

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

**CNR No. DLNE01-002714-2022
SC No. 257/22
FIR No. 247/20
PS Khajuri Khas
U/s. 147/148/149/188/435/436/34 IPC**

State

Versus

**1. Hariom Gupta
S/o. Sh. Anokhe Lal,
R/o. M-20, Gali No.31,
Sadat Pur Extension Delhi.**

**2. Basant Kumar Mishra
S/o. Sh. Nand Kishore,
R/o. M-79, Sadat Pur Extension Delhi.**

**3. Gorakh Nath
S/o. Sh. Heera Lal,
R/o. N-2/2, Gali No.02, Dayalpur, Delhi.**

**4. Rohit Gautam
S/o. Sh. Ram Ji Gautam,
R/o. L-109/A, Gali No.31,
Sadat Pur Extension Delhi.**

5. Kapil Pandey
S/o. Sh. Khyali Dutt Pandey,
R/o. C-8/18, Dayalpur, Delhi.

6. Bheem Sain
S/o. Sh. Chanderpal
R/o. M/3, Gali No.31,
Sadat Pur Extension Delhi.

....Accused.

Date of Committal	:	01.09.2022.
Date of Arguments	:	03.09.2025.
Date of Pronouncement	:	11.09.2025.

(Section 481 BNSS complied with by all accused persons)

JUDGMENT

Facts of Prosecution Case as per Charge Sheet

1.1 The present case pertains to the riots that had happened in North East, Delhi in the year 2020.

1.2 As per the case of the prosecution, this case was registered on the complaint of Mohd. Wakeel on 03.03.2020 who alleged he was running a shop at property no. B-47A, Sadatpur Extension, Gali No.1. He had taken this shop on rent from Mukesh. On 25.02.2020, the rioters burnt his shop and all the articles in it and he suffered loss of around 1.5 lacs. On this complaint, the present case was registered and investigation was assigned to ASI Jamshed Ali.

1.3 During investigation, IO prepared site plan at the instance of complainant. He examined several witnesses including land lady of complainant namely Sangeeta and Beat Constable Sandeep. These two witnesses had stated that they had seen the incident and that they could identify some of the rioters. During investigation, IO received a video of riots from one Prem Singh. This video was shown to Sangeeta, HC Sandeep and to other persons. Sangeeta and HC Sandeep, after seeing of that video, identified six persons as the persons who were involved in the incident at the shop of Wakeel. At that time, the names of those persons were not known. Thereafter, section 188 IPC was added in the present case. During investigation, IO obtained certificate u/s 65B of Evidence Act from videographer Prem Singh.

1.4 On 12.06.2021, when IO ASI Jamshed Ali was at the police station, Ct. Sandeep had brought six persons and stated that they were involved in the incident of this case. The names of those persons were disclosed as Gorakh Nath, Bhim Sain, Hari Om, Kapil Pandey, Rohit Gautam and Basant Kumar. The accused were interrogated and a pointing out memo was also prepared at their instance. After completion of investigation, on 22.03.2022 chargesheet was filed against all six accused persons.

1.5 Subsequently on 08.12.2022, a supplementary chargesheet was also filed along with certificate u/s. 65-B of I.E. Act

in respect of photographs placed on the record, site plan and supplementary relevant statements.

Charges

2.1 On 22.02.2023, charge for offences punishable u/s 147/148 IPC r/w 149 & 188 IPC; u/s 450 r/w section 149 IPC and u/s 435/436 r/w section 149 IPC was framed against all the accused, to which they pleaded not guilty and claimed trial.

Prosecution Evidence

3.1 The prosecution has examined 10 witnesses to prove its case.

3.2 **PW1 is HC Vikas Tomar.** He deposed that on 03.09.2020, he had accompanied I/C SI Manish to B-47/2, Sadatpura Extension, Delhi. There were two shops in that property. One shop was open and was in running condition. The other shop was closed. At the instance of IO, he had taken 04 photographs of both the shops. The print of the photographs were obtained from a private lab. He had also prepared a certificate regarding those photographs. The said certificate was Ex.PW1/A and the photographs were exhibited as Ex.PW1/P1 to Ex.PW1/P4.

