

IN THE COURT OF SH. PARVEEN SINGH,
ADDL. SESSIONS JUDGE – 03 (NORTH EAST DISTRICT)
KARKARDOOMA COURT : DELHI.

SC No. 26/2021

FIR No. 50/2020

PS Gokalpuri

U/s. 147/148/149/381/427/436/188 IPC

State

Versus

1. Deepak,
s/o Sh. Ganga Ram,
r/o E-73/R-63, A Block,
Gokal Puri, Delhi.

2. Prince,
s/o Sh. Mahender Singh,
r/o C-33, Gali No. 6,
Bhagirathi Vihar, Delhi.

3. Shiv,
s/o Sh. Raju,
r/o 442, Gali No. 6,
C Block, Indra Puri,
Ghaziabad, U.P.

*(proceedings abated vide
order dated 18.12.2024)*

...Accused

Date of Committal	:	15.01.2021.
Date of Arguments	:	15.12.2025.
Date of Pronouncement	:	18.12.2025.

(Section 481 BNSS complied with by all the accused)

JUDGMENT

Facts of Prosecution Case as per Charge Sheet

1.1 Brief facts as per the case of the prosecution are, that a DD No.126A was recorded in PS Gokal Puri on 24.02.2020 at 07:49:53 p.m. The information recorded was to the effect that at H. No. 1/20, Gokal Puri, Main Road, Sabha pur, Jannati Masjid, Nr. State Bank, some people were breaking the mosque and 15-20 people were closeted inside a room. The DD was assigned to SI Manvir. He reached the informed place where SHO, with other staff, was already present. Fire brigade vehicle had also reached which was dowsing the fire. In different streets around the mosque, 400-500 people, who were armed with dandas and TMT bars, had gathered and were indulging in vandalism and arson and on this endorsement of ASI Manvir, the present FIR u/s 147/148/149/436/427 IPC was registered.

1.2 During the investigation, on 09.03.2020, accused of this case namely Deepak, Prince and Shiv (since expired) were arrested. They were arrested when SI Dhirender was out in field investigating this case and met HC Mahesh. HC Mahesh informed him that somebody had recorded a video of the incident of arson at Jannati Mosque. This video was given to him by a secret informer and he informed that the persons involved in this case were sitting in A Block park. Thereafter, accused were arrested from A Block park. The said

recording in two CDs was seized by the IO on 10.03.2020 from HC Mahesh, who had also given certificate u/s 65B of Evidence Act.

1.3 Thereafter, three more complaints were attached in this FIR. One was lodged by one Mohd. Tohid. The second was lodged by Rashid Kamruddin and the third was signed by 15 persons. As per the complaint of Mohd. Tohid, he was an Imam at Jannati Masjid and was residing in a room in that masjid. During the riots of 25.02.2020, a loot of Rs.45,000/- had happened in his room and thereafter, his room was set afire. His motorcycle had also been burnt down. Mohd. Rashid stated that he was Naib Imam of the Jannati mosque and was residing in that mosque. On 24.02.2020, some rioters started pelting stones upon the mosque and being scared, they fled from mosque in order to save their lives. Later on, he came to know that mosque had been looted and set afire. In that loot, Rs.75,000/- cash and jewelry worth Rs.1.40 lacs belonging to him had been looted. The third complaint was filed by the members of management committee of Jannati Masjid regarding damage and arson at the mosque on 25.02.2020. During the investigation, case property was collected and photographs of the burnt property were also taken.

1.4 First charge sheet was filed on 06.05.2020. Thereafter, first supplementary charge sheet was filed on 15.09.2021. As per the first supplementary charge sheet, CCTV footage from SBI had been collected on 17.07.2020 which was provided by manager of the bank

in a pen drive with certificate u/s 65B of Evidence Act. Another complaint made by one Aizaz Fatima had been attached in this FIR. She had alleged that on 24.02.2020 when the riots started, she locked her house no. A-472, Gokal Puri, Delhi and went to a safe place. Thereafter, the rioters vandalized the gate of her house and carried away a 10 x 4 feet steel railing.

1.5 The mobile phone of Deepak was seized and sent to FSL. The result of the examination of his phone was received. PCR callers Anwar Ahmed and Jamil Ahmed were examined. Delhi fire service report dated 25.02.2020 and 26.02.2020 regarding Jannati Masjid had been collected and placed in file. A request was made for a complaint u/s 195 Cr.P.C.

