

**IN THE COURT OF SH. RAVINDRA PANDEY, ACMM-01, ROUSE AVENUE
DISTRICT COURTS, NEW DELHI**

STATE Vs. Som Nath Bharti & Ors.

FIR No. 659/16

PS: Hauz Khas

U/S: 186/353/323/147 of IPC read with Section 149 IPC & Section 3 of Prevention of Damage to Public Property Act, 1984.

22.01.2021

ID No.	: 09/2019
CNR No.	: DLCT12-000039-2019
Date of commission of offence	: 09.09.2016
Date of institution of the case	: 03.07.2018
Name of the complainant	: Sh. R.S Rawat, Chief Security Officer, AIIMS, South, New Delhi.
Name of accused persons and addresses	: 1) Somnath Bharti S/o Late Sita Ram Bharti R/o:- NIL-26, Malviya Nagar, New Delhi. 2) Jagat Saini S/o Sh. Pooran Chand R/o:- 18-C, Gautam Nagar, New Delhi. 3) Daleep Jha S/o Sh. S.N Jha R/o E-96, Gautam Nagar, New Delhi. 4) Rakesh Pandey S/o Sh. B.M Pandey R/o:- 40/21A, Manohar Kunj, Gautam Nagar, New Delhi. 5) Sandeep @ Sonu S/o Sh Babu Ram R/o:- E-137/2, Gautam Nagar, New Delhi.
Offence complained of	: U/s 186/353/323/147 of IPC read with Section 149 IPC & Section 3 of Prevention

	of Damage to Public Property Act, 1984.
Plea of the accused Persons	: Pleaded not guilty
Final order	Accused persons namely Jagat Saini, Dileep Jha, Sandeep Sonu and Rakesh Pandey are acquitted. Accused Som Nath Bharti is convicted for charge of offences punishable U/s 323/353 IPC read with Section 149 IPC and from charge of offence punishable U/s 147 IPC read with Section 149 IPC and charge of offence punishable U/s 3 of the Prevention of Damage to the Public Property Act, 1984.
Date of judgment	: 22.01.2021

J U D G M E N T

1. The case of the prosecution in brief is that on 09.09.2016 at around 09.45 am, accused persons namely Som Nath Bharti, Jagat Saini, Dileep Jha, Sandeep Sonu and Rakesh Pandey and approximately 300 unknown associates of Som Nath Bharti, MLA of the area had broken the fence of boundary wall of AIIMS (All India Institute of Medical Sciences New Delhi) in Gautam Nagar near nallah Road with JCB for creating an access to AIIMS. The FIR dated 10.09.2016 was registered on the basis of complaint dated 09.09.2016 of complainant Sh R.S Rawat, Chief Security Officer, AIIMS. The complaint of complainant is reproduced as under:-

“It is to report that today at about 09.45 am, Sh Som Nath Bharti alongwith his approximately 300 supporters assembled in Gautam Nagar, near nallah Road and started breaking the fence on the boundary wall with the help of JCB in order to give access to unauthorized persons inside AIIMS property. They were claiming that road belongs to general public. They were requested to produce the order of Competent Authority in this regard

but they failed to produce any document. Further, they were not accompanied by any Government official. They also damaged the fence of boundary wall of Government property and when objected by undersigned, they started shouting and misbehaving with the security personnel. A few security personnels also received minor injuries while protecting the government land. During their aforesaid action, they used abusive language, disrupted the peace in the hospital and caused disturbance to the patient and employees of AIIMS. They adopted unlawful ways to encroach the government land. It is therefore, requested to lodge an FIR and take strict legal action against these persons for attempt to encroach the government property, attempt to assault government servant on duty and disrupting peace in the hospital”.

2. After registration of FIR, investigation was carried out and after completion of investigation, chargesheet U/s 173 Cr.PC filed regarding commission of offence punishable U/s 186/353/323/147 IPC and Section 3 of the Prevention of Damage to Public Property Act, 1984.

3. Vide order dated 20.11.2018, charge was framed against the accused persons namely Som Nath Bharti, Daleep Jha, Jagat Saini, Rakesh Pandey and Sandeep @ Sonu regarding commission of offence punishable U/s 323/353 IPC read with Section 149 IPC and for offence punishable U/s 3 of the Prevention of Damage to Public Property Act, 1984 and for offence punishable U/s 147 IPC read with Section 149 IPC.

4. In order to prove the charges, prosecution has relied upon the testimonies of 19 witnesses (Nineteen Witnesses).

5. **PW-1 Sh R.S Rawat** is the complainant and he deposed that on 09.09.2016 at about 09.45 am, he received an information that the gathering of around

300 persons had assembled towards Gautam Nagar side outside the boundary wall of AIIMS. He deposed that those persons were also having JCB machine and they were trying to break the wall and fence of AIIMS. He deposed that he informed to Deputy Director Administration and Superintendent Engineer and Security Control Room to send some Re-Enforcement.

PW1 further deposed that he reached at the spot and saw that local MLA/accused Som Nath Bharti was leading the mob from the front, which had damaged half of the wall by JCB. He deposed that he requested the driver of JCB Machine to stop the demolition of wall. He deposed that accused Som Nath Bharti and certain persons from the mob directed the driver of JCB Machine to not to stop the demolition. He deposed that he asked accused Som Nath Bharti that why he was breaking the wall to which accused Som Nath Bharti replied that road going alongwith the wall is not AIIMS property and accused Som Nath Bharti wants to make a public thoroughfare for the residents of Gautam Nagar to AIIMS. PW1 deposed that he requested to accused Som Nath Bharti to show if there is any document that wall does not belong to AIIMS and he requested to accused Som Nath Bharti to talk to the witness with any government official accompanied with the accused Som Nath Bharti for purposes of breaking the wall. PW1 deposed that accused Som Nath Bharti had not shown any document nor any government official was accompanying him for the purposes of demolition of the wall. He deposed that accused Som Nath Bharti again insisted the driver of JCB machine to carry on the demolition on the wall. He deposed that the security guards of the AIIMS tried to stop the JCB from demolishing the wall in which they suffered minor injuries. He deposed that some public persons from the mob were also insisting on breaking of the wall and they also started stone pelting. PW1 deposed that the public persons also abused them and they did not stop despite the request. PW1 deposed that he called the police. PW1 further deposed that police had some conversation with accused Som Nath Bharti, and then it was agreed

between AIIMS, police and accused Som Nath Bharti that till the next the decision status-quo will be maintained. He deposed that he lodged complaint to the police Ex PW1/A. He deposed that his statement Ex PW1/B was also recorded in the Court. PW1 identified the accused Som Nath Bharti in the Court. PW1 deposed that he cannot identify any other accused persons present in the Court as a part of the mob. Witness PW1 also identified the photographs of scene of occurrence Ex PW1/C1 to Ex. PW1/C5. PW1 deposed that he received notice U/s 91 Cr.PC from the IO and in compliance of that he handed over certain documents to the police. PW1 deposed that he also replied the notice Ex. PW1/D. PW1 deposed that he handed over the documents Ex. PW1/E1 to Ex. PW1/E13.

PW1 in reply to the cross-examination on behalf of the accused Jagat Saini and Daleep Jha deposed that he received information from Security Control Room of AIIMS that wall behind AIIMS was being broken by a mob by JCB Machine. He further replied that he informed to the Deputy Director, Superintending Engineer and Security Control Room between 09.45 am to 10.00 am. He stated that the distance between his office where he received information and place of incident is around 500 meters and he reached at the spot with 5-6 security guards within five minutes i.e. by 09.50 am. He stated that the name of one of security guard accompanied him is Birender Singh Yadav. He stated that on the spot, the mob was constituted of around 300 persons and police was not present at that time when he reached at the spot. He replied that he and security guard Birender Singh Yadav alongwith other security guards requested the JCB driver to not demolish the wall. He replied that he did not suffer any injury in the incident and he was not manhandled by mob. However, he was abused by the mob. He further replied that he called the police and stated that he do not remember whether the call was made by through mobile phone or through Control Room. He stated that he was having his mobile phone at that time. He stated that some of the security guards were also having mobile phones.

He replied that police was called at around 10.00 am and within 15 to 20 minutes, the SHO PS Hauz Khas Mr. Sangwan alongwith other police man arrived at the spot. He further replied that witness did not ask SHO to record his statement. He replied that police had not recorded the statement of guards in his presence. PW1 further replied that the Deputy Director Administration and Superintending Engineer AIIMS came at the spot for sometime but they have not given any statement to the police in his presence and they remained around 15 minutes. He further replied that witness and other guards remained at the spot till 12.00 pm when the mob was dispersed. PW1 replied that the guards who were injured were medically examined in AIIMS on that day and he did not accompany them. He further replied that some Supervisors accompanied them. Witness PW1 further replied that he is Graduate and he can read and write English language. He replied that he gave dictation to type his complaint Ex. PW1/A on the same day and gave the complaint to the police station either on the same day in the evening or on the next day in the morning. He replied that he did not send any complaint to the Court before giving complaint Ex. PW1/A to the police. He further replied that in his presence or in his knowledge, no senior officer had sent any complaint to the Court. He replied that probably police had recorded his statement in this case but he do not remember the date and time. He further replied that police had not recorded the statements of other persons in his presence. He replied that he was acting Chief Security Officer since 2015 and he is a regular staff of AIIMS. He replied that he had not given any Appointment Letter or Duty Roster to the police during investigation and police did not seize any Duty Roster of any other Security Guard in his presence. He replied that he do not remember if the police had taken his signature on any document during the investigation. Witness admitted that he had not mentioned the fact that he informed to Deputy Director (Admn) and Superintending Engineer and Security Control Room in his complaint Ex. PW1/A. Witness admitted that he had not stated in his complaint Ex. PW1/A that "certain persons from the mob directed the

driver not to stop the demolition” or “ he wants to make a public thoroughfare for the residents of Gautam Nagar to the AIIMS”, or “ I called the police”, or “ it was agreed between AIIMS, police and accused Som Nath Bharti that till the next decision status-quo will be maintained” which was recorded in my examination in chief. Witness further admitted that in his statement recorded U/s 164 Cr.PC Ex. PW1/B, the reference of JCB machine is not there and the strength of mob was mentioned as 200 to 300 whereas in complaint Ex. PW1/A, it was stated as 300.

Witness denied the suggestion that witness and other guards were not on duty on that day and that was why witness had not given his or any other guards Duty Roster or Appointment Letter to the police. Witness volunteered explained that he was not asked by the police for furnishing the Duty Roster or Appointment Letter. Witness replied that he do not remember which guard had made the video of the incident and from which mobile number. Witness stated that he do not remember if he arranged the meeting of any Security Guard who might had made the video with the police. Witness stated that he had not given any mobile phone to the investigating officer. Witness stated that the DVD was made by photography office of AIIMS and he do not remember if he had given any document relating to DVD to the police.

Witness was also cross examined by accused Som Nath Bharti. In reply to the cross-examination, witness stated that he was acting Chief Security Officer in AIIMS on the date of incident. He stated that he do not have knowledge about all the physical assets of AIIMS as Security is not concerned with that. He stated that he is aware about the area and boundaries of AIIMS. He stated that AIIMS had four gates on the boundary walls and AIIMS had its boundary on the nallah (drain) till its dead end where the nallah (drain) end. Witness volunteered replied that there is road on nallah (drain). Witness stated that outer boundary wall also has fence on it. Witness admitted that there is a wall between nallah (drain) and AIIMS premises. Witness stated that he was verbally informed by Engineering Department that nallah (drain) is a

property of AIIMS and outer wall besides nallah (drain) is built on the AIIMS land. Witness stated that he had given certain documents to the police after collecting from Engineering Department. Witness further stated that he had submitted documents of this case as Ex. PW1/E1 to Ex. PW1/E13. Witness stated that he is not certain whether these documents conferred ownership right of that nallah (drain) and outer wall to the AIIMS. Witness stated that he had not read documents Ex. PW1/E1 to Ex. PW1/E13 and therefore, he cannot tell whether there is any document available to prove that outer wall was built by AIIMS or not. Witness stated that wall belongs to AIIMS as the wall was being used by AIIMS. Witness denied the suggestion that his averments made in complaint Ex. PW1/A dated 09.09.2016, statement U/s 164 Cr.PC Ex PW1/B and statement in the Court in examination in chief are substantially, materially and factually different and he made it deliberately. Witness replied that he personally saw and heard from the persons from the mob while saying that the land does not belong to AIIMS and to make the road to give access to the people living in Gautam Nagar area. Witness further stated that the mob/members of the mob were trying to gain access unauthorizedly to the AIIMS by breaking the wall. Witness further stated that there was already passage to the people to have access to the AIIMS. Witness admitted that he had not used the word unauthorized person or references in the document Ex. PW1/A. Witness further replied that he asked accused Som Nath Bharti that why he was breaking the wall and accused Som Nath Bharti told him that road going alongwith the wall is not AIIMS property and he wants to make a public thoroughfare for the residents of Gautam Nagar. Witness further stated that he requested to the accused Som Nath Bharti to show if there is any document that wall does not belong to AIIMS and he also requested to have a talk with Government Officials if accompanying him for purposes of breaking the wall. Witness stated that accused Som Nath Bharti has not shown any document nor any government official was accompanying with him for purposes of demolition of wall. Witness further replied

and admitted that in his examination in chief he stated that “ the police had some conversation with accused Som Nath Bharti and then it was agreed between AIIMS, police and accused Som Nath Bharti that till next decision status-quo will be maintained” but this fact have not been stated in his complaint Ex. PW1/A or in his statement Ex. PW1/B recorded U/s 164 Cr.PC. Witness stated that he was representing the AIIMS in that conversation. Witness stated that he does not remember whether in the said conversation it was agreed that there will be subsequent meeting between AIIMS, PWD and residents of Gautam Nagar and accused Som Nath Bharti with respect to the issue of opening of road for Gautam Nagar residents. Witness stated that he is not aware if any subsequent meeting took place between the AIIMS representatives, PWD, MCD officials, accused Som Nath Bharti, traffic officials, UTTPAC representatives and Gautam Nagar RWA Residents. Witness denied about the document Ex. PW1/D1 and stated that he had not seen it earlier. Witness stated that he had seen the accused Som Nath Bharti prior to the incident in question. However, he do not met the accused Som Nath Bharti prior to the date of incident. Witness stated that he met the accused Som Nath Bharti after the incident when he was protesting and giving dharna to the office of MS AIIMS in connection with the issue of Sant Gopal Dass from AIIMS premises. Witness replied that guards who were medically treated were namely Sh Dinker, Sh Santosh, Sh Jitender and Sh Om Parkash, however, he does not remember the names of other guards. Witness stated that public caused them injury as public persons were pelting stones. Witness denied the suggestion that guards received no injuries because there was no stone pelting. Witness stated that he does not remember whether there was any other JCB machine on the side of AIIMS. Witness stated that he does not know whether police seized the stone or not. Witness stated that public persons were unable to scale the wall and reached the other side of nallah/drain. Witness stated that hospital is around 50 meters from the wall. Witness admitted the fact that “

