

State vs Joginder Singh on 4 March, 2024

IN THE COURT OF SH. AYUSH SHARMA, MM-02, NORTH WEST
DISTRICT, ROHINI COURTS, DELHI

STATE VS. JOGINDER SINGH & ORS.

FIR NO. 180/2004

PS: KANJHAWALA

U/S: 147/149/151/152/186/332/353/427 IPC

Date of institution of the case :	15.02.2006
Date of judgment reserved :	12.10.2023
Date of commission of offence :	28.07.2004
Name of the complainant :	SI Hansraj No. D-3309, PIS No. 16940093, PS Kanjhawala
Name of accused and address :	Joginder S/o Net Ram R/o Village Karala, Delhi. Raj Kumar S/o Nafe Singh R/o Village Kanjhawala, Delhi. Joginder S/o Sultan Singh R/o Village Kanjhawala, Delhi. Ishwar S/o Jailal R/o Village Kanjhawala, Delhi. Raj Roop S/o Goverdhan R/o Village Karala, Delhi. Ram Kumar S/o DharamPandit R/o Village Karala, Delhi (deceased). Bijender S/o Ram Singh R/o Village Mubarakpur, Delhi.
Offence complained of :	147/149/151/152/186/332/353 427 IPC
Plea of the accused :	Pleaded not guilty
Date of Judgment :	04.03.2024
Final order :	Held not guilty/Acquitted.

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State
vs.
Joginder & Ors.

FIR No. 180/2004 PS Kanjhawala

Page No. 1 / 41

JUDGMENT

I. CASE OF THE PROSECUTION

1. The prosecution's case revolves around the incident that took place in the afternoon of 28.07.2004 in Village Karala and Madanpur Dabas. Residents of Village Karala and Madanpur Dabas were protesting against the shortage of water supply, which led them to assemble at the water tank situated in Village Karala from 25/26.07.2004. Police were deployed for security at the water tank in Karala on the intervening night of 27/28.07.2004. On 28.07.2004, officers including SHO and other personnel namely SI Hansraj, SI Ramkumar, SI Kishanlal, SI Amlanand, ASI Ramkumar, ASI Ramchandra arrived at the water tank and observed a gathering of males and females raising slogans against the officers of Delhi Jal Board ('DJB') and government. The SHO and officers of DJB along with former Labour Minister Sahib Singh Verma appealed to the crowd to maintain peace and assured them of resolving the water problem. Some people dispersed but others remained at the spot. Around 2 pm, the situation escalated as the mob turned violent. They damaged the property including breaking the glasses of a DTC bus bearing no. DL 1PB 1767 and SDMs gypsy bearing no. DL 6CC 0069. The mob also deflated the tires of bus bearing nos. DL 1PB 1675, DL 1PB 5579, DL 1PB 1974 and truck bearing nos. HR 46A 0478 and HR 46A 2499. Stones were also thrown at the police force. The police used force to disperse the mob, resulting in injuries to ASI Ramchandra, HC Ramchandra, Ct. Rajbir and Ct. Ramesh sustained injuries. The present FIR was registered based on these events and after conclusion of investigation, AYUSH AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:19:31 +0530 Joginder & Ors.

chargesheet u/s 147/149/151/152/186/332/353/427 IPC was filed and the accused persons were sent for trial.

II. COURT PROCEEDINGS

2. Vide order dated 01.11.2006, the Id. Predecessor of this court took cognizance of the offence and accused persons were thereafter summoned in the present case. Pursuant to the appearance of the accused persons, they were supplied with the copy of chargesheet in compliance of Section 207 CrPC. Upon hearing the arguments, vide order dated 19.03.2008, charge u/s 147/149/151/152/186/353/332/427 IPC were ordered to be framed against all the accused persons. The accused persons pleaded not guilty and the matter was listed for Prosecution Evidence ('PE'). It is pertinent to mention that during the pendency of trial, accused Ram Kumar expired and proceedings qua him stood abated vide order dated 16.03.2013.

III. EVIDENCE OF THE PROSECUTION

3. In order to substantiate its case, the prosecution has examined twenty- five witnesses in toto. The witnesses can be divided into following categories:

a. Public witnesses: Krishan Singh (PW3), Neeraj (PW7), Sanjeev Rana (PW10), Narayan Dass (PW11), Ranbir Singh (PW13) and Pratap Singh (PW23).

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b. Police Witnesses: ASI Ram Chander (PW1), HC Ram Chander (PW4), HC Mahavir (PW5), Retired HC Rajpal (PW8), ASI SriBhagwan (PW9), Retd. Insp. RK Dahiya (PW12), Insp. Hansraj (PW21), SI Rajbir (PW22), Retd. SI Amlanand (PW24).

c. Formal Witnesses: HC Sukhpal (PW2), HC Vikram Singh (PW6), Ujender (PW14), Raj Kumar (PW15), Dashrath Yadav (PW16), Dr. Brijesh Singh (PW17), Dharampal (PW18), Rajesh (PW19), Sukhvir Singh (PW20), and HC Bhanwar Singh (PW25).

Public witnesses

4. PW3 Krishan Singh deposed that on 28.07.2004, he was on duty at bus No. DL 1PB 1974 with driver Hari Singh. He further deposed that this bus was plying as Mudrika Seva and they took the said bus from Azadpur towards Qutubgarh and when they reached at Karala Road, they saw that several public persons had gathered there and the road was blocked. He further deposed that all those persons were protesting and shouting slogans in regard to water board. He further deposed that some of them came towards their bus and punctured the tires of the bus. He further deposed that he did not see police officials or any scuffle over there. This witness was also cross examined by Ld. APP after taking permission of the court as he was not supporting the case of prosecution. In his cross-examination by Ld. APP, PW3 denied that some persons forcefully stopped their bus. He further stated that he cannot say whether the public persons were shouting slogans against AYUSH SHARMA SHARMA Date: 2024.03.04 14:19:52 +0530 State Joginder & Ors.

Government and public officers or that whether they were demanding for sweet water (normal water). He denied that in his presence police officials tried to mollify the public persons and warned them that the procession was illegal and despite that some persons remained on the spot and pelted stones on the vehicles and the police officials. He also denied that public persons broke glasses of the said bus by pelting stones. He further denied that he was deposing falsely due to the fear of accused persons who were having political influence.

5. This witness was not cross examined by Ld. defence counsel despite opportunity being given.

6. PW7 Neeraj deposed that he does not know anything about this case. He further deposed that he had not clicked the photographs and the same might be clicked by the boy who was working at his shop. This witness was also cross examined by Ld. APP after taking permission of the court as he was not supporting the case of prosecution. In his cross-examination by Ld. APP, PW7 denied that on 28.07.2004 on the request of the police officials he had clicked the photographs of DTC buses whose glasses were broken with deflated tyres. He further deposed that he did not click the photographs Mark 7/B/1 to 7/B/9 with the negatives Mark 7/C/1 to 7/C/9. He denied that he has been won over by the accused. He further stated that he does not remember the name of the boy who was working at his shop. He further deposed that he, his brother and one boy were only working at his shop and presently, only he along with his brother are working at the shop. He further deposed that he was not present at his shop and he cannot say AYUSH SHARMA SHARMA Date: 2024.03.04 14:20:01 +0530 State Joginder & Ors.

whether the said boy was taken by the police or not. He denied that he has not disclosed the true facts as he has been won over by the accused persons. He further denied that he was deposing falsely.

