

**IN THE COURT OF MS. GEETANJLI GOEL,
ADDITIONAL SESSIONS JUDGE / SPECIAL JUDGE
(PC ACT OF 2008) CBI-24, ROUSE AVENUE DISTRICT
COURT, NEW DELHI.**

IN THE MATTER OF:

**CNR No. DLCT11-000003-2021
S.C. No. 01/2021
CIS No. 01/2021
FIR No. 84/2020
Police Station Adarsh Nagar
Under Sections 3(i)(r)(s) SC/ST Act and
323/341/506/34 IPC**

State

Versus

**Akhilesh Pati Tripathi
S/o Shri Abhay Nandan Tripathi
R/o T-huts N-9C/129, Lal Bagh
Azadpur, Delhi – 110033.
Also at:
C-3, CC Colony
Model Town, Delhi.**

.....Accused

Date of Institution	29.04.2020
Received by Transfer on	06.01.2021
Judgment reserved on	16.03.2023
Judgment Pronounced on	25.03.2023

J U D G M E N T

1. The present FIR was registered on the basis of the complaint dated 10.02.2020 of Shri Sanjeev Kumar wherein he had stated that he was a student. On 07.02.2020 at around 11:35 p.m., when he along with his friend namely Raj Kishore was going to his home, the accused along with his supporters stopped the complainant at Jhandewalan Chowk, Lal Bagh and took the key of his scooty and beat him badly. The accused said “Chamar ko Maro, iska baap bahut bada neta ban raha hai” and “iss chamar ko iss ki aukat dekha do.” He used the prohibited words to damage the image of the complainant and his parents, which was prohibited under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities Act), 1989 (hereinafter referred to as the SC/ST Act). It was stated that the complainant and his family members called on 100 number and when the police came on the spot, the accused fled from the spot. The accused with his supporters beat the complainant with heavy objects. The complainant was admitted in Hindu Rao Hospital immediately. It was also stated that the complainant belonged to Scheduled Caste 'Chamar'. On the basis of the complaint, the FIR was registered under Sections 323/341/506/34 IPC and Sections 3(i)(r)(s) of the SC/ST Act.

2. After completion of investigation, charge sheet was filed in the Court of the Ld. ASJ-4, Central, Tis Hazari Court. Thereafter, the matter was received by transfer on 06.01.2021 by the order of the Ld. Principal District & Sessions Judge. Cognizance was

taken vide order dated 04.07.2022. Documents were supplied to the accused under Section 207 Cr.P.C. After hearing arguments, vide order dated 05.09.2022, charge was framed against the accused Akhilesh Pati Tripathi for the offences under Sections 341, 323, 506(I) IPC and Sections 3(i)(r) and 3 (i)(s) of the SC/ST Act to which the accused pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

3. The prosecution in support of its case had examined 17 witnesses. **PW1** SI Hans Raj deposed that on 01.03.2020, he was posted as Assistant Sub-Inspector at PS Adarsh Nagar and his duty hours were 4 p.m. to 12 midnight. One written complaint dated 10.02.2020 of Sanjeev Kumar was handed over to him by SHO Sudhir Kumar for registration of FIR. On the basis of the complaint, he lodged FIR No.84/2020 which is **Ex.PW1/A** bearing his signatures at point A. His endorsement on the complaint is **Ex.PW1/B** bearing his signatures. Certificate under Section 65B of the Indian Evidence Act is **Ex.PW1/C**.

4. **PW2** SI Avtar Krishan deposed that on 08.02.2020, he was posted as Assistant Sub Inspector at PS Adarsh Nagar and his duty hours were from 12 a.m. to 8 a.m. A PCR call was received from the Control Room at about 12.39 a.m. about a quarrel and that someone had been stabbed. The entry was made and information was given to the IO SI Ravi Kumar. DD No.2A was recorded which is **Ex.PW2/A**. He stated that at about 12:46 a.m. another call was received about AAP MLA Akhilesh Pati Tripathi beating the caller which was recorded as DD No.3A and the same

is **Ex.PW2/B**. At about 2:38 a.m. another call was received from the Control Room on the basis of information from Vinayak Hospital that Akhilesh Pati Tripathi had been admitted in the hospital vide MLC No.1517/20 and the same was recorded as DD No.8A and is **Ex.PW2/C**.

5. **PW3** HC Manoj Kumar had brought the record from the Control Room regarding the calls received on 08.02.2020. He stated that three calls were received – first call was from 12.11 a.m. to 12.13 a.m. approximately about the BJP workers stabbing an AAP candidate. The second call was from 12.34 a.m. to 12.35 a.m. approximately about AAP MLA Akhilesh Pati Tripathi beating the caller and using caste specific words. The third call was from 1.52 a.m. to 1.56 a.m. approximately about information from Vinayak hospital that Akhilesh Pati Tripathi had been admitted in the hospital vide MLC No.1517/20. The record in respect of the said calls is **Ex.PW3/A (colly)**.

6. **PW4** Mohd. Shami Khan and **PW6** Raj Kishore are public witnesses and **PW5** Sanjeev Kumar is the complainant and their testimonies would be adverted to later. **PW7** Shri Himanshu Aggarwal deposed that on 07.02.2020, he was doing the work of providing tents on contract. At around 9:30-10 p.m. he was putting tent and table at Jhandewalan Chowk. He was working on contract for Aam Aadmi Party. Some boy came and told him that there had been an attack on the accused Akhilesh Pati Tripathi. He asked him (me) for his phone to make a call to the police. He told him that he would not give the phone and he made the call on 100 number himself from his number 9999707621.

7. **PW8** Shri Ashib deposed that on 07.02.2020, his friend Sanjeev had taken his scooty bearing No.DL6SAM4665 in the morning. After two days, he had returned the same to him. The copy of receipt (as ownership proof of the scooty) bearing his signatures is Ex.PW8/A (certified copy of the same was shown by the witness).

8. **PW9** Shri Vinod Kumar, Bailiff, Office of Executive Magistrate, Model Town, Delhi identified the signatures of Shri Shyam Prakash, Executive Magistrate, Model Town, Delhi on the verification report in respect of Caste Certificate issued to Sanjeev Kumar, S/o Madhav Prasad bearing certificate No.9510108704 which is Ex.PW9/A, who he stated had duly verified the said caste certificate. On the next date, he had produced the original issuing register from SDM, Model Town office, containing the entry at serial No.16379 regarding the caste certificate of Sanjeev Kumar, son of Madhav Prasad. The number of the certificate of Sanjeev Kumar at the said serial number was written as SC/06/63/17072/3/7/09/951010870400 29610. The photocopy of the said entry at serial No.16379 of the register is **Ex.PW9/B (OSR)**. During cross-examination PW9 admitted that he did not have any personal knowledge about the matter and his deposition was based on the record. He admitted that there was no pagination in the register brought by him. He denied the suggestion that the register produced by him was a tampered and manipulated one. Thus, PW9 had deposed only the basis of record.

9. **PW10** HC Devender had brought the complaint register for the year 2020. As per the same, complaint dated 10.02.2020 made by Sanjeev Kumar was received in the PS vide entry at No.145. The copy of the register is **Ex.PW10/A (OSR)**. Thereafter, the complaint was sent to ACP Jahangir Puri.

10. **PW11** SI Mahender Pratap deposed that on 21.03.2020, he was posted as SI at PS Adarsh Nagar. ACP Sanjay Drall had come to PS Adarsh Nagar and he along with him went to the house of the complainant i.e. Sanjeev at C-327, Lal Bagh, Azadpur where the complainant met them. The IO took him along and they went to the place of incident i.e. Jhandewalan Chowk, Lal Bagh. At his instance, the IO inspected the spot and prepared the site plan Ex.PW5/B. The other witness Mohd. Shami also came to the spot. The IO had made inquiries in the neighbourhood. Along with them, they went to the office of ACP Drall. IO recorded the statements of Sanjeev and Mohd. Shami and the recording of their statements was videographed. Thereafter, they were discharged. His statement was recorded under Section 161 Cr.P.C.

11. **PW12** SI Ravi Kumar deposed that in the intervening night of 7/8-02.2020 he was posted as SI at PS Adarsh Nagar and was on emergency duty from 8 p.m. to 8 a.m. Around 12:30 a.m. – 1:00 a.m., three calls were received namely DD No.2A (Ex.PW2/A), 3A (Ex.PW2/B), and 8A (Ex.PW2/C) regarding a quarrel. In one of the calls, it was stated that someone had been stabbed and in another call it was stated that the MLA Akhilesh Pati Tripathi was quarreling. He along with constable Sandeep

reached the spot at Jhandewalan Chowk, Lal Bagh where it was revealed that the injured had been removed to Vinayak Hospital and Hindurao Hospital. They reached Vinayak Hospital where the accused was found admitted but he did not give his statement. He was not responding and was unconscious. Thereafter, they reached Hindurao hospital where the complainant Sanjeev Kumar met them. He was also admitted in hospital and stated that he would give his written complaint later. They came back to the PS and he informed the seniors. He lodged DD No.14A which is **Ex.PW12/A**. The PCR calls were kept pending.

12. PW12 further deposed that on 10.02.2020, the complainant Sanjeev came to the PS and gave his written complaint which is Ex.PW5/A. The same was marked to him by the SHO and the SHO made the endorsement **Ex.PW12/B** vide his signatures at point B which he identified as he had worked with him. His statement was recorded by the IO ACP Drall.

13. **PW13** Dr. Ankit Garg, Senior Resident, Department of Surgery, Hindurao Hospital, Delhi deposed that on 08.02.2020 he was posted at Hindurao Hospital as Senior Resident, Department of Surgery. The complainant in the present case Sanjeev was produced before him and was examined by the doctor working under him namely Dr. Krishna Chand under his supervision. The report on MLC No.641/2020 was prepared by Dr. Krishna Chand and the MLC is **Ex.PW13/A**. He identified the signatures of Dr. Krishna Chand as he had worked under him. He also identified his signatures on Ex.PW13/A and he stated that after examining the report and the patient Sanjeev he had opined that the nature

of injury was simple vide his opinion at point C. PW13 further stated that Dr. Avdesh Bhati was working as Senior Resident, Orthopedic on 08.02.2020 and the MLC was also referred to him for opinion. His opinion is at point D bearing his signatures at point E on Ex.PW13/A. He had also opined the injuries to be simple from ortho side. He identified his signatures as he had worked with him. He stated that Dr. Avdesh had left the services of the hospital as per the report on the summons.

14. **PW14** Shri Kamal Kumar deposed that he was working as Nodal officer with Reliance Jio Infocomm Ltd. since December 2016. Notice had been received to produce the CAF along with call detail record and Cell ID chart of the following numbers:- 9999707621, 8840832821, 8383898699 for the period 07.02.2020 to 09.02.2020. Copy of the notice is Mark A. The CAF along with call detail record and Cell ID chart in respect of number 9999707621 is **Ex.PW14/A (colly)** which had been certified by him vide his initials and stamp on every page. The said number was in the name of Himanshu Aggarwal. The CAF along with call detail record and Cell ID chart in respect of number 8840832821 is **Ex.PW14/B (colly)** which had been certified by him vide his initials and stamp on every page. The said number was in the name of Shiv Shankar Pandey.

15. PW14 further proved the CAF along with call detail record and Cell ID chart in respect of number 8383898699 as **Ex.PW14/C (colly)** which had been certified by him vide his initials and stamp on every page. The said number was in the name of Sanjeev Kumar. The certificate under Section 65B of the

Evidence Act in support of the documents is **Ex.PW14/D**. During cross-examination on the next date, PW14 stated that he had not brought the record which was summoned and volunteered he had already filed the same before the Court. He denied the suggestion that he was deposing falsely or that the record that was produced by him did not exist. Thus, nothing material was extracted during the cross-examination of the said witness to doubt the record produced by him.

16. **PW15** ACP Sanjay Drall deposed that on 08.02.2020, he was posted as ACP Jahangirpuri. On 10.02.2020, the present case was registered regarding a quarrel at Jhandewalan Chowk, Lal Bagh and investigation of the case was received by him. Complainant Sanjeev Kumar was called to the PS and was examined. He obtained the MLC of the complainant and the accused Akhilesh Pati Tripathi. He obtained the caste certificate of the complainant from the complainant and seized the same vide seizure memo Ex.PW5/C. The caste certificate is Ex.PW5/D. He got the same verified from SDM, Model Town and verification report is Ex.PW9/A. He obtained the PCR form Ex.PW3/A and the same was verified by ACP CPCR. He obtained the final result on both the MLCs. Request letters for obtaining the final result are **Ex.PW15/A (colly)**. Later on accused Akhilesh Pati Tripathi was referred to Fortis, Shalimar Bagh and the request letter for obtaining final result is **Ex.PW15/B**.

17. PW15 further stated that on 21.03.2020, the complainant and witness Mohd. Shami Khan met him at the spot and he

prepared the site plan Ex.PW5/B at the instance of the complainant Sanjeev Kumar. He examined other witnesses. The CAF and CDR of Sanjeev Kumar and accused Akhilesh Pati Tripathi for the period 07.02.2020 to 09.02.2020 were also obtained. The location of both was found at the spot of incident. Other suspected persons were also interrogated but nothing was found against them and their CDRs were also obtained. The said CDRs in the names of Bansidhar Tripathi, Om Singh and Shiv Shankar Pandey are **Ex.PW15/C (colly)** and Ex.PW14/B (colly) and all three were found present at their homes at Rana Pratap Bagh. He stated that the owner of the scooty on which the complainant was at the time of the alleged incident was also examined. Notice under Section 41A Cr.P.C. was given to the accused Akhilesh Pati Tripathi and the same is **Ex.PW15/D**. The DD entry in this respect is **Ex.PW15/E**. The conviction slip was prepared. Previous record of the accused was collected. After completion of investigation, the charge sheet was filed without arrest. Thereafter, supplementary charge sheet was filed. The recording of the statements of the witnesses was videographed with the help of SI Mahender and the Pen Drive in respect of the same is **Ex.P-1**. He had also verified the DD entries which are Ex.PW2/A, Ex.PW2/B, Ex.PW2/C, Ex.PW12/A and they bore his signatures and stamp. He identified the accused.

18. **PW16** Inspector Sudhir Kumar Sharma deposed that in the intervening night of 7/8-02-2020, he was posted as SHO, PS Adarsh Nagar. Two-three calls were received regarding quarrel at Lal Bagh and he marked the same to SI Ravi Kumar. As none had agreed to give a statement, the calls were kept pending. On

10.02.2020 at time he did not remember, the complainant Sanjeev Kumar had come to the PS and had given a written complaint Ex.PW5/A and he marked the same to SI Ravi Kumar vide his endorsement **Ex.PW16/A** bearing his signatures. Investigation was carried on. On 01.03.2020 he made endorsement **Ex.PW16/B** on the complaint bearing his signatures and got the FIR registered. The investigation was then marked to ACP Jahangirpuri Sanjay Drall.

19. **PW17** Shri Pawan Singh deposed that he was working as Nodal Officer with Vodafone Idea Ltd since September 2018. Notice had been received to produce the CAF along with call detail record and Cell ID chart and certificate under Section 65B Indian Evidence Act of the following numbers:- 9873386499, 8588833418 for the period 07.02.2020 to 09.02.2020. The CAF along with call detail record and Cell ID chart in respect of number 9873386499 is **Ex.PW17/A (colly)** which had been certified by him vide his initials and stamp on every page at point A. The said number was in the name of Akhilesh. The CAF along with call detail record and Cell ID chart in respect of number 8588833418 is **Ex.PW17/B (colly)** which had been certified by him vide his initials and stamp on every page. The said number was in the name of Naveen Prajapati as per the CAF but as per the user list, the number was in the name of Hitashi. The certificate under Section 65B of the Evidence Act in support of the documents is **Ex.PW17/C**. He was not cross-examined on behalf of the accused despite opportunity being given.

20. Statement of the accused was recorded under Section 294 Cr.P.C. on 28.11.2022 vide which he admitted MLC No.1517/20 dated 08.02.2020 of Vinayak Hospital and the same is Ex.P-1. In view of the same, the witnesses at Serial No.11 and 12 were dropped from the array of witnesses. Prosecution evidence was closed vide order dated 15.12.2022. An application under Section 311 Cr.P.C. was filed by the Ld. Additional PP for State for recalling PW10 as his cross-examination had not been got conducted which was allowed vide order dated 16.01.2023.

21. After prosecution evidence was closed, statement of the accused was recorded under Section 313 Cr.P.C. wherein all the incriminating material existing on record including exhibited documents were put to the accused which he denied and stated that he had been falsely implicated in the present case. He admitted that DD No.2A was recorded but stated that the said information was sent with regard to his stab injuries at the hands of the complainant and the BJP supporters. He admitted that he was admitted in Vinayak Hospital after sustaining serious injuries. He admitted that information was received that BJP supporters were stabbing Aam Aadmi Party candidate and he after sustaining injuries was admitted in Vinayak Hospital. He stated that PW4 Mohd. Shami Khan was an introduced witness as he was President of Mandal Ward No.76 for BJP Party and was closely associated with the complainant and his father, who was a corporator for 10 years from BJP and other party members. He stated that PW4 was never present at the spot. He stated that he never abused the complainant Sanjeev nor used any caste specific words. On the contrary, complainant Sanjeev was violating the

Election Code of Conduct and was distributing election material and campaigning for BJP candidate Kapil Mishra and PW4 Mohd. Shami Khan was an interested and introduced witness being the Ex-BJP Mandal Ward No.-76 President of Sangam Park. He stated that as a law abiding citizen, he was aware that caste specific words could not be used against anyone and he had never used caste specific words for anyone till date nor even used foul and abusive language against anyone. He stated that PW4 had identified him in Court only as he was the MLA of the area and everybody knew him.

