

DLNE010011092021



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

CNR No. DLNE01-001109-2021
SC No. 162/2021
State v. Kuldeep Singh etc.
FIR No. 119/2020
PS Khajuri Khas

U/s. 147/148/149/153-A/188/302/505/120-B/34 IPC

**In the matter of: -
STATE**

Versus

- 1. Kuldeep Singh**
S/o. Sh. Om Prakash,
R/o. H.No. B-11/1, Bansal Dairy,
Main Market, Khajuri Khas, Delhi.
- 2. Harjeet Singh @ Happy**
S/o. Sh. Amar Singh,
R/o. C-46, Gali No.2, Khajuri Khas, Delhi.
- 3. Sandeep @ Sanjeev**
S/o. Sh. Rajender Prasad,
R/o. H.No.12, Gali No.1, Khajuri Khas, Delhi.
- 4. Rahul @ Ajay**
S/o. Sh. Chander Bhan,
R/o. Gali No.2, Soniya Vihar,
Opposite Police Station Khajuri Khas, Delhi.

5. Aadil

S/o. Sh. Aslam,
R/o. Gali No.5, E-Block,
Shri Ram Colony, Khajuri Khas, Delhi.

6. Farman

S/o. Mohd. Fareed,
R/o. Near Water Treatment Plant,
Main Wazirabad Road, Delhi.

7. Israr

S/o. Sh. Usman,
R/o. H.No. C-450, Gali No.15,
Shri Ram Colony, Khajuri Khas, Delhi.

8. Ikbāl

S/o. Sh. Waseem,
R/o. H.No. C-72, Gali No.5,
Chandu Nagar, Khajuri Khas, Delhi.

9. Juber

S/o. Sh. Shahid,
R/o. H.No. C-85, Gali No.3,
Shri Ram Colony, Khajuri Khas, Delhi.

10. Maroof

S/o. Sh. Kallu,
R/o. H.No. C-108, Gali No. 4,
Shri Ram Colony, Khajuri Khas, Delhi

11. Rizwan

S/o. Sh. Imran,
R/o. H.No. A-652, Gali No. 18,
Shri Ram Colony, Khajuri Khas, Delhi.

12. Shamim @ Lala @ Arif

S/o. Sh. Naim Khan,
R/o. H.No. C-125, Gali No. 22,
Shri Ram Colony, Khajuri Khas, Delhi.

13. Shahbuddin

S/o. Sh. Mohd. Anwar,
R/o. Munna's House, Gali No. 29,
Gyani Market, Khajuri Khas, Delhi.

14. Tayyab

S/o. Sh. Rahish,
R/o. H.No. A-652, Gali No. 18,
Shri Ram Colony, Khajuri Khas, Delhi.

15. Bharat Bhushan @ Lucky

S/o. Sh. Kamal Kant,
R/o. H.No. A- 73, Gali No. 8, Khajuri Khas, Delhi.

16. Imran

S/o. Sh. Islamuddin,
R/o. A-Block, Gali No. 17,
Shri Ram Colony, Khajuri Khas, Delhi.

17. Sachin Gupta @ Moppi

S/o. Sh. Babu Lal Gupta,
R/o. H.No. A-4, Main Market, Khajuri Khas, Delhi.

18. Sachin Rastogi

S/o. Late Sh. Ram Avtar,
R/o. H.No. A-65, Gali No. 5,
A-Block, Khajuri Khas, Delhi.

19. Dharmender @ Dham

S/o. Sh. Chandarvir Giri,
R/o. H.No. 54, Gali No. 4, Khajuri Khas, Delhi.

...Accused Persons

18.03.2025

ORDER ON THE POINT OF CHARGE

Vide this order, I shall decide the question of charges
against above-mentioned accused persons.

