

DLNE010024062020



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

INDEX		
Sl. No.	HEADINGS	Page Nos.
1	Description of Case & Memo of Parties	2-3
2	Case set up by the Prosecution	3-7
3	Charges	7-8
4	Description of Prosecution Evidence	8-34
5	Plea of accused under Section 351 BNSS	34
6	Arguments of Defence & Prosecution	34-35
7	SECTION 255 BNSS	35-40
APPRECIATION OF FACTS AND EVIDENCE		
8	Unlawful Assembly & Riot	41-43
9	Identification of accused persons	43-52
10	Conclusion and Decision	52

Sessions Case No.	:	118/2020
Under Section	:	144/147/148/149/302/201/427/432/435/ 120-B/34 IPC
Police Station	:	Gokalpuri
FIR No.	:	35/2020
CNR No.	:	DLNE01-002406-2020

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. **Rishabh Chaudhary @ Tapas**
S/o. Sh. Yogender Singh,
R/o. H.No. F-53, Gali No.1,
Ganga Vihar, Gokalpuri, Delhi-94.
7. **Jatin Sharma @ Rohit**
S/o. Sh. Gouri Shankar Sharma,
R/o. H.No. C-101, DLF,
Dilshad Extension-II, Ghaziabad,
Sahibabad, U.P.-201005.

8. **Vivek Panchal @ Nandu**
S/o. Sh. Pramod Kumar Panchal,
R/o. H.No. D-106, Gali No.4, Ganga Vihar, Delhi-94.
9. **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.
10. **Tinku Arora**
S/o. Sh. Ashok Kumar,
R/o. H.No. E-51, Gali No.2,
Bhagirathi Vihar, Delhi-94.
11. **Sandeep Kumar @ Mogli**
S/o. Late Sh. Dalveer Singh,
R/o. H.No. E-24, Gali No.3,
Bhagirathi Vihar, Delhi-94.
12. **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 : 08.04.2025

Date of pronouncement : 22.04.2025

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 144/147/148/149/188/302/201/395/396/412/435/153-A/505/120-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 dead body 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 A. Some injury marks were found present on its face. Accordingly, this case vide FIR No. 35/2020 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, post mortem of the body of deceased was got conducted at GTB Hospital on 29.02.2020 by a Board of Doctors. Dead body was identified to be of Hashim Ali. Further investigation of the case was transferred to the SIT of Crime Branch.
4. During the course of investigation, nine accused persons namely, (1) Lokesh Kumar Solanki @ Rajput (2) Pankaj Sharma (3) Sumit Chaudhary @ Badshah (4) Ankit Chaudhary @ Fauzi (5) Prince @ DJ wala, (6) Rishabh Chaudhary @ Tapash (7) Jatin Sharma @ Rohit (8) Vivek Panchal @ Nandu, (9) Himanshu Thakur were arrested in this case.
5. The statements of eye witnesses were recorded u/s 161 CrPC and 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 Hashim 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 Nala along with the bike.

6. During further course of investigation, mobile data of 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 the present case 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 Khan.
7. After completion of investigation, on 04.06.2020 main chargesheet was filed against accused Lokesh Kumar Solanki @ Rajput, Pankaj Sharma, Sumit Chaudhary @ Badshah, Ankit Chaudhary @ Fauzi, Prince @ D.J. Wala, Rishabh Chaudhary @

Tapas, Jatin Sharma @ Rohit, Vivek Panchal @ Nandu and Himanshu Thakur, for offences punishable under Section 144/147/148/149/302/201/427/432/435/120-B/34 IPC. This chargesheet was filed before Id. Duty MM (North-East), Karkardooma Courts, Delhi. On 21.08.2020, Id. CMM/NE took cognizance of afore-said offences and summoned above-mentioned nine (9) accused persons. Thereafter, case was committed to the court of sessions vide order dated 30.09.2020.

8. On 01.10.2020, 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 chargesheet. This supplementary chargesheet was sent by Id. CMM/NE to the court of sessions vide order dated 11.12.2020.
9. On 07.05.2021, second supplementary chargesheet along with FSL reports, copy of prohibitory order u/s. 144 Cr.P.C., and other additional documents and impleading three additional accused persons namely Sahil @ Babu, Sandeep @ Mogli and Tinku Arora, was filed before Duty MM/NE. 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 26.10.2021.
10. On 15.09.2022, third supplementary chargesheet along with copy of complaint u/s. 195 Cr.P.C. and other additional documents, was filed before Id. CMM/NE. On same day, Id. CMM/NE took cognizance of offence u/s. 188 IPC. This supplementary chargesheet was sent by Id. CMM/NE to the court of sessions

vide order dated 22.10.2022.

11. Thereafter, fourth supplementary chargesheet along with certified copy of CDRs and CAFs of mobile numbers of three accused persons and Shivam and Mohit, was filed directly before this court. This supplementary chargesheet was filed in view of permission granted by this court vide order dated 14.01.2025.