3.3 **PW2 is ACP Pawan Kumar.** He deposed that on 24.02.2020 at about 8 a.m., he alongwith his staff had gone to the area of PS Khajuri Khas for patrolling and law and order duty. While he was on patrolling in the area, his reader came and handed him a copy

of order u/s 144 Cr. PC, as was passed by the then DCP/NE. He directed the Reader also to move in the area of their PS to announce that order. He, using the mike already fitted in his official Gypsy, kept announcing that Order during the patrolling. He had announced that order while moving in the area of Shri Ram Colony; A block Sonia Vihar (the area which fell into their jurisdiction); block A to E in Khajuri Khas; Biharipur; Sherpur; Tukmirpur; Sadatpur; Sadatpur Extension; West Karawal Nagar; main Wazirabad Road; main Karawal Nagar road; Tukmirpur road; Dayalpur village; Khajuri Khas pusta road; Sonia Vihar pusta road; and Kali Ghata road. He had announced that there should not be gathering of 5 or more persons in the public place. He had asked the persons on the road to go back to their homes and that in case of defiance, legal action would be taken. He continued making this announcement upto about 12.30 p.m. and by that time, he had repeated that announcement for 2-3 times in all the areas.

3.4 **PW3 is Kiran.** She deposed that for about 07 years prior to her deposition, she had been residing in Sadatpur Extension, Delhi. She further deposed that on 25.02.2020, riots had taken place in her area. On that day, she was present at her home. At about 9-10 p.m, she heard some noise coming from outside. She came out of her home and saw that a number of persons i.e. around 100-150 persons were moving towards B block. After about 5-10 minutes, she saw that shop

in the house of Mukesh was set on fire. It was shop of woods, which was being run by a tenant of Mukesh. Due to darkness, she could not see and identify any person in that mob. The persons in that mob were carrying dandas, stones and iron rods.

3.5 **PW4 is Mohd. Wakeel.** He is the complainant in this case. He had deposed that he was running a carpenter shop at B-47, gali no.1, Sadatpur Extension, Delhi-94. On 23.02.2020, he had closed his shop in the evening. However, due to riots, he did not open his shop on 24.02.2020 and 25.02.2020. On 25.02.2020, he received a telephonic information from his landlady Sangeeta that rioters had vandalized and looted his shop and that they could not save the shop from the rioters. Thereafter he visited his shop on 28.02.2020 and found it in open condition. Articles in burnt condition were lying inside the shop and outside the shop. Some articles were missing. He had taken the photographs of his shop using his mobile phone. He further deposed that on 28.02.2020, he visited PS Khajuri Khas and made his complaint (Ex.PW4/A). He had handed over print of photographs (Ex.PW4/P-1 to Ex.PW4/P-5) to the police. Police had inspected his shop and prepared a site plan (Ex.PW4/C) of the shop. He deposed that subsequent site plan was also prepared which was Ex.PW4/D.

3.5.1 During his cross examination by Id. SPP, he denied that he had visited the police station on 03.03.2020 to make his complaint.

3.6 **PW5 is Sangeeta.** She is the landlady of complainant Mohd. Wakeel. She deposed that there were three shops on the ground floor of her house. Two shops had been let out, one was let out to complainant Mohd. Wakeel. She deposed that in the year 2020, riots had taken place in that area. On the day when riots had happened, she was present at her house though her husband and her brother-in-law had gone to Loni. The riot had taken place in night at about 11-11.30 p.m. She heard a lot of noise from the gali. However, she did not go out to see the riot, because her child was very small and she was taking care of her child. After the return of her husband at about 12 midnight, she went downstairs and had seen that shop of furniture as well as the shop of tailor were opened and the articles of these shops had been set on fire. She had not seen any of the rioters. She denied any video being shown to her by the police or identifying any of the rioters in any video before the police.