Disrupted the peace in the hospital and caused disturbance to the patients and employees of AIIMS” as mentioned in complaint Ex. PW1/A is not find mentioned in statement U/s 164 Cr.PC Ex. PW1/B or deposition of the witness in the Court. Witness stated that he had not handed over the instrument/computer from which CD was made from video or instrument from which the video was made to the police. Witness stated that he had given Certificate U/s 65-B of Indian Evidence Act for the video footage Ex. PW1/F. Witness admitted that the Certificate Ex. PW1/F does not find mentioned the detail of device from which the video was made for converting into CD. Witness stated that he does not remember whether he had given CCTV footage to the police and he had not procured CCTV footage of the incident. Witness stated that he was not summoned by the police to the police station during investigation. Witness stated that he is not aware whether there was any long pending dispute between AIIMS and Gautam Nagar qua 4 acres of DDA land meant for Community purposes of Gautam Nagar which was allegedly taken over by AIIMS. Witness denied the suggestion that he deposed falsely.

Accused Rakesh Pandey and Sandeep @ Sonu opted to adopt the cross examination as cross examined on behalf of the accused Som Nath Bharti, Jagat Saini and Daleep Jha.

6. **PW-2 Ajay Kumar** deposed that on 09.09.2016, he was posted as Security AIIMS. He deposed that accused Som Nath Bharti alongwith 200 to 300 supporters reached AIIMS towards side of Gautam Nagar. He deposed that he informed his Incharge Sh R.S Rawat that accused Som Nath Bharti is present outside AIIMS alongwith his 200/300 persons and was trying to break the fence with JCB machine. He deposed that Sh. R.S Rawat reached at the spot. Witness deposed that mob has abused them and they also resorted the stone pelting due to which some of the guards including PW2 got injured. Witness deposed that he received injury at his

back by the stone and he was medically examined at AIIMS vide MLC No. 583221/16. Witness identified the accused Som Nath Bharti in the Court. Witness stated that he cannot identified any other accused persons present in the Court as part of the mob. Witness also identified the four photographs of the place of occurrence as Ex. PW1/C1 to Ex. PW1/C5.

During cross examination by the accused Som Nath Bharti, witness replied that he is a Security in AIIMS and his salary is given by his Contractor. He stated that he is working in AIIMS on contractual basis and he is working in the AIIMS since the year 2009. Witness stated that he was on duty at the spot. He stated that the breaking of fence started at 09.45 am. Witness denied the suggestion put by accused Som Nath Bharti that action of demolition was undertaken by PWD and not by accused Som Nath Bharti. Witness stated that he is not aware that many meetings took place between AIIMS and PWD regarding the wall in question. Witness stated that wall was not broken, only the fence above the wall was broken. Witness stated that there was no scuffle between witness including other security personnels and the mob. Witness admitted that he was not assaulted by any person from the mob and he explained that only stones were hurled. Witness stated that he had not seen accused Som Nath Bharti while throwing the stone. Witness admitted that AIIMS also called JCB and the same was standing at the side of witness and the wall of AIIMS. Witness stated that the said JCB on the side of AIIMS came around 1 ½ hour after the incident and he does not know on whose instructions the JCB was called from the side of AIIMS. Witness stated that it is not known whether anybody had made any video clip of the incident or not and witness had not made any video recording of the incident. Witness stated that he does not know who called the police and also does not know how many persons were injured by stone pelting. Witness stated that he does not know the name of other injured guards. Witness stated that at the time of incident he was Security Guard and at the time of deposition in the Court, he was working as

Security Guard. Witness stated that he was medically examined and MLC was prepared after 2-3 hours of the incident on the same day. Witness stated that he was given pain killer by the doctor. Witness stated that there was some conversation between accused Som Nath Bharti and officials of the witness after which demolition was stopped. Witness stated that there were 30 to 35 security guards of AIIMS who reached at the spot and there were 4 to 5 officers including DDA and officers from Engineering Department reached there. Witness admitted that accused Som Nath Bharti was not abusing to anyone but his associates were doing so. Witness denied the suggestion that after the incident the guards were rewarded and honour. Witness denied the suggestion that he deposed falsely.

The other accused persons opted not to cross examine the witness.

7. **PW-3 Santosh Kumar** deposed that the incident is of 09.09.2016 near All India Institute of Medical Sciences. He deposed that he was employed as Security Guard in BIS Security Company. He deposed that his duty was on the road Gautam Nagar drain. He deposed that at around 09.45 am, accused Som Nath Bharti alongwith his 200-300 supporters were present at the side of Gautam Nagar. He deposed that they had a JCB Machine with them by which they broke the fence. He deposed that he alongwith other security guards had tried to stop them and they called their seniors in the AIIMS who came at the spot. Witness deposed that they tried to persuade accused Som Nath Bharti to stop the breaking of the fence and to have a talk on the issue. Witness deposed that the mob which was gathered there started jostling with them in which he suffered injury. He deposed that he was also medically examined. Witness deposed that police enquired from him regarding the incident. Witness identified accused Som Nath Bharti in the Court. Witness stated that his statement was also recorded earlier in the Saket Court Ex PW3/A. Witness stated that he cannot identify any other accused persons of this case who was present at the

spot among the mob.

During cross examination by accused Som Nath Bharti, witness replied that he is working in AIIMS since the year 2012 and have not got any promotion. Witness stated that his initial salary was Rs. 7000/- to Rs. 8000/- and currently he is receiving salary of Rs. 17,000/-. Witness denied the suggestion that they were honoured by AIIMS. Witness stated that he got a Certificate from AIIMS but he is not aware about the nature of Certificate as it was in English language and he cannot read the English language. Witness stated that his duty hours were from 7.00 am to 2.00 pm. He stated that security guards who were present with him were Sh Dinkar Chaudhary, Sh Ved Parkash and Sh Ajay Kumar and he does not remember the names of other guards who were 8 to 9 numbers. Witness stated that his supervisor at the time of incident was Mr. Partap and message of incident was given to Mr. Partap. Witness stated that when he reached the spot, he saw that JCB machine was breaking the fence of the wall of the AIIMS and accused Som Nath Bharti alongwith number of other persons were present there with the JCB machine. Witness stated that his duty was on the bridge and his duty area was around 200 meters alongwith length of the bridge. Witness replied that nallah(drain) is covered by wall of both the sides and on one side of the nallah/drain, the AIIMS Campus situates. Witness stated that there is a wall between AIIMS and nallah/drain. Witness stated that on the other side of the nallah/drain there is a wall which separate Gautam Nagar from the nallah/drain. Witness stated that as per his information, both the walls are of AIIMS. He stated that his duty was on the wall separating Gautam Nagar to the nallah/drain. Witness stated that he cannot tell the status of ownership of the wall according to the records. Witness further stated that he does not know whether there was a wall between drain and AIIMS. Witness stated that the JCB had pulled down the fence of the wall. However, fence was not severed from the wall. Witness stated that he saw that the JCB was pulling the fence and he witnessed the same. Witness stated that

there was no JCB on the side of AIIMS. Witness stated that he got injury as public was trying to further pull the fence down and he alongwith other guards were trying to save the fence from further damage. Witness stated that he received injury on his back. Witness stated that doctor advised him for medicines which he took from AIIMS and his MLC was prepared probably on the same day. Witness stated that MLCs of Dinkar and Ved Parkash were also prepared with him. Witness stated that he does not know where they suffered injury. Witness stated that Mr. Rawat and Mr. Sri Niwasan of the DDA talked to accused Som Nath Bharti. Witness denied the suggestion that he was not present at the place of incident and he falsely deposed in the Court to get increment of his salary or to receive Certificate for giving false statement U/s 161 Cr.PC.

Witness was not cross examined by other accused persons.

8. **PW-4 Dinkar Kumar Chaudhary** deposed that on 09.09.2016, he was working as Security Guard at AIIMS and was employed through BIS Security Company. He deposed that his duty was at the drain outside AIIMS from 7.00 am to 2.00 pm. He deposed that he alongwith other security guards were coming from the side of medical OPD and reached near drain and they saw that accused Som Nath Bharti alongwith mob of 200 to 300 persons were pulling the fence of the wall by a JCB machine. He deposed that he asked them to stop pulling the fence. He deposed that he informed his seniors and his seniors came at the spot and discussed the issue with accused Som Nath Bharti. Witness stated that some persons from the mob were abusing them and they also resorted stone pelting. Witness identified the accused Som Nath Bharti in the Court during his examination in chief. Witness stated that he cannot identify the other accused persons of this case who were part of the mob.

During his cross examination by the accused Som Nath Bharti, witness replied that he is working in AIIMS since the year 2011. Witness admitted that he was

honoured in AIIMS and was given Certificate for safeguarding the public property in this case. Witness admitted that he was honoured because security guards were able to save the wall. Witness admitted that the wall was not damaged. Witness volunteered that only fence was damaged. Witness stated that at the time of incident he was present opposite the wall, the fence of which was broken. He stated that he was on duty at that place with three other security guards namely Sh Santosh, Sh Ved Parkash and Sh Ajay. Witness stated that there is a register which maintains the duty roster of the guards. Witness stated that he had not given the copy of register to the investigating officer neither investigating officer demanded the same. Witness denied the suggestion that investigating officer never demanded the duty register as witness was not present at the spot. Witness stated that he recognized the accused Som Nath Bharti on the date of incident. Witness replied that in his statement U/s 161 Cr.PC, he stated that there was a leader whom he does not know. Witness denied the suggestion that he gave statement in the Court under the pressure. Witness stated that he went to AIIMS to inform the supervisor Mr. Partap regarding the incident. He was present at bike parking which is around 50 meters from the spot. Witness stated that it took 3 to 4 minutes to him to inform Mr. Partap. Witness stated that the drain is in AIIMS Campus and witness again said that drain is outside the Campus. Witness replied that the bridge over the drain is old but he does not know when it was constructed. Witness stated that there is a way for Gautam Nagar residents to go to the AIIMS and it is opened and anyone can take his car/scooter etc to the AIIMS. Witness replied that there was JCB at the spot and one JCB also came at the side of AIIMS later on. Witness denied the suggestion that fence was broken by JCB on the side of AIIMS. Witness volunteered explained that accused Som Nath Bharti broken the fence of AIIMS and thereafter, JCB from the side of AIIMS came. Witness further replied that accused Som Nath Bharti was present on the right side of the JCB and was in front of the mob. Witness stated that he suffered minor injury in the incident

while trying to hold the fence from falling down. Witness stated that fence was later on repaired. Witness stated that his MLC was prepared on the same day. Witness stated that he does not know whether any meeting took place between AIIMS and PWD after the incident. Witness stated that police came at the spot after the incident at around 10.00 am. Witness stated that after long discussion between DDA, AIIMS and accused Som Nath Bharti which took place in English to which witness could not understand, the demolition was stopped. Witness stated that discussion was peaceful. Witness stated that police arrived at the time of discussion. Witness denied the suggestion that he deposed falsely. Witness further denied the suggestion that bridge is used to paid parking.

During cross examination on behalf of other co accused persons witness stated that there is a wall on both the sides of AIIMS and width of the drain is about 20 to 25 feet. Witness denied the suggestion that there was nothing visible on the other side of the wall of the AIIMS side.

9. **PW-5 Sh. Ved Parkash** deposed that on the date of incident, he was Security Guard at AIIMS through BIS Security Company and his duty hours were from 6.00 am to 2.00 pm and his duty was at the drain outside Dental OPD. He deposed that he was on duty alongwith 4-5 other security personnels including Sh. Santosh Kumar and Sh Dinkar Chaudhary. He deposed that he does not remember the name of other security guard. Witness stated that they saw 200 to 300 persons present at the side of the wall who were shouting. Witness stated that accused Som Nath Bharti was also present with mob. Witness identified the accused Som Nath Bharti during his examination. Witness stated that the mob was shouting slogans and was trying to break the wall. Witness stated that there was no bulldozer at the spot and mob was trying to pull the fence with the hands. Witness stated that he suffered injury in trying to save the fence. Witness stated that he was medically examined in AIIMS and

during investigation, his statement was recorded in Court U/s 164 Cr.PC Ex. PW5/A. Witness stated that he does not remember if there was any JCB machine at the spot. Witness stated that he cannot identify the other accused persons of this case who were present at the spot alongwith the mob.