CHARGES

12. On 04.04.2022, charges were framed against accused 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 144/147/148/153A/188/302/201/427/432/435/505/34 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 **Hashim Ali**, 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 Hashim Ali along with his brother Aamir Khan 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 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.*

***Fourthly**, 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.”*

DESCRIPTION OF PROSECUTION EVIDENCE

13. Several witnesses were dropped on the basis of admission of documents under Section 294 Cr.P.C./330 BNSS and prosecution

examined 40 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 Singh	PW1 was resident of F-442A, gali no.8, Ganga Vihar, Gokalpuri. 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 which 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 any of them. 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.	
PW2/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, who resided near his house, requested him to rescue her. When PW2 reached Bhagirathi Vihar, he did not go ahead as he was hearing noise of hue and cry, but he	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	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 named and identified some accused persons as part of mob of rioters at different points of time and date. Thus, PW2 also did not support the case of prosecution and was declared hostile by Id. SPP on the aspect of identifying some accused in the mob of rioters in the alleged incident.	
PW3 Shivam Bhardwaj	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). PW3 identified his said mobile phone 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.	Ex.PW3/ Article-1 (mobile phone make Realme belonging to PW3)
PW4/Mohit Sharma	PW4 was working in Khaibar Pass Metro Depot as technician. Crime branch officials had taken him	Ex.PW4/ Article-1 (mobile phone

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	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 before the court. His mobile phone was make Samsung. This mobile phone was marked as A2-MOB in FSL, Rohini. 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.	make Samsung belonging to PW4)
PW5/Sh. Amit Kumar	In February 2020, PW5 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, PW5 remained inside his home and he did not see any mob at any place on that day. 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 for having seen beating of a muslim boy at that time by this mob.	
PW6/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. 8383847939.	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	PW6 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”.	
PW7/Sh. Shalu	PW7 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. PW7 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, PW7 did not support the case of prosecution and he was also declared hostile on the point of identifying the accused persons in the mob in the alleged incident.	
PW8/Sh. Paras	PW8 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.	
PW9/HC Nitesh Rathi	On 06.01.2021 on the instructions of Insp. Dinesh, PW9 collected 2 pullandas, which were seized in case FIR No.36/20, PS Gokalpuri, along with letter of subsequent opinion request and PW9 deposited the same in department of Forensic Medicine, GTB hospital.	
PW10/Sh. Babu Khan	PW10 was father of deceased Hashim Ali. On 26.02.2020, he was present at his home bearing D-222, Gali No.16, Old Mustafabad, Delhi. His other son	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	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 Amir 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 Amir 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 Amir was also switched off. On 27.02.2020, PW10 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 Amir at GTB hospital. On 10.03.2020, his nephew Mohsin made telephonic call to PW10 and told that someone was making calls to his sisters using mobile phone number of Amir i.e. 9313118035. PW10 visited PS Gokalpuri and informed SHO about this fact.	
PW11/Ct. Vipin	On 26.02.2020, vide DD No.16-B, PW11 was deputed for law & 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., PW11 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 PW11 with other police staff, that mob started running away, while taking names of Rishabh, Pankaj, Prince, Avdresh and Ankit. PW11 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.37/20. These photographs	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	were shown by accused Lokesh by opening his Facebook account, on the laptop of SHO PS Gokalpuri. PW11 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 PW11 had mentioned name of Ankit as Ankit Fauzi at that time; and that PW11 had also mentioned name of accused Rishabh Jaat and Jatin, as being told by accused Lokesh, while pointing out photograph on his facebook page.	
PW12/Sh. Nasir Ali	PW12 was brother of deceased Hashim Ali. On 26.02.2020, PW12 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., PW12 had received a call from mobile phone no. 7291882903 of Hashim Ali and during this call, PW12 had conversation with his brother Amir Ali. During this conversation, Amir had told PW12 that he was somewhere near the canal and was about to reach home in 5 minutes. His brothers Amir and Hashim were coming on Apache m/cycle, but they did not come back to home by night of 26.02.2020. On 28.02.2020, PW12 came to know that his both aforesaid brothers had died and their dead bodies were recovered from drain.	
PW13/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, PW13 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	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	Colony, Gokalpuri and Gokalpuri Village.	
PW14/ASI Naresh Pal	PW14 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. PW14 identified signature of Mr. Surya at circle X and true copy of that order. PW14 also produced office record of complaint u/s 195 Cr.P.C. PW14 identified signature of Sh. Sanjay Kumar Sain on the same.	Ex.PW14/A (true copy of order u/s. 144 Cr.P.C.) & Ex.PW14/B (original complaint u/s 195 Cr.P.C)
PW15/ASI Manvir	On 27.02.2020, PW15 along with ASI Ram Dass went to E-Block, Bhagirathi Vihar Nala, on a call recorded vide DD No.24-B. PW15 witnessed recovery of three dead bodies and one motorcycle bearing DL-5SBA-7168, from the drain. 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 Hashim Ali and MLC bearing no. 758/03/20. All three dead bodies were declared brought dead and were preserved in the mortuary, GTB hospital. PW15 witnessed (i) recording of	Ex.PW15/A (seizure memo of TECHNO mobile phone); Ex.PW15/B (seizure memo of motorcycle bearing DL5SBA7168) & Ex.PW15/C (seizure memo of clothes of deceased)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	statement of father and other relatives of deceased Hashim, 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. On 10.08.2020, PW15 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 PW15 about afore-said mobile phone and pen-drive.	
PW16/HC Javed Khan	PW16 was photographer in mobile crime team/NE District. On the direction of I/C ASI Mahavir, PW16 took 6 photographs near pipeline, main nala, Bhagirathi Vihar, Delhi, on 02.03.2020.	Ex.PW16/A (certificate u/s. 65-B of I.E. Act) Ex.PW16/P-1 to Ex.PW16/P-6 (six photographs)
PW17/SI Yashpal	PW17 was Duty Officer in PS Gokalpuri. He registered FIR in the present case on the basis of rukka handed over by ASI Ram Dass. Thereafter, he also made endorsement on the back side of rukka.	Ex.PW17/A (endorsement of PW17 on the back side of rukka); & Ex.PW17/B

