

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

CNR No. DLNE01-000498-2022
SC No. 36/22
FIR No. 99/20
PS New Usmanpur

State

Versus

1. Ishu Gupta
S/o. Sh. Hari Babu Gupta,
R/o. H.No.C-44/38, gali No.7,
Sudama Puri, Delhi.
2. Prem Prakash
S/o. Sh. Sarwan Kumar,
R/o. H.No. A-14, gali No.2,
4 ½ Pusta Punjabi Colony, Gamri, Delhi.
3. Raj Kumar @ Sewaiya
S/o. Sh. Nathu Singh,
R/o. H.No.C-4/20, gali No.7,
Sudama Puri, Usmanpur, Delhi.
4. Manish Sharma @ Panchar
S/o. Sh. Vishnu Sharma,

R/o. H.No. 1/A, gali No.2,
Gamri Road, Usmanpur, Delhi.

5. Rahul @ Golu
S/o. Sh. Surender Singh,
R/o. H.No.H-68/1, gali No.16,
Jai Parkash Nagar, Usmanpur, Delhi.

6. Amit @ Annu
S/o. Sh. Ramesh Chander,
R/o. H.No.C-44/53, gali No.6,
Sudama Puri, Usmanpur, Delhi.

....Accused.

Date of Committal	:	22.02.2022.
Date of Arguments	:	01.08.2025.
Date of Pronouncement	:	25.08.2025.

(Section 481 BNSS complied with by all accused persons)

JUDGMENT

Facts as per Charge sheet

1.1 Brief facts of the case of the prosecution are, that on 26.02.2020 at about 13:13:09 hours, DD No. 96A was received at PS New Usmanpur. This DD was regarding an incident of arsoning at Azizia Masjid, Gamri Extension. On receipt of this DD, ASI Karan Singh along with Ct. Deepak visited Azizia Masjid, Sudamapuri, Delhi and came to know that a mob of rioters had set on fire one scooty, homes and shops in the gali in front of said Azizia Masjid. The

As no eye witness or complainant turned up to report this incident, ASI Karan prepared a tehrir and got the FIR was registered on the basis of that tehrir. The investigation of this case was assigned to ASI Karan Singh.

1.2 During the investigation, ASI Karan Singh inspected the scene of crime and prepared site plan. On 27.02.2020 one Nasir Ahmad came to the police station and showed his MLC No.693/20, on which concerned doctor had endorsed “physical assault at gali no.9” and opined nature of injury as “under observation”. IO recorded statement of Nasir Ahmad who alleged that on 26.02.2020 at around 11.00 a.m, he had gone out in search of his brother-in-law. At about 01.30p.m, when he was near Azizia Masjid, he saw 30-40 rioters standing there and they were carrying dandas/ sticks in their hands. He further alleged that on coming to know about his identity, 2-3 boys started beating him with dandas/ sticks.

1.3 During further investigation on 27.02.2020, IO visited a burnt grocery shop situated at C-44/4, gali no. 8, Sudamapuri, Delhi, collected exhibits from the said shop and recorded statement of its owner namely Sh. Rasid Ahmad. Sh. Rashid Ahmad alleged that on 26.02.2020 at about 05.00 p.m, he found that the rioters had burnt his grocery shop and from inquiries, he came to know that the rioters had also set fire to Yaseen’s ground floor near Azizia Masjid and Fahimuddin’s house in gali no. 8. Thereafter, on 01.03.2020, IO

prepared another site plan at the instance of HC Vikash and recorded his statement, who stated that due to riots in North East District, section 144 Cr.PC had been imposed in the area and time and again, the public was informed about the imposition of section 144 Cr.P.C. IO also recorded statement of PCR caller namely Rahis, s/o Abdul Razak. During further investigation on 05.03.2020, IO recorded statement of Ms. Nasim and Fahimuddin, who had suffered losses during the riots. During further course of investigation on 15.03.2020, witness Sonu met IO and informed that on 26.02.2020 at around 01:00 PM, he was present near Aziziya Masjid and he witnessed the incidents of setting fire to houses, shop and vehicles by the rioters. On 07.03.2020, ASI Sita Ram had arrested accused Prem Prakash and Ishu Gupta in case FIR No. 89/2020 PS NU Pur and during interrogation, these accused disclosed about their involvement in this case also. Thereafter, these accused were arrested in this case. On 09.03.2020, accused Raj Kumar @ Swaiya, Amit @ Annu and Rahul @ Golu were arrested in case FIR No. 89/2020 of PS NU Pur and accused Manish Sharma @ Puncture was arrested in FIR No. 111/20 PS NU Pur. Thereafter, on their disclosure about their involvement in the present case also, these accused were arrested in the present case. On 17.03.2020, Sonu identified all the six accused persons arrested in the case, from a series of various photographs. All these six accused persons were identified by HC Vikash, who confirmed their

involvement in riots on 26.02.2020 near Aziziya Masjid.