7. This witness was not cross examined by Ld. defence counsel despite opportunity being given.

8. PW10 Sanjeev Rana deposed that on 28.07.2004, he boarded the bus of route No.741 plying between Mangla Puri to Village Jaunti (Kanjhawala) and when they reached at Karala Chowk, they saw crowd in front of the bus which got the bus stopped. He further deposed that he and all the passengers deboarded the bus. He further deposed that suddenly, the crowd started shouting slogans regarding deficit water supply and also deflated the tyres of the aforesaid bus. He further deposed that the window glasses of some other buses were damaged by the said mob. He further deposed that the police officials who were present at the spot, pacified the mob and after some time, recovery van repaired the bus and he proceeded towards his destination. He further deposed that he cannot identify the accused persons due to lapse of time. This witness was also cross examined by Ld. APP after taking permission of the court as he was not supporting the case of prosecution. In his cross-examination by Ld. APP, this witness failed to identify the accused persons in the court. He denied that he was intentionally not identifying the accused persons in order to save them. He further denied that he was deposing falsely.

9. This witness was not cross examined by Ld. defence counsel despite AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:20:12 +0530 Joginder & Ors.

opportunity being given.

10.PW11 Narayan Dass deposed that he does not know anything about this case. This witness was also cross examined by Ld. APP after taking permission of the court as he was not supporting the case of prosecution. In his cross-examination by Ld. APP, this witness admitted that on 28.07.2004, he took SDM (SV) towards Kanjhawala office vide Gypsy No. DL 6CC 0069 and when they reached village Karala, they saw crowd in front of their Gypsy who got the same stopped and was shouting slogans against the deficit water supply. He further deposed that all of a sudden, the crowd pelted stones upon the Gypsy due to which left window and rear window got damaged. He further deposed that with the help of police, the SDM was rescued from there. He further deposed that he cannot identify the accused persons due to lapse of time and he failed to identify them on being specifically pointed out by Ld. APP. He denied that he intentionally not identifying the accused persons in order to save them or that he was deposing falsely.

11.This witness was not cross examined by Ld. defence counsel despite opportunity being given.

12.PW13 Ranbir Singh deposed that on 28.07.2004, he was on duty as Conductor at DTC bus bearing No. DL 1PB 1767 plying on route No.106+174 and when they reached at Karala Chowk, they found that several persons had gathered there who were making some protest. He further deposed that those persons stopped their bus and deflated its bus. This witness correctly identified the bus in photographs Mark-

AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:20:21 +0530 Joginder & Ors.

X1. This witness was also cross examined by Ld. APP after taking permission of the court as he was resiling from his previous statement. In his cross-examination by Ld. APP, PW13 stated that he does not remember if the public persons were shouting slogans against Delhi Jal Board as well as Delhi Government. This witness denied that the public persons were shouting slogans for getting sweet water supply or that they were shouting that they will not allow the buses to ply on the said route or that they were threatening to cause damage or that the police officials present there were requesting them not to block the passage or that they were requesting them to maintain peace and tranquility. He further denied that that in the meanwhile, Sahib Singh Verma also reached there or that he was giving them assurance regarding proper supply of water or that he left the spot after requesting them to leave for their houses or that some persons left the spot or that some persons remained there or that they kept on blocking the road and shouting slogans or that police gave them warning to disperse or that they disobeyed the said direction or that despite directions they did not leave the spot or that they took a violent colour at about 2 P.M. or that they started throwing bricks and stones upon the DTC buses and police force. This witness admitted that due to the bricks and stones thrown by the public persons, the panes and glasses were broken. He further deposed that he does not know if any police official sustained any injury in the incident. He admitted that public persons had prevented them from discharging their official duty and caused obstruction and also caused damage to the public property. He further deposed that he cannot identify the members of the said crowd. He denied that accused persons are some of the persons who caused AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 14:20:31 +0530 State Joginder & Ors.

obstruction in performance of his govt. duty and damage to the DTC bus. He also denied that he is not deliberately stating the true and correct facts and not identifying the accused persons as he has been won over by them.

13. In the cross-examination conducted by Ld. Counsel for accused, PW13 stated that he does not remember the timing of his duty on 28.07.2005 or that how many passengers were there in the said bus at the time of incident. He further deposed that he does not know how many public persons and police officials were present at the spot. He denied that he was not on duty at the above said bus or that no damage or obstruction was caused by the public persons or that damage was caused by the police officials in order to falsely implicate innocent public persons in the present case in order to show their efficiency in solving the criminal cases.

14. PW 23 Pratap Singh deposed that on 27.08.2004, he was on duty as Conductor at DTC bus bearing No.1675. He further deposed that he does not remember the complete registration number of the bus and stated that the said bus was plying on route No.741. He further deposed that when they reached Karala Road, some public persons blocked the Karala Road who were raising slogans and demanding for normal water supply. He further deposed that police official also came at the spot. He further deposed that he cannot identify the public persons due to lapse of time and he does not remember anything else regarding this case. This witness was also cross examined by Ld. APP after taking permission of the court as he was not supporting the case of prosecution. In his cross-examination by Ld. APP, this witness AYUSH by AYUSH SHARMA SHARMA Date:

2024.03.04 State 14:20:41 +0530 Joginder & Ors.

admitted that the incident was dated 28.07.2004 and on that day, he was doing duty at DTC bus bearing No. DL 1PB 1675 as Conductor and Rajeev Rana was the driver of the said bus. He further deposed that he does not remember the public persons who were involved in the incident. He further deposed that he does not remember whether the public persons threatened to cause damage to the public property. He further deposed that he does not remember whether Sahib Singh Verma made appeal to the public to calm down and assured them that their water problem will be resolved. He further deposed that he does not remember whether police officials requested the public persons to disperse otherwise, they will take action against them. This witness denied that at about 2 P.M. public persons were raising slogans and agitating and also throwing stones and brick due to which some police officials sustained injuries and some DTC buses were also damaged. This witness failed to identify the accused persons present in the court. He denied that he had been won over by the accused persons.

15. This witness was not cross examined by Ld. defence counsel despite opportunity being given.

Police Witnesses

16. PW1 ASI Ram Chander deposed that on 28.07.2004, he was deputed at water tank where public persons had gathered at about 2 P.M. as there was short supply of water. He further deposed that SHO and officials of Delhi Jal Board were also present there who were requesting the public persons to calm down and to maintain the peace. He further deposed that some of the persons denied to accede to the AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 14:20:50 +0530 State Joginder & Ors.

request and started pelting stones on police party. He further deposed that some of them deflated the tires of government vehicles, raised slogans and broke the window panes of the vehicles and thus created hindrance in discharge of their duties. He further deposed that he was present at the spot along with HC Ram Chander, Ct. Rajbir, Ct. Ramesh and other police officials. He further deposed that he along with HC Ram Chander, Ct. Rajbir and Ct. Ramesh sustained injuries and they were removed to the SGM hospital. PW1 correctly identified all the accused persons who were present in the court. He further deposed that the stones were taken into possession by police vide memo Ex.PW1/A.