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
		(FIR)
PW18/ASI Shyam Lal	PW18 took sealed pullanda from PS Gokalpuri, to CERT Technology Information at CGO complex, Lodhi Road and deposited the same there, on 08.09.2020. On 24.09.2020, Insp. Tyagi handed over one authority letter to PW18, in order to bring the result from CERT, CGO complex. PW18 went to CERT and handed over the authority letter. In CERT, PW18 was handed over 4 sealed pullandas and documents running into 8 pages. PW18 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 PW18, so as to hand over the same to the IO and he did the same. PW18 deposed that on 09.04.2020, Insp. Dinesh had brought accused Rishabh Chaudhary, Jatin Sharma and Vivek Panchal, in the office of PW18 and after interrogating them, Insp. Vinay Tyagi arrested them, in the present case. Insp. Vinay Tyagi prepared their separate arrest and personal search memos and recorded their disclosure statement.	Ex.PW18/A (arrest memo of accused Rishabh Chaudhary); Ex.PW18/B and Ex.PW18/C (arrest and personal search memo of accused Vivek)
PW19/ASI Ram Dass &	He deposed on the lines of PW15/ASI Manvir, in respect of	Ex.PW19/A (rukka);

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
PW20/ RetdACP Mahesh	Ex.PW15/A, Ex.PW15/B, Ex.PW15/C, preparing of rukka, recording statement of father of deceased and identification of dead body of Hashim Ali. PW19 witnessed preparation of site plan by IO/Insp. Bineet Pandey, in the present case. PW19 prepared inquest papers for conducting postmortem on the dead body of deceased Hashim Ali and Amir. On 06.05.2020, PW19 had pointed out the place of recovery of dead bodies to PW20/Retd. ACP Mahesh Draughtsman from Crime branch. PW20 had taken his measurements. On the basis of said measurements, PW20 prepared scaled site plan on 26.05.2020 and thereafter handed over the same to the IO/Insp. Vinay Tyagi on same day.	Ex.PW19/B (site plan); Ex.PW19/C & Ex.PW19/D (identification statement of Babu Khan and Sheruddin, respectively); Ex.PW19/E & Ex.PW19/F (Request form to conduct postmortem examination alongwith form 25.35); & Ex.PW20/A (scaled site plan)
PW21/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, 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.	Ex.PW21/A (pointing out memo)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	PW21 correctly identified accused Jatin Sharma, before the court.	
PW22/ASI Ramesh Kumar & PW23/SI Hava Singh	He joined investigation of the present case on 08.03.2020, along with IO/Insp. Vinay Tyagi, PW23/SI Hava Singh, SI Arjun Singh, ASI Sunil, ASI Raj Kumar, ASI Mohd. Salim, ASI Satish Patil, myself, HC Shyam Lal, HC Babu Ram, Ct. Kuldeep and Ct. Puneet. PW22 and PW23 witnessed seizure of mobile phones from witnesses Shivam, Mohit and Dimpal. PW22 and PW23 also witnessed arrest and personal search of accused Lokesh Solanki, in the present case. PW23 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. PW22 and PW23 also joined investigation of the present case on 11.03.2020, along with IO/Insp. Vinay Tyagi, SI Hava Singh, ASI Mohd. Salim, ASI Satish Patil, ASI Sunil, HC Shyam Lal, HC Babu Ram, Ct. Kuldeep & Ct. Puneet. PW22 and PW23 witnessed arrest of accused Ankit Chaudhary and Sumit @ Badshah and pointing out memo. PW22 also joined investigation of the present case on 09.04.2020. He	Ex.PW22/A (arrest memo of accused Lokesh); Ex.PW22/B (arrest memo of accused Ankit Chaudhary); Ex.PW22/C (pointing out memo at the instance of accused Ankit); Ex.PW22/D & Ex.PW22/E (arrest and personal search memo of accused Jatin); Ex.PW23/A to Ex.PW23/C (print outs of WhatsApp messages found in mobile phones of witnesses Shivam, Mohit and Dimple, respectively);

