

Delhi District Court

State vs . Saleem And Anr. on 29 November, 2022

IN THE COURT OF MS. MEENA CHAHAN
METROPOLITAN MAGISTRATE -08 (CENTRAL)
TIS HAZARI COURTS : DELHI
JUDGMENT

FIR No. : 165/14 PS : Kamla Market U/s 186/353/332/34 IPC State vs. Saleem and Anr.

Date of Institution of case: 27.08.2015 Date when Judgment reserved: 21.11.2022 Date on which Judgment pronounced: 29.11.2022 A. Case No. : 288149/16 B. Date of Institution of Case : 27.08.2015 C. Date of Commission of Offence : 10.06.2014 D. Name of the complainant : Dilip Kumar E. Name of the Accused & his :1. Saleem S/o Abdul Mugnee R/o 2791, Mohalla Nihariyan, G B Road, Delhi.

2. Abdul Jabbar S/o Sh. Abdul Mugnee, R/o 2791, Mohalla Nihariyan, G B Road, Delhi.

3. Mohd. Iqbal S/o Late Mohd. Shami R/o 2791, Mohalla Nihariyan, G B Road, Delhi.

F. Offence complained of	: U/s 186/353/332/34 IPC
G. Plea of the Accused	: Pleaded not guilty
H. Order reserved on	: 21.11.2022
State Vs. Saleem and Ors.	
FIR No. 165/14	
PS Kamla Market	

I. Final order	: Acquitted of all charges
J. Date of such order	: 29.11.2022

Brief statement of reasons for decision of the case:

1. Succinctly put, the case of the prosecution is that on 10.06.2014 at about 12.30 p.m. at H. No. 2719, Mohalla Niharyan, Chandni Chowk, Delhi within the jurisdiction of PS Kamla Market, accused persons in furtherance of their common intention obstructed public servant Dalip Kumar, then Assistant Manager, BSES along with his team member and police officials of PS Kamla Market in discharge of his official duties and voluntarily assaulted them with hand blows and foot with an intent to prevent or deter them from discharging their duties and caused hurt to complainant Dalip Kumar and a videographer Kishan Pal while they were discharging their duties as public servant and thereby committed the offences punishable U/s 186/353/332 read with Section 34 Indian Penal Code (hereinafter called as IPC).

2. After the usual investigation, the charge sheet for the offences u/s 186/353/332/34 IPC was prepared against the accused persons. The aforementioned charge sheet was filed before the court on 27.08.2015 whereupon the cognizance of the offences was taken against the accused persons. The copy of the charge-sheet was supplied to the accused persons in compliance of Section 207 Code of

Criminal Procedure (hereinafter called as Cr.P.C).

3. After hearing the arguments, charge u/s 186/353/332/34 IPC was framed against the accused persons on 16.11.2015 for the State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market alleged commission of the offences u/s 186/353/332/34 IPC to which accused persons pleaded "Not Guilty" & instead claimed trial.

4. In support of its version, the prosecution has examined ten witnesses.

5. PW-1 Dalip Kumar deposed that on 10.06.14, he was working as Assistant Manager in BSES YPL, Delhi. He was authorized to conduct raids and inspect the site as per the notification of LG and after granting the permission on behalf of licensee BSES YPL. A team consisting of himself, Shri Naval Singh Assistant Manager, Female guard official and Delhi Police officials conduct a raid at house no. 2719, Mohallan Nihariyan, Chandni Chowk area as there was a complaint of direct theft of electricity. At about 12.30 PM, all raiding party members reached house no. 2791, Mohalla Nihariyan, Chandni Chowk area, where Salim, Abdul Jabbar and Mohd. Iqbal met them and they found themselves indulging in direct theft of electricity. They removed the electric wire and electric meter from the site. Thereafter, they proceed to the house no. 2719, Mohalla Nihariyan, Chandni Chowk area. There was also a direct theft of electricity. Public persons gathered there and they obstructed them from their official duty and when they tried to remove the electric wire meter as the direct theft of electricity was going on. The public is saying that the BSES team has removed the electric meter and wire from the electric line and they have to snatch the electric meter from their possession. The State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market public started beating them. Public persons snatched the danda from the possession of a police official and attacked videographer Kihan Pal, who was with them. Videographer sustained an injury. He also received minor injuries. Public persons snatched the electric meter from their possession and damaged the same by throwing it on the road. He was medically examined. Thereafter, they returned to their office and complained about the matter to their senior officials. Senior officials instructed him to complain the matter to the police. Thereafter, he complained the matter to the police vide his complaint Ex. PW1/A. Raiding party had 13 members. He cannot identify the public persons who gathered there and obstructed them from performing official duty and who caused injuries to him. The attention of the witness attracted the courtroom, the witness stated that he was unable to identify the assailants (public persons) as there was a huge crowd of persons.