17. In the cross-examination by Ld. Counsel for accused, the witness stated that he reached at the spot at 8 A.M. and he does not remember when he finally left the spot for SGM hospital. He further deposed that he did not make any departure entry before leaving the PS for the spot but the concerned DD writer made his departure entry. He further deposed that 250-300 public persons were present at the spot and he can identify only one or two public persons present at that time. He further deposed that the persons who were demanding normal water supply, were throwing the stones. He further deposed that he cannot tell the names of the persons who damaged the Government vehicles. PW1 denied that accused persons were not present at the spot at the time of incident or that they have not done any illegal activity. He also denied that he was deposing falsely.

18.PW4 HC Ram Chander deposed that on 28.07.2004 at about 2 P.M., he along with other staff was present near Karala Water tank when he AYUSH AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:21:00 +0530 Joginder & Ors.

found that several public persons were gathered and SHO, PS Kanjhawala and IO and other police staff were also present there. He further deposed that the public persons were shouting and raising slogans against the officers of Delhi Jal Board and Government for sweet water (normal water). He further deposed that SHO made an appeal to the public for keeping peace but they continued to shout and blocked the road. He further deposed that Senior police officials and officers of Delhi Jal Board also reached there and Ex Minister Sahib Singh Verma also reached at the spot and tried to pacify the public persons. He further deposed that despite his appeal, some public persons remained at the spot and continued to shout. He further deposed that SHO warned them that their assembly was against the law but despite that, public persons started pelting stones upon them and they sustained injuries. He further deposed those public persons stopped the DTC buses and deflated their tires and they also broke the glasses of the buses and trucks. He further deposed that all the accused persons present in the court were the same persons who were involved in the incident. He further deposed that he cannot tell their names.

19.In the cross-examination by Ld. Counsel for accused, PW4 stated that he reached the spot at about 8 A.M. on the date of incident and that he did not make any departure entry. He further deposed that there were about 400-500 public persons who had gathered at the spot. He further deposed that he firstly left the spot at about 3 P.M. for the hospital and reached at the spot again at about 8 P.M. He further deposed that he cannot tell the names of the public persons who were throwing the stones and the persons who had stopped the DTC buses and deflated AYUSH AYUSH SHARMA State SHARMA Date: 2024.03.04 14:21:10 +0530 Joginder & Ors.

their tyres. He denied that accused persons were not present at the spot or that they did not do any illegal activity. He further denied that he was deposing falsely.

20.PW5 HC Mahavir deposed that on 28.07.2004, he along with the SHO and other staff went to the spot, i.e., Paani Ki Tanki, Village Karala where public had gathered and shouting slogans against the Government and Jal Board. He further deposed that the SHO tried to pacify the crowd but the crowd moved towards Karala Chowk and started halting the traffic and puncturing the vehicles. He further deposed that crowd further increased and Sr. police officers also reached the spot and at about 2 P.M., Ex Labour Minister Sahib Singh Verma also reached there. He further deposed that the crowd got infuriated and beaten four police officials and ASI Ram Chander, Ct. Rajbir, HC Ram Chander and Ct. Ramesh sustained injuries and they were moved to SGM Hospital by SI Kishan Lal. He further deposed that crowd also threw stones and broke the glasses of the vehicles. He further deposed that public was demanding for sweet drinking water. He further deposed that the Minister as well as police officials tried to pacify the crowd but they did not stop. He further deposed that DTC buses and private buses were also damaged by the public. This witness correctly identified the accused persons in the court.

21. In the cross-examination by Ld. Counsel for accused, PW5 stated that he does not remember the DD entry vide which he left the PS. He further deposed that he does not know how many police officials left the PS on the said DD entry. He further deposed that he cannot tell the names of the accused persons. He admitted that TIP of accused AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:21:25 +0530 Joginder & Ors.

persons was not done in the PS by him. He denied that accused persons were not present on the spot on the day of incident or that he was deposing falsely at the instance of SHO or that the accused have been framed to work out the blind case. He further deposed that he had no idea of number of public persons who were gathered at the spot. He admitted that the number of persons present at the spot were more than the accused present in the court. He denied that accused persons were not present at the spot or that he was deposing falsely.

22. PW8 Retd. HC Rajpal deposed that on 28.07.2004 on receiving call, he along with SHO went to water tank, Karala where many people had gathered and were shouting slogans against Delhi Jal Board. He further deposed that the officers of Delhi Jal Board and then labour Minister late Sahib Singh Verma were also present. He further deposed that the mob was shouting for water and chanting slogans that they want water and if they do not get water, they will vandalize that place. He further deposed that SHO and Sahib Singh tried to make the people understand and to go back to their home but some of them did not stop and jammed the Karala Chowk and pelted stones on DTC bus and broke its glasses. He further deposed that those people also pelted stones upon the police party and ASI Ram Chander, HC Ram Chander, Ct. Rajbir and others were injured in the stone pelting and consequent action of police and injured were sent to SGM Hospital. He further deposed that after medical treatment, he brought all the said people on the spot. He further stated that he cannot identify the accused persons as 12 years have passed since the incident. This witness was also cross examined by Ld. APP after taking permission of the court as he was not supporting the case of prosecution. In his cross-examination by AYUSH AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:21:35 +0530 Joginder & Ors.

Ld. APP, PW8 stated that he cannot identify the accused persons by name but can identify them by their faces. PW8 only identified accused Ishwar, S/o Jai Lal and Rajroop S/o Goverdhan and remaining accused were wrongly identified by PW8.

23. In the cross-examination by Ld. Counsel for accused, PW8 stated that IO did not call him in the PS for identification of accused persons. He admitted that he identified the accused persons in court for the first time after the incident. He denied that he identified the accused persons at the instance of prosecution.

24. PW9 ASI Shribhagwan deposed that on 28.07.2004, he was on patrolling duty in the area. He further deposed that he left the beat at about 10.25 A.M. and reached at T Point Karala where he saw many people and police staff including SHO, PS Kanjhawala who were trying to pacify the public who were shouting slogans for paucity of water. He further deposed that there were also some people who were instigating the mob for want of normal water and the mob obstructed the way. He further deposed that at that time, Ex Labour Minister Saheb Singh Verma also reached the spot and

tried to pacify the mob. He further deposed that thereafter, some members of the public became furious and started pelting stones on DTC Bus, Gypsy of SDM and other public vehicles. He further deposed that the name of the persons were Raj Kumar and Jogender from Kanjhawala village, Jogender, Raj Roop, Ram Kumar from Karala Village and Bijender Sharma and Ishwar Singh from Mubarakpur Village. PW9 correctly identified all the accused persons present in court. He further deposed AYUSH AYUSH SHARMA SHARMA Date: 2024.03.04 14:21:44 +0530 State Joginder & Ors.

that the public did not disperse and remained vandalizing the public property. He further deposed that SI Hansraj prepared rukka and got FIR registered through Ct. Vikram. He further deposed that after some time public was dispersed and he went from the spot for his duty in beat. He further deposed that accused Joginder of Karala village was arrested on 15.09.2004 by SI Hansraj. He further deposed that photographs Ex.PW9/1 to PW9/9 and the negatives Ex.PW9/10 to PW9/18 were also clicked. He identified the case property i.e. some bricks and stones Ex. P1.