3.6.1 She was cross examined by Id. SPP and she denied that police had recorded her statement u/s 161 Cr.P.C on 10.03.2020, 20.12.2020 and 12.06.2021. She also denied that she had gone downstairs in the gali after hearing the noise; or that her husband and her husband's brother were also present there, who had gone to the corner of the gali; or that she had seen the riots and seen some of the rioters. She denied seeing any video of riots at PTS Wazirabad or identifying 6 rioters in that video as a part of the mob, who had

vandalized the shops in her house. She further deposed that she had not seen any police official in the gali at the time of riots.

3.7 **PW6 is Amit Shaky.** He was the photographer who had accompanied SHO on 25.02.2020 and had recorded video at the instance of SHO. The said video was Ex.PW7/V-1.

3.8 **PW7 is Prem Singh.** He deposed that he was running a photo studio in the name of Prince Digital Studio and used to do photography for Delhi Police/NE. He had provided photographer to PS Khajuri Khas, since about 23/24.02.2020 and their work continued upto 26/27.02.2020. At that time, he had Amit to PS Khajuri Khas, for the purpose of videography. He had copied the video recorded by Amit in a DVD and handed the same to police after receiving back the camera with video in memory card from Amit. He further deposed that police had obtained his signature on a certificate u/s 65B of IE Act.

3.8.1 However, Ld. SPP submitted that old certificate was not upto mark, hence witness was asked to furnish fresh certificate with complete particulars.

3.8.2 He prepared fresh certificate which was Ex.PW7/A.

3.9 **PW8 is SI Deepak Chandra.** He deposed that in September 2021, this case was marked to him for further investigation. He called videographer Prem Singh, who handed him a DVD with certificate u/s 65B of Evidence Act. He seized the said

DVD vide seizure memo Ex.PW8/A. On 14.03.2022, he prepared main charge sheet and filed the same in the court.

3.10 **PW9 is HC Sandeep.** As per the case of the prosecution, he was the eye witness of the incident and had identified the accused. His detailed testimony shall be considered at a later stage as and when required.

3.11 **PW10 is ASI Jamshed Ali.** He is the IO of the case. His testimony shall be considered at a later stage as and when required.

Statement of Accused

4.1 Thereafter, on 08.08.2025, statements u/s 313 Cr.P.C of accused persons 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. Spl. PP for State as well as ld. counsels for accused persons and perused the record very carefully.

5.2 It has been contended by ld. SPP that through PW3 and PW5, who were the eye witnesses of the riots, the prosecution had established that on 25.02.2020 at about 11-11.30 p.m, rioters broke open the shop of the complainant and set its articles on fire. He has further contended that though these witnesses had turned hostile on the point of identification of the accused, however, through PW9 HC Sandeep, the prosecution has established the identity of the accused as a part of the mob which had committed the present offence. He has

contended that HC Sandeep is a natural witness as he was a beat officer of the area and during the course of his duty, he was present in that area. He has further contended that the testimony of PW9 HC Sandeep, despite cross examined on behalf of accused, has not been shaken and he is a credible witness.

5.3 Countering the same, ld. counsels for accused have contended that the entire case of the prosecution is based upon the testimony of only one police witness i.e. PW9 HC Sandeep, who is an interested witness and his testimony needs corroboration. This witness, despite seeing the incident and despite being beat constable, never approached the IO for about more than 10 days and it was only on 10.03.2020 that his statement was recorded. They have further contended that PW9 is a planted witness and could not have been present at the scene of crime because in such a tense situation, he could not have gone to the area alone. This is more so because PW5 Sangeeta has deposed that she did not see any police official in the gali at the time of riots. They have further contended that PW9 had deposed the riots had happened at 11-11.30 p.m in the night and he was at a distance of 50 meters. In the light of this part of the testimony of PW9, it has been contended on behalf of accused that at 11-11.30 p.m in the night, which would be pitch dark, he could not have seen the face or recognized the persons in the mob of 100-150 persons from a distance of 50 meters. This further shows that this witness is not a

credible witness. They have further contended that this witness had never visited the house of any of the accused; he had not conducted any inquiry or verification about these accused and had not served any summons upon them. This witness was not aware about any case or complaint pending against any of the accused wherein he might have joined the investigation. They have therefore contended that it is highly improbable that this witness would have known the accused or identified them. They have further contended that the witness suddenly produced the accused before the IO. They have further contended that IO had not conducted proper investigation and the video (Ex.PW7/V-1) cannot be looked into in evidence because it had not been properly proved as the certificate u/s 65B of Evidence Act is not as per section 65B of Evidence Act.

