



IN THE COURT OF MS. NEHA MITTAL
ADDITIONAL CHIEF JUDICIAL MAGISTRATE-03
ROUSE AVENUE DISTRICT COURT, NEW DELHI

State Vs Somnath Bharti
(Ex-Law Minister, GNCTD) and Ors.

DLCT12-000141-2019

CR Cases No.17/2019

FIR No.76/2014

Police Station : Malviya Nagar

Date of institution of the case : 29.09.2014

Date of reserving for judgment : 17.04.2026

Date of pronouncement of judgment : 24.04.2026

a.	Serial No. of the case	CC No. 17/2019
b.	Date of commission of offence	Intervening night of 15/16.01.2014
c.	Name of the complainant	Ms. "D" (Identity hidden)
d.	Name, parentage and address of accused persons	1. Somnath Bharti S/o Sh. Sita Ram Bharti R/o Nil 26, Nil Block, Malviya Nagar, New Delhi. 2. Aditya S/o Dr. Prem Kumar R/o 801, Sector-A, Pocket-C, Vasant Kunj,



		New Delhi. 3. Badlu Khan S/o Sh. Tej Khan R/o 149, Hauz Rani, Malviya Nagar, New Delhi 4. Badal Khan @ Nafees Ahmed S/o Sh. Anees Ahmed Khan, R/o JD- 17/8, 1st Floor Left Side Khirki Extn., Malviya Nagar New Delhi & 265, Hauz Rani, New Delhi. 5. Deepak Chauhan S/o Sh. Ramprakash R/o H.No.2, Village Khirki Malviya Nagar, New Delhi. (Discharged vide order dated 02.03.2019 passed by Ld. ASJ in Revision Petition). 6. Anil Kumar S/o Sh. Govardhan Singh R/o Village Khirki, Malviya Nagar, New Delhi (declared as proclaimed offender vide order dated 25.10.2018)
--	--	--



		7. Pawan Saini S/o Shri Kishan Saini R/o H.No.163A/2, Village Khirki, Malviya Nagar, New Delhi 8. Naresh Saini S/o Lt. Jagbir Saini R/o H.No.163A/4, Village Khirki, Malviya Nagar, New Delhi. 9. Dharam Chand Rana S/o Shri Dhoom Singh Rana R/o H.No.134, Village Khirki Malviya Nagar, New Delhi. 10.Ved Saini S/o Shri Balbir Saini R/o R-65, Khirki Extn. Malviya Nagar, New Delhi 11.Rajesh Saini @ Bittu S/o Shri Kishan Saini R/o H. No. 163A/1, Village Khirki, Malviya Nagar, New Delhi. 12. Hemant Saini S/o Shri Inder Saini R/o H.No.R-86A, Khirki
--	--	---



		Extn., Malviya Nagar, New Delhi.
		13.Sanjeev Saini @ Bittoo S/o Shri Jai Singh Saini R/o H.No.H.No.159, Village Khirki, Malviya Nagar, New Delhi.
		14.Vijay Saini @ Bobby S/o Shri Lt. Jagbir Saini R/o H.No.163A/4, Village Khirki, Malviya Nagar, New Delhi.
		15.Devender Chauhan S/o Shri Rajpal Chauhan R/o H.No.5, Village Khirki, Malviya Nagar, New Delhi.
		16.Anil Saini @ Pappi S/o Shri Raj Kumar Saini R/o Village Khirki, Malviya Nagar, New Delhi.
		17.Inder Saini S/o Sh. Balbir Saini R/o R-86A, Khirki Extn., Malviya Nagar, New Delhi.
		18.Shyamlal Saini S/o Lt. Mir Singh



		R/o H.No.160, Village Khirki, Malviya Nagar, New Delhi.
e.	Offence complained of	U/s 323/354/354C/153A/147/ 149/452/186/353/356/143/152/ 506/509/ 427/ 341/342/ 34 IPC
f.	Plea of accused persons	Pleaded not guilty
g.	Final Order	Acquittal
h.	Date of Judgment	24.04.2026



INDEX

SL.No.	PARTICULARS	PAGE No.
1.	Brief statement of facts	8
2.	Charge	10
3.	Prosecution Evidence	11-35
4.	Statement of accused persons under Section 313 of the Cr.P.C.	35-38
5.	Defence Evidence	38-51
6.	Final Arguments	
	• Arguments by Ld. SPP for the State	51-54
	• Arguments on behalf of accused persons (A-7 to A-14) and (A-16 to A-17)	55-56
	• Arguments on behalf of Accused No.1	57-60
	• Arguments on behalf of Accused No.2	60
	• Arguments on behalf of Accused No.18/Shyam Lal Saini	61
	• Rebuttal Arguments by Ld. SPP for the State	61
7.	Appreciation of Evidence and Findings	
	• Admissibility of electronic evidence vis-a-vis certificate u/s 65-B of Indian Evidence Act	64-68
	• Admissibility of statements u/s 164 Cr.P.C. without examination of victims as	68-71



	witnesses	
	• Identity of accused persons vis-a-vis non-conduct of Test Identification Parade	71-73
	• Constitution of unlawful assembly	73-79
	• Identification of the Alleged Victims	79-81
	• Delay in Registration of FIR	81-83
	• Defence raised by the accused persons	83-86
	• Liability for separate charges	86-110
8.	Conclusion	110



JUDGMENT

1. Vide this judgment, this court shall proceed to decide the instant matter emanating from the FIR no.76/2014 registered under sections 323/354/354C/153A/147/149/452/186/353/356/143/152/506/509/427/341/342/34 Indian Penal Code, 1860 (in short 'IPC').

2. The present FIR has been registered in compliance of order dated 18.01.2014 passed on an application filed under Section 156(3) Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") by the complainant "D". The names of the victims have been hidden in order to protect their identity in compliance of directions issued by Hon'ble Apex Court in the judgment '*Nipun Saxena & Anr vs. Union of India & Ors*'. **However, for the convenience of the parties i.e. prosecution and the accused persons; and the superior courts, the names of the victims along-with their corresponding pseudo names are mentioned on a separate sheet annexed with the judgment, to be kept in a sealed cover, accessible only to the aforementioned.**

Brief Statement of Facts:

3. Succinctly stated, the facts of the present case, as per the FIR, are that the complainant came to India on 03.01.2017 and hired an accommodation in Khirki Extension, Malviya Nagar, New Delhi. It is alleged that on the night of 15/16.01.2014 at around 2 a.m., when the complainant was present at the aforesaid



address, around ten unknown persons having wooden sticks/*lathis* in their hands started shouting at the complainant to open the door. It is further stated that when she opened the door, they entered in her room without her permission and forcefully asked her to produce her passport and upon her resistance, one of them slapped her and held her by neck. It is further stated that the said persons checked the bag of the complainant on the basis of their claim that she was hiding drugs in her bag. It is further stated that when she tried to contact the police from her cellphone, the said persons shouted that as the complainant is black, the Indian police will not help her and they also said “we are tired of blacks, why don’t you go back to your country”. It is further stated that when the complainant showed them her return ticket, the same was forcibly taken from her and was torn up. It is further alleged that they threatened to kill the complainant if she does not leave the country. It is further alleged that they humiliated the complainant by touching her various body parts and then they forced the complainant to come out of her house. It is further stated that after the incident, while watching TV, the complainant identified the aforesaid assailants and came to know that they were from Aam Aadmi Party led by local MLA Somnath Bharti/accused no. 1.

4. During investigation, it was revealed that there are other victims/foreign nationals who were harassed in manner similar to that of the complainant on the same night. Statement of



complainant and other victims were got recorded under Section 164 Cr.P.C. It was further revealed during investigation that the accused persons firstly apprehended two Ugandan women namely Ms. “S1” and Ms. “S2” who were coming in a taxi, manhandled them and compelled them to sit in PCR. Thereafter, the accused persons entered H.No.S-9, Khirki Extension, Malviya Ngagar, New Delhi and manhandled two other women namely S3 and S4 apart from Ms. “D” on whose complaint the present FIR has been registered. Thereafter, the accused persons/mob came out of the house and stopped one Ecco Car No.DL-3CBV-2984 in which four Ugandan women were traveling namely M, N, N@P and A@J and they all were molested and manhandled by the mob. All the aforesaid victims were got medically examined and their statement under Section 164 Cr.P.C. were got recorded. CCTV footage of the incident was collected and after completion of investigation, the present chargesheet was filed.

Filing of Charge Sheet and Framing of Charge:

5. After the completion of investigation, the charge sheet in the instant case was filed on 29.09.2014 under Section 323/354/354C/153A/147/149/452/186/353/356/143/152/506/509/427/341/342/34 IPC. Thereafter, supplementary charge-sheet was filed by the IO on 03.10.2015. Cognizance in the present matter was taken vide order dated 15.07.2016.

6. Subsequently, vide order dated 29.06.2018 passed by Ld.



Predecessor of this court, all the accused persons except accused Anil (who has been declared as proclaimed offender vide order dated 25.10.2018) were charged under Section 323/354/354C/153A/147/143/152/186/506/509/427/342 IPC read with Section 149 IPC. Revision petition against the said order filed by accused Shyamlal Saini was dismissed by Ld. Sessions Court vide order dated 24.09.2018. However, the revision petition filed by accused Deepak Chauhan S/o Sh. Krishan Pal Singh (mentioned as Deepak Chauhan S/o Sh. Ram Prakash in the chargesheet) was allowed vide order dated 02.03.2019 and he was discharged of all the charges.

Evidence Led By The Prosecution:

7. In order to prove the case, the prosecution has examined 32 witnesses in total, who are as under:-

Prosecution Witness	Name of the Witness	Role of the witness
PW-1	Dr. Abhishek Kothari	Formal witness to prove MLCs.
PW-2	Sh. Deepak Kumar	Seizure witness of CCTV footage of AIIMS
PW-3	Sh. Dharamveer Prajapati	Seizure witness of CCTV footage of the incident
PW-4	Sh. Aditya Kaushik	Independent Eye witness
PW-5	Sh. Nitin Jain	Independent Eye witness
PW-6	Sh. Kulwant Singh	Independent Eye witness
PW-7	Sh. Yash	Seizure witness of



		CCTV footage of the incident
PW-8	ASI Sri Krishan	Formal police witness (Recorded DD No.6A)
PW-9	ASI Permanand	Formal police witness (Registered FIR)
PW-10	W/Ct. Kamlesh	Police witness/Eye witness
PW-11	ASI Rajender Singh	Police witness/Eye witness
PW-12	Ct. Sachin	Police witness/Eye witness
PW-13	Sh. Sanjay Singh	Photographer
PW-14	ASI Sanjay Toppo	Formal police witness
PW-15	Retd. ACP Sh. B.S. Jakhar	Police witness/Eye witness
PW-16	W/Ct. Mamta	Formal police witness
PW-17	Retd. ACP Sh. Harpal Singh	Police witness/Eye witness
PW-18	Inspector S.S. Yadav	Formal police witness
PW-19	Inspector Vijay Pal	Police witness/Eye witness
PW-20	HC Jitender	Formal police witness (produced case property)
PW-21	Inspector Bega Ram	Investigating Officer
PW-22	W/SI Mukesh	Seizure witness of L shaped iron angle and newspaper
PW-23	Inspector Ajay Kumar	Seizure witness of CD of place of incident
PW-24	SI Amit Kumar	Seizure witness of CCTV footage
PW-25	Dr. Zameer Ahmad	Formal witness to prove MLCs.
PW-26	Inspector Raman Lamba	Investigating Officer



PW-27	ASI Jitender	Formal police witness (produced case property)
PW-28	Sh. V.B. Ramteke	Formal witness from CFSL (to prove FSL report)
PW-29	ACP Pramod Singh Kushwaha	Police witness (gave complaint u/s 195 Cr.P.C.)
PW-30	ACP Vijay Chandel	Investigating Officer
PW-31	Sh. O.P. Mishra	Formal witness (gave sanction u/s 196 Cr.P.C.)
PW-32	Sh. V. Lakshmi Narasimhan	Formal witness from FSL (proved FSL report)

8. Further, to prove its case, the prosecution has relied upon the following evidences/documents:

Sl. No.	Description of Evidence	Exhibits	Proved By
1.	MLC No.408245 of Ms. "S1"	Ex.PW1/A	PW-1
2.	MLC No.408244 of Ms. "S2"	Ex.PW1/B	PW-1
3.	Seizure Memo of CCTV footage of main emergency AIIMS	Ex.PW2/A	PW-2
4.	Seizure Memo of CCTV footage of the incident produced by ABP News.	Ex.PW3/A	PW-3
5.	Certificate u/s 65B Indian Evidence Act with respect to the footage which was seized vide Seizure Memo Ex.PW3/A.	Ex.PW3/B	PW-3
6.	CD which was seized vide Seizure Memo Ex.PW3/A.	Ex.PW3/C	PW-3
7.	Seizure Memo of CCTV footage of the incident	Ex.PW7/A	PW-7



	produced by ANI.		
8.	CD which was seized vide Seizure Memo Ex.PW7/A.	Ex.PW7/C (also exhibited as Ex.PW24/B)	PW-7
9.	Notice u/s 91 Cr.P.C.	Ex.PW7/D	PW-7
10.	DD No.6A dated 16.01.2014, PS Malviya Nagar	Ex.PW8/A	PW-8
11.	FIR 76/2014, PS Malviya Nagar	Ex.PW9/A	PW-9
12.	Endorsement on FIR	Ex.PW9/B	PW-9
13.	Statement of PW-11 ASI Rajender Singh recorded u/s 161 Cr.P.C.	Ex.PW11/A	PW-11
14.	Statement of PW-12 Ct. Sachin recorded u/s 161 Cr.P.C.	Ex.PW12/A	PW-12
15.	Photographs of place of incident.	Ex.PW13/1 (Colly)	PW-13
16.	CD of the video recording of the place of incident.	Ex.PW13/2	PW-13
17.	PCR Form-1	Ex.PW14/1	PW-14
18.	Letter dated 12.04.2013 sent to SHO, PS:Malviya Nagar issued by Mahesh Kaushik, General Secretary, SSMS (Regd.)	Ex.PW-19/ A-1	PW-19
19.	Letter dated 30.10.2013 sent to SHO issued by Mahesh Kaushik, General Secretary, SSMS (Regd.)	Ex.PW-19/ A-2	PW-19
20.	Case property i.e. L shape iron angle	Ex.PW20/X	PW-20
21.	Seizure Memo of L shape iron angle	Ex.PW22/A	PW-22
22.	Seizure Memo of Newspaper	Ex.PW22/B	PW-22



23.	Case property i.e. Newspaper	Ex.PW22/C	PW-22
24.	Seizure Memo of CCTV footage of the incident produced by TV Today Network.	Ex.PW23/A	PW-23
25.	Covering Letter	Ex.PW23/B	PW-23
26.	CD which was seized vide Seizure Memo Ex.PW23/A.	Ex.PW23/B1	PW-23
27.	Seizure Memo of letter	Ex.PW24/A	PW-24
28.	MLC No. 614/14, 615/14, 616/14 and 617/14 all dated 16.01.2014	Ex.PW25A to Ex.PW25/D	PW-25
29.	Order of DCP (South) dated 24.04.2014	Ex.PW26/A	PW-26
30.	Statement of complainant u/s 161 Cr.P.C.	Ex.PW26/B (Objected to by Ld. Counsel for accused on the ground that the statement is not in handwriting of PW26 and the signatory of said statement has not appeared in the court).	PW-26
31.	Written request for recording of statement of complainant u/s 164 Cr.P.C.	Ex.PW26/C	PW-26
32.	Statement of complainant u/s 164 Cr.P.C.	Ex.PW26/D (Objected to by Ld. Counsel for accused on the ground that the statement is not in handwriting of PW26 and the signatory of	PW-26



		said statement has not appeared in the court).	
33.	Site Plan	Ex.PW26/E	PW-26
34.	MLC No.809/14 of the complainant	Ex.PW26/F (Objected to by Ld. Counsel for accused)	PW-26
35.	Statement of victims namely "S3", "S2", "S1" and "M" u/s 161 Cr.P.C.	Ex.PW26/G to Ex.PW26/J (Objected to by Ld. Counsel for accused on the ground that the statement is not in handwriting of PW26 and the signatory of said statement has not appeared in the court).	PW-26
36.	Written request for recording of statement of four victims.	Ex.PW26/K	PW-26
37.	Statement of four victims namely "S3", "S2", "S1" and "M" u/s 164 Cr.P.C.	Ex.PW26/L to Ex.PW26/O (Objected to by Ld. Counsel for accused on the ground that the statement is not in handwriting of PW26 and the signatory of said statement has not appeared in the court).	PW-26
38.	Written request for	Ex.PW26/P	PW-26



	recording of statement of two victims namely S4 and N@P, and one witness namely Balram		
39.	Statement of two victims namely S4 and N@P, and one witness namely Balram u/s 164 Cr.P.C.	Ex.PW26/Q to Ex.PW26/S (Objected to by Ld. Counsel for accused on the ground that the statement is not in handwriting of PW26 and the signatory of said statement has not appeared in the court).	PW-26
40.	Written request for recording of statement of two victims namely Ms. "A@J", Ms. "N" and two witnesses namely Aditya Kaushik and Suman Chaudhary.	Ex.PW26/T	PW-26
41.	Statement of two victims namely Ms. "A@J", Ms. "N" and two witnesses namely Aditya Kaushik and Suman Chaudhary u/s 164 Cr.P.C.	Ex.PW26/U to Ex.PW26/X (Objected to by Ld. Counsel for accused on the ground that the statement is not in handwriting of PW26 and the signatory of said statement has not appeared in the court).	PW-26
42.	Notices u/s 91 Cr.P.C.	Ex.PW26/Y to Ex.PW26/Y4	PW-26
43.	Site Plan	Ex.PW26/Z	PW-26



