

State vs Rashid on 7 March, 2024

IN THE COURT OF METROPOLITAN MAGISTRATE-02,
NORTH EAST DISTRICT, KARKARDOOMA COURTS,
DELHI
PRESIDED BY: SH. VIPUL SANDWAR

JUDGMENT

State Vs. Rashid & Ors.

U/s 143/147/186/353/332 r/w 149 IPC

PS : SEELAMPUR

A. CIS No. of the Case	: 460566/2015
B. FIR No.	: 397/1999
C. Date of Institution	: 17.09.1999

D. Date of Commission of Offence : 18.06.1999 E. Name of the complainant : Ct. Jeet Singh, PS Seelampur F. Name of the Accused, his : (1) Rizwan @ Patel S/o Parentage & Addresses Mohd. Jalis, R/o E-95, Gali no.5, Shastri Park, Delhi (abated on 15.09.2022), (2) Shami Khan S/o Habib Khan, R/o H. No. C-178, Gali no.9, Shastri Park, Delhi, (3) Vinod Prasad S/o Deenanath Prasad, R/o Village Manchala, PS Motihari, Bihar (declared PO on 12.01.2006), (4) Mohd.

Nurulla S/o Mohd. Muslim, R/o C-Block, Gali no.7, Shastri Park, Delhi (declared PO on 28.08.2014), (5) Anand S/o Rajdev Singh, R/o C-61, Gali no.3, Shastri Park, FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.1 of 26 Delhi (declared PO on 09.07.2012), (6) Pawan Kumar S/o Shaligram Singh, R/o C-Block, Gali no.3, Shastri Park, Delhi (declared PO on 09.07.2012), (7) Gopal S/o Govind, R/o E-63, Gali no.9, Shastri Park, Delhi, (declared PO on 09.07.2013), (8) Iqrar S/o Abrar, R/o C-46, Gali no.3, Shastri Park, Delhi, (9) Pradeep @ Sonu S/o Jai Prakash, R/o C-41/1, Shastri Park, Delhi (abated on 31.10.2023), (10) Asif S/o Madan, R/o Gali no.6, E-

Block, Shastri Park, Delhi (declared PO on 25.04.2001), (11) Mohd.

Ahmed S/o Mohd. Sadik, R/o Gali no.3, C-Block, Shastri Park, Delhi, (12) Mohd.

Yunus S/o Bundu Khan, R/o F-32, Gali no.1, Shastri Park, Delhi, (abated on 01.11.2012), (13) Mohan S/o Prem Ballabh, R/o B-58, Shastri Park, Delhi (declared PO on 09.07.2013), (14) Mohd. Sultan S/o Riyazuddin, R/o D-31, Gali no.3, Shastri Park, Delhi, (15) Mohd.

Minatulla S/o Mohd.

Allahuddin, R/o E-93, Gali no.15, Shastri Park, Delhi (declared PO on 22.03.2005), (16) Raju S/o Malin Bishnoha, R/o Gali no.6, E-Block, Shastri Park, Delhi (declared PO on 12.01.2006), (17) Jafar S/o Phool Hassan, R/o E-24, Gali FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.2 of 26 no.3, Shastri Park, Delhi, (18) Mustaq Ahmed S/o Ashfaq Ahmed, R/o 169, Gali no.14, E-Block, Shastri Park, Delhi, (19) Manjar S/o Subhan Khan, R/o E-469, Gali no.14, Shastri Park, Delhi, (20) Mohd. Samiullah S/o Abdullah, R/o E-Block, Gali no.9, Shastri Park, Delhi and (21) Yunus S/o Abdul Qayyum, R/o E-95, Gali no.4, Shastri Park, Delhi.

G. Representation on behalf of : Ms. Amandeep Kaur, Ld. APP State for the State H. Offence complained of : 147/148/149/353/186/332 IPC I. Plea of the Accused : Pleaded not guilty and claimed trial.

