

**In the Court of Sh. Satish Kumar,
Judicial Magistrate Ist Class, Amritsar.**

CNR No.PBAS03-012906-2017

Date of decision:14.02.2018.

State Versus Rakesh Kumar son of Balbir Chand, resident of
 H.N.88-A, Gali No.1, Gopal Nagar, Majitha Road,
 Amritsar.

.....Accused.

FIR No. 137/5.9.2005

U/s 307/283/186/353/332/427/506/148/149 IPC
and Section 3/4 of Prevention of Damage of
Public Property Act 1984
P.S.'A-Division', Amritsar.

Present: Sh. Jagdeep Kumar, Addl. Public Prosecutor for the State.
 Accused Rakesh Kumar on bail with counsel Shri PM
 Zakhmi, Advocate.

JUDGMENT:

1. The above said accused has been sent up by the Police of
Police Station A-Division, Amritsar to stand trial for the commission of
the offences punishable under Sections
307/283/186/353/332/427/506/148/149 IPC and Section 3/4 of
Prevention of Damage of Public Property Act 1984, as per FIR No. 137
dated 5.9.2005.

2. The facts of the case, in brief, are that the present case was registered against the accused on the allegations that on 5.9.2005, Inspector Jaspal Singh alongwith other police officers were present in the area at Chowk Ramtalai and there was a call of strike. At that time, Shri Kawaljit Singh Randhawa, Duty Magistrate was also present there. Suddenly, a group of 250/300 persons came there, who were armed with deadly weapons, and started damaging government and private vehicles on the way and also threw stones on police party. They were damaging the government and private buildings. Station House Officer tried to stop them for doing so through announcement, but of no use. Karan son of Roshan, Arjan son of Kewal Kumar, Rakesh Kumar and Bunny Bhatti son of Ashok Kumar were organizing the mob. They all were armed with deadly weapons i.e. Kirpans, Takua, Datars. They all were instigating the mob for getting the more loss to the public properties. Shri Kawaljit Singh Randhawa, Duty Magistrate also tried to stop for the same through announcement, but the mob attacked on the police party, on which SHO after obtaining the written order from Duty Magistrate, started throwing the gas and water on the mob, as a result of which the mob scattered. ASI

Lakhwinder Singh, constable Bhupinder Singh, constable Ashwani Kumar received injuries. They were admitted to hospital. Ruqa was sent to police station. Case was registered against the accused under Section 307/283/186/353/332/427/506/148/149 IPC and Section 2/3 Prevention of Damages Public Property Act. Investigation was conducted. During investigation, accused Karan son of Roshan was declared as innocent, after conducting inquiry by SP/D ASR dated 9.5.2008. Accused Arjan, Rakesh Kumar, Bunny Bhatti were declared as proclaimed offenders by the court of Shri Ajaib Singh, JMIC, Amritsar vider order dated 28.11.2008. Thereafter, accused of present case namely Rakesh Kumar surrendered in the court. Original file containing challan against the accused, who were declared as proclaimed offenders, was summoned, which is attached alongwith the present supplementary challan. On completion of the investigation against the present accused Rakesh Kumar, the present supplementary challan was presented against him.

3. On the presentation of challan and appearance of accused, copies of challan & copy of documents relied upon by the prosecution, were supplied to the accused free of costs, as envisaged under section

207 Cr.P.C. Since the offence under Section 307 IPC is exclusively triable by the Court of Sessions, the present case was committed to the Learned Court of Sessions, Amritsar. Thereafter, the present case has been sent to the court of undersigned for disposal vide order dated 20.9.2017 passed by the court of Shri Jaspinder Singh, learned Additional Sessions Judge, Amritsar with directions to accused to appear in the court of undersigned. The learned Court of Shri Jaspinder Singh, has also served charge sheet for the offence punishable under Sections 283/186/353/332/427/506/148/149 IPC and Section 2,3 of Prevention of Damage to Public Property Act, 1984 to accused Rakesh Kumar, to which he did not plead for guilty and claimed trial. Thereafter, the evidence of prosecution was called by the court of undersigned.

4. In order to prove its case, the prosecution examined **PW1** HC Anil Kumar, who while appearing in the court, has deposed that on 9.5.2017, he was present in the police party headed by ASI Santokh Kumar. Witness further proved the memo of arrest of accused Rakesh Kumar as Ex.P1/A, memo of personal search of accused as Ex.PW1/B.

5. No other PW was examined by the prosecution. The

prosecution remained failed to conclude its evidence despite availing numerous opportunities. There was no ground to give any further opportunity to the prosecution to lead any further evidence. The evidence of the prosecution was closed by order.

