



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

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Sessions Case No.	:	09/2021
Under Section	:	148/153A/302/436/450 IPC r/w 149 IPC as well as Section 188 IPC
Police Station	:	Gokalpuri
FIR No.	:	39/2020
CNR No.	:	DLNE01-000297-2021

In the matter of: -

STATE

VERSUS

MOHD. SHAHNAWAZ @ SHANU

S/o. Mohd. Rashid,
R/o. H.No. A-528, Gali No.22,
Phase-10, Shiv Vihar, Delhi.

...Accused

Case registered on ASI Gajraj Singh
the complainant of

Date of Institution : 04.06.2020
Date of reserving order : 13.02.2025
Date of pronouncement : 24.02.2025
Decision : Acquitted.

(Section 481 BNSS complied with by the accused)

JUDGMENT

THE CASE SET UP BY THE PROSECUTION: -

1. The above-named accused has been charge-sheeted by the police for having committed offences punishable under Section 144/147/148/149/188/153A/302/201/427/436/120B/34 IPC.
2. Brief facts of the present case are that on 26.02.2020 at about 01:04 PM an information was recorded in PS Gokalpuri vide DD No.17-A to the effect that mob was pelting stone near Kabir Building, Gali No.1, Bhagirathi Vihar. ASI Giri Raj went to

afore-said place. Ct. Vipin met ASI Giri Raj and informed him that, rioters had set the house of owner of Anil Sweets, on fire, which was situated in Chaman Park. Accordingly, ASI Giri Raj and Ct. Vipin reached the afore-said property in Chaman Park. They found that this house was in burnt condition. During inspection of this house on the 2nd floor, they found half burnt dead body of a person in a hall. Hands and legs of the dead body were missing. On inquiry, it was found that it was Godown of Anil Pal and that it was dead body of a person namely Dilbar, who used to work as waiter for Anil Pal. Dead body was sent for postmortem examination to GTB hospital and DD No.41-A was recorded in PS at the instance of Duty Constable from GTB hospital. ASI Gajraj obtained MLC of this dead body. DD entries No. 17-A and 41-A were kept in abeyance due to rush of a number of PCR calls. On 28.02.2020 on the basis of DD No.41-A dated 26.02.2020, ASI Gajraj got this FIR registered for offence u/s. 147/148/149/302/201/436/427 IPC.

3. In the chargesheet, IO has given account of background of riots taken place in Delhi and several incidents taken place at different parts of Delhi on different dates. Crux of such narration is that communal riot had started in Delhi since 24.02.2020. Insp. Pramod Joshi started investigation in the present case. During investigation, he examined different persons including Devender (brother of deceased), Shyam Singh and Anil Pal.
4. Mr. Devender (brother of deceased) identified dead body of Dilbar. As per statement given by Shyam Singh, on 24.02.2020

Dilbar had gone to the Godown at about 02:00 PM to have his lunch. Since around 02:30 PM pelting of stones started near their shop (Anil Sweets), due to which the shop was closed and all the workers including owner remained inside that sweet shop. After around one hour they left that place and this witness came to rescue brother and nephew of Anil from their Pastry Shop. Thereafter, this witness along with others went to the terrace of Dairy of Anil. From that place they saw that number of persons had gone up to terrace of Godown of Anil and they were vandalizing that Godown. Those persons were pelting stones towards this witness and other persons. The witness saw the rioters entering their Godown along with petrol filled bottles, stones etc. at about 06:40-06:45 PM. Shanu @ Shahnawaz was one of them. At about 07:30-08:00 PM this witness met another worker of his shop namely Mahesh. Mahesh informed him about having telephonic talk with Dilbar and that Dilbar was stuck in that Godown in property no. A-29, Chaman Park since afternoon. At about 09:30 PM, this witness made call to Dilbar on his phone, but his phone was switched off and this witness informed this fact to his employer Anil. Next day, they could not visit that Godown due to riots and they did not have any information about Dilbar.

5. Crime team also inspected the place of recovery of dead body and lifted some mobile phone and batteries in damaged/burnt condition. Subsequently, investigation of this case was transferred to SIT Crime Branch on 05.03.2020. Insp. Surrender

Kumar started further investigation in this case. FSL team was called at scene of crime on 05.03.2020. He obtained video of CCTV footage from Rajdhani School, which was seized in FIR No. 134/20, PS Dayalpur.

6. IO examined various witnesses in the case. He also obtained postmortem examination report. On the basis of name of culprits mentioned by the witnesses, IO arrested several accused persons on different dates. He also added Section 120-B, 153-A and 34 IPC in this case. He examined CCTV footages also for identification of the accused persons. The exhibits lifted from the scene of crime were sent to FSL for examination. Section 188 IPC was also added in view of operation of proclamation u/s. 144 Cr.P.C. at the relevant time. DNA profile of the deceased was generated and on the basis of DNA match, it was confirmed that the deceased was Dilbar Negi.
7. After completion of investigation, IO prepared a chargesheet on the basis of materials collected, against 12 accused persons including accused Mohd. Shahnawaj @ Shanu, for offences u/s.144/147/148/149/188/153A/302/201/427/436/120B/34 IPC. This chargesheet was filed on 04.06.2020 before Duty MM-2 (North-East), Karkardooma Courts, Delhi. On 08.07.2020, first supplementary chargesheet was filed before Id. CMM, North East District, Karkardooma Court, Delhi along with a complaint under Section 195 Cr.P.C. Thereafter on 10.09.2020, Id. CMM (N/E) took cognizance of offences punishable under Section 144/147/148/149/188/302/201/427/436/120-B/34 IPC. Vide this

order, ld. CMM (N/E) declined to take cognizance of offence u/s 153-A IPC, for want of sanction u/s. 196 Cr.P.C. Thereafter, case was committed to the court of sessions vide order dated 14.01.2021. Subsequently on 27.10.2022, one more supplementary chargesheet along with sanction u/s. 196 Cr.P.C. and other documents, was filed before this court directly.

8. Thereafter on 30.05.2023, one more supplementary chargesheet was filed by IO/Insp. Kanwar Singh in response to queries raised by this court vide order dated 25.10.2023. Those queries were as under: -
- (a) What conversations had taken place between deceased Dilbar and other persons telephonically since evening till night of 24.02.2020?
 - (b) What is the status of missing limb and hands of the deceased and reasons thereof?
 - (c) What is the status of other persons named by witnesses in their statement being part of the rioters, in respect of which in the main chargesheet it was reported that investigation is still continuing, but in the subsequent supplementary chargesheets their status was not explained?
9. Thereafter on 16.10.2023, Insp. Surender Kumar had furnished clarificatory information regarding relied upon videos in this case and related facts, which are as under: -
- (a) Three videos pertaining to CCTV footage from CCTV camera installed in Rajdhani Public School, which covered the footage up to around 3 to 05:35 PM.
 - (b) Another video of different camera (Ch-1) of Rajdhani Public School, which covered footage till around 4 PM.
 - (c) Fifth video covering adjoining gali to Rajdhani Public School till

around 4 PM.

- (d) Other three videos recorded by Ankit in his mobile phone of the time around 5 PM.
10. Thereafter, out of 12 accused persons, 11 accused persons namely Mohd. Faizal, Azad, Asraf Ali, Rashid @ Monu, Shahrukh, Mohd. Shoaib @ Chhutwa, Parvez, Rashid @ Raja, Mohd. Tahir, Salman (s/o. Shah Mohd.) and Sonu Saifi, were discharged in this case by this court, vide order dt. 25.10.2023.

CHARGES

11. On 25.10.2023, charges were framed against accused Shahnawaz @ Shanu only, for offences punishable under Section 148/436/302/450/153-A IPC read with Section 149 IPC and 188 IPC to which he pleaded not guilty and claimed trial. The charges were framed in following terms: -

“That on 24.02.2020, from around 02:30 PM onwards till night time, in and around the area of Chaman Park, Delhi; within the jurisdiction of PS Gokalpuri, you the above named accused along with your other associates (unidentified) i.e. more than five persons from Muslim community, had formed an unlawful assembly, the common object whereof was to cause maximum damage to the properties of persons from Hindu community, and to commit vandalism, arson and riot, by the use of force and violence, and to disturb the public tranquillity by jeopardizing harmony between religious communities of Hindus and Muslims; to harm Hindus by all means including to kill them; and in prosecution of the common object of such assembly, and in violation of the proclamation issued under section 144 Cr.P.C. by DCP, North-East vide order dated 24.02.2020 bearing no.10094-170 X-1, North-East, Delhi dated 24.02.2020, which was duly announced in all the localities of District North-East including area of PS Gokalpuri, this mob including you accused

committed riot being equipped with dangerous weapons like stones, danda, bottles of petrol bomb etc. and you knew being member of the afore-said unlawful assembly that an offence was likely to be committed in prosecution of that common object; and thereby you accused committed offences punishable under section 148 IPC read with section 149 IPC as well as section 188 IPC and within my cognizance.

