

State vs . Javed Alam Etc. on 25 November, 2022

IN THE COURT OF ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE (SOUTH EAST):SAKET
COURTS:NEW DELHI

Presided by Ms. SONAM SINGH-I

State vs. Javed Alam etc.
FIR No. 312/2000
Police Station : New Friends Colony
Under Section: 147/148/149/186/353/452 Indian Penal Code ,
1860 (in short "IPC") & Section 3 & 4 of The Prevention of
Damage to Public Property Act, 1984.(in short "PDP Act")

Date of institution : 24.12.2002
Date of reserving : 22.09.2022
Date of pronouncement : 25.11.2022

JUDGMENT

- a) Serial number of the : 86128/2016 case
- b) Date of commission of : 03.07.2000 offence
- c) Name of the : Insp. Gurmeet Singh, SHO/NFC complainant
- d) Name, parentage and : 1) Javed Alam s/o Khurshed address of the accused Alam, R/o. 379/14, Zakir Nagar, New Delhi. (Proceedings already abated vide order dated 20.01.2014) State vs. Javed Alam etc.
- 2) Naseem Ahmed s/o Shabir Ahmed, R/o. 199/17, Zakir Nagar, New Delhi.
- 3) Irfan s/o Furkan R/o. 791/22, Zakir Nagar, New Delhi. (Absconder declared vide order 19.04.2022)
- 4) Shahnawaz s/o Mohd.
- Riazuddin, R/o. E-822/22, Zakir Nagar, New Delhi (Proclaimed offender vide order dated 21.05.2011)
- 5) Abrar Alvi s/o Mohd. Shabbir R/o. 94/40, Zakir Nagar, New Delhi.
- 6) Mohd. Salim s/o Mohd. Babu R/o. 339/22, Zakir Nagar, New Delhi.

7) Mohd. Kashim s/o Mohd.

Maltiulah, R/o. 500/6, Zakir Nagar, New Delhi. (Proclaimed offender vide order dated 21.05.2011)

8) Furkan Ahmad s/o Zamir Ahmad, R/o. 545/44, Zakir Nagar, New Delhi.

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9) Mohd. Arif s/o Sh. Khursheed R/o. 379/14 Zakir Nagar, New Delhi.

10) Zuber Ahmad s/o Abdul Gaffur, R/o. 567/45 Zakir Nagar, New Delhi.

11) Mohd. Showkeen @ Ashok s/o Kamar, R/o. 54/34 Zakir Nagar, New Delhi.

12) Guchhan s/o Sharddin Khan R/o. K-38, Thoker No.4, Abul Fazal, New Delhi.

13) Ali Hassan s/o Amit Hassan, R/o. Gali No.39, Zakir Nagar, New Delhi.

14) Shakil s/o Jamil R/o. A-28/45, Zakir Nagar, New Delhi.

15) Mahandi Hassan s/o Abul R/o. 548/40, Zakir Nagar, New Delhi.

16) Gulam Haider s/o Mohd.

Sheffiullah, c/o Nabi Mohd.

Ahmad, R/o. Gali No.22, Zakir Nagar, New Delhi.

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17) Kadir s/o Shamsher Ali, R/o.

Gali NO.39, Zakir Nagar.

(Proclaimed offender vide order dated 21.05.2011)

18) Mohd. Uzair s/o Shamshul Islam, R/o. H.No.351 Nai Basti, Delhi. (Proclaimed Offender vide order dated 21.05.2011)

e) Offences complained of : Sections 147/148/149/186/353/452 IPC and U/s 3 and 4 of PDP Act.

f) Plea of the accused : Pleaded not guilty.

g) Final order : 25.11. 2022

h) Date of final order : Accused persons, namely,

1) Naseem Ahmad s/o Shakir,

2) Abrar Alvi s/o Mohd.

Shabbir,

3) Mohd. Salim s/o Mohd.

Babu,

4) Furkan Ahmad s/o Zamir Ahmad,

5) Mohd. Arif s/o Sh.

Khursheed,

6) Zuber Ahmad s/o Abdul Gaffur,

7) Mohd. Showkeen @ Ashok s/o Kamar, State vs. Javed Alam etc.

8) Gucchan s/o Sharddin Khan,

9) Ali Hassan s/o Ami Hassan,

10) Shakeel Ahmad,

11) Mahandi Hasan s/o Abdul and

12) Gulam Haider s/o Mohd.