5.4 In counter, Id. SPP has contended that merely because PW9 is a police witness, it would not mean that his testimony has to be discarded. He has contended that it is now well settled that even the testimony of a police witness is sufficient to prove the guilt of accused in case the witness is found to be credible. In this regard, he has relied upon the judgments of Hon'ble Supreme Court in Baldev Singh v. State of Haryana, (2015) 17 SCC 554 ; Mohd. Nasim v. State, 2023 SCC Online Del 7073 and Pramod Kumar v. State (GNCT of Delhi) 2013 SCC Online SC 502. He has further contended that the presence of PW9 is further established by the duty roster which had been

admitted by the accused and was exhibited as Ex.A-6. The said duty roster clearly mentions that HC Sandeep was the beat constable of beat no. 10 which included the area of West Karawal Nagar and Sadatpur Extension. The incident had happened at Sadatpur Extension and therefore, the presence of PW9 is quite natural at that place.

Findings

6.1 I have considered the rival submissions and perused judgments cited at bar by Id. SPP.

6.2 During the trial, on 19.07.2023, the endorsement on rukka had been admitted and exhibited as Ex.A-2. Resultant FIR was also admitted and exhibited as Ex.A-1. Also were admitted the prohibitory order u/s 144 Cr.P.C which was exhibited as Ex.A-4, the complaint u/s 195 Cr.P.C which was exhibited as Ex.A-5 and, the duty roster which was exhibited as Ex.A-6.

6.3 Therefore as far as the presentation of rukka for registration of FIR and the factum of registration of FIR are concerned, they stand admitted. It also stands admitted that a proclamation u/s 144 Cr.P.C was issued vide Ex.A-4. PW2 ACP Pawan Kumar, who was the then SHO of PS Khajuri Khas, had deposed about the announcement of this proclamation. As per his deposition, on 24.02.2020, he had announced about the imposition of proclamation u/s 144 Cr.P.C through mike, and this announcement was made in the area of Shri Ram Colony; A block Sonia Vihar; block

A to E in Khajuri Khas; Biharipur; Sherpur; Tukmirpur; Sadatpur; Sadatpur Extension; West Karawal Nagar; main Wazirabad Road; main Karawal Nagar road; Tukmirpur road; Dayalpur village; Khajuri Khas pusta road; Sonia Vihar pusta road and Kali Ghata road. He had deposed that he had specifically announced that there should not be gathering of 5 or more persons in the public place.

6.4 He was cross examined and deposed that while making the announcement, he had seen gathering of mob in the area of Sadatpur Extension. He had made this announcement in the area of Sadatpur Extension on 25.02.2020 also. He denied that on 25.02.2020, no such announcement was made in the area of Sadatpur Extension.

6.5 From the aforesaid cross examination of PW2, it is evident that except a bald suggestion that no such announcement was made on 25.02.2020, nothing has emerged from the cross examination of this witness which would discredit his testimony that he had announced the proclamation of imposition of section 144 Cr.P.C. Even if the suggestion that such announcement was not made on 25.02.2020 is taken on face value, it has nowhere been denied that such announcement was made on 24.02.2020 and that it was also made in the area of Sadatpur Extension i.e. where the incident had happened. That being the case, the proclamation once announced had to be in effect unless, it was lifted and therefore, in view of the admission of the proclamation (Ex.A-4) and the fact that such proclamation was

announced, I am of the considered opinion that section 144 Cr.P.C was imposed in the area of Sadatpur Extension and it was properly announced for the knowledge of public at large.

6.6 Furthermore, it has nowhere been disputed that the incident in question had happened on 25.02.2020. I say so because the testimonies of PW3 and PW5 have remained completely unchallenged.

