



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

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Sessions Case No.	:	50/2021
Under Section	:	147/148/380/427/436 read with 149 IPC & 188 IPC
Police Station	:	Gokalpuri
FIR No.	:	53/2020
CNR No.	:	DLNE01-000458-2021

In the matter of: -

STATE

V E R S U S

- 1. MOHD. SHAHNAWAZ @ SHANU**
S/o. Mohd. Rashid,
R/o. H.No.A-528, Gali no.22, Phase 10,
Shiv Vihar, Delhi.
- 2. MOHD. SHOAIB @ CHHUTWA**
S/o. Sh. Islam
R/o. H.No.93, gali no.5/2,
Behind Rajdhani School,
Babu Nagar, Delhi.
- 3. SHAHRUKH**
S/o. Sh. Salauddin,
R/o. B-262, Gali no.7, Babu Nagar,
Near Shiv Mandir, Delhi.
- 4. RASHID @ RAJA**
S/o. Sh. Riyajuddin,
R/o. A-22, Gali no.1, Chaman Park,
Shiv Vihar Tiraha, Delhi.
- 5. AZAD**
S/o. Sh. Riyasat Ali,
R/o. C-824, Gali No.9,
Old Mustafabad, Delhi.
- 6. ASHRAF ALI**
S/o. Sh. Anisul Haq,
R/o. H.No. A-18, Chaman Park,
Indira Vihar, Delhi.
- 7. PARVEZ**
S/o Sh. Riyajuddin,
R/o. Gali No.1, Karawal Nagar, Delhi.

8. MD. FAISAL

S/o. Sh. Raisuddin,
R/o. H.No. F-14, Gali No.1, Babu Nagar,
Main Brijpuri Road, Delhi.

9. RASHID @ MONU

S/o. Khalil,
R/o. H.No. 259, Gali No.7,
Shiv Mandir, Shakti Vihar, Delhi.

...Accused Persons

Complainant:

SMT. REKHA SHARMA

W/o. Sh. Shripal,
R/o. A-49A, Chaman Park, Shiv Vihar
Tiraha Road, Delhi.

Date of Institution : 20.07.2020

Date of reserving order : 01.03.2023

Date of pronouncement : 13.03.2023

Decision : All Accused Convicted

(Section 437-A Cr.P.C. complied with by all accused except Ashraf Ali)

JUDGMENT

THE CASE SET UP BY THE PROSECUTION: -

1. The above named accused persons have been chargesheeted by the police for having committed offences punishable under Section 147/148/149/188/380/427/436 IPC.
2. Brief facts of the present case are that on 29.02.2020 FIR was registered at PS Gokalpuri pursuant to receipt of a written complaint dated 29.02.2020 from Smt. Rekha Sharma. Complainant alleged that on 24.02.2020 at about 01:00-02:00 PM, when she was present at her house bearing no. A-49A, Chaman Park, Shiv Vihar Tiraha Road, Delhi, there was stone pelting in her gali. There was a mob in the gali, which was trying

to break open the gate of her house. She made a call to her husband, who was on his duty. Her husband returned home and took her away to a safe place and locked the gate. It was further alleged that during the night intervening between 24.02.2020 and 25.02.2020, that mob broke open the rear gate of her aforesaid house and robbed the goods lying therein. They also damaged the house and set on fire its room on the upper floor. It was further alleged that due to fire in adjacent go-down, her house became in bad condition. Investigation of the present case was assigned to IO/ASI Ramdas.

3. During investigation, IO visited A-49A and prepared site plan at the instance of complainant. On 15.03.2020, IO called IC Crime Team, got inspected and photographed this property. He obtained inspection report and photographs from them and placed them on the record. During further investigation, IO recorded statement of HC Hari Babu and Ct. Vipin, who being beat officers had seen the incident of the present case and they named accused Shahnawaz @ Shanu, Azad, Shahrukh, Mohammad Shoaib @ Chhutwa, Rashid @ Monu, Parvez, Rashid @ Raja, Mohd. Faisal and Ashraf Ali, as member of the responsible mob. During further investigation, complainant identified one of the rioters namely Shahnawaz @ Shanu, who was leading the mob on 24.02.2020 at about 01:00-02:00 PM. IO recorded statement of complainant and other public witnesses, who identified accused persons.
4. During further investigation, efforts were made to identify other persons involved in the crime with the help of CCTV cameras,

viral footages on social media and with the help of public witnesses. During further investigation, IO came to know that accused persons involved in the incident of the present case namely Mohd. Shahnawaz @ Shanu, Mohd. Shoaib, Shahrukh, Rashid, Azad, Ashraf Ali, Parvej, Mohd. Faisal and Rashid @ Monu, were arrested by Crime Branch in FIR No.39/2020, PS Gokalpuri. IO obtained permission for interrogation of aforesaid accused persons and after their interrogation, IO formally arrested them in the present case. During further investigation, IO also added Sections 436/188 IPC in the present case. IO also obtained CD containing E-chargesheet and video clip of FIR No.39/20, PS Gokalpuri, from Insp. Surender Singh. Call detail records of accused persons were obtained from the concerned service providers, analyzed and placed on the record. On 07.07.2020, IO also recorded statement of PCR callers namely Himanshu and Atul Kumar, who also identified accused Shahnawaz @ Sanu as one of the members of such mob. During further investigation, IO also recorded other PCR callers and obtained PCR forms with certificate u/s. 65-B of I.E. Act.

5. After completion of investigation, on 20.07.2020 a chargesheet was filed before Duty MM (North East), Karkardooma Courts, Delhi, against aforesaid accused persons. Thereafter, on 23.12.2020, ld. CMM (North East), Karkardooma Courts, Delhi, took cognizance of offences punishable under Section 147/148/149/380/427/436 IPC. Vide this order, ld. CMM (North East) declined to take cognizance of offence under Section 188 IPC, for want of complaint under Section 195 Cr.P.C. Thereafter,

case was committed to the sessions court on 12.01.2021. On 04.10.2021, first supplementary chargesheet was filed before Id. CMM (N/E), along with a complaint under Section 195 Cr.P.C and other documents. Ld. CMM (N/E) sent this supplementary chargesheet to the sessions court vide order dated 27.10.2021. Subsequently, another supplementary chargesheet along with certificate under Section 65-B of I.E. Act and other document was filed directly before this court on 30.11.2022.

