

DLNE010002952021



**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

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PRAMACHALA

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Sessions Case No.	:	08/2021
Under Section	:	147/148/149/302/341/427/436/395 /412/ 120-B IPC
Police Station	:	Karawal Nagar
FIR No.	:	64/2020
CNR No.	:	DLNE01-000295-2021

In the matter of: -
STATE

Versus

- 1. AMAN**
S/o. Sh. Rajender Singh
R/o. H.No. Gali No. 2, Vijay Vihar,
Near Chaman Vihar, Loni, Ghaziabad, U.P.
- 2. VIKRAM @ VICKY**
S/o Sh. Ram Bharan,
R/o. H. No. 731, Gali No. 14,
SBS Colony, Karawal Nagar, Delhi.
- 3. RAHUL SHARMA**
S/o. Sh. Shiv Kumar Sharma,
R/o. H.No. C-305, Gali No. 5, Mukund Vihar,
Karawal Nagar, Delhi.
- 4. RAVI SHARMA**
S/o. Sh. Ram Niwas Sharma,
R/o. H.No. C-313, Gali No. 4,
Mukund Vihar, Karawal Nagar, Delhi.
- 5. DINESH SHARMA**
S/o. Kanchi Lal Sharma
R/o C-Block, Gali No.2/3, Mukund Vihar,
Karawal Nagar, Delhi.
- 6. RANJEET RANA**
S/o Sh. Mahavir Singh,
R/o H. No. 560, Gali No. 11,
Shaheed Bhagat Singh Colony,
Karawal Nagar, Delhi.

...Accused Persons

**Case registered on the
complaint of:**

ASI Hariom

Date of Institution : 07.07.2020
Date of reserving Judgment : 16.05.2025
Date of pronouncement : 16.05.2025
Decision : All accused are acquitted.
(Section 481 BNSS complied with by all accused persons)

JUDGMENT

THE CASE SET UP BY THE PROSECUTION

1. The present case relates to the murder of one Shahbaz S/o Safi Ahmed R/o H. No. 38, Husainiya Masjid, Hussain Vihar, Loni, Ghaziabad, U.P., who was brutally assaulted and burnt alive on 25.02.2020 on Main Khajuri Pusta Road, near Kali Ghata Cut, opposite to dumpyard, Delhi. Present FIR was registered bearing no. 64/2020 dated 28.02.2020 on the complaint of ASI Hariom, PS Karawal Nagar, Delhi, in furtherance of DD No. 134-B dated 27.02.2020, PS Karawal Nagar, Delhi.
2. As per charge sheet, the dead body of deceased Shahbaz was first seen by SI Naveen Kumar of PS Khajuri Khas, who was searching the dead body as per the information of one Saqib, a friend of deceased Shahbaz. During the course of investigation, IO examined Matloob, i.e. brother of deceased Shahbaz, who stated that his brother had gone to fetch medicines for his eyes on 25.02.2020 at about 07:00 AM, to Guru Nanak Hospital, Turkman Gate, Delhi. On the same day, i.e. 25.02.2020 at around 02:25 PM, when Matloob telephonically talked to deceased Shahbaz on his mobile no. 9599158283, deceased informed that he had reached Karawal Nagar, but riots were going on in the whole area. Later on, at about 03:00 PM when Matloob again

tried to contact deceased Shahbaz, his mobile phone was found switched off. Father of deceased Shahbaz namely Safi Ahmad was also examined, who stated that deceased Shahbaz had been missing since 25.02.2020. Thereafter, Matloob went in search of his brother and while passing through Chaman Vihar, he was told by one Ankit that his brother had been murdered and burnt at Khajuri Pusta Road by the rioters. Since, the rioters were specifically assaulting Muslims on that day at that place, Matloob could not reach at Khajuri Pusta Road due to fear and on 27.02.2020 on learning about the fact that police had taken one burnt dead body to the hospital, Matloob asked Saqib to check for the dead body of Shahbaz in the mortuary of GTB Hospital. As there was only one skull piece and some pelvic bones of the dead body, hence, the identification of the dead body was not possible on physical appearance and the same was identified to be belonging to the deceased Shahbaz after matching of the DNA samples of parents of deceased Shahbaz, with that of the burnt body parts of deceased.

3. During investigation, site plan was prepared and statement of witnesses were recorded u/s 161 Cr.PC. During investigation, six accused persons namely Aman, Vikram @ Vicky, Rahul Sharma, Ravi Sharma, Dinesh Sharma and Ranjeet Rana were arrested in this case on the basis of location of their mobile phones and on the identification and statement of public witnesses.
4. After completion of investigation, on 07.07.2020 chargesheet was filed against five accused persons namely Aman, Vikram @ Vicky, Rahul Sharma, Ravi Sharma and Dinesh Sharma, for

offences punishable u/s. 147/148/149/302/341/427/436/395/412/120-B IPC, before MM-02, North East District, Karkardooma Courts, Delhi. Thereafter, on 16.10.2020 Id. CMM, North East District, Karkardooma Court, Delhi, took cognizance of offences punishable u/s. 147/148/149/302/341/427/436/395/120-B IPC against all five accused persons and of offence punishable u/s. 412 IPC against accused Aman. **On 15.12.2020 first supplementary chargesheet** was filed before Id. CMM (N/E). This supplementary chargesheet was filed along with statements of two eye witnesses namely Chetan Sharma and Popinder @ Poppy as recorded u/s 161 Cr.P.C by the IO. Thereafter, case was committed to the court of sessions vide orders dated 22.12.2020 and 14.01.2021.

5. In the **second supplementary chargesheet** which was filed on 05.01.2021 before Id. CMM/NE, accused Ranjeet Rana was also chargesheeted, whose name had surfaced in the statements of various public witnesses earlier. In the **third supplementary chargesheet** which was filed on 24.11.2021 before Id. CMM/NE, IO stated that co-accused Achin @ Sachin, whose name had also been mentioned by the witnesses to have actively participated in the riots along with other accused persons, despite best efforts could not be identified and traced. IO had obtained sanction u/s 196 Cr.P.C from GNCT, Delhi for prosecution of all accused persons for offence u/s 153A IPC. This supplementary chargesheet was sent by Id. CMM/NE to the court of session vide order dated 06.12.2021. In the **fourth supplementary chargesheet** which was filed on 10.03.2023 directly before this court, all the

accused persons were further chargesheeted for the offence punishable u/s 188 Cr.P.C. pursuant to a complaint u/s 195 Cr.P.C from DCP, N.E. for violating the provisions of Section 144 Cr.P.C.

CHARGES

6. On 08.07.2023, charges were framed against accused Aman, Vikram @ Vicky, Rahul Sharma, Ravi Sharma, Dinesh Sharma and Ranjeet Rana, for offences punishable u/s. 120-B IPC read with Section 147/148/153-A/302/341/395 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in following terms: -

“That before and on 25.02.2020, at unknown place and time, you all accused persons along with your other associates (unidentified) from Hindu community, entered into a criminal conspiracy to take revenge and attack upon persons from Muslim Community; to harm Muslims by all means including to kill them. For the aforesaid criminal conspiracy elaborate preparations had been made to fulfill the object of the agreement/conspiracy. In furtherance of aforesaid criminal conspiracy you all accused persons formed an unlawful assembly, the object whereof was to attack upon persons from Muslim Community; to commit riot, to harm/kill Muslims, to wrongfully restrain Muslim persons and to loot them, by the use of force and violence; and thereby you all committed offences punishable under Section(s) 120B r/with 147/148/302/341/395 IPC and within my cognizance.”

7. On same day i.e. 08.07.2023, charges were framed against afore-said six accused persons for offences punishable u/s. 147/148/153-A/302/341/395 IPC r/w. 120B & 149 IPC; and u/s. 188 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in following terms: -

“That on 25.02.2020 at about 2 PM onwards, in and

around the area on Main Khajuri Pusta Road, near Kali Ghata Cut, Opposite Garbage Centre, Delhi, within the jurisdiction of Karawal Nagar, you the above named accused persons along with other associates (unidentified) from Hindu Community i.e. more than five persons, in pursuance to a criminal conspiracy formed an unlawful assembly in that area with common object to attack upon persons from Muslim Community and to commit riot by the use of force and violence, and to harm Muslims by all means including to kill them; and this mob including you accused persons, in prosecution of aforesaid common object and a criminal conspiracy hatched to achieve this common object, used force and violence to commit riot; and thereby you all accused persons committed offences punishable under Sections 147/148 IPC read with Section 120-B & 149 IPC and within my cognizance.

Secondly, *on the aforesaid date and place, at about 02:25-03:00 PM, in furtherance of above mentioned criminal conspiracy and common object of riotous mob, when victim Shahbaz was coming back after taking medicines for his eyes from Guru Nanak Hospital, Turkman Gate, Delhi, he was intercepted, assaulted and burnt alive by aforesaid mob including you accused persons, thereby causing his death and, thereby you all committed an offence punishable under Section 302/341 IPC read with Section 120-B & 149 IPC within my cognizance.*

Thirdly, *on the aforesaid date, time and place, within the jurisdiction of PS Karawal Nagar, this mob including you all accused persons used force and violence in prosecution of common object of such assembly and the criminal conspiracy, promoted enmity and disharmony between religious groups of Hindus and Muslims by indulging into riotous acts against Muslims and thus, disturbed the public tranquility, and thereby you all accused persons committed offence punishable under Section 153-A IPC read with Section 149 IPC within my cognizance.*

Fourthly, *on the aforesaid date, time and place, within the jurisdiction of PS Karawal Nagar, this mob including you all accused persons used force and violence in prosecution of*

common object of such assembly and the criminal conspiracy, robbed wrist watch of deceased Shahbaz, which was recovered from accused Aman and was identified in judicial TIP as wrist watch of deceased Shahbaz, and thereby you all accused persons committed offence punishable under Section 395 IPC read with Section 120-B & 149 IPC within my cognizance.

Fifthly, on the aforesaid date, time and place, within the jurisdiction of PS Karawal Nagar, this mob including you all accused persons used force and violence in prosecution of common object of such assembly and the criminal conspiracy, were present on Main Khajuri Pusta Road, near Kali Ghata Cut, Opposite Garbage Centre, Delhi, in prosecution of aforesaid common object of forming unlawful assembly and in violation of proclamation issued u/s 144 Cr.P.C. by the competent authority/ DCP North-East vide its order on 24.02.2020 bearing notification no. 10094170, which was duly announced in area under PS Karawal Nagar and thereby you all accused persons committed offence punishable under Section 188 IPC within my cognizance.”

8. On same day i.e. 08.07.2023, charge was framed only **against accused Aman** for offence punishable under Section 412 IPC, to which he pleaded not guilty and claimed trial. The charges were framed in following terms: -

“That you at the time of your arrest on 09.04.2020 in this case, were found in possession of one wrist watch make Michel Renee of Golden and Silver colour, which was recovered during your personal search and which belonged to deceased Shahbaz, being taken away from him either at the time of assault upon him or thereafter, and you were well aware of ownership of this watch as well as about killing of Shahbaz; and being found in possession of this watch belonging to Shahbaz, you committed an offence punishable u/s 412 IPC and within my cognizance.”

DESCRIPTION OF COURT & PROSECUTION EVIDENCE

9. Several witnesses were dropped on the basis of admission of documents under Section 294 Cr.P.C./330 BNSS, which are

endorsement on rukka as **Ex.A-1**; copy of FIR as **Ex.A-2**; certificate u/s 65B of IE Act as **Ex.A-3**; MLC dt. 27.02.2020 as **Ex.A-4**; MLC dt. 02.03.2023 as **Ex.A-5**; MLCs dt. 26.03.2020 as **Ex.A-6 & Ex. A-7**; Post mortem report as **Ex.A-8**; request for postmortem as **Ex.A-9**; letter for information regarding UIDB as **Ex.A-10**; unidentified dead body form as **Ex.A-11**; letter to ACP as **Ex.A-12**; unidentified dead body form as **Ex.A-13**; picture of unidentified dead body as **Ex.A-14**; seizure memo of DVD as **Ex.A-15**; letters to ACP requesting to provide details of CCTV cameras as **Ex.A-16 & Ex. A-17**; DD nos.10, 38 B & 29B as **Ex.A-18, Ex.A-19 and Ex.A-20**; copy of relevant entry in register no.19 as **Ex.A-21**; letter to DCP requesting prosecution sanction u/s 196 Cr.P.C. as **Ex.A-22**; FSL report as **Ex.A-23**; orders of Deputy Secretary (Home) granting sanction against accused persons as **Ex.A-24 & Ex. A-25**; complaint u/s 195 Cr.P.C. as **Ex.A-26**; prohibitory order u/s 144 Cr.P.C. as **Ex.A-27**; subsequent opinion in respect of PM report as **Ex.A-28 &** authority letter to provide the result/expert's opinion as **Ex.A-29**; forwarding letter as **Ex.A-30**; FSL result as **Ex.A-31**; SOC report as **Ex.A-32**; death report as **Ex.A-33**; acknowledgment of case acceptance as **Ex.A-34, Ex.A-35, Ex.A-36, Ex.A-37 & Ex.A-38**; forwarding letter as **Ex.A-39**; FSL report as **Ex.A-40**; sanction orders as **Ex.A-41 and Ex.A-42**; forwarding letter as **Ex.A-43**; FSL report as **Ex.A-44**; letter to HOD, Forensic Medicine regarding subsequent opinion in respect of PM report as **Ex.A-45**; two TIP proceedings as conducted by Ms. Vijay Shree Rathore, ld. MM as **Ex.A-46 and Ex.A-47**; DD No.134-B dated

27.02.2020 as **Ex.A-48** and rukka as **Ex.A-49**.

10. Prosecution examined 26 witnesses in support of its case. **PW1/Sh. Matloob Alam** was brother of deceased Mohd. Shehbaz. He deposed that on 25.02.2020, Shehbaz left H.No.38, gali No.2, Hussain Vihar, Loni, Ghaziabad, U.P. for Guru Nanak Hospital alone. At about 2.30 pm PW1 had telephonic talk with Shehbaz on his mobile phone. PW1 had made this call from his mobile no. 7982328856. PW1 again tried calling him after about 30 minutes, but his mobile phone was found to be switched off. Shehbaz did not return back to home. On that day, Shehbaz was wearing blue colour jeans and red colour shirt with red colour blazer/jacket. He was wearing black shoes and a wrist watch of golden colour. PW1 had identified wrist watch of Shehbaz before a judge and he identified that watch before the court also, which is **Ex.PW1/Article-1**.
11. **PW2/Sh. Saqib Ahmad** had accompanied PW1 and his mother to GTB hospital in search of Shehbaz, on 26.02.2020. PW2 did not support the case of prosecution on the point of date and time, on which riot had taken place in the area. During his cross-examination by Id. Special PP, he admitted the suggestion that in GTB hospital SI Naveen met them and that they had informed him about killing of Shahbaz near Kali Ghata cut.
12. **PW3/HC Ravinder** deposed that on 24.02.2020 at about 9 am, SHO PS Karawal Nagar received a copy of order u/s. 144 Cr.P.C. as passed by Id. DCP, North-East. On the instruction of SHO, PW3 pronounced that order in the area of PS Karawal Nagar, through loud hailer.

13. **PW4/Sh. Popinder** deposed that on 25th day of a month in the year 2020, at about 2-2.30 pm, he was going towards Loni for fetching wine. At that time, PW4 had seen a mob of around 500-700 persons on the main road near Kalighata. This mob was beating someone and PW4 had seen that person being beaten from a distance of about 20 steps. That person was a young boy. Maximum persons in that mob had covered their face. The other persons with naked face were not known to PW4. PW4 further deposed that while he was returning back, some persons present near Kalighata informed him that the mob had burnt one boy. PW4 did not support the case of prosecution on the point of identification of accused persons and he was declared hostile witness.
14. **PW5/ACP Mahesh** was draughtsman in Crime Branch. On the call of IO/Insp. Manoj, PW5 visited Pusta Road, near Kalighata Road, Karawal Nagar, Delhi on 20.04.2020. The place of incident was on the Pusta Road near the road divider. PW5 took measurements of that place and prepared his rough notes. PW5 prepared scaled site plan on 15.05.2020, took print of the same, signed it and thereafter handed over the same to IO on same day. Said site plan is **Ex.PW5/A**. On 23.02.2023, on the request of Insp. Deepak Pandey, PW5 again visited that place and took measurements at the instance of witnesses Chetan Sharma and Popinder @ Poppy. On 06.03.2023 PW5 prepared revised scaled site plan and handed over the same to Insp. Deepak Pandey. Said revised scaled site plan is **Ex.PW5/B**.

15. **PW6/SI Naveen** had telephonically informed about finding one burnt skull along with other burnt materials, to PW2/Saqib Ahmed, SHO PS Karawal Nagar and ACP Khajuri Khas division.
16. **PW7/Sh. Chetan Sharma** deposed that on 25.02.2020 riot had taken place in the area of Karawal Nagar. On that day, he was present at his home bearing G-137, gali no. 23, SBS Colony, Karawal Nagar, Delhi. At about 2-3 pm, PW7 left his home and reached main road of Pusta, Karawal Nagar. PW7 saw that some of Hindu persons were beating one muslim boy. That boy tried to flee and he ran towards other side of the road in open area having water logged therein and having much depth. Due to depth, he could not go farther in that open area and he had to come back. Then he was again caught by mob of Hindu persons, who again assaulted him with hands, legs and weapons like swords, axe etc. Thereafter, they took that boy near a dumpyard on Pusta road and then they set that boy on fire. That boy was set on fire using the wooden materials taken out from the aforesaid dumpyard. The persons in that mob had muffled their face and their eyes were only visible. PW7 identified his signature at point X on photo identification memo of accused Ranjeet @ Rana, Vicky, Dinesh Sharma and Rahul Sharma, which are **Ex.PW7/A** to **Ex.PW7/D**, respectively. PW7 identified them, because he knew them. PW7 deposed that he had not seen afore-said persons in the mob of rioters on aforesaid date. PW7 did not support the case of prosecution on the point of identification of accused persons
17. **PW8/Sh. Ankit** deposed that in February 2020 he was residing at Kachchi Colony, Sunday market, near Gaurav Medical Store,

Chaman Vihar, Loni, Ghaziabad, U.P. PW8 deposed that on the day of riot, at about 1-1.30 pm, he was sitting near his house in Loni. His friends namely Aman, Mohit and Rahul came to him and they told him to go to Pusta of Karawal Nagar as riot was going on at that place. Initially Rahul refused to go, but thereafter all three of them left that place, stating that they would not go ahead of DLF Pusta. On same day at about 5-6 pm, Mohit and Aman again came to his house and they informed that a person was killed in the riots. They had informed PW8 his name, but he could not recollect his name before the court. PW8 did not support the case of prosecution on the point of identification of accused persons and was declared hostile witness. During his cross-examination by Id. Special Public Prosecutor, he denied the suggestion that he had stated before police that Mohit and Aman had disclosed before him on that day that they had killed that boy.

18. **PW9/Sh. Rahul** deposed that on 25.02.2020, he remained at his home i.e. Kachchi Colony, Sunday market, in front of Shiv Mata Mandir, Chaman Vihar, Loni, Ghaziabad (U.P.) up to 1-1.30 pm. After 1.30 pm, he came out of his home and at that time, he met Mohit, Aman and Ankit. Mohit and Aman told PW9 that riots were taking place in Karawal Nagar and they told PW9 to visit that place to see the riots. From that place PW9, Aman and Mohit came up to Toll Tax at Delhi Border. At that place, PW8 met Poppy @ Popinder, who had Parchoon shop at Delhi Police training Centre. During night time, PW9 met Mohit and Aman, who told him that public had burnt a boy namely Shahzad. PW9

further deposed that PW9 had seen mob of a number of persons present on the side of Pusta road, Karawal Nagar. They were wearing masks. When PW9 had come back to this place along with Poppy at about 4 pm, PW9 had seen a boy in burnt condition lying on Pusta road, Karawal Nagar. One wooden gate was lying over him. PW9 had not identified anyone in the afore-said mob. In the jail, PW9 was shown live video on LED, wherein Ranjeet Rana was present and police asked him, if he knew Ranjeet. PW9 had told police that he knew Ranjeet. PW9 further deposed that one Madam was sitting, when he had identified Ranjeet as his known person, in Mandoli Jail. Afore-said Madam was sitting in that chamber and PW9 had identified Ranjeet Rana in presence of that Madam and one police official. That Madam had not told anything else to PW9. PW9 identified accused Aman and Ranjeet before the court. PW9 did not support the case of prosecution on the point of presence of accused Rahul Sharma, Ravi Sharma, Dinesh Sharma, Vikram @ Vicky, Ranjeet Rana and Aman among the rioters assembled on the Pusta road, who indulged into vandalism and arson and assaulting muslim persons. PW9 was also declared hostile by the prosecution.

19. **PW10/Sh. Ratandeep** was friend of Vikram @ Vicky. PW10 used to talk to accused on his mobile number ending with 92. PW10 identified accused Vikram before the court. PW10 did not support the case of prosecution on the point of mobile number of Vikram ending with 92, on which PW10 used to talk to Vikram. PW10 was also declared hostile by the prosecution.

20. **PW11/Sh. Rahul Sharma** deposed that his friends Dinesh Sharma, Lala and Rahul did not meet him on 25.02.2020 at any point of time. PW11 identified them before the court. PW11 did not support the case of prosecution on the point that PW11 was informed by his afore-said three friends that on 25.02.2020 they along with the mob had assaulted and looted a number of Muslim persons. PW11 was also declared hostile by the prosecution.
21. **PW12/Mohd. Shafi Ahmed** was father of deceased Shahbaz, who had left his home on 25.02.2020 for Guru Nanak Hospital, Turkman Gate, in order to get medicines for his eyes. At about 11.30 am PW12 again telephonically contacted Shahbaz and Shahbaz told PW12 that he had left the hospital and was on his way back to his home. PW12 told PW1/Matloob to make a call to Shahbaz and he made call to Shahbaz at about 2.25 pm. PW1/Matloob informed PW12 that he had telephonic conversation with Shahbaz, who informed him that he was at Karawal Nagar, where persons were being assaulted by the rioters and he would find some way to come back to the home. PW12 further deposed that blood sample of PW12 and his wife was taken in GTB hospital for DNA examination. PW12 deposed that Shahbaz was not wearing any jacket and he did not know make and model of wrist watch, but it was having golden chain.
22. **PW13/ASI Dinesh** took special message to CMM/NE, Joint CP (Eastern Range) and DCP/NE and handed over three separate closed envelopes for afore-said officers, on 28.02.2020.
23. **PW14/Retd. ASI Hari Om** deposed that on 27.02.2020 at about 9.07 pm, he was assigned DD No.134B regarding dead burnt

body lying on Pusta road near Kalighata road. PW14 along with Ct. Vishal reached Pusta road. Near the road divider, PW14 found some bones along with ash. PW14 telephonically called crime team at that place. PW14 kept the ash with bones in a bag and tied it. PW14 did not support the case of prosecution on the point of preparation of rukka and he was declared hostile witness.

24. **PW17/SI Jagbir Singh** went to GTB hospital on 26.03.2020 and gave a request letter to CMO for collection of blood sample of parents of deceased Shahbaz. In GTB hospital, PW17 met Mr. Safi Ahmed and his wife Mukima Khatoon (parents of deceased Shahbaz) and he collected their blood samples there. PW17 handed over both blood samples in sealed condition separately with sample seal to IO, who seized the same. PW17 took the exhibits to FSL Rohini and deposited the same there.
25. **PW18/Insp. Rajeev Ranjan** had prepared chargesheet in this case and filed the same before the court. **PW19/Sh. Pankaj Sharma** was Nodal Officer in Reliance Jio company. He proved certified copy of CDR, EKYC, Cell ID Chart in respect of mobile no.7982340792 and respective certificates, which are **Ex.PW19/A** to **Ex.PW19/E**. **PW21/Sh. Ajay Kumar** was Nodal Officer Nodal Officer in Bharti Airtel Ltd. He proved certified copy of CDR, EKYC/CAF, certificate u/s 63 BSA and Cell ID Chart in relation to mobile no.9599158283 and 9871038923 for period w.e.f. 20.02.2020 to 28.02.2020, which are **Ex.PW21/A** and **Ex.PW21/F**. **PW22/Sh. Pawan Singh** was Alternate Nodal Officer in Vodafone Idea Ltd. He proved certified copy of CDR, CAF, certificate u/s 65B of I.E. Act and Cell ID Chart in relation

to mobile no.8447403001, 8802020557 and 9654596144, which are **Ex.PW22/A** and **Ex.PW21/H**.

26. **PW23/ACP Pradeep Kumar Paliwal** had prepared a supplementary chargesheet-III, in order to place on record SOC report, FSL examination report in respect of mobile phones of accused persons and sanction u/s. 196 Cr.P.C. He filed supplementary chargesheet before the court on 22.10.2021.
27. **PW15/Retd. SI Shailendra Singh, PW16/Insp. Prakash Roy, PW20/Insp. Shyam Sunder, PW24/ACP Ramesh Lamba, PW25/Insp. Deepak Pandey and PW26/Insp. Manoj**, were part of investigation of the present case.
28. **PW25/Insp. Deepak Pandey** received result from FSL, Rohini, which related to examination of mobile phone of deceased Shahbaz. Wrist watch **Ex.PW1/Article-1** was make of “Michel Renee” having chain of golden colour.

STATEMENT OF ACCUSED PERSONS

29. Prosecution was requested to furnish synopsis of incriminating evidence against the accused persons. A synopsis was filed by ld. prosecutor. **Sh. Rakshpal Singh** and **Sh. Shailendra Singh**, ld. defence counsels submitted that all the cited eye witnesses of prosecution, had turned hostile and none of the witnesses identified any of the accused persons. **Sh. Nitin Rai Sharma**, ld. Special PP for State submitted that there is evidence on the record to show that a wrist watch belonging to deceased Shahbaz was recovered from the possession of accused Aman. Said wrist watch was duly identified by **PW1/Matloob**, during TIP as well as before the court and same is **Ex.PW1/Article-1**. Besides this,

ld. Special PP could not point out any other incriminating evidence qua other accused persons.

SECTION 255 BNSS

30. Section 255 BNSS (erstwhile S.232 Cr.P.C.) provides as under: -
“Acquittal- If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal.”
31. Section 256 BNSS (erstwhile 233 Cr.P.C.) provides as under: -
“Entering upon defence. - (1) Where the accused is not acquitted under section 255, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. (2) If the accused puts in any written statement, the Judge shall file it with the record. (3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”
32. Section 257 BNSS further provides that when examination of the witness of accused, (if any) is complete, the prosecutor shall sum up his case and thereafter the accused shall be entitled to respond to the arguments of the prosecutor. Section 258 BNSS further provides that after hearing arguments and points of law (if any), the judge shall give a judgment in the case.
33. On the other hand, Section 351 BNSS (erstwhile S.313 Cr.P.C.)

provides as under: -

“Power to examine the accused – (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court- (a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary; (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:”

34. As it is evident from the language used in Section 351 BNSS, this provision talks about “any circumstance appearing in the evidence against the accused”. On the basis of such language, practically the courts have been using the term of “incriminating evidence”. The purpose or objective behind the provision under section 351 BNSS is also evident from the language of the provision, wherein it is mentioned that 'for the purpose of enabling the accused personally to explain'.
35. In the case of **Sivamani & Anr. v. State of Kerala**, 1993 Cri.L.J. 23 (Kerala), while examining the scope of section 232 Cr.P.C., hon'ble Kerala High Court observed that an accused can be acquitted u/s 232 only when there is no evidence that he committed the offence. In that case, Kerala High Court dealt with the term of 'there is no evidence' and in that process the court referred to observations made by Division Bench of same court in the case of **State of Kerala v. Mundan**, 1981 Cri.L.J. 1795 (Kerala), to the effect that where there is some evidence connecting the accused with the commission of crime, it is the duty of the judge to pass on to Section 233 and not to appreciate that evidence and find out whether it was reliable or not, so as to

pass an order u/s 232 of the Code.

36. In the case of **Madan Mohan Jagga v. The State, 1984 Cri.L.J. 681 (Himachal Pradesh)**, even High Court of Himachal Pradesh examined the scope of 'no evidence' as appearing in Section 232 Cr.P.C. to observe that “*this term neither means total absence of evidence, nor does it mean absence of cogent, convincing, reliable and trustworthy evidence. All that it means is that there is no inculpatory evidence against the accused in the sense that even if the prosecution evidence adduced is accepted at its face value, it would not amount to legal proof of the evidence, charged against the accused. In such a case, the court is not required to marshal the evidence with a view to find out if it would be safe to act upon it or not.*”
37. In view of above-mentioned observations made by higher courts, it has to be seen if at all examination of an accused u/s 351 BNSS is necessary in all the circumstances. As per S.351 BNSS, the inculpatory evidence appearing against the accused is to be put to him, so as to enable the accused to give his explanation. As per Section 255 BNSS, if the judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal. On conjoint reading of Section 255 and Section 351 BNSS, it becomes amply clear that the focus of the court has to be on inculpatory evidence. However, the expression 'no evidence' as mentioned in Section 255 BNSS has an important role to decide if examination u/s 351 BNSS is mandatory in all circumstances. If there is no admissible evidence on the record, so as to indicate towards the accused for

commission of alleged offence, then there remains no occasion to seek any kind of explanation from the accused.