Secondly, on the afore-said date at around 9 PM and thereafter, within the jurisdiction of PS Gokalpuri, this mob including you accused committed mischief by fire or explosive substance such as petrol bomb etc. and by using those explosive substance, you set ablaze the Godown situated at A-29, Chaman Park, Delhi, belonging to Sh. Anil Pal; and thereby you accused committed an offence punishable under section 436 IPC read with section 149 IPC and within my cognizance.

Thirdly, on the afore-said date at around 9 PM and thereafter, within the jurisdiction of PS Gokalpuri, Dilbar Negi died out of asphyxia due to inhalation of smoke, as a result of pelting petrol bombs and setting Godown of Anil situated at A-29, Chaman Park, on fire by this mob including you accused and you all are presumed to know that the person present in such property or being hit with petrol bomb and catching fire, will burn to his death; and thereby you accused committed an offence punishable under section 302 IPC read with section 149 IPC within my cognizance.

Fourthly, on the afore-said date at around 9 PM, within the jurisdiction of PS Gokulpuri, this mob including you accused entered into Godown of Anil situated at A-29, Chaman Park, in order to vandalize and set it ablaze; and thereby you accused committed an offence punishable under Section 450 IPC read with Section 149 IPC and within my cognizance.

Fifthly, on the afore-said date, time period and place, within the jurisdiction of PS Gokalpuri, this mob including you accused indulged into such acts against persons from

Hindu community and their properties, so as to vandalize and set on fire such properties, which was prejudicial to the harmony between religious communities of Muslims and Hindus and which disturbed the public tranquillity by jeopardising harmony between Hindu and Muslim community; and thereby you accused committed an offence punishable under section 153-A IPC read with section 149 IPC within my cognizance.”

DESCRIPTION OF PROSECUTION EVIDENCE

12. Several witnesses were dropped on the basis of admission of documents under Section 294 Cr.P.C. and prosecution examined 20 witnesses in support of its case, as per following description: -

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
PW1/ACP Mahesh	On 08.04.2020 PW1 visited H.No. A-29, Chaman Park, Shiv Vihar, Delhi. On the instruction of IO/Insp. Surender Kumar, PW1 took measurements of 2nd floor of this property as well as the surrounding areas on the ground floor. On the basis of those measurements, PW1 prepared scaled site plan on 30.04.2020, on the computer in his office. PW1 handed over this site plan to IO on 02.06.2020. On 16.09.2022, PW1 again visited aforementioned H.No. A-29, as he was called by IO/Insp. Kanwar Sain. On his instruction, PW1 took measurements near that property and surrounding areas of this property of 2 witnesses. On 19.09.2020, PW1 prepared scaled site plan on the computer in his office, on the	Ex.PW1/A & Ex.PW1/B (Site plans prepared by PW1)

	basis of measurements taken by him in this case.	
PW2/ASI Gajraj Singh	On receipt of DD No.17-A, PW2 visited Kabir Gali, Bhagirati Vihar on 26.02.2020, where he met HC Vipin. On pointing out of HC Vipin, PW2 went to Godown of Anil Sweets situated on the Brijpuri Road, Chaman Park. It was 3 storey building and the whole property was in burnt condition. While checking that property, they found one dead body in burnt condition on the 2nd floor. Head of this body was towards west direction. Both limbs and hands of this body were missing. PW2 had taken 2-3 photographs of that dead body. Workers of that Godown had informed him about name of dead person as 'Dilbar Negi'. PW2 informed SHO about the same and he came to that place. Thereafter said body was sent to GTB hospital by Ct. Vipin. On same day, PW2 was marked another DD No.41A regarding preparation of MLC of afore-said body, wherein he was declared 'brought dead'. PW2 obtained that MLC from GTB hospital. On 28.02.2020, PW2 prepared tehrir on DD No.41A and handed over the same to DO/ASI Rakesh Kumar, to register a case. After registration of FIR in this case, investigation was assigned to Insp. Pramod Joshi. PW2 identified Tehrir prepared by him from points A to A1 on print of DD No.41A. On 28.02.2020, PW2 recorded statement of Devender (brother of Dilbar Negi)	Ex.PW2/A (Tehrir prepared by PW2) & Ex.PW2/B (site plan prepared by IO/Insp. Joshi in the presence of PW2)

	alongwith Anil and one more person, as per directions given by SHO. Thereafter, they went to GTB hospital mortuary, where dead body was identified by Devender and the other person. PW2 filled up and prepared request letter and form 25.35 for postmortem examination of that dead body, which are Ex.A-6 & Ex.A-8 respectively. On same day, postmortem examination was conducted, which was video recorded as well. Thereafter dead body was handed over to the family members. PW2 had prepared a delivery memo accordingly, carbon copy of which is Ex.A-13. In GTB mortuary, PW2 was handed over one viscera box, two jars and one envelope in sealed condition. PW2 handed over these exhibits to Insp. Pramod Joshi, who seized the same, vide a seizure memo Ex. A-18 in the presence of PW2. On 02.03.2020, PW2 alongwith IO/Insp. Joshi went to same property to get inspection of the same done by Crime Team. ASI Mahavir and Ct. Javed/photographer came there for inspection. One mobile phone and one battery were lying in burnt condition at the place where dead body was initially lying. IO seized them in open condition, vide a seizure memo, which is Ex. A-21. On 28.02.2020, Insp. Joshi/IO had prepared site plan of this place in the presence of PW2. On 02.03.2020 from the top floor of this property, 3 mobile phones in damaged condition with their	
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	batteries in damaged condition were seized by IO in open condition, vide seizure memo is Ex.A-19. On same day, after coming back to PS, IO recorded his statement. On 06.03.2020 IO prepared one cloth pullanda of burnt mobile phone and its battery and another cloth pullanda of 2 mobile phones and 3 batteries along with some other materials. Both the cloth pullandas were sealed with the seal of 'GS'. IO prepared two separate seizure memos in respect of these cloth pullandas. Seizure memo of 2 mobile phones and 3 batteries is Ex. A-20. Seizure memo of burnt mobile phone and its battery is Ex.A-22.	
PW3/Sh. Chidda Lal Tomar	PW3 was declared as hostile witness. As per his testimony, he was resident of A-1/23, Mahalaxmi Enclave, Karawal Nagar, Delhi. On 24.02.2020, riot had taken place in his area. On that day, PW3 was present at his home throughout the day. PW3 had seen riot on that day at about 3-4 p.m. At about 3 PM from the terrace of his house, PW3 had seen a number of persons, who were coming from the side of Mustafabad towards his home and they had come upto the shop and Godown of Anil Pastry and near Chawla's Book Store. Shop of Anil Pastry was situated on the main Brijpuri road and his Godown was situated in A-29 in the gali. In the same gali, his house was situated on the opposite side of A-29 after leaving one plot. Those persons were having danda. They were pelting stones on the properties. They set Anil Pastry shop on fire. Thereafter they set Chawla's Book Store on fire. All these things were happening during afore-said	

period between 3-4 p.m.

After Chawla's Book Store, this mob came inside his gali. In his gali, they were making a lot of noise and they were abusing Hindus. This mob looted the articles from the Godown of Anil situated at A-29. They had taken away the utensils and cylinders etc. used for making sweets. From there, the mob went to the terrace of Rajdhani Public School. From the terrace of this school, this mob was throwing something alike bottle after lighting mouth of the same, towards houses of Hindus, towards persons, who had taken shelter near dispensary & towards Kunwar Vatika parking situated on the back side of his house. The vehicles parked in Kunwar Vatika parking had caught fire due to pelting of afore-said material. PW3 remained on the terrace of his house till night.

At about 6-7 p.m as well as at about 9 p.m. also from the terrace of his house, PW3 had seen this mob present on the terrace of Rajdhani Public School. However, PW3 had not seen any incident of riot between 9-10 P.M. or around 9 P.M. PW3 had not seen incident of arson at A-29. He had not seen face of any rioter as it was dark and there was no light.