6.7 PW3 Kiran deposed that on 25.02.2020, riots had taken place in her area. On that day at about 9-10 p.m., she heard some noise coming out of her gali. She came out of her home and saw that around 100-150 persons were moving towards B block. After about 5-10 minutes, she saw that shop in the house of Mukesh was on fire. It was shop of wood, which was being run by a tenant of Mukesh.

6.8 PW5 Sangeeta is the wife of Mukesh and it is to be remembered that PW3 had referred to the shop of tenant of Mukesh being burnt.

6.9 PW5 deposed that in the year 2020, a shop was given on rent to a person called Wakeel, who was running carpentry business from the said shop. She did not remember the date or month but probably it could have been March because the examinations of children were going on. On the day of riot, she was present on the second floor of her house. At around 11-11.30 p.m, she heard a lot of noise coming from gali. She did not go out to see the riot because, her

child was very small at that time and she was taking care of her child. Her husband came back home at 12 midnight. She went downstairs and saw that shop of furniture and shop of tailor i.e. another tenant of hers, had been opened by breaking the locks. Articles from both these shops were lying in the gali and had been set on fire.

6.10 She was not cross examined on behalf of the accused.

6.11 Therefore, the testimonies of PW3 and PW5 had established that the shop of Wakeel Ahmed, who was the complainant in this case and on whose complaint the present FIR was registered, was burnt down in the riots, on 25.02.2020, at around 11-11.30 p.m.

6.12 Therefore, from the evidence discussed above, the facts which are established are, that on 25.02.2020 section 144 Cr.P.C had been imposed in the area and that on 25.02.2020 at around 11-11.30 p.m, shop belonging to complainant Wakeel Ahmed situated at B-47, Block A, Sadatpur Extension, Delhi had been broken open, vandalized and burnt by a mob of rioters.

6.13 The question which now arises is, whether the prosecution has succeeded in proving that the accused in the present case were a part of the rioting mob?

6.14 To prove this fact, the prosecution, during the trial, has been able to produce only one witness i.e. PW9 HC Sandeep.

6.15 HC Sandeep, appearing as PW9, deposed that during the riots going on from 24.02.2020 to 26.02.2020, he was a beat constable

of beat no. 10 covering Sadatpur Extension and West Karawal Nagar. On 25.02.2020 at about 10-11 p.m., he was present at Shukra Bazar road of Sadatpur Extension. No other staff from his PS was with him but the outer force was there. At that time, a mob of around 100-150 persons was coming to gali no.2 of B block, Sadatpur Extension from the side of Pusta. They were carrying danda, stone etc. and they were raising slogans like 'Jai Shree Ram'. Some of the persons in the mob had covered their faces and some faces were naked. There was a shop of furniture in gali no.1 in property no. B-47A. The said mob broke the shutter of that shop and entered the shop. They brought out some wooden articles in the gali and set them on fire. They also set fire inside that shop. Just adjacent to that shop, there was the shop of a tailor in the name of 'Irfan Tailor'. This mob broke open the shutter of this tailor shop also. They brought some cloth outside in gali and set them on fire. They also set fire inside that shop. He alongwith officials of outer force tried to stop them, but they did not listen. He had seen faces of some persons in that mob, but he did not know them. On 10.03.2020, IO ASI Jamshed Ali contacted him and he came to know about the registration of the present case. He had told IO that he could identify some persons in that mob and that he was trying to find out their particulars. On 20.12.2020, IO ASI Jamshed Ali showed him one video clip of mob assembled during period of riots on pusta. In that video clip, he had identified 6 persons. He searched for those 6

persons in his area. On 12.06.2021, he produced those 6 persons before IO/ASI Jamshed Ali, in PS Khajuri Khas. They were taken to the place of incident where they pointed out to the place of incident whereafter, IO released them after binding them. He came to know the names of these persons after seeing the video and while making inquiry in his beat area as Hari Om, Basant Kumar Mishra, Gorakh Nath, Bhim Sain, Kapil Pandey and Rohit Gautam. During his testimony before the court, he correctly identified these accused.