25.In his cross-examination by Ld. Counsel for accused, PW9 stated he reached at the spot on asking of DO vide DD No.19B dated 28.07.2004. He admitted that many people other than accused persons were present at the spot who were uttering slogans and shouting. He further deposed that he cannot say who were pelting stones or uttering slogans and that he never went to identify the accused persons during the investigation. He further admitted that accused persons were not arrested from the spot but were arrested later on. He admitted that he had identified the accused persons in the court for the first time. He denied that he wrongly identified the accused persons or that he was deposing falsely at the instance of IO/SHO or that accused persons were framed to work out the blind case. He also denied that the case property was not present on the spot or that he wrongly identified the same or that no other public person was arrested at the spot. He further denied that he was deposing falsely.

26.PW12 Retd. Inspector R.K. Dahiya deposed that on 28.07.2004, vide DD entry 14, he along with SI Hansraj went to village Karala, near AYUSH AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:21:56 +0530 Joginder & Ors.

water tank as there was water problem. He further deposed that when they reached there, they found that several public persons were gathered there and SHO was also present with his staff. He further deposed that public persons were shouting and raising slogans against Delhi Jal Board and Government for sweet and normal water and they also obstructed the way and deflated the tyres of buses and trucks. He further deposed that in the meantime, Sr. officers of police with extra police staff and the Delhi Jal Board staff reached there. He further deposed that Ex Minister Saheb Singh Verma also reached there and they all tried to pacify the public. He further deposed that some public persons still remained there and continued raising the slogans. He further deposed that at about 2 P.M., the mob came on the main road and started pelting stones and bricks on the vehicles and on the police persons. He further deposed that thereafter, on the order of the SHO, they used force and scattered the mob and pacified them. He further deposed that during this process, 4-5 police persons were injured. He further deposed that thereafter, SI Hansraj prepared rukka and got the FIR registered in this regard. He further deposed that he cannot identify the accused persons due to

lapse of time. This witness was also cross examined by Ld. APP after taking permission of the court as he was not supporting the case of prosecution. In his cross- examination by Ld. APP, PW12 correctly identified the accused persons and stated that apart from them, other villagers were also part of the mob. This witness also correctly identified the photographs and negatives and stated that mob was raising slogans "ya to meetha paani do, nahi to hum thod phod kar denge".

AYUSH SHARMA SHARMA Date:

2024.03.04 14:22:05 +0530 State Joginder & Ors.

27.In the cross-examination by Ld. Counsel for accused, PW12 admitted that he was never called by the IO for identifying the accused persons since the date of the incident till today and he identified the accused persons in court for the first time. He further deposed that he had also seen the accused persons at the time of the incident. He denied that he was identifying the accused persons at the instance of prosecution or that he has no personal knowledge of the case or that he was deposing falsely.

28.PW21 Inspector Hansraj deposed that on 28.07.2004, he along with SI Ram Kumar went to village Karala near water tank for arrangement of law and order as there was water problem in the village Karala, Kanjhawala and Madanpur. He further deposed that in the intervening night of 27.07.2004 and 28.07.2004, police were deployed at water tank, Karala and when he reached there on 28.07.2004, he found that many public persons had gathered, who were shouting and raising slogans against DJB and Delhi Government for sweet and normal water and they were also threatening to destroy/damage the public property. He further deposed that SHO tried to make them understand to keep peace but they continued their agitation and they moved away from water tank, Karala to Karala Chowk main road. He further deposed that the public persons blocked the road and ACP, Senior officers of DJB and former Minister Sahib Singh Verma also reached there. He further deposed that they appealed to the public to maintain peace and they gave assurance to solve their problem and they further requested to leave the place and go to their respective homes. He further deposed that thereafter, few persons moved from that place and many of them remained there and continued raising slogans. He AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:22:15 +0530 Joginder & Ors.

further deposed that suddenly the mob increased and damaged the glass of one DTC bus and Gypsy of SDM, Saraswati Vihar (Govt. vehicle) and also deflated the tyres of four DTC buses and two trucks. He further deposed that when they were asked to stop these illegal activities, they started pelting stones on police team which moved them away by force. He further deposed that in this incident, some police officials sustained injuries and he with the help of SI Amlanand, he sent the injured to SGM Hospital. He further deposed that thereafter, he prepared rukka and got the FIR registered through Ct. Vikram. He further deposed that the photographs of the spot were taken through a private photographer and the pelted stones were collected vide memo Ex.PW1/A. He further deposed that thereafter, he prepared site plan Ex.PW21/A and also recorded the statements of all the witnesses and deposited the case property in the PS Malkhana. He further deposed that on 15.09.2004 during the search of accused persons, he along with Ct. Shribhagwan went to the house

of accused Jogender at Village Karala and on the way, Ct. Shribhagwan identified one of the accused persons who was standing in the street and told that he was throwing stones on police officials on the day of incident. He further deposed that he caught that accused with the help of Ct. Shribhagwan and interrogated him. He further deposed that accused Jogender was arrested vide memo Ex.PW21/B and his personal search was also conducted vide Ex.PW21/C. This witness correctly identified accused Jogender in court. He further deposed that thereafter, he was transferred and the file of this case was handed over to MHCR concerned for further investigation.

AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 14:22:23 +0530 State Joginder & Ors.

29. In the cross-examination conducted by Ld. Counsel for accused, PW21 stated that he reached at the spot on 28.07.2004 at about 11.15 A.M. He further deposed that he cannot tell which slogan or activity was made by accused Jogender. He admitted that he cannot identify which stone was thrown by which accused. He denied that he had not conducted the investigation of this case or that all the memos and entries were prepared while sitting in the PS. He further denied that accused Jogender was not arrested in the way as stated by him. He also denied that he was deposing falsely.

30. PW22 SI Rajbir deposed that on 28.07.2004, he along with other police officials were sent to Karala Chowk, Water Tank and on reaching there, they found that public persons had gathered who were demanding sweet/normal water supply. He further deposed that they were shouting and raising slogans against the Delhi Government. He further deposed that Sahib Singh Verma and SDM were also present at the spot and Sahib Singh appealed to the public to maintain peace and assured them that their problem will be resolved soon. He further deposed that thereafter, Sahib Singh Verma left the spot. He further deposed that public damaged the DTC buses by throwing stones. He further deposed that one of the stones hit him and he sustained injuries. He further deposed that HC Ram Chandran, ASI Ram Chandran and Ct. Ramesh also sustained injuries in the incident and they were taken to SGM hospital. This witness correctly identified the accused persons in the court. He further deposed that senior police officials like ACP, DCP, NW also reached at the spot.