During cross examination by accused Som Nath Bharti, witness stated that he is working with AIIMS since the year 2009. He replied that there is a Duty Register and the place of duty is fixed by Supervisor and other senior officers of the witness. Witness admitted that he was given Certificate for doing good job in protecting AIIMS property and it was given after the incident. He stated that Certificate was given by AIIMS Director and in the presence of other senior officers. Witness stated that he does not know to whom the wall belongs and whether it belongs to AIIMS or MCD or any other body. He stated that he was present at around 200 meters from the side of incident and he saw that mob pulled down the fence. Witness stated that he alongwith other guards held the fence for around 20 to 25 minutes. Witness stated that he suffered injury in trying to save the fence. Witness stated that his statement was recorded by the police on the next day of the incident. Witness stated that he does not know whether Mr. Rawat accompanied them or not to the police station. Witness stated that his medical examination was conducted by AIIMS from Trauma Medical Center alongwith Santosh Chaudhary and Dinkar Chaudhary on the same date of incident. Witness stated that his statement was recorded in the Court on 12.12.2016. Witness admitted that accused Som Nath Bharti was present at the spot but he was not doing anything and mob was shouting slogans. Witness stated that he does not know what injury was suffered by his fellow guard. Witness stated that he has seen the accused Som Nath Bharti in newspaper and television earlier to the date of incident and that is how he recognized the accused Som Nath Bharti. Witness stated that he does not know that what use the AIIMS do with the bridge and at the time of incident it was used for parking. Witness stated that

mob was shouting to break the wall to make a way to the bridge. Witness stated that he does not know how the incident was stopped. Witness denied the suggestion that he had given the statement to the police or in the Court under the pressure.

Other accused persons opted not to cross examine the witness.

10. **PW-6 Sanjeev Kumar** deposed that on 15.09.2016, he was posted as Junior Engineer at Sub Division-1 South Road-II Andrews Ganj, Sri Fort Road, New Delhi. He deposed that on that day he was called by IO in the PS Hauz Khas and he enquired about the matter from the witness and asked him as to whether he was present at the spot at the time of incident. Witness stated that he was not present at the place of incident at the time of incident and he accordingly, replied the same to the IO. Witness stated that IO enquired about the presence of JCB machine at the spot to which he replied to the IO that JCB machine was called to break the speed breaker in pursuance of order of Hon'ble Supreme Court of India at Mahinder Kumar Lane Marg, P.R Block Road. Witness stated that order for breaking the speed breaker was issued by Executive Engineer, South PWD and copy of the order is mark 6-A. Witness stated that on 15.09.2016, he had submitted the written reply to SHO PS Hauz Khas which is Ex. PW6/B.

During cross examination by accused Som Nath Bharti, witness replied that he does not know whether any meeting took place in respect of nallah (drain) in PWD as he did not attend any such meeting. Witness replied that he had attended the meeting of area MLA to discuss the issues of Constituency concerning PWD. Witness stated that there was no discussion regarding accessibility to AIIMS in any those meetings. Witness stated that he had seen the nallah/drain and road adjacent to the nallah/drain was under his supervision. Witness stated that nallah/drain belongs to MCD. Witness stated that the name of the road is Sudhershnan Cinema Road and Gautam Nagar road. Witness stated that the proposal to give access to AIIMS was

from Sudhershana Cinema Road. Witness stated that he was in the office on 09.09.2016 and he went to Sudhershana Cinema Road in the evening at about 4.00 pm to inspect the road. He stated that he came to know about the incident around 2.00 pm when he enquired from JCB driver about his whereabouts. Witness stated that there was no official meeting between him and accused Som Nath Bharti regarding the nallah/drain neither any discussion took place regarding repair of Sudhershana Cinema Road. Witness stated that he does not know the name of driver of JCB and he had never issued any instruction to bring JCB machine at the spot on the date of incident. Witness stated that he had instructed JCB owner to demolish breakers and fill the earth which was excavated on 07.09.2016. Witness stated that breakers were on the road. Witness stated that the speed breakers were at Mahinder Kumar Jain Road at the distance of 600 meters from the spot and work was to be start at 10.00 am and direction was issued in oral. Witness stated that approval for removal of speed breakers was taken on 06.09.2016 and JCB was standing at Gautam Nagar road and it was standing around 50 meters from the spot of incident. Witness stated that the wall in question belongs to AIIMS but he does not have any document to show to that effect. Witness replied that he wrote a letter Ex. PW6/B to SHO regarding enquiry whether PWD had demolished the wall to which he replied that PWD had not demolished the wall. Witness further replied that nobody asked from PWD to demolish the wall. Witness stated that letter Ex. PW6/B was written by Sh K.P Kaushik, Assistant Engineer and witness signed it as a witness and he signed it after reading the letter. Witness stated that he had not seen the JCB machine being used to demolition/damage to the wall. Witness stated that he is not aware regarding any meeting on 15.09.2016 in the office of Chief Engineer. Witness stated that he is not aware about any meeting between PWD and AIIMS after the incident. Witness replied that except Ex. PW6/B no other statement of the witness was recorded. Witness denied the suggestion that he deposed falsely that JCB machine was not brought by

PWD and on direction of PWD. Witness denied the suggestion that PWD was involved in demolition of the wall. Witness denied the suggestion that the damage to the wall was caused by PWD officially after several meetings with the AIIMS. Witness denied the suggestion that he is not aware about those meetings.

Other accused persons opted not to cross examine the witness.

11. **PW-7 Mr. K.P Kaushik** deposed that on 15.09.2016, he was called in the PS Hauz Khas and was enquired about the incident. He deposed that he was asked whether PWD was involved in the incident to which he replied to the query to the police through letter Ex. PW6/B in his own handwriting with signature of Junior Engineer Sanjeev Gupta who also accompanied with him to the PS.

During cross examination by accused Som Nath Bharti witness replied that at the time of incident he was working as Assistant Engineer on current duty charge and he was on additional charge of the place of incident which was situated in Sub Division -1. He replied that he remained Incharge in January 2017 on dual charge basis. Witness replied that he worked with accused Som Nath Bharti being MLA since the year 2014 till he was transferred to South-East Division in the year 2017. Witness replied that he had attended all the official meetings called by accused Som Nath Bharti being MLA but witness failed to disclose the exact number of meetings. Witness replied that he never attended any meeting in PWD H.Q which was called by Chief Engineer or Engineer in Chief. Witness further replied that in the meetings which were participated by him, there was no discussion regarding giving access to the residents of Gautam Nagar to nallah/bridge. Witness admitted that there was an agenda in that regard and he was orally told about it by Executive Engineer that some proposal in that regard was going on. Witness produced the agenda mark 7/P and admitted that at serial no. 9 issue is mentioned in the agenda. Witness stated that incident was of 09.09.2016 and he came to the notice of the incident on that day. Witness stated that

he was informed that some wall was broken and Executive Engineer Jagdish Parsad asked him to inspect the wall. Witness stated that he came to know about the incident at about 3.00 pm. During cross examination document Ex. PW6/D from point C to D was put to the witness wherein it was written that “ Moreover, it is mentioned that our higher officials directed not to accompany with these people well before in time and accordingly, site staff followed the order” to which witness replied volunteered that it was in reference to the agenda mark 7/A. Witness replied that he had not received any call from police and no other statement except Ex. PW6/B was recorded by police or in the Court U/s 164 Cr.PC. Witness stated that information which is mentioned in letter Ex. PW6/B was given to him by Superintending Engineer Mukesh Meena and Executive Engineer Jagdish Parsad. Witness stated that he had not given any note sheet on which the permission for JCB machine was taken to the police. Witness replied that in the said letter it is mentioned that nallah belongs to SDMC on the basis of his personal knowledge and he had not seen any document in that regard. Witness denied that letter Ex. PW6/B was written by him under police pressure. Witness replied that he replied the query of police in writing through document Ex. PW6/B in the PS. Witness stated that he do not know regarding the ownership of the wall in question. Witness volunteered explained that it does not belong to PWD. Witness stated that when he visited at the site in question at 4.00 pm alongwith JE Sanjeev, he found that no wall was broken and only concertina coil and one angle iron were slight bent. He also replied that no person or JCB was found present at the site. Witness replied that he was not informed by JCB driver or its owner that JCB machine was being used for purpose for which it was not hired. Witness denied the suggestion that the action was of PWD and he was having knowledge about it in advance. Witness denied the suggestion that since his senior officials have warned as mentioned in letter Ex. PW6/C from Point C to D, it means that action was of PWD and nobody else. Witness denied the suggestion that he deposed falsely regarding the action of PWD at the

instance of his senior officers.

Witness was not cross examined by other remaining accused persons.

12. **PW-8 Rahul son of Sh Prem Kumar** deposed that on 17.09.2016, he moved application in Court for release of JCB Machine bearing no. HR55K-0351 which was allowed vide order dated 17.09.2016 on superdarinama Ex PW8/A. He deposed that he is the owner of JCB machine and copy of RC is Ex. PW8/B. Witness also identified the photographs of JCB machine as Ex. PW8/C1 to Ex. PW8/C4. Witness also identified his signatures on the photographs.

During cross examination by accused Som Nath Bharti, witness replied that his elder brother Arun Kumar used to look after the work of JCB machine. Witness replied that the bill of assigned work was used to be given to his brother Arun Kumar and witness does not used to manage the JCB. Witness replied that he had never worked for PWD neither he had any tender of PWD. Witness denied the suggestion that JCB machine was engaged by PWD.

Other accused persons opted not to cross examine the witness.

13. **PW-9 Arun Kumar S/o Sh Prem Kumar**, deposed that on 10.09.2016, he was called by police in PS Hauz Khas and when he reached there he was enquired by police regarding how JCB machine went to the police of incident. He further stated that he informed to the police that his cousin brother Manoj Kumar had asked him to provide machine for some government work. Witness stated that police asked him to surrender the JCB machine to which he surrendered and it was seized and seizure memo Ex. PW9/A was prepared. Witness had also identified the photographs of JCB machine Ex. PW8/C1 to Ex. PW8/C4. He also identified his signature on the photographs Ex. PW8/C1 to Ex. PW8/C4 on its back portion at point B.

During cross examination by accused Som Nath Bharti, witness admitted

that he used to look after the work of JCB machine. Witness replied that he did not work for PWD. Witness voluntarily replied that he send the machine at request of his cousin Manoj Kumar and he is not aware for what government purpose the machine was sent. Witness replied that his cousin Manoj Kumar paid him in cash.

Other accused persons opted not to cross examine the said witness.

14. **PW-10 Satender Kumar, Chief Security Officer, AIIMS** deposed that he joined as Chief Security Officer in AIIMS on 16.01.2018 and prior to that the work of Chief Security Officer was look after by Mr. R.S Rawat who was working as Acting Chief Security Officer. Witness stated that he had given complaint U/s 195 Cr.PC to the police to be filed with the chargesheet addressed to the Court to prosecute accused persons in FIR No. 659/2016 Ex. PW10/A bearing his signature at point A on both the pages.

During cross examination by accused Som Nath Bharti, he replied that complaint U/s 195 Cr.PC was given by him on the instruction of Mr. R.S Rawat and he gave it in May 2018. He replied that he had given the complaint on the basis of documents available in the office of Security Department and he had seen the complaint lodged by Mr. R.S Rawat and also seen the other relevant documents. Witness replied that the document are lying in the Security Office of AIIMS. Witness replied that he cannot tell how many documents were there related to these documents and they may be more than one. Witness replied that he was not aware about the incident on its date as he was not posted in AIIMS at that time. Witness replied that he does not have any personal knowledge about the incident nor he had seen the incident. Witness replied that he is not aware of any meeting on this issue between PWD and AIIMS. Witness replied that his office received reference from police station Hauz Khas through SHO vide reference no. 603/SHO/HKS on 20.02.2017 and he can produce the same if the same is traceable in the office.

Witness replied that he does not know the reason for delay for more than one year in making complaint U/s 195 Cr.PC despite the request in February 2017 as he joins AIIMS only in January 2018. Witness denied the suggestion that complaint U/s 195 Cr.PC is made under pressure and fact mentioned in the complaint are false and maliciously drafted.

Other accused persons opted to adopt the cross examination as cross examined by accused Som Nath Bharti.

15. **PW-11 Ct. Sanjay Yadav** deposed that on 22.09.2016, he was posted as Constable at Police Post AIIMS and on that day Inspector R.P Meena came to the AIIMS where Chief Security Officer Mr. R.S Rawat had handed over one DVD which was seized by IO and Memo Ex. PW11/A was prepared. Witness identified the DVD Ex. PW11/B.

During cross examination by accused Som Nath Bharti, witness replied that he was posted at PS Hauz Khas in the year 2015 and on the date of incident, he was on duty at Police Post AIIMS near gate no. 1 next to Railway Reservation Counter. Witness again said that his duty was at the gate no. 1. Witness replied that at the time of incident, he was present at gate no. 1. Witness further replied that he is not aware where Mr. R.P Meena was present on the date of incident. Witness replied that he and Inspector R.P Meena went to seize the DVD Ex. PW11/B. Witness replied that he does not remember the exact time but it was afternoon and it was on 22.06.2016. Witness replied that the CD was seized from the office of Chief Security Officer, AIIMS. Witness replied that he had not seen the video before or after it was seized. Witness further replied that Inspector R.P Meena had also not seen the CD in his presence. Witness replied that he had not seen the contents of CD even on till date. Witness replied that he did not sign on CD and only signed on seizure memo. Witness admitted that there was no distinguishing mark on CD. Witness replied that

CD was handed over to Inspector R.P Meena and he had seen the CD and also touched it. Witness denied the suggestion that CD Ex. PW11/B is not the same which was seized by IO in his presence. Witness stated that the statement which is given to the police was regarding the seizure of CD by IO. Witness stated that he had not given any statement to the police in writing nor he had signed the statement. Witness denied the suggestion that he was not present when the CD was seized by IO or that no statement was recorded by IO.

During cross examination by other accused persons, witness replied that he gave statement to the IO on 22.06.2016. Witness admitted that he is not aware about the detail of video in the CD or from where it was recorded or by which instrument video was made. Witness stated that IO had not demanded any instrument by which video was recorded and/or transferred to the CD.

