

**IN THE COURT OF MS. VIDHI GUPTA ANAND,
ACMM-01, ROUSE AVENUE DISTRICT COURTS,
NEW DELHI**

STATE Vs. RAAJ KUMAR ANAND & ANR.

FIR No. 275/22

PS: PATEL NAGAR

U/S: 188/34 IPC

Cr Case No.	:	3/2023
CNR No.	:	DLCT12-000050-2023
Date of commission of offence	:	28.03.2022
Date of institution of the case	:	27.03.2023
Name of the complainant	:	SI Neeraj Choudhary
Name of Accused persons and addresses	:	(i) Raaj Kumar Anand S/o Sh. Om Prakash Anand R/o 43/22, Block-43, East Patel Nagar, Delhi-110 008 (ii) Ankush Narang S/o Late Sh. Bharat Bhushan Narang R/o H. No. 28, West Patel Nagar, Delhi
Offence complained of	:	U/s 188/34 IPC
Plea of the Accused	:	Pleaded not guilty
Final order	:	Acquitted
Date of judgment	:	09.06.2023

J U D G M E N T

1. Vide this judgment a case of *Disobedience to Order duly Promulgated by Public Servant* punishable u/s 188/34 of the Indian Penal Code (IPC) filed against two Accused persons i.e.

Accused no.1 Raaj Kumar Anand, sitting MLA from Patel Nagar, Delhi and Accused no.2 Ankush Narang, sitting councilor, shall be decided and disposed off.

Brief Facts of the Case

2. Briefly stated the allegations brought by Prosecution against both Accused persons are that on 28.03.2022 at about 04:30 P.M. near the residence of Delhi BJP President Aadesh Gupta at West Patel Nagar within the jurisdiction of PS Patel Nagar, both Accused persons along with other unknown persons, were marching while shouting slogans without any prior permission from the Competent Authority, without maintaining social distancing and without wearing masks resulting in violation of the Order of ACP Patel Nagar bearing no. 1950-2018/R-ACP/PTN dated 26.02.2022 and therefore, they committed an offence punishable U/s 188/34 IPC.

Trial Proceedings

3. With these allegations, charge-sheet was filed against the Accused persons on 27.03.2023, upon which cognizance was taken of the offence u/s 188 IPC read with Section 195 Cr.P.C. on 11.04.2023 and both Accused persons were summoned in the Court. Upon their appearance in the Court on 19.04.2023, both Accused persons namely, Raaj Kumar Anand and Ankush Narang were admitted to bail and supplied with the copy of the charge-sheet and relevant documents in terms of Section 207 Cr.P.C.

4. On 29.04.2023, Notices of Accusation u/s 251 Cr.P.C. were served upon both the Accused persons for the offence committed u/s 188/34 IPC to which they pleaded not guilty and claimed

trial.

Also, on the same date, Accused persons admitted registration of the FIR in the present matter and accordingly, their separate statement u/s 294 Cr. P.C. was recorded, wherein FIR was exhibited as **Ex.A-1** and supporting certificate u/s 65 (B) of the Indian Evidence Act was exhibited as **Ex.A-2**. Accused persons also admitted the complaint U/s 195 Cr.P.C. which was exhibited as **Ex.A-3** as well as DD entry No. 52-A dated 28.03.2022 PS Patel Nagar, which was exhibited as **Ex.A-4**.

5. In order to prove its case, Prosecution examined three witnesses i.e. PW-1 SI Neeraj Choudhary, PW-2 Ct. Mahender and PW-3 IO SI Bajrang Balya. The testimonies of Prosecution witnesses are summarized in the following paragraphs for a quick perusal.

5.1. **PW1 SI Neeraj Choudhary:** PW1 deposed that on 28.03.2022 he was assigned law and order duty at Block-28 at the house of BJP leader namely Adesh Gupta and accordingly, he went to the said spot along with HC Nikesh and Ct. Mahender.

PW1 further deposed that on that day at about 4:30 P.M., he saw a group of people, coming from the direction of West Patel Nagar i.e. A to Z Block, headed by Raaj Kumar Anand, the local MLA of that area from Aam Aadmi Party and Ankush Narang, who is a sitting councilor from Aam Aadmi Party. PW1 added that he observed that the abovesaid persons including both the Accused persons were neither wearing any mask nor observing any social distancing which was in violation of the notification issued by the then ACP of Patel Nagar due to wide spread of COVID-19. PW1 further deposed that when he stopped and asked

the Accused persons to show permission for the said gathering, they failed to do so and when he asked both the Accused persons to leave the spot, they continued to protest. PW1 added that he immediately informed the then SHO about the present situation who reached the spot and tried to remove the Accused persons along with other persons but the abovesaid *dharna* was continued by them. Lastly, PW1 stated that as the Accused persons did not leave the spot on the directions of the then SHO, he reduced the complaint in writing (**Ex.PW-1/A**) on the basis of which FIR was got registered in PS Patel Nagar through Ct. Mahender. Both the Accused persons were present in the Court and correctly identified by the witness.