In his cross examination by prosecutor, PW3 deposed that Police had made enquiry from him in respect of incident dated 24.02.2020 and had recorded his statement on laptop, on 06.03.2020. PW3 knew accused Shahnawaz @ Shanu, as Shanu used to run betel shop on the main Brijpuri road at the corner of gali of PW3. PW3 identified him before the court. PW3 had told police that he had seen accused Shanu entering Godown of Anil at A-29 alongwith his friends, while carrying petrol alike item in bottles. However, he did not remember if he had told police that he had seen Shanu and others setting that Godown on fire. House of PW3 was situated at the corner of gali, and PW3 was

	standing on the corner of his terrace therefore, PW3 had so stated before the police. PW3 admitted the suggestion that he had seen accused Shanu and his friends entering A-29 alongwith bottle containing material alike petrol, from the terrace of his house. During the period between 9.15-10 p.m., PW3 had made calls at 100 number. During this period itself, PW3 had made telephonic call to Anil, owner of Anil Pastry shop, to tell him that rioters had entered into his Godown. However, he did not remember if he had mentioned name of Shanu in his conversation with Anil.
PW4/Sh. Ankit Pal	PW4 was also declared hostile witness. He deposed that on 24.02.2020 riots had taken place in the area of Mahalaxmi Enclave, Shiv Vihar, Delhi. On that day PW4 was away to Loni, Ghaziabad, out of some job. At about 02:30 PM, PW4 was telephonically informed by his brother Amit Pal, telling him not to come to the Anil Pastry shop, as Amit was stuck in the shop because of riots going on there. This shop was situated just adjacent to Dairy Shop situated at C-1, Mahalaxmi Enclave, Shiv Vihar, Delhi. On this day, his other brother namely Sachin Pal also telephonically informed PW4 that he was also stuck in Anil Pastry Shop and he told PW4 to come and rescue him. PW4 reached this place by around 3-3.30 pm. and even PW4 had to take shelter in the Pastry Shop because while PW4 was there, the mob of rioters again came forward to his shop. This mob had tried to open the shutter for some time but thereafter they had gone back and then PW4 alongwith Sachin went to terrace of his pastry shop. After 5 minutes of the same, his pastry shop was set on fire at about 4:30 pm. At the same time mob of rioters was pelting stones and petrol bumb towards them i.e. towards pastry shop from his Godown situated just in front of this shop, and across the road. The rioters were pelting stones from 3rd floor of this

	Godown, and they had gone inside after breaking open the door of this Godown. PW4 further deposed that on 24.02.202 at around 5.30-6.00 pm PW4 and others went to back side gali and remained standing in that gali. At about 6:00 pm the afore-said mob had looted and set on fire the dairy shop. At that time PW4 was standing at the end point of dairy wali gali, wherein his dairy shop was situated. Thereafter PW4 went back to his home as per above-mentioned address. PW4 came to this place again on 26.02.2020. On 24.02.2020 at about 5:30 pm when PW4 was present on terrace of pastry shop, his uncle Anil Pal was also present with him. He had accompanied PW4 back to his home when they left that gali at about 6:30 pm. On 26.02.2020 PW4 alongwith his brothers Sachin and Amit had gone to afore-said Godown to look for his staff namely Dilber Negi. Dilber Negi was missing, who had gone to Godown on 24.02.2020 and thereafter they had no information about him. On the 2nd floor of this Godown, they saw a dead burnt body without hands and legs. Thereafter, PW4 informed police officials who were present on the road and called them at that place. On 24.02.2020 at about 10 PM, uncle of PW4 namely Anil Pal had received information telephonically that their afore-said Godown was also set ablaze by the rioters. Amit had also accompanied PW4 to the terrace of pastry shop. PW4 knew accused Shanu as he had a betel shop. police had shown PW4 CCTV footage related to riots. PW4 had identified accused Shanu in that CCTV footage.
PW5/Sh. Amit Pal	PW5 was also declared hostile witness. As per his testimony, uncle of PW5 namely Anil had been running a sweets shop in the name of Anil Sweets shop at T point, Shiv Vihar. On 24.02.2020 at about 3-

3.30 p.m., PW5 was present at Pal Dairy shop. There was Godown of Anil Sweets for the purpose of storage of articles. It was situated in property No. A-29, Khasra No. 58/8/2, main Brijpuri Road, Chaman Park. This Godown was situated on the opposite side of Rajdhani Public school across the road and it was on the main road itself. On 24.02.2020 at about 5 p.m., some boys had entered into this Godown and they remained therein for about 2-3 hours. At that time, PW5 was on the terrace of Godown of Pal Dairy, alongwith some other staff. In the aforesaid Godown of Anil Sweets at A-29, boys had also come in this property through adjacent terrace. These rioters had damaged the walls and had pelted stones on this Godown also. At about 7 p.m., PW5 had left that place i.e. terrace of Godown of Pal Dairy and he went back to his home.

PW5 further deposed that on 26.02.2020 at about 11 a.m., he visited aforesaid Godown at A-29, alongwith Anil uncle, Ankit (brother), some staff and some neighbours. PW5 saw this Godown to be in completely burnt condition. PW5 knew Dilbar Singh Negi, who was staff in Anil Sweets. On 26.02.2020 on the upper floor of this Godown, they had found half body of Dilbar Singh Negi. This part of body was in completely burnt condition and hands and legs of the body were missing.

At about 5 p.m. on 24.02.2020, PW5 had identified 4-5 persons, who had entered into aforesaid Godown at A-29. At that time, PW5 knew them only by their faces. PW5 came to know their names from the police, when they had shown PW5 video of riots and had pointed out to those persons in the video by their names.

In April 2020, police had made enquiry about incident at A-29 and had recorded his statement. His statement was recorded twice in the month of April and one statement was recorded after lock-down in 2021. PW5

	had seen accused Shanu on the outside road between 3 p.m.-5 p.m. on that day.
PW6/HC Pradeep	He had announced order u/s. 144 Cr.P.C. in the jurisdictional area of PS Gokalpuri, through loud hailer. This order was passed by Id. DCP (N/E), Delhi on 24.02.2020.
PW7/Sh. Gulshan Kumar	PW7 was also cited as eye witness of the incident but, he was also declared as hostile witness. As per his testimony, PW7 was running stationary shop in the name of Chawla Book Centre, since the year 2000 at C-1, Mahalaxmi Enclave, near Shiv Vihar Tiraha, Main Brijpuri Road, Delhi. Riot had taken place in that area either on 23rd or 24th of February, either in the year 2020 or 2021. During aforesaid 2 days, on the first day pelting of stones had taken place in that area after 2 p.m. and PW7 had immediately closed his shop and left his shop. On this day, PW7 had stayed overnight at the house of a neighbour to his afore-said shop in nearby gali. His name was Chhida Lal. PW7 further deposed that house of Chhida Lal Tomar was about 4 properties away in the adjacent gali to the shop of PW7. On the previous day i.e. the day of pelting of stones, PW7 was present over terrace of his house at about 6-7 p.m. alongwith Chhida Lal and his son Ajeet Pal. From that place, PW7 saw that at least about 100 persons were present on the terrace of a Godown of Anil Sweets. This Godown was situated across the road in front of his aforesaid shop. Those persons were pelting stones on the public passing by on the road and persons coming from the side of Hanuman temple. Stones were also being pelted upon nearby properties between his shop and Hanuman temple. He could not see face of any rioter. On this day at about 9 p.m., PW7 was present in the house of Chhida Lal himself. Due to failure of electricity, there was dark and nothing was visible. PW7

	had not seen Shanu and he had otherwise heard his name only. He denied the suggestions of prosecutor that he had seen Shanu among the rioters from the corner of that gali, or had seen Shanu entering this Godown at about 9 P.M.	
PW8/SI Rajeev	PW8 was IO of FIR No. 134/20, PS Dayalpur and in that case, PW8 had seized 7 DVRs from Rajdhani Public School. PW8 had saved 2 footages from the videos in those DVRs, in his laptop, through assistance of expert. On 06.03.2020 Insp. Surender Kumar from Crime branch had come to PW8 in PS Dayalpur. On demand of Insp. Surender, PW8 copied those 2 videos in a pen-drive and handed over that pen-drive to him. He seized that pen-drive, vide a seizure memo. PW8 had also handed over a certificate u/s. 65-B of IE Act.	Ex.PW8/A (seizure memo of pendrive); & Ex.PW8/B (certificate u/s. 65-B of IE Act, issued by PW8)
PW9/Sh. Anil Pal	PW9 was also declared hostile witness. He had been running shop of Sweets in the name of Anil Sweets Corner, since the year 1995 at ground floor, 206, Shiv Vihar Tiraha, Karawal Nagar Main Road, Mahalaxmi Enclave. PW9 was running the shop of Pastry in the name and style of M/s Anil Pastry Shop, since about 2006-2007. PW9 also had a Godown to keep the materials of sweets, which was situated at A-29, Chaman park, Main Brijpuri Road, opposite to Rajdhani Public school. PW9 deposed that on 24.02.2020, riots had taken place in the area of aforesaid	Ex.PW9/A (document pertaining to CD which was handed over by PW9 to the police)