CHARGES: -

6. On 24.02.2022, charges were framed against aforesaid accused persons for offences punishable under Section 147/148/380/427/436 IPC read with Section 149 IPC and 188 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in the following terms: -

“That during the night intervening between 24th February, 2020 and 25th February, 2020 from 12 midnight from 1:00 am at House No. A-49A, Chaman Park, Shiv Vihar, Tiraha Road, Delhi belonging to Rekha Sharma w/o Shripal within the jurisdiction of PS Gokalpuri, all of you belonging to a particular community alongwith your other associates (unidentified) formed an unlawful assembly, the object whereof was to cause maximum damage to the persons belonging to the other community as well as their properties and to create fear & insecurity in the minds of the members of other community by use of force or violence in prosecution of common object of such assembly and committed rioting and you all, being members of the aforesaid unlawful assembly knew that various offences were likely to be committed in prosecution of that common object and thereby committed offences punishable under Section(s) 147/148 read with Section 149 IPC and within my cognizance.

***Secondly**, on the aforesaid date, time and place, you all being members of unlawful assembly in furtherance of your common object alongwith your other associates (unidentified) committed vandalism, theft and mischief by fire or explosive substance by setting on fire the aforesaid house and the articles lying therein with an intent to destroy the same and as such committed offences punishable under section 427/380/436 IPC read with Section 149 IPC and within my*

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cognizance.

Thirdly, on the aforesaid date and time, you all being members of unlawful assembly in furtherance of your common object alongwith your other associates (unidentified) knowing that by an order, namely Prohibitory Order under section 144 Cr.P.C, promulgated by public servant (DCP, North East Delhi) lawfully empowered to promulgate the said order whereunder you were directed to abstain from unlawful assembly in the North-East District, Delhi from 24.02.2020 onwards, but you have disobeyed such directions the disobedience of which causes riots in the area and that you have thereby committed offences punishable under section 188 IPC and within my cognizance.”

DESCRIPTION OF PROSECUTION EVIDENCE: -

7. Prosecution examined 11 witnesses in support of its case, as per following descriptions: -

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
PW1/ Insp. Manish Kumar	On 15.03.2020, he along with ASI Mahavir photographer visited A-49A and on the direction of ASI Ram Dass, PW1 inspected the spot and prepared inspection report.	Ex.PW1/A (inspection report prepared by PW1)
PW2/Sh. Zishan & PW3/Sh. Khurshid Alam	They were PCR callers. They saw that the rioters were committing vandalization and arson and there was smoke all over the area.	
PW4/Sh. Atul Kumar	On 24.02.2020 at about 04:00 PM, when he was present in his house, riots had started in the area. PW4 saw a mob consisting of more than 100 persons belonging to muslim community, which came from Mustafabad side and started stone pelting. They started throwing petrol bombs on the shops/houses on the road. They looted the goods from the shops and set ablaze those shops. There was a shop on the ground floor of his house under the name and style of Pizza diet, which was also set ablaze by the rioters. At around 05:00 PM, PW4 and his father were rescued by the police officials and they went to the house of their relatives in Karawal Nagar. They	

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Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	returned on 27.02.2020 and saw that their entire house had been burnt. He did not identify any rioter and he was declared hostile by the prosecution.	
PW5/Smt. Rekha Sharma	She was the complainant in the present case. PW5 had gave a written complaint in the PS on 29.02.2020 and she identified her signature at point A on the same. Police officials visited her house and prepared site plan at her instance. PW5 identified her signature at point A on her complaint and site plan. However, she claimed that she did not see any rioter. She was also declared hostile by the prosecution.	Ex.PW5/A (written complaint of PW5) & Ex.PW5/B (site plan prepared at instance of PW5)
PW6/HC Hari Babu	<p>On 24.02.2020, he was posted as HC in PS Gokalpuri. On that day, PW6 reported for duty at Chaman Park at about 6.00 a.m. and he kept taking round of that area including Brijpuri Road and Johripur Road.</p> <p>On this day, PW6 had seen that a mob had started assembling at Shiv Vihar Tiraha after 12:00 PM, which was raising slogan against Hindu community and 'Allaha-hu-Akbar' etc. The members of this mob were also carrying danda, stones and such article which used to result into blast and fire on throwing the same. They were setting the nearby houses and shops on fire.</p> <p>In the intervening night of 24/25.02.2020 between 12:00 AM to 01:00 AM, PW6 was present near A block of Chaman Park and saw that the members of the mob broke open the gate of house bearing no. A-49 and thereafter, they set that house on fire by throwing an article, which was resulting into blast and fire. PW6 alongwith other force tried to stop that mob, which started pelting stones towards police team also.</p> <p>PW6 identified accused Shahnawaz, Azad, Parvez,</p>	

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Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>Faisal and Rashid, in the aforesaid mob as PW6 had worked in the same beat and had seen them in the same locality during the course of his duty. PW6 also identified faces of some other members of that mob, which included accused Shahrukh and Mohd. Rashid. After seeing photos obtained from video, PW6 informed IO of this case about presence of accused Shahrukh and Mohd. Rashid and some more persons in the aforesaid mob.</p> <p>PW6 identified accused Shahnawaz, Rashid, Azad, Faisal and Parvez, before the court correctly and pointed out to accused Rashid s/o Khalil, Shoiab, Shahrukh, without taking their names, as members of aforesaid mob.</p>	
PW7/HC Vipin Kumar	<p>On 24.02.2020 he was on duty along with PW6/HC Hari Babu and other staff at Shiv Vihar Tiraha since 08:00 AM.</p> <p>PW7 reiterated the same facts, as deposed by PW6/HC Hari Babu, and claimed having seen incident at A-49 and accused persons as part of that mob.</p> <p>PW7 identified all the accused persons before the court correctly.</p>	
PW8/ASI Yashpal	<p>On 29.02.2020 he was working as Duty Officer from 04:00 PM till 12:00 midnight, at PS Gokalpuri.</p> <p>On that day, PW8 registered FIR in the present case on the basis of rukka handed him over by Insp. Vineet Pandey. Thereafter, PW8 handed over original rukka, copy of FIR and certificate u/s 65B of I.E. Act to ASI Ram Dass for further investigation. PW8 identified his signature on endorsement at circle X on the rukka.</p>	<p>Ex.PW8/A (endorsement on rukka);</p> <p>Ex.PW8/B and Ex.PW8/C (FIR and certificate u/s 65B of I.E. Act)</p>