6. After closure of prosecution evidence, statement of accused Rakesh Kumar under Section 313 Cr.P.C was recorded, in which all the incriminating pieces of evidence were put to the accused, who denied the allegations of the prosecution. In defence, the accused did not lead any evidence and closed his defence evidence.

7. I have heard learned APP for the State and learned defence counsel and have gone through the file carefully.

8. Now brief point for determination in this case is:-

(i) Whether on 5.9.2005 at about 2.00 PM in the area of Chowk Ram Talai, Amritsar, accused Rakesh Kumar alongwith his co-accused being member of unlawful assembly, armed with deadly weapons damaged the Government as well as non government vehicles and also caused destruction to Government building?

(ii) Whether on the same, date, time and place, the above named accused voluntarily obstructed Kanwaljit Singh

Randhawa, Duty Magistrate, SHO Jaspal Singh and his police party, who were public servant and discharging their public function at that time and also used a salt and criminal force against them and committed criminal mischief by causing damage to many governments and public vehicles and by doing above said act, all accused contravened the provisions of Section 2, which is punishable under Section 3 of Damaged to Public Property Act, 1984?

9. In order to prove the above points for determination, the prosecution had to establish that on 5.9.2015, accused Rakesh Kumar alongwith his co-accused being member of unlawful assembly, armed with deadly weapons damaged the Government as well as non government vehicles and also caused destruction to Government building and voluntarily obstructed Kanwaljit Singh Randhawa, Duty Magistrate, SHO Jaspal Singh and his police party, who were public servant and discharging their public function at that time and also used a salt and criminal force against them and committed criminal mischief by causing damage to many governments and public vehicles and by doing above said act, all accused contravened the provisions of Section 2,

which is punishable under Section 3 of Damaged to Public Property Act, 1984.

10. The counsel for the accused has argued that the prosecution has not been able to prove the guilt of the accused beyond a shadow of reasonable doubt. The witness, got examined by prosecution, has not been able to prove the case on the basis of the sole testimony. In order to prove the same, there is statement of only one official witness i.e **PW1** HC Anil Kumar, who only proved the memo of arrest and memo of personal search of accused Rakesh Kumar on record. The evidence of PW1 is not supported by any other witness, as prosecution remained failed to examine its star witness i.e. complainant Inspector/SHO Jaspal Singh, on whose behalf, the present case was registered. Neither Investigating Officer, nor any eyewitness to the incident has been got examined by the prosecution and only on the testimony of official witness, the accused cannot be convicted. Medical record also remained unproved on record. In order to prove the guilt of the accused, the evidence from the side of prosecution must be sufficient enough, so as to leave no doubt in regard to the complicity of the accused in commission

of the alleged offence. The witnesses, who were instrumental in proving the guilt of the accused were not examined by the prosecution, which has rendered the whole case of the prosecution as futile, because on the basis of highly insufficient evidence of the witnesses, the guilt of the accused cannot be established. The link evidence is missing in this case. No independent witness was joined in the investigation. So, the alone testimony of above said prosecution witness, which also too suffers from infirmities and do not inspire any confidence and are not sufficient to hold the accused guilty for the offences with which he has been charged in this case. As such, in-fact it is a case of no evidence against accused to prove the charges framed against the accused. Moreover, the documents placed on record by the prosecution, remained unproved on record.

It is a cardinal principle of criminal jurisprudence that guilt of the accused must be proved beyond reasonable shadow of doubt and if the prosecution fails to prove the offence, as alleged against the accused, the accused is entitled to acquittal. On the basis of above discussion as the prosecution has not been able to bring cogent evidence to link the present accused with the offence as alleged against him, the accused

Rakesh Kumar is acquitted of the charges framed against him. The case property be dealt with as per rules. Bail bonds and surety bonds stands discharged. File be consigned to the record room.

Pronounced
14.02.2018

*Hira Lal
Stenographer-II

(Satish Kumar)
Judicial Magistrate Ist Class,
Amritsar
(UID No.PB0375)

State vs Rakesh Kumar

Present: Shri Jagdeep Kumar, APP for the state
Accused Rakesh Kumar on bail with counsel Sh. PM
Zakhmi, Advocate.

Statement of accused Rakesh Kumar has been recorded, in which he did not opt to lead evidence. Arguments heard. Vide separate detailed judgment of even date, accused Rakesh Kumar has been acquitted of the charges framed against him. The case property be dealt with as per rules. Bail bonds and surety bonds stands discharged. File be consigned to the record room.

Pronounced
14.02.2018

*Hira Lal ,Stenographer-II

(Satish Kumar)
Judicial Magistrate Ist Class,
Amritsar