38. On careful scrutiny of evidence on record, I found that there is no incriminating evidence to connect any of the accused persons with the incident probed and charged in this case, which could be put to such accused persons so as to seek their response. Hence, statement of accused persons under Section 351 BNSS was dispensed with and this court proceeded to pass judgment as per Section 255 BNSS.

APPRECIATION OF FACTS AND EVIDENCE

UNLAWFUL ASSEMBLY & RIOT

39. PW1/Matloob and PW12/Shafi Ahmed deposed that deceased Shahbaz had left home on 25.02.2020 for his eye treatment and Shahbaz was in telephonic contact with PW1 up to 2.25 P.M. At that time Shahbaz informed PW1 that Shahbaz had reached area of Karawal Nagar, where riot was going on. Thereafter, mobile phone of Shahbaz was found switched off. Shahbaz did not reach back his home. Subsequently, PW6/SI Naveen found burnt skull and some bones on Pusta road and finally by way of DNA test, it was confirmed that said burnt part of body pertained to Shahbaz.
40. According to PW4/Popinder, on that day at about 2.20 P.M., he had seen a boy being beaten by a mob near Kalighata and subsequently he heard that a boy was burnt there. PW7/Chetan Sharma gave more detailed account of the incident. According to him, he saw a muslim boy being beaten by mob of persons from Hindu community near a dump-yard on Pusta road. He also saw that boy being burnt by that mob. PW9/Rohit also deposed about

seeing a boy in burnt condition at Pusta road, Karawal Nagar. He had also seen a mob on that road earlier on that day.

41. All these evidences seen together, leave no doubt that Shahbaz was beaten and burnt by an unlawful assembly on Pusta road.

IDENTIFICATION OF ACCUSED PERSONS

42. It is to be seen if there is any evidence to show presence and participation of accused persons in the aforesaid mob, which killed Shahbaz. Some of aforesaid witnesses were relied by the prosecution to also show that accused persons were part of the mob, which was responsible for aforesaid incident. Prosecution had cited PW7 and PW9 as eye witnesses of this incident. PW8 and PW11 were cited as witnesses of extra judicial confession made by some accused. Unfortunately, none of these relied upon eye witnesses, supported the case of prosecution to vouch for having seen and identifying the accused persons in the mob of aforesaid rioters. Other two witnesses also turned hostile on the aspect of extra judicial confession made in their presence.
43. It is no longer res integra that TIP proceeding is only corroborative in nature and it cannot be treated as substantive evidence. There is no other evidence to connect any of the accused persons with the incident of killing of Shahbaz. There is no evidence of any conspiracy hatched by these accused persons. Since, no one claimed having seen any of the accused persons, hence there is no evidence of any role as imputed to them.

S.412 IPC

44. Section 412 IPC deals with dishonestly receiving or retaining stolen property, with knowledge of such property being acquired

by the commission of dacoity, or with knowledge that the person from whom such property is being received, is member of a gang of dacoits, or the knowledge that it is a stolen property, or having reason to believe that such property is stolen property. The burden of proof lies with the prosecution to establish the elements of the offence beyond reasonable doubt. To convict a person under Section 411 or 412 IPC, the prosecution must prove the following:

1. The property in question was obtained through theft (as defined under Section 378, IPC) or related offenses like robbery or dacoity.
 2. The accused had possession or control of the stolen property.
 3. The accused knew or had reason to believe that the property was stolen i.e. the accused was aware or had reasonable grounds to suspect that the property was stolen.
 4. The act was done dishonestly i.e. the accused acted with intent to wrongfully gain or cause wrongful loss to the rightful owner.
45. There can be situation where the accused directly knew that the property was stolen (e.g., he was informed by the thief or witness of the theft). Reason to believe means that the accused had such circumstances that would lead a reasonable person to suspect the property to be stolen, which may include purchasing goods at a suspiciously low price or acquiring property in a clandestine or irregular manner (e.g. late-night transactions without documentation).
46. The prosecution bears the burden of proving all elements of the offence beyond reasonable doubt. The accused is not required to prove his innocence. In the case of **Trimbak v. State of Madhya**

Pradesh, AIR 1954 SC 39, Supreme Court held that mere possession of stolen property does not automatically prove guilt unless the prosecution shows the accused had knowledge or reason to believe it was stolen. In the case of **Shiv Kumar v. State of M.P.**, (2022) 7 SCR 493, while relying upon aforesaid judgment, Supreme Court again observed that “12. *In this case, although recovery of items was made, the prosecution must further establish the essential ingredient of knowledge of the appellant that such goods are stolen property. Reliance solely upon the disclosure statement of accused Raju alias Rajendra and Sadhu alias Vijaybhan Singh will not otherwise be clinching, for the conviction under Section 411 of the IPC.....The penal Section extracted above can be broken down into four segments namely: Whoever, I. Dishonestly; II. Receives or retains any stolen property; III. Knowing; or IV. Having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

15. To establish that a person is dealing with stolen property, the “believe” factor of the person is of stellar import. For successful prosecution, it is not enough to prove that the accused was either negligent or that he had a cause to think that the property was stolen, or that he failed to make enough inquiries to comprehend the nature of the goods procured by him. The initial possession of the goods in question may not be illegal but retaining those with the knowledge that it was stolen property, makes it culpable.”

47. In the present case, prosecution alleged that a wrist watch was recovered from the possession of accused Aman, which belonged to deceased. IO/PW26 deposed that Aman had disclosed that he had taken away that wrist watch from the body of Shahbaz. However, above-mentioned case law makes it amply clear that disclosure statement of accused cannot be basis to say that accused had knowledge of property found with him to be stolen property. The alleged disclosure statement of Aman, is apparently not admissible in evidence. Thus, there is no evidence to show that Aman was in possession of aforesaid watch, with knowledge of same to be robbed article. Accordingly, prosecution evidence failed to establish all requisite ingredients of offence u/s 412 IPC.

CONCLUSION & DECISION

48. In view of my foregoing discussions, observations and findings, I find that charges leveled against the accused persons in this case are not proved at all. Hence, all accused persons namely Aman, Vikram @ Vicky, Rahul Sharma, Ravi Sharma, Dinesh Sharma and Ranjeet Rana, are hereby acquitted of all the charges leveled against them, in this case.

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Announced in the open court (PULASTYA PRAMACHALA)
today on 16.05.2025 ASJ-03 (North- East)
(This Judgment contains 25 pages) Karkardooma Courts/Delhi

DLNE010033582021



**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

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Sessions Case No.	:	336/2021
Under Section	:	147/148/149/188/380/427/436 IPC
Police Station	:	Gokalpuri
FIR No.	:	114/2020
CNR No.	:	DLNE01-003358-2021

In the matter of: -

STATE

VERSUS

1. **Ankit Chaudhary @ Fouji**
S/o. Sh. Raj Kumar,
R/o. H.No. G-14, Gali No.2, G-Block,
Ganga Vihar, Gokalpuri, Delhi-94;
2. **Sumit @ Badshah**
S/o. Late. Sh. Om Prakash,
R/o. H.No. A-367, Gokalpuri, Delhi-94;
3. **Pappu**
S/o. Sh. Manka Singh,
R/o. H.No. B-21, Gokalpuri,
Block-B, Delhi;
4. **Vijay Aggarwal**
S/o. Sh. Sushil Kumar,
R/o. H.No. A-91, Gali No.2,
Ganga Vihar, Delhi;
5. **Ashish Kumar (proceedings against him stands abated vide order dated 03.01.2025)**
S/o. Late Sh. Ram Kumar Singh,
R/o. H.No. D-69, Gokalpuri,
Near SBI ATM, Delhi;
6. **Saurav Kaushik**
S/o. Sh. Jagdish Kaushik,
R/o. H.No. D-3, Gali No.3,
Ganga Vihar, Delhi;
7. **Bhupender Pandit**
S/o. Sh. Balaram Pandit,
R/o. H.No. F-283, F-Block,
Ganga Vihar, Gokalpur, Delhi-110094;

8. **Shakti Singh**
S/o. Sh. Surender Singh,
R/o. H.No. A-110, A-Block,
near Jain Mandir, Ganga Vihar, Delhi-110093;
9. **Sachin Kumar @ Rancho**
S/o. Sh. Krishan Dutt Sharma,
R/o. H.No. D-107, Gali No.5,
Ganga Vihar, near Ram Leela Maidan, Delhi;
10. **Rahul**
S/o. Sh. Prakash,
R/o. H.No. B-21, Main Road,
Gokalpuri, Delhi;
11. **Yogesh Sharma**
S/o. Sh. Hardev Sharma,
R/o. H.No. C-534, Gali No.2,
Ganga Vihar, Delhi-94.

...Accused persons

**Case was registered on
the complaint of:**

Sh. Imran Sheikh
S/o. Md. Yusuf Sheikh,
R/o. H.No. C-4/173, Yamuna
Vihar, North-East, Delhi.

Date of Institution : 03.05.2020
Date of reserving Judgment : 09.04.2025
Date of pronouncement : 14.05.2025
Decision : All accused are acquitted.

(Section 481BNSS complied with by the accused persons)

JUDGMENT

CASE SET UP BY THE PROSECUTION: -

1. The above-named accused persons have been chargesheeted by the police for offences punishable under Section 147/148/149/380/427/436 IPC.
2. As per chargesheet, brief facts of the present case are that on 03.03.2020 FIR was registered at PS Gokalpuri pursuant to receipt of a written complaint dated 01.03.2020 from one **Mohd.**

Imran Sheikh, s/o. Sh. Yusuf Sheikh. In his complaint, Mohd. Imran Sheikh alleged about loot and arson committed in his medical shop in the name and style of “Crown Medicos”. His shop was situated in property bearing no. B-7, Main Road, Gokalpuri, Delhi-94. First and second floor of his shop was full with medicines. He further alleged that one Aslam who was working in a salon, which was situated in front of his medical shop, had telephonically informed him at around 01:30 AM that some persons had looted his afore-said shop and were setting it ablaze. Immediately thereafter, complainant Mohd. Imran Sheikh made call at 100 number to police about this incident.

3. On the basis of aforesaid complaint, a rukka was prepared and DO/ASI Yashpal registered this FIR No. 114/2020, u/s. 147/148/149/380/427 IPC, which was assigned to SI Laxmi Narayan Sharma for investigation.
4. During investigation, IO visited place of incident, prepared site plan at the instance of complainant Mohd. Imran Sheikh and recorded his statement. On 05.03.2020, IO was informed by SI Satyadev in the PS that accused Ankit Chaudhary and Sumit @ Badshah, who had been arrested in FIR No.41/20, had confessed their involvement in the incident of the present case. After interrogation, accused Ankit and Sumit were arrested in the present case.
5. On 07.03.2020, IO called Mobile Crime Team officials at the scene of crime of the present case. IO got the spot inspected and photographed by them. IO obtained SOC report and photographs from officials of Mobile Crime Team and recorded their

statement. IO also collected and seized ash from the place of incident.

6. On 09.03.2020, ASI Ramdass informed IO about arrest of remaining accused in FIR No.126/20. On the basis of their confession, IO formally arrested Pappu, Ashish Kumar, Saurabh Kaushik, Bhupender, Shakti Singh, Sachin Kumar @ Rancho, Vijay, Rahul and Yogesh. On 19.03.2020, IO of FIR 41/20 i.e. ASI Gajraj informed IO of this case about receiving a CD of certain video of riots in his case. He also informed that some rioters were visible in the same and that, videos related to place of incidents in this case as well. IO obtained a copy of that CD and seized it in this case. This CD was sent to FSL, Rohini for forensic examination.
7. On 21.03.2020, by the order of SHO, SI L.N. Sharma handed over the case file to MHC(R). Further investigation was assigned to ASI Sushil Kumar.
8. Another complaint dated 11.03.2020 (received vide DD no.9A dt. 22.03.2020) was received from one **Akram Ali** in PS Gokulpuri. In his complaint, Akram Ali alleged that he was running his shop at C-12, Main Road, ground floor, Gokalpuri in the name and style of 'Smart Looks Salon' and he alongwith his brother Aslam was residing on rent on the second floor of C-12, Main Road, Gokalpuri. On 24.02.2020 at around 6 PM, a number of persons came and started vandalism and thereafter he and his brother left Delhi for their native place, in order to save their lives. On 29.02.2020, when Aslam Ali (brother of Akram Ali) visited said shop, he informed Akram Ali that rioters had vandalized his

shop. He also informed that all the important documents, which were kept in the counter, were taken out from the shop by the rioters and same were set on fire. ASI Sushil was assigned this complaint and on the basis of proximity of the date, time and place of incident mentioned by this complainant, said complaint was clubbed in the present case.

9. Subsequently, after discussion with senior officer, IO added Section 436 IPC in the present case. Notice u/s 91 Cr.P.C. was sent to related companies, in order to obtain certified copy of CDR/CAF of mobile numbers of the accused persons.
10. After completion of investigation, on 03.05.2020 a chargesheet was filed before Id. CMM (North-East), Karkardooma Courts, Delhi, against all aforesaid eleven (11) accused persons for offences punishable under Section 147/148/149/380/427/436 IPC.
11. On 15.01.2021, first supplementary chargesheet along with some documents including FSL report, was filed before Id. CMM (North-East), Karkardooma Courts, Delhi. Thereafter, Id. CMM (N/E) took cognizance of offences punishable under Section 147/148/149/380/427/436 IPC vide order dated 15.01.2021. Vide this order, Id. CMM (N/E) declined to take cognizance of offence under Section 188 IPC, for want of complaint under Section 195 Cr.P.C. Thereafter, case was committed to the court of sessions on 10.03.2021 and 24.09.2021.
12. On 07.09.2022, second supplementary chargesheet along with complaint under Section 195 Cr.P.C. and other documents, was filed directly before this court. On this day, this court took

cognizance of offence under Section 188 IPC. On 15.03.2023, third supplementary chargesheet along with copy of FIR, copy of seizure memo, copy of FSL forwarding letter, sealed CD, examination report, copy of road certificate, copy of acknowledgment memo, copy of certificate u/s. 65-B I.E. Act, crime team inspection report, crime team photographs and statement u/s 161 Cr. PC, was filed directly before this court.

CHARGES

13. Charges were decided vide order dated 29.01.2022. On 19.04.2022, charges were framed against accused 1. Ankit Chaudhary @ Fauzi, 2. Sumit @ Badshah, 3. Pappu, 4. Vijay, 5. Ashish Kumar, 6. Saurav Kaushik, 7. Bhupender, 8. Shakti Singh, 9. Sachin Kumar @ Rancho, 10. Rahul and 11. Yogesh for offences punishable under Section 147/148/380/427/436 IPC read with Section 149 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in following terms: -

“That during the night intervening between 24/25.02.2020 within the jurisdiction of PS Gokalpuri, you along with your other associates (unidentified) from a particular community had formed an unlawful assembly with the common object of committing riots by carrying stones, sticks and other weapons of rioting and to create fear and insecurity in the minds of members of other community and by use of force or violence in prosecution of a common object of such assembly committed rioting and you, being members of the aforesaid unlawful assembly knew that offences were likely to be committed and thereby you alongwith your other associates (unidentified) committed offences punishable under sections 147/148 IPC read with Section 149 IPC and within my cognizance.

Secondly, on the aforesaid date, approximate time and place, you all being members of unlawful assembly alongwith your other associates (unidentified) trespass in the shop of complainant Imran Sheikh and looted the same thereby committed theft of articles lying therein and as such, committed offence punishable under Section 380 IPC read with Section 149 IPC within my cognizance.

Thirdly, on the aforesaid date, approximate time and place at B-7, Gokalpuri, Delhi i.e. the shop M/s Crown Medicos of complainant Imran Sheikh and another shop No. C-12, Main Road, Gokalpuri, Delhi of complainant Akram Ali, you all being members of unlawful assembly alongwith your other associates (unidentified) broke open the locks and entered in the aforesaid shops and then set those on fire by explosive substance with the intent to destroy the same and as such, committed offence punishable under Section 436 IPC read with Section 149 IPC within my cognizance.

Fourthly, on the aforesaid date, time and place, you all being members of unlawful assembly alongwith your other associates (unidentified) committed mischief by causing wrongful loss and damage to the aforesaid shops of complainants Imran Sheikh and Akram Ali and as such committed offence punishable u/s 427 IPC read with Section 149 IPC within my cognizance.”

14. Thereafter, on 13.09.2022, additional charge was framed against aforesaid accused persons for offence punishable under Section 188 IPC, in the following terms: -

“That, in the intervening night between 24.02.2020 and 25.02.2020, at and in the nearby area around B-7, Gokalpuri, Delhi, within the jurisdiction of PS Gokalpuri, you all accused persons being member of an unlawful assembly alongwith your other associates (unidentified) were present at aforesaid place, in prosecution of the common object of an unlawful assembly and in violation of the proclamation

issued u/s 144 Cr. PC by the competent authority/DCP, North East vide order dated 24.02.2020 bearing no.10094-170 X-1, North East, Delhi dt.24.02.2020, which was duly announced in all the localities District North East including area of PS Gokalpuri, thereby you all committed offence punishable under Section 188 IPC and within my cognizance, and I hereby direct that you be tried by this Court for the aforesaid charge.”

DESCRIPTION OF PROSECUTION EVIDENCE: -

15. Several witnesses were dropped on the basis of admission of documents under Section 294 Cr.P.C. and prosecution examined 12 witnesses in support of its case, as per following descriptions:-

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
PW1/SI L.N. Sharma	PW1 was 1st IO. He was assigned investigation of this case on 03.03.2020. PW1 visited Crown Medicos and prepared its site plan Ex.PW1/A. In front of that shop, there was shop namely Smart Salon of Aslam. Said Aslam came to PW1 and informed him about taking photographs of the incidents taken place on 25.02.2020. Aslam further told PW1 that said mobile phone, in which photographs were taken, was with his brother and his brother had gone to native place. Hence, that mobile phone was not available. On 05.03.2020, on the basis of information given by SI Satyadev, PW1 obtained arrest documents of accused Sumit and Ankit Chaudhary as pertaining to FIR 41/20 from SI Satyadev. PW1 arrested both these accused in this case vide arrest memos Ex. A-10 & A-9 respectively. On same day complainant Imran had come to police station and he handed over a CD of video of his shop and some documents, which were seized by PW1. On 06.03.2020, crime team officials visited the place of incident. They inspected and took photographs of that	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	place. SOC report was given to PW1 by SI Manish. PW1 collected ash from the shop of Imran and seized it vide Ex.PW1/C. The ash materials were produced before the court in cloth pullanda. Same are Ex.PW1/Article-1 and Ex.PW1/Article-2. On 09.03.2020, on the basis of information given by ASI Ramdas, PW1 arrested accused Ashish, Saurabh Kaushik, Bhupender, Shakti Singh, Pappu, Vijay, Sachin, Yogesh and Rahul, in this case vide separate arrest memos. On 19.03.2020, PW1 received two CDs from ASI Gajraj Singh, which were seized vide Ex.PW1/D. On 21.03.2020, further investigation was assigned to other IO and PW1 submitted the file with MHC(R). PW1 identified all accused before the court.	
PW2/ Mohd. Imran Sheikh	PW2 was first complainant. He was running medical shop in the name of Crown Medicos at B-7, main road, Gokalpuri. He had closed his shop on 24.02.2020 at about 6 P.M. In that night between 24 and 25.02.2020, PW2 received a call from Aslam/PW5. Aslam informed PW2 that mob had pelted stones on his shop. PW2 has several telephonic conversations with PW5 that night and subsequently PW5 informed PW2 that his shop was set on fire by the mob. PW2 made call at 100 number and informed police about the same. He came to his shop on 27.02.2020 or 28.02.2020. PW2 found his shop and godown situated above it, in completely burnt condition. PW2 made complaint to police i.e. Ex.PW2/A. He also handed over some documents, pieces of some burnt materials and a CD of video his shop, to police. Police prepared site plan of that place. Police also obtained a certificate from PW2 in respect of photographs handed over by him i.e. Ex.PW2/B. Those photographs are Ex.PW2/P-1 to P-12. PW2 was declared hostile by prosecution and he denied	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	the suggestions that he had come to shop in the night of incident, or that he had seen and identified accused persons in the mob of rioters.	
PW3/HC Pradeep	On 24.02.2020, an order passed by DCP, North-East u/s. 144 Cr.P.C., was received through Dak in the morning and on the directions of SHO, PW1 obtained loud hailer from malkhana and announced the proclamation u/s. 144 Cr.P.C. in the jurisdictional area of PS Gokalpuri i.e. Johripur Extension, Ganga Vihar, Chaman Park, Indira Vihar, Bhagirathi Vihar, Sanjay Colony, Gokalpuri and Gokalpuri Village.	
PW4/HC Vikas	On 06.03.2020, PW4 had visited B-7 main market Gokalpuri, alongwith SI Manish, for inspection. They had come from crime team. SI Manish inspected that place, which was a burnt shop. PW4 had taken photos of this shop. PW4 also issued a certificate u/s. 65-B of IE Act i.e. Ex.PW4/A . Those photographs are Ex. PW4/P-1 to P-20 .	
PW5/ Aslam	PW5 was running salon at C-12, main road, Gokalpuri. On 24.02.2020, at about 6.30-7 P.M., PW5 was informed that mob had started assembling at Ganga Vihar Chawk, and after some time PW5 closed his salon and went upstairs. This property was situated at the corner of a gali, in the middle of the main road of Gokalpuri. PW5 started peeping outside from the window of this property, which opened towards main road. At about 7.30-7.45 P.M., a mob of 50-60 persons equipped with danda, iron rod etc., came there and they damaged the board over salon of PW5 by pelting stones and with danda and iron rod. There were CCTV cameras in the salon of PW5, which were also damaged by the mob. After damaging the board, this mob moved forward	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	towards main road. PW5 moved to the terrace of his property. After about 1-1.15 hours, that mob again came back to the shop of PW5. The strength of the mob had increased to about 200 persons and they were divided into three parts. One part again started damaging the salon of PW5. Other part was damaging Crown Medicos, which was situated across the road in B block. Crown Medicos was finally set on fire at about 11.45 P.M.-12 midnight. That mob again came back to salon of PW5 after 12 midnight and they broke the shutter partly. They took away various articles from the salon viz. 6 chairs, 2 sofas, LED TV, DVR, Fridge, Geyser, Cash counter and wooden furniture. Some articles were burnt on the road and some articles were taken away. PW5 recorded videos of the incidents at 7 P.M., 10 P.M. and 12-12.30 AM in his mobile phone. PW5 had identified some of the persons in that mob by their names, some of them by their face and some of them by their father's name. PW5 had seen and identified Ankit Chaudhary @ Fauzi, Sumit @ Badshah, Rahul, Amit Kumar, Vicky, Sumit. PW5 identified accused Sumit @ Badshah, Vijay and Pappu before the court by taking their correct names. He claimed that he knew their names. PW5 did not identify accused Ankit Chaudhary on the display screen, who was appearing through video conference. PW5 identified accused Sandeep @ Mogli, Rahul, Shakti Singh, Saurabh, Ashish before the court, stating that he did not know their names. PW5 deposed that Saurabh was known as Kachhua in the locality. PW5 had not handed over videos recorded by him to the police, rather he had uploaded them on social media viz. Facebook. PW5 had transferred all the videos in his laptop and subsequently	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	on directions of the court, he produced a DVD with copy of those videos. This DVD was sent to CFSL, New Delhi for forensic examination. PW5 identified the videos in that DVD Ex.PW5/B, to be pertaining to recordings done by him and two videos received through WhatsApp. He proved a certificate u/s 65 B I.E. Act in respect of that DVD i.e. Ex.PW5/A. PW5 identified 22 videos i.e. Ex.PW5/V-1 to Ex.PW5/V-22. In his subsequent appearance, PW5 identified accused Ankit before the court, stating that on previous occasion he could not identify Ankit on display screen.	
PW6/ Akram	PW6 was brother of PW5. PW6 was residing at C-12, second floor, main road, Gokalpuri with his brother Aslam/PW5. PW5 was running a salon on the ground floor of this property in the name of Smart Look Salon. On 24.02.2020 PW6 left Delhi at 11.30 P.M., because riots had started, but Aslam remained in Delhi. Aslam came to native place on 29.02.2020 and informed PW6 that in riots articles of salon were burnt on the road. PW6 came to Delhi on 01.03.2020 and made complaint Ex.PW6/A. Police visited his property and prepared a site plan i.e. Ex.PW6/B. PW6 did not see any incident in the shop and he remained closed inside his room with other workers. Aslam had locked them in a room. Aslam had gone to terrace. PW6 had given photographs to police and he gave a certificate regarding the same i.e. Ex.PW6/P-1. PW6 had wrongly mentioned in his complaint Ex.PW6/A that on 24.02.2020 PW6 had left Delhi alongwith Aslam.	
PW7/HC Mohit	PW7 was photographer in crime team. He visited C-12 main road, Gokalpuri, which was a closed salon, with SI Surrender. He took photographs Ex.PW7/P-1 to P-4. He	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	proved certificate for those photographs as Ex.PW7/A.	
PW8/Sh. Geetesh Patel	PW8 was expert in Physics division of FSL, Rohini. He had examined one CD in FIR no. 41/20 PS Gokalpuri. There were two audio-video files in that CD, which were examined by PW8 and he had prepared his report Ex.PW8/C . PW8 prepared mirror copy of that CD for the purpose of this case i.e. Ex.PW8/B and also issued certificate u/s 65-B I.E. Act i.e. Ex.PW8/A .	
PW9/ASI Jahangir & PW10/ASI Vanvir	On 24.02.2020, PW9 and PW10 were on duty on Main Road, Gokalpuri. At about 6 PM, a mob of about 100-150-200 persons had assembled in the market on the Main Road, Gokalpuri/Ganga Vihar. This mob vandalised a salon in the name of Smart Look in property no. C-12 and they set that salon on fire. SHO had come there on patrolling on official vehicle and then mob had dispersed away. The mob again came at the chawk at about 1.30 A.M. They entered into Crown Medicos, vandalised the articles lying there and set that shop on fire. PW9 and PW10 had identified about 10-11 persons in that mob and they knew them by their names. They were accused Ankit Chaudhary, Sumit Badshah, Sachin, Saurabh, Bhupender, Ashish, Rahul, Vijay, Shakti & Pappu. They were also part of the mob which had vandalised Crown Medicos. PW9 & PW10 identified all accused before the court by taking their correct names. On 07.01.2021 IO had showed PW9 some photographs, and PW9 identified accused persons in those photographs, as being involved in the riots taken place on 24.02.2020 at C-12, Main Road Gokalpuri. IO had shown a video of riot to PW10 on 10.12.2020 and PW10 had identified accused in that video. The said video pertained to same place.	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
PW11/Sh S.Ingarsal	PW11 was expert in Photo & Scientific Aid Division in CFSL, New Delhi. This court had sent DVD submitted by PW5/Aslam to CFSL for forensic examination. PW11 examined the videos in that DVD. There were 24 videos in that DVD. PW11 examined them all except one and he did not find any alteration or tampering in any of those examined video files. He prepared his report Ex.PW11/A .	
PW12/ASI Sushil Kumar	On 22.03.2020, PW12 was posted as ASI in PS Gokalpuri. On that day, PW12 received the case file of this case for further investigation. PW12 had also received a complaint from complainant Akram Ali from reader to SHO. PW12 called that complainant in PS, and took him to his shop. It was found in front of B-7, regarding which this case was registered. PW12 clubbed the complaint of Akram and recorded his statement u/s. 161 Cr.P.C. PW12 prepared main chargesheet against 11 accused persons and filed it on 03.05.2020. On 11.05.2020, PW11 called the crime team at C-12 Gokalpuri, where crime team officials inspected the property and took photographs. PW12 recorded statement of I/C Crime team SI Surender and photographer Ct. Mohit on that day. PW12 also obtained SOC report and photographs subsequently. On 10.12.2020, PW12 recorded the statement of eyewitness namely ASI Vanvir in PS. On 07.01.2021 PW12 recorded statement of HC Jahangir. PW12 placed order u/s 144 Cr.P.C. In September, 2021 PW12 filed 1st supplementary chargesheet in the court. PW12 deposited ash material to FSL, Rohini for examination. PW12 also obtained complaint u/s. 195 Cr.P.C. from DCP/NE and recorded the statement of Ct. Pradeep regarding the proclamation u/s. 144 Cr.P.C.	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	PW12 seized the photographs already submitted by Akram and he obtained a certificate from Akram u/s 65-B I.E. Act. PW12 prepared site plan of shop of Akram Ex. PW6/B. PW12 also prepared supplementary site plan Ex. PW12/B. PW12 obtained copy of records from register 19. Thereafter, PW12 filed 2nd supplementary charge sheet in the court in September, 2022. PW12 obtained certificate u/s 65-B I.E. Act from Ct. Mohit and Ct. Vikas i.e. both photographers from crime team. He received FSL report regarding examination of ash material and filed 3rd supplementary chargesheet in March, 2023.	
Admitted documents under Section 294 Cr.P.C. Endorsement on rukka as Ex. A-1; FIR (colly 3 pages) as Ex. A-2; GD no. 009A as Ex. A-3; GD no. 280 A as Ex. A-4; GD no.291 A as Ex. A-5; GD no. 022 A as Ex. A-6; GD no. 084 A as Ex. A-7; GD no. 667 A as Ex. A-8; arrest memo of accused Ankit Chaudhary as Ex.A-9; arrest memo of accused Sumit @ Badshah as Ex.A-10; arrest memo of accused Ashish Kumar as Ex.A-11; arrest memo of accused Saurabh Kaushik as Ex.A-12; arrest memo of accused Bhupender as Ex.A-13; arrest memo of accused Shakti Singh as Ex.A-14; arrest memo of accused Pappu as Ex.A-15; arrest memo of accused Vijay as Ex.A-16; arrest memo of accused Sachin Kumar @ Rancho as Ex.A-17; arrest memo of accused Yogesh as Ex.A-18; arrest memo of accused Rahul as Ex.A-19; personal search memo of accused Ankit Chaudhary as Ex.A-20; personal search memo of Sumit @ Badshah as Ex.A-21; personal search memo of accused Ashish Kumar as Ex.A-22; personal search memo of accused Saurabh Kaushik as Ex.A-23; personal search memo of accused Bhupender as Ex.A-24; personal search memo of accused Shakti Singh as Ex.A-25; personal search memo of accused Pappu as Ex.A-26; personal search memo of accused Vijay as Ex.A-27; personal search memo of accused Sachin Kumar as Ex.A-28; personal search memo of accused Yogesh as		

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
Ex.A-29; personal search memo of accused Rahul as Ex.A-30; copy of road certificate as Ex.A-31; copy of relevant entry in register 19 as Ex.A-32; SOC report as Ex.A-33; order u/s 144 Cr.P.C. as Ex.A-34; complaint u/s 195 Cr.P.C. as Ex.A-35; another SOC report as Ex.A-36.		