1.6 In the second supplementary charge sheet, it was submitted the the pendrive containing CCTV footage was sent to FSL and result was received. Also the mobile phone of accused Deepak had been sent to FSL Rohini for forensic examination and its result had been received. The copy of order imposing section 144 Cr.P.C was also collected and hence with these evidences, second supplementary was filed.

Charges

2.1 Thereafter, charges u/s 147/148 r/w section 149 IPC; u/s 380 r/w 149 IPC and u/s 427/436 r/w section 149 IPC were framed against the accused on 23.02.2022 by my learned predecessor, to

which the accused pleaded not guilty and claimed trial. Thereafter, on 19.09.2022, an additional charge u/s 188 IPC was framed against the accused to which they pleaded not guilty and claimed trial.

Prosecution Evidence

3.1 In order to prove its case, the prosecution examined following witnesses,

Prosecution Witness No.	Name of Witness	Description
PW1	Parmod	Photographer, who had videographed and photographed burnt properties/ articles.
PW2	Ct. Rakesh	Witness to the arrest of accused persons.
PW3	ASI Yashpal	Recorded FIR
PW4	Mohd. Sharim	Eye witness
PW5	Maqbool Ahmed	One of the members of Management of mosque, who lodged a complaint.
PW6	Mohd. Tohid	One of the complainants.
PW7	Mohd. Sajid	Eye witness
PW8	HC Vinesh Kumar	Deposited exhibits in FSL, on the instructions of IO.

PW9	Rashid	One of the complainants.
PW10	HC Pradeep	Announced imposition of section 144 Cr.P.C.
PW11	Anwar Ahmed	Was present in the mosque on the day of riot.
PW12	ASI Manvir	Responder to DD No. 126A, went to the mosque, prepared rukka and got the present FIR registered.
PW13	Chiralekha	Forensic Examiner from FLS
PW14	SI Dheerender Kumar	One of the IO, who arrested accused persons.
PW15	ASI Gajraj	One of the IO
PW16	ASI Mahesh	Informed about the presence of accused to IO. Had accompanied IO and arrested accused.

3.1.1 Further the prosecution proved the documents as given in the table below:-

Exhibit No.	Description of the Exhibit	Proved/ Attested by
Ex.PW1/A	Seizure memo of DVD	PW1

Ex.PW1/B	DVD	PW1
Ex.PW1/C	Certificate u/s 65B of Evidence Act	PW1
Ex.PW2/A	Arrest Memo of accused Prince	PW2
Ex.PW2/B	Arrest Memo of accused Deepak	PW2
Ex.PW2/C	Arrest Memo of accused Shiv	PW2
Ex.PW2/D	Personal Search Memo of accused Shiv	PW2
Ex.PW2/E	Personal Search Memo of accused Prince	PW2
Ex.PW2/F	Personal Search Memo of accused Deepak	PW2
Ex.PW2/G	Disclosure of accused Shiv	PW2
Ex.PW2/H	Disclosure of accused Deepak	PW2
Ex.PW2/I	Disclosure of accused Prince	PW2
Ex.PW3/A	FIR	PW3
Ex.PW3/B	Certificate u/s 65B of Evidence Act	PW3
Ex.PW3/C	GD no. 126A	PW3
Ex.PW3/D	GD No. 217A	PW3
Ex.PW5/A	Complaint made by PW5	PW5

Ex.PW5/B	Panchnama	PW5
Ex.PW6/A	Complaint made by PW6	PW6
Ex.PW8/A	Copy of RC no. 64/21/20	PW8
Ex.PW9/A	Complaint made by PW9	PW9
Ex.PW9/B	List of Articles	PW9
Ex.PW9/C	Seizure memo of Scooty	PW9
Ex.PW12/A	Endorsement on DD no.126A	PW12
Ex.PW12/B	Site plan	PW12
Ex.PW12/C	Site plan	PW12
Ex.PW13/A	Report of FSL	PW13
Ex.PW13/B	Certificate u/s 65B of Evidence Act	PW13
Ex.PW14/1	Seizure memo of CDs	PW14
Ex.PW15/1	Seizure memo of pendrive	PW15
Ex.PW15/2	Seizure memo of m/cycle of Tohid	PW15
Ex.PW15/3	Seizure memo of mobile phone of Deepak	PW15
Ex.PW15/4	Seizure memo of burnt articles	PW15

Ex.PW15/5	Site plan	PW15
Ex.PW15/6	Composite site plan	PW15

The witnesses of prosecution have deposed as under:-

3.2 **PW1 is Pramod.** He is a photographer by profession and on the instructions of the police officials, he had, after the incident, conducted videography and photography of the area of Chaman Park around a mosque. He prepared the DVD of the video and handed it to the police which was seized vide memo Ex.PW1/A. The DVD was proved vide Ex.PW1/B and certificate u/s 65B of Evidence Act was proved vide Ex.PW1/C.