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	witnessed arrest and personal search of accused Jatin Sharma. On 22.04.2020, PW22 and PW23 along with IO, SI Arjun Singh, ASI Saleem Khan, ASI Sunil Kumar, HC Shyam Lal and Ct. Kuldeep went to Tihar jail. At that place, IO interrogated and arrested accused Himanshu. PW22 correctly identified accused Lokesh Solanki, Ankit, Pankaj & Badshah, before the court. But he could not identify others. During his cross-examination by Id. Special PP, PW23 admitted suggestion of Id. SPP in respect of identity of accused Himanshu, Rishabh Chaudhary, Sandeep @ Mogli, Sahil @ Babu and Lokesh Solanki	Ex.PW23/D to Ex.PW23/F (original seizure memo of mobile phones of witnesses Shivam, Mohit and Dimple, respectively); Ex.PW23/G (personal search memo of accused Lokesh); Ex.PW23/H (arrest memo of Sumit); Ex.PW23/I (pointing out memo at the instance of accused Ankit and Sumit); Ex.PW23/K (arrest memo of Himanshu)
PW24/Insp. Pramod Joshi	PW24 pointed out the dead bodies to PW15/ASI Manvir Singh and PW19/ASI Ram Dass on 27.02.2020. He also pointed out the place of recovery of dead body to Insp. Mahesh.	
PW25/Insp.	PW25 joined investigation of the	Ex.PW25/A &

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
Arjun Singh	present case on 09.03.2020, 10.03.2020 and 13.03.2020. PW25 witnessed arrest, personal search of accused Pankaj Sharma, preparation of point out memo at his instance. PW25 also witnessed arrest of accused Prince, in the present case. He correctly identified accused Pankaj, Lokesh Solanki, Sumit Chaudhary, Ankit Chaudhary and Prince, before the court.	Ex.PW25/B (arrest and personal search of accused Pankaj Sharma) & Ex.PW25/D (arrest memo of accused Prince)
PW26/Sh. Pawan Singh	PW26 was Alternate Circle Nodal Officer in Vodafone Idea Ltd. PW26 brought and proved fresh certified copies of CDRs, CAFs certificate u/s 65B of I.E.Act and Cell ID Chart in relation to mobile nos. 8750610027, 9540689734, 7291882903, 9654196608, 9136034019, 8588902696 & 9313118035 for different periods. He also brought and proved record on the basis of IMEI numbers 86465503871111 and 911552280231690. PW26 also brought and proved manual Cell ID Chart, in relation to afore-said mobile numbers.	Ex.PW26/A to Ex.PW26/N (certified copy of CDR and EKYC/DKYC CAF of mobile numbers 8750610027, 9540689734, 7291882903, 9654196608, 9136034019, 8588902696, & 9313118035, respectively); Ex.PW26/O & Ex.PW26/P (certified copy of CDRs in relation to given two IMEIs;