6.16 A video, which was exhibited as Ex.PW7/V-1, was also played during his testimony and he identified the accused in that video also.

6.17 During his cross examination, he deposed that he had been posted as Beat Constable in the beat no.10 w.e.f mid 2019 to mid 2021. On the same day, he had telephonically informed about the incident to the SHO. He had never visited house of any of the accused persons to serve any summons or notice, or to make any other kind of enquiry in the past. He was not part of any investigation of any other case against these accused. He used to maintain a diary as Beat Constable. At the time of incident, he would have been at a distance of about 50 meters from the shops in B-47A but while incident was going on, he had gone closer to the shops. He was present on the opposite direction to the pusta from that mob. The aforesaid shops were visible to him from the distance of 50 meters. He denied that he was not

present at the aforesaid place; or that he had not seen any incident; or that he had been planted as eye witness by IO.

6.18 The IO of the case, appearing as PW10, deposed that he received investigation of this case on 09.03.2020. On 10.03.2020, at the instance of the complainant, he had prepared site plan, Ex.PW4/C. He also recorded statement of Wakeel Ahmed, Sangeeta (wife of landlord of the shop of Wakeel) and Ct. Sandeep. On 20.03.2020, he visited the shop of Kiran and recorded her statement. On 03.09.2020, he summoned district crime team. On 20.12.2020, he obtained a video through WhatsApp on his mobile phone from Prem, who was running photo studio in the name of Prince. This video recorded by his employee Amit on 25.02.2020 was of pusta road, in front of PTS and Pushta Road. Thereafter, he alongwith Ct. Sandeep went to the house of Sangeeta (PW5). They identified 5-6 persons in that video and he recorded her statement u/s 161 Cr.P.C. During the investigation, Wakeel Ahmed had produced photographs of burnt shops. On 12.06.2021, Ct. Sandeep brought 6 persons to the PS and informed that they were the same persons, who were appearing in the video of riots, as recorded on 25.02.2020. He interrogated them and bound them for their appearance. On 21.09.2021, he deposited the file with MHCR and again received the file on 05.12.2022. On that day, he prepared fresh site plan at the instance of Wakeel Ahmed. The said site plan was Ex.PW4/D. He further deposed that from the duty roster of

25.02.2020, he had come to know that Ct. Sandeep was on duty in Beat no.10, covering area of Sadatpur Extension. He placed the duty roster on record. Video (Ex.PW7/V-1) was also played during his testimony and he identified all the accused in the video. He had also identified accused during his testimony before the court.

6.19 During his cross examination, he deposed that the distance between the location of mob in aforesaid video and B-47-A, Sadatpur Extension would be around 100 meters. From the location of mob, B-47-A was not visible. He had come to know about the existence of this video on 20.12.2020 through SHO. For the first time, on 20.12.2020, he had come to know about suspects in this case for the first time on 20.12.2020. He denied that he had not conducted proper investigation, or that he had prepared the statement of witnesses on his own; or that he did not visit any place of incident; or that he did not prepare any site plan at the place of incident.

6.20 From the aforesaid testimonies of PW9 and PW10, it is evident that the only witness who puts the presence of the accused at the scene of crime and at the time of crime is PW9.

6.21 Before proceeding on the analysis of these testimonies, I deem it appropriate to first consider the challenge of Id. counsels for accused to the video Ex.PW7/V-1 that this video has not been proved as per section 65B of Evidence Act and it has been contended that it cannot be considered by the court as evidence while deciding this

case. This challenge is raised on the ground that certificate u/s 65B of Evidence Act, which is Ex.PW7/A, is not a proper certificate.

6.22 PW7 has proved this certificate as Ex.PW7/A. The said certificate is a hand written document which states it is to be a certificate u/s 63 BSA. However, this certificate lacks the particulars as required u/s 63 (4) Part A and B, as required, have not been provided. At the same time, it also cannot be considered as a certificate u/s 65B of Evidence Act because it completely lacks the particulars as are required to be provided and therefore, I find that in absence of a valid certificate, the video cannot be proved through secondary evidence and court shall not be looking into this video while deciding this case.