16. **PW-12 Ct. Inder Singh** deposed that he is Beat Constable in the area of Gautam Nagar, PS Hauz Khas. He deposed that on 17.07.2017, he joined the investigation in the present case on the request of the IO. He deposed that one video was played by IO on computer through a pen drive and he was asked to identify the said person in that video. He stated that he identified those persons as he had worked as Beat Officer in the area for sometime. He stated that he identified accused Sandeep, Jagat Saini, Rakesh Pandey and Daleep Jha in the video during investigation. Witness also identified Sandeep, Jagat Saini, Rakesh Pandey and Daleep Jha during his examination in the Court. Witness also identified the accused persons Sandeep, Jagat Saini, Rakesh Pandey and Daleep Jha in the DVD Ex. PW11/B played in the Court.

During cross examination by accused Som Nath Bharti, witness replied that he joined PS Hauz Khas in June, 2015 as Constable and was assigned the duty of Beat Officer probably in November 2015 in that area. Witness replied that he was

Beat Officer on the date of incident and he gave the statement U/s 161 Cr.PC when he was looking after the duty of Beat Officer of the area. Witness replied that he knew some other persons apart from the accused who were shown in video but he does not know their names. Witness replied that he knew all the accused persons namely Sandeep, Jagat Saini, Rakesh Pandey and Daleep Jha prior to the incident. Witness replied that there is a RWA in Gautam Nagar and he knew the President of the RWA and not other members. Witness replied that name of the President is Sh Yash Ahuja and he had not seen him in the video. Witness replied that he identified all four accused persons by his own and video was shown to him by Inspector Anand Swaroop who asked him whether he can identify any of the person shown in the video. Witness was drawn attention regarding his statement mark PW12/A recorded U/s 161 Cr.PC and his statement to the Court and asked that he deposed falsely as he stated in his statement U/s 161 Cr.PC that he identified the four accused persons with the assistance of secret informer to which witness replied that he may have forget the fact that he identified four accused persons with the help of secret informer and witness admitted that he knew the four accused persons. Witness further replied that he had not taken any help of secret informer. He stated that he discuss with other Beat Constables namely Ram Mehar and ASI Suman Pathania as they were Beat Officers with him, in common Beat area. He further replied that he took the help of Ct. Ram Mehar and ASI Suman Pathania in identifying the four accused persons. Witness replied that he do not remember the duration of the video and stated that video was run on laptop when he identified accused persons and at that time, IO was also present. Witness stated that he had not made any effort by showing the video to anyone else to identify the other persons in the video. Witness further replied that he did not do so because he acted exactly as instructed by IO. Witness denied the suggestion that he deposed falsely at the instance of senior/investigating officer. Witness denied the suggestion that the four accused persons were not known to him

prior to the incident. Witness denied the suggestion that he had identified four accused persons maliciously as per instruction of senior officers.

Other four accused persons opted not to cross examine the said witness.

17. **PW-13 SI Chagga Lal** deposed that on 10.09.2016, he was posted at PS Hauz Khas and was working as Duty Officer from 4.00 pm to 12 midnight. He deposed that at about 7.00 pm Inspector Anand Swaroop presented him a rukka for registration of FIR and he registered the FIR No. 659/2016 U/s 186/353/147/323 IPC and made endorsement on rukka and signed it at point A. He identified his endorsement on rukka as Ex. PW13/A. He deposed that after registration of FIR, he handed over copy of FIR to Inspector Anand Swaroop. Witness also produced the original FIR Register and identified the FIR as Ex. PW13/B. Witness stated that he issued Certificate U/s 65-B of Indian Evidence Act Ex. PW13/C.

During cross examination by accused Som Nath Bharti, witness replied that he remained posted at PS Hauz Khas from 12th March 2016 to 28 Feb. 2019 as Duty Officer continuously. Witness replied that as a duty officer his duty was to receive complaint of visitors, to register the FIR, to receive PCR call. Witness replied that on 09.09.2016, he was posted at PS Hauz Khas, however, he cannot tell whether any complaint or PCR call was received in PS Hauz Khas from 09.09.2016 till 10.12.2016 in connection with this case without looking into the record. Witness stated that he does not remember that prior to Inspector Anand Swaroop, anyone came to lodge complaint in that connection. Witness replied that he was on duty on 09.09.2016 from 4.00 pm to 12 midnight and during that period all the complaints were received by him. Witness replied that he does not remember whether any complaint was received alongwith rukka. Witness replied that he does not remember whether complainant Mr. R.S Rawat came to him for registration of case or not. Witness denied the suggestion that he deposed falsely that he does not remember that Mr. R.S

Rawat came to him for registration of case or not. Witness replied that when he received rukka, he was directed to register the FIR and he was not told against whom the FIR was to be registered. He replied that FIR was registered on the basis of complaint and he did not name anybody by the accused. Witness was confronted with FIR Ex. PW13/B in which in column 7 name of accused Som Nath Bharti was mentioned. Witness replied that he was not aware about accused Som Nath Bharti at the time of registration of FIR. Witness was confronted by putting FIR Ex PW13/B. Witness admitted that the contents of the FIR, it is written that accused Som Nath Bharti is a MLA. Witness voluntarily replied that he only copied the complaint and he does not know accused Som Nath Bharti personally. Witness admitted that a preliminary enquiry is to be done before registration of the FIR. Witness stated that report of enquiry was not filed with the rukka. Witness stated that in the present case one day time was taken for enquiry as the FIR was registered on the next day of incident. Witness was confronted with the FIR Ex. PW13/B column no. 3 where date and time of information received at PS is shown as 10.09.2016 at 19:00 hours. Witness replied that he had written no delay in column no. 8 of the FIR Ex. PW13/B because there was no delay in registration of the FIR after receiving of rukka. Witness admitted that SHO used to decide who shall be the investigating officer of a particular case. Witness admitted that he has not seen the original complaint and he never met with the complainant. Witness stated that tehrir is the endorsement on the complaint made by IO. Witness denied the suggestion that he registered the FIR under pressure by ignoring all the rules and established practices. Witness stated that the FIR was typed by computer operator in his presence.

During cross examination by accused Rakesh Pandey and Sandeep, witness replied that he cannot tell whether the preliminary enquiry was done against other accused persons except accused Som Nath Bharti or not as it is not the subject. Witness admitted that except the accused Som Nath Bharti, name of other accused

persons is not mentioned in FIR.

Accused Jagat Saini and Daleep Jha opted not to cross examine the said witness.

18. **PW-14 Ct. Jai Singh** deposed that on 10.09.2016, he was posted as Photographer with Mobile Crime Team South District and on request of IO Inspector Anand Swaroop he took photographs of the spot i.e. behind AIIMS, Ganda nallah. Witness stated that he had handed over negatives of the photographs to the IO and he also produced the receipt of acknowledgment regarding receiving of negatives by IO as Ex. PW14/A. Witness identified the five photographs Ex. P1 (C1 to C5) and stated that he had taken these photographs of the spot.

During cross examination by accused Jagat Saini and Daleep Jha, witness stated that he does not remember whether IO had recorded his statement U/s 161 Cr.PC or not. Witness stated that he went to the spot on receiving call from Control Room. Witness stated that he reached at the spot at 5.30 pm and remained there till 5.45 pm and he took five photographs. Witness denied the suggestion that no fence is broken in the photographs and witness volunteered replied that broken fences are clearly visible in the photographs. Witness admitted that negatives are not on the record. Witness replied that he does not remember whether he made arrival entry in his office after returning from the spot. Witness denied the suggestion that he did not went to the spot on 10.09.2016 and due to the same reason, he did not disclose the departure and arrival entry. Witness denied the suggestion that he did not gave negatives to the IO. Witness denied the suggestion that he deposed falsely.

Accused Som Nath Bharti, Rakesh Pandey and Sandeep, opted to adopt the cross examination as done on behalf of accused Jagat Saini and Daleep Jha.

19. **PW-15 HC Prem Nath MHC(M) PS Hauz Khas** deposed and produced the Register No. 19. He deposed that as per entry no. 1708, the case property of the

present case i.e. JCB Machine was deposited in Malkhana. Witness produced the photocopy of entry no. 1708 as Ex. PW15/A.

During cross examination by accused Som Nath Bharti, witness stated that he was not posted in PS Hauz Khas when the entry was made and he does not know who made the entry in the Register no. 19.

Other accused persons opted not to cross examine the said witness.

20. **PW-16 Inspector R.P Meena** deposed that on 21.09.2016, he was posted at PS Hauz Khas as Inspector Anti Terrorist Operation (ATO). He deposed that on that day, the IO Inspector Anand Swaroop was on leave so the investigation of the case was marked to him by the SHO. He deposed that he recorded the statement of complainant Mr. R.S Rawat U/s 164 Cr.PC by moving application Ex. PW16/A. He deposed that on 22.09.2016, accused Som Nath Bharti was arrested from his office and the memo regarding the arrest and personal search was prepared as Ex. PW16/B and Ex. PW16/C. PW16 deposed that after medical examination of accused Som Nath Bharti, he was produced before the Court. Witness stated that he seized the DVD produced by complainant Mr. R.S Rawat and prepared seizure memo Ex. PW11/A. Witness identified the accused Som Nath Bharti in the Court.

During cross examination by accused Jagat Saini and Daleep Jha, witness replied that he had not recorded any DD that investigation was marked to him by SHO. Witness further replied that he made the departure entry before arresting the accused Som Nath Bharti and same is part of the record Ex. PW16/D. Witness deposed that he does not remember whether name of accused Daleep Jha and Jagat Saini was mentioned by complainant Mr. R.S Rawat in his statement U/s 164 Cr.PC. Witness stated that he does not remember whether he recorded the statement of complainant Mr. R.S Rawat U/s 161 Cr.PC in respect to the seizure of DVD from him.

Witness stated that he had not associated any public witness at the time of seizure of DVD. Witness stated that he recorded arrival entry DD no. 25A in the PS Hauz Khas after arrest of accused Som Nath Bharti Ex. PW16/E. Witness denied the suggestion that seizure memo of DVD was prepared later on in collusion with IO Inspector Anand Swaroop and due to the same reason, statement of witness was not recorded by IO.

During cross examination by accused Som Nath Bharti, witness replied that he joined PS Hauz Khas in September 2015 and remained posted there till Feb. 2017 and during his entire tenure, he was ATO at PS Hauz Khas and thereafter, he was ATO of PS Mubarakpur. Witness stated that decision to arrest accused Som Nath Bharti was taken by him in consultation with SHO. Witness stated that he never met accused Som Nath Bharti prior to his arrest and after his arrest. Witness stated that after the arrest, he interrogated the accused Som Nath Bharti but accused Som Nath Bharti did not cooperate in the investigation. Witness stated that he does not remember whether he recorded this fact in the case diary or not. Witness stated that he does not remember whether he issued notice U/s 41 Cr.PC to the accused Som Nath Bharti for joining the investigation. Witness stated that he does not remember whether he made the attempt to join the accused Som Nath Bharti in the investigation before his arrest. Witness stated that there were 5-7 persons in the office when accused Som Nath Bharti was arrested. Witness stated that 4-5 police officials including the witness went to arrest the accused Som Nath Bharti. Witness stated that SI Varun Gulia, SHO PS Hauz Khas and deponent were the member of team for arresting the accused Som Nath Bharti and witness stated that he does not remember the name of other police officer. Witness stated that he does not remember whether their names were written in departure and arrival entry Ex. PW16/D and Ex. PW16/E. Witness stated that accused Som Nath Bharti was arrested for commission of offence punishable U/s 186/353/323/147 IPC and Section of 3 of Prevention of Damage to Public Property Act, 1984. Witness stated that he had not complied the provision of

Section 41 Cr.PC before the arrest of accused. Witness denied the suggestion that accused Som Nath Bharti made a request that he would join the investigation by visiting to the PS after sometime after attending a meeting. Witness voluntarily stated that accused Som Nath Bharti asked him to wait for two minutes only. Witness stated that he did not manhandled the accused Som Nath Bharti neither he touched the accused as accused complied with the oral direction to come alone to the PS. Witness stated that no other police official accompanying him also touched the accused physically for the purposes of arrest of accused Som Nath Bharti. Witness stated that accused Som Nath Bharti was arrested at 11.30 am. Witness stated that accused Som Nath Bharti was produced before the Court and he was granted bail from the Court. Witness denied that he arrested the accused Som Nath Bharti under the pressure from higher authorities and there was no requirement of arrest of accused Som Nath Bharti. Witness denied that accused Som Nath Bharti was arrested only to cause embarrassment to him and to cause fear in the minds of general public and accused Som Nath Bharti and his supporters. Witness stated that decision to arrest the accused Som Nath Bharti was taken on 22.09.2016 in the morning. Witness denied the suggestion that he deliberately flouted the provision of Section 41 Cr.PC or deliberately choose accused Som Nath Bharti to arrest him to cause embarrassment and to cause fear in the minds of his supporters and common people at large. Witness stated that he does not remember whether he recorded the arrest in the case diary or not.

21. **PW-17 M.L Khan, Superintending Engineer, Najafgarh Zone,** deposed that on 19.06.2006, he was working as Executive Engineer South Zone SDMC New Delhi and he wrote a letter Ex. PW1/E11 bearing his signature at point A regarding the permission of covering the open nallah flowing through Ansari Nagar Campus of AIIMS in Ward No. 14, South Zone.