1. As per case of prosecution, on 28.02.2020 this FIR was registered in PS Khajuri Khas, on the basis of statement of Pappu (brother of deceased). In his statement, Pappu alleged that his brother namely Babbu (deceased) was an auto driver. He further alleged that on 25.02.2020 at about 2 PM, when Babbu was returning from work and reached Khajuri Chowk, there was a mob, which was pelting stones. It was further alleged that Babbu got serious injuries and Babbu was admitted in Jag Parvesh Chandra Hospital, Shastri Park, Delhi by police. Thereafter, Babbu was referred to UCMS and GTB Hospital for treatment and during treatment Babbu died on 27.02.2020.
2. Postmortem of deceased Babbu was conducted in UCMS and GTB Hospital Vide PM No. 352/20 dated 28.02.2020. After postmortem examination, dead body of Babbu was handed over to his kin and exhibits were taken into police possession through seizure Memo and were deposited in PS Malkhana. Thereafter on 07.03.2020, the case was transferred to STF/Crime Branch/Sunlight Colony for further investigation.
3. During the course of investigation, IO obtained PM Report of deceased Babbu. Autopsy Surgeon had opined in the Report that "*Cause of Death is coma as a result of head injury produced by blunt force impact. However, viscera preserved to rule out poisoning*".
4. On 20.03.2020, permission for interrogation of those accused was taken from the court, who were arrested by SI Naveen in

case FIR No. 103/2020. Thereafter, accused persons namely (1) Rizwan S/o Imran; (2) Israr Ahmad S/o Usman; (3) Tayyab S/o Rahis; (4) Iqbal S/o Wasim; (5) Jubair S/o Sahid; (6) Maroof S/o Kallu; (7) Shamim @ Lala @ Arid S/o Naim Khan; (8) Adil S/o Aslam; (9) Shabuddin S/o Mohammad Anwar; (10) Farman S/o Mohd. Fareed; (11) Bharat Bhushan @ Lucky S/o Sh. Kamal Kant; and (12) Imran s/o Islamuddin; were interrogated separately. During interrogation, all the alleged persons admitted to their involvement in the incident of riot dated 25.02.2020 at Khajuri Khas i.e. the place of occurrence in the present case. They were formally arrested in the present case.

5. On 22.03.2020 one accused namely Rahul @ Ajay S/o Sh. Chandar Bhan, was arrested in present case and his cloth and his mobile phone were also taken into police possession. On 30.03.2020, three other accused persons namely Sandeep @ Sanjeev S/o. Sh. Rajender Prasad; Harjeet Singh @ Happy @ Paji S/o. Sh. Amar Singh; and Kuldeep S/o. Sh. Om Prakash were arrested and mobile phones of accused Bharat Bhushan @ Lucky, Kuldeep Singh, Harjeet Singh @ Happy @ Paji and Rahul @ Ajay, were taken into police possession. Subsequently, Sections 153A/505/120-B IPC were added in present case.
6. During the course of further investigation, statements of public witnesses namely (1) Dalip Sharma, S/o Sh. Dharam Pal Sharma; (2) Sandeep Kumar, S/o. Sh. Deena Nath; (3) Virender Kumar S/o. Sh. Dhaneshwar Kumar Yadav; (4) Deepak Kumar, S/o. Sh. Ram Kishan; (5) Sabir, S/o. Sh. Saddik Khan; (6) Munna, S/o.

Mohd. Yusuf; and (7) Imran, S/o. Mohd Iqbal, were recorded u/s 161 Cr.P.C. The witnesses stated in their statements that above-mentioned accused persons were present at Khajuri Chowk on 25.02.2020 and they were the part of mob. They were provoking and instigating the mob against the other community and they were pelting the stones at the member of other community.

7. During local investigation, it was revealed that on 25.02.2020 since morning, several persons from both the community started gathering near Khajuri Chowk. While members from Hindu community were gathering towards Khajuri Khas, members from Muslim community were gathering towards Shree Ram Colony. Both the groups started raising slogans against each other and they both started pelting stones at each other, and the situation became violent.
8. As per chargesheet, the accused persons from Muslim Community namely (1) Rijwan, (2) Israr, (3) Taiyab, (4) Iqbal, (5) Juber, (6) Maroof, (7) Shamim @ Lala @ Arif, (8) Adil, (9) Sahabuddin, (10) Farman and (11) Imran were conspiring and instigating the riot and they raised slogans against Hindu Community. Being part of the mob, these accused persons pelted stones on members of the mob of Hindu Community.
9. Accused persons from Hindu Community namely (1) Rahul @ Ajay, (2) Sandeep @ Sanjeev, (3) Harjeet Singh @ Happy @ Paji, (4) Kuldeep, (5) Bharat Bhushan @ Lucky, (6) Dharmender @ Dham, (7) Sachin Gupta @ Moppi and (8) Sachin Rastogi,

were conspiring and instigating the riot and they raised slogans against Muslim Community. They were part of mob and pelted stones on members of the mob of Muslim Community.