1.4 Thereafter, further investigation of the present case was carried out by IO/Insp. Ratnesh Kumar. During the course of further investigation, IO collected the PCR form. Site plans of the places of offence were prepared at the instance of witnesses Sh. Fahimuddin, Sh. Rasid and Smt. Nasim. CDR analysis of mobile no.8375974014 reflected location of mobile phone user was near the place of occurrence. The said mobile number was registered in the name of Smt. Satyawati Goyal (mother of Ishu Gupta) who stated that although the said mobile was obtained in her name, but it was being used by her son Ishu Gupta. Exhibits were collected and sent to FSL Rohini for expert opinion. The scaled site plan of the place of occurrence was prepared and complaint u/s 195 Cr.P.C was obtained. The damaged vehicles i.e. CBZ motor cycle bearing registration no. DL-5SAG-6929 and scooty DL-5SCA-6778 were found to be registered in the name of Yasin (husband of Nasim) and Saifuddin (cousin of Faimuddin), respectively.

1.5 After completion of investigation, chargesheet was filed against six accused namely Ishu Gupta, Prem Prakash, Raj Kumar @ Sewaiya, Manish Sharma @ Panchar, Rahul @ Golu and Amit @ Annu, for offences punishable u/s 188/147/148/149/427 /435/436/454/120B IPC.

1.6 Thereafter, on 01.07.2022 first supplementary

chargesheet along with FSL report, was filed. Thereafter, three more supplementary charge sheets were filed for filing certificates u/s 65B of Evidence Act, scaled site plan, photographs etc.

Charge

2.1 On 08.05.2023, charge for offences punishable u/s 147/148 r/w 149 & 188 IPC; u/s 427 r/w section 149 IPC; u/s 435 r/w section 149 IPC; u/s 436 r/w section 149 IPC and u/s 308 r/w section 149 IPC was framed against all the accused, to which they pleaded not guilty and claimed trial.

3 The prosecution has examined 17 witnesses to prove its case.

Prosecution Evidence

3.1 **PW1 is Fahimuddin.** He deposed that on 14.11.2018, he had purchased one Hero Honda scooty bearing registration no. DL-5S CA6778. That scooty was burnt on 25.02.2020 in the riots. He further deposed that on 25.02.2020, when he was present at his native place in District Bijnor, U.P., he received a telephonic call from his neighbour that rioters had set fire to his scooty as well as his residence. He came to his residence after about 1 month and found all the articles and his house in burnt condition. Some food articles were lying scattered. He did not find his scooty and he was informed that same was taken by police. He sustained loss of about 3.50-4 lacs. Police had made

enquiry from him at Police Station and had recorded his statement. He furnished documents of his scooty as well as other articles, which were available with him. He had taken photographs of his burnt house through his mobile phone and print of the same was given to the police. He deposed that police had obtained a certificate from him regarding the photographs. He identified his signatures on certificate at point X, however, he was not aware of the contents. During his testimony, contents of the certificate were explained to him and he deposed that the contents explained to him were correct. The certificate was exhibited as Ex.PW1/A and the 11 photographs were exhibited as Ex.PW1/P-1 to Ex.PW1/P-11.

3.2 PW2 is Rashid Ahmad. He deposed that he was running a parchun shop from the ground floor of property no. C-44/4, Gali No. 8, Sudamapuri, Near Ajizia Masjid, Usmanpur, Delhi. On 25.02.2020 riots had taken place in that area and in the evening he alongwith his family had left his house for the house of his relative in Shastri Park. In the night of 26.02.2020, he received a telephonic call from his neighbour Golu, who informed him that some one had set fire to his parshun shop. On 27.02.2020 his elder son went to the shop. His son had brought photographs of his burnt shop in mobile phone and had shown those photographs to him. Subsequently, he had filled the form for compensation as issued by the Govt. He had handed over the print of photographs as taken by his son to the police. Police had not

prepared any document for taking those photographs. Police had taken his signatures on some documents but he could not tell the nature of document or purpose of his signatures. He identified four photographs from the file which were handed over by him to the police. Those photographs were marked as Mark PW2/P1 to P4.

3.2.1 He was cross examined by Id. SPP. During his cross examination by Id. SPP, he deposed that he did not remember the dates when police had made enquiry from him. He denied that he himself had gone to his shop at about 5:00 p.m. on 26.02.2020 or that he himself had seen his shop in burnt condition and made enquiry from his neighbour. He was told that his shop was burnt somewhere around at 12 p.m. He did not remember if he had informed police that he himself had gone to his shop on 26.02.2020 at 5:00 p.m. He denied that he had been present when police had lifted burnt articles including iron cash box from his shop in a polysack on 27.02.2020 or that police had prepared a memo while taking photographs from him and for that purpose he had signed on the same. Police had not taken any ownership document from him relating to his house.

3.3 **PW3 is Rahis.** He deposed that on 25.02.2020 between 1:00-2:00 PM, he was present on the terrace of his house. From that place, he saw riot taking place near Ajijiya masjid. From that place, he could see around 50-60 persons present on the T-point of his gali and main road. The said mosque was situated around 5 mtrs. He saw

smoke rising up from aforesaid mosque. A lot of noise was being created by that mob. He did not see any place being burnt. At that time, he had made call at 100 no. from my mobile no. 9716345242 to inform about the aforesaid riot. He had informed police that “*masjid me aag jani ki jaari hai*”. On that day at about 4:00-4:15p.m, he had seen fire flames arising out from that mosque.