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
		Ex.PW26/Q & Ex.PW26/R (certificate u/s. 65-B of I.E. Act in respect of afore-said CDRs and EKYC/DKYCs respectively); & Ex.PW26/S (manually prepared Cell ID Chart).
PW27/ASI Satish Patil	PW27 participated in 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. PW27 witnessed preparation of pointing out memo at the instance of accused Vivek Panchal. On the direction of IO, on 17.04.2020 PW27 collected the exhibits with RC No.35/21/20, from malkhana and he deposited the same in the department of CERT-in, for examination. On the direction of IO, on 08.05.2020 PW27 collected the exhibits with RC No.58/21/20, from malkhana and he deposited the same	Ex.PW27/A (pointing out memo at the instance of accused Vivek Panchal); Ex.PW27/B & Ex.PW27/C (true photocopies of relevant entries made in register no.21); & Ex.PW27/D (acknowledgm ent given to PW27 at FSL)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	in FSL, Rohini, Delhi, for examination. PW27 was also given an acknowledgment in FSL. Till the time aforesaid exhibits remained in his custody, same were not tampered with in any manner. PW27 correctly identified accused Vivek Panchal before the court.	
PW28/ASI Shashikant	On 20.08.2020 on the instruction of IO/Insp. Vinay Tyagi, PW28 collected FSL reports in sealed condition along with 2 sealed pullanda; along with another report dt. 31.07.2020 in sealed envelope. Thereafter, he went to malkhana PS Gokalpuri and deposited afore-said 2 pullandas there. PW28 handed over said reports to IO. On 02.09.2020, on the instruction of IO, PW28 took authority letter from ACP, Star-II, Crime Branch and went to CERT-in. PW28 collected one report in open condition containing 11 pages, along with three pullandas in sealed condition. PW28 deposited one pullanda in the malkhana and he handed over two pullandas along with afore-said report, to IO. Till the time aforesaid exhibits remained in his custody, same were not tampered with in any manner.	
PW29/HC Karamveer	On 27.02.2020, PW29 accompanied PW15/ASI Manvir and PW19/ASI Ram Dass to GTB Hospital, by TATA 407 vehicle, in which 3 dead bodies were kept. All these 3 dead bodies were deposited in mortuary at GTB hospital. PW29 was deputed at the mortuary for safety of aforesaid dead bodies and he remained there upto 29.02.2020, for afore-said particular duty.	
PW30/Sh. Ahmad Shahid	PW30 used to work as vendor for scrap dealing and for this purpose, he used to roam around in the area of Ganga Vihar, Bhagirathi Vihar, Johripur, Shiv Vihar,	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	Mustafabad, Dayalpur & Karawal Nagar. PW30 deposed that riot had taken place on 25.02.2020 in and around the area of Brijpuri Pulia. Since atmosphere had worsened since 24.02.2020, therefore, PW30 was at his home on 25.02.2020. On receipt of telephonic call from his aunt (mausi) Ameena, at about 3-4 pm, PW30 went to her house situated at the corner of a street (gali) near Johripur pulia. PW30 saw that there was a mob of around 100-150 persons at Ganga Vihar/Johripur pulia, who were raising slogans like Har Har Mahadev, Jai Siya Ram. PW30 went to the terrace of house of Ameena and from the terrace, PW30 saw that the persons from that mob were equipped with lathi, danda etc. They were stopping the passers-by. PW30 knew 2-4 persons in that mob, who were Thakur (who was carrying danda), Mukesh Master, Avdhesh Mishra, Kanhaiya, Sahil, Tinku & Mogli. PW30 had seen these persons in the aforesaid mob, who were raising slogans etc. Thereafter, PW30 took his aunt Ameena to his home, through back side streets. PW30 correctly identified accused Mogli, Tinku and Sahil before the court. PW30 was declared hostile by prosecution on the point of name of some accused persons.	
PW31/ASI Mahesh	PW31 was working as MHC(M), PS Gokulpuri. PW31 deposed on the lines of PW27 in respect of Ex.PW27/B & Ex.PW27/C. On 08.09.2020, HC Shyam Lal handed over 5 pullandas of mobile phones, to PW31, which were received by him from CERT-In. PW31 pasted the receiving and copy of acknowledgment of the same in register no.21.	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	On 24.09.2020, HC Shyam Lal handed over a report (consisting of 8 pages) from CERT-In, to PW31. PW31 handed over to him two copies, one for the IO and another for the court. On 07.01.2021, PW31 handed over one danda to HC Pankaj vide R/C no.03/21/21. The said danda was seized in FIR no.156/20, PS Gokalpuri, for examination and for obtaining subsequent opinion in the present case. HC Pankaj handed over the receiving of the same, to PW31. PW31 pasted the same in register no.21.	
PW32/Ms. Shabina	PW32 was widow of Amir. She deposed that on 26.02.2020, her husband late Amir 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., PW32 spoke to her husband on mobile phone from her mobile phone bearing no.7827..... She did not remember the complete number. PW32 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 PW32 that at that place, there was a mob and that the mob was intercepting the muslim persons. After around 5-10 minutes, PW32 called her husband on mobile phone, to know whether they had reached home or not. However, his phone was switched off.	
PW33/Sh. Sheruddin	PW33 deposed on the lines of PW10 in respect of Amir and Hasim, who were coming home on Apache vehicle on 26.02.2020 and in respect of telephonic conversation of Nasir with Amir. PW33 identified photograph of Amir and Hasim at PS Gokalpuri, where police informed him that those dead	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	bodies were taken out from the drain.	
PW34/Insp. Bineet Pandey	PW34 was handed over investigation of the present case on 27.02.2020, after registration of FIR in PS Gokalpuri. PW34 deposed on the lines of PW19/ASI Ram Dass in respect of Ex.PW19/B. On 28.02.2020, in PS Gokalpuri, PW34 had shown photographs of dead bodies to PW10/Sh. Babu Khan and PW33/Sheruddin, who identified deceased in this case in the photograph. PW34 also recorded their statements in this respect. On 29.02.2020, PW34 authorised PW19/ASI Ram Das to get the post-mortem examination be done in this case. PW34 sent him to Mortuary at GTB Hospital with PW10/Babu Khan and PW33/Sheruddin as well as PW15/ASI Manveer. PW19 subsequently came back and handed over case file to PW34, informing that post mortem on dead body of Hashim Ali was conducted on that day and the dead body was delivered to the relatives. PW34 recorded statement of PW15, PW19 and PW29/Ct. Karamveer. On 02.03.2020, PW34 had called crime team at the place of recovery of dead body. PW15/ASI Mahavir and PW16/Ct. Javed had come there. They inspected that place and PW16/Ct. Javed took photographs at his instance. PW34 was handed over SOC report by PW15/ASI Mahavir. Thereafter, PW34 did not conduct any other investigation as further investigation was transferred to Crime Branch and PW34 handed over the case file to MHC(R).	
PW35/Sh. Arun Kumar	PW35 was working as Scientist B, in Cyber Forensic Lab, CERT-In,	Ex.PW35/A (report