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Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	PW8 also identified his signature at point A on FIR and certificate u/s 65B of I.E. Act.	
PW9/HC Pradeep	<p>He was working as reader to SHO. On 24.02.2020, he received copy of order under Section 144 Cr.P.C., issued by DCP (N/E), through Dak. Copy of same is Ex. A-18 (admitted document). PW9 informed SHO about the same.</p> <p>On the direction of SHO, PW9 announced proclamation under Section 144 Cr.P.C. in the area of PS Gokalpuri, through loud hailer.</p>	
PW10/ASI Mahavir	He was photographer in crime team and he took 7 photographs of the spot. PW13 submitted certificate under Section 65-B of I.E. Act, in respect of photographs and identified his signature at circle X on the same.	<p>Ex.PW10/A (certificate u/s. 65-B of I.E. Act issued by PW10) &</p> <p>Ex.PW10/P-1 to Ex.PW10/P-16 (16 photographs taken by PW10 at A-49A)</p>
PW11/ASI Ram Dass	<p>On 29.02.2020 he was handed over copy of FIR of this case along with complaint of PW5/ Smt. Rekha Sharma and certificate under Section 65-B of I.E. Act. PW11 visited A-49/A and prepared site plan (Ex.PW5/B) at the instance of PW5. PW11 identified his signature at point X on the same. PW11 recorded statement of complainant.</p> <p>On 15.03.2020, PW11 called crime team consisting of SI Manish and ASI Mahavir, where ASI Mahavir took photographs of</p>	<p>Ex.PW11/A (seizure memo of ash material lifted by PW11) &</p> <p>Ex.PW-11/ Article-1 (ash materials kept in plastic box by PW11)</p>

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Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>the property and SI Manish inspected that place and prepared SOC report. PW11 collected photographs and certificate u/s. 65-B of I.E. Act subsequently.</p> <p>On 20.03.2020, PW11 again visited A-49A and lifted ash from that place and seized the same vide seizure memo bearing his signature at point X on the same.</p> <p>On 07.04.2020, PW11 also recorded statement of PW6/HC Hari Babu and PW7/Ct. Vipin.</p> <p>On 10.04.2020, PW11 again examined complainant and her husband namely Sri Pal Sharma.</p> <p>On 24.04.2020 PW11 interrogated and formally arrested accused Shehnawaz @ Shanu, Shahrukh, Shoib, Rashid, Azad, Ashraf Ali and Parvej, in Mandoli Jail, vide separate arrest memos, which are Ex.A1 to Ex.A7 (admitted documents), respectively.</p> <p>On 27.04.2020, PW11 also interrogated and arrested accused Faisal and Rashid @ Monu in Tihar Jail, vide separate arrest memos, which are Ex.A8 and Ex.A9 (admitted documents), respectively.</p> <p>PW11 identified his signature at point X on arrest memos Ex.A1 to Ex.A9.</p> <p>In July 2020, PW11 recorded statement of PCR callers viz. Atul, Himanshu. PW11 obtained copy of order u/s 144 Cr.PC.</p>	

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Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>PW11 prepared charge sheet in this case and filed the same before the court.</p> <p>PW11 obtained complaint u/s 195 Cr.PC., which is Ex.A-17 (admitted document). He had already obtained copy of charge sheet prepared by crime branch in FIR No. 39/20.</p> <p>PW11 obtained CDR of mobile numbers of accused persons; again examined complainant Rekha Sharma; prepared a supplementary charge sheet and filed the same before the court. PW11 identified ash materials kept in plastic box by him.</p> <p>PW11 identified all accused persons in the court correctly.</p>	

Admitted documents under Section 294 Cr.P.C.

Arrest memo of accused Mohd. Shahnawaz @ Shanu, Shahrukh, Shoib, Rashid, Azad, Ashraf Ali, Parvej, Mohd. Faisal and Rahid @ Monu as **Ex.A-1** to **Ex.A-9**; PCR forms as **Ex.A-10** to **Ex.A-16**; complaint under Section 195 Cr.P.C. as **Ex.A-17**; copy of prohibitory order under Section 144 Cr.P.C. as **Ex.A-18**; certified copy of CAF in the name of Azad Ahmad and CDR of mobile no.9818920953 provided by Bharti Airtel Limited as **Ex.A-19 (colly. 5 pages)**; certificate u/s. 65-B of I.E. Act issued by Nodal Officer, Bharti Airtel Limited as **Ex.A-20**; certified copy of Vodafone Idea Delhi Cell ID Chart, CAF with supporting documents, in respect of mobile nos.9990550718, 9654607435, 9891366314, 9136277735 and 9654796812, as **Ex.A-21 (colly. 33 pages)**; certificate u/s. 65-B of I.E. Act issued by Nodal Officer, Vodafone Idea Limited as **Ex.A-22**; copy of CDR and CAF with supporting documents provided by Reliance Jio Infocom Limited in respect of mobile no.9718825136, 7984796920 as **Ex.A-23 (colly. 26 pages)**; certificate u/s. 65-B of I.E. Act issued by Nodal Officer, Reliance Jio Infocom Limited as **Ex.A-24** and FSL report dated 05.04.2022 as **Ex.A-25**; and certified copy of statement of HC Hari Babu as **Ex.A-26**.

PLEA OF ACCUSED PERSONS U/S. 313 CR.P.C.

8. All accused persons denied all the allegations and pleaded innocence, taking plea that they were not present at the spot on the day of incident and they have been falsely implicated in this case. They also took plea that their name was implicated in this case, just to work out the case and witnesses have falsely deposed against them at the instance of IO. Accused persons did not opt to lead any evidence in their defence.
9. I heard ld. Special PP and ld. counsels for accused persons. I have perused the entire material on the record.