22. The accused further stated that the complainant left his father's office for the purpose of distributing election material and campaigning for BJP candidate Kapil Mishra. He stated that the complainant Sanjeev was campaigning for BJP candidate Kapil Mishra violating Election Code of Conduct and when he saw Sanjeev distributing election material and campaigning, he objected to it and all the BJP supporters had beaten him and attacked him with a knife causing serious injuries to him due to which he collapsed and became unconscious. He stated that when he objected Sanjeev started the quarrel with him and stabbed him with a knife due to which he became unconscious. He stated that Bansi Tripathi, Om Singh and Vishal Pandey were not present at the spot. He stated that it was evident that there was no mention of PW4 in the first complaint on the basis of which FIR was lodged on 01.03.2020. There was no mention of the witness in the FIR Ex.PW5/A allegedly lodged by the complainant. He stated that PW4 was introduced by the complainant as he was the President of Sangam Park Mandal Ward No.76 from BJP Party

and a supporter of BJP and an interested witness. He stated that as per the record, PW5 Sanjeev was taken to Hindu Rao Hospital in a PCR Van and PW13 Dr. Ankit Garg had deposed that Sanjeev was only given conservative management and was discharged after two hours. Sanjeev only had simple injuries according to MLC Ex.PW13/A but Sanjeev insisted on giving written complaint as he wanted to make false complaint with deliberation and consultation and the said fact was deposed by SI Ravi Kumar. He stated that Sanjeev had not made any complaint on 10.02.2020, it was made much thereafter. He stated that he was the MLA of the area so every person knew him by name and face. He stated that he was unconscious and he was not involved in any *hatha pai* or *gaali galoch*. He stated that despite the complainant being hale and hearty, conscious and oriented, he did not lodge the complaint as he wanted to gain time to make a false complaint after due deliberation and consultation.

23. The accused stated that BJP Party was in center due to which police favoured the complainant and did not disclose the material fact which did not favour case of prosecution. He stated that PW16 SHO Sudhir Kumar Sharma visited the spot and gave the true version to the extent that the complainant and BJP supporters had caused injuries to him after he objected to the distribution of election material and campaigning. He stated that the witnesses had deposed against him as they were interested and introduced witnesses. The complainant was distributing election materials and campaigning for BJP candidate Kapil Mishra against the guidelines of Election Code of Conduct and when he objected to it, the complainant along with BJP

supporters had beaten him and attacked him with a knife. So, in order to save himself and to take revenge for the defeat in the election, the complainant along with witnesses had hand in glove conspired against him and deposed false and fabricated statements. He stated that he was innocent, victim and injured and the FIR against him was false and fabricated. The complainant had lodged it in order to save himself as he along with BJP supporters caused serious injuries to him and secondly. they were committing offence and violating election guidelines. The present case was registered after due deliberation and consultation and the police was totally under the influence of the complainant and his party. One-sided investigation had been done and the statements of relevant witnesses which were favouring him had not been brought on record. No action had been taken against the complainant and his supporters for causing serious injuries to him. He stated that in order to save the complainant and prove his false complaint, the police officials had also made wrong statement and withheld important facts.

DEFENCE EVIDENCE

24. The accused stated that he wanted to lead evidence in defence and produced Ms. Ranjhna as **DW1** who deposed that she ran a beauty parlour. On 07.02.2020 at about 11:30 p.m. her children aged about 15 years and 8 years were playing on the road at Jhandewala Chowk. She saw that the complainant Sanjeev was distributing election material. He told her also that the elections were to be held on 08.02.2020 and that she should vote for BJP. The accused Akhilesh Pati Tripathi came from the

gali where he used to reside i.e. near Mithla Park and told Sanjeev not to do so and that the Election Code of Conduct was in place. There were 10 to 15 persons with Sanjeev. They did not agree to what the accused told them and they attacked him. One boy had a knife in his hand and he attacked the accused with the same. Public had gathered at the spot. The accused fell unconscious. Somebody called on 100 number. The police persons including from the area came to the spot. The SHO had also come to the spot and inquired from her and she told him what had happened. One Ambulance had come to the spot and took the accused. Thereafter, she went home. She stated that police had recorded her statement at the spot itself but she was not called for investigation later on. She had not heard the accused saying anything before he fell unconscious and volunteered he had fallen unconscious.

25. **DW2** Shri Balmiki Mandal deposed that he worked as a waiter. On 07.02.2020, he was returning after his work as a waiter at Apni Rasoi, Ashok Vihar. At about 11-11.15 p.m. he reached Jhandewalan Chowk and he saw that Sanjeev Kumar was distributing campaigning material of BJP. The accused Akhilesh Pati Tripathi came from Mithla Park and he told the complainant that Election Code of Conduct was in place and he should not distribute the pamphlets. On hearing the same, Sanjeev Kumar and his supporters attacked Akhilesh Pati Tripathi. One of the supporters of Sanjeev Kumar tried to attack Akhilesh Pati Tripathi with a knife due to which he became unconscious and fell on the ground. After sometime PCR came and SHO also came from the PS. After about 10 minutes

Ambulance came and took the accused to the hospital. The police started inquiring from the persons present there and SHO also inquired from him. He noted something and he was told that if need be, he would be called to the PS. He went home thereafter. He did not give any complaint and had appeared on receiving the summons from the Court. He stated that in his presence the accused had not used any abusive or casteist remarks. Defence Evidence was closed vide order dated 16.02.2023.

ARGUMENTS

26. I have heard Ld. Additional PP for State Shri Manish Rawat and Shri Mukesh Kalia, Ld. Counsel for the accused. The Ld. Additional PP for State had argued that the date of incident was 07.02.2020 at 11.30 p.m. at Jhandewalan Chowk and Sanjeev was the complainant and the FIR was registered under provisions of IPC and SC/ST Act. It was submitted that several DD entries were lodged. DD No.2A at 12.39 a.m. which is exhibited as Ex.PW2/A was regarding the quarrel with accused. Then DD No.3A was lodged which is exhibited as Ex.PW2/B at 12.46 a.m. and the same was important as it mentioned the use of caste specific words and beatings to the complainant. The caller was the complainant Sanjeev whose mobile number was reflected in the call and thereafter the Nodal Officer had pointed out the mobile number of the complainant. DD No.8A was recorded at 2.38 a.m. which was exhibited as Ex.PW2/C and it was regarding the admission of the accused in Vinayak Hospital. On 08.02.2020 DD No.14A was registered which was pertaining to admission of the complainant at Hindu Rao Hospital and of the

accused at Vinayak Hospital. DD No.14A was kept pending.

27. It was submitted that it was the admitted fact that the accused and the complainant were present at the spot. There was also no delay in lodging the complaint of quarrel and use of caste specific words as the DD entry was there. Though the complaint may have been given on 10.02.2020 and the FIR was registered on 01.03.2020, however that would not be regarded as delay in making the complaint and even if there was delay in registration of FIR, the complaint was already lodged and the case of the prosecution could not be discarded. It was also not disputed that the complainant was SC/Chamar and relevant caste certificate was there. The complainant belonged to SC category which was in the knowledge of the accused as the accused was the sitting MLA of the area and the father of the complainant had been the Councilor for ten years from SC category so it was in the knowledge of the accused that the complainant belonged to SC category and it was not necessary for the prosecution to prove that the complainant belonged to SC category.

28. The Ld. Addl. PP further submitted that the complaint was registered vide DD No.54B and there were specific allegations in the complaint which fulfilled all the ingredients of the offences referred to in the complaint and it was submitted that Section 341 IPC was attracted as the scooty was stopped so there was wrongful restraint of the complainant. The complainant had been beaten and MLC was there which showed simple injuries so Section 323 IPC was also attracted. The words used by the accused '*Iska Baap Bahut Bada Neta Banta Hai*' showed that it

was in the knowledge of the accused that the complainant was the son of the Councilor. It was also proved that call on 100 number vide DD No.3A was made by the complainant. It was submitted that the complaint was marked to SI Ravi for preliminary enquiry and it was contended by the accused that SI Ravi was not the relevant person to conduct the enquiry but when the FIR was registered, the investigation was transferred to ACP who thereafter conducted the investigation and preliminary enquiry by SI Ravi was not barred. It was submitted that the words uttered by the accused satisfied the ingredients of Sections 3 (1)(r) and (s) of the SC/ST Act as it showed that the accused intentionally insulted or humiliated the complainant knowing that he was the son of the Ex-Councilor and belonged to SC category. Further, the incident had taken place in public view where public persons were present and caste specific words were uttered in the presence of independent witnesses.

29. The Ld. Addl. PP had further submitted that Raj Kishore was declared hostile but he had supported the case of the prosecution on several points. Md. Shami had supported the case of the prosecution and he was an independent witness and belonged to a different religion than the complainant. Moreover, intimidation under Section 506 IPC was also proved. It was submitted that the FIR was lodged on 01.03.2020 as Ex.PW1/A. Thereafter investigation was conducted. The statements of the witnesses including Raj Kishore and Md. Shami were recorded and supplementary statement of complainant was recorded and the statement of Ashib was also recorded. The charge sheet was filed and charges were framed against the accused. Seventeen

witnesses were examined by the prosecution to prove its case. PW1 proved the lodging of the FIR which was not disputed and there was no suggestion to the witness that the FIR was manipulated. PW2 had proved the lodging of DD entries which was not challenged. It was argued that during cross examination the DD entry regarding stabbing of accused was admitted but no such incident had taken place as there was no such alleged history in the MLC of the accused and the MLC did not show any stab injury and different stances had been taken by the DWs wherein DW1 had stated about the accused being stabbed and DW2 had stated about one boy trying to stab the accused and there was no proof that the stabbing incident had been place.

30. It was submitted that PW3 had proved the Control Room record regarding DD entries and no suggestion was put to him that the same was manipulated and his deposition was not challenged. PW5 corroborated the allegations made in the complaint and he stated about his scooty being stopped and he mentioned the specific words that were used. The spot of incident was admitted as also that the incident took place in public view. PW4 was an independent witness who proved that the incident took place in his presence. PW5 had stated about calling on 100 number which was also reflected from the DD entry and he also stated about the presence of PW4 who was his neighbour. PW5 had also given explanation regarding the delay in lodging the complaint and his explanation was not challenged during cross-examination. He had also proved the site plan which was prepared by the IO and the caste certificate. He was subjected to detailed cross examination with regard to the knowledge of the

accused that the complainant was the son of the Councilor and belonged to SC category. The motive for using caste specific words was also shown as the father of the complainant was earlier the Councilor and it was also shown why the incident had happened. It was submitted that PW5 was confronted with Ex.PW5/A wherein some facts stated by the complainant in the examination in chief were not mentioned but it was submitted that the same were mentioned in the statement of the complainant under Section 161 Cr.P.C. with which the complainant was not confronted and it was stated that if the witness was not confronted or contradicted with an earlier statement or no suggestion was put to him or there was no cross examination on the same, the same was deemed to be admitted. PW5 was also cross-examined regarding Md. Shami and he stated that he was not a relative and he was a Muslim and not an interested witness. The cross examination of the complainant also showed that the accused knew that it was a reserved seat and that the complainant belonged to SC category so the prosecution did not have to prove that the complainant belonged to SC category.

31. The Ld. Addl. PP had further argued that the defence taken by the accused was that the complainant was distributing election material and PW5 had stated that no one went to clean the premises. PW5 had also explained why the name of the accused and caste specific words were not mentioned in the alleged history in the MLC as the same was not asked and the complainant was a layman. It was submitted that there was a DD entry about the stabbing incident but the incident of stabbing was not shown by record. The accused had nowhere said that the

complainant had distributed election material and there was no documentary evidence to prove the same. PW4 was an independent witness who corroborated the allegations made by the complainant and identified the accused and also proved that the incident had taken place in public view. He was a neighbour but not a relative and a natural witness. He was cross examined on knowing Sanjeev but as he was the neighbour, he would know about the family of the complainant and was not an interested witness. The fact that he stated that he did not know where Sanjeev was coming from and doing what showed that he was an independent witness. He also corroborated the version of Sanjeev that there was no one to clean the premises and that the complainant was on scooty and no specific suggestion was put to PW4 that PW5 was not on scooty. He had himself volunteered that he had heard the abuses. He had also stated that he did not know DW1 and DW2 and denied their presence at the spot of incident. The suggestion regarding the knife was falsified as there was no medical evidence and there was no corroborating evidence that stab injury was sustained by the accused. The doctor had also not stated so and merely because PW4 was from BJP, his testimony could not be discarded.

32. The Ld. Addl. PP had further submitted that PW7 was the caller who made the call and the DD entry was also there. PW8 had handed over the scooty to PW5 and he was not challenged that he had handed over the scooty to the complainant. Even though the scooty was not produced during trial but the number of the scooty and the color were there. PW9 proved the caste certificate and it was not challenged during trial that the

complainant belonged to SC. PW10 had proved the complaint. PW11 had accompanied the IO. It was submitted that DW1 had stated that her statement was recorded by police officers at the spot but no suggestion was put to PW11 that public persons were present at the spot or their statements were recorded at the spot. PW12 had carried out the enquiry prior to registration of FIR and after the lodging of the FIR the investigation was carried by the ACP. The cross-examination of PW12 falsified the version of the accused that statement of public persons was recorded at the spot. No suggestion was put to PW13 that the accused had suffered stab injuries or that he was administered medicines for the same. PW14 had proved the number which was reflected in DD No.3A. PW15 proved the site plan and he also stated that the owner of the scooty was examined. Regarding the argument that the prosecution had not proved that the accused did not belong to SC category, it was submitted that no suggestion was put to PW15 in that regard and he had filed the chargesheet and even otherwise Tripathi was not a lower caste. It was contended that the defence put forth by the accused was not proved that the complainant was distributing election material and it was not shown that Shami Khan was a procured witness. PW16 had stated that he did not record the statement of any witness at the spot. PW17 was the Nodal Officer.

33. It was further argued that during his statement under Section 313 Cr.P.C. the accused had given a false statement so it had to be read against him as there was nothing to show stab injuries. He had also not stated that DW1 and DW2 were present at the spot. Moreover, if any incident had taken place with the

accused and the police had not taken action, there were legal remedies like under Section 156 (3) Cr.P.C. available to the accused but he had not availed the same. DW1 had stated that there were 10 to 15 persons with the complainant whereas DW2 had stated that there were 7-8 persons. DW1 had stated that one boy had a knife and had attacked the accused whereas DW2 had stated that one boy tried to attack the accused, so it was a contradictory version. DW1 had stated that her children were playing in the area and there was no park but then she stated that there was a small park. DW2 had stated that children used to play there. It was argued that it was shown that the defence witnesses were procured witnesses. Photographs were put to DW1 which she admitted and which showed that she supported AAP.

34. Per contra, the Ld. Counsel for the accused had submitted that the objective of passing the SC/ ST Act was to save weaker sections who were socially, financially, educationally and economically weaker from atrocities and the sections were not meant to be misused to achieve ulterior motive which was the purpose of the present case. The complainant in the present case belonged to a fairly good family and was from a metropolitan city, he had a car, a scooter, multiple houses and offices and one office was given to BJP for operation. Educationally he was a law student at the time of the alleged incident. He had been residing in Delhi for decades and he was claiming protection of a law which was meant for weaker sections which he was not and the alleged intimidation and threat did not fall in the ambit of SC/ST Act. It was the admitted case that the accused was three times sitting MLA from AAP from Model Town Constituency.

The complainant's father remained Councilor for ten years from the same constituency. The incident took place on 07.02.2020 and 08.02.2020 was the date of elections. Accused was the sitting MLA. It was contended that there was a tendency of the opposition party to implicate AAP persons and the complainant and his father were supporting Kapil Mishra who was the BJP candidate and who had defected from AAP. The alleged incident had taken place in the intervening night of 07.02.2020 and 08.02.2020 when the elections were to be held. It was submitted that the Ld. Additional PP had picked and chosen part of the cross examination ignoring or not inviting attention to the relevant portions. It was argued that the complainant had admitted that he was going to throw campaign material. Moreover, the accused was unconscious so he could not make a detailed report to the police about the incident. Ashib had stated that he had not given the scooty and his brother had given the scooty whereas the complainant had stated that he had taken the scooty from Ashib so there was a contradiction. The complainant had stated that PW4 was not related to BJP but PW4 had stated so impeaching the credibility of the witness and PW4 was shown photographs which he admitted. The complainant had also named other persons like Bansidhar but it was found by the IO that they were not there at the spot on the basis of the CDRs etc. On 07.02.2020 when the ACP and SHO went to the spot, they recorded the statements as stated by DW1 but they were not produced.

35. Reliance was placed on behalf of the accused on the PCR form Ex.PW3/A (colly) which showed the landing time as

12:11:47 a.m. It was submitted that the witnesses had not stated that the accused was attacked from the sharp side and may be the knife did not go in due to the clothes the accused was wearing. It was submitted that even if there were no injuries correlating to stab injuries, it would not make the defence of the accused doubtful. It was pointed out that the said document also showed that the police was at the spot at 12:16:34 a.m. and the presence of the SHO was shown at 12:16 a.m. and he may have come before that. There was malafide on the part of the prosecution as none from the PCR was examined and the same had been put to the witness during cross examination. It also showed that the accused had sustained injuries and had fallen unconscious and the witnesses to the said facts had not been examined by the IO. It was submitted that the first information by the complainant was at 12:34:41 i.e. almost after 20 minutes. It was submitted that when the accused was lying unconscious and was being removed to hospital in ambulance, the SHO and PCR were there and the accused who was unconscious was expected to make the call but the complainant himself had made the call after 20 minutes as he was in possession of campaigning material which was prohibited. The complainant had stated that his father had asked him to throw the same at midnight which corroborated that he was in possession of the material.

36. It was argued that as the accused was unconscious, he could not give the details but the complainant due to his background could say about the caste specific words. Reference was made to the MLC of the accused which showed his time of admission at 12:55 a.m. and alleged history of assault around one

hour back i.e. around midnight and the complainant had informed the police 40 minutes after that. Moreover, as per the report the accused was drowsy and not obeying to the commands. The IO who had gone to the hospital had also stated that the accused was not in a position to make the statement. The time of admission of the complainant was 1:25 a.m. much later than that of the accused and there was no history with regard to any of the atrocities that were allegedly committed with him. Reference was also made to the statement of PW13. It was pointed out that the next day the complainant had gone to cast his vote but despite that he had lodged the complaint only on 10.02.2020 and there was an unexplained delay of three days. Merely by referring to the DD entries, it could not be said that the atrocities were committed and the offence under SC/ ST Act was made out.

