

**IN THE COURT OF SH. VIRENDER KUMAR KHARTA,**  
**ADDITIONAL SESSIONS JUDGE (FTC)-02, CENTRAL**  
**DISTRICT, TIS HAZARI COURTS, DELHI**

In the matter of:-

**(Sessions case no. 28380/2016)**

FIR No.	58/2012
Police Station	Jama Masjid
Charge-sheet filed under Sections	145/147/148/149/186/353/427/436/379 IPC & Sec. 3 & 4 of The Prevention of Damage to Public Property Act.
Charges framed against accused persons <b>except Mohd. Irshad.</b>	Sec. 145/147/148/149 IPC, Sec. 186 IPC read with Sec. 353 IPC, Sec. 427 IPC read with Sec. 3 & 4 of Prevention of Damage to Public Property Act, Sec. 379 IPC & 436 IPC.
Charges framed against accused Mohd. Irshad.	Sec. 145/147/148/149 IPC, Sec. 186 IPC read with Sec. 353 IPC, Sec. 427 IPC read with Sec. 3 & 4 of Prevention of Damage to Public Property Act, Sec. 379 IPC, 436 IPC & Sec. 174A IPC.

**State**

**Versus**

**1. Imran @ Dagda,**  
S/o Mohd. Yusuf,  
R/o 4029, Gali Khan Khana,  
Urdu Bazar, Jama Masjid, Delhi.

**2. Arshad,**  
S/o Sh. Sagir Ahmad,  
R/o 3968, Gali Khan Khana,  
Urdu Bazar, Jama Masjid, Delhi.

**3. Salman @ Rajan,**

S/o Late Sh. Pappu @ Ram Singh,  
R/o 113, Gali No. 12, Opp. Chand  
Cinema, Kalyanpuri, Delhi.

**Presently at :-**

Park No. 6, Meena Bazar,  
Jama Masjid, Delhi.

**4. Mohd. Shamim,**

S/o Late Mohd. Bashir,  
R/o Patri Meena Bazar, Gate No. 2,  
Dargah Hare Bhare Shah,  
Jama Masjid, Delhi.

**5. Mohd. Arif,**

S/o Sh. Dilshad,  
R/o H/o Makki Irshad, Jagat Cinema  
Jama Masjid, Delhi.

**Permanent address:-**

H. No. 95/26, Paize Bagh, Farash  
Khan, PS Begum Ganj,  
Kanpur, Uttar Pradesh.

**6. Naeemuddin @ Naeem @ Mainuddin**

S/o Sh. Mirazuddin,  
R/o 3968, Gali Khan Khana,  
Urdu Bazar, Jama Masjid, Delhi.

**7. Mohd. Irshad,**

S/o Late Mohd. Khalil,  
R/o Park No. S, Meena Bazar,  
Jama Masjid, Delhi.

**8. Bilal,**

S/o Sh. Manzoor Bhatt,  
R/o 3910, Gali Jagat Cinema Wali,  
Jama Masjid, Delhi.

- 9. Nadeem @ Kuppa,**  
S/o Sh. Nawaboddin,  
R/o 3910, Gali Jagat Cinema Wali,  
Jama Masjid, Delhi.
- 10. Tohid,**  
S/o Sh. Abdul Rashid @ Rashid Ahmad  
R/o 3996, Gali Khan Khana,  
Jama Masjid, Delhi.
- 11. Shahid @ Kamil,**  
S/o Sh. Ishtiyak Ahmed,  
R/o 4029, Gali Khan Khana,  
Jama Masjid, Delhi.
- 12. Ziyauddin (Murgewala),**  
S/o Sh. Chaudhary Mohammaddin,  
R/o 1154, Gali Saiyad Wali, Kala Mahal  
Jama Masjid, Delhi.
- 13. Abdul Wahid,**  
S/o Sh. Abdul Zahir,  
R/o 3978, Gali Khan Khana,  
Jama Masjid, Delhi.
- 14. Abdul Zahid,**  
S/o Sh. Abdul Zahir,  
R/o 3978, Gali Khan Khana,  
Jama Masjid, Delhi.
- 15. Mohd. Ikrar,**  
S/o Sh. Abdul Sattar,  
R/o 3991, Gali Khan Khana,  
Jama Masjid, Delhi.
- 16. Mohd. Imaran @ Rizwan,**  
S/o Late Sh. Mohd. Ahsaan  
R/o 3975, Gali Khan Khana,  
Urdu Bazar, Jama Masjid, Delhi

**...Accused Persons.**

Date of Institution of case	11.12.2012
Date of Arguments	16.09.2025 & previous dates.
Judgment reserved on	16.09.2025
Judgment pronounced on	24.09.2025
Decision	<b>Acquitted</b>

## J U D G M E N T

1. Accused persons namely Imran @ Dagda, Bilal, Mohd. Shamim, Naeemuddin, Tohid Ahmed, Abdul Zahid, Shahid, Ziauddin, Arshad, Abdul Wahid, Mohd. Imran @ Raizwan, Salman @ Rajan, Mohd. Arif, Nadeem, Mohd. Iqrar and Mohd. Irshad are facing trial for the offences punishable under Sec. 145/147/148/149 IPC, Sec. 186 IPC read with Sec. 353 IPC, Sec. 427 IPC read with Sec. 3 & 4 of Prevention of Damage to Public Property Act, Sec. 379 IPC & 436 IPC. Additionally accused Mohd. Irshad is also facing trial for the offence punishable under Sec. 174A IPC.

2. The story of the prosecution is that on the intervening night of 21.07.2012 & 22.07.2012 at about 01:35 am, near Jagat Cinema Police Booth, Jama Masjid, all the aforesaid accused persons along with their co-accused namely Rizwan @ Mamu (since deceased), Shamshul Qamar (since deceased) and Shoaib Iqbal (since discharged) in furtherance of their common intention joined/formed an unlawful assembly for a common object to commit an offence. Further on the abovesaid date, time and place

all the aforesaid accused persons along with their aforesaid co-accused persons being the member of an unlawful assembly and in prosecution of common object of the such assembly, some members pelted stones, bricks and torched Police Post and also damaged various vehicles and committed the offence of rioting and at that time they were armed with something which was used as weapon of offence was likely to caused death. Further on the the abovesaid date, time and place all the aforesaid accused persons along with their aforesaid co-accused persons in furtherance of their common intention voluntarily obstructed and used criminal force deterring the public servant for discharging their lawful duty. Further on the abovesaid date, time and place all the aforesaid accused persons along with their aforesaid co-accused persons in furtherance of their common intention committed mischief, causing loss and damage to the property (vehicles) including police property (public property). Further on the abovesaid date at or about 11:30 pm near Urdu Bazar, Jama Masjid, the aforesaid unlawful assembly and aforesaid accused persons being members of the said unlawful assembly, committed theft of Rs. 7,50,000/- kept in two bags in car bearing registration no. DL-4CR-2512 by taking out of the possession of Abdul Sattar Khan Bharti intending to take the said things dishonestly without his consent. Further on the abovesaid date, time and place all the aforesaid accused persons along with their aforesaid co-accused persons in furtherance of their common intention committed mischief by fire, intending to cause or knowing it to be likely that aforesaid accused persons will thereby cause the destruction of

any building which is ordinarily used as a place for custody of property or dwelling house. Further on 26.07.2019, process under Sec. 82 Cr.PC was executed for appearance of accused Mohd. Irshad before the court on 27.08.2019 but he failed to appear before the court on 27.08.2019 and he was declared Proclaimed Offender on 09.09.2019.

3. The brief facts which are borne out from the record of the case are that on 22.07.2012, on receipt of DD No. 6B, Ex. PW-29/A, regarding pelting of stones in the area of Jagat Cinema wali gali, PW-29 IO/Retd. Inspector Kuldeep (the then Sub-Inspector) along with PW-17 Ct. Sandeep went to the spot of incident i.e. near Police Booth, Jagat Cinema, Delhi, where SHO PS Jama Masjid along with other police staff was already found present and they found that Police booth near Jagat Cinema had already been set ablaze due to which the articles kept inside the abovesaid police booth had been burnt. The bricks, stones and broken bottles of glass in huge quantity were also lying outside the police booth near Jagat Cinema and some vehicles were also found damaged there. Thereafter PW-29 IO/Retd. Inspector Kuldeep (then SI) recorded statement of PW-2 HC Raj Kumar, Ex. PW-2/A, who was on duty at aforesaid Police booth, and on the basis of his statement, PW-29 IO/Retd. Inspector Kuldeep prepared rukka, Ex. PW-29/B and got the present FIR registered at PS Jama Masjid through PW-17 Ct. Sandeep Kumar. During investigation, IO got inspected the spot of incident through Mobile Crime Team and seized the broken glass and stones from

the spot of incident. Thereafter IO met with one Sh. Abdul Sattar Khan Bharti, who got recorded his complaint regarding missing of Rs. 7,50,000/-, which were kept in two bags in his Skoda Octavia car bearing registration no. DL-4CR-2512, which was parked near spot of incident, during riot. During investigation, IO recorded statements of police personals who were posted at ablazed Police Booth near Jagat Cinema, seized three damaged vehicles i.e. Wagon-R car bearing registration no. DL-2CAH-3414, Maruti Suzuki Ecco car bearing registration no. DL-5SCJ-2594 & Skoda Octavia bearing registration no. DL-4CR-8512, burnt/damaged articles lying in the Police Booth near Jagat Cinema, recorded statements of owners of damaged car and prepared site plan at instance of PW-2 HC Raj Kumar. Thereafter further investigation of the present case was entrusted to PW-38 Inspector Praveen Kumar.

4. During investigation, on 28.07.2012, accused Imran @ Dagda and Arshad were apprehended by IO on the basis of secret information from Parking, near Jagat Cinema and thereafter IO interrogated them and during interrogation, they confessed their involvement in the present incident and disclosed the names of their accomplices. Thereafter IO arrested accused Arshad and Imran @ Dagda, conducted their personal search and recorded their disclosure statements vide memos exhibited as Ex. PW-3/9 to Ex. PW-3/12, Ex. PW-3/3 & Ex. PW-3/4. Thereafter both the accused persons led the police party to Urdu Park and got their accomplices namely Mohd. Shamim, Mohd. Imran @ Rizwan and

Salman @ Rajan arrested vide memos Ex. PW-3/6 to Ex. PW-3/8. IO also got identified the aforesaid accused persons through PW-2 HC Rajesh and Ct. Dana as they were posted at ablazed Police Booth at the time of incident. During investigation, on 01.08.2012, IO along with SI Kuldeep, HC Raj Kumar and Ct. Sayed Aijaj went in search of remaining accused persons and reached at Coat Market, where secret informer met him and informed about the presence of accused Mohd. Arif, Mohd. Irshad and Nadeemuddin @ Naeem at Meena Bazar, Nahar Patri, Jama Masjid. Thereafter IO along with police officials went there and arrested aforesaid three accused persons, at instance of secret informer as well as HC Raj Kumar and Ct. Sayed Aijaj, who identified them at first sight, vide arrest memos, Ex. PW-2/G3, Ex. PW-2/G4 & Ex. PW-2/G5. IO also conducted personal search and recorded disclosure statements of aforesaid three accused persons vide memos, Ex. PW-2/G6 to Ex. PW-2/G8 & Ex. PW-2/G2, Ex. PW-2/G1 & Ex. PW-2/G. During investigation, IO collected PCR Form, recorded statement of caller of PCR Smt. Satbiri, examined MHC(M) of PS Daryaganj, Kamla Market, Karol Bagh and Jama Masjid who issued tear gas shells to staff deployed near Jagat Cinema Police Booth, collected copy of items issuing register with respect to issuance of articles stored in Jagat Cinema Police Booth from ASI Arvind Premi, In-charge, Store Keeper, collected duplicate pay-in slip of electricity bill for ablazed Police Booth and collected copy of register with respect to issuance of gas gun/tear gas from PS Karol Bagh, Daryaganj, Kamla Market & Jama Masjid. During investigation, IO also collected copy of



logbook, crime team report, photographs, recorded statements of witnesses under Sec. 161 Cr.PC, sought permission under Sec. 195 Cr.PC from the office of ACP, Daryaganj and tried to search for remaining accused persons but no clue could be found. On completion of investigation, charge-sheet was filed by the IO before the Court through the SHO. After arrest of remaining accused persons namely Rizwan @ Mamu, Nadeem @ Kuppa, Ikrar, Wahid, Zahid, Shamshul Qamar, Shahid @ Kamil, Bilal, Jiyauddin and Tohid, supplementary charge-sheet was also filed before the court.