3.3 **PW2 is Ct. Rakesh.** According to his testimony, on 09.03.2020, he was on patrolling duty with SI Dhirender. On reaching near a dustbin in Ganga Vihar, they met HC Mahesh, who informed SI Dhirender that 05 assailants, who had set fire in the mosque at A Block Gokal Puri, could be found in the park at A Block Gokal Puri. They reached the park and found these five boys. These boys disclosed their names as Deepak, Prince, Shiv and CCL B and R. Accused Prince, Shiv and Deepak were arrested vide arrest memos Ex.PW2/A, Ex.PW2/B and Ex.PW2/C respectively. Their personal search were conducted vide memos Ex.PW2/D to Ex.PW2/F respectively.

3.3.1 During his cross examination, he deposed that HC Mahesh was having a video in his mobile phone which he showed to the IO. Prior to arrest of the accused, he did not know them and only HC Mahesh knew them. He denied that they had not conducted any raid in A block park or the accused were not arrested in the manner as stated by him.

3.4 **PW3 is ASI Yashpal.** He was the duty officer of PS Gokal Puri on 28.02.2020 from 4.00 p.m till 12 midnight. He had recorded the FIR and proved it vide Ex.PW3/A and his certificate u/s 65B of Evidence Act vide Ex.PW3/B. He proved GD No. 126A vide Ex.PW3/C and 217A vide Ex.PW3/D.

3.5 **PW4 is Mohd. Sharim.** He is stated to be an eye witness. His detailed testimony shall be considered at a later stage as and when required.

3.6 **PW5 is Maqbool Ahmed.** He was one of the members of the management committee of the mosque and he proved the said complaint vide Ex.PW5/A. He also proved the panchnama of articles of the mosque, which had been damaged, vide Ex.PW5/B.

3.7 **PW6 is complainant Mohd. Tauhid.** He proved his complaint vide Ex.PW6/A.

3.8 **PW7 is Mohd. Sajid.** He is stated to be an eye witness. His detailed testimony shall be considered at a later stage as and when required.

3.9 **PW8 is HC Vinesh Kumar.** As per his testimony, on 08.05.2020, he had collected a pulinda from MHCM for its deposition at FSL, Rohini. He deposited the parcel and obtained an acknowledgment as well as receipt on the copy of RC. On return to the police station, he handed over the acknowledgment and the receipt to MHCM. He identified his signatures on RC and it was exhibited as Ex.PW8/A.

3.10 **PW9 is complainant Mohd. Rashid.** He proved his complaint as Ex.PW9/A and the list of his damaged/ missing articles as Ex.PW9/B. He proved the seizure memo of his burnt scooty vide Ex.PW9/C.

3.11 **PW10 is HC Pradeep.** As per his deposition, on 24.02.2020, he had announced the imposition of section 144 Cr.P.C in the areas of Johripur Extension, Ganga Vihar, Chaman Park, Indira Vihar, Bhagirathi Vihar, Sanjay Colony and Gokalpuri and Gokalpuri Village.

3.12 **PW11 is Anwar Ahmed.** He deposed that he was a regular visitor of Jannati Masjid where he went to offer namaz. On 24.02.2020 at around 6.30/7.00 p.m, he had gone to the said mosque to offer prayers. However on hearing a commotion, they closed the door of the mosque and went to the first floor of the mosque. Thereafter, 10-12 persons went to a room on the the first floor of the mqoue and remained there for about 1-1.30 hours. During this period, there were

sounds of beating the door of mosque, breaking of glasses and pelting of stones. He had made a call to PCR.