During cross-examination by Ld. APP for the State after seeking permission from the court, PW-1 stated that he admitted that he had mentioned the name of public persons in his complaint. (Vol. The name of public persons which he mentioned in his complaint Ex. PW1/A are based on his knowledge gathered from the other public persons who were calling those persons by those names). He denied that he visited the place of incident in the presence of IO on 10.06.14. He further denied that on 22.06.14, he visited the police station Kamla Market, where accused Saleem was present in police custody and he identified him as the assailant. He further denied that State Vs. Saleem and

Ors.

FIR No. 165/14 PS Kamla Market on 08.08.14, I visited the police station Kamla Market, where accused Mohd. Iqbal was present in police custody and he identified him as the assailant. He further denied that on 21.08.14, he visited the police station Kamla Market, where accused Abdul Jabbar was present in police custody and he identified him as the assailant. He further denied that accused Mohd. Iqbal, Abdul Jabbar and Sleem were present in Court on 10.06.14 at the spot and they obstructed them from performing their official duty, while they were removing the electric wire and meter from the site as direct theft of electricity was going on. He further denied that he is not identifying the accused persons intentionally and deliberately as he won over them as he settled the matter with them. He further denied that he is deposing falsely.

During cross-examination by Ld. Counsel for accused persons, PW- 1 stated that he admitted that no beatings / manhandling happened with him and his team members at the time of inspection of house no. 2791, Mohalla Nihariyan, Chandni Chowk area, Delhi. No case was lodged about the electricity theft in respect of house no. 2719, Mohalla Nihariyan, Chandni Chowk area, Delhi. He further denied that there was no theft of electricity at house no. 2719, Mohalla Nihariyan, Chandni Chowk area. He further denied that they did not do any assessment of theft of electricity at 2719, Mohalla Nihariyan, Chandni Chowk area. He admitted that police staff were with him at the time of inspection. There was no lady police official. He further denied that a quarrel had happened between him and the public State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market persons on 10.06.14 at aforesaid house no. 2719, Mohalla Nihariyan, Chandni Chowk area. He further denied that he intentionally mentioned the name of accused persons in his complaint Ex. PW1/A.

6. PW-2 Jatan Singh deposed that on 10.06.14, he sent a team to conduct raids at Mohalla Nihariyan, Gali School Wali, Chandni Chowk, Delhi with respect to the theft of electricity. Mr. Dalip Kumar who was the team leader of the raiding party reported him telephonically that the public persons had started agitating and quarreling with the raiding team at the raiding site. Dalip Kumar informed him that after conducting raids at the premises no. 2791, Mohalla Nihariyan, Gali School Wali, Chandni Chowk, as the raiding team proceeded further, some of the public persons started agitating and manhandling with the officials of the raiding team. Thereafter, he directed them to reach at the PS and get the FIR lodged against the culprits. He also filed a complaint u/s. 195 Cr PC, the same is Ex. PW2/A.

During cross-examination by Ld. Counsel for the accused persons, PW-2 stated that he sent the raiding team for conducting mass raids at Mohalla Nihariyan, Gali School Wali, Chandni Chowk, Delhi on his oral instructions. (Vol. The raid was conducted as per schedule). He was not present at the time of mass raid at Mohalla Nihariyan, Gali School Wali, Chandni Chowk. Delhi. The raiding team left the BSES Office at about 10.00 AM and firstly went to PS Kamla State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market Market. There were two teams which were sent to the site. Mr. Dalip Kumar did not tell him the name of any such persons, who allegedly manhandled and

quarreled with the raiding team.

7. PW-3 Kishan Pal has deposed that on 10.06.14, he was working as photographer with a contractor, whose name he does not remember today. The said contractor runs his company in the name and style of SafeGuard Pvt. Ltd at Dwarka. He along with Dalip Kumar, Assistant Manager of BSES (YPL) had gone to house no. 2791, Mohalla Niharihan, Chandni Chowk. Delhi at about 12.00/12.30 Noon. There was a case of direct theft of electricity at the aforesaid house. He videographed the scene of the theft of electricity at the aforesaid house at the instruction of Ashok Kumar. Thereafter, they left the said house. Thereafter, they reached another house in said mohalla. Some public persons gathered there. The public started shouting and abusing them and other staff of BSES. Someone pushed him and public people beat him. He cannot identify the persons who pushed him and beat him. Police officials were already with them. Thereafter, they reached the police post. Thereafter, they went to their office. His officers lodged the complaint.