3.3.1 During his cross examination by Ld. SPP, he deposed that he was having two mobile numbers. The other mobile number was 9971971283. This number was working on 25.02.2020 and 26.02.2020. He did not know any Fahimuddin either by name or face. He had come to know subsequently about this name and that scooty of such person was burnt. He knew Rashid s/o Yashin who had grocery shop at the corner of his gali. In his gali, no riot had taken place at that time. He had received call from police after around one year of making aforesaid call. Prior to that police did not make any contact with him. He did not make any call at 100 number on 26.02.2020. He denied that he had made a call at 100 number from mobile no. 9971971283 on 26.02.2020 also at 1:13:17 hours and volunteered, that subsequently he came to hear that probably many calls, which were made on 25.02.2020, were recorded on 26.02.2020. He denied that he had informed police about getting impression of the mosque being set on fire on 26.02.2020 because on the previous day also this mosque was set on fire by the rioters and volunteered, that on 26.02.2020, he

was not present at his home as he had gone to his relative at Khoda Colony, Ghaziabad.

3.4 **PW4 is Sonu.** He deposed that in February 2020, he was residing at C-31, gali no.11, Gamri, Delhi. On 26.02.2020, he was present at his home, because of riots. He did not come out of his home on that day because his family members did not allow him. I did not see any riot taking place from his home as well. He did not remember the date, but in the month of April 2020, some police had come for verification and they had called him in PS New Usmanpur for enquiry. He had visited PS New Usmanpur. Police had shown him video on the laptop. In that video, he had identified one person, but he did not know the name of that person. That person was lifting some article from a shop. Apart from that person, he did not identify anyone else in that video and police had sent me back to the home.

3.4.1 During his cross examination by Id SPP, he deposed that police never recorded his statement. He deposed that Azizia masjid was situated just outside his gali. He had subsequently seen that the adjacent shops and this masjid were in damaged condition. He denied that police had recorded his statement on three occasions i.e. on 15.03.2020, 17.03.2020 and 07.09.2022. He denied that he had stated before police that on 26.02.2020 at about 1 p.m., he had come out of his home near Azizia masjid; or that at that time he had seen about 30-40 rioters indulging into vandalism and arson in the nearby shops and

houses of Azizia masjid; or that he had seen some rioters at that time; or that on 17.03.2020, he was shown photographs of different persons on four sheets in the PS; or that on the basis of his memory, he had identified some persons in those photographs, who were among the rioters on 26.02.2020; or that police had informed him the name and particulars of those identified persons, as Raj Kumar @ Sewaiya, Amit @ Anu, Rahul @ Golu, Ishu Gupta, Manish Sharma @ Puncture and Prem Parkash @ Kake; or that he had seen all these persons on 26.02.2020 among the rioters, who had gone to gali no.8, Sudama Puri after indulging into vandalism and arson; or that these persons were carrying lathi, danda and articles for arson.

3.5 PW5 is Mohd. Nasir Ahmed. He deposed that he was residing at the house of his brother in law at 3rd Pushta, New Usmanpur. On 26.02.2020 at about 11-11.15 p.m., he had come out of his home for taking a walk. He was in gali no.5. It was either 1st pusta or 2nd pusta. Around 30-40 persons were standing in that gali. When he was crossing through that gali, those persons asked his name. He told them his name. Then, one person from that mob said that he was muslim and exhorted others to beat him (*yeh musalmaan hai maaro isko*). Two boys from them came forward and started beating him with hands and fists. He tried to run away. They started hitting him with lathi and danda. He raised his hand to save himself and was hit on right hand with lathi, due to which he sustained fracture. At the last

point of that gali, he received a blow of lathi on his head from back side and then he fell down and became unconscious. He regained conscious in the morning and found himself in the hospital. Next day, he visited to the police station and gave his statement before police.

3.5.1 During his cross examination by Id. SPP, he deposed that as per his estimation, he was beaten at around 1-1.30 in the night. He denied that he had stated before police that he had come out of house of his brother-in-law at about 11 a.m.; or that incident with him had taken place at about 1.30 p.m. i.e. during day time.

3.6 **PW6 is Naseema.** She deposed that on 24th February, riots had taken place at Bhajanpura Petrol Pump. On 25th February, rioters had burnt Azizia Masjid. On 25.02.2020, she had left her house bearing no. C-44/8, Gali No. 8/9, Near Azizia Masjid, 5th Pushta, Delhi. On 26.02.2020, her house was burnt in the riots. She came back after about 3-4 days and found that the locks of both the rooms on the ground floor of her house were broken. All the articles inside the room were in burnt condition. One CBZ motorcycle was also parked inside her home and same was also in burnt condition. Two CCTV cameras were installed outside her home and both the cameras were also in broken condition. She further deposed that she alongwith her mother in law had gone to PS in Shastri Park and orally made her complaint, which was written by police. She had given photocopy of R/C and photographs of the burnt house to the police.

3.7 **PW7 is HC Suraj.** He deposed that in February 2020, he was posted as Constable in PS New Usmanur and was looking after the work of dossier cell in the PS. He had handed over the photographs of Raj Kumar, Ishu Gupta and Manish to Insp Ratnesh and ASI Karan Singh. The photographs were Ex.PW7/P1 to Ex.PW7/P4. He had also given certificate u/s 65B of Evidence Act, which was Ex.PW7/A.

