

State vs . Noor Mohd. on 30 May, 2023

IN THE COURT OF DR. SHIRISH AGGARWAL
CHIEF METROPOLITAN MAGISTRATE, NORTH-EAST
DISTRICT, KARKARDOOMA COURT, DELHI

State Vs. Noor Mohd.

FIR No. 150/2020

Police Station : Khajuri Khas

Under Section: 147, 148, 188, 323, 394 and 427 r/w Section 149
of Indian Penal Code, 1860 (in short "IPC")

Date of institution : 30.06.2020

Date of reserving : 23.05.2023

Date of pronouncement : 30.05.2023

JUDGMENT

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| a) | Serial number of the case : | 783/2020 |
| b) | Date of commission of offence | 24.02.2020 |
| c) | Name of the complainant | Mohd. Rashid |
| d) | Name, parentage and address of the accused | Noor Mohammed @ Noora
s/o Munna Mouji r/o A-1,
Kalia Cable Wali Gali, Milan
Garden, Near Mangal Bazar,
Sabhapur Village, Sonia
Vihar, Delhi |
| e) | Offences complained of | Sections 147, 148, 188, 323,
394 and 427 r/w Section 149
of Indian Penal Code |
| f) | Plea of the accused | Pleaded not guilty. |
| g) | Final order | Acquitted |
| j) | Date of final order | 30.05.2023 |

JUDGMENT

CASE OF THE PROSECUTION

1. The above named accused has been chargesheeted by the police for having committed offences punishable under Sections 147, 148, 188, 323, 394 and 427 r/w Section 149 of IPC.

2. Brief facts of the present case are that on 02.03.2020, the present FIR was registered at PS Khajuri Khas pursuant to receipt of a written complaint on 29.02.2020 from Mr. Shahid.

Complainant alleged that he resides at F-312/15, Khajuri Khas, Delhi-94 and his shop is situated at E-4/4, Khajuri Khas, Near Aadarsh Lakhpat School. He further alleged that on 24.02.2020 at about 6 O' clock some rioters looted some articles lying in his shop (under the name & style of Bharat Glass) and also vandalized it. Investigation of the present case was assigned to ASI Jeevanand.

3. During investigation, IO visited the shop of the complainant which is under the name & style of Bharat Glass at E-4/4, Khajuri Khas, Near Aadarsh Lakhpat School and prepared site plan at the instance of the complainant. On 02.04.2020, SI Sandeep handed over the disclosure statement of the accused Noor Mohd. @ Noora to the IO ASI Jeevanand in case FIR No.221/2020 wherein IO SI Sandeep informed the IO regarding the involvement of the accused in the present case. Thereafter, the IO interrogated the accused Noor Mohd. @ Noora. Meanwhile, Ct. Sangram arrived at the police station who informed the IO that he had seen accused Noor Mohd. @ Noora who had vandalized the shop of complainant and was part of the mob. During interrogation, complainant Mohd. Rashid also came to the police station to enquire about his case who also identified the accused as one of the persons who had vandalized his shop and was part of the mob.

4. IO recorded the statement of the complainant on 02.04.2020 and on the basis of this statement, added Section 394 of IPC. Thereafter, the IO recorded the statement of the PCR callers. IO interrogated the accused Noor Mohd. @ Noora who disclosed his involvement in the present case. Thereafter, the IO arrested the accused vide arrest memo dated 02.04.2020.

5. During further investigation, IO took the accused to the place of the incident and prepared the pointing out memo.

6. After completion of investigation, on 30.06.2020, the present chargesheet was filed before Duty Magistrate, North-East District, Delhi against the aforesaid accused. Thereafter, cognizance of the offences was taken.

CHARGES

7. On 21.09.2022, charges were framed against the accused for offences punishable under Section 147, 148, 188, 323, 394 and 427 r/w Section 149 of IPC to which the accused pleads not guilty and claimed trial. The charge was framed in the following terms:-

That Firstly on 24.02.2020 at the shop of Mohd. Rashid S/o Mohd. Shahid situated at E-4/4, Khajuri Khas, Near Adarsh Lakhpat School, Delhi (By the name and style of Bharat Glass) within the jurisdiction of PS Khajuri Khas, you alongwith your other associates (unidentified) armed with sticks had formed an unlawful assembly, the common object whereof was to commit mischief and robbery in that area and in violation of the Proclamation issued under Section 144 Cr.P.C by the competent authority, committed rioting and you (Noor Mohammed @ Noora) being member of the aforesaid unlawful assembly having knowledge of the common object of the unlawful assembly and thereby committed offences punishable under sections 147 and 148 of IPC read with section 149 and Section 188 of IPC and within my

cognizance.