Sheffiullah Acquitted under sections 147/148/149/186/353/452 IPC and U/s 3 and 4 of PDP Act.

BRIEF FACTS AND REASONS FOR DECISION OF THE CASE

1. Vide this judgment, all the twelve accused persons namely 1) Naseem Ahmad s/o Shakir, 2) Abrar Alvi s/o Mohd. Shabbir, 3) Mohd. Salim s/o Mohd. Babu, 4) Furkan Ahmad s/o Zamir Ahmad, 5) Mohd. Arif s/o Sh. Khursheed, 6) Zuber Ahmad s/o Abdul Gaffur, 7) Mohd. Showkeen @ Ashok s/o Kamar, 8) Gucchan s/o Sharddin Khan, 9) Ali Hassan s/o Ami Hassan, 10) Shakeel Ahmad, 11) Mahandi Hasan s/o Abdul and 12) Gulam Haider s/o Mohd. Sheffiullah stand acquitted of the offences punishable under Section 147/148/149/186/353/452 IPC and Sections 3 and 4 of PDP Act in this case for the reasons mentioned below :

CASE OF THE PROSECUTION

2. In a nutshell, the case of the prosecution is that on 03.07.2000 at about 9:30 AM, SHOs of various Police Stations, State vs. Javed Alam etc. namely, New Friends Colony, Lajpat Nagar, Defence Colony, Kalkaji, Chitranjan Park, Sri Niwas Puri, Hazarat Nizamuddin, Sarita Vihar, Ambedkar Nagar and Malviya Nagar reached at Tauba Colony for a demolition drive. Tauba Colony is within the jurisdiction of PS New Friends Colony. The Deputy Director of DDA along with other DDA staff members were also present on the spot with two JCBs and one bulldozer. DDA staff informed persons residing there that they were illegally occupying the government land and their unauthorized houses had to be demolished. They were asked to vacate the said houses and leave along with their belongings. However, they resisted the demolition operation by asking the demolition team to leave the spot. In the meantime, lot of persons gathered and also climbed on the roofs of those houses.

3. It is alleged that SHO, P.S. New Friends Colony requested people to leave the spot. Thereafter, the demolition started, at about 10:00 am. After 10 to 15 minutes, people started throwing stones from the roofs and streets upon the police team as well as the DDA demolition team. Subsequently, another warning was issued through P.A System, as to they were obstructing in the government work and their actions was illegal. Despite the warning, they continued to pelt stones upon the team. Thereafter, tear gas was used to disperse the mob, yet it did not stop them from throwing stones.

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4. It is alleged that several police staff members got injured as they were hit with stones. They included Insp. Jasbir Singh Malik, who was the SHO P.S.Kalkaji Ct. Mohan Singh of P.S. Kalkaji , Ct. Ajit of P.S. Hauz Khas, Ct. Jitender Rana of P.S. Malviya Nagar and they were all sent to hospital for medical treatment. Further, the mob entered into the police booth at Ashoka Park and had beaten up Ct. Anil who was sent to AIIMS for his medical treatment.

5. It is also stated that the mob damaged the windows of the police booth and also burnt the articles lying inside. Further, one girl, namely, Smt. Suman was also injured.

6. It is alleged that at about 4.00 PM, the situation came under control and accused persons were apprehended. It is alleged that 10 people were arrested from Tauba Colony, 6 from Laxman and 4 from Ashoka Park, Zakir Nagar. Further, the present FIR U/s. 147/148/149/186/353/332/452 IPC and 3 & 4 PDP Act was registered investigation was conducted.

7. During the investigation, the site plan was prepared, case property which included stones, burn wooden pieces etc. were seized. Further, MLCs of injured persons were collected, accused persons were arrested and statement of witnesses were State vs. Javed Alam etc. recorded. Since, three accused persons were found to be children, their final reports were submitted before the JJB.