During his cross-examination, PW1 deposed that on the day of the incident around 15-20 police persons were also deputed at the spot and the Accused persons were accompanied by around 50-60 persons and the said persons were coming towards the direction of the house of Adesh Gupta.

An important fact revealed by PW1 during his cross examination was that at the time of incident, he was carrying his smart phone and he had prepared the video of the abovesaid Accused persons when they gathered at the spot and had sent the same to the IO through Whatsapp. Interestingly, no such video has been placed on record by the IO.

PW1 further deposed that the then SHO namely, Inspector Bharat Singh and ACP Patel Nagar, namely, Deepak Chandra reached at the spot during *dharna pradarshan*. With respect to the timings of the abovesaid *dharna* PW1 deposed that it started at about 04:30 P.M. and continued till 07:30/ 08:00 P.M. Another

important fact revealed by PW1 is that the place of the alleged incident is a residential area and there is a general store near the spot as well. PW1 further deposed that no inquiries were made by the IO from public persons with respect to the alleged incident in his presence.

5.2. PW2 Ct. Mahender: PW2 is also an eye-witness to the case. He deposed that on 28.03.2022 he was on patrolling duty in West Patel Nagar and on receiving information from PS Patel Nagar that some *dharna pradarshan* will be carried out at the house of BJP leader Aadesh Gupta, he along with other police staff including PW1 SI Neeraj put barricading near the house of abovesaid BJP leader. PW2 further deposed that on that day at around 04:30 P.M., Accused Raaj Kumar Anand, the area MLA , along with Accused Ankush Narang, accompanied by around 100-150 people were coming from the direction of West Patel Nagar towards the house of abovesaid BJP leader. He added that the abovesaid persons were neither wearing masks nor following the guidelines of social distancing and despite being asked to maintain social distancing the Accused persons did not comply. Further, he stated that the then ACP and the then SHO, who were also present at the spot, asked SI Neeraj to take appropriate steps against the Accused persons, on which SI Neeraj wrote a complaint and handed over the same to PW2 upon which FIR was got registered at PS Patel Nagar.

He could not recall whether he received the copy of the FIR from the DO and handed over the same to the IO or not, however, he remembered that IO had recorded his statement u/s 161 Cr. P.C.(**Mark PW2/A**).

Only upon his cross-examination by Ld. APP for the State PW2 remembered that he had come back to the spot along with the original *Rukka*, copy of FIR and certificate u/s 65B of the Indian Evidence Act and handed over the same to the IO.

During his cross-examination by Ld. Counsel for the Accused persons, PW2 could neither remember the time when he left the PS for the spot nor the name of the police personnel who went along with him, however, he stated that they were around 5-7 in number and reached at the spot at around 02:30 to 03:00 P.M. He further stated that the said *dharna pradarshan* started at around 04:15 P.M and continued for around 1-1½ hours. PW2 also admitted in his cross-examination that the spot of the incident is a residential area and there were one or two shops as well in the said area. PW2 specifically stated that several public persons had gathered at the spot at time of the alleged *dharna pradarshan*.

5.3. PW3 IO SI Bajrang Balya: PW3 is the prime witness to the case being the IO of the matter, however, his testimony creates more doubt in the Prosecution case than bringing clarity to it.

He deposed that on 28.03.2022, he was posted at PS Patel Nagar as SI and on that day, when he was present at PS Patel Nagar, he received information that a protest has been carried out by the MLA Raaj Kumar Anand and Councilor Ankush Narang alongwith some unknown persons at the residence of BJP Leader Aadesh Gupta. PW3 further deposed that he received information from the then Duty Officer that the investigation of the present case has been marked to him and on this information, he went to

the spot i.e. 28 Block, West Patel Nagar where he found some unknown persons who were carrying on the protest. PW3 further deposed that Ct. Mahender met him who handed over the original *tehreer* alongwith the copy of the FIR and certificate u/s 65 B of Indian Evidence Act and on this, he started the investigation in the present case.

PW3 further deposed that he tried to search for the Accused persons who were named above but all in vain and also tried to search for the CCTV footages but could not find any.