Secondly, on the aforesaid date, time and place, you being members of unlawful assembly alongwith your other associates (unidentified) vandalized the aforesaid shop (by the name and style of BHARAT GLASS) belonging to complainant Mohd. Rashid S/o Mohd. Shahid, caused simple injury to the complainant Mohd. Rashid and committed robbery of various articles lying therein, besides of Rs.50,000/- and thereby committed offences punishable under Sections 323, 427, 394 read with section 149 IPC and within my cognizance.

DESCRIPTION OF PROSECUTION EVIDENCE:-

8. Prosecution examined six witnesses in support of its case, as per following descriptions:

Sl No. & Role of witness & Description of Proved Name of documents documents/case witness properties PW-1 He is the complainant in the Ex.PW-1/A is a Mohd. present case. PW-1 gave a written written complaint of Rashid complaint in the PS on PW1- complainant 29.02.2020. He identified his signature at point A on the Ex.PW-1/B is the complaint. Police officials visited site plan prepared at his shop and prepared site plan at the instance of his instance. PW-1 identified his PW1/complainant signature at point A on the site plan. However, the said witness PW-1/C are the was declared hostile by the photographs of the prosecution since he did not shop of the identify the accused as the complainant/PW1 offender.

PW-2 HC He was working as Reader to concerned SHO. On Devender 24.02.2020 he received copy of the order under Section 144 Cr.PC issued by the DCP, North-East District through Dak. PW2 informed SHO about the same.

On the direction of SHO, PW2 announced proclamation under Section 144 Cr.PC in the area of PS Khajuri Khas through loud speaker/handler PW-3 HC On 24.02.2020, he was posted at Ex.PW-3/A is the Sangram Khajuri Khas Police Station. PW3 arrest memo Singh was present at the spot when the riot took place. He stated that the Ex.PW-3/B is the rioters vandalised the shop of the disclosure statement complainant under the name & of the accused style of 'M/s Bharat Glass'. Ex.PW-3/C is the pointing out memo On 02.04.2020 he identified the which was prepared accused Noor Mohd. @ Noora at the instance of who was being interrogated by the accused ASI Jeevanand in PS Khajuri Khas as the same person who had taken part in riots by vandalizing the shop of the complainant under the name & style of 'Bharat Glass'.

On his identification, the accused was arrested by ASI Jeevanand.

PW-4 ASI PW-4 was the first IO in the Jamshed Ali present case. On 02.03.2020, he received one complaint of complainant Mohd. Rashid from the Reader to the SHO for registering FIR and further investigation.

Thereafter, PW-4 prepared rukka which he had handed over to DO SI Chanderpall Singh for registering FIR.

ON 10.03.2020, he had submitted the case filed to MHC(M) Record Room.

PW-5 ASI On 11.03.2020 PW-5 was posted as ASI at PS Khajuri Jeevanand Khas. On that day he received the file from MHC(R) of PS Khajuri Khas.

On 12.03.2020, he contacted the complainant Mohd. Rashid and went to the place of incident alongwith the complainant Mohd. Rashid where he prepared the site plan at the instance of the complainant. He also took photographs of the vandalized shop of the complainant. Thereafter, PW-5 recorded the statement of the complainant at the place of incident.

On 02.04.2020, PW-5 arrested the accused vide arrest memo dated 02.04.2020. Thereafter, he had taken the accused to the place of incident and prepared the pointing out memo.

PW-6	In the month of October, 2021, he was posted as SI at
Inspector	PS Khajuri Khas. PW-6 on instructions of the SHO PS
Rajeev	Khajuri Khas, received case file from MHC(R) PS
Kumar	Khajuri Khas

On 23.11.2021, he obtained the complaint under Section 195 Cr.PC from the office of DCP, North_East District. Thereafter, on 25.11.2021, he recorded the statement of Ct. Devender who had announced the prohibitory order under Section 144 Cr.PC within the jurisdiction of PS Khajuri Khas. Thereafter, he filed the supplementary chargesheet.