37. The Ld. Counsel for the accused had further submitted that the complaint was made on 10.02.2020 in the night. The enquiry by SI Ravi Kumar was not made part of the judicial record. After 20 days, without any pressure, the FIR was lodged. In the original complaint, there was handwritten averment regarding producing the SC/ ST certificate and PW5 had stated that the same was added when he had given the certificate. There was a presumption against the prosecution that material documents had been withheld. It was submitted that PW4 was not an independent witness though it was argued that he was not related to the complainant party. It was contended that in the statement of the complainant dated 10.02.2020 there was no reference of PW4. He also stated that he did not see the accused stopping the scooty of the complainant. PW4 was associated closely with the

BJP and the photographs were not denied by the prosecution or by the witnesses and they were taken over a period of one decade wherein PW4 was celebrating with the family of the complainant. It was argued that the conduct of PW4 had to be seen who was closely associated with the complainant but did not intervene, did not make any hue and cry, did not sustain any injury, did not make any call to the police and did not even escort the complainant to the hospital with the police and did not even go to meet him in the hospital and also did not take any follow up. He met the complainant on 08.02.2020 but he did not make any representation to the police nor he went to the police and acted as a silent spectator and only at the instance of the father of the complainant, he went to the police station and made a statement making deliberate improvements with relation to caste specific words in his testimony in Court which were not even mentioned in his statement under Section 161 Cr.P.C. and not much credence could be given to his statement.

38. The Ld. Counsel for the accused had further submitted that the incident had taken place just prior to the election and in violation of the Election Code of Conduct, the complainant was in possession of and distributing election material which was prohibited and the admission was there that he was going to throw the election material. It was also not in dispute that the accused was injured and was lying on the ground. The call by the complainant was made after more than 20 minutes. In the MLC, the time of admission of the accused was shown as 12.55 a.m. and he had sustained the injuries around 12 a.m. whereas the complainant was admitted at 1.25 a.m. It had also come on

record that the accused was drowsy and was not responding to commands. The complainant had sustained simple injuries and he was discharged after 2 hours after being given conservative management, yet there was three days delay in making the complaint which was made only on 10.02.2020. Further, no material had been placed on record to show what investigation or enquiry was conducted between 10.02.2020 and 01.03.2020. The FIR was then registered on 01.03.2020 after 21 days and the statements of the witnesses were recorded on 21.03.2020 or thereafter. It was submitted that the statements of all the witnesses were recorded either on 21.03.2020 or thereafter i.e. after more than 50 days of the incident and 21 days after the registration of FIR. As such there was a delay in lodging the complaint though the complainant was hale and hearty and was a law student and he had gone to cast his vote which casts a doubt on the motive of the complainant and he had himself caused injuries to the accused and he had apprehension that he may have repercussions from the accused who was the sitting MLA and as he was violating the election code of conduct and supporting the opposition party. It was submitted that apart from building up his defence the complainant also wanted to tarnish the image of the accused and with one complaint he tried to achieve several things.

39. It was argued that PW12 had stated that the accused was unconscious so there was no occasion for the accused to make the call to the police. PW12 was the first IO who had reached the spot and then had gone to the hospital. Even at 12.55 a.m. when the accused was examined, he was not responding so the accused

could not have informed the police by way of phone call. There was no suggestion to DW1 and DW2 that they were not living in the area and they were natural and independent witnesses who were residing there. It was submitted that there were three main witnesses of the prosecution out of whom PW4 was an introduced witness. Reference was made to the examination in chief of PW5 and that he had stated about three persons but the result of the investigation was that they were not there at that time. Their mobiles were examined and they were not found present at the spot and they were not chargesheeted and the allegations of the complainant were found incorrect. It was submitted that since the case was under the SC/ ST Act, the onus was on the prosecution to show that the intention behind the provisions was fulfilled but there was no reference in the examination in chief to the caste or that the complainant belonged to SC/ ST caste or to a caste which was SC about which utterances were made. There was not even a whisper that the accused tried to intimidate or humiliate the complainant as he belonged to a particular caste and it had to be seen if the utterances were made to humiliate a person of a particular caste. Despite the fact that the complaint was lodged after deliberation and consultation, there were no such allegations and it was only if alarm was caused due to intimidation that the offence would be made out. It was submitted that it was necessary for the complainant to have stated that with a view to insult and humiliate him as he belonged to a particular caste that the utterances were made which would attract the offence.

40. It was argued that the complainant time and again was telling a lie during his cross examination. He had admitted that he was a law student and that the accused was an MLA and his own father was Councilor for ten years and supporting the BJP candidate. He had stated that it was not in his knowledge that the Election Code of Conduct was in place. Omveer with whom he had gone to make the complaint was not examined and the ACP had stated that he had met the complainant for the first time on 01.03.2020. In cross PW5 had stated that the accused was with 30 to 40 supporters whereas PW4 had stated that there were 20 to 25 supporters. There were several improvements made by him in his testimony with which he was confronted. He had stated that he had taken the scooty from Ashib but Ashib had stated that he was not there and the scooty was taken from his brother. It was also conceded that the scooty was not taken into possession. PW8 Ashib had admitted that his statement was not recorded by the police so the statement of the complainant regarding the scooty was not substantiated.

41. It was submitted that PW4 was the only witness who supported the case of the prosecution and PW5 had stated that he was not related to him. PW5 had stated that he did not know the political affiliation of PW4. However, PW4 was confronted with photographs etc. which showed his close association with the BJP. Further, PW5 had stated that he had gone to college on 07.02.2020 which falsified that he had taken the scooty at 10 a.m. on that day and then he tried to cover up the same. PW5 had also stated that PW6 was with him but PW6 was the only witness on which the prosecution had harped but PW6 had not supported the

case of the prosecution on any count except that he was a resident of the area. It was submitted that even being in possession of election material was an offence and PW5 had himself admitted that he was taking the same. It was contended that PW5 could not say when the caste specific words were stated. He had stated that 2-3 persons with the accused had also passed the remarks whereas PW4 had said that only the accused had passed the remarks. PW5 had said that the remarks were passed two times whereas PW4 stated that the remarks were passed only one time. Further, the police had stated that they had recorded the statement of PW6 after 40 days and it could not be that the accused had won him over as even during the 40 days, there was no representation by him, he had not called the police and he had not gone to the hospital with the complainant. The mother, brother and sister of the complainant had come to the spot but they were not examined. IO had stated that there was no relative of the complainant at the hospital but PW5 had stated that his mother had gone to the hospital.

42. The Ld. Counsel for the accused had further argued that the police and the SHO were there at the spot at 12.16 a.m. but none of the officers from PCR were examined. PW5 had made an incorrect statement that the accused was at the spot when he was taken to the hospital as the admission of the accused in the hospital was prior to the admission of the complainant in the hospital. It also corroborated that the complainant had hit the accused and he had admitted his involvement in the fight. It was submitted that if the family members of the complainant were there at the spot and utterances had been made, they would have

made a complaint which was not so. PW5 was also confronted with photographs and the names of persons who were present at the spot and from whom the accused had gathered information were put to PW5 during cross examination and two of the said persons had been examined as defence witnesses. It was submitted that it was not the quantity but the quality of witnesses which mattered and the defence witnesses in the present case were natural and independent witnesses, one of whom belonged to SC category and one was a lady. It was submitted that the caste certificate was given on 01.03.2020 whereas the complaint was of 10.02.2020 so there was interpolation in the same as the complainant had stated that he had added the handwritten portion on the day he had handed over the caste certificate. It also showed that it was after due deliberation and consultation that the complaint was made. Further, Sunil Kumar was not examined who had told the complainant about the sections. The complainant had also not told the history to the doctor at the hospital. There was no reference in the complaint Ex.PW5/A to the presence of Md. Shami which was an improvement and Mohd. Shami was examined by the police after 42 days. As regards PW6, he was cross examined in detail by the Ld. Additional PP and he had denied regarding the utterances and had not supported the case of the prosecution though he was an important witness on whom the prosecution was relying.

43. The Ld. Counsel had further submitted that PW4 was shown as an independent witness but he was not so. PW5 had stated that he did not know of the connection of PW4 to BJP but PW4 had admitted that he remained a Pradhan for 10 years and

he also admitted the photos which showed that he was an interested witness as he was associated with the BJP for many years. It was argued that the presence of PW4 at the spot was doubtful as he was holding such an important post and was closely associated with the family of the complainant but he did not inform the police or anyone else about the incident and did not take the complainant to the hospital and did not meet the complainant in the hospital and was not aware of the physical condition of the complainant and did not go to the police station in February 2020 nor enquired from the complainant. In fact he was called by the father of the complainant and then he went to the PS and got his statement recorded. He had stated that he was unaware that the accused sustained injuries and it was not in his knowledge that the accused was removed to hospital though he left much later and this showed he was an introduced witness. In the statement which was recorded under Section 161 Cr.P.C. on 21.03.2020 PW4 was not aware of the caste specific words and did not inform the police about the specific words whereas in his examination in chief he had stated the said words. There was no representation or complaint by him but after two years and seven months, for the first time in the Court, he mentioned specific utterances which created a doubt that he was a planted and a tutored witness. There was also difference in the words stated by PW4 and PW5 which also created doubt on the utterances being made. During cross examination PW4 stated that he knew the family of the complainant and stated about his involvement with BJP and the complainant and admitted the photographs and that he had been campaigning with the family of the complainant. He

had also taken charge of campaigning when the father of the complainant was in custody so he could not be regarded as an independent person.

44. It was also submitted that if the office had closed at 8 p.m. there was no occasion for the complainant to be there at 11 p.m. and to clean the office and to go to throw the garbage at 11.30 p.m. PW4 had stated that he had not seen the scooty being stopped and that he did not call the police but Sanjeev called the police. He also stated that he remained at the spot for 10 minutes only and he did not see Sanjeev hitting anyone while Sanjeev had stated that he had hit the accused. His statement was factually incorrect that he had not seen the accused being hit or it was possible that he came later and if he had come later then the accused could not have made the utterances in his presence. He also stated that only the accused abused Sanjeev whereas Sanjeev stated that there were others also. There were improvements in his statement and he was not getting support from his original statement.

45. The Ld. Counsel for the accused had further submitted that PW16 was the SHO and at the time of elections, police officers are on high alert. It was unbelievable that on receiving information that the sitting MLA was attacked, he did not go to the spot whereas the record showed that he had gone to the spot. It could not be believed that the police station was only one kilometer from the spot but still he did not go the spot and as such PW16 was stating contrary to the record to support the case of the prosecution. He stated that the entire night he was in the

PS but it could not be that he did not get feedback from the hospital and the same could not be believed. It was argued that when the police was under control of one party, the police was bound to act as per their dictates. It was argued by the Ld. Additional PP that the names of the DWs were not suggested to PW11 but there was no occasion to suggest the names to PW11 as he had only stated about joining the investigation on 21.03.2020 and the suggestions were given to the IO who had gone to the spot in the intervening night of 07/08.02.2020. PW15 had stated that he met PW4 at the spot but PW4 stated that he had gone to the police station at the instance of Madhav Prasad. He had stated during cross examination that on 08.02.2020 he was on patrolling and that on 07.02.2020 at 11.35 p.m. the police was aware of the incident. The first information by the complainant was at 12.34 a.m. and he had contradicted the SHO as he stated that the SHO had informed him and he had reached before the PCR and before midnight so either the SHO or the ACP were telling a lie and it also showed how the investigation was conducted. He stated that he met the complainant for the first time on 01.03.2020 and it also showed the malafide that he stated that everything was placed on record but no official of PCR was examined in whose presence the accused was removed to hospital. He had placed the CDRs of others on record but not of PW6 who was the star witness and of PW4 and he also stated that Sanjeev informed him about PW4 on 21.03.2020 which showed that PW4 was an introduced witness. PW6 was examined on 25.03.2020 after 45 days and he was also produced by the complainant.

46. The Ld. Counsel for the accused had further submitted that the accused in his defence had produced two DWs and DW2 was from the same caste and both had stated about their presence at the spot and had testified that the SHO and ACP were there. Their testimony was natural and inspired confidence. It was submitted that PW8 had also not supported the case of the prosecution. It was submitted that there were contradictions in the testimonies of the witnesses and the accused was entitled to an acquittal.

47. The Ld. Additional PP for State in rebuttal had submitted that PW4 had not lied that he did not belong to BJP and he had admitted that he belonged to the BJP so there was no falsity. Mohd. Shami had stated that he had intervened in the matter. The SC/ST certificate was not disputed and there was no suggestion that Ex.PW9/A was manipulated or that the complainant did not belong to SC/ST caste. There was also no dispute that the complaint was made and no suggestion was put that the complaint was manipulated so even if Omveer was not examined it did not matter and it was the quality of the witnesses that mattered and not the quantity. Further, Omveer was not at the spot and only went with the complainant so there was no requirement to examine him as a witness. There was also no admission that the complainant was distributing campaign material and he had stated that he was going to throw waste and there was difference between campaign material and waste material. Even if PW4 had not stated the caste specific words in his statement under Section 161 Cr.P.C. it could not be discarded or it could not be said that the statement was contradictory and it

was not an omission. Moreover the statements of witnesses had been videographed and there could be no challenge to the same. It was argued that SHO and SI Ravi had specifically stated that statements of no witnesses were recorded at the spot so the statement of DW1 and DW2 that the statements were recorded at the spot was false. No legal remedy had been availed by the accused and as regards the alleged contradictions, parrot like statements were not permissible.

DISCUSSION

48. It is the settled proposition of law that to bring home conviction, the prosecution has to establish its case beyond the pale of reasonable doubt by establishing an unbroken chain of events, leading to commission of the offence. It is also a settled proposition of law that once this chain is broken or a plausible theory of another possibility is shown, the accused becomes entitled to the benefit of doubt which ultimately leads to his/her acquittal (1997(3) Crimes 55 in case titled **Sadhu Singh v. State of Punjab**). The cardinal rule in criminal law is that prosecution has to prove its case beyond reasonable doubt and the benefit of doubt has to be given to the accused. In **Batcu Venkateshwarlu v. Public Prosecutor High Court of AP (SC) 2009 (1) RCR (Criminal) 290: 2009 (1) RAJ: 2008 (15) SCALE 212**, the Hon'ble Supreme Court has observed as under:

“A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to “proof” is an exercise

particular to each case... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.”

Now on the basis of the testimony of the witnesses and the documents on record, the Court has to scrutinize whether the prosecution is able to prove the offences with which the accused has been charged against the accused beyond reasonable doubt. In his complaint dated 10.02.2020 Ex.PW5/A, the complainant Shri Sanjeev Kumar had stated that on 07.02.2020 at around 11:35 p.m, when he along with his friend namely Raj Kishore was going to his home, the accused along with his supporters stopped the complainant at Jhandewalan Chowk, Lal Bagh and took the key of his scooty and beat him badly. The accused used caste specific words “*Chamar ko Maro, iska baap bahut bada neta ban raha hai*” and “*iss chamar ko iss ki aukat dekha do*” to damage the image of the complainant and his parents. The complainant and his family members called on 100 number and when the police came on the spot, the accused fled from the spot. It was stated that the accused with his supporters beat the complainant with heavy objects and the complainant was admitted in Hindu Rao Hospital immediately.

49. The material witnesses in the present case are PW4, PW5 and PW6. **PW4** Mohd. Shami Khan deposed that he was working

as Property Dealer. On 07.02.2020 at about 11.30 p.m., he was present at Jhandewalan Chowk, Lal Bagh. His house was close to the said spot and after having his dinner, he had stepped out from the house. Sanjeev whom he knew from before was going on a scooty with his friend Raj Kishore. As they turned right from Jhandewalan Chowk, the accused Akhilesh Pati Tripathi was coming with around 20 to 25 persons from the front. They stopped Sanjeev and started beating him. When he saw the incident, he ran towards there to intervene. He asked them why they were beating Sanjeev on which they pushed him also. The accused and his men were abusing Sanjeev using caste specific words "*inka baap bahut bada neta banta hai, chammaar ke bachey ko sabak sikhana hai*". The mother of Sanjeev Subhawati and others also came to the spot. Sanjeev made a call on 100 number. The police came to the spot and took Sanjeev to the hospital. He came back home. On 21.03.2020, the police had recorded his statement. He identified the accused.

50. **PW5** Sanjeev Kumar who is the complainant deposed that he is a student. On 07.02.2020 at about 11.30 p.m., he had left from the office of his father (BJP office) B-5, Mouji Wala Bagh, Jhandewalan Chowk, where his father had asked him to do the cleaning work. There was a garbage bin at about 500 metres from the office. He had kept the dustbin on his scooty and he along with his friend Raj Kishore were going towards the garbage bin. The accused Akhilesh Pati Tripathi was standing with about 30-40 supporters. They saw him and stopped his scooty and the accused took the key of his scooty. The accused stated that he was the son of Madhav Prasad. He took him off the scooty,

caught hold of his collar and gave him a slap. He stated “*iss chamaar ko maro, iska baap bahut bada neta banta hai, iss chamaar ko iski aukaat dikhao*”. The others also started beating him. The main persons were Bansi Tripathi, Om Singh and Vishal Pandey. He stated that his uncle who stayed in the neighbourhood Dr. Mohd. Shami Khan came to the spot and intervened. He was also pushed. His mother also came to the spot. He called on 100 number. Police came to the spot. The Ambulance took him to Hindu Rao Hospital. The police came to the hospital to record his statement but his condition was not good. On 10.02.2020 he had given a typed complaint at PS Adarsh Nagar which is **Ex.PW5/A**.

51. PW5 further deposed that on 20.02.2020 or 21.02.2020 the police took him to the spot of incident and prepared the site plan at his instance which is **Ex.PW5/B**. He had submitted his caste certificate to the IO on date he did not remember which was seized vide seizure memo **Ex.PW5/C**. The duly verified caste certificate is **Ex.PW5/D**. He identified the accused. Thus, PW5 had stated about the incident of 07.02.2020 when at about 11.30 p.m., he, on his scooty along with his friend Raj Kishore were going towards the garbage bin and the accused who was standing with about 30-40 supporters stopped his scooty and took him off the scooty, caught hold of his collar and gave him a slap and made caste specific remarks. He stated that Dr. Mohd. Shami Khan came to the spot and intervened and he was also pushed.