	Godown. On this day, PW9 had opened his sweets shop at about 8 a.m. On that day at about 1.30-2.00 p.m., PW9 came to know that persons were assembling near Rajdhani Public School. Between 3.00-3.30 p.m., PW9 came out of his afore-said shop and went to another Godown/manufacturing unit of sweets situated at A-1/12, Gali No.1, Mahalaxmi Enclave. At that time, PW9 saw a mob of around 100-150 persons on main Brijpuri Road in front of Rajdhani Public school. They were persons from muslim community. This mob was pelting stones towards the direction of Shiv Vihar. PW9 went to the terrace of Godown at A1/12 and saw that a number of persons were present on the terrace of his other Godown at A-29. From that terrace, those persons were pelting stones and petrol bombs towards the direction of Shiv Vihar. His nephew Ankit Pal was also present with him on the terrace of A-1/12. Ankit Pal had recorded video of the rioters present over terrace of A-29 through his mobile phone, at around 4 p.m. PW9 further deposed that staff of PW9 used to sleep in the above-mentioned Godown at A-29. They were Shyam Singh Rawat, Dilbar Negi, Sita Ram and one more person probably named Raj Kumar. On same day at about 9-9.30 p.m. PW9 asked Shyam Singh, who was present with him at that time,	
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	about whereabouts of Dilbar Negi and Sita Ram. Shyam Singh at that time told PW9 that Shyam Singh was informed by a boy that Dilbar Negi was present in A-29. Shyam Singh made a call to Dilbar Negi, in the presence of PW9 and informed that phone of Dilbar Negi was found switched off. PW9 had remained over terrace of A-1/12 till about 5.30 p.m. Thereafter PW9 remained standing in the back side gali of this Godown for about 30-45 minutes. Thereafter PW9 alongwith Ashok Pal, Duli Chand Pal (both brothers), Ankit Pal, Amit Pal and Sachin Pal (all 3 are nephews), went back to his afore-said home. At about 5-5.30 p.m., PW9 had seen rioters going inside and coming out of his Godown at A-29, from his position in back side gali to A-1/12. Those persons were carrying weapons like danda, stone and pistol etc. After PW9 had reached back his home, he received a telephonic call from his neighbour Chhidda Lal Tomar at around 8-8.30 p.m. and he informed PW9 that rioters had set his Godown i.e. A-29 on fire. PW9 further deposed that on 25.02.2020, PW9 came to find out about Dilbar Negi and Sita Ram and reached near Dispensary at Shiv Vihar Tiraha, at about 9 a.m. From this place, two police officials accompanied PW9 and they moved towards A-29. A mob of persons from muslim community	
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	was present on the road in front of Rajdhani Public school and that mob started raising noise on seeing PW9 alongwith police officials. Then, police officials asked PW9 to go back and told him that they would go to A-29 to check that place. PW9 came back to place in front of dispensary and stayed there waiting for aforesaid police officials. Both those police officials came back and informed PW9 that no one was present in A-29 and then PW9 went back to his home. On 26.02.2020, riot had been controlled and police officials were present on that road. PW9 came to A-29 on this day at about 11 a.m. Someone had made telephonic call to PW9 on this day, thereby telling him to come to that place. Police officials were present at A-29 and PW9 went inside alongwith them. On the 2nd floor of this Godown, they found a burnt dead body. The hand and limb/leg of dead body were lying separately. His Godown situated at A-29 was found in a burnt condition. On the basis of shape of face of this dead body and the fact that Dilbar Negi was missing, they concluded that it was dead body of Dilbar Negi. PW9 had informed police about the nature of Godown at A-29. A team had come alongwith police, who lifted some samples from that 2nd floor. PW9 was told by Chhidda Lal Tomar that one Parvez and one Shanu, were involved in setting ablaze his Godown at A-29. Police had shown PW9 video	
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	of riot on laptop and police had asked PW9 to identify any person in those videos, if known to PW9. PW9 had identified about 8-10 persons in those videos and informed their names to the police. Those persons were known to PW9, since prior to aforesaid incident. PW9 had identified accused Shanu and others. PW9 correctly identified accused Shanu before the court. PW9 further deposed that, police had recorded statement of PW9 after making enquiry in respect of incident of arson in Godown at A-29. On 24.02.2020, Dilbar Negi had reported for work at his shop namely Anil Sweets at about 8-8.30 a.m. He used to go for taking lunch at about 1 p.m. For the purpose of taking lunch, he used to go to the Godown at A-29. On 24.02.2020 also, he was present in his shop till about 1 p.m. Between 1.30 p.m. to 3.30 p.m., his employees namely Babloo, Shyam Singh, Sindhi, Ramesh & Vinod, were present in the shop alongwith PW9. The mob, which was present in front of Rajdhani Public school was also abusing Hindus, raising slogans of 'Kafiro tumhe kaat denge' and were throwing petrol bombs, apart from pelting stones. PW9 used gas cylinders for the purpose of making sweets and gas cylinder was kept in his shop and in the Godown situated in Gali No.1. Apart from his Godown at A-29, the adjacent house belonging to	
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	Narender, Vipin etc., were also burnt. Other houses in the same line and belonging to Hindu persons, were also burnt on the same day. PW9 had made a call at 100 number on 24.02.2020 at about 7.7.30 p.m. to inform about fire set in his Godown in A-29. Police had recorded statement of PW9 in respect of aforesaid incident more than once. His first statement was recorded on 26.02.2020. PW9 further deposed that on the same day at about 9.45 p.m., Mr. Chidda Lal Tomar had made a WhatsApp call to PW9, informing that accused Shanu @ Shahnawaz alongwith some other boys had set his Godown on fire; and that on 26.02.2020, PW9 had seen his Godown at A-29 in burnt condition. At this time, PW9 was present in his Godown situated in gali no.1, when some known persons telephonically informed PW9 that a burnt dead body was lying on the 2nd floor of his Godown at A-29. Thereafter PW9 made a call at 100 number and informed police about the same. Police came there on same day and PW9 had visited 2nd floor of Godown with police on same day and he had seen that dead body. After apprehending accused Shahnawaz, police had taken him away. PW9 identified his signature at circle X on a document, which is Ex.A-15. PW9 had given video of riot as recorded by his nephew Ankit, to the	
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	police in a CD. PW9 identified his signature at circle X on a document. No tampering was done in that video or mobile phone of Ankit, by PW9.	
PW10/SI Prakash	On 13.04.2020 he was posted as SI in SIU-II, Crime branch, Nand Nagri, Delhi. On that day, he and IO/Insp. Surender Kumar were present in the office at Nand Nagri. One witness namely Ankit Pal had come to IO in the office. He handed over his mobile phone make Samsung black colour, dual SIM, to the IO. IO checked that mobile phone and found that there was memory card also. IO kept that mobile phone in a plastic box and sealed it with seal of 'PB'. He seized that mobile phone vide a seizure memo. On 20.05.2020, PW10 alongwith IO/Insp. Surender went to office of SOS, Crime branch, Rohini. In that office, they met SI Pankaj, who was IO in FIR No.134/20, PS Dayalpur. Insp. Surender had carried one hard disk alongwith him. SI Pankaj copied some footage of riot from his laptop to the hard disk produced by Insp. Surender. IO prepared seizure memo of that hard disk. Thereafter they came to the office and IO recorded his statement. PW10 further deposed that on 16.04.2021, he had gone to Paudi Garhwal alongwith HC Kavinder, on the instructions of IO of this case, for taking blood sample of parents of deceased namely Dilbar Negi. They	Ex.PW10/A (seizure memo of mobile phone make Samsung black colour dual SIM); Ex.PW10/B (seizure memo of hard disk);