3.13 **PW12 is ASI Manvir.** He deposed that on 24.02.2020, he was on emergency duty from 8.00 a.m to 8.00 p.m in PS Gokalpuri. On that day, at about 07.50 p.m, DD No. 126A was assigned to him. Thereafter, he went to Jannati Masjid, A Block, Gokalpuri. He went inside the mosque but did not find any person in the mosque. The ground floor of the mosque was on fire. Thereafter, he returned to the police station and kept the DD pending. On 28.02.2020, he made endorsement on this DD for registration of FIR and got the FIR registered. His endorsement was Ex.PW12/A. Thereafter, he went to Jannati Masjid and prepared site plan, Ex.PW12/B. On 01.03.2020, he got videography of the mosque done through a private person namely Pramod. Thereafter, further investigation was transferred to other IO. On 14.09.2021, he alongwith ASI Gajraj again went to the mosque and ASI Gajraj prepared a site plan, Ex.PW12/C.

3.14 **PW13 is Ms. Chitralekha, Jr. Forensic/ Assistant Chemical Examiner from FSL, Rohini.** She deposed that on 09.02.2024, she received one sealed parcel alongwith forwarding letter, copy of FIR, copy of seizure memo and road certificate. On being opened, the parcel was found containing a CD. She examined the CD and also prepared two mirror copies of the CD. She proved her report Ex.PW13/A. She proved the CD as Ex.PW13/Article-1. She

also issued a certificate u/s 65B of Evidence Act in respect of preparation of mirror copies of the CD. The certificate was Ex.PW13/B.

3.15 **PW14 is SI Dheerendra Kumar.** He is the IO of the case. He deposed that on 09.03.2020, HC Mahesh informed him that a secret informer had a video and he had informed that the persons visible in the video were sitting in A Block Park, Gokal puri. He formed a raiding party and apprehended 05 boys sitting that park. Those boys were interrogated and two of them were minors. The three major persons namely Deepak, Shiv and Prince were arrested vide arrest memos Ex.PW2/A to Ex.PW2/C. Their personal search was conducted vide memos Ex.PW2/D to Ex.PW2/F. He seized the CD which contained CCTV footage vide seizure memo E.xPW14/1.

3.16 **PW15 is ASI Gajraj.** He deposed that on 18.03.2020, he received three complaints from complainants Khursheed, Tohid and Rasheed. He clubbed those complaints in the present FIR. On 04.05.2020, he received another complaint made by Naresh. The said complaint was also clubbed in the present FIR. On 05.05.2020, one Pramod gave him a CD containing video footage of riots. He seized the said CD vide seizure memo Ex.PW1/A. He further deposed that he collected CCTV footage of the camera installed at SBI, Gokalpuri and seized it vide memo Ex.PW15/1. He further deposed that he had seized the burnt scooty of Rasheed and motor cycle of Tohid, vide

memos Ex.PW9/C and Ex.PW15/2. He further deposed that one more complaint was received from Aizaz Fatima and the same was clubbed in this case. In the year 2020, he had gone to the house of Deepak and seized his mobile phone vide seizure memo Ex.PW15/3. He further deposed that during the investigation, he had seized some articles from the mosque, vide memo Ex.PW15/4. During the investigation, he had obtained the registration record of scooty and motorcycle of Tohid and Rasheed. He had also prepared site plan, Ex.PW15/5.

3.17 **PW16 is ASI Mahesh.** He deposed that on 09.03.2020, he was on patrolling duty. When he reached near garbage dump at Ganga Vihar, he met SI Dhirender, Ct. Vipin and Ct. Rakesh. He informed SI Dhirender that a secret informer had given him a recording of the riots at Jannati Masjid and that the five persons involved in the riots could be apprehended from A Block Park, Gokul puri. Thereafter, the accused were arrested from A Block Park.

Statement of Accused

4.1 Thereafter, on 15.09.2025, statements u/s 313 Cr.P.C of the accused were recorded and they preferred not to lead evidence in their defence.

Contentions of ld. SPP and of ld. counsels for accused

5.1 I have heard ld. SPP for State as well as ld. counsels for accused and perused the record very carefully.

5.2 It has been contended by ld. SPP that the prosecution has

proved its case through the CCTV footage, the CD and the testimonies of eye witnesses namely PW4 Mohd. Sharim and PW7 Mohd. Sajid. These eye witnesses have deposed that the accused were a part of the mob and were armed with lathi/ danda. During the cross examination, no material contradictions have emerged and thus, on the basis of the testimonies of these witnesses, accused are liable to be convicted. He has further contended that the accused were apprehended on the basis of a video/ recording of riot happened at Jannati Masjid and thus, it also stands proved that they were involved in the mob.