During cross-examination by Ld. APP for the State after seeking due permission from the court, PW-2 stated that police had made enquiry from him. He was taken to the hospital, where he was medically examined. Police did not record his statement. He denied State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market that Mohd. Iqbal, Abdul Jabbar and Saleem had gathered there being the members of the crowd of public and they gave beatings to Assistant Manager Dalip Kumar and Amar Singh who sustained injury and he stated this fact to the police in his statement. He denied that he was won over by the accused persons and he is not identifying them intentionally as he settled the matter with the accused persons. He denied that he is deposing falsely. During cross-examination by Ld. Counsel for accused, PW-2 stated that he admitted that no quarrel had happened when the inspection was going on at the house no. 2791, Mohalla Nihariyan, Chandni Chowk, Delhi. The inspection of house no. 2719, Mohalla could not be conducted as when they reached there, public persons started shouting.

8. PW-4 Amar Singh has deposed that on 10.06.2014 he was working as lineman in BSES. On that day he along with Dalip Kumar (Manager), Kishan Pal (Videographer) and other BSES officials went to H. No. 2791, Mohalla Nihariyan, Delhi. They found direct theft of electricity at the aforementioned house. Sh. Kishan Pal did the videography of the scene of direct theft of electricity at the spot at the instructions of Manager Dalip Kumar. At the instructions of the manager, the illegal wire by which the direct theft of electricity was committed got disconnected. The wire was taken in possession and thereafter they went to another house whose number he does not remember today but it was situated nearby at State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market aforesaid H. No. 2791. When they reached near the said house, a local resident came and started beating us. His manager Dalip Kumar received injuries but he did not receive any visible injury. He was medically examined. He does not know those public persons who beat the members of the BSES team. He cannot identify those public persons.

During cross-examination by Ld. APP for the State after seeking due permission from the court, PW-4 stated that he did not make any statement to the police, however police only made enquiry

from him. He denied that on 10.06.2014, he made his statement to the police regarding the incident. The statement marked PW4 u/s 161 Cr.PC is read over to the witness who denied having made such a statement to the police. He admitted that at the time of conducting the raid, local police staff were with them. He admitted that the raid was conducted at about 12.30 PM at H. no. 2791, Mohalla Nihariyan, Delhi. He admitted that the direct theft of electricity of H. no. 2791, Mohalla Nihariyan was committed by Mohd. Iqbal, Abdul Jabbar and Saleem. He does not remember whether the number of other houses was 2719, Mohalla Nihariyan where they reached after conducting the raid at H. No. 2791, Mohalla Nihariyan, Delhi. He admitted that he does not remember this fact due to the lapse of time. He admitted that when the videographer started to do videography at H. no. 2719, Mohalla Nihariyan, the public persons came and started beating them. He does not remember due to the old incident, whether public persons namely State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market Mohd. Iqbal, Abdul Jabbar and Salim were present with the public persons who had beaten them and he told those names to the police. He does not remember whether he was beaten by a public person namely Mohd. Iqbal and he told this fact to the police. He admitted that manager Dalip Kumar had registered the present case against the persons who had beaten them. At this stage the attention of witness is brought towards the accused persons who are in attendance of the court by Ld. APP to which witness states that he is not able to identify the accused persons due to lapse of time. He denied that he was won over by the accused persons. He denied that he is deposing falsely.

9. PW-5 HC Anil Kumar has deposed that on 10.06.14, he was posted at PS Kamla Market as HC. On that day, the Assistant Manager, Dilip Kumar along with other team members including female, photographer etc. all officials of BSES came to the police station as a raid had to be conducted at Mohalla Nihariyan, Delhi. He alongwith Ct. Mahender and the above BSES member team reached house no. 2791, Mohalla Nihariyan, Delhi, where the direct theft of electricity was committed at the aforesaid house. The Assistant Manager got prepared the videography of the scene of direct theft of electricity and got clicked photographs. The Assistant Manager removed the wire by which the theft was committed and also removed the electric meter from the site. The same were taken in possession. Thereafter, they all reached house no. 2719, Mohalla State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market Nihariyan, where the Direct theft of electricity was committed. When the videography of the scene of theft was conducted by the BSES team the owner of the house no. 2791, namely Abdul Jabbar, Saleem and Iqbal, whose names came to be known later on, came along with public persons. The all above persons Abdul Jabbar, Saleem and Iqbal alongwith public persons started abusing and beating the BSES team. The accused persons gave legs and fist blows to the members of the BSES team. Lineman Amar Singh and another team member, whose name he does not remember today, sustained injuries. They escaped the BSES team members from the accused persons. BSES team members went to the police station and registered the case. Again said photographs were not clicked at the spot. He has correctly identified accused persons Saleem and Mohd. Iqbal. The identity of accused Abdul Jabbar is not disputed by Ld. Defence Counsel in the testimony of this witness, however, he can identify the accused Abdul Jabbar.