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
Sahani	Ministry of Electronics, Government of India, New Delhi. On 17.04.2020, he received request letter from Crime branch in this case alongwith 5 sealed packets and other documents. These exhibits were assigned to PW35 and his Incharge Lt. Colonel Santosh Khadsare. PW35 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 and a certificate u/s 65-B of IE Act was issued in respect of the same. PW35 again received another request letter dated 07.09.2020 in this case alongwith sealed packets of exhibits as sent back by this witness to the police. This time, PW35 examined exhibits A1-MOB, A2-MOB and A3-MOB, alongwith their related SIMs and memory cards. PW35 extracted data from the same in another pendrive vide a report and issued a fresh certificate, in respect of the same. PW35 had prepared two copies of that pendrive and all these exhibits and pendrives were sealed and sent back. He identified afore-said pendrive with its contents.	prepared by PW35 in respect of extracted data from digital exhibits); Ex.PW35/B (certificate u/s 65B of IE Act was issued in respect of retrieved data); Ex.PW35/D (extracted data from pen-drive); Ex.PW35/E (certificate u/s. 65-B of I.E. Act in respect of Ex.PW27/E); Ex.PW35/ Article-1 (Pen-drive with extracted data)
PW36/HC Rajender Singh	PW36 had participated in the investigation of the present case on 08.02.2021 and 10.02.2021. PW36 witnessed interrogation and arrest of accused Sandeep @ Mogli and Tinku Arora by IO in CJ-13, Mandoli. He also witnessed preparation of pointing out	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	memo by IO at the instance of accused Tinku. PW36 correctly identified accused Sandeep and Tinku before the court.	
PW37/HC Pankaj	PW37 was posted as HC in Crime Branch Nand Nagri. On 06.01.2021 on the direction of PW38/IO/Insp. Vinod Ahlawat, PW37 collected danda, which was deposited in FIR No.156/20, from malkhana PS Gokalpuri and handed over the same with request letter, in Forensic Department of GTB hospital. On 20.01.2021, PW37 took an authority letter given by IO to GTB hospital. PW37 collected danda and subsequent opinion from GTB hospital. PW37 handed over a copy of this opinion and danda to MHC(M) in PS Gokulpuri. He handed over original opinion to IO. PW37 was part of investigation of this case on 08.02.2021, 10.02.2021, 27.04.2021 and 30.04.2021, with IO/PW38 and other staff. PW37 witnessed arrest of accused Tinku Arora and Sandeep @ Mogli, by IO on 08.02.2021 at CJ-13, Mandoli. On same day, PW2/Nisar Ahmed joined investigation of the present case and PW2 identified both these accused persons to be involved in the riot in the night of 24.02.2020 and in the killings of Muslims on 25.02.2020 and in the night of	Ex.PW37/A & Ex.PW37/B (arrest memos of accused Tinku and Sandeep, respectively); Ex.PW37/D (arrest memo of Sahil);

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	26.02.2020. PW37 also witnessed arrest of accused Sahil on 27.04.2021 by IO at CJ-12, Mandoli Jail. One witness namely Shehzad was passing by and he was also joined in the investigation on 30.04.2021. Shehzad identified Sahil. PW37 correctly identified accused Tinku, Sandeep and Sahil, before the court.	
PW38/Insp. Vinod Ahlawat	He was IO of FIR No. 156/20 PS Gokalpuri. PW38 had arrested Himanshu Thakur on 08.04.2020, recorded his disclosure statement, recovered a danda from Johri Pur Pulia at the instance of Himanshu on 13.04.2020 and prepared seizure-cum-recovery memo in respect of that danda, in that case. PW38 deposed on the lines of PW37 in respect of Ex.PW37/A to Ex.PW37/E. On 10.02.2021, PW38 along with staff visited PS Gokalpuri and met ASI Manvir. PW38 obtained two photographs and copy of seizure memo of a mobile phone and a pendrive as pertaining to FIR No.78/20, PS Gokalpuri. PW38 seized them vide a seizure memo. PW38 obtained certified copy of	Ex.PW38/A (true photocopy of seizure memo of danda); Ex.PW38/B (true copy of arrest memo of accused Himanshu Thakur); Ex.PW38/D (seizure memo of two photographs and copy of seizure memo of a mobile phone and a pendrive as pertaining to FIR No.78/20,

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	CDR, CAF and location chart in respect of 7-8 mobile numbers as pertaining to the accused persons. PW38 recorded statement of witness Ahmad Shahid on 02.11.2020; that of one other witness on 15.11.2020; that of HC Pankaj on 06.01.2021, 20.01.2021, 27.04.2021 and 30.04.2021; that of MHC(M) on 07.01.2021; that of HC Pankaj and Ct. Rajender on 08.02.2021; that of HC Pankaj, Ct. Rajender and ASI MAnvir on 10.02.2021. During investigation, in the month of February 2021, PW38 had received sanction order u/s. 196 Cr.P.C. against nine accused persons, who were already chargesheeted in this case. PW38 prepared supplementary chargesheet and filed the same along with afore-said materials on 08.05.2021. PW38 had recorded statement of some more witnesses	PS Gokalpuri)
PW39/Sh. L.K. Gutam	PW39 was working as Deputy Secretary (Home), GNCT, Delhi. PW39 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	Ex.PW39/A (sanction orders u/s. 196 Cr.P.C for offences u/s 153A/505 IPC accorded by LG against accused Lokesh Solanki, Pankaj