6.23 Now coming on to the challenges raised to the testimony of PW9.

6.24 The first ground to assail the testimony of this witness, which has been taken by ld. counsels for accused, is that he is the only witness who has supported the case of the prosecution and being a police witness, he is an interested witness and therefore, in absence of any corroboration, his testimony cannot be relied upon.

6.25 It is now well settled law that if the testimony of a police witness is found to be credible, the court can rely upon that testimony and there cannot be any insistence on corroboration of that testimony.

6.26 In this regard, Hon'ble Supreme Court in **Pramod Kumar**

(supra) has held as under:-

“13. This Court, after referring to State of U.P. v. Anil Singh, 1989 SCC (Cri) 48; State (Govt. of NCT of Delhi) v. Sunil, (2001) 1 SCC 652 and Ramjee Rai v. State of Bihar, (2006) 13 SCC 229 has laid down recently in Kashmiri Lal v. State of Haryana, (2013) 6 SCC 595 that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence.

14. Thus, the submission that the whole case should be thrown overboard because of non-examination of independent witness and reliance on the official witnesses cannot be accepted.”

6.27 Further in the case of **Baldev Singh (supra)**, Hon’ble Apex Court had observed that: -

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.

11. Observing that no infirmity is attached to the testimony of police officials merely because they belong to police force and that conviction can be based on the testimony of police officials in

Girja Prasad v. State of M.P. (2007) 7 SCC 625.”

6.28 In view of the aforesaid judgments of Hon’ble Supreme Court, it is a settled proposition of law that merely because a witness is a police witness, his testimony cannot be discarded. He is a witness like any other witness and he has to be tested on the touchstones of the credibility rather than his profession. Therefore, if the testimony of police witness is found to be credible, the said testimony can be relied upon to arrive at a finding of guilt against the accused.

6.29 Another challenge to the credibility of PW9, which has been raised during the course of arguments, is that PW9 is a planted witness and he could not have been present at the scene of crime because in that situation, he would not have been ventured out in the area alone and he was not accompanied by any other police official and therefore, it is contended that PW9 had been planted as a witness at a later stage and that is why, he first contacted the IO on 10.03.2020 i.e. almost 13 days after the incident.

6.30 I have considered this contention and I find that the testimony of this witness reveals that though he was the only person from PS Khajuri Khas at the time of incident and at the place of incident, but he was not alone. He had specifically deposed that he was accompanied by outer force and therefore, he was not alone. This part of his testimony has remained unchallenged.

6.31 The duty roster for 25.02.2020 had been admitted and

exhibited as Ex.A-6. This duty roster clearly reflects Ct. Sandeep as a beat constable of Beat No. 10. This beat included Sadatpur Extension area where the shop in question, which had been burnt on 25.02.2020, was situated. Therefore, it cannot be accepted that the presence of this witness at that place was improbable. In fact, it is more probable that being a beat constable of the area and having been accompanied by the outer force, he was present in the area.

6.32 His presence is further challenged in the light of testimony of PW5 who stated that at the time of incident, she had not seen any police in her gali.

6.33 However, the testimony of PW5 Sangeeta on this account cannot be relied upon because according to her own testimony, she had remained inside her house during the incident and only came out at around 12 midnight when the rioters had already left and therefore, she could not have known whether at the time of incident, the police was present or not.

6.34 Coming onto the testimony of PW9 HC Sandeep.

6.35 PW9 in his first statement to the IO had categorically stated that he had seen the faces of some people whom he could recognize on being shown. Thereafter, according to his testimony, he was shown a video on 20.12.2020 wherein he recognized 06 people i.e. the six accused in this case.

6.36 There is no challenge to this part of his testimony that on

20.12.2020, a video was shown to him and he recognized 06 people in that video.

6.37 PW9 then deposed that he had looked for those six people and on 12.06.2021, he produced 06 accused before the IO. This part of his testimony has also remained unchallenged.