5. Vide orders dated 02.11.2012 and 08.11.2012 copy of the charge-sheet under Section 207 Cr.P.C were supplied to the accused persons and vide order dated 06.12.2012 the case was committed to the Court of Sessions under Sec. 209 Cr.P.C. Thereafter supplementary charge-sheet was filed in the present case and copy of supplementary charge-sheet under Sec. 207 Cr.PC was also supplied to the accused persons.

6. Vide order dated 17.02.2014 the Ld. Predecessor was pleased to frame charges under Sec. 145/147/148/149 IPC, Sec. 186 IPC read with Sec. 353 IPC, Sec. 427 IPC read with Sec. 3 & 4 of Prevention of Damage to Public Property Act, Sec. 379 IPC & 436 IPC against eight accused persons namely Imran @ Dagda, Arshad, Salman @ Rajan, Mohd. Imran @ Rizwan, Mohd. Shamim, Mohd. Arif, Naeemuddin and Mohd. Irshad. Vide order dated 27.09.2014, Ld. Predecessor was pleased to frame charges under Sec. 145/147/148/149 IPC, Sec. 186 IPC read with Sec. 353

IPC, Sec. 427 IPC read with Sec. 3 & 4 of Prevention of Damage to Public Property Act, Sec. 379 IPC & 436 IPC against remaining accused persons namely Shoaib Iqbal, Mohd. Rizwan @ Mamu, Nadeem @ Kuppa, Mohd. Iqrar, Abdul Wahid, Abdul Zahid, Shamshul Qamar, Shahid @ Kamli, Bilal, Ziauddin (Murgewala) and Tohid Ahmad Ansari. Vide order dated 25.09.2024, charge under Sec. 174A IPC was also framed against accused Mohd. Irshad. Accused persons pleaded not guilty to the charges and claimed trial.

7. To prove its case, prosecution has examined **39** witnesses. The testimonies of presecution witnesses along with its nature has been discussed briefly in the following paragraphs.

8. **PW-1 HC Gyanender Singh**, was the MHC(M) at PS Jama Masjid. He deposed that on 21.07.2012, he handed over one gasgun, 8 tear gascell and 3 hand granades to Ct. Ravish. He further deposed that Ct. Ravish returned 4 tear gascell, 3 granedes and gasgun and other articles. He proved photocopy of register as Ex. PW-1/A. He also deposed that on 04.09.2012, he handed over the copy of electricity bill installed at Police Booth, Jagat Cinema, Jama Masjid to the IO which was seized by him vide seizure memo Ex. PW-1/B. He also proved copy of electricity bill as Ex. PW-1/C. In his cross-examination, he denied the suggestion that no arms and ammunition were handed over to Ct. Ravish by him at any point of time or on the relevant date and time.

9. **PW-2 HC Raj Kumar**, was the complainant as well as one

of the eyewitness of the incident. He deposed that on 21.07.2012, he was performing his duty at Jagat Cinema Picket along with ASI Taufiq Khan, Ct. Rajesh and Ct. Dana Ram. He further deposed that at about 12:30 am in the night, infrenzy crowd consisting 50 in number, came from the side of Nukkar Farash Bazar and said mob was uttering slogans 'Masjid wahi banaenge', 'Shere Delhi Zindabad', 'MLA Shoaib Iqbal Zindabad', 'Allah hu Akbar' and mob coming towards them and started pelting stones towards their Police booth. He further deposed that he informed his senior officers with his mobile phone and after seeing the critical condition he thought it better to recede backward and they started receding backward and reached towards gate no. 1 of Jama Masjid and during this period the said mob put the police booth on fire and some of them started breaking the gate of Metro Station. He further deposed that after sometime many members of police party reached there and the annoucement was made towards the side of senior officer and requested the unlawful assembly and infrenzy mob to disperse but infrezy mob did not pay heed on the annoucement made by senior police officers. He further deposed that tear gas were fired thereafter some of the public persons had ran away from there. He also deposed that the amplifire lying in the booth as well as police booth had been burnt in this incident along with electricity meter installed in the booth. He further deposed that his statement, Ex. PW-2/A was recorded by the IO. He proved the seizure memos of bricks, stones and pieces of bottle, a car bearing registration no. DL-4CR-8512, seizure memo of two other damaged cars and seizure memo of burnt

articles i.e. battery, amplifire system, seizure memo of a pipe on which radio was installed as Ex. PW-2/B & Ex. PW-2/E. This witness could identify only four accused persons namely Naemuddin @ Maenuddin, Mohd. Shamim, Imran @ Dagda and Arif during his deposition in the court. He narrated about apprehension of accused Arif, Nadeem and Irshad and proved their arrest memos, personal search memos and their disclosure statements as Ex. PW-2/G to Ex. PW-2/G8. This witness has correctly identified the case properties in the court during his deposition. In his cross-examination, he deposed that DD No. 53B was recorded with respect to their Rawangi from PS to picket duty on the day of incident. He also deposed that 50-60 people were present at the Jagat Cinema chowki. He admitted that mob was coming from Daryaganj side at the said time. He also admitted that stone pelting by the mob had started at 12:30 am and continued till the police force arrived. He denied the suggestion that he had not seen the incident in question. He also deposed that he was not knowing accused Shamim and Imran from prior date. He also deposed that it might be possible that Shamim and Imran were not part of mob who had committed the crime in question. He also deposed that he had not identified accused Shamim and Imran @ Rizwan. He admitted that on 10.03.2014 when his examination-in-chief was recorded, he had said that he could not identify any of the accused persons. He also admitted that the said time there was no public person near the police booth when his statement was recorded. He denied the suggestion that incident

did not take place in his presence as he had not seen the incident in question.

10. **PW-3 Ct. Rajesh**, was also one of the eyewitness of the present incident. He deposed that on 21.07.2012, he along with ASI Tausif Ahmad Khan, HC Raj Kumar and Ct. Dana Ram were performing duty at Police Picket, Jagat Cinema. He further deposed that on the intervening night 21-22.07.2012, all aforesaid police officials were on duty at picket situated at Jagat Cinema as in Subhash Park accused Shoaib Iqbal and his accomplices had constructed a mosque unauthorisedly and there was tension in the area. He further deposed that at about 12:30 am a crowd came from the side of nukkar, Faras Bazar uttering slogans that 'Masjid wahi banaenge', 'Shere Delhi Zindabad', 'MLA Shoaib Iqbal Zindabad', Aale Mohammad Zindabad, 'Allah hu Akbar' and came towards Police Picket, Jagat Cinema and started pelting stones, bricks and glass bottles towards them in a planned manner. He further deposed that to save themselves, all members of police party moved towards the gate no. 1 of Jama Masjid, after leaving the police booth and thereafter the crowd set on fire the police picket due to which the furnitures and alarming system was burnt. He further deposed that in the meantime HC Raj Kumar informed the senior officers who reached at the spot and the members of crowd were asked to disperse but they did not pay any heed. He further deposed that as per the directions of the senior officers, tear gas shells were released. He also deposed that the crowd had also pelted stones and bricks and broken the glasses of vehicles

and ran away. He further deposed that accused Imran @ Dagda, Imran @ Rizwan, Arshad and Mohd. Shamim @ Babu Khan were leading the crowd. He narrated about proceedings conducted by the IO at the spot of incident viz. seizure of broken pieces of bricks, stones and bottles, recording of statement of HC Raj Kumar, recording complaint of Abdul Sattar, regarding damaging his car bearing registration no. DL-4SR-8512 make Skoda Octavia and committing theft of Rs. 7,55,000/- from his car by the crowd during riot, preparation of rukka and registration of present FIR through Ct. Sandeep. He further deposed that on 29.07.2012, he again joined the investigation in the present case and he narrated about apprehension of accused persons namely Mohd. Shamim, Mohd. Imran @ Rizwan, Imran @ Dagda, Arshad and Salman @ Rajan from Parking of Jagat Cinema on the basis of secret information and proved their disclosure statements, arrest memos and personal search memos as Ex. PW-3/1 to Ex. PW-3/15. This witness has correctly identified the accused persons during his deposition before the court. In his cross-examination, he deposed that the mob of around 400 people came from the side of nukkar, Faiz Bazar. He also deposed that he did not pelt stone in retaliation nor any other police staff did so. He admitted that no police official had received injury due to pelting of stones. He also admitted that he had given the names in his examination-in-chief regarding the accused persons who were known to him prior to the incident as the cases were registered against them. He denied the suggestion that no incident took place in his presence. He also denied the suggestion that he was not present on the date of the

incident or that at the time of incident. He also denied the suggestion that accused persons were falsely implicated in the present case or that no accused persons were arrested in his presence.

11. **PW-4 ASI Mustafa Khan**, was the Duty Officer at PS Jama Masjid. He proved the copy of FIR No. 58/2012 and endorsement on rukka as Ex. PW-4/A & Ex. PW-4/B. In his cross-examination, he denied the suggestion that FIR was ante-time and ante-dated. He deposed that he had no knowledge of any police officer or any articles like tear gas shell, pistols, rifles etc. being sent to the spot. He admitted that the entire contents of FIR was not entered in DD No. 5.

12. **PW-5 SI Dhan Singh**, was the In-charge, Mobile Crime Team. He deposed that on 22.07.2014, on receiving information from Police Control Room, he along with other members of crime team consisting Ct. Ravinder, photographer and Ct. Hardev went to the spot of incident i.e. near Jagat Cinema Police Booth, Jama Masjid and inspected the spot of incident. He proved his detailed report in this regard as Ex. PW-5/A. In his cross-examination, he deposed that no public person had signed the report, Ex. PW-5/A. He also deposed that he had not collected the exhibits from the spot. He denied the suggestion that he never visited the spot or that he had prepared a false report at the instance of IO.