ARGUMENTS OF DEFENCE & PROSECUTION

10. **Sh. Z Babar Chauhan**, ld. defence counsel for accused Mohd. Shahnawaz @ Shanu, Azad and Parvez, argued that PW4/Sh. Atul Kumar and PW5/Smt. Rekha were relied upon by the prosecution as eyewitnesses, but they did not identify any accused. It was further argued that PW6/HC Hari Babu and PW7/HC Vipin Kumar are police officials, who were relied upon by the prosecution, but they are not the credible witnesses. It was further argued that PW6/HC Hari Babu in FIR No.40/20 could not identify same accused, taking plea that due to lapse of long time he could not identify them. But subsequently, he identified them, which shows that he was tutored. PW7/HC Vipin Kumar remains lone witness to identify the accused, but he could not answer any question in his cross-examination. PW7 did not make any DD entry of identifying accused in the present case. His statement was prepared falsely and belatedly to solve the case. PW7 could not have identified anyone in such a large mob. In

support of his contentions, ld. counsel relied upon a judgment passed in the case of **Harbeer Singh v. Sheeshpal & Ors. 2017 [1] JCC 289**, on the point of delay in examination of witnesses. The relied upon observations are as under: -

“17. However, Ganesh Bhavan Patel Vs. State Of Maharashtra, (1978) 4 SCC 371, is an authority for the proposition that delay in recording of statements of the prosecution witnesses under [Section 161 Cr.P.C.](#), although those witnesses were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case. [See also Balakrushna Swain Vs. State Of Orissa, (1971) 3 SCC 192; Maruti Rama Naik Vs. State of Maharashtra, (2003) 10 SCC 670 and Jagjit Singh Vs. State of Punjab, (2005) 3 SCC 68]. Thus, we see no reason to interfere with the observations of the High Court on the point of delay and its corresponding impact on the prosecution case.

18. Further, the High Court has also concluded that these witnesses were interested witnesses and their testimony were not corroborated by independent witnesses. We are fully in agreement with the reasons recorded by the High Court in coming to this conclusion.

19. In Darya Singh Vs. State of Punjab, AIR 1965 SC 328 = 1964 (7) SCR 397, this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said:

“There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully.....But where the witness is a close relation of the victim and is shown to share the victim’s hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence..... If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised.””

11. **Sh. Salim Malik**, ld. counsel for accused Rashid @ Raja, Shahrukh and Shoaib @ Chhutwa, argued that PW6/HC Hari Babu and PW7/HC Vipin Kumar are not trustworthy. They did not give information of incident and accused, till long time in the police station.
12. **Sh. Abdul Gaffar**, ld. counsel for accused Ashraf Ali, Rashid @ Monu and Mohd. Faisal, argued that PW2/Zishan and PW3/Khurshid Alam stated that there was electricity failure and there was complete dark. Hence, it was not possible to identify any face by PW6/HC Hari Babu and PW7/HC Vipin Kumar also. Hence, they are not trustworthy.
13. Per-contra, **Sh. D. K. Bhatia**, ld. Special PP for State argued that PW2/Zishan and PW3/Khurshid Alam deposed about 08:00-09:00 PM, but the incident in question took place between 12:00-01:00 AM. Though PW4/Sh. Atul Kumar and PW5/Smt. Rekha Sharma did not identify any accused, but PW6/HC Hari Babu and PW7/HC Vipin Kumar have supported the case of prosecution and proved identity of accused persons. He further argued that there is nothing against PW7 to discredit his evidence. Even PW6 stated that his memory was not in fit condition in the past, and he took medicine for 5 months and thereafter he was fit.
14. At the time of examination of PW6, he was directed to furnish his medical documents, which were submitted in the court at the stage of final arguments. Thereafter, additional submissions were heard in respect of these medical documents. The crux of submissions made by defence counsels is that the medical

documents do not show if this witness was having any problem in his mind or memory. They pointed out that the medical records show that the witness was suffering from problems related to ear. Ld. Special P.P. submitted that the witness was repeatedly making complaints of giddiness and being uncomfortable at the relevant time, which shows that he was actually not well and in fit condition to recollect everything properly.

APPRECIATION OF FACTS AND EVIDENCE

UNLAWFUL ASSEMBLY & RIOTS

15. In respect of unlawful assembly and riots, testimonies of PW2, PW3, PW4, PW5, PW6 and PW7 are the relevant evidence. PW2/Zishan could not mention the number of rioters, but he deposed that on 24.02.2020 or 25.02.2020, at about 08:00 PM or 09:00 PM, when he was present at his home, there were riots in the area. The rioters were committing vandalization and arson. There was smoke all over the area. PW3/Khurshid Alam reiterated the same facts as deposed by PW2, giving some different time of riot i.e. 25.02.2020 at about 08:30 PM.
16. According to PW4/Sh. Atul Kumar, on 24.02.2020 at about 04:00 PM when he was present at his house, the riot had started in the area. A mob consisting of more than 100 persons belonging to Muslim community came from Mustafabad side and started stone pelting. They started throwing petrol bombs on the shops/houses on the road. They looted the goods from the shops and set ablaze those shops. There was a shop on the ground floor of his house which being run under the name and style of Pizza Diet. It was also set ablaze by the rioters. Around 05:00 PM, PW4 and his

father were rescued by the police officials and they went to the house of his relatives in Karawal Nagar. They returned on 27.02.2020 and saw that their entire house had been burnt. However, he was declared hostile by the prosecution, on the point of identification of accused, as he did not identify anyone..

17. PW5/Smt. Rekha was complainant in the present case. According to her testimony, on 24.02.2020 at about 01:30 PM or 02:00 PM, when she was present at her home, there was stone pelting in her gali. There was a mob of large number of persons in the gali. The persons in the mob were trying to break open the gate of her house. She made a telephonic call to her husband who was on his duty. He returned home and took her to a safe place. They returned home in the morning of the next day and found that the gate of their house had been broke open and their entire house had been burnt. Thereafter, she submitted a written complaint regarding the incident in the police station on 29.02.2020.
18. PW6/HC Hari Babu and PW7/HC Vipin Kumar were the police officials. Both of them deposed about being on duty in Chaman Park including Brijpuri Road and Johripur Road on 24.02.2020. PW6 and PW7 also deposed about a mob indulging into vandalism and arson on this road. They also deposed that during intervening night between 24/25.02.2020, the mob looted articles from property no. A-49A, Chaman Park, after breaking the iron gate on the back side of the property. Thereafter, this property was set on fire by this mob. Except for testimonies of PW6 and PW7, other evidence remained unchallenged and unrebutted.