During cross-examination by Ld. Counsel for accused persons, PW- 5 stated that BSES Team members had come at PS at about 12.00 Noon. He did not hand over any document in respect of his departure from PS Kamla Market to IO. They were sent with the BSES Team for their protection. No quarrel happened at house no. 2791, Mohalla Nihariyan. Only one electric meter was removed from house no. 2791, Mohalla Nihariyan. He does not know the name of the person in whose name the electricity meter was installed. There was only one electricity theft case at premises no.

State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market 2791, Mohalla Nihariyan on the day of incident. He denied that he is deposing falsely that there is only one electricity theft case. He did not meet any person at premises no. 2791, Mohalla Nihariyan. He denied that he is deposing falsely in this respect. He does not know whether BSES officials had found three electricity theft cases / complaints at house no. 2791, Mohalla Nihariyan. He does not know the name of the owner of house no. 2791, Mohalla Nihariyan. He does not know the name of the owner of house no. 2719, Mohalla Nihariyan. The names of accused persons were disclosed during an investigation conducted by the IO. IO had told him the name of the accused persons. He cannot say as to what could be the age of the accused Abdul Jabbar at the time of incident. He denied that he is deposing falsely on this aspect. He further denied that he is identifying the accused persons Saleem and Iqbal due to their appearance in the court today. He further denied that he deposed falsely at the instance of IO and BSES officials. He further denied that the accused Saleem and Iqbal were not present at the spot on the day of incident. There were 60/70 public persons present at the spot. He escaped the BSES officials at the spot. He further denied that he is deposing falsely on this aspect. He did not sustain any injury and his uniform was not torn during the process of escaping the BSES officials. He further denied that he had not escaped the BSES officials or that he fled away so that he did not sustain injury and his uniform was not turn. No quarrel happened between the officials of BSES and the owner of house no. 2719, Mohalla State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market Nihariyan. He further denied that he is deposing falsely on this aspect. His statement was recorded on the same day by the IO. He further denied that he is deposing falsely on this aspect. He further denied that he had recorded his statement u/s. 161 Cr.PC at the instance of IO. They returned to PS at about 1.30 PM. He further denied that he was not present at the spot so that he is unable to tell the name of other team members of BSES officials. He did not count the team members of BSES, however, they were about 15-20 in numbers. He further denied that he is deposing falsely on this aspect. He further denied that he had not made any departure entry before proceeding to the spot. He further denied that as there was no arrival entry as such there is no departure entry of mine. He further denied that he is deposing falsely in order to implicate the accused persons at the instance of IO and BSES officials.

10. PW-6 Ct. Mahender Singh has deposed that on 10.06.2014, his duty hours were from 8:00 am to 8:00 pm. At about 12: 30 pm a BSES team composed of Dalip Kumar Assistant Manager, photographer, one female staff and other officials came to PS Kamla Market. He along with HC Anil Kumar and other police officials accompanied them to conduct raids at Mohalla Nihariyan, Delhi. They alongwith BSES team reached house no. 2791 Mohalla Nihariyan, Delhi where they found that