During his cross examination by accused Jagat Saini and Daleep Jha, witness stated that there was no agreement of lease with the AIIMS during his tenure and ownership right of the said nallah was not given to AIIMS. Witness admitted that permission was given to cover the nallah and no further right was given to AIIMS. Witness volunteered that they were given the right to use the nallah. Witness admitted that it is not written in Ex. PW1/E11 that no other public person can use the said covered nallah/drain for thoroughfare. Witness stated that he inspected the nallah before issuing the letter. Witness stated that no time period was fixed for AIIMS to cover that nallah. Witness stated that when the letter was written, there was no consideration from the side of AIIMS though it was to be considered later on. Witness stated that IO had not recorded his statement during investigation. Witness denied that the permission was granted to the AIIMS to cover the nallah in the illegal manner. Witness stated that he did not went for inspection of the nallah after his permission as he was transferred on 25.07.2016.

During cross examination by accused Som Nath Bharti, witness replied that he has no knowledge about any correspondence between AIIMS and MCD after this letter and stated that there was some correspondence prior to this letter. Witness stated that he has not talked with MCD officials before visiting to the Court for evidence and had no discussion with AIIMS or MCD after his transfer on this issue. Witness stated that he talked to Mr Mittal A.E MCD after receiving summons from the Court and he did not talk with Executive Engineer. Witness stated that he has no knowledge that MCD Commissioner had informed in writing to PWD that PWD can make a slip road to connect to Sudhershana Cinema Road to cover nallah. Witness stated that he has no knowledge whether any lease was executed between MCD and AIIMS with respect to the said nallah. Witness stated that the permission was only to cover the nallah and no habitable structure or anything to do commercial activity was allowed by MCD vide letter Ex. PW1/E11. Witness stated that during his tenure, the

annual rent was not finalized. Witness further stated that he cannot say whether permission was granted null and void for want of fulfillment of condition given in the letter about finalization of token annual rent. Witness admitted that there was no restriction for other persons to use the covering done on nallah as per the letter. Witness stated that there was no permission to built any wall on nallah and permission was only to cover the nallah.

Accused Rakesh Pandey and Sandeep @ Sonu adopted the cross examination as done on behalf of accused Som Nath Bharti, Jagat Saini and Daleep Jha.

22. **PW-18 Bhupesh Kumar Sharma, Medical Record Technician, Trauma Center, AIIMS**, deposed that he has been deputed on behalf of Medical Superintendent AIIMS to produce original MLC Register before the Court. Witness produced the Authority Letter regarding his appearance as Ex. PW18/A. Witness produced the record of MLC Ex. PW18/B to Ex. PW18/G and deposed that the same was prepared in AIIMS hospital as per record available in the hospital. Witness deposed that Dr. Deep Sikha has left the hospital. Witness stated that he has been working in AIIMS since 1991 and was working in Trauma Center, AIIMS from January 2015. Witness stated that he had seen Dr. Deep Sikha while writing and signing the documents. Witness identified the signature of Dr. Deep Sikha on MLC Ex. PW18/B to Ex. PW18/G at point A.

During cross examination by accused Som Nath Bharti, witness stated that he has been authorized by Dr. Tej Parkash Sinha officer incharge Medical Record Section AIIMS. Witness stated that he is a Medical Record Technician. Witness stated that MLC Register are not prepared now as MLCs are now computerized. Witness stated that he was not present at the time of medical examination of patient. Witness stated that MLCs are prepared by doctor after medical examination. Witness stated

that he is not competent person to tell about the merits of the contents of the MLCs. Witness stated that the MLCs are dated 16.09.2016 and on that day his duty was in Medical Record Section.

Accused Jagat Saini, Daleep Jha, Rakesh Pandey and Sandeep @ Sonu opted not to cross examine the witness.

23. **PW-19 Inspector Anand Swaroop** deposed that on 09.09.2016, he was posted as Inspector Investigation at PS Hauz Khas and on that day complaint Ex. PW1/A of Mr. R.S Rawat Chief Security Officer, AIIMS New Delhi was marked to him for enquiry. He deposed that after conducting enquiry he made endorsement on complaint at point B, on 10.09.2016. He deposed that he got FIR No. 659/2016 registered and during investigation he recorded the statements of witnesses and also got their statements recorded U/s 164 Cr.PC in the Court. He deposed that he seized one JCB machine which was used in commission of crime and he prepared seizure memo Ex. PW19/A. He deposed that he issued notices to PWD, MCD and AIIMS to provide necessary and relevant documents as regard to road on nallah behind AIIMS. He deposed that documents were collected and placed on file. He deposed that complaint U/s 195 Cr.PC Ex. PW10/A was obtained from AIIMS and was filed with chargesheet. He deposed that MLCs of the injured were deposited and opinion on the same were obtained. He deposed that identification of co accused persons were fixed with the help of beat staff and secret informer by showing them video footage. He deposed that he prepared site plan Ex. PW19/B bearing his signature at point A. He deposed that after investigation, he filed chargesheet in the Court. Witness identified all accused persons in the Court during his examination.

During cross examination by accused Som Nath Bharti, witness replied that he knew the area of Gautam Nagar and Masjid Mor and nearby areas fully. Witness deposed that he do not know all the RWAs, Market Welfare Associations Etc.

He stated that as an Inspector Investigation, he had done investigation in three-four cases of Gautam Nagar. Witness stated that he was present in the PS when the present incident took place. Witness stated that he did not went to the spot at the time of incident and he went there at 8.00 pm night. He stated that he inspected the site and discussed the case with complainant and called Crime Team to take photographs of the spot. Witness stated that Ct. Jai Singh from the Crime Team was made as a witness in this case. Witness stated that there was no CCTV camera on or around the spot. Witness stated that he also enquired from some of the residents of Gautam Nagar about the incident. However, he did not made them witness as they did not disclose any material fact. Witness stated that he had not made any person from Gautam Nagar, Yusuf Sarai, Gulmohar Park, Niti Bagh, Masjid Mor, Gujjar Dairy and Green Park as a witness because he could not find any one who could have disclosed anything about the case. Witness stated that he does not remember the name of any person from the area from whom he enquired about this case. He stated that he received video footage after around two days of the incident and complainant provided the video and CD. Witness stated that he did not sent the CD to FSL and did not seize the instrument from which the video was made. Witness stated that it was made from mobile phone and mobile phone was not seized. Witness stated that he has no proof to say that video and CD was not adulterated. Witness admitted that he did not send the video or CD to FSL. Witness stated that eye witnesses has supported the case. Witness denied the suggestion that there is no eye witness in the case who is not connected with AIIMs or police. Witness admitted that he has not cited the name of Sat Pal, the driver of JCB as a witness in the chargesheet and witness voluntarily stated that it was inadvertent error as he is the material witness in this case. Witness stated that accused of this case was identified by Beat Constable Inder of the area. Witness failed to disclose the name and identity of the persons of the area with whom he enquired for identification of persons involved in the incident as reflected in the

video. Witness stated that all the accused persons except accused Som Nath Bharti was called by police for investigation. Witness stated that accused Som Nath Bharti was called by other IO for investigation. Witness stated that he did not come to accused Som Nath Bharti or made any attempt to enquire from accused Som Nath Bharti about the incident. Witness stated that spot of the incident is outside boundary of AIIMS and the wall which was damaged was made by AIIMS. Witness stated that it was revealed during investigation and he collected documents to prove the wall belongs to AIIMS as Ex. PW1/E10. Witness stated that there is no mention of wall in document Ex. PW1/E10. Witness stated that people of the AIIMS were on the side of AIIMS and people of Gautam Nagar were on the side of that wall. Witness stated that he does not remember the height of the wall. Witness stated that there is no video or photo showing assault on the guards as alleged. Witness stated that the fence was at the top of the wall. Witness stated that he associated Mr. R.S Rawat and Mr. Satender Kumar as a witness from AIIMS. Witness failed to disclose the details of witnesses from PWD as mentioned in chargesheet and stated that it is a matter of record. Witness stated that he collected documents relating to PWD which are record after serving them notice. Witness stated that no warning was given by police to the mob that the assembly was unlawful. Witness failed to disclose the date of arrest of accused Som Nath Bharti and duration of police custody. Witness stated that other accused persons were not arrested during investigation. Witness stated that medical examination of the injured were conducted on the date of incident itself and after looking the MLCs of the witnesses, he stated that medical examination was done on 10.09.2016. Witness denied the suggestion that case was made up under political pressure against accused Som Nath Bharti to harm his reputation and to harass the innocent individuals. Witness denied the suggestion that he knew many more persons of the crowd and deliberately implicated the accused Som Nath Bharti and other co accused persons as politically guided by people belonging from BJP. Witness denied

the suggestion that there was no evidence in the case. Witness denied the suggestion that he did not went to the locality for identification of other persons involved in the alleged incident.

Other accused persons opted to adopt the cross examination as done on behalf of accused Som Nath Bharti.

24. After prosecution evidence, statement of accused persons recorded U/s 313 Cr.PC. Accused persons Jagat Saini, Daleep Jha, Sandeep @ Sonu and Rakesh Pandey opted not to lead any DE. Accused Som Nath Bharti opted not to lead any DE. However, on 07.10.2020, an application U/s 91 read with Section 311 Cr.PC was moved by accused Som Nath Bharti which was dismissed. Accused approached to Hon'ble High Court of Delhi and vide order dated 14.10.2020 accused Som Nath Bharti was permitted to lead DE.

25. Accused Som Nath Bharti examined two witnesses in support of his defence.

26. **DW-1 Anil Kumar Assistant Engineer Office of EE, M4 SDMC South Zone Pushp Vihar, Sector-6 New Delhi** produced the copies of documents i.e. letter dated 15.02.2016 from Chief Engineer South Zone SDMC to the Principal Chief Engineer, PWD, GNCTD, Ex. DW1/A, Minutes of Meeting dated 18.04.2016 Ex. DW1/B, Letter dated 13.04.2016 from Executive Engineer South Road-II PWD to Executive Engineer (M-II) SDMC Ex. DW1/C. Witness stated that he has seen the documents Ex. PW1/E11 and Ex. PW1/D1 placed on judicial record and as per his knowledge the documents and their contents are correct. Witness stated that the permission was given by Commissioner SDMC to Director AIIMS for covering open nallah upto 600 meters from Ring Road towards Gautam Nagar. Witness stated that the 600 meters distance ends upto Street Light Pole No. 29. Witness deposed that AIIMS has covered the nallah beyond the limited area and no permission for area

covered beyond permitted limit was granted by SDMC to AIIMS. Witness stated that the place of incident dated 09.09.2016 took place beyond the area that was permitted to be covered. Witness stated that there was no lease deed executed between AIIMS and SDMC in pursuance to the permission vide letter Ex. PW1/E11 nor any token rent was decided during his tenure. Witness stated that the permitted covered area as well as the area covered beyond the permitted limit is being commercially used by AIIMS for parking purposes. The wall towards the Sudhershana Cinema Road which is subject matter of the case is not the part of the nallah and it is constructed on Sudhershana Cinema Road. Witness deposed that it was an MCD road under jurisdiction of SDMC till 2013 and thereafter, it was handed over to PWD. Witness stated that MCD has never received any application to seek permission to construct the wall on Sudhershana Cinema Road. Witness stated that he is aware as to who is the owing authority of the said wall. Witness stated that the terms and condition of permission granted to the AIIMS for covering the nallah was not complied by the AIIMS Authority. Witness deposed that Commissioner SDMC has permitted PWD to connect Sudhershana Cinema Road with covered portion of Gautam Nagar nallah by constructing a slip road vide letter Ex. PW1/A and witness was Member of the meeting held on 12.04.2016 on behalf of SDMC and Minutes of the same is Ex. DW1/B. Witness stated that AIIMS Authorities were aware about the meeting dated 12.04.2016 but none from AIIMS participated in that meeting. Witness stated that he was assigned the duty to ensure removal of toilet block from the point where slip road was to be constructed vide letter dated 13.04.2016 Ex. DW1/C. Witness deposed that he got removed it accordingly. Witness deposed that he attended meeting dated 15.09.2016 held in the Office of Chief Engineer South PWD, minutes of which are Ex. PW1/D1. Witness stated that action dated 09.09.2016 for making slip road connected Sudhershana Cinema Road with covered portion of Gautam Nagar nallah by removing the wall was of PWD. Witness stated that the action was opposed by AIIMS as

discussed in the meeting. Witness stated that meeting dated 15.09.2016 was fixed at request of AIIMS and police authority to find amicable solution. Witness stated that nallah is owned by MCD and it is the Competent Authority to deal with the same.

During cross examination on behalf of the State, witness admitted that he had not brought the original documents as produced during his examination in chief. Witness admitted that he was not present at the spot on the date of incident i.e. 09.09.2016. Witness admitted that he cannot produce any document or record to show that AIIMS is making commercial use for parking purposes. Witness stated that he cannot say that AIIMS may have opted permission for constructing wall on Sudhershana Cinema Road after or before his tenure as A.E (Civil) (Maintenance). Witness stated that he has not lodged any complaint for non compliance of terms and conditions of permission granted to AIIMS for covering nallah though he visited the spot. The document Ex. DW1/A was put to the witness and witness was asked that in this document, there is no mention for granting permission for constructing slip road to which witness again stated that permission was granted vide document Ex. PW1/A. Witness denied the suggestion that he gave evasive reply and no permission was granted vide document Ex.DW1/A to PWD for connecting Sudhershana Cinema Road with covered portion of Gautam Nagar nallah. Witness admitted that as per document Ex. DW1/B, no permission was granted as stated above. Witness stated that he is not aware about any document vide which PWD took action on 09.09.2016. Witness denied the suggestion that he deposed falsely.