J. Order reserved on	: 23.01.2024
K. Date of Order	: 07.03.2024
L. Final Order	: Acquitted

Brief Statement of Reasons for Decision of the Case

1. The present FIR is based on the statement of Ct. Jeet Singh wherein he has stated that on 18.06.1999 he alongwith HC Balram was on patrolling duty at about 09:45 pm at Shastri Park red light, around 50 people from A,B,C,D Block, Shastri Park came to ISBT road and started obstructing the traffic. They also broke the flower pots and threw them on the road to stop the on going traffic. When the drivers of the vehicles tried to removed them they started pelting stones on the vehicles. In the meantime around 150 people came from E,F,G,H Block led by Yunus, Rashid Patel and Mohd. Rashid. Ct. Jeet Singh knew them from before. The entire people stopped the traffic on the road and FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.3 of 26 started protesting. He alongwith HC Balram tried to pacify the mob, however, they failed. Due to the stone pelting wind shield of the nearby vehicles broke. He send a wireless message after which SHO, Addl. SHO came at the spot alongwith reserve force. The police officials arrested 20 accused persons. The mob did not stop pelting stones and kept pelting stones on the vehicles and the passerby which injured police officials and public persons. On the basis of his statement FIR under section 147/148/149/353/186/332 IPC was registered.

2. FIR was registered and has been investigated by the officials of Police Station Seelampur and IO/SI Anwar Khan filed the charge sheet against the accused persons upon which cognizance was taken on 17.09.1999 by the learned Predecessor of this Court.

3. Accused persons appeared before the Court and copy of chargesheet along with other documents under Section 207 Cr.P.C. were supplied to them.

4. Charge was framed vide order dated 13.03.2015 for the offence punishable Under Section 143/147 r/w 149, 186 r/w 149, 332 r/w 149 and 353 r/w 149 IPC against accused persons by the learned Predecessor of this Court, to which, the accused persons pleaded not guilty and claimed trial.

5. Thereafter, matter was listed for Prosecution Evidence. The Prosecution has examined 10 witnesses in support of its case. In nutshell, the testimony of the prosecution witnesses is as follows :-

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(i) PW1 HC Shafi Ahmed has deposed that on 18.06.1999 he was on night emergency duty. He went to Shastri Park near red light alongwith SHO, PS Seelampur where mob was present and they were shouting slogans and destroying property nearby. The mob was annoyed by the cutting the electricity supply. After reaching there the mob started to disperse. 19 people were found at the spot who were part of the mob. IO/SI Anwar Khan who was present at the place of incident prepared tehrir alongwith rukka and same was given to him. He went to PS and handed over the rukka and tehrir to Duty Officer. Thereafter, FIR was registered and the same was handed over to him. He came back to the place of incident and handed over the copy of FIR and tehrir to the IO. He could not remember whether the 19 persons were apprehended on that day or not. In his cross-examination he has stated that he could not remember the name of the complete list of accused persons. He reached at the place of incident at 0045 am alongwith SHO, PS Seelampur. The place of incident is 1-1.5 kms from the police station. The road was blocked by the mob. He denied being the planted witness.

(ii) PW2 HC Balram Singh on 18.06.1999 was at patrolling duty alongwith Ct. Jeet Singh. When he reached Shastri Park bus stand, a mob was present at that place. The mob was shouting slogans about electricity, pelting stones and destroying the property nearby. He informed the incident to the PS on wireless.

Thereafter, SHO, PS Seelampur reached at the spot with other police officials. He was further called for examination on 18.12.2023. He stated that he does not remember the exact date of incident but it was in the year 1999. he could not identify the accused persons present in the Court due to long lapse of time FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.5 of 26 despite being his attention drawn towards the accused persons in the dock. In his cross-examination he denied the suggestion that no such incident ever took place.

(iii) PW3 Satish Chand was the home guard official in the year 1999. He turned completely hostile and stated that he does not know anything with respect to the present case. Ld. APP for the State put questions in the nature of cross-examination to him after seeking permission of the Court. He denied the suggestion that 18.06.1999 he alongwith SHO reached at red light Shastri Park where crowd of people had gathered and were raising slogans "jab tak bijli nahi aayegi, tab tak traffic jam rahega". He denied his statement under section 161 Cr. PC. He denied the suggestion that SHO tried to make the mob understand and the mob started pelting stones and injured police staff and damage police vehicle. He denied the suggestion that he and Karan Singh went to GTB hospital at about 11:15 pm and got their medical treatment done. He denied the suggestion that the accused persons had formed and unlawful assembly and had pelted stones injuring him and Karan Singh. He denied

his MLC also. The witness was not cross examined by the accused persons despite being given an opportunity.