PW3 also stated that he met both the Accused persons and prepared their *pabandinamas* in the present case i.e. **Ex. PW-3/A** with respect to Accused Ankush Narang and **Ex. PW-3/B** with respect to Accused Raaj Kumar Anand. He added that during the course of investigation, he obtained the copy of order u/s 144 Cr.P.C (**Ex. PW-3/C**), copy of DDMA order (**Ex. PW-3/D**) and also obtained sanction under Section 195 Cr.P.C (**Ex. A-3**).

Lastly, PW3 deposed that after completion of the investigation, he prepared the *challan* against the Accused persons and filed it before the concerned court.

During his cross-examination, PW3 stated that he did not remember the exact time when he left the PS for the spot of the incident, however, he had reached the spot prior to registration of FIR around 9:30 P.M. PW3 further deposed that he did not find the then ACP or SHO present at the spot. He admitted that the spot of the incident is a residential area but no inquiry was conducted from the residents. PW3 further admitted that no inquiry was conducted by him from the police persons present at the spot except Ct. Mahender. PW3 admitted that he stayed at the

spot for around 2 hours and no site plan was prepared by him. Further, PW3 deposed that he had recorded the statement of Ct. Mahender in the Police Station itself.

Contrary to the testimony of PW1, he denied having either any photograph or any video of the alleged incident rather he stated that he did not even remember that SI Neeraj Chaudhary had sent him any photo or video of the alleged incident.

6. After examination of all the Prosecution witnesses, as mentioned above, Prosecution evidence was closed and statements of Accused persons were recorded u/s 313 Cr.P.C. on 01.06.2023 whereby all incriminating evidence was put to both the Accused persons.

Accused persons stated that all the evidences against them are false and frivolous and had not taken any part in the alleged *dharna pradarshan* and had not violated any law, order or notification of DDMA or any other authority. They added that they were not even present at the alleged place on the date of the incident and have been falsely implicated in the present case.

7. Despite opportunity, Accused persons preferred not to lead any evidence in their defence. Accordingly, matter was taken up for final arguments.

Final Arguments

8. Ld. APP for the State as well as Ld. Respective Counsel for the Accused persons vehemently argued in support of their respective cases. While Ld. APP for the State prayed for conviction of the Accused persons citing sufficiency of evidence, Ld. Counsel for the Accused persons prayed for their acquittal stating that prosecution case is far from proving the guilt of the Accused persons and is rather full of irreparable loopholes.

9. It was argued by Ld. APP for the State that eye witnesses to the incident have given uniform statements before the Court and PW1 and PW2 have specifically deposed that both the Accused persons were present at the spot at the time of alleged incident. It was further argued by Ld. APP for the State that the identity of the Accused persons has not been disputed and all the relevant documents pointing towards the guilt of the Accused persons have been brought on record by the Prosecution.

Hence, it was argued by Ld. APP for the State that the case is clearly proved against the Accused persons for violating the order of the ACP, Patel Nagar dated 26.02.2022, whereby the Accused persons failed to maintain social distancing and also did not wear masks and thus, they both should be convicted for the offence u/s 188/34 IPC.

10. On the other hand, Ld. Counsels for the Accused persons strongly opposed the arguments of Ld. APP for the State and argued that there is not even an *iota* of truth in the case put forth by the Prosecution rather it is based on conjunctures and surmises and completely false only for the purpose of promoting political agenda.

The arguments taken by Ld. Counsel for the Accused persons are summarized in the following paragraphs:-

(a) It was argued that there are material discrepancies in the evidence of Prosecution witnesses, which questions their truthfulness.

It was pointed out that in the cross-examination of PW1, he has stated that Accused persons were accompanied by around 50-60 persons and the said persons were coming towards the house of Aadesh Gupta, however, in his examination-in-chief,

PW2 has stated that the Accused persons were accompanied by 100-150 people. It was stated that this itself proves that the figures given by the Prosecution witnesses are false, more so as there is no other document/witness to prove as to how many people accompanied the Accused persons on the day of the alleged incident.

Further, it was brought forward by Ld. Counsels for the Accused persons that it is highly critical to note that PW1 has stated in his testimony that *"I had prepared the video of the abovesaid Accused persons when they gathered at the spot. I had sent the abovesaid video to the IO through Whatsapp. I am not aware as to whether the said video has been placed on record by the IO or not."* However, no such video has been brought on record by the IO and rather he has stated that he neither has any photo nor any video of the alleged incident. In fact, IO has also deposed that he did not even remember whether SI Neeraj Choudhary had sent him any photograph or video of the alleged incident or not.