3.8 **PW8 is ACP Mahesh.** He deposed that on 09.09.2022, on the instructions of IO Insp. Ashwani Kumar, he prepared scaled site plan (Ex.PW8/A) and handed the same to IO/Insp. Ashwani Kumar on same day.

3.9 **PW9 is Pradeep Kumar, Sr. Scientific Officer.** He deposed that on 09.07.2021, their team received a call from PS New Usmanpur regarding a burnt vehicle, which was lying in malkhana PS New Usmanpur. On the same day at about 3.15 p.m. he alongwith his team went to PS New Usmanpur. They inspected that vehicle, which was in completely burnt condition. Back wheels were in partially burnt condition. They checked engine number and noted the same. He directed IO to send debris of that burnt vehicle to FSL for further examination. He prepared report of observation of aforesaid burnt vehicle, which was Ex.PW9/A and sent intimation to IO of the case about the same.

3.10 **PW10 is ASI Vikas.** He is a witness to the riots happened

on 26.02.2020. He is also a witness to the arrest of the accused persons in this case. His testimony shall be considered at a later stage as and when required.

3.11 PW11 is Sabir Ali. He deposed that he was owner of property bearing no. C-22/1, Gamri Sudamapuri, Delhi. In February 2020, the ground floor of this property was let out to Sh. Shehzad, who was running a shop of bakery. The first floor of this property was let out to one Fahim @ Fahimuddin. During the riots of February 2020, this complete property was set ablaze by the rioters.

3.12 PW12 is ASI Sita Ram. He was the IO of case FIR No. 89/20 of PS New Usmanpur. He deposed that on different dates, he had arrested accused Prem Prakash, Ishu Gupta, Raj Kumar @ Sewaiya, Rahul and Amit @ Anu in FIR No. 89/20 and accused Manish in FIR No. 111/20. These accused disclosed their involvement in the present case and thus, he informed IO of this case. He further deposed that he had handed over the copy of disclosure statement, arrest memo and copy of FIR no. 89/20 and 111/20 to ASI Karan Singh. He further deposed that in FIR No. 89/20, one mobile phone was seized from the possession of accused Ishu Gupta which was seized vide memo Ex.A-23. Copy of the said seizure memo was handed to ASI Karan Singh.

3.13 PW13 is Insp. Ratnesh. He is one of the IOs of this case. His testimony shall be considered at a later stage as and when

required.

3.14 PW14 is Saifuddin. He deposed that he had purchased a Honda scooty. His cousin Fahimuddin used to drive this scooty. He further deposed that his scooty was burnt during the riots on 26.02.2021 and he received claim from insurance company of that scooty.

3.15 PW15 is HC Deepak. He deposed that on 26.02.2020, a call, regarding setting ablaze in Azizia Mosque and nearby properties, was received at PS New Usmanpur. Thereafter, he alongwith ASI Karan Singh went at Azizia Mosque and did not find any rioter at that place. They found a scooty in burnt condition in a gali in front of Azizia Masjid. They brought the said scooty in the police station and thereafter, IO seized it vide memo Ex.PW15/A. He further deposed that on 09.03.2020, he alongwith ASI Karan had gone to ASI Sita Ram, who had informed about the involvement of four boys namely Raj Kumar, Rahul, Manish and Amit in the present case. Thereafter, these accused were arrested in this case vide arrest memos Ex.PW15/B to Ex.PW15/E.

3.16 PW16 is Insp. Ashwani Kumar. He is one of the IOs. He deposed that he had filed final chargesheet in December 2021. He further deposed that there after he got scaled site plan prepared and filed a supplementary charge sheet. Thereafter, vide seizure memos (Ex.PW16/A and Ex.PW16/B), he had seized photographs given by

Fahimuddin and Naseem. Thereafter, he filed another supplementary charge sheet.

3.17 PW17 is SI Karan Singh. He is the initial IO of the case. His testimony shall be considered at a later stage as and when required.

Statement of Accused

4.1 Thereafter, on 14.07.2025 and on 26.07.2025, statements u/s 313 Cr.P.C of accused persons was recorded and they preferred not to lead evidence in their defence.

Contentions of Ld. SPP and Ld. Counsels for accused

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

5.2 Ld. SPP has contended that the prosecution has proved its case beyond all reasonable doubts. There were two eye witnesses namely Sonu and HC Vikas. Though PW Sonu had been won over by the accused and had turned hostile but HC Vikas had identified these accused as the persons who were involved in the rioting which is the subject matter of this case. He has further contended that HC Vikas, at the very first instance i.e. on 01.03.2020 which was merely 03 days after the incident, in his statement u/s 161 Cr.P.C had stated, that he had seen the incident and seen the rioters and even identified one of the rioters by name i.e. Rahul @ Golu. Therefore, HC Vikas is a

creditworthy witness, who at the very initial stage had identified the accused. Nothing has come in his cross examination that can discredit his testimony. He has further contended that merely because he is a police witness, it cannot be said that his testimony cannot be relied upon. He has contended that if the testimony of a police officer is found to be reliable, the court can definitely act upon the same. In this regard, he has relied upon the judgments of Hon'ble Supreme Court in Mohd. Nasim v. State, 2023 SCC Online Del 7073; Namdeo v. State of Maharashtra (2007) 14 SC 150 and Pramod Kumar v. State (GNCT of Delhi) 2013 SCC Online SC 502.