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	this case. PW39 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.	Sharma, Sumit Chaudhary, Ankit Chaudhary, Prince, Rishabh Chaudhary, Jatin Sharma, Vivek Panchal and Himanshu Thakur, in this case)
PW40/Retd Insp. Vinay Kumar	On 05.03.2020, PW40 was assigned investigation of present case as well as of FIR No.37/20, both PS Gokalpuri. On same day, PW40 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. On 07.03.2020, PW40 received report of SOC alongwith photographs from Crime Team from North East district. Same were inspected and placed on file. PW40 deposed on the lines of PW22 and PW23 in respect of seizure of mobile phones from witnesses Shivam, Mohit and Dimpal, on 08.03.2020. PW40 also deposed on the lines of PW21, PW22 and PW23, in respect	Ex.PW40/A (seizure memo of mobile phone of Lokesh); Ex.PW40/D (personal search memo of accused Rishabh)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	of Ex.PW21/A, Ex.PW22/A, Ex.PW22/B, Ex.PW23/D to Ex.PW23/H, Ex.PW23/K, respectively. PW40 had seized mobile phone of accused Lokesh Solanki. PW40 also deposed on the lines of PW25 in respect of Ex.PW25/A to Ex.PW25/E. PW40 also deposed on the lines of PW18 in respect of Ex.PW18/A to Ex.PW18/C. He also proved personal search memo of accused Rishabh. PW40 also deposed on the lines of PW27 in respect of Ex.PW27/A. PW40 had prepared the chargesheet and filed the same on 04.06.2020 before the court of Id. CMM/NE. On 22.09.2020, report from CERT-In was collected by HC Shyam Lal and he handed over the same to PW40. 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, PW40 prepared supplementary chargesheet-I and filed it on 24.09.2020 before the court alongwith aforesaid materials. Thereafter PW40 was transferred to South District and further investigation was handed over to	

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	Insp. Vinod Ahlawat. PW40 had also applied for sanction u/s 196 Cr.PC through DCP against the accused persons. Same was received by PW40 and he had also filed that sanction order probably with supplementary chargesheet. PW40 had also applied for complaint in view of violation of order u/s 144 Cr.PC. He had also obtained details of the m/cycle of the deceased from the office of RTO.	
PW41/Insp. Dinesh Kumar	On 09.04.2020, PW41 was posted as Insp. in Crime Branch, Shakarpur, Delhi. He had arrested accused Jatin and Vivek in FIR no. 36/20 PS Gokalpuri, being IO of that case. On 11.04.2020, PW41 had recovered and seized one danda each at the instance of both these accused persons in FIR No. 36/2020. On that day, both these accused persons were on police remand. PW41 alongwith both these accused persons and Rishabh as well as SI Arun, SI Ravinder, ASI Om Prakash, ASI Vikal, HC Dinesh, had gone to Bhagirathi Vihar pulia. PW41 had recovered one danda each at the instance of Vivek and Jatin, from that place near that pulia and a <i>pilkhan tree</i>. PW41 had prepared cloth pullanda of both these dandas and had seized them vide separate seizure memos. PW41 had provided	Ex.PW41/A (OSR) & Ex.PW41/B (OSR) (true photocopies of seizure memos of danda recovered at the instance of Jatin and Vivek pertaining to FIR No. 36/20)

Sl. No. & Name of Witness	Role of Witness & Description of Testimony	Proved documents/ case properties
	copy of aforesaid seizure memos to Insp. Vinay Tyagi. PW41 correctly identified accused Jatin and Vivek, before the court.	
Admitted documents under Section 294 Cr.P.C/330 BNSS Particulars of R/C of vehicle no. DL 5S BA 7168 as Ex.A-1 & A2 , respectively; certificate u/s. 65/B of I.E. Act as Ex. A-3 ; MLC no.758 as Ex.A-4 ; postmortem report no.358/220 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 Ex.A-11 ; copy of p/search memo of Ankit Chaudhary as Ex.A-12 ; copy of p/search memo of Sumit @ Badshah as Ex.A-13 ; copy of FIR no.50/20 as Ex.A-14 ; copy of arrest memo and p/search memo of accused Prince Ex.A-15 & A-16 respectively; R/C. No. 17/21/20 as Ex.A-17 ; CDRs and CAFs as Ex.A-18 to Ex.A-58 , respectively.		

PLEA OF ACCUSED UNDER SECTION 351 BNSS

14. 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

15. I heard ld. Special PP as well as ld. counsels for accused persons and I have perused the entire material on the record.
16. **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 who killed the victim in this case. Hence, judgment of acquittal should be passed in the case.

17. 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

18. 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.

19. 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:”

20. 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'.”*

21. 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.”

22. 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.

23. 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.

24. 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.”*
25. 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. 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.

26. For this purpose, as per law explained by higher courts, appreciation of the evidence on the record has 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 Hashim. 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

27. 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 Hashim. 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.
28. 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, for murder of brother of deceased herein. As per chargesheet itself, both these murders had been committed simultaneously. Said FIR 37/20 is also pending in this court for today itself. Same charges were framed therein also, on the basis of same allegations. 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. In the present case said charge is being dropped, as the same is being taken into consideration in aforesaid FIR 37/20 of same police station.