27. **DW-2 Naib Chand, Executive Engineer, PWD** deposed that he was authorized by Chief Engineer to appear in the Court. He deposed that he brought copies of documents which are attested by him to be true and certified copies of original i.e. letter dated 05.01.2016 from Executive Engineer South Road-II, PWD to S.E Circle South, PWD Ex. DW2/A, letter dated 11.05.2016 from S.E Circle South,

PWD to Chief Engineer NDZ-IV CPWD East Block R.K Puram Ex. DW2/B, letter dated 23.06.2016 from S.E South (Maintenance Circle) to Executive Engineer AIIMS, Project Division CPWD, Ayur Vigyan Nagar, Khel Goan Marg, New Delhi Ex DW2/C, letter dated 01.07.2016 from S.E Circle South, PWD to Chief Engineer South Zone SDMC Ex DW2/D, letter dated 07.09.2016 from Chief Engineer South PWD to Dr. M.C Mishra, Director AIIMS Ex DW2/E, letter dated 07.09.2016 Ex. DW2/E was delivered to AIIMS Authority by hand.

During cross examination on behalf of the State, witness admitted that he has no personal knowledge about the present case and stated that he deposed on the basis of record.

28. After defence evidence, final arguments heard at length on behalf of State as well as on behalf of the accused persons.

29. It is submitted on behalf of the State that the incident pertains to 09.09.2016 between 9.00 am to 10.00 am. It is further submitted that the FIR was lodged on the basis of complaint of complainant/PW1 on 10.09.2016. It is further submitted that during investigation PW12/Beat Constable Inder Saini identified the accused persons namely Sandeep @ Sonu, Jagat Saini, Rakesh Pandey and Daleep Jha from the video footage recorded from mobile phone which was converted into DVD and placed on record of the Court file. It is further submitted that accused Som Nath Bharti was identified by complainant Mr. R.S Rawat and the averments of the complainant also find corroboration from the testimony of PW2, PW3, PW4 and PW5 who were the members of Security Staff of AIIMS. It is further submitted that accused took the defence during cross examination that action for demolition of wall was planned and proposed by PWD. However, as per statement of PW6 Sanjeev Kumar and PW7 K.P Kaushik, the officials of PWD on the duty on the date of incident categorically denied that there was any plan for action on the boundary wall of the

AIIMS and its demolition. It is further submitted that PW1 duly proved the prosecution case regarding the time of incident, presence of accused Som Nath Bharti at the place of incident and his role in the commission of the offence, injury caused to the victims during the incident and he also identified the photographs of the place of incident. It is further submitted that the testimony of PW1 find corroboration from the averment of PW3, PW4 and PW5 who also identified the accused Som Nath Bharti during their examination in the Court. It is further submitted that the JCB machine was used for demolition of the wall and in the attempt to demolish the wall, JCB machine pull down the fence of the wall. It is further submitted that accused Som Nath Bharti was leading the mob and was instigating the mob to demolish the wall of the AIIMS on the pretext that AIIMS illegally occupied the place of occurrence. It is further submitted that PW12 identified the accused persons Sandeep @ Sonu, Jagat Saini, Daleep Jha and Rakesh Pandey during his examination in the Court and he is the probable witness regarding identification of the accused Sandeep @ Sonu, Jagat Saini, Daleep Jha and Rakesh Pandey being Beat Constable of the area. It is further submitted that the accused Som Nath Bharti was arrested during investigation and same is proved by witness PW16 Inspector R.P Meena. The statements of eye witnesses of the incident i.e. security staff as well as complainant were recorded U/s 164 Cr.PC and it also corroborates the prosecution case regarding the incident and role of the accused persons in the commission of offence. The major portion of investigation was carried out by IO PW19 Inspector Anand Swaroop who filed the chargesheet in the Court. It is further submitted that the defence witness DW1 stated about the communication and meetings between PWD and other departments regarding the place in question and the communication itself not justified the illegal act of the accused persons and offence committed by them. It is further submitted that the accused persons led by accused Som Nath Bharti being MLA of the area opted to take the law in their own hands instead of opting the lawful means of their grievance if any qua the wall in question

and in furtherance of their common object to demolish the wall, they formed unlawful assembly to use criminal force to demolish the wall in question possessed by AIIMS and they use the criminal force by pelting stones on the security staff of the AIIMS and by abusing them and the JCB machine was used to demolish the wall in attempt of which the fence at upper portion of the wall was pull down and security staff of the AIIMS received injuries on their person. It is further submitted that the case of prosecution regarding charges of offence punishable U/s 323/353 IPC read with Section 149 IPC and offence punishable U/s 3 of the Prevention of Damage to the Public Property Act, 1984 and offence punishable U/s 147 IPC read with Section 149 IPC is duly proved by prosecution so the accused persons may be convicted as per law and be sentenced as per law.

30. It is submitted on behalf of the accused Som Nath Bharti that AIIMS unauthorizedly constructed a wall on nallah as mentioned in site plan Ex. PW19/B and AIIMS has no authority to possess the nallah or wall built over it as reflected in site plan. It is further submitted that guards of the AIIMS are not public servants as defined U/s 21 IPC. It is further submitted that the services of security guards are governed by the Private Security Act and Rules framed under it and U/s 2 (h) of the said Act, Private Security Guard is defined. It is further submitted that since security guards of the AIIMS are not public servants so the charges punishable U/s 353 IPC is also not attracted against the accused Som Nath Bharti as well as other accused persons. It is further submitted that the nallah/drain was belonging to MCD and AIIMS unlawfully occupied it. It is further submitted that witness PW7 from PWD categorically replied that he was not aware that wall in question was belonging to which department and he also admitted that only concretetina coil and one angle of iron post were slightly bent. It is further submitted that as per deposition of PW17, AIIMS was only given the right to cover the nallaha. However, it unauthorisedly constructed wall and started using it for commercial purposes i.e. for parking purposes. It is further submitted that

AIIMS covered the nallaha/drain even beyond permissible limit as deposed by DW1 through the document produced by him. It is further submitted that no judicial TIP of the accused persons got conducted by IO as came on record during the testimony of PW-19 and the identity of the accused persons namely Sandeep @ Sonu, Jagat Saini, Daleep Jha and Rakesh Pandey was fixed on the basis of Beat Staff and secret informer and the case of prosecution regarding the identification of accused persons namely Sandeep @ Sonu, Jagat Saini, Daleep Jha and Rakesh Pandey is not believable and reliable and it is liable to be discarded. It is further submitted that accused Som Nath Bharti is a known figure being MLA of the area and he was falsely implicated by the police in the present case due to political reason. It is further submitted that there was no CCTV camera on or around the place of incident and it is not clear from where the police procured the CD which is relied by prosecution for corroborating its case regarding the identity of accused persons namely Sandeep @ Sonu, Jagat Saini, Daleep Jha and Rakesh Pandey and role of accused Som Nath Bharti in the commission of offence. It is further submitted that the alleged CD was prepared from mobile phone but the mobile phone was neither seized nor send to FSL for its forensic examination. It is further submitted that the JCB driver was neither cited as witness nor as a accused by the police in the chargesheet U/s 173 Cr.PC and no reasonable explanation was given by prosecution. It is further submitted that IO in his statement stated that he enquired about 70-80 persons regarding the incident but he failed to explain why he did not examined them and associated them as a witness nor any list of persons allegedly enquired by the IO was filed with the final report. It is further submitted that no warning was given by police regarding unlawful assembly. It is further submitted that the plan for removal of wall of unauthorised construction was of PWD and not of accused persons and assembly was also unlawful as the action was planned by PWD/Government Agency. It is further submitted that police/IO deliberately not conducted fair investigation and many documents were withheld by

police in order to implicate the accused Som Nath Bharti. It is further submitted that during investigation the ownership documents of the wall in question was not collected by the IO by the reason best known to him. It is further submitted that it is not clear from the evidence/documents brought on record that on whose instance the JCB machine was brought on the spot for said action of PWD. It is further submitted that the case of prosecution against accused Som Nath Bharti as well as other accused persons is not proved beyond reasonable doubt as accused persons were falsely implicated so they may be acquitted from the present case.

31. It is submitted on behalf of the accused Jagat Saini and Daleep Jha that the FIR was registered with delay and false MLC was prepared to implicate the accused persons in the present case. It is further submitted that the name of the accused Jagat Saini and Daleep Jha were added during the investigation and no notice was given to them at any point of time to join the investigation. It is further submitted that PW1 himself admitted that the guards of the AIIMS tried to stop the JCB machine from demolition of the wall in which they suffered minor injuries which clarifies that accused persons did not cause any injury to the security personnels of the AIIMS. It is further submitted that eye witnesses failed to identify the accused Jagat Saini and Daleep Jha in the Court during their examination and their presence at the place of incident is not duly proved as per law as CD which is relied by prosecution is not proved as per law. It is further submitted that accused Jagat Saini and Daleep Jha may be acquitted from the present case.

32. It is submitted on behalf of the accused Rakesh Pandey and Sandeep @ Sonu that they were falsely implicated by the police in the present case and no material evidence came on record against them regarding their presence at the spot. It is further submitted that the CD which is relied by prosecution for establishing the presence of accused persons at the spot is not duly proved and eye witnesses failed to identify the accused Rakesh Pandey and Sandeep @ Sonu, so they may be

acquitted from the present case.

33. Accused Som Nath Bharti has relied upon the following judgments in support of his case:-

1. **Kanshi Ram Vs. State, 86(2000), Delhi Law Times 609.**
2. **Siri Ram Sharma & Ors. Vs. State & Ors, 56 (1994) Delhi Law Times 684 (DB).**
3. **Kush Hori & Ors. Vs. State.**
4. **Ram Narain Vs. Ved Prakash, 56 (1994) Delhi Law Times 692.**
5. **Gurinder Singh & Anr. Vs. State, 63 (1996) Delhi Law Times 104.**
6. **Om Parkash & Ors. Vs. The State, 23 (1983) Delhi Law Times 50.**
7. **Anil Kumar Tito @ Anil Kumar Sharma @ Tito Vs. State NCT of Delhi, decided by Hon'ble High Court of Delhi in Cr. A. No. 66/2013 on 29.05.2015.**
8. **V.K Shashi Kala Vs. State, (2012) 9 SCC 771.**
9. **Ashutosh Verma Vs. CBI, Criminal Misc. No. 79/14, Delhi High Court.**
10. **Shashi Bala Vs. State of NCT Delhi, Criminal Misc. No. 1752/16, Delhi High Court.**

34. It is submitted that in ***Kanshi Ram Vs. State***, (supra) it was held that

“ There is no evidence to show formation of any unlawful assembly at any time with common object of using criminal force against complainant Israr Ahmed or other media persons. From the mere fact of petitioner alongwith security personnels being found at scene of occurrence at the time when complainant Israr Ahmed was assaulted, it cannot be inferred

that they were member of unlawful assembly within the meaning of Section 141 IPC”.

It is further submitted that in present case also mere presence of the accused at the place of incident cannot be treated as member of unlawful assembly and even otherwise assembly was not unlawful as action for removal of wall was taken by PWD.

It is further submitted that in the present case the TIP of the other co accused persons was not got conducted as per law and their identity was ascertained and they were chargesheeted on the basis of the video footage allegedly recorded through mobile phone and filed in the Court in the form of CD/DVD and law on this point is already settled in case titled as ***Siri Ram Sharma & Ors. Vs. State*** (Supra) and ***Anil Kumar Tito @ Anil Kumar Sharma @ Tito Vs. State NCT of Delhi, decided by Hon'ble High Court of Delhi in Cr. A. No. 66/2013 on 29.05.2015*** and entire case of prosecution is doubtful and benefit of doubt be given to the accused persons including the accused Som Nath Bharti.

It is further submitted that mere presence of the accused Som Nath Bharti at the place of incident and at the time of incident cannot be treated as member of unlawful assembly as firstly assembly was not unlawful and accused had not committed any overact or assault or used criminal force against the alleged injured persons or in the removing the wall and law on this point is already settled in case titled

as ***Kush Hori & Ors. Vs. State (Govt of NCT Delhi)*** (supra) and ***Om Parkash & Anr Vs. State*** (supra).

It is further submitted that security guards were hired by AIIMS on contractual basis and they were not public servants so accused cannot be held liable for offence punishable U/s 353 IPC alongwith other provisions of law and law on this point is already settled in case titled as “***Gurinder Singh & Anr Vs. State***” (supra).

It is further submitted that many documents which were within the notice of the IO of the case were not filed with the final report which came to the notice during the trial which caused prejudice to the accused persons and it creates doubt in the prosecution case against the accused persons and law on this point is already settled in case titled as **V.K Shashi Kala Vs. State, (2012) 9 SCC 771 (Supra), Ashutosh Verma Vs. CBI, Criminal Misc. No. 79/14, Delhi High Court (Supra) and Shashi Bala Vs. State of NCT Delhi, Criminal Misc. No. 1752/16, Delhi High Court (Supra)**, so accused persons may be acquitted from the present case and benefit of doubt be given to the accused persons.

35. Accused persons Jagat Saini and Daleep Jha have relied upon the following judgments in support of their case:-

1. **Gurinder Singh & Anr. Vs. State, 63 (1996) Delhi Law Times 104.**
2. **Shiv Charan & Ors. Vs. State, 2011 (4) JCC 2793.**
3. **Kanan & Ors. Vs. State of Kerala, (1979) 3 Supreme**

Court Cases 319.

4. Raju @ Rajendra Vs. State of Maharashtra, 1997 (3) C.C. Cases 103 (SC).

5. Ravindra alias Ravi Bansi Gohar Vs. State of Maharashtra, AIR 1998 Supreme Court 3031.

6. Vijayan @ Rajan etc Vs. State of Kerala, 1999 1 AD, (Cr.), S.C 337, (Supreme Court).

36. It is further submitted that no judicial TIP of the accused persons was got conducted and their identity qua the present case was ascertained by IO on the basis of video footage allegedly recorded in mobile phone. It is further submitted that the said mobile phone or video footage was not send for its forensic examination. It is further submitted that police falsely implicated the accused persons so they may be acquitted from the present case.