	went to local PS Pethasaini and then they went to village Rakhra. PW10 took parents of Dilbar Negi namely Gopal Singh and Sakha Devi, to a nearby primary health centre. PW10 gave a request letter to Medical Officer namely Dr. Jai Shanker in that health centre and Doctor took blood sample of both aforesaid persons on separate gauze piece. Doctor kept both blood on gauze in separate white envelopes and sealed it with the seal of 'PB'. PW10 seized both these envelopes vide a seizure memo, which is Ex. A-119. PW10 came back to Delhi and deposited these envelopes in PS Crime Branch. Subsequently, Insp. Kanwar Sain had recorded his statement in this case.	
PW11/Sh. Shyam Singh	PW11 was also declared hostile witness. As per his testimony, he was working at Anil Sweets at Shiv Vihar Tiraha. At that time, he was staying in the Godown of that shop situated in property no. A-29, Chaman Park, which was at a distance of about 40-50 steps away from this shop. Riot had taken place on 24.02.2020, in the area of aforesaid shop/Godown. On that day, Dilbar had gone to above mentioned Godown to take lunch at 2.00 p.m. On 24.02.2020 Dilbar had made several telephonic calls to PW11 on his mobile number 9654617954. During those calls, Dilbar told PW11 about the riotous situation around that Godown and that about his inability to come out from that place. Thereafter, PW11 and Sh. Anil Pal kept trying to call Dilbar till 9 p.m., but every time phone of Dilbar Negi was found switched off. PW11 had telephonically talked to Devender on 28.02.2020. PW11 had visited GTB	

	hospital for postmortem of Dilbar. PW11 was witness to identification and delivery of dead body of Dilbar Negi by Devender, vide memos Ex. A-9 and Ex. A-13 .	
PW12/Sh. Malahu	PW12 was also declared hostile witness. In the month of February, 2020, he was working at Anil Sweets shop in Shiv Vihar. Riot had taken place on 24.02.2020, in that area. On that day, PW12 had come to his aforesaid shop at about 8 a.m. and at about 12 p.m., he had gone for lunch in the Godown, where they used to stay and sleep. PW12 deposed that riot had started in that area at around 3-3.15 p.m. and everyone started pulling down their shutters.	
PW13/Sh. Devender Singh	He is elder brother of deceased Dilbar Negi. On 26.02.2020, he had received information that his brother Dilbar Singh was no more. PW13 had seen and identified dead body of Dilbar Singh in GTB hospital. His face was otherwise burnt with body. After postmortem, dead body of Dilbar was handed over to PW13, vide memo Ex. A-13.	
PW14/Sanjay Singh Negi	On 24.02.2020 at 04:30 PM, he had telephonic conversation with Dilbar Singh, who was working in a sweet shop at Shiv Vihar, Delhi. He informed PW14 that riots had started in his area and a lot of noise were being heard. After 15-20 minutes he made a Whatsapp video call to PW14. In that video call PW14 had seen Dilbar alongwith one more boy in a room. On that day at around 8.00 PM, PW14 again made a call to Dilbar, but due to disturbance and noise the voice was not clear and they could not have a conversation. After two days, PW14 received a call from a person with whom Dilbar used to work, getting information that Dilbar had died during the riots.	
PW15/Ms Neelam	On 06.05.2022 she was working as Junior Forensic/Assistant Chemical Examiner in FSL Rohini. On that day,	Ex.PW15/A & Ex.PW15/B

	she had received five sealed parcels containing mobile phones, SIM cards and memory cards, for their examination. PW15 analyzed mobile phones with different softwares namely Universal Forensic Extraction Device & Oxygen Forensic Detective Tool. PW15 had extracted data from MP1, MC1, MC2 and SC1 to SC4 and stored in a sterile pen-drive. PW15 had prepared her report in respect of afore-said examination and proceedings. She had also prepared a certificate u/s. 65-B of IE Act in respect of afore-said pen-drive. PW15 identified: - (i) mobile phone make VIVO (MP1) and two SIM cards (SC1 and SC2) taken out from first parcel; (ii) mobile phone make Samsung (MP5), two SIM cards and memory card (SC3, SC4 & MC1), taken out from fourth parcel; (iii) mobile phone make Samsung (MP6) and memory card (MC2), taken out from fifth parcel.	(report of PW15 and certificate u/s. 65-B of I.E. Act); Ex.PW15/ Article-1 to Ex.PW15/ Article-9 (exhibits of this case, which were received by PW15 on 06.05.2022)
PW16/Sh. Pawan Singh	He was Alternate Nodal Officer in Vodafone Idea Ltd. PW16 brought and proved certified copy of CDR; certified copy of DKYC in the name of accused Mohd. Shahnawaz s/o Mohd. Rashid; certificate u/s. 63 BSA in respect of certified copy of DKYC and CDR; certified copy of Cell ID/location Chart; pertaining to mobile no. 9136277735.	Ex.PW16/A to Ex.PW16/D (certified copy of CDR, DKYC, certificate u/s. 63 BSA & Cell ID/Location Chart, pertaining to

		mobile no. 9136277735)
PW17/Insp. Pawan Yadav	On 05.03.2020, he was posted as SI in SIU, Crime Branch, Nand Nagri, Delhi. On this date, PW17 accompanied IO/Insp. Surrender Kumar to A-29, Chaman Vihar, Shiv Vihar, Delhi. One witness Anil met IO at that place, who was owner of that property. PW17 was witness to seizure of two samples of ash lifted from the place where dead body of Dilbar Negi was pointed out to be recovered/found, as well as seizure of two empty bottles lying on the terrace of afore-said Godown. PW17 was also witness to arrest and personal search of accused Shanu on 06.03.2020, by IO in this case vide arrest and personal search memo, which are Ex. A-15 and Ex. A-16, respectively. IO had also seized the mobile phone from accused Shanu. PW17 deposed on the lines of PW8 in respect of Ex.PW8/A. Sh. Anil Pal had handed over CD containing some images and videos and IO seized that CD vide seizure memo. On 28.05.2020, PW17 was in his office with IO. IO sealed mobile phone of accused Shanu which was already seized by him on 06.03.2020, vide a seizure memo. On same day, witness Ankit Pal had come to office and he had handed over photocopies of the documents related to A-29, Chaman Vihar to the IO. He also handed over photocopy of RC of one	Ex.PW17/A (seizure memo of two samples of ash); Ex.PW17/B (seizure memo of two empty bottles); Ex.PW17/D (seizure memo of CD handed over by Anil Pal to IO); Ex.PW17/E (seizure memo of mobile phone of accused Shahnawaz); Ex.PW17/F (photocopy of RC of one scooty and one motorcycle handed over by Ankit Pal)

	scooty and one motorcycle to the IO. IO seized these documents vide a seizure memo. During his testimony, PW17 correctly identified accused Shanu before the court.	
PW18/Insp. Pramod Joshi	On 26.02.2020, he was posted as SHO PS Gokalpuri. On that day at around 04:30 PM, PW18 received a call from PW2/ASI Gajraj regarding finding of a burnt dead body on the second floor of A-29, Chaman Park, which was a Godown owned by Anil Sweets. PW18 immediately reached aforesaid place. On the second floor of aforesaid Godown, PW2/ASI Gajraj and Ct. Vipin met PW18. The Godown was in burnt condition. On the second floor, a dead body was lying. Both legs and both hands of the dead body were missing and it was in burnt condition. PW18 directed PW2/ASI Gajraj to send that dead body to the mortuary. Alongwith PW18, beat staff of that area was present and PW18 directed that beat staff to preserve afore-said place. PW18 deposed on the lines of PW2 in respect of Ex.PW2/B, Ex.A-18, Ex.A-19, Ex.A-20, Ex.A-21 and Ex.A-22. PW18 collected PM Report from mortuary at GTB Hospital as related to Dilbar Negi. Thereafter, further investigation of this case was transferred to Crime Branch and PW18 handed over the case file to MHC(R).	
PW19/Insp. Kanwar Sain	In February 2022, he was posted as Inspector in SIU-2, Crime Branch, Delhi. In that month, he was assigned file of this case for further investigation. He had obtained complaint u/s 195 Cr.P.C from the office of DCP, North-East as pertaining to this case. On 16.09.2022, he again called ACP Mahesh to the place of crime. PW19 informed ACP Mahesh about position of Gulshan, on the basis of statement given by Gulshan. ACP Mahesh took his measurement. On same day,	