10. During the course of further investigation, all the exhibits were sent to FSL Rohini for expert opinion. All accused persons were duly identified by eye witnesses.
11. After completion of investigation, on 16.06.2020 chargesheet was filed against accused Kuldeep Singh, Harjeet Singh @ Happy, Sandeep @ Sanjeev, Rahul @ Ajay, Aadil, Farman, Israr, Ikbal, Juber, Maroof, Rizwan, Shamim @ Lala @ Arif, Shahabuddin, Tayyab, Bharat Bhushan @ Lucky and Imran for offences u/s. 147/148/149/302/153-A/505/120-B/34 IPC. This chargesheet was filed in the court of Id. CMM, North-East District, Karkardooma Court, Delhi.
12. On 28.09.2020, first supplementary chargesheet impleading three additional accused namely Dharmender @ Dham, Sachin Gupta @ Moppi and Sachin Rastogi, was filed before Id. CMM (N/E).
13. On 21.10.2020 Id. CMM (N/E) took cognizance of offences u/s.147/148/149/302/120-B IPC against all the nineteen accused persons namely Kuldeep Singh, Harjeet Singh @ Happy, Sandeep @ Sanjeev, Rahul @ Ajay, Aadil, Farman, Israr, Ikbal, Juber, Maroof, Rizwan, Shamim @ Lala @ Arif, Shahabuddin, Tayyab, Bharat Bhushan @ Lucky, Imran, Sachin @ Moppi, Sachin Rastogi and Dharmender @ Dham. Thereafter, Id. CMM

(N/E) committed the case to the court of sessions vide order dated 24.02.2021.

14. On 19.10.2022, second supplementary chargesheet along with sanction u/s. 196 Cr.P.C. against 16 accused persons other than three accused persons namely Dharmender, Sachin Gupta and Sachin Rastogi, complaint u/s. 195 Cr.P.C. and other documents, was filed before ld. CMM (N/E).
15. On 21.11.2022, ld. CMM (N/E) took cognizance of offence u/s. 153-A/505 IPC against 16 accused persons other than three accused persons namely Dharmender, Sachin Gupta and Sachin Rastogi as well as of offence u/s. 188 IPC against all 19 accused persons. This supplementary chargesheet was sent to the court of sessions by ld. CMM (N/E) vide order dated 30.01.2023.
16. On 18.12.2023, third supplementary chargesheet alongwith certain documents including sanction u/s. 196 Cr.P.C. against remaining accused Dharmender @ Dham, Sachin Gupta @ Moppi and Sachin Rastogi, and FSL reports etc., was filed directly before this court.

ARGUMENTS OF DEFENCE

17. I heard ld. Special PP and defence counsels on the point of charge. I have perused the entire materials on the record.
18. **Sh. Praveen Yadav**, ld. Amicus Curiae for accused Farman, Adil and Shamim @ Lala, argued that no witness identified the accused persons as part of culprit mob. He submitted that Babbu was killed by a different mob.

19. **Sh. Nishant Kumar Tyagi**, ld. counsel for accused Sandeep @ Sanjeev and Sachin Rastogi, argued that accused persons were arrested on the basis of disclosure statement only. He further argued that there is no witness to murder of Babbu in the present case. It was further argued that everyone stated that one person was being badly beaten. None of the witnesses had identified any accused in the video, which is relied upon by the prosecution. It was further argued that statements of public witnesses were recorded belatedly. It was further argued that no case of murder is made out in the present case.
20. **Sh. Ashok Kumar Tiwari**, ld. LAC for accused Bharat Bhushan @ Lucky, argued that Sabir and Amit identified accused on the basis of Dossier. They did not see the video and case of prosecution is based on disclosure statement.
21. **Sh. Abdul Gaffar**, ld. counsel for accused Iqbal, Imran, Maroof and Shahabuddin, argued that police witnesses HC Anil Kumar and Ct. Bhupendra identified accused on the basis of overall scenario, rather than in respect of killing of Babbu. They said that they could identify those persons. It was further argued that other public witnesses identified accused, as pertaining to incident peculiar to them and as rioter. Case of prosecution itself shows that it was free fight between two rival mobs. It was further argued that Muslim accused were not part of the mob, which killed Babbu. He submitted that S.149 IPC cannot be invoked in a case of free fight. In support of his contentions, ld. counsel relied upon certain case laws, which are as under: - (i) **Kashi Rai**