theft of electricity was being committed by the owner of house no. 2791, Mohalla Nihariyan, Delhi. The spot was photographed and BSES officials removed the State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market electric wire through which electricity theft was being committed. The same was taken into possession. They went to house no. 2719, Mohalla Nihariyan, Delhi where they also found that theft of electricity was being committed by the owner of the said house. When BSES officials started taking photographs and removing the wire all the accused persons namely Mohd. Iqbal, Abdul Zabbar and Saleem along with other persons came there and started abusing and manhandling the BSES team. He has correctly identified accused persons. All the accused persons along with other public persons attacked the BSES officials and started beating them. Some of the BSES officials sustained injuries in this process. He along with HC Anil and other police officials anyhow managed to free the BSES officials from accused persons and took them to PS Kamla Market. Thereafter, Assistant Manager Dalip Kumar lodged a complaint regarding the same. IO recorded his statement. During cross-examination by Ld. Counsel for accused persons, PW- 6 stated that the BSES team reached PS Kamla Market at about 12:00 noon and they left the PS along with them at about 12: 30 pm. They accompanied the BSES team and he does not know whether there was any specific complaint against the owner of house no. 2791 Mohalla Nihariyan, Delhi or not. Departure entry was made regarding our departure from PS Kamla Market. However, he does not know whether IO had annexed the same along with the judicial file or not. He denied that no departure entry was made regarding his departure from PS Kamla Market. He was not assigned specific State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market protection of any officials rather he was assigned alongwith BSES team. He along with HC Anil and other two three police officials had accompanied the BSES team. He does not remember today the names of two or three police officials. The name of those police officials was not disclosed by him to IO. He denied that no police officials were sent to protect the BSES team from PS Kamla Market. No quarrel had taken place at house no. 2791 Mohalla Nihariyan, Delhi. One meter was disconnected at house no. 2791 Mohalla Nihariyan, Delhi. He does not remember the name of the registered consumer of the meter removed from the house no. 2791 Mohalla Nihariyan, Delhi. He denied that he does not remember the same as he was not present there. He denied that there was no theft of electricity at house no. 2791 Mohalla Nihariyan, Delhi. He does not know about the owner of house no. 2791 Mohalla Nihariyan, Delhi. He does not remember who met them at house no. 2791 Mohalla Nihariyan, Delhi. He cannot tell how many electricity meters were installed at house no. 2791 Mohalla Nihariyan, Delhi. Vol. One electricity meter was disconnected in his presence at house no. 2791 Mohalla Nihariyan, Delhi. The distance between house no. 2791 Mohalla Nihariyan, Delhi and house no. 2719 Mohalla Nihariyan, Delhi is around 100 meters. He cannot tell who was the owner of house no. 2719 Mohalla Nihariyan, Delhi. IO had disclosed the name of the accused persons to him. He denied that he was not present at the spot when the incident took place and he is falsely deposing at the instance of the IO. He further denied that he State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market is only identifying the accused persons present in the court today as accused in the present case as they have been arrayed as accused in the present case and not because they were present at the spot. His statement was recorded by the IO on 10.06.2014. The FIR

was registered in the evening of 10.06.2014. His statement was recorded by the IO after registration of FIR. They reached the PS from the spot at about 3: 00 pm. He does not remember whether his arrival entry was made at the PS or not. Vol. Duty officer might have made an entry regarding the same. He denied that there is no entry regarding his departure and arrival that is why he is unable to tell about the DD entry regarding the same. He denied that accused persons were not present at the spot at the time of incident. He further denied that he is deposing falsely at the instance of a BSES official and IO.

11. PW-7 Ct. Ram Niwas has deposed that on 10.06.2014, his duty hours were from 8:00 am to 8:00 pm. At about 7: 30 pm duty officer handed over to him a copy of FIR and original rukka of the present case with the direction to hand over the same to IO SI Mangesh. He went to house no. 2719 Mohalla Nihariyan, Delhi and handed over a copy of FIR and original rukka to IO. IO recorded his statement.

During cross-examination by Ld. Counsel for accused persons, PW- 7 stated that he denied that he did not join investigation of the present case at any time and not visited the house no. 2719 Mohalla State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market Nihariyan, Delhi.

12. PW-8 Ct. Ravinder has deposed that on 21.08.2014, accused Abdul Jabbar along with his surety came to the PS. IO formally arrested and personally searched the accused in his presence vide memos Ex.PW8/A and Ex.PW8/B respectively. IO recorded the disclosure statement of accused Abdul Jabbar in his presence Ex.PW8/C. IO recorded his statement u/s 161 Cr.P.C.

13. PW-9 Dina Nath Yogi has deposed that on 18.08.2015, he was posted as Assistant Manager, BSES YPL, Town Hall, Chandni Chowk, Delhi. At the request of IO, he had handed over to him two electricity bills of CA No. 100301306 and 150455798 which are Ex. PW9/A and Ex. PW9/B. IO took the same into possession vide seizure memo Ex. PW6/C.

During cross-examination by Ld. Counsel for accused persons, PW- 9 stated that he does not have any personal knowledge about the incident mentioned in the FIR.