	PW19 recorded statement of HC Pradeep who had announced proclamation u/s 144 Cr.P.C. On 19.09.2022, PW19 received scaled site plan from ACP Mahesh and PW19 recorded his statement. On same day, PW19 recorded statement of SI Prakash, who had brought blood samples of parents of deceased from Uttarakhand. On 26.10.2022, PW19 filed a supplementary chargesheet-II in this case with aforesaid materials. On the basis of some queries made by the court, PW19 recorded statements of Mahesh @ Malho and Pradeep on 17.01.2023; that of Anil Pal on 18.01.2023; that of Manmohan Singh and Sanjay Singh on 25.02.2023 and that of Shyam Singh and Raj Kumar @ Bablu on 28.02.2023. PW19 had also recorded statement of one Sindhi Singh. On 27.02.2023, PW19 had sent a request letter to GTB Hospital so as to give opinion if missing hands and legs of the deceased, were on account of chopping or on account of burn. On 02.05.2023, PW19 obtained afore-said opinion from GTB Hospital. On 19.05.2023, PW19 recorded statements of Anil Pal, Ankit Pal and Amit Pal. On 29.05.2023, PW19 filed supplementary chargesheet-III alongwith aforesaid materials.	
PW20/Insp. Surender Kumar Singh	On 05.03.2020, he was posted as Inspector in SIU-II, Crime Branch, Delhi. On that day, investigation of this case was assigned to him. On receipt of case file, PW20 reached at A-29, Shiv Vihar, which was the place of incident in this case. PW20 called complainant Anil Pal at that place and made enquiry from him and recorded his statement. PW20 prepared site plan of A-29 and	Ex.PW20/A and Ex.PW20/B (Site plans of A-29 and the place, where dead body of Dilbar Negi was found); Ex.PW20/C

	the place therein from where dead body of deceased Dilbar Negi was found. On same day, PW20 called FSL team for inspection of that place. PW20 deposed on the lines of PW17 in respect of Ex.PW17/A, Ex.PW17/B, Ex.PW17/C, Ex.PW17/D, Ex.A15, Ex.A16, Ex.PW8/A. PW20 had also obtained certificate u/s 65B of IE Act from SI Rajiv. PW20 had analyzed those videos. On 13.03.2020 PW20 obtained the post mortem report of deceased Dilbar Negi from GTB hospital through his staff and kept the same on file. PW20 sent request for the CDR of mobile phone of Dilbar Negi to the service provider. On 16.03.2020, PW20 recorded statement of Ankit Pal, who had come to his office at Nand Nagri. On 20.03.2020, PW20 sent the viscera and other exhibits to FSL Rohini through Ct. Kaushal and HC Pankaj. HC Pankaj got the exhibits deposited at FSL Rohini. After his return, PW20 recorded the statement of HC Pankaj and MHC(M) PS Gokalpuri. On 30.03.2020, PW20 recorded statement of PCR callers namely Vipin, Pawan, Ishtiyak Ali, Mohan, Dr. Shahnawaz, Shadab, Sharad Singh, Ram Niwas Pandey, Omkar Sharma etc., who had made calls in respect of some incidents at Shiv Vihar tiraha and Brij Puri road. On 01.04.2020, PW20 recorded	(seizure memo of DVD);
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	statement of Amit Pal, who was present at the place of incident during noon time on the date of incident. On 08.04.2020, Insp. Mahesh was called at the place of incident, who inspected the site in the presence PW20 and took his rough notes. PW20 deposed on same the lines as deposed by PW10/SI Prakash in respect of Ex.PW10/A and Ex.PW10/B (except date of 21.05.2020). On 21.04.2020, PW20 handed over FSL form to Ct. Kanhaiya to deposit the viscera of Dilbar Negi in FSL Rohini. On same day he came back to PW20 and handed over to PW20 case acceptance. PW20 recorded his statement and statement of MHC(M) PS Gokalpuri, where case properties were deposited in this case. On 08.05.2020, PW20 handed over FSL form to Ct. Ashok to deposit 5 mobile phones in FSL Rohini. On same day he came back to PW20 and handed over to PW20 case acceptance. PW20 recorded his statement and statement of MHC(M) PS Gokalpuri, where case properties were deposited in this case. On 27.05.2020, PW20 alongwith SI Prakash and other staff went to A-29, Chaman Park, Shiv Vihar. PW20 took photographs through his mobile phone, of A-29 from the same angle in which CCTV cameras were covering that place from Rajdhani Public School. After coming back to his office, PW20	
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	transferred those photos in a DVD and sealed that DVD with seal of 'PY'. PW20 seized the same vide a seizure memo. On 02.06.2020, PW20 sent Ct. Anuj to collect site plan, which was prepared by Insp. Mahesh. On same day, Insp. Mahesh came to PS Nand Nagri. He handed over scaled site plan to PW20 in the office and PW20 recorded his statement. On 04.06.2020, PW20 filed the first chargesheet in this case against accused Shahnawaz @ Shanu. Subsequently, PW20 obtained order u/s 144 Cr.P.C. passed by office of Id. DCP(NE). PW20 also obtained complaint u/s. 195 Cr.P.C. against accused Shanu. Thereafter, PW20 prepared and filed first supplementary chargesheet. PW20 deposited the case file with MHC(R). PW20 correctly identified accused Shahnawaz @ Shanu before the court.	
Admitted documents under Section 294 Cr.P.C. Rukka as Ex.A-1; copy of FIR as Ex.A-2; certificate u/s 65B of IE Act as Ex.A-3; MLC of Dilbar as Ex.A-4; postmortem report as Ex.A-5; request for postmortem as Ex.A-6; GD no.41A as Ex.A-7; death report as Ex.A-8; identification memos as Ex.A-9 & A-10; death certificate as Ex.A-11; MLC no. BD/754/03/2020 as Ex.A-12; handing over memo as Ex.A-13; death report as Ex.A-14; arrest memo and personal search memo of accused Shahnawaz as Ex.A-15 & Ex.A-16, respectively; order u/s. 144 Cr.P.C. as Ex.A-17; seizure memos related to deceased as Ex.A-18 to Ex.A-22; GD entries of PCR calls as Ex.A-23 to Ex.A-48; PCR forms as Ex.A-49 to Ex.A-110; acknowledgment dated 21.04.2020 and 08.05.2020 as		

Ex.A-111 and **Ex.A-112**; Road certificate no. 62/21/20 as **Ex.A-113**; forwarding letters as **Ex.A-114** and **Ex.A-115**; complaint u/s 195 Cr.P.C. as **Ex.A-116**; blood sample receipts as **Ex.A-117** & **Ex.A-118**; seizure memo of two envelopes containing blood sample as **Ex.A-119**; FSL reports as **Ex.A-120** to **Ex. A-122**; Sanction u/s 196 Cr.P.C. as **Ex.A-123**; FSL report as **Ex.A-124**; PCR form as **Ex.A-125** (colly 5 pages); subsequent opinion as **Ex.A-126**; copy of R/C as **Ex.A-127**; acknowledgment as **Ex.A-128** and Inspection report prepared by ASI Mahabir Singh (Finger Print Expert/Proficient), District Mobile Crime Team (N/E) as **Ex.A-129**.

PLEA OF ACCUSED U/S. 351 BNSS

13. Accused Mohd. Shahnawaz @ Shanu denied all the allegations and he pleaded innocence, taking plea that he has nothing to do with the commission of alleged offences. He further took plea that he has been falsely implicated in this case. He further took plea that witnesses deposed falsely against him. Accused did not opt to lead any evidence in his defence.

ARGUMENTS OF DEFENCE & PROSECUTION

14. I heard ld. Special PP and ld. counsel for accused. I have perused the entire material on the record.
15. A written submission/synopsis under signature of ld. counsel **Sh. Z. Babar Chauhan**, was filed on behalf of accused Mohd. Shahnawaz @ Shanu. In the written synopsis, it was mentioned that this accused has been falsely implicated in multiple cases by the police. It was further mentioned that this court had convicted this accused in FIR No. 53/2020 and an appeal has been preferred by this accused before Hon'ble High Court of Delhi, wherein accused has been granted bail vide order dated 09.08.2024. That there are major contradictions in the statements of public

eyewitnesses, which cast a shadow of doubts upon the prosecution story and same is not sufficient for the prosecution to bring home the guilt. That PW4, PW5, PW7 & PW11 did not support the prosecution at all. That accused made a call to one Mahesh at about 9 PM, which shows that the incident had happened after 9 PM on 24.02.2020, whereas most of the witnesses have deposed claiming themselves to be the witnesses prior to 7 PM. That PW3/Chidda Lal Tomar testified that it was dark at the time of incident, which shows that he could not see any of the rioters, therefore, the question of his making a WhatsApp call to PW9/Sh. Anil Pal, is not tenable. That the plea of identification of accused is not tenable at all. That PW9/Sh. Anil Pal had testified that he did not see this accused and that this accused was not arrested in his presence. Later he tried to improve his version at the instance of IO, which is not reliable. Further on 27.07.2024, PW9 testified that he had identified accused in the video shown by the police to him, which also did not contain the time of recording and that same was of the daytime. That testimonies of the examined public witnesses are not credible as the quality of their statements are poor in the eyes of law and same are not tenable. **Mohd. Dilshad**, ld. defence counsel for accused Mohd. Shahnawaz @ Shanu argued on the lines of written submissions.