& Ors. v. State of Bihar, 1994 (1) East Cri.C. 113 (S.C.); (ii) Kanwarlal & Anr. v. State of M.P., 2003 CRI.L.J. 62 (S.C.); (iii) Ananta Kathod Pawar & Ors. v. The State of Maharastra, JT 1997(7) S.C. 408; and (iv) Puran v. State of Rajasthan, AIR 1976 SC 912.

22. **Sh. Manoj Kumar**, ld. counsel for Rahul @ Ajay and **Mohd. Dilshad**, ld. counsel for accused Juber, argued that accused persons have been falsely implicated in the present case.
23. **Sh. Paramjeet Singh**, ld. counsel for accused Sachin Gupta @ Moppi, Harjeet Singh @ Happy, Kuldeep and Dharmender @ Dham, argued that on the disclosure of Rahul, other accused namely Kuldeep and Happy were arrested. He further argued that police witnesses did not identify anyone in video of incident, though they claimed to be present there.
24. **Sh. Akhtar Shamim**, ld. counsel for accused Rizwan, argued that Munna did not identify this accused as part of mob, which killed Babbu.
25. Accused Israr and Tayyab also submitted that they have been falsely implicated in the present case.

ARGUMENTS OF PROSECUTION

26. **Sh. Naresh Kumar Gaur**, ld. Special PP for State assisted by IO/ Insp. Vikas Rana, argued that both the mobs were indulging into riot and Babbu was killed in this riot. Witnesses identified all the accused persons as part of the mobs, which indulged into riot at the place of incident.

27. A synopsis with calendar of evidence was also filed by Insp. Amit Prakash on behalf of prosecution, mentioning evidence/witnesses connecting the accused persons with the incident being prosecuted in this case, the details of which are as follows: -

Sl. No.	Name of Accused	Evidence against accused
1	Rijwan S/o. Sh. Imran	1. Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Sandeep Kumar and Sh. Munna. 2.CDR location of accused.
2	Israr, S/o. Sh. Usman	Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Virender Kumar and Sh. Deepak Kumar.
3	Tayyab, S/o. Sh. Rahis	Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Dalip Sharma and Sh. Munna.
4	Iqbal, S/o. Sh. Wasim	Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Sandeep Kumar and Sh. Deepak Kumar.
5	Juber, S/o. Sh. Sahid	1. Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Sandeep Kumar and Sh. Virender Kumar. 2.CDR location of accused.
6	Maroof, S/o. Sh. Kallu	1. Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Deepak Kumar. 2.CDR location of accused.
7	Shamim @ Lala @ Arif S/o. Sh. Naim	Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit and Sh. Munna.

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8	Adil, S/o. Sh. Aslam	Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Dalip Sharma and Sh. Munna.
9	Shahbuddin, S/o. Mohd. Anwar	Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Amit, Sh. Dalip Sharma and Deepak Kumar.
10	Farman, S/o. Mohd. Farid	Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Amit, Sh. Dalip Sharma and Sh. Virender Kumar.
11	Bharat Bhushan @ Lucky, S/o. Sh. Kamal Kant	1. Statements u/s. 161 Cr.P.C. of Ct. Bhupendra, Ct. Amit, Sh. Sabir. 2.CDR location of accused.
12	Imran, S/o. Sh. Islamuddin	Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Sandeep Kumar and Sh. Virender Kumar.
13	Rahul @ Ajay, S/o. Sh. Chander Bhan	1. Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Sabir and Sh. Danish. 2.CDR location of accused. 3. The movement/ act of the accused captured in Viral Video. 4. Clothes worn by this accused on the day of incident, were recovered at his instance. 5. Pointing out memo of the place of incident.
14	Sandeep @ Sanjeev, S/o. Sh. Rajender Prasad	1. Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit and Sh. Sabir. 2.CDR location of accused. 3. Accused refused his TIP
15	Harjeet Singh	1. Statements u/s. 161 Cr.P.C. of HC Anil

