



**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

**CNR No. DLNE01-000323-2021
Sessions Case No. 22/21
FIR No. 88/20
PS Dayalpur
U/s 147/148/149/153-A/505/307/120-B/34 IPC
& 27/30 Arms Act**

In the matter of: -

STATE

Versus

- 1. MOHD. TAHIR HUSSAIN**
S/o. Kallan Saifi,
R/o. H.No. E-7, Khajuri Khas,
Main Karawal Nagar Road, Delhi.
- 2. TANVIR MALIK**
S/o. Rajuddin,
R/o. H.No. A-1/94, Nehru Vihar, Delhi.
- 3. GULFAM @ VIP**
S/o. Shabbir Ahmed,
R/o. H.No. A-1/1, Nehru Vihar, Delhi.
- 4. NAZIM**
S/o. Azeem,
R/o. H.No. 1378, Gali No.15,
Nala Road, Mustafabad, Delhi.

5. KASIM

S/o. Azeem,
R/o. H.No. 1378, Gali No.15,
Nala Road, Mustafabad, Delhi.

6. SHAH ALAM

S/o. Kallan Saifi,
R/o. H.No. A-1/112, Gali No.3,
Nehru Vihar, Delhi.

7. RIYASAT ALI,

S/o. Liyakat Ali,
R/o. 218/4, Gali No. 4,
Moonga Nagar, Delhi.

8. LIYAKAT ALI,

S/o. Rahamtulla,
R/o. 218/4, Gali No. 4,
Moonga Nagar, Delhi.

05.11.2022

ORDER ON THE POINT OF CHARGE

Vide this order, I shall decide the question of charges to be framed against accused Mohd. Tahir Hussain, Tanvir Malik, Gulfam @ VIP, Nazim, Kasim, Shah Alam, Riyasat Ali and Liyakat Ali.

1. Brief facts of the present case are that, on 25.02.2020 relatives of an injured namely Ajay Goswami visited Dayal Pur police station and reported that Ajay was shot in the riots and was admitted in Hindu Rao hospital. ASI Vijayant Kumar visited this hospital and found that injured was not in condition to make his statement. ASI Vijayant collected his MLC no. 962/20 and also seized blood stained cloths of Ajay, sample blood gauze and pellet/bullet

recovered from the body of Ajay.

2. Subsequently, FIR was registered on 01.03.2020, on the basis of statement given by Sh. Ajay Goswami. Complainant alleged that on 25.02.2020 he had come to his uncle's home. At about 03.50 PM, he was going to his home at C 153, Gali No. 21, Khajuri Khas, Delhi. When he was at the corner of gali, he saw a huge mob on main Karawal Nagar road indulging into pelting stones and firing gun shots. Complainant on seeing this started running back towards home of his uncle in gali no. 8, Moonga Nagar. At that time, he felt being hit on his hip by some bullet. The persons standing there informed him that he was hit by bullet and that between gali 5 and 6 Gulfam and Tanvir were blindly firing. At that time uncle of complainant namely Sh. Rakesh Sharma reached there and lifted him with the help of some boys and took him to Mavi Hospital. Complainant was given first aid there and thereafter, he was taken to Hindu Rao Hospital, where he was admitted. This FIR was registered for offences punishable under Section 307/120B/34 IPC.
3. ASI Vijayant Kumar examined eye witnesses and prepared site plan at the instance of Prashant. Eye witnesses namely Prashant and Harish stated that accused Gulfam and Tanvir were firing blindly, when Ajay was shot.
4. Subsequently, investigation was transferred to crime branch and Special Task Force. SI Rajeev Bamal took up further investigation. He added Sections 147/148/149 IPC in the case. He recorded supplementary statement of the eye witnesses and

thereafter, arrested accused Tanvir on 12.03.2020. Accused Gulfam was arrested on 16.03.2020. On 19.03.2020 FSL team visited the scene of crime, took photographs and lifted swabs from probable bullet holes. Accused Tahir Hussain was interrogated and arrested and thereafter Sections 153A and 505 IPC were added in the case. IO examined other witnesses also and arrested accused Kasim and Nazim. He also collected video of riots for 24.02.2020 and 25.02.2020 from social media. Videos were subsequently sent to FSL for examination and were found to be non-tempered.