(iv) PW4 Jeet Singh on 18.06.1999 he alongwith HC Balram were on patrolling duty in the area of Shastri Park red light. At about 09:45 pm when they were present at Shastri Park red light, 40-50 people came from the side of A,B,C,D Block Shastri Park and obstructed the running traffic on ISBT road. The crowd started the demolishing the flower pots and started pelting stones on the vehicle present there. He alongwith HC Balram tried to make the mob understand and opened the traffic. One accused FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.6 of 26 Patel who was leading the mob replied alongwith other members "jab tak bijli nahi aayegi, tab tak traffic jam rahega". He transmitted the wireless message to control and SHO Seelampur alongwith DCP, reserved staff reached at the spot. Accused Yunis, Rashid and Patel were apprehended and were brought to the PS. Accused Patel was leading the said crowd. Members of crowd were brought to the PS. He narrated the whole incident to the IO who recorded his statement. He could not identify the accused persons who were the members of the crowd due to lapse of long time. His examination in chief could not be completed and the matter was deferred. Summons were sent to him through DCP on 12.12.2023, however, his presence could not be secured and he is dropped from the list of witnesses on 18.12.2023.

(v) PW5 Retd. ACP Rajender Gautam on 18.06.1999 he was posted as Addl. SHO. At about 09:45 pm he received information that at the residential area of Shastri Park, residents had created a traffic jam on the main road Shastri Park. He alongwith S.C. Rana the then SHO PS Seelampur alongwith Inspector Paras Nath and SI Anwar Khan reached the spot. SHO S. C. Rana tried to pacify the aggression of the public and requested them to disperse the traffic. They tried to resume the traffic but the public persons present started pelting stones and damaged the public property including vehicles. He also sustained injuries. The local police arrested 19 persons. He correctly identified the accused present in the Court. In his cross-examination he has stated that he cannot identify the accused through their names due to lapse of time. He could not tell the names of accused who had thrown stones upon him. He denied the suggestion that the accused FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.7 of 26 persons were lifted from their houses. He stated that at the spot around 150-200 were present. He has stated that the spot did not have sufficient light. Though the accused persons were visible while throwing the stones but he could identify them through their appearance.

(vi) PW6 Retd. HC Swaroop Singh was posted as HC on 18/19.06.1999 and on the instructions of IO reached Shastri Park red light and saw broken glass, stones and one tempo lying at the spot. He took the photographs of the spot area and after some days he handed over the same to the IO. He could not identify the accused persons shown to him as he had not seen the accused persons at the time of capturing the photographs. In his cross- examination he denied the suggestion that no photographs were captured by him and for the same reasons no record of photographs are present in the judicial file.

(vii) PW8 ASI Sukhram Pal on 21.07.1999 in the morning between 10:00-11:00 accused Yunus came to the PS and IO/SI Anwar Khan interrogated and arrested him in his presence. He could not

identify the remaining accused as he had not seen them at the time of incident. In his cross examination he has stated that accused Yunus was unknown to him before the incident.

(viii) PW9 Retd. ACP H. C. Rana on 18.06.1999 he was posted as SHO, PS Seelampur and received a message that 150- 200 people have closed the ISBT road near Shastri Park red light at about 10:00 pm. He alongwith forces and both Addl. SHOs Rajender Gautam and Paras Nath reached at the spot. Crowd was throwing stones on the vehicles and the police and Addl. Rajender Gautam and several police officials sustained injuries. The crowd was shouting that they will not allow the vehicles on FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.8 of 26 road till electricity is restored at their Shastri Park residence. He alongwith Addl. SHO tried to make the crowd understand but the crowd was adamant in nature. 19 people were arrested and were chargesheeted in the present case. In his cross-examination he has stated that he and other Addl. SHOs reached separately at the spot on their own. Addl. SHO Rajender Gautam sustained injuries in his presence. He could not say that out of 200 people which accused persons were pelting stones which hit the police officials. He could not state that the whether the arrest memos of all the accused persons were prepared on the spot or not. He has denied the suggestion that the real culprits ran away from the spot and the accused persons have been falsely implicated. He denied the suggestion that public persons other than the accused were present at the spot.