	@ Happy @ Pali, S/o. Sh. Amar Singh	Kumar, Ct. Bhupendra, Ct. Amit, Sh. Munna and Sh. Imran. 2. Accused refused his TIP
16	Kuldeep, S/o. Sh. Om Prakash	1. Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Munna and Sh. Imran. 2. CDR location of accused. 3. Accused refused his TIP
17	Dharmender @ Dham, S/o. Sh. Chanraveer Giri	1. Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Munna and Sh. Sabir. 2. Accused was arrested on the pointing out of eyewitnesses Munna and HC Anil Kumar
18	Sachin Gupta @ Moppi, S/o. Babu Lal Gupta	1. Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Munna and Sh. Sabir. 2. CDR location of accused. 3. Accused was arrested on the pointing out of eyewitnesses Munna and HC Anil Kumar
19	Sachin Rastogi, S/o. Late Ram Avtar Rastogi	1. Statements u/s. 161 Cr.P.C. of HC Anil Kumar, Ct. Bhupendra, Ct. Amit, Sh. Munna and Sh. Sabir. 2. CDR location of accused. 3. Accused was arrested on the pointing out of eyewitnesses Munna and HC Anil Kumar

LEGAL PROVISIONS OF ALLEGED OFFENCES

28. First of all, I shall refer to the provisions dealing with the alleged offences and some related provisions.

- 1.1 Section 148 IPC provides punishment for committing riot being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.
- 1.2 Section 149 IPC provides liability of each member of unlawful assembly for any offence committed by any member of that assembly in prosecution of the common object of that assembly or within knowledge of members of that assembly to be likely committed in prosecution of that object.
- 1.3 Section 153-A IPC provides punishment for promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
- 1.4 Section 188 IPC provides punishment for disobedience to order duly promulgated by public servant.
- 1.5 Section 302 IPC provides punishment for culpable homicide amounting to murder.
- 1.6 Section 505 IPC provides punishment for making statements conducing to public mischief.
- 1.7 The ingredients of offence defined under Section 120-B IPC were explained by Supreme Court in ***Lennart Schussler v. Director of Enforcement, (1970) 1 SCC 152*** in following manner: -

"9. It now remains to be seen whether the alleged agreement which A-1 and A-2 arrived at in Stockholm in 1963 and again in Madras in 1965, would, if established, amount to a criminal conspiracy. The first of the offence defined in Section 120-A of the Penal Code which is itself punishable as a substantive offence is the very agreement between two or more persons to

do or cause to be done an illegal act or a legal act by illegal means subject however to the proviso that where the agreement is not an agreement to commit an offence the agreement does not amount to a conspiracy unless it is followed up by an overt act done by one or more persons in pursuance of such an agreement. There must be a meeting of minds in the doing of the illegal act or the doing of a legal act by illegal means. If in the furtherance of the conspiracy certain persons are induced to do an unlawful act without the knowledge of the conspiracy or the plot they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established. It is also clear that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement."

APPRECIATION OF EVIDENCE AND FINDINGS

29. It has come in the statement of the witnesses that from Khajuri Chowk to Pusta Road, there was pelting of stones between two mobs who were attacking each other. Ct. Bhupendra and HC Anil Kumar claimed to be present there. They mentioned that one Ct. Amit had sustained injuries, who was taken to Jag Parvesh Hospital by them. In their statement given before IO, they mentioned that Rizwan, Israr, Tayyab, Imran, Ikbāl, Juber, Shamim @ Lala, Adil and Bharat Bhushan @ Lucky were also involved in the riots taken place at Khajuri Chowk on 25.02.2020. They had also seen the video of riot, wherein some rioters were beating a person with danda and stone, and subsequently they had come to know that said victim had died

whose name was Babbu. They had mentioned before IO that they could identify rioters, who had beaten Babbu to death.