5. After completion of investigation, on 08.06.2020, a chargesheet was prepared by IO/SI Rajeev Baman against eight accused persons namely Tahir Hussain, Tanvir Malik, Gulfam @ VIP, Nazim, Kasim, Shah Alam, Riyasat Ali and Liyakat Ali, for offences punishable under Section 147/148/149/153-A/505/307/120-B/34 IPC & 27/30 Arms Act and was filed before Duty MM (North East), Delhi. On 12.10.2020, ld. CMM (North East), Delhi, took cognizance of offences punishable under Section 147/148/149/307/120-B/34 IPC. Vide this order, ld. CMM (N/E) declined to take cognizance of offences punishable under Section 153-A and 505 IPC for want of sanction under Section 196 Cr.P.C. and offences under Arms Act for want of sanction u/s 39 Arms Act. Thereafter, this case was committed to the sessions court vide order dated 22.12.2020.
6. Thereafter, on 11.05.2022, first supplementary chargesheet was filed by IO, before ld. CMM, North East, Delhi, with sanction u/s

196 Cr.P.C. and cognizance was taken for Sections 153A and 505 IPC. This supplementary chargesheet was committed to the sessions court on 05.07.2022.

7. I have heard ld. Special PP and ld. defence counsels on the point of charge. I have perused the entire material on the record, including written submissions.

8. **Written Arguments of Defence**

In his written submissions, **Sh. Salim Malik**, ld. counsel for accused Tanvir Malik and Gulfam @ VIP, submitted that neither there is any cell ID location to show location of both the accused at the time of alleged incident, nor CDR reflects connectivity of both these accused with other accused in the present case or any other riot cases. He further submitted that Ct. Saudan, Ct. Pawan, Sh. Harish Chandra and Sh. Prashant Kumar, are not reliable witnesses, who are cited as common witnesses in the present case as well as in other riot cases. He further submitted that Ct. Saudan and Ct. Pawan are stock witnesses and they did not make any whisper to any higher authorities or to any other person about seeing the accused persons. He further submitted that identification of a few selected persons in a large mob by a witness, in the absence of TIP, cannot inspire the confidence of court. Ld. counsel further submitted that there must be strong suspicion, which may lead the court to think that there is ground for presuming that the accused persons have committed an offence. Ld. counsel further submitted that neither the accused persons have been specifically named in the FIR, nor they have

been assigned any specific role. He further submitted that no recovery has been shown from both these accused persons. He further submitted that there is no CCTV footage/video-clip of the incident(s) in question available on the record, to confirm the presence of the accused persons at the spot/ SOC at the relevant time. It was also argued that as far as CDR is concerned, the accused persons are residents of the same area/locality and it is quite natural, if their CDR locations are found in the said area. Ld. counsel further submitted that though at the stage of charge, scrutiny of material is not permissible, but if two views are possible and the court is satisfied that the evidence gives rise to some suspicion, but not grave suspicion against the accused, the court will be within its right to discharge the accused. Suspicion has to be strong and grave suspicion, leading the court to presume that the accused has committed an offence. Thus, ld. counsel prayed for discharge of accused Tanvir Maik and Gulfam @ VIP. Sh. Salim Malik, ld. counsel further argued that FSL report of fire arm as recovered in FIR 101/20, PS Khajuri Khas from Gulfam, does not support the case of prosecution as it was found to be a different pistol vis-a-vis the bullets recovered in this case.