13. **PW-6 Ct. Hardev**, was the Videographer at Mobile Crime Team. He deposed that on 22.07.2014, on direction of IO, he

videographed the spot of incident in two DVDs i.e. no. 23 & 25. However, DVD No. 23 could not played in the court as the file was corrupted. In his cross-examination, he deposed that he had not made any separate entry with respect to taking camera to the spot for videography. He also deposed that he did not remember the exact duration of videography conducted by him. He denied the suggestion that he had not visited the spot or that he had conducted videography of spot.

14. **PW-7 SI Munanabar Kamal**, deposed that on 21.07.2012 he along with HC Ramkesh, Ct. Bale Singh, Ct. Giriraj and Ct. Narender had left the PS for their duty at Nukkar, Faiz Bazar picket while SI Tausif Ahmad along with HC Raj Kumar, Ct. Dana Ram and Ct. Rajesh had left the PS for duty at Police Picket, Jagat Cinema. He proved DD No. 53B, Ex. PW-7/A regarding their duty at the aforesaid place. In his cross-examination, he denied the suggestion that he had never recorded DD No. 53B or that it was later on manipulated at the instance of senior police officials.

15. **PW-8 Ct. Pawan**, deposed that on the intervening night of 21-22.07.2012, he along with SHO PS Karol Bagh and other staff came to Police Booth near Jagat Cinema, Jama Masjid. He further deposed that there was huge crowd there and crowd was pelting stones on the police. He further deposed that at 12:30 midnight, on instruction of SHO, he had fired two tear gas shells from gas gun. This witness was not cross-examined on behalf of the accused persons despite opportunity given to them.



16. **PW-9 Ct. Shyam Singh**, deposed that on the intervening night of 21-22.07.2012, he along with ACP, Daryaganj went to Police Booth near Jagat Cinema, Jama Masjid where there was a huge crowd and the crowd was pelting stones on the police. He further deposed that on instruction of ACP, he had fired eight gas shells from gas gun and one granite shell. This witness was not cross-examined on behalf of accused persons despite opportunity given to them.

17. **PW-10 Ct. Ravinder**, was the photographer at Mobile Crime Team. He proved 15 photographs of the spot of incident from different angles as Ex. PW-10/1 to PW-10/15. He also proved negatives thereof as Ex. PW-10/1A to PW-10/15A. In his cross-examination, he denied the suggestion that he did not visit the spot or that the photographs were ante-dated and ante-timed.

18. **PW-11 Ct. Subhash**, deposed that on the intervening night of 21-22.07.2012, he along with SHO PS Kamla Market came to Police Booth near Jagat Cinema, Jama Masjid. He further deposed that there was huge crowd there and crowd was pelting stones on the police. He further deposed that on direction of SHO to disperse the crowd, he had fired five tear gas shells towards the crowd. This witness was not cross-examined on behalf of the accused persons despite opportunity given to them.

19. **PW-12 SHO Pramod Joshi**, deposed that on 21.07.2012, he was posted as SHO PS Kamla Market. He further deposed that on the intervening night of 21-22.07.2012 at around 12:15 am, he

received wireless message from the Control Room wherein it was mentioned that he was to report along with staff at Jama Masjid. He further deposed that he along with staff reached at Jama Masjid where senior officers along with SHOs of other Police Stations were present and there was unlawful assembly of several persons who were pelting stones and bottles at police party. He further deposed that to control the said agitated crowd and by the order of the senior officers, he ordered Ct. Subhash carrying gas gun to fire tear shells and he fired five tear shells on his directions. In his cross-examination, he deposed that he had not received any order of his senior officer in writing for firing tear shells. He denied the suggestion that he had not ordered for tear gas shells and also had not informed the DCP.

20. **PW-13 Sh. Om Prakash**, Retd. ACP, deposed that on 20-21.07.2012, he was posted in Central District as ACP and on the intervening night of 21-22.07.2012, he along with Ct. Shyam Lal, wireless operator was in his area i.e. Sunahri Masjid adjacent to Daryaganj. He further deposed that on the same intervening night at about 12:30 am, his operator Shyam Lal received a message about unlawful assembly at Jagat Cinema and the persons of unlawful assembly had broken the door of DMRC and had also pelted stones and the said persons also put fire on the announcement system installed on the police booth near Jagat Cinema. He further deposed that on receipt of the said information, he alongwith operator Shyam Lal reached at the police booth Jagat Cinema and he told the persons of unlawful

assembly not to do so and try to pacify them to leave the said place but the persons of unlawful assembly continued pelting stones. He further deposed that he gave five minutes time to the persons of unlawful assembly to disperse but they did not disperse and thereafter he took the oral directions of his senior officers for firing of tear gas shells as it was the only option left with him to save the public property. He further deposed that on the directions of the senior officers, he directed his operator Shyam Lal to throw eight tear gas shells of small range and one tear gas shell of long range on the said unlawful assembly. He further deposed that on his direction, Shyam Lal had fired abovestated tear gas shells on the unlawful assembly and after that unlawful assembly started dispersing. In his cross-examination, he deposed that his statement was recorded at the spot. He admitted that there was no source of light at the police booth. He also deposed that he had not seen any untoward incident taking place at Sunahari Masjid in his presence. He denied the suggestion that they were not carrying tear gas shells when he had proceeded for patrolling duty on the said day. He denied the suggestion that Shyam Lal had not received any wireless message on the said date or that he was not on patrolling duty on the said day or that he had visited the spot in question. He also denied the suggestion that no tear gas shells had been fired on his instructions.

21. **PW-14 Ct. Rabish Kumar**, deposed that on the intervening night of 21-22.07.2012, at about 12:30-01:00 am, he along with Inspector Inder Kumar Jha, SHO PS Jama Masjid reached at

Police Booth, Jagat Cinema. He further deposed that several persons had gathered there and they were pelting stones on police personnel. He further deposed that on the direction of SHO, he had fired four tear gas shells on the said persons. In his cross-examination, he admitted that he had not stated in his statement to the police that the booth was burning when they reached there. He also deposed that he had not seen any police officials in injured condition at the spot. He denied the suggestion that he did not accompany SHO at the spot or that he had not fired any tear gas.

22. **PW-15 ACP Sh. Ram Mehar Singh**, deposed that on the intervening night of 21-22.07.2012, he was posted as SHO PS Karol Bagh. He further deposed that in the abovesaid night at about 12:30-12:45 am (night), he along with his staff reached at Subhash Park, Jagat Cinema, Jama Masjid for law and order duty and found mob present at the spot and they were pelting stones on the police officials. He further deposed that he directed Ct. Pawan Kumar to use tear gas shells to disperse the mob. He further deposed that Ct. Pawan used two tear shells and the empty tear shells of the abovesaid gas shells were deposited in the Malkhana of PS Karol Bagh. In his cross-examination he deposed that since he was on law and order duty so he did not need to get the order for carrying tear gas shells from any officials. He also deposed that the entry regarding carrying of tear gas shells was made in Malkhana by Malkhana Moharir. He denied the suggestion that he did not go to spot or used the tear gas shells.

23. **PW-16 HC Anil Kumar**, was the MHC(M) at PS Darya Ganj. He deposed that he had issued one gas gun, eight tear gas shells, four grenade and other ante-riot equipment to Ct. Shyam Singh who was on duty with ACP Darya Ganj vide entry at Sl. No. 58, Ex. PW-16/A. He further deposed that after five days, Ct. Shaym Singh had returned three grenade, eight empty cover of the abovesaid tear gas shells and he mentioned the said fact in the Ex. PW-16/A. He also proved DD No 48B, dated 25.07.2012, Ex. PW-16/B in his regard. In his cross-examination, he denied the suggestion that entry no. 58 of Arms and Ammunition register was not having the details of the arms and ammunition which were issued by him to Ct. Shyam Singh. He admitted that there was cutting and overwriting in entry no. 58, Ex. PW-16/A. He denied the suggestion that there was manipulation in Arms & Ammunition register with regard to date of issuing and depositing the arms and ammunition. He denied the suggestion that DD No. 48B was fabricated document.

24. **PW-17 Ct. Sandeep Kumar**, deposed that on 22.07.2012, on receiving DD No. 6B, he along with SI Kuldeep reached near Police Booth, Jagat Cinema where SHO along with police staff was already present. He further deposed that he found that the fire in the abovesaid police booth and the articles kept in the abovesaid police booth had been burnt due to fire. He further deposed that bricks, stone and broken bottle of glass in huge quantity were lying outside the booth near Jagat Cinema. He further deposed that SI Kuldeep recorded statement of HC Raj

Kumar, prepared rukka, Ex. PW-2/A by making his endorsement and sent him to PS Jama Masjid for getting the FIR recorded. He further deposed that after registration of present FIR, Ex. PW4/A, he returned back to the spot and handed over copy of FIR and original rukka to SI Kuldeep Singh. He narrated about the proceedings conducted by the IO/SI Kuldeep Singh at the spot viz. inspection of spot of incident by mobile crime team, seizure of bricks, stones, broken bottle of glass and broken vehicles from the spot and preparation of site plan at instance of HC Raj Kumar. He also deposed that one Abdul Sattar Khan Bharti, owner of one of the broken vehicle seized by the IO informed the IO that his cash in sum of Rs. 7,50,000/- kept in the abovesaid vehicle was found stolen and thereafter IO recorded statement of Abdul Sattar Khan Bharti in this regard. In his cross-examination, he deposed that he left PS vide DD No. 4A, however, he did not remember his arrival entry number. He also deposed that no public persons had joined the investigation in his presence, however, one public person had come there and informed about the theft of money from his vehicle. He also deposed that the said person had not signed any memo prepared at the spot. He denied the suggestion that neither he had visited the spot nor the FIR was got registered through him or that nothing was seized in his presence.

25. **PW-18 Ct. Sayyad Ajaz**, deposed that on 01.08.2012, he joined the investigation in the present case along with IO/Inspector Praveen Kumar. He narrated about apprehension of accused persons namely Arif, Irshad and Naeem by the IO from

Urdu Park, on the basis of secret information. He proved arrest memos, personal search memos and disclosure statements of accused Arif, Irshad and Naeem as Ex. PW-2/G-3 to Ex. PW-2/G-5, Ex. PW-2/G-6 to Ex. PW-2/G-8 & Ex. PW-2/G to Ex. PW-2/G-2. He also proved pointing out of spot of incident by the accused persons vide memo Ex. PW-18/A. He further deposed that on 19.02.2012, he was present at Urdu Bazar during patrolling where HC Raj Kumar, VB In-charge came there and pointed out four accused persons who were standing at the corner of Gali Khankhana. He further deposed that all the abovesaid four accused persons ran away from there by seeing them and since he was Beat Officer of the abovesaid Ilaka so he recognized the abovesaid accused persons as Wahid, Jahid, Iqrar and Aziz as they were residents of same beat. He further deposed that thereafter he along with HC Raj Kumar visited the residential houses of abovesaid accused persons but they were not found present at their respective houses. This witness has correctly identified the accused persons during his deposition before the court. In his cross-examination, he admitted that names of accused persons apprehended on 01.08.2012 were revealed to him later on only after their arrest. He also admitted that accused persons apprehended from Urdu Park did not try to flee. He denied the suggestion that accused persons namely Arif, Irshad and Naeem were lifted from their respective houses and were falsely implicated in this case. He admitted that accused persons namely Wahid, Jahid, Iqrar and Nadeem were residents of Gali Khankhana. He denied the suggestion that they had not seen the

abovesaid accused persons running into the gali or they had not chased them as claimed by him.