8. Upon completion of necessary investigation, chargesheet u/s 173(2) Cr.P.C for the offences punishable U/s. 147/148/149/186/353/332/452 IPC and 3 & 4 PDP Act was presented to the Court

against the 18 accused persons namely 1) Javed Alam s/o Khursheet Alam, 2) Naseem Ahmad s/o Shabir Ahmed, 3) Irfan s/o Furkah, 4) Shahnawaz s/o Mohd. Riazuddin,

5) Abarar Alvi s/o Mohd. Shabbir, 6) Mohd. Salim s/o Mohd. Babu, 7) Mohd. Kashim s/o Mohd. Mattiullah, 8) Furkan Ahmad s/o Zamir Ahmad, 9) Mohd. Arif s/o Khursheet, 10) Zuber Shmad s/o Abdul Gaffur, 11) Mohd. Showkeen @ Ashok s/o Kaman, 12) Gucchan s/o Shardeen Khan, 13) Ali Hassan s/o Amir Hassan,

14) Shakil s/o Jamil, 15) Mahendi Hassan s/o Abdul Ghashik, 16) Gulam Haider s/o Mohd. Shifhullah, 17) Kadir s/o Shamsher Ali and 18) Mohd. Uzair s/o Shamshul Islam for trial.

COURT PROCEEDINGS

9. The learned predecessor of this court took cognizance upon the said police report on 24.12.2002 and issued summons to the accused persons. They were supplied with the copies of police report and documents.

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10. The accused persons, namely, Shahnawaj, Mohd. Kasim, Kadir and Mohd. Ujair failed to appear despite process of court and hence were declared proclaimed offender vide order dated 21.05.2011 passed by my ld. Predecessor. Further, accused Irfan also failed to appear despite process of the court and was declared an absconder by the Ld. Predecessor vide order dated 19.04.2022.

CHARGE

11. Upon hearing the arguments advanced at bar by learned counsel for the parties and on perusal of the judicial file, prima facie case against all the accused persons, namely, 1) Naseem Ahmad s/o Shakir, 2) Abrar Alvi s/o Mohd. Shabbir, 3) Mohd. Salim s/o Mohd. Babu, 4) Furkan Ahmad s/o Zamir Ahmad, 5) Mohd. Arif s/o Sh. Khursheed, 6) Zuber Ahmad s/o Abdul Gaffur, 7) Mohd. Showkeen @ Ashok s/o Kamar, 8) Gucchan s/o Sharddin Khan, 9) Ali Hassan s/o Ami Hassan, 10) Shakeel Ahmad, 11) Mahandi Hasan s/o Abdul and 12) Gulam Haider s/o Mohd. Sheffiullah 13) Irfan s/o Furkan and 14) Javed Alam s/o Khursheed Alam for the offences punishable u/s 147/148/149/186/353/452 IPC and U/s. 3 & 4 PDP Act was found to be made out.

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12. Charge was separately framed against all accused persons except accused Javed Alam on 28.09.2013 and against accused Javed Alam on 07.10.2013, to which they all pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE:

13. Matter was then listed for Prosecution Evidence.

(I) Prosecution Witnesses:

14. In order to prove and substantiate its case, the prosecution in all has examined, 25 witnesses, namely:

Sr. No. Designation and Name of the Role in the present Witness case 1 PW 1 Sh. Gian Chand Sachdeva Witness/DDA Joint Director.

2 PW2 Sh. R.D.Verma Witness/DDA, Field Investigator

3. PW3 Ct. Ajit Injured/Police official

4. PW4 Sh. S.K.Auluck Witness/DDA Assistant Director (Survey)

5. PW5 Sh. Shri Pal Witness/DDA Kanoongo, South East Zone.

6. PW6 Sh. Ishwar Chand Witness/DDA Kanoongo State vs. Javed Alam etc.

7. PW7 Sh. S.P.Tyagi Witness/DDA retired Field Investigator

8. PW8 Sh. Ramesh Chand Witness/DDA Field Investigator.

9. PW9 Sh. Harish Chander Witness/DDA Patwari

10. PW10 Sh. Ct. Jitender Rana Witness was posted as Constable in PS Malviya Nagar/injured

11. PW11 HC Shaukat Ali Witness was posted as Constable in PS Defence Colony/injured

12. PW12 ACP Jasbir Singh Malik Witness was posted as SHO Kalkaji/injured.

13. PW13 Insp. Tripti Joshi Witness was posted as Duty Officer at PS NFC.

14. PW14 Ct. Ravinder Witness was posted as Constable at PS New Friends Colony.

15. PW15 Sh. Om Prakash Witness was posted as Patwari at Land Management, South Zone, DDA.

16. PW16 Sh. Karan Singh Witness was posted as Patwari, Land Management, North Zone DDA.

17. PW17 Sh. Shiv Kumar Witness was posted as Junior Engineer, DDA.

18. PW18 Dr. Deepa Roy Witness was posted as Junior Resident in AIIMS and examined two injured persons vide two MLCs Ex.PW State vs. Javed Alam etc. 18/A and Ex.PW18/B described below.