52. **PW6** Shri Raj Kishore deposed that on date he did not remember as long time had passed, he was busy in his office

Grand Uddhav, Pahar Ganj, Nehru Market. Between 12 p.m. to 6 p.m. he received a call from the PS and he was told that his name and number were noted and he had to go to the PS. He told them that he was busy and could not come at that time. At 10 p.m. he reached PS Adarsh Nagar. He told his address and phone number. His signatures were obtained on a paper on which 3-4 lines were written. Then he was told that he did not have to come again. He stated that he was not allowed to read what was written on the paper. He stated that his father was not well and expired in 2021 due to Cancer.

53. The Ld. Additional PP for State requested to cross examine the witness as he was not supporting the case of the prosecution which was allowed and during cross-examination by the Ld. Additional PP for State PW6 denied the suggestion that he had met ACP Sanjay Drall on 25.03.2020 at PS Jahangir Puri and volunteered at that time, corona was going on and it was not possible to get out of the house. He denied the suggestion that he had told ACP Sanjay Drall about the incident or that he recorded his statement or that the said statement was read out to him on which he stated it was correct. He was shown his statement dated 25.03.2020 and after seeing and reading the statement **Mark PW6/1**, he stated that he had not made the said statement to the IO. He denied the suggestion that he was deposing falsely that he had not given any statement or the statement Mark PW6/1 to ACP Sanjay Drall or that he had not met him. He denied the suggestion that on 07.02.2020 at about 8 p.m. he along with the complainant Sanjeev Kumar was present at the office of father of Sanjeev Kumar and volunteered he had dinner at 8 p.m. with his

family. He was confronted with the statement Mark PW6/1 wherein it was so stated. He stated that in 2020, he was doing his studies of B. Com through open. He denied the suggestion that he and Sanjeev Kumar had cleaned the office and had put the garbage in a box or that Sanjeev had taken out his scooty No.DL-6SAM 4665 in order to throw the garbage or that he had kept the box on the scooty and both of them had left the office to throw the box in the garbage bin. He was confronted with the statement Mark PW6/1 wherein it was so stated. He stated that Sanjeev was not his friend but he knew him as his father was the Councillor. He denied the suggestion that the scooty was driven by Sanjeev and he was sitting behind him. He was confronted with the statement Mark PW6/1 wherein it was so stated. He knew the accused Akhilesh Pati Tripathi as he was the MLA of their area and he identified the accused.

54. PW6 denied the suggestion that when Sanjeev and he, at about 11:15 p.m. turned right from Jhandewalan Chowk towards the garbage bin, they saw the accused Akhilesh Pati Tripathi and his supporters standing on the road. He was confronted with the statement Mark PW6/1 wherein it was so stated. He denied the suggestion that he had stated to the IO that the accused Akhilesh Pati Tripathi came in front of the scooty and stopped it and on seeing Sanjeev he stated that he was the son of Madhav Prasad or that he took out the key of the scooty or that he made them get off the scooty forcibly. He was confronted with the statement Mark PW6/1 wherein it was so stated. He further denied the suggestion that he also stood on the corner and volunteered a lot of noise was there and about 150-200 people had gathered at the

spot and he was also standing there. He stated that the MLA and his supporters and the opposition party i.e. Madhav Prasad and his family members were also present at the spot and there was *Gaali Galoch* and *Hatha Pai* between them. He denied the suggestion that the accused Akhilesh Pati Tripathi started checking the scooty, caught hold of the collar of Sanjeev or that he slapped Sanjeev or that the accused said to Sanjeev “*Chamar ko maro, iska baap bahut neta ban raha hai, iss chamar ko iski aukaat dikha do*” or that he had stated to the IO that the friends of the accused Bansi Tripathi, Vishal Pandey, Om Singh and others started beating Sanjeev and volunteered he did not know the said persons. He was confronted with the statement Mark PW6/1 wherein it was so stated. He denied the suggestion that he had stated to the IO that at that time, Mohd. Shami Khan who used to reside in the neighbourhood came there and intervened or that the accused and his associates did *Dhaka Mukki* with Mohd. Shami Khan. He was confronted with the statement Mark PW6/1 wherein it was so stated. He admitted that the mother of Sanjeev had come to the spot and volunteered the entire family of Sanjeev was there and *Hathapai* was going on. He admitted that a lot of persons had gathered there from both the sides. He denied the suggestion that he had stated to the IO that Sanjeev called police on 100 number and PCR and Ambulance had come to the spot or that the Ambulance had taken Sanjeev to the hospital and volunteered he had gone home before that. He was confronted with the statement Mark PW6/1 wherein it was so stated. He denied the suggestion that he was denying making the statement Mark PW6/1 to the IO as he had been won over by the accused

and in order to support the case of the accused.

55. PW6 had thus, denied giving any statement to the IO. He denied the suggestion that were given to him regarding the incident of 07.02.2020 whereas per the case of the prosecution, PW6, on the said date had accompanied the complainant Sanjeev Kumar. It is pertinent that he stated that Sanjeev was not his friend but he knew him as his father was the Councillor and he also stated that he knew the accused Akhilesh Pati Tripathi as he was the MLA of their area. He was also confronted with the statement Mark PW6/1 but he denied having any knowledge about the incident as stated therein. However, he had volunteered that a lot of noise was there and about 150-200 people had gathered at the spot and he was also standing there. He stated that the MLA and his supporters and the opposition party i.e. Madhav Prasad and his family members were also present at the spot and there was *Gaali Galoch* and *Hatha Pai* between them. As such, even according to PW6 some incident had taken place on 07.02.2020 in which there was *gali galoch* and *hatha pai* between the MLA and his supporters and the opposition party i.e. Madhav Prasad and his family members. He had also denied knowing the alleged friends of the accused Bansi Tripathi, Vishal Pandey, Om Singh. He admitted that the mother of Sanjeev had come to the spot and in fact volunteered that the entire family of Sanjeev was there and *Hathapai* was going on. He further admitted that a lot of persons had gathered there from both the sides. As such, PW6 had denied accompanying the complainant on 07.02.2020 and the incident as per the case of the prosecution though he stated that some incident had taken place between the

two sides on 07.02.2020 and a lot of persons had gathered there from both the sides.

56. It is thus seen that PW4 and PW5 had deposed about the alleged incident of 07.02.2020 while PW6 had not supported the case of the prosecution except in so far as he stated that some incident had taken place on 07.02.2020. As per the case of the prosecution, several calls were received by the police regarding the incident and the prosecution had proved the DD entries vide which calls were made regarding the incident and PW2, PW3, PW12, PW15 and PW16 had deposed regarding the same. The Ld. Addl. PP had submitted that the caller in respect of DD No.2/B was the complainant Sanjeev whose number was reflected in the call and thereafter the Nodal Officer had pointed out the mobile number of the complainant. The record also shows that the mobile number of the complainant is reflected in Ex.PW2/B and thereafter PW14 had proved that the said number was of the complainant. Further DD No.8A and DD No.14A were also registered as also DD No.2A which is Ex.PW2/A. PW2 was cross-examined at length and during cross-examination PW2 stated that on 08.02.2020 he was working as Duty Officer. He was alone and there was no one to assist him and volunteered there was one operator. He could not tell the name of the operator. Whatever he had deposed in his examination in chief was on the basis of records. He was not aware when the elections of the Vidhan Sabha were held. He stated that the accused was the MLA from Model Town at that time from AAP. Thus, PW2 was not aware when the elections of the Vidhan Sabha were held. Further, PW2 stated that he was not aware nor he had any

concrete information that BJP persons had stabbed candidate of AAP at about 12:39 a.m. He was not aware whether any information was received at PS prior to DD No.2A. It was mentioned in Ex.PW2/A that BJP persons had stabbed the candidate of AAP. He denied the suggestion that he had deliberately deposed falsely that “I was not aware nor I had any concrete information that BJP persons had stabbed candidate of AAP at about 12:39 a.m.” or that he had deliberately deposed falsely at the instance of the ruling party. Thus, PW2 had stated that he was not aware nor had any concrete information that BJP persons had stabbed candidate of AAP at about 12.39 a.m. though he stated that it was mentioned in Ex.PW2/A that BJP persons had stabbed the candidate of AAP. He stated that the entry Ex.PW2/A was made by the typist. He did not remember the name of the typist.

57. PW2 further stated that he had made entry in the Roznamcha register about joining duty. He could not tell the DD number of the same but the same was around 8 p.m. on 07.02.2020 and volunteered his duty was from 12 a.m. to 8 a.m. However, there is no reason to doubt that PW2 was on duty on the said date. He admitted that after 12 a.m. the number of the DD entries started from one. He could not tell how many calls of fights were received from 8 p.m. on 07.02.2020 to 12:39 a.m. on 08.02.2020 or how many DD entries were recorded. He had not brought any record other than what was summoned. He denied the suggestion that he had not brought the other record as it was not favoring the prosecution. However, PW2 was a witness only to the record and had deposed as per the record. He could not

admit or deny the suggestion that the candidate of AAP was stabbed at 11:40 p.m. on 07.02.2020 or that the said information was received at the PS at that time itself. But it is seen that Ex.PW2/A does mention that BJP persons had stabbed the candidate of AAP though it is of 12.39 a.m. The Ld. Addl. PP for State had argued that PW2 had proved the lodging of DD entries which was not challenged and there is no dispute that the DD entries were lodged, rather it is the case of the accused that the first DD entry which was lodged was regarding the accused being stabbed. The Ld. Addl. PP had then argued that during cross-examination the DD entry regarding stabbing of the accused was admitted but no such incident had taken place as there was no such alleged history in the MLC of the accused, however, the said aspect would be adverted to later.

58. The Ld. Addl. PP had further submitted that PW3 had proved the Control Room record regarding DD entries and no suggestion was put to him that the same were manipulated and his deposition was not challenged. During cross-examination PW3 stated that whatever he had deposed in his examination in chief was on the basis of records. As per Ex.PW3/A the first call was made by Himanshu Aggarwal and volunteered the name was automatically generated. Once PW3 had stated that whatever he had deposed in his examination in chief was on the basis of records, question of challenging his deposition would not arise. PW7 Himanshu Aggarwal had deposed about making the call on 100 number from his number 9999707621 which was also as per what was stated by PW3. PW14 had also proved that the said number was in the name of Himanshu Aggarwal. During cross-

examination PW7 stated that he was aware that the accused was contesting from AAP and that the Vidhan Sabha Elections were on 08.02.2020. He was aware that Kapil Mishra was contesting from BJP. He was aware that Madhav Prasad had remained Councillor from BJP for 10 years from the said area. He was aware that Madhav Prasad, his son Sanjeev and other family members were supporting and campaigning for BJP. He was aware that the accused was residing at Jhuggi No.N-9C/129, Lal Bagh. He was not aware that Sanjeev and his family members were residing at C-75 A, Second Floor, Gali No.3, Mahendru Enclave. He stated that Mahendru Enclave and Lal Bagh were opposite each other. Thus, PW7 had stated about being aware of the political affiliations of the accused and the complainant.

59. During further cross-examination PW7 stated that the spot of incident was about half a kilometer from the spot where he was putting tent and table. He stated that when he reached the spot, he saw that the accused was lying down on the road and he was surrounded by AAP supporters in order to save him. The BJP persons were also present and trying to hit and one stone had also hit on his (my) back. He had made the call on 100 number after about 45-60 minutes of reaching the spot. He was aware that police had reached the spot soon after but there was no space in the PCR so it was stated that the accused would be taken to the hospital in Ambulance and Ambulance was called. He admitted that the Ambulance came around 12:15 a.m. and took the accused to the hospital. Thus, PW7 had in fact supported the case sought to be put forth by the accused and he stated that when he reached the spot, he saw that the accused was lying down on the road and

he was surrounded by AAP supporters in order to save him. He also admitted that the Ambulance came around 12:15 a.m. and took the accused to the hospital.

60. During cross-examination PW12 stated that when DD No.2A was handed over to him, he was in the PS. He was in PS when DD No.3A was handed over to him and he was on the way to the spot when he was informed telephonically about DD No.8A. It was in his knowledge that the accused Akhilesh Pati Tripathi was an MLA from AAP and candidate for elections from AAP. He did not remember on which date the elections were to be held. He had perused DD No.2A before leaving for the spot. He did not remember if the exact contents of DD No.2A were that BJP persons had stabbed AAP candidate. He did not know Madhav Prasad who had remained a Councilor from the area. Thus, PW12 had stated that he did not remember the exact contents of DD No.2A but even otherwise DD No.2A is on record and nothing material was extracted during the cross-examination of PW12.

61. During cross-examination PW15 stated that on 07.02.2020 at 11:35 p.m. on receiving the calls regarding dispute, he reached at the spot. At the time when he received the call, he was in his office. Inspector Sudhir was the SHO at that time. He was not informed that any call was received in PS that BJP persons had stabbed the candidate of AAP. Later on he came to know about DD No.2A and that it was about BJP persons stabbing the candidate from AAP. Later on he came to know that the accused was contesting from AAP. The SHO had informed him that the

accused had also been injured in the incident and had been taken to Vinayak Hospital. Thus, PW15 stated that he came to know later on that DD No.2A was about BJP persons stabbing the candidate from AAP though he also stated that on receiving the calls regarding the dispute, he reached at the spot.

62. PW16 who was the SHO was also cross-examined regarding the calls and during cross-examination PW16 stated that he was present in the PS when the calls were received in the intervening night of 7/8-02-2020. The same were regarding a quarrel. The calls were received around 12:30 a.m. He admitted that there was one call that BJP persons had stabbed the candidate of AAP but he could not say if that was the first call or not. The 2-3 calls were received within a span of half an hour to one hour. He remained in the PS the entire night. Thus, it is not in dispute that several calls were received in the PS regarding the incident and one of the calls pertained to BJP persons stabbing the candidate of AAP which is DD No.2A while another call pertained to AAP MLA Akhilesh Pati Tripathi beating the caller which was recorded as DD No.3A.

63. It is the case of the prosecution that thereafter the complaint was made on 10.02.2020 which was registered vide DD No.54B and the record also shows the same and on the basis of the said complaint the FIR was registered on 01.03.2020. PW5 was cross-examined regarding making the complaint and he stated that he had given the complaint on 10.02.2020 Ex.PW5/A after understanding everything and not at the instance of anyone. He and his one brother Omveer had gone to the police station to

make the complaint during the daytime. First time he went he did not meet anyone and then he contacted again and he met perhaps the ACP. He stated that he had written Ex.PW5/A by hand and then got it typed. He did not remember when he had got it typed. Thus, PW5 reiterated that he had given the complaint Ex.PW5/A on 10.02.2020 after understanding everything and not at the instance of anyone though he did not remember when he had got it typed but nothing much turns on the same as it is on record that the complaint was made on 10.02.2020. He had stated that he and his one brother Omveer had gone to the police station to make the complaint though at another point he had stated that none of his family members went with him to the police station. It was argued on behalf of the accused that Omveer had not been joined as a witness whereas the Ld. Addl. PP for State had argued that there was no need to join Omveer as he was not an eye witness and had only accompanied the complainant and there is merit in the said submission of the Ld. Addl. PP for State as it is not the case of the prosecution that Omveer was an eye witness or had any other role and he had merely accompanied the complainant when he had gone to the police station to make the complaint. As such, non-joining of Omveer as a witness is of no consequence in the present case. Further, PW5 had stated that he had met the ACP on the same day on which he had made the complaint whereas the ACP who was examined as PW15 had stated that he had met the complainant for the first time on 01.03.2020.

64. PW5 further stated that para 7 of Ex.PW5/A was in his handwriting and he had written it when he had gone to give the caste certificate. He did not remember when he had gone to give

the caste certificate. He did not even remember if he had gone after 20 days or 40 days. The Ld. Counsel for the accused had argued that there was interpolation in the complaint as the caste certificate was given only on 02.03.2020 whereas the complaint is dated 10.02.2020. The record also shows that the caste certificate was handed over by the complainant to the police not on 10.02.2020 i.e. the day on which the complaint was made but on 02.03.2020 as reflected from the seizure memo Ex.PW5/C and if the handwritten portion was added in the complaint when the caste certificate was given, it was clearly done at a later stage. During cross-examination PW15 stated that the handwritten portion in the complaint Ex.PW5/A was not written in his presence. He could not say who had written the same. The same did not bear any initials. Thus, PW15 could not say who had written the handwritten portion in the complaint and it was not written in his presence, nor did it bear any initials. PW16 was also cross-examined regarding the complaint and he stated that the complaint Ex.PW5/A was received in the night. The handwritten portion in the complaint was already written when it was received by him. He admitted that the same did not bear any initials or date. He admitted that in Ex.PW5/A, under DD No.54 there was overwriting in February and 2020 at point X and there was overwriting at point Y where LC 145 was written. Thus, PW16 stated that the handwritten portion in the complaint was already written when it was received by him and no suggestion to the contrary was put to him. He also admitted that there was overwriting at two places in Ex.PW5/A. He further stated that he had read the complaint. As such, it cannot be disputed that the

complaint had handwritten portion in it which as per the version of the complainant was written on the day the caste certificate was handed over to the IO i.e. on 02.03.2020.

65. PW5 was also cross-examined on mentioning the sections in the complaint and he stated that he had mentioned the sections in Ex.PW5/A at the instance of one known person namely Sunil Kumar who resided in the village. He knew about Sections 506 and 34 IPC and had read about one or two other sections and the others were told to him by Sunil Kumar. He was aware that passing caste related remarks was covered under SC/ST Act. He did not remember if he had given the complaint on the same day when the FIR was lodged. Thus, PW5 had stated about mentioning the sections in the complaint at the instance of one Sunil Kumar. It was argued by the Ld. Counsel for the accused that Sunil Kumar had not been joined as a witness but there was even no necessity for the same as it is not the case that he had witnessed the incident or had any other role. At the same time, it is significant that PW5 had stated that he was aware that passing caste related remarks was covered under SC/ST Act.

66. PW12 was cross-examined regarding the complaint and he stated that he did not know who was accompanying Sanjeev when he came to the police station on 10.02.2020 or whom he met and volunteered he did not come in his presence and the complaint was given to him by the SHO. Thus, PW12 was not present when the complainant had come to the police station and he had volunteered that the complaint was given to him by the SHO. During cross-examination PW16 stated that he did not

remember if the complainant had come alone or he was accompanied by anyone else. He did not remember if any entry was made in the DD register regarding the complainant coming to the PS. PW16 also denied the suggestion that no complaint was received on 10.02.2020 nor the same was marked to anyone or that he had withheld important and material facts which were favouring the accused or that he had deposed falsely at the instance of senior officers but there is nothing to show that the complaint was not received on 10.02.2020 when all the witnesses have consistently stated about the same. PW16 did not remember if the complainant had come alone or he was accompanied by anyone else or if any entry was made in the DD register regarding the complainant coming to the PS. As such, PW12 was not present when the complainant had come to the police station and PW16 did not remember if the complainant had come alone or was accompanied by anyone else though nothing much turns on the same and the complainant himself had stated that he was accompanied by Omveer when he went to give the complaint.