Further, Ld. Counsel for the Accused persons pointed out that there is discrepancy in the testimonies of Prosecution witnesses with respect to the time of the alleged incident. While PW1 states that *dharna pradarshan* started around at 04:30 P.M. and continued till 07:30/ 08:00 P.M., PW2 has stated that protest had started at around 04:15 P.M. and continued for around 1-1½ hours. Also, it was pointed out that contradicting both the abovesaid witnesses, IO has stated that he reached at the spot at around 09:30 P.M. and at that time the protest was still going on.

In view of the above contradictions, Ld. Counsels for the Accused persons stated that the Prosecution witnesses are not

reliable witnesses as their credibility stands questioned.

(b) It was further argued by Ld. Counsel for the Accused persons that there are no public witnesses to the alleged incident despite the fact that place of alleged incident is a residential area, which again proves that the Prosecution case is devoid of any merits. Ld. Counsel for the Accused persons also pointed out that as per the testimony of the IO/ PW3, no efforts were made by him to conduct any inquiries from any of the public persons, who were present at the spot or residents of the area.

(c) It was further brought forth by Ld. Counsel for the Accused persons that IO has not prepared any site plan of the alleged incident and thus, as to from which direction the Accused persons were coming, where they were heading towards and exact place of occurrence has not been brought on record in any form.

(d) It was questioned by Ld. Counsel for the Accused persons that as to what was the investigation officer doing at the spot of alleged incident for more than two hours as he neither recorded the statement of any public person nor prepared any site plan nor recorded statement of any other police official witness present at the spot. Further it was argued that it is questionable that IO recorded the statement of only one witness i.e. Ct. Mahender that too in the PS itself and not on the spot. Hence, it is argued that these circumstances point out that the case of the Prosecution is concocted.

(e) Further, it was contended by Ld. Counsel for the Accused persons that as per the Prosecution witnesses, the SHO namely, Inspector Bharat Singh and ACP, Patel Nagar namely, Deepak Chandra had also reached at the spot during the incident, however, they have not been brought in the witness box for the reasons best

known to the IO.

(f) Ld. Counsel for the Accused persons further argued that there is neither any video nor any photograph of the incident to prove the presence of Accused persons at the spot and there are various other doubts in the Prosecution case, which render its falsehood more probable than its truthfulness.

(g) With respect to the identity of the Accused persons, it was argued by Ld. Counsel for the Accused persons that both the Accused persons are political figures and easily identifiable by any person. Further, it was pointed out that IO did not find any of the Accused person at the spot and later on he had got their *pabandinamas* made.

(h) It was further asserted by defence that presuming that Accused persons were present at the spot and were accompanied by around 100 people, it is questionable that no protester, not even a single person amongst those 100 persons, had been identified by the IO during the investigation of this case despite the fact that *dharna pradarshan* continued for about 4-5 hours. It was pressed that this rather points out that Accused persons have been falsely implicated in the present matter on account of being public figures.

On behalf of Accused persons reliance was placed on the judgment titled as ***Anoop Joshi vs. State (Delhi)* [1992(2) CC Cases 314 HC]** to buttress the arguments of defence that lack of public witnesses questions the credibility of the prosecution case. Ld. Counsel specifically quoted the following extract of the said judgment:

“18. It is repeatedly laid down by this Court that in such cases it should be shown by the police that sincere efforts

have been made to join independent witnesses. In the present case, it is evident that no such sincere efforts have been made, particularly when we find that shops were open and one or two shop-keepers could have been persuaded to join the raiding party to witness the recovery being made from the appellant. In case any of the shop-keepers had declined to join the raiding party, the police could have later on taken legal action against such shop-keepers because they could not have escaped the rigours of law while declining to perform their legal duty to assist the police in investigation as a citizen, which is an offence under the I.P.C.

19. It is not possible to believe only the I.O. that some of the shop-keepers were requested to join with the raiding party when all other officials appearing in the witness box stated that no shop-keeper was requested to join in the raiding party.”

With these submissions, it was argued by Ld. Counsel for the Accused persons that Prosecution has failed to perform its duty of proving the guilt of Accused persons beyond reasonable doubts and thus, Accused persons deserve to be set free from the charges levelled against them by acquitting them.