19. PW19 Sh. Rajbir Singh Witness was posted as Record Clerk in AIIMS and identified handwriting and signature of Dr. Dinesh Khanna who had prepared MLCS Ex.

PW19/A, Ex. PW19/B and Ex. PW19/C and Ex. PW19/D, described below.

20. PW20 HC Mohan Singh Witness was posted as Constable at PS Kalkaji/injured.

21. PW21 Insp. Anil Malik Witness was posted as SI at PP Jamia Nagar and at PS NFC/injured.

22. PW22 ASI Malkhan Singh Witness was posted as SI at PS NFC

23. PW23 Sh. Ashok Kumar Witness was posted as Purporting Clerk, Revenue Department, Govt. of NCT of Delhi, Tis Hazari Court and he identified the signatures of Sh. Deepak Nand, District Nazir who had prepared the report Ex.PW23/2 in regard to destruction of the case property (parthar, bricks, rod, burnt wood) destroyed in the presence of Ld. Auction State vs. Javed Alam etc. Magistrate vide report Ex.PW23/1.

24. PW24 ASI Anil Kumar Witness was posted as Constable at PS NFC/injured.

25. PW25, Rtd. ACP Gurmeet Singh Witness was posted as an Inspector at PS NFC and was performing the duty in the capacity of SHO/complainant.

ADMISSION AND DENIAL OF DOCUMENTS U/S 294 CrPC

15. On 27.10.2018, the accused persons admitted the following documents in proceedings conducted u/s 294 CrPC:

Sr. No. Exhibits/Mark Nature of Documents 1 Ex.A-1 MLC No. 62046 dated 03.07.2000

2. Ex. A-2 MLC No. 62345 dated 03.07.2000

3. Ex.A-3 MLC No. 62348 dated 03.07.2000

4. Ex.A-4 MLC No. 61986 dated 03.07.2000

5. Ex.A-5 Photographs.

State vs. Javed Alam etc. (II) Documents on record :

16. The prosecution witnesses relied on the following documents:

Sr. No. Exhibits/Marks Nature of documents

1. Ex. PW13/A Copy of FIR no.312/2000.
2. Ex. PW13/B Endorsement on the Rukka.
3. Ex. PW18/A MLC No. 62094/2000 of injured Jitender Rana
4. Ex. PW18/B MLC No. 62093/2000 of injured Ajit Singh
5. Ex. PW19/A MLC No. 62046 dated 03.07.2000 of injured Anil Kumar
6. Ex. PW 19/B MLC No. 62345 dated 03.07.2000 of injured Saukat Ali
7. Ex. PW19/C MLC No. 62348 dated 03.07.2000 of injured Jasbir Malik
8. Ex. PW19/D MLC No. 61986 dated 03.07.2000 of injured Ct.

Mohan Singh

9. Ex. PW21/A Seizure memo of stones.
10. Ex. PW21/B Seizure memo of pelted stones and piece of glass.
11. Ex. PW21/1 to Ex. Arrest memos of all accused PW21/17 persons.
12. Ex. PW22/A (OSR) RC Certificate register no. 21 regarding sending of case property to the office of District Nazir.
13. Ex. PW23/1 & Ex. Report regarding disposal of case property in presence of State vs. Javed Alam etc. PW23/3 Ld. Auction Magistrate.
14. Ex. PW23/2 Report of Deepak Nand, District Nazir.
15. Ex. PW25/A Rukka.
16. Ex. A5 (Colly) Photographs of spot and circumstances of alleged incident).
17. Ex. PW25/B Site Plan.
18. Ex.PW25/C Arrest memo of accused Zubair.

17. Thereafter, ld. Predecessor of this court closed the prosecution evidence vide order dated 02.12.2019. The court will discuss the testimonies of the said witnesses later i.e., at the time of appreciation of evidence.

18. During trial, accused Javed Alam expired and proceedings against him were abated vide order dated 20.01.2014.

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

19. The accused persons in their statement under Section 313 Cr.P.C, on 14.09.2020 denied the entire evidence put to them. They stated that they were not present at the time of incident at the spot. They stated that the police have falsely implicated them in this case. They stated that the police lifted them from their house State vs. Javed Alam etc. without any reason and implicated them in the present case. All the accused persons opted not to lead any defence evidence.