19. Thus, the overall appreciation of above-mentioned evidence shows that an unlawful assembly was formed, which indulged into vandalism and arson. Property no. A-49A, Chaman Park was also attacked by this unlawful assembly. Photographs Ex.PW10/P-1 to Ex.PW-10/P-16 read with certificate Ex.PW10/A, do corroborate the version of PW5 that this property was vandalized and burnt. Even seizure memo Ex.PW11/A as prepared by IO/PW11 shows that there were remnants of burnt articles, and IO lifted ash from there. Therefore, it is well established that an unlawful assembly was formed, which indulged into riots, vandalism and arson, thereby also damaging and burning property no. A-49A, Chaman Park.

IDENTIFICATION OF ACCUSED

20. The foremost question is that whether accused persons named in this case were also involved in the aforesaid incident, as member of above-mentioned unlawful assembly? For this purpose, prosecution produced PW4/Anil Kumar, PW5/Smt. Rekha Sharma, PW6/HC Hari Babu and PW7/HC Vipin Kumar. Out of these witnesses, PW4 and PW5 were the public witnesses, who did not support the case of prosecution to identify any accused as member of the mob. They were the affected persons and both of them vouched about seeing a mob involved in vandalism and arson in the nearby houses and shops. But they took plea that they did not identify any member of that mob and refused to accept that they had mentioned name of any accused before police. Therefore, these witnesses were declared hostile. But, in any case these two witnesses did not depose about seeing the

riotous incidents during night time. PW4 mentioned about time period of 4-5 PM. PW5 mentioned about being at her property at about 2PM. Therefore, non-identification of any accused by them is insignificant in this case. Identification by them even otherwise, was not going to prove presence of accused persons in the mob during incident at A-49 during night time. From testimony of PW5, it is well apparent that at 2PM, gate of her house was not broke open. At that time mob had only pelted stones in her gali.

21. PW6/HC Hari Babu and PW7/HC Vipin Kumar were the police officials, who deposed about being on duty at that place, and hence, they also deposed about seeing the mob which attacked on this property no. A-49 during night time. They claimed that they had identified some persons in that mob. PW6 identified accused Shahnawaz, Rashid, Azad, Faisal, Parvez, before the court correctly by taking their names and pointed out to accused Rashid s/o Khalil, Shoiab and Shahrukh, without taking their names. He deposed that he had seen these persons in that mob, who had not covered their faces. He also deposed that he knew some of them since prior to the riots. As per his testimony, he had seen some of the accused persons in the same locality during the course of his duty in that beat. He had also identified faces of some members, though he did not know their names. He knew accused Shahnawaz, Azad, Parvez, Faisal and Rashid by their names and name of other persons identified by him, were informed to him by IO. He did not identify Ashraf during his evidence in the court and Id. Special PP cross-examined him. On

being pointed out, this witness admitted the suggestion that he had also identified this accused in the video.

22. Defence challenged the credibility of PW6 on the basis of his previous testimony recorded in FIR No.40/20 and 83/20, PS Goklapuri on 28.03.2022. Certified copy of those testimonies is Ex.A-26. At that time this witness could not identify the accused persons in FIR 40/20, taking plea of lapse of long time. However, he had stated that he had seen some persons in the mob and identified them. He had disclosed names of those persons as Shahrukh, Parvez and Azad. In that case, he was talking about the riotous act of the mob as taken place on Main Brijpuri Road on 25.02.2020 at about 01-02 PM. He was cross-examined by Id. Special PP at that time also and in that process, he admitted that the person identified by him was Shahnawaz and not Shahrukh. Id. defence counsel made contentions that this witness identified the accused persons in FIR 83/20, subsequent to his examination in FIR No.40/20 only because of tutoring. His other argument was that since this witness had not seen any accused, therefore, he could not identify any accused during his examination in FIR No.40/20. In this respect, Id. Special PP submitted that at the time of examination in FIR No.40/20, this witness was not in fit condition. He argued that ideally this witness should not have been examined at that time, because of his poor medical condition.
23. When PW6 was cross-examined in the present case he admitted the suggestion that during his examination in previous case he had stated before the court that due to passage of long time, he

could not identify accused Shahnawaz, Parvez and Azad. PW6 did not remember the FIR of such case, but it was in reference to FIR No.40/20. In response to the query of the court, PW6 further explained that at that time, his memory was not in fit condition and he was taking medicine for mind, but now he was in fit state of mind. He was further cross-examined by defence on this aspect and then he stated that he took medicine for about five months from Jain Hospital, Anand Vihar and his medical prescriptions were lying at home, which could be produced by him. Accordingly, as per demand made by ld. defence counsel he was directed to produce the relevant medical document before the court. Since these medical documents have been produced as per demand of defence and defence did not raise any challenge to authenticity of these documents, therefore the same can be read into evidence. The defence counsels took plea that these medical documents do not show any mental illness of the witness. Hence, the plea of memory loss due to medical problems as taken by PW6, is not sustainable. It is correct that these medical documents show that PW6 was suffering from problem related to his ear, which included the problem of vertigo. However, for the purpose of not being able to recollect any fact or face of a person correctly, it is not necessary that the person concerned would be suffering from some sort of mental illness. In fact, even without suffering from any particular illness, it is a normal tendency of any person that he does not recollect an incident taken place in the past completely and very accurately. If I compare the condition of PW6 with such normal person, then apparently his

condition was worse than others. As per alleged history mentioned in his medical documents, he was admitted in the hospital on 12.01.2022 with complaint of high-grade fever with vertigo. He was discharged on 15.01.2022 and was found suffering from acute vertigo with cervical spondylosis with Covid-19. Thereafter also he remained under treatment in Garg hospital. On 21.01.2022, he again visited Jain hospital with complaint of dizziness, nousea and his sleep was also reported to be disturbed. His medical prescriptions show that he continued taking medical advice and the last prescription produced is dated 21.03.2022, wherein again complaint of dizziness was reported. As per common knowledge of medical science, the problem of vertigo does make a person unstable and very uncomfortable because of severe giddiness etc. In that state of mind, it can be possible with anyone that he does not recollect all the things very correctly and accurately. I am in agreement with the contention of Id. Special PP that it was not ideal decision of prosecution to examine PW6 in such peculiar situation at that time. They should have waited for recovery of PW6 completely, before examining him in any case. However, it seems that probably because PW6 could not afford to remain on medical leave on such ground for a longer period and he reported for his duty, he was produced as witness in routine manner, thereby compelling him to depose before the court.