30. On the other hand, witness Dalip Sharma stated before IO that on 25.02.2020 at about 2 PM when he reached Khajuri Chowk, he could find a number of persons indulging into riot. These persons were attacking each other with lathi, danda and stones. Some persons were beating a person on the road with danda. Some persons had caught this witness and had assaulted him. He had sustained injuries in his left eye. Subsequently, IO had shown some photographs from dossier to this witness and from those photographs this witness identified photo of Adil, Tayyab, Farman and Shahbuddin, stating that they were among the rioters.
31. Similarly, witness Sandeep Kumar made statement about damage caused to his house by the rioters by pelting stones. He mentioned about coming to know about death of the person, who was beaten on the road by some persons on 25.02.2020. He was also shown dossier of some persons and he had identified them as the persons, who were involved in pelting of stones at his house. These persons were accused Juber, Iqbal, Imran and Rizwan.
32. Witness Virender Kumar had also sustained injury because of pelting of stones at Khajuri Chowk on same day and he had identified photographs of Israr, Imran, Farman and Juber, while pointing out that they were involved in the assault and loot with him. Witness Deepak Kumar also identified photographs of

accused Maroof, Israr, Iqbal and Shahbuddin, stating that they were involved in the incident of assault and loot with him.

33. On the other hand, witness Sabir mentioned about rioters entering into his shop on afore-said date and causing damage in his house and looting articles as well as cash amount. He had also seen a person being beaten on the road by some persons. He identified photographs of Sandeep @ Sanjeev, Bharat Bhushan @ Lucky and Rahul @ Ajay. He mentioned that these persons were involved in the beating of afore-said person on the road, whose name was subsequently disclosed as Babbu. He further stated that Sandeep was carrying danda, while others were carrying stone.
34. Witness Ct. Amit, who was also injured on 25.02.2020 at the same place, identified Rizwan, Israr, Tayyab, Iqbal, Juber, Marrof, Shamim @ Lala, Adil, Shahbuddin, Farman, Bharat Bhushan @ Lucky, Imran, Rahul @ Ajay, Sandeep @ Sanjeev, Harjeet Singh @ Happy @ Paji and Kuldeep, in the dossier and he informed IO that all these persons were involved in the riot taken place on 25.02.2020 at Khajuri Chowk to Pusta Road.
35. In his statement, witness Munna mentioned name of Tayyab, Rizwan, Adil, Shamim @ Lala, Kuldeep and Harjeet Singh, as the person who were involved in the riot at afore-said place of Khajuri Chowk on 25.02.2020. He mentioned name of Kuldeep and Harjeet being involved in the beating of Babbu on 25.02.2020. He also stated that mob of persons from Hindu and Muslim Community were raising slogans against each other and

were attacking upon each other on afore-said day at Khajuri Chowk.

36. Witness Munna had identified Sachin @ Moppi and he had mentioned that he was also involved in the beating of Babbu. On seeing Dharmender @ Dham and Sachin Rastogi also, this witness informed IO that these persons were also involved in the beating of Babbu. All these three persons were arrested by IO in the presence of this witness.
37. In his statement, witness Imran also stated about the same incident and claimed that he was also assaulted by the rioters on same day at 04:30 PM (at different time period). During day time at Khajuri chawk, he had seen beating of a boy i.e. Babbu and he identified photo of Harjeet and Kuldeep. He mentioned that these two persons were involved in beating of Babbu, wherein Kuldeep was carrying a danda, while Harjeet was beating Babbu with legs and hand.
38. IO had also obtained two videos from BBC, which pertained to incident of beating of Babbu. Same were handed over by S. Rahul Kumar and same were sent to FSL, Rohini for examination. Result thereof is still awaited. Mobile phone of accused persons were also seized and sent to FSL for retrieval of data. From the mobile phone of Sachin Rastogi, certain WhatsApp chats were retrieved, wherein he had claimed to be there in the photograph showing beating of Babbu.

39. HC Devender had made announcement of order u/s. 144 Cr.P.C. on 24.02.2020, in the area of PS Khajuri Khas, through loud speaker.
40. Before, I proceed further to analyse the evidence, it is appropriate to refer to the stand of prosecution, as taken in the chargesheet. In the chargesheet, it is so mentioned that: -

"In which a rioter Babbu S/o Shri Samim was injured and during treatment, he succumbed to his injuries.