5.3 On the other hand, Id. Counsels for accused have contended that though the prosecution has sought to rely upon the CD which allegedly was provided to ASI Mahesh by a secret informer, however, that CD was never played before the court and it was never proved on record. They have further contended that even the CCTV footage, which was collected by the IO from SBI, Gokalpuri, was never proved on record. They have further contended that the eye witnesses stated have seen the incident. However, they were examined by the IO only on 05.09.2021. They have been planted in this case as prosecution had no evidence against the accused.

Findings

6.1 I have considered the rival submissions.

6.2 The case of the prosecution rests on three types of evidence. First is the recording of incident/ CD provided by a secret

informer to HC Mahesh, on the basis of which accused were arrested on 09.03.2020. Second is a CCTV footage from SBI, Gokalpuri, which, according to the prosecution, captured the incident. Third is the testimony of eye witnesses i.e. PW4 Mohd. Sharim and PW7 Mohd. Sajid.

6.3 First, I shall take up the recording/CDs which became the basis of arrest of accused and solving this case. The recording/the CDs, which HC Mahesh had obtained from the secret informer, were neither proved nor any effort was made to prove it on record. This is not surprising because the prosecution could not have proved those CDs as per Indian Evidence Act. I say so because, as per the prosecution, those CDs were provided to PW16 ASI Mahesh by a secret informer. The fact that the CDs were provided by the secret informer is visible from the certificate u/s 65B of Evidence Act issued by HC Mahesh (initialed by me today). This certificate was never proved on record but has been looked into by me for a limited purpose that it states that these two CDs were given to him by secret informer. The secret informer by the nature of his work could not be exposed. Surprisingly, instead of trying to find out the original source of this recording, or the person who had recorded it, the IO obtained a certificate u/s 65B of Evidence Act from HC Mahesh. This person could not have issued a certificate u/s 65B of Evidence Act as he was not the one who had prepared these CDs. Thus during evidence,

prosecution did not choose to prove this certificate and resultantly, did not prove these CDs on record. The FSL expert PW13 Ms. Chitralkha would also not give any sanctity to this electronic evidence because firstly, these CDs were never played in the court for the purpose of identifying the accused in any of the videos contained on those CDs.

6.4 The second is the CCTV footage, which was collected from State Bank of India, Gokulpuri Branch. This CCTV footage also met the same fate because neither the footage was sought to be played during the evidence nor was the footage or certificate u/s 65B of Evidence Act sought to be proved. However surprisingly, even the Manager of State Bank of India, who had issued certificate u/s 65B of Evidence Act, was never cited as a witness by the prosecution or the IO.

6.5 Still as the court is duty bound to reach the truth lest this lapse on the part of the prosecution allows the guilty to escape, I had opened the envelope containing the pen drive of the video footage collected from SBI. It had footages from three cameras and each camera folder had hundreds of videos. However, none of these cameras either show any incident at the relevant time and date or cover the mosque where the incident had happened. Therefore, it is apparent that IO just collected this CCTV, dumped it on record and without even analyzing whether it was a relevant piece of evidence or

not sent it to FSL and then chose not to have it proved because the witness, who had given the pen drive containing these footages and the certificate u/s 65B of Evidence Act was not even cited as a witness in any of the charge sheets.

6.6 Therefore, apart from the testimonies of two witnesses namely Mohd. Sharim and Mohd. Sajid, there is no evidence on record through which prosecution can prove its case against the accused.

6.7 PW4 Mohd. Sharim deposed that in February 2020, he was running a saree shop at A-5, Ganga Vihar under the name and style of M/s Surat Designer Saree. On 24.02.2020, at about 11.00 a.m, he went to his shop and left his shop at 4 p.m. He returned to his shop at about 5 p.m. At about 7 p.m., a number of persons had assembled near Noori Mosque in Ganga Vihar, which was near to his shop. The mob was raising slogan of 'Jai Shri Ram'. He closed his shop and he, alongwith his nephew Sajid, started to go to his residence. When they reached near the mosque, he saw that the mob was carrying lathi and danda and raising slogans and noise. It was very terrible scenario. He alongwith his nephew silently reached main road, Gokalpuri chowk. The mob was making noise saying that '*maar lo tod do le lo*' etc. When he was crossing the mob, he saw that the mosque was on fire. He knew some of them by their name and some of them and some of them by their faces as they were local persons from the same locality.