67. During further cross-examination PW12 stated that he was aware that inquiry and investigation regarding an offence under SC/ST Act could only be done by the ACP. The name of the then SHO PS Adarsh Nagar was Insp. Sudhir Kumar. The complaint was given to him and then taken back. He stated that there was no endorsement by him on the said complaint. He denied the suggestion that no complaint was marked and handed over to him on 10.02.2020 nor was it taken back or that because of the said reason there was no endorsement by him on Ex.PW5/A or that because of the said reason no entry was made by him in the DD

register. Thus, PW12 had stated that the complaint was given to him and then taken back and there was no endorsement by him on the complaint and in those circumstances, there may not have been any entry made by him in the DD register. During cross-examination PW16 stated that it came to his knowledge that there were allegations attracting SC/ST Act in the said complaint. It was in his knowledge that in case of SC/ST Act inquiry could be done only by the ACP. The same was not marked to ACP at that time as it was only after registration of FIR that inquiry was done by ACP. He stated that he had decided to get the FIR registered after discussing the matter with senior officers. Thus, PW16 stated that he decided to get the FIR registered after discussing the matter with senior officers which answers the contention raised by the Ld. Counsel for the accused that on 01.03.2020 suddenly the FIR was registered based on the complaint dated 10.02.2020 without there being anything further. PW16 also stated that it was in his knowledge that in a case under SC/ST Act, inquiry could be done only by the ACP but he also stated that it was only after registration of FIR that inquiry was done by ACP.

68. During cross-examination PW15 stated that he did not conduct any inquiry in the present case prior to 01.03.2020 and volunteered SI Ravi Kumar was the IO. SI Ravi Kumar had not examined the complainant prior to 01.03.2020. The caste certificate was obtained after 01.03.2020 and volunteered prior to that the SHO had verbally verified from the SDM Model Town regarding the caste. PW15 admitted that in a case under SC/ST Act, SI is not empowered to carry out the inquiry or

investigation. SI Ravi Kumar did not produce any record before him of any inquiry conducted by him or any statement recorded by him and volunteered the case was registered on 01.03.2020. SI Ravi Kumar did not apprise him of the day to day progress in the case prior to 01.03.2020. Thus, PW15 had reiterated that the case was registered on 01.03.2020 and though SI Ravi Kumar was the IO prior to that, SI Ravi Kumar had not examined the complainant prior to 01.03.2020 and also did not produce any record before him of any inquiry conducted by him or any statement recorded by him. It was argued on behalf of the accused that under the SC/ST Act, an officer below the rank of ACP is not authorized to investigate whereas in the present case the first IO was a Sub-Inspector to which the Ld. Addl. PP had submitted that in the present case, SI Ravi Kumar had conducted enquiry only prior to the registration of the FIR which was not barred and after the FIR was registered, the investigation was carried out by ACP who was examined as PW15. It was submitted that the complaint was marked to SI Ravi Kumar for preliminary enquiry and when the FIR was registered, the investigation was conducted by ACP and preliminary enquiry by SI Ravi was not barred. It is true that PW15 had stated that he did not conduct any inquiry in the present case prior to 01.03.2020 and volunteered that SI Ravi Kumar was the IO but it is seen that there is nothing to show that SI Ravi Kumar had carried out any investigation in the present case. The investigation after the registration of FIR on 01.03.2020 was carried out only as per the provisions of law by an ACP. In fact it was stated by PW12 that the complaint was given to him and then taken back and that

there was no endorsement by him on the said complaint which also shows that investigation was not carried out by him.

69. It was then contended by the Ld. Counsel for the accused that the IO had not placed on record the material collected by SI Ravi Kumar between 10.02.2020 and 01.03.2020 and that the enquiry by SI Ravi Kumar was not made part of judicial record. It is seen that during cross-examination PW15 had stated that SI Ravi Kumar did not produce any record before him of any inquiry conducted by him or any statement recorded by him and that SI Ravi Kumar did not apprise him of the day to day progress in the case prior to 01.03.2020 but he also volunteered that the case was registered on 01.03.2020. Even during cross-examination of PW12, nothing had come out to show that he had recorded the statement of any witness or done any investigation in the present case and he was not even present when the complainant had gone to the police station to give the complaint. During cross-examination PW16 could not say if any written proceedings were carried out between 10.02.2020 and 01.03.2020 and volunteered only SI Ravi Kumar could tell. He stated that when the decision for registration of FIR was taken on 01.03.2020, other than the complaint, no other document was produced before him by SI Ravi Kumar. As such, there is nothing to show that any record which would have proved beneficial to the accused had been withheld and there is also nothing to show that there was any material collected, non-production of which had caused any prejudice to the accused and PW16 had also stated that when the decision for registration of FIR was taken on 01.03.2020, other than the complaint, no other document was

produced before him by SI Ravi Kumar.

70. It was also argued on behalf of the accused that there was unexplained delay in lodging the complaint though the complainant was hale and hearty, was a law student, he had made the call on 100 number, he was discharged from hospital after 2 hours after conservative management and he had even gone to cast his vote on 08.02.2020 whereas the complaint was given only on 10.02.2020 which cast a doubt on the motive of the complainant and he had himself caused injuries to the accused and he had apprehension that he may have repercussions from the accused who was the sitting MLA and he was violating the Election Code of Conduct and supporting the opposition party. It was also submitted that apart from building up his defence, the complainant also wanted to tarnish the image of the accused and with one complaint, the complainant tried to achieve several things. Per contra, the Ld. Addl. PP for State had submitted that the complainant had explained the delay in lodging the complaint in that he was not in a position to give his statement and his explanation was not challenged during cross-examination. During cross-examination PW12 stated that on 09.02.2020 he had spoken telephonically to the accused and the complainant and they had stated that they would give their complaint in writing later. He did not remember if he had asked Sanjeev on 09.02.2020 if he was still in hospital or had been discharged. He did not go to Hindurao Hospital on 09.02.2020 or thereafter regarding the present case. He denied the suggestion that he had withheld the material facts which did not suit the case of the prosecution. Thus, PW12 had stated about speaking

telephonically to the accused and the complainant on 09.02.2020 and they stated that they would give their complaint in writing later and even the accused has not denied that any such call was received by him and no suggestion was put to PW12 in that regard.

71. During cross-examination PW15 stated that the complainant had already been discharged on 08.02.2020. The complainant did not approach him on 08.02.2020 for recording his statement. He met the complainant for the first time on 01.03.2020 when the investigation was marked to him. It did not come to his knowledge when the complainant gave his complaint for the first time in PS and volunteered the complainant and the accused did not give their statement for several days. Thus, as per PW15, the complainant had not approached him on 08.02.2020 for recording his statement and he had met the complainant for the first time only on 01.03.2020. It is true that the complainant had stated that he was not in a position to give his statement as was contended by the Ld. Addl. PP for State and it may be that the complainant was not in a position to give his statement immediately in the hospital but it is also seen that as stated by PW15, the complainant had already been discharged on 08.02.2020 but he did not approach PW15 on 08.02.2020 for recording his statement and PW12 had also stated that he spoke to the complainant telephonically on 09.02.2020 but he stated that he would give his complaint in writing later for which no reasons are forthcoming. As such, there is also merit in the contention of the Ld. Counsel for the accused that once the complainant was released from hospital after 2 hours after

conservative management and he had also gone to cast his vote on 08.02.2020, there is no reason why the complaint could not be made till 10.02.2020 and even no cogent explanation has been put forth for the same. The incident was of the intervening night of 07.02.2020 and 08.02.2020 whereas the complaint was given on 10.02.2020 and the FIR was registered only on 01.03.2020.

72. The Ld. Addl. PP for State had then submitted that there was no delay in lodging the complaint of quarrel and use of caste specific words as the DD entry was there and that though the complaint may have been given on 10.02.2020 and the FIR was registered on 01.03.2020, however that would not be regarded as delay in making the complaint and even if there was delay in registration of FIR, the complaint was already lodged and the case of the prosecution could not be discarded. There is merit in the contention of the Ld. Addl. PP that DD entry was lodged in the intervening night of 07.02.2020 and 08.02.2020 itself regarding the quarrel and use of caste specific words by the accused which is Ex.PW2/B and as such the case of the prosecution cannot be discarded but it cannot also be lost sight of that the actual complaint was made by the complainant only on 10.02.2020 and thereafter the FIR was registered only on 01.03.2020 and the statements of PW4 and some other witnesses were recorded only on 21.03.2020 and thereafter and no cogent explanation has been furnished why the complaint was not lodged till 10.02.2020.

73. PW1 had proved the FIR and had stated that one written complaint dated 10.02.2020 of Sanjeev Kumar was handed over

to him by SHO Sudhir Kumar for registration of FIR on the basis of which he lodged the FIR No.84/2020 which is Ex.PW1/A. During cross-examination PW1 stated that he was the duty officer at the time the complaint was received. There was no one else to assist him. He admitted that when the FIR was registered, there was a kayani entry regarding the same which was DD No.43A in the present case. The said entry was made by the typist WCt. Seema. He had perused the said entry. The same was a typed entry. He had not brought the DD register. The FIR was typed by WCt. Seema and volunteered in his presence. He stated that it was not mentioned in the FIR that the FIR was typed by WCT. Seema and volunteered the same was mentioned in the kayani entry which he had brought and the same is **Ex.PW1/P1**. The same was objected to by the Ld. Counsel for the accused on the ground that the same was not supplied to him and it was neither entered nor signed by the witness and it was not produced along with the register but as a single paper but it is pertinent that the said entry was produced when the witness was cross-examined regarding the same.

74. During further cross-examination PW1 admitted that the kayani entry was made in the register No.2 which was in a bound form and duly paginated. He could not tell what entry was made before the said entry or after the said entry. Again said, there was no entry in the register and at present the entry was maintained in the CCTNS system. The name of the accused and the witness were not mentioned in the kayani entry and volunteered the same were not mentioned in the kayani entry and only the basis of the case was mentioned therein. He stated that Register No.8 was

maintained as per the Punjab Police Rules. He could not say if it was mandatory as per Chapter-III of the same to mention the name of the accused and the complainant in the same and volunteered the same were not mentioned in the kayani entry. It was not in his knowledge whether the present case had been investigated earlier or not and volunteered he had received the complaint and he registered the FIR. He stated that it was not his job to give copy of the FIR to the complainant and volunteered the same would be done by the IO. Thus, PW1 had stated that his job was only to register the FIR. He also stated that he did not meet the complainant in the present case. He denied the suggestion that the FIR was not registered in the manner as deposed by him. He did not have knowledge of computers. Computer was maintained by CCTNS operator. The certificate under Section 65B of the Indian Evidence Act was not given by CCTNS operator and volunteered the same was given by him. He denied the suggestion that he was not authorized or competent to give the certificate under Section 65B of the Indian Evidence Act or that he had suppressed the material facts which were not favouring the case of the prosecution. However, nothing could be extracted during the cross-examination of the said witness to cast any doubt on the FIR.

75. During cross-examination PW10 denied the suggestion that the complaint was first sent to PS Jahangirpuri and volunteered it was received at PS Adarsh Nagar and then on 11.02.2020 it was sent to ACP Jahangirpuri. He admitted that there was a cutting and instead of PS it had been put as ACP but that was perhaps due to clerical mistake it was first written as PS

and the main entry (in next column) was with red pen where ACP was mentioned and volunteered the PS and the ACP office were in the same building. He admitted that there were no initials of anyone where the cutting was there and volunteered no initials are put in the register. Thus, PW10 had stated that the complaint was first received at PS Adarsh Nagar and then on 11.02.2020 it was sent to ACP Jahangirpuri and he also explained the cutting. He admitted that there was nothing mentioned in the column for action taken report and volunteered as no action was taken and the complaint was sent to ACP Jahangirpuri. As such, PW10 also explained why nothing was mentioned in the column for action taken report. He could not tell the time of the entry in the register and volunteered he was not posted there at that time. He denied the suggestion that the entry had been made later on in order to support the case of prosecution. Thus, PW10 had mainly produced the record and he stated that he was not posted there when the entry in the register was made.

76. It is the case of the accused that PW5 had made material improvements in the Court over his complaint Ex.PW5/A and he was cross-examined regarding the same and he stated that he had stated in the complaint that *“on 07.02.2020 at about 11.30 p.m., I had left from the office of my father (BJP office) B-5, Mouji Wala Bagh, Jhandewalan Chowk, where my father had asked me to do the cleaning work”* and he was confronted with Ex.PW5/A wherein it was not so stated. He had stated in his complaint *“there is a garbage bin at about 500mtrs from the office. I had kept the dustbin on my Scooty and I along with my friend Raj Kishore were going towards the garbage bin”* and he was

confronted with Ex.PW5/A wherein it was not so stated. He had stated in the complaint that there were 30-40 supporters and he was confronted with Ex.PW5/A wherein it was not so stated. He had stated in the complaint “*the accused stated that I was the son of Madhav Prasad. He took me off the scooty, caught hold of my collar and gave me a slap*” and he was confronted with Ex.PW5/A wherein it was not so stated. He had stated in the complaint “*the main persons were Bansi Tripathi, Om Singh and Vishal Pandey*” and was confronted with Ex.PW5/A wherein it was not so stated. He had stated in the complaint “*my uncle who stays in the neighbourhood Dr. Mohd. Shamim Khan came to the spot and intervened. He was also pushed*” and he was confronted with Ex.PW5/A wherein it was not so stated. He had stated in the complaint “*the police came to the hospital to record my statement but my condition was not good*” and he was confronted with Ex.PW5/A where it was not so stated. It is thus seen that PW5 was confronted on a number of things which he had deposed in the Court but which did not find mention in his complaint Ex.PW5/A. As such there were material improvements in the testimony of PW5 before the Court over his complaint Ex.PW5/A. The Ld. Addl. PP for State had argued that PW5 was confronted with Ex.PW5/A wherein some facts stated by the complainant in the examination in chief were not mentioned but it was submitted that the same were mentioned in the statement of the complainant under Section 161 Cr.P.C. with which the complainant was not confronted and it was submitted that if the witness was not confronted or contradicted with an earlier statement or no suggestion was put to him or there was no cross-

examination on the same, the same was deemed to be admitted. While the legal position in this respect is settled, it is also true that there were material improvements in the testimony of PW5 before the Court over his complaint Ex.PW5/A.

77. It is the case of the prosecution that PW5 was on a scooty when the alleged incident took place and the owner of the scooty Ashib was examined as PW8. The Ld. Counsel for the accused had argued that admittedly the scooty was not taken into possession and there were contradictions between the version of the complainant and PW8 in that the complainant had stated that PW8 had handed over the scooty to him while PW8 had stated that he was not there and his brother had handed over the scooty to the complainant and the complainant had also tried to cover up his stand that he had gone to college on the said day. Per contra, the Ld. Addl. PP had submitted that even though the scooty was not taken into possession, the number and the documents of the same were there and the colour of the scooty was also known. PW8 had stated that the complainant Sanjeev was his friend and he was cross-examined on knowing Sanjeev and he stated that the name of father of Sanjeev is Madhav Prasad. He was aware that Madhav Prasad was a political figure and remained the Councilor from the area for 10 years from BJP. He was aware that Sanjeev resided in Mahendru Enclave but he did not know the address. He could not say if his address was C-75A, Second Floor, Gali No.3, Mahendru Enclave. He knew Sanjeev for the previous 5 to 6 years. He had never been to the house of Sanjeev at Mahendru Enclave. He stated that Sanjeev had one elder brother and one younger sister. He resided in a joint family. He

was not aware which party Sanjeev was supporting. Thus, PW8 had stated that he knew Sanjeev for the previous 5 to 6 years and he was aware that he resided in Mahendru Enclave though he could not tell his address and he had never been to the house of Sanjeev at Mahendru Enclave. He also knew that the father of Sanjeev was a political figure though he was not aware which party Sanjeev was supporting. During cross-examination PW5 stated that he knew Ashib for 10-12 years though PW8 had stated about knowing him for the previous 5 to 6 years.

78. PW5 was cross-examined on taking the scooty from PW8 and he stated that at the time of the incident, his family had one scooty and one car. Thus, if the family of PW5 itself had a scooty, there is no explanation why the scooty was taken from PW8. PW5 stated that he did not remember the number of the scooty which he had borrowed from Ashib. He had gone around 10 a.m. to the house of Ashib to take the scooty. Ashib worked in Wazirpur. He had spoken to Ashib and then he had gone to take the scooty from him. Ashib had not taken any receipt from him when he had taken the scooty from him. He had not taken any receipt as he had given the scooty to him out of friendship. There was no talk as to for how many days he had taken the scooty and volunteered he had to go somewhere so he had taken the scooty. He had not taken any receipt from Ashib when he had returned the scooty to him and volunteered he had come to his house and taken the scooty from there. It was a white colour scooty. He had told Ashib about the incident on 07.02.2020. He admitted that he used to go to the house of Aashib and volunteered frequency was less. Thus, PW5 did not remember the number of the scooty but

he stated that it was a white colour scooty. During further cross-examination, PW5 stated that on 07.02.2020, he had gone to college. He had gone to VIPS and attended classes from around 8.00 a.m. to 2.00 p.m. What he had stated on 20.10.2022 about taking the scooty at 10:00 a.m. was correct and he did not remember correctly whether he had attended college or not on that day and volunteered though his college was open during those days. He denied the suggestion that in order to cover up what he had stated on 20.10.2022, he had changed his statement after being confronted with what he had stated on 20.10.2022. Thus, PW5 had stated about going to college on 07.02.2020 but thereafter he stated that what he had stated on 20.10.2022 about taking the scooty at 10.00 a.m. was correct and he did not remember correctly whether he had attended college or not on that day.