24. I am conscious of the observations made by this court itself, in respect of credibility of same witness i.e. PW6 herein, in some other cases against some of the same accused persons. At that

time, though the plea of this witness, regarding his unfit mental condition at the time of his examination in FIR No.40/20, was before this court, but this court did not have the supporting medical documents on the record to make assessment of such plea. Ideally, the prosecution should have produced such document on their own, keeping in view this plea being taken by this witness. Ld. Special PP argued that just because of mishappening taken place in one case, the testimony of same witness as given in other cases should not be seen with suspicion and rejected. After having the aforesaid medical documents on the record and appreciating the probable mental state of this witness during his examination in FIR No.40/20, I am now in agreement with such contention of ld. Special PP. It is also worth to mention here that after his examination in FIR No.40/20, this witness was examined in another FIR No.83/20 on same day, wherein he had identified some of the accused persons and at that time the court had recorded its observations about failure of this witness to identify those accused in FIR No.40/20 and his subsequent identification in FIR No. 83/20. However, at that time the court could not and did not assess the reasons behind such conduct of this witness and therefore, those observations cannot be guiding factor as if now. The subsequent identification could be because the witness would have occasion to recollect the faces during his cross examination in the previous case i.e. FIR 40/20.

25. The defence counsels had cross-examined this witness in this case at length. A witness can be tutored in respect of his statement to be given in examination in chief. But no one knows

that what questions would be put to such witness during his cross-examination by the opposite party. Therefore, there remains minimum chances of tutoring a witness regarding his answers to be given during his cross-examination. The cross-examination of a witness, hence, becomes an important tool to assess his credibility, while appreciating the coherence and consistence of his statement regarding the relevant facts deposed by him in his examination in chief.

- 26.** PW6 in his cross-examination deposed that he knew Shahnawaz, Parvez and Azad since about 8-10 months prior to riots. But he did not know their residential addresses or their parentage. He admitted that Shiv Vihar Tiraha did not fall in the jurisdiction of PS Gokalpuri and he was not beat officer of Shiv Vihar Tiraha. Accused Shahnawaz was stated to be running a betel shop (paan ki dukan) at Shiv Vihar Tiraha. It is not necessary that in order to identify and recognize accused Shahnawaz, it was necessary to be beat officer of Shiv Vihar Tiraha itself. Technically, Shiv Vihar Tiraha was in the jurisdiction of different PS, but it was common place to be visited by police officials of PS Gokalpuri as well. Therefore, recognizing a person running shop of betel, cigarette etc. at that place does not sound to be unnatural or improbable. In order to recognize face of someone, it is not necessary to have personal acquaintance with him. It depends upon person to person for retaining faces of such person, whom he sees frequently in a particular area. The plea taken by defence in respect of location of mobile phone of accused persons being in the same area, was that since they were resident of same area,

therefore, it was natural to have such mobile location in their CDR. Thus, this plea in itself supports the case of prosecution that PW6 or for that matter PW7 had the natural occasion to see the accused persons in that area frequently, which became basis for them to identify the accused persons in the mob and retain faces of these persons. Being aware of name of some accused persons is also not unnatural, if their names are heard on regular basis.

27. PW6 was confronted with his statement under Section 161 Cr.P.C. in respect of certain omissions of fact i.e. house no. A-49, being situated after 3-4 houses from Shiv Vihar Tiraha on the road going towards Johripur and in respect of seeing some accused during his duty. However, these omissions are not such material omissions, so as to cast any doubt over overall testimony of PW6. PW6 had also stated that he had also identified the accused persons in the video and the video related to incident at and around Shiv Vihar Tiraha. A number of videos had surfaced and were obtained by police agency, which related to riots. The videos were used for multiple purposes including the purpose of verifying the identity of particular rioter. For this purpose, the video need not be necessarily related to the incident in question, if it was used only for the purpose of confirming the identity of accused in a different incident. If PW6 had done so, so as to confirm the identity of accused persons as being member of the mob which indulged into the incident in question, then there is nothing to take exception of. PW6 confidently narrated all his knowledge about other accused persons also i.e. Azad working as

motorcycle mechanic, Mohd. Rashid running auto in that area. He also clarified that he was talking about Rashid s/o Sh. Khalil. On being asked by defence, he also mentioned damages caused to other shops including that of one Sharmaji during riots, while clarifying that apart from incident at A-49, riot was already going on.

28. PW6 as well as PW7 claimed that they were deputed on duty due to riots at Chaman Park area. Both of them vouched that they were at Shiv Vihar Tiraha and that they had been taking round on Brijpuri road as well as Johripur road. Both of them vouched that they had been beat constables of that area. It was suggested to PW6 that he had not seen any incident at A-49 or that he had taken name of accused being involved in this incident falsely and at the behest of IO and that he did not know them at all. PW6 denied all these suggestions. PW7 was also suggested by defence that he had also not seen any accused in the mob in the area near Shiv Vihar Tiraha and that he was planted as a witness to sort out the cases and that he had identified accused persons at the instance of IO. PW7 also denied all these suggestions. PW6 and PW7 being local police officials, were natural witnesses to be present at the place of incident. There is no dispute to the fact that they had been beat constables of that area. During the riots, the police team could be on move in the sense that their position was not necessarily to be a fixed point or place. Depending upon the movement of mob the police could also have been on movement and therefore, if PW6 and PW7 kept moving on Brijpuri Road near Shiv Vihar Tiraha, then I do not find anything

unusual with the same.

29. Thus, on overall appreciation of testimony of PW6, I do not find any material contradiction or infirmity appearing in respect of the presence of PW6 at the concerned place during intervening night of 24/25.02.2020 and him witnessing the incident at A-49. I also do not find any material contradiction in respect of identification of accused persons by this witness in that mob, which was there during incident at A-49.
30. As already mentioned herein above, PW7 was also on duty at the same place with PW6. He also vouched that in the intervening night of 24/25.02.2020 a mob which had assembled on Brijpuri Road since day time itself, remained active. In the night time, the mob looted articles from property no. A-49, Chaman Park after opening the iron gate on the back side of the property. Thereafter, the mob set this property on fire. He further deposed that the accused persons namely Shahnawaz, Shoaib, Shahrukh, Rashid @ Monu, Rashid @ Raja, Parvez, Azad, Faisal and Ashraf Ali, whom he had seen and identified in this mob, also participated in vandalizing and setting this property on fire. PW7 stated that he knew these accused persons, because he had been beat constable of the Chaman Park and Indra Vihar and he had seen these persons in his area in the past. During his cross-examination, he deposed that he was examined in three other cases besides present case on 07.04.2020 by the IOs. He also admitted that area of Shiv Vihar Tiraha was not part of his beat, but he clarified that at Shiv Vihar Tiraha there was meeting point of jurisdiction of PS Dayalpur and PS Karawal Nagar. He was also cross-examined at