44.	Photocopy of Mud No.2123	Ex.PW27/A (OSR)	PW-27
45.	FSL report dated 09.10.2014.	Ex.PW28/A	PW-28
46.	Complaint u/s 195 Cr.P.C.	Ex.PW29/A	PW-29
47.	Sanction u/s 196 Cr.P.C.	Ex.PW31/A	PW-31
48.	FSL report dated 28.08.2014	Ex.PW32/A	PW-32

9. It is pertinent to mention here that despite repeated opportunities, prosecution could not produce the witnesses mentioned at Sl. No.1, 2 and 8 and hence, they were dropped from the list of witnesses vide order dated 29.11.2022. Subsequently, vide order dated 10.01.2023 witnesses mentioned at Sl. No.3, 4, 5, 6, 7 and 9 were also dropped from the list of witnesses. Pertinently, all the aforesaid witnesses were the victims in the present case and have not been examined by the prosecution. Two other prosecution witnesses namely Balwant and Balram were dropped from the list of witnesses vide order dated 18.03.2020 as they were untraceable. PW Suman Chaudhary was dropped from the list of witnesses vide order dated 10.01.2020 on filing of her death verification report.

10. Before proceeding further, this court deems it appropriate to discuss the role as well as crux and essence of the testimonies of the prosecution witness. The witnesses examined by the prosecution can be categorized as eye-witnesses, formal witnesses, expert witnesses, seizure memo witnesses and



investigating officers. The relevant portion of their testimonies is being discussed hereunder.

10.1 EYE WITNESSES

The eye-witnesses of the incident can be further categorized into three categories i.e. private individuals, police officials and media personnel.

10.1.1 Private Individuals

(a) *PW-4 Sh. Aditya Kaushik* deposed that he is resident of S-9, Khirki Extension, Malviya Nagar, New Delhi and on 15.01.2014 at around 12-12.30 AM. in the night, there was some ruckus in the lane adjacent to his house where some Africans were residing as tenants and crowd had gathered. He deposed that he saw the incident from his balcony. He further deposed that people in the crowd were wearing cap of Aam Aadmi Party.

In his cross-examination, he stated that he cannot identify who was present in the crowd.

10.1.2 Media Personnel

(a) *PW-5 Sh. Nitin Jain* from TV Today Network deposed that in the intervening night of 15/16.01.2014, he along-with his cameraman Kulwant reached at the place of incident where they saw accused No.1 Somnath Bharti was standing with 3-4 local persons and police personnel including ACP Jakhar and SHO was present. He further deposed that there was an Ecco car



in which some police personnel and few Africans were sitting and accused No.1 Somnath Bharti was asking ACP Jhakhar to raid some building as he was claiming that illegal activities were going on there. He further deposed that on his inquiry from accused No.1, he stated that prostitution racket was being operated from the building and no action was being taken by the police, accused no.1 was asking to call female cops. He further stated that some verbal altercations also took place between accused No.1 and ACP as the latter was reluctant to take action saying it was night time whereas accused No.1 was adamant that if no action is taken in time, those involved in prostitution and drug racket will flee. Thereafter, the van was taken to hospital for medical examination of African females on the orders of ACP. He further deposed that he made the video of the incident and the same was handed over to his office. He identified only accused No.1 Somnath Bharti correctly. He was duly cross examined on behalf of all the accused persons.

(b) PW-6 Sh. Kulwant Singh, Cameraman from TV Today Network deposed that in 2014, he shot the incident on the instructions of PW-5 and saw that there was some altercation going on between Somnath Bharti (A-1) and ACP. He further deposed that he saw a van parked there in which some policemen and women were sitting. He also took the sound byte of accused No.1 and after shooting the incident, submitted the cassette to PW-5. He identified only accused No.1 Somnath Bharti correctly. He was duly cross examined on behalf of all the



accused persons.

10.1.3 Police Officials

(a) PW-10 W/Ct. Kamlesh deposed that in the intervening night of 15/16.01.2014, she along-with SHO Inspector Vijay Pal Singh and ASI Suresh reached at Sai Baba Mandir, Khirki Extension to attend a call where they saw that in a PCR van, two Ugandan women were sitting and accused No.1 Somnath Bharti along-with 10-15 supporters were stopping and checking the vehicles. She further deposed that thereafter a car was stopped by accused No.1 and his supporters in which three trans-gender were traveling and the accused persons asked the SHO to verify their identity. Upon verification by police staff, they were allowed to go. Thereafter, a male African sitting in an auto was also stopped in similar fashion and was allowed to go after verification. The two women sitting in PCR van were also allowed to leave after verification. Thereafter, a person named Captain came at the spot and took the accused persons to S-9, Khirki Extension stating that illegal activities by African females are carried out there. Upon reaching S-9, the accused persons started knocking the door and asked the SHO to search the building and it is only after persuasion by police officials and some altercation, accused No.1 and his supporters came at some distance from the building but accused No.1 was still adamant for the police to search the house. In the meanwhile, an Ecco car in which four foreigners women were traveling was stopped by the supporters of accused No.1 and the accused no.1 asked the SHO



to frisk and search the women in front of video camera. She further deposed that ACP Jakhar came at the spot and altercation took place between ACP and accused no.1 on the said issue. She further deposed that two women sitting in the car were forced to urinate near the car as accused no.1 and his supporters did not allow them to move from car for urination. Thereafter, ACP Harpal Singh came at the spot who stated that female police will search these women by taking them to side or in front of local women to which accused No.1 did not agree and accordingly, altercation continued. Thereafter, at about 4.30 AM., the four females along-with SI S.S. Yadav, Ct. Sunil and two supporters of accused no.1 were taken to AIIMS for medical examination. She identified only accused No.1 Somnath Bharti correctly. She was duly cross-examined on behalf of all the accused persons.

(b) *PW-11 ASI Rajinder Singh* was the Incharge of PCR Van E-16. He deposed that in the intervening night of 15/16.01.2014, while he was stationed along with Ct. Sachin/PW-12 at Main Market, Malviya Nagar, accused no.1 came in Innova Car and asked him to follow his car. After informing Eagle-1, he followed accused no.1 till Sai Baba Mandir, Khirki Extension. Thereafter, accused no.1 alighted from his car and asked his associates to bring two Nigro ladies who were made to sit in the PCR van. He stated that accused no.1 asked him to call SHO on the spot upon which he informed control room and SHO, PS Malviya Nagar along with SI Gopi



Ram reached. In the meanwhile, accused persons stopped a vehicle in which trans-gender were traveling. Thereafter, on the instructions of SHO Malviya Nagar, he dropped the Nigro women sitting in PCR van at PS and handed over them to Duty Officer. He identified only accused No.1 Somnath Bharti correctly. He was duly cross examined on behalf of all the accused persons.

(c) *PW-12 Ct. Sachin* deposed that in the intervening night of 15/16.01.2014, his duty was on E-16. He stated that on that day while he was stationed alongwith ASI Rajinder Singh/PW-11 at Main Market, Malviya Nagar, accused no.1 came in his Innova Car and asked Incharge/PW-11 to follow his car. After taking permission from control room, he followed accused no.1 till Sai Baba Mandir, Khirki Extension. Thereafter, accused no.1 alongwith his 7-8 associates alighted from his car and then his associates brought two Nigerian ladies who were made to sit in the PCR van. He stated that accused no.1 asked Incharge/PW-11 to call SHO on the spot upon which SHO PS Malviya Nagar alongwith SI Gopi Ram came. Thereafter, he dropped the Nigerian women sitting in PCR van at PS and handed over them to Duty Officer. He identified only accused No.1 Somnath Bharti correctly. He was duly cross examined on behalf of all the accused persons.

(d) *PW-15 Retd. ACP B.S. Jhakar* deposed that on 15/16.01.2024, he reached near Sai Mandir, Khirki Extension at



around 2.20 a.m. on receiving information from control room and found SHO, PS Malviya Nagar and accused no.1 Somnath Bharti alongwith his 15-20 supporters at the spot. He saw that accused no.1 and his supporters had surrounded an Ecco car in which four Ugandan women were sitting and accused no.1 was claiming that these women were involved in trafficking of drugs and prostitution. Thereafter, SHO PS Malviya Nagar told him that accused no.1 and his supporters are continuously pressurizing to search these women in open in front of camera. He further deposed that thereafter, he offered to get these ladies searched in presence of local ladies or lady police but accused persons did not agree. He further deposed that he requested the accused no.1 to allow these ladies to urinate in some nearby house under supervision of ladies staff but he did not agree and stated that they cannot be allowed to come out of the car as they can throw objectionable items to save themselves due to which these ladies urinated near the door of the car. Thereafter, two supporters of accused no.1 forcibly sat inside the car upon which he also asked Ct. Sunil to sit in the car to prevent any untoward situation. He further deposed that he refused to search H.No.S-9, Khirki Extension as requested by accused no.1 stating that same is illegal upon which accused no.1 asked his supporters to trespass into the house and conduct search themselves. However, they were controlled and in the meantime, ACP Harpal also came at the spot. Thereafter, it was agreed that the ladies alongwith supporters of accused no.1 and police staff be sent for medical



examination where independent search can be taken by hospital staff. Accordingly, at around 4.30 a.m., the ladies were sent to AIIMS, New Delhi. He identified the accused persons by their faces but not by their names. He was duly cross-examined on behalf of all the accused persons.

(e) *PW-17 Retd. ACP Harpal Singh* deposed that on 15/16.01.2024, he reached near Sai Mandir, Khirki Extension at around 3.20 a.m. on receiving information from control room and found SHO, PS Malviya Nagar, ACP B.S. Jakhar and accused no.1 Somnath Bharti alongwith his 15-20 supporters at the spot. He saw that accused no.1 was directing the above officials for search of four Ugandan women who were detained in an Ecco car at the spot in public presence upon which he tried to explain him the rules for search of ladies but accused no.1 did not listen and rather said “I am the Law Minister and I know the rules”. Accused no.1 was claiming that these women were involved in trafficking of drugs and prostitution. He further deposed that thereafter, he offered to get these ladies searched in presence of local ladies or lady police but accused persons did not agree. Accused no.1 was also directing to search all the houses in which these Ugandan women were residing. Thereafter, it was agreed that the ladies alongwith supporters of accused no.1 and police staff be sent for medical examination where independent search can be taken by hospital staff. Accordingly, they were taken to AIIMS, New Delhi. He identified the accused no.1 correctly and



stated that he cannot identify the supporters of accused no.1 who were present on the date of incident. He was duly cross examined on behalf of all the accused persons.

(f) PW-19 Inspector Vijay Pal was posted as SHO PS Malviya Nagar at the time of incident. He deposed that in the intervening night of 15/16.01.2014, on receiving DD No.6A, he alongwith ASI Suresh and W/Ct. Kamlesh reached at Sai Baba Mandir, Khirki Extension where SI Gopi Ram, Ct. Sunil, Ct. Manoj were already present. He deposed that accused no.1 and his 15-20 supporters were checking the vehicles near Sai Baba Mandir. He deposed that PCR E-16 Incharge HC Rajinder/PW-11 informed him that two African ladies namely “S1” and “S2” were forcibly taken out from some vehicle and made to sit in PCR van. Thereafter, another vehicle was forcibly stopped in which three trans-genders were sitting who were forcibly taken out and they were told “*Tum ilake me gandgi fala rahi ho, is ilake ko chorkar chale jao nahi to tumhare liye bura hoga*”. Thereafter, an auto was stopped and an African boy sitting in auto was pulled out and searched. Thereafter, a person introducing himself as “Captain” @ Aditya S/o Prem Kumar (Accused No.2) came at the spot in car bearing No. DL-12CC-4217 who told accused no.1 that he knew where African women were residing and indulging in prostitution and drug trafficking. Thereafter, Captain took accused no.1 and his supporters to S-9, Khirki Extension where the accused persons



entered into the houses and started knocking the door. Efforts were being made to remove them and request for more staff was sent to control room. In the meanwhile, one Ecco car in which four foreigners women were traveling was stopped by the supporters of accused no.1 and the accused no.1 asked him to frisk and search the women in front of video camera. He further deposed that ACP Jakhar came at the spot. In the meanwhile, two supporters of accused no.1 forcibly sat in the said Ecco car upon which the witness directed Ct. Sunil to sit in the vehicle. He further deposed that two women sitting in the car were forced to urinate near the car as accused no.1 and his supporters did not allow them to move from car for urination. Thereafter, ACP Harpal Singh came at the spot and all the police officials talked to accused no.1 regarding the search procedure. Thereafter, the aforesaid four females alongwith SI S.S. Yadav, Ct. Sunil and two supporters of accused no.1 were taken to AIIMS for medical examination where accused no.1 and some of his supporters had already reached. Thereafter, Ecco car was searched but nothing incriminating was found. On returning to police station, he lodged DD No.9A in this regard. He identified the accused persons correctly by their names and faces. He was duly cross examined on behalf of all the accused persons.

10.2 EXPERT WITNESSES:-

(a) PW-1 Dr. Abhishek Kothari deposed that on 18.01.2014, he examined two female victims namely “S1” and



“S2” vide MLCs Ex.PW1/A and Ex.PW1/B, who were brought AIIMS Trauma Centre with alleged history of assault. He further deposed that only “S2” had visible injury in the form of bruise below right eye. He was cross examined on behalf of all accused persons.

(b) PW-25 Dr. Zameer Ahmad deposed that on 16.01.2014, he medically examined four African women vide MLCs Ex.PW25/A to Ex.PW25/D on the oral request of SI S.S. Yadav and it was suspected to be a case of drug consumption. He was duly cross examined on behalf of all the accused persons.

(c) PW-28 V.B. Ramteke is Sr. Scientific Officer from CFSL. He deposed that four sealed glass vials sealed with the seal impression CMO AIIMS HOPT ND were examined by him for narcotic drug and psychotropic substance and the result was negative. He proved his detailed report dated 09.10.2014 Ex.PW28/A. He was duly cross examined on behalf of all the accused persons.

(d) PW-32 Sh. V. Lakshmi Narasimhan is Sr. Scientific Officer at FSL. He deposed that on 15.07.2014, four sealed parcels with the seal of “SSY” were received and after their examination, report dated 28.08.2014 Ex.PW32/A sealed with the seal of “VLN” was prepared. He was duly cross examined on behalf of all the accused persons.



10.3 FORMAL WITNESSES:-

(a) *PW-8 ASI Sri Krishan* brought the original DD Register to prove DD No.6A Ex.PW8/A(OSR) regarding handing over of two Nigro ladies by accused No.1 to PCR Van E-16. He was duly cross examined on behalf of all the accused persons.

(b) *PW-9 ASI Parmanand* proved FIR Ex.PW9/A(OSR) and endorsement Ex.PW9/B on the Tehrir. He was duly cross examined on behalf of all the accused persons.

(c) *PW-13 Sh. Sanjay Singh*, Photographer deposed that he photographed and video graphed the entire area surrounded S-9, Khirki Extension. He proved photographs Ex.PW13/1 (Colly) and CD of video recording Ex.PW13/2. He was duly cross examined on behalf of all the accused persons.