9. In support of his contentions, **Sh. Salim Malik**, ld. counsel for accused Tanvir Malik and Gulfam @ VIP, relied upon certain case laws, which are as follows: -
 - ***Usmangani @ Bhura Abdul Gaffar & Anr. v. State of Gujarat, Crl. Appeal No. 1041/2061, decided on 09.08.2018, by Supreme Court.***

- **Kallu Mal Gupta v. State, 2000 IAD Delhi 107 .**
- **Umar Abdula Sakoor Sorathia v. Intelligence Officer Narcotic Control Bureau”, JT 1999 (5) SC 394.**
- **Sapna Ahuja v. State, 1999 VAD Delhi 407.**
- **Dilawar Balu Kurane v. State of Maharashtra, 2002 (2) SCC 135.**
- **State of Bihar v. Ramesh Singh, 1977 (4) SCC 39.**
- **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4.**
- **Niranjan Singh K.S. Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76.**
- **Soma Chakravarty v. State through CBI, (2007) 5 SCC403.**
- **P. Vijayan v. State of Kerala and Anr, (2010) 2 SCC 398.**
- **State of Maharashtra v. Priya Sharan Maharaj & Ors. AIR 1997 SC 2041.**

10. In his written submissions, **Sh. Rizwan**, ld. counsel for accused Mohd. Tahir Hussain submitted that neither investigating agency nor complainant explained satisfactorily about inordinate delay of 4 days in the registration of FIR. He further submitted that in his complaint, victim Sh. Ajay Goswami has not named accused Tahir Hussain and he named this accused after improving his statement u/s 161 Cr.P.C. with connivance of the investigating agency. Ld. counsel further submitted that there is not even a single video to show involvement of accused either in any kind of rioting or in using petrol bombs or in destruction of any kind of property. Ld. counsel further submitted that statements of omnipresent public witnesses are same and are identical to each other, as they have been made witnesses in number of other FIRs lodged against accused Tahir Hussain. Prosecution adopted copy, cut and paste theory, which seems to be forged and manufactured

statements, to falsely implicate accused Mohd. Tahir Hussain and which throw a serious doubt on the credibility of their statements. He further submitted that licensed pistol released by accused before the day of incident, is nothing, but a circumstance in nature. He further submitted that there is no concrete evidence against present accused to prove either his involvement in the shooting, or any direct link between his licensed pistol being used and the firing that hit the victim. Ld. counsel further submitted that licensed pistol was never used by accused to fire at anybody and there is no electronic or any other evidence, to show that licensed pistol was used by accused to cause hurt to anybody. Therefore, applicability of Sections 27 & 30 of Arms Act and Sec. 307 IPC against accused is questionable. He further submitted that credibility of eye witnesses including Pradeep, Harish, Ct. Saudan and Ct. Pawan is also questionable. He further submitted that Section 120-B and 149 IPC are incompatible and cannot be invoked together, especially when there is no evidence produced by the investigating agency to connect accused with the unlawful assembly and conspiracy. He further submitted that police lodged multiple FIRs covering the same offences and the facts, which does not only lead to multiplicity of proceedings, but also causes unnecessary harassment to the accused. Ld. counsel further submitted that accused cannot be subjected to a fresh investigation by the Police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing multiple FIRs, which in any case, is an infringement of the right of accused,

guaranteed under Article 20 (3) of the Constitution. Ld. counsel prayed for discharge of accused Mohd. Tahir Hussain.

11. **Sh. Rizwan**, ld. counsel for accused Mohd. Tahir Hussain, relied upon certain case laws, in support of his contentions, which are as follows: -

- **Jameer @ Saddam v. State of Karnataka, Crl. Petition No. 100086 of 2018, decided on 23.03.2018 by High Court of Karnataka.**
- **Yogesh @ Sachin Jagdish Josh vs. State of Maharashtra, (2008) 10 SCC 394.**
- **Narender Kumar Vs. State (NCT of Delhi) Criminal Appeal Nos.2066-67 of 2009, decided on 25.05.2012 by Supreme Court.**
- **C. Muniappan and Others vs. State of Tamil Nadu, (2010) 9 SCC 567.**
- **Amitbhai Anilchandra Shah Vs Central Bureau of Investigation and Another, (2013) 6 SCC 348.**
- **TT Antony v. State of Kerala (2001) 6 SCC 181.**
- **Arnab Ranjan Goswami v. Union of India & Ors. 2020 SCC OnLine SC 462.**

12. In his written submissions, **Sh. Dinesh Kumar Tiwari**, ld. counsel for accused Shah Alam, submitted that accused Shah Alam was not present at the spot during the riots and he was present at his house. He further submitted that eyewitness Sh. Pradeep Verma in his statement under Section 161 Cr.P.C. named accused Shah Alam stating that he was throwing stone on crowd. Ld. counsel further submitted that neither there was meeting of minds for criminal conspiracy, nor was there recovery of any weapon from his possession, nor is there allegation of using

communal slogan by him, nor the accused was named in the statement of any other witness, hence, offences punishable under Section 307/120-B/153-A IPC as well as 25/27 Arms Act, are not made out against accused Shah Alam, in the present case. Thus, ld. counsel prayed for discharge of accused Shah Alam.