(ix) PW10 Retd. SI Anwar Khan on 18.06.1999 he was present at his division at Shastri Park area and wireless message was circulated that riots have taken place at Shastri Park red light. Ct. Jeet Singh and HC Balram were on patrolling duty in the Shastri Park area. On receiving the wireless message they reached the spot. They tried to control the riots and pacify the people gathered at the spot. The people had damaged on the vehicles on the road and the plants on the side of the road. SHO Rana, Addl. SHO Rajender Gautam and Inspector Paras Nath reached there with police force. Due to stone pelting by the public, Inspector Rajender Gautam and two public persons got injured and they were send to GTB hospital for medical treatment. They apprehended 19 persons. 03 persons, Rashid, Yunus Patel and Mohd. Yunus were leading the mob by inciting them and raising slogans. He alongwith Ct. Jeet Singh went to FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.9 of 26 the hospital and collected the MLC of Inspector Rajender Gautam and two other public persons. He returned to the spot, prepared rukka and sent Ct. Mohd. Shafi with rukka to the PS for registration of FIR. Ct. Mohd. Shafi returned to the spot with the copy of FIR and original rukka and handed over the same to him. As the witness was not disclosing complete facts, Ld. APP for the State put questions in the nature of cross-examination to the witness after seeking permission of the Court. To a specific questions he stated that he had apprehended 20 persons. He had applied for permission under section 195 Cr. PC. He had prepared site plan after returning from GTB hospital. He recorded statements of witnesses under section 161 Cr. PC. After completing the investigation he prepared the chargesheet and filed it before the Court. In his cross-examination he has stated that he received the wireless at about 10:00 pm. He has not filed any transcript of wireless message. He reached at the spot after ten minutes of receiving the message on his personal scooter. He denied the suggestion that the actual accused had escaped the spot due to dispersion by the police force and public persons present at the spot were apprehended and were made an accused in the present case. When he reached the spot, Inspector Rajender Gautam and two public persons were injured. At about 12:15 am, rukka was prepared and handed over to Ct. Mohd. Shafi. The

distance between the spot and GTB hospital was 4-4.5 kms. SHO had arrived at the place of incident at about 10:00-10:15 pm. He had not recorded the statement of public persons in this regard. It took 3-4 hours for preparing the arrest memo and personal search memo of all the accused persons.

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6. PE was closed on 16.01.2024 and on the same date statement of accused under Section 313 Cr. PC read with section 281 Cr. PC was recorded. Accused persons did not wish to lead DE and matter was fixed for final arguments.

7. Final arguments heard. Case record perused meticulously.

8. This Court has thoughtfully considered the material on record and arguments advanced with due circumspection.

9. In Mahadev Sharma v. State of Bihar, (1966) 1 SCR 18 : AIR 1966 SC 302 : 1966 Cri LJ 197 , Hon'ble Supreme Court has observed that:

"Section 141 defines an unlawful assembly as an assembly of five or more persons the common object of which is inter alia to commit an offence. There are five clauses which describe the many kinds of common objects which render an assembly unlawful.

.....Continuing again with the scheme of the Chapter, we next see that Section 142 says that a person is considered to be a member of an unlawful assembly, if, being aware of facts which render any assembly an unlawful assembly he intentionally joins that assembly or continues in it. A mere membership of an unlawful assembly is punishable under Section 143. Under the next section heavier punishment is awardable to a person who joins an unlawful assembly armed with a deadly weapon or with anything which used as a weapon of offence is likely to cause death. Section 145 next provides for a similar higher punishment for a person who joins or continues in an unlawful assembly knowing that it has been ordered to disperse. These sections make membership as such of an unlawful assembly punishable, though in varying degrees. Section 146 then defines the offence of rioting. This offence is said to be committed when the unlawful assembly or any member thereof in prosecution of the common object of such FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.11 of 26 assembly uses force or violence. It may be noticed here that every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence. There is thus vicarious responsibility when force or violence is used in prosecution of the common object of the unlawful assembly. The next two sections prescribe punishment for the offence of rioting. Section 147 punishes simple rioting. Section 148 punishes more severely a person who commits the offence of rioting armed with a deadly weapon but the section makes only a person who is so armed liable to higher punishment.