11. Submissions of both the sides have been patiently heard. Record has been carefully perused.

Law Points for Consideration

12. Case at hand pertains to alleged violation of Section 188 IPC by the Accused persons, which is a criminal offence for defying the orders duly promulgated by a public servant which in the case at hand is the Order of ACP Patel Nagar bearing no. 1950-2018/R-ACP/PTN dated 26.02.2022 issued u/s 144 Cr.P.C. As per the said order, even though social restrictions were lifted on account of declining cases of COVID-19, it was emphasized that while allowing public activities, wearing of masks, maintaining social distancing, hand hygiene etc. as mandated in

National Directives for COVID Management shall continue to be enforced at all places and any violation of the said instructions shall invite action u/s 188 IPC apart from other legal provisions. The order also specifically mentioned that it is being passed *ex-parte* and directs for its publication through press and affixation on the notice board.

13. Before proceeding on to discussion on the facts of the case and appreciation of evidence, it is utmost necessary to briefly make note of the penal provision attracted herein i.e. Section 188 IPC. For easy reference, Section 188 IPC is reproduced below:

“Section 188 - Disobedience to Order duly Promulgated by Public Servant -

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

14. The language of the provision itself suggests that knowledge of the order being disobeyed is the first pre-requisite for completion of the offence u/s 188 IPC. In fact, the explanation appended to the provision makes it clear that it is not

necessary that the Accused must intend or contemplate to cause harm from his disobedience; rather it is sufficient that he flouted the order despite knowing that the same is in force. Thus, two basic ingredients can be culled out from the provision to complete the offence u/s 188 IPC:

a) Knowledge of the order promulgated by the Government Servant;

b) Disobedience of the said order by the Accused

15. On the aspect of knowledge of the Accused with respect to the order promulgated by a Government Servant, vide leading authorities of Higher Courts, a duty has been cast upon the public authorities to ensure that there is a widespread publicity given to such orders and also, it is mandated that personal communication must be made to the Accused at the spot itself so that even if the order is not within his knowledge at the time of violation, he can change his course of action.

In its judgment titled as ***Bhoop Singh Tyagi vs. State [2002 Cri L J 2872]***, discussing the necessity of the knowledge of the Accused with respect to the relevant order, it was held by the High Court of Delhi as follows:

9. As already seen, a person booked under Section 188 IPC must have actual knowledge of public servant's order requiring him to do or abstain from doing some act. Acquiring or gaining of such knowledge is a pre-requisite. Any proof of general notification promulgated by a public servant would not satisfy the requirement.

10. It is true that the knowledge of Accused could be presumed in certain circumstances but all the same a complaint/FIR must indicate, even though not in very express terms, that he had the knowledge of the order and had knowingly disobeyed it. Where the terms of complaint/FIR did not provides even as inkling in this regard, it cannot be said to make out or constitute an offence under Section 188 and in such a situation, it would

warrant to be quashed.

Thus, it is the duty of the Prosecution to establish in the court that the Accused had prior-knowledge about the order promulgated by the Government Servant and despite that he disobeyed the same. Merely stating that the order was given wide publicity will not suffice to presume the knowledge of the Accused.

16. Also, on the aspect of wide publicity to be given to the order of the government servant, it is specifically held by the Supreme Court of India that putting up of banners and public announcements in the concerned area are imperative. The most relevant judgment highlighting the issue of public announcements and display of order u/s 144 Cr.P.C., is ***Ramlila Maidan Incident Judgment [(2012) 5 SCC 1]***, wherein it was held by the Apex Court of India as follows:

162. The Standing Order 309 contemplates that there should be display of banner indicating promulgation of Section 144 Cr.P.C., repeated use of Public Address system by a responsible officer-appealing/advising the leaders and demonstrators to remain peaceful and come forward for memorandum, their deputation etc. or court arrest peacefully and requires such announcement to be videographed. It further contemplates that if the crowd does not follow the appeal and turns violent, then the assembly should be declared as unlawful on the PA System and the same should be videographed. Warning on PA system prior to use of any kind of force is to be ensured and also videographed. I find that there is hardly any compliance to these terms of this Standing Order.

.....

295. The right to peacefully and lawfully assemble together and to freely express oneself coupled with the right to know about such expression is guaranteed under Article 19 of the Constitution of India. Such a right is inherent and is also coupled with the right to freedom and liberty which have been conferred under Article 21 of the

Constitution of India.

From the above elucidation, it is clear that merely assembling at a public place by group of people is not an offence unless prohibitions u/s 144 Cr.P.C. are in force and the same have been brought to the knowledge of the concerned persons. Further, to attract penalty under section 188 IPC, it is a must that the said persons continue to gather or refuse to disperse despite having knowledge of the notification u/s 144 Cr.P.C.