16. Per-contra, in the final arguments filed on behalf of prosecution, **Sh. Madhukar Pandey**, ld. Special PP for State, it was mentioned that accused Shahnawaz @ Shanu was clearly identified as the

person entering the Godown of PW9/Anil Pal situated at A-29, Chaman Park, Delhi, by PW3/Sh. Chhida Lal Tomar. It was further mentioned that PW3 also made a telephonic call to PW9 informing him that he had seen accused Shahnawaz @ Shanu with his friends entering in the afore-said Godown (A-29), along with bottle containing material alike petrol. That PW9 also corroborated the testimony of PW3 that he had made telephonic call to him and he informed him that accused Shahnawaz @ Shanu along with some other boys had set his Godown on fire. It was further mentioned that presence of deceased Dilbar Negi in the said Godown (A-29) was confirmed by PW11/Sh. Shyam Singh. It was further mentioned that accused Shahnawaz @ Shanu being the part of afore-said mob, had played an active role and he indulged in riotous activities as well as setting the Godown on fire, due to which Dilbar Negi lost his life. It was further mentioned that testimonies of PW3, PW9 and PW11 are sufficient and reliable.

17. Ld. Special PP placed reliance upon the case of **Mohd. Nasim v. State**, 2023 SCC OnLine Del 7073, wherein Hon'ble High Court of Delhi observed that: -

*“12. It was observed in **Kuna @ Sanjaya Behera v. State of Odisha**, 2017 SCC OnLine SC 1336 that the conviction can be based on the testimony of single eyewitness if he or she passes the test of reliability and that is not the number of witnesses but the quality of evidence that is important. The Supreme Court in **Veer Singh v State of UP**, (2014) 2 SCC 455 observed as under: -*

Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality

of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided Under Section 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable.”

13. The prosecution does not require number of eyewitnesses to prove its case beyond reasonable doubt. Even if there is one eyewitness and his testimony is up to the mark, the conviction can be based upon the same. The **Supreme Court in Namdeo v. State of Maharashtra, (2007) 14 SCC 150** held as under: -

*“In the leading case of **Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793**, this Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence Courts call for corroboration. “It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs.””*

18. Ld. Special PP also placed reliance upon the case of **Atmaram & Ors. v. State of Madhya Pradesh, 2012 (5) SCC 738**, wherein Hon'ble Supreme Court observed that: -

“13. It is a settled cannon of criminal jurisprudence that every statement of the witness must be examined in its entirety and the Court may not rely or reject the entire statement of a witness merely by reading one sentence from the deposition in isolation and out of context.”

19. It was further mentioned that deposition of a witness who had been cross examined by the Prosecutor for resiling away from his statement given to police was considered in the case of **Jodhraj**

Singh v. State Of Rajasthan, 2007(15) SCC 294, wherein Hon'ble Supreme Court observed that: -

“14. It is trite that only because a witness, for one reason or the other, has, to some extent, resiled from his earlier statement by itself may not be sufficient to discard the prosecution case in its entirety. The Courts even in such a situation are not powerless. Keeping in view the materials available on record, it is permissible for a Court of law to rely upon a part of the testimony of the witness who has been declared hostile.”

20. Ld. Special PP further mentioned that Hon'ble Supreme Court in the case of **Jodhraj Singh** (supra) also considered and approved the dictum laid down by it in the judgment of **State of U.P. v. Ramesh Prasad Misra and Another (1996) 10 SCC 360**, wherein it was held that: -

“7. The question is whether the first respondent was present at the time of death or was away in the village of DW 1, his brother-in-law. It is rather most unfortunate that these witnesses, one of whom was an advocate, having given the statements about the facts within their special knowledge, under Section 161 recorded during investigation, have resiled from correctness of the versions in the statements. They have not given any reason as to why the investigating officer could record statements contrary to what they had disclosed. It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.”

21. Final argument further mentions that even though PW3, PW9 and PW11 had resiled from their statements given to the IO, to some extent, they had supported the case of prosecution with respect to the role attributed to accused Shahnawaz. It was further mentioned that afore-mentioned judgments dictate that the

evidence of a witness has to be read in entirety and merely because the witness resiled from his statements given to the police, the testimony of such a witness does not become unreliable or less trustworthy. It was further mentioned that the evidence available against accused Shahnawaz, placed him at the scene of the incident, as part of a riotous mob, thereby firstly attracting conviction for offence under Section 148 IPC read with Section 188 IPC. It was further mentioned that testimonies of PW3, PW9 and PW11, proved that accused Shahnawaz @ Shanu entered the said Godown (A-29) with some other persons along with petrol alike substances and then set ablaze the said godwon inside which Dilbar Negi was present and subsequently, Dilbar Negi was found dead in the said Godown. Post mortem report further corroborates that cause of death of Dilbar Negi as asphyxia i.e. due to inhalation of smoke in the night of 24/25.02.2020. Afore-said acts attract conviction of accused under Section 302/436/450 IPC.

22. **Sh. Madhukar Pandey**, Id. Special PP argued on the lines of final arguments, filed on behalf of prosecution.

**APPRECIATION OF LAW, FACTS AND EVIDENCE
UNLAWFUL ASSEMBLY & RIOT**

23. As per charges framed in this case, on 24.02.2020, an unlawful assembly in the form a riotous mob, was present in the area around property no. A-29, wherein the Godown in question was situated. This fact has been affirmed by several witnesses viz. PW3, PW4, PW5, PW7, PW9, PW11 and PW12. As per their

testimonies, a mob consisting of persons from muslim community had assembled in that area. They had been pelting stone and bottles with inflammable liquid upon the properties of persons from Hindu community. They had also entered into the Godown in question with such articles. This Godown as well as adjoining properties were found burnt next day by PW9.

24. Police witness i.e. PW2 also deposed that on his visit to this Godown on 26.02.2020, he found it in burnt condition. He also found a dead body, which was subsequently identified as body of Dilbar Negi. The evidence also show that said Dilbar Negi used to work for PW9 and that on that fateful day he had gone to this Godown during lunch time i.e. somewhere in afternoon period.
25. The evidence in respect of aforesaid facts, have not been challenged or disputed by defence. Defence focused on non-involvement of accused Shanawaz in the alleged incident. Even otherwise, aforesaid evidence on the record proves it beyond doubt that an unlawful assembly had been formed, which indulged into vandalism and arson, and that Godown in question was also burnt in that process. It is also well established that deceased Dilbar Negi had been hiding himself in that Godown on the 2nd floor, and he was telephonically in contact with some persons including PW11, PW12 and PW14. These witnesses vouched for having conversation with Dilbar till around 8 P.M. Unfortunately, on the record I could not find any material to divulge the mobile number being used by deceased, or CDR/CAF/location chart of mobile number of deceased. These

materials could have shown the time of last conversation on the mobile phone of deceased. Still, deposition of aforesaid witnesses, leave no doubt that deceased Dilbar was alive in that Godown till around 8 P.M., and he was beyond contact since around 9 P.M. Thus, he might have become unconscious by 9 P.M., or he might have died by that time. Postmortem report could not provide any tentative time of death of Dilbar. Thus, exact time of his death is not known. But, his death in this incident, is clearly established.

IDENTIFICATION OF ACCUSED

26. The core issue arising out of conflict between case of prosecution and plea of defence, is that whether accused Shahnawaz was part of rioters, who allegedly entered into this Godown at around 9 P.M. and set it ablaze? Ld. prosecutor in his arguments claimed that despite eye witnesses turning hostile to the case of prosecution, involvement of Shahnawaz has been proved. He relied upon evidence of PW3 and PW9, to argue that involvement of Shahnawaz, has been proved.
27. As per case presented by prosecution, on 24.02.2020 at around 9 P.M., PW3/Mr. Chhida Lal Tomar and PW7/Mr. Gulshan were present at the corner of their gali and from that place they had seen, accused Shanu @ Shahnawaz and his companions going into this Godown at about 9 PM and thereafter, this Godown being set on fire. It is also to be appreciated that owner of this Godown and his family members, were also examined in this case, and prosecution claimed that they had also seen Shahnawaz

entering this Godown at different point of time. However, since it had been a concrete stand of prosecution that Shah Nawaz had entered into this Godown with his companions at around 9 PM. and at that time this Godown was set on fire. Therefore, any reference to other riotous activity around this place at different point of time, had limited relevance to show that riot had been going on in that area since day time. Hence, evidence referring to activity of different timeline, does not help much in deciding culpability of accused in the incident of arson at this Godown and death of Dilbar Negi. This is so because if a person ceased to be member of the mob by the time when the Godown was set on fire, then mere on the basis of his presence in the past in that mob, he cannot be made liable for actions of the mob as taken place in his absence.