26. **PW-19 Sh. Rais Ahmad**, deposed that his sister Swaleha was the registered owner of car bearing registration no. DL-2CAH-3414 but he used to drive the said car as the same always remained under his custody. He further deposed that on the intervening night of 21-22.07.2012 he had parked his abovesaid car in the parking opposite Jagat cinema, Jama Masjid. He further deposed that on the very next day in the morning time, he saw that his abovesaid car was damaged as its front windscreen was broken. He further deposed that he came to know that his abovesaid car was damaged during riot (danga) which had taken place there in the abovesaid intervening night. This witness was not cross-examined on behalf of accused persons despite opportunity given to them.

27. **PW-20 ASI Chander Shekhar**, deposed that on the intervening night of 21-22.07.2012 at about 01:35 am, a PCR call was received from mobile no. 9278313581 that 'stones were being pelted in the gali of Jagat Cinemawali'. He proved PCR form regarding the aforesaid information as Ex. PW-20/A. In his cross-examination, he deposed that the caller of the mobile phone had not disclosed his name. He denied the suggestion that Ex. PW-20/A was not generated by him or that he had not received any call from the said phone.

28. **PW-21 ASI Krishan Kumar**, was the Wireless Operator. He



proved copies of page nos. 131 & 141 to 151 of logbook register regarding several wireless transmissions in the intervening night of 21-22.07.2012 as Ex. PW-21/B. He also proved the seizure memo of photocopies of log book/message register as Ex. PW-21/A. In his cross-examination, he admitted that there was no DD entry regarding the incident in message register. He denied the suggestion that no entry was made by him in the log book or that due to that reason, he was unable to produce the same.

29. **PW-22 SI Arvind Premi**, deposed that he was posted at Police Control Room, Daryaganj and on 29.05.2003 he had issued WIPA System including GM300 Set No. 159KZFF900 make Motorola alongwith all the components of WIPA System for installation at Police Booth, Jagat Cinema. He proved entry in this regard in register vide TIV No. 8/2023 as Ex. PW-22/A and seizure memo of copy of said register as Ex. PW-22/B. In his cross-examination, he denied the suggestion that no communication system was installed by the technical team in the year 2003. He also denied the suggestion that communication system was not burnt on the day of incident. He also denied the suggestion that batteries were not in burnt condition.

30. **PW-23 Smt. Satbiri**, was the caller of 100 number regarding incident. She deposed that she did not remember the month and year of the incident, however, it was in the intervening night of 21-22, a quarrel took place in the gali outside her house and she made a call at 100 number. She further deposed that she did not know anything about the present case. This witness was cross-

examined by Ld. Addl. PP for the State in which she admitted that the incident took place in the month of July, 2012. She denied the suggestion that many persons had gathered at the spot and they were pelting stones upon each other. She also deposed that she was present inside her house and she did not see anything. She also deposed that she did not know as to whether the aforesaid persons were pelting stones upon each other due to some dispute over Akbarbadi Masjid. She denied the suggestion that she was deposing falsely to save the accused persons. This witness was confronted with her statement recorded under Sec. 161 Cr.PC, Mark-X-23. In her cross-examination, she deposed that police had not recorded her statement in the present case. She also deposed that she had not visited PS Jama Masjid in respect of the present case. She also deposed that on the date of incident, she did not come out from her house and she did not know as to what happened in the gali.

31. **PW-24 Ms. Swaleha Nihal**, deposed that she did not know anything about the facts of the present case as she was not resident of Jama Masjid Area and nothing was happened in her presence. She further deposed that she was the registered owner of the car make Wagon-R bearing registration no. DL-2CAH-3414, which was being used by his brother Rahish Ahmad. She further deposed that her brother told her that her abovesaid car was damaged in a quarrel in Jama Masjid area and her brother Rahish Ahmad made a complaint regarding damage of her car to Police. In her cross-

examination, she deposed that police had not recorded her statement in the present case.

32. **PW-25 Sh. Abdul Sattar Khan**, deposed that on 27.07.2012, he along with his family had come to Jama Masjid area and on that day he had parked his Skoda car bearing registration no. DL-7C-8512 in the parking in front of Rest IN Guest House near Jagat Cinema, Jama Masjid, Delhi. He further deposed that at about 11:30 pm, he went to reception of the aforesaid Guest House for booking rooms and after sometime, he heard some noises coming from outside. He further deposed that tear gas bombs were used due to which they were unable to see and when he saw outside the Guest House, he found that many public persons had gathered there and police had also reached there. He further deposed that in the morning, he reached to see his aforesaid car and found that front end rear windows of his car were broken and found that his three bags, containing clothes and a cash in sum of Rs. 7,50,000/- were missing. He further deposed that he also checked the dashboard of his aforesaid car and found one small purse containing Rs. 5,000/- was missing from there. On putting a leading question by Ld. Addl. PP for the State, witness admitted that the date of incident was 21.07.2012 and not 27.07.2012 and due to lapse of time he could not state the correct date of incident. In his cross-examination, he deposed that he made DD entry on the next day of incident and after that no investigation had been conducted. He also deposed that IO had not taken the proof of staying in the aforesaid Guest House from him.

He also deposed that he did not hand over any parking slip to the IO. He denied the suggestion that he had not parked his aforesaid car in parking or that bags, purse and cash amount were not missing from his aforesaid car.

33. **PW-26 SI Rajender**, was the MHC(M) at PS Karol Bagh. He proved entry at Serial No. 26 in Arms and Ammunition Register regarding handing over of one gas gun, eight tear gas shells and one body protector to Ct. Pawan as Ex. PW-26/A. He also proved entry made by SHO Inspector Ram Mehar Singh at Serial No. 14A as Ex. PW-26/B. In his cross-examination he deposed that the departure entry in respect of SHO Ram Mehar Singh was made as DD No. 2 in Rojnamcha Register. He admitted that there was no entry either in rojnamcha register or in Arms & Ammunition register with respect to the arms and ammunition which were carried by other team members besides Ct. Pawan. He denied the suggestion that there was manipulation in Arms & Ammunition Register with regard to date of issuing and depositing the arms and ammunition.

34. **PW-27 Retd. ACP I. K. Jha**, deposed that on 21.07.2012, he was posted as SHO PS Jama Masjid and an illegal construction for Masjid was going on at Subhash Park, Jama Masjid, Delhi. He further deposed that on the same day, it was sealed by MCD in compliance of order passed by Hon'ble High Court of Delhi and the area under the jurisdiction of PS Jama Masjid was tensed. He further deposed that at around 11:00 am, he along with police staff of PS Jama Masjid as well as outer force was present at the gate of

Subhash Park, where Tarabi (religious ceremony of Muslims) was going on in Sunhari Masjid and there was a huge gathering of people in this religious programme. He further deposed that a large gathering of people came out from the Sunhari Masjid and started raising slogans in support of area MLA Mr. Shoaib Iqbal and got violent. He also deposed that they started pelting stones on the buses plying on the road near iron bridge, Nukkar, Faiz Bazar and the crowd also set ablaze motorcycles including one government police motorcycle, parked at police booth at Nukkar, Faiz Bazar. He further deposed that the crowd was dispersed from there which started moving towards Jagat Cinema and the crowd also set ablaze police booth and the belongings i.e. wireless set, battery, speakers etc. kept therein. He further deposed that he directed Ct. Ravish to fire tear gas shells to control the crowd, who fired four rounds of tear gas shells upon the crowd. He further deposed that despite that, crowd did not clam down and destroyed other articles i.e. some of the vehicles parked there. He further deposed that one of the persons leading the crowd was accused Imran @ Dagda who was ruffian of the area and during the melee created by crowd, one of the person among the crowd snatched service pistol of Ct. Gyani Ram. In his cross-examination, he denied the suggestion that where the digging work of DMRC had been conducted, an old Masjid was found under the ground. He also denied the suggestion that accused persons had been falsely implicated to suppress the issue of mosque found under ground during digging by DMRC. He also deposed that some police officials sustained injury due to pelting

of stones. He denied the suggestion that no bus was damaged in the area within the jurisdiction of PS Jama Masjid. He also denied the suggestion that no motorcycles were set ablaze parked outside police booth, Nukkad Faiz Bazar, which was situated near iron bridge. He also denied the suggestion that accused persons were falsely implicated in the present case as no such incident took place as narrated by him in his statement.

35. **PW-28 ASI Ram Kesh**, was the MHC(M) at PS Kamla Market. He proved entry in register regarding issuance of one tear gas gun with 18 tear gas shells to Ct. Subhash in the intervening night of 21-22.07.2012 as Mark-PW-28/1. In his cross-examination, he deposed that he had issued abovementioned articles of Ct. Subhash on the oral direction of SHO. He denied the suggestion that no such above-mentioned articles were issued, used or returned or that entry Mark-PW-28/1 was manipulated or fabricated document.

36. **PW-29 Retd. Inspector Kuldeep** was the first IO in the present case. He deposed that on receiving DD No. 6B, Ex. PW-29/A regarding pelting of stones in Jagat Cinema wali gali, he along with Ct. Sandeep went to the spot where SHO PS Jama Masjid along with other police staff were already present. He further deposed that Police booth near Jagat Cinema had already been set ablaze due to which articles lying inside booth had been burnt and some vehicles were also found damaged. He narrated about proceedings conducted by him at the spot of incident viz. inspection of spot through Mobile Crime Team, seizure of broken

glass and stones vide seizure memo Ex. PW-2/B, recording statement of HC Raj Kumar, Ex. PW-2/A, preparation of rukka, Ex. PW-29/B and registration of FIR through Ct. Sandeep. He also narrated about recording of complaint of owner of damaged Skoda Octiva car regarding theft of Rs. 7,50,000/- from his car, seizure of three damaged cars vide seizure memos, Ex. PW-2/C, Ex. PW-2/D & Ex. PW-2/E, seizure of burnt articles lying in Jagat Cinema Police Booth vide seizure memo, Ex. PW-2/F and preparation of site plan at instance of HC Raj Kumar, Ex. PW-2/DY. He further deposed that on 29.07.2012, he again joined the investigation in the present case and narrated about apprehension of accused persons namely Arshad, Imran @ Dagda, Mohd. Shameem, Mohd. Imran @ Rizwan and Salman @ Rajan by the IO on the basis of secret information and proved their arrest memos, personal search memos and disclosure statements on the lines of PW-3 Ct. Rajesh. He further deposed that on 01.08.2012, he again joined investigation in the present case along with IO and narrated about apprehension of accused Arif, Mohd. Irshad and Naeem on the basis of secret information and proved their arrest memos, personal search memos and disclosure statements on the line of PW-2 HC Raj Kumar. This witness has correctly identified accused persons as well as case properties during his deposition before the court. This witness was cross-examined at length. In his cross-examination, he admitted that public persons were passing through abovementioned t-point and Inspector Praveen Kumar requested those passersby to join the investigation, but none agreed. He also deposed that IO had not requested local

residents/shopkeepers to join the investigation. He also deposed that IO had not served any notice in writing to those public persons or to local residents and shopkeepers. He also admitted that no parking attendant was got joined at the time of arrest of accused persons. He also deposed that no site plan of arrest of accused persons was prepared by IO in his presence at the spot. He also deposed that no public persons had joined the proceedings of disclosure statements of accused persons. He denied the suggestion that he had not joined the investigation on 29.07.2012 or that accused persons were not arrested in the above-mentioned manner or that no secret information was received. He denied the suggestion that accused Mohd. Irshad was arrested at the instance of secret informer.