31. In the cross-examination conducted by Ld. Counsel for accused, Digitally sig
AYUSH by AYUSH
SHARMA
SHARMA Date: 2024.03.04
State 14:22:32 +053

Joginder & Ors.

PW22 stated that he reached the spot at about 12-12.30 P.M. on the date of incident and there were about 400-500 public persons who had gathered there. He further deposed that he firstly left the spot at about 12.45 P.M. - 1 P.M. for the hospital and again reached the spot at about 3.30 P.M. He further deposed that he cannot tell the names of the public persons who were throwing the stones. He further deposed that he also cannot tell the names of the persons who had stopped the DTC buses and deflated their tyres. This witness denied that he cannot identify the persons who were

part of the public gathered at the spot. He further denied that accused persons were not present at the spot at the time of incident or that they have not done any illegal activity and he was deposing falsely.

32.PW24 SI Amlanand deposed that on 28.07.2004 vide DD entry No.17B, he along with SI Kishan Lal, ASI Ram Kumar, Ct. Vikram reached at Village Karala near Paani Ki Tanki where SHO was also present with other staff. He further deposed that the villagers were also present there and they were raising slogans against the officials of Jal Board as well as the Government by saying "hame jaldi se jaldi paani diya jaye aur swachhh paani diya jaye". He further deposed that a lot of other people also assembled there. He further deposed that SHO tried to pacify them but they did not listen the request of the SHO. He further deposed that outer force was also called there and Sahib Singh Verma and other officials of Jal Board also came there and tried to pacify the villagers but they did not concede. He further deposed that the public persons started throwing stones on the buses and broke their glasses and damaged them. He further deposed that those public AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 14:22:42 +0530 State Joginder & Ors.

persons also damaged the vehicle of SDM as well as one tempo. He further deposed that police personnel namely ASI Ram Chander, HC Ram Chander, Ct. Ramesh and Ct. Rajbir were also injured in the incident. He further deposed that finding no other option, the SHO used force and dispersed the public persons and directed SI Hansraj to take appropriate action in the matter. He further deposed that SI Hansraj prepared a Tehrir and got the FIR registered through Ct. Vikram. He further deposed that the injured persons were shifted to hospital for their medical examination. He further deposed that he can only identify one or two accused persons due to long lapse of 18 years. This witness correctly identified accused Ishwar Singh in the court. This witness was also cross examined by Ld. APP after taking permission of the court as he was resiling from his previous statement. In his cross-examination by Ld. APP, PW24 failed to identify the other accused persons. He denied that he is intentionally not identifying the accused persons due to some unlawful agreement with them. He admitted that glasses of the vehicles were broken by the mob and also the tyres were deflated.

33.In the cross-examination conducted by Ld. Counsel for accused, PW 24 stated that he is not sure whether he or the DO had made the departure entry. He further deposed that he left the PS at 10 A.M. for the spot and reached there at about 1.30/2 P.M. He further deposed that he cannot tell the route number or the registration number of the buses which were damaged. He further deposed that he also cannot tell the colour or registration number of the vehicle of the SDM which was damaged but stated that it was Government vehicle. He denied that he AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:22:50 +0530 Joginder & Ors.

cannot tell these details because he was not present at the spot. He admitted that IO did not call him during the investigation of this case for identification of the accused persons. He further denied that he wrongly identified accused Ishwar Singh at the instance of the IO or that he was not present at the spot. He further denied that he could not identify the accused persons as they were not present at the spot. He further denied that he was deposing falsely.

Formal Witnesses

34.PW2 HC Sukhpal deposed that on 28.07.2004 at about 3.50 P.M., Ct. Vikram brought rukka and on the basis of which he recorded FIR of the present case Ex.PW2/A. He further deposed that he also made endorsement on rukka Ex.PW2/B.

35.In the cross-examination by Ld. Counsel for accused, the witness stated that he was not present at the spot and he has no personal knowledge of the case. He denied that he has not registered the FIR.

36.PW6 HC Vikram Singh deposed that on 28.07.2004 at about 10-11 A.M., he along with SI Kishan Lal, SI Amla Nand and other police staff reached at Paani Ki Tanki, Village Karala, Delhi where SHO along with other staff was present and where public had gathered. He further deposed that the public was agitating for sweet drinking water and public also deflated tyres of the vehicles and also broke the DTC buses and private buses. He further deposed that some public persons and police officials got injured in the incident. He further deposed that SHO asked the public to restrain themselves and not to break the law but public did not restrain. This witness was also cross examined by AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:23:11 +0530 Joginder & Ors.

Ld. APP after taking permission of the court as he was resiling from his previous statement. In his cross-examination by Ld. APP, PW6 admitted that HC Ram Chander, Ct. Rajvir, Ct. Ramesh and ASI Ram Chander were injured in the incident. He also admitted that SI Kishan Lal took the injured persons to SGM Hospital, Mangol Puri. He further admitted that Government vehicles were also damaged. He further deposed that Ex labour minister Sahib Singh Verma, Sr. officials of DJB and police officers also reached at the spot. He further deposed that public moved towards Karala Chowk and stopped the traffic. He further deposed that he does not remember that he took rukka to PS for registration of FIR. He denied he made any such statement to the police. He further denied that the incident took place at about 2 P.M. He denied that he was deposing falsely in order to favour the accused persons.

37.This witness was not cross examined by Ld. defence counsel despite opportunity being given.

38.PW14 Ujender deposed that on 28.07.2005, he was driving bus Gramin Sewa (Azadpur to Azadpur via Kanjhawala) and when bus reached at village Karala bus stop, mob stopped the bus and he along with bus conductor kept themselves sitting in the said bus for about 2- 2.5 hours. He further deposed that in the meantime, DTC officers approached him and noted the time table of the bus. He further deposed that the passengers deboarded from the bus and after about three hours, the traffic movement became normal and they reached Azadpur Terminal in the evening.

AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 14:23:19 +0530 State Joginder & Ors.

39.In the cross-examination conducted by Ld. Counsel for accused, PW14 stated that he does not know anything more about the present case.

40.PW15 Raj Kumar deposed that the summoned record had been transferred to old record room being old record and that the said record is not available in the DTK DTC Depot. The letter dated 13.02.2019 in this regard is Ex.PW15/A.

41.This witness was not cross examined by Ld. defence counsel despite opportunity being given.

42.PW16 Dashrath Yadav proved the entries of MLC No.76586 of Ram Chander, S/o Harish Chand Lal Mark A, MLC No.76587 of Rajbir Singh, S/o Dariav Singh Mark B, MLC No.76588 of Ram Chander, S/o late Sh. Harchand Mark C and MLC No.76589 of Ramesh Chander, S/o late Sh. Mir Singh Mark D in original MLC register.