79. PW8 was also cross-examined on giving the scooty to Sanjeev and he stated that he was not aware how many vehicles were there with the family of Sanjeev. He had seen Sanjeev driving a two-wheeler. He could not say whether he was driving his own scooty or it was borrowed. He stated that Sanjeev had taken his scooty for the first time on 07.02.2020. He had not taken his scooty ever after that date. Thus, according to PW8 Sanjeev had taken his scooty for the first time on 07.02.2020 and he had not taken his scooty ever after that date. He further stated that Sanjeev had taken the keys of scooty from his home when he was not at home. He had taken the keys from his brother Chand Babu. He could not say at what time Sanjeev had returned the scooty and volunteered he was on his work. He stated that his

working hours were from 8 a.m. to 5 p.m. and volunteered at times he worked even after 5 p.m. He stated that on 07.02.2020, he had left home at about 9:30 a.m. and came back at 8 p.m. On the day the scooty was returned, he had left at 9:30 a.m. and returned at 6:30 p.m. Thus, as per PW8, Sanjeev had taken the keys of the scooty from his home when he was not at home and had taken the keys from his brother Chand Babu though Chand Babu has not been examined in the present case and PW8 had stated that police did not inquire from him or from Chand Babu or from his family members at any point of time. However, PW5 had stated about taking the scooty from PW8 and did not state that he had taken the scooty from the brother of PW8 Chand Babu. PW8 could not say at what time Sanjeev had returned the scooty and he had volunteered that he was at work at time whereas PW5 had stated that he had not taken any receipt from Ashib when he had returned the scooty to him and volunteered he had come to his house and taken the scooty from there. As such, according to PW5, PW8 had come to his house and taken the scooty from there whereas per PW8, PW5 had returned the scooty when PW8 was at work.

80. During further cross-examination PW5 stated that he had not shown the scooty to the police and volunteered the police had made inquiries and he had told them about the scooty and given the number of Ashib. Around the time when he had given the complaint he had received a call from Ashib who had stated that the police was asking about the scooty and he told him to give the details and around that time he had shown the scooty to the police. PW8 on the other hand had stated that he did not produce

the scooty to the police at any point of time though the scooty should have been seized as it is the case of the prosecution that the alleged incident had taken place when PW5 was riding the scooty. PW8 stated that it was a white colour scooty which was also so stated by PW5. PW8 denied the suggestion that he had deposed falsely that Sanjeev had taken or returned his scooty or that as he was a good friend of Sanjeev so he had deposed falsely at his instance. He had not given any statement to the police. He stated that Mahendru Enclave was about one kilometer from his house. Thus, as per PW8 he had not given any statement to the police and he had also not produced the scooty to the police. Further, he had not handed over the keys of the scooty to Sanjeev and he was not even aware at what time the scooty was returned though he had stated about Sanjeev taking his scooty on 07.02.2020 and his testimony in this regard is in contradiction to the testimony of PW5.

81. During cross-examination PW15 did not remember the date on which he met Ashib and volunteered it was during investigation. He could not even say if it was before 21.03.2020 or after 21.03.2020. He was called by him to the office but no notice under Section 160 Cr.P.C. was given to him. He was called through SI Mahender. He had not seen the scooty involved in the present case and volunteered he had seen the documents of the scooty. He did not receive any representation from Raj Kishore or Ashib prior to 21.03.2020 nor any other officer received the same. He stated that he left the office at about 12:00 p.m. on 21.03.2020 and volunteered along with SI Mahender. Thus, PW15 had also stated that he had not seen the scooty involved in

the present case and volunteered that he had seen the documents of the scooty.

82. PW8 was also cross-examined on being aware about the elections on 08.02.2020 and he stated that he was not aware that there was election to Vidhan Sabha on 08.02.2020. He stated that he had gone for duty on 08.02.2020. He did not vote. Thus, PW8 was not aware that there was election to Vidhan Sabha on 08.02.2020. PW8 was then cross-examined on knowing the accused and during cross-examination PW8 stated that he was staying in Lal Bagh for about 10 to 12 years. He knew the accused who is MLA from AAP from the area. He was not aware that the accused resided in the area of Lal Bagh or that he resided in Jhuggi bearing No.N-9C/129, Lal Bagh, Azadpur. As such PW8 knew the accused who was MLA from AAP from the area though he did not know where he resided. PW8 also stated that he did not come to know that on 07.02.2020 in the night the accused had sustained injuries and he had no knowledge about the alleged incident. Even otherwise, it is not the case of the prosecution that he had witnessed any such incident.

83. It is further the case of the prosecution that at the time of the incident, PW5 was accompanied by Raj Kishore who has been examined as PW6 and who it is seen had turned hostile. The Ld. Addl. PP for State had submitted that PW6 was declared hostile but he had supported the case of the prosecution on several points. However, it is seen that PW6 had not supported the case of the prosecution except on the point that some incident had taken place between the complainant and the accused side on

07.02.2020. PW4 was cross-examined on knowing PW6 and he stated that he knew Raj Kishore for 4-5 years and volunteered as he remained with Sanjeev. He stated that as Raj Kishore used to remain with Sanjeev so he supported BJP. Thus, PW4 had stated that Raj Kishore used to remain with the complainant Sanjeev whereas PW6 himself had stated that Sanjeev was not his friend but he knew him as his father was the Councillor.

84. During cross-examination PW5 stated that he did not remember the name of father of Raj Kishore but perhaps it was Shyam. His house was 100-150 meters from the office. He stated that he used to keep going to his house before the incident. Even after the incident he kept going to his house. He stated that Raj Kishore used to come to his office earlier also and volunteered he was his friend. He stated that Raj Kishore was working as an accountant in Adarsh Nagar. He stated that Raj Kishore has three sisters and one brother. The house of Raj Kishore was about 100 meters from the place of incident and volunteered it was in the Gali. He was not aware which party Raj Kishore was supporting at that time. He had not requested him to support BJP. He denied the suggestion that Raj Kishore was not known to him or that as he was residing in his neighbourhood so he had taken his name. Thus, PW5 had stated that he used to keep going to the house of PW6 whereas PW6 had denied that PW5 was his friend.

85. Further, PW5 stated that he had started cleaning work in the office around 6-7 p.m. His friend Raj Kishore was with him during the cleaning work. Raj Kishore had come in the night around 8 p.m. when the work was almost over. Raj Kishore had

gone home in between to have dinner and thereafter he came back. The first time he had come on his own. The second time he had come back on his own and volunteered he told him that he would have dinner and come back. The first time he remained with him for 1-1½ hours. The second time he came back around 10:30 p.m. He had come on foot. From 10:30 to 11:30 p.m. they were just sitting and chatting. He stated that the garbage bin where he was going to throw the waste was about 50 meters from the place of incident. Most of the time they went to throw the waste from the house in the garbage bin. Raj Kishore had accompanied him several times while going to throw the waste. However, PW6 had denied being with the complainant on the said day. Further, PW5 stated that Raj Kishore was with him in the hospital. He had left before he was discharged and volunteered he had to go to cast his vote. He had met Raj Kishore on the date of voting i.e. 08.02.2020 and volunteered he had come to his house. He had come to his house around afternoon at about 2:00 p.m.

86. During cross-examination by the Ld. Counsel for the accused, PW6 stated that he had remained at the spot for about 15-20 minutes. He knew that the accused was the MLA from the area. He was not aware that the accused sustained injuries in the incident or that he was taken to the hospital and volunteered he did not know about the fight. He denied the suggestion that deliberately he was suppressing the fact that the accused sustained injury and he was removed to the hospital in Ambulance. Thus, PW6 had stated about remaining at the spot for about 15-20 minutes though he was not aware that the

accused had sustained injuries in the incident or that he was taken to the hospital and volunteered that he did not know about the fight. He had also not stated about being with the complainant in the hospital about which the complainant had stated or about meeting him on the date of voting.

87. During further cross-examination PW5 stated that he had not taken police to the house of Raj Kishore. He had not taken Raj Kishore to the police station. He stated that police had not inquired from Raj Kishore in his presence. In his knowledge Raj Kishore had not given any representation or statement to the police. Thus, PW5 had not taken the police to the house of Raj Kishore nor in his knowledge Raj Kishore had given any representation or statement to the police. It is thus seen that the testimony of PW6 helps the case of the prosecution only to the extent that he had stated that some incident had taken place on 07.02.2020 and there is merit in the contention of the Ld. Counsel for the accused that he had not supported the case of the prosecution about any utterances being made by the accused, though he was one of the most important witnesses on whom reliance had been placed by the prosecution.

88. During cross-examination PW15 stated that he did not obtain the CDR of Raj Kishore and volunteered as he was the eye witness. He denied the suggestion that it was in his knowledge that Raj Kishore was never present at the spot at the relevant time or that he had not witnessed the incident or that for that reason only CDR of his mobile was not placed on record. He examined Raj Kishore in his office on 25.03.2020. He had not given any

notice under Section 160 Cr.P.C. to him and he was brought by the complainant. Thus, PW15 had stated about examining Raj Kishore but he had not obtained the CDR of Raj Kishore and volunteered as he was the eye-witness. Moreover, PW15 had stated that Raj Kishore was brought by the complainant but PW5 had stated that he had not taken Raj Kishore to the police station.

89. It is also the case of the prosecution that PW4 had come to the spot and intervened. PW4 was cross-examined regarding his qualifications and what work he did and during cross-examination PW4 stated that he did not have his own office but he worked with other persons and he did the work of liaison. At present he had opened a small shop in addition to property dealing work. The shop was of cold drinks and snacks. He had done undergraduation. He had written doctor as he used to work in a hospital in Kanpur and thereafter he used to see patients. He used to assist in OT. He stated that he came to Delhi in 2000. Thus, PW4 stated that he had written the word doctor in his title as he used to work in a hospital but it is seen that he did not have any qualifications to use the title doctor and he had only done undergraduation.

90. The Ld. Addl. PP for State had argued that PW4 was an independent witness who corroborated the allegations made by the complainant and identified the accused and also proved that the incident had taken place in public view and he also proved that the incident took place in his presence. It was submitted that PW4 was a neighbour and not a relative and belonged to a different religion than the complainant and was a natural witness

and he would know about the family of the complainant and was not an interested witness whereas the Ld. Counsel for the accused had submitted that PW4 could not be regarded as an independent witness, rather he was an interested witness who was closely involved with BJP with which the father of the complainant and the complainant were associated and also with the complainant and his family. PW5 was cross-examined on knowing PW4 and his political affiliation and during cross-examination PW5 stated that he knew Mohd. Shami Khan for about 10-12 years. He was working as a Property Dealer. He was not related to him but as he was a neighbour he addressed him as uncle. He had cordial relations with him. He stated that the house of Mohd. Shami was around 50 meters from the office and volunteered his house was opposite another house of his. He kept going to the house of Mohd. Shami and he also came to their house often. He stated that he had addressed Mohd. Shami as Doctor as he used to have a clinic earlier and used to treat people. Thus, PW5 had stated that he had cordial relations with PW4 and that he kept going to the house of PW4 and PW4 also came to their house often.

91. PW4 was also cross-examined on knowing the complainant and his political affiliation During cross-examination PW4 stated that he knew the family of Sanjeev since 2002. He was aware that Sanjeev had a house in Mahendru Enclave. Earlier, Sangam Park was in ward 71 and at present it was ward 76. He joined BJP in 1989 but he became active member in 2007. He became President of Sangam Park Mandal of BJP in 2012 and remained so till 2017. He was still with BJP. Thus, PW4 had stated about knowing the family of the

complainant since 2002 and also about being with the BJP. He further stated that Kapil Mishra had contested the elections for Vidhan Sabha from his area. He was aware that Kapil Mishra was earlier MLA from AAP and thereafter he left AAP and joined BJP. Thus, he had stated that Kapil Mishra had contested the elections for Vidhan Sabha from his area. Further, PW4 admitted that in the elections held on 08.02.2020, he (Kapil Mishra) had got ticket from Model Town. He admitted that Sangam Park came in Model Town Constituency. He denied the suggestion that it was a high stake election for BJP as Kapil Mishra had defected from AAP to BJP. He stated that he had campaigned for Kapil Mishra as he worked for any other candidate. He admitted that Kapil Mishra had campaigned in Lal Bagh and he had also assisted in the same. Thus, PW4 had remained President of Sangam Park Mandal from 2012 to 2017 and Sangam Park fell in Model Town Constituency from which Kapil Mishra had got the ticket and Pw4 had campaigned for Kapil Mishra.

92. PW4 was further cross-examined on his association with BJP and he was shown Mark X and he stated that the same was of 2017-18. He stated that one hoarding of Mark X would have been put up in the BJP office. The said BJP office was about 100 meters from his house. The said office was at B-5, Mauji Wala Bagh and at present also it was at the same address. At that time, there was only one office of BJP in Lal Bagh. Sanjeev, Madhav Prasad and other workers of BJP used to come to the said office. In 2007, Madhav Prasad used to reside in C-327 and volunteered the same is still his house. He used to go to the said house. During further cross-examination PW4 had stated that he was

aware that Madhav Prasad had contested the elections and remained Councilor for 10 years. He was aware that at the time of one of the elections, Madhav Prasad was in jail on charges of murder in 2012. He stated that he had been granted bail for 5 days for campaigning. He stated that when Madhav Prasad was in jail, he along with others was looking after the campaigning. He also stated that he had been to the house of Sanjeev at Mahendru Enclave. He stated that he had visiting terms with Madhav Prasad and Sanjeev. Thus, PW4 had stated that Sanjeev and Madhav Prasad were supporting BJP and he himself was associated with BJP and about going to the house of the complainant about which PW5 had also stated.

93. On the other hand, during cross-examination PW5 stated that he was not aware if Mohd. Shami Khan had political affiliation with any political party. He denied the suggestion that Mohd. Shami Khan was an important member of BJP and ward President of that area or that a number of campaigns were done by him and his (my) father and him together or that a number of hoardings and posters were put up and ads were taken out in newspapers in the area depicting their pictures. Thus, PW5 had stated that he was not aware if Mohd. Shami Khan had political affiliation with any political party and he also denied the suggestion that Mohd. Shami Khan was an important member of BJP and ward President of that area which is not possible once PW5 knew PW4 and PW4 was also associated with BJP as stated by him. This is further borne out by the fact that PW4 was cross-examined on meeting the complainant on 06.02.2020 and 07.02.2020 and he stated that in 2020 the office of BJP in Lal

Bagh was at B-5. He had also stated that Madhav Prasad was the owner of B-5. Thus, if the father of the complainant was the owner of BJP office and PW4 went there, it is not possible that the complainant would not know about his political affiliation. Further, PW4 had stated that he had gone to the office of BJP on 6 and 7 February. He had not met Sanjeev on 07.02.2020 and volunteered that he met him only when the incident took place. He did not remember but he would have met Sanjeev on 06.02.2020 and volunteered he kept going to the office. As such, PW4 had stated that about going to the office of BJP on 06.02.2020 and on 07.02.2020 i.e. the day of the incident.

94. Various photographs were put to PW4 and PW5 and PW4 stated that he was at point A in Mark X and Madhav Prasad was at point B. He was shown Mark X1 and he identified himself at point A and point B. The same was of 2020. He was shown Mark X2 and he identified himself at point A and point B. Madhav Prasad was at point C and D. The same was of 2015 or thereafter. He was shown Mark X3 and he identified himself at point A and point B. Madhav Prasad was at point C and D. The same was of after 2020. He was shown Mark X4 and he identified himself at point A and point B. Madhav Prasad was at point C and D. The same was of 2019. He was shown Mark X5 and he identified Madhav Prasad at point A and B. The same was of 2012. He was shown Mark X6 and he stated that the same was of 2020. He was shown Mark X7 and he identified himself at point A and Madhav Prasad at point B. He stated that the same was 7-8 years old. He was shown Mark X-8 and he stated that he was at point A and Shri Madhav Prasad was at point B. The said photo was of prior

to 2017. Though the photographs were not proved as per law but from the testimony of PW4, it is evident that he was associated with BJP and with Madhav Prasad, father of the complainant.

95. The photographs were also put to PW5 and he was shown one coloured photograph Mark X and he identified his father at point B and uncle Mohd. Shami at point A. He stated that he had seen Mark X being put up in his area around 5 years prior. He was shown another photo Mark X1 and he identified Mohd. Shami at point A and point B and volunteered the said photo was 10 years old. He was shown Mark X2 and he identified Mohd. Shami at point A and point B. His father was at point C and D; in Mark X3 he identified Mohd. Shami at point A and point B and his father at point C and D; in Mark X4 he identified Mohd. Shami at point A and point B and his father at point C and D; in Mark X5 he identified his father at point A and B; in Mark X6 he stated that Mohd. Shami and his father were not there; in Mark X7 he identified Mohd. Shami at point A and his father at point B. Thus, even PW5 had identified PW4 in the photographs as also his father so it could not be possible that PW5 was not aware of the political affiliation of PW4.

96. The Ld. Addl. PP had argued that PW5 was subjected to detailed cross-examination with regard to the knowledge of the accused that the complainant was the son of the Councilor and belonged to SC category and the cross-examination of the complainant also showed that the accused knew that it was a reserved seat and that the complainant belonged to SC category so the prosecution did not have to prove that the complainant

belonged to SC category. During cross-examination PW5 stated that his father remained Councilor from 2007 to 2017 from ward No.76. The alleged place of incident fell in the same ward. He was aware that ward No.76 was a reserved seat meant for SC/ST. Thus, PW5 stated that his father remained Councilor from 2007 to 2017 from ward No.76 and also that ward No.76 was a reserved seat meant for SC/ST which would show that even the accused would be aware of the caste of the complainant as the accused himself was a sitting MLA from the area. PW5 further stated that the area of Lal Bagh where the alleged incident took place was a cluster surrounded by jhuggis. He was not aware that the candidate who was contesting on BJP ticket, Shri Kapil Mishra had defected from AAP and joined BJP or that he had remained an MLA on AAP ticket from another constituency. He denied the suggestion that he was deposing falsely in the said regard or that Kapil Mishra had defected from AAP to BJP which was in his knowledge or that these were high stake elections for the BJP. He admitted that his father remained a Councilor from BJP for 10 years. He admitted that he and his father were supporting Kapil Mishra in the Vidhan Sabha elections who was contesting from BJP. Thus, PW5 stated that he was not aware that the candidate who was contesting on BJP ticket, Shri Kapil Mishra had defected from AAP and joined BJP though he stated that his father was supporting Kapil Mishra who was contesting from BJP. PW5 was also cross-examined regarding the political affiliation of the accused and where he resided and he stated that he was aware that the accused was the sitting MLA from AAP and he was also contesting the elections. He was not aware that

the accused was residing in Jhuggi No.N-9C, Lal Bagh. He had never seen the Jhuggi of the accused from outside. As such, PW5 was aware that the accused was the sitting MLA from AAP and was also contesting the elections though he was not aware where he was residing.