17. Keeping the above law points in consideration, the facts and evidence of the case at hand shall be examined to determine whether the Accused persons are guilty of the offence u/s 188 IPC or they deserve to be set free from the charges levelled against them.

Appreciation of Evidence

18. At the outset, it may be noted that there are two cardinal principals of criminal jurisprudence which govern the decision in any criminal trial; one, *that Accused is presumed to be innocent unless proven guilty* and two, *the guilt of the Accused has to be proved by the Prosecution beyond all reasonable doubts*. Meaning thereby that the burden to prove the guilt of the Accused is on the Prosecution and even if no evidence is led by the Accused, he can still rebut the case of the Prosecution by creating preponderance of probabilities in his favour.

In the leading judgment of the Supreme Court of India in matter titled as ***Anand Ramachandra Chougule v. Sidarai Laxman Chougala*** [2019 (SCC online) SC 974], elucidating upon the onus of proof in a criminal trial, it was held that:

9. *The burden lies on the prosecution to prove the*

allegations beyond all reasonable doubt. In contradistinction to the same, the Accused has only to create a doubt about the prosecution case and the probability of its defence. An Accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the Accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the Accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

Also, **Narinder Kumar v. State (NCT of Delhi) [(2012) 7 SCC 171]**, it was held by the Apex Court that:

However great the suspicion against the Accused and however strong the moral belief and conviction of the court, unless the offence of the Accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the Accused and the prosecution has to bring home the offence against the Accused by reliable evidence. The Accused is entitled to the benefit of every reasonable doubt.

19. In the present matter, in order to prove the commission of alleged offence by the Accused persons, Prosecution has examined three witnesses, while on the other hand the Accused persons have preferred not to lead any evidence in their defence. Accused persons have duly conducted detailed cross-examinations of all the three prosecution witnesses. Accordingly, facts of the case as well as the evidence led by the Prosecution has been examined in detail by this Court.

It would be apt to highlight the relevant aspects of evidence leading to the decision in this case vide the following points:-

(a) Contradictions in the testimonies of the Prosecution witnesses: Only three witnesses have been examined by the Prosecution in this matter, out of which two are eye-witnesses

and one is the Investigation Officer (IO), who reached the spot allegedly after the incident but never saw the incident himself. The brief of the testimonies of all the Prosecution witnesses has already been mentioned in the foregoing pages and from the bare reading of the testimonies itself it appears that the witnesses lack credibility. There are several contradictions in their testimonies, which question their truthfulness. To cite a few, there is no specific number of the persons who participated in the protest march, while one witness says it would be around 50-60 persons, the other says that it would be around 100-150 persons and despite that only two persons have been made Accused in this matter.

Further, the time duration of the protest remains unclear as all the three witnesses have given different answers. While PW-1 states that the protest started at around 04:30 P.M. and continued till 07:30-08:30 P.M., PW-2 states that protest started at around 04:15 P.M. and continued till 1-1½ hours, however, PW-3 states that he reached at the spot at around 09:30 P.M. and the protest was still going on.

Most importantly, PW-1 has specifically stated that he had made a video of the incident and sent the same to the IO through WhatsApp, however, IO has denied having any such video with him.

The above contradictions are material and substantial contradictions and cannot be ignored while considering the truthfulness of the Prosecution witnesses, more so, because the case at hand is a criminal case and duty of the Prosecution is to prove its case beyond all reasonable doubts. Even if presuming that minor discrepancies in the testimonies of Prosecution

witnesses are bound to happen, there are other glaring discrepancies as well brought out in the Prosecution case, which render the Prosecution case wholly unreliable. The same have been brought out in the judgment ahead.

(b) No Public Witness: It has been admitted by all the three witnesses that the spot where the alleged incident occurred is a residential area. In fact, PW-1 has also stated in his testimony that there is a general store near the spot and PW-2 has admitted that there are one or two shops in the said area. Also, PW-2 has specifically stated in his cross-examination that several public persons had gathered at the spot at the time of the alleged protest. To the misery of the Prosecution case despite having public persons present at the spot, no inquiries were conducted from them and no statements of any public person were recorded by the IO. For the reasons best known to him, no inquiry has been conducted by the IO from any of the residents of the area or any of the shops nearby. Even though IO submits that he was present at the spot for two hours for recovering the CCTV footages of the area, he seems to have failed to collect the basic evidence from the spot itself. It is apparent from the case file that some basic and material aspects of investigation have not been covered by him either because of his ignorance or because some other intervening factors best known to him.