43.In the cross-examination conducted by Ld. Counsel for accused, PW16 admitted that the entries in MLC register are not made by him and he does not know who made these entries and the same were not made in his presence. He also admitted that no date is mentioned on the signatures made on the register. He further admitted that the entries in the register are carbon copies and not the original. He further deposed that the original entries used to be given to the IO.

44.PW17 Dr. Brijesh Singh deposed that he has worked with Dr. Chitranjan and recognizes his handwriting and signature. He further AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 14:23:47 +0530 State Joginder & Ors.

deposed that the entries of MLC No.76586, 76587, 76588 and 76589 were prepared by Dr. Chitranjan.

45.In the cross-examination conducted by Ld. Counsel for accused, PW17 stated that the entries of MLC No.76586, 76587, 76588 and 76589 were not prepared in his presence and he had not treated the patients mentioned in the said MLCs. He further deposed that he has no personal knowledge regarding the said entries.

46.PW18 Dharam Pal deposed that the DTC bus bearing No. DL 1PB 1675 was declared scrapped vide official order dated 15.06.2013 and the said bus was operative in 2004.

47.In the cross-examination conducted by Ld. Counsel for accused, PW18 stated that he cannot tell on which route the said bus was plying in 2004. He further deposed that he cannot tell name of the driver and conductor who were on duty on the said bus in 2004 as the names have not been recorded in the official record.

48.PW19 Rajesh deposed that DTC bus No. DL 1PB 1675 was declared scrapped vide order dated 12.06.2013 and the said bus was e- auctioned vide No. 4291 on 14.07.2014. He further deposed that DTC bus No. DL 1PB 1767 was declared scrapped vide order dated 28.01.2012 and the said bus was e-auctioned vide No.4502 on 30.08.2012.

49.In the cross-examination conducted by Ld. Counsel for accused, PW19 stated that he cannot tell on which route the said bus was plying in 2004. He further deposed that he cannot tell name of the

driver and AYUSH by AYUSH SHARMA State SHARMA Date: 2024.03.04 14:23:58 +0530 Joginder & Ors.

conductor who were on duty on the said bus in 2004 as the names have not been recorded in the official record.

50.PW20 Sukhvir Singh deposed that DTC bus No. DL 1PB 5579 was declared scrapped vide order dated 08.05.2015 and the said bus was e-auctioned vide No.1406 on 28.04.2015. He further deposed that DTC bus No. DL 1PB 1974 was declared scrapped vide order dated 29.03.2011 and the said bus was e-auctioned vide No.78 on 28.01.2011.

51.In the cross-examination conducted by Ld. Counsel for accused, PW20 stated that he cannot tell on which route the said bus was plying in 2004. He further deposed that he cannot tell name of the driver and conductor who were on duty on the said bus in 2004 as the names have not been recorded in the official record.

52.PW25 HC Bhanwar Singh deposed that old record of PS Kanjhawala from 2001-2005 had been destroyed vide order Ex.PW25/A issued by the concerned authority.

53.This witness was not cross examined by Ld. defence counsel despite opportunity being given.

IV. STATEMENT / DEFENCE OF THE ACCUSED

54.Accordingly, vide order dated 27.02.2023, PE was closed. In the statement recorded under Section 313 CrPC, all the accused stated that they were not present at the spot and have been falsely implicated in the present case. They further stated that they do not anything about AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:24:09 +0530 Joginder & Ors.

the incident. The accused persons did not opt to lead Defence Evidence.

V. SUBMISSIONS OF PARTIES

55.Ld. APP for the State has submitted that all the prosecution witnesses have given a consistent account of the happening of the incident. It is further submitted by Ld. APP that the accused persons be convicted of the offence.

56.Sh. Abhishek Kaushik, Ld. Counsel for defence has submitted that all the prosecution witnesses have not assigned any specific role to the accused persons. He has further submitted that all the public witnesses have failed to identify the accused persons. He has next submitted that though some of the prosecution witnesses who were members of the police party have identified the accused persons for the first time in court, in the facts and circumstances, there evidence is absolutely valueless unless there has been a previous test identification parade. In support of his submissions, he has relied upon the judgment of Hon'ble Supreme Court in Vijayan @ Rajan v. State of Kerala 1999 (1) JCC (SC) 177 and Rajendra Kumar v. State 23 (1983) DLT 42.

VI. APPRECIATION OF EVIDENCE: ANALYSIS AND FINDINGS

57.I have heard the submissions of Ld. APP and the Ld. Counsel for accused and perused the record along with the written submissions AYUSH SHARMA SHARMA Date:

2024.03.04 State 14:24:19 +0530 Joginder & Ors.

filed by the parties. Before embarking on the exercise of appreciating the evidence, it is apt to take note of the ingredients that the prosecution is required to prove for bringing home the charge(s) against the accused persons i.) The protest turned into an 'unlawful assembly' ii) The accused persons were members of 'unlawful assembly' and iii) they entertained along with the other members of the assembly the common object as defined in Section 141 IPC.

Protest/Agitation turned into an 'unlawful assembly'

58.Without reiterating all the contents again, it is sufficient to note prosecution witnesses namely PW1 ASI Ram Chander, PW3 Shri Krishan, PW4 HC Ram Chander, PW5 HC Mahavir, PW6 HC Vikram, PW8 Retd. HC Rajpal, PW9 ASI Sri Bhagwan, PW10 Sanjeev Rana, PW12 Retd Insp. RK Dahiya, PW13 Ranbir Singh, PW21 Inspector Hansraj, PW22 SI Rajbir and PW24 SI Amlanand have deposed in one voice that on 28.07.2004, the mob/crowd gathered to voice protest against the scarcity of water, turned violent, started pelting stones, deflated tires and attacked the police officers despite the command of SHO and other Senior officers concerned who were present at the spot, to disperse. The explanation of Section 141 IPC prescribes that an assembly, which was not unlawful when assembled, may subsequently become an unlawful assembly. Having perused the entire evidence, I am of the view the moment the mob disobeyed the lawful command to disperse and developed the common object of causing damage to public property and injuries to police officers, the protest/agitation turned into an 'unlawful assembly'.

AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 14:24:27 +0530 State Joginder & Ors.