ADMITTED DOCUMENTS UNDER SECTION 294 CR.PC

9. FIR Ex.A-1, Endorsement on ruka Ex.A-2, G.D. No.227-A Ex.A-3, PCR Forms Ex.A-4, G.D. Entry No. 226-A Ex.A-5, PCR Forms Ex.A-6, G.D. Entry No.222-A Ex.A-7, PCR Forms Ex.A-8, PCR Forms Ex.A-9, 65-B of the Indian Evidence Act Ex.A-10, G.D. Entry No.229-A Ex.A-11, SOC report Ex.A-12, Prohibitory order under Section 144 Cr.PC Ex.A-13 and Complaint under Section 195 Cr.PC Ex.A-14.

STATEMENT OF ACCUSED UNDER SECTION 313 Cr.P.C/DEFENCE OF THE ACCUSED

10. The accused in his statement under Section 313 Cr.P.C recorded on 18.04.2023 denied the entire evidence put to him taking plea that he has been falsely implicated in this case only to work out the case and he has not been identified by the witnesses. Accused did not opt to lead any evidence in his defence.

FINAL ARGUMENTS

11. The Court heard final arguments addressed by the Ld. Special Public Prosecutor and perused the record. Despite grant of opportunity, Ld. Counsel for the accused did not come forward to address

arguments.

ANALYSIS AND FINDINGS

12. The relevant legal provisions are reproduced below:

Section 141 IPC defines Unlawful assembly as: An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is First- To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or Second- To resist the execution of any law, or of any legal process; or Third- To commit any mischief or criminal trespass, or other offence; or Fourth - By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or Fifth - By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.--An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Section 142 IPC provides the consequences of joining an unlawful assembly as follows:-

"Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly."

Section 146 IPC defines Rioting as follows:-

"Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting."

Sections 147 IPC provides punishment for rioting which is as follows:-

"Whoever, is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 148 IPC provides punishment for rioting armed with deadly weapon which is as follows:-

"Whoever, is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Section 149 IPC provides that every member of unlawful assembly will be guilty of offence committed in prosecution of common object. It is as follows:

"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"

Section 188 IPC provides for punishment for disobedience of order promulgated by public servant. It is as follows:

"whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both "

Section 319 defines hurt as follows:

"Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt"

Section 323 provides for punishment for voluntary causing hurt, as follows:

"Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both"

Section 394 provides for punishment for causing hurt while committing robbery. It is as follows:

"If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or

attempting to commit such robbery, shall be punished with 1[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Section 425 defines mischief as follows:

"Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief"

Section 427 provides for punishment for causing loss or damage to the amount of Rs.50 or upwards by committing mischief. It is as follows:

"Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both"

IDENTIFICATION OF THE ACCUSED

13. After careful perusal of the record, this Court is of the opinion that the identification of the accused as the offender by the prosecution witness/es is not believable for various reasons.

14. As per the chargesheet, the complainant Mr. Rashid and the concerned beat officer HC Sangram Singh had identified the accused Noor Mohd. as the offender. However, when evidence was recorded, the complainant Mr. Rashid examined as PW-1 failed to identify the accused as the offender. Infact, the complainant stated that he never informed the police that he can identify the offenders. He also denied identifying the accused as the offender in the police station.

15. The complainant Mr. Rashid testified that at 10 AM on 24.02.2020, he opened his shop and was present at the shop. However, after about one hour, he heard that riots had begun in the area. So he left the shop without closing it and went back home. He stated that after 2-3 days, when the situation became normal, he returned to his shop where he found that articles in it had been vandalized. He testified that the police did not arrest anyone in his presence.

16. With the permission of the Court, the Ld. Special Public Prosecutor cross-examined the complainant. During cross- examination, the witness denied having stated to the police that he can identify the persons who were present in the riots. He denied that the accused was arrested in his presence or that he identified him in the police station on 02.04.2020. He also denied that he has been won over by the accused.

17. PW-3 HC Sangram Singh who was the beat officer at the place where the office of the complainant is situated, deposed that he was present at the spot of offence and identified some persons in the mob. He deposed that he had tried to stop the mob, but could not control the same.