Section 149 occurs in Chapter VIII of the Indian Penal Code which deals with offences against the public tranquility. That Chapter consists of twenty- one sections and most of them are concerned with assemblies which are a danger to public peace. Such assemblies are designated unlawful assemblies and the punishment for membership varies in severity according as the assembly only menaces the public peace or actually disturbs it. The scheme of the Chapter may now be examined."

10. Section 149 then creates vicarious responsibility for other offences besides rioting. The section provides as follows:

"149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

11. For the application of the section there must be an unlawful assembly. Then if an offence is committed in prosecution of the common object of that assembly or is such as the members of the unlawful assembly know to be likely to be committed then whoever is member of that assembly at the time FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.12 of 26 the offence is committed is guilty.

12. It was also observed in Mahadev (supra) that:

"Is it obligatory to charge a person under Section 147 or Section 148 before Section 149 can be utilized? Section 149 does not state this to be a condition precedent for its own application. No other section prescribes this procedure. Sections 146 and 149 represent conditions under which vicarious liability arises for the acts of others. If force or violence is used by a member in the prosecution of the common object of the unlawful assembly every member of the assembly is rendered guilty of the offence of rioting and is punishable for that offence under Section 147. The offence of rioting must, of course, occur when members are charged with murder as the common object of the unlawful assembly. Section 148 creates liability on persons armed with deadly weapons and it is a distinct offence. It need not detain us. If a person is not charged under Section 147 it does not mean that Section 149 cannot be used. When an offence (such as murder) is committed in prosecution of the common object of the unlawful assembly or the offence is one which the members of the assembly knew to be likely to be committed in prosecution of the common object, individual responsibility is replaced by vicarious responsibility and every person who is a member of the unlawful assembly at the time of the committing of the offence becomes guilty. It is not obligatory to charge a person under Section 143, or Section 144 when charging

him with Section 147 or Section 148. Similarly, it is not obligatory to charge a person under Section 143 or Section 147 when charging him for an offence with the aid of Section 149. These sections are implied. It may be useful to add a charge under Section 147 and Section 148 with charges under other offences of the Penal Code read with Section 149, but it is not obligatory to do so. A person may join an unlawful assembly and be guilty under Section 143 or 147 or 148 but he may cease to be its member at the time when the offence under Section 302 or some other offence is committed. He would not in that event be liable for the other offence for Section 149 would not apply to him.

The fallacy in the cases which hold that a charge FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.13 of 26 under Section 147 is compulsory arises because they overlook that the ingredients of Section 143 are implied in Section 147 and the ingredients of Section 147 are implied when a charge under Section 149 is included. An examination of Section 141 shows that the common object which renders an assembly unlawful may involve the use of criminal force or show of criminal force, the commission of mischief or criminal trespass or other offence, or resistance to the execution of any law or of any legal process. Offences under Sections 143 and 147 must always be present when the charge is laid for an offence like murder with the aid of Section 149, but the other two charges need not be framed separately unless it is sought to secure a conviction under them. It is thus that Section 143 is not used when the charge is under Section 147 or Section 148, and Section 147 is not used when the charge is under Section 148. Section 147 may be dispensed with when the charge is under Section 149 read with an offence under the Indian Penal Code."

13. In Ramachandran v. State of Kerala, (2011) 9 SCC 257 : (2011) 3 SCC (Cri) 677 : 2011 SCC OnLine SC 1203 at page 266, hon'ble Supreme Court has observed that:

"Section 149 IPC has essentially two ingredients viz. (i) offence committed by 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 (under Section 141 IPC) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object.

For "common object", it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on the spur of the moment; it is enough if it is adopted by all the members and is shared by all of them.

In order that the case may fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.14 of 26 assembly, it may yet fall under the second part of Section 149 IPC if

it can be held that the offence was such as the members knew was likely to be committed. The expression "know" does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that if a body of persons go armed to take forcible possession of the land, it would be right to say that someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149 IPC. There may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149 IPC cannot be ignored or obliterated.

However, once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object."

14. In *Masalti v. State of U.P.* [AIR 1965 SC 202 : (1965) 1 Cri LJ 226] , the Supreme Court has held that:

"The crucial question for determination in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly."