PLEA OF ACCUSED UNDER SECTION 351 BNSS

16. Accused persons denied all the allegations and pleaded innocence, taking plea that they are innocent and they were falsely implicated in this case by the investigating agency. They also took plea that witnesses had deposed falsely against them. They further took plea that they had not committed any crime as alleged against them in the present case. They took plea that they were falsely identified by witnesses at the instance of IO and that PW9 & PW10 were planted witnesses in this case. Accused persons did not opt to lead any evidence in their defence.
17. Apart from above-said plea, accused Ankit and Sumit took plea that they were falsely identified in video at the instance of IO.

ARGUMENTS OF DEFENCE & PROSECUTION

18. I heard ld. Special PP as well as ld. counsels for accused persons and I have perused the entire material on the record.
19. Sh. Ved Prakash Mishra, Sh. Hari Shankar, Sh. Rakshpal Singh, Sh. Nitin & Ms. Archana, ld. counsels argued that brother of PW-5 i.e. Akram deposed that he had not seen any incident at his shop till 11:30 pm and he alongwith PW-5 had left the shop as well as Delhi that night. This fact was mentioned in the

complaint of Akram i.e. Ex. PW-6/A. They further argued that PW-5/Aslam never handed over his mobile phone to the police. PW-5 also deposed that his shop was burnt at around 12:00 A.M., but he did not record any video of that incident. It was further argued that PW-5 did not make any call to the police at the time of incident because he was not present in Delhi at that time and he had not seen any incident. Ld. defence counsels further argued that evidence of PW-5 is contradictory. At one instance, PW-5 could not identify accused Ankit Chaudhary though he claimed that he had known Ankit for ten years. Statement of PW-5 and PW-9 are contradictory regarding the time of incident at the shop of PW-5. PW-9 and PW-10 gave description of different time for leaving police station on 24.02.2020. They also mentioned different time of incident at Crown Medicos. PW-5 had mentioned a different time of incident at Crown Medicos. It was further argued that all these witnesses gave statement with different description of the incident falsely, at the instance and tutoring of the IO. No explanation was offered by PW-9 for giving belated statement before the IO. Name of the accused persons were involved in many cases of riots and hence, they were implicated in this case also falsely.

20. **Sh. Jagdeep Sharma, Ld. Counsel for accused Sachin** added that accused Sachin does not appear in any of the videos relied upon by the prosecution.
21. **Sh. Nitin Rai Sharma, Ld. Special Public Prosecutor** argued that PW-5/Aslam, PW-9/ASI Jahangir and PW-10/ASI Vanvir are star witnesses of the prosecution. There are two places of incidents in

this case. One is shop of PW-5, namely, Smart Look Salon and another is Crown Medical Shop of PW-2, namely Crown Medicos. Ld. Special Public Prosecutor submitted that both these shops were situated nearby and were vandalized and set ablaze by same mob. He further submitted that PW-5 identified the accused persons and he also proved some videos of the incidents, as recorded by him. These videos were forensically examined in CFSL, New Delhi and were found without any tampering. Ld. Special Public Prosecutor further submitted that PW-9 & PW-10 had also seen and identified the accused persons in that mob, as they had also seen incident at both the afore-said shops. Presence of these police officials at the spot cannot be denied as they were deputed there to control the riots and hence, their presence was natural at that place. He further submitted that PW-6/Akram deposed that his brother Aslam had remained in Delhi. PW-6 also clarified that in the complaint it was wrongly mentioned that Aslam had also left Delhi.

APPRECIATION OF FACTS AND EVIDENCE
UNLAWFUL ASSEMBLY & RIOT

22. PW5/Aslam, PW9/ASI Jahangir and PW10/ASI Vanvir were the witnesses of the prosecution, who deposed about seeing the riots and incidents in question. PW5 deposed that on 24.02.2020 at around 6.30-7 P.M., a mob had started assembling at the nearby Chawk known as Ganga Vihar Chawk. At about 7.30-7.45 P.M., this mob came to his shop at C-12 and they damaged the CCTV cameras as well as the board over his shop. Thereafter, this mob moved away. According to PW5, this mob again came back to that place after 1-1.30 hours and they again started damaging the

shops there. One group of the mob vandalized Crown Medicos, which was situated across the road in B block. This mob damaged the board and glass of that shop. Afterwards, that shop was set ablaze by the mob at about 11.45 P.M.-12 mid night. Salon of PW5 was again attacked by this mob after 12 mid night and they partially broke the shutter and entered into his shop. The mob took out the articles from his shop. They burnt some articles and took away other articles. PW5 also deposed that he had taken shelter on the upper floor over this shop and thereafter on the terrace of that property. He had recorded video of some of the actions of that mob, which were proved as Ex.PW5/V-1 to V-22. Among these videos, two videos i.e. Ex.PW5/V-21 and Ex.PW5/V-22 were not recorded by PW5, and he had received them on WhatsApp. These two videos showed attack on his salon by the mob.

23. PW9 and PW10 also deposed about seeing aforesaid incidents, while being on patrolling duty on that day. Both of them mentioned that at about 6 P.M., mob of around 100-150-200 persons damaged salon in C-12. PW10 went on to say that mob also set fire in this shop. Both of them further deposed that same mob vandalized Crown Medicos in the intervening night of 24-25.02.2020, at around 1.30 A.M. this mob set ablaze that shop.
24. PW1 was first IO, who deposed that he visited Crown Medicos on 03.03.2020 and he had found it in burnt condition. PW2 was owner of Crown Medicos, who deposed that he was informed by PW5 in the intervening night of 24-25.02.2020 that mob had been vandalizing his shop and had subsequently burnt it. PW2

had made call to police accordingly on 100 number. The undisputed DD entries Ex.A-4, Ex.A-5 and Ex.A-6, show that informations were given to police on 24.02.2020, at 21.50.46 hrs. to report that mob had been breaking the gate of Crown Medicos; at 22.02.33 hrs. to report that mob was looting the articles from this shop; and at 01.26.51 hrs. of 25.02.2020 to report that this shop was set ablaze by the mob. PW2 visited this shop on 27 or 28.02.2020, and he found the shop in completely burnt condition. He took photographs of his shop, which were handed over to police with certificate u/s 65-B I.E. Act. Same were proved as Ex.PW2/P-1 to P-12.

25. PW4 was the photographer of crime team, who deposed that he visited Crown Medicos on 06.03.2020 and he found this shop in burnt condition. He took photographs of this shop, which are Ex.PW4/P-1 to P-20. He also proved certificate u/s 65-B I.E. Act in support of these photographs.
26. The defence counsels challenged the presence of PW5 at the relevant time in the property of his shop. They referred to complaint Ex.PW6/A, which was made by brother of PW5. In this complaint it was mentioned that PW6 and his brother both fled away from their shop and went to village through train. Before the court, PW6 had clarified that his brother PW5 had not gone with him. However, defence treated it as false improvement in the stand.
27. In order to verify the correct position, videos proved as Ex. PW5/V-1 to V-20 are very relevant. Here it is worth to mention that an expert from CFSL, New Delhi i.e. PW8 had examined all

these videos and he reported that there was no superimposition or artifacts or any change or interpolation in any of these videos. He also reported that no variation was found in nature of relative and rhythmic audio sound quality and audio was maintaining the consistency throughout the video clips. Thus, there is no reason to suspect the veracity of these videos, which were claimed to be recorded by PW5 himself, with his voice recorded therein.

28. On seeing these videos, it is well clear that a number of persons were moving on the road, in front of Crown Medicos and Salon of PW5. The video Ex.PW5/V-3 shows a mob pelting stones on a shop. The person recording the video is also speaking giving description of that shop as Smart Look Salon. PW5 claimed that this audio contained his voice. In that video PW5 mentioned his name also. In video Ex.PW5/V-5, the speaker claims that the rioters were from same locality and in the last part of it, speaker also mentions about breaking of camera. In video Ex.PW5/V-8 and Ex.PW5/V-3, speaker mentions that mob were breaking Crown, which refers to medical shop of PW2. Video Ex.PW5/V-3 further shows that a police team comes into picture, due to which rioters moved away from Crown Medicos. In video Ex.PW5/V-10, speaker mentions that mob again attacked Crown Medicos and that they had come back to that shop 3rd or 5th time. In video Ex.PW5/V-14 speaker mentions that rioters had taken out articles of Smart Look outside and they were setting fire in the same. Video Ex.PW5/V-15 also shows that some articles were kept on the road by the rioters, just in front of Salon of PW5. In video Ex.PW5/V-16, articles being set on fire is clearly visible

and the speaker mentions that some articles were taken away by the rioters and some were set on the fire. Video Ex.PW5/V-17, V-18 & V-19 also show articles being burnt on the road. Video Ex.PW5/V-20 shows attack on the shop situated just in front of the articles burning, across the road. Speaker mentions that rioters were again trying to break locks of Crown Medicos and that rioters had taken away articles from his shop and had burnt remaining articles. All the aforesaid videos show that such incidents were taking place when it was dark, i.e. it was night time period.

29. Video Ex.PW5/V-21 & V-22, appear to be recorded during such time when there was still sunlight. These videos were recorded from some place across the road. Both videos show attack on Smart Look Salon by a mob with danda and stones.
30. Now, the question is that whether PW5 was present at the time of attack over his shop and Crown Medicos. If I read testimony of PW5 conjointly with aforesaid videos, I find that claim made by PW5 about being present in a room on the upper floor of his shop, is not false claim. The videos show that they were recorded from a place inside a window situated on upper position from the level of road. Some videos were apparently recorded from place like terrace. Moreover, it had also been mentioned in the complaint of PW2 itself that Aslam i.e. PW5 had informed him about vandalism at his medical shop. PW2 deposed that he had several rounds of talk with PW5 and on the basis of that he had made call to police. PW5 also deposed that he had made video call to PW2 and had shown him the attack over shop of PW2. All

these depositions are well corroborated by the aforesaid videos. Hence, I do not have any doubt that those videos were recorded by PW5.

31. Moreover, the photographs proved by PW2 and PW4 leave no doubt that Crown Medicos was completely burnt. The site plan Ex. PW6/B shows that both these shops i.e. Crown Medicos and Smart Look Salon, were situated almost in front of each other and across the road. Therefore, whatever has been described in the videos by the speaker (PW5), validly connotes to incident at both these shops. Hence, it is well established that a mob of rioters attacked over both the aforesaid shops time and again from late evening of 24.02.2020 up to late in the intervening night of 24 & 25.02.2020. Crown Medicos was finally completely burnt in that process. Smart Look Salon was not set ablaze, but it was vandalized, broke open and articles lying there were taken out. Some articles were taken away by the rioters and some were burnt on the road.

IDENTIFICATION OF ACCUSED PERSONS

32. The core issue is that whether accused persons were part of the mob of rioters, which was responsible for the incidents probed in this case. Prosecution relied upon PW5, PW9 and PW10 to prove the presence of all accused in the mob of rioters, which attacked both the aforesaid shops. PW5 deposed that he already knew accused Ankit Chaudhary, Sumit @ Badshah, Rahul, Amit Kumar, Vicky, Sumit. He identified accused Sumit @ Badshah, Vijay and Pappu, as the persons whom he knew by their names. At that occasion, accused Ankit Chaudhary was appearing

through video conference and PW5 could not identify him. However, during his examination on a subsequent date, when he had identified videos in DVD furnished by him, accused Ankit was physically present in the court and at that moment PW5 identified him, stating that on previous occasion he could not understand the appearance of the person on the computer screen and he was not told name of that person, hence, he could not identify Ankit Chaudhary on that occasion. PW5 further identified accused Sandeep @ Mogli, Rahul, Shakti Singh, Saurabh and Ashish, stating that they were also members of the mob of rioters, but he did not know their names. At the same time PW5 deposed that Saurabh was known as Kachhua in that locality.

33. On the other hand, PW9 and PW10 identified all the accused persons, claiming that they knew them since prior to the incident. However, both these officials were posted in the same police station, despite that their statement regarding identifying the accused persons, was recorded at much belated time. Moreover, if these accused persons were already known to these two police officials, then there could not have been any need to identify them in any video or photographs. It is worth to note here that by the time IO recorded statement of these two police officials, all accused were already arrested and chargesheeted in this case. Therefore, their identification of accused persons, at such belated time, is not beyond controversy and doubt.
34. Defence challenged evidence of PW9 and PW10, mainly on the grounds that despite being posted in the same police station, they

came up to name and identify photographs of the accused persons after a huge gap of around 10 months.

35. I do find merit in this argument. If PW9/ASI Jahangir and PW10/ASI Vanvir had actually seen and identified the accused persons among the rioters on 24.02.2020, then there was no good reason for them to keep silence for such a long period. From the record of duty roster, even IO could have known the particulars of officials, who were on duty at the concerned place. Still, even IO did not make any attempt to examine such officials at the earliest possible time. Showing photographs of accused to PW9, when they were already arrested in this case, appears to be unnatural action, giving impression that PW9 was artificially made an eye witness to identify the accused persons. Therefore, evidence of PW9 cannot be relied upon to assume presence of any accused in the mob of rioters. Same logic applies to discard the identification by PW10.
36. Defence challenged credibility of testimony of PW5, submitting that he falsely identified the accused persons before the court, as after-thought plea. In the cross examination of PW5, defence counsels suggested to him that he had identified accused persons because they all were residents of same locality. PW5 admitted this suggestion. Defence counsels also suggested to PW5 that he had identified accused because they belonged to other community and PW5 had enmity with them because of their community. PW5 denied these suggestions.
37. It has to be appreciated that PW5, though claimed that he knew some of the accused persons by names since prior to this

incident, but he did not get name of any such person mentioned in the complaint made by his brother Akram/PW6. PW6 deposed that PW5 had informed him about the incident. If that was so and if PW5 knew at least some of the rioters by their names, whom he identified before the court, then it was natural for PW5 to mention their names before PW6 as well. However, PW6 neither in his complaint Ex. PW6/A nor in his testimony before the court, stated that he was ever informed about name of any of the rioter by his brother PW5.

38. PW1 was the IO, who claimed to have recorded statement of PW5 on 03.03.2020. However, in that statement also, there was no mention of all the names of rioters as claimed by PW5 before the court. PW1 deposed that except for disclosure statement of accused persons, he did not have any other evidence against accused persons at the time of arrest of accused persons. At the same time, PW1 stated that Aslam had stated that he could identify the culprits from the video, but that phone and video was also not made available to PW1 by PW5. If PW5 knew the name of rioters as named by him before the court, then even if he did not have his mobile phone to hand over the videos to police/PW1, PW5 would have mentioned those names before PW1. Thus, claims of PW5 that he knew some accused persons by their names since prior to the incident and that he also had seen and identified them among the rioters, are incompatible with his omission to mention such names before PW6 or before PW1 at the first occasion itself. It is also worth mentioning here that even in the videos recorded by PW5, he did not take name of any

of the rioters or accused. At least at that time, PW5 had no resistance from anyone for not taking the names of those, whom he was able to see and identify, if he was also aware of their names. Though PW5 pointed out to accused Sumit and Ankit in two videos, but face of those persons is not that clear and visible in the videos, so that one could reach to any conclusion regarding identity of such persons. Therefore, naming and identification of accused persons by PW5 before the court for the first time, in the background of his claim of having known some of them since prior to the incident, is suspicious, and in absence of any corroboration to such evidence of PW5, it is risky to act upon his identification.

CONCLUSION & DECISION

39. In view of my foregoing discussions, observations and findings, I find that charges levelled against the accused persons in this case are not proved beyond all reasonable doubts and accused are entitled for benefit of doubt. Hence, all accused 1. Ankit Chaudhary @ Fauzi, 2. Sumit @ Badshah, 3. Pappu, 4. Vijay, 5. Ashish Kumar, 6. Sourabh Kaushik, 7. Bhupender, 8. Shakti Singh, 9. Sachin Kumar @ Rancho, 10. Rahul and 11. Yogesh, are acquitted of the charges levelled against them.

PULASTYA
PRAMACHALA

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Date:
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Announced in the open court (PULASTYA PRAMACHALA)
today on 14.05.2025 ASJ-03 (North- East)
(This order contains 28 pages) Karkardooma Courts/Delhi

DLNE010024122020



**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

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Sessions Case No.	:	121/2020
Under Section	:	144/147/148/149/153-A 188/505/302/ 201/ 427/395/396/432/435/412/120-B/34 IPC.
Police Station	:	Gokalpuri
FIR No.	:	36/2020
CNR No.	:	DLNE01-002412-2020

In the matter of: -
STATE

V E R S U S

1. Lokesh Solanki

S/o. Sh. Yogender Kumar,
R/o. H.No. C-5/47, 4th Floor,
Yamuna Vihar, Delhi-53.

2. Pankaj Sharma

S/o. Late Sh. Rajveer Sharma,
R/o. H.No. C-162, Gali No.3,
Bhagirathi Vihar, Delhi-94.

3. Sumit Chaudhary @ Badshah

S/o. Late. Sh. Om Prakash,
R/o. H.No. A-367, Gokalpuri, Delhi.

4. Ankit Chaudhary @ Fouzi

S/o. Sh. Rajkumar,
R/o. H.No. G-14, Gali No. 2, G-Block,
Ganga Vihar, Gokalpuri, Delhi-94.

5. Prince @ D.J. Wala

S/o. Sh. Mahender Singh,
R/o. H.No. C-33, Gali No.2,
Bhagirathi Vihar, Delhi-94.

6. Munesh Kumar

S/o. Sh. Babu Ram,
R/o. Village Kalkatti Narora, Prempuri Mohalla,
Distt. Bulandshaher, PS Narora (U.P.) &
Gali No.2, Mamura, Noida, U.P

- 7. Rishabh Chaudhary @ Tapas**
S/o. Sh. Yogender Singh,
R/o. H.No. F-53, Gali No.1,
Ganga Vihar, Gokalpuri, Delhi-94.
- 8. Jatin Sharma @ Rohit**
S/o. Sh. Gouri Shankar Sharma,
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- 9. Vivek Panchal @ Nandu**
S/o. Sh. Pramod Kumar Panchal,
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- 11. Sahil @ Babu**
S/o. Late Sh. Rakesh Sharma,
R/o. H.No. D-138, Gali No.11,
Bhagirathi Vihar, Delhi-94.
- 12. Sandeep Kumar @ Mogli**
S/o. Late Sh. Dalveer Singh,
R/o. H.No. E-24, Gali No.3,
Bhagirathi Vihar, Delhi-94.
- 13. Tinku Arora**
S/o. Sh. Ashok Kumar,
R/o. H.No. E-51, Gali No.2,
Bhagirathi Vihar, Delhi-94.

...Accused persons

Complainant:

ASI Ram Dass

Date of Institution : 04.06.2020
Date of reserving Judgment : 17.05.2025
Date of pronouncement : 17.05.2025
Decision : All accused are acquitted.

(Section 481 BNSS complied with by all the accused persons)

JUDGMENT

CASE SET UP BY THE PROSECUTION: -

1. The above-named accused persons have been chargesheeted by the police for offences punishable under Section 144/147/148/149/153-A/188/505/302/201/427/395/396/432/435/412/120-B/34 IPC.
2. As per the case of the prosecution, incident in the present case took place on 26.02.2020, however police came to have knowledge of it only on 27.02.2020 when SHO, PS Gokulpuri informed Duty Officer vide DD No. 24-B dated 27.02.2020 that three dead bodies had been found in the Bhagirathi Vihar Nala near Pulia. Three dead bodies were taken out and were given Mark A, B, and C. This case related to dead body Mark B. Some injury marks were found present on it. Accordingly, this case vide FIR No. 36/2020 dated 27.02.2020 U/s. 147/148/149/201/302 IPC, was registered at police station Gokalpuri.
3. After registration of FIR, investigation of the case was taken up by the local police. During the course of investigation, on 01.03.2020 the dead body was identified as that of Akil Ahmed s/o. Sh. Safi Ahmed and post mortem of the body of deceased

was got conducted at GTB Hospital on 01.03.2020 vide PM No.370/2020 by a Board of Doctors. After completion of formalities and the postmortem, body of deceased Akil Ahmed was handed over to his wife Jahira @ Jahera @ Gudia. Clothes of deceased and blood gauze were sealed by the doctors and handed over to IO and IO seized the same. Cause of death was opined as shock as a result of ante mortem injury to head produced by blunt force impact. Further investigation of the case was transferred to the SIT-II/Crime Branch on 05.03.2020.

4. Statements of eye witnesses were recorded u/s 161 CrPC. The witnesses stated about the specific role of above-mentioned accused persons, inter alia that on 26.02.2020 they were present at Bhagirathi Vihar Nala Pulia, carrying stones, cudgel, sticks, swords and iron rods etc. and were shouting slogans like “Jai Sri Ram” and “Har Har Mahadev”. All the accused were leading the mob and giving directions to their associates by calling each other by their names. The above said accused persons are alleged to have been involved in killing of nine muslim persons, after checking their identity. Public witnesses also witnessed the incident of murder of Akil Ahmed. They stated that a mob stopped one person who was coming from Loni side and after confirming that he belonged to Muslim Community, they murdered him with lathi and stones and dumped his body into Bhagirathi Vihar drain (nala).
5. During further course of investigation, mobile phones of Mohit Sharma and Shivam Bhardwaj were looked into and it revealed

that they were members of WhatsApp group namely "*KATTAR HINDUT EKTA*". Further investigation of this group was carried out, which revealed that it was created on 25.02.2020 for taking revenge from Muslim community. As per the chats of "*KATTAR HINDUT EKTA*" WhatsApp group, the accused persons already arrested in FIR No.35/20, PS Gokalpuri along with other rioters, had become active in Ganga Vihar/Bhagirathi Vihar area. They conspired to teach Muslims a lesson for attacking the Hindus, equipped themselves with lathis, danda, sticks, swords, fire arms etc. and killed many innocent persons including Akil Ahmed (deceased in this case).

6. Accused Lokesh Solanki was found to be a member of this group and messages had also been sent into group by him. Initially, there were 125 members in the group and 47 of them had exited the group by 08.03.2020. Mobile phones of various members of the group were seized and sent to FSL for forensic examination. Mobile phone of one of them namely Deepak Singh was found having more posts/chats related to the said group "*Kattar Hindu Ekta*".
7. Accused Lokesh Solanki was arrested in FIR No.35/20, PS Gokalpuri. His mobile phone of make Redmi, Model Y 2 with Dual IMEI No. 860980041243736 and 860980041243744 with SIM bearing mobile number 7557497409 was recovered from his possession and was seized. Upon checking the said phone, it was found that he had deleted all the messages of the said group and he had left the group on 02.03.2020.

8. The mobile phone of the deceased was found to be active with mobile no.9560458268, registered in the name of accused Munesh Kumar. Munesh was arrested and he disclosed that he had purchased the said phone from one Raju, who could not be traced or identified.
9. During initial course of investigation, ten (10) accused persons namely Lokesh Solanki, Pankaj Sharma, Sumit Chaudhary @ Badshah, Ankit Chaudhary @ Fauzi, Prince, Munesh Kumar, Rishabh Chaudhary @ Tapas, Jatin Sharma @ Rohit, Vivek Panchal @ Nandu and Himanshu Thakur, were arrested in this case.
10. On 05.06.2020 first chargesheet was filed against ten (10) accused persons namely Lokesh Solanki, Pankaj Sharma, Sumit Chaudhary @ Badshah, Ankit Chaudhary @ Fauzi, Prince, Munesh Kumar, Rishabh Chaudhary @ Tapas, Jatin Sharma @ Rohit, Vivek Panchal @ Nandu and Himanshu Thakur, for offences punishable under Section 302/395/396/412/144/147/148/149/201/120-B/34 IPC. This chargesheet was filed before Id. Duty MM-02 (North-East), Karkardooma Courts, Delhi. On 24.08.2020, Id. CMM/NE took cognizance of offences under Section 302/395/396/144/147/148/149/201/120-B/34 IPC and summoned nine (9) accused persons. Vide this order, Id. CMM/NE also took cognizance of offence punishable under Section 412 IPC and summoned accused Munesh Kumar. Thereafter, case was committed to the court of sessions vide order dated 30.09.2020.

11. On 12.10.2020, **first supplementary chargesheet** along with FSL reports, pen drive and additional documents, was filed before Id. CMM (North-East), Karkardooma Courts, Delhi. Section 153-A/505 IPC were also added in the present case through this supplementary charge-sheet. This supplementary chargesheet was sent by Id. CMM/NE to the court of sessions vide order dated 11.12.2020.
12. On 24.01.2021, **second supplementary chargesheet** along with copy of sanction under Section 196 Cr.P.C., subsequent medical opinion regarding weapon of offence, FSL reports, PCR calls forms, copy of prohibitory u/s. 144 Cr.P.C, certified copy of CDRs and CAFs of mobile numbers of three accused persons and Shivam and Mohit and other additional documents and impleading three additional accused persons namely Sahil @ Babu, Sandeep @ Mogli and Tinku Arora, was filed before Id. CMM/NE, Karkardooma Court, Delhi. Section 188 IPC was also added in the present case. This supplementary chargesheet was sent by Id. CMM/NE to the court of sessions vide order dated 15.02.2021.
13. On 21.10.2021, **third supplementary chargesheet** along with copy of complaint u/s. 195 Cr.P.C. and another sanction under Section 196 Cr.P.C. accorded against accused Sahil @ Babu, Sandeep @ Mogli and Tinku Arora, was filed before Id. CMM/NE. This supplementary chargesheet was sent by Id. CMM/NE to the court of sessions vide order dated 26.10.2021.

14. Thereafter, on 10.10.2022 **fourth supplementary chargesheet** was filed directly before this court. On 22.11.2024, **fifth supplementary chargesheet** along with a pendrive containing mirror copy of data of WhatsApp Chats, was filed directly before this court.

CHARGES

15. On 11.05.2022, charges were framed against twelve (12) accused persons namely 1. Lokesh Kumar Solanki @ Rajput 2. Pankaj Sharma, 3. Ankit Chaudhary @ Fauzi, 4. Prince @ D.J Wala, 5. Jatin Sharma @ Rohit, 6. Himanshu Thakur, 7. Vivek Panchal @ Nandu, 8. Rishabh Chaudhary @ Tapash, 9. Sumit Chaudhary @ Badshah, 10. Tinku Arora, 11. Sandeep @ Mogli and 12. Sahil @ Babu for offences punishable under Section 144/147/148/302/201/395/34 IPC read with Section 149 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in following terms: -

“That from the early morning of 25.02.2020 till the late night of 26.02.2020, in the area at or around main Ganda Nala Road, near C-Block, Bhagirathi Vihar, Delhi, within the jurisdiction of PS Gokalpuri, all of you being members of unlawful assembly along with your other associates(identified & unidentified) formed an unlawful assembly carrying deadly weapons like lathis, sticks(danda), stones, swords and other arms, used force or violence in prosecution of a common object i.e. committed rioting and you all knew being members of the aforesaid unlawful assembly that offence was likely to be committed in prosecution of that common object and thereby committed offences punishable under Section(s)144/147/148 IPC read with Section 149 IPC and within my cognizance.