37. **PW-30 Retd. ASI Toshif Khan**, was also one of the eyewitness of the alleged incident. He deposed that in July, 2012, he was on duty along with staff members at Jagat Cinema Picket in the intervening night of 21/22.07.2012 and at around 12:30 am, a gathering of people came there. He further deposed that they were shouting slogans ‘Shoaib Iqbal Jindabad, Masjid wahi banaenge’ and they started pelting stones on police party when they were directed to stop their procession. He further deposed that they did not stop thereafter HC Raj Kumar informed senior officer and more staff came there and tear gas shells were also lobbed upon crowd to disperse them. He also deposed that some of the crowd members, set ablaze police booth resulting in burning of furniture and some other articles. He also deposed that



crowd also damaged some vehicles. In his cross-examination, he denied the suggestion that he was not present at the spot or that he had not seen that incident. He also deposed that he did not remember the number of vehicle which was damaged. He denied the suggestion that no such proceedings took place at the spot or that all the written proceedings were conducted while seated at the police station.

38. **PW-31 HC Vijay**, deposed that on 01.05.2014 he joined the investigation in the present case. He further deposed that on that day, accused Tohid Ahmad Ansari was arrested vide arrest memo Ex. PW-31/A and his disclosure statement was recorded vide memo Ex. PW-31/B. This witness was not cross-examined on behalf of accused persons despite opportunity given to them.

39. **PW-32 ASI Sayyad Ijaj**, deposed that during December, 2013, he joined the investigation in the present case. He proved arrest memos of accused persons namely Mohd. Rizwan, Nadeem @ Kuppa, Shamshul Qamar and Mohd. Shahid as Ex. PW-32/A to Ex. PW-32/D. In his cross-examination, he deposed that accused persons were arrested in the police station in his presence and documents were prepared in PS Jama Masjid. He denied the suggestion that the disclosure statements were recorded by the IO on his own without interrogating accused person.

40. **PW-33 ASI Rajender**, deposed that on 28.06.2024 on receipt of information regarding arrest of Mohd. Irshad, he along with ASI Pradeep Kumar came to the court of Ld. MM where

accused was formally interrogated vide memo Ex. PW-33/A and arrested in the present case vide memo Ex. PW-33/B, with permission of court. This witness was not cross-examined on behalf of accused persons despite opportunity given to them.

41. **PW-34 ASI Pradeep Kumar**, deposed that on 27.06.2024, on receipt of information regarding arrest of accused Mohd. Irshad by Crime Branch vide GD No. 64A, Ex. PW-34/A, he went to the court of Ld. MM, where accused was produced. He further deposed that he moved application, Ex. PW-34/B for interrogation and formal arrest of accused. He further deposed that he interrogated accused Mohd. Irshad vide memo Ex. PW-33/A and arrested in the present case vide arrest memo Ex. PW-33/B. This witness was not cross-examined on behalf of accused persons despite opportunity given to them.

42. **PW-35 SI Nitin Singh**, ARSC, Crime Branch, deposed that 24.06.2024, he along with ASI Sanjeev, HC Gaurav, HC Mintu and ASI Baljeet went to Araria, Bihar for arresting PO/accused Mohd. Irshad, on the basis of secret information. He further deposed that on 27.06.2024, he arrested accused Mohd. Irshad from Jahangir Nagar, Ward No. 18 with the help of local police. He proved arrest memo and personal search memo of accused Mohd. Irshad as Ex. PW-35/A & Ex. PW-35/B. This witness was not cross-examined on behalf of accused persons despite opportunity given to them.

43. **PW-36 ASI Paramjit Singh**, was the Duty Officer at PS

Jama Masjid. He proved copy of GD No. 0064A dated 27.06.2024 as Ex. PW34/A received from HC Mintu Yadav, Crime Branch regarding arrest of PO/accused Mohd. Irshad. This witness was also not cross-examined on behalf of accused persons despite opportunity given to them.

44. **PW-37 HC Subhash**, deposed that on 19.01.2014, accused Ziauddin and Bilal were interrogated separately vide memos Ex. PW-37/A & Ex. PW-37/B and they were arrested in PS Jama Masjid, in the present case vide memos Ex. PW-37/A-1 & Ex. PW-37/B-1. He further deposed that on that day, RC of vehicle no. 7708 was also taken into possession vide seizure memo Ex. PW-37/C. In his cross-examination, he deposed that accused persons were arrested in the PS by IO/Inspector Praveen Kumar. He denied the suggestion that accused persons were not arrested in his presence.

45. **PW-38 Inspector Praveen Kumar Saroha**, was the Investigating Officer in the present case. He deposed that on 28.07.2012, further investigation of the present case was entrusted to him from SI Kuldeep. He narrated about apprehension of accused Imran @ Dagda and Arshad on the basis of secret information from Parking, near Jagat Cinema. He proved their arrest memos, personal search memos and their disclosure statements as Ex. PW-3/9 to Ex. PW-3/12 & PW-3/3 & Ex. PW-3/4. He also narrated about apprehension of accused persons namely Mohd. Shamim, Mohd. Imran @ Rizwan and Salman @ Rajan from Urdu Park and proved their arrest memos Ex. PW-3/6

to Ex. PW-3/8. He also narrated about apprehension of accused persons namely Mohd. Arif, Mohd. Irshad and Nadeemuddin @ Naeem from Meena Bazar, Nahar Patri, Jama Masjid, at instance of secret information. He proved their arrest memos, Ex. PW-2/G3, Ex. PW-2/G4 & Ex. PW-2/G5, personal search memos and disclosure statements, Ex. PW-2/G6 to Ex. PW-2/G8 & Ex. PW-2/G2, Ex. PW-2/G1 & Ex. PW-2/G. He also narrated about collection of PCR Form, recording of statement of caller of PCR Smt. Satbiri, Ex. PW-38/D, recording statements of MHC(M)s of PS Daryaganj, Kamla Market, Karol Bagh and Jama Masjid who issued tear gas shells to staff deployed near Jagat Cinema Police Booth, collection of copy of items issuing register with respect to issuance of articles stored in Jagat Cinema Police Booth for ASI Arvind Premi, In-charge, Store Keeper, vide seizure memo Ex. PW-22/B, collection of duplicate pay-in slip of electricity bill for ablaze Police Booth vide seizure memo Ex. PW-1/B and collection of copy of register with respect to issuance of gas gun/tear gas from PS Karol Bagh, Daryaganj, Kamla Market & Jama Masjid vide seizure memos Ex. PW-38/E, Ex. PW-16/A, Ex. PW-28/1 & Ex. PW-1/A. He also narrated about collection of copy of logbook pages, Ex. PW-21/B vide seizure memo Ex. PW-21/A, crime team report, photographs, recording of statements of witnesses under Sec. 161 Cr.PC and seeking permission under Sec. 195 Cr.PC from the office of ACP, Daryaganj. He also narrated about joining of investigation by accused persons namely Mohd. Rizwan, Nadeem @ Kuppaa, Mohd. Ikrar, Abdul Wahid, Abdul Zahid, Shamshul Qamar, Mohd.

Shahid, Bilal, Jiyauddin, Tohid Ahmad and proved their arrest memos as Ex. PW-32/A, Ex. PW-32/B, Ex. PW-38/G, Ex. PW-38/H, Ex. PW-38/I, Ex. PW-32/C, Ex. PW-32/D, Ex. PW-37/B-1, Ex. PW-37/A1, Ex. PW-31/A. He proved their disclosure statements of accused Nadeem @ Kuppa, Mohd. Ikrar, Abdul Wahid, Abdul Zahid, Samshul Qamar, Mohd. Shahid @ Kamil as Ex. PW-38/J (colly). He also proved disclosure statements of accused Bilal as Ex. PW-37/B, Jiyauddin Ex. PW-37/A, Tohid Ahmad Ansari as Ex. PW-31/B. In his cross-examination, he denied the suggestion that secret informer did not inform him about presence of accused Imran @ Dagda and Arshad at parking near Jagat Cinema. He also deposed that he tried to get joined public person but none agreed. He also deposed that no public person could be joined during arrest and personal search of accused persons namely Imran @ Dagda, Arshad, Mohd. Shamim, Mohd. Imran @ Rizwan and Salman @ Rajan. He also deposed that no site plan at the pointing out by any of the accused persons was made by him. He denied the suggestion that none of the accused gave disclosure statement or that he recorded disclosure statement of accused persons on his own or that obtained signature/thumb impression of accused persons on blank papers and converted the same into incriminating memos or that all the accused persons were apprehended from the house or that proper investigation was not conducted.

46. **PW-39 SI Narender Kumar**, was the Process Server who executed process under Sec. 82 Cr.PC against accused Mohd.

Irshad. He deposed that during July, 2019 he was assigned with the process under Sec. 82 Cr.PC against accused Mohd. Irshad, S/o Mohd. Khali, R/o Park No. 2 & Park No. 5, Meena Bazar, Jama Masjid, Delhi. He further deposed that on that day, he visited the aforesaid premises where accused Mohd. Irshad could not traced and none of the residents were aware about his whereabouts. He further deposed that he made public announcement in the area through loudspeaker regarding issuance of process under Sec. 82 Cr.PC against accused Mohd. Irshad and his appearance before the court on 27.08.2019. He further deposed that he also pasted one copy of process at Rain Basera of Meena Bazar, Jama Masjid as well as notice board of the court. He proved his statement and report in this regard as Ex. CW-1/A & Ex. CW-1/B. In his cross-examination, he deposed that no DD entry was lodged while leaving police station for execution of process against accused Mohd. Irshad. He also deposed that he did not remember as to how many public person gathered when he made announcement through loudspeaker. He also deposed that he did not record statement of any of those public persons who gathered there. He denied the suggestion that no pasting of process under Sec. 82 Cr.PC was done by him or that he had not examined caretaker of Rain Basera.