15. In *K.M. Ravi v. State of Karnataka* [(2009) 16 SCC 337 : (2010) 3 SCC (Cri) 281] Supreme Court has observed FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.15 of 26 that mere presence or association with other members alone does not per se become sufficient to hold every one of them criminally liable for the offences committed by the others unless there is sufficient evidence on record to show that each intended to or knew the likelihood of commission of such an offending act.

16. In *State of U.P. v. Kishanpal* [(2008) 16 SCC 73 :

(2010) 4 SCC (Cri) 182] Supreme Court has held 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. Mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in prosecution of the common object or such as the members of the assembly knew were likely to be committed.

17. In *Amerika Rai v. State of Bihar* [(2011) 4 SCC 677 :

(2011) 2 SCC (Cri) 429] Supreme Court has opined that for a member of an unlawful assembly having common object what is liable to be seen is as to whether there was any active participation and the presence of all the accused persons was with an active mind in furtherance of their common object. The law of vicarious liability under Section 149 IPC is crystal clear that even the mere presence in the unlawful assembly, but with an active mind, to achieve the common object makes such a person vicariously liable for the acts of the unlawful assembly.

18. In *Charan Singh v. State of U.P.* [(2004) 4 SCC 205 :

2004 SCC (Cri) 1041] the Supreme Court at pp. 209-10, para FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.16 of 26 13 has observed that:

"13. ... The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. ... The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 has to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter."

19. In *Bhanwar Singh v State of M.P.* [(2008) 16 SCC 657 : (2010) 4 SCC (Cri) 378] hon'ble Supreme Court at p. 674, para 44 observed that:

"44. Hence, the common object of the unlawful assembly in question depends firstly on whether such object can be classified as one of those described in Section 141 IPC. Secondly, such common object need not be the product of prior concert but, as per established law, may form on the spur of the moment. Finally, the nature of this common object is a question of fact to be determined by considering nature of arms, nature of the assembly, behaviour of the members, etc."

20. Thus, the Apex Court has warned through a catena of judgments that where general allegations are made against a large number of persons the court would categorically scrutinise the FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.17 of 26 evidence and hesitate to convict the large number of persons if the evidence available on record is vague. It is obligatory on the part

of the court to examine that if the offence committed is not in direct prosecution of the common object, it yet may fall under the second part of Section 149 IPC, if the offence was such as the members knew was likely to be committed. Further inference has to be drawn as to what was the number of persons; how many of them were merely passive witnesses; what were their arms and weapons. The number and nature of injuries is also relevant to be considered. "Common object" may also be developed at the time of incident.

21. In the present case, accused persons have been charged with offence punishable under S. 143 IPC and section 147 r/w 149 IPC. As discussed above, every offence as punishable under section 143 IPC is implicit in the offence punishable under section 147 IPC. Further, the use of section 149 IPC is not required for offence punishable under section 147 IPC, however, section 149 IPC can be used when any specific offence has been committed by the members of the unlawful assembly other than mentioned in section 147 IPC. Accordingly, in the present matter we shall deal only with the offence punishable under section 147 IPC.

22. For examining the offence under S. 147, the first determination is whether the accused persons formed an unlawful assembly as defined in S. 141 IPC. As a matter legislative policy, a minimum of five persons are required for forming an unlawful assembly. PW1/HC Shafi Ahmed stated that on 18.06.1999 when FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.18 of 26 he went to Shastri Park red light alongwith SHO PS Seelampur a mob was present and shouting slogans. The mob was annoyed due to electricity supply cut. 19 people were found who were part of the mob. In his cross-examination he has stated that he reached the place at about 0045 am which is at a distance at about 1-1.5 kms. He could not tell how many person shouting slogans and how many were silent in the mob. PW4 alongwith HC Balram were on patrolling on 18.06.1999 and at about 09:45 pm when they reached Shastri Park red light 40-50 people came from A, B, C, D Block and obstructed the road at the traffic. He alongwith HC Balram tried to pacify the traffic by failed. He could not identify the accused persons due to long lapse of time. His further examination could not be conducted as he could not be served even through DCP and was accordingly, dropped from the list of witnesses by this Court vide order dated 18.12.2023. PW5 Retd. ACP Rajender Gautam has stated that the local police alongwith district line force apprehended 19 persons. In his cross-examination he could not identify the accused persons due to lapse of time and stated that around 150-200 people were present at the spot. PW7 HC Balram failed to identify the accused persons in Court due to long lapse of time despite his attention being drawn to the accused persons standing in the dock. PW8 ASI Sukhram Pal could only identify the Mohd. Yunus and could not identify the remaining accused. PW9 Retd. ACP H. C. Rana has stated that around 150-200 people had closed the ISBT road and 19 people were arrested and chargesheeted. IO/PW9 to the specific questions he has stated that he had arrested 20 persons, however, on the judicial file there are 20 arrest memos and 21 personal search memos. There is no FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.19 of 26 arrest memo of accused Yunus S/o Abdul Qayyum. In his cross-examination IO has stated that he reached the spot at about 10:10 pm. Rukka was prepared at about 12:15 am, it took him 3-4 hours to prepared the arrest memos of the accused persons.