***Secondly**, in the night of 26/02/2020 at about 9.30 p.m. at around main Ganda Nala Road, near C-Block, Bhagirathi Vihar, Delhi, , you all being members of said unlawful assembly along with your other associates (identified and*

*unidentified) used force or violence in prosecution of a common object and in furtherance of common intention committed murder of **Akil Ahmed**, S/o Shri Shafeek Ahmed, merely on account of the fact that he belonged to the other community and thereafter threw his dead body in the Bhagirathi Vihar ganda nala with a view to conceal/destroy his identity and thereby you all along with your other associates (identified and unidentified) committed offences punishable under Section(s) 302/201/34 IPC read with Section 149 IPC and within my cognizance.*

***Thirdly**, that on the aforesaid date, time and place, you all being members of the said unlawful assembly, along with your other associates (identified and unidentified), while committing the murder of deceased Akil Ahmed robbed him of his mobile phone instrument of make SAMSUNG colour black/grey with IMEI no. 352929083700462 and 352930083700460 committed offences punishable under Section(s) 395 IPC read with Section 149 IPC and within my cognizance.”*

16. On 11.05.2022 itself charge was framed against accused Munesh Kumar, in the following terms, to which he pleaded not guilty.

“That the deceased Akil Ahmed was having/using phone instrument of make SAMSUNG colour black/grey with IMEI no. 352929083700462 and 352930083700460 and he was robbed of this mobile phone on 26/02/2020 at the time of his murder. You accused Munesh Kumar s/o Sh.Babu Ram, knowing this fact, took the said mobile phone instrument of deceased Akil Ahmed and used the said mobile number instrument with the SIM no.9560458268 and 7838375580 and the same was recovered from you and thereby committed the offences punishable under section 412 IPC and within my cognizance.”

DESCRIPTION OF PROSECUTION EVIDENCE

17. Several witnesses were dropped on the basis of admission of documents under Section 294 Cr.P.C./330 BNSS and prosecution examined 32 witnesses in support of its case, as per following

description: -

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
PW1/Sh. Narottam	PW1 was resident of F-442A, gali no.8, Ganga Vihar, Gokalpuri, in February 2020. On 26.02.2020, at about 8/8.30 p.m. he was sitting on a pipe line situated near a temple, which was at a distance of about 100 meters from his home. At that time, he saw a mob coming from the side of Bhagirathi Vihar and was going towards Johripur pulia. The said mob was chasing two bikers. After reaching at the cross road, break was applied by the bikers and the pillion rider jumped in the nala. The other biker left the bike and started running away, who was over powered by that mob near a sewage filter plant of MCD at some distance from that cross road. The mob gave beatings to that biker and threw him in the nala. They also threw that bike into nala and while setting fire in the same. Thereafter PW1 came back to temple and made a call at 100 number. PW1 deposed that he did not see face of any of the rioters in afore-said mob and he could not identify. Thus, PW1 did not support the case of prosecution and was declared hostile by Id. SPP on certain points as well as on the point of identification of accused persons i.e. he did support the prosecution about having seen any of the accused persons in that mob.	
PW2/Sh. Nisar Ahmed	PW2 was residing at E-61/1, main nala road, near Johripur pulia, Bhagirathi Vihar alongwith his family. On 26.02.2020, in the morning, he was at the home of his brother-in-law Anwar. His brother Esh Mohammad was stuck at the house of his sister Ameena situated near Johripur pulia. PW2 requested one Avdhesh Mishra to lock his home and to rescue his brother from the house of Ameena. Niece of PW2 namely Sitara,	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	who resided near his house, requested him to rescue her. When PW2 reached Bhagirathi nala, he did not go ahead as he was hearing noise of hue and cry but he had not personally seen assault to any person. PW2 also did not see and identify any person in the mob of rioters on 26.02.2020 at the alleged place of incident. Though, PW2 did name and identify some accused persons as part of mob of rioters at different points of time, date and place. Thus, PW2 also did not support prosecution in this case and was declared hostile by Id. SPP on the aspect of identification of some accused during incident of this case.	
PW3/Sh. Shivam	PW3 was resident of C-129, Bhagirathi Vihar, Delhi. He was using a mobile phone make Realme using no. 7217779080 of Jio company, during period between 24.02.2020 to 26.02.2020. He was member of certain WhatsApp group during that period. His afore-said mobile phone was taken from him in the Crime Branch Office. He identified his signature at circle X on the seizure memo of WhatsApp Chat dated 08.03.2020 with print of chats (39 pages) pertaining to FIR No.35/20. PW2 identified his said mobile phone (Ex.PW3/Article-1 pertaining to FIR No.35/20) before the court. PW3 did not support the case of prosecution and he was also declared hostile on the point of knowing some accused and about confession made by Lokesh for killing muslim persons, alongwith other accused persons.	
PW4/Sh. Mohit	PW4 was working in Khaibar Pas Metro Depot as technician. Crime branch officials had taken him	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
Sharma	alongwith Shivam and Dimple, to their office and had taken mobile phones of all three of them. PW4 was added in a WhatsApp group namely Kattar Hindut and crime branch officials had checked contents of all three mobile phones, which were seized. He identified his mobile phone (Ex.PW4/Article-1 pertaining to FIR No.35/20) before the court. PW4 also did not support the case of prosecution and he was also declared hostile on the point of knowing some accused and about confession made by Lokesh for killing muslim persons, alongwith other accused persons and about knowing the chats in the Whats App group.	
PW5/Sh. Amit Kumar	In February 2020, PW5 was residing at B-55/1, gali no.1, Bhagirathi Vihar, Delhi. On 26.02.2020 at about 7 A.m., when PW5 was coming back to his home, he saw a mob present at Brijpuri Pulia. PW5 reached back his home and thereafter, remained inside his home and he did not come out of his home. Thus, PW5 also did not support the case of prosecution and he was declared hostile on the point of identifying accused persons in a mob at Nala Road, Bhagirathi Vihar on 26.02.2020 at 9.15 P.M. and 15-20 minutes thereafter, for having seen beating of different muslim boy both times at that place by this mob and their bodies being thrown in the drain.	
PW6/Sh. Shalu	PW6 was running a private parking at A-1/1, Gali No.1, Bhagirathi Vihar, Delhi. Riots had taken place in his area between 24.02.2020 and 26.02.2020. On 26.02.2020, he had opened his afore-said parking at 10 AM and after closing the same at around 03:30 PM, he was going back to his house situated at A-83, Gali	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	No.2, Bhagirathi Vihar, Delhi. At that time, a mob had started assembling in his gali no.1, Bhagirathi Vihar and the number of persons in that mob was increasing, wherein persons from both communities were there. PW6 deposed that during his presence there, the afore-said mob in gali no.1 was assembling only and they were not doing anything. He immediately left that place for his home and therefore, he did not know that what was done by that mob. Thus, PW6 did not support the case of prosecution and he was also declared hostile on the point of identification of the accused persons.	
PW7/Sh. Paras	PW7 was resident of B-99, gali No.1, Bhagirathi Vihar, Delhi and he was working in Kosmos Hospital. He deposed about making a call to police at 100 number on 25.02.2020 regarding situation of riots.	
PW8/Ct. Vipin	On 26.02.2020, vide DD No.16-B, PW8 was deputed for law-and-order duty in the area of Bhagirathi Vihar. On that day, his duty hours were from 9 a.m. onwards, which continued for whole night of 26.02.2020. At about 10 p.m., PW8 was near ganda nala pulia (known as Ganga Vihar pulia). He was coming towards this pulia from the side of Ganga Vihar and he saw a mob of around 100-150 persons near this pulia. On seeing PW8 with other police staff, that mob started running away, while taking name of Rishabh, Pankaj, Prince, Avdhesh and Ankit. PW8 was also witness to taking colour print of photographs of some persons including accused Prince DJ wala and Pankaj, by Insp. Vinay Tyagi in FIR No.35/20 and 37/20. These photographs were shown by accused Lokesh by opening his Facebook account,	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	on the laptop of SHO PS Gokalpuri. On 10.03.2020, Insp. Dinesh from crime branch had made similar enquiry from PW8 in this case and had recorded his similar statement therein. PW8 was cross-examined by Id. Special PP and he admitted the suggestion that he had also mentioned the names of accused Himanshu, Lokesh Rajput, Jatin, Monty Nagar, Pawan, Monu and Sumit, as being taken by the persons in the mob at Ganga Vihar pulia, and that PW8 had mentioned name of Ankit as Ankit Fauzi at that time; and that PW8 had also mentioned name of accused Rishabh Jaat and Jatin, as being told by accused Lokesh, while pointing out photograph on his facebook page.	
PW9/HC Pradeep	On 24.02.2020, an order passed by DCP, North-East u/s. 144 Cr.P.C., was received through Dak in the morning and on the directions of SHO, PW9 obtained loud hailer from malkhana and announced the proclamation u/s. 144 Cr.P.C. in the jurisdictional area of PS Gokalpuri i.e. Johripur Extension, Ganga Vihar, Chaman Park, Indira Vihar, Bhagirathi Vihar, Sanjay Colony, Gokalpuri and Gokalpuri Village.	
PW10/ Mohd. Tushar	PW10 was resident of H.No. D-73, Giri Market, Loni Dawar, near Vikas Inter college, Ghaziabad, U.P. PW10 knew Mohd. Akil Ahmed. PW10 had last telephonic conversation with Mohd. Akil Ahmed on 26.02.2020 at about 09:30 PM. Akil had made this call from his mobile number 8010050010 to PW10 at 7678227939, informing that he was going to Mustafabad from Nehru Vihar and he was stuck among the Hindu rioters. Thereafter his	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	phone was disconnected. PW10 informed Abid (cousin of Mohd. Akil Ahmed) and Aslam (brother-in-law of Mohd. Akil Ahmed) about afore-said conversation. These persons informed PW10 subsequently that dead body of Akil Ahmed was found after 3 days in GTB hospital.	
PW11/ Mohd. Anwar	PW11 was resident of E-155, gali no.12, main nala road, Bhagirathi Vihar, Delhi. Riot had taken place in that area on 25.02.2020. On that day, PW11 had seen mob of rioters of about 100-150 persons at about 11-11:30 PM. PW11 further deposed that he was taken out from his house in the early morning of 26.02.2020. PW11 deposed that he could not see face of anyone in the aforesaid mob.	
PW12/Sh. Deepak Kashyap	PW12 knew Akil Ahmed. On the request of Akil, PW12 had provided him SIM card having mobile no.8010050010 on his ID.	
PW13/ ACP Mahesh	On 06.05.2020, PW13 was posted as draughtsman from Crime Branch. On the call of IO/Insp. Dinesh Kumar, PW13 visited a place near Delhi Jal Board Pulia, Johripur, Bhagirathi Vihar Nala. PW13 took measurements of that place and on the basis of said measurements, PW13 prepared scaled site plan on 26.05.2020 and thereafter he handed over the same to the IO/Insp. Dinesh Kumar on same day.	Ex.PW13/A (scaled site plan)
PW14/Ct. Ankur	On 08.05.2020, on the instruction of Insp. Dinesh, PW14 took four sealed	Ex.PW14/A (true copy of

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	pullandas of this case to FSL, Rohini, and deposited them against acknowledgment. PW14 handed over copy of road certificate and original of acknowledgment from FSL, to Insp. Dinesh. Said four pullandas were not opened by anyone till the time they remained with him and they remained sealed throughout.	RC bearing no.56/21/20); Ex.PW14/B (original acknowledgment from FSL)
PW15/HC Javed Khan	PW15 was photographer in mobile crime team/NE District. On the direction of IO/Insp. Dinesh, PW15 took photographs of a place in drain, Bhagirathi Vihar, Delhi, on 02.03.2020. PW15 had deposited certificate u/s. 65-B of I.E. Act, in respect of photographs taken by him.	Ex.PW15/A (certificate u/s. 65-B of I.E. Act); Ex.PW15/P1 to Ex.PW15/P9 (photographs)
PW16/ASI Ram Dass	On 27.02.2020, PW16 along with PW24 went to E-Block, Bhagirathi Vihar Nala, on a call recorded vide DD No.24-B. PW16 and PW24 witnessed recovery of three dead bodies from the drain. They also deposed that all three dead bodies were sent in TATA 407 to GTB hospital alongwith PW24/ASI Manvir and Ct. Karamveer. On that day, ASI Ram Dass prepared rukka on the basis of DD No.24-B and got registered FIR Nos. 35/20, 36/20 and 37/20. FIR in the present case was	Ex.PW16/A (Site plan of the place from dead body of Akil was recovered); Ex.PW16/B (rukka prepared by PW16); PW16/C (identification statement); Ex.PW16/D (seizure memo of cloth

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	registered concerning to the dead body with reference to MLC bearing no. 759/03/20. All three dead bodies were declared brought dead and were preserved in the mortuary, GTB hospital. PW16 witnessed preparation of site plan by Insp. Jagdish and identification of dead body in this case. PW16 recorded identification statement of Wakil Ahmed, Aslam and Guria. PW16 prepared inquest papers. Thereafter, postmortem examination on the dead body of Akil Ahmed was conducted on 01.03.2020, which was video recorded as well. PW16 prepared delivery memo of dead body as well. PW16 seized one sealed cloth pullanda, which was handed over by doctor on 01.03.2020 to PW16. On 02.03.2020 on the instruction of IO, PW16 called crime team at the place of recovery of dead body. PW24/ASI Mahavir along with photographer PW15/HC Javed Khan, came to that place. PW16 got the site inspected, photographed and he obtained SOC report from PW24/ASI Mahavir. PW16 handed over that SOC report to IO and IO recorded his statement.	pullanda handed over by doctor)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
PW17/HC Nitesh	On 17.04.2020, on the direction of Insp. Dinesh, PW17 obtained three case properties from malkhana PS Gokalpuri and deposited these materials in CERT at CGO complex, New Delhi, against receipt. On 06.01.2021, on the direction of Insp. Dinesh, PW17 took two exhibits from malkhana and deposited the same in Forensic Department of GTB hospital, against receipt.	Ex.PW17/A & Ex.PW17/B (True copy of RC nos. 36/21/20 and 2/21/21, respectively);
PW18/SI Satender	PW18 witnessed arrest of accused Prince by Insp. Dinesh in this case as well as in FIR No.38/20, in Karkardooma court. PW18 also witnessed preparation of pointing out memos prepared at different places at the instance of Sumit Chaudhary.	Ex.PW18/A (Arrest memo of Prince); Ex.PW18/B to Ex.PW18/D (pointing out memos at the instance of Prince)
PW19/ Insp. Hawa Singh	PW19 was witness to preparation of pointing out memo at the instance of Sahil @ Babu on 29.10.2020. On same day, witness Shalu had identified accused Sahil in his presence. On 30.12.2020, IO had obtained police remand of accused Sandeep and Tinku and PW19 was witness to pointing out memo prepared at the	Ex.PW19/A to Ex.PW19/C (pointing out memos at the instance of accused Sahil, Sandeep and Tinku)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	instance of accused Sandeep and Tinku Arora. Witness Amit had also come to same place and had identified accused Sandeep and Tinku in the presence of PW19.	
PW20/ Insp. Arun Sindhu	On 22.04.2020, accused Himanshu was arrested by IO in Tihar Jail in the presence of PW20. On same day, pointing out memo at the instance of Himanshu was prepared in the presence of PW20.	Ex.PW20/A (arrest memo of Himanshu); Ex.PW20/B (pointing out memo)
PW21/ASI Ravinder Singh	On 19.03.2020 PW21 accompanied IO to Noida and accused Munesh was arrested in his presence. During search of Munesh one mobile phone make Samsung containing two SIMs was recovered, which was seized. PW21 identified accused Munesh before the court.	Ex.PW21/A (arrest memo of accused Munesh-cum-personal search memo); Ex.PW21/B (seizure memo of mobile phone)
PW22/ASI Vikal	PW22 was witness to arrest of accused Lokesh Sharma and Pankaj Sharma on 11.03.2020. He was also witness to preparation of pointing out memo at the instance of Lokesh and Pankaj Sharma on 12.03.2020. On same day, accused Ankit Chaudhary and Sumit were arrested in his presence.	Ex.PW22/A & Ex.PW22/B (arrest memos of accused Lokesh Solanki and Pankaj, respectively); Ex.PW22/C & Ex.PW22/D (pointing out

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
		memos at the instance of accused Lokesh and Pankaj); Ex.PW22/E & Ex.PW22/F (arrest memo of Ankit and Sumit, respectively)
PW23/ Insp. Pramod Joshi	PW23 was posted as SHO in PS Gokalpuri. During patrolling on 27.02.2020, he found three dead bodies near Johripur pulia in Bhagirathi Vihar nala. PW23 passed on this information to DO. ASI Ram Dass along with ASI Manvir Singh came to this place and PW23 pointed out those bodies to these two officials. After registration of FIR in this case, PW23 assigned this case to Insp. Jagdish Yadav. On 27.04.2020, IO/Insp. Dinesh Kumar recorded statement of PW23.	
PW24/ASI Manvir Singh	On 27.02.2020, PW24 along with ASI Ram Dass went to E-Block, Bhagirathi Vihar Nala, on a call recorded vide DD No.24-B. PW24 witnessed recovery of three dead bodies. The dead body in this case was having injury marks on his face and it was body of a male boy wearing blue colour T-shirt and red colour lower. He took dead body to GTB hospital with Ct. Karamvir. MLC No.BD/759/03/20 was	Ex.PW24/A (seizure memo of photographs)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	prepared in respect of this dead body. All these three dead bodies were preserved in mortuary. PW24 handed over MLC to ASI Ram Dass who prepared rukka on the basis of DD No.24/B. On 18.01.2021, Insp. Dinesh from Crime Branch visited PS Gokalpuri and he made inquiry from PW24 about mobile phone seized by PW24 in FIR No.78/20 and photographs of accused Mogli, Tinku and Sahil. PW24 handed over photographs of these accused persons which was seized vide seizure memo by IO. PW24 informed IO that mobile phone of Nisar Ahmed was deposited in FSL Rohini. PW24 identified accused Mogli, Sahil @ Babu and Tinku before the court.	
PW25/Sh. Rajeev Manocha	PW25 was running his business in the name of L.A. Enterprises at the address of 4697/3, IIIrd floor, Nepal Carrier Building, 21A, Ansari Road, Daryaganj, New Delhi. PW25 deposed that his company had provided Mr. Narottam a motorcycle bearing no.6074 and a mobile no. 9310849006. Said motorcycle was registered in the name of afore-said company and said mobile number was obtained in the name of afore-said company.	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
PW26/Sh. Zahira	PW26 was widow of deceased Akil. On 26.02.2020, Akil had left for his house at Mustafabad at about 6 PM. PW26 made telephonic call to Akil after about 1-1.30 hours, but Akil did not pick the phone. On 01.03.2020 PW26 visited GTB hospital with her relative and found dead body of Akil at that place. On same day, postmortem examination was conducted and her signature was obtained on identification document of dead body. Thereafter, dead body was handed over to PW26.	
PW27/SI Arun Ahlawat	PW27 was accompanying IO on 15.05.2020. IO had made inquiry about members of Kattar Hindut Ekta group. IO had found chats in the mobile phone of Deepak, which was downloaded by IO and print of same was seized by IO in the presence of PW27. PW27 also witnessed seizure of mobile phone of Vipin, Dhruv Kashyap, Shivam Verma, Ravidner Pal, Ansul Pal, Deepak, Chaman Tiwari, Adesh Verma, Manish Jain, Kapil Kumar, Aanshik Tomar and Alok, by IO. On 16.05.2020, PW16 accompanied IO/Insp. Dinesh, ASI Vikal, ASI Om Prakash and HC Dinesh to MACT office, Seelampur. Ct. Rajneesh handed over a DVD to IO, over which 'Akil' was written. Ct.	Ex.PW27/A (seizure memo of print of chats) & Ex.PW27/B to Ex.PW27/M (seizure memos of mobile phones)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	Rajneesh also handed over a certificate u/s. 65B of I.E. Act. IO seized that DVD in the presence of PW27 vide seizure memo Ex. A-12.	
PW28/Sh. Arun Kumar Sahani	PW28 was working as Scientist B, in Cyber Forensic Lab, CERT-In, Ministry of Electronics, Government of India, New Delhi. On 17.04.2020, PW28 received request letter from Crime branch in FIR No.35/20, PS Gokalpuri, alongwith 5 sealed packets and other documents. These exhibits were assigned to PW28 and his Incharge Lt. Colonel Santosh Khadsare. PW28 extracted data from the digital exhibits i.e. mobile phones, SIM cards and memory cards as contained in those 5 sealed packets. The extracted data were copied/stored in a pendrive. PW28 and his I/C prepared report about afore-said proceeding and issued a certificate in respect of the same, in that FIR. PW28 again received another request letter dated 07.09.2020 in FIR No.35/20, PS Gokalpuri alongwith sealed packets of exhibits as sent back by this witness to the police. This time, PW28 examined exhibits A1-MOB, A2-MOB and A3-MOB, alongwith their related SIMs and	Ex.PW28/A (True copy of original report prepared by PW28 in FIR No.35/20, in respect of extracted data from digital exhibits); Ex.PW28/B (true copy of original certificate u/s 65B of IE Act in respect Ex.PW28/A); Ex.PW28/D & Ex.PW28/E (true copy of another report dated 22.09.2020 and certificate u/s. 65-B of I.E. Act, respectively); Ex.PW28/H

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	memory cards. PW28 and his I/C prepared report about afore-said proceeding and issued a certificate in respect of the same, in that FIR. PW28 received a request letter from Delhi Police, thereby seeking mirror copy of extracted data, which was so done in FIR No.35/20, PS Gokalpuri. PW28 prepared mirror copy of afore-said extracted data for this case, using office copy maintained in his office. The mirror copy was sealed and sent back to Delhi Police. PW28 also provided certificate u/s 63 BSA in this respect. He identified pendrive with its contents. This pen-drive contained chats from afore-said WhatsApp group namely "Kattar Hindut".	(certificate u/s. 63 BSA in respect of preparation of mirror copy); & Ex.PW28/ Article-1 (Pen-drive with extracted data)
PW29/ Insp. Jagdish Yadav	PW29 deposed on the lines of PW16 in respect of PW16/A. PW29 also deposed on the same lines of PW16 in respect of providing him photocopy of request for PM, form 25.35, statement of relatives of deceased, MLC and death summary of the deceased, as well as original seizure memo of exhibits seized by ASI Ram Dass in the hospital. On 02.03.2020, PW29 had called crime team at the place of incident, got the spot inspected and photographed, obtained SOC report and recorded statement of crime team officials. PW29 also recorded statement of Jahera and Aslam.	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	On 05.03.2020, information was received from PHQ that further investigation of this case was transferred to crime branch, hence, PW29 sent the case file to crime branch. Insp. Mahesh took measurements at the place of recovery of dead body in the presence of PW29.	
PW30/ASI Om Prakash	PW30 witnessed arrest and personal search of accused Vivek Panchal, Rishabh Chaudhary and Jatin, by IO. PW30 also witnessed seizure of mobile phones of these three accused persons, by IO. PW30 also witnessed preparation of pointing out memo by IO at the instance of afore-said three accused persons. PW30 also witnessed recovery of two dandas by IO at the instance of accused Jatin and Vivek, preparation of site plans and seizure memos. PW30 identified accused Rishabh and Vivek before the court. PW30 did not support the case of prosecution on the point of identification of accused Jatin and he was declared hostile witness.	Ex.PW30/A to Ex.PW30/C (arrest and personal search of accused Vivek, Rishabh and Jatin); Ex.PW30/D to Ex.PW30/F (seizure memo of mobile phone of accused Vivek, Jatin and Rishabh); Ex.PW30/G to Ex.PW30/I (pointing out memo at the instance of accused Rishabh, Jatin and Vivek); Ex.PW30/J to Ex.PW30/M (site plans and

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
		seizure memos in respect of recovered danda at the instance of accused Jatin and Vivek)
PW31/Sh. L.K. Gautam	PW31 was working as Deputy Secretary (Home), GNCT, Delhi. PW31 deposed that Lt. Governor of GNCT of Delhi, approved for according sanction u/s. 196 Cr.P.C for offences u/s 153A/505 IPC against accused Lokesh Solanki, Pankaj Sharma, Sumit Chaudhary, Ankit Chaudhary, Prince, Rishabh Chaudhary, Jatin Sharma, Vivek Panchal and Himanshu Thakur, in this case. PW31 being competent officer to sign the sanction order on behalf of LG, signed said sanction order. Similar sanction was accorded by LG against accused Sandeep, Sahil and Tinku in this case.	Ex.PW31/A & Ex.PW31/B (sanction orders dated 16.12.2020 and 26.07.2021)
PW32/ Insp. Dinesh Kumar	PW32 was IO of this case. He inspected the place of recovery of dead body of Akil Ahmed in front of E-43, Bhagirathi Vihar Nala. He recorded statement of one PCR caller namely Narottam Singh. PW32 also	Ex.PW32/ Article-1 & Ex.PW32/ Article-2 (two dandas)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	deposed about calling of crime team officials and about getting inspection and photography done by them. On 08.03.2020, PW32 also recorded statement of Mohit, Shivam and Dimple, on the basis of information given by Insp. Vinay Tyagi (IO in FIR No.35/20). PW32 deposed on the lines of PW22 in respect of arrest proceedings of the accused persons namely Lokesh and Pankaj. PW32 arrested accused Ankit and Sumit Chaudhary, while they were in PC in FIR No.35/20. PW32 also recorded statement another eyewitness Amit. Thereafter, he arrested accused Prince in the court and prepared a pointing out memo at the instance of Sumit, Ankit and Prince on 13.03.2020. PW32 had sent mail to service providers to search for IMEI of the mobile phone set belonging to deceased Akil Ahmed and he received a reply from Airtel Company with information that said mobile phone set was used with other number. PW32 obtained CAF of that mobile number, which was in name of Munesh. On 19.03.2020, PW32 arrested Munesh and recovered mobile phone	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	set from his possession. On 09.04.2020, he arrested Rishabh Chaudhary from Ganga Vihar and at the instance of Rishabh Chaudhary, accused Jatin and Vivek Panchal were also arrested. PW32 recovered one mobile phone set each from these accused persons and he seized the same. Police remand was obtained for these accused persons and on 11.04.2020, PW32 prepared pointing out memo at the instance of these accused persons. At the instance of accused Jatin and Vivek one danda each was recovered from a place near Johripur pulia, on the basis of their disclosure statement, which were seized in this case. PW32 also prepared the site plan of the place of recovery of these dandas and he identified the parcels on the basis of his handwriting. PW32 directed Ct. Nitesh to deposit mobile phones of Jatin, Vivek and Rishabh in CERT-In. On 22.04.2020 PW32 arrested Himanshu in Tihar Jail and obtained his police remand for one day. Thereafter, he prepared pointing out memo of place of offence at the instance of Himanshu. On 08.05.2020 clothes of the	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	deceased, Blood Gauze and dandas recovered at the instance of Jatin and Vivek, were sent to FSL through Ct. Ankur. PW32 called draughtman Mahesh at Jauharipur Pulia along with Insp. Yadav. He received scaled site plan on 26.05.2020. On 15.05.2020 he had called 12 members of Kattar Hindut Ekta WhatsApp group and he seized their mobile phones. He obtained video recording of postmortem examination. He prepared main chargesheet and filed the same in court on 04.06.2020. PW32 recorded statement Sh. Nasir, in the present case. He sent request for sanction u/s. 196 Cr.P.C. against nine accused persons. PW32 received result from CERT-In regarding retrieval of data from mobile phones of accused Vivek, Rishabh and Jatin. He obtained copy of result from CERT-In as received in FIR No.35/20. He prepared supplementary chargesheet-I and filed it on 12.10.2020. On 27.10.2020, PW32 arrested accused Sahil in Tihar Jail and obtained his police remand for two days. On 29.10.2020 he prepared pointing out memo of place of incident at the	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	instance of Sahil. At the same time, witness Shalu met him, who identified Sahil and PW32 recorded his statement. PW32 arrested accused Sandeep and Tinku on 29.12.2020. He prepared pointing out memo at their instance on 30.12.2020. He sent another request letter for sanction u/s. 196 Cr.P.C. against Sahil, Sandeep and Tinku. On 12.01.2021, PW32 recorded statement of Rajiv Manocha. On 18.01.2021, PW32 along with SI Subhash visited PS Gokalpuri, where PW32 was provided 3 photographs of rioters, copies of seizure memo of mobile phone of Nasir and that of pen-drive taken from Nasir, by IO/ASI Manveer of FIR No.78/20. PW32 seized all these materials vide seizure memo. PW32 received report in respect of examination of cloths of deceased as well as report regarding examination of the dandas, from FSL. The dandas were also received back from FSL. Thereafter, PW32 sent those dandas alongwith an application to GTB Hospital for obtaining subsequent opinion regarding injuries received by deceased being possible to be inflicted through those dandas.	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	Subsequently, PW32 received that opinion also. He filed supplementary chargesheet-II on 24.01.2021. Thereafter, PW32 sent a request letter to DCP, N/E for a complaint u/s 195 Cr.P.C. against all the accused persons for the offence u/s 188 IPC on account of violating the order u/s 144Cr.P.C. Subsequently, PW32 received that complaint from the office of DCP, N/E. The sanction order u/s. 196 Cr.P.C. against Sandeep, Sahil and Tinku was also subsequently received. Thereafter, in September 2021, PW32 filed supplementary chargesheet no. III alongwith aforesaid materials. PW32 had also collected CDRs and CAF of the mobile numbers used by some witnesses and some accused persons. He also collected PCR forms related to PCR call made on 24.02.2020 and 26.02.2020 including the call made by Narottam. PW32 identified all the accused persons before the court.	
Admitted documents under Section 294 Cr.P.C/330 BNSS Request for post mortem as Ex.A-1 (colly 2 pages); seizure memo of documents as Ex.A-2; photocopy of documents as Ex.A-3 (colly); endorsement on rukka as Ex.A-4; FIR as Ex.A-5; DD No. 24-B as Ex.A-6; GD No.112-A as Ex.A-7; postmortem report as Ex.A-8; death certificate as Ex.A-9; emergency registration card as Ex.A-10;		

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	MLC as Ex.A-11 ; seizure memo of DVD as Ex.A-12 ; certificate u/s 65B of IE Act as Ex.A-13 ; opinion regarding weapon of offence as Ex.A-14 ; prohibitory order as Ex.A-15 ; arrest/surrender form of accused Sahil as Ex.A-16 ; arrest/surrender form of accused Sandeep as Ex.A-17 ; arrest/surrender form of accused Tinku Arora as Ex.A-18 ; complaint u/s 195 Cr. PC as Ex.A-19 (colly 2 pages) ; PCR forms Ex.A-20 (colly.6 sheets) & Ex.A-21 (colly.4 sheets) and copy of entries from register no.19 as Ex.A-22 to Ex.A-116 .	

