

***IN THE COURT OF SH. VIRENDER BHAT: ASJ-03:
(NORTH-EAST DISTRICT): KARKARDOOMA COURTS: DELHI***

Sessions Case no.95/21

FIR no.141/20

U/s 147/148/149/436/457/392/452/188/153A/427/506 IPC

PS Gokalpuri

State

Versus

Dinesh Yadav @ Michael

S/o Sh.Jagannath Yadav

R/o E-22/3, E block,

Bhagirathi Vihar,

Delhi

***Date of institution of case* : 05.08.2020**

***Date of hearing of final arguments* : 22.11.2021**

***Date of pronouncement of judgment* : 06.12.2021**

J U D G M E N T :-

BRIEF FACTS OF THE CASE:

1. The above named accused has been facing trial for the offences u/s 143/147/148/457/392/436/506 IPC r/w section 149 IPC.

2. Briefly stated, the case of the prosecution is that on 25.02.2020, a mob comprising of 150-200 rioters gathered at about 11.30 a.m. in front of the complainant's house i.e. at E-110, gali no.14, Bhagirathi Vihar, Delhi and barged into the house after breaking its gate. They stole the important papers like sale deeds, golden/silver ornaments, cash, utensils, clothes and kettle from the house. Some of the goods lying on the ground floor were set ablaze whereas some of the goods lying in the first floor were damaged. The complainant alongwith her children saved their lives by jumping over to the roof of the adjoining house. Thereafter, the police reached there and took them to the house of their relatives.

3. On the basis of a written complaint submitted by the complainant in the PS, an FIR was registered on 03.03.2020 and investigation was commenced. During the course of the investigation, the IO visited the spot and prepared the site plan. He recorded the supplementary statement of the complainant Manori u/s 161 Cr.PC. He also recorded the statements of the witnesses Ashiq and Arif. The station Daily Diary was checked on 04.03.2020 and it was found that Ct.Vipin alongwith HC Sanoj were present in Bhagirathi Vihar area on 25.02.2020 to curb the riots. Their statements were recorded u/s 161 Cr.PC. Crime Team was summoned on 13.03.2020 which examined the spot and took its photographs.

4. It is the case of the prosecution that the name of accused Dinesh Yadav @ Michael had cropped up in the statements of the complainant and the police personnels as being involved in the acts of arson, loot and robbery in the complainant's house. It came to be known that the accused has been arrested on 03.06.2020 in another case FIR no.78/20 of PS Gokalpuri. Accordingly, the IO visited the Mandoli Jail and after obtaining permission from the Duty MM, interrogated the accused Dinesh Yadav @ Michael and formally arrested him in this case.

5. Relevant DD entries of the PCR calls regarding the riots received in Police Control Room as well as the corresponding PCR forms were collected by the IO. The PCR callers were also examined and their statements were recorded u/s 161 Cr.PC.

6. After completion of investigation, chargesheet was prepared and filed in the court.

7. On 03.08.2020, charges u/s 143/147/148/457/392/436/506 r/w section 149 IPC were framed against the accused to which he pleaded not guilty. Accordingly, trial was held against him.

8. The prosecution has examined 13 witnesses to prove the charges against the accused. The statement of accused u/s 313

Cr.PC was recorded on 29.09.2021 in which he denied all the incriminating evidence and claimed false implication. The accused has chosen not to lead any evidence in his defence.

9. I have heard the Ld.Special PP as well as the advocate appearing for the accused from DLSA. I have also perused the entire oral as well as documentary evidence.

10. The complainant Manori has been examined as PW-1. Perusal of her testimony shows that she had not seen or identified any of the assailants, who had vandalized her house. She has deposed that on account of large scale communal riots happening in the vicinity of her house on 25.02.2020, she alongwith her family members left the house at about 4.00 p.m. and was staying with one of their relatives. After 4 days, they were called by the police and on reaching her house, she found the same to have been completely burnt. Her buffalo and calf had been taken away by unknown persons. She proved the complaint submitted by her in the PS as Ex.PW 1/A and the photographs of the burnt house taken by the police as Ex.PW 1/B (colly). She deposed that she can not identify any of the rioters, who might have put her house on fire as she was not present in the house at the time of incident. She was declared hostile at the request of the Ld.Special PP and in the cross examination conducted by the Ld.Special PP, she denied having stated to the police that her house had been

vandalized, ransacked and looted by the violent mob in her presence.