47. After closing of Prosecution Evidence, separate statements of all the accused persons were recorded under Sec. 313 Cr.PC, wherein they denied all the charges against them. Accused Imran @ Dadga claimed that he was innocent and falsely implicated by

the IO in the present case on the day of his arrest. He further claimed that he along with accused Arif, Salmaan, Arshad, Naimuddin visited the police station to see their friends and relative where police officials of PS Jama Masjid falsely implicated them in the present FIR. Accused Bilal claimed that he was innocent and falsely implicated in the present case. He further claimed that police officials falsely implicated him as they were the officers of PS Jama Masjid. Accused Salmaan @ Rajan claimed that he was falsely implicated in the abovesaid case and he was not involved in the commission of alleged offence. He further claimed that on the day of alleged incident, he was not present in the vicinity of Jama Masjid, Delhi as he was plying rickshaw in other areas of Trans Yamuna and when he came back in the night at that time he came to know that some riots had taken place in the area of Jama Masjid. He further claimed that at about 09:00 am, police officials of PS Jama Masjid came and lifted him from Rain Basera and implicated him in the present case. Accused Naemuddin @ Naeem, Ziauddin and Abdul Zahid, claimed that the beat officer of the area was known to them personally that is why the case was planted upon them and they were not part of aforesaid incident in any way. They further claimed that one of their relative and Shahdab were taken by police and when they went to police station for their release, they were caught hold and booked in the present case. Accused Mohd. Shahid claimed that he was falsely implicated in the present case at the behest of Beat Constable/Head Constable. Accused Mohd. Shamim claimed that he was falsely implicated in this case and he had not committed

any offence on the relevant time, date and place. He further claimed that he was in Jhasi, UP along with Imran and another person to see his brother who was in judicial custody and he returned back on 23.07.2012 at about 04:30 am to his house at Delhi. He further claimed that thereafter police called him and arrested him in the present case after lifting him from Patri, Meena Bazar, Jama Masjid, Delhi. Accused Arshad claimed that his brother namely Shahdab was taken by police from house and when he went to PS Jama Masjid for getting release his brother, he was caught hold and falsely implicated in the present case. Accused Iqrar and Abdul Wahid claimed that the beat officer of the area was known to them personally that is why the case was planted upon them and they were not part of aforesaid incident in any way. They further claimed that they were implicated in the abovesaid case after the one and half year of the alleged incident as the police was searching them. Accused Arif claimed that he was innocent and had not committed any offence. He further claimed that he was falsely implicated in the case by the police officials of PS Jama Masjid who were personally known to him. Accused Imran @ Raizwan claimed that he was falsely implicated in this case and he had not committed any offence on the relevant time, date and place. He further claimed that he was in Jhasi, UP along with Mohd. Shamim and another person to see his brother who was in judicial custody and he returned back on 23.07.2012 at about 04:30 am to his house at Delhi. He further claimed that thereafter police called him and arrested him in the present case after lifting him from his house. Accused Nadeem @ Kupp



claimed that after about 16 months of the incident, police started visiting his house and he secured anticipatory bail. He further claimed that local police staff was known to him since before the incident as he was General Secretary of RWA. Accused Mohd. Irshad claimed that the beat officers of the area was known to him personally that is why the case was planted upon him and he was not part of aforesaid incident in any way. He further claimed that since he used to run push cart near the spot, police picked him up and falsely implicated him in the present case. Accused Tohid Ahmad claimed that after about four months of incident, he was taken to police station with his father and released after some time and thereafter he came to know that he had been booked in the present matter. He also claimed that he was innocent and was minor at the time of alleged incident.

48. Accused persons have examined two witnesses in their defence. The nature and testimony of the defence witnesses has been briefly discussed as under:-

49. **DW-1 Ms. Kiran**, deposed that on 21.07.2012 at around 12:30 am, there was a mob on the road and she got afraid. She further deposed that then she called Nadeem Khan and thereafter Nadeem Khan along with Bilal and Rizwan @ Mamu came to her house to protect them. She further deposed that they all stayed at her home with them till morning i.e. 22.07.2012. In her cross-examination, she admitted that her house was not target of mob. She also admitted that none of the mob came at her house. She also admitted that none of the stone fell on her house. She also

admitted that she did not approach office of Commissioner of Police or DCP regarding booking of Nadeem Khan, Bilal and Rizwan @ Mamu in the present case. She denied the suggestion that she had been tutored by accused Nadeem Khan and Bilal.

50. **DW-2 Sh. Nafees**, deposed that on 21.07.2012 at about 08:00 pm, Ziauddin came at his house for Namaz in the month of Ramadan. He further deposed that Ziauddin remained at his house till 12:00 noon on next day i.e. 22.07.2012 and Ziauddin was not present at the spot during riot. In his cross-examination, he deposed that he and Ziauddin performed Namaz on 21.07.2012 at 08:00 pm in the mosque. He admitted that he did not approach office of Commissioner of Police or DCP regarding booking of Ziauddin in the present matter. He denied the suggestion that he had been tutored by accused Ziauddin.

51. Final arguments were advanced by **Sh. Pankaj Kumar Ranga**, Ld. Addl. PP for the State, **Sh. Pradeep Anand**, Ld. Counsel for accused persons namely Mohd. Arif, Mohd. Shamim, Imran @ Rizwan, Salman @ Rajan and Mohd. Tohid Ahmad Ansari, **Sh. Rajendra Prasad**, Ld. Amicus Curie for Imran @ Dagda, **Sh. Prakash Priyadarshi**, Ld. Counsel for accused Ziauddin, and **Sh. Saleem Ahmad**, Ld. Counsel for accused Nadeem, Bilal, Shahid, Abdul Zahid, Abdul Wahid, Iqrar, Naeemuddin and Arshad and Ld. Amicus Curie for accused Mohd. Irshad.

52. Ld. Addl. PP for the State argued that the prosecution has proved its case beyond reasonable doubt and all the prosecution witnesses have supported the prosecution story and have

corroborated each other's version. To substantiate his submissions, he argued that eyewitnesses i.e. PW-2 HC Raj Kumar, PW-3 Ct. Rajesh and PW-30 Retd. ASI Tausif Khan have narrated the entire incident in detail and they have corroborated each other's versions. He also argued that the photographs of the spot of incident showing the damage to public property have been duly proved by the prosecution. He also argued that three cars were damaged by the accused persons during the riot and this fact has also been proved by the prosecution. He also argued that use of tear gas shells has also been duly proved by the prosecution. He also argued that the police officials had no enmity with the accused persons and hence there is no question of their false implication. He also argued that the all the proceedings have been duly proved by the police witnesses and all the prosecution witnesses are of the sterling quality and hence all the accused persons should be convicted under all the Sections of law under which charges have been framed against them.

53. Per contra Ld. Defence Counsels as well as Ld. Amicus Curie for accused persons argued that the prosecution has miserably failed to prove its case beyond reasonable doubt. To substantiate their point, they argued that the investigation in the present case has been conducted in an arbitrary manner. They further argued that as per the version of eyewitness PW-3 Ct. Rajesh, the accused persons were known to him prior to the date of incident but none of the accused has been named in the FIR nor the police officials visited the house of accused persons on the

night of incident or on the very next day. They further argued that nothing has been brought on record with respect to illegal construction of mosque in the area. They further argued that the police has not pointed out as to who was the leader of the mob. They further argued that PW-2 HC Raj Kumar has turned hostile on the identity of accused persons and he has given contradictory version with respect to the identity of some accused persons. They further argued that as per the case of the prosecution, several SHOs, ACPs and their staff reached at the spot while the mob was present there but none of them have identified any of the accused. They further argued that the shops in the area of Jama Masjid remain open during the whole night but no shopkeeper or any independent public person has been examined as PW by the prosecution to corroborate the prosecution's story. They further argued that no CCTV footage of the area showing the faces of accused persons has been collected by the IO despite the fact that several CCTV cameras have been installed at the spot of incident. They further argued that nothing has been brought on record to prove that the gate of DMRC was damaged. They further argued that the testimony of prosecution witnesses are suffering from material contradictions and hence cannot be relied upon. They further argued that if such a huge mob was pelting stones on the police officials, how none of the police officials got hurt and why the MLC of none of the police officials got prepared. They also argued that no articles i.e. dandas, matchsticks have been recovered from the possession of accused persons. They also argued that the the stolen money has also not been recovered from

possession of accused persons. They further argued that the police was clueless about the offenders and hence later on in order to solve their case, they falsely implicated the accused persons in the present case. They further argued that since the prosecution has failed to prove its case against accused persons beyond reasonable doubts, all the accused persons should be acquitted under all sections of law under which charges have been framed against them.

54. In the present case, charges under Sec. Sec. 145/147/148/149 IPC, Sec. 186 IPC read with Sec. 353 IPC, Sec. 427 IPC read with Sec. 3 & 4 of Prevention of Damage to Public Property Act, Sec. 379 IPC, 436 IPC have been framed against all the accused persons. Additional charge under Sec. 174A IPC has been framed against accused Mohd. Irshad. These Sections have been elaborated as under:-

**145. Procedure where dispute concerning land or water is likely to cause breach of peace:-**

1. *Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.*

2. *For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land and the rents or profits of any such property.*
3. *A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.*
4. *The Magistrate shall then, without reference of the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute :Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of this order under sub-section (1).*
5. *Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has*

*existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.*

- 6. (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.*

*(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).*
- 7. When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.*
- 8. If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an*

*order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.*

9. *The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.*
10. *Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.*

**147. Punishment for rioting:-**

*Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

**148. Rioting, armed with deadly weapon:-**

*Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

**149. Every member of unlawful assembly guilty of offence committed in prosecution of common object:-**

*If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.*



**186. Obstructing public servant in discharge of public functions:-**

*Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.*

**353. Assault or criminal force to deter public servant from discharge of his duty:-**

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

**427. Mischief causing damage to the amount of fifty rupees:-**

*Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

**379. Punishment for theft:-**

*Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

**436. Mischief by fire or explosive substance with intent to destroy house, etc:-**

*Whoever commits mischief by fire or any explosive*

*substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

**174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974:-**

*Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.*

**Section 3 in The Prevention Of Damage To Public Property Act, 1984:-**

**3. Mischief causing damage to public property**

1. *Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.*
2. *Whoever commits mischief by doing any act in respect of any public property being:-*

- (a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;*
- (b) any oil installations;*
- (c) any sewage works;*
- (d) any mine or factory;*
- (e) any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith, shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine*

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

#### **Section 4 in The Prevention Of Damage To Public Property Act, 1984**

#### **4. Mischief causing damage to public property by fire or explosive substance**

*.Whoever commits an offence under sub-section (1) or sub-section (2) of section 3 by fire or explosive substance shall be punished with rigorous imprisonment for a term which shall not be less than one year, but which may extend to ten years and with fine:Provided that the Court may, for special reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than one year.*

55. I have thoughtfully considered the arguments advanced, perused the material available on record, scrutinized the evidence

led by the prosecution and gone through the relevant provisions of law. I have also considered the judgments relied upon by the Ld. Addl. PP for the State as well as Ld. Defence Counsels/Ld. Amicus Curie for accused persons.

56. PW-2 HC Raj Kumar, PW-3 Ct. Rajesh & PW-30 Retd. ASI Tausif Khan are the star witnesses of the prosecution as they were performing their duties at the spot of incident when the mob reached there and hence their testimonies are to be appreciated as per the established principles of law pertaining to the appreciation of testimonies of eyewitnesses.