(d) *PW-14 ASI Sanjay Toppo* deposed that on 15/16.01.2014, he was posted at PCR, Control Room. He stated that he received call from PCR E-16 that accused no.1 had asked them to follow his car upon which he recorded this self call in computer which is Ex.PW14/1(colly). He further deposed that he was informed by PCR that near Sai Baba Mandir, two Nigerian ladies were made to sit in PCR van. He was duly cross examined on behalf of all the accused persons.

(e) *PW-16 W/Ct. Mamta* deposed that on 22.01.2014,



she went alongwith IO and three witnesses to Saket Court for getting their statement under Section 164 Cr.P.C. recorded. She was duly cross examined on behalf of all the accused persons.

(f) *PW-18 Inspector S.S. Yadav* deposed that on receiving court order dated 18.01.2014, he prepared rukka Ex.PW9/B and sent the same to Duty Officer for registration of FIR. He was duly cross examined on behalf of all the accused persons.

(g) *PW-20 HC Jitender* produced the case property i.e. L shape iron angle Ex.PW20/X in unsealed condition. He was duly cross examined on behalf of all the accused persons.

(h) *PW-22 W/SI Mukesh* proved seizure memo of L shape iron angle Ex.PW22/A and seizure memo of newspaper Ex.PW22/B. She deposed that she recorded the statements of victims under Section 161 Cr.P.C. She identified L shape iron angle Ex.PW20/X and newspaper Ex.PW22/C. She was duly cross-examined on behalf of all the accused persons.

(i) *PW-24 SI Amit Kumar* deposed that he assisted Inspector Raman Lamba in the investigation of the present case. He deposed that he collected the CD and letter pertaining to the case from Sh. Dharamveer Prajapati, ABP News and seized the same vide seizure memo Ex.PW3/A and PW24/A respectively. He identified CD Ex.PW3/C and Ex.PW24/B. He was duly cross



examined on behalf of all the accused persons.

(j) *PW-27 ASI Jitender Singh* proved the photocopy of Mud No.2123 Ex.PW27/A (OSR). He was duly cross-examined on behalf of all the accused persons.

(k) *PW-29 ACP Pramod Singh Kushwaha* proved his complaint under Section 195 Cr.P.C. Ex.PW29/A. He was duly cross-examined on behalf of all the accused persons.

(l) *PW-31 Sh. O.P. Mishra*, Secretary to Minister, GNCTD proved the sanction under Section 196 Cr.P.C. Ex.PW31/A. He was duly cross examined on behalf of all the accused persons.

10.4 WITNESSES TO PROVE SEIZURE MEMOS OF CDs:-

(a) *PW-2 Sh. Deepak Kumar*, Deputy Chief Security Officer, AIIMS deposed that he handed over the CCTV footage of Main Emergency AIIMS for the intervening night of 15-16.01.2014 which was seized vide Seizure Memo Ex.PW2/A. He was duly cross examined on behalf of all the accused persons.

(b) *PW-3 Sh. Dharamveer Prajapati* from ABP News deposed that he gave video footage of the incident in the form of CD Ex.PW3/C in PS Malviya Nagar which was seized vide Seizure Memo Ex.PW3/A. He also identified the signatures of his officer Sh. Vikram Paul on certificate u/s 65-B of Indian



Evidence Act Ex.PW3/B. He was duly cross-examined on behalf of all the accused persons.

(c) *PW-7 Sh. Yash* from ANI deposed that he received notice under Section 91 Cr.P.C. Ex.PW7/D from the Investigating Officer upon which he handed over the CD Ex.PW7/C to the Investigating Officer who seized the same vide Seizure Memo Ex.PW7/A. He was duly cross examined on behalf of all the accused persons.

10.5 INVESTIGATING OFFICERS:-

(a) *PW-21 Inspector Bega Ram* is the first investigating officer. He deposed that on 19.01.2014, investigation of the present case was marked to him and on the same day, it was transferred to Inspector Raman Lamba. He was duly cross examined on behalf of all the accused persons.

(b) *PW-26 ACP Raman Lamba* is the investigating officer who deposed that investigation of the present case was marked to him vide order Ex. PW26/A. He further deposed that statement of complainant Ms. D was recorded U/s 161 Cr.PC by W/SI Mukesh on his direction. Thereafter, statement of complainant U/s 164 Cr.PC was got recorded. He further deposed that he seized newspaper Ex. PW22/C vide seizure memo Ex. PW22/B in which the complainant had identified accused No.1 from his photograph to be the assailant leading the mob on the intervening



night of 15/16.01.2014 and prepared site plan Ex. PW26/E, seized L shaped angle iron frame broken by the mob in order to gain entry into the complainant's house vide seizure memo Ex. PW22/A. He further deposed that the scene of crime was inspected by the crime team which took photographs Ex. PW13/1(colly). Thereafter, the complainant was got medically examined vide MLC Ex. PW26/F.

Thereafter, on 21.01.2014, on his directions, statement of four other victims were recorded U/s 161 Cr.PC as they had come to PS. Malviya Nagar for lodging their complaint with respect to the same incident. The statement of these victims were also got recorded U/s 164 Cr.PC. Thereafter, again on 22.01.2014, two more victims alongwith one Mr. Balram had come to PS and their statement U/s 161 and 164 Cr.PC were recorded. Thereafter, again on 23.01.2014, two more victims alongwith one Ms. Suman Chaudhary and Aditya Kaushik had come to PS and their statement U/s 161 and 164 Cr.PC were recorded.

Thereafter, he gave notices U/s 91 Cr.PC Ex. PW26/Y to Ex. PW26/Y4 for obtaining media coverage of ABP news, Aaj Tak and Zee News pertaining to the incident and also to Medical Superintendent AIIMS Hospital to provide CCTV footage of emergency area. The relevant DD entries, complaints, PCR calls, MLC etc., were collected from the concerned PS in connection with the incident in question. The statement of police officials namely ACP B. S. Jharkhar ACP DIU Harpal Singh, Inspector



Vijay Pal Singh and W/Ct. Kamlesh were recorded U/s 161 Cr.PC and site plan Ex. PW26/Z of the spot where the series of the incident happened was prepared at the instance of SI Surender Yadav in presence of Inspector Vijay Pal. One private photographer Sanjay Singh took photographs Ex. PW13/1(colly) and made video Ex. PW13/2 while the place was being inspected by the IO.

He further deposed that the relevant video recordings were provided by ABP news alongwith certificate U/s 65B Indian Evidence Act on 30.01.2014 and one CD was produced by the office of ANI News on 07.02.2014. TV today network provided the relevant CD on 11.02.2014. The CCTV footage of the emergency area of AIIMS was seized on 11.03.2014. Thereafter, the investigation was transferred to Inspector Vijay Pal Singh. He was duly cross examined on behalf of all the accused persons.

(c) *PW-23 Inspector Ajay Kumar* deposed that he seized the CD and the covering letter provided by TV Today Network vide seizure memo Ex.PW23/A. He identified the covering letter Ex.PW23/B and CD Ex.PW23/B1. He was duly cross-examined on behalf of all the accused persons.

(d) *PW-30 ACP Vijay Chandel* deposed that he being the investigating officer, tried to search all nine victims and complainant at their correspondence address and came to know that they all had left the premises just after the incident, he recorded the statement of police personnel of PCR units of Delhi



police. He filed the charge-sheet after completion of the investigation. Thereafter, he obtained address of three witnesses only from FRRO and the same was submitted in the court. Upon receiving CFSL result and permission U/s 196 Cr.PC, he filed supplementary charge-sheet. He identified accused Somnath Bharti, Devender Chauhan and Badlu Khan by their names and identified the remaining accused persons by their faces only. He was duly cross examined on behalf of all the accused persons.

11. Thereafter, PE was closed on 23.04.2024 and the matter got listed for recording of statement of accused persons u/s 313 of Cr.P.C.

Examination of accused persons u/s 313 of the Code of Criminal Procedure, 1973:

12. As mandated u/s 313 of Cr.P.C., the accused persons were given due opportunity to personally explain the circumstances appearing against them in evidence in the matter at hand. Statement of accused persons namely Shyam Lal Saini, Pawan Saini, Ved Saini, Rajesh Saini @ Bittoo, Hemant Saini, Dharamchand Rana and Vijay Saini @ Bobby were recorded on dated 25.08.2023 wherein all the aforesaid accused persons except accused Shyam Lal Saini opted to lead defence evidence. Thereafter, statement of accused persons namely Naresh Saini, Inder Saini, Anil Saini and Sanjeev Saini were recorded on dated 26.08.2023 wherein they opted to lead defence evidence.



12.1 Thereafter, vide order dated 26.10.2023, applications u/s 313(5) Cr.P.C. filed on behalf of accused persons namely Somnath Bharti, Badlu Khan, Badal Khan, Aditya and Devender Chauhan were dismissed. Statement of accused persons namely Badlu Khan, Badal Khan, Aditya and Devender Chauhan were recorded on dated 10.11.2023 wherein they opted not to lead defence evidence. Statement of accused Somnath Bharti was recorded on 25.01.2024.

12.2 All the incriminating facts, circumstances and evidences were put to the accused persons as appeared in the testimonies of prosecution witnesses and the corresponding documents.

12.3 Accused Ved Saini has stated in his statement u/s 313 Cr.P.C. that though he was present at the spot on the day of incident but he was not involved in any of the offences and that he did not obstruct the police. He stated that he was standing there only as a mute spectator. He further stated that he saw accused No.1 telling the police officials to call female police staff so as to check the African nationals as they were suspected to be involved in prostitution and drugs trade. Same defence was taken by accused Naresh Saini in his statement u/s 313 Cr.P.C.

12.4 Accused persons namely Rajesh Saini, Pawan Saini, Vijay Saini, Hemant Saini, Sanjeev Saini @ Bittoo, Anil Saini @ Pappi, Inder Saini, Dharam Chand Rana, Badlu Khan have stated



that they were present at the spot only as a mute spectator and they were not part of unlawful assembly. It is further stated that they do not know anything about the conversations that transpired between accused No.1 and police officials as they were standing at some distance. They also stated that they came to know about the FIR only after receiving the summons from the Court.

12.5 Accused Devender Chauhan has stated that he came to the spot when he came to know that crowd had gathered there and he was not a part of the crowd which was standing peacefully. He further stated that he does not know about the conversations between accused No.1 and police officials. Accused Badal Khan @ Nafees Ahmad stated that he stopped on his way at the spot for about 40 minutes and was standing there as a mute spectator. He stated that the crowd that had gathered there was not creating any ruckus.

12.6 Accused Kumar Aditya Singh has stated that while he was coming back from Saket mall, he stopped out of curiosity on seeing the crowd and stayed there for about one hour. He further stated that he was not a part of unlawful assembly and was only standing there as a mute spectator. He stated that he went to AIIMS Hospital out of curiosity and was asked by 2-3 persons in Khaki uniform to drop them to AIIMS. He denied taking accused No.1 to S-9 Khirki Extension.

12.7 Accused Somnath Bharti had stated that all the



allegations against him are false and that the police had deliberately not investigated the persons who are involved in human trafficking and drug peddling as the area police was hand in gloves with drug peddlers and human traffickers. It is further stated that the area residents including other co-accused persons have complained against the activities of drug peddling and human trafficking going on in the area right under the nose of the police. He further stated that on being elected on 08.12.2013, he started getting these complaints as no other official was taking any action. It is because of this reason that he has been falsely implicated in the present case.

12.8 Accused Shyam Lal Saini stated that he was not present at the spot on the day of the incident.

Defence Evidence Led By The Accused Persons:

13. Application u/s 315 Cr.P.C. filed on behalf of accused persons namely Pawan Saini, Naresh Saini, Dharam Chand Rana, Ved Saini, Rajesh Saini, Hemant Saini, Sanjeev Saini, Vijay Saini, Anil Saini and Inder Saini was allowed vide order dated 27.02.2024. Different applications filed on behalf of the accused persons for summoning witnesses in defence were allowed vide order dated 10.04.2024.

14. Ultimately, 27 witnesses were examined in total in defence evidence. The details of the witnesses examined by the accused persons are as under:-



Defence Witness	Name of the Witness	Role of the witness
DW-1	Ved Saini	Accused/Local Resident – Khirki Extension, New Delhi.
DW-2	Naresh Saini	Accused/Local Resident – Khirki Extension, New Delhi.
DW-3	Mahesh Kaushik	Member & General Secretary of Shri Shiv Mandir Sanstha, Khirki Extension
DW-4	SI Umesh Tiwari	Record Clerk in the O/o Commissioner of Police, Delhi.
DW-5	HC Sunil Kumar	Record Clerk, O/o DCP, Hauz Khas, Delhi.
DW-6	HC Kanhaiya Lal	Record Clerk, PS:Malviya Nagar, Delhi.
DW-7	K C Rana	General Secretary, Khirki Village Residents Welfare Association.
DW-8	Koshal Kumar Satija	Assistant Section Officer, Lieutenant Governor Office, Delhi
DW-9	S A Sikandar	General Secretary, Vikas Samiti, EJT Blocks, Khirki Extension.
DW-10	Shyam Lal Gangia	President, Resident Welfare Association, Khirki Extension.
DW-11	Pawan Kumar	Local Resident – Khirki Extension, New Delhi.
DW-12	Intezar Hussain	Local Resident – Khirki Extension, New Delhi.
DW-13	Tilat Ahmad	President, Resident Welfare Association, Khirki Extension.
DW-14	Atishi	LOP, Delhi Assembly and



		Member of the Meeting dated 31.01.2014 chaired by Accused No.1.
DW-15	Tarun Kumar Kardam	Local Resident – Khirki Extension, New Delhi.
DW-16	Saraswati Kalyan	Secretary, Defence Advisor in Uganda Embassy/High Commission.
DW-17	Javed Hussain	Local Resident – Khirki Extension, New Delhi and Member of the Meeting dated 31.01.2014 chaired by Accused No.1.
DW-18	Prabodh Raj Gaur	Local Resident – Khirki Extension, New Delhi – Member of the Meeting
DW-19	Anita Sharma	Managing Editor, India TV Broadcast Centre
DW-20	Rupashree Nanda	Reporter, CNN News
DW-21	Meenakshi Kandwal	Consultant Editor, NDTV
DW-22	Ankit Tyagi	Resident Editor, NDTV
DW-23	Sayeed Ansari	Managing Editor, TV Today Network, (AajTak Channel)
DW-24	Himanshu Mishra	Deputy Editor, TV Today Network, (AajTak Channel)
DW-25	Jacqueline Martens	Head of Business, BBC News India
DW-26	Retd./ACP Virender Jain	Last IO/SHO, PS: Malviya Nagar
DW-27	ACP Ved Prakash	1 st IO/SHO, PS: Vasant Kunj

15. The defence witnesses have relied upon the following documents in their evidences as under:-



Sl. No.	Exhibit No.	Description of the Exhibit	Proved by/Attested by
1.	Ex.DW-3/1 (OSR)	Letter dated 02.12.2013 addressed to CP, Delhi written by Shri Shiv Mandir Sanstha	DW-3
2.	Ex.DW-3/2 (OSR)	Two Post Office Receipts dated 05.12.2013 at 10:52 AM. 1. E RD345447247IN 2. E RD345447255IN	DW-3
3.	Ex.DW-3/3 (OSR)	Letter dated 26.11.2013 addressed to DCP, South on the letter head of Shri Shiv Mandir Sanstha written by Sh. Kishan Saini	DW-3
4.	Mark-A	Letter dated 24.11.2013 addressed to SHO, PS:Malviya Nagar on the letter head of Shri Shiv Mandir Sanstha written by Sh. Kishan Saini	DW-1
5.	Ex.DW-7/1	Letter dated 14.01.2014 addressed to Somnath Bharti (A-1) on the letter head of Khirki Village RWA.	DW-7
6.	Ex.DW-4/1	Report dated 25.04.2024 received from the O/o the Asstt. Commissioner of Police Sh. Atul Kalia, Delhi.	DW-4
7.	Ex.DW-4/2 (OSR)	Copy of Diary Register (running into 4 pages)	DW-4