23. The primary requirement for an unlawful assembly as defined in section 141 IPC is that there should be five or more persons. The present chargesheet has been filed against 21 persons. During

trial 09 accused persons were declared PO and proceedings against accused persons had abated. The identity of the all accused persons have not been established by any of the prosecution witnesses. PW1 has stated that 19 persons were present at the spot. PW4 has stated that crowd of 40-50 people were present at the spot. PW5 in his cross-examination has stated that 150-200 people were present at the spot. IO has stated that he had arrested 20 persons, however, no explanation has been provided for only 20 arrest memos and 21 personal search memos. There is no coherency in the testimonies of the prosecution witnesses and they have not established with certainty the number of persons present and the number of persons apprehended. None of the prosecution witnesses have identified all the persons charged. Accordingly, the prosecution has failed to prove the offence punishable under section 147 IPC.

24. The accused persons have also been charged with offence punishable under S. 186/332/353 IPC. It reads as under:

"186. Obstructing public servant in discharge of public functions.--Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.20 of 26 three months, or with fine which may extend to five hundred rupees, or with both."

332. Voluntarily causing hurt to deter public servant from his duty.--Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

353. Assault or criminal force to deter public servant from discharge of his duty.--Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

25. In Durgacharan Naik v. State of Orissa , (1966) 3 SCR 636 : AIR 1966 SC 1775 : 1966 Cri LJ 1491, hon'ble Supreme Court has observed that:

"We have expressed the view that Section 195 of the Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same or slightly different set of facts and which is not included within the ambit of the section, but we must point out that the provisions of Section 195 cannot be evaded by resorting to devices or camouflage. For instance, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground

that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the Indian Penal Code, though in truth and substance FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.21 of 26 the offence falls in the category of sections mentioned in Section 195 of the Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by mis describing it or by putting a wrong label on it."

26. In the present case, the accused persons have been charged with obstructing public servants Ct. Jeet Singh, HC Balram and Addl. SHO, PS Seelampur Inspector Rajender Gautam from discharging their duties. They have also been charged with using criminal force and assaulting them. Further they have been charged with causing hurt to Home Guard Ct. Karan Singh, Ct. Satish Chand and Addl. SHO Rajender Gautam and deterring them from discharging their duties. Perusal of the testimony of PW5 Retd. ACP Rajender Gautam shows that on 18.06.1999 after receiving the information at about 09:45 pm he went to the spot i.e. Shastri Park main road alongwith HC Rana, Inspector Paras Nath and SI Anwar Khan. They tried to pacify the crowd but they started pelting stones on them and damaged public property including vehicles. He has deposed that during the said course he sustained injury on his person. In his cross- examination he has stated that it was not possible to him to tell the names of accused who had thrown stones upon him by which he had sustained injuries. Home Guard Ct. Karan Singh could not be examined as a witness before this Court as his presence could not be secured even after service through DCP and he was dropped from the list of witnesses on 18.12.2023. Home Guard Ct. Satish Chand was examined as PW3, however, he turned completely hostile and did not support the prosecution case at all.

FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.22 of 26 Ld. APP for State put questions in the nature of cross- examination to him and has deposed that the crowd started pelting stones on police personnel staff and vehicle due to which one Ct. Karan Singh got injured. He denied the suggestion that he and Ct. Karan Singh went to GTB hospital to get their medical done or that Ct. Karan Singh was injured by the crowd. He denied the MLCs of the himself and Ct. Karan Singh. No doctor who had examined the injured have been examined by prosecution as a prosecution witness to establish the nature of injury or the possible causes of injury. In the circumstances, it cannot be said that the prosecution has proved that the accused persons have committed offence punishable under section 332 r/w 149 IPC. PW2/HC Balram has stated that the mob was shouting slogans about electricity and were pelting stones and destroying property. Neither HC Balram nor PW4/Ct. Jeet Singh could not identify any accused persons due to long lapse of time. PW5/ACP Rajender Gautam has also not been able to identify the accused persons other than Mustaq, Manjar and Jaffar. Nowhere in the deposition either PW2, PW4 and PW5 have stated that they were obstructed in discharge of their public functions or any criminal force was used against them or they were assaulted. No MLC or any document suggesting any injury on either of them have been proved by the prosecution. There is no consistency in the deposition of various PWs as discussed above. Therefore, prosecution has failed to prove charge under section 186/353 r/w 149 IPC.

27. In a criminal trial, the burden on the prosecution is beyond reasonable doubt. The reasonable doubt is a rule of caution laid FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.23 of 26 down by the Courts of Law in respect of assessing the evidence in criminal cases. In *Awadhi Yadav v. State of Bihar*, (1971) 3 SCC 116 at page 117, Hon'ble Supreme Court has observed that:

"Before a person can be convicted on the strength of circumstantial evidence, the circumstances in question must be satisfactorily established and the proved circumstances must bring home the offence to the accused beyond reasonable doubt. If those circumstances or some of them can be explained by any other reasonable hypothesis then the accused must have the benefit of that hypothesis. But in assessing the evidence imaginary possibilities have no place. What is to be considered are ordinary human probabilities."

28. In *State of Haryana v. Bhagirath*, (1999) 5 SCC 96 :

1999 SCC (Cri) 658 : 1999 SCC OnLine SC 577 at page 99 Hon'ble Supreme Court has observed that:

"But the principle of benefit of doubt belongs exclusively to criminal jurisprudence. The pristine doctrine of benefit of doubt can be invoked when there is reasonable doubt regarding the guilt of the accused. It is the reasonable doubt which a conscientious judicial mind entertains on a conspectus of the entire evidence that the accused might not have committed the offence, which affords the benefit to the accused at the end of the criminal trial. Benefit of doubt is not a legal dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of the accused. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression "reasonable doubt" is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge."

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29. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book *Wharton's Criminal Evidence* (at p. 31, Vol. 1 of the 12th Edn.) as follows:

"It is difficult to define the phrase 'reasonable doubt'. However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the *Webster* case. He says:

'It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.'

30. In the treatise The Law of Criminal Evidence authored by H.C. Underhill it is stated (at p. 34, Vol. 1 of the 5th Edn.) thus:

"The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt."

31. The evidence brought on record by the prosecution, is not sufficient to link the accused persons to the commission of the crime. As discussed above, the prosecution has failed to prove the offense punishable under section 147 IPC. No offence under FIR No.397/99 State vs. Rashid & Ors. PS Seelampur Page No.25 of 26 section 186/332/353 IPC has been proved as the prosecution has failed to establish the requisite obstruction of public functions or any assault / use of criminal force police personnels.

32. Thus, in view of the above discussion, the Prosecution has not been able to establish beyond reasonable doubt that accused Accused persons have committed offences under S. 147, 186/332/353 r/w 149 IPC. Therefore, accused persons persons are found not guilty in the present case and resultantly, they stand acquitted in the present case.

33. Accused persons are directed to furnish bonds in the sum of Rs.10,000/- each with a surety of like amount u/s 437A Cr.P.C and are directed to be present before the Ld. Appellate Court as and when directed. Digitally signed by VIPUL SANDWAR VIPUL Date:

SANDWAR 2024.03.07
17:12:31
+0530

Announced in the open
Court on 07 th March, 2023

(VIPUL SANDWAR)
MM-02/NE/KKD COURTS