5.3 On the other hand, ld. counsels for accused have contended that this is completely a false case and has been built up only to show that the case is worked out. They have further contended that despite HC Vikas claiming to be a witness to this incident, he did not report the matter to the police till 01.03.2020. They have further contended that his statement was recorded after a delay of 04 days. This was despite the fact that HC Vikas admittedly being present in the police station and IO was also of the same police station. They have further contended that as per the case of the prosecution, all the accused, except accused Manish @ Puncture, were initially arrested in case FIR No. 89/20 PS New Usmanpur and during their interrogation in that case, they made disclosure about their involvement in this case and upon the said disclosure being made, ASI Sita Ram, who appeared

as PW12 in this case, informed the IO of this case. Then the IO of this case arrested these accused. The arrest of these accused, as per the IO SI Karan Singh, was made on the identification HC Vikas. However, the photocopies of the arrest memos of case FIR No. 89/20 of PS New Usmanpur, which are on record, shows that accused Ishu Gupta was arrested in that case on 07.03.2020 at about 9.00 p.m. i.e. after the arrest in this case. They have further contended that similar is the case with regard to the arrest of other accused persons. In FIR No. 89/20, on 09.03.2020, accused Amit @ Annu had been shown to be arrested at 12.10 p.m and accused Rahul @ Golu had been shown to be arrested at 12.05 p.m. However, in this case, accused Amit had been arrested on 09.03.2020 at 10.55 a.m and accused Rahul @ Golu had been arrested on 09.03.2020 at 10.45 a.m. Thus, this is completely a cooked up case and HC Vikas, who supported the story of prosecution falsely, is not a reliable witness. They have further contended that with regard to injured Nasir, prosecution has again brought up a false case. Injured Nasir had stated that he was injured somewhere at around 1.30 at night whereas the claim of the prosecution is that he was injured at about 1:30 in the afternoon. Furthermore, the MLC of the injured (Ex.A-17) reflects that this is not the MLC of his person because there are so many cuttings on it. Initially it is shown of an unknown person s/o unknown. Thereafter, in the brackets, name is written as Nihal. Then the name Nais is written and it then struck out and name Nasir is

written. They have further contended that the injured has not supported the case of the prosecution and the prosecution has falsely implicated the accused persons with regard to the injuries to the injured. They have further contended that the PCR caller Rahis, who appeared as PW3, had denied making any call on 25.02.2020 and during his cross examination by Ld. SPP, he stuck to his stand that no call was made on 25.02.2020. In fact, Rahis had stated that no incident had happened and this reflects that on 26.02.2020, no incident had happened.

5.4 In rebuttal, Id. SPP has contended that firstly the MLC of Nasir had been admitted by the accused and was exhibited as Ex.A-17. Therefore, now the accused cannot turn around and say that this is not the MLC of injured Nasir and thus, whatever is written therein stands proved. He has further contended that it was for the defence to challenge this MLC and only then, the defence could have argued what the defence has argued. He has further contended that even the analysis of call detail records of accused Ishu Gupta has clearly shown that on the date and time of incident, his location was of the area near the place of incident. This further corroborates the case of the prosecution. This CDR had been admitted by the accused and was exhibited as Ex.A-12. It is not even challenged that the mobile phone number 8375974014 was being used by accused Ishu Gupta. Thus, it is contended that some small variations cannot be considered to be the

contradictions and it, in no manner, affects the case of the prosecution or gives any benefit to the accused.

5.5 With regard to the PCR call being made by Rahis, Id. SPP has contended that PW3 Rahis has admitted having mobile phone no. 9971971283. This number is clearly reflected in the PCR form Ex.A-16. This PCR form had been admitted by the accused and exhibited as Ex.A-16. Thus, there is no further requirement of proving that the call was made by Rahis Ahmed to the effect that mosque had been set on fire.

Findings

6.1 I have considered the rival submissions.

6.2 First I shall take up the issue of PCR call, which as per the prosecution was made on 26.02.2020 and according to the defence was made on 25.02.2020.

6.3 It is correct that PW3 Rahis, during his examination in chief, denied making any call on 26.02.2020. If that be the case, the foundation of the prosecution's case i.e. the starting point gets destroyed.

6.4 However, I find force in the contention of Id. SPP that the accused had admitted PCR form and the defence now cannot challenge the fact that a PCR call was made at 01:13:09 on 26.02.2020. Furthermore, though PW3 had denied making this call but

he had admitted that mobile number was 9971971283 belonged to him and this is the mobile number which was recorded in PCR form (Ex. A-16). Thus, I find no force in the contention of Id. Counsels for accused that as PW3 has denied making any call, which resulted in lodging of DD no. 96A, the entire case is false and DD no. 96A was falsely recorded.