11. Similarly, PW-2 Arif and his brother i.e. PW-3 Ashiq, whose house also had been set ablaze and looted by the rioters on 25.02.2020, deposed that they can not identify any of the rioters, who might have put their house on fire as they were not present in the house at the time of incident. In the cross examination by the Ld.Special PP also, after being declared hostile at his request, they denied that the incident had taken place in their presence.

12. Even though these victims i.e. PW-1, PW-2 & PW-3 had not identified any of the rioters in the mob yet their testimonies establish the fact that their houses had been trespassed into after breaking open the locks, vandalized, robbed and then set on fire by a violent mob. Therefore, the offences u/s 143/147/148/457/392/436 IPC read with Section 149 IPC were committed by the persons comprising the mob

13. According to the Ld.Special PP, PW-6 Ct.Vipin and PW-7 HC Sanoj are the eye witnesses to the incident and their deposition clearly establishes the fact that the accused Dinesh Yadav @ Michael was the part of the mob which had attacked, looted and set ablaze the house of the complainant. Therefore, it is necessary to scrutinize their testimonies minutely.

14. PW-6 Ct.Vipin has deposed that on 24.02.2020 at about 2.00 p.m., riots had erupted in favour of CAA and against it in the area of Chaman Park, Brijpuri Road, Indira Vihar, Shiv Vihar Tiraha, Bhagirathi Vihar and Johripur area. He further deposed that on 25.02.2020 at about 11 p.m., he alongwith HC Sanoj and other police staff was on riot controlling duty in the area of Bhagirathi Vihar. He saw about 200-300 rioters alongwith *lathis, dandas and stones* at Nala road, Bhagirathi Vihar. He alongwith his colleagues tried to pacify the rioters but they were very aggressive. They saw that the rioters were identifying the Muslim persons, segregating them and beating them. The vehicles belonging to Muslims were put on fire and thrown in nala. He further deposed that rioters were putting on fire the houses in E block. He deposed that from amongst the rioters, he identified the accused Dinesh Yadav @ Michael as he knew him prior to the incident in his capacity of Beat Officer in the area. In the cross examination, he deposed that he knew the accused because of his popularity of his name. According to him, the accused was carrying a danda at the time of incident but the said danda was not recovered from the accused. He did not see the accused taking away the buffalo of the complainant. He also deposed that he did not see the accused entering into the house to commit robbery therein or putting any house on fire. In further cross examination, he admitted that he had not seen the accused giving any threats of life to complainant or her two grand children. He

also admitted that he did not see the complainant and her two grand children fleeing from the house after any threat to their life given by the accused and his associates. He had not seen the accused vandalizing the house of the complainant with his own eyes.

15. The deposition of PW-7 HC Sanoj is also on similar lines. Though in his examination in chief, he stated that he had identified accused Dinesh Yadav @ Michael in the mob which attacked and ransacked the complainant's house yet, in his cross examination, he too stated that he had not seen the accused vandalizing or looting or putting on fire the house of the complainant. He had stated that he had not seen the accused taking away the buffalo and calf from the complainant's house. He also admitted that he had not seen the accused giving threats to the life of complainant and her two grand children and that he did not see the complainant and her grand children fleeing from the house after receiving threats to their lives from accused and their associates.

16. It was vehemently argued by the Ld. Counsel for the accused that no active role has been attributed to the accused in the incident in question by these two witnesses which clearly indicates that the accused was only a bystander and did not share the object of the unlawful assembly. It is argued that the accused

resides in the vicinity of the spot of incident and therefore, his presence on the road in the area during the riots was natural. According to the Ld. Counsel, the deposition of these two witnesses establishes the innocence of the accused and is liable to be acquitted.

17. It is true that the perusal of the testimony of PW-6 and PW-7, the two eye witnesses to the incident in question, reveals that the accused had not taken any active part in vandalizing, looting or putting on fire the house of the complainant. However, it cannot be said that he was only a bystander or a passive spectator at the spot of incident. It has come in the deposition of PW-6 that the accused was amongst the rioters who were identifying Muslims, beating them and setting ablaze the houses in E-Block, Chaman Park. He has further stated in the cross-examination that the accused was carrying a danda (wooden rod) at that time. Similarly, PW-7 had also identified the accused amongst the rioters who were identifying Muslims, beating them, burning their vehicles and putting on fire the houses in E-Block, Chaman Park. On this aspect, the testimonies of these two eye witnesses PW-6 & PW-7 have remained consistent and could not be shaken in the cross-examination even. It is pertinent to note here that the complainant's house was also in E-Block bearing H. No. E-110, Gali No. 14, Bhagirathi Vihar, Delhi.