8.	Ex.DW-5/1	Office Order dated 27.06.2023 regarding destruction of record upto 2019 (running into 11 pages)	DW-5
9.	Ex.DW-6/1 (OSR)	Copy of Daily Diary Register No.II having DD No.74B dated 23.11.2013.	DW-6
10.	Ex.DW-8/1	Attested copy of complaint dated 18.01.2014 by the Khirki Village Residents Welfare Association.	DW-8
11.	Ex.DW-8/2	Attested copy of letter dated 11.02.2014 issued by OSD to Hon'ble LG.	DW-8
12.	Ex.DW-8/3	Attested copy of Letter Monitoring System.	DW-8
13.	Ex.DW-9/1	Complaint dated 27.06.2013 addressed to SHO, PS:Malviya Nagar bearing DD No.52B dated 27.06.2013.	DW-9
14.	Ex.DW-9/2 (Mark-M)	Complaint dated 28.12.2013 addressed to DCP, Hauz Khas, bearing complaint reference No.R481.	DW-9
15.	Ex.DW-9/3	Certificate of Registration of Vikas Samiti Hauz Rani under Societies Registration Act of XXI, 1860. Registration No. 58797/2007 dated 31.05.2007.	DW-9
16.	Mark-N	Copy of Memorandum of Association of Vikas Samiti Hauz Rani, EJT	DW-9



		Block, Delhi	
17.	Mark-O	Complaint to Dy. Commissioner, Excise bearing reference No.RWA:CE:28 dated 05.01.2014.	DW-10
18.	Mark-P	Complaint to SHO, PS:Malviya Nagar bearing reference No.RWA:DP:24 dated 20.01.2013.	DW-10
19.	Mark-Q	Certificate of registration of Block J4-J3 RWA Khirki Extension.	DW-10
20.	Mark-R	Letter addressed to Registrar of Society	DW-10
21.	Mark-S	Copy of rules and regulations of association namely Block J4-J3, RWA	DW-10
22.	Ex.DW-26/A	Certified copy of chargesheet in FIR No.131/14 PS:Malviya Nagar	DW-26

16. *Accused Ved Saini* examined himself as DW-1 who deposed that illegal and immoral activities were taking place in Khirki Village about 5-7 months prior to the date of incident. He further deposed that African national ladies used to stand on the road side at night and used to make obscene/indecent gestures to the passersby, and African national men were engaged in drug peddling. He further deposed that apart from numerous oral complaints, he gave a written complaint to SHO, PS Malviya



Nagar and concerned DCP but no action was taken upon which the members of RWA Khirki Village and members of Shiv Mandir Sanstha met the area MLA i.e. accused No.1 regarding the aforesaid illegal activities. He relied upon letter dated 24.11.2013 Mark-A submitted to SHO, PS: Malviya Nagar vide DD No.74B, letter dated 26.11.2013 Mark-B received in the office of DCP, South, Hauz Khas vide Diary No.5095, letter dated 02.12.2013 Mark-C addressed to Commissioner of Police, receipt Mark-D for sending the letter by speed post to the then Home Minister and letter dated 14.01.2014 Mark-E addressed to accused No.1 (the then area MLA and Law Minister).

He further deposed that accused No.1 visited Shiv Mandir, Khirki Village and assured to look into the issue of immoral and illegal activities. Thereafter, on 15/16.01.2014, at around 01:30 AM, he saw accused No.1 speaking to a police official asking him to search the African ladies who were sitting in the car and to call lady police constable to search the African women. He further stated that the then SHO, Sh.Vijay Pal knew him by name because of his frequent visit to the police station for filing complaints on behalf of Shiv Mandir Sanstha and RWA Khirki Village. He was duly cross-examined by the Ld. SPP for the State.

17. *Accused Naresh Saini* examined himself as DW-2. He deposed about the immoral and illegal activities prevailing in the Khirki Village on the same lines as DW-1. He further deposed



that on one occasion, upon receiving a message from Rajesh Saini regarding the above mentioned illegal activities, DCP BS Jaiwal reached at the spot but prior to him the concerned SHO and ACP had already reached and were trying to hush-up the matter. Upon warning of the DCP, the illegal activities stopped for 2-3 days but resumed thereafter. Being aggrieved, the members of Shiv Mandir Sanstha and members of RWA Khirki Village met the then area MLA i.e. accused No.1.

He further deposed that on 15/16.01.2014, accused No.1 came along with police and his supporters at Shiv Mandir. And he also reached there and saw a huge crowd had gathered, media persons were present and police officials were present in large numbers. He further deposed that there was a van in which some ladies of African origin were sitting and accused No.1 was asking the police officials to call lady police to conduct their search. He further deposed that the police officials were being asked to conduct the search of African ladies and one building situated in S-Block, however, they were not inclined to do so. He deposed that he was standing there as mute spectator and did not interfere in the proceedings of the police at the spot. He further stated that the then SHO, Sh.Vijay Pal knew him by name because of his frequent visit to the police station for filing complaints on behalf of Shiv Mandir Sanstha and RWA Khirki Village. He was duly cross-examined by the Ld. SPP for the State.



18. *DW-3 Mahesh Kaushik* is a member of Shiv Mandir Sanstha. He brought the duplicate copy of complaints already Mark-B and Mark-C and copy of speed post receipt already Mark-D and proved them as Ex.DW-3/3 (OSR), Ex.DW-3/1 (OSR) and Ex.DW-3/2 (OSR) respectively. He was duly cross-examined by Ld. SPP for the State.

19. *DW-4 SI Umesh Tiwari* proved letter issued from ACP bearing No.867/Record Branch/PHQ dated 25.04.2024 Ex.DW-4/1 and complaint received from Sh. Mahesh Kaushik through speed post as Ex.DW-4/2 (OSR). He was not cross-examined by Ld. SPP for the State despite opportunity.

20. *DW-5 HC Sunil Kumar* proved destruction letter dated 27.06.2023 as Ex.DW-5/1. He was not cross-examined by Ld. SPP for the State despite opportunity.

21. *DW-6 HC Kanahiya Lal* proved the entry in Daily Diary Register No.II pertaining to the complaint received from Shiv Mandir Sanstha vide DD No.74B dated 23.11.2013 as Ex.DW-6/1 (OSR). He was not cross-examined by Ld. SPP for the State despite opportunity.

22. *DW-7 KC Rana* proved letter dated 14.01.2014 Ex.DW-7/1 written by him in the capacity of General Secretary of Khirki Village, RWA addressed to accused No.1 regarding the immoral and illegal activities being carried out in the area by people of African origin. He was cross-examined by Ld. SPP for



the State.

23. *DW-8 Sh. Koshal Kumar Satija* proved the attested copy of complaint dated 18.01.2024 of Khirki Village RWA which was received by the office of LG on 22.01.2014 vide Diary No.3239 along with letter dated 11.02.2014 sent to CP by the OSD to LG and attested copy of letter monitoring system as Ex.DW-8/1 to Ex. DW-8/3 respectively. He was cross-examined by Ld. SPP for the State.

24. *DW-9 S.A Sikander* is the General Secretary of Vikas Samiti, EJT Blocks, Khirki Extension. He proved the copy of complaint dated 27.06.2013 addressed to SHO, PS:Malviya Nagar as Ex.DW-9/1 and copy of complaint dated 28.12.2013 addressed to DCP Hauz Khas Ex.DW-9/2. He was cross-examined by Ld. SPP for the State.

25. *DW-10 Shyam Lal Gangia* (President of RWA, Khirki Extension) proved the copy of complaint to Deputy Commissioner Excise Mark-O, copy of complaint addressed to SHO, PS: Malviya Nagar Mark-P, copy of certificate registration Mark-Q. He was cross-examined by Ld. SPP for the State.

26. *DW-11 Sh. Pawan Kumar* deposed that he is a resident of Khirki extension and the meeting shown in the video having file name “First meeting of Indo-African Coordination Committee held in Sai Baba Mandir, Khirki Extn.MP4” was



organized by him to address the concerns and the feeling of insecurity of the Africans in the wake of incident which took place in the intervening night of 15th and 16th January, 2014. He deposed that the locals of Khirki Extension and Khirki Village were affected by the problem of drug trafficking and sex rackets that were running in the said area and as their complaints remained unaddressed, they approached accused No.1 as he was the area MLA and Law Minister of Delhi. He was duly cross examined by Ld. SPP for the State.

27. *DW-12 Intezar Hussain, DW-13 Tilat Ahmed, DW-14 Ms. Atishi, DW-15 Tarun Kumar, DW-16 Saraswati Kalyan, DW-17 Javed Hussain and DW-18 Prabodh Raj Gaur* deposed on the same lines as DW-11. They all had attended the above mentioned meeting which was organized to address the concerns of locals and Africans against each other. They all were cross examined by Ld. SPP for the State.

28. *DW-19 Ms. Anita Sharma*, upon seeing one video from YouTube link "<https://www.youtube.com/watch?v=Jiv9OMa1qOs.MP4>", deposed that the said video was aired on their Channel-India TV around 11 years ago. The news reader in the video is Ms. Meenakshi Kandwal and she was working as a news reader at that time. She was duly cross-examined by Ld. SPP for the State.

29. *DW-20 Ms. Rupashree Nanda* deposed that she



interviewed the woman shown in the video having file name "videoplayback.MP4". She was duly cross-examined by Ld. SPP for the State.

30. *DW-21 Ms. Meenakshi Kandwal*, deposed that she is the News reader in the video shown to her from YouTube link "<https://www.youtube.com/watch?v=Jiv9OMalqOs>.MP4". She was duly cross-examined by Ld. SPP for the State.

31. *DW-22 Sh. Ankit Tyagi* deposed that he was working as field reporter with Headlines Today when the video having file name "Ugandan women allege they were forced into prostitution (1).mp4" was aired on the News channel. He deposed that the video pertains to a news that 3 Ugandan women approached Delhi Government with their grievance that they have been forced into prostitution and their passports have been confiscated by the people running this prostitution racket. The concerned area was Khirki Extension. He deposed that he was told by his sources from the Delhi Government that the girls were asked to go to police station to get their FIR registered but they refused for the same out of fear. He was duly cross-examined by Ld. SPP for the State.

32. *DW-23 Mr. Sayeed Ansari* deposed that he is the news reader in the video having file name "Women from Uganda forcefully brought to India.mp4". He deposed that this video is a true and correct video which was broad casted on their channel.



He was duly cross-examined by Ld. SPP for the State.

33. *DW-24 Mr. Himanshu Mishra* deposed that he is the Field reporter in the video having file name "Women from Uganda forcefully brought to India.mp4". He was duly cross-examined by Ld. SPP for the State.

34. *DW-25 Ms. Jacqueline Martens* deposed that the video having file name "Imported for my body_The African women trafficked to India for sex - BBC Africa Eye documentary.mp4" was published at the behest of BBC Africa, whereas she works with BBC News India which is a different entity altogether. She was not cross-examined by Ld. SPP for the State despite opportunity.

35. *DW-26 Retd./ACP Virender Jain* deposed that the main IO in FIR No.131/2014, PS Malviya Nagar was Inspector Ved Prakash, SHO PS: Vasant Kunj at that time. He proved the certified copy of chargesheet Ex.DW-26/A (colly). He was duly cross-examined by Ld. SPP for the State.

36. *DW-27 ACP Ved Prakash* deposed that further investigation in FIR No.131/2014 was transferred to him. The allegations in that case were that three Ugandan women appeared before office of DM, South and alleged that they were forcibly kept in the area of Khirki Extension, Malviya Nagar, Delhi. He deposed that he recorded the statement of these girls u/s 161



Cr.P.C. and also got recorded their statement u/s 164 Cr.P.C. Accused lady Ireni was also arrested in the said case. Scene of the crime was also visited and pointing out memos were also prepared. Concerned Embassy was also informed. He was duly cross-examined by Ld. SPP for the State.

37. Thereafter, DE was closed on 23.12.2025 and the matter was listed for final arguments.

Final Arguments:

38. Final arguments were advanced by Ld. SPP for the State and Ld. Defence Counsels. The final arguments were heard at length on behalf of both the parties. Further, written submissions were filed on behalf of State, A-1/Somnath Bharti and A-18/Shyam Lal Saini. Same have been perused.

Arguments by Ld. SPP for State:

39. It has been argued by Ld. SPP for the State that PW-5 and PW-6 are eye witnesses to the incident of altercation between accused No.1 and ACP and no cross-examination on the said portion of their testimony has been conducted implying thereby that the said portion of their testimony stands admitted. It has further been argued by the Ld. SPP for the State that PW-11 was accompanied by PW-12 and both of them have consistently deposed that the supporters of accused No.1 had forcibly brought two Negro ladies and made them sit in the PCR van at the instance of accused No.1.



40. It has further been argued that PW-15 is also an eye-witness to the entire event, who has clearly deposed that accused No.1 obstructed in the discharge of public functions of the police officials as he was constantly criticizing them by asking them to search the female victims in front of the camera. It has further been argued that PW-19 was the SHO, PS-Malviya Nagar at the time of incident and was present on the spot from 01:30 AM till the end. It has further argued that the suggestion given by on behalf of accused persons to the witness that S-9 is not a house but a street has demolished the defence of the accused persons.

41. It has been further argued that as per FSL report Ex-PW-32/A, all the CDs having the CCTV footage of the incident in question are found to be genuine without any alteration. CDs Ex.PW-4/C, Ex.PW-3/C & PW-7/C were played and seen in the Court.

42. Ld. SPP for the State has relied upon following judgments:-

(a) *Sarwan Singh Vs. State of Punjab, AIR 2002 SC 3652* - In this case, the identification of the accused for the first time in the Court was relied upon as the witnesses knew the accused before and they both were acquainted with each other. Simultaneously, it has been held that ordinarily identification of the accused for the first time in the Court by a witness should not be relied upon for the purpose of passing order of conviction without a definite



corroboration.

(b) *Mahavir Singh Vs. State of Haryana, 2014(6) SCC 716* – It was held that in case question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised.

(c) *Balu Sudam Khalde & Anr. Vs. The State of Maharashtra, Criminal Appeal No.1910 of 2010 decided on March 29, 2023* – It was held that in case, answers given by the witness to the suggestions given by the defence counsel incriminate the accused in any manner, then the same would be binding and could be taken into consideration along with other evidence. Further, the principles of appreciating the oral evidence and evidence of injured eye-witnesses were summarized.

(d) *Nitya Nand Vs. State of UP & Anr, Criminal Appeal No.1348 of 2014 decided on September 04, 2024* - The principle of vicarious liability embodied u/s 149 IPC was discussed.

(e) *Haribhau @ Bhausahab Dinkar Kharuse & Anr. Vs. State of Maharashtra, Criminal Appeal No.1755/2011 decided by Hon'ble Supreme Court of India* – The principle of vicarious liability embodied u/s 149 IPC was discussed.

(f) *Ram Dular Rai Vs. State of Bihar AIR 2004 SC 1043* - The principle of vicarious liability embodied u/s 149 IPC was discussed.



(g) *Amish Devgan Vs. Union of India (2021) 1 SCC 1* – The interpretation of Section 153A IPC was discussed.

(h) *Devender Kumar Vs. State & Anr., SLP (Cri) No. of 2025 decided Hon'ble Supreme Court of India* – The ingredients of Section 186 IPC and the necessity of compliance of Section 195 Cr.P.C. were discussed.

(i) *State through Inspector of Police Vs. Lali @ Manikandan & Anr. 2022 SCC Online SC 1424* – In this case, the accused was convicted on the basis of sole testimony of eye-witness despite the non-examination of the original complainant.

Arguments on behalf of accused persons (A-7 to A-14) and (A-16 to A-17)

43. Per contra, Ld. Counsel for the accused persons (A-7 to A-14) and (A-16 to A-17) has argued that the accused persons were present on the spot merely because of the fact that on hearing the noise/ruckus, they came out of their houses to see as to what was happening. It has further been argued that they have been falsely implicated as they used to regularly meet the area SHO/PW-19 Inspector Vijay Pal Singh in PS: Malviya Nagar, being office bearers of Shiv Mandir Sanstha and RWA, in respect of the problem of drug peddling and human trafficking and gave complaints Ex.PW-19/A1, Ex.PW-19/A2 and Ex.PW-19/A3. Another argument raised is that accused persons have neither been named in the complaint nor have they been identified by



any of the eye-witnesses except PW-15 and PW-19. Identification of the accused persons by these two witnesses is meaningless as they both have failed to assign any role to the accused persons in their testimonies and have just vaguely used the term ‘supporters’ of Somnath Bharti.