6.5 However, while perusing the PCR form, a surprising fact emerged which has caught my attention. PCR form (Ex.A-16) at page no. 2 records an inbound vehicle communication i.e. the communication made by the PCR response vehicle to the control room and it is to the effect, that a call had been made to the caller who stated his name as Rais and further stated that the mosque had been set at fire at night; at the relevant time, there were 4-5 boys; police was at the spot, the boys were sent away after counselling and ASI Karan Singh was on call. (*Caller ko phone kiya apna naam Rais batlaya kah masjid rat aag lagai thi 4 or 5 ladke ab the lokal police moke par thi sajha kar bej diya hai ane ki jarurat nahi call par IO ASI Karan Singh PS Usmanpur.*)

6.6 This is the information which was received by PCR team and it was in possession of IO. It was certainly required to be looked into that on what basis this information was given to the police control room.

6.7 What is more surprising is, that it records that ASI Karan Singh was present at the site. If that be the case, then it completely contradicts the claim of ASI Karan Singh that when he reached the place of incident, he found that the houses near about the mosque and a scooty were still burning. Therefore, it was incumbent upon the IO to seek clarification either from the caller, or from the PCR Van Incharge the basis on which this fact was recorded in the PCR form as inbound vehicle communication.

6.8 This then brings me to a very strong argument raised on behalf of the accused and the same is with regard to the timing of arrest of the accused persons. This is important because as per the case of the prosecution and as had been built up by the IO, all these accused except accused Manish @ Puncture, were initially arrested in FIR No. 89/20 of PS NU Pur by ASI Sita Ram and during their interrogation, they disclosed their involvement in this case also which prompted ASI Sita Ram to inform ASI Karan Singh i.e. the IO of this case, who in turn arrested these accused, after their arrest in FIR no. 89/20, at the instance/ identification of PW10 HC Vikas.

6.9 Similar is the case of accused Manish @ Puncture with the only difference, that his arrest had been effected by ASI Sita Ram in FIR No. 111/20 PS New Usmanpur.

6.10 I have carefully seen the arrest memos exhibited as

Ex.PW15/B, Ex.PW15/C, Ex.PW15/D, Ex.PW15/E, Ex.PW17/D and Ex.PW17/E. At the same time, I have not only seen the copies of arrest memos of these accused persons in FIR no. 89/20 PS New Usmanpur, which had been filed with this charge sheet and are available on record, but I had also seen the original copies of the arrest memos of accused in FIR No. 89/20, as the said file is also pending before me.

6.11 The first arrests were made by ASI Sita Ram in FIR No. 89/20 on 07.03.2020 and these arrests were of accused Prem Prakash and Ishu Gupta. There is no time on the photocopy of arrest memo of accused Prem Prakash, as has been filed in this court. However, the original arrest memo available in case file pertaining to FIR No. 89/20, which had been admitted and exhibited as Ex.A-6 (in FIR No. 89/20), shows the time of arrest of accused Prem Prakash @ Kake as 08.00 p.m. The arrest memo of accused Ishu Gupta in FIR No. 89/20 shows the time of arrest as 09.00 p.m on 07.03.2020.

6.12 In the light of this fact, the testimony of IO, HC Vikas and the arrest memos of this case are required to be considered.

6.13 IO SI Karan Singh appeared as PW17. On this account, he deposed that on 07.03.2020, ASI Sita Ram had informed him in the police station that ASI Sita Ram had arrested two persons in FIR No. 89/20 and they had disclosed about their involvement in this case also.

He interrogated these two accused namely Ishu Gupta and Prem Prakash and arrested them vide arrest memos Ex.PW17/D and Ex.PW17/E. He is silent about the timing in his testimony but PW10 ASI Vikas gives the timing of these arrest or interrogation as 10-10.30 a.m. The arrest memo of Prem Prakash @ Kake (Ex.PW17/E) also reflects his time of arrest at around 10.40 a.m on 07.03.2020 and that of Ishu Gupta (Ex.PW17/D) reflects his time of arrest as 10.25 a.m on 07.03.2020. I fail to understand that how is it possible that the persons, who were initially arrested in FIR No. 89/20 at 8.00 p.m and 9.00 p.m on 07.03.2020, could have been arrested in this case around 10-11 hours prior to that arrest and that too on the basis of disclosure made in FIR No. 89/20.

6.14 Similarly, accused Raj Kumar @ Sewaiya, Rahul @ Golu and Amit were also arrested in this case pursuant to their disclosure in FIR No. 89/20 i.e. after their arrest in FIR No.89/20 and accused Manish @ Puncture was arrested in this case pursuant to his arrest and disclosure in FIR No. 111/20 PS NU Pur.

6.15 As per arrest memo (Ex.PW15/E) of Amit @ Annu, he was arrested in this case on 09.03.2020 at 10.55 a.m and as per arrest memo (Ex.PW15/D) of accused Rahul @ Golu, he was arrested in this case on 09.03.2020 at 10.45 a.m. These arrests were made on the basis of disclosure of these accused in FIR No. 89/20. However, in FIR No. 89/20, accused Amit @ Annu was arrested on 09.03.2020 at 12.10 p.m

and accused Rahul @ Golu was arrested on 09.03.2020 at 12.05 p.m. Therefore, it is impossible that their disclosure in FIR No. 89/20 could be the basis for their arrest in this case prior to the arrest of these accused in FIR no. 89/20.

6.16 What is also to be noticed is, that with regard to arrest of these accused persons also, PW10 HC Vikas deposed that on 09.03.2020 at around 10-11 a.m, he found SI Karan Singh interrogating four boys in his room and he identified them as a part of the mob. Their names were disclosed as Amit, Rahul @ Golu, Raj Kumar @ Sewaiya and Manish @ Puncture.