97. It is thus evident from the cross-examination of PW4 and PW5 that PW4 and PW5 kept going to each other's house and both supported the same party and PW4 had close association with the father of PW5. This is further buttressed by the fact that PW4 had gone to give his statement at the police station in the present case only at the instance of the father of the complainant and he was not summoned for the same by the police officials. PW4 was cross-examined on how he was called for recording of his statement and he stated that the IO had not given him any written notice to join investigation and volunteered he was called to PS Adarsh Nagar. He was informed by Madhav Prasad that he had to go to the police station. Sanjeev met him at the police station and even Kishore had met him at the police station. Madhav Prasad had told him on 21.03.2020 itself that he had to go to the police station. He stated that he came to know about the FIR only on 21.03.2020. Thus, PW4 was not given any notice by the IO to join investigation and he had stated that he was informed by Madhav Prasad on 21.03.2020 itself that he had to go to the police station and thereafter he had gone to the police station.

98. The Ld. Addl. PP for State had submitted that PW4 had proved the spot of incident and during further cross-examination

PW4 stated that in 2020, Madhav Prasad was residing in the house at Mahendru Enclave along with his family. The said house was 10 minutes walk from the place of incident. The office closed at 8 p.m. He did not go to office on 07.02.2020 and volunteered he was at home and after having his dinner had stepped out. There was no employee for cleaning the office and volunteered any worker would clean the office. He had gone to the office during the day around 2 to 4 p.m. He stated that the place of incident was not visible from his house and volunteered he was standing at the chowk. The office of BJP was not visible from the place of incident. Again said, if one came out of the office then it was visible. He stated that the distance between the place of incident and the BJP office was about 15-20 meters. Thus, PW4 was cross-examined regarding the spot of incident being visible from his house and he had volunteered that he was standing at the chowk. Further, he had stated that the office of BJP was not visible from the spot of incident but he again said that if one came out of the office, then it was visible. During cross-examination PW5 stated that the house of Mohd. Shami was around 40 meters from the place of the incident. The place of incident was visible from his office. The place of incident was not visible from the house of Mohd. Shami and volunteered his house was in the Gali. Thus, both PW4 and PW5 had stated that the spot of incident was not visible from the house of Mohd. Shami.

99. PW5 was also cross-examined regarding the distance of the spot of incident from his residence and he stated that he resided in a joint family. His parents, sister, brother and his wife

resided with him. He admitted that when the incident took place he was pursuing law. He admitted that C-75 A, Second floor, Gali No.3, Mahendru Enclave was his address and volunteered he had three houses and depending upon the situation, he resided in any one of them. PW5 stated that the spot of incident was about 10 to 15 minutes walk from his Mahendru Enclave address. As such the spot of incident was about 10 to 15 minutes walk from the Mahendru Enclave address of the complainant.

100. PW4 was then cross-examined on having a mobile and PW4 stated that he did not remember if he had a mobile phone at that time. He was not aware that there was a directory in which the numbers of the Presidents of the mandals of BJP were contained. He could not admit or deny the suggestion that he was maintaining a mobile and as it was not suiting his case so he had feigned ignorance in that regard. Thus, PW4 stated that he did not remember if he had a mobile at that time. During cross-examination PW15 stated that he had not placed the CDR of mobile number of Shami Khan on record and volunteered as he was the eye-witness. Thus, the CDR of mobile of PW4 had not been placed on record and PW15 had volunteered as he was the eye-witness.

101. The Ld. Addl. PP for State had submitted that PW5 had corroborated the allegations made in the complaint and he had stated about his scooty being stopped and he mentioned the specific words that were used. The witnesses were cross-examined regarding the incident and during cross-examination PW5 stated that he had gone to the office of BJP on 07.02.2020

at about 4-5 p.m. He did not meet his family members or other office bearers of BJP at that time. There was no fixed time of opening and closing of the BJP office referred to by him. The said office belonged to them and volunteered they resided on the upper floor and the office was on the ground floor. He did not remember if he had stated in his complaint or his statement to the police that they used to reside on the upper floor and the office was on the ground floor and he was shown Ex.PW5/A where it was not so recorded. He stated that the office of BJP mentioned by him was their personal office and was not used by the office bearers of BJP. He stated that there was no employee in the said office and volunteered his father used to sit there sometimes. Thus, PW5 had not mentioned in the complaint that they used to reside on the upper floor and the office was on the ground floor. It is pertinent that he had stated that he had gone to the office of BJP and the said office belonged to them and it was their personal office and not used by the office bearers of BJP. PW5 also admitted that Mahendru Enclave where he had his residence was a posh area having Kothis and volunteered they mostly lived in Lal Bagh area which was not a posh area but nothing much turns on the same. He denied the suggestion that in order to cover up what he had stated on 20.10.2022 he had made up a new story that day of mostly residing in Lal Bagh area or that what he had stated was not correct.

102. During further cross-examination PW5 stated that he was not aware that as per the Election Commission guidelines no political party could have opened its office on 07.02.2020. At present he was aware of the same. As such, it is seen that even if

the office was the personal office of PW5, he had stated it to be the office of BJP and that he had gone to the same on 07.02.2020. Further, PW5 stated that from around 6 p.m. till 11:30 p.m. only his mother had come to the office and no office bearer of BJP had come there. The office was used by his father for his personal work. The campaign material of BJP was kept in the said office. It is significant that though PW5 stated that the office was used by his father for his personal work he also stated that the campaign material of BJP was kept in the said office. It may be mentioned that even PW15 stated that the nearest BJP office from the spot was about 40 meters away and volunteered the same was run by the complainant and his father. The said office was visible from the spot of incident. Further, PW15 stated that he did not know the complainant Sanjeev Kumar prior to the present case. During investigation, he became aware that the complainant Sanjeev Kumar and his father Madhav Prasad supported the BJP and Madhav Prasad had been a Councilor for 10 years. He was not aware that even in the past there were complaints against the accused made by BJP and Congress which were found to be false and unfounded. However, no such complaints have been proved in the present case.

103. During further cross-examination PW5 stated that he had started cleaning work in the office around 6-7 p.m. He stated that there was no safai karamchari for cleaning work in the office. The Ld. Addl. PP had argued that PW4 and PW5 had corroborated the version of each other that there was no one to clean the premises but nothing much turns on the same. The Ld. Counsel for the accused had argued that the office closed at 8.00

p.m. so there was no occasion for the complainant to be there at 11.00 p.m. It is seen that PW4 had stated during cross-examination that the office closed at 8.00 p.m. and as such no reason is forthcoming why PW5 was there till 11.00 p.m. and in fact it was even contended on behalf of the accused that as the elections were to be held on 08.02.2020, the office could not have been opened on 07.02.2020. During further cross-examination PW5 stated that the waste which he was taking to throw was the campaign material and volunteered his father had asked him to remove it. He was not aware that as per the Election Commission guidelines, no person could carry campaign material in a public place. At present he was aware of it. It is pertinent that it is the case of the accused that the complainant was distributing campaign material and when the accused had objected to the same, the accused was beaten by the complainant and his supporters. From the cross-examination of PW5 as well, it is evident that the waste which PW5 was taking to throw was campaign material. The Ld. Addl. PP had argued that there was difference between waste material and campaign material but it is significant that in the present case, no such material has been seized and as such it cannot be said whether the material was in fact waste material or was campaign material which could be distributed, once the complainant himself has stated that the waste which he was taking to throw was campaign material.

104. During cross-examination PW4 stated that it did not come to his knowledge from where Sanjeev was coming at the time of the incident. The Ld. Addl. PP had argued that the fact that PW4 had stated that it did not come to his knowledge from where

Sanjeev was coming at the time of the incident showed that he was an independent witness but no such inference can be drawn from PW4 stating that it was not in his knowledge from where Sanjeev was coming at the time of the incident. PW4 further stated that he had seen the scooty of Sanjeev being stopped from a distance of 7-8 meters. Again said, he did not see the scooty being stopped but he saw the quarrel which took place. As such, PW4 had not seen the scooty of the complainant being stopped but had seen the quarrel which took place but during his examination in chief he had stated that Sanjeev, whom he knew from before was going on a scooty with his friend Raj Kishore; as they turned right from Jhandewalan chowk, the accused Akhileshpati Tripathi was coming with around 20 to 25 persons from the front; they stopped Sanjeev and started beating him. Further, in his statement under Section 161 Cr.P.C. which is Ex.PW4/P1, PW4 had specifically stated that on 07.02.2020 at about 11.30 p.m. he was standing at Jhandewala Chowk and he saw that the son of Madhav Prasad Sanjeev Kumar who was with his friend Raj Kishore on scooty turned towards the right from Jhandewala Chowk and the accused who was standing with his supporters on the road came in front of the scooty of Sanjeev and stopped the same. However, as per his testimony during cross-examination PW4 had not seen the scooty of the complainant being stopped. The Ld. Addl. PP had argued that PW4 had corroborated the version of the complainant that the complainant was on scooty but it is seen that during cross-examination, PW4 had stated that he had not seen the scooty being stopped. In these circumstances, there was also no question of any specific

suggestion being put to PW4 that PW5 was not on scooty. It is thus seen that PW6 had not supported the case of the prosecution regarding the incident as stated by PW5 though as per the case of the prosecution, PW6 was accompanying PW5 at the time of the incident. PW4 had stated that he had not seen the scooty being stopped meaning thereby he was witness to the incident, if any that happened after the complainant was already at the spot and there are contradictions between the testimony of PW5 and PW8 about the scooty being taken by PW5 from PW8.

105. It is the case of the prosecution that the accused and his supporters had beaten the complainant and the accused had used caste specific words against the complainant and the witnesses were cross-examined regarding the same and during cross-examination PW4 stated that he had not asked Sanjeev who had abused him and what were the abuses and volunteered he had himself witnessed the incident and heard the abuses. Only the accused was abusing Sanjeev. He did not hear the other persons with the accused abusing Sanjeev. In his presence, the accused abused Sanjeev once and volunteered if he had abused Sanjeev earlier he could not say. When he reached the spot, the accused was beating Sanjeev. Thereafter, the accused had abused Sanjeev. Thus, PW4 had stated that when he reached the spot, the accused was beating Sanjeev and that in his presence the accused abused Sanjeev and he had also volunteered that he had himself witnessed the incident and heard the abuses. He further stated that he had remembered the words which were spoken in abuse to Sanjeev. He was aware that if caste related abuses are given it amounted to an offence under the SC/ST Act. As such, PW4 was

also aware that if caste related abuses were given, it amounted to an offence under the SC/ST Act.

106. PW4 further stated that he had stated to the IO “the accused and his men were abusing Sanjeev using caste specific words “*inka baap bahut bada neta banta hai, chammaar ke bachey ko sabak sikhana hai*” and he was confronted with the statement under Section 161 Cr.P.C. which is Ex.PW4/P1 wherein it was not so specifically recorded. He denied the suggestion that no caste related remarks were passed by the accused against Sanjeev. Thus, it is seen that in the statement Ex.PW4/P1, PW4 had stated to the IO that the accused and his men had pushed him and gave dirty caste specific abuses to the complainant and called him '*chamar*' but he had not used the specific words as stated by him during examination in chief. The Ld. Addl. PP for State had argued that even if the specific words were not mentioned in the statement under Section 161 Cr.P.C., it did not matter as PW4 had stated them in the Court but it is also relevant that if PW4 was aware of the specific words used, there is no reason why the same were not stated to the IO. Further, PW4 stated that only the accused was abusing Sanjeev and he did not hear the other persons with the accused abusing Sanjeev and also that in his presence, the accused abused Sanjeev once and volunteered if he had abused Sanjeev earlier he could not say.

107. During cross-examination PW5 stated that he reached the spot within one minute of leaving from the office. He could not say after how many minutes of reaching the spot were caste related words used. He could not say if it was after 5 seconds or

after 2 hours. Thus, PW5 could not say after how many minutes of his reaching the spot were the caste related words used. He stated that 2-3 persons who were with the accused also passed caste related remarks. First the accused had passed caste related remarks and then 2-3 other persons had passed caste related remarks. The persons with the accused had said different caste related remarks after adding to them. The other persons who had passed caste related remarks were known to him from before. Again said, he knew one person but he did not know the other two persons. He had written the name of the person whom he knew in the complaint and also of the other two persons. He was confronted with Ex.PW5/A where no such names were mentioned. Thus, PW5 had stated that apart from the accused, two three other persons had also passed caste related remarks and they passed different caste related remarks after adding to them. PW5 had also stated about writing the name of the other persons who had passed caste related remarks in the complaint Ex.PW5/A but he was confronted with Ex.PW5/A where no such names were mentioned. Even in the examination in chief, PW5 had not stated about any other persons passing caste related remarks, nor stated the names of anyone. It is also pertinent that PW4 had stated that only the accused was abusing Sanjeev and he did not hear the other persons with the accused abusing Sanjeev whereas PW5 had stated about 2-3 other persons passing the remarks as well. Even in the complaint Ex.PW5/A there was no reference to any other person passing caste related remarks.

108. During further cross-examination PW5 stated that as 2-3 lines were stated so he remembered the same. The accused had

passed caste related remarks two times and then the persons with him had also passed the remarks two-three times. The accused had passed different caste related remarks on both the occasions. He had remained at the spot for about half an hour more after the caste related remarks were passed. Thus, PW5 had stated that the accused had passed caste related remarks two times and that he had passed different caste related remarks on both the occasions but during his examination in chief, he had only referred to one remark “*iss chamaar ko maro, iska baap bahut bada neta banta hai, iss chamaar ko iski aukaat dikhao*” and did not refer to any other remark and even did not say that the accused had passed different caste related remarks on two occasions. Even in the complaint, there was no reference to any other caste related remark being passed though there was an 'and' between “*chamaar ko maro, iska baap bahut bada neta ban raha hai*” and “*iss chamaar ko iski aukaat dikha do*” and in the statement under Section 161 Cr.P.C. there was reference to only one such remark. Further, PW4 had stated that in his presence, the accused abused Sanjeev once and volunteered if he had abused Sanjeev earlier he could not say. A perusal of the record thus shows that though in the complaint, the complainant had stated about the accused passing caste related remarks and even before the Court, he had deposed regarding the same but there are discrepancies in the testimony of PW5 and of PW4 as to how many times the remarks were passed and whether they were passed only by the accused or by others as well. The Ld. Counsel for the accused had also pointed out that there was difference in the words which were stated by PW4 and PW5 to have been used by the accused.

It is also surprising that though so many persons were present at the spot but no witness other than PW4 has been examined who heard the accused passing caste related remarks against the complainant with PW6 turning hostile and as regards PW4, he had not mentioned the specific remarks in his statement to the IO and it is also seen that he had close affiliation with the father of the complainant and there are discrepancies in the statement of PW4 and PW5 in this regard.

109. The witnesses were also cross-examined regarding hitting the accused and PW4 stated that he did not hit the accused. He did not attack any person who was present at the spot. He remained at the spot for about 10 minutes. He could not say whether the accused was at the spot when he left the spot. He did not see Sanjeev hitting anyone. He did not come to know that the accused had sustained serious injuries or that he was unconscious and volunteered he did not sustain any injury. He did not know how and when the accused left from the spot. The accused was at the spot as long as he was there. When he left from the spot, the accused was standing and volunteered he said to him not to speak in the matter. He did not remember if he had stated to the IO in his statement under Section 161 Cr.P.C. that the accused had told him not to speak in the matter. He stated that he was told by people that the accused used to reside in Jhuggi No.9, Lal Bagh and volunteered he had never gone there. Thus, PW4 had stated that the accused was at the spot as long as he was there though at one point, he had also stated that he could not say whether the accused was at the spot when he left the spot and he had volunteered that the accused did not sustain any injury which is

contrary to the DD entries proved on record and the medical record. PW4 had also volunteered that the accused had said to him not to speak in the matter but the same was not there in the statement of PW4 to the IO.

110. During cross-examination PW5 stated that he had hit the accused. Again said, there was so much of crowd that he could not say whom he had slapped. He denied the suggestion that due to his hitting, the accused had lied on the ground. He denied the suggestion that due to his hitting, the accused sustained serious injuries and fell on the ground and became unconscious. Though, PW5 had denied the suggestions that due to his hitting, the accused had lied on the ground or that the accused sustained serious injuries and fell on the ground and became unconscious but he did state that he had hit the accused though he again said, there was so much of crowd that he could not say whom he had slapped. It is pertinent that PW5 had not even clarified that he had hit the accused in retaliation to the accused hitting him or abusing him and as such there is a possibility that the said statement of PW5 points to the fact that he himself could be the aggressor. It is also pertinent that PW4 had stated that he had not seen PW5 hitting anyone whereas PW5 himself had stated that he had hit the accused, again said he could not say whom he had slapped. Further, PW5 stated that the accused was present at the spot when he was taken by Ambulance to the hospital. However, that is contrary to the record because as pointed out by the Ld. Counsel for the accused, the DD entry regarding BJP persons stabbing AAP candidate is of 00.39.17 whereas the DD entry regarding the accused beating the caller and using caste specific

words is of 00.46.44. Further, as per Ex.PW3/A, the landing time was 00.11.47 and the name of the caller was stated to be Himanshu Aggarwal i.e. PW7 who had stated about the accused being stabbed and it mentions about the accused being taken by ambulance. The landing time in respect of the second call was 00.34.41 and the caller was the complainant Sanjeev Kumar which was about the AAP MLA Akhilesh Pati Tripathi beating the caller and using caste specific words. Even as per the MLC of the accused Ex.P-1, he was brought to the hospital at 12.55 a.m. and the alleged history of assault was of about one hour back whereas per the MLC of the complainant Ex.PW13/A, he was brought to the hospital at 1.25 a.m. Thus, not only the call regarding the accused being stabbed was prior in time but even the admission of the accused in hospital was much prior to the admission of the complainant in the hospital. In these circumstances, it cannot be believed that the accused was present at the spot when the complainant was taken to the hospital by ambulance.