FINAL ARGUMENTS

20. The Court heard the final arguments on 22.09.2022.

ANALYSIS AND FINDINGS

21. I have heard the submissions of learned APP for the State as well as that of Sh.Mohd Azeem, learned counsel for the accused persons. The court has also diligently gone through the charge-sheet, documents, evidence recorded and the entire material on record. The legal provisions in this context 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 State vs. Javed Alam etc. 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 states in regard to being member of 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 143 IPC prescribes the punishment for being a member of unlawful assembly as follows:-Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Section 145 IPC states about joining or continuing in unlawful assembly , knowing it has been commanded to disperse as follows:-Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 146 IPC defines Rioting: 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 relates to 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 is as follows:-

State vs. Javed Alam etc. Rioting armed with deadly weapon:

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 is as follows:-

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

Section 186 IPC is as follows:-

Obstructing public servant in discharge of public functions:

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section 353 IPC is as follows:-

Assault or criminal force to deter public servant from discharge of his duty:

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

Section 452 IPC is as follows:-

House-trespass after preparation for hurt, assault or wrongful restraint:

State vs. Javed Alam etc. Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 3 of PDP Act is as follows:-

3.Mischief causing damage to public property. (1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.(2) Whoever commits mischief by doing any act in respect of any public property being--

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele- communications, or any building, installation or other property used in connection therewith, shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine: Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

Section 4 of PDP Act is as follows:-

4. Mischief causing damage to public property by fire or explosive substance.

Whoever commits an offence under sub-section (1) or sub-section (2) of section 3 by fire or explosive substance shall be punished with rigorous imprisonment for a term which shall not be less than one year, but which may extend to ten years and with fine:

State vs. Javed Alam etc. Provided that the court may, for special reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than one year.

22. I have heard the submissions of ld. APP for the State as well as that of Sh. Mohd Azeem, Ld. counsel for the accused persons. The court has also diligently gone through the charge- sheet, documents and the entire material on record.

23. After careful perusal of the record, this Court is of the opinion that there are innumerable deficiencies in the case of the prosecution and contradictions in the testimonies of its witnesses.

CONTRADICTIONS AND DEFICIENCIES IN THE TESTIMONY OF THE COMPLAINANT AND OTHER WITNESSES

24. The story of the prosecution has already been narrated in the earlier paragraphs. Specifically, it is alleged that on 03.07.2000, there was SHOs of different police stations present along with DDA officials for the demolition drive at Tauba Colony, New Delhi within jurisdiction of PS New Friends Colony. They were present at Tauba Colony at about 09.30 AM, with two JCB and one Bulldozer for demolishing the allegedly illegally occupied land.

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25. The SHO's present at Tauba Colony were allegedly the complainant, namely, Insp. Gurmeet Singh along with Insp. V.P.Singh (SHO PS Lajpat Nagar), Insp. Dhir Singh (SHO PS Defence Colony), Insp. Jasbir Malik (SHO PS Kalkaji), Insp. Harcharan Verma (SHO PS C.R.Park), Insp. R.K.Khanna (SHO PS S.N.Puri), Insp. Gurcharan Dass (SHO PS H.N.Din), Insp. Karam Chand (SHO PS Sarita Vihar), Insp. Bir Singh (SHO PS Ambedkar Nagar) and Insp. V.S.Rathi (SHO PS Malviya Nagar)

26. The DDA Staff included Sh G.C.Sachdeva, Dy. Director, South East Zone, Sh. K.S.Badgujjar, Asstt. Director, Sh. S.K.Aulak, Asstt. Director (Survey), Field Investigators S/Shri Sri Pal, S.P.Tyagi, R.D.Verma and Ramesh Chand and Sh. Ishwar Chand Field Kanoongo, Patwaries S/Shri Om Prakash, Ranbir, Karan Singh and Harish Kumar with Sh. Shiv Pratap Singh, J.R. Civil.

27. It is alleged that after a survey, the persons residing there were told that they were illegally occupying the government land. They were told that the illegally constructed houses are to be demolished. The said persons were asked to vacate the said houses and leave along with their belongings. However, they all resisted the demolition operation by asking the demolition team to leave the spot.

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28. It is alleged that in the meantime, a crowd of persons gathered on the spot and also climbed on the roofs of the houses situated there. The mob pelted stones upon the police as well as DDA officials who were on the spot to discharge their official duties. The Police was compelled to use the tear gas to disperse the crowd. Further, a stampede also happened due to which a girl, namely, Smt Suman sustained minor injuries.