18. PW-3 further deposed that on 02.04.2020, ASI Jeevanand was interrogating one person whose name was later revealed as Noor Mohammad. He stated that he identified the said person and informed that he is the same person who had taken part in riots by vandalizing and arsoning M/s Bharat Glass. He deposed that thereafter the accused was arrested by the IO and his personal search was conducted. The witness stated that he can identify the accused if shown to him. However, on behalf of the accused, it was submitted that the accused is not disputing his identity as he had sought exemption from personal appearance.

19. During cross-examination PW-3 admitted that before 02.04.2020, he had not informed the IO that he can identify the rioters and that he had not even informed his superior officers in writing in this regard.

20. He also admitted that he was at a distance of 40-50 meters from the spot. He admitted that he had not made any video of rioting on that day or of any incident. He admitted that he was carrying mobile phone which had the option of recording video.

21 PW-3 also admitted that he was accompanied by 2-3 police officials at that time.

LAW ON APPRECIATION OF EVIDENCE OF SOLITARY EYE WITNESS IN CASES OF RIOTING

22. It is the case of the State that the accused has committed offences under Sections 147, 148 r/w Section 149, 188, 323, 394 and 427 r/w Section 149 of IPC. In order to prove these offences, the prosecution is required to prove that the accused, being member of unlawful assembly had committed the offence of rioting.

23. A word of caution was added by the Hon'ble Supreme Court in cases of rioting, where large number of accused persons were involved holding that it was not safe to rely upon uncorroborated and unsubstantiated testimony of one solitary witness. In fact, in the case of Masalti vs State of U.P. AIR 1965 SC 202, the Hon'ble Apex Court had laid down a principle that where a court has to deal with the evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two/ three or more witnesses who give a consistent account of the incident. It was further observed by the Hon'ble Court that in a sense the test may be described as mechanical; but it cannot be treated as irrational or unreasonable. This principle which was laid down by the Hon'ble Supreme Court in the case of Masalti (supra) in the year 1965 was reiterated by Hon'ble Apex Court in the case of State of U.P. vs Dan Singh & Ors. reported in (1997) 3 SCC

747. In the said case, the Hon'ble apex Court adopted the above principle/ test laid down in the case of Masalti (Supra) while examining the testimonies of eye witnesses in order to ascertain the guilt of the accused beyond reasonable doubt and observed that:

"48... Even though we see no reason to disregard their evidence, nevertheless, keeping in mind the observations of this Court in Masalti's case (supra), we feel that even though a very large number of members of the unlawful assembly had taken

part in the attack on the Doms, it would be safe if only those of the respondents should be held to be the members of the unlawful assembly who have been specifically identified by at-least four eye witnesses..."

24. In view of the aforementioned decisions, this Court finds it unsafe to rely on uncorroborated testimony of a single purported eye witness i.e. HC Sangram Singh who has been examined as PW-3. This is more so because his testimony has been found to be in contradiction with the other evidence on record and also because of the other deficiencies, drawbacks and infirmities in his own testimony.

Law on appreciation of Ocular Evidence

25. The account of an eyewitness is considered to be the best evidence in any case. However, it is settled law that the testimonies of the eyewitnesses are required to be carefully analyzed to test the reliability, credibility and truthfulness of the witness. The ocular evidence has to be tested for its inherent consistency and inherent probability of the version and also for the consistency of the account given by the witness. This principles was laid down by the Hon'ble Supreme Court in the case of Dilawar Hussain & Ors. vs State of Gujarat & Anr. (1991) 1 SCC 253. The said case was of an incident of communal riots and mob violence on the basis of caste. The apex court laid down principles regarding appreciation of evidence and also observed the parameters on the basis of which the credibility/ truthfulness of a witness can be ascertained. The relevant paragraph in this regard is reproduced below:

"3... Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape. But on reliable evidence truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution howsoever abhorring and hateful cannot reflect in deciding the guilt."

"4. Misgiving, also, prevailed about appreciation of evidence. Without advertent to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether, it is an ordinary crime or a crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely, if depositions are honest and true. Whether the witnesses, who claim to have seen the incident in this case, withstand this test is the issue? But before that some legal and general questions touching upon veracity of prosecution version may be disposed of....."