length on various points including his knowledge about other persons in that locality and he answered all such questions. None of his given answers were disputed by the defence. Location of A-49 given by PW6 and PW7 was similar i.e. to be on road going towards Johripur. In respect of any other incident, if seen by him on 24.02.2020, he added that he had seen incident at A-53 also, which also took place after midnight and this property was situated adjacent to A-49. In respect of his knowledge about accused persons, this witness had already stated in his examination in chief that Shahnawaz used to run a shop of betel at Shiv Vihar Tiraha. Accused Shoaib, Sharukh, Rashid @ Monu used to ply TSR. Accused Shoaib and Shahrukh used to reside in Babu Nagar, while accused Rashid @ Monu used to stay in Shakti Vihar. Accused Rashid @ Raja used to reside in A-Block, Chaman Park and Parvez had repair shop in gali no.5, Old Mustafabad. Azad also resided in Old Mustafabad. Faisal used to work as electrician and Ashraf Ali used to sell clothes on cart. None of these facts were disputed by defence. It is part of job of a beat constable to remain vigilant in his area. Therefore, with passage of time acquiring knowledge about local persons, is not unusual for a beat constable. Hence, I have no reason to suspect knowledge of PW6 and PW7 about the accused persons or retention of faces of the accused persons by these witnesses.

- 31.** Defence took plea that PW6 and PW7 had though knowledge of the names and particulars of the accused persons, but they did not take any steps to formally get this information recorded, before 07.04.2020. Defence claimed that PW6 and PW7 were planted

and tutored witnesses and hence, there was delay in recording their statements by IO. In respect of delayed examination of PW6 and PW7 by IO in this case, Mr. Babar referred to judgment passed in the case of **Harbeer Singh** (supra). I have already mentioned relevant observations from that judgment herein above.

32. It is true that in normal circumstances delayed examination of an eyewitness would give rise to a reason to be suspicious against statement of such eyewitness. However, it depends upon case to case and facts and circumstances of each case, to look into the credibility of given reasons behind such delay. It is not the ratio of aforesaid judgment that in all the cases delayed examination of any eyewitness would result into rejection of his evidence in toto. In the case of **John Pandian v. State, (2010) 14 SCC 129**, on the point of effect of delayed examination of witnesses, hon'ble Supreme Court observed that statement of eyewitnesses should be recorded immediately or with least possible delay. Early recording of statement gives credibility to evidence of witnesses, but it is not an absolute rule that where statement is recorded late, witness is a false or a trumped-up witness. Supreme Court held that it will depend upon the quality of evidence of the witness.
33. In the present case, it is matter of common knowledge that on account of unexpected riots, which rocked North-East part of Delhi for about three-four days, there had been huge pressure upon the police agency. A huge number of complaints were bound to pour in and it so happened. PW11/ASI Ram Dass was asked by this court to explain the reasons for delayed

examination of PW6 and PW7. PW11 explained that there was Corona at that time and the police officials were not meeting each other. For such reasons, it took so much time to examine PW6 and PW7 as well as to call crime team at the spot. It is well within knowledge of everyone that year 2020 was also rocked on account of unexpected pandemic of Covid-19. There had been cases since beginning of the year and because of highly accelerated increase in the positive cases of Covid-19, even Government of India was compelled to take a hard decision for complete lock-down in the whole country since 24.03.2020. It does not mean that prior to 24.03.2020, the situation was normal. On account of everyday reporting of positive cases of Covid-19, there had been advise and guidelines issued for all for least interaction, to avoid physical contact and to maintain physical distance etc. Therefore, there was impact on the functioning of every organization. Police organization was no exception to this impact. Police in Delhi would have been recovering from the impact of riots taken place during concluding days of February 2020, when they were also expected to enforce the norms devised on account of Covid-19. For such reasons, I find that the above-mentioned explanation given by IO cannot be treated as an after-thought and artificial kind of explanation. IO had also explained that on account of Corona, even the briefings in the police station were not physically attended by everyone on every day.

34. Defence emphasized upon absence of any DD entry regarding incident in question, immediately after such incident. There cannot be any doubt that ideally these two witnesses were

expected to either report in the form of complaint or in the form of DD entry, in respect of incident and the accused seen by them. However, one cannot be oblivious of the fact that this was not the only incident, which took place during riots. There were numerous incidents. At times ideal mode of working is ignored by a person, especially when there is an atmosphere of chaos and huge pressure. PW6 stated that he had informed SHO on 26 or 27.02.2020 that he identified some persons in the mob. PW7 also deposed that after 2-3 days, he had informed SHO about incident at A-49 and A-53. Since SHO was the officer in charge of the police station, these two witnesses were supposed to act as per his directions. Now, the question is as to why did not SHO get recorded such information in the DD register? One reason could be that there were numerous incidents, which took place every day. Perhaps there was no clarity of thought so as to how to tackle that situation. The days subsequent to the riots were filled with receipt of complaints and the SHO would have been in position to first take a decision as to how to deal with flood of the complaints. Investigation into a case was to be initiated after registration of FIR. Recording of statement of the concerned eyewitnesses could take place only when the investigation started in such FIR. When an official would have been burdened with investigation of a number of such complaints, in addition to the other duties related to maintaining law and order, assisting SDM/local authorities in disbursement of compensation etc., it could not be expected from such official to show urgency in recording statement of any witness including police officials, in

any case. Therefore, all I can say that the delay in the examination of PW6 and PW7 cannot be said to be without any cogent reasons. In the peculiar circumstances attached to this case, this delay and non-recording of such information in the police station, cannot be given over importance. In my opinion, it would be better to look into the quality of evidence of PW6 and PW7, devoid of aforesaid expectations.

35. Defence also mentioned about the judgment passed in the case of **Masalti v. State of U.P., AIR 1965 SC 202**, arguing that principle explained in that case applies to the facts and circumstances of this case. In the case of Masalti, hon'ble Supreme Court dealt with a case of multiple murder by an unlawful assembly. The court while dealing with the aspect of identification of members of that mob, made certain observations regarding test of consistent testimony by four witnesses as applied by High Court. The relevant part of the same is as follows: -

“16. Mr. Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of

witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case.”