During investigation it has been established that two warring groups of rioters had assembled at Khajuri Chowk on 25.02.2020. Both the groups were arrived with deadly weapon sticks, stones etc and attacking each other. These groups were responsible for commission of offences mentioned in the charge-sheet as is evident from statements of PWs and other related evidences. It is also clearly established that all the arrested accused persons were entire members of mob mentioned above. Therefore, culpability of all the arrested accused persons are established."

41. During the course of arguments, the relied upon two video clips were also seen in the court. Videos did show the incident of beating of a boy on the road. Said boy is stated to be Babbu. The videos made it clear that there were two rival groups of the persons, who were attacking each other. In the given backdrop of the incident, it is amply clear that those were groups of persons from Hindu and Muslim community, and that this incident was one of the incidents of communal riot, which rocked North-East part of Delhi for almost three days. The victim was from Muslim community and the videos showed that he was chased and

assaulted on the road by the members of one of the groups, which is stated to pertaining to persons from Hindu community.

42. However, prosecution has chargesheeted persons from both these communities, because they were found to be part of respective mobs/groups, which indulged into rioting at that place during the time period of 1-2 P.M. Prosecution has invoked S.149 IPC to show culpability of all these accused persons. Therefore, it is expedient to look into the scope of vicarious liability u/s 149 IPC.
43. In **Ramachandran & Ors. v. State of Kerala, (2011) 9 Supreme Court Cases 257**, it was held by Supreme Court that "In order that the case may fall under the first part of Section 149, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under the second part of Section 149 IPC if it can be held that the offence was such as the members knew was likely to be committed. The expression "know" does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that if a body of persons go armed to take forcible possession of the land, it would be right to say that someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149 IPC. There may be cases which would come within the second part, but not within

the first. The distinction between the two parts of Section 149 IPC cannot be ignored or obliterated."

44. In **L. Shah & Anr. v. West Bengal**, (2001) 5SCC 235, a three judges bench of Supreme Court held that "In this context it is appropriate to refer to Section 142 IPC. It pertains to a person who intentionally joins an unlawful assembly and continues to involve himself in it. The only condition which the Section envisages is that the person who joins the unlawful assembly should have been aware of the facts which rendered such assembly unlawful. If he knew that an unlawful assembly had been formed with a common object and if he had chosen to join it enroute to its destination the person joining midway can also be fastened with the vicarious liability envisaged in Section 149 IPC, unless he drops himself out before reaching such destination."
45. In **K. Madhvan v. Majeed & Ors.** (2017) 5SCC 568, Hon'ble Supreme Court observed that presence of accused as part of unlawful assembly, when not as curious onlooker or bystander, suggests his participation in object of assembly. When the prosecution establishes such presence, then it is the conduct of the accused that would determine whether he continued to participate in the unlawful assembly with the intention to fulfill the object of the assembly, or not."
46. Supreme Court in the case of **State of Maharashtra v. Ramlal Devappa Rathod**, (2015) 15 SCC 77, made following observations: -

"24. The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus, when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons. But in a situation where assault is opened by a mob of fairly large number of people, it may at times be difficult to ascertain whether those who had not committed any overt act were guided by the common object. There can be room for entertaining a doubt whether those persons who are not attributed of having done any specific overt act, were innocent bystanders or were actually members of the unlawful assembly."

47. The above-mentioned observations of Supreme Court, make it well clear that for inviting liability by virtue of Section 149 IPC, it is not required to prove overt act on the part of every member of the mob. However, it is important for the prosecution to show

that the alleged act was done by the members of that mob in pursuance to the common object of that mob and accused was member of such mob at the relevant time. Hence, common object of an unlawful assembly plays important role in fixing the vicarious liability.