44. It has further been argued that the FIR details are not mentioned on the seizure memo Ex.PW-2/A and that the CD which was seized vide the said seizure memo has not been exhibited and there is no certificate u/s 65 B Indian Evidence Act with respect to the said CD. Similarly, the CD Ex.PW-7/C produced by PW-7 is also not supported by the requisite certificate u/s 65 B Indian Evidence Act. Other lacunas in the investigation that have been highlighted by the Ld. Counsel are that the site plan Ex.PW-26/E and Ex.PW-26/Z do not bear the signatures of any police official who is stated to have accompanied the IO to the spot, no copy of passport or visa of the alleged victims have been filed in the chargesheet. It has been argued that a complaint u/s 195 Cr.P.C. Ex.29/A given by PW-29 and sanction u/s 196 Cr.P.C. Ex.PW-31/A given by PW-31 have been given without looking into the charge-sheet.

45. Ld. Counsel has relied upon the following judgment in support of his arguments:-

(a) Zainul Vs. State of Bihar, Criminal Appeal No.1187 of 2014 decided by Hon’ble Supreme Court of India.



(b) Chandrabhan Sudam Sanap Vs. State of Maharashtra AIR Online 2025 SC 58.

(c) Kundan Singh Vs. State, Criminal Appeal No.711 of 2014 decided by Hon'ble High Court of Delhi.

(d) Jagdeo Singh @ Jagga Vs. State, Criminal Appeal No.527 of 2014 decided by Hon'ble High Court of Delhi.

(e) Arif Vs. State of Govt. of NCT of Delhi, 2015 SUPREME (DEL) 2368.

(f) Dana Yadav @ Dahu and Ors. Vs. State of Bihar, 2002 (7) SCC 295.

Arguments on behalf of accused No.1

46. It has been argued by Ld. Counsel for accused No.1 that all the charges have been framed with the aid of Section 149 IPC and in case of failure of the prosecution to establish the constitution of unlawful assembly u/s 141 IPC, all the charges against the accused persons will fail. It has further been argued that PW-19 is the star witness of the prosecution as he is stated to to be the first one to have reached the spot of incident at about 01:30 AM and that it can be culled out from his testimony that no unlawful assembly was constituted by the accused persons on the alleged date and place. It has further been argued that the defense taken by the accused persons regarding the prevalence of unlawful activities of drug peddling and human trafficking stands admitted by PW-19 in his cross-examination. Further, it has been



argued that the delay in the registration of the FIR also goes against the case of the prosecution as there was nothing which stopped PW-19 to register FIR on the date of offence itself, he being physically present at the spot and witness to the alleged offences.

47. Ld. Counsel for accused No.1 had also argued that on account of non-examination of the alleged victims, charges u/s 354/354C/452/506/509 IPC are bound to fail. He has rather argued to the extent that the prosecution has failed to establish the identity of the alleged victims. Validity of complaint u/s 195 Cr.P.C. Ex.-PW-29/A has also been challenged by the Ld. Counsel on the ground that the complaint was given on 24.09.2014 i.e. prior to the preparation of charge-sheet on 27.09.2014.

48. Ld. Counsel for accused No.1 has relied upon the following judgment in support of his arguments:-

(a) *State of Punjab vs. Devender pal Singh Bhullar & Ors.*, (2011)14 SCC 770 - In the said judgment, the Hon'ble Court quashed the entire proceedings as the very birth of the FIR, which was the direct consequence of the impugned order was found not having any lawful existence. There is no such scenario in the present case. Hence, this judgment is not applicable.

(b) *Tomaso Bruno vs State of UP*, (2015)7 SCC 178 - In this



case, the Hon'ble Apex Court raised serious doubts about the prosecution case because of its omission to produce the CCTV footage, which was the best evidence.

(c) *Vijay @ Chinee vs State of MP, (2010)8 SCC 191* - The weight to be attached to the testimony of the victim of sexual assault has been discussed. Since none of the victim has been examined in the present case, the said judgment is inapplicable.

(d) *Arjun Pandit Rao Khotkar Vs. Kailash Kushan Rao Gorantyal and Ors. 2020 Supreme (SC) 446* - It pertains to the admissibility of electronic evidence and shall be discussed at relevant stage.

(e) *C. Muniappan vs State of Tamil Nadu, (2010)9 SCC 567* – To support the argument that the provision of Section 195 Cr.P.C. is mandatory.

(f) *Sunil Kandu vs State of Jharkhand, (2013) 4 SCC 422* – To support the argument that if the prosecution is not able to prove its case beyond reasonable doubt, it cannot take advantage of the fact that the accused has not been able to probabalise their defence. The said judgment also discussed the effect of shoddy investigation.

(g) *Jacob Mathew vs State of Punjab (2005)6 SCC* – This



judgment deals with the issue of criminal negligence in medical cases and hence, it is inapplicable in the present case.

(h) *Naresh Aneja vs State of U.P., (2025)2 SCC 604* – The ingredients for commission of offence punishable u/s 354 & 506 IPC has been discussed.

(i) *Manik Taneja vs State of Karnataka, (2015)7 SCC 423* - The ingredients for commission of offence punishable u/s 506 IPC have been discussed.

(j) *Shaik Sajid Sajju vs State of Telangana, decide on 31.01.2025 by Hon'ble High Court of Telangana* – In this case, the proceeding was quashed for non-compliance of Section 195 Cr.P.C.

(k) *State of Maharashtra vs Babu Bhaga Zore & Ors, (2020) SCC OnLine Bom 325* – In the said judgment, the principles regarding power of Appellate Court while dealing with an appeal against an order of acquittal were summarized. The same is clearly inapplicable to the present case.

(l) *B.N. John vs State of U.P., 2025 INSC 4* – The mandatory compliance of Section 195 Cr.P.C. was discussed.

(m) *A. Sreenivasa Reddy vs Rakesh Sharma & Anr, (2023)8*



SCC 711 – The consequence of refusal of sanction u/s 19 of Prevention of Corruption Act, 1988 upon prosecution of a person for an offence under IPC was discussed. Since PC Act is not in question before this Court, this judgment is not of much help.

Arguments on behalf of accused no. 2

49. It has been argued by Ld. Counsel for A-2 that the actual name of A-2 is Kumar Aditya but his name has been mentioned as Aditya in the chargesheet. It has further been argued that A-2 is not a resident of Khirki Extension and that he was just passing by when he stopped upon seeing the commotion in the area. It has further been argued that no specific allegations have been leveled against him and that nothing incriminating can be seen against him in the videos relied upon by the prosecution. Another arguments raised on his behalf is that none of the accused persons have been medically examined.

Arguments on behalf of accused No.18

50. Ld. LAC for accused Shyam Lal Saini has argued that there is not a single footage on record in which the accused can be seen as he was not present at the spot on the alleged date and time. It has further been argued that neither any specific role has been assigned to him nor his identity has been established by the prosecution. It has further been argued that no opportunity was given to the accused during investigation to explain his defence as no notice u/s 41A Cr.P.C. was given to him. Ld. Counsel has further argued that the identification of the accused by PW-15 is



meaningless as he has failed to name the accused and has vaguely stated that he identifies them by their faces. Similarly, identification of the accused by PW-19 is also not trustworthy as the name of the accused is not mentioned in identification by faces by the witness.

Arguments in Rebuttal by Ld. SPP for the State

51. In rebuttal, Ld. SPP for the State has argued that the confusion in the name of one of the victims stands clarified from the statement of Inspector Vijay Pal recorded u/s 161 Cr.P.C. as well as from the service report dated 12.10.2022 received from Ministry of External Affairs. With respect to the TIP, it has been argued that there was no need to conduct TIP as Inspector Vijay Pal/PW-19 has identified all the accused persons in his statement u/s 161 Cr.P.C. With respect to the requirement of certificate u/s 65-B Indian Evidence Act, it has been submitted that its absence is merely an irregularity and not illegality. Further, the delay in the medical examination of S-1 and S-2 has been attributed to the fact that they were scared to step out of their homes.

Appreciation of Evidence and Findings :

52. For the sake of convenience, the alleged incidents that took place on the day of offence shall be referred to as under:-

(a) Alleged incident pertaining to victims S-1 and S-2 (they were allegedly made to sit in PCR van)– hereinafter referred to as ‘**1st incident**’.



(b) Alleged incident pertaining to victims M, N@P, A@J, N (they were traveling in Ecco car) – hereinafter referred to as ‘**2nd incident**’.

(c) Alleged incident pertaining to victims D, S-3 and S-4 (they are residents of S-9, Khirki Extension) – hereinafter referred to as ‘**3rd incident**’.

53. The case of the prosecution is that all the accused persons were members of the unlawful assembly and they committed the offences punishable u/s 143/147/153A/186/323/342/354/354C/427/ 452/506/509 IPC r/w Section 149 IPC. All the accused persons except accused Shyam Lal Saini have admitted their presence on the spot on the day of incident. The defence raised on behalf of accused No.1 is that he went to the spot of incident as he was regularly getting complaints, being the local MLA, regarding drug peddling and human trafficking from the local residents of Khirki Extension. It is further stated that no civil or criminal wrong took place till the time accused No.1 remained at the spot and the police officials were deliberately not investigating the persons involved in drug peddling and human trafficking as they all were hand in gloves with each other. Remaining accused persons have taken the defence that they went to the spot on hearing loud police siren to see what was happening and that they were present at the spot merely as mute spectators and had not participated in any unlawful activity/checking/trespassing.



54. Having considered the rival submissions and after wholesome perusal of the record and appreciating the evidence on record, this Court deems it fit to first deal with the issues pertaining to the admissibility of following evidence as objections in this regard have been raised by the accused persons:-

- (i) Admissibility of electronic evidence *vis-a-vis* certificate u/s 65-B of Indian Evidence Act.
- (ii) Admissibility of statements u/s 164 Cr.PC. without examination of victims as witnesses.
- (iii) Identity of accused persons *vis-a-vis* non-conduct of Test Identification Parade.

(I) Admissibility of electronic evidence vis-a-vis certificate u/s 65-B of Indian Evidence Act

55. Arguments have been raised on behalf of accused persons regarding the admissibility of electronic evidence i.e. CD/DVD of the CCTV footage of the incident in question on the ground that there is no certificate u/s 65B Indian Evidence Act or that the certificate is not in compliance with the conditions mentioned in the Section 65-B(4) of the Act. Reliance has been placed upon judgments “*Chandrabhan Sudam Sanap Vs. State of Maharashtra AIR Online 2025 SC 58*” and “*Jagdeo Singh @ Jagga Vs. State, decided by Hon’ble High Court of Delhi in Crl. A. No.527/14*”.



56. There is little room for doubt regarding the fact that the judgment relied upon by accused no. 1 i.e. “**Arjun Pandit Rao Khotkar Vs. Kailash Kushan Rao Gorantyal and Ors. 2020 Supreme (SC) 446**” dominates the field regarding the admissibility of electronic evidence. Hence, a reference to the same shall answer all the questions raised in the present case pertaining to the electronic evidence produced by the prosecution. It has been held in the said judgment that the certificate required u/s 65-B(4) Indian Evidence Act is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anwar PV Vs. PK Bashir*. The non-obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65-B, which is a special provision in this behalf. The judgment further clarifies that the certificate u/s sub-section (4) can be given either by a person occupying a responsible official position in relation to the operation of the relevant device or a person who is in the management of relevant activities and that it shall be sufficient for such matter to be stated to the “best of the knowledge and belief of the person stating it”. Hence, production of the certificate u/s 65B of the Act is a prerequisite for the admissibility of electronic evidence and not raising any objection in regard to non-production of the certificate is immaterial.

57. In the present case, the prosecution has sought to rely



upon four different CDs produced by four different witnesses i.e. PW-2, 3, 7 & 23.

58. The CCTV footage of the Main Gate, Emergency, AIIMS was sought to be proved in the testimony of PW-2. Qua this, it has been argued on behalf of accused persons that the CD produced by PW-2 has not been exhibited and hence, the same cannot be read in evidence. Perusal of record shows that PW-2 has deposed that the CD provided by him to the Investigating Officer was seized vide seizure memo Ex. PW-2/A. However, the CD was not brought from the police *malkhana* and hence, was not exhibited in the testimony of the witness. As per settled law, marking of a document as an exhibit is only for the purpose of identification and does not amount to proof of its contents which must be established in accordance with the provisions of the Evidence Act (reliance placed upon *Sudhir Engineering Company Vs. Nitco Roadways 1995 SCC OnLine Del 251*). Thus, it is not the non-exhibition of the CD which is adverse to the case of prosecution, but it is rather the non-production of the mandatory certificate u/s 65-B which makes the CD inadmissible in evidence. Even though, no question with regard to the certificate u/s 65-B was put to the witness during his cross-examination, the same does not amount to waiver as the absence of the certificate hits at the very admissibility of the electronic record as evidence.

59. Similarly, the CD Ex.PW-7/C, purported to be the



CCTV footage of the incident recorded on behalf of Asian News International, produced by PW-7 is not supported with the requisite certificate u/s 65-B. The objection in this regard has been raised during the examination-in-chief of the witness. Further, it is pertinent to note that IO/Inspector Raman Lamba had asked the Editor, ANI to produce the CCTV footage along with the certificate u/s 65-B of the Act vide notice u/s 91 Cr.P.C. Ex.PW-7/D. Despite this, neither the certificate was given on behalf of ANI nor any subsequent request/demand for the same was made by the IO. Hence, the said CD also suffers from the same infirmity.

60. PW-23 Inspector Ajay Kumar has deposed that he seized CD Ex.PW-23/B1 vide seizure memo Ex.PW-23/A. The certificate u/s 65-B of Evidence Act with respect to the said CD is stated to be the letter Ex.PW-23/B. A perusal of the said letter shows that a line “this communicate may also please be considered as the certificate u/s 65-B of the Evidence Act” has been written towards the end of the letter. The remaining contents of the letter are responses to the questions asked by way of notice u/s 91 Cr.P.C. Admittedly, the said letter finds no mention of the essential conditions enumerated u/s 65-B(4) of the Evidence Act. Thus, the said letter fails to fall within the category of the certificate u/s 65-B of the Act. Hence, CD Ex. PW-23/B1 is inadmissible in evidence.

61. On behalf of ABP News, PW-3 had produced DVD



Ex.PW-3/C and certificate u/s 65-B of Evidence Act Ex.PW-3/B. It has been contended on behalf of accused persons that the certificate u/s 65-B is not in proper order as it has been given on the basis of “*information available*” and that PW-3 has stated in his cross-examination that he cannot guarantee whether any other person had made any tampering in the CD. In the opinion of this Court, the objection with respect to the certificate Ex.PW-3/B is merit less as it has been clearly held in *Arjun Panditrao’s Case (supra)* that it shall be sufficient to state the matter in certificate under sub-section (4) on the basis of “*best of the knowledge and belief of the person stating it*”. Thus, it is not necessary to give the certificate on the basis of personal knowledge only and hence, the certificate Ex.PW-3/B is valid in law. After passing the test of admissibility u/s 65-B of the Evidence Act, the next question is of the genuineness thereof. In the present case, the CCTV footages were sent to FSL for examination. As per FSL report Ex.PW-32/A, the relevant video files in DVD exhibit 1 were examined using Video Analysis System and it was found that all the video files were found containing one identified video shots and there was no indication of alteration in any of the identified video shots on the basis of frame by frame examination. The credibility of PW-32 could not be shaken nor any lacuna in the process of examination undertaken by him could be brought on record despite detailed cross-examination of the witness. The mere fact that PW-3 has failed to assure the Court of the genuineness of the CD is immaterial as there is



otherwise on record strong and clinching evidence in the form of FSL report. Hence, the DVD Ex.PW-3/C is admissible in evidence.

62. In view of the above discussion, **none of the electronic evidence produced by the prosecution except DVD Ex.PW-3/C is admissible in evidence** for want of certificate u/s 65-B of the Indian Evidence Act.

(II) Admissibility of statements u/s 164 Cr.PC. without examination of victims as witnesses-

63. Question has also been raised on behalf of accused persons with respect to the admissibility of the statement of victims recorded u/s 164 Cr.P.C. as none of the victims have been examined in the Court as witness.

64. Statement of victims S-1, S-2, 'M', 'N', 'N@P', 'A@J', 'D', S-3 and S-4 were recorded u/s 164 Cr.P.C. and same have been exhibited as Ex.PW-26/M, Ex.PW-26/N, Ex.PW-26/O, Ex.PW-26/R, Ex.PW-26/U, Ex.PW-26/V, Ex.PW-26/D, Ex.PW-26/L and Ex.PW-26/Q respectively. All these victims have described in detail the alleged offences that were committed with them.