18. It is manifest from the deposition of PW-2 and PW-3 that there were large scale communal riots in E-Block, Chaman Park, Bhagirathi Vihar, Delhi on 24.02.2020 and 25.02.2020. According to PW-6 and PW-7, the number of rioters was about 200 to 300 and all of them were having lathis (wooden rods), stones etc. in their hands. Therefore, it is established that there was an unlawful assembly, the common object of which was to assault the persons belonging to Muslim community, damage their vehicles, loot and set ablaze the houses in E-Block, Chaman Park, Bhagirathi Vihar, Delhi.

19. Section 149 IPC has essential two ingredients viz:

(i) Offence committed of any member of an unlawful assembly consisting of five or more members and

(ii) Such offence must be committed in prosecution of the common object (u/s 141 IPC) of the assembly or members of the assembly knew to likely to be committed in prosecution of the common object.

20. Once it is established that the unlawful assembly had some common object, it is not necessary that a person

constituting unlawful assembly must be shown to have committed some overt act. For the purpose of incurring vicarious liability under Section 149 IPC, liability of the other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact that whether the other members knew before hand that offence actually committed, was likely to be committed in prosecution of the common object. (see. Daya Kishan Vs. State of Haryana (2010) 5 SCC 81).

21. It would be useful to refer, on this issue, to the decision of the Apex Court in State of U.P Vs. Kishan Pal (2008) 16 SCC 73 wherein it was observed”

“47. It is well settled that once a membership of an unlawful assembly is established it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. In other words, mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicarious liable for the acts done by others either in the prosecution of the common object of the unlawful assembly or such which the members of the unlawful assembly knew were likely to be committed.”

22. Thus, Section 149 IPC engrafts a principle of vicarious or constructive liability in as much as a person would be guilty of an offence, though he may not have directly committed the same if, as a member of unlawful assembly, he had shared the common object with the other members to commit such an offence or if he knew that such offence is likely to be committed in prosecution of the common object of the assembly of which he was a member. Though, it would be difficult, but not impossible, to collect any direct evidence of such knowledge for the reason that the knowledge involves a mental act, yet such knowledge can be easily inferred from the circumstances in which the offence is carried out by the members of the assembly and the motive as well as the nature of the assembly, its common object and the conduct of its members before and after the actual commission of crime.

23. The testimony of PW-6 and PW-7 clearly indicates that the accused was a part of unlawful assembly consisting of 200-300 rioters on 25.02.2020 which indulged in large scale riots in E-Block, Chaman Park, Bhagirathi Vihar, Delhi. It further comes out from the deposition of PW-2, PW-3, PW-6 and PW-7 that the rioters comprising the unlawful assembly belonged to Hindu Community whereas the victims who were beaten & whose houses/shops were vandalized, looted and burnt belonged to the members of Muslim community. The fact that the accused also

belongs to Hindu community and was present in the mob armed with an wooden rod which mob resorted to violence against the Muslims, indicates that he shared the common object of the unlawful assembly. The mere fact that he was not seen entering complainant's house or vandalizing or looting or putting it on fire, does not mean that he was mere a bystander. There is nothing on record to show that the accused had disassociated himself from the unlawful assembly and he did not share the common object of the assembly. It does not appear that his presence at the incident spot was only because he is a resident of that very area, as sought to be argued by his Ld. Counsel. The circumstances in which the members of Muslim community were identified & beaten, their vehicles damaged and their houses broken open, robbed and set ablaze by the rioters comprising the members of the other community coupled with the object of the unlawful assembly i.e. to assault the Muslims & damage their properties and the fact that the accused was seen amongst the rioters armed with a wooden rod, are sufficient to indicate beyond any doubt that he too shared the common object of the assembly and had knowledge that these types of incidents would be indulged into by the members of the assembly.

24. Therefore, even though the evidence on record does not indicate that the accused had directly committed the offences involved in this case yet he is to be held guilty of all those

offences which have been committed by the members of unlawful assembly for the reason that he shared the common object of other members of the assembly and knew that these offences are likely to be committed in prosecution of the common object of the assembly.

25. In view of the above discussion, accused is hereby convicted of the offences punishable u/s 143/147/148/457/392/436 IPC r/w Section 149 IPC.

Announced in the Open Court

VIRENDER
BHAT

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VIRENDER BHAT
Location: North
East District,
Karkardooma
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Date: 2021.12.06
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(VIRENDER BHAT)

ASJ-03(NE)/KKD Courts/06.12.2021