Accused persons were members of 'unlawful assembly'

59.Prosecution has examined 25 witnesses to prove its case against the accused persons, out of which all the public witness including IO Retd. SI Amlanand (PW24) failed to identify the accused persons as forming part of the mob that committed the alleged offences. However, some of the police witnesses namely PW1 ASI Ram Chander, PW4 HC Ram Chander, PW5 HC Mahavir, PW9 ASI SriBhagwan, PW12 Retd. Insp. RK Dahiya (during cross-examination by Ld. APP), PW21 Insp. Hansraj (identified only accused Jogender), PW22 SI Rajbir have identified the accused persons in court. It has been argued by Ld. Counsel for accused persons that it would be unsafe/ not prudent to convict the accused persons solely on the basis of first-time identification in the court when no TI proceedings have been conducted. To assess this submission, reference may be made to the judgment of Hon'ble Supreme Court in Amrik Singh v. State of Punjab, (2022) 9 SCC 402 wherein it was held:

"20. Similarly, another decision of this Court in the case of Md. Kalam (supra) relied upon by learned counsel appearing on behalf of the State also shall not be applicable to the facts of the case on hand. It is observed in the said decision that the evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. It is observed that the purpose of TIP therefore is to test and strengthen the trustworthiness of that evidence. It is observed that it is accordingly considered a safe rule of prudence to generally look for corroboration of AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:24:43 +0530 Joginder & Ors.

the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. It is further observed that the said rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration. Therefore, on facts it was observed that failure to hold a TIP would not make inadmissible the evidence of identification in Court. It is further observed that the weight to be attached to such identification should be a matter for the courts of fact.

60. Similarly, in Kanan & Ors. v. State of Kerala AIR 1979 SC 1127, the Hon'ble Supreme Court held:

"It is well settled that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T. I. parade to test his powers of observations. The idea of holding T. I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T. I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court."

61. Each case has to be examined on its own facts, to assess as to how much weightage can be attached to first time identification. This court AYUSH SHARMA SHARMA Date:

2024.03.04 State 14:24:52 +0530 Joginder & Ors.

finds on a close scrutiny of evidence of police witnesses, that no TIP of the accused persons was got conducted to lend credibility to the identification in court for the first time after several years of the incident, when admittedly they were total strangers and were allegedly forming part of mob consisting of 400-500 people. When viewed so, in the light of deposition of the public witnesses who failed to identify the accused persons, the failure to hold TI parade is fatal to the case of prosecution. Having regard to the entire evidence, the identification of the accused persons for the first time in court is highly doubtful and not convincing.

62. There are other reasons to doubt the membership of accused persons as part of the unlawful assembly. All the police witnesses deposed in one voice that after the command to disperse was given by SHO and senior officers concerned, some of the people from mob went away and some of them remained there. Indeed, all the police witnesses in their deposition have stated that 'mob/crowd' was shouting and after sometime, stones were thrown at them and public property was damaged but they do not state anywhere in their evidence that at the time when stones were being thrown or public property was damaged, accused persons continued to be the members of the 'mob/crowd' who remained at the spot. In this context, reliance is placed on the judgment of Hon'ble Supreme Court in Prabhakar Shankar Sawant & Ors. v. State of Maharashtra (1979) 4 SCC 727, wherein it was held:

"A perusal of the evidence clearly shows that the entire morcha consisting of 300 to 400 persons was in the first instance peaceful but became violent only when some of the members AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:25:01 +0530 Joginder & Ors.

of the assembly started pelting stones and damaged the glass panes of the houses of some of the prosecution witnesses. It is true that the Sessions Judge as also the Magistrate had held that the appellants were members of the unlawful assembly but the courts below have viewed this case from an absolutely wrong angle of vision. Before the appellants could be convicted of sharing the common object of the assembly or of being members of the same at a time when the assembly became unlawful, it had to be proved by the prosecution that the appellants were members of the unlawful assembly at the time when assembly became unlawful and started pelting stones. To begin with there is no such evidence in this case. The evidence merely shows that the appellants were members of the morcha but there is absolutely nothing to show that they were members of the unlawful assembly when the members of the assembly started pelting stones. P.W. 1 who is a complainant and a full-fledged eye-witness had lodged the F.I.R. on the 21st June, 1972 in which he did not mention the names of any of the appellants. That by itself is a serious infirmity in the prosecution case which is sufficient to throw doubt on the truth of the version presented by the prosecution. No explanation for the omission of the names of the appellants has been given in the statement of the complainant and in absence of any explanation this appears to us to be a manifest defect in the prosecution case on which alone the appellants are entitled to an acquittal, more particularly when the complainant says categorically in his evidence that accused 1, 3, 4, 5, 10 and 11 were AYUSH SHARMA SHARMA Date:

State

2024.03.04
14:25:12

Joginder & Ors.

heading the morcha. Indeed if this was so then we would have expected the complainant to mention at least these names in the F.I.R. It is true that P.W. 1 in his deposition has stated that the morcha was shouting and after some time stones were thrown at his house but he does not state anywhere in his evidence that at the time when stones were being thrown, appellants continued to be members of the morcha. Strong reliance was placed on the evidence of P.W. 2 who says that he saw that a morcha had come and members of the morcha had thrown stones in his house. He further says that there were 400 to 500 persons in the morcha and he had seen accused Nos. 3 and 6 in the morcha. But he does not state at what stage he had seen these members in the morcha nor does he say that when the morcha started pelting stones and broke his window glass panes any of the appellants continued to be members of the morcha. P.Ws. 2 and 6 are neighbours and if they had actually identified the appellants or any of them as members of the morcha at the time when stones were being pelted, they must have in ordinary circumstances revealed the names of the persons whom they identified to the complainant before he lodged the F.I.R. This was, however, not done which clearly shows that the witnesses did not at all identify the appellants at the stage when the morcha became unlawful. The learned Sessions Judge tried to explain away this important lacuna in the prosecution case by presuming that as the morcha moved on it must be presumed to be unlawful and any person who was a member of that assembly must be presumed to share the AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:25:24 +0530 Joginder & Ors.

common object of the unlawful assembly. We think that the learned Sessions Judge has, however, overstated the law on the subject."

63. Significantly, all the police witnesses do not state in their evidence at what stage they had seen the accused persons in the crowd/mob nor do they say when the crowd/mob started pelting stones, any of them continued to remain at the spot. Thus, on this count too the membership of accused persons as part of unlawful assembly remained doubtful and uncertain.

The accused persons entertained along with the other members of the assembly the common object as defined in Section 141 IPC.

64. Though the membership of accused persons as part of unlawful assembly is doubtful and uncertain, and yet if they were considered members, the prosecution could not establish that the accused persons shared the common object of the unlawful assembly. While determining this question, it becomes relevant to consider whether the accused persons 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. The mere presence of, in or near the unlawful assembly, is not sufficient to show that the accused persons were also a member of the unlawful assembly and it must be proved that they also shared the common object of the unlawful assembly. In *Jayendra Shantaram Dighe & ors. v. State of Maharashtra* 1991 SCC OnLine Bom 481, the Hon'ble Bombay High Court held:

AYUSH SHARMA SHARMA Date:

2024.03.04 State 14:25:33 +0530 Joginder & Ors.

"5. Before scanning the evidence, it is desirable to discuss the legal position as to under what circumstances the criminal liability can be foisted on a member of an unlawful assembly which was initially lawful, but, which became unlawful because of the offences committed by some of the unidentified persons of the assembly. Section 149 of the Indian Penal Code reads as under:

"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 that time of the committing of that offence, is a member of the same assembly is guilty of that offences."