65. The said statements have been sought to be proved by PW-16/W/Ct Mamta who has deposed regarding the production of the witness for getting their statement u/s 164 Cr.P.C. recorded and



also by PW-26 who proved the written requests for recording of statement of the complainant and other victims.

66. Objections were raised on behalf of accused to the exhibition of the statement of victims recorded u/s 164 Cr.P.C. on the ground that the statement is not in the writing of the deponent/PW-26 and the signatories of the said statements have not appeared in the Court. The said objections were kept pending at that stage and hence, are being taken up at the time of passing the present judgment.

67. Admittedly, none of these victims have been examined by the prosecution in its evidence as they were untraceable and hence, have been dropped from the list of witnesses vide orders dated 29.11.2022 and 10.01.2023. The fact of recording of their statements u/s 164 Cr.P.C. has been deposed by IO/PW-26 who had moved the application before the concerned Magistrate for recording of the statements. However, the same is insufficient to prove the contents of the statements in view of the settled legal position with respect to the evidentiary value of the statements u/s 164 Cr.P.C.

68. The statement u/s 164 Cr.P.C. is not substantive evidence, as substantive oral evidence is one which is deposed before the Court and is subjected to cross-examination. A statement u/s 164 Cr.P.C. is not subjected to the constraints attached with the statement u/s 161 Cr.P.C. and hence, the vigour of Section 162



Cr.P.C. does not apply and hence, it is considered on a better footing. Such statements can only be used to corroborate the statement of witness or to contradict him. However, relevancy and admissibility are distinct concepts in the realm of law of evidence. The contents of statement u/s 164 Cr.P.C. need to be proved by the victim as victim is the sole person who can vouch for the veracity of the contents. In ***State of Delhi vs Shri Ram Lohia, AIR 1960 SC 490***, it was held that statements recorded under Section 164 of the Code are not substantive evidence in a case and cannot be made use of except to corroborate or contradict the witness.

69. In ***R. Shaji versus State of Kerala 2013 (14) SCC 266***, it has been held in Para 28 that Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C. can be relied upon for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross examine the witnesses whose statements are recorded under section 164 Cr.P.C., such statements cannot be treated as substantive evidence.

70. In view of the above discussed legal position, **the statement of the victims recorded u/s 164 Cr.P.C. in the present case remains unproved** due to non-examination of these victims as witnesses in the Court and hence, cannot be relied upon.

(III) Identity of accused persons vis-a-vis non-conduct of Test Identification Parade



71. Ld. Counsel for accused No.5-12 & A-15 to A-16 has challenged the dock identification of the accused persons in the absence of any proceedings in the form of test identification parade. He has relied upon judgments “*Arif Vs. Govt. of NCT of Delhi, 2015 SUPREME (Del) 2368*” and “*Dana Yadav @ Dahu & Ors. Vs. State of Bihar, 2002 (7) SCC 295*”.

72. However, all the accused persons except accused Shyam Lal Saini have admitted their presence at the spot and hence, their objection with respect to their identification in the Court for the first time is groundless. The fact whether they were merely mute spectators or a member of unlawful assembly shall be dealt with in the latter part of this judgment, on the basis of evidence available on record. Thus, it is only the admissibility of evidence with respect to the identification of accused Shyam Lal Sani which is in question.

73. Perusal of record shows that despite the claim of the prosecution regarding the presence of number of police officials on the spot of incident, only PW-15 has identified accused Shyam Lal Saini. Remaining eye-witnesses i.e. PW-4,5,6,10,11,12 &17 have failed to identify all the accused persons except accused No.1 Somnath Bharti. PW-19 has probably failed to identify accused Shyam Lal Saini as his name, though mentioned in testimony of PW-19, but is missing in the portion wherein accused persons have been identified by the



witness in the Court.

74. It is material to note that PW-15 has identified the accused in the Court after a period of almost 7 years from the date of incident. Admittedly, no TIP proceedings were carried out in the present case. Identification of an accused by a witness for the first time in the Court has been consistently held to be evidence of weak character, incapable of forming the base for conviction. It is not the case of the prosecution that PW-15 already knew the accused and hence, there is no reasonable ground for not conducting TIP. Rather it has been stated by PW-19 in his examination-in-chief that he came to know the names of the supporters of accused No.1 at the spot itself. Despite this, their names do not find any mention in DD No.9-A Ex. PW-19/A-4.

75. The fact of non-identification of the accused by the only independent witnesses present at the spot i.e. PW-5 and PW-6 also assumes importance as the police officials identifying them appear to be interested witnesses as the accused persons have proved on record number of complaints made by them to the area SHO/PW-19 and area ACP/PW-15 and non-action thereon. It is because of this reason that *Sarwan Singh's judgment (supra)* which has been relied upon by the prosecution is not applicable to the facts of the present case as the credibility of the police witnesses has not been established beyond.



76. In view of the above discussion, **the evidence of identification of the accused Shyam Lal Saini in the Court by witnesses is not inherently inadmissible but has weak evidentiary value.**

Constitution of Unlawful Assembly:-

77. The next question is regarding the discharge of onus of proof by the prosecution qua constitution of unlawful assembly by the accused persons. This question assumes importance as all the charges have been framed against the accused persons with the aid of Sec 149 IPC.

78. Section 141 of IPC defines an unlawful assembly to be an assembly of five or more persons, where the common object of the persons comprising that assembly is to commit any of the acts enumerated in the five clauses of that section. Before proceeding further, it would be apt to reproduce the definition of Unlawful Assembly:-

'Unlawful Assembly - An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is -

(i) 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

(ii) to resist the execution of any law, or of any legal process; or



(iii) *to commit any mischief or criminal trespass, or other offence; or*

(iv) *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*

(v) *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.'*

79. Only when the assembly fits into any of the above circumstances, it could be construed as unlawful. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141 IPC.

80. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. Thus, it is trite law that not every gathering/ assembly of people can be termed as unlawful assembly unless five or more people have gathered with one of



the common objects as enumerated in Section 141 IPC.

81. Constitution of unlawful assembly is a question of fact and the prosecution is required to prove constitution of unlawful assembly and its common object. Mere presence as a stranger, by passer or gathered on the spot to see quarrel or the incident would not make the person liable for formation of unlawful assembly or liable for the commission of offence.

82. While dealing with the question of formation of unlawful assembly, the Apex Court in the matter of **Masalti v. State of U.P.**¹ has held as under:-

"17. ...What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC. Section 142 provides that 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. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly."

(emphasis supplied)

¹ (1964) SCC OnLine SC 30



83. While dealing with same question, the Hon'ble Supreme Court of India in the matter of **Sherey and others Vs. State of U.P.**, has held as under:-

"4. ...But when there is a general allegation against a large number of persons the Court naturally hesitates to convict all of them on such vague evidence. Therefore we have to find some reasonable circumstance which lends assurance. From that point of view it is safe only to convict the abovementioned nine accused whose presence is not only consistently mentioned from the stage of FIR but also to whom overt acts are attributed..."

(emphasis supplied)

84. Further, the Hon'ble Apex Court in the matter of **Chandra Bihari Gautam & Ors. v. State of Bihar**,² has held as under:-

"6. Section 149 is an exception to the criminal law whereunder a person can be convicted and sentenced for his vicarious liability only on proof of his being a member of the unlawful assembly, sharing the common object, notwithstanding as to whether he had actually participated in the commission of the crime or not. Common object does not require prior concert and a common meeting of minds before the attack. An unlawful object can develop after the accused assembled. The existence of the common object of the unlawful assembly has to be ascertained in the facts and circumstances of each case. It is true that the mere presence of the accused is not sufficient to hold them guilty for the sharing of common object as the prosecution has to further established that they were not mereby-standers but in fact were sharing the common object. When a concerted attack is made by a large number of persons, it is often difficult to determine the actual part played by each of the accused but on that account, for an offence committed by a member of the unlawful assembly in the prosecution of the common object or for an offence which was known to be likely to be committed in prosecution of the common object, persons provide to be members cannot escape the consequences arising from the doing of that act which

² (2002) 9 SCC 208



amounts to an offence. There may not be a common object in a sudden fight but in a planned attack on the victim, the presence of the common object amongst the persons forming the unlawful assembly can be inferred."
(emphasis supplied)

85. Thus, mere presence of the accused persons at the spot will not make the accused persons members of the unlawful assembly. Much less a common object to do a criminal act can be attributed to the accused persons. Same is the ratio of the judgments relied upon by the prosecution.

86. In the present case, all the accused persons except accused Shyam Lal Saini have admitted their presence at the spot on the alleged date and time. However, the burden remains on the prosecution to prove that they were members of the unlawful assembly. The presence of five or more persons at the spot is not disputed. What the prosecution is required to prove is that these persons entertained one of the five common objects enumerated in Section 141 IPC.

87. From the case of the prosecution and allegations made, it is clear that the prosecution does not allege that the assembly of the accused persons was formed with the common objects mentioned in sub-section (1), (2), (4) & (5). Thus, this Court is required to conduct a scrutiny only with respect to the common object mentioned in sub-section (3).

88. The assembly of the accused persons, in the present



case, can be termed as unlawful only if the prosecution is able to establish that the common object of the persons comprising the assembly was to commit any mischief or criminal trespass or other offence. It has to be borne in mind, while dealing with the admitted presence of the accused persons at the spot, that they all are residents of Village-Khirki/Khirki Extension and hence, their presence at the spot is not to be looked with suspicion outrightly. Rather their presence is a natural consequence of the events that took place in their residential area, obviously out of curiosity. Thus, the seemingly innocuous presence of the accused persons at the spot needs to be proved to be tainted with criminality by the prosecution with a heavier responsibility. The accused persons were admittedly unarmed and not carrying any weapons. The only allegation of carrying wooden sticks/*lathis* has been made by the complainant in her application u/s 156(3) Cr.P.C. but the same has remained unproved in view of the non-examination of the complainant in the Court as a witness. Further, PW-17 has stated in his cross-examination that he did not see any of the persons present at the spot carrying any *lathi* or sword or any other weapon.

89. No overt act has been attributed to any of the accused persons except A-1. Though it is not necessary for every member of the unlawful assembly to do some act in pursuance of the common object, but the fact that no overt act has been attributed to anyone but A-1 assumes importance in the facts and



circumstances of the case for determining the very existence of unlawful assembly.

90. The prosecution has also failed to prove the commission of any of the offences by the assembly of the accused persons as discussed in the latter part of this judgment. On the contrary, the accused persons have been able to prove the reasons for their presence at the spot on the alleged date and time. **Hence, this Court is of the opinion that prosecution has failed to prove the constitution of unlawful assembly.**

Identification of the Alleged Victims:-

91. A major focus of the defence, while addressing the final arguments, was on the failure of the prosecution to establish the identity of the alleged victims. It is a matter of record that none of the victims appeared in the witness box and hence, the Court had no opportunity to verify their identity.

92. Perusal of record shows that there is not even a single document in the entire charge-sheet which could have established the identity of the victims. PW-10 W/Ct Kamlesh was amongst the first batch of police official to have reached the spot on receiving the call from Khirki Extension. However, she has stated in her cross-examination that she does not know who are the complainants in this case and she cannot identify them. PW-11 ASI Rajender, another police official, has deposed in his



cross-examination dated 16.02.2019 that even if the video of the spot is shown to him, he cannot identify the African females (alleged victims). PW-15 ACP B.S. Jhakkar has stated in his examination-in-chief that he did not see the identification proof of the African females (alleged victims). It is further pertinent to note that PW-26 ACP Raman Lamba/IO has stated in his cross-examination dated 21.03.2023 that he had taken copy of passport and visa of the complainant during investigation and handed over the same to the second IO. However, the same are admittedly not on record and he further admits not having prepared any seizure memo of the said documents, forcing this Court to doubt if any such documents were ever collected.

93. PW-19 Inspector Vijay Pal, who was posted as SHO Malviya Nagar at the time of incident, has stated in his cross-examination that the fact of nationality of the victims as Ugandan nationals was verified by SI Gopi Ram. However, for reasons best known to the prosecution, SI Gopi Ram has not been examined as a witness by the prosecution.

94. All the Investigating Officers have failed not only in collecting the copy of passports of the alleged victims but also did not make any attempt to verify whether they were actually residing as tenants at the given addresses. The total absence of efforts on the part of investigating agency to put on record any document pertaining to the identity of the alleged victims rather



forces the Court to believe that there is more to hide than to reveal and hence, the shielding of alleged victims from the Court. **These facts, in toto, raise a reasonable doubt on the fact of identity of the alleged victims.**

Delay in Registration of FIR:-

95. One of the arguments raised on behalf of accused persons is that the delay in registration of the present FIR clearly indicates the mala-fide of the investigating agency. Perusal of record shows that the alleged incident took place in the intervening night of 15th-16th January, 2014 whereas the present FIR was registered on 19.01.2014 after passing of order dated 18.01.2014 by the then Ld. MM on an application u/s 156(3) Cr.P.C. filed on 18.01.2014.

96. It is the case of the prosecution that many police officials including senior officers i.e. the area SHO, ACP/DIU South District and ACP Hauz Khas were present at the spot on the date of alleged incident. As per the testimony of PW-19/area SHO, he reached at the spot on receiving DD No.6A at 01:30 AM and all the alleged offences took place in his presence. Though PW-15 ACP B.S. Jhakkar and PW-17 ACP Harpal Singh reached at the spot a little later i.e. at 02:20 AM and 03:20 AM respectively, but some of the offences allegedly did take place in their presence too. However, to the utter surprise of this Court, they all chose not to take any action or initiate any legal



proceedings against the accused persons, for reasons not explained to the Court. No explanation is forthcoming as to why the police officials despite being eye-witnesses to the alleged offences did not register the FIR immediately. On being aware of the alleged commission of cognizable offences, the police officials were duty bound to register FIR but the same was not done.

97. It is further pertinent to note that PW-19 has stated in his cross-examination dated 16.09.2021 that he had not read the complaint u/s 156(3) Cr.P.C. filed by the complainant before submitting the status report in the Court. Hence, the circumstances surrounding the registration of FIR are shady. The manner of filing the status report by PW-19 without going through the contents of the complaint forces this Court to believe that the police officials were indeed using the complainant as a pawn to do their dirty work. Probably this is the reason as to why certain allegations against the accused persons are not recorded in DD no. 9A and have been mentioned for the first time in the complaint/application u/s 156(3) CrPC.

98. In view of the above discussion, prosecution case is further weakened by the unexplained delay in the registration of FIR.

Defence raised by the accused persons:-



99. The crux of the defence raised by the accused persons is that illegal activities of drug-peddling and sex trafficking were prevalent in the area of Khirki Extension and the local residents were aggrieved by the non-action on the part of the police on the said issues and hence, they had approached A-1 for redressal of their grievances as he was the then MLA of the area.

100. To prove their defence, accused Ved Saini and Naresh Saini have examined themselves as witnesses besides summoning other official witnesses to prove various complaints filed by the RWA of Khirki Extension with various authorities. A-1 has also examined many news reporters, news readers, field reporters etc., to prove the videos of clipping of news reports, interviews broad-casted on news channel and a meeting organized by Indo-African Coordination Committee held in Sai Baba Mandir, Khirki Extension.

101. A perusal of the various complaints relied upon by the accused persons shows that the issues of drug peddling and human trafficking by the Africans living in the area of Khirki extension were sought to be redressed by them. All these complaints are prior to the date of alleged incident, thereby corroborating the defence of the accused persons. The fact of receiving of these complaints has also been admitted by PW-19 in his cross-examination dated 16.09.2021.

102. A-1 has also examined a number of news reporters,



journalists and field reporters to prove the news clippings, documentary etc. in support of his defence. The first question that arises is the admissibility of news reports in evidence. Reference to the decision of the Supreme Court in case of **Laxmi Raj Shetty v. State of Tamil Nadu** shall be helpful in this regard. In the said judgment, the Supreme Court has considered the question of admissibility of the news-items appearing in a press report in the newspaper and opined as follows:

“We cannot take judicial notice of the facts stated in a news-item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein. It is now well settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in absence of the maker of the statement appearing in court and deposing to have perceived the fact reported. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible.”