48. The statements of the witnesses and the video of the incident, show that the members of the mob of persons from Muslim community had no role to play in the beating of victim Babbu. Rather they were sympathizers for this victim. Videos showed that when the persons assaulting that boy left him on the road in injured condition, the persons from the rival mob came to that boy and probably they lifted him away from that place. So, by no stretch of imagination, it could be part of common object of the mob of persons from Muslim community to assault the victim namely Babbu. Hence, accused Rijwan, Israr, Taiyab, Iqbal, Juber, Maroof, Shamim @ Lala, Adil, Sahabuddin, Farman and Imran, cannot be fastened with vicarious liability for culpable homicide of Babbu with aid of S.149 IPC.
49. The chargesheet itself refers to a different case being investigated i.e. FIR no. 103/20 by SI Naveen, wherein all these aforesaid accused persons were arrested. FIR 103/20 was also registered in respect of an incident taken place at the same place during same time period, wherein Ct. Amit had sustained fracture in his hand. This example is sufficient to say that for any other riotous activity of afore-said accused persons, they should have been separately booked. They cannot be prosecuted in this case, which

relates to culpable homicide of Babbu. In this case, court has to look for culpability of accused persons, who are connected with incident of beating of Babbu, which resulted into his death. Therefore, accused Rijwan, Israr, Taiyab, Iqbal, Juber, Maroof, Shamim @ Lala, Adil, Sahabuddin, Farman and Imran, are entitled for discharge in this case.

50. Now, I shall discuss the role of other accused persons namely Rahul @ Ajay, Sandeep @ Sanjeev, Harjeet Singh @ Happy, Kuldeep, Bharat Bhusan @ Lucky, Dharmender @ Dham, Sachin Gupta @ Mopi and Sachin Rastogi. I have already mentioned statement given by different witnesses, who identified these accused persons and stated that they were involved in the incident of beating of Babbu. It is not the case that any of these accused persons have been chargesheeted only on the basis of disclosure statement of co accused. Arrest of an accused based on disclosure statement, is different from charge sheeting such accused. All these accused were duly identified by the witnesses, be it through dossier or in person during arrest of some of them. If IO did not get all of them identified in the video, from the witnesses, at the most it can be termed as an omission on the part of IO. But, such omission of IO does not wash away evidence of witnesses.
51. It is also not required that in the statement of any witness, it should have been mandatorily mentioned that such accused murdered Babbu. Death of Babbu consequent to his sever beating by these persons, is established through chain of evidence. What is important to be seen, is that these accused persons were

identified to be part of that mob, which attacked and assaulted Babbu so badly, so as to cause his death. The persons in this mob were equipped with danda and they were also pelting stones. Their common object is well explicit with their act, i.e. to indulge into rioting and attack over persons from rival mob/community, and Babbu was assaulted in prosecution of such common object of this mob. It would be well within their knowledge that hitting a boy on his head with danda and giving merciless beating, could cause death of that boy. Hence, they are liable for his culpable homicide amounting to murder.

52. At the relevant time, order passed u/s. 144 Cr.P.C. was in operation, to make it illegal to assemble in public place being equipped with weapons. A complaint u/s. 195 Cr.P.C. against all accused persons has been filed, thereby making out a case for commission of offence u/s. 188 IPC.
53. The act of attack over the rival mob, on the basis of them being from a different community, was certainly an act prejudicial to maintenance of communal harmony and assault on Babbu was part of such act. Sanction u/s. 196 Cr.P.C. was accorded by competent authority against these accused persons. Therefore, I also find a prima facie case of commission of offence punishable u/s. 153-A IPC against these accused persons.
54. At the same time, I do not find any concrete evidence of a criminal conspiracy, nor do I find any evidence of

making/publishing inflammatory statement, against any accused, to make out case u/s. 505 IPC.

55. Thus, on the basis of above-mentioned observations, the description of evidence and discussion, I find prima facie case for trial against accused persons namely: - 1) Rahul @ Ajay, 2) Sandeep @ Sanjeev, 3) Harjeet Singh @ Happy, 4) Kuldeep, 5) Bharat Bhusan @ Lucky, 6) Dharmender @ Dham, 7) Sachin Gupta @ Mopi and 8) Sachin Rastogi for offences punishable u/s. 148/153-A/302 IPC read with Section 149 IPC, as well as u/s. 188 IPC.

Announced in the open court (PULASTYA PRAMACHALA)
today on 18.03.2025 ASJ-03(North East)
(This order contains 26 pages) Karkardooma Courts/Delhi