PLEA OF ACCUSED UNDER SECTION 351 BNSS

18. For the purpose of recording statement of accused persons under Section 351 BNSS, prosecution was asked to file synopsis of incriminating evidence. It was so filed by ld. Special Public Prosecutor. Submissions were heard from both the sides on the point of incriminating evidence against the accused persons.

ARGUMENTS OF DEFENCE & PROSECUTION ON THE POINT OF INCRIMINTING EVIDENCE

19. I heard ld. Special PP as well as ld. counsels for accused persons and I have perused the entire material on the record.
20. **Ms. Anita Seth, Adv. and Sh. Shubham Arora, Adv.** authorised by **Sh. Nishant Kumar Tyagi**, ld. counsel for accused Jatin Sharma, Lokesh Solanki, Sahil @ Babu, Vivek Panchal and Rishabh Chaudhary; **Sh. Rakshpal Singh** and **Sh. Hari Krishan**, ld. counsels for accused Pankaj Sharma, Sumit @ Badshah, Ankit Chaudhary @ Fauji, Prince, Tinku and Sandeep @ Mogli; **Sh. Hari Krishan**, ld. counsel for Himanshu Thakur, took plea

that the alleged eye witnesses of prosecution, did not support the case of prosecution and they were declared hostile by the prosecutor. None of the witnesses of prosecution identified any of the accused persons, as part of the mob of rioters which killed the victim in this case. Hence, judgment of acquittal should be passed in the case.

21. However, **Sh. Saleem Ahmed**, Id. Special P.P. argued that though the witnesses cited as eye witness of the incident did not support the case of prosecution, but there are circumstantial evidences on the record, which point out to accused persons. Hence, those circumstantial evidences should be put to the accused persons, for their response under Section 351 BNSS.

SECTION 255 BNSS & 351 BNSS

22. Section 255 BNSS (erstwhile S.232 Cr.P.C.) provides as under: -

“Acquittal- If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal.”

23. Section 256 BNSS (erstwhile 233 Cr.P.C.) provides as under: -

“Entering upon defence. - (1) Where the accused is not acquitted under section 255, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. (2) If the accused puts in any written statement, the Judge shall file it with the record. (3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground

that it is made for the purpose of vexation or delay or for defeating the ends of justice.

24. Section 257 BNSS further provides that when examination of the witness of accused, (if any) is complete, the prosecutor shall sum up his case and thereafter the accused shall be entitled to respond to the arguments of the prosecutor. Section 258 BNSS further provides that after hearing arguments and points of law (if any), the judge shall give a judgment in the case.
25. On the other hand, Section 351 BNSS (erstwhile S.313 Cr.P.C.) provides as under: -

“Power to examine the accused – (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court- (a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary; (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:”

26. As it is evident from the language used in Section 351 BNSS, this provision talks about “any circumstance appearing in the evidence against the accused”. On the basis of such language, practically the courts have been using the term of “incriminating evidence”. The purpose or objective behind the provision under section 351 BNSS is also evident from the language of the provision, wherein it is mentioned that 'for the purpose of enabling the accused personally to explain'.
27. In the case of **Sivamani & Anr. v. State of Kerala, 1993 Cri.L.J. 23 (Kerala)**, while examining the scope of section 232 Cr.P.C.,

hon'ble Kerala High Court observed that an accused can be acquitted u/s 232 only when there is no evidence that he committed the offence. In that case, Kerala High Court dealt with the term of 'there is no evidence' and in that process the court referred to observations made by Division Bench of same court in the case of **State of Kerala v. Mundan**, 1981 Cri.L.J. 1795 (Kerala), to the effect that where there is some evidence connecting the accused with the commission of crime, it is the duty of the judge to pass on to Section 233 and not to appreciate that evidence and find out whether it was reliable or not, so as to pass an order u/s 232 of the Code.

28. In the case of **Madan Mohan Jagga v. The State**, 1984 Cri.L.J. 681 (Himachal Pradesh), even High Court of Himachal Pradesh examined the scope of 'no evidence' as appearing in Section 232 Cr.P.C. to observe that “*this term neither means total absence of evidence, nor does it mean absence of cogent, convincing, reliable and trustworthy evidence. All that it means is that there is no inculpatory evidence against the accused in the sense that even if the prosecution evidence adduced is accepted at its face value, it would not amount to legal proof of the evidence, charged against the accused. In such a case, the court is not required to marshal the evidence with a view to find out if it would be safe to act upon it or not.*”
29. In view of above-mentioned observations made by higher courts, it has to be seen if at all examination of an accused u/s 351 BNSS is necessary in all the circumstances. As per S.351 BNSS,

the inculpatory evidence appearing against the accused is to be put to him, so as to enable the accused to give his explanation. As per Section 255 BNSS, if the judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal. On conjoint reading of Section 255 and Section 351 BNSS, it becomes amply clear that the focus of the court has to be on inculpatory evidence. However, the expression 'no evidence' as mentioned in Section 255 BNSS has an important role to decide if examination u/s 351 BNSS is mandatory in all circumstances. If there is no admissible evidence or such evidence so as to establish all ingredients of the alleged offence or to indicate towards the accused for commission of alleged offence, then there remains no occasion to seek any kind of explanation from the accused.

30. On analysing the evidence on the record, on the above-mentioned parameters, I did not find any incriminating evidence against any of the accused persons, which could connect them with the alleged riotous incident of killing of victim Akil. Hence, statement of all accused persons u/s 351 BNSS is being dispensed with. The analysis of evidence is hereunder.

APPRECIATION OF FACTS AND EVIDENCE

UNLAWFUL ASSEMBLY & RIOT

31. I have already observed in some of the connected cases out of series of nine cases, that though the first charge refers to a wide range of period from 25.02.2020 to 26.02.2020, but it has to be appreciated that FIR in this case was registered for murder of an

unidentified person presumably by a mob. Subsequently, said dead person was identified as Akil. On the basis of investigation, prosecution alleged in the chargesheet that this victim was killed on 26.02.2020 at about 9.30 P.M. at Bhagirathi Vihar Pulia. Therefore, talking about any unlawful assembly at any other place and at any other time, is irrelevant in this case. In the present case, I have to look for evidence of unlawful assembly at Bhagirathi Vihar Pulia at around 9.30 P.M. on 26.02.2020.

32. Similarly, there is another charge for offences under Section 153A/505 IPC. However, from the chargesheet of the case itself it is disclosed that same accused were also being prosecuted separately in FIR 37/20. As per chargesheet itself, all these murders had been committed one after another. Same charges were framed therein also, on the basis of same allegations and this court has already returned finding on this similar charge in FIR 37/20. A person cannot be prosecuted, tried and punished for same act, in more than one case. This legal principle was well recognized by Hon'ble High of Delhi in another case of riots taken place in North East Delhi i.e. Mohd. Tahir Hussain vs. State of NCT of Delhi, **CRL.M.C. 4654/2022 & CRL.M.A. 18837/2022** decided on 26.11.2024. Therefore, the charge for offences under Section 153A/505 IPC are to be looked into in one case only. Hence, in the present case said charge is being dropped.
33. As per testimony of PW1, on 26.02.2020 at about 8-8.30 P.M., he saw a mob chasing two bikers, who were coming from the

side of Bhagirathi Vihar and going towards Johripur Pulia. Pillion rider jumped into the drain (Nala) and the driver of bike tried to run away, but he was overpowered and beaten mercilessly and thrown into the drain. Bike was also thrown into the drain. Such evidence on its face value, establishes that two persons and a bike were thrown (one person jumped) into the drain near Johripur Pulia. Testimony of PW1 is totally silent in respect of alleged incident with deceased herein. Thus, evidence of PW1 does not help prosecution, to establish anything related to the incident in this case.

34. PW16 and PW24 were the police officials. According to their evidence, on 27.02.2020, they reached at drain in front of E block, Bhagirathi Vihar and they recovered three dead bodies from the drain. Dead body of Akil was one of those three bodies. PW10 deposed about having last telephonic conversation with Akil, but his testimony does not provide any information about exact location of Akil at the time of last call. Moreover, there is nothing on the record as to what exactly happened with Akil. The only thing which has come in the evidence, is that dead body of Akil was recovered from drain near Bhagirathi Vihar, near Johripur Pulia on 27.02.2020. Thus, though on the basis of postmortem report, it can be assumed that Akil was murdered, but it remains a matter of guess and hypothesis only as to how, when and where was he murdered? In such situation, there is no evidence at all to say that Akil was actually killed by a mob.

IDENTIFICATION OF ACCUSED PERSONS

35. Next question is that whether there is any evidence to show that accused persons prosecuted in this case, were behind killing of Aamir? Ld. Prosecutor submitted that the circumstantial evidence on the record, point out to the accused persons.
36. Before I proceed further, it shall be beneficial to have an idea of legal principles related to circumstantial evidence. In **K.T. Palanisamy Vs. State of Tamil Nadu, 2008 (1) RCR (Criminal) 870**, Supreme Court held that: -

“When the offence is said to have been committed and the circumstantial evidence is made the basis for establishing the charge against the appellant, indisputably all the links must be completed to form the basis for his conviction. It is now well settled that in a case where an offence is said to have been established on circumstantial evidence alone, indisputably all the links in the chain must be found to be complete.”

37. Hon'ble Supreme Court has dealt with the conditions, which need to be satisfied, before circumstantial evidence can be made the basis of conviction. In **Shambhu Nath Mehra Vs. State of Ajmer** AIR 1956 SC 404; **Shivaji Shohib Rao Bobade Vs. State** AIR 1973 SC 2622; **Birdhi Chand Sarda Vs. State of Maharashtra** AIR 1984 SC 1622; **Pandala Veera Reddy Vs. State of A.P and Other** AIR 1990 SC 79; **C. Chenga Reddy and Others Vs. State of A.P** 1996 (3) 10 SCC 193; **Bodh Raj @ Bodha Vs. State of J & K** AIR 2002 SC 3164; **Trimukh Murty Kirka Vs. State of Maharashtra** 2007 (Crl.); **Vithal Eknath Adilinge Vs. State of Maharashtra** 2009(3) RCR (Crl.) 161, Hon'ble Supreme Court

had the occasion to deal with the circumstantial evidence based cases. The principles for use of circumstantial evidence to arrive at the finding of guilt, as laid down by the Hon'ble Apex court, can be summarized as:

- i) *The circumstances from which the conclusion of guilt is to be drawn, should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;*
- ii) *The facts so established should be consistent only with the hypothesis of guilt of accused, i.e. to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- iii) *The circumstances should be of a conclusive nature & tendency;*
- iv) *They should exclude every possible hypothesis except the one to be proved, and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

38. In the present case, the circumstantial evidence has to be looked into, to see if a chain of facts is so established, as to lead to inference that accused persons or any of them were part of a mob and that if such mob was responsible for killing of Akil Ahmed. However, I have already mentioned herein-above that there is no evidence to even show as to when, where and how Akil was killed. In that situation, evidence of any other witness, who otherwise deposed about some riotous incident seen by them, remains meaningless in this case. PW5/Amit was the witness, upon whom prosecution relied to say about the incident with Akil. However, even prosecution did not come up with a case that Akil had seen the victims or that he had ever confirmed about particular victim been seen by him in the night of

26.02.2020. PW5 altogether denied having seen any incident, thereby giving fatal blow to the case of prosecution.

39. Ld. Prosecutor heavily relied upon the WhatsApp chats from above-mentioned group, to raise fingers against accused Lokesh Solanki and some others. These chats were proved to show extra judicial confessions made therein by accused Lokesh. However, question is that when evidence of prosecution does not even establish the incident with Akil, then any confession cannot fill up that gap. The relied upon messages from the WhatsApp chats, do mention name of any victim. Therefore, reliance on such chats is like shooting in dark, for the purposes of this case.
40. Ld. Prosecutor also relied upon testimony of PW2/Nisar. Ld. Prosecutor argued that evidence of PW2 shows a pattern of presence in the mob during the period since 24.02.2020 upto 26.02.2020.
41. As far as pattern of presence in the mob for three days, is concerned, it cannot be forgotten that prosecution has chargesheeted the accused persons, for murder of Akil with aid of S.149 IPC. Unless, it is shown that there was a mob, which killed Akil and unless the identity of members of the culprit mob is established, vicarious liability cannot be fastened upon anyone else. In absence of some concrete evidence laying down the foundation, no presumption can be raised that some persons identified as part of some mob at some place at some other time period, would also have been part of a mob, and such mob was

involved in the incident of murder of Akil.

42. Ld. Prosecutor further referred to evidence of PW8/Ct. Vipin, submitting that this witness also had heard names of some accused, being taken by the members of a mob. As per testimony of this witness, on 26.02.2020 he was on duty. On that day at about 10 P.M., he was present near Ganda Nala Pulia known as Ganga Vihar Pulia. He was coming towards that Pulia (bridge) from the side of Ganga Vihar and he saw a mob near that Pulia. On seeing police, that mob started dispersing away and while running away from that place, they took names of Rishabh, Pankaj, Prince, Avadesh, Ankit and many other names. All of them fled away from that place and this witness could not see any person. This witness could not remember other names heard by him but, when Ld. Prosecutor suggested names of Himanshu, Lokesh Rajput, Jatin, Monty Nagar, Pawan, Monu and Sumit, then this witness admitted having heard these names as well at Ganga Vihar Pulia. He was also witness of the proceedings wherein Lokesh had pointed out to photographs of some accused persons and had told their names before IO.
43. I find that this circumstance does not lead to fill up the evidence and to show incident with Akil. When incident is not known, then such evidence is inconsequential.
44. Other circumstance relied by Ld Prosecutor and Ld. counsel for victim, was recovery of a stick (Danda) each from Himanshu, Jatin and Vivek in other cases. Those sticks were sent to Forensic

Department of GTB Hospital. The Board of Doctors, who had conducted postmortem examination, gave opinion that the injuries found on the body of Akil, could be caused by those sticks. However, at the same time nothing more was found on any of those sticks, so as to say that same sticks were used to inflict injuries upon Akil. Hence, such general opinion does not help much, so as to infer anything against these three accused persons in the present case.

45. Thus, in the name of circumstantial evidence, there is nothing on the record, to show the incident with victim Akil. In that situation, none of the accused persons, can be connected with killing of Akil.

S.412 IPC

46. Section 412 IPC deals with dishonestly receiving or retaining stolen property, with knowledge of such property being acquired by the commission of dacoity, or with knowledge that the person from whom such property is being received, is member of a gang of dacoits, or the knowledge that it is a stolen property, or having reason to believe that such property is stolen property. The burden of proof lies with the prosecution to establish the elements of the offence beyond reasonable doubt. To convict a person under Section 411 or 412 IPC, the prosecution must prove the following:-
1. The property in question was obtained through theft (as defined under Section 378, IPC) or related offenses like robbery

or dacoity.

2. The accused had possession or control of the stolen property.

3. The accused knew or had reason to believe that the property was stolen i.e. the accused was aware or had reasonable grounds to suspect that the property was stolen.

4. The act was done dishonestly i.e. the accused acted with intent to wrongfully gain or cause wrongful loss to the rightful owner.

47. There can be situation where the accused directly knew that the property was stolen (e.g., he was informed by the thief or witness of the theft). Reason to believe means that the accused had such circumstances that would lead a reasonable person to suspect the property to be stolen, which may include purchasing goods at a suspiciously low price or acquiring property in a clandestine or irregular manner (e.g. late-night transactions without documentation).

48. The prosecution bears the burden of proving all elements of the offence beyond reasonable doubt. The accused is not required to prove his innocence. Ld. Prosecutor mentioned about S. 114 (a) and S.106 of the Indian Evidence Act. S. 114 (a) provides that if the accused is found in recent possession of stolen property and he cannot satisfactorily explain as to how did he acquire it, the court may presume that accused stole that property or he knew that it was stolen property or he dishonestly received it. This is a rebuttable presumption meaning thereby the accused can offer an explanation to counter it, but the ultimate burden remains with

the prosecution to prove the ingredients of the offence.

49. In the case of **Trimbak v. State of Madhya Pradesh**, AIR 1954 SC 39, Supreme Court held that mere possession of stolen property does not automatically prove guilt unless the prosecution shows the accused had knowledge or reason to believe that it was stolen. In the case of **Shiv Kumar v. State of M.P., (2022) 7 SCR 493**, while relying upon aforesaid judgment, Supreme Court again observed that “12. *In this case, although recovery of items was made, the prosecution must further establish the essential ingredient of knowledge of the appellant that such goods are stolen property. Reliance solely upon the disclosure statement of accused Raju alias Rajendra and Sadhu alias Vijaybhan Singh will not otherwise be clinching, for the conviction under Section 411 of the IPC.....The penal Section extracted above can be broken down into four segments namely: Whoever, I. Dishonestly; II. Receives or retains any stolen property; III. Knowing; or IV. Having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

15. *To establish that a person is dealing with stolen property, the “believe” factor of the person is of stellar import. For successful prosecution, it is not enough to prove that the accused was either negligent or that he had a cause to think that the property was stolen, or that he failed to make enough inquiries to comprehend the nature of the goods procured by him. The initial possession*

of the goods in question may not be illegal but retaining those with the knowledge that it was stolen property, makes it culpable.”

50. In the present case, prosecution alleged that a mobile phone was recovered from the possession of accused Munesh, and SIM card issued in the name of deceased Akil Ahmed, was used on that phone set before killing of Akil Ahmed. The CDR of mobile phone number issued in the name of Akil Ahmed, i.e. **Ex. A-60** shows that said number was used upto 26.02.2020 on the mobile phone set bearing same IMEI number which pertained to mobile phone recovered from Munesh. However, there is merit in the argument of ld. defence counsel that IO did not collect any evidence, which could lead to inference that this mobile phone was received by Munesh with knowledge of same being stolen property. In my opinion, presumption u/s 114 (a) of I.E. Act cannot come into play in this case, because there was a big gap of the mobile phone of Akil Ahmed being stolen/robbed and recovery of this phone from accused Munesh on 19.03.2020. IO deposed that accused Munesh had disclosed to him that said mobile phone was purchased by Munesh from an unknown person in Bhagirathi Vihar. Thus, IO was informed about purchase of this phone, but IO did not investigate further and produce any evidence to show that Munesh had purchased it with dishonest intention and with knowledge of it being a robbed property. S.106 I.E. Act could have application in this case, only when aforesaid fact would have been established. There is no

evidence to show that Munesh had the knowledge of that mobile phone set being a stolen/robbed property. Thus, I find that evidences on the record do not establish all ingredients of offence u/s 412 IPC against Munesh.

CONCLUSION & DECISION

51. In view of my foregoing discussions, observations and findings, I find that charges levelled against the accused persons in this case are not proved at all. Hence, all accused are acquitted of all the charges levelled against them in the present case.

PULASTYA
PRAMACHALA
Digitally signed
by PULASTYA
PRAMACHALA
Date:
2025.05.17
12:18:59 +0530

Announced in the open court
today on 17.05.2025
(This order contains 48 pages)

(PULASTYA PRAMACHALA)
ASJ-03 (North- East)
Karkardooma Courts/Delhi

DLNE010023982020



IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI

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Sessions Case No.	:	117/2020
Under Section	:	144/147/148/149/153-A/188/505/302/201/ 427/395/396/432/435/412/120-B/34 IPC.
Police Station	:	Gokalpuri
FIR No.	:	37/2020
CNR No.	:	DLNE01-002398-2020

In the matter of: -
STATE

VERSUS

- 1. Lokesh Kumar Solanki @ Rajput**
S/o. Sh. Yogender Kumar,
R/o. H.No. C-5/47, 4th Floor,
Yamuna Vihar, Delhi-53.
- 2. Pankaj Sharma**
S/o. Late Sh. Rajveer Sharma,
R/o. H.No. C-162, Gali No.3,
Bhagirathi Vihar, Delhi-94.
- 3. Sumit Chaudhary @ Badshah**
S/o. Late. Sh. Om Prakash,
R/o. H.No. A-367, Gokalpuri, Delhi.
- 4. Ankit Chaudhary @ Fouzi**
S/o. Sh. Rajkumar,
R/o. H.No. G-14, Gali No. 2, G-Block,
Ganga Vihar, Gokalpuri, Delhi-94.
- 5. Prince @ D.J. Wala**
S/o. Sh. Mahender Singh,
R/o. H.No. C-33, Gali No.2,
Bhagirathi Vihar, Delhi-94.
- 6. Pawan Kumar @ Lokesh**
S/o. Sh. Moji Lal,
R/o. A-69, GF-3, SLF Ved Vihar,
Ankur Vihar, Ghaziabad, U.P
- 7. Lalit Kumar @ Rahul Chaudhary**
S/o. Sh. Rajesh,
R/o. H.No. B-622, Sanjay Camp,
Dakshinpuri, Ambedkar Nagar, Delhi.
- 8. Rishabh Chaudhary @ Tapas**
S/o. Sh. Yogender Singh,
R/o. H.No. F-53, Gali No.1,
Ganga Vihar, Gokalpuri, Delhi-94.

9. **Jatin Sharma @ Rohit**
S/o. Sh. Gouri Shankar Sharma,
R/o. H.No. C-101, DLF,
Dilshad Extension-II, Ghaziabad,
Sahibabad, U.P.-201005.
10. **Vivek Panchal @ Nandu**
S/o. Sh. Pramod Kumar Panchal,
R/o. H.No. D-106, Gali No.4,
Ganga Vihar, Delhi-94.
11. **Himanshu Thakur**
S/o. Sh. Harender,
R/o. H.No. F-19, 1st Floor, Flat No.1,
Ekta Society, DLF-Ankur Vihar,
Loni, Ghaziabad, U.P.
12. **Tinku Arora**
S/o. Sh. Ashok Kumar,
R/o. H.No. E-51, Gali No.2,
Bhagirathi Vihar, Delhi-94.
13. **Sandeep Kumar @ Mogli**
S/o. Late Sh. Dalveer Singh,
R/o. H.No. E-24, Gali No.3,
Bhagirathi Vihar, Delhi-94.
14. **Sahil @ Babu**
S/o. Late Sh. Rakesh Sharma,
R/o. H.No. D-138, Gali No.11,
Bhagirathi Vihar, Delhi-94.

...Accused persons

Complainant: ASI Ram Dass

Date of Institution : 04.06.2020

Date of reserving Judgment : 05.05.2025

Date of pronouncement : 13.05.2025

Decisions: -

1. **Accused Lokesh Kumar Solanki is convicted** of offences punishable u/s. 153-A/505 IPC. He is acquitted of remaining charges levelled against him in the present case.

2. **Remaining accused persons are acquitted** of all the charges levelled against them in the present case.

(Section 481 BNSS complied with by all the accused persons)

JUDGMENT

CASE SET UP BY THE PROSECUTION: -

1. The above-named accused persons have been chargesheeted by the police for offences punishable under Section 144/147/148/149/153-A/188/505/302/201/427/395/396/432/435/412/120-B/34 IPC.
2. As per the case of the prosecution, on 27.02.2020 SHO, PS Gokulpuri informed Duty Officer vide DD No. 24-B that dead body had been found in the Bhagirathi Vihar Drain (Nala) near Pulia. Police staff visited that place and three dead bodies were taken out, which were given Mark A, B, and C. This case related to dead body Mark C. Some injury marks were found present on its face. Accordingly, this case vide FIR No. 37/2020 dated 27.02.2020 U/s 147/148/149/201/302/427 IPC, was registered at police station Gokalpuri.
3. After the registration of FIR, the investigation of the case was taken up by the local police. During the course of investigation, on 28.02.2020 the dead body was identified that of Aamir and post mortem of the body was conducted at GTB Hospital on 29.02.2020 vide PM No.356/2020 by a Board of Doctors. Subsequently, investigation of the case was transferred to the SIT of Crime Branch.
4. During the course of further investigation, eleven (11) accused persons namely, (1) Lokesh Kumar Solanki @ Rajput (2) Pankaj Sharma (3) Sumit Chaudhary @ Badshah (4) Ankit Chaudhary @ Fauzi (5) Prince @ DJ wala, (6) Pawan Kumar @ Lokesh, (7) Lalit Kumar @ Rohit Chaudhary, (8) Rishabh Chaudhary @

Tapash, (9) Jatin Sharma @ Rohit, (10) Vivek Panchal @ Nandu and (11) Himanshu Thakur were arrested in this case.

5. Accused Pawan Kumar was arrested on the allegation that from his possession, a phone set with IMEI No. 911552250231690 was recovered. This phone set was used with SIM card with mobile no. 9313118035 for some time after killing of Aamir, and this SIM card was issued to and used by deceased Aamir. The other SIM card which was used in this mobile phone set make Intex, was found to be in the name of father of accused Pawan. On the basis of disclosure statement made by Pawan, a mobile phone set (VIVO) was recovered from the possession of accused Lalit Kumar @ Rohit Chaudhary. This mobile phone (VIVO) belonged to deceased Aamir.
6. The statements of eye witnesses were recorded u/s 161 CrPC and the witnesses stated about the specific role of above-mentioned accused persons except Pawan and Lalit, inter alia that on 26.02.2020 they were present at Bhagirathi Vihar Nala Pulia, carrying stones, cudgel, sticks, swords and iron rods etc. and were shouting slogans like “Jai Sri Ram” and “Har Har Mahadev”. All the accused were leading the mob and giving directions to their associates by calling each other by their names. The above said accused persons are alleged to have been involved in killing of nine muslim persons, after checking their identity. Public witnesses also witnessed the incident of murder of Aamir Ali. They stated that a mob stopped two persons riding Apache bike and after ascertaining their identity as muslims, the mob killed both the persons with stones, cudgel, sticks, swords

and iron rods and threw their body in the drain (nala) along with the bike.

7. During further course of investigation, mobile phones of Mohit Sharma and Shivam Bhardwaj were looked into and it revealed that they were members of WhatsApp group namely "*KATTAR HINDUT EKTA*". Further investigation of this group was carried out, which revealed that aforesaid group was created on 25.02.2020 for taking revenge from Muslim Community. As per prosecution the accused persons, already arrested in FIR No.35/20 PS Gokalpuri, along with other rioters had become active in Ganga Vihar/Bhagirathi Vihar area. They conspired to teach Muslims a lesson for attacking the Hindus, equipped themselves with lathis, danda, sticks, swords, fire arms etc. and killed many innocent persons including Hashim Ali and his brother Aamir (deceased in this case).
8. After completion of investigation, on 04.06.2020 main chargesheet was filed against eleven (11) accused persons namely Lokesh Kumar Solanki @ Rajput, Pankaj Sharma, Sumit Chaudhary @ Badshah, Ankit Chaudhary @ Fauzi, Prince @ D.J. Wala, Pawan Kumar @ Lokesh, Lalit Kumar @ Rahul Chaudhary, Rishabh Chaudhary @ Tapas, Jatin Sharma @ Rohit, Vivek Panchal @ Nandu and Himanshu Thakur, for offences punishable under Section 144/147/148/149/302/201/427/395/396/432/435/412/120-B/34 IPC. This chargesheet was filed before Id. Duty MM (North-East), Karkardooma Courts, Delhi. On 20.07.2020, Id. CMM/NE took cognizance of offences under Section

302/144/147/148/149/201/395/396/427/432/435/120-B/34 IPC against nine (9) accused persons. Vide this order, Id. CMM/NE also took cognizance of offence punishable under Section 412/201 IPC against accused Pawan Kumar @ Lokesh and under Section 412 IPC against accused Lalit Kumar @ Rahul Chaudhary. Thereafter, case was committed to the court of sessions vide order dated 30.09.2020.