14. PW-10 Retired SI Mangej Singh on 10.06.2014, Manager BSES Dalip Kumar came to the PS to lodge a complaint regarding beating him and other officials who were with him. Krishanpal and Amar Singh also came along with Dalip Kumar and apprised the fact of injury. Thereafter, he sent Ct. Mahesh alongwith complainant Dalip Kumar, Krishan Pal and Amar Singh for their medical State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market examination at LNJP Hospital. Thereafter, complainant gave a written complaint in the PS and prepared rukka vide Ex.PW10/A and handed over the same to DO and got the FIR registered. Thereafter, he along with the complainant went to the spot. He prepared a site plan at the instance of complainant vide Ex.PW10/B. He recorded the statement of witnesses. On 22.06.2014, he alongwith Ct. Roop Lal went to the Mohalla Nihariyan in search of the accused

and found the accused present in the gali near his house. They apprehended accused Salim and brought him to PS. When he was interrogating the accused, HC Anil came to the PS who were present along with the complainant at the time of incident and identified accused Salim. Complainant Dalip also came to the PS and identified accused Salim. Thereafter, he arrested accused Md.Salim and personally searched him vide Ex. PW10/C and Ex. PW10/D respectively. Thereafter, he recorded a disclosure statement vide Ex.PW10/E. On next day, during investigation, accused Salim disclosed the name of his co-associates namely Abdul Zabbar and Md. Iqbal. They tried to search the accused persons near the place of incident but could not be traced. On the next day, the accused was produced before the Court and he was sent to J/C. On 08.08.2014, accused Md. Iqbal came to the PS on the direction of the Court. He formally arrested and personally searched vide Ex.PW10/F and Ex.PW10/G. He recorded disclosure statements of accused Md. Iqbal vide Ex.PW10/H. Thereafter, on 21.08.2014, accused Md. Abdul Zabbar came to the PS on the direction of the Court. He State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market formally arrested and personally searched vide Ex.PW8/A and Ex.PW8/B. He recorded disclosure statements of accused Md. Iqbal vide Ex. PW8/C. He obtained the MLC of injured Krishan Pal in which the doctor had opined the nature of injury as simple. Thereafter, he obtained the sanction under Section 195 Cr.P.C., vide Ex.PW2/A. During investigation, he obtained the electricity bill from D.N. Yogi, Assistant Manager, BSES vide Ex. PW9/A and already Ex.PW9/B. He seized the same vide seizure memo Ex. PW9/C. He recorded the statement of witnesses. After completion of investigation, he prepared a chargesheet and submitted it before the Court. He has correctly identified the accused persons. During cross-examination by Ld. Counsel for all accused persons, PW-10 stated that complainant Dalip came to the PS in between 4 -5 p.m. Incident happened at about 12:30 p.m., as narrated by complainant Dalip. Police officials namely HC Anil and Ct. Mahender was present with them during the raid by the complainant. He denied that police officials namely HC Anil and Ct. Mahender was not present with them during the raid by the complainant. After perusal of the record, no DD entry regarding the arrival and departure of the Ct. Anil and Ct. Mahender are found on record. He denied that none of the witnesses had identified the accused persons in the PS. He further denied that no statement was given by the complainant and other witnesses namely Krishan Pal and Amar Singh. He further denied that all the proceedings were carried out while sitting at PS. He further denied that he did not State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market apprehend accused Salim from his gali. He further denied that the complainant had not given any written complaint and he had merely signed on the blank paper. He further denied that he had told the name of the accused persons to the witnesses and they were not aware about the name of the accused persons. He had asked public persons but none joined the investigation and left without disclosing their names and addresses. He further denied that he had falsely implicated the accused persons. He further denied that none of the accused had given their disclosure statements and he obtained the signature on blank papers and later on converted the same into disclosure statements. He further denied that he is deposing falsely.

15. After the conclusion of prosecution evidence, statements of accused persons were recorded separately wherein accused persons claimed to be innocent and denied the allegations against them.

Accused persons opted not to lead any Defence Evidence. Final arguments were heard.

16. I have heard Ld. APP for State and learned counsel for accused. I have perused the record. Ld APP for the state argues that the prosecution has successfully proved its case against the accused. It is submitted that testimonies of all police witnesses who are eye- witnesses cannot be discarded and in totality the case of prosecution is proved beyond reasonable doubt against the accused. On the other hand, Ld counsel for the defence argued that the prosecution has State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market miserably failed to prove its case as both the complainant and injured have failed to identify the accused persons. It is contended that remaining police officials have not exhibited any DD entries to prove their involvement at the spot, further there are various discrepancies in the testimony of police witnesses and the benefit of doubt should, thus, be given to the accused persons.

17. I have cogitated over the submissions made by Ld. APP for the state and ld. counsel for the accused. At this juncture, it is prudent to discuss the penal provisions involved in the case for arriving at a just decision. The penal provisions are reproduced in verbatim:-

186. Obstructing public servant in discharge of public functions.

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

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

353. Assault or criminal force to deter public servant from discharge of his duty.--Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market 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.