29. It is also alleged that the mob entered into the police booth, gave beatings to the Constable Anil who was sent to AIIMS for his medical treatment. The mob also damaged the police booth by breaking the windowpanes and also set fire to the articles lying inside the booth. It is alleged that due to the pelting of the stones several police staff and DDA officials sustained injuries. It is alleged that accused persons who were part of mob were apprehended and arrested in this case.

30. It is alleged that the accused persons have committed the offences under Sections 147/148/149/186/353/452 IPC and Sections 3/4 of PDP Act. In order to prove these offences, the prosecution is required to prove that the accused persons, being members of unlawful assembly had committed the offence of rioting. They are also required to prove that the accused persons committed the act of rioting armed with a deadly weapon. It is also required from the prosecution to prove that the accused State vs. Javed Alam etc. persons obstructed public servants in discharge of their public duty by assaulting and use of criminal force. It is also to be proved that the accused persons committed house trespass by forcibly entering the police booth after making preparation for causing hurt, assault or wrongful restraint. The prosecution is to prove that the accused persons broke the windowpanes of the booth and also set fire to the articles lying inside the booth. It is also to be proved that the accused persons attacked the police staff and DDA officials by pelting stones at them, due to which they suffered injuries.

LAW ON APPRECIATION OF OCULAR EVIDENCE

31. 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 story and also for the consistency of the account

given by one witness. The same principles were stated by the Hon'ble Supreme Court in the case of Dilawar Hussain & Ors. -vs- State of Gujarat & Anr. reported in (1991) 1 SCC 253. The aforesaid case was of an incident of communal riot/mob violence on caste divide. The apex court laid down principles regarding appreciation of evidence and also observed the parameters on the basis of which the credibility/ State vs. Javed Alam etc. 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 adverting 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...."

LAW ON APPRECIATION OF EVIDENCE IN CASES OF RIOTING: ONE SOLITARY WITNESS' ACCOUNT NOT ENOUGH.

32. 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 State vs. Javed Alam etc. uncorroborated and unsubstantiated testimony of one solitary witness. In fact, in the case of Masaltı -vs- State of U.P. reported in 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 Masaltı(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 Masaltı (Supra) while examining the testimonies of eyewitnesses 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 eyewitnesses..."

(underlining added by undersigned for emphasis) State vs. Javed Alam etc.

33. In view of the aforesaid principles, this court will examine the testimonies of the eyewitnesses and determine as to which of the accused persons had committed the offences alleged against them.

34. Although, the Prosecution examined several witnesses who included the SHO's and the DDA officials present and some injured persons. However, from the scrutiny of their testimonies, it is found that there are only three witnesses who identified the accused persons. Those three witnesses are, namely, PW 12 ACP Jasbir Singh Malik who was posted as SHO, Police Station Kalkaji and was also injured. The second witness is PW 21 Inspector Anil Malik, who was posted as SI at PP Jamia Nagar and at Police Station, NFC and he was also injured. Lastly, it is PW25 Retired ACP Gurmeet Singh, who was the complainant and SHO, Police Station, NFC.

35. The remaining witnesses who are injured persons are namely, PW 3 Ct. Ajit, PW 10 Ct. Jitender Rana, PW 11 HC Shaukat Ali, PW 20 HC Mohan Singh and PW24 ASI Anil Kumar but they failed to identify the accused persons. They did not utter even a single word against any of the accused persons.

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36. It is also observed that the Test Identification Proceedings (TIP) of none of the accused persons was conducted after their arrest by the police. This aspect creates a doubt in the case of the prosecution. The significance of TIP has been noted in the case of Rameshwari 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 furnishes 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 State vs. Javed Alam etc. 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."

GENERAL ALLEGATIONS MADE BY PWS WHO IDENTIFIED THE ACCUSED PERSONS

37. It is important to analyze the testimonies of the prosecution witnesses who identified the accused persons. The analysis is to be done to determine whether in the light of their testimonies, the case of the prosecution has been proved beyond reasonable doubt. PW 12 Insp. Jasbir Malik was the then SHO PS Kalkaji and also one of the injured persons. In his testimony, the only incriminatory evidence against the accused persons is :"The accused persons present in the court today were part of the mob who were pelting stones but I cannot tell their names." However, this allegation which is made against the accused persons is of a general nature and does not specifically mention what offences the accused persons had committed.