26. In the recent judgment of the Hon'ble Supreme Court in the case of Balu Sudam Khalde Vs. State of Maharashtra CrI. Appeal No.1910 of 2010 decided by the Hon'ble Supreme Court on 29.03.2023, it was held that in assessing the value of evidence of an eye witness, one of the principle considerations is whether there is anything inherently improbable or unreliable in the evidence. It was held that the circumstances elicited from the eye witness himself or established by other evidence tending to improbablise or discredit the veracity of the statement, will have a bearing upon the value which a Court would attach to the evidence.

27. In view of the aforementioned decisions, this court will examine the testimony of the sole purported eye witness HC Sangram Singh and that of the other witnesses to assess how much value the Court can attach to the evidence of HC Sangram Singh.

DELAY IN RECORDING STATEMENTS UNDER SECTION 161 CR.PC OF EYE WITNESSES

28. The offence was committed on 24.02.2020. Complaint was given by PW-1 Mr. Mohd. Rashid to the police on 29.02.2020. FIR was registered on 02.03.2020. The sole eye witness HC Sangram Singh was posted on the Beat where the shop of the complainant is situated. He claims to be present at the place of offence when the offence took place and to have witnessed it. However, during cross-examination he admitted that he never informed the IO or any superior officer that he had witnessed the offence being committed and that he can identify some of the offenders.

29. It is hard to believe that a police officer who has witnessed an offence being committed in his area of posting did not make any complaint in this regard. He never reported the matter at his police station for registration of FIR. He did not call up 100 number for seeking immediate police aid. He did not make any attempt to arrest any of the offenders. In his examination-in- chief, he has claimed that he tried to stop the mob, but could not control the same. If he have the courage of making efforts to stop the mob, he could have also made attempt to arrest the offenders or to atleast report the crime if he had indeed witnessed it. He did not even bother to ask the complainant whether the complainant had reported the matter to the police.

30. If for some reason he could not do his duty at the time when the offence was committed, he could have atleast reported it later on the same day or on a subsequent day. He ought to have given a written complaint to the police station. He did not do so even at any point of time in the future when the volatility subsided.

31. It is hard to fathom that a police officer who is courageous enough to make efforts for stopping the mob just stood there as a mute spectator when the rioting and plundering was taking place. He did not even deem it fit to make a video of the offence being committed, even though he was at a relatively safe distance of 40-50 meters from the place of offence and was accompanied by 2-3 other police officers. No explanation has been given by the said witness who is a police officer for standing by and just watching and waiting.

32. It is too much of a coincidence that HC Sangram Singh and the complainant Mr. Mohd. Rashid happen to be at the police station on 02.04.2020 at the time when the accused herein was being

interrogated by the IO ASI Jeevanand in another case and that too at the place of the police station where the accused was being interrogated. Admittedly, the complainant did not frequent the police station and it was only the first time after registration of FIR that the complainant had come to the police station to enquire about his case.

33. Admittedly, till 02.04.2020, HC Sangram Singh never disclosed to anyone that he can identify the offenders. As per the prosecution, he disclosed the same for the first time on 02.04.2020 when he happen to see the accused Noor Mohd. at the police station. His statement under Section 161 Cr.PC was recorded by the IO only on 02.04.2020. Prompt reporting of crime is expected from a police officer specially when he had witnessed the crime happening at his place of duty. The fact that there was a substantial delay on part of HC Sangram Singh in disclosing material information to the IO creates a doubt on the veracity of his version that he can identify the offender.

34. The prosecution has failed to bring on record the reasons for delay in HC Sangram Singh reporting the matter to the investigating officer. The fact that he did not take any action when he purportedly witnessed the crime also creates a doubt on the veracity of his testimony.

35. In the case of Harbeer Singh Vs. Sheeshpal & Ors. 2017 (1) JCC 289, the following was held:

"17. However, Ganesh Bhavan Patel Vs. State Of Maharashtra, (1978) 4 SCC 371, is an authority for the proposition that delay in recording of statements of the prosecution witnesses under Section 161 Cr.P.C., although those witnesses were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case. [See also Balakrushna Swain Vs. State Of Orissa, (1971) 3 SCC 192; Maruti Rama Naik Vs. State of Maharashtra, (2003) 10 SCC 670 and Jagjit Singh Vs. State of Punjab, (2005) 3 SCC 68]. Thus, we see no reason to interfere with the observations of the High Court on the point of delay and its corresponding impact on the prosecution case.