13. In his written submissions, **Sh. Abdul Gaffar**, ld. Counsel for accused persons Nazim and Kasim submitted that on 30th March, 2022 the accused persons were arrested from their home town Distt Sambhal (U.P.) in connection with FIR No. 65/20 but no incriminating material was recovered from them, and thereafter they were formally arrested in this case. He further submitted that there is no electronic evidence i.e., video, CCTV footage, and mobile phone location to ascertain their presence at the scene of the incident, against the accused persons. He further submitted that prior to their arrest, there was no evidence against accused persons, nor could any witness describe their body structure or physical feature or knew their names. He further submitted that prior to their arrest, the Investigation Agency examined various eye-witnesses, who claimed that they can identify the rioters, but the accused persons were never subjected to judicial TIP. He further submitted that Pradeep Verma is the only witness against accused persons, Nazim and Kasim, and apart from this, there is nothing against both the accused persons in the entire charge-sheet. He further submitted that two police officials Suadan and Pawan, claimed to be eye-witness of the incident did not explain the reason of inordinate delay or not making any PCR call or

written complaint or DD Entry, when their statement got recorded on 06th June, 2020. Thus, ld. counsel prayed for discharge of accused persons Nazim and Kasim.

14. In his written submissions, **Sh. Z. Babar Chauhan**, ld. counsel for accused persons Riyasat Ali and Liyakat Ali submitted that witness Pradeep Verma is not a reliable person, as he is a witness in many cases of riots. He further submitted that the witness Pradeep Verma was a stock witness of the police and has been cited in a number of cases of riots at the same point of time. Thus, ld. counsel prayed for discharge of accused persons Riyasat Ali and Liyakat Ali.
15. In support of his contentions, **Sh. Z. Babar Chauhan**, ld. counsel for accused persons Riyasat Ali and Liyakat Ali, relied upon certain case laws, which are as follows: -
- **Masalti & Ors. v. State of U.P., AIR (1965) SC 202.**
 - **State v. Ashraf Ali & Ors.**
 - **Khurshid Ahmad v. State of J & (2018) 7, SCC 429.**
 - **Manoka Malik v. State of West Bengal (2019) 18, SCC 721.**
 - **Duleshwar v. State of M.P. (2020) 11, SCC 440.**

Arguments of Prosecution

16. **Sh. Madhukar Pandey**, ld. Special PP filed a synopsis and argued that the time of incident was at around 03:50 PM. He also argued that accused Tahir Hussain was present in the house and he was instigating the crowd gathered around his house as well as on the terrace of his house. He further argued that the conduct of accused Tahir Hussain is relevant to be looked into. He further

argued that different arms would have been used in the incident of the present case. He submitted that all the accused persons are vicariously liable for offence under Section 307 as well as 505 IPC. He further submitted that statements given by the eye witnesses leave no doubt in respect of role of accused Tahir Hussain, Shah Alam, Gulfam and Tanvir. He further submitted that the eye-witnesses also saw other accused persons as being active participant of the same mob. Therefore, by virtue of Section 149 of IPC, all of the accused persons are liable to be tried for alleged offences.

Appreciation of arguments, facts and law: -

17. First of all, I shall refer to the provisions dealing with the alleged offences and other relevant offences.
 - Section 141 IPC defines unlawful assembly as assembly of five or more persons with common object to overawe by criminal force or show of criminal force, any public servant in the exercise of the lawful power of such public servant; or to commit any mischief or other offence etc.
 - Section 142 IPC provides that whoever being aware of facts rendering any assembly as an unlawful assembly, initially joins that assembly or continues in it, is said to be a member of unlawful assembly.
 - Section 146 IPC defines rioting providing that whenever force or violence is used by unlawful assembly or by any member thereof, in prosecution of the common object of such assembly, every

member of such assembly is guilty of the offence of rioting.