29. 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. Though, there is gap of time between the time-period deposited by PW1 and alleged time period of killing of Hashim.
30. PW19 and PW15 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 from same place. 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. PW10/Babu Khan deposed that Hashim and Amir were his sons. Amir 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 PW10, PW12/Nasir and

PW32/Shabina, on 26.02.2020 Amir and Hashim had left for Mustafabad, Delhi from Ghaziabad on Apache bike at about 9 P.M. At about 9.30 P.M., Amir had telephonic conversation with PW32, when Amir informed that he had reached Gokalpuri Pulia. But thereafter, Amir or Hashim could not be contacted, as their phone was found switched off. PW12 also had telephonic talk with Amir at about 9.30 P.M.

31. PW15 and PW19 did not find any other bike from the drain, at least from the place where 3 dead bodies were recovered. Out of three, two bodies pertained to Hashim and Amir. Aforesaid evidence read together, show that probably PW1 had seen Hashim and Amir in the night of 26.02.2020. Therefore, on the basis of above-mentioned circumstantial evidences, it can be inferred that Hashim and Amir were intercepted by a mob/unlawful assembly, at or near Bhagirathi Vihar Pulia, near E block Bhagirathi Vihar and near Johripur Pulia, and one of them was assaulted and thrown in the drain, while other was compelled to jump into the drain in order to save himself. Their bike was also thrown in the drain at that place itself. Postmortem report of Hashim shows that he was inflicted 42 injuries and he died because of shock as a result of injury to his head and abdomen. So, probably Amir would have jumped into the drain and Hashim would have been thrown after assault.

IDENTIFICATION OF ACCUSED PERSONS

32. Next question is that whether there is any evidence to show that accused persons prosecuted in this case, were members of the mob which killed Hashim Ali. Ld. Prosecutor submitted that the

circumstantial evidence on the record, point out to the accused persons.

33. 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.”

34. 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."*

35. 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 intercepted Hashim and Amir. In fact, except for PW1, no other witness claimed having seen any incident, which could be connected with incident with Hashim and Amir. 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 the same mob which was responsible for killing of Hashim and Amir.

36. Id. Prosecutor heavily relied upon the Whats App chats from a 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 that chat 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 rhen
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”

37. 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 it could be a boast also, 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 Mahapatra 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).
38. Thus, the relied upon 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 Amir. 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 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. 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 Hashim.

39. Ld. Prosecutor also relied upon testimony of PW2/Nisar. PW2 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 PW2, becomes worthless.
40. 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. However, before I deal with this plea, it is worth to refer to some part of the evidence of PW2. In his cross examination by prosecutor, PW2/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. PW2/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, such admission of suggestion does not become evidence of the stated facts, because what was told by PW2/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 PW2/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 statement of PW2/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.

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 Hashim with aid of S.149 IPC. Unless, the identity of members of the culprit mob is established, vicarious liability cannot be fastened upon anyone. 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 the mob, which was involved in the incident of murder of Hashim and his brother Amir.

42. Ld. Prosecutor further referred to evidence of PW11/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. There are two site plans proved on the record as Ex.PW19/B and Ex.PW20/A. As per Ex.PW19/A, which was prepared by 1st IO in the presence of PW19, dead body was recovered immediately near a Pulia, which was a bit away from Johripur Pulia. Name of this Pulia is not mentioned in this site plan, but it has come in the evidence of IO/PW40 that dead body was recovered from Bhagirathi Vihar Double Pulia. In site plan Ex.PW20/A i.e. a scaled site plan, said Pulia 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 PW1, as to it was same place where he had seen two bikers being intercepted. 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 are same. There is no evidence to confirm the place where victim and his brother was intercepted. Therefore, whatever was heard by PW11, cannot be connected with the alleged place of incident, nor on the basis of the same it can be inferred that any of the accused persons were part of that mob, which was behind the killings of Hashim and his brother. PW11 did not say anything about the incident with Hashim. Even PW1 did not say about arrival of PW11 on that spot where incident had taken place. PW1 rather, mentioned about PCR vans reaching there and going back.

44. Other circumstance relied by Id Prosecutor, 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 Hashim, 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 Hashim. Hence, such general opinion does not help much, so as to infer anything against these three accused persons in the present case.

45. Thus, I find that 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 member of the culprit mob.

CONCLUSION & DECISION

46. 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 namely 1. Lokesh Kumar Solanki, 2. Pankaj Sharma, 3. Ankit Chaudhary, 4. Prince, 5. Jatin Sharma @ Rohit, 6. Himanshu Thakur, 7. Vivek Panchal @ Nandu, 8. Rishabh Chaudhary @ Tapas, 9. Sumit Chaudhary @ Badshah, 10. Tinku Arora, 11. Sandeep @ Mogli and 12. Sahil @ Babu, are acquitted of all the charges.

Announced in the open court
today on 30.04.2025
(This order contains 52 pages)

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