18. Further, the High Court has also concluded that these witnesses were interested witnesses and their testimony were not corroborated by independent witnesses. We are fully in agreement with the reasons recorded by the High Court in coming to this conclusion.

19. In Darya Singh Vs. State of Punjab, AIR 1965 SC 328 = 1964 (7) SCR 397, this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said:

"There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully.....But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by

such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence.....If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised."

36. In the case of John Pandial Vs. State (2010) 14 SCC 129, Hon'ble Supreme Court held that statement of eye witnesses should be recorded immediately or with least possible delay. It was held that early recording of statement gives credibility to evidence of witnesses, but is not an absolute rule that where the statement is recorded later, witness is false or a trumped - up witness. It was held that credibility of the witness will depend on the quality of evidence of the witness.

37. In view of the aforesaid decisions, it can be concluded that due to delay in examination of the purported eye witness HC Sangram Singh, it gives rise to suspicion and the Court has to carefully examine his testimony for infirmities.

38. For unknown reasons neither he nor the other witnesses disclosed the identity of the 2-3 other police officers who were with HC Sangram Singh at the time of offence. These 2-3 witnesses have not been examined even though investigation in riots cases was being done under the direct supervision of senior police officers and it is settled law that in cases of rioting, conviction can be sustained only if there is consistent account of the incident given by atleast 2-4 witnesses.

39. The prosecution has failed to give any plausible explanation for non-joining the 2-3 other police officers who were purportedly accompanying PW-3 at the place of offence. This casts a serious doubt about the veracity of the entire prosecution case that PW-3 had indeed seen the accused Noor Mohammad committing the offence.

40. It is the case of the prosecution that the complainant Mr. Mohd. Rashid himself identified the accused as the offender. However, this has been denied by the complainant. No explanation has been given by the State as to why the complainant would deny identifying the accused. Only a suggestion was given by the Ld. SPP for the State to the complainant during his cross-examination that he has been won over by the accused. No further questions were put to the witness. It is hard to believe that the accused who appears to be from a very humble background could win over the complainant. As per the disclosure of the accused recorded by the police, the accused makes seat covers in Bhajanpura area. In the recent case of Balu Sudam Khalde Vs. State of Maharashtra Crl. Appeal No.1910 of 2010 decided by the Hon'ble Supreme Court on 29.03.2023, it was held that when evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the Accused.

(c) The evidence of injured witness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly.

41. In view of the aforementioned recent decision of the Hon'ble Supreme Court which has enunciated the previous decisions on how to evaluate testimony of the victim, testimony of the complainant Mr. Mohd. Rashid is to be given precedence over testimony of the police witnesses. Testimony of the complainant is to be given greater evidential value. There is no reason brought on record by the State for which the complainant would allow the accused to escape punishment.

42. A victim usually has a better opportunity to see offenders from a closer distance and to note their appearance and facial expressions. However, the victim herein i.e. the complainant Mr. Mohd. Rashid has not identified the accused as the offender. Infact, as per the testimony of the complainant, he cannot identify any of the offenders. He denied telling the police that he can identify the offenders. Even in his first handwritten and signed complaint given to the police identified as Ex.PW-1/A, he did not mention that he had seen the offenders and can identify them. If he had seen the offenders and could have identified them, he would have mentioned this in his complaint. The fact that the State falsely cited the complainant as a witness who can identify the accused as the offender, indicates that the case of the prosecution that the offence was committed by the accused Noor Mohammad is false.

43. It is the tendency of the police witnesses to speak in line with the police case. Delhi police being a disciplined force, a Head Constable is under the influence of the SHO and the supervisory police officers. It appears that his statement was procured and prepared falsely and belatedly to solve this case.

44. It is also observed that the Test Identification Proceedings (TIP) of the accused was not conducted after he was purportedly identified by HC Sangram Singh at the police station. No efforts were made by the police to keep the accused away after he was identified by HC Sangram Singh and before the complainant could see him, so that Test Identification Parade can be carried out. This creates a doubt in the case of the prosecution. The significance of TIP has been noted in the case of Rameshwar Singh vs State of Jammu & Kashmir 1971 SCC CrL. 638, wherein the Hon'ble Supreme Court while dealing with the issue regarding the evidence relating to identification of the accused by the witness has observed as under:

"6..... It may be remembered that the substantive evidence of a witness is his evidence in court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after the former's arrest is of vital importance because it furnish to the investigating agency an assurance that the investigation is proceeding on right lines in addition to furnishing a corroboration of the evidence to be given by the witness later in court at the trial.