34. Acts done by several persons in furtherance of common intention.--When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

18. Before proceeding for the appreciation of the evidence, the cardinal principle of criminal law is to be borne in mind that the prosecution is supposed to prove its case on a judicial file beyond reasonable doubt by leading reliable, cogent and convincing evidence. Further, it is a settled proposition of criminal law that in order to prove its case on a judicial file, prosecution is supposed to stand on its own legs and it cannot derive any benefit whatsoever from the weaknesses, if any, of the defence of the accused. Further it is a settled proposition of criminal law that the burden of proof of the version of the prosecution in a criminal trial throughout the trial is on the prosecution and it never shifts on to the accused. Also it is a settled proposition of criminal law that the accused is entitled to the benefit of every reasonable doubt in the prosecution story and such reasonable doubt entitles the accused to acquittal.

19. Section 186, IPC, provides the punishment for voluntarily State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market obstructing any public servant in the discharge of his public functions. Section 353 IPC provides the punishment for assaulting or using 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. The common thread running between Section 186, IPC and Section 353, IPC is that the offence should have been committed against a public official when the official was discharging his official duties as a public servant. So, it is necessary for the prosecution to establish that the complainant was discharging his official duties as a public servant when the accused committed offences with which he is charged in the present case. It has been held by the Hon'ble Supreme Court of India in a three judges bench judgment in a case titled Durgacharan Naik And Ors vs State Of Orissa, 1966 AIR 1775: "It is true that most of the allegations in this case upon which the charge under Section 353, Indian Penal Code is based are the same as those constituting the charge under s. 186, Indian Penal Code but it cannot be ignored that section 186 and 353, Indian Penal Code relate to two distinct offences and while the offence under the latter section is a cognizable offence, the one under the former section is not so. The ingredients of the two offences are also distinct. Section 186, Indian Penal Code is applicable to a case where the accused State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market voluntarily obstructs a public servant in the discharge of his public functions but under Section 353, Indian Penal Code the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch. X of the Indian Penal Code dealing with Contempt of the lawful authority of public servants, while s. 353 occurs in Ch. XVI regarding the offences affecting the human body. It is well established that s. 195 of the Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that section."

20. In the present case, a complaint under Section 195 Cr.P.C was made by Assistant Vice President, BSES Yamuna Power Ltd. Dilshad Garden, GT Road, Delhi, who was the senior officer of the complainant at the relevant time. The said complaint is Ex. PW2/A. The complaint has been duly proved. Therefore, compliance of Section 195 Cr.P.C has been done in the present case.

21. Section 332, IPC, provides punishment for voluntarily causing hurt to deter a public servant from his duty. In order to prove the offence punishable under Section 332 IPC, the prosecution has to establish that the complainant, injured Kishan Pal and police officials were a public servant at the time of incident and that the accused had voluntarily caused hurt to such public servant State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market and further that and at the time of hurt public servant was discharging his duty as such public servant or that the accused had intention to prevent or deter the victim or any other public servant from discharging his duties as such public servant. Section 323, IPC, provides punishment for causing hurt.

22. The case of the prosecution is that the accused persons had obstructed the complainant Dalip Kumar alongwith his team members and police officials of PS Kamla Market in discharge of their public duty, voluntarily assaulted them with hand blows and foot and used criminal force thereby causing simple hurt to the complainant Dalip Kumar and videographer Kishan Pal. The aforesaid prosecution version indicates that in order to bring home the guilt of the accused, it is an identity as assailant which must be proved beyond reasonable doubt by the prosecution. In order to prove the identity of accused persons and presence of the accused persons at the spot, testimonies of the complainant and eye- witnesses are to be scanned.

23. Perusal of deposition of PW-1/Complainant reflected that he failed to identify the accused persons stating that there was a huge crowd of persons. Thereafter, after seeking due permission from the court, PW-1 was cross-examined by Ld. APP u/s 154 Indian Evidence Act, wherein he was confronted with his complaint Ex. PW1/A where names of all accused persons were categorically State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market stated and specific roles have been assigned to each one of them. It is strange that the complainant was unable to identify these named persons who obstructed him and even caused injuries to him at the stage of trial. PW-1 was also confronted with all his supplementary statements recorded u/s 161 Cr.P.C where it is stated that he visited the spot in presence of IO, he identified all accused persons after their arrest. It is a settled legal position that statements recorded u/s 161 Cr.P.C cannot be used for any purpose as per provision of section 162 Cr.P.C except for the purpose of contradiction and corroboration. Hence, the statement of the complainant recorded at the stage of investigation cannot be relied on and accordingly, the testimony of the complainant does not support the case of prosecution. Benefit of doubt clearly goes in favor of the accused and against the prosecution.