38. The other injured person is PW21 is Insp. Anil Malik and he was posted as SI at PP Jamia Nagar and at PS NFC. He deposed that he could identify the arrested accused persons and specifically deposed that, "Today, 13 accused persons out of said 17 arrested accused persons are present in the court today", but further deposed that, "I cannot tell the names of all accused State vs. Javed Alam etc. persons present in the court". The only incriminatory evidence in his deposition is reproduced: "In the whole process, five to six police personnel also received injuries. The mob/crowd attacked our one of the police booths near Ashoka park and assaulted and injured Ct. Anil who was on duty there. The mob forcefully entered into the said booth, assaulted the constable and broke the glass panels of the said booth and threw out the material on fire." From his testimony, it is apparent that the allegations made against the accused persons are bald, as he did not specify the details of the role of the accused persons in commission of the alleged offences. Lastly, PW 25 Retd. ACP Gurmeet Singh is the complainant as well as IO in this case. He identified the accused persons but deposed that he could not specify their names as the incident had occurred around 18 years. From perusal of the testimony of PW25 ACP Gurmeet Singh, it is apparent that he has failed to state the specific acts of the accused and their involvement in the alleged incident.

DISCHARGE OF DUTY BY INJURED/PWs NOT PROVED

39. The prosecution also failed to prove any official correspondence or order or notice or any other document on record to show that the injured persons and other witnesses including the SHO, police officials and DDA officials had gone to the spot for discharging their official duties of demolition.

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40. PW 12 ACP Jasbir Singh Malik in his cross- examination deposed that he did not remember whether he had inquired from the DDA officials about serving prior notice regarding the demolition upon the residents of the area. He deposed that he did not remember whether he had made any departure/arrival entry regarding their movement towards Tauba Colony.

41. PW 21 Inspector Anil Malik in his cross-examination deposed that he did not remember the exact time when information regarding demolition reached. He further deposed that he started for the demolition site from PP Jamia Nagar and regarding the same he made departure/DD entry which he could not recall. Further, in his cross examination he stated that he "was not aware whether DDA had served any prior notice on the residents of the spot where the demolition drive had to be carried out."

42. In this regard, the testimony of PW25 Retd. ACP Gurmeet Singh is also relevant. In his cross-examination, he deposed that that he did not remember the DD entry by which they left the PS, although, he had made a departure entry. However, the said DD entry was not placed on record. Further, he deposed that in regard to the demolition drive, he was informed by the DDA State vs. Javed Alam etc. through a letter. It was admitted by him in his cross-examination that he had not placed the aforesaid letter with the charge sheet. Moreover, he deposed that as per the information supplied by the DDA Staff they had served prior notice to the residents of the area. He further deposed that he did not ask for a copy of notice supplied to the residents by the DDA as DDA was autonomous body and a letter regarding demolition had already been served upon them.

43. Thus, it is apparent that the prosecution witnesses failed to bring on record any letter vide which they were directed/instructed to provide police aid to the DDA officials for the demolition of illegal encroachment on the spot. In view of this aspect also, the case of the prosecution becomes weak as it could not be proved that the accused persons obstructed public servants in discharge of their public duty.

NON-PRODUCTION OF CASE PROPERTY DURING TRIAL

44. PW21 Inspector Anil Mailk in his examination-in- chief deposed that the IO/SHO PS NFC Retd. ACP Gurmeet Singh had seized 39-40 brick stones used by the unlawful assembly and kept the same in a plastic katta and sealed it with memo Ex.PW21/A bearing signature of PW1 Inspector Anil Malik at State vs. Javed Alam etc. point A. Further, PW1/ Inspector Anil Mali stated that the IO/SHO PS NFC Retd. ACP Gurmeet Singh seized from the police booth various articles including, broken glass panels, burnt wooden pieces, ashes brick, stones used by the unlawful assembly which were kept in the plastic kata and sealed the same with memo Ex.PW21/B. PW 25 Retd. ACP Gurmeet Singh also deposed that he could identify the case property if shown to him but that it has

been disposed of, as per the report of District Nazir which is Ex.PW23/2.