37. **Section 141 IPC defines unlawful assembly as “ an assembly of five or more persons is designated as unlawful assembly”, if the common object of the persons composing that assembly is-**

- First.- To overawe by criminal force, or show of criminal force, (the Central or any State Government or Parliament or the Legislature of any State), or any public servant in the exercise of the lawful power of such public servant; or
- Second.- To resist the execution of any law, or of any legal process; or
- Third.- To commit any mischief or criminal trespass, or other offence; or
- Fourth.- By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.- An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Section 142 of IPC defines being member of unlawful assembly.—Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Section 143 of IPC provides about Punishment.—Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Section 146 of IPC defines Rioting—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Section 147 of IPC provides about punishment for Rioting.—Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 149 of IPC provides that every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every

person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Section 21 (Twelfth) (a) of IPC defines public servant as- the words “public servant” denotes a person falling under any of description hereinafter following namely- Every person, in the service or pay of the Government or remunerated by fees or commission for performance of any public duty by the Government.

Section 323 of IPC provides about Punishment for voluntarily causing hurt- Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Section 353 of IPC provides about punishment of assault or criminal force to deter public servant from discharge of his duty- Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 3 of The Prevention of Damage to Public Property Act, 1984 provides that:-

Mischief causing damage to public property- (1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which

may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being-

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installation;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of telecommunication, or any building, installation shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the Court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

Section 425 of the IPC defines Mischief as “Whoever with intent to cause or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously, commits mischief.

Explanation 1- It is not essential to the offence of mischief that offender should intent to cause loss or damage to the owner of the property injured or destroyed, it is sufficient if he intends to cause, or know that he is likely to cause, wrongful loss or damage to any person by injury in any property, whether its belong to that person or not.

Explanation 2- Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

According to Section 2 (b) of the Prevention of Damage to Public Property Act, 1984, “Public

property is defined as- any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of-

(I) the Central Government; or

(ii) any State Government; or

(iii) any local authority; or

(iv) any corporation established by, or under, a Central, Provincial or State Act; or

(v) any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf;

Provided that the Central Government shall not specify any institution, concern or undertaking under this sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments.

38. Heard the submission on behalf of the State and also heard the submission on behalf of the accused persons. I have also gone through the entire case file and case law as relied by Ld counsels for the parties.

39. As per prosecution case and charge-sheet on 09.09.2016 at around 09.45 am, a mob constituting approximately 300 persons led by accused Som Nath Bharti, the MLA of the area gathered near the boundary wall of AIIMS (All India Institute of Medical Sciences New Delhi) in Gautam Nagar at the nallah (drain) road with JCB with common object of breaking the wall of AIIMS and to get an access to the AIIMS. It is further case of prosecution that in the process of demolishing the wall, the mob led by accused Som Nath Bharti used the JCB machine and also manually damaged the fence on the boundary wall of the AIIMS. It is further case of prosecution that in the

process of breaking the wall and the fence of the boundary wall, the mob led by accused Som Nath Bharti used criminal force by pelting stones upon the security personnels of the AIIMS due to which they received simple injuries upon their body while protecting the damage to the fence and boundary wall from the mob and from the JCB machine. During investigation, accused persons namely Jagat Saini, Daleep Jha, Rakesh Pandey and Sandeep @ Sonu were identified as members of the unlawful assembly and they were also charge-sheeted. Other members of the unlawful assembly were remained unidentified during investigation and they remain untraceable. Prosecution witness PW1/complainant Mr. R.S Rawat deposed in the Court that on 09.09.2016 at about 09.45 am, he received message regarding the information of gathering assembled towards Gautam Nagar outside the boundary wall of the AIIMS with the JCB machine and was trying to break the wall and fence of the AIIMS. On receiving the information, complainant further informed the same to Deputy Director Administration and Superintending Engineer and also informed to the Security Control Room to send some re-enforcement. The said Deputy Director Administration and Superintending Engineer were not associated in the investigation as they were not cited as prosecution witness. As per averment of PW1 when he reached at the place of incident after receipt of information, he saw that accused Som Nath Bharti, the Local MLA was leading the mob from the front and JCB was damaging the wall. PW1 further stated that he requested the JCB driver to stop the demolition of the wall upon which accused Som Nath Bharti and some of the members of the mob insisted to the driver of the JCB to not to stop the demolition. PW1/complainant further stated that he asked the accused Som Nath Bharti that why he was breaking the wall upon which accused Som Nath Bharti informed that road going alongwith the wall is not AIIMS property and he wants to make a public thoroughfare for the residents of Gautam Nagar to the AIIMS. PW1 requested to the accused Som Nath Bharti to show any document that wall does not belongs to AIIMS and also asked him to have

conversation or talk with some government officials if accompanied with him for purposes of breaking the wall to which accused Som Nath Bharti has not produced any document and no government official of any agency was accompanied with him for purpose of demolition of the wall of the AIIMS. Witness stated that accused Som Nath Bharti insisted the driver of the JCB to carry on the demolition of the wall to which the guards of the AIIMS Security tried to stop the JCB from demolishing the wall in which they suffered minor injuries. Witness/complainant further stated that some public persons among the mob were also insisting on breaking of that wall and they also resorted to stone pelting. Witness stated that public persons were abusing to the witness as well as security staff of the AIIMS and when they did not stop despite the request of the witness, witness called the police. When police came at the spot, they had some conversation with accused Som Nath Bharti and then it was agreed between AIIMS, Police and accused Som Nath Bharti that till next decision, status-quo would be maintained. During prosecution evidence, no witness from the police regarding the information given to the police was examined by prosecution. Prosecution witness PW1 identified his complaint given to the police as Ex. PW1/A and he deposed that his statement was also recorded U/s 164 Cr.PC Ex. PW1/B. Witness PW1 identified the accused Som Nath Bharti in the Court. However, witness failed to identify the other accused persons namely Jagat Saini, Sandeep @ Sonu, Daleep Jha and Rakesh Pandey as a members of mob were present at the time of incident. Another eye witness of prosecution PW2 Ajay Kumar stated that on 09.09.2016, accused Som Nath Bharti alongwith his supporters constituting 200-300 persons reached AIIMS towards the side of Gautam Nagar and he informed regarding the same to witness PW1 Mr. R.S Rawat and also informed about the presence of accused Som Nath Bharti alongwith his supporters and their act of breaking the fence with JCB machine. PW2 stated that on his information, complainant Mr. R.S Rawat reached at the spot. PW2 stated that mob abused them and mob resorted to stone

pelting due to which the guards including the witness PW2 received injuries. PW2 stated that he received injury at his back from the stone and he was medically examined at AIIMS. During his examination, PW2 identified the accused Som Nath Bharti but failed to identify the other accused persons namely Jagat Saini, Sandeep @ Sonu, Daleep Jha and Rakesh Pandey as a members of mob were present at the time of incident. Witness also identified the photographs of the place of incident as Ex. PW1/C1 to Ex. PW1/C5. Prosecution has also relied upon the testimony of other eye witness PW3. PW3 deposed that he being security guard employed at AIIMS was on duty on the road on Gautam Nagar drain and at about 09.45 am on 09.09.2016, accused Som Nath Bharti alongwith his 300-400 supporters were present at the side of Gautam Nagar side of the fence of the AIIMS boundary. He stated that he alongwith other security guards tried to stop them and they called their seniors from AIIMS who came at the spot. He stated that his seniors tried to persuade accused Som Nath Bharti to stop breaking the fence and to have talks on the issue. However, mob which was gathered there started jostling with them in which witness suffered injury and was medically examined. Witness stated that he was enquired by police regarding the incident. Witness identified his signature on statement recorded U/s 164 Cr.PC Ex PW3/A. Witness identified the accused Som Nath Bharti in the Court but failed to identify the other accused persons namely Jagat Saini, Sandeep @ Sonu, Daleep Jha and Rakesh Pandey as a members of mob were present at the time of incident. Prosecution also examined witness Sh Dinkar Kumar Chaudhary who deposed on the same line as deposed by PW2 and PW3 and he stated that he saw that accused Som Nath Bharti alongwith mob of 200-300 persons were pulling the fence of the wall by JCB machine. Witness stated that the security staff asked them to stop pulling the fence and they also informed to their seniors on which seniors of the security staff came at the spot and discuss the issue with accused Som Nath Bharti. Witness stated that some of the members of the mob were abusing them and they

also resorted to stone pelting. Witness identified the accused Som Nath Bharti in the Court. However, accused persons namely Jagat Saini, Sandeep @ Sonu, Daleep Jha and Rakesh Pandey as a members of mob were present at the time of incident. Witness identified his signature recorded U/s 164 Cr.PC Ex. PW4/A. Prosecution has also relied upon the testimony of other eye witness PW5 Sh Ved Parkash who was also member of the Security Guard working with the AIIMS and he stated that he saw a mob of 200-300 persons were present at the side of the wall at the time of incident and on the date of the incident and the mob were shouting. Witness stated that accused Som Nath Bharti was also present alongwith the mob and he identified the accused Som Nath Bharti in the Court. Witness stated that mob was shouting slogans and were trying to break the wall. Witness stated that there was no bulldozer at the spot and mob was trying to pull the fence with their hands. Witness stated that he suffered injury while trying to save the fence and he was medically examined. Witness identified his signature on statement recorded U/s 164 Cr.PC Ex PW5/A during investigation. Witness failed to disclose whether any JCB machine was present at the spot and stated that he does not remember regarding the presence of JCB machine at the spot at the time of incident. Witness failed to identify the accused persons namely Jagat Saini, Sandeep @ Sonu, Daleep Jha and Rakesh Pandey as a members of mob were present at the time of incident.

40. Prosecution has also examined two official witnesses from PWD namely Sanjeev Kumar/ PW6 and K.P Kaushik/ PW7. As per statement of PW6, he was working as Junior Engineer in PWD and was Incharge of the place of incident on the date and time of the incident and during investigation, he was enquired by police regarding his presence at the place of incident and role of PWD in the said incident of demolition of wall and fence of AIIMS. He deposed that he witnessed the report filed on behalf of the PWD Ex PW6/D and stated that he was not present at the place of incident, at the time of incident and JCB machine was present near the place of

incident to break the speed breaker in pursuance of order of Hon'ble Supreme Court of India at Mahender Kumar Lane Marg, P.R Block Road in another matter and said order of breaking the speed breaker was issued by Executive Engineer, South PWD. Similarly, PW7 deposed that he was working as Assistant Engineer in PWD and he prepared report Ex PW6/B, which was witnessed by PW6 Sanjeev Kumar, J.E and submitted the same to the police.

41. Prosecution also relied upon the testimonies of PW8 and PW9 regarding the presence of JCB at the place of incident and PW8 deposed that he was owner of the JCB machine and he also identified the JCB machine through its photographs Ex. PW8/C1 to Ex. PW8/C4 which he got released on superdarinama on the basis of order of the Court. Similarly, witness PW9 deposed that he surrendered the JCB machine to the police which was seized and he identified his signature on seizure memo Ex. PW9/A. He also identified the photographs of the JCB machine.

42. Prosecution has also relied upon the testimony of PW10 Satender Kumar, Chief Security Officer, AIIMS regarding his complaint U/s 195 Cr.PC and he deposed that he give complaint U/s 195 Cr.PC Ex. PW10/A, to the police addressed to the Court to prosecute the accused persons in the present case.

43. Prosecution examined PW11 Ct. Sanjay Yadav regarding seizure of DVD by the IO from the Chief Security Officer Mr. R.S Rawat and he identified his signature on the memo Ex. PW11/A.

44. Prosecution has relied upon the testimony of PW12 Ct. Inder Singh for establishing the identity of accused persons namely Jagat Saini, Daleep Jha, Rakesh Pandey and Sandeep @ Sonu and he deposed that on the instruction of IO, he joined the investigation and identified these accused persons from video played on computer through one pen drive.

45. Prosecution relied upon the testimony of PW13 SI Chaggan Lal, Duty

Officer to prove his endorsement on rukka Ex. PW13/A and to prove the registration of the FIR Ex. PW13/B and Certificate U/s 65-B of the Indian Evidence Act Ex. PW13/C.

46. Prosecution relied upon the testimony of PW14 Ct. Jai Singh to prove the photographs of the place of incident and he identified the said photographs Ex. P1 (C1 to C5) and stated that these photographs were taken by him at the spot. He also identified the signature of the receipt of acknowledgement of receiving of negatives by the IO.

47. Prosecution relied upon the testimony of PW15 HC Prem Nath regarding the deposition of receiving JCB machine in the Malkhana and he produced the original Register No. 19 in the Court and proved the photocopy of the entry no. 1079 Ex. PW15/A.

48. Prosecution has relied upon the testimony of PW16 Inspector R.P Meena, one of the IO of the case during the investigation and he deposed in the Court that he moved application Ex. PW16/A for recording statement of complainant U/s 164 Cr.PC. He deposed that during investigation, he arrested the accused Som Nath Bharti and conducted his personal search and prepared memos Ex. PW16/B and Ex. PW16/C. He also deposed that during investigation, he seized DVD produced by complainant and he seized the same and prepared seizure memo Ex. PW11/A.

49. Prosecution has relied upon the testimony of PW17 witness from SDMC and he deposed that he was working as Superintending Engineer on 19.06.2006 and he wrote a letter Ex. PW1/E11 regarding submission of covering the open nallah flowing to Ansari Nagar Campus of AIIMS in Ward No. 14, South Road.

50. Prosecution has also relied upon the testimony of PW18 Bhupesh Kumar Sharma, Medical Record Technician, Trauma Center, AIIMS to prove the MLCs of the injured persons and he produced his Authority Letter for appearance in the Court as Ex. PW18/A and he also produced the original record of the MLCs Ex. PW18/B to Ex.

PW18/G and he deposed that as per record of AIIMS hospital, these MLCs were prepared at AIIMS hospital. He deposed that he worked with the Doctor who examined the patients qua MLCs and he identified the signature of the doctor on the MLCs at point A Ex. PW18/B to Ex. PW18/G.