It is not that in every case it is mandatory to have a public witness to prove the case, however, when despite availability, statement of no public witness is recorded by the IO then certainly serious doubts crop up with respect to the case presented by him before the Court. The *Anoop Joshi judgment (Supra)* cited by defence becomes directly applicable to the case

at hand, wherein it has been underlined that sincere efforts have to be made by the police to join independent witnesses to the case especially when they are available at the spot.

The above stated legal position is fortified by the observations of the Supreme Court of India in the case titled as ***Hemraj vs. State Of Haryana [AIR 2005 SC 2110]*** wherein it was held that:

“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...”

Hence, the absence of public witnesses in the dock despite their availability raises several questions on the truthfulness of the Prosecution case.

(c) No Photo or video of the alleged incident: IO has stated that he made several efforts to find the CCTV footages of the incident in the concerned area but of no avail, however, IO has conveniently skipped to mention before the Court that PW-1 had sent him a video of the alleged incident through WhatsApp and to the utter surprise of the Court instead of producing the said video in the Court alongwith the case file, IO has rather casually stated that he does not remember whether SI Neeraj Choudhary (PW-1) had sent him any photo or video of the alleged incident or not since he has changed his mobile phone. It is surprising that despite having received material evidence with respect to the occurrence of the alleged incident, IO conveniently chose to let it drain away rather than bringing it on Court record to prove the Prosecution case. The conduct of the IO in not bringing on record a material piece of evidence despite availability and rather letting it washed away in a casual manner also raises questions about his

basic knowledge of investigation in criminal cases as well as his seriousness towards investigation of the case.

Again, not in every case, photo or video of the incident may be placed on record, however, when it is available and despite that not brought on record, it raises serious questions.

(c) No Site Plan: The preparation of site plan or spot map of the place where the incident has occurred is one of the most essential and basic features of a criminal investigation conducted by the police. Whether it is the simple case of affray or a serious offence of murder, site plan of the incident is necessary to recreate the crime scene before the Court and also, to explain the manner and the place at which the incident may have taken place. On this aspect, yet another lapse surfaces on the part of the IO i.e. his failure to prepare the site plan during investigation and more surprisingly, it is observed that the chargesheet has been duly forwarded by the concerned ACP without making any observation.

The importance of site plan in a criminal trial has been highlighted by the Higher Courts in several judgments.

Recently, in the matter titled as ***In Re: To Issue Certain Guidelines Regarding Inadequacies And Deficiencies In Criminal Trials*** [Suo Moto Writ (CRL) No.(S) 1/2017, dated 20.04.2021], the Supreme Court of India highlighted the importance of a site plan in a criminal investigation vide Draft Criminal Rules on Practice, 2021, in the following words:

“i. A site plan of the place of occurrence of an incident shall be appended by the Investigating Officer to the scene mahazar or spot panchnama.

ii. The site plan shall be prepared by the Investigating Officer by hand, and shall disclose

- a. the place of occurrence,
- b. the place where the body (or bodies) was / were found,
- c. the place where material exhibits and/or weapons,
- d. blood stains and/or body fluids had fallen,
- e. the place where bullet shells, if any, were found or have caused impact,
- f. the source of light, if any and
- g. adjoining natural and man-made structures or features such as walls, pits, fences, trees/bushes, if any and
- h. elevation of structures and their location.

iii. The preparation of this sketch by the Investigating Officer shall be followed by a scaled site plan prepared by police draftsman, if available, or such other authorized or nominated draftsman by the State Government, who shall prepare the scaled site plan after visiting the spot.

iv. The relevant details in the mahazar or panchnama shall be marked and correlated in the said site plan.”

Also, the Delhi High Court in its judgment titled as ***State vs Sunil Kumar @ Sagar @ Rahul & Ors. [Cr.L.P. No. 8/2013 Dated 27.01.2015]*** upholding the decision of the trial court held that:

“13. Regarding the site plan it can be said that it is a vital part of the investigation and that it should give a clear description of the spot to which it belongs but the site plan relied upon by the prosecution no where shows existence of adjoining houses or shop where public persons could have been found. Also no attempt is shown to have made to join any public person during the entire investigation.”

No explanation, whatsoever, has been given by the IO for not preparing the site plan in this matter. Thus, failure of the IO to prepare a site plan against weakens the prosecution case.