- Section 148 IPC provides punishment for rioting being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.
- Section 149 IPC provides liability of each member of unlawful assembly for any offence committed by any member of that assembly in prosecution of the common object of that assembly or within knowledge of members of that assembly to be likely committed in prosecution of that object.
- Section 153-A IPC provides punishment for promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
- Section 505 IPC provides punishment for making statements conducing to public mischief.
- Section 307 IPC provides punishment for attempt to murder.
- Section 34 IPC defines act done by several persons in furtherance of common intention.
- The ingredients of offence defined under Section 120-B IPC were explained by Supreme Court in ***Lennart Schussler v. Director of Enforcement, (1970) 1 SCC 152*** in following manner: -

“9. It now remains to be seen whether the alleged agreement which A-1 and A-2 arrived at in Stockholm in 1963 and again in Madras in 1965, would, if established, amount to a criminal conspiracy. The first

of the offence defined in Section 120-A of the Penal Code which is itself punishable as a substantive offence is the very agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means subject however to the proviso that where the agreement is not an agreement to commit an offence the agreement does not amount to a conspiracy unless it is followed up by an overt act done by one or more persons in pursuance of such an agreement. There must be a meeting of minds in the doing of the illegal act or the doing of a legal act by illegal means. If in the furtherance of the conspiracy certain persons are induced to do an unlawful act without the knowledge of the conspiracy or the plot they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established. It is also clear that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement.”

18. The well recognised and settled principles of law for framing of the charge have been explained in the judgments cited by defence and mentioned herein above, while discussing defence arguments. In short, the test is to see if strong suspicion arises against the accused persons named herein for their involvement in the crime alleged by the prosecution, and the court is not supposed to conduct a mini trial and look into probative value of evidence on the record.
19. Arguments were made to say that for same incident several FIRs

were lodged including present case by police and almost same set of witnesses have been made eye witnesses in all these cases. According to defence, this scenario casts serious doubt over the credibility of the prosecution case. However, there cannot be a fixed criteria for witnessing a particular number of the incidents. Therefore, if some witnesses are common to several cases, that reason in itself cannot be sufficient to cast aspersions over their credibility. If in the course of indulging into riotous acts, different incidents of injury to different persons or damage to different properties, were caused by same mob comprising of more than five persons, in pursuance to the common object of the mob, then Section 149 IPC comes into play, to make every member of this mob liable for such incidents. Therefore, if some witnesses identified the accused persons in this mob and gave account of actions of the accused persons in more than one case, no exception can be taken for the same. As already observed, their credibility cannot be looked into at this stage, and same shall be subject matter of test during the trial. The commonality of witnesses in several cases, is natural when several incidents took place at and around same place and at close interval of time.

20. Another argument based of locations of mobile phones allegedly being used by the accused persons at the relevant time, does not have much scope at this stage. I say so because, this piece of evidence in itself is not sufficient to either frame the charges or to discharge any accused. Such evidence is for the purpose of corroboration. Description of locations of mobile phones will

require to be explained by the person having knowledge of the working of this software. Prosecution and defence will have to prove use and non-use of the given mobile numbers.

21. As far as allegation of conspiracy is concerned, the prosecution itself has referred to FIR 59/20 Crime branch, wherein the conspiracy behind start of riots in Delhi, was the subject matter of investigation. There is concept of an Umbrella Conspiracy being the larger conspiracy and several smaller conspiracies under the larger conspiracy. The objective of Umbrella Conspiracy may be wider than the objective of smaller conspiracy. The main planning to ignite a communal riot and taking steps for prosecution of such plan, could be Umbrella Conspiracy and participants to this conspiracy may or may not be part of each smaller conspiracies and vice versa. In pursuance to the objective of the larger conspiracy, when smaller plans are made and executed to cause incident of riot at a particular place or area involving some other persons (perhaps including local persons), this becomes a case of smaller conspiracy under Umbrella Conspiracy. Therefore, FIR 59/20 as referred herein above is to be treated to cover the aspect of Umbrella Conspiracy. The allegations and evidence in this case, have to be assessed to find out existence of smaller conspiracy peculiar to incident covered in this case.
22. Statement of injured Ajay Goswami reveals that on 25.02.2020 at about 3.50 PM, when he reached at the corner of gali no. 8, Moonga Nagar, he saw a large mob on the main road, which was

indulging into pelting stones and firing. Therefore, injured started running back in the gali and at that time he was hit by a bullet on his hip. He was removed to nearby hospital and finally admitted in Hindu Rao hospital. He stated that due to pain he did not give his statement on that day.