9. On 06.11.2020, first supplementary chargesheet along with additional documents, was filed before Id. CMM (North-East), Karkardooma Courts, Delhi. Section 153-A/505 IPC were also added in the present case through this supplementary charge-sheet. This supplementary chargesheet was sent by Id. CMM/NE to the court of sessions vide order dated 11.12.2020.
10. On 24.01.2021, second supplementary chargesheet along with copy of sanction under Section 196 Cr.P.C., certified copy of CDRs and CAFs of mobile numbers of three accused persons and Shivam and Mohit, FSL reports and other additional documents and impleading three additional accused persons namely Sahil @ Babu, Sandeep @ Mogli and Tinku Arora, was filed before Duty MM/NE, Karkardooma Court, Delhi. Section 188 IPC was also added in the present case. This supplementary chargesheet was sent by Id. CMM/NE to the court of sessions vide order dated 15.02.2021.
11. On 01.10.2020, third supplementary chargesheet along with complaint u/s. 195 Cr.P.C. and another sanction under Section 196 Cr.P.C. accorded against accused Sahil @ Babu, Sandeep @ Mogli and Tinku Arora, was filed before Id. CMM/NE. This

supplementary chargesheet was sent by Id. CMM/NE to the court of sessions vide order dated 26.10.2021.

12. Thereafter, on 10.10.2022 fourth supplementary chargesheet was filed directly before this court. On 07.11.2024, fifth supplementary chargesheet in respect of mirror image of the WhatsApp Chats, was filed directly before this court.

CHARGES

13. On 04.04.2022, charges were framed against twelve (12) accused persons namely 1. Lokesh Kumar Solanki @ Rajput 2. Pankaj Sharma, 3. Ankit Chaudhary @ Fauzi, 4. Prince @ D.J Wala, 5. Jatin Sharma @ Rohit, 6. Himanshu Thakur, 7. Vivek Panchal @ Nandu, 8. Rishabh Chaudhary @ Tapash 9. Sumit Chaudhary @ Badshah, 10. Tinku Arora, 11. Sandeep @ Mogli and 12. Sahil @ Babu for offences punishable under Section 144/147/148/188/302/201/427/432/435/395/396/153A/505/34 IPC read with Section 149 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in following terms: -

“That from the early morning of 25.02.2020 till the late night of 26.02.2020, in the area at or around main Ganda Nala Road, near C-Block, Bhagirathi Vihar, Delhi, within the jurisdiction of PS Gokalpuri, all of you being members of unlawful assembly along with your other associates(identified & unidentified) formed an unlawful assembly carrying deadly weapons like lathis, sticks(danda), stones, swords and other arms, used force or violence in prosecution of a common object i.e. committed rioting and you all knew being members of the aforesaid unlawful assembly that offences were likely to be committed in prosecution of that common object and thereby committed offences punishable under Section(s)144/147/148 IPC read with Section 149 IPC and within my cognizance.

***Secondly,** in the night of 26/02/2020, exact time unknown, at or around main Ganda Nala Road, near C-Block, Bhagirathi Vihar, Delhi, , you all being members of said unlawful assembly along with your other associates (identified and unidentified) used force or violence in prosecution of a common object and in furtherance of common intention committed murder of **Aamir Khan**, S/o Shri Babu Khan, merely on account of the fact that he belonged to the other community and thereafter threw his dead body in the Bhagirathi Vihar ganda nala with a view to conceal/destroy his identity and also committed mischief by fire or explosive substance by setting on fire Apache Motorcycle bearing Regn. No.DL- 5SBA-7168 upon which deceased Aamir Khan along with his brother Hashim Ali were heading to their residence and thereby you all along with your other associates (identified and unidentified) committed offences punishable under Section(s) 302/201/427/432/435/34 IPC read with Section 149 IPC and within my cognizance.*

***Thirdly,** that on the aforesaid date, time and place, you all being members of the said unlawful assembly, along with your other associates (identified and unidentified), while committing the murder of deceased Aamir Khan robbed him of his mobile phone instrument of make VIVO model 1610 with IMEI No. 8646550877115 and 864655038771107 and having number 9313118035, committed offences punishable under Section(s) 395/396 IPC read with Section 149 IPC and within my cognizance.*

***Fourthly,** that on the aforesaid dates, time and place, you all being members of said unlawful assembly along with your other associates (identified and unidentified) raised religious slogans in furtherance of common intention and common object to incite and promote enmity between different groups on the ground of religion and acted in a way that are prejudicial to the ways of harmony and thereby you all along with your associates (identified and unidentified) committed offences punishable under Section(s) 153A/505 IPC read with Section 149 IPC and within my cognizance.*

Fifthly, on the aforesaid dates, time and place you all being members of the said unlawful assembly along with your other associates (identified and unidentified) violated the proclamation issued under Section 144 Cr.P.C. by the competent authority and hence committed offence punishable under Section 188 IPC read with Section 149 IPC and within my cognizance.”

14. On 04.04.2022 itself charges were framed against accused Pawan Kumar @ Lokesh and Lalit Kumar @ Rahul Chaudhary, in the following terms, to which they pleaded not guilty.

“ That the deceased Aamir Khan was having/using phone instrument of make VIVO model 1610 with IMEI numbers 864655038771115 and 864655038771107 with mobile number 9313118035 and he was robbed of this mobile phone on 26/02/2020 at the time of his murder. You accused Pawan Kumar @ Lokesh S/o Shri Moji Lal, knowing this fact, took the said mobile phone instrument of deceased Aamir and gave the instrument to Lalit S/o Shri Rajesh and used the SIM of the said mobile number in the instrument with IMEI number 911552250231690 since 02/03/2020. Later on, you destroyed the said SIM of mobile number 9313118035 and committed the offences punishable under Section(s) 201/412 IPC and within my cognizance.

Secondly, that you accused Lalit S/o Shri Rajesh took and used the mobile phone instrument to make VIVO model 1610, from Pawan with IMEI no. 864655038771115 and 864655038771107 with dual SIM slots, well knowing the fact that the same, was robbed from the deceased Aamir Khan as mentioned above and the same was recovered from you at your instance and thereby you committed offence punishable underSection 412 IPC and within my cognizance.”

DESCRIPTION OF PROSECUTION EVIDENCE

15. Several witnesses were dropped on the basis of admission of documents under Section 294 Cr.P.C./330 BNSS and prosecution examined 39 witnesses in support of its case, as per following

description: -

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
PW1/Sh. Nisar Ahmed	PW1 was residing at E-61/1, main nala road, near Johripur pulia, Bhagirathi Vihar alongwith his family. On 26.02.2020, in the morning, he was at the home of his brother-in-law Anwar. His brother Esh Mohammad was stuck at the house of his sister Ameena situated near Johripur pulia. PW1 requested one Avdresh Mishra to lock his home and to rescue his brother from the house of Ameena. Niece of PW1 namely Sitara, who resided near his house, requested him to rescue her. When PW1 reached Bhagirathi nala, he did not go ahead as he was hearing noise of hue and cry but he had not personally seen assault to any person. PW1 also did not see and identify any person in the mob of rioters on 26.02.2020 at the alleged place of incident. Though, PW1 named and identified some accused persons as part of mob of rioters at different points of time and date. Thus, PW1 did not support the case of prosecution and was declared hostile by Id. SPP on the aspect of identification of some accused during incident of this case.	
PW2/ Sh. Shivam Bhardwaj	PW2 was resident of C-129, Bhagirathi Vihar, Delhi. He was using a mobile phone make Realme using no. 7217779080 of Jio company, during period between 24.02.2020 to 26.02.2020. He was member of certain WhatsApp group during that period. His afore-said mobile phone was taken from him in the Crime Branch Office. He identified his signature at circle X on the seizure memo of WhatsApp Chat dated 08.03.2020 with print of chats (39 pages) pertaining to FIR No.35/20. PW2 identified his said mobile phone (Ex.PW3/Article-1 pertaining to FIR No.35/20) before the court.	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	PW2 did not support the case of prosecution and he was also declared hostile on the point of knowing some accused and about confession made by Lokesh for killing muslim persons, alongwith other accused persons.	
PW3/Sh. Mohit Sharma	PW3 was working in Khaibar Pas Metro Depot as technician. Crime branch officials had taken him alongwith Shivam and Dimple, to their office and had taken mobile phones of all three of them. PW3 was added in a WhatsApp group namely Kattar Hindut and crime branch officials had checked contents of all three mobile phones, which were seized. He identified his mobile phone (Ex.PW4/Article-1 pertaining to FIR No.35/20) before the court. PW3 also did not support the case of prosecution and he was also declared hostile on the point of knowing some accused and about confession made by Lokesh for killing muslim persons, alongwith other accused persons and about knowing the chats in the Whats App group.	
PW4/Sh. Amit Kumar	In February 2020, PW4 was residing at B-55/1, gali no.1, Bhagirathi Vihar, Delhi. In the month of February 2020, riots had taken place in this locality. On 26.02.2020, PW4 remained inside his home and he did not see any mob at any place on that day. Thus, PW4 did not support the case of prosecution and he was declared hostile on the point of identifying accused persons in a mob at Nala Road, Bhagirathi Vihar on 26.02.2020 at 9.15 P.M. and for having seen beating of a muslim boy at that time by this mob.	
PW5/ Dimple	PW6 was user of mobile phone no.9873723713, which was registered in his name and he was also using another number from the same phone set i.e.	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	8383847939. PW5 did not support the case of prosecution and he was also declared hostile on the point of being member of a WhatsApp group namely “Kattar Hindut Ekta”.	
PW6/Sh. Shalu	PW6 was running a private parking at A-1/1, Gali No.1, Bhagirathi Vihar, Delhi. Riots had taken place in his area between 24.02.2020 and 26.02.2020. On 26.02.2020, he had opened his afore-said parking at 10 AM and after closing the same at around 03:30 PM, he was going back to his house situated at A-83, Gali No.2, Bhagirathi Vihar, Delhi. At that time, a mob had started assembling in his gali no.1, Bhagirathi Vihar and the number of persons in that mob was increasing, wherein persons from both communities were there. PW6 deposed that during his presence there, the afore-said mob in gali no.1 was assembling only and they were not doing anything. He immediately left that place for his home and therefore, he did not know that what was done by that mob. Thus, PW6 did not support the case of prosecution and he was also declared hostile on the point of identification of the accused persons.	
PW7/Sh. Paras	PW7 was resident of B-99, gali No.1, Bhagirathi Vihar, Delhi and he was working in Kosmos Hospital. He deposed about making a call to police at 100 number on 25.02.2020 regarding situation of riots.	
PW8/Sh. Babu Khan	PW8 was father of deceased Amir Ali. On 26.02.2020, he was present at his home bearing no. D-222, Gali No.16, Old Mustafabad, Delhi. His other son namely Nasir was also present at home with him. Since evening time of 26.02.2020, his son Nasir was in regular telephonic touch with Hashim Ali, who was returning back to Delhi along with his brother Aamir	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	on a motorcycle make Apache, from Pasonda, Ghaziabad. In the last conversation taken place at 9:30 PM, it was informed to Nasir that Hashim and Aamir had reached Gokalpuri and they were expected to reach home in next 5-10 minutes. However, none of them reached home and mobile phone of Aamir was also switched off. On 27.02.2020, PW8 came to know that his two sons were no more. He had sent his son Sheruddin and his relative Rehmat for the purpose of identification of dead bodies of Hashim and Aamir at GTB hospital. On 10.03.2020, his nephew Mohsin made telephonic call to PW8 and told that someone was making calls to his sisters using mobile phone number of Aamir i.e. 9313118035. PW8 visited PS Gokalpuri and informed SHO about this fact.	
PW9/Ct. Vipin	On 26.02.2020, vide DD No.16-B, PW9 was deputed for law-and-order duty in the area of Bhagirathi Vihar. On that day, his duty hours were from 9 a.m. onwards, which continued for whole night of 26.02.2020. At about 10 p.m., PW9 was near ganda nala pulia (known as Ganga Vihar pulia). He was coming towards this pulia from the side of Ganga Vihar and he saw a mob of around 100-150 persons near this pulia. On seeing PW9 with other police staff, that mob started running away, while taking name of Rishabh, Pankaj, Prince, Avdhesh and Ankit. PW9 was witness to taking colour print of photographs of some persons including accused Prince DJ wala and Pankaj, by Insp. Vinay Tyagi in the present case and in FIR No.35/20. These photographs were shown by accused Lokesh by opening his Facebook account, on the laptop of SHO PS Gokalpuri.	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	On 10.03.2020, Insp. Dinesh from crime branch had made similar enquiry from PW9 in FIR no. 36/20 and had recorded his similar statement therein. PW9 was cross-examined by Id. Special PP and he admitted the suggestion that he had also mentioned the names of accused Himanshu, Lokesh Rajput, Jatin, Monty Nagar, Pawan, Monu and Sumit, as being taken by the persons in the mob at Ganga Vihar pulia, and that PW9 had mentioned name of Ankit as Ankit Fauzi at that time; and that PW9 had also mentioned name of accused Rishabh Jaat and Jatin, as being told by accused Lokesh, while pointing out photograph on his facebook page.	
PW10/Sh. Nasir Ali	PW10 was brother of Aamir Ali (deceased in this case). On 26.02.2020, PW10 was present at his house bearing H.No. D-222, gali no.17, main 25 foota road, Old Mustafabad, Delhi. On this day at about 9.30 p.m., PW10 had received a call from mobile phone no. 7291882903 of Hashim Ali and during this call, PW10 had conversation with his brother Aamir Ali (deceased in this case). During this conversation, Aamir had told PW10 that he was somewhere near the canal and was about to reach home in 5 minutes. His brothers Aamir and Hashim were coming on Apache motorcycle, but they did not come back to home by night of 26.02.2020. On 28.02.2020, PW10 came to know that his both aforesaid brothers had died and their dead bodies were recovered from drain.	
PW11/HC Pradeep	On 24.02.2020, an order passed by DCP, North-East u/s. 144 Cr.P.C., was received through Dak in the morning and on the directions of SHO, PW11 obtained loud hailer from malkhana and announced the proclamation u/s. 144 Cr.P.C. in the jurisdictional area of PS Gokalpuri i.e. Johripur Extension, Ganga Vihar,	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	Chaman Park, Indira Vihar, Bhagirathi Vihar, Sanjay Colony, Gokalpuri and Gokalpuri Village.	
PW12/ASI Naresh Pal	PW12 was working in Record Branch, North East District, Delhi Police. He produced office record with original order u/s 144 Cr.P.C. dated 24.02.2020 as passed by Sh. Ved Prakash Surya, the then DCP/NE. PW12 identified signature of Mr. Surya at circle X and true copy of that order. PW12 also produced office record of complaint u/s 195 Cr.P.C. PW12 identified signature of Sh. Sanjay Kumar Sain on the same.	Ex.PW12/A (true copy of order u/s. 144 Cr.P.C.) & Ex.PW12/B (original complaint u/s 195 Cr.P.C)
PW13/ASI Manvir	On 27.02.2020, PW13 along with ASI Ram Dass went to E-Block, Bhagirathi Vihar Nala, on a call recorded vide DD No.24-B. PW13 witnessed recovery of three dead bodies and one motorcycle bearing DL-5SBA-7168, from the drain. PW13 also deposed that all three dead bodies were sent in TATA 407 to GTB hospital alongwith ASI Manvir and Ct. Karamveer. On that day, ASI Ram Dass prepared rukka on DD No.24-B and got registered two FIRs bearing 35/20 and 37/20. FIR in the present case was registered concerning to the dead body of Aamir with reference to	Ex.PW13/A (seizure memo of clothes of deceased)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	MLC bearing no. 760/03/20. All three dead bodies were declared brought dead and were preserved in the mortuary, GTB hospital. PW13 witnessed (i) recording statement of father and other relatives of deceased Aamir, at GTB hospital; (ii) identification of both dead bodies; (iii) seizure of wearing clothes of deceased with blood on gauze, by ASI Ram Dass and (iv) seizure of mobile phone make TECHNO, which was found in the pocket of dead body identified as Hashim (deceased in FIR No.35/20). On 10.08.2020, PW13 had seized one mobile phone and one pen-drive in FIR No.78/20 of same PS, from one Nisar Ahmed. On 18.01.2021, Insp. Dinesh from Crime Branch visited PS Gokalpuri and he made inquiry from PW13 about afore-said mobile phone and pen-drive.	
PW14/HC Javed Khan	PW14 was photographer in mobile crime team/NE District. On the direction of I/C ASI Mahavir, PW14 took 7 photographs near pipeline, main nala, Bhagirathi Vihar, Delhi, on 02.03.2020.	Ex.PW14/A (certificate u/s. 65-B of I.E. Act); Ex.PW14/P1 to Ex.PW14/P-7 (seven photographs)
PW15/SI Yashpal	PW15 was Duty Officer in PS Gokalpuri. He registered FIR in the present case on the basis of rukka	Ex.PW15/A (endorsement of PW15 on the

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	handed over by ASI Ram Dass. Thereafter, he also made endorsement on the back side of rukka. PW15 handed over copy of FIR with original rukka to Insp. Pramod Joshi/SHO for further investigation.	back side of rukka); & Ex.PW15/B (FIR)
PW16/ASI Shyam Lal	PW16 participated in the investigation of the present case on 17.03.2020, along with IO/Insp. Vinay Tyagi, SI Hava Singh, SI Arjun Singh, ASI Salim Khan, ASI Sunil Kumar, ASI Ramesh Kumar, HC Shashikant, HC Babu Ram and Ct. Kuldeep. PW16 witnessed arrest and personal search of accused Pawan on the pointing out of secret informer. PW16 also witnessed recovery and seizure of mobile phone make Intech (Intex), from possession of this accused. PW16 also witnessed confession of accused Pawan regarding golden colour mobile phone make Vivo of deceased, which was lying with accused Lalit. PW16 also witnessed arrest and personal search of accused Lalit and recovery and seizure of said mobile phone at the instance of accused Lalit. PW16 deposed that on 09.04.2020, Insp. Dinesh had brought three accused Rishabh Chaudhary, Jatin Sharma and Vivek Panchal, in the	Ex.PW16/A & Ex.PW16/B (arrest and personal search memos of accused Pawan, respectively); Ex.PW16/C (seizure memo of Intech mobile phone); Ex.PW16/D & Ex.PW16/E (arrest and personal search memos of Rishabh Chaudhary, respectively); Ex.PW16/F and Ex.PW16/G (arrest and personal search memo of accused Vivek Panchal,

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	office and interrogated them. Thereafter, Insp. Vinay Tyagi arrested all three of them, in the present case. Insp. Vinay Tyagi prepared their separate arrest and personal search memos and recorded their disclosure statement. PW16 identified his signature at circle X on arrest and personal search memos of accused Rishabh Chaudhary and Vivek Panchal. PW16 took sealed pullanda from PS Gokalpuri, to CERT Technology Information at CGO complex, Lodhi Road and deposited the same there, on 08.09.2020, in FIR No.35/20. On 24.09.2020, Insp. Tyagi handed over one authority letter to PW16, in order to bring the result from CERT, CGO complex. PW16 went to CERT and handed over the authority letter. In CERT, PW16 was handed over 4 sealed pullandas and documents running into 8 pages. PW16 took all these materials to malkhana PS Gokalpuri and handed over the same to MHC(M). MHC(M) handed back 2 sealed pullandas out of 4 pullandas, alongwith some papers out of aforesaid 8 pages, to PW16, so as to hand over the same to the IO and he did the same. PW16 did not support the case of prosecution and he was also declared	respectively)

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	hostile on the point of colour of VIVO mobile phone as recovered from accused Lalit on 17.03.2020.	
PW17/ASI Ram Dass & PW18/RetdACP Mahesh	PW17 deposed on the lines of PW13/ASI Manvir, in respect of: - (i) recovery of dead bodies; (ii) recovery and seizure of one motorcycle bearing no. DL-5SBA-7168; (iii) sending those three dead bodies in TATA 407 to GTB hospital along with ASI Manvir and Ct. Karamveer; (iv) preparing of rukka by PW17; (v) recording statement of father of deceased and identification of dead body of Aamir; and (vi) seizure of one cloth pullanda with blood on gauze vide memo Ex.PW13/A. PW17 witnessed preparation of site plan by SHO at his instance, in the present case. PW17 prepared inquest papers for conducting postmortem on the dead bodies in FIR Nos.35/20 and 37/20 i.e. deceased Hashim Ali and Aamir, respectively. PW17 also identified his signature at circle X on request-form to conduct postmortem examination alongwith form 25.35. On 06.05.2020, PW17 had pointed out the place of recovery of dead bodies to PW18/Retd. ACP Mahesh, who was draughtsman from Crime branch. PW18 had taken his	Ex.PW17/A (rukka); Ex.PW17/B (site plan); Ex.PW17/C (identification statement of Babu Khan); Ex.PW17/D & Ex.PW17/E (Request form to conduct postmortem examination alongwith form 25.35); & Ex.PW18/A (scaled site plan)

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	measurements. On the basis of said measurements, PW18 prepared scaled site plan on 26.05.2020 and thereafter handed over the same to the IO/Insp. Vinay Tyagi on same day.	
PW19/ASI Mahesh	PW19 was working as MHC(M) in PS Gokalpuri. PW19 deposed that IO of this case deposited 2 sealed pullandas in the malkhana. PW19 handed over those two sealed pullandas to ASI Satbir for depositing the same in FSL Rohini. PW19 had issued road certificate no.59/21/20 to ASI Satbir. After depositing the aforesaid pullandas in FSL Rohini, ASI Satbir handed over 3 documents i.e. copy of acknowledgement, receipt as issued by FSL and copy of R/C. The copy of road certificate was pasted in the register no.21. Till the time the pullandas remained in his custody, they were not tampered with. PW19 declared hostile by the prosecution on the point of one name of Satish Patil, which was wrongly mentioned by PW19 as Satbir, in his evidence.	Ex.PW19/A (OSR) (copy of R/C no. 59/21/20)
PW20/SI Sunil	He joined investigation of the present case on 10.04.2020, along with IO/ Insp. Vinay Tyagi, SI Hava Singh, ASI Mohd. Salim, ASI Satish Patil,	Ex.PW20/A (pointing out memo at the instance of

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	HC Shashikant, HC Shyam Lal, HC Babu Ram, Ct. Kuldeep and Ct. Puneet. He witnessed preparation of pointing out memo at the instance of accused Jatin Sharma, Vivek Panchal and Rishabh Chaudhary. PW20 correctly identified accused Jatin Sharma, before the court.	accused Jatin Sharma)
PW21/ASI Ramesh Kumar & PW22/SI Hava Singh	He joined investigation of the present case on 08.03.2020, along with IO/Insp. Vinay Tyagi, PW22/SI Hava Singh and other staff. PW21 and PW22 witnessed seizure of mobile phones from witnesses Shivam, Mohit and Dimpal Paul. PW21 and PW22 also witnessed arrest and personal search of accused Lokesh Solanki, in the present case. PW22 witnessed seizure of three print outs of WhatsApp messages related to riots, by IO/Insp. Vinay Tyagi. These messages were found in the mobile phones of witnesses Shivam, Mohit and Dimpal. PW21 and PW22 also joined investigation of the present case on 11.03.2020, along with IO/Insp. Vinay Tyagi, ASI Mohd. Salim, ASI Satish Patil, ASI Sunil, HC Shyam Lal, HC Babu Ram, Ct. Kuldeep & Ct. Puneet. PW21 and PW22 witnessed arrest of accused Ankit Chaudhary and Sumit @ Badshah	Ex.PW21/A (arrest memo of accused Lokesh); Ex.PW21/B (arrest memo of accused Ankit Chaudhary); Ex.PW21/C (pointing out memo at the instance of accused Ankit); Ex.PW21/D & Ex.PW21/E (arrest and personal search memo of accused Jatin). Ex.PW22/A to Ex.PW22/C (print outs of WhatsApp

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	and pointing out memo. PW21 also joined investigation of the present case on 09.04.2020. He witnessed arrest and personal search of accused Pankaj Sharma. PW22 witnessed arrest of accused Himanshu by IO on 22.04.2020, at Tihar Jail. PW21 correctly identified accused Ankit, Pankaj & Badshah, before the court. During his cross-examination by Id. Special PP, PW21 admitted suggestion of Id. SPP in respect of identification of his signature on arrest and personal search memo of accused Jatin Sharma. PW21 also admitted the suggestion of Id. SPP in respect of identification of accused Jatin Sharma. During his cross-examination by Id. Special PP, PW22 admitted suggestion of Id. SPP in respect of identification of accused Himanshu, Rishabh Chaudhary, Sandeep @ Mogli, Sahil @ Babu and Lokesh Solanki.	chats found in mobile phones of witnesses Shivam, Mohit and Dimple, respectively); Ex.PW22/D to Ex.PW22/F (true copy of seizure memo of mobile phones of witnesses Shivam, Mohit and Dimple, respectively); Ex.PW22/G (true copy of seizure memo of mobile phone of Lokesh) Ex.PW22/H (personal search memo of accused Lokesh); Ex.PW22/I (arrest memo of Sumit); Ex.PW22/J (pointing out memo at the instance of

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		accused Ankit and Sumit); Ex.PW22/L (arrest memo of Himanshu)
PW23/Insp. Pramod Joshi	PW23 was posted as SHO in PS Gokalpuri. During patrolling on 27.02.2020, he found three dead bodies near Johripur pulia in Bhagirathi Vihar nala. PW23 passed on this information to DO. ASI Ram Dass along with ASI Manvir Singh came to this place and PW23 pointed out those bodies to these two officials. After registration of FIR in this case, PW23 had taken up investigation of this case on same day. He was handed over original tehrir and copy of FIR by ASI Ram Dass. PW23 deposed on the lines of PW17 in respect of: - (i) site plan Ex.PW17/B prepared by him; (ii) sending dead body to GTB hospital mortuary on 27.02.2020; (iii) direction given to PW17/ASI Ram Dass on 29.02.2020, to get postmortem examination done on this dead body. Thereafter, further investigation of this case transferred to Crime branch and PW23 sent the case file to Crime branch through road certificate. On 06.05.2020 on the call of Insp. Vinay from Crime branch, PW23 reached the place of recovery of dead body in this case. Insp. Mahesh was already called by IO/Insp. Vinay for the purpose of preparing scaled site plan. PW23 pointed out the place of recovery of dead body to Insp. Mahesh.	
PW24/Sh. Ajay Kumar	He was working as Nodal Officer in Bharti Airtel company and he proved	Ex.PW24/A to Ex.PW24/N