From this point of view it is a matter of great importance both for the investigation agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards are effectively taken so that the investigation proceeds on correct lines for punishing the real culprit. It would, in addition, be fair to the witness concerned who was a stranger to the accused because in that event the chances of his memory fading are reduced and he is required to identify the alleged culprit at the earliest possible opportunity after the occurrence. It is thus and thus alone that justice and fairplay can be assured both to the accused and to the prosecution. The identification during police investigation, it may be recalled, is not substantive evidence in law and it can only be used for corroborating or contradicting evidence of the witness concerned as given in court. The identification proceedings, therefore, must be so conducted that evidence with regard to them when given at the trial, enables the court safely to form appropriate judicial opinion about its evidentiary value for the purpose of corroborating or contradicting the statement in court of the identifying witness."

45. Since TIP of the accused was not conducted by the police for identification by the complainant, it can be inferred that it was not carried out since the police was already aware that its case is fabricated and the accused has been shown as the offender only for solving of this case.

CONTRADICTIONS IN THE TESTIMONY OF PW-1 and PW-3

46. The complainant Mr. Mohd. Rashid examined as PW-1 testified that he had opened his shop at 10 AM on 24.02.2020 and after about one hour, when he heard that riots had begun in the area, he got scared and left the shop without closing it and went back home. It is after 2-3 days, when the situation had become normal that he returned to his shop and found that the articles therein had been vandalized. On the other hand, in the complaint given by the said witness to the police on 02.02.2020 identified as Ex.PW-1/A, the complainant testified that the offence of loot and vandalism had taken place at 6 O' clock on 24.02.2020.

47. As per the FIR identified as Ex.A-1, the offence was committed at the shop of the complainant at 06:00 PM on 24.02.2020. As per the testimony of the complainant, the complainant had left the shop in the morning of 24.02.2020 and returned after 2-3 days. Since the complainant had already left the shop, it is not clear how he learnt that his shop was vandalized and looted at 06:00 PM. Hearsay evidence is not admissible. The State has not led any evidence which establishes that the offence had indeed taken place at 06:00 PM. Even the purported eye witness HC Sangram Singh has not disclosed the time of offence.

48. Even though in the complaint given to the police by Mr. Mohd. Rashid identified as Ex.PW-1/A, it is stated that his shop was looted, this allegation which is a material fact is missing from the testimony of PW-1. PW-1 only deposed that his shop was vandalized. Therefore, there is contradiction in the version of the complainant narrated by him in his complaint and as narrated by him in his testimony.

49. HC Sangram Singh who did not even bother to report the matter immediately to his superiors and did not even make a video of the offence claims to have tried to stop the mob. It is hard to believe that such a person would risk his life to stall the attempts of a mob of rioters. As such, it appears that the testimony of HC Sangram Singh is false.

50. During cross-examination, PW-3 testified that he was at a distance of 40-50 meters from the place of offence. It is doubtful if HC Sangram Singh could have clearly seen and identified one of the several rioters from such a long distance. Also, it is hard to understand how from such a long distance, PW-3 tried to stop the mob as he claims to have done.

CONCLUSION

51. The burden of proof on the prosecution is to prove the case by leading convincing evidence to prove the guilt of accused persons beyond reasonable doubt. The accused persons cannot be convicted on the basis of mere probabilities or presumptions. Suspicion, howsoever grave may be, cannot take place of proof. Every benefit of doubt goes in favour of accused persons.

52. In view of the above discussion, since the prosecution has failed to prove its case beyond reasonable doubt, the accused Noor Mohammad @ Noora stand acquitted of the offences punishable under Section 147, 148, 188, 323, 394 and 427 r/w Section 149 of Indian Penal Code.

53. File is ordered to be consigned to record room as per rules (Announced in the open court on 30.05.2023) (Shirish Aggarwal) Chief Metropolitan Magistrate North-East District, KKD Courts Delhi, 30.05.2023