6.17 Here again, this witness seems to be supporting whatever the IO has cooked up and which is an impossibility because, at that time, these accused should have been under the interrogation of ASI Sita Ram, IO of FIR No. 89/20 and could not have been in custody or under interrogation by the IO of this case. Their arrest in this case was on the basis of information of ASI Sita Ram, IO of FIR No. 89/20, that during the interrogation in his case they had confessed about their involvement in this case. But for their arrest in FIR No. 89/20, IO SI Karan Singh would have never known, at least on 09.03.2020, about their involvement in this case. The fact that by the time they were arrested in this case, these accused had not been arrested in FIR No. 89/20, leads to only one conclusion that on 09.03.2020 till 11.00 a.m, IO SI Karan Singh (PW17) had no occasion or reason to either

interrogate or to arrest these accused in this case.

6.18 Hence the entire case built up on the basis of the disclosures of accused, which led to their arrest, is falling apart.

6.19 This prompted me to call for the case diary and to my surprise, case diary of this case was not available in the court. Thus, I was constrained to direct the SHO, PS New Usmanpur to send the case diary from VRK and I also issued notice to IO Insp. Ashwani Kumar, who had filed the chargesheet.

6.20 SHO has sent a report stating that the case diaries were neither available in VRK nor in PS records.

6.21 Insp. Ashwani Kumar sent an exemption on the ground that he was on leave but despite there being a clear mentioning in the notice that he was required to produce the case diary, he was completely silent about it. However, SHO PS New Usmanpur had sent fresh print out of the case diary from a pen drive sent to him by Insp. Ashwani Kumar. (The forwarding letter is on court file).

6.22 I have perused the said case diary and it further establishes the fact that the IO has cooked up a case to somehow work it out and foisted it upon the accused. I say so because, the first case diary was recorded on 27.02.2020 and the inner case diary has record of one statement u/s 161 Cr.P.C of Ct. Deepak on 27.02.2020. The second case diary is then written on 05.03.2020. So from 27.02.2020

till 05.03.2020, there is no case diary which has been written by the IO.

6.23 If that be the case, it would appear that no statement of HC Vikas u/s 161 Cr.P.C, wherein he had claimed that he had seen the rioters, he could identify them, and that he even knew one of the rioters namely Rahul @ Golu by name; was recorded by the IO on 01.03.2020.

6.24 The fact that this statement was subsequently manipulated is further fortified by the perusal of said case diary. In the said case diary, the statement dated 27.02.2020 is recorded on Book/ Vol. No. 9446 at page no. 54. On 05.03.2020, as per the said case diary, one statement u/s 161 Cr.P.C of complainant Mohd. Rahis was recorded. However, that statement is not available in the case diary so reconstructed and provided by SHO PS New Usmanpur. The first statement u/s 161 Cr.P.C, which was available after the statement of Ct. Deepak, is the statement of ASI Sita Ram recorded on 07.03.2020 and the said statement is in book/ vol. no. 9446 at page no. 55 which establishes that this is the only second statement recorded in this case after the statement of Ct. Deepak.

6.25 If that be the case, there cannot be any statement of HC Vikas u/s 161 Cr.P.C of 01.03.2020. Thus, the argument of Ld. SPP that HC Vikas is a reliable witness because, at the very initial stage,

HC Vikas stated that he was the eye witness of the incident, could identify the accused and had even named one of the accused, HC Vikas is reliable; loses strength.

6.26 In these circumstances, I am of the opinion that HC Vikas, whose statement u/s 161 Cr.P.C seems to have not been recorded on 01.03.2020, as per the reconstructed case diary supplied by SHO PS New Usmanpur, and who has been found to be just speaking on the lines of the case built up by the IO with regard to the arrest of the accused, as discussed above, is not a creditworthy witness and the judgments cited at bar by Id. SPP are of no help to the prosecution.

6.27 With regard to the contention of Id. SPP, that the analysis of CDR reflects that at the time of incident the location of accused Ishu Gupta to be the area where the incident had happened, does not carry much weight because, accused Ishu Gupta is a resident of H. No. C-44/38, Gali No. 7, Sudamapuri and the incident had happened in Gali no. 8/9, Sudamapuri. Therefore, it would not be a surprise that as per cell tower IDs, his location would be of the same area.

6.28 This brings me to another aspect of this case which further proves how shoddy the investigation was. It relates to the injuries caused to Mohd. Nasir Ahmed (PW5).

6.29 As per the case of the prosecution, on 26.02.2020 at 01.30

p.m, PW5 had been attacked and injured by rioters near Azizia Masjid. The purported MLC of PW5 was exhibited as Ex.A-17, after being admitted by the accused.

