titled as, “**Umar Abdula Sakoor Sorathia V/s Intelligence Officer Narcotic Control Bureau**”, JT 1999 (5) SC 394 it was held that, “it is well settled that at the stage of framing charge, the Court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record, the court could come to the conclusion that the accused would have committed the offence, the court is obliged to frame the charge and proceed to the trial”.

11. It is well-settled law that at the time of framing of charge the FIR and the material collected by the investigating agency cannot be sieved through the cull ender of the finest gauzes to test its veracity. A roving inquiry into the pros and cons of the case by weighing the evidence is not expected or even warranted at the stage of framing of charge (reliance **Sapna Ahuja V/s State**”, 1999V AD Delhi p 407).

12. (i) Now, reverting back to the case in hand. Though, the accused has not been specifically named by any of the complainants in their initial written complaints preferred to the investigating agency, however, at this stage we have the ocular evidence in the form of supplementary statements of complainant Irshad dated 02.04.2020 as well as statements of independent public witnesses namely Smt.Chander Kala (chachi of accused), Shoaib and Ms.Farha recorded

under Section 161 Cr.P.C, wherein they have given categorical account of the incident in question and role played by accused therein. Moreover, the presence of accused at the spot/SOC has also been confirmed by police witnesses namely HC Mahesh Chand and HC Jahangir Khan, who were lying posted as “**Beat Officers**” in the area/locality in question at the relevant time. Their statements cannot be brushed aside/discarded at this stage, merely because there has been some delay in recording of their statements or the complainant(s) have not specifically named them in their initial written complaints. **Ocular evidence is considered the best evidence, unless there are strong reasons to doubt it.** At this stage, defence has not been able to put forth any reason worth to disbelieve/discard the ocular evidence of aforesaid witnesses by doubting their presence at the spot/SOC on the date and time of incident. Even the mobile video-clip provided by PW Shoaib in connected case FIR No.148/2020, PS Gokalpuri cannot be thrown into dustbin at this stage, as the places of incident(s) in both the case FIRs is quite nearby. Whether the same unlawful assembly was operating in the area at the relevant time is a question which cannot be decided at this stage. Similarly, the issue of improper clubbing of complaints and delay in recording of witnesses in the matter also cannot be adjudicated upon at the stage of consideration on charge. This Court, will try to seek answers to these questions during the course of trial.

(ii) Be that as it may, it is worth noting that investigation in the matter appears to be highly callous, inefficient and unproductive; however, as noted earlier this Court at this stage, cannot ignore the statements of victims *dehors* the delay in recording of FIR in the matter.

13. (i) It is pertinent to note here that it is permissible for the Court to sift and weigh the evidence for the limited purpose of finding out whether or not *prima facie* case against the accused has not been made out or not. The material to determine *prima facie* case would depend upon the facts of each case. However, it is not expected to decide the credibility and truthfulness of the

available material at the stage of consideration on charge. The disputed defence of accused cannot be taken into consideration at this stage. Sufficiency of material or evidence is not required for framing of charges, unless Court finds that the materials are completely and absolutely absent for the purpose of trial. It is well settled that when there is evidence indicating strong suspicion against the accused, the Court will be justified in framing of charge and granting an opportunity to the prosecution to bring on record entire evidence for the purpose of trial.

(ii) In view of the aforesaid discussion, I am of the considered opinion that *prima facie* there is enough material on record to frame charges against the accused under requisite sections.

14. (i) Separately, charge under Section(s) 143/147/148/454/427/380/436/435 IPC read with Section 149 IPC and Section 188 IPC has been framed against the accused.

(ii) Accused is directed to remain present in Court. The accused and his counsel are directed to follow Covid-19 appropriate behaviour. The Reader attached to the Court is directed to explain the contents of charges to the accused in vernacular in the presence of his counsel, if the counsel is present in Court and then obtain his signatures thereupon.

15. List the matter for fixing the date for prosecution evidence (PE) at **2.00 PM.**

VINOD
YADAV

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ASJ-03(NE)/KKD COURTS/23.08.2021