6. In the case of (Musakhan v. State of Maharashtra), (1977) 1 SCC 733: AIR 1976 SC 2566, the Supreme Court has held that a mere innocent presence in an assembly of persons, does not make the accused a member of an unlawful assembly. According to the Supreme Court, to constitute "member of unlawful assembly" it must be shown either by direct or circumstantial evidence that the accused shared the common object of the assembly. The Supreme Court has also held that the Court is not entitled to presume that any and every person in the mob is guilty of every act committed by the mob. In the case of (P.S. Sawant v. State of Maharashtra), (1976) 1 SCC 594: AIR 1975 SC 1265, the Supreme Court held that before the accused could be convicted of sharing the common object of the assembly or of being members of the same at a time when AYUSH SHARMA State SHARMA Date: 2024.03.04 14:25:52 +0530 Joginder & Ors.

the assembly became unlawful, it had to be proved by the prosecution that the accused were members of the unlawful assembly at the time the assembly became unlawful and started pelting stone. If there is no evidence of identification of accused at the stage when the morcha became unlawful it cannot be explained away by presuming that as the morcha moved on it must be presumed to be unlawful and any person who was a member of that assembly must be presumed to share the common object of the unlawful assembly. This, according to the Supreme Court, is like over-stating the law on the subject. The Supreme Court has also held that before the Court is satisfied that an accused is a member of an unlawful assembly it must be shown either from his active participation or otherwise that he shared the common object of the unlawful assembly though it is not necessary that the accused should be guilty of any overt act. But, it is sufficient if it is shown that as a participant of the unlawful assembly he was sharing the common object of the same. Further, in the case of (Allauddin Main v. State of Bihar), (1989) 3 SCC 5: AIR 1989 SC 1456, the Supreme Court has laid down one more principle that in such case it is to be found out if the offence committed was committed to accomplish the common object of the assembly or the one which the member knew was likely to be committed. According to the Supreme Court, there must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object, then every member of the assembly will be liable for

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same.

9. There is another aspect of the matter which has to be taken into consideration. If suddenly a few elements behaved in an unruly manner, which was not contemplated by the other members of the procession and in view of the fact that a huge crowd of about two thousand had assembled, it was certainly difficult for the other processionists to extricate themselves from the procession and disperse. Therefore, merely because the accused persons were there in the procession, they cannot be held guilty of the offences committed by the unidentified persons. According to me the aforesaid facts which I have discussed in detail clearly go to show that the members who took out the procession to lodge their protest peacefully could not have anticipated or contemplated the unruly behaviour of some miscreants. There is also no evidence on record to show that all the members in the procession shared the common intention of pelting stones at the police party discharging its duty.

10. Therefore, in the light of all this, the present appellants cannot be held guilty under Ss. 147, 148, 332 read with 149 of the Indian Penal Code, merely because they participated in the procession."

65. Similarly, in *Tribhuvan Nath & Ors. v. State* 1995 SCC OnLine Del 16, the Hon'ble Delhi High Court held:

"18. The short question which arises for consideration is whether the appellants could be treated to be members of the said mob which was having the unlawful object of murdering Digitally signed by AYUSH AYUSH SHARMA SHARMA Date:

2024.03.04 State 14:26:55 +0530 Joginder & Ors.

the Sikhs and looting and arousing their shops and houses. From the testimony of Public Witness 1 and Public Witness 2, it is apparent that the appellants had come to ask the Sikhs residing in the locality to cut their hair so that they may not be noticed as Sikhs who could be the targets of the unruly mob which might come and kill the Sikhs. If that is so, it is not possible to agree with the inference drawn by the learned Additional Sessions Judge that when the actual rioting mob came at about 3.30 P.M. and assaulted the Sikhs, these appellants also became members of the mob sharing the said unlawful object of the said mob. After all, no overt act has been imputed to the appellants by Public Witness 1 and Public Witness 2 that the appellants had either instigated the mob or had led the mob or had performed any other act which could show that when the mob came, which assaulted Himmat Singh, these appellants came to share their common unlawful object of the said mob. There is no statement made by these Public Witness 1 and Public Witness 2 that the appellants had indulged in any rioting, arousing or looting of the properties and valuables of the Sikhs.

19. Mere presence of appellants in the mob at the time the mob came, in our view, would riot lead to any inference that the appellants had become members of the said mob sharing the unlawful objects of the said mob.

20. In Bishambar Bhagat Vs. The State of Bihar, AIR 1971 SC 2381, it was held that mere presence of a person at the place where the members of an unlawful assembly have gathered for carrying out their illegal common AYUSH by AYUSH SHARMA SHARMA Date: 2024.03.04 State 14:27:20 +0530 Joginder & Ors.

object does not incriminate him but the question is one of fact in each case as to whether a person happens to be innocently present at the place of occurrence or was actually a member of the unlawful assembly.

21. Similarly in Mutha Naicker Vs. State of Tamil Nadu AIR 1978 SC 1647, the Supreme Court held that whenever in uneventful rural society something unusual occurs, more so where the local community is faction ridden and a fight occurs amongst factions, a good number of people appear on the scene not with a view to participating in the occurrence but as curious spectators. In such an event, mere presence in the unlawful assembly should not be treated as leading to the conclusion that the person concerned was present in the unlawful assembly as a member of the unlawful assembly.

22. Same ratio had been repeated by the Supreme Court in case of Ghanshyam Vs. State of UttarPradesh AIR 1983 SC 293."

66. In the case at hand, all the police witnesses have deposed in general terms to the effect that the 'mob/crowd/public persons' vandalized the public property and pelted stones on the police party. This kind of omnibus evidence naturally has to be very closely scrutinized in order to eliminate all chances of false or mistaken implication. No overt act has been imputed to the accused persons that they had either led the mob or instigated them or had indulged in any of the alleged acts so as to infer that they shared the common object of the said 'mob/crowd/public persons.' Consequently, the prosecution has also failed to establish the third ingredient.

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67. In the present case, there is no legally acceptable material to prove that the accused persons were members of unlawful assembly or that they had committed any overt act that could show that they shared the common object of the unlawful assembly. There are series of doubts in the entire case put forth by the prosecution against the accused persons and case cannot be said to be proved beyond reasonable doubt in any manner. Consequently, accused Joginder S/o Net Ram, Raj Kumar S/o Nafe Singh, Joginder S/o Sultan Singh, Ishwar S/o Jailal, Raj Roop S/o Goverdhan and Bijender S/o Ram Singh are held not guilty and stand acquitted of the offence u/s 147/149/151/152/186/353/332/427 IPC. File be consigned to record room after due compliance.

AYUSH by AYUSH
SHARMA

SHARMA Date: 2024.03.04
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Announced in Open court
On 4th March, 2024

(Ayush Sharma)
MM-02, North-West District
Rohini Courts/04.03.2024

This judgment consists of 41 pages and each and every page this judgment is signed by me.

AYUSH AYUSH SHARMA SHARMA Date: 2024.03.04 14:28:20 +0530 (Ayush Sharma) MM-02,
North-West District Rohini Courts/04.03.2024 State Joginder & Ors.