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	certified copy of CDR, and respective CAFs/EKYCs/DKYCs, as pertaining to mobile numbers 9871171934, 9212946177, 9205095077, 9891407613, 9821685321, 9560585420 and 7453838637, for the period w.e.f 01.02.2020 to 29.02.2020. PW24 also proved manual Cell ID Chart and certificate u/s. 63 BSA pertaining to afore-said CDRs, EKYCs/DKYCs. During his cross-examination by Id. SPP, PW24 admitted the suggestion that he had furnished the record sought by IO in respect of CDR and EKYC of mobile no. 9650832647. PW24 proved certified copy of EKYC with certificate u/s. 65-B of I.E. Act.	(certified copy of CDR, and respective CAFs, as pertaining to given mobile numbers); Ex.PW24/P & Ex.PW24/Q (Respective certificates u/s. 65-B of I.E. Act); Ex.PW24/R (manual Cell ID Chart); Ex.PW24/S & Ex.PW24/T (certificate u/s. 65-B of I.E. Act and certified copy of EKYC)
PW25/ASI Satish Patil	PW25 participated in the investigation of the present case on 10.04.2020 along with IO/Insp. Vinay Tyagi, SI Hawa Singh, ASI Sunil, ASI Salim Khan, ASI Ramesh, HC Shashikant, HC Babu Lal, HC Shyam Lal, Ct. Kuldeep, Ct. Puneet. PW25 was witness to pointing out memo at the instance of accused Vivek Panchal. PW25 deposed on the lines of PW19 in respect of Ex.PW19/A (OSR). Till the time aforesaid exhibits remained	Ex.PW25/A (pointing out memo at the instance of accused Vivek Panchal); Ex.PW25/B (original acknowledgment from FSL)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	in his custody, same were not tampered with in any manner. PW25 correctly identified accused Vivek Panchal before the court.	
PW26/ASI Shashikant	On 20.08.2020, on the instruction of IO/Insp. Vinay Tyagi, PW26 went to office of FSL Rohini in Bio Division. PW26 collected report no. 2730/CSMD/132/20/12639 dt.31.07.2020, which was sealed with the seal of 'FSL J DELHI' and articles/pullandas, pertaining to FIR No.35/20. Thereafter, PW26 went to malkhana, PS Gokalpuri and deposited 2 pullandas in the malkhana PS Gokalpuri. Report was handed over to the IO/Insp. Vinay Tyagi. Till the time exhibits and reports remained in his custody, same were not tampered with, in any manner.	
PW27/HC Karamveer	PW27 deposed that on 27.02.2020, on receipt of telephonic call from DO, he reached Johripur pulia. PW27 accompanied PW13/ASI Manvir and PW17/ASI Ram Dass to GTB hospital, in one TATA 407, wherein three dead bodies were kept. PW27 deposed that MLC of three dead bodies were prepared in GTB hospital and dead bodies were deposited in mortuary GTB hospital. PW27 was deputed at the mortuary for safety of aforesaid dead bodies and he remained there upto 29.02.2020, for aforesaid particular duty. His statement was recorded by Insp. Bineet Pandey in FIR Nos. 35/20 and 37/20.	
PW28/Sh. Rajeev Manocha	PW28 was running his business in the name of L.A. Enterprises at the address of 4697/3, IIIrd floor, Nepal Carrier Building, 21A, Ansari Road, Daryaganj, New Delhi. PW28 deposed that his company had provided Mr. Narottam a motorcycle bearing no. DL-1SA E 6074	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	and a mobile no. 9310849006. Said motorcycle was registered in the name of afore-said company and said mobile number was obtained in the name of afore-said company.	
PW29/Insp. Vinod Ahlawat	He was IO of FIR No. 156/20 PS Gokalpuri. He had arrested accused Himanshu Thakur, in his case on 08.04.2020. PW29 correctly identified accused Himanshu Thakur.	Ex.PW29/A & Ex.PW29/B (true copies of arrest and personal search memo of Himanshu Thakur, respectively)
PW30/Insp. Dinesh Kumar	PW30 was IO of FIR No.36/20 of PS Gokalpuri. In that case, PW30 had recovered and seized one danda each at the instance of accused Jatin and Vivek, on 09.04.2020. On 11.04.2020, PW30 had provided copy of that seizure memos to the IO of this case i.e. Insp. Vinay Tyagi. PW30 was assigned further investigation of this case and he had interrogated and formally arrested accused Sahil @ Babu in jail no. 5, Tihar, on 27.10.2020; accused Sandeep @ Mogli and Tinku in jail no.13, Mandoli on 29.12.2020. PW30 recorded statement Sh. Rajiv Minocha and Sh. Nasir, in the present case. On 18.01.2021, PW30 along with SI Subhash visited PS Gokalpuri, where PW30 was provided 3 photographs of rioters, copies of seizure memo of	Ex.PW30/A & Ex.PW30/B (true copies of seizure memos of danda at the instance of Jatin and Vivek); & Ex.PW30/C to Ex.PW30/E (arrest memo of accused Sahil, Sandeep and Tinku, respectively)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	mobile phone of Nasir and that of pen-drive taken from Nasir, by IO/ASI Manveer of FIR No.78/20. PW30 seized all these materials vide seizure memo. PW30 received another report in respect of examination of the dandas from FSL. The dandas were also received back from FSL. Thereafter, PW30 sent those dandas alongwith an application to GTB Hospital for obtaining subsequent opinion regarding injuries received by deceased being possible to be inflicted through those dandas. Subsequently, PW30 received that opinion also. PW30 also received a sanction order u/s 196 Cr.P.C. against accused Lokesh Solanki, Pankaj, Ankit, Sumit, Prince, Jatin, Vivek, Rishab and Himanshu for offence u/s 153A/505 IPC. Thereafter, PW30 prepared supplementary chargesheet and filed the same alongwith aforesaid material in the court on 24.01.2021. Thereafter, PW30 sent a request letter to DCP, N/E for a complaint u/s 195 Cr.P.C. against all the accused persons for the offence u/s 188 IPC on account of violating the order u/s 144Cr.P.C. Subsequently, PW30 received that complaint from the office of DCP, N/E. PW30 also sent a request letter to Govt. of NCT of Delhi, requesting sanction u/s 196 Cr.P.C. for offence u/s 153A/505 IPC	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	against accused Sahil @ Babu, Sandeep @ Mogli and Tinku. This sanction order was also subsequently received. Thereafter, in September 2021, PW30 filed another supplementary chargesheet alongwith aforesaid materials. PW30 had also collected CDRs and CAF of the mobile numbers used by some witnesses and some accused persons. PW30 correctly identified accused Sahil @ Babu, Sandeep @ Mogli and Tinku before the court.	
PW31/Sh. Pankaj Sharma	He was working as Nodal Officer in Reliance Jio and he proved certified copy of CDR and respective CAFs/EKYCs/DKYCs, as pertaining to mobile no. 7557497409, 7557223533, 7982702731, 7217779080 and 8287809349, for the period w.e.f 01.02.2020 to 29.02.2020. PW31 also proved manual Cell ID Chart and certificate u/s. 63 BSA pertaining to afore-said CDRs, EKYCs/DKYCs.	Ex.PW31/A to Ex.PW31/J (certified copy of CDR, and respective CAFs, as pertaining to given mobile numbers); Ex.PW31/K (certificate u/s. 63 BSA in respect of aforesaid CDRs and CAFs); & Ex.PW31/L (manual Cell ID Chart)
PW32/Insp. Arjun Singh	PW32 had joined investigation in FIR No.35/20 and in this case with IO/Insp. Vinay Tyagi on 09.03.2020. In his presence pointing out memo was prepared at the instance of	Ex.PW32/A & Ex.PW32/B (arrest and personal search memos of

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	accused Lokesh Solanki. Lokesh Solanki had opened his Facebook profile and pointed out to his some of friends while disclosing their names and IO had taken print/screenshot of these photographs in his presence. Accused Pankaj and Prince were arrested in his presence by IO on 10.03.2020 and 13.03.2020. A mobile phone from accused Pankaj was seized in his presence in FIR No.33/20. Pointing out memos of place of incident at the instance of Sumit Chaudhary, Ankit and Prince were prepared in his presence. On 17.03.2020 accused Pawan and Lalit were arrested in his presence. One mobile phone make VIVO was recovered from Lalit in his presence. Subsequently, accused Sahil @ Babu, Sandeep @ Mogli and Himanshu Thakur were arrested in his presence on 27.10.2020 and 29.12.2020, respectively. PW32 had examined HC Pradeep regarding announcement of order u/s. 144 Cr.P.C. In the court, this witness identified all accused persons except Prince, though in cross-examination by prosecution, he admitted the suggestion regarding identity of	Pankaj); Ex.PW32/C (copy of seizure memo of mobile at the instance of Pankaj, pertaining to FIR No.35/20); Ex.PW32/D (arrest memo of accused Prince); Ex.PW32/F (seizure memo of VIVO mobile at the instance of Lalit); & Ex.PW32/G & Ex.PW32/H (arrest and personal search memo of accused Lalit)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	Prince.	
PW33/Sh. Shashank Tyagi	PW33 was Alternate Circle Nodal Officer in Vodafone Idea Ltd. He proved certified copy of CDR and CAF in respect of mobile numbers 8750610027, 9540689734, 9136034019, 8588902696 & 9313118035 along with certificate u/s. 65-B of I.E. Act and Cell ID Chart.	Ex.PW33/A to Ex.PW33/M (certified copy of CDRs and CAFs of given mobile number along with certificate and Cell ID Chart)
PW34/Ms. Shabina	PW34 was widow of Aamir. She deposed that on 26.02.2020, her husband late Aamir alongwith her brother-in-law (devar) namely Hashim Ali left Garima Garden, Ghaziabad, U.P. at about 9 p.m., for Mustafabad, Delhi. They had gone on their Apache bike. At around 9.30 p.m., PW34 spoke to her husband on mobile phone from her mobile phone bearing no.7827..... She did not remember the complete number. PW34 further deposed that her husband informed her that they had reached Gokalpuri pulia and they would be reaching home within 5 minutes. He had also informed PW34 that at that place, there was a mob and that the mob was intercepting the muslim persons. After around 5-10 minutes, PW34 called her husband on mobile phone, to know whether they had reached home or not. However, his phone was switched off.	
PW35/Sh. Sheruddin	PW35 deposed on the lines of PW8 in respect of Aamir and Hasim, who were coming home on Apache vehicle on 26.02.2020 and in respect of telephonic conversation of Nasir with Amir. PW35 identified photograph of Amir and Hasim at PS Gokalpuri, where police informed him that those dead	

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	bodies were taken out from the drain.	
PW36/Sh. Narottam Singh	PW36 was not sure about the exact date, but on 25-26.02.2020 at about 7-8 PM, he had gone to drain of Bhagirathi Vihar, T-point bridge and had seen a mob of around 100 persons on bridge. Those persons were inspecting the passersby and making inquiry about the religion. They were assaulting the persons from Muslim Community. PW36 was at the distance of about 100 meters from them near a Pipe Line and he found that certain vehicles/bikes were set on fire. He saw two persons coming on Apache motorcycle being inspected by that mob. One of them had jumped in the drain and second person was given beatings, thereafter that person also jumped in the drain. Thereafter, PW36 came back to his home. He did not know anyone in that mob nor did he see face of any one in that mob. PW36 had also not seen those bikers or their face because they were wearing helmet. He had made call at 100 number and informed police about ongoing riots. PW36 was declared hostile by prosecution in respect of identity of accused persons and other factual aspects, but he did not confirm the date of incident of beating two bike riders, nor did he support the prosecution about having seen any of the accused persons in that mob.	
PW37/Sh. Arun Kumar Sahani	PW37 was working as Scientist B, in Cyber Forensic Lab, CERT-In, Ministry of Electronics, Government of India, New Delhi. On 17.04.2020, PW37 received request letter from Crime branch in FIR No.35/20, PS Gokalpuri, alongwith 5 sealed packets and other documents. These exhibits were assigned to PW37 and	Ex.PW37/A (True copy of original report prepared by PW37 in FIR No.35/20, in respect of extracted data from digital

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	his Incharge Lt. Colonel Santosh Khadsare. PW37 extracted data from the digital exhibits i.e. mobile phones, SIM cards and memory cards as contained in those 5 sealed packets. The extracted data were copied/stored in a pendrive. PW37 and his I/C prepared report about afore-said proceeding and issued a certificate in respect of the same, in that FIR. PW37 again received another request letter dated 07.09.2020 in FIR No.35/20, PS Gokalpuri alongwith sealed packets of exhibits as sent back by this witness to the police. This time, PW37 examined exhibits A1-MOB, A2-MOB and A3-MOB, alongwith their related SIMs and memory cards. PW37 and his I/C prepared report about afore-said proceeding and issued a certificate in respect of the same, in that FIR. PW37 received a request letter from Delhi Police, thereby seeking mirror copy of extracted data, which was so done in FIR No.35/20, PS Gokalpuri. PW37 prepared mirror copy of afore-said extracted data for this case, using office copy maintained in his office. The mirror copy was sealed and sent back to Delhi Police. PW37 also provided certificate u/s 63 BSA in this respect. He identified pendrive with its contents as Ex.PW37/Article-1. This pen-drive contained chats from afore-said WhatsApp group namely "Kattar	exhibits); Ex.PW37/B (certificate u/s 65B of IE Act in respect Ex.PW37/A); Ex.PW37/D & Ex.PW37/E (true copy of another report dated 22.09.2020 and certificate u/s. 65-B of I.E. Act, respectively); Ex.PW37/H (certificate u/s. 63 BSA in respect of preparation of mirror copy); & Ex.PW37/Article-1 (Pen-drive with extracted data)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	Hindut".	
PW38/Sh. L.K. Gautam	PW38 was working as Deputy Secretary (Home), GNCT, Delhi. PW38 deposed that Lt. Governor of GNCT of Delhi, approved for according sanction u/s. 196 Cr.P.C for offences u/s 153A/505 IPC against accused Lokesh Solanki, Pankaj Sharma, Sumit Chaudhary, Ankit Chaudhary, Prince, Rishabh Chaudhary, Jatin Sharma, Vivek Panchal and Himanshu Thakur, in this case. PW38 being competent officer to sign the sanction order on behalf of LG, signed said sanction order. Similar sanction was accorded by LG against accused Sandeep, Sahil and Tinku in this case.	Ex.PW38/A & Ex.PW38/B (sanction orders dated 16.12.2020 and 26.07.2021);
PW39/Retd Insp. Vinay Tyagi	On 05.03.2020, PW39 was assigned investigation of present case as well as of FIR No.35/20, both PS Gokalpuri. On same day, PW39 visited house of deceased situated in Bhagirathi Vihar and met his father Babu Khan and his elder brother Nasir Ali as well as widow of deceased Aamir, namely Smt. Shabeena Khan. He recorded their statements. PW39 deposed on the lines of PW21 and PW22 in respect of seizure of mobile phones from witnesses Shivam, Mohit and Dimpal. PW39 received report of SOC alongwith photographs from Crime Team from North East district. Same were inspected and placed on file. PW39 also deposed on the lines of PW21, PW22 and	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	PW32, in respect of Ex.PW21/A, Ex.PW21/D, Ex.PW21/E, Ex.PW22/A to Ex.PW22/L and Ex.PW32/A to Ex.PW32/H. PW39 also deposed on the lines of PW16 in respect of Ex.PW16/A, Ex.PW16/B, Ex.PW16/C, Ex.PW16/D, Ex.PW16/E, Ex.PW16/F and Ex.PW16/G. On 17.04.2020 PW39 sent all the pullandas to CERT-In, for the retrieval of all the data i.e. text messages, videos and audios, through ASI Satish Patil. On 27.04.2020, PW39 recorded statement of Insp. Pramod Joshi regarding registration of FIR in this case. On 06.05.2020 draughtsman Insp. Mahesh Chand along with his team went to place of occurrence and he took measurements at the instance of Insp. Pramod Joshi. PW39 recorded their statement. On 08.05.2020, clothes of deceased were sent to FSL, Rohini, for the purpose of investigation, through ASI Satish Patil. PW39 had prepared the chargesheet and filed the same on 04.06.2020 before the court of Id. CMM/NE. On 24.09.2020, report from CERT-In was collected by HC Shyam Lal and he handed over the same to PW39. He deposited the 5 mobile phones in the malkhana. In this regard, statements of HC Shyam Lal (Crime branch) and MHC(M) PS Gokalpuri namely HC Mahesh, were recorded. Thereafter, PW39 prepared supplementary chargesheet-I and filed it on 30.09.2020 before the court alongwith aforesaid materials. On 22.07.2020 PW39 had also applied for sanction u/s 196 Cr.PC through DCP Crime Branch against the accused persons. Same was received by PW39 and he had also filed that sanction order in the court of Id.	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	CMM/NE. Thereafter, this case was transferred to Insp. Dinesh Kumar for further investigation. PW39 had also collected certified copy of CAFs and CDRs of mobile phones of all accused persons. He had also obtained certified copy of CAF and CDR of mobile phone of deceased Aamir Ali, witness Narottam and some other witnesses. PW39 had sent information of IMEI number of mobile phone set and SIM card number allotted to deceased Aamir Ali, to all service providers. PW39 received information from one service provider that the SIM card number of Aamir Ali i.e. 9313118035 was being used on a mobile phone set with different IMEI number ending with 11151108. PW39 also added Section 412 and 201 IPC against accused Pawan and Lalit, in the present case. PW39 correctly identified accused Sumit @ Badshah, Pawan, Lokesh, Panchal, Jatin, Rishab and Prince, before the court. PW39 also correctly identified accused Ankit, Lalit, Pankaj and Himanshu.	
Admitted documents under Section 294 Cr.P.C/330 BNSS Particulars of R/C of vehicle no. DL-5SBA-7168 as Ex.A-1 & Ex.A-2; certificate u/s. 65-B of I.E. Act as Ex.A-3; MLC No.760 as Ex.A-4; postmortem report no.356/2020 as Ex.A-5; death certificate as Ex.A-6; emergency registration card as Ex.A-7; opinion regarding weapon of offence as Ex.A-8; copy of FIR No.41/20 as Ex.A-9 (colly 3 pages); copy of arrest memo of Ankit Chaudhary as Ex.A-10; copy of arrest memo of Sumit @ Badshah as Ex.A-11; copy of personal search memo of Ankit Chaudhary as Ex.A-12; copy of personal search memo of Sumit @ Badshah as Ex.A-13; copy of FIR No.50/20 as Ex.A-14; copy of arrest memo and personal search memo of accused Prince as Ex.A-15 & A-16 respectively and copy of R/C No.15/21/20 as Ex.A-17.		

PLEA OF ACCUSED UNDER SECTION 351 BNSS

16. For the purpose of recording statement of accused persons under Section 351 BNSS, prosecution was asked to file synopsis of incriminating evidence. It was so filed by ld. Special Public Prosecutor. Submissions were heard from both the sides on the point of incriminating evidence against the accused persons.

ARGUMENTS OF DEFENCE & PROSECUTION ON THE POINT OF INCRIMINATING EVIDENCE

17. **Ms. Priyanka Jain**, Adv. authorised by **Sh. Nishant Kumar Tyagi**, ld. counsel for accused Jatin Sharma, Lokesh Solanki, Sahil @ Babu, Vivek Panchal and Rishabh Chaudhary; **Sh. Rakshpal Singh** and **Sh. Hari Krishan**, ld. counsels for accused Pankaj Sharma, Sumit @ Badshah, Ankit Chaudhary @ Fauji, Prince, Tinku and Sandeep @ Mogli; and **Sh. Rajan Sisodia**, ld. counsel for Himanshu Thakur, took plea that the alleged eye witnesses of prosecution, did not support the case of prosecution and they were declared hostile by the prosecutor. None of the witnesses of prosecution identified any of the accused persons, as part of the mob of rioters who killed the victim in this case. Hence, judgment of acquittal should be passed in the case.
18. However, **Sh. Saleem Ahmed**, ld. Special P.P. argued that though the witnesses cited as eye witness of the incident did not support the case of prosecution, but there are circumstantial evidences on the record, which point out to accused persons. Hence, those circumstantial evidences should be put to the accused persons, for their response under Section 351 BNSS.

SECTION 255 BNSS & 351 BNSS

19. Section 255 BNSS (erstwhile S.232 Cr.P.C.) provides as under: -

“Acquittal- If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal.”

- Section 256 BNSS (erstwhile 233 Cr.P.C.) provides as under: -

“Entering upon defence. - (1) Where the accused is not acquitted under section 255, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. (2) If the accused puts in any written statement, the Judge shall file it with the record. (3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”

Section 257 BNSS further provides that when examination of the witness of accused, (if any) is complete, the prosecutor shall sum up his case and thereafter the accused shall be entitled to respond to the arguments of the prosecutor. Section 258 BNSS further provides that after hearing arguments and points of law (if any), the judge shall give a judgment in the case.

20. On the other hand, Section 351 BNSS (erstwhile S.313 Cr.P.C.) provides as under: -

“Power to examine the accused – (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court- (a) may at any stage, without previously warning the accused, put such questions to him as the Court considers

necessary; (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:”

21. As it is evident from the language used in Section 351 BNSS, this provision talks about “any circumstance appearing in the evidence against the accused”. On the basis of such language, practically the courts have been using the term of “incriminating evidence”. The purpose or objective behind the provision under section 351 BNSS is also evident from the language of the provision, wherein it is mentioned that 'for the purpose of enabling the accused personally to explain'. Hon'ble High Court of Delhi in the case of **Ranjan Dwivedi & Anr. v. CBI, 2008 Cri.L.J. 1440 (DHC)**, was examining the scope and content of Section 313 Cr.P.C. and in that process, Delhi High Court referred to following observations made by hon'ble Supreme Court in the case of **Jai Dev v. State of Punjab, AIR 1963 SC 612**: *“the ultimate test in determining whether or not the accused has been fairly examined under Section 342 Cr.P.C. (similar provision under old Act), would be to enquire whether, having regard to all the question put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity.”* Taking view of object behind Section 313 Cr.P.C., Delhi High Court observed that “19. Thus, it is well settled that the provision is mainly intended to benefit the accused and as it's corollary to benefit the court in reaching the final conclusion. 20. At the same time, it should be

borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim 'audi alteram partem'."

22. Delhi High Court further made observations in the same case in the following terms: -

“24. We think that a pragmatic and humanistic approach is warranted in regard to such special exigencies. The word 'Shall' in clause b to Section 313 (1) of the code is to be interpreted as obligatory on the court and it should be complied with when it is for the benefit of the accused.”

23. Delhi High Court was dealing with a different situation in the concerned case, however, in that process, the court did come up with clear cut observations that the principle underlying Section 313 Cr.P.C. was “audi alteram partem” i.e. to afford an opportunity to the accused to explain adverse material or circumstances. The court further made it clear that the said provision was intended for the benefit of the accused, to explain circumstances, which might appear adverse to him, so that accused could explain them.

24. In the case of **Sivamani & Anr. v. State of Kerala, 1993 Cri.L.J. 23 (Kerala)**, while examining the scope of section 232 Cr.P.C., hon'ble Kerala High Court observed that an accused can be acquitted u/s 232 only when there is no evidence that he committed the offence. In that case, Kerala High Court dealt with the term of 'there is no evidence' and in that process the court referred to observations made by Division Bench of same court in the case of **State of Kerala v. Mundan, 1981 Cri.L.J. 1795 (Kerala)**, to the effect that where there is some evidence

connecting the accused with the commission of crime, it is the duty of the judge to pass on to Section 233 and not to appreciate that evidence and find out whether it was reliable or not, so as to pass an order u/s 232 of the Code. In the case of **Mundan** (supra), Kerala High Court had further observed that the words 'no evidence' in Section 232 Cr.P.C. cannot be construed and interpreted to mean absence of sufficient evidence for conviction or absence of satisfactory or trustworthy or conclusive evidence in support of the charge. The judge has to see whether any evidence has been let in on behalf of the prosecution in support of their case that the accused committed the offence alleged, and whether that evidence is legal and relevant. It is not the quality or quantity of the evidence that has to be considered at this stage. If there is any evidence to show that the accused has committed the offence, then the judge has to pass on to the next stage. It is not open to him to evaluate and consider the reliability of the evidence at that stage.

25. In the case of **Madan Mohan Jagga v. The State, 1984 Cri.L.J. 681 (Himachal Pradesh)**, even High Court of Himachal Pradesh examined the scope of 'no evidence' as appearing in Section 232 Cr.P.C. to observe that "this term neither means total absence of evidence, nor does it mean absence of cogent, convincing, reliable and trustworthy evidence. All that it means is that there is no inculpatory evidence against the accused in the sense that even if the prosecution evidence adduced is accepted at its face value, it would not amount to legal proof of the evidence, charged against the accused. In such a case, the court is not

required to marshal the evidence with a view to find out if it would be safe to act upon it or not.”

26. In view of above-mentioned observations made by higher courts, it had to be seen if at all examination of an accused u/s 351 BNSS was necessary in all the circumstances. As per S.351 BNSS, the inculpatory evidence appearing against the accused is to be put to him, so as to enable the accused to give his explanation. As per Section 255 BNSS, if the judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal. On conjoint reading of Section 255 and Section 351 BNSS, it becomes amply clear that the focus of the court has to be on inculpatory evidence. However, the expression 'no evidence' as mentioned in Section 255 BNSS has an important role to decide if examination u/s 351 BNSS is mandatory in all circumstances. If there is no admissible evidence on the record, so as to indicate towards the accused for commission of alleged offence, then there remains no occasion to seek any kind of explanation from the accused. In other words, if there is no inculpatory evidence on the record to connect the accused with the offences charged against him, then it is not a viable situation to seek any kind of explanation from him. In absence of inculpatory evidence on the record, examination u/s 351 BNSS shall be useless exercise, because accused is otherwise not required to explain evidence of any such fact, which does not connect him with the offences charged against him. Section 255 BNSS becomes relevant for such situation only.
27. For this purpose, as per law explained by higher courts,

appreciation of the evidence on the record was to be done on limited parameters i.e. without looking into the credibility and sufficiency of the evidence to convict the accused for the offences charged with. On analysing the evidence on the record, on the above-mentioned parameters, I did not find any incriminating evidence against any of the accused persons, which could connect them with the alleged riotous incident of killing of victim Aamir. Hence, statement of all accused persons u/s 351 BNSS was dispensed with, vis a vis all the charges except the charges framed under Section 153-A/505 IPC and 412/201 IPC. On perusal of the record and taking into consideration the view taken by this court in FIR No.35/20, PS Gokalpuri, the evidence qua charges under Section 153-A/505 IPC was looked into in this case and the relevant incriminating evidence was put to accused Lokesh Solanki. Similarly, the relevant incriminating evidence against accused Pawan was put to him which related to charge under Section 201/412 IPC. However, on analysing the evidence on the parameters of requisite ingredients of offence under Section 412 IPC, no incriminating circumstance to satisfy those ingredients could be found against accused Lalit. Hence, statement under Section 351 BNSS of accused Lalit also, was dispensed with.

PLEA OF ACCUSED LOKESH AND PAWAN

28. Accused Lokesh took plea that he did not know about the WhatsApp Chat retrieved from the phone of witness Shivam. He further took plea that he had not posted any message against any community. He did not deny that a mobile phone make Redmi

Y-2 with dual SIM facility having SIM of mobile number 7557497409 was taken from his possession by IO, with WhatsApp group in the name of "Kattar Hindut Ekta" and that there were messages from his afore-said mobile number in afore-said WhatsApp group. He also did not deny the correctness of CDR and CAF of mobile no. 7557497409, which was issued in his name. He took further plea that he was not an active member in afore-said WhatsApp group and he was added in this WhatsApp group by someone without his consent. He pleaded innocence.

29. Accused Pawan took plea that he did not use the mobile phone set (Intex) and that he did not give any information regarding Lalit. He also pleaded innocence.

FINAL ARGUMENTS OF DEFENCE & PROSECUTION
SECTION 153-A/505 IPC

30. **Sh. Nishant Tyagi**, ld. counsel for accused Lokesh Solanki argued that in the present case the ingredients of S.153-A IPC are not proved and satisfied. He submitted that the allegations against accused Lokesh could be covered under Clause (a) only and there are no allegations to invoke Clause (b) & (c) at all. According to him, for invoking Clause (a) malicious intent is very important and there must be consequences of the words spoken or written by the accused, to result into creating disharmony or riots etc. Ld. counsel submitted that accused Lokesh through his messages did not ask anyone to join him or to kill anyone. Accused rather offered his help to the others. It was further argued that the other members of that group were not before accused Lokesh in his

physical presence and there is no evidence that any of those members joined this accused for subsequent action. There is no evidence to show that any disturbance was created because of messages of accused Lokesh. Accused Lokesh did not hold any position of responsibility so that his messages could be given importance by anyone else. Thus, no one had listened to him and no one was influenced by his messages.

31. Per contra, **Sh. Saleem Ahmed**, Id. Special Public Prosecutor for State, argued that there is no requirement in law that there should be some consequence as outcome of the hatred messages. He submitted that if all the messages posted by Lokesh in the WhatsApp group are read together, then there cannot be doubt about satisfying the ingredients of S.153-A (a) IPC. He submitted that a sanction under S. 196 Cr.P.C regarding this offence was also duly proved.
32. **Ms. Mangla Verma**, Id. counsel appearing on behalf of victim also argued that Section 153-A (a) & (b) IPC do not require any consequent impact. She argued that these provisions only looked for requisite intention of the accused, which can be reflected from the messages posted by accused Lokesh.
33. A written argument was also filed on behalf of victim. In the arguments, it has been mentioned that in **Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431**, Supreme Court had analysed the ingredients of Sections 153-A and 505 IPC and held that while Section 153-A applies when a person, through spoken or written words, signs, or visible representations, promotes or attempts to promote feelings of enmity, hatred, or ill will, Section 505(2)

requires that such feelings be promoted specifically through a publication or by circulating a statement, rumour, or alarming news. In both sections, however, the presence of mens rea or criminal intent, is an essential element of the offence. Recently, the Court in **Patricia Mukhim v. State of Meghalaya**, (2021) 15 SCC 35 while referring to **Manzar Sayeed Khan v. State of Maharashtra**, (2007) 5 SCC 1, clarified that the intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole.

SECTION 412/201 IPC

34. **Sh. Rakshpal Singh** and **Sh. Hari Krishan**, ld. counsels for accused Pawan argued that there is contradiction in the testimony of PW22 and PW32 regarding recording of disclosure statement of accused Pawan. PW22 mentioned the date of 18.03.2020, while PW32 mentioned the date of 17.03.2020 for recording such statement. They further argued that PW32 deposed that they had gone in search of accused Pawan on 17.03.2020, though according to IO/PW39 they were not aware about Pawan before they met his father on 17.03.2020. It was further argued that IO did not establish the chain and circumstances under which the SIM card had allegedly reached upto accused Pawan. They submitted that no mobile phone make Intex was recovered from accused Pawan, rather it was planted upon him. IO did not make inquiry from any of those persons with whom the conversions would have taken place using afore-said SIM card, so as to

confirm if the SIM card was actually used by accused Pawan.