57. PW-2 HC Raj Kumar is the complainant in the present case on whose statement, present FIR has been registered. On the perusal of complaint PW-2 HC Raj Kumar, exhibited as Ex. PW-2/A and contents of FIR, it is revealed that PW-2 HC Raj Kumar has only mentioned about a mob and he has not named any person who was the member of the unlawful assembly nor he has stated that he can identify any of the member of unlawful assembly that committed riot at the spot of incident. It is pertinent to mention that no sketch of any member of unlawful assembly was prepared at instance of PW-2/complainant HC Raj Kumar. In these circumstances, it cannot be presumed that PW-2/complainant HC Raj Kumar was able to see the faces of the members of the unlawful assembly and that is why, nothing about identification of accused persons was mentioned by him in his complaint, Ex. PW-2/A on the basis of which present FIR, Ex. PW-4/A was registered.

58. PW-2/complainant HC Raj Kumar deposed that on 21.07.2012, he along with ASI Tausif Khan, Ct. Rajesh and Ct. Dana Ram was performing his duty at Jagat Cinema Picket. He further deposed that at about 12:30 am in the night, infrenzy crowd came from side of Nukkar Bazar and the crowd was consisting 50 members. PW-3 Ct. Rajesh who was also present with PW-2/complainant HC Raj Kumar deposed that crowd was consisting 50 in number, however in his cross-examination, PW-3 Ct. Rajesh deposed that the mob of around 400 people came from the side of nukkar, Faiz Bazar. Thus, there are material contradictions in the statement of PW-2/complainant HC Raj Kumar and PW-3 Ct. Rajesh, which raises serious doubts on the prosecution story with respect to the number of persons who were members of unlawful assembly/mob.

59. PW-2/complainant HC Raj Kumar deposed that the infrenzy mob started pelting stones towards their police booth and he informed the senior police officers through his mobile phone. PW-2/complainant HC Raj Kumar has not deposed as to who was the said Senior Police Officer, who was informed by him. None of the Senior Police Officer deposed that he had ever received any such phone call from PW-2/complainant HC Raj Kumar. He also deposed that the said mob put the police booth on fire. Thus, PW-2/complainant HC Raj Kumar had informed the senior police officers regarding the pelting of stones by the mob at about 12:30 am. However, the first information regarding the pelting of stone was received at PS Jama Masjid at about 01:35 pm, through, DD

No. 6B dated 22.07.2012 i.e. after a delay of about one hour. If the situation was so critical, why no call at 100 number was made by PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh, PW-30 Retd. ASI Tausif Khan and Ct. Dana Ram or the senior police officials who were allegedly informed by PW-2/complainant HC Raj Kumar. This raises serious doubts with respect to the timing of alleged incident as well as on the veracity of PW-2/complainant HC Raj Kumar.

60. PW-2/complainant HC Raj Kumar deposed that some of the members of mob started breaking the gate of the Metro. PW-3 Ct. Rajesh and PW-30 Retd. ASI Tausif Khan who were also the eyewitnesses of alleged incident have not deposed anything about the damage to the Metro gate by the mob. Moreover, the gate of Metro is not visible in the photographs brought on record by the prosecution and no officials from Delhi Metro Rail Corporation has been examined as PW to corroborate the version of PW-2/complainant HC Raj Kumar with respect to the alleged damage to the Metro gate. This raise serious doubts on the prosecution story as well as on veracity of PW-2/complainant HC Raj Kumar.

61. PW-2/complainant HC Raj Kumar deposed that after seeing the critical condition, they thought it better to recede and he started receding backward and reached towards gate no. 1 of Jama Masjid and during this period, the said mob put the police booth on fire. PW-3 Ct. Rajesh also deposed that to save themselves, all members of police party moved towards gate no.

1, Jama Masjid and thereafter the mob put the police booth on fire. PW-2/complainant HC Raj Kumar in his cross-examination deposed that they travelled 25-30 meters within 2-3 minutes and had reached at gate no. 1, Jama Masjid and the police booth was not visible from gate no. 1. PW-3 Ct. Rajesh in his cross-examination deposed that they were slowly moving towards gate no. 1, Jama Masjid and they had travelled about 100 meters from Jagat booth police post towards gate no. 1. It is not possible to correctly identify the faces of persons from a distance of 100 meters at night time. Thus, from the testimonies of PW-2/complainant HC Raj Kumar and PW-3 Ct. Rajesh, it is clear that they had maintained a safe distance from the mob and have moved backward. The alleged incident took place at night time and in these circumstances, it could not have been possible to see as to who put the police booth on fire. This raises serious doubts on the veracity of PW-2/complainant HC Raj Kumar and PW-3 Ct. Rajesh.

62. As per the versions of PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh and PW-30 Retd. ASI Tausif Khan, the stone pelting started at about 12:30 am. PW-2/complainant HC Raj Kumar in his cross-examination deposed that stone pelting continued for 4-5 minutes. As per the contents of DD No. 6B, Ex. PW-29/A, the stone pelting was going on at about 01:35 am. However, PW-25 Sh. Abdul Sattar Khan Bharti deposed that at about 11:30 pm, he went to the reception of the guest house for booking the room and after sometime he heard some noises

coming from outside. He further deposed that tear gas bombs were used due to which they were unable to see. Thus, three different timings of start of the pelting of stones by the mob i.e. 11:30 pm, 12:30 am & 01:35 am have come on record. This raises serious doubts on the prosecution story as well as on the veracity of PW-2/complainant HC Raj Kumar.

63. PW-3 Ct. Rajesh deposed that they were wearing body protector with helmet which were taken by them from the Police Station, when they joined the duty. PW-2/complainant HC Raj Kumar and PW-30 Retd. ASI Tausif Khan have not deposed that they were wearing the body protector and helmet. PW-7 SI Munnabar Kamal has proved DD No. 53B, Ex. PW-7/A vide which the abovesaid police officials had left for their duty, on the date of incident. PW-7 SI Munnabar Kamal has not deposed that the body protector and the helmet were issued to PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh & PW-30 Retd. ASI Tausif Khan. Nothing has been mentioned in DD No. 53B, Ex. PW-7/A with respect to the issuance of body protector and helmet to PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh and PW-30 Retd. ASI Tausif Khan. Even the MHC(M) has not deposed that he had issued body protectors and helmets to PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh and PW-30 Retd. ASI Tausif Khan. This raises serious doubts on the prosecution story as well as on the veracity of PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh and PW-30 Retd. ASI Tausif Khan.



64. In his examination-in-chief dated 10.03.2014, PW-2/complainant HC Raj Kumar deposed that he cannot identify any of the accused persons and on that day, he did not identify any of the accused persons present in the court and thereafter his examination-in-chief was deferred. On 28.04.2014, on pointing out by the Ld. Addl. PP for the State, PW-2/complainant HC Raj Kumar identified accused Imran Dagda and Arif only but he did not identify any other accused persons. PW-2/complainant HC Raj Kumar specifically deposed that it might be possible that accused Shamim and Imran were not part of the mob who had committed the crime in question. PW-2/complainant HC Raj Kumar was the eyewitness of the alleged incident, he must have seen all the accused persons at the spot and must have identified them in the court but he did not identify the other accused persons and the identification of accused persons namely Imran @ Dagda & Arif was only on pointing out by the Ld. Addl. PP for the State. This raises serious doubts regarding the involvement of accused persons in the alleged incident. Even PW-30 Retd. ASI Tausif Khan did not identify any of the accused persons despite the fact that he was also the eyewitness of the alleged incident. This has weakened the case of prosecution.

65. PW-3 Ct. Rajesh identified all the accused persons at the time of recording of his testimony. PW-3 Ct. Rajesh specifically deposed that he remained at spot of incident i.e. Police booth, Jagat Cinema throughout till 08:00 am along with other police

officials except HC Raj Kumar, on the day of incident, who remained somewhere else during the said period. However, in his cross-examination, he deposed that he left the police booth when pelting started and came back after three hours. He again said, that as soon as police force reached at the spot, he also arrived at the spot. From the above statement of PW-3 Ct. Rajesh, serious doubts have been created with respect to his presence at the spot of incident throughout the night.

66. PW-2/complainant HC Raj Kumar deposed that he had not received any injury in the incident in question. He further deposed that the four police officials present with him did not receive any kind of injury. He also deposed that at the time when the mob had arrived they had stepped backward 15-20 meters from the said chowki. PW-30 Retd. ASI Tausif Khan has also not deposed anything about receiving any kind of injury. However, PW-3 Ct. Rajesh deposed that stones hit them but they did not receive any injury. PW-2/complainant HC Raj Kumar and PW-30 Retd. ASI Tausif Khan have not deposed that they were hit by the stones. Thus, there are material contradictions in the testimonies of PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh & PW-30 Retd. ASI Tausif Khan which raises serious doubts on the prosecution story. None of the police witnesses who also reached at the spot later on, and who have deposed that the mob was pelting stones have also not sustained any injuries which seems to be suspicious. If the version of PW-3 Ct. Rajesh is accepted that they had been hit with the stones, their MLC should have been

prepared which has not been done in the present case. This raises serious doubts on the prosecution story.

67. As per the versions, of PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh and PW-30 Retd. ASI Tausif Khan, the alleged incident took place at about 12:30 am on the intervening night of 22-22.07.2012. However, PW-27 Retd. ACP I. K. Jha, who was the then SHO of PS Jama Masjid deposed that at around 11:00 am, he along with his police staff as well as the outer force was present at the gate of Subhash Park and the Tarabi ceremony was going on in Sunhari Masjid, a large gathering of people came out from the Sunhari Masjid and started raising slogans in support of area MLA Shoaib Iqbal and got violent. Thus, there are material contradictions in the versions of PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh, PW-30 Retd. ASI Tausif Khan and PW-27 Retd. ACP I. K. Jha with respect to the time of gathering of the mob. PW-27 Retd. ACP I. K. Jha further deposed that the crowd started pelting stones on buses plying on the road near iron bridge, nukkar Faiz Bazar and due to pelting of stones, window panes of buses got damaged and the crowd also set ablaze motorcycle including one government motorcycle parked at police booth at Nukkar Faiz Bazar and thereafter crowd started moving towards the Jagat Cinema and set ablaze the police booth and the belongings i.e. wireless set, battery, speakers etc. kept there and thereafter he directed Ct. Ravish to fire tear gas shells on the crowd. No other prosecution witness has deposed about the pelting of stones on buses, breaking of the window panes of buses

and setting ablaze the motorcycle including one government motorcycle and no proof in form of photograph or other evidence has been produced by the prosecution. This raises serious doubts on the veracity of PW-27 Retd. ACP I. K. Jha and on the prosecution story.

68. PW-27 Retd. ACP I. K. Jha deposed that one of the persons leading the crowd was Imran @ Dagda, who was ruffian of the area. He also deposed that one of the persons among the crowd snatched service pistol of Ct. Gyani Ram. Ct. Gyani Ram has not been examined as PW for the reasons best known to the IO. None of the prosecution witness has deposed that the mob had come into contact with the police officials to the extent that the pistol of one constable was snatched. As per the prosecution story, when the mob arrived PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh, PW-30 Retd. ASI Tausif Khan and Ct. Dana Ram were present at the spot of incident and the then SHO PW-27 Retd. ACP I. K. Jha was not present at the spot of incident and he came later on. PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh and PW-30 Retd. ASI Tausif Khan have not deposed that accused Imran @ Dagda was leading the crowd. In these circumstances, the version of PW-27 Retd. ACP I. K. Jha that accused Imran @ Dagda was leading the crowd seems to be doubtful.