The persons, who were known to him by names, were Shiv (phoolwala), who had his shop of flowers in Ganga Vihar; and Deepak, who was resident of Ganga Vihar. He could not have taken name of anyone as he was running his shop at that place (probably trying to say that he could not tell these names to the police.) After some days after the riots, he closed his shop in Ganga Vihar. He was called in PS Gokalpuri in the year previous to his examination in chief. He was shown some photographs if he could identify them and he identified three photographs out of them and told the police that those three persons were in the riotous mob. Those photographs were of Shiv, Deepak and Prince. He also knew Prince by his name and all three of them were in the mob. He informed this fact to police also. He further deposed that Shiv, Deepak and Prince were having lathi/danda in their hands, when they were part of the mob. They were vandalizing the mosque and nearby houses of muslims. He did not find photos of other persons whom he identified by their faces and hence, he could not tell police about other persons. He identified accused Shiv, Deepak and Prince in the court. He further deposed that Noori Mosque was also known as Jama Masjid and it was the only Mosque in that locality.

6.8 He was cross examined by Id. SPP and he deposed that he did not know if the name of said mosque was Jannati Masjid. He had heard some persons calling this mosque as Jannati Masjid as well. He

admitted that he was running saree shop from A-46, main road, Ganga Vihar and had so stated before police and volunteered, that this shop was situated nearby Garbage house choraha. Due to lapse of 2 years and out of confusion, he had mentioned the address of his shop as A-5, whereas it was A-46.

6.9 During his cross examination on behalf of accused, he deposed that he had been running the said shop for about 1 year prior to the riots. The mosque was at a distance of 100-150 steps from his shop. His shop was not vandalized in this riot. His shop was damaged in the riot taken place on 26.02.2020 and regarding this, FIR no.144/20, PS Gokalpuri was registered. He admitted that the said FIR was registered in March 2020. At the time of lodging of FIR no.144/20, he had informed the name of culprits, but police had refused to register the FIR with name. When he had seen fire in the mosque, he would be around 100 feet away from the mosque. He denied that he had not seen anyone indulging in the riot because those persons had covered their faces as stated by him before police and volunteered, that he had stated before police that some had covered their faces and some had not. He was having a smart phone at that time but he did not make any call to police on that day and did not try to record video of the incident and volunteered, that the situation was not congenial. He admitted that his statement was recorded by police on 05.09.2021. Prior to that, he did not inform police in any manner

that he knew the identities of some of the rioters indulged in the incident and volunteered, that after the riots, on account of COVID lock-down, he had gone to his native place. After the lock down, he received several calls from police in the year 2021. When he went to the police, he returned from his native place. He denied that he did not know any of the three accused persons or that he did not identify them in the mob on 24.02.2020, or that he had mentioned their names only at the instance of police officials.

6.10 The second eye witness is PW7 Mohd. Sajid. He deposed that in February, 2020, he used to sell clothes as hawker in the area of Gokalpuri, Yamuna Vihar, Bhajanpura, Loni Gol Chakkar and Maujpur. He also used to visit area of Ganga Vihar to sell clothes. He had been doing this work of selling clothes for last 8-10 years. On 24.02.2020, he was present at the shop of his uncle (mamu) Mohd. Sharim in Ganga Vihar. He remained at the said shop on till about 07-07:30 p.m. He received a telephonic call from his uncle Khurshid at about 06-06:30 p.m. Khurshid informed him that he had closed his shop in Maujpur due to riots and advised him to close this shop in Ganga Vihar also. After closing the shop, he, along with his uncle Mohd. Sharim, were walking towards Maujpur. They were on the main road and wanted to take an auto from the main road. When they were about 250 meters ahead of their shop in A-Block, Gokalpuri, they saw a riot taking place. There were around 100 persons. This

mob was pelting stones on Jannati Masjid. They were vandalizing the articles in and around the Masjid including vehicles with dandas. They were throwing bottle with some inflammatory substance which used to burst into fire on the gate of masjid. The wooden gate of the masjid caught fire. He saw all these things from a distance of about 50 steps. The mob was raising slogan of Jai Sri Ram. Some persons in that mob had covered their faces with cloth and some were having naked faces. Amongst the persons with naked face, he knew three persons and identified them. They were Prince, Shiv and Deepak. Since he used to hawk in that area to sell clothes, he knew many faces. He had seen Prince in the area of Gokalpuri. Shiv had a flower shop near a temple in Gokalpuri near sabzi mandi. He had seen Deepak also in sabzi mandi market, Gokalpuri who resided in sabzi mandi and he had a shop in the sabzi mandi. He did not know the profession of Prince. The mob had vandalized many shops nearby the masjid. He did not remain there longer and only stayed there for around two minutes. He had seen all these incidents taken place around 07:30 p.m. He had given information to the police of whatever had been seen by him. On that day, his uncle Mohd. Sharim had gone to PS Gokalpuri to lodge his complaint as articles of his shop were stolen. He accompanied his uncle. At that time, police officials showed him photographs of a number of persons, asking me if he could identify anyone. Amongst those photographs, he had identified photographs of aforesaid three