24. Coming to depositions of other public eye-witnesses PW- 3/Kishan Pal(injured) and PW-4/Amar Singh, they were also unable to identify the accused persons and even denied making any statements to the police with respect to the alleged incident soon after the incident. Other eye-witnesses are police witnesses i.e. PW- 5, PW-6, PW-8 and PW-10 who have correctly identified all the accused persons, however they nowhere stated that they were being obstructed or assaulted or deterred from discharge of their duties by the acts of the accused persons. All the above said witnesses merely stated that accused persons were abusing/beating BSES team State Vs. Saleem and

Ors.

FIR No. 165/14 PS Kamla Market members and gave leg and fists blows to them and injuries were caused to the complainant and videographer Kishan Pal and other team members of BSES. During the cross-examination of PW-5, he stated that he did not sustain any injury nor his uniform was torn. In view of these testimonies, it cannot be stated that police officials were being obstructed by the accused persons in discharge of their duties or any assault/hurt was caused to any of them. As far as the complainant and injured Kishan Pal is concerned, they have refused to identify the accused persons. Considering the overall case of the prosecution, it cannot be said with certitude that accused persons were present at the spot or they obstructed/deterred the complainant along with his team member or videographer or police officials of PS Kamla Market at the relevant point of time. When the identity of the accused persons is not proved, there is no need to discuss the allegation of causation of hurt to the complainant and videographer Kishan Pal by the accused persons as no nexus could ever be proved between the causation of injuries and act of accused persons.

25. Further, there are no DD entries of departures and arrival of any police witnesses who were allegedly present at the spot along with the complainant and his team members. It is an established statutory obligation upon the Police officials to mark their departure and arrival in the register kept in the police station for the purpose as per the Punjab Police Rules. It is relevant here to reproduce Chapter 22 Rule 49 of the Punjab Police Rules, 1934, which reads State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market as under:

"22.49 Matters to be entered in Register No. II□The following matters shall, amongst others, be entered: "(c) The hour of arrival and departure on duty at or from a police station of all enrolled police officers of whatever rank, whether posted at the police station or elsewhere, with a statement of the nature of their duty. This entry shall be made immediately on arrival or prior to the departure of the officer concerned and shall be attested by the latter personally by signature or seal. Note: The term Police Station will include all places such as Police Lines and Police Posts where Register No. II is maintained."

26. Since testimony of complainant and injured is not supporting the case of prosecution, the arrival and departure entries of all police witnesses who were allegedly present at the spot and had witnessed the whole incident, became a vital piece of evidence. However, no such daily diary entry regarding arrival/departure of the said witnesses are present on record and proved. This puts the presence of all police witnesses at the spot at the relevant time under a cloud of suspicion and the benefit of this doubt goes in favor of the accused persons.

27. All the above mentioned facts and circumstances create reasonable doubts on the allegation of happening of the incident as mentioned hereinabove as the prosecution is not able to prove the presence of accused persons at the post and their identity of the accused persons is not established . The fact of presence of all police State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market witnesses on the spot at the relevant date and time itself has come under the clouds of reasonable doubts. On careful perusal and analysis of the entire evidence, I find that there is no corroborative, consistent and sufficient evidence to make up the edifice of the prosecution case which has been produced by the prosecution. Given the aforementioned facts and circumstances, it has to be concluded that the prosecution has failed to prove its case against the accused beyond reasonable doubt. The accused is entitled to benefits of reasonable doubt. Accordingly, accused 1)Saleem S/o Abdul Mugnee, 2) Abdul Jabbar S/o Sh. Abdul Mugnee and

3)Mohd. Iqbal S/o Late Mohd. Shami stands acquitted under Section 186/332/353/34 Indian Penal Code.

File be consigned to Record Room subject to compliance of section 437-A Cr.PC.

Announced in the open court

today i.e. 29.11.2022

MEENA
CHAUHAN

Digitally signed
by MEENA
CHAUHAN
Date:
2022.11.29
17:15:50 +0530

(MEENA CHAUHAN)
Metropolitan Magistrate-08
Central District, Tis Hazari
Courts/Delhi

[This judgment contains 29 pages and each page bears the initials of undersigned and the last page bears the complete sign of undersigned.] State Vs. Saleem and Ors.

FIR No. 165/14 PS Kamla Market