69. In addition to PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh and PW-30 Retd. ASI Tausif Khan, PW-8 Ct. Pawan, PW-9 Ct. Shyam Singh, PW-11 Ct. Subhash, PW-12 Inspector Pramod Joshi, PW-13 Retd. ACP Om Prakash, PW-14 Ct.

Rishabh and PW-15 ACP Ram Mehar Singh have deposed that when they reached at the spot of incident, there was a huge crowd/mob which was pelting stones on the police party and thereafter tear gas shells were fired upon them. If the abovesaid police officials were present at the spot of incident and the crowd was pelting stones upon them, the crowd and the police officials were face to face and all these police officials/prosecution witnesses must have seen the faces of the members of crowd/unlawful assembly. However, none of abovesaid prosecution witnesses have identified any of the accused persons nor they have explained the individual role of accused persons. This raises serious doubts on the prosecution story.

70. The alleged incident took place at a public place in a crowded area. The alleged mob must have assembled at some place before reaching to the spot of incident. However, the IO has not collected any CCTV footage of the spot of incident or the CCTV footage of the area from where the said mob must have passed before reaching at the spot of incident. As per the prosecution story, the alleged incident continued for a long time and several SHOs and other Senior Police Officials also reached at the spot of incident. However, none of the police official videographed the incident with their mobile phones through which the faces of accused persons could have been matched/identified. This raises serious doubts on the prosecution story.

71. As per the prosecution story, three cars were damaged and the police booth was also put on fire. The mob must have used articles like danda, kerosene oil/petrol, lighter/matchbox for committing the said offence. However, nothing has been recovered from possession of any of the accused. This raises serious doubts on the involvement of accused persons in the present incident.

72. PW-25 Abdul Sattar Khan Bharti deposed that on 21.07.2012, he along with his family went to Jama Masjid area and parked his Skoda car bearing registration no. DL-7C-8512 in the parking in front of Guest House near Jagat Cinema, Jama Masjid, Delhi. He further deposed that at about 11:30 pm, he went to reception of the aforesaid Guest House for booking rooms and after sometime, he heard some noises coming from outside. He further deposed that tear gas bombs were used due to which they were unable to see and when he saw outside the Guest House, he found that many public persons had gathered there and police had also reached there. He further deposed that in the morning, he reached to see his aforesaid car and found that front and rear windows of his car were broken and found that his three bags, containing clothes and a cash in sum of Rs. 7,50,000/- were missing. He further deposed that he also checked the dashboard of his aforesaid car and found one small purse containing Rs. 5,000/- was missing from there. The bag, the purse and the cash belonging to PW-25 Sh. Abdul Sattar Khan Bharti have not been recovered from possession of any of the accused. No fingerprints

of any of the accused were found on the car of PW-25 Sh. Abdul Sattar Khan Bharti and two other cars which were damaged during the said riot. PW-25 Sh. Abdul Sattar Khan Bharti has not produced any proof of the possession of cash in sum of Rs. 7,50,000/-. In these circumstances, the offence of commission of theft cannot be attributed to the accused persons.

73. PW-1 HC Gyanender Singh deposed that on 21.07.2012, he was posted as MHC(M) at PS Jama Masjid and on that day, he had handed over one gas gun, eight tear gas shells and three hand grenade to Ct. Ravish. In his cross-examination, he admitted that he had made the entry of the abovesaid articles in the rough register and he had not made any entry in register no. 19. The abovesaid articles were the government property and the MHC(M) was duty bound to make an entry of said articles in register no. 19 while issuing the said articles to Ct. Ravish. This raises serious doubts on the veracity of PW-1 HC Gyanender.

74. In the present case, accused persons have been arrested on different dates. No TIP of accused persons was got conducted through PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh & PW-30 Retd. ASI Tausif Khan. Non-identification of accused persons through judicial TIP has weakened the case of the prosecution.

75. PW-23 Smt. Satbiri deposed that it was in the intervening night of 21-22, a quarrel took place in the gali outside her house and she made a call at 100 number. She further deposed that she

did not know anything about the present case. This witness was cross-examined by Ld. Addl. PP for the State in which she admitted that the incident took place in the month of July, 2012. She denied the suggestion that many persons had gathered at the spot and they were pelting stones upon each other. She also deposed that she was present inside her house and she did not see anything. She also deposed that she did not know as to whether the aforesaid persons were pelting stones upon each other due to some dispute over Akbarbadi Masjid. She denied the suggestion that she was deposing falsely to save the accused persons. Thus, PW-23 Smt. Satbiri has not supported the case of prosecution and she has denied the incident of stone pelting. Accused persons have taken the defence that the shops in the area of Jama Masjid remains open throughout the night but the independent eyewitness was not examined by the IO in the present case. PW-3 Ct. Rajesh in his cross-examination admitted that no damage was caused by the mob to the vehicles plying on the road before reaching the police booth, which means that public persons were passing from the spot of incident when the mob arrived. However, IO has not examined any independent eyewitness, who could have corroborated the prosecution story. Non-examination of any independent eyewitness has weakened the case of the prosecution.

76. Additional charge under Sec. 174A IPC has also been framed against accused Mohd. Irshad. Ld. Amicus Curie for accused Mohd. Irshad has argued that proper procedure for



executing the process under Sec. 82 Cr.PC has not been complied by the Process Server. PW-39 SI Narender Kumar had executed the process under Sec. 82 Cr.PC against accused Mohd. Irshad. In his cross-examination, he admitted that no departure and arrival entries were lodged by him for leaving the PS for execution of process under Sec. 82 Cr.PC against accused Mohd. Irshad and on his arrival. He also admitted that no videography was conducted by him. PW-39 SI Narender Kumar deposed that he arranged the loudspeaker from nearby market and he did not claimed reimbursement from department. No receipt of payment for loudspeaker has been placed on record by PW-39 SI Narender Kumar. PW-39 SI Narender Kumar failed to depose about the material of the gate of the house of accused Mohd. Irshad. He also admitted that he did not obtain the copy of the register of inhabitants of Rain Basera. No photograph of pasting of process under Sec. 82 Cr.PC at the residence of accused Mohd. Irshad/Rain Basera as well as on the notice board of the court has been placed on record by PW-39 SI Narender Kumar. In these circumstances, it cannot be said that the process under Sec. 82 Cr.PC was duly executed by PW-39 SI Narender Kumar. Thus, the prosecution has failed to prove the ingredients of offence punishable under Sec. 174A IPC against accused Mohd. Irshad.

77. To prove the prosecution case, the testimony of the prosecution witnesses must be reliable. It is not the quantity but the quality of the testimony of the witness that helps a court in arriving at a conclusion in any case. The test in this regard is that

the evidence adduced by the parties must have a ring of truth. In a criminal trial, the prosecution has to prove the case beyond reasonable doubt and it is possible only when the testimony of prosecution witnesses is cogent, trustworthy and credible. To secure a conviction of accused, the testimony of the prosecution witness must be of sterling quality.

78. In case titled as ‘**Rai Sandeep @ Deepu Vs. State (NCT of Delhi), (2012) 8 SCC 21**’, it is held that:-

*“22. In our considered opinion, the “sterling witness” should be of a very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There*

*should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstances should given room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of very other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only, if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any*

*corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”*

79. Similarly, in case of **Ramdas Vs. State of Maharashtra, (2007) SCC 170**, it is held that :

*“23. It is no doubt true that the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances with cast of shadow of doubt over her veracity. If the evidence of the prosecutrix is of such quality that may be sufficient to sustain an order of conviction solely on the basis of her testimony. In the instant case we do not find her evidence to be of such quality.”*

80. Thus, from the above said judgments, it is clear that the version of the witness should be natural one and it must corroborate the prosecution case. Such version must match with the testimony of other prosecution witnesses. It should be of such a quality that there should not be any shadow of doubt upon it.

81. Due to inconsistencies and contradictions in the testimonies of PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh & PW-30 Retd. ASI Taushif Khan, serious doubts have been created upon the prosecution story. The versions of PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh & PW-30 Retd. ASI Taushif Khan are not natural one. The things appears to have not happened in the manner these have been projected. In the light of aforesaid discussion, this court is of the considered opinion that the testimonies of PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh & PW-30 Retd. ASI Taushif Khan are not clear, cogent, credible and trustworthy and same are not corroborated by other material evidence. The testimonies of PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh & PW-30 Retd. ASI Taushif Khan in the present case cannot be said to be of sterling quality to secure the conviction of the accused persons.

82. It is established principle of law that if two views are possible, the view favourable to the accused must be accepted. The benefit of doubt must always go to the accused as the prosecution has to prove the case beyond reasonable doubt.

83. The Hon'ble Apex court in **Rang Bahadur Singh Vs. State of U.P.** reported in **AIR 2000 SC 1209** has held as follows:-

*“The timetested rule in that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits.”*

84. In yet another decision in **State of U.P. Vs. Ram Veer Singh and Another** reported in **2007(6) Supreme 164** the Hon'ble Apex Court has held as follows:-

*“The golden thread which runs through the web of administration of justice in criminal cases is that if two view are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case*

*where admissible evidence is ignored, a duty is cast upon the appellate Court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not.”*

85. In the present case, due to inconsistencies and contradictions in the testimonies of PW-2/complainant HC Raj Kumar, PW-3 Ct. Rajesh & PW-30 Retd. ASI Taushif Khan, non-examination of any independent eyewitness, non-collection of any relevant CCTV footage and the defence taken by the accused persons, serious doubts have been created on the prosecution story and two views are possible in this case and hence the benefit of the same must go to the accused persons.

86. For the reasons stated above, this court is of the considered opinion that the prosecution has failed to prove the ingredients of offences punishable under Section 145/147/148/149 IPC, Sec. 186 IPC read with Sec. 353 IPC, Sec. 427 IPC read with Sec. 3 & 4 of Prevention of Damage to Public Property Act, Sec. 379 IPC & 436 IPC against all the accused persons and ingredients of offence punishable under Sec. 174A IPC against accused Mohd. Irshad, beyond reasonable doubt.

87. Accordingly in view of the aforesaid discussion, **accused persons namely Imran @ Dagda, Bilal, Mohd. Shamim, Naeemuddin, Tohid Ahmed, Abdul Zahid, Shahid, Ziauddin,**

Arshad, Abdul Wahid, Mohd. Imran @ Raizwan, Salman @ Rajan, Mohd. Arif, Nadeem, Mohd. Iqrar and Mohd. Irshad are hereby acquitted for offences punishable under Sec. 145/147/148/149 IPC, Sec. 186 IPC read with Sec. 353 IPC, Sec. 427 IPC read with Sec. 3 & 4 of Prevention of Damage to Public Property Act, Sec. 379 IPC & 436 IPC. Additionally accused Mohd. Irshad is also hereby acquitted for the offence punishable under Sec. 174A IPC.

88. File be consigned to Record Room after due compliance.

Announced in the open court  
on 24<sup>th</sup> day of September, 2025

(Virender Kumar Kharta)  
ASJ/FTC-02(CENTRAL)  
TIS HAZARI COURTS:DELHI:24.09.2025