36. The test mentioned in the case of Masalti, was deliberated upon by Supreme Court in the case of **State of Maharashtra v. Ramlal Devappa Rathod, (2015) 15 SCC 77**, and the court made following observations: -

“24. The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus, when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons. But in a situation where assault is opened by a mob of fairly large number of people, it may at times be difficult to ascertain whether those who had not committed any overt act were guided by the common object. There can be room for entertaining a doubt whether those persons who are not attributed of having done any specific overt act, were innocent bystanders or were actually members of the unlawful assembly. It is for this reason that in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] this Court was cautious and cognizant that no particular part in respect of an overt act was assigned to any of the assailants except Laxmi Prasad. It is in this backdrop and in order to consider

“whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly”, this Court at SCR pp. 148-49 in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 observed that his participation as a member

of the unlawful assembly ought to be spoken by more than one witness in order to lend corroboration. The test so adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 was only to determine liability of those accused against whom there was no clear allegation of having committed any overt act but what was alleged against them was about their presence as members of the unlawful assembly. The test so adopted was not to apply to cases where specific allegations and overt acts constituting the offence are alleged or ascribed to certain named assailants. If such test is to be adopted even where there are specific allegations and overt acts attributed to certain named assailants, it would directly run counter to the well-known maxim that “evidence has to be weighed and not counted” as statutorily recognised in Section 134 of the Evidence Act.”

- 37.** In the same case, Supreme Court explained the nature of cases wherein test mentioned in the case of Masalti, can be applied, while making following observations: -

“26. We do not find anything in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] which in any way qualifies the well-settled principle that the conviction can be founded upon the testimony of even a single witness if it establishes in clear and precise terms, the overt acts constituting the offence as committed by certain named assailants and if such testimony is otherwise reliable. The test adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] is required to be applied while dealing with cases of those accused who are sought to be made vicariously responsible for the acts committed by others, only by virtue of their alleged presence as members of the unlawful assembly without any specific allegations of overt acts committed by them, or where, given the nature of assault by the mob, the Court comes to the conclusion that it would have been impossible for any particular witness to have witnessed the relevant facets constituting the offence. The test adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] as a rule of prudence cannot mean that in every case of mob violence there must be more than one eyewitness.”

- 38.** Above mentioned observations of Supreme Court, make it clear that for inviting liability by virtue of Section 149 IPC, it is not required to prove overt act on the part of every member of the mob and at the same time rule of prudence has been also spoken about, for fastening vicarious liability with aid of S.149 IPC.

That rule of prudence is the genesis of the test mentioned in the case of **Masalti** (supra). In that case also, it was approved as a mark of precaution, rather than laying it down as a hard and fast rule. It all depends upon facts and circumstances of each case and credibility of the witness, who gives account of the riotous act of the mob. In the present case, I have already discussed the credibility of both the witnesses i.e. PW6 and PW7, who gave account of the incident in question and in view of my observations already made herein above regarding their credibility, there is no occasion to follow the decision taken in the case of **Masalti** (supra).

39. Defence also took plea that PW2 and PW3 deposed about failure of electricity, due to which they could not see any rioter. Hence, PW6 and PW7 also could not have seen the accused persons. However, I am in agreement with the rebuttal argument of Id. S.P.P. that these two witnesses were taking about time period of 8-9PM, though incident in question took place somewhere around 12-1AM, after midnight. Therefore, deposition of these witnesses cannot have any bearing on the evidence of PW6 and PW7.
40. In some other cases involving PW6 and PW7 as witnesses and decided by me so far, I did take a view that non recording of a vital information regarding involvement of particular persons in particular incident at the earliest point of time, in the police station, invited adopting rule of prudence as done in the case of **Masalti** (supra). However, on the basis of additional material and consequent explanations related to credibility of PW6 and overall

assessment of the evidence PW6 and PW7, the situation is altogether different, where there is no occasion to continue with my past approach. On the basis of assessment of evidence in this case and further reasoning, I am convinced with the version of prosecution against the accused persons. I find it well established that all the named accused persons in this case did become part of an unruly mob, which was guided by communal feelings and was having a common object to cause maximum damage to the properties of persons belonging to Hindu community. PW9 proved that he had pronounced order under Section 144 Cr.P.C. Though, he was given suggestions in his cross-examination that he did not make any such announcement, but he denied such suggestion. There is nothing in his cross-examination so as to make me disbelieve his version. In fact, even PW7 during his cross-examination itself replied that he had also seen police official making announcement of order under Section 144 Cr.P.C. on Main Brijpuri Road during day time on E-rickshaw. This version of PW7 corroborates the statement of PW9 that he had visited all area under his police station on E-rickshaw. PW7 also replied in his cross-examination by defence that they were given instruction to inform public about operation of order under Section 144 Cr.P.C. and to pacify them and ask them to go back to their homes. PW6 and PW7 deposed that due to their minimal number in comparison to the strength of the mob, the police could not stop the rioters. In that situation, it looks very probable and natural that the police team would be at least making appeal to the rioters to disperse and to go back, while announcing about

operation of order under Section 144 Cr.P.C. Despite such appeal, this mob continued rampage and in continuity to their riotous acts, this mob which included accused persons, looted articles from the house of complainant/PW5 situated at A-49, Chaman Park near Shiv Vihar Tiraha, vandalized other articles in that property and thereafter, set this property on fire.

CONCLUSION & DECISION

- 41.** In view of my foregoing discussions, observations and findings, I find that charges levelled against all the accused persons in this case are proved beyond doubts. Hence, accused **1.** Mohd. Shahnawaz @ Shanu, **2.** Mohd. Shoaib @ Chhutwa, **3.** Shahrukh, **4.** Rashid @ Raja, **5.** Azad, **6.** Ashraf Ali, **7.** Parvez, **8.** Md. Faisal and **9.** Rashid @ Monu, are convicted for offences punishable under Section 147/148/380/427/436 read with Section 149 IPC as well as under Section 188 IPC.

Announced in the open court today on 13.03.2023
(This order contains 37 pages)

(PULASTYA PRAMACHALA)
ASJ-03 (North- East)
Karkardooma Courts/Delhi