51. Prosecution has also relied upon the testimony of PW19 IO Inspector Anand Swaroop. He deposed that on 09.09.2016, he was posted at PS Hauz Khas and complaint Ex. PW1/A of Mr. R.S Rawat, Chief Security Officer, AIIMS was marked to him for enquiry and after conducting enquiry he made endorsement on complaint at point B on 10.09.2016 and he got registered the present FIR bearing no. 659/2016 PS Hauz Khas. He deposed that during investigation, he recorded the statements of witnesses and also got recorded the statements of witnesses U/s 164 Cr.PC in the Court. He deposed that he seized the JCB machine which was used in the commission of offence and prepared its seizure memo Ex. PW19/A. He deposed that he issued notices to PWD, MCD and AIIMS and collected documents and filed the same with case file. Witness deposed that he deposited the MLCs of the injured persons to the AIIMS and obtained the opinion on it. He deposed that during investigation, he fixed the identification of co accused persons with the help of beat staff and secret informer by showing them video footage. He deposed that he prepared site plan Ex. PW19/B bearing his signature at point A and after completion of investigation, he filed the charge sheet in the Court. Witness identified the accused persons in the Court.

52. Accused persons namely Jagat Saini, Sandeep @ Sonu, Daleep Jha and Rakesh Pandey took the defence during the cross examination of PW1, PW2, PW3, PW4 and PW5 that eye witnesses failed to identify them as a member of the unlawful assembly present at the spot on the date of incident and at the time of incident. During final arguments, they took the defence that their identity was fixed on the basis of alleged mobile phone video recording produced in the Court in the form of DVD/CD,

however the said DVD/CD or video recording was never send for FSL examination to prove its genuineness neither the witness who recorded the said video was examined in the Court nor the instrument of recording was produced in the Court. Accused persons namely Jagat Saini, Sandeep @ Sonu, Daleep Jha and Rakesh Pandey further took the defence that they were falsely implicated by the police.

53. Accused Som Nath Bharti took the defence during cross examination as well as during final arguments qua the prosecution witnesses PW1, PW2, PW3, PW4 and PW5 that documents Ex. PW1/E1 to Ex. PW1/13 does not confer the ownership rights of the nallah (drain) and outer wall to the AIIMS and nallah was not owned by AIIMS. Accused also took the defence that witnesses PW1, PW2, PW3, PW4 and PW5 improved their version regarding the incident and role of the accused Som Nath Bharti from their statements made to the police, statements recorded U/s 164 Cr.PC and statements recorded in the Court during their examination in chief. Accused Som Nath Bharti also took the defence that there was proposal from PWD after various meetings, as per which a public thoroughfare was be opened on road going alongwith the AIIMS wall and the drain which was illegally occupied by AIIMS and AIIMS was using it for commercial activities i.e. for parking purposes. Accused Som Nath Bharti also took the defence that the instrument from which the video footage of alleged incident was allegedly recorded was not properly seized neither it was examined in FSL nor the detail of recording device was provided. Accused Som Nath Bharti also took the defence that witnesses were not present at the time of alleged incident and later on they were planted to create a false case against the accused and witnesses from the AIIMS were rewarded by AIIMS Authorities. Accused Som Nath Bharti also took the defence that the action for demolition of wall for opening the thoroughfare for residents of Gautam Nagar was planned and executed by PWD and AIIMS supported it. Accused Som Nath Bharti also took the defence that he had not committed any offence and witnesses falsely implicated him at the instance of senior officials of AIIMS

and police and they falsely identified him regarding the involvement in the incident as he is the MLA of the area. Accused Som Nath Bharti also took the defence that JCB machine was brought by the PWD as action was planned by PWD and the driver of the JCB machine was not examined as witness neither he was cited as prosecution witness. Accused Som Nath Bharti also took the defence that he did not cause any injury to the alleged victims neither they received any injury nor he caused any damage to the public property of AIIMS and the MLCs of the injured persons were falsely prepared in order to create the case against him.

54. Accused Som Nath Bharti also took the defence qua the witnesses PW6 and PW7 that nallah/drain was belonging to MCD to which witnesses admitted that nallah was belonging to MCD. Accused also took the defence that the JCB machine was brought at the place of incident by PWD as action was approved by PWD. Similarly, accused took the defence qua the statement of witness PW8 and PW9 that JCB machine was engaged by PWD.

55. Accused Som Nath Bharti also took the defence qua the witness PW10 that he gave complaint U/s 195 Cr.PC under pressure and his false case against the accused persons.

56. Accused Som Nath Bharti also took the defence that police officials/witnesses deposed falsely against him in order to falsely implicate him in the present case. He also took the defence that CD qua the video recording of the alleged place of incident was not properly seized and it was never send for FSL for its examination. Accused also took the defence that he was falsely arrested without following the due procedure of law regarding arrest and no notice was given to him to join the investigation prior to his arrest. Accused also took the defence that the FIR was registered under pressure by ignoring the rules and established practices. Accused also took the defence that no fence was broken as shown in the photographs

as relied by prosecution. Accused also took the defence that IO of the case has not conducted fair investigation and he falsely implicated him in the present case without following due procedure and without any evidence. Accused also took the defence through defence witnesses DW1 and DW2 by producing the documents Ex. DW1/A, Ex. DW1/B, Ex. DW1/C, Ex. PW1/E11 and Ex. PW1/D1 and documents Ex. DW2/A, Ex. DW2/B, Ex. DW2/C, Ex DW2/D and Ex DW2/E, that there was proposal to connect Sudhershana Cinema Road with covered portion of Gautam Nagar nallah by constructing a slip road. Accused also took the defence that AIIMS was unauthorizedly in the possession of the place in question beyond the permitted limit and the place in question was commercially used by AIIMS for parking purposes. Accused also took the defence that action was planned by PWD for constructing the slip road which was opposed by AIIMS.

57. It is proved duly by the prosecution through the testimony of PW1/complainant that nallah/drain i.e. the place of incident was belonging to MCD and was given on lease to the AIIMS for covering and maintenance through document Ex. PW1/E11 and this fact is also not disputed by the accused persons during their cross examination on the different basis that AIIMS encroached upon the excess area as permitted by MCD and was using it for commercial purposes. The complaint Ex. PW1/A of the complainant is also duly proved by him during his examination and he re-asserted his averments in the Court qua the incident and identified the accused Som Nath Bharti but he failed to identify the accused persons namely Daleep Jha, Sandeep @ Sonu, Rakesh Pandey and Jagat Saini. During the incident, the injured persons i.e. Security Staff of the AIIMS suffered injuries upon their bodies and they were medically examined and the MLCs of the injured persons is duly proved by prosecution through the injured persons himself as well as corroborated from the record of the AIIMS produced by witness PW18. No material contradiction brought on record regarding the medical examination of the physical injuries suffered by victims in

the incident during their cross examination as well as the cross examination of PW18. The video footage qua the incident was admittedly not send to FSL for its examination by which the prosecution put its case to fix the identity of accused persons namely Daleep Jha, Sandeep @ Sonu, Rakesh Pandey and Jagat Saini, neither the instrument from which it was recorded was seized and produced in the Court originally nor the person who recorded the video footage through mobile phone was examined and associated by police during investigation, hence the video footage produced in the form of CD/DVD is not proved as per law by the prosecution. The identification of the accused persons namely Daleep Jha, Sandeep @ Sonu, Rakesh Pandey and Jagat Saini by PW12 Ct. Inder Singh in the Court regarding their involvement in the incident is also discarded on the same basis that original footage itself was not duly proved. The case of prosecution regarding the involvement of accused persons namely Daleep Jha, Sandeep @ Sonu, Rakesh Pandey and Jagat Saini in the incident and their presence at the place of incident is not proved as no effective evidence brought on record by prosecution to connect the accused persons namely Daleep Jha, Sandeep @ Sonu, Rakesh Pandey and Jagat Saini with the said incident.

58. The prosecution has duly proved that the mob which was gathered on 09.09.2016 at around 09.45 am at the drain (nallah) behind AIIMS New Delhi was gathered there for demolishing the wall and fence possessed by the AIIMS. The prosecution witness PW1, PW2, PW3, PW4 and PW5 deposed specifically in this regard that mob/gathering of 200 to 300 persons led by accused Som Nath Bharti were shouting slogans, pelting stones and were using criminal force by using hands and by using JCB machine to demolish the wall and fence at the upper portion of the wall and no material contradiction brought on record during cross examination by the accused Som Nath Bharti and witnesses remained consistent during their cross examination. Prosecution witness PW6 and PW7 deposed that the PWD was not having any plan to demolish the wall and fence of the AIIMS possessed by the AIIMS.

The defence of the accused Som Nath Bharti that action for demolition of wall and fence possessed by AIIMS was planned and executed by PWD does not hold any merit in view of the specific denial of the witnesses PW6 and PW7 during their examination in chief and their cross examination. PW1 specifically stated that mob was led by accused Som Nath Bharti which was constituted of approximately 300 persons. PW1 further categorically stated that accused Som Nath Bharti and some of the unknown members of the unlawful assembly/mob was instructing the JCB machine driver to not stop the demolition work and to carry on the demolition work despite the request of the witness PW1. PW1 also stated that he asked the accused Som Nath Bharti to produce any document regarding the order of demolition of the wall and fence possessed by AIIMS. However, no document was produced by accused Som Nath Bharti nor any government machinery official was accompanying him. Similarly, witnesses PW2, PW3, PW4 and PW5 also specifically stated that accused Som Nath Bharti was leading the mob and mob led by him break the fence at the boundary wall of the AIIMS with the JCB machine as well as manually and in the process of protecting the fence of the boundary wall of the AIIMS, PW2, PW3, PW4 and PW5 received simple injuries on their person. The complaint U/s 195 Cr.PC is also duly proved by prosecution through witness PW10. The registration of the FIR on the complaint of complainant is also proved by prosecution through the examination of Duty Officer on duty. Accused Som Nath Bharti took the defence through the witnesses DW1 and DW2 as well as through cross examination of prosecution witnesses that action was planned by PWD for demolition of wall and fence of the AIIMS allegedly illegally occupied by AIIMS. However, the document produced during examination of defence witnesses and during cross examination of prosecution witnesses only reflect that there was a proposal to open the covered nallah for traffic and no order authorising any government machinery issued by Competent Authority was given to any person or government agency for demolition of wall and fence

possessed by the AIIMS. Hence, the defence as taken by the accused is discarded as it does not hold any merit. The injuries suffered by PW2, PW3, PW4 and PW5 during the incident while protecting the demolition of fence and boundary wall of the AIIMS and due to stone pelting by the mob is also duly proved by prosecution through witnesses themselves and by PW18 i.e. Medical Record Technician. It is duly proved that during investigation the accused Som Nath Bharti was arrested by the IO PW16. Material part of investigation i.e. collection of documents regarding the possession of the place in question by AIIMS, collection of medical documents of the witnesses/victims who suffered injuries and preparation of chargesheet is proved by IO PW19 and no material contradiction brought on record by the accused through the cross examination of IO as well as other prosecution witnesses regarding the defence put by him. Accused Som Nath Bharti also took the defence that the driver of the JCB machine was not associated in the investigation nor cited as prosecution witness. However, this defence also not hold any merit in view of the other corroborating evidence regarding the presence of JCB machine, instruction given by the accused Som Nath Bharti to the driver for the JCB machine and manual action of the mob for demolishing the fence at the boundary wall possessed by the AIIMS as deposed by prosecution witnesses PW1, PW2, PW3, PW4 and PW5. The JCB machine was seized during the investigation and was released to its owner. The owner of the JCB machine PW8 and his brother PW9 who was Incharge of the JCB machine for its operation specifically denied that JCB machine was engaged by PWD. During cross examination of witness PW6, it came on record that JCB machine was present near the place of incident for removing the speed breaker at Mahender Kumar Jain Road at the distance of 600 meters from the spot on the basis of order of Hon'ble Supreme Court of India in some another matter. Accused Som Nath Bharti also took the defence that the security staff of the AIIMS cannot be considered as public servant U/s 21 of IPC. However, the Court is of the view that Section 21 of IPC Clause 12 covers

the act of the Security staff of the AIIMS under the category of Public Servant as they get remuneration from the Government Agency/AIIMS for performance of public duty. The security staff of the AIIMS were performing the delegated duties of public servant and are duly covered under the definition of Public Servant. Hence, the defence of the accused that the security staff of the AIIMS are not public servant is discarded and not accepted.

59. In view of the above discussion, the Court is of the considered view that prosecution has failed to prove its case beyond reasonable doubt against accused Daleep Jha, Jagat Saini, Rakesh Pandey and Sandeep @ Sonu regarding charges of offence punishable U/s 323/353 read with Section 149 IPC and charge of offence punishable U/s 3 of The Prevention of Damage to Public Property Act, 1984 and charge of offence punishable U/s 147 IPC read with Section 149 IPC.

60. The Court is of the considered view that prosecution has duly proved its case beyond all reasonable doubt against accused Som Nath Bharti regarding charges of offence punishable U/s 323/353 read with Section 149 IPC and charge of offence punishable U/s 3 of The Prevention of Damage to Public Property Act, 1984 and charge of offence punishable U/s 147 IPC read with Section 149 IPC and he is held guilty and convicted for the same.

61. Be put up for arguments on sentence qua convict Som Nath Bharti on 23.01.2021 at 11.00 am.

62. Accused persons namely Daleep Jha, Jagat Saini, Rakesh Pandey and Sandeep @ Sonu are directed to furnish bail bonds/surety bonds in terms of Section 437-A Cr.PC for sum of Rs. 10,000/- each.

**Announced in the open Court,
On 22nd, January, 2021.**

**(Ravindra Kr Pandey)
ACMM-01,RADC/New Delhi**