103. In **Mohet Hojai, Son of Shri Thangmai Hojai v. National Investigation Agency** (11 Aug 2023, Gau), it was held as under:

“149. In the case of Jacob Puliyel v. Union of India & Ors., reported in (2022) 3 SCR 471, the Hon’ble Supreme Court held that Courts cannot take judicial notice of facts stated in a news item published in a newspaper. A statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence, unless proved by the maker of the statement appearing in the



Court and deposing to have perceived the fact reported. 150. We feel that the same analogy would apply to a report telecasted in a TV channel. Thus, the CDs of news clipping reports sought to be proved in the testimony of Hiteswar Medhi (PW-27) and Caushiq Kashyap Bezbaruah (PW-70) were inadmissible as the same tantamount to hearsay evidence. That apart, the CDs were in form of secondary evidence and absence of certificate under Section 65B of the Evidence Act ruled out their production in evidence.”

104. It is clear from the said judgments that news reports are hearsay evidence but can be proved by examining the news reporter who has actually received/perceived the information. In the present case, though A-1 has duly examined the field reporters and news readers as DW-20, DW-21, DW-22, DW-23 and DW-24 to prove the news clippings, but there is no certificate u/s 65-B Evidence Act along with these clippings. Hence, these reports/videos are inadmissible in evidence. However, the same does not diminish **the defence of the accused persons which otherwise stands proved from other ocular and documentary evidence.**

105. The proving of the defence of the accused persons creates a dent in the prosecution case as the vested interest of the police has come on record. The accused persons are also able to reasonably explain their presence on the spot.

Liability for separate offences:-

106. It is now to be determined whether any offence, as charged, was committed by any or all of the accused persons



while being present at the spot in response to the complaints pertaining to drug trafficking and drug peddling. Let us now deal with the liability of the accused persons for all the charges separately. It is pertinent to note that the accused persons have been charged for the offences with the aid of Section 149 IPC on the principle of vicarious liability. However, it has already been observed that the prosecution has failed to prove the constitution of unlawful assembly. Hence, for determining the criminal liability of the accused persons, aid of Section 149 IPC cannot be taken and the same shall be determined on individual basis.

(I) Charge u/s 452 read with section 149 of the Indian Penal Code (IPC)

“That, in the intervening night of 15/16-01-2014 at around 02:00 A.M in Khirki Extension Village, Malviya Nagar, New Delhi, within the jurisdiction of PS Malviya Nagar, you all were members of an unlawful assembly, some of the members of which committed the offence of house trespass in House No. S-9, Khirki Extension, Malviya Nagar, New Delhi after making the preparation for causing hurt to the residents of that house namely, D, S-3 and S-4 in prosecution of the common object of that assembly with the common object of committing the offence of house trespass which you all knew it to be committed in prosecution of such object and all of you, are guilty of that offence punishable under 452 read with section 149 of the Indian Penal Code (IPC), and within my cognizance.”

107. Charge u/s 452 r/w sec 149 IPC has been framed on the basis of allegations made in the application u/s 156(3) CrPC and statement of victims ‘D’, S-3 and S-4 recorded u/s 164 Cr.P.C. which are Ex.PW-26/D, Ex.PW-26/L and Ex.PW-26/Q in which



they have stated that mob of 8-10 persons led by accused No.1 forcefully entered into their house after breaking the window, molested them by inappropriately touching them. Further, eye-witnesses i.e. PW-10 W/CT Kamlesh, PW-15 ACP BS Jhakar, PW-17 ACP Harpal Singh and PW-19 Inspector Vijay Pal have also deposed to this effect to prove the above-mentioned incidents.

108. As per the case of the prosecution, accused persons had criminally trespassed into S-9, Khirki Extension and committed the above-mentioned offence. However, there are material contradictions in the testimony of the eye-witnesses qua the said incident. PW-19 Inspector Vijay Pal has deposed that accused Aditya came at the spot in WagonR car and led accused No.1 and his supporters to house No.S-9, Khirki Extension where most of them entered into the house and started thumping the doors. On the contrary, in DD No.9A Ex.PW-19/A4 recorded and proved by the same witness, it is stated that ‘the police kept them (the accused persons) out of the above said house and it was informed to him that neither the law permits to enter and search’.

109. Further, PW-10 and PW-15 have not stated in their testimonies that accused persons entered the house of the victims. PW-15 has rather clearly stated in his examination-in-chief that the accused persons were somehow controlled and not allowed to enter S-9. Without entering the house of the alleged victims, the offence of house trespass can certainly not be committed.



110. The statement of the victims recorded u/s 164 Cr.P.C., in which allegations qua commission of offence punishable u/s 452 IPC have been made, are inadmissible in evidence, as already discussed in para no. 69. These infirmities make the case of the prosecution unreliable.

111. Thus, there is no evidence on record to show that the accused persons criminally trespassed into the house of the victims. Hence, the said incident remains unproved.

(II) Charge u/s 323 read with section 149 of the Indian Penal Code (IPC)

“Secondly, in the intervening night of 15/16-01-2014 at around 02:00 A.M in Khirki Extension Village, Malviya Nagar, New Delhi, within the jurisdiction of PS Malviya Nagar, you all were members of an unlawful assembly, some of the members of which committed the offence of causing simple hurt to D, S3, S4, N, A@J and S2 in prosecution of the common object of that assembly with the common object of committing the offence of simple hurt which you all knew it to be committed in prosecution of such object and all of you, are therefore guilty that offence punishable under 323 read with section 149 of IPC, and within my cognizance.”

112. The allegations qua this offence have only been made in the statement of victims D, S-2, S-3, S-4, A@J and N recorded u/s 164 Cr.P.C. At the cost of repetition, it is stated that these statements are inadmissible in evidence as none of these witnesses have been examined in the Court. The remaining eye-witnesses have not made even any whisper regarding inflicting of injuries upon these victims by any of the accused persons. Mere



proving of MLC Ex. PW-1/A, Ex. PW-1/B, Ex. PW-25/A to Ex. PW-25/D does not prove the commission of the offence, in the absence of any other evidence.

113. Further, perusal of MLC Ex.PW-25/A to Ex.PW-25/D shows that it has been noted therein that the victims were brought by SI SS Yadav for formal examination and consumption of drugs. Rather all the MLCs specifically note ‘no physical assault’. Thus, there are no allegations of infliction of any injury upon them at the instance of the accused person.

114. No charge has been framed against the accused persons with respect to the injury sustained by victim S-1 as mentioned in her MLC Ex.PW-1/A and hence, the same cannot be considered in evidence against the accused persons. Even otherwise, mere proving of the nature of injury sustained by victim S-1 cannot prove that the same was caused at the behest of any of the accused persons.

115. Similarly, MLC Ex.PW-1/B of victim S-2 merely mentions the alleged history as ‘assault’ without naming the accused persons. Further, she was medically examined on 18.01.2014 at 08:03 PM i.e. almost after two days of the incident which raises suspicion as to whether the injuries mentioned in the MLC are even connected to the incident in question. Similarly, complainant D was medically examined vide MLC Ex.PW-26/F



on 20.01.2014 i.e. after 4 days of the incident and without furnishing any reason for this delay.

116. In view thereof, the prosecution has miserably failed to prove the charge for the offence punishable u/s 323 r/w Section 149 IPC against the accused persons.

(III) Charge u/s 354/354C read with Section 149 of the Indian Penal Code (IPC)

“Thirdly, in the intervening night of 15/16-01-2014 at around 02:00 A.M in Khirki Extension Village, Malviya Nagar, New Delhi, within the jurisdiction of PS Malviya Nagar, you all were members of an unlawful assembly, some of the members of which committed the offence of assault with intention to outrage the modesty of D, S-4, S-2, M and A@J and voyeurism in prosecution of the common object of that assembly with the common object of committing the offence of assaulting the modesty and voyeurism of the women which you all knew it to be committed in prosecution of such object and all of you, are therefore guilty that offence punishable under 354/354C read with section 149 of IPC, and within my cognizance.”

117. The charge under these Sections pertains to the victims of all the three different incidents i.e. S-2 (victim of 1st incident); M and A@J (victims of 2nd incident); D and S-4 (victims of 3rd incident).

118. With respect to the victim S-2, the allegations can only be found in the statements u/s 164 Cr.P.C. of S-1 and S-2 which are Ex.PW-26/M and Ex.PW-26/N respectively. In statement Ex.PW-26/M, it is stated that the victim S-2 was slapped and



kicked in her back by accused No.1 Somnath Bharti. In statement Ex.PW-26/N, the victim S-2 has herself stated that she was restrained from attending the nature's call by accused No.1 Somnath Bharti who asked him to urinate in front of the mob. However, these statements are inadmissible in evidence as already discussed above. Further, no allegations at all qua these offences have been made with respect to victim S-2 by other witnesses/police officials present at the spot. Thus, there is no evidence on record to prove these allegations.

119. The victims of the 2nd incident i.e. M and A@J have stated in their statements u/s 164 Cr.P.C. Ex.PW-26/O and Ex.PW-26/U that their taxi/Ecco car was stopped en-route by a mob and the men in the mob did not allow them to go for urination despite request and rather asked them to urinate there itself due to which victim A@J was forced to urinate there itself before the public. However, as these victims were not examined in Court, their statements u/s 164 Cr.P.C are inadmissible in evidence.

120. The other evidence that has been produced by the prosecution to prove this incident is the testimony of the eye-witnesses i.e. PW-10 W/CT Kamlesh, PW-15 ACP Jhakhar and PW-19 Inspector Vijay Pal. From the line of cross-examination of these witnesses, it is clear that the accused persons have not denied the presence of Ecco car at the spot. Rather, their defence is that the Ugandan women sitting in that car were indulged in drug trafficking and other immoral activities and hence, demand was



being raised by the accused persons on behalf of local residents of Khirki Extension to search these Ugandan women for narcotic substances.

121. It is the testimony of PW-10, PW-15 and PW-19 which needs to be scrutinised in detail to evaluate as to whether their testimony can be relied upon for proving the incident in question, as they are the only eye-witnesses who have been examined by the prosecution. PW-17 admittedly came to the spot later on but had seen the Ecco car at the spot.

122. Qua this incident, PW-10 had deposed that the Ecco car was stopped by the supporters of accused No.1 and that accused No.1 asked the SHO/PW-19 to frisk and search them for drugs. She has also alleged that accused No.1 was demanding the search in front of camera leading to altercation between him and PW-15 and that the victims sitting in the Ecco car were forced to urinate near the car itself as accused No.1 and his supporters did not allow them to move from the car for urination. During her cross-examination, she stated that she is not aware if accused No.1 had made call to 100 number demanding more female police. However, the fact that accused no. 1 was demanding for ladies police is clearly mentioned in Delhi Police Control Room Form-I Ex.PW-14/1. The said form has been proved by prosecution witness/PW-14 himself. Her evasive reply is also in contradiction to the testimony of PW-5 who has stated in his examination-in-chief that accused No.1 was asking for female cops. This Court is of the view that PW-5 is more



reliable being an independent witness. On the other hand, PW-10 has much to hide in order to justify the conduct of the police authorities regarding non-action on the complaints of the local residents regarding drug peddling and human trafficking, the same having been proved by the accused persons by examining themselves as witnesses in defence as well as by proving complaints Ex.DW-3/1, Ex.DW-3/2 and Ex.DW-3/3. Further, a large number of police force was admittedly present at the spot on the day of incident. Hence, it is quite improbable to believe that the Ugandan women sitting in the Ecco car were successfully stopped by the accused persons from moving out of the car for relieving themselves. It is further pertinent to note that the only independent witnesses present on the spot i.e. PW-5 and PW-6 have not deposed anything regarding the fact that women were forced to urinate at the spot itself. These witnesses, being a part of news industry, could not have left out such an important piece of information that too pertaining to the then Law Minister of Delhi. This allegation, though sensitive, would have been a sensational news for the media houses as the Law Minister, expected to protect the legal rights of the people was himself being a party to the violation of these rights in the most inhumane manner.

123. For the same reasons, the testimony of PW-15 and PW-19 also falls short of the required standard of proof to prove the incident of forced urination by the alleged victims at the spot. Moreover, as per the cross-examination of PW-19, he got the



information about the desire of Ugandan women to relieve themselves through someone whose name he does not remember. This is all the more reason to doubt the occurrence of the incident, as alleged. It is strange to note that almost all the police officials who have been examined as prosecution witness, have stated that the Ugandan women requested the police and the accused persons to let them go for answering nature's call. However, none of the police witness has come forward to take the responsibility that it was him/her to whom the said request was made.

124. It is also pertinent to note that nothing about the said incident has not been mentioned in DD No.9A dated 16.01.2014 recorded by PW-19 himself, which is the most contemporaneous document in relation to the alleged incident.

125. It is also the case of prosecution that the modesty of victims D and S-4 was also outraged by the accused persons in pursuance of the common object. However, allegations to this effect made by the victims themselves in their statements u/s 164 Cr.P.C. are inadmissible in evidence. No such allegations have been made by the remaining eye-witnesses/police officials. Rather PW-15 ACP BS Jhakkar has categorically stated in his examination-in-chief that the accused persons were somehow controlled and not allowed to enter S-9. Without entering into the house, the alleged incident cannot possibly have taken place as the victims were present inside the house and the accused persons did not enter the house.



126. In view of the above discussion, this Court is of the opinion that the prosecution has miserably failed to prove the charges u/s 354/354C r/w section 149 IPC against the accused persons.

(IV) Charge u/s 153A read with Section 149 of the Indian Penal Code (IPC)

“Fourthly, on the aforesaid date, time and place, in Khirki Extension Village, Malviya Nagar, New Delhi, within the jurisdiction of PS Malviya Nagar, you all were members of an unlawful assembly, some of the members of which committed the offence of promoting enmity between different groups on the ground of race and done acts prejudicial to the maintenance of harmony by calling the victims as Blacks and words like “the victims are Blacks and you all do not want them to stay there” and by assaulting only because they are persons of foreign origins in prosecution of the common object of that assembly with the common object of offence of promoting enmity, between different groups, which you all knew it to be committed in prosecution of such object and all of you, are therefore guilty of that offence punishable under 153A read with section 149 of the Indian Penal Code (IPC), and within my cognizance.”

127. The allegations qua this offence have been made both by the alleged victims and the other eye-witnesses. However, as already discussed above, the allegations made by the victim in their statement u/s 164 Cr.P.C. are inadmissible in evidence. No such allegations have been made by PW-10, PW-11, PW-12, PW-15 and PW-17 despite they being the eye-witnesses of the incident in question.

128. PW-19 Inspector Vijay Pal has made the allegation that



a vehicle coming from the side of Select City Mall, Saket in which three trans-gender were sitting was forcibly stopped and they were asked “*tum ilake mein gandagi fela rahi ho, iss ilake ko chhod kar chale jao, nahi toh tumhare liye bura hoga*”. However, he has neither named the person who stopped the vehicle nor these trans-genders have been examined as witnesses in the Court nor any charge qua this incident has been framed. Apart from this, no other allegations have been made against any of the accused persons qua this offence. As the prosecution has failed to prove that the accused persons uttered the words in dispute, no question arises for this Court to delve into the discussion whether the uttering of those words would have constituted an offence u/s 153A IPC. Hence, *Amish Devgan’s judgment (supra)* is not applicable to the facts of the present case.

129. It is further pertinent to note that sanction u/s 196 CrPC is required for taking cognizance of offence punishable u/s 153-A IPC. In the present case, the prosecution is relying upon sanction Ex.PW-31/A. Perusal of cross-examination of PW-31 shows that he neither remembers if the draft charge-sheet was prepared nor the fact that CDs pertaining to the case were placed before him or not, at the time of giving sanction. This casts a reasonable doubt on the manner of grant of sanction. It appears the sanction suffers from the vice of non-application of mind and hence, can be termed as invalid. Hence, the accused persons are entitled to be acquitted u/s 153A r/w Section 149 IPC.



(V) Charge u/s 509 read with Section 149 of the Indian Penal Code (IPC)

Fifthly, on the aforesaid date, time and place, in Khirki Extension Village, Malviya Nagar, New Delhi, within the jurisdiction of PS Malviya Nagar, you all were members of an unlawful assembly, some of the members of which committed the offence of uttering words and gestures intending to insult the modesty of complainant D, N and S4 in prosecution of the common object of that assembly with the common object of committing the offence of assaulting the modesty of women which you all knew it to be committed in prosecution of such object and all of you, are therefore guilty of that offence punishable under 509 read with section 149 of the Indian Penal Code (IPC), and within my cognizance.

130. Allegations which form the basis for framing charge for this offence are that the accused persons insisted for search and frisking of Ugandan women in front of camera without regard to their modesty and referred them as ‘prostitutes’.

131. The allegations made by the alleged victims in their statements u/s 164 CrPC are inadmissible in evidence, as already discussed above. No allegation of calling the alleged victims as prostitutes has been made by any of the prosecution witnesses.