persons. He did not give any information to police prior to that day because he was quite afraid and had not visited that area due to fear. He identified all the three accused in the court. He further deposed that at the time of aforesaid incident, Shiv was carrying a danda and was vandalizing the articles. Deepak and Prince were carrying bottles with inflammable substance and they were throwing the same.

6.11 During his cross examination, he deposed that he had informed the police about Deepak. Neither had he read his statement given to the police nor it was read over to him. His uncle also did not read his statement. He knew the person by the name of Deepak and he did not mention name of Deepa or Deepu before the police. He was confronted with his statement u/s 161 Cr.P.C (Ex.PW7/D1) where name of Deepa @ Deepu was mentioned. After 05.09.2021, he had met police official two more times but his statement was not recorded at that time. He deposed that he had mentioned before police that Deepak was carrying bottle with inflammable substance and was throwing the same. He was confronted with his statement Ex.PW7/D1, wherein it was not so recorded. He deposed that he had mentioned before police that he had gone to police station along with his uncle Mohd. Sharim to lodge a complaint. He was confronted with statement Ex.PW7/D1, wherein it was recorded that police had visited shop of his uncle. Before 05.09.2021, he would have visited his uncle in Gokalpuri for about 2-3 times. The theft in the shop of his uncle

Sharim had taken place during riots itself, for which they had gone to police to lodge the complaint. He was using a mobile phone at that time. He did not know if Deepak was having a tea stall in sabzi mandi, Gokalpuri. He denied that he had falsely named and identified three accused at the instance of police official or that his false statement was recorded after calling him from Okhla Vihar or that he had not seen any incident at Jannati Masjid. He denied that before 05.09.2021, he had neither made a complaint nor given any information to the police because he had not seen any incident. Deepak was not having glass bottle rather he was having cane and from the same he was sprinkling inflammable liquid. Deepak was carrying bottle of plastic rather than glass bottle. Prince was carrying glass bottle which is used to contain beer etc. He had no enmity with anyone in that area. He had not stated before the police that Shiv was carrying a danda or Prince was carrying a glass bottle. He had not informed about the profession of the three accused to the police. He was confronted with his statement Ex.PW7/D1 where their professions were recorded. He denied that He had not seen any of the accused persons prior to their photographs shown to him by the police. He did not have any kind of transaction with any of the three accused in the past. He denied that he did not know the three accused either by their face or by their names.

6.12 I have carefully considered the testimonies of these two witnesses. I am of the opinion that testimonies of these two witnesses

have to be considered and analyzed with great caution. I say so because firstly, the statements of these witnesses were recorded by the IO after a delay of more than 1½ year and therefore whether there is a reasonable explanation for the said delay needs to be considered. Secondly, these witnesses are not only chance witnesses but had been discovered by chance.

6.13 The explanation that these witnesses have given for not approaching the police for a period of 1½ years is, that as PW4 and PW7 were carrying on their business in the same area, being scared of repercussions, they did not approach the police.

6.14 However, it is noticeable that during the cross examination, both these witnesses had admitted that in March 2020 itself, PW4 had lodged a complaint with regard to a theft at his shop during the riots of 2020. Not only this, during this cross examination, PW4 had stated that he in fact intended to name those rioters but the police did not record those names in his FIR. This establishes that in his own case, he was ready to name the rioters and had lodged the FIR in March 2020. That being the case, the explanation that he never told the police about the three accused as he was scared about the repercussions does not inspire much confidence.

6.15 Furthermore, PW4 states that on 24.02.2020, he closed the shop because a number of persons had gathered near Noori Mosque Ganga Vihar and were raising slogans of Jai Shri Ram

whereas PW7 stated, that shop was closed after receiving a phone call from one Khurshid who informed him that there had been riots due to which he had closed his shop at Maujpur and advised them i.e. him and PW4 to close their shop. The witnesses have assigned different roles to accused. According to PW4, all the accused were carrying lathis and dandas and without attributing any particular act to them, states that they were merely a part of the mob. However, PW7 deposed that accused Shiv was having a danda and was vandalizing the articles; and Deepak and Prince were carrying bottles with inflammable substance and throwing them. During his cross examination, he further changed the role played by Deepak and stated that Deepak was not having a glass bottle but was having a cane and from the same he was sprinkling inflammable liquid.