(d) No other police witnesses examined apart from Ct. Mahender: There is only statement u/s 161 Cr.P.C. placed on record by the IO which belongs to Ct. Mahender i.e. PW-2 and as per the testimony of the IO the same has been recorded in the PS

itself. As per the Prosecution witnesses, there were several police persons present at the spot of the incident, who had done barricading at the spot of the incident upon receiving of prior intimation of protest and who were later present at the spot till the reaching of the IO at the spot, however, the statement of not even a single police official has been recorded by the IO for the reasons best known to him. Rather, the IO could not even tell the names of other police personnel present at the spot of incident. It has been specifically admitted by PW-1 and PW-2 that the concerned SHO and ACP were also present at the spot of incident at the time when the incident occurred which makes them eye-witness to the case, however, neither of them have been examined by the IO.

This again brings forth that despite availability of eye-witnesses, IO preferred not to record their statements.

(e) Accused persons not found at the spot: Even though PW-1 and PW-2 have stated that the Accused persons namely, Raaj Kumar Anand and Ankush Narang were part of the group of persons who were leading the protest march, they were not found at the spot by the IO. It is questionable that if indeed the Accused persons were present at the spot when the FIR was registered against them and police personnel including SHO and ACP concerned were also present at the spot, why were the Accused persons allowed to leave the spot prior to arrival of the IO. It rather strengthens the defence version that it is possible that Accused persons were never present at the spot. The version of the IO that when he reached at the spot neither the Accused persons nor SHO/ ACP were present at the spot rather proves favourable for the defence.

Even if presuming that Accused persons left the spot of incident prior to arrival of the IO, since their details were very well available with the IO, it is questionable that IO approached the Accused persons and took their *pabandinamas* after a period of six months of the alleged incident i.e. in September, 2022. What investigation was done by the IO during the intervening period of six months after registration of FIR is a question which remains unanswered even after completion of trial. Preparation of *Pabandinamas* of the Accused persons appears to be a mere formality for the purpose of completion of investigation rather than effectively carrying out inquiries in the case.

(f) No evidence of publication / communication of order of the ACP u/s 144 Cr.P.C.: As has already been discussed above, it is necessary for the completion of offence under Section 188 IPC that the order u/s 144 Cr.P.C. should have been widely publicized and personally communicated to the Accused. Even though it is stated in the final report of police that the order of the ACP, Patel Nagar bearing no.1950-2018/R-ACP/PTN dated 26.02.2022 was given vide publication through press and electronic media, not even a single proof of publication has been brought on record by the Prosecution. No banner, no pamphlet and no photograph of public announcements have been placed on record. Keeping that apart, no proof of personal communication to the Accused persons with respect to the order u/s 144 Cr.P.C. has been brought on record by the IO. Knowledge of the Accused persons of the order promulgated by the Government servant is an essential ingredient for completion of the offence u/s 188 IPC and IO has clearly failed to bring any oral testimony to this effect or documentary evidence to prove the same. Hence, from this

aspect as well the Prosecution case falls flat on the ground.

20. From the above held discussion and scrutiny of evidence, there remains no scope of doubt that Prosecution has altogether failed to prove the guilt of the Accused persons. Neither legally not factually could it be proved by Prosecution that Accused persons have committed the offence under section 188 IPC. As already mentioned above, burden of proof was on the Prosecution to establish the commission of crime by the Accused persons but it could not even prove the presence of Accused persons at the spot of the alleged incident.

There are innumerable lapses in investigation conducted by the IO viz. not conducting inquiries from public witnesses, no preparation of site plan, not recording statements of SHO/ACP and other eye-witnesses, to mention a few. However, the most glaring omission on the part of the IO is not bringing the video of the incident on record despite the fact that same was made available to him. Mere statement of the IO that he has changed his mobile phone and therefore, he does not remember receiving the video of the incident appears to be nothing more than a flimsy excuse. It is a separate question as to why did the IO not produce the most clinching piece of evidence in the court despite having received it. Whether the reason behind this conduct of the IO is ignorance towards legal procedures or casual approach to investigation or some other extraneous factors; the bottom line remains that this act of the IO has damaged the Prosecution case beyond repairs.

Conclusion

21. In view of the above discussion, elucidation of facts and law and other material placed on record, it is held that

Prosecution has failed to discharge its burden of proving the guilt of the Accused persons.

Hence, both the Accused persons namely Raaj Kumar Anand and Ankush Narang are held not guilty and acquitted for the offence u/s 188/34 IPC.

One copy of this judgment be sent the concerned DCP for intimation about the investigation conducted by the IO in the present case as well as his due sensitization about the investigation procedure in criminal trials.

**Announced in the open Court, (Vidhi Gupta Anand)
on 9th day of June, 2023. ACMM-01/RADC/New Delhi**