6.38 Apart from a bald suggestion that he was not present at the scene of crime, at the time of incident or that he had not seen the accused, nothing has emerged in his cross examination, which has already been reproduced above, which would discredit the testimony of this witness.

6.39 A further challenge has also been raised by Id. counsels for accused on the ground that this witness could not have known about these accused persons as he had never visited their houses prior to the incident or conducted any inquiry or investigation qua them, prior to the incident.

6.40 It is correct that there is a little gap in the story of the prosecution where PW9 had merely deposed that on 12.06.2021, he produced these 06 accused before the IO. I say so because he merely deposed that he had produced 06 accused before the IO. How he gathered the information about their residential addresses, where he found them and how he produced them before the IO has not been stated in his testimony.

6.41 However, it was for the defence to seek these

clarifications. The defence failed to do so and rather, the defence allowed his testimony on this account to remain unrebutted. Meaning thereby, that the defence did not challenge the testimony of PW9 that on 12.06.2021, it was he who had produced 06 accused before the IO. That being the case, the contention raised on behalf of the accused that PW9 could not have known about the accused because prior to the incident, he had not visited their houses or conducted any inquiry qua them, loses its steam.

6.42 I accordingly find that despite the cross examination, defence has not been able to shake the testimony of PW9, who as per the nature of his duties could have been present at the place of incident. Thus, I find that by virtue of testimony of PW9, the prosecution has proved beyond all reasonable doubts that accused on 25.02.2020 at around 11-11.30 p.m were a part of the rioting mob (which had been carrying danda, stones etc.) of 100 to 150 persons, which had broken open the shutter of the shop of the complainant, taken out the articles from the shop, set those articles on fire and thereafter, set fire inside the shop.

6.43 As it was an assembly of more than 05 persons, this assembly was certainly in violation of proclamation of section 144 Cr.P.C and was an unlawful assembly. Resultantly, for violation of order u/s 144 Cr.P.C, accused are liable to be convicted u/s 188 IPC.

6.44 The proven act of this assembly was that this mob of

rioters acted in unison vandalized and burnt articles of shop of Wakeel Ahmed on 25.02.2020 at around 11-11.30 p.m and thus, the common object of this assembly was to commit riot, arson and mischief. This unlawful assembly had committed an act of riot when this assembly broke open the shop of Wakeel Ahmed and set its articles on fire. This assembly was armed with lathi and dandas etc. which if used by the mob could have been a deadly weapons and thus, this assembly had committed the offence of rioting while being armed with deadly weapons.

6.45 The common object of the unlawful assembly, as discussed earlier, was to cause damage to the property and an act in furtherance of this mischief was done whereby, the articles from the shop of the complainant were taken out and set afire. The complainant, appearing as PW4 deposed that he had made a complaint with regard to this act and the said complaint was Ex.PW4/A. There was no cross examination of this witness with regard to this complaint and therefore, whatever is stated in the complaint has to be taken to be true and in the complaint, complainant has stated that he had suffered a loss of around Rs.1.50 lacs. Thus, this mischief is covered within the definition of section 435 IPC.

6.46 However, there is no evidence that this mischief was done with the intent to cause destruction to the building wherein, the shop of the complainant was situated. Hence, I find that there is no

sufficient evidence to convict the accused u/s 436 r/w section 149 IPC.

6.47 In view of the above discussion, I find that accused, being a part of this unlawful assembly, are liable to be convicted for offences punishable u/s 188 IPC, u/s 147 r/w section 149 IPC, u/s 148 r/w section 149 IPC, section 450 r/w section 149 IPC and section 435 r/w section 149 IPC.

6.48 All the accused are accordingly convicted for offences punishable u/s 188 IPC, u/s 147 r/w section 149 IPC, u/s 148 r/w section 149 IPC, section 450 r/w section 149 IPC and section 435 r/w section 149 IPC and are acquitted of offence punishable u/s 436 r/w section 149 IPC.

6.49 Be heard separately on the point of sentence.

Pronounced in open court
on 11.09.2025.
(This judgment contains 27 pages
and each page bears my signatures)

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