6.16 This brings me to the discovery of these witnesses by the IO. Surprisingly, IO in his examination in chief does not speak about examining these two witnesses. Even the supplementary charge sheet dated 15.09.2021 is silent about examining these witnesses. However, if the statements of these witnesses are seen, they reflect that it was the IO who had approached PW4 at his shop regarding the investigation of FIR No. 144/20, of which PW4 was a complainant, whereas, both PW4 and PW7 have stated that it was in the police station that they had met IO and identified accused in photographs. As per PW4, he was called to PS Gokal puri whereas as per PW7, he and

PW4 had gone to lodge a complaint regarding the theft at shop of PW4. Therefore, these chance witnesses according to their 161 Cr.P.C statements were approached by police at their shop and as per them, they had gone to police station. Even the reason for going to PS as stated by PW4 and PW7 is different. PW7 seems to be making up a reason of going to police station because, the complaint regarding a theft at the shop of PW4, as admitted by PW4, had been made in March 2020 and FIR No. 144/20 had already been lodged. That being the case, they could not have had an occasion to visit PS Gokal Puri for the purpose of making this complaint in September 2021.

6.17 Considering this situation, I had to peruse the case diary to find out what is the stand of IO regarding how he found these witnesses. Case diary dated 05.09.2021, which has been initialed by me today, reflects that it was not during the investigation of FIR No. 144/20 that IO had met PW4 being the complainant of FIR No. 144/20, and then had shown him and PW7 the photos wherefrom, they had identified the accused. On the contrary, the case diary states that IO, while making inquiries from public and showing photos to public, reached the shop of PW4 where he met PW4 and PW7. Therefore, not only these witnesses are chance witnesses but are also the witnesses who had been discovered by chance. However, this entire stand of the IO that he discovered these witnesses by chance and at their shop as stated in his case diary, or that he met them at the shop of PW4 when

he had approached them during the investigation of FIR 144/20 is completely demolished by one statement of PW4 in his examination in chief where he stated; that after some days from riots, he had closed his shop in Ganga Vihar. If he had closed his shop after a few days of riots in the year 2020, it is impossible that IO would reach that shop and find them in that shop in September 2021. Therefore, the entire case of the prosecution with regard to these chance witnesses stands completely demolished.

6.18 I accordingly find that these witnesses are not reliable witnesses because of the discrepancies in their statements, because of a false explanation of the delay in recording of their statements by IO and, because of the fact, that they could not have met the IO at the shop of PW4 on 05.09.2021 and identified the accused through the photos, as the said shop, as per PW4, had already been closed a few days after the riots of February 2020.

6.19 In these circumstances, I find that prosecution has failed to prove its case and both the accused are entitled to an acquittal.

6.20 Before parting, I am pained to observe the manner in which this investigation has been conducted because, the accused had been arrested in this case on the basis of an inadmissible evidence and only on the basis of the said evidence, they were charge sheeted in this case through the first charge sheet. The fact that the evidence was inadmissible was probably known to the prosecution because

prosecution never chose to prove the said evidence/ CDs on record. Thus, from the date of arrest of accused till the filing of first charge sheet, there was no concrete evidence. It is only 1½ years later that two chance witnesses, who in fact were found by chance, were examined in September 2021 and as discussed above, it is possible that they were never examined because the place of examination as stated by the IO in his case diary did not exist on the day they were examined. I have made these observations with the hope that the investigating agency takes note of the manner in which this matter has been investigated and initiates corrective measures to ensure that in future, personal liberties of citizens are not undermined unless, there is evidence enough to implicate them in a crime.

6.21 The accused are accordingly acquitted for all the charges framed against them. Their bail bonds stand cancelled. Sureties stand discharged. File be consigned to record room.

6.22 Copy of judgment be sent to worthy Commissioner of Police for his perusal.

Pronounced in open court
on 18.12.2025.
(This judgment contains 29 pages
and each page bears my signatures)

(Parveen Singh)
ASJ-03, North East Distt.,
Karkardooma Court, Delhi.