23. Other witnesses namely Prashant and Harish were present there and they took Ajay to hospital. They saw mob on the terrace of house of Tahir Hussain indulging into pelting stones, acid bomb as well as petrol bombs. They saw that Gulfam and Tanvir were firing blindly from the place between gali no.5 and 6 Moonga Nagar and at the same time one bullet hit Ajay on his right hip.
24. Witness Pradeep stated that he came out of his gali no. 8 at about 3.50 PM and saw that Gulfam and Tanvir were firing. Accused Shah Alam, Liyakat, Riyasat, Kasim and Nazim were instigating others and pelting stones towards gali no. 8, while saying that they would not leave the Hindus. This witness was shown videos of the riots of 24.02.2020 and 25.02.2020. He pointed out the videos of 25.02.2020. He also identified Tahir Hussain in the video of 24.02.2020, while giving direction to other rioters and holding a danda in his hand.
25. Witness Surender Pal stated that on 25.02.2020, he was present near gali no. 7 and 8. On that day since about 12-12.30 PM, accused Tahir Hussain was instigating persons from Muslim community, who had assembled on the road, so as not to leave Hindus as Hindus had burnt shops of Muslims and also had killed many Muslims. Tahir Hussain kept instigating the rioters and

rioters kept firing, pelting stones, throwing petrol and acid bombs from the terrace of house of Tahir or from the front of his house. At about 4 PM one boy was hit by a bullet.

26. Ct. Rahul and Ct. Praveen were present on duty on main Karawal Nagar road near Chand Bagh pulia, to control the riots. They also saw Tahir Hussain instigating persons from Muslim community to teach a lesson to Hindus.
27. Other witnesses namely Vikalp, Bharat, Aakash had also seen Tahir Hussain instigating the others. Ct Saudan, Ct. Pawan, Ajay Jha and Prince also saw accused Tahir Hussain, his brother Shah Alam, accused Gulfam, Tanvir, Nazim and Kasim among the rioters on this day. They also described similar role of Tahir, Gulfam and Tanvir as given by other witnesses.
28. From the statements of above-mentioned witnesses, presence of all named accused in the mob is well reflected. It is also well apparent that this mob kept indulging into firing of gunshots, pelting of stones, acid and petrol bombs towards Hindus and houses of Hindus. These acts of the mob make it clear that their objective was to harm Hindus in their body and property to maximum possible extent. Indiscriminate firing at others makes it clear that this mob consciously wanted to even kill Hindus. It cannot be said that accused persons were oblivious of such objective of this mob. Apparently, this was an unlawful assembly, acting in pursuance of aforesaid object. Tahir Hussain or for that matter, any other accused are not supposed to be static in their movement. Different witnesses hence, saw them in different

manner. Though role of Gulfam, Tanveer, Tahir and Shah Alam have been mentioned by some witnesses, but in such cases, by virtue of Section 149 IPC, description of specific role of every accused is not required. Participating and being member of this mob being conscious of its objectives is sufficient, to make all named accused liable for the deeds of this mob.