28. In order to assess the argument of Id. Prosecutor, I shall reproduce the relevant part of evidence. The relevant part of testimony dated 14.03.2024, of PW3/Sh. Chidda Lal Tomar, is as follows: -

“2. At about 9 p.m. also, I was present at the terrace of my house. At that time also, this mob was present at the terrace of Rajdhani Public school. I did not see any incident at about 9 p.m. in my gali. I did not come out of my house after 9 p.m. also. Between 9-10 p.m. also, I was present at the terrace of my house. It was dark. Electricity wires were already burnt and there was no light, hence I did not see any particular incident of riot between 9-10 p.m. I had not seen incident of setting godown at A-29 on fire. I do not remember, if this godown was ever set on fire during riots. I had not seen face of any rioter in aforesaid mob at about 9 p.m. as it was completely dark.

XXXXXX by Sh. Madhukar Pandey, Id. Special PP for the State.

4. I might have told police that on 24.02.2020 at about 9 p.m., I was present at the corner of gali in front of A-29, I do not remember it correctly. I had told police that I had seen Shanu entering godown of Anil at A-29 alongwith his friends, while carrying petrol alike item in bottles. I do not remember, if I told police that at that time, Shanu and his friends set this godown i.e. A-29, on fire. It is wrong to suggest that I was present at the corner of my gali at about 9 p.m.

.....

6. It is correct to suggest that I had seen Shanu and his friends entering A-29 alongwith bottle containing material alike petrol, from the terrace of my house. Since I do not remember it, hence I cannot admit or deny that after Shanu entered godown at A-29, after some time this godown was set on fire.

7. I know a person namely Parvez, who was present among the rioters, who had entered A-29 at about 9 p.m. alongwith Shanu.”

29. The relevant part of testimony dated 26.03.2024, of PW4/Sh. Ankit Pal, is as follows: -

“9. When I was present at the end of dairy wali gali, due to smoke coming from my pastry shop and dairy shop, I could not see if any rioter was going in and coming out from the aforesaid godown. I did not see any person known to me going inside this godown at that time and before leaving that place for my home.

.....

XXXXXX by Sh. Madhukar Pandey, Id. Special PP for the State.

10.It is wrong to suggest that it had so happened and that I had so stated before police that on 24.02.2020 at about 6.40-6.45 pm I had seen Shanu entering my aforesaid godown with bottles of diesel, petrol, etc. alongwith other rioters; or that we had left that place at about 7.30-8.00 pm.”

30. The relevant part of testimony dated 09.04.2024, of PW5/Sh. Amit Pal, is as follows: -

“XXXXXX by Sh. Madhukar Pandey, Id. Special PP for the State.

8. It is wrong to suggest that it had so happened and that I had so stated before police that I had identified Shanu @ Shahnawaz entering abovementioned godown in A-29 at 6.40-6.45 p.m carrying stones, petrol or diesel bottles alongwith other boys;”

31. The relevant part of testimony dated 25.04.2024, of PW7/Sh. Gulshan Kumar, is as follows: -

“XXXXXX by Sh. Madhukar Pandey, Id. Special PP for the State.

.....

8. It is wrong to suggest that it had so happened and that I had so stated before police that on aforesaid day, subsequently I had come out in the gali at the corner of Anil Pastry shop; or that from this place, I had seen the rioters alongwith aforesaid Shahnawaz @ Shanu, entering in the aforesaid godown being equipped with danda etc. at about 9 p.m.; or that these rioters at that time set that godown on fire; or that I had tried to stop them, but they did not hear me and continued rioting till late night.”

32. The relevant part of testimony dated 03.09.2024, of PW9/Sh. Anil Pal, is as follows: -

“XXXXXX by Sh. Madhukar Pandey, Id. Special PP for the State.

.....

3 . It is wrong to suggest that it had so happened and that I had so stated before police that on 24.02.2020 at about 6.40-6.45 p.m., I had seen some rioters entering my godown at A-29 with stones and bottles of petrol and diesel; or that I had identified one boy among those rioters, who was Shanu @ Shahnawaz

4. It is correct that on the same day at about 9.45 p.m., Mr. Chidda Lal Tomar had made a WhatsApp call to me and had informed me that Shanu @ Shahnawaz alongwith some other boys had set my godown on fire;

33. The quoted portions from the testimony of PW3, show that first of all this witness denied even having seen any incident around 9

PM or between 9-10 PM. He even did not say about the Godown being set ablaze in his presence. In that situation the concluding part of his testimony, wherein he mentioned that he knew a person namely Parvez, who was present among the rioters who had entered this Godown at about 9 PM along with Shanu, has contradicted his own stand. Earlier he had stated that there was no light and it was completely dark, therefore, he had not seen face of any rioter in that mob at about 9 PM. This witness otherwise had been shaky, while responding to the suggestion being given by prosecution and on the basis of his testimony one cannot be very sure, if he had actually seen and identified accused Shahnawaz among the rioters, who entered this Godown at about 9 PM. Rather, this witness vouched that he had not seen any incident around this time period.

34. The another cited eyewitness i.e. PW7 even denied the suggestion of having seen Shanu entering the afore-said Godown at about 9 PM or having seen the rioters setting that Godown on fire at that time. He also belied the stand of prosecution that he had tried to stop the rioters, but rioters did not listen to him. In such situation, even if PW9 admitted the suggestion of the Prosecutor that PW3 had informed him about name of Shanawaz @ Shanu being part of the rioters, who had set his Godown on fire, such testimony of PW9 cannot be a substantive and complete evidence to show that accused Shahnawaz was among the rioters or to show that all these rioters entered afore-said Godown at about 9 PM and thereafter set it on fire.

35. I have also quoted from the testimony of owner of Godown i.e. PW9 and his family members for a purpose. It is matter of record that name of Shanu was nowhere mentioned before police by any of these witnesses immediately after this incident, nor it is so mentioned in the FIR. Had it been a case that PW9 was informed about the name of Shah Nawaz @ Shanu as one of the rioters as identified by PW3 on 24.02.2020 at around 9 PM, then PW9 had the occasion to mention name of Shanu in the call made by him to the police at 100 number or on next date i.e. 25.02.2020 or on 26.02.2020 when according to PW3 the dead body was recovered in the afore-said Godown and it had come to the knowledge of all these persons including PW9, who was owner of this Godown. It is also worth to mention that in the file, there are three handwritten statements purportedly pertaining to Devender Singh, Rohit Negi and Shyam Singh as recorded by ASI Gajraj Singh. There is overwriting in the date of all these statements to make them 28.02.2020, but in any case it is well apparent that when police could meet these employees of PW9, then even PW9 had the occasion to meet police after discovery of dead body. The FIR was registered on 28.02.2020 and if name of accused Shanu was already within the knowledge of PW9 since 24.02.2020, then he would have mentioned his name before police before registration of FIR and police could have registered FIR rather on the basis of such information provided by PW9. Therefore, the evidence related to admission by PW9 regarding having conversation on WhatsApp call at about 09:45 PM on 24.02.2020

with PW3 and PW3 informing the name of Shahnawaz as one of the rioters, does not inspire confidence at all. Thus, for want of any substantive evidence to show that accused Shahnawaz had entered this Godown along with other rioters at about 9 PM, afore-said kind of evidence in the form of admission to suggestion being given by Prosecutor, cannot be basis to presume guilt of accused Shahnawaz. Hence, I find that prosecution has failed to establish the fact, that accused Shahnawaz had entered this Godown along with other rioters at about 9 PM and thereafter, this Godown was set on fire by those rioters.

CONCLUSION & DECISION

36. In view of my foregoing discussions, observations and findings, I find that charges levelled against accused Mohd. Shahnawaz @ Shanu in this case, is not proved beyond reasonable doubts. Hence, accused Mohd. Shahnawaz @ Shanu is given benefit of doubt and he is acquitted of all the charges levelled against him in this case.

Announced in the open court (PULASTYA PRAMACHALA)
today on 24.02.2025 ASJ-03 (North- East)
(This order contains 47 pages) Karkardooma Courts/Delhi