35. Per contra, **Sh. Saleem Ahmed**, Id. Special Public Prosecutor for State argued that CAF & CDR of mobile phone used by deceased Aamir i.e. Ex.PW33/K & Ex.PW33/J show that the particular mobile number was issued and was used by deceased Aamir. Same mobile number was subsequently found being used after the incident of killing of Aamir for some period, while using IMEI of the phone set, which was found from the possession of accused Pawan. The other SIM card used on that mobile phone set (Intex) was found allocated in the name of father of Pawan. He further submitted that S. 114 (a) of Indian Evidence Act provides for presumption, which was not rebutted by accused Pawan. He further submitted that Section 106 Evidence Act operated against accused Pawan to account for his possession of afore-said mobile set. He further submitted that IO deposed that Pawan had disclosed about destroying the SIM card, which was used in the name of deceased Aamir.

36. I have given due consideration to the rival contentions and perused the record.

APPRECIATION OF FACTS AND EVIDENCE

UNLAWFUL ASSEMBLY & RIOT

37. Though the first charge refers to a wide range of period from 25.02.2020 to 26.02.2020, but it has to be appreciated that FIR in this case was registered for murder of an unidentified person presumably by a mob. Subsequently, said dead person was identified as Aamir. On the basis of investigation, prosecution alleged in the chargesheet that this victim was killed on

26.02.2020 at about 9.40 P.M. at Bhagirathi Vihar Pulia. Therefore, talking about any unlawful assembly at any other place and at any other time, is irrelevant in this case. In the present case, I have to look for evidence of unlawful assembly at Bhagirathi Vihar Pulia at around 9.40 P.M. on 26.02.2020.

38. PW36/Narottam is the only witness, who claimed to have seen two bikers being intercepted by a mob near Johripur Pulia. As per testimony of PW36, either on 25 or 26.02.2020 at about 7-8 P.M., he saw a mob intercepting two bikers on T point bridge. One of them jumped into the drain (Nala) and the second biker was beaten. Thereafter second person also jumped into the drain. Such evidence on its face value, establishes that two persons riding a bike, were intercepted by a mob. One person jumped into the drain, while other person was beaten and he also jumped into the drain near Johripur Pulia (T point bridge). There is gap of time between the time-period deposed by PW36 and alleged time period of killing of Aamir. PW36 did not remember about the exact date also. Thus, testimony of PW36 does not lead to any concrete situation, to confirm the incident taking place in his presence, as alleged in this case. This witness was examined by prosecution in other cases also, including FIR 35/20 of same police station which related to murder of Hashim (brother of Aamir). However, prosecution did not take support from the statement made by this witness in other case. Thus, evidence of this witness on the record of this case, does not depict any incriminating circumstance against any accused.

39. PW13 and PW17 were the police officials. According to their

evidence, on 27.02.2020, they reached at drain in front of E block, Bhagirathi Vihar and they recovered three dead bodies from the drain. One motorcycle bearing no. DL-5S BA 7168 was also recovered from the drain in burnt condition, from nearby place to place of recovery of dead bodies. Number plate of the motorcycle was lying outside the drain. Record from transport authority related to motorcycle bearing aforesaid number, are Ex.A-1 and Ex.A-2. These documents show that said motorcycle (Apache) was registered in the name of Asgari, w/o Babu Khan. PW8/Babu Khan deposed that Hashim and Aamir were his sons. Aamir was having a bike bearing no. DL....7168, which was purchased in the name of wife of Babu Khan i.e. Asgari. According to evidence of PW8, PW10/Nasir and PW34/Shabina, on 26.02.2020 Aamir and Hashim had left for Mustafabad, Delhi from Ghaziabad on Apache bike at about 9 P.M. At about 9.30 P.M., Aamir had telephonic conversation with PW34, when Aamir informed that he had reached Gokalpuri Pulia. But thereafter Aamir or Hashim could not be contacted, as their phone was found switched off. PW10 also had telephonic talk with Aamir at about 9.30 P.M.

40. PW15 and PW19 did not find any other bike from the drain, at least from the place where 3 dead bodies were lying in the drain. Out of three, two bodies pertained to Hashim and Aamir. The postmortem examination report of Aamir Ex. A-5 shows that he had been inflicted several injuries including burn injuries. Aforesaid evidence read together, show that probably Hashim and Aamir were intercepted by someone in the night of

26.02.2020 near Johripur Pulia and Aamir was beaten as well as burnt. Aamir either jumped into the drain or he was thrown in the drain. Their motorcycle was also burnt and thrown into the drain. Therefore, on the basis of above-mentioned circumstantial evidences, it can be inferred that Hashim and Aamir were intercepted by someone which could or could not be a mob/unlawful assembly. Postmortem report of Aamir shows that he was inflicted 25 injuries and he died because of shock as a result of injury to his head. Thus, it can be inferred from the circumstances that it was a case of culpable homicide.

IDENTIFICATION OF ACCUSED PERSONS

41. Next question is that whether there is any evidence to show that accused persons prosecuted in this case, were behind killing of Aamir? Ld. Prosecutor submitted that the circumstantial evidence on the record, point out to the accused persons.
42. Before I proceed further, it shall be beneficial to have an idea of legal principles related to circumstantial evidence. In **K.T. Palanisamy Vs. State of Tamil Nadu, 2008 (1) RCR (Criminal) 870**, Supreme Court held that: -

“When the offence is said to have been committed and the circumstantial evidence is made the basis for establishing the charge against the appellant, indisputably all the links must be completed to form the basis for his conviction. It is now well settled that in a case where an offence is said to have been established on circumstantial evidence alone, indisputably all the links in the chain must be found to be complete.”

43. Hon'ble Supreme Court has dealt with the conditions, which need to be satisfied, before circumstantial evidence can be made the

basis of conviction. In **Shambhu Nath Mehra Vs. State of Ajmer** AIR 1956 SC 404; **Shivaji Shohib Rao Bobade Vs. State** AIR 1973 SC 2622; **Birdhi Chand Sarda Vs. State of Maharashtra** AIR 1984 SC 1622; **Pandala Veera Reddy Vs. State of A.P and Other** AIR 1990 SC 79; **C. Chenga Reddy and Others Vs. State of A.P** 1996 (3) 10 SCC 193; **Bodh Raj @ Bodha Vs. State of J & K** AIR 2002 SC 3164; **Trimukh Murty Kirka Vs. State of Maharashtra** 2007 (Crl.); **Vithal Eknath Adilinge Vs. State of Maharashtra** 2009(3) RCR (Crl.) 161, Hon'ble Supreme Court had the occasion to deal with the circumstantial evidence based cases. The principles for use of circumstantial evidence to arrive at the finding of guilt, as laid down by the Hon'ble Apex court, can be summarized as: -

- i) *The circumstances from which the conclusion of guilt is to be drawn, should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;*
- ii) *The facts so established should be consistent only with the hypothesis of guilt of accused, i.e. to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- iii) *The circumstances should be of a conclusive nature & tendency;*
- iv) *They should exclude every possible hypothesis except the one to be proved, and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

44. In the present case, the circumstantial evidence has been relied upon by Id. Prosecutor, for the reasons that the cited eye witnesses, did not support the prosecution on the aspect of identifying accused persons or any of them, as member of the

mob which had allegedly intercepted Hashim and Amir. In fact, except for PW36, no other witness claimed having seen any incident. Even evidence of PW36 remained inconclusive in respect of alleged incident. The circumstantial evidence has to be looked into, to see if a chain of facts is so established, as to lead to inference that accused persons or any of them, were part of a mob which was responsible for killing of Hashim and Aamir.

45. Ld. Prosecutor as well as the written arguments on behalf of victim, heavily relied upon the WhatsApp chats from above-mentioned group, to raise fingers against accused Lokesh Solanki and some others. These chats were proved to show extra judicial confessions made therein by accused Lokesh. The relevant part of those chats is as follows: -

“2/26/20, 9:45 AM - Binni: sare taiyaar rho
2/26/20, 8:29 PM - Binni: Bhai taiyaar rho kaam start hone vala hai
2/26/20, 8:29 PM - Binni: taiyaar rho sare
2/26/20, 8:30 PM - Binni: puliya se pipeline ki trf aarge hai suer
2/26/20, 8:44 PM - +91 97168 29847: Aane du in mullo ka suar bna denge
2/26/20, 10:22 PM - +91 70539 44604: Bhaio ye danga q ho raha h nale par abhi jo hua tha
2/26/20, 10:22 PM - +91 70539 44604: Jhoripur nale par
2/26/20, 10:24 PM - +91 96435 06209: Dikat lag rhi he 6 no me sab ready rhena
2/26/20, 11:39 PM - **+91 75574 97409: Bhai Mai Ganga Vihar se lokesh Solanki hu agr kisi ko koi problem ho or wha log Kam pde to bta dena Mai apni Puri Ganga Vihar ki team k sath aayunga Sara Saman hai humare pass goli bandook sab kuch**
2/26/20, 11:40 PM - **+91 75574 97409: Bhai Pura support hai abhi Hindu bhaiyo ko**
2/26/20, 11:40 PM - **+91 75574 97409: Bilkul bhai Ganga Vihar gokulpuri jhoripur sb sath hai tumhare**

2/26/20, 11:41 PM - +91 97739 29196: 15 k Dane h kya
2/26/20, 11:41 PM - +91 97739 29196: Kisi Bhai k pass
2/26/20, 11:41 PM - +91 95992 45196: Monty Nagar.vcf (file attached)
2/26/20, 11:41 PM - +91 95992 45196: Bahi ad kro bhai ktr hindu h
2/26/20, 11:41 PM - +91 95992 45196: Yeh
2/26/20, 11:41 PM - +91 75574 97409: **Pistol hai**
2/26/20, 11:42 PM - +91 75574 97409: **Humare pass**
2/26/20, 11:42 PM - +91 97739 29196: Faltu h kya
2/26/20, 11:42 PM - +91 97739 29196: Bhai goli h Kya 315 ki
2/26/20, 11:44 PM - +91 75574 97409: **Tumhare Bhai ne abhi 9 bje k krib b.vihar m 2 mulla mare hai**
2/26/20, 11:44 PM - +91 75574 97409: **Or nale m feka hai**
2/26/20, 11:44 PM - +91 97168 29847: Bilkul Lokesh bhai
2/26/20, 11:44 PM - +91 75574 97409: **Apni team k sath**
2/26/20, 11:44 PM - +91 70539 44604: Haa bhai
2/26/20, 11:45 PM - +91 97168 29847: Ha
2/26/20, 11:45 PM - +91 75032 34804: Rajput bhai bhagirath vihar me bande bhej do
2/26/20, 11:45 PM - +91 75574 97409: Bhai abhi thodi aarhe hai hum sab raily lekr
2/26/20, 11:45 PM - +91 75574 97409: B.vihar m
2/26/20, 11:45 PM - +91 97739 29196: Koi dikkt na h Bhaiyo
2/26/20, 11:49 PM - +91 75574 97409: Vinay tumhe pta hai na tumhara Bhai sbse aage rhta hai aise kamo m”

46. Such posts/messages may be put in the group solely with intention of becoming hero in the estimation of other members of the group and the alleged confession could be only a boast without truth. Hon’ble Supreme Court has dealt with confessions including extra judicial confession, in many cases. The judgments of **Pancho v. State of Haryana, (2011) 10 SCC 165**; **Pyare Lal v. State of Rajasthan, AIR 1963 SC 1094**; **Sahadevan v. State of Tamil Nadu, (2012) 6 SCC 403**; **State of Maharashtra v. Damu, (2000) 6 SCC 269**; **Chandrapal v. State of Chhattisgarh,**

(2022) LiveLaw (SC) 529; Ramu Appa Mahapatar v. The State of Maharashtra, 2025 INSC 147, uniformly classify extrajudicial confessions as corroborative evidence rather than substantive. They cannot form the sole basis for conviction due to their inherent weaknesses and they must be supported by independent, reliable evidence. The Supreme Court has emphasized for voluntariness, truthfulness, and corroboration, reflecting safeguards under Article 20(3) of the Constitution (protection against self-incrimination).

47. In the facts and circumstances of this case, the relied upon confessional chats, cannot be substantive evidence to show that accused Lokesh had actually killed two muslim persons. Above-mentioned chats, at the most could be used as corroborative piece of evidence, so as to support the substantive evidence. But there is no substantive evidence showing complicity of Lokesh in the alleged incident. Moreover, they cannot be read, as confession of killing Hashim and his brother Aamir. Prosecution has used same confession for killings of nine persons in different cases. Thus, even prosecution used it only as circumstantial evidence, without being sure as to for which particular victim, this particular chat related to. The first chargesheet itself mentioned about three incidents of killing on 26.02.2020 between 9.15 P.M. and 9.40 P.M. So, even otherwise the relied upon confessional message in the group, cannot be evidence of all these killings between 9.15 P.M. and 9.40 P.M. The argument of ld. Prosecutor that the chats show that Lokesh and other accused persons who were member of that group, were involved in the riots. However, I find that this

plea is just a general presumption without support of substantive evidence and has no bearing in this case. It shall be matter of analysis of other piece of circumstantial evidence, to see if the chain of all circumstances has been connected, to show involvement of Lokesh and others in the incident leading to death of Aamir.

48. Ld. Prosecutor and ld. counsel for victim, also relied upon testimony of PW1/Nisar. PW1 claimed having seen and identified several persons including some accused persons, in the mob present near Bhagirathi Nala or Johripur Pulia at different points of time than the alleged time of incident in this case. In that situation, any name being mentioned by PW1, becomes worthless.
49. Ld. Prosecutor argued that evidence of PW1 shows a pattern of presence in the mob during the period since 24.02.2020 upto 26.02.2020. Before I deal with this plea, it is worth to refer to some part of the evidence of PW1. In his cross examination by prosecutor, PW1/Nisar deposed that he had subsequently come to know from police that murders had taken place at Johripur Pulia. This goes on to show that he had not seen any incident of murder himself. PW1/Nisar admitted suggestion of the prosecutor that he had told name of some persons to police, who were part of the mob seen by him and who continued rioting for whole day of 25.02.2020 and they used to kill muslim persons. However, PW1 denied the suggestion that he had told before police about the same continuing till night of 26.02.2020.
50. First of all, such admission of suggestion does not become

evidence of the stated facts, because what was told by PW1/Nisar before police, does not become substantive evidence. What was deposed by him before the court, is the substantive evidence. Secondly, even this statement does not show if PW1/Nisar had seen any particular incident of murder. This was a generalized statement, perhaps based on hearsay, which does not help in the trial of a particular incident. Therefore, even without going into question of credibility of evidence of PW1/Nisar, I find that his evidence does not help the case of prosecution in any manner, to prove involvement of any accused in the alleged incident or to connect any chain of circumstances.

51. As far as pattern of presence in the mob for three days, is concerned, it cannot be forgotten that prosecution has chargesheeted the accused persons, for murder of Aamir with aid of S.149 IPC. Unless, it is shown that there was a mob, which killed Aamir and unless the identity of members of the culprit mob is established, vicarious liability cannot be fastened upon anyone else. In absence of some concrete evidence laying down the foundation, no presumption can be raised that some persons identified as part of some mob at some place at some other time period, would also have been part of a mob, and such mob was involved in the incident of murder of Aamir.
52. Ld. Prosecutor further referred to evidence of PW9/Ct. Vipin, submitting that this witness also had heard names of some accused, being taken by the members of a mob. As per testimony of this witness, on 26.02.2020 he was on duty. On that day at about 10 P.M., he was present near Ganda Nala Pulia known as

Ganga Vihar Pulia. He was coming towards that Pulia (bridge) from the side of Ganga Vihar and he saw a mob near that Pulia. On seeing police, that mob started dispersing away and while running away from that place, they took names of Rishabh, Pankaj, Prince, Avadesh, Ankit and many other names. All of them fled away from that place and this witness could not see any person. This witness could not remember other names heard by him but, when Id. Prosecutor suggested names of Himanshu, Lokesh Rajput, Jatin, Monty Nagar, Pawan, Monu and Sumit, then this witness admitted having heard these names as well at Ganga Vihar Pulia. He was also witness of the proceedings wherein Lokesh had pointed out to photographs of some accused persons and had told their names before IO.

53. There are two site plans proved on the record as Ex.PW17/B and Ex.PW18/A. In site plan Ex.PW18/A i.e. a scaled site plan, there is only one Pulia, which is referred as Bhagirathi Vihar Jal Board Pulia. Place of incident is also shown near that Pulia. Unfortunately, prosecution did not get it confirmed from PW36 or PW9, as to it was same place where PW36 had seen two bikers being intercepted, or PW9 had seen the mob. Moreover, in none of these two site plans, there is any reference to Ganga Vihar or Ganga Vihar Pulia. Thus, the evidence of prosecution regarding place of recovery of dead body and motorcycle, does not refer to Ganga Vihar Pulia. Prosecution has not come up with any evidence to show that Ganga Vihar Pulia and Bhagirathi Vihar Pulia were same. There is no evidence to confirm the place where victim and his brother was intercepted. In the written

argument on behalf of victim, statement of PW9 is quoted to say that distance between Ganga Vihar and Bhagirathi Vihar was 100 meters. I find this distance to be irrelevant in this case, for ascertaining the culprit in the case. This distance does not help in any manner to raise any inference. The drain (Bhagirathi Drain) was stated to be between Ganga Vihar and Bhagirathi Vihar. Both these localities are across the drain to each other. It is not the case of prosecution that there was only one pulia (bridge) between these two localities. Therefore, whatever was heard by PW9, cannot be connected with the alleged incident, nor on the basis of the same it can be inferred that any of the accused persons were part of a mob, which could be behind the killings of Aamir.

54. Other circumstance relied by Id Prosecutor and Id. counsel for victim, was recovery of a stick (Danda) each from Himanshu, Jatin and Vivek in other cases. Those sticks were sent to Forensic Department of GTB Hospital. The Board of Doctors, who had conducted postmortem examination, gave opinion that the injuries found on the body of Aamir, could be caused by those sticks. However, at the same time nothing more was found on any of those sticks, so as to say that same sticks were used to inflict injuries upon Aamir. Hence, such general opinion does not help much, so as to infer anything against these three accused persons in the present case.
55. Thus, in the name of circumstantial evidence, there are some fragments and pieces of evidence, which fall much short to point out towards any of the accused persons as culprit for killing of Aamir.

S.153-A/505 IPC

56. In the written arguments filed on behalf of victim, some case laws are referred, which are **Bilal Kaloo v. State of A.P., (1997) 7 SCC 431; Patricia Mukhim v. State of Meghalaya, (2021) 15 SCC 35** and **Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1.**
57. It is relevant to reproduce the provisions u/s 153-A and 505 IPC, which are as follows:

S.153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. — (1) Whoever— (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or (c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or

knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

S.505. Statements conducing to public mischief. — (1) Whoever makes, publishes or circulates any statement, rumour or report, with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

58. In the case of **Patricia** (supra), hon'ble Supreme Court while dealing with aforesaid legal provisions, made following observations: -

“9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the sine-qua-non of the offence under Section 153

A IPC and the prosecution has to prove the existence of mens rea in order to succeed.¹

10. The gist of the offence under Section 153 A IPC is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.

11. In Bilal Ahmed Kaloo v. State of A.P.³, this Court analysed the ingredients of Sections 153 A and 505 (2) IPC. It was held that Section 153 A covers a case where a person by “words, either spoken or written, or by signs or by visible representations”, promotes or attempts to promote feeling of enmity, hatred or ill will. Under Section 505 (2) promotion of such feeling should have been done by making a publication or circulating any statement or report containing rumour or alarming news. Mens rea was held to be a necessary ingredient for the offence under Section 153 A and Section 505 (2). The common factor of both the sections being promotion of feelings of enmity, hatred or ill will between different religious or racial or linguistics or religious groups or castes or communities, it is necessary that at least two such groups or communities should be involved. It was further held in Bilal Ahmed Kaloo (supra) that merely inciting the feelings of one community or group without any reference to any other community or group cannot attract any of the two sections. The Court went on to highlight the distinction between the two offences, holding that publication of words or representation is sine qua non under Section 505.”

59. This charge is based on the chats posted in the aforesaid WhatsApp group. This group was created on 24.02.2020 at 19:19:42 hours. Accused Lokesh was member of this group since

beginning. Some of the messages posted by him in this group, are already reproduced in this judgment. I have gone through the messages posted in this group by different members. As the name suggests, the central focus of messages in this group have been to unite the persons from Hindu community. However, on that pretext, messages started pouring in to the effect of abusing the muslims. Messages were posted to call upon the members to assemble together, so as to counter the muslims.

60. In the given scenario of riots which started from 24.02.2020, any communication only for the purpose of being united or to come together to counter any attack from rival group, can be understandable. However, messages in the aforesaid group were not limited to this extent only. There were abuses in some messages for muslims. There were instigations against the community of muslim. For example, some of such messages are reproduced herein below: -

“9mullo ko maar diya gya hai.
brijpuri puliya pr.
himmat bnaye rkho or inki bajaye rkho.”

61. Among such kind of messages, accused Lokesh also posted messages like mentioned herein below: -

“Are inki MAA ki ch—
Jo krna hai kro
Are sbki maa cho—
Dekha jayega
Group m bakchodi krne se kya hoga
Agr Kuch krna hai to
Bhar road pr aao na”

62. The messages posted in the group by accused Lokesh on 26.02.2020, have already been reproduced in paragraph 45. I

have deliberately skipped to reproduce some of the messages containing abuses and only a few of them have been mentioned here. Thus, in the background of messages posted earlier in the aforesaid group and the kind of participation shown by accused Lokesh therein, the messages posted by him on 26.02.2020 leave no doubt that theme of all those messages was to mobilize the members against muslim persons. It is also well apparent that intent of the messages posted by accused Lokesh, was to instigate the others against muslim persons. This act was in fact alike spreading hatred for muslim persons and to instigate others to resort to violence against them.

63. I am in agreement with the arguments of Id. Prosecutor and Id. counsel for victim, that there is no requirement of evidence of consequent action taking place, on the basis of messages posted by accused Lokesh. Thus, I do find that accused Lokesh through his messages attempted to promote disharmony, feeling of enmity and hatred for muslim persons and he committed offence defined and punishable under S.153-A IPC.
64. Accused Lokesh offered to others to help with weapons etc., which was to incite others to commit offences against muslim persons, because no person without authority of law can use weapon or force against any person. If force or weapons were to be used by any member of this group against muslim persons, then it had to be an offence. Thus, messages posted by accused Lokesh are also found to be with intent to cause alarm to other members of the group and to induce them to commit offence against muslim persons and against public tranquility, being

punishable under S.505 IPC.

S.412/201 IPC

65. Section 412 IPC deals with dishonestly receiving or retaining stolen property, with knowledge of such property being acquired by the commission of dacoity, or with knowledge that the person from whom such property is being received, is member of a gang of dacoits, or the knowledge that it is a stolen property, or having reason to believe that such property is stolen property. The burden of proof lies with the prosecution to establish the elements of the offence beyond reasonable doubt. To convict a person under Section 411 or 412 IPC, the prosecution must prove the following:
1. The property in question was obtained through theft (as defined under Section 378, IPC) or related offenses like robbery or dacoity.
 2. The accused had possession or control of the stolen property.
 3. The accused knew or had reason to believe that the property was stolen i.e. the accused was aware or had reasonable grounds to suspect that the property was stolen.
 4. The act was done dishonestly i.e. the accused acted with intent to wrongfully gain or cause wrongful loss to the rightful owner.
66. There can be situation where the accused directly knew that the property was stolen (e.g., he was informed by the thief or witness of the theft). Reason to believe means that the accused had such circumstances that would lead a reasonable person to suspect the property to be stolen, which may include purchasing goods at a

suspiciously low price or acquiring property in a clandestine or irregular manner (e.g. late-night transactions without documentation).

67. The prosecution bears the burden of proving all elements of the offence beyond reasonable doubt. The accused is not required to prove his innocence. Ld. Prosecutor mentioned about S. 114 (a) of the Indian Evidence Act. This provision provides that if the accused is found in recent possession of stolen property and he cannot satisfactorily explain as to how did he acquire it, the court may presume that accused stole that property or he knew that it was stolen property or he dishonestly received it. This is a rebuttable presumption meaning thereby the accused can offer an explanation to counter it, but the ultimate burden remains with the prosecution to prove the ingredients of the offence.
68. In the case of **Trimbak v. State of Madhya Pradesh**, AIR 1954 SC 39, Supreme Court held that mere possession of stolen property does not automatically prove guilt unless the prosecution shows the accused had knowledge or reason to believe it was stolen. In the case of **Shiv Kumar v. State of M.P.**, (2022) 7 SCR 493, while relying upon aforesaid judgment, Supreme Court again observed that “12. *In this case, although recovery of items was made, the prosecution must further establish the essential ingredient of knowledge of the appellant that such goods are stolen property. Reliance solely upon the disclosure statement of accused Raju alias Rajendra and Sadhu alias Vijaybhan Singh will not otherwise be clinching, for the conviction under Section 411 of the IPC.....The penal Section extracted above can be broken*

down into four segments namely: Whoever, I. Dishonestly; II. Receives or retains any stolen property; III. Knowing; or IV. Having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

15. To establish that a person is dealing with stolen property, the “believe” factor of the person is of stellar import. For successful prosecution, it is not enough to prove that the accused was either negligent or that he had a cause to think that the property was stolen, or that he failed to make enough inquiries to comprehend the nature of the goods procured by him. The initial possession of the goods in question may not be illegal but retaining those with the knowledge that it was stolen property, makes it culpable.”

69. In the present case, prosecution alleged that a mobile phone was recovered from the possession of accused Pawan, and SIM card issued in the name of deceased Aamir, was used on that phone set after killing of Aamir. The CDR of mobile phone number issued in the name of Aamir, i.e. Ex.PW33/I, shows that said number was used on mobile phone set bearing same IMEI number, which pertained to mobile phone (Intex), from 02.03.2020 to 10.03.2020. However, prosecution did not prove the CAF of mobile number, which was allegedly found in the name of father of accused Pawan. Moreover, there is merit in the argument of ld. defence counsel that IO did not confirm from those persons, with whom conversations had taken place using SIM card in the name of Aamir on this phone set (Intex), as to who was actual user of

this mobile phone and that SIM card. Most importantly, prosecution did not prove any such circumstance, which could lead to inference that this SIM card was received with knowledge of same being stolen property. In my opinion, presumption u/s 114 (a) of I.E. Act cannot come into play in this case, because there was a big gap of the mobile phone of Aamir being stolen/robbed and recovery of this phone from accused Pawan or accused Lalit. IO deposed that accused Pawan had disclosed to him that mobile phone and Sim card of Aamir was given to Pawan by one Babu. But IO could not find that Babu. The allegation of prosecution that Pawan and Lalit disclosed before IO that SIM card of Aamir was destroyed by them, is not acceptable because it is hit by S.24, S.25 and S.27 of I.E. Act. This alleged disclosure did not lead to recovery of any new fact. There is no evidence on the record, except for one circumstance of mobile phone sets being found in possession of Pawan and Lalit, to show that it was Pawan who actually used the SIM card of Aamir. S.106 I.E. Act could have application in this case, only when aforesaid fact would have been established. There is no evidence to show that Pawan or Lalit had the knowledge of the SIM card and mobile phone set being stolen property. Thus, I find that charges u/s 201 are not proved against Pawan. Evidences on the record do not establish all ingredients of offence u/s 412 IPC either against Pawan or Lalit.

CONCLUSION & DECISION

70. In view of my foregoing discussions, observations and findings, I find that charges under Sections

144/147/148/188/302/427/432/435/395/396/34 IPC read with Section 149 IPC, are not proved at all, against accused namely 1. Lokesh Kumar Solanki, 2. Pankaj Sharma, 3. Sumit Chaudhary @ Badshah, 4. Ankit Chaudhary, 5. Prince @ D.J. Wala, 6. Rishabh Chaudhary, 7. Jatin Sharma @ Rohit, 8. Vivek Panchal @ Nandu, 9. Himanshu Thakur, 10. Tinku Arora, 11. Sandeep @ Mogli and 12. Sahil @ Babu. Hence, they are acquitted of such charges.

71. Accused 1. Pankaj Sharma, 2. Sumit Chaudhary @ Badshah, 3. Ankit Chaudhary, 4. Prince @ D.J. Wala, 5. Rishabh Chaudhary @ Tapal, 6. Jatin Sharma @ Rohit, 7. Vivek Panchal @ Nandu, 8. Himanshu Thakur, 9. Tinku Arora, 10. Sandeep @ Mogli and 11. Sahil @ Babu are also acquitted for charges under Sections 153-A/505 IPC.
72. Accused Pawan Kumar @ Lokesh and Lalit Kumar @ Rahul Chaudhary are acquitted for charges under Sections 201/412 IPC.
73. Charges under Sections 153-A/505 IPC stand proved against accused Lokesh Kumar Solanki and he is held guilty and convicted under both these provisions.

Digitally signed
by PULASTYA
PRAMACHALA
Date:
2025.05.13
16:27:39 +0530

Announced in the open court
today on 13.05.2025
(This order contains 68 pages)

(PULASTYA PRAMACHALA)
ASJ-03 (North- East)
Karkardooma Courts/Delhi