29. The statements of witnesses also make it clear that because of indiscriminate firing by members of this mob, several persons were hit by bullet. Ajay Goswami was one of them. Therefore, if police are prosecuting accused persons separately for separate incidents, it cannot be said that accused persons are being prosecuted for same facts and for same cause of action in different cases. Accused persons have to be prosecuted for every criminal act and incident, which took place because of their indulging into riot with a particular common object.
30. There was no need of TIP as the witnesses named accused persons in their statements. TIP is required only when accused is unknown to the witness. Absence of video of the incident in question or absence of name of accused in the FIR or absence of recovery of actual weapon of the offence, do not make the case of prosecution unbelievable. Significance of such omissions, depends upon facts of each case and that too at the final stage of the case.
31. In the case of **Masalti v. State of U.P., AIR 1965 SC 202**, hon'ble Supreme Court had laid down a test for appreciation of evidence related to identification of accused persons in the

unlawful assembly, wherein it was observed that four witnesses should give consistent account against the accused in cases of mob violence. Subsequently, in the case of **State of Maharashtra v. Ram Lal Devappa Rathod & Ors. (2015) 15 SCC 77**, hon'ble Supreme Court again explained the rule of prudence as laid down in the case of **Masalti** (supra) and observed that said rule of prudence does not apply when culpability of accused against whom there are specific allegations of overt acts, is in question and such rule applies only when culpability of those accused are involved, who are being made vicariously liable under Section 149 IPC for being members of an unlawful assembly and sharing its common object, without proof of any overt acts against them. In this case, as per evidence, not only there are sufficient number of witnesses to identify the accused, rather over acts on the part of accused persons have been also mentioned.

32. I do not find any clash or rivalry between ingredients of Section 120B and Section 149 IPC. The facts and evidence of this case show that a number of persons assembled at and around the house of Tahir Hussain. Some of them were equipped with firing weapons. Acid and Petrol bombs were also arranged, by accumulating the required materials in the house of Tahir Hussain. All these things were done to target Hindus. Every member of the mob assembled there, participated in achieving and encouraging others, to target Hindus. Such conduct of the members of this mob, show that they were acting out of meeting

of their mind and with a clear-cut objective in mind, to kill and harm Hindus. It is well recognized by the courts that there remain least chances of getting direct evidence of conspiracy. Therefore, the court raises inferences on the basis of conduct of the accused persons and probable reason behind such conduct. On the basis of same criteria, it can be said that this mob acted out of a criminal conspiracy and hence, all accused are liable to be tried for hatching criminal conspiracy to indulge into riot and kill Hindus and harm properties of Hindus and consequent to such conspiracy firing and causing gunshot injury to Ajay Goswami.

33. Section 153A(1)(b) IPC, provides that if any person does such act, which is prejudicial to the maintenance of harmony between different religious groups or communities and which disturbs or is likely to disturb the public tranquillity, he becomes liable to be punished under this provision. In this case, all accused indulged into targeting Hindus and their such acts were apparently prejudicial to the harmony between communities of Muslims and Hindus. They did disturb the public tranquillity as well. Thus, apart from allegation of instigating others to harm person from Hindu community, even on account of indulging into above mentioned acts, make an accused liable under this provision. Therefore, all named accused are also liable under this provision.
34. However, it is matter of record of this court that for same criminal conspiracy and acts resulting into offences u/s 147, 148 and 153A IPC and u/s 27 Arms Act, which were common for several incidents of injury to different persons taken place one

after another at around same place, charges have already been framed in FIR 91/2020 of same police station. Therefore, there is no need to again frame charges for these offences in this case.

35. Thus, on the basis of above-mentioned description of evidence and discussion, I find all accused persons liable to be tried for offence punishable u/s 307 r/with 120B and 149IPC, in respect of incident related to Ajay Goswami.
36. On the record, evidence show that accused Tahir Hussain, Shah Alam, Nazim, Kasim, Riyasat and Liyakat were instigating others to teach a lesson to Hindus and not to leave them. There is no statement to show if other accused namely Gulfam and Tanvir were also making statements to instigate other Muslims to attack on Hindus. A person cannot be made vicariously liable for commission of offence u/s 505 IPC. Hence, accused Tahir Hussain, Shah Alam, Nazim, Kasim, Riyasat and Liyakat are liable to be tried for offence u/s 505 IPC also and accused Gulfam and Tanvir are discharged for offence punishable u/s 505 IPC.

Ordered accordingly.

Announced in the open court (PULASTYA PRAMACHALA)
today on 05.11.2022 ASJ-03(North East)
(This order contains 22 pages) Karkardooma Courts/Delhi