132. Apart from this, the police witnesses i.e. PW-10, PW-15, PW-17 and PW-19 have deposed that accused no. 1 and his supporters were repeatedly asking for conducting the search of the alleged victims in open and in front of the camera. The question is whether the consistent testimony of these witnesses is



sufficient to discharge the burden of proof placed upon the prosecution. The veracity of this allegation has to be adjudged in light of the fact that PW-5 has stated in his examination-in-chief that accused No.1 was asking for female cops. This fact is also clearly mentioned in Delhi Police Control Room Form-I Ex.PW-14/1. When the demand for female police made by accused no. 1 stands established from oral as well as documentary evidence, there remains little room for believing the version of the prosecution. When accused no. 1 himself made efforts for ensuring the presence of female cops at the spot, there appears hardly any strength in the case put forth by the prosecution. Further, it is material to note that neither any of the independent witnesses present at the spot has made this allegation nor anything as such has been captured in the video recordings. At this stage, it is pertinent to note that PW-15 ACP Jhakkar has stated in his cross-examination that the entire incident has been recorded in the mobile phone cameras by the police officials. However, no such recordings have been brought on record. Had any such recordings been produced in the Court, the same would have been the best evidence to prove the case of the prosecution. Since the recording is stated to have been made by the police officials, the same could have been easily procured by the prosecution. There is no explanation as to why the prosecution has not produced the same. This raises an adverse inference against the prosecution (reliance placed upon *Tomaso Bruno's Case*).



133. Hence, this Court is of the opinion that prosecution has miserably failed to prove the charge u/s 509 r/w section 149 IPC against the accused persons.

(VI) Charge u/s 506 read with section 149 of the Indian Penal Code (IPC)

“Sixthly, on the aforesaid date, time and place, in Khirki Extension Village, Malviya Nagar, New Delhi, within the jurisdiction of PS Malviya Nagar, you all were members of an unlawful assembly, some of the members of which committed the offence of criminal intimidation by threatening complainant D to kill her in furtherance of common object of that assembly with the common object of committing the offence of criminal intimidation which you all knew it to be committed in prosecution of such object and all of you, are therefore guilty of that offence punishable under 506 read with section 149 of the Indian Penal Code (IPC), and within my cognizance.”

134. The victim D would have been the best witness to prove the allegations qua this offence, however, she has failed to appear in the Court for her testimony. In the absence of her examination, her statement u/s 164 Cr.P.C. is inadmissible in her evidence. No allegation of any such threat has been made by any other witness. Hence, the prosecution has failed to prove this incident.

(VII) Charge u/s 342 read with section 149 of the Indian Penal Code (IPC)

“Seventhly, on the aforesaid date, time and place, in Khirki Extension Village, Malviya Nagar, New Delhi, within the jurisdiction of PS Malviya Nagar, you all were members of an unlawful assembly, some of the



members of which committed the offence of wrongful confinement by confining the vehicle make Ecco Car bearing registration number DL3CB2984 in which the victims N, M, A@J, N@P and further confining the victims S-1 and S-2 and other victims in prosecution of the common object of that assembly with the common object of committing the offence of wrongful confinement which you all knew it to be committed in prosecution of such object and all of you, are therefore guilty of that offence punishable under 342 read with section 149 of IPC, and within my cognizance.”

135. Charge under these sections has been framed with respect to the victims of 1st and 2nd incident.

136. With respect to the assault on victims of 1st incident i.e. S-1 and S-2, there are two eye-witnesses only i.e. PW-11 and PW-12, who were deputed on PCR Van E-16 on the date of incident. Remaining witnesses had come to the spot later on. Their testimony has to be analyzed with caution as they both being police officials have an inherent prejudice to support the case of the prosecution.

137. These witnesses have deposed that they followed the car of accused No.1 in their PCR van and stopped at Sai Baba Mandir in Khirki Extension. It is further deposed that accused No.1 asked his associates to call two Negro ladies upon which his supporters made the two ladies sit in the PCR van. Perusal of their testimonies shows that both of them have been able to identify only accused No.1 Somnath Bharti and have clearly stated that they cannot identify any other accused/ alleged supporters of accused No.1.



None of them have deposed in their examination-in-chief regarding use of force upon these two victims at the instance of accused No.1 or his associates. Rather the use of force by the accused persons was stated for the first time in the cross-examination by PW-11 when he was asked as to why he did not intervene as a Police Officer. It appears that this allegation was made by the witness, probably to justify his stance of not interrupting in between.

138. It is further pertinent to note that PW-11 has clearly stated in his cross-examination dated 16.02.2019 that he cannot identify the victims and supporters of A- 1 even if the video of the spot is shown to him. PW-11 has further stated in his cross-examination dated 16.02.2019 that these two women were not indecently treated. These victims were the best persons to tell whether they were wrongfully restrained but they have not come before the Court to depose. For the reasons discussed above, this Court is of the opinion that the testimony of PW-11 is insufficient to prove the incident in question.

139. Similarly, PW-12 has also expressed his inability to identify either the persons accompany A-1 or the victims, in his cross-examination dated 13.02.2020. The witness has further stated that he opened the door of the vehicle for these women. This certainly creates an impression that no force was being used upon these women by any of the accused persons else PW-12, being a police officer, would definitely not have assisted the accused persons by opening the door. Further, in his examination-in-chief,



PW-12 has stated that ‘3-4 persons who came with Mr. Somnath Bharti brought two Nigerian ladies’. Thus, no direct or indirect allegations have been levelled against A-1 by this witness and the witness admittedly fails to identify those 3-4 persons.

140. These two victims would have been the best persons to tell whether they were sitting in the van against their wishes or not but they have not been examined. Their statements were recorded u/s 164 Cr.P.C. and same have been exhibited as Ex.PW-26/M and Ex.PW-26/N. They both have stated in their statement that they were forcefully pulled out of the taxi in which they were traveling near Sai Baba Mandir by a mob led by accused No.1. However, these statements are inadmissible in evidence. The prosecution has relied upon judgment “*State through Inspector of Police Vs. Laly*” to support the argument that conviction can be sustained even if the original complainant has not been examined in the Court. In the said judgment, the accused was convicted u/s 302 IPC based on the deposition of eye-witness who was found to be credible. However, in the present case, though eye-witnesses have been examined by the prosecution but material contradictions have been noted in their testimonies, thereby making them unworthy of credit.

141. PW-10 had reached the spot at around 01:30 AM and had found the alleged two victims sitting in the PCR van. However, she has not deposed anything qua their restraintment at the instance of accused No.1.



142. The prosecution further seeks to rely upon the examination-in-chief of PW-19 wherein he has stated that he was informed by PW-11 that two African ladies were forcibly taken out from some vehicle and were made to sit in PCR van. However, this portion of testimony of PW-19 is hearsay in nature and hence, inadmissible. Further, PW-11 has not deposed in the Court to this effect.

143. Statement of victims of 2nd incident i.e. 'M', 'N', 'N@P' and 'A@J' were also recorded u/s 164 Cr.P.C. which are Ex.PW-26/O, Ex.PW-26/R, Ex.PW-26/U and Ex.PW-26/V. They have stated in their statements that they all were coming together in a taxi which was stopped by a mob led by accused No.1. Racial comments were hurled upon them and they were made to sit in the car for about two hours and were not even allowed to step out of the car for urination. At the cost of repetition, it is again reiterated that these statements are inadmissible in evidence.

144. The witnesses of this incidents are stated to be PW-10 and PW-19. PW-15 and PW-17 came to the spot later on and found the Ecco car at the spot. The testimonies of these witnesses regarding this incident does not inspire confidence because their over-zealousness is apparent from the extent of allegations, contrary to record, made by them specifically against A-1. For instance, the claim of the witnesses that A-1 was insisting for personal search of these women in front of camera is belied by the fact that it was A-1 who was repeatedly asking for more lady



police. Similarly, the allegations pertaining to the incident of forced urination in public has failed to achieve the trust of the Court for reasons already discussed while dealing with the charge u/s 354/354C IPC. For these reasons, this Court has hesitation in trusting upon the testimony of PW-10 and PW-19.

145. It is further pertinent to note that the only independent witnesses present on the spot i.e. PW-5 and PW-6 have specifically stated in their cross-examination that they have not stated the fact ‘accused Somnath Bharti and his supporters had stopped one Ecco car’ in their statement u/s 161 Cr.P.C. to the police implying thereby that it is the police officials who are trying to build up a case on these lines.

146. The videos relied upon by the prosecution have also been played and seen in the Court. None of the accused persons can be seen using force or manhandling any of the victims.

147. Hence, in view of the above discussion, this Court is of the opinion that the prosecution has failed to prove the commission of offence punishable u/s 342 IPC r/w 149 IPC by the accused persons.

(VIII) Charge u/s 143/147 read with section 149 of the Indian Penal Code (IPC)

“Eightly, on the aforesaid date, time and place, in Khirki Extension Village, Malviya Nagar, New Delhi, within the jurisdiction of PS Malviya Nagar, you all were members of an unlawful assembly, the common



object of which was to commit the offences mentioned above and committed the offence of rioting and you all thereby committed an offence punishable under 143/147 of IPC, read with section 149 of IPC, and within my cognizance.”

148. The existence of an unlawful assembly is a necessary postulate for invoking Section 147 and 148 of IPC. Where the existence of such an unlawful assembly is not proved, the conviction under Section 147 and 148 of IPC cannot be recorded or sustained. The failure of the prosecution to show that the assembly was unlawful must necessarily result in the failure of charge u/s 147 and 148 IPC.

149. In the present case, as has already been discussed, the prosecution has failed to prove the constitution of unlawful assembly. In view thereof, charges u/s 143/147 r/w section 149 IPC are bound to fail.

(IX) Charge u/s 186 read with section 149 of the Indian Penal Code (IPC)

“Ninthly, on the aforesaid date, time and place, in Khirki Extension Village, Malviya Nagar, New Delhi, within the jurisdiction of PS Malviya Nagar, you all were members of an unlawful assembly, some of the members of which committed the offence of obstructing the public servants i.e. police personals in discharging their duties which you all knew it to be committed in prosecution of such object and all of you, are therefore guilty of that offence punishable under 186 read with section 149 of IPC, and within my cognizance.”

150. The essential ingredients to constitute the offence u/s 186 IPC are as under:-



- (a) There must be an obstruction.
- (b) The obstruction must be by the accused.
- (c) The obstruction must be voluntary.
- (d) The obstruction must be of a public servant.
- (e) The obstruction must in discharge of public functions by the public servant.

151. To initiate prosecution under this section, it is necessary that a complaint is filed u/s 195(1)(a) Cr.P.C. is filed by the concerned public servant or his superior officer to whom he is administratively subordinate. In the present case, the prosecution has relied upon complaint Ex.PW-29/A. Accordingly, the said requirement stands complied with.

152. The charge u/s 186 IPC stems from the general allegations that the accused persons obstructed the police officials in discharge of their public function. The manner of obstruction has not been specified in the charge. Strangely, the case of the prosecution does not reveal the public function which was sought to be discharged by the public servants/ police officials in which they were obstructed by the accused persons. All the police officials except PW-11 and PW-12 reached at the spot on receiving a call. The only allegation that can probably come under the purview of u/s 186 IPC with respect to PW-11 and PW-12 is that they were asked by A-1 to follow his car. However, as per the case of the prosecution itself, they followed the car of A-1 only after seeking instruction/permission from the



control room and the said fact is apparent from the testimony of these two witnesses. Thus, obstruction, if any, cannot be attributed to the accused persons.

153. With respect to the remaining police officials present at the spot, it is not the case of the prosecution that they were present there to discharge any public function which was obstructed by the accused. Rather the case of the prosecution is that accused persons went on the spot and committed numerous offences and they were being stopped from committing offences by the police officials.

154. Ld. SPP for the State has relied upon *Devendra Kumar's judgment (supra)* wherein it has been observed that the expression "obstruction" used in Section 186 IPC is not confined to physical obstruction and neither there is any need of use of criminal force nor the act need to be a violent one. It has further been held in the said judgment that any act of causing impediment by unlawfully preventing public servant in discharge of his functions would be enough to attract Section 186 IPC. In the present case, PW-5 has stated in his testimony that altercation took place between ACP and A-1 regarding the action to be taken. However, neither there are any allegations of use of any kind of force by the accused persons on the police officials nor anything as such can be seen in the CCTV footage of the incident. Verbal demands were indeed made by the accused



persons to conduct search of the foreign nationals. In the opinion of this Court, the same does not fall within the purview of Section 186 IPC as no act was being done by the police officials in which they were disrupted and rather, demand for action on their part was being made by the accused persons. Though use of physical force is not necessary for a conviction under Section 186 IPC, but the obstruction must transcend mere verbal threats or passive resistance. There must be an overt act or a credible threat capable of preventing a public servant from executing their duties. Same appears to be missing in the present case.

155. In view thereof, this Court is of the opinion that the prosecution has failed to prove the commission of offence punishable u/s 186 IPC.

(X) Charge u/s 427 read with section 149 of the Indian Penal Code (IPC)

“Tenthly, on the aforesaid date and time at House No. S-9, Khirki Extension Village, Malviya Nagar, New Delhi, within the jurisdiction of PS Malviya Nagar, you all were members of an unlawful assembly, some of the members of which committed the offence of mischief by breaking the iron gate of that house and other articles which you all knew it to be committed in prosecution of such object and all of you, are therefore guilty of that offence punishable under 427 read with section 149 of IPC, and within my cognizance.”

156. The allegations qua this offence are that the accused persons broke the window and gate of house S-9 to gain entry and also torn the return ticket of victim D. However, the said ticket of victim ‘D’ allegedly torn by accused persons has not been seized.



Even its photographs are not on record. Further, this allegation has been made only by victim D in her statement u/s 164 Cr.P.C. which is inadmissible in her evidence. None other witness has deposed qua this allegation.

157. Further, the broken iron angle Ex.PW-20/X stated to have been broken by the accused persons was produced in the Court in unsealed condition as observed in the testimony of PW-20. The absence of seal on the iron angle raises cloud of suspicion on the seizure itself. Ld. SPP for the State has argued that no cross-examination has been done on behalf of any of the accused persons, the same cannot be questioned now. Reliance has been placed upon *Mahavir Singh's judgment & Balu Sudam's judgment (supra)*. Perusal of record shows that questions qua seal were put to PW-20 when the case property i.e. the iron angle was produced in the Court for the first time. PW-22 was also cross-examined in detail with respect to the seizure memo of the iron angle. Hence, in the opinion of this Court, the above mentioned judgments are not applicable to the facts of the present case. Further, while dealing with the charge u/s 452 r/w Section 149 IPC, it has already been observed that the prosecution has failed to prove that any of the accused persons entered into the house of the victim.

158. These infirmities make the case of the prosecution unreliable. Hence, accused persons are entitled to be acquitted u/s 427 r/w section 149 IPC.



Conclusion:

159. Accordingly, this court is of the opinion that prosecution has failed to prove its case beyond reasonable doubt on account of following discrepancies:-

- (a) Statement of victims u/s 164 Cr.P.C. are inadmissible in evidence as they have not come before the Court to depose.
- (b) The prosecution has not been able to establish the identity of the alleged victims beyond reasonable doubt.
- (c) There is unexplained delay in registration of present FIR thereby weakening the case of the prosecution.
- (d) Material contradictions have been noted in the testimony of eye-witnesses.
- (e) The prosecution has failed to prove the constitution of unlawful assembly.

160. Hence, this Court hereby accords the benefit of doubt to the accused persons for the offences punishable u/s 323/354/354C/153A/147/143/152/186/506/509/427/342 IPC read with Section 149 IPC and hold the accused persons not guilty of commission of said offences. Accused persons namely Somnath Bharti, Aditya, Badlu Khan, Badal Khan@Nafees Ahmad, Pawan Saini, Naresh Saini, Dharamchand Rana, Ved Saini, Rajesh Saini@ Bittoo, Hemant Saini, Sanjeev Saini, Vijay Saini, Devender Chauhan, Anil Saini, Inder Saini and Shyamlal Saini are acquitted of the offences u/s 323/354/354C/153A/147/143/152/186/506/509/427/342 IPC read with Section 149 IPC.



File be consigned to record room after due compliance.

**Announced in the open
Court on 24.04.2026**

**(NEHA MITTAL)
ACJM-03/RADC
NEW DELHI
24.04.2026**