45. Further, in the testimony of PW 23 Sh. Ashok Kumar who appeared from Revenue department, Govt NCT of Delhi, the alleged case property was stated to be disposed of/destructed. Further, he deposed that the case property was disposed of/destructed vide order Ex.PW23/1 passed by Ld. Auction Magistrate on 11.01.2017, 12.01.2017 and 13.01.2017. He also proved the report of District Nazir in this regard as Ex.PW23/2.

46. However, the case property, prior to its destruction was never produced before the court nor any photographs of the case property have been filed with the destruction for the purpose of identification of case property. Thus, the articles which were allegedly destroyed by the accused person could not be proved by the prosecution.

State vs. Javed Alam etc. NON-JOINDER OF PUBLIC WITNESSES:

47. It is pertinent to note that despite presence of several public persons on the spot, the IO did not join the public persons at the time conducting investigation and even not made any effort to join them by issuing any notice etc. None of the witness deposed regarding the joining of any independent public witness to the investigation. Further, it is pertinent to note that PW25 ACP Gurmeet Singh/IO deposed that there were large number of persons who had gathered at the spot, almost 1000 persons. However, in his cross examination, he deposed that he was unable to tell whether he had recorded the statement of any public witness.

48. In the absence of any joinder of any independent witness in the investigation, false implication of the accused persons by the local police in the present case cannot be ruled out.

49. The aforesaid observation of the Court is fortified by following observations by the Hon'ble apex court in the case of Hem Raj v. State of Haryana AIR 2005 SC 2110, it has been observed that:

"8. The fact that no independent witness though available, was examined and not even an explanation was sought to be given for not examining such witness is a serious infirmity in the prosecution case. Amongst the independent witnesses(Kapur) one who was very State vs. Javed Alam etc. much in the know of things from the beginning was not examined by the prosecution.

9. Non-examination of independent witness by itself may not give rise to adverse inference against the prosecution. However, when the evidence of the alleged eyewitnesses raise serious doubts on the point of their presence at the time of actual occurrence, the unexplained omission to examine the independent witness would assume significance."

50. The aforesaid deposition of the IO PW25 ACP Gurmeet Singh shows that he has failed to give any plausible explanation for non-joining of the public witnesses in the investigation despite their availability. This casts a serious doubt about the veracity of the entire prosecution case of the

accused persons being involved in the alleged offences.

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 all shadow of reasonable doubts, hence, all the twelve accused persons namely 1) Naseem Ahmad s/o Shakir, 2) Abrar Alvi s/o Mohd. Shabbir, 3) Mohd.

State vs. Javed Alam etc. Salim s/o Mohd. Babu, 4) Furkan Ahmad s/o Zamir Ahmad, 5) Mohd. Arif s/o Sh. Khursheed, 6) Zuber Ahmad s/o Abdul Gaffur,

7) Mohd. Showkeen @ Ashok s/o Kamar, 8) Gucchan s/o Sharddin Khan, 9) Ali Hassan s/o Ami Hassan, 10) Shakeel Ahmad, 11) Mahandi Hasan s/o Abdul and 12) Gulam Haider s/o Mohd. Sheffiuallah stand acquitted of the offences punishable under Section 147/148/149/186/353/452 IPC and Sections 3 and 4 of PDP Act

53. Bail bonds/Surety bonds U/s. 437 CrPC stands canceled.

54. File is ordered to be consigned to record room with direction to preserve the same as five accused persons have been declared as absconders/proclaimed offenders. The names and particulars of said five accused persons who are declared proclaimed offenders are provided below:

1) Irfan s/o Furkan R/o. 791/22, Zakir Nagar, New Delhi.

(Absconder declared vide order 19.04.2022)

2) Shahnawaz s/o Mohd. Riazuddin, R/o. E-822/22, Zakir Nagar, New Delhi (Proclaimed offender vide order dated 21.05.2011)

3) Mohd. Kashim s/o Mohd. Maltiulah, State vs. Javed Alam etc. R/o. 500/6, Zakir Nagar, New Delhi.

(Proclaimed offender vide order dated 21.05.2011)

4) Kadir s/o Shamsher Ali, R/o. Gali NO.39, Zakir Nagar. (Proclaimed offender vide order dated 21.05.2011)

5) Mohd. Uzair s/o Shamshul Islam, R/o. H.No.351 Nai Basti, Delhi. (Proclaimed Offender vide order dated 21.05.2011) Dictated and announced in the open Court on 25.11.2022 (SONAM

SINGH-I) ACMM (SOUTH EAST):

SAKET COURTS :NEW DELHI State vs. Javed Alam etc.