6.30 However, when Mohd. Nasir appeared as PW5, he deposed that in February 2020, he was visiting Delhi and residing with his brother in law at 3rd Pushta. On 26.02.2020 at about 11-11.15 p.m, he came out of the house for a walk and forgot his way back. He was in gali no. 5 of either 1st pushta or 2nd Pushta, though he did not remember exactly, when 30-40 persons who were standing in the gali, asked his name. On his name being stated, one of them stated that he was a muslim and exhorted others to beat him. Two boys came forward and started beating him with hands and fists. In order to save himself, he raised his hand and sustained fracture. When he was running, they started chasing him and at the end of the gali, he received a blow of lathi on his head from back side. He fell down and became unconscious. He regained consciousness in the morning and found himself at government hospital zero Pushta. He was informed that some policeman had brought him there. Police met him in the hospital and asked him to give his statement but he was not in a fit condition to give his statement and was also nervous to give his statement. He did not identify any of the accused as assailants.

6.31 He was cross examined by Ld. SPP and during his cross examination, he gave an estimation of time at which he was assaulted

and according to him, it was around 1-1.30 in the night. He denied that the incident had taken place with him at around 1.30 p.m i.e. during the day time.

6.32 During his cross examination on behalf of the accused, he deposed that he was not known as Nihal.

6.33 The accused have raised a challenge to the MLC (Ex.A-17) that it is not the MLC of PW5 Mohd. Nasir.

6.34 Ld. SPP has countered by arguing that once the MLC is admitted, the accused could not have challenged it in the manner they are challenging it.

6.35 I have weighed the contention and I find that as far as the formal proof of MLC (Ex.A-17) is concerned, the accused cannot raise any challenge. This will mean that they cannot challenge the fact that this MLC was prepared and by whom it was prepared. However, if there are serious defects visible in the MLC itself, then the accused can certainly argue on that point and the accused have contended that the MLC has so many cuttings that it cannot be established that this MLC is of PW5.

6.36 A perusal of the MLC (Ex.A-17) reflects that initially it is stated that the name of the injured was not known and the name of father was also not known. Then in brackets, the name Nihal is written and then above Nihal, Nasir is written and the person who had brought

the injured to the hospital is stated to be Rajan Gupta, whose mobile number is also provided in the MLC.

6.37 Not only this, the MLC is completely silent about any injuries or fracture on the hand of the witness, as has been stated by him in his examination in chief. Hence, serious doubts on the face of it arise about this MLC being the MLC of PW5. Merely because the accused had admitted it, it does not lie with the prosecution to contend that the accused cannot now challenge any aspect of this MLC. On the contrary, I am of the considered opinion, that in view of so many cuttings on the face of it and that the fact that the person who had brought the injured to the hospital was never contacted, Id. SPP chose not to examine the doctor in order to seek a clarification. The accused are bound to take advantage of the flaws of the case of the prosecution such as the ones in the MLC. It was for the prosecution to have clarified these issues so as to take away the advantage of these flaws from the accused. The prosecution chose not to do so and it did so at its own peril.

6.38 I accordingly find that this is highly doubtful that the MLC even belonged to PW5 Mohd. Nasir and could also have been of any other person. I say so because, neither the IO chose not to investigate any discrepancy in the MLC in order to establish that it was in fact the MLC of PW5 Mohd. Nasir nor any effort was made during the trial by examining the doctor or the person who got the

injured admitted so as to clear the doubts.

6.39 There is another eye witness PW4 Sonu. He has turned hostile and not supported the case of the prosecution but he was cited as a witness.

6.40 PW4 Sonu has been cited as a witness by the prosecution who was present during the rioting, the subject matter of this case, on 26.02.2020.

6.41 As per the case of the prosecution, he had seen and identified the accused from the photographs shown to him and these photographs were exhibited as Ex.PW7/P1 to Ex.PW7/P14. What surprises me is, that this witness appeared for the first time on 15.03.2020. This witness out of blue meets the IO at Sudamapuri on 15.03.2020 i.e. after all the accused had been arrested. On 17.03.2020, he was called to the police station to make the identification of the accused from various photographs.

6.42 I fail to understand that when the accused were already in custody, why the process of identification of accused through photographs was conducted instead of having their judicial TIP conducted. The process of identification of perpetrators of a crime from the photographs may be accepted when accused are not known and have not been arrested. Once the accused have been arrested, the right approach for the identification of the accused, if at all required

by the IO to ascertain whether he is in the right direction or not, should have been a judicial TIP but for the reasons best known to the IO, he did not take that path. Therefore, the sudden appearance of this witness and non conducting of TIP creates serious doubts about the manner in which the investigation was conducted.

6.43 In view of my aforesaid discussions, it is apparent that merely in order to work out a case, a false case has been foisted upon the accused and PW10 HC Vikas, the only eye witness of the case, is completely unreliable qua these accused persons. All the accused are entitled to be acquitted of all the charges.

6.44 However before parting, I must observe that there has been an egregious padding of evidence by the IO and this has resulted in serious trampling of the rights of the accused, who have been probably charge sheeted only in order to show that this case is worked out. This is more saddening because despite the glaring defects, supervising officers i.e. SHO and ACP, had forwarded the charge sheet in a mechanical manner. Such instances lead to serious erosion of the faith of the people in the investigating process and the rule of law and therefore, I deem it appropriate that the copy of this judgment be sent to worthy Commissioner of Police for his perusal, with a request to take remedial action.

6.45 All the accused are accordingly acquitted. Their bail

bonds stand cancelled. Sureties stand discharged. File be consigned to record room.

Pronounced in open court
on 25.08.2025.
(This judgment contains 34 pages
and each page bears my signatures)

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