111. It is the case of the accused that the complainant was campaigning and distributing election material in violation of the Election Code of Conduct as per which campaigning ended 48 hours before the election and when the accused objected to the same, the complainant and his persons hit the accused due to which the accused fell down and became unconscious. During cross-examination PW4 stated that he was not aware that campaigning ended 48 hours before election as per the model code of conduct or that distribution of campaign material was also prohibited. He stated that the campaign material was kept in

the office and volunteered it used to come from outside as well when needed. PW4 stated that it did not come to his knowledge that on 07.02.2020 Sanjeev was indulging in campaigning against the guidelines of Election Commission or that Sanjeev was distributing campaigning material amongst the residents of Lal Bagh. He denied the suggestion that the same was in his knowledge. It is pertinent that PW4 did not deny but rather stated that it did not come to his knowledge that on 07.02.2020 Sanjeev was indulging in campaigning against the guidelines of Election Commission or that Sanjeev was distributing campaigning material amongst the residents of Lal Bagh. PW4 further stated that it did not come to his knowledge that the accused who resided in the same area, when he came to know about the same he objected to it or that all of Sanjeev's supporters who were associated with BJP attacked the accused or that the accused was attacked by Sanjeev and others with the blunt side of a knife causing serious injuries to the accused or that as a result of the same the accused collapsed and became unconscious. He denied the suggestion that the same was in his knowledge. Again, it is pertinent that PW4 did not deny that when the accused objected, all of Sanjeev's supporters who were associated with BJP attacked the accused or that the accused was attacked by Sanjeev and others with the blunt side of a knife causing serious injuries to the accused or that as a result of the same the accused collapsed and became unconscious and he merely stated that it was not in his knowledge though at another point he had stated that the accused was at the spot when he had left from there. He stated that it was not in his knowledge that the workers of AAP

informed the police or that the police reached at the spot at 12 midnight or that as the injuries of the accused were serious, instead of removing him by PCR, an Ambulance was requisitioned or that after the accused had been removed from the spot, in order to save himself Sanjeev made a false PCR call. He denied the suggestion that the same was in his knowledge. Again, rather than denying what was put to him, PW4 merely stated that it was not in his knowledge that the workers of AAP informed the police or that the police reached at the spot at 12 midnight or that as the injuries of the accused were serious, instead of removing him by PCR, an Ambulance was requisitioned or that after the accused had been removed from the spot, in order to save himself Sanjeev made a false PCR call.

112. During further cross-examination PW4 stated that he was aware that Sanjeev is a law student. He denied the suggestion that Sanjeev had manipulated the facts and lodged a false case in order to save himself or that no incident took place in his presence or that he was an introduced witness being a BJP worker and having cordial relations with Sanjeev and his family or that he was tutored by them or that he had deposed at their instance. He admitted that on the previous date, Shri Madhav Prasad had come to the Court with him and that they, including Sanjeev had gone back together. Thus, PW4 had denied the suggestion that Sanjeev had manipulated the facts and lodged a false case in order to save himself or that he was an introduced witness but he had also admitted that on the previous date, Shri Madhav Prasad, father of the complainant had come to the Court with him and he and the complainant and his father had gone

back together.

113. PW5 was also cross-examined along similar lines and he stated that it was not in his knowledge that the Election Code of Conduct had come into force from 06.02.2020 and that campaigning was prohibited. At present he was aware that campaigning was prohibited 48 hours before the election. PW5 stated that the election to Vidhan Sabha was on 08.02.2020. He had voted on 08.02.2020. He had no responsibility allotted to him in the elections. PW5 stated that he was not aware as to whether the candidate he was supporting had won or lost. However, he was aware that the accused had won the elections. He denied the suggestion that on 07.02.2020 he was indulging in campaigning against the guidelines of Election Commission or that he was distributing campaigning material amongst the residents of Lal Bagh or that the accused who resided in the same area, when he came to know about the same, he objected to it or that all of his (my) supporters who were associated with BJP attacked the accused or that the accused was attacked by him and others with the blunt side of a knife causing serious injuries to the accused or that as a result of the same the accused collapsed and became unconscious. He denied the suggestion that the workers of AAP informed the police or that the police reached at the spot at 12 midnight or that as the injuries of the accused were serious, instead of removing him by PCR, an Ambulance was requisitioned or that after the accused had been removed from the spot, in order to save himself he made a false PCR call. He denied the suggestion that using his legal knowledge as a law student and as his father had been a Councilor, from a reserved

constituency so the story of caste related remarks was made up or that he wanted to achieve the dual purpose of tarnishing the image of AAP thereby which was being supported by poor and lower caste persons. He denied the suggestion that as the BJP was the ruling party so he got favour from police or that he had fabricated records in connivance with the police and created false documents. He denied the suggestion that he had placed false facts about the incident which had not taken place or that he had given a distorted version or that he was the person who was the aggressor and caused injuries. He denied the suggestion that being the supporter of the ruling party in centre and the police being under its control, the police did not take any action against him. Thus, PW5 denied the suggestion that on 07.02.2020 he was indulging in campaigning against the guidelines of Election Commission but as noted above, it has come on record that the complainant was carrying campaign material though he had stated that it was waste material. He also denied the suggestion that the accused objected to it or that the accused was attacked by him and others with the blunt side of a knife causing serious injuries to the accused or that as a result of the same the accused collapsed and became unconscious. He also denied the other suggestions that were put to him. At the same time, PW5 had stated about slapping the accusing though he again said, he did not know whom he had slapped and it has come in evidence that some incident had taken place on 07.02.2020.

114. During cross-examination PW15 stated that it was in his knowledge that as per the Election Code of Conduct, possession and distribution of campaign material was prohibited 48 hours

before the election. It did not come to his knowledge that the complainant was distributing campaign material in violation of the Election Code of Conduct. It did not come to his knowledge that the accused used to reside in the area of Lal Bagh or that when he objected to the complainant distributing election material then he was assaulted by the complainant and other BJP party workers. Thus, PW15 stated that it did not come to his knowledge that the complainant was distributing campaign material in violation of the Election Code of Conduct or that when the accused objected to the complainant distributing election material, then he was assaulted by the complainant and other BJP party workers and as noted earlier, even the 'waste' material which the complainant was carrying at the time of the alleged incident has not been seized in the present case. PW15 stated that he had inquired from the accused during his interrogation as to who had caused injury to him. He had carried out investigation as to who had caused injury to the accused. He came to know that there was an argument between the complainant and the accused, there was exchange of words and then a scuffle took place. No case was registered in respect of causing injury to the accused nor he gave any direction in that regard and volunteered it was a case of simple injury. Thus, PW15 stated that he had carried out investigation as to who had caused injury to the accused but he stated that no case was registered in that regard as it was a case of simple injury. The Ld. Counsel for the accused had argued that the accused was unconscious so he could not make a detailed report to the police about the incident. From the MLC of the accused Ex.P-1, it is

evident that the accused was unfit for statement and he was drowsy and not obeying the commands and as such he could not have been expected to make a detailed report of the incident immediately. However, there is merit in the submission of the Ld. Addl. PP for State had argued that if no case was registered on the complaint of the accused, it was open to him to have taken recourse to other legal remedies but there is nothing on record to show that the accused had availed any legal remedies.

115. PW15 also denied the suggestion that during the course of investigation it was revealed that the complainant Sanjeev Kumar was campaigning against the guidelines of the Election Commission or that the accused who was present in the same area, after coming to know the same objected to the same or on account of the same, the complainant and supporters of BJP attacked the accused and caused injury on his person as a result of which he collapsed and became unconscious. It was not in his knowledge that the complainant was a law student. He denied the suggestion that on the instructions from the higher ups he did not take any action against the complainant and supporters of BJP despite knowing that they were involved in violation of Election Code of Conduct and they were guilty of causing serious injuries on the person of the accused. He denied the suggestion that he had not fairly investigated the case or that he had withheld the material evidence which was not favouring the case of the prosecution. Thus, PW15 had denied the suggestions put to him of not taking any action against the complainant and supporters of BJP on instructions from higher ups but even the accused had not availed any other remedy.

116. During further cross-examination PW15 stated that the accused was not present at the spot when he reached there. He did not come to know how the accused was removed to hospital – whether by PCR or by ambulance. It did not come to his knowledge from the record that when PCR reached the spot the accused was lying unconscious. Thus, PW15 stated that the accused was not present at the spot when he reached there. He was shown Ex.PW3/A and he stated that he had placed the same on record. He had read the same. He had got the same later on and then he had read it. He did not examine any officer from PCR who had first reached the spot and seen the accused lying on the spot and in whose presence the accused was removed to hospital in ambulance. He stated that there was no need to examine the said witnesses. He denied the suggestion that he did not examine the said witnesses as they would have demolished the entire prosecution story. It did not come to his knowledge that the complainant was the aggressor and had attacked the accused. As such, PW15 had not examined any officer from PCR and he also stated that there was no need to examine the said witnesses. It was argued on behalf of the accused that deliberately no officer from PCR had been examined who could state about the accused lying unconscious and being removed to the hospital in an ambulance but even otherwise, it is seen that the record is there which exhibits that the accused was removed to hospital by ambulance.

117. During cross-examination PW16 admitted that elections were to be held on 08.02.2020. Again said, he was not confirmed whether it was on 08.02.2020 but the elections were to be held in

a day or so. He admitted that he was aware that the candidate of Aam Aadmi Party was Akhilesh Pati Tripathi and Kapil Mishra was contesting from BJP. He was aware that the name of the father of the complainant Sanjeev Kumar is Madhav Prasad but he was not aware if Madhav Prasad had remained a Councilor for 10 years from the said area. He was not aware whether Sanjeev Kumar was affiliated to any party or not. The sitting MLA at that time was the accused Akhilesh Pati Tripathi. PW16 stated that it was not in his knowledge that the Election Code of Conduct prohibited distribution of campaigning material 48 hours before the election. Again said, the same was in his knowledge but not if anyone was violating the same. It is pertinent that PW16 stated that it was not in his knowledge if anyone was violating the Election Code of Conduct and he did not outrightly deny that the same was being violated. The Ld. Addl. PP had argued that the accused had nowhere stated that the complainant had distributed election material and there was no documentary evidence to prove it. It is true that there is no documentary evidence to prove that the complainant had distributed election material but it was for the IO to have seized the material which the complainant was allegedly going to throw as 'waste' material rather than the accused being expected to produce documentary evidence in that regard.

118. PW16 was cross-examined regarding the accused sustaining injuries and being taken to the hospital and he stated that the spot of incident was about one kilometer from the PS. He stated that SI Ravi Kumar did not give any confirmation call from the spot regarding the accused being stabbed or having

sustained injury and volunteered no one met at the spot. It came to his knowledge that accused Akhilesh Pati Tripathi was taken to Vinayak Hospital but he could not say if he was taken in an ambulance. He was not aware if he was taken to another hospital from Vinayak Hospital. He stated that in the morning at about 6-7 a.m., he came to know about the status of the case and that the accused had been taken to Vinayak hospital. He had gone to Vinayak hospital to see the accused. He did not record the statement of the accused and volunteered that was the job of SI Ravi Kumar. He had only spoken to the accused about the injury but did not make inquiry from him. Till that time, no case had been registered against the accused. He did not remember on what date and at what time he had gone to see the accused in the hospital. He did not remember whether he had gone the same day when SI Ravi Kumar had briefed him about the case or the next day or on any other day. He did not remember if SI Ravi Kumar had accompanied him to the hospital. He stated that his driver was with him but he did not remember his name. He stated that he kept meeting the accused after he met him in the hospital but he did not remember when he met him for the first time after meeting him in the hospital. Thus, PW16 stated that he had gone to Vinayak hospital to see the accused but he did not record the statement of the accused and volunteered that was the job of SI Ravi Kumar. He did not remember several other things that were asked of him and he also did not state anything specifically about the accused sustaining injuries.

119. The witnesses were also cross-examined regarding when the complainant met PW4 after the incident and PW4 stated that

he did not go to the hospital where Sanjeev was taken. He met Sanjeev after two days of the incident at the house of Sanjeev. He did not get to know when Sanjeev came back from the hospital. On 07.02.2020, he had met Madhav Prasad in the afternoon and on 08.02.2020 he met him. He had told Madhav Prasad that he had witnessed the incident in question. On 09.02.2020 when he met Sanjeev, it did not come to his knowledge whether he had made any complaint or lodged any FIR. He did not even ask him about the same. He stated that he did not go to the hospital to see Sanjeev after the incident. PW5 had also stated during cross-examination that he did not meet Mohd. Shami on 08.02.2020. He did not go with him to the hospital. He met Mohd. Shami on 09.02.2020 and thereafter he kept meeting him. As such PW4 had stated about meeting the complainant and his father prior to the filing of the complaint on 10.02.2020 but he had not even asked the complainant whether he had lodged any complaint or FIR or not which does not stand to reason as he knew the complainant and his family and it is his case that he had seen the incident take place.

120. It was contended on behalf of the accused that PW4 was not an eye-witness and had been introduced later on. During cross-examination PW4 stated that he had voted on 08.02.2020. He had seen police persons at the polling booth. He did not complain to the police persons about the incident in question nor even to the senior police officers who were visiting at that time. He did not make any representation or complaint to the police regarding the incident at any point of time and volunteered except his statement recorded by the IO on 21.03.2020. He did

not make any complaint or give any representation in any Court or before any forum prior to 21.03.2020. As such, PW4 himself had not made any complaint to the police or any representation regarding the incident though he was stated to be an eye-witness to the incident. During cross-examination PW15 stated that he had read the complaint Ex.PW5/A on the basis of which the FIR was registered. The name of Shami Khan was mentioned in the complaint. He was confronted with the complaint Ex.PW5/A wherein the name of the witness Shami Khan was not mentioned as eye-witness or otherwise. Thus, in the complaint Ex.PW5/A the name of PW4 was not mentioned as an eye-witness or otherwise. PW15 further stated that Sanjeev Kumar had informed him that Shami Khan was the eye-witness of the incident on 21.03.2020. Prior to that Shami Khan had not given any complaint or representation to him or any other police officer. Thus, even as per PW15, Shami Khan himself had not given any complaint or representation to him or any other police officer prior to 21.03.2020 and it was also not in the knowledge of the police officers that Shami Khan was an eye-witness to the incident. It is strange that the complainant did not state about the presence of Shami Khan in the complaint, nor Shami Khan made any complaint nor the name of Shami Khan was told to the police officials till 21.03.2020 and as noted above he had gone to the police station only on being told by Madhav Prasad and his statement was recorded that day.

121. During cross-examination PW5 stated that Mohd. Shami never went with him to the police station. Police did not record any statement of Mohd. Shami in his presence. To his

knowledge, Mohd. Shami did not give any representation, statement or complaint to the police. As such, PW5 had also stated that to his knowledge, PW4 did not give any representation, statement or complaint to the police. During cross-examination PW15 stated that he had examined Shami Khan in his office. He had not given any notice under Section 160 Cr.P.C. to him and he had come with the complainant. It did not come to his knowledge that Shami Khan had remained the President of BJP Adhyaksh Mandal for several years. During investigation the political affiliation of Shami Khan did not come to his knowledge and he also did not inquire about the same. He did not come to know during investigation that Shami Khan was a procured witness or that the complainant had brought him after tutoring him. Thus, PW15 stated that during investigation, the political affiliation of PW4 did not come to his knowledge. It is seen, as contended on behalf of the accused, that in the complaint dated 10.02.2020 Ex.PW5/A on the basis of which the FIR was lodged, the name of PW4 was not mentioned as an eye-witness to the incident and even PW4 had not taken any steps to make any complaint to the police himself though he had also stated about being pushed.

122. The witnesses were then cross-examined on the police coming to the spot and PW4 stated that the police had come in about 10-15 minutes of his reaching the spot. He did not call the police and volunteered Sanjeev himself called the police. Sanjeev had called after 5 minutes of his reaching the spot. Sanjeev was taken in an Ambulance after the police came to the spot. When the police came to the spot the fighting had stopped however,

talks were taking place. He stated that he had not called the police regarding the present incident. Immediately after the police came, they took Sanjeev to the hospital. He did not give any statement to the police at the spot when the police came. Thus, PW4 had stated about the police reaching the spot in 10-15 minutes and that Sanjeev himself had called the police and as per the record also Sanjeev had made a call to the police though prior to that, call had already been made to the police. However, PW4 did not give any statement to the police at the spot. He also stated that he was not medically examined though he had stated about being pushed.

123. During cross-examination PW5 did not remember after how much time of his making the call on 100 number had police come to the spot. He could not even say whether the police had come after half an hour or two hours. He stated that police had not taken him to the hospital and volunteered ambulance had taken him. Thus, PW5 had also stated about being taken in an ambulance to the hospital. He did not remember if he had met the police at the spot before he was taken to the hospital. His father was not present at home when he had gone to throw the garbage. His mother had accompanied him to the hospital. He did not remember after how much time of his mother coming to the spot, the ambulance took him to the hospital. He could not say if it was after half an hour or one hour. Thus, PW5 had stated about his mother accompanying him to the hospital though his mother has not been joined as a witness in the present case. He also stated that in his presence police had not examined any family member of his. In his knowledge no family member of his had given any

representation, statement or complaint to the police. Thus, the family members of the complainant were present at the spot but they had not given any representation, statement or complaint to the police.

124. During cross-examination PW12 stated that he did not remember the exact time when he reached the spot but it was 10 to 15 minutes after receiving the call. He came to know the spot of incident when he reached the spot. He came to know the same from the public. Around 40-50 public persons were present at the spot. He did not record the statement of any public person at the spot. He did not obtain the names and addresses of any public persons at the spot and volunteered they left for the hospital. No relative or friend of Sanjeev was present in Hindurao Hospital and volunteered only Sanjeev was there. He remained in Hindurao Hospital for about 2-2½ hours and he remained in Vinayak Hospital for about 1 hour. Ct. Sandeep remained with him throughout. He had not sent any formal communication to the duty officer from the hospital before recording DD No.14A. While returning from the hospital he had gone to the spot. He stated that there were a number of jhuggis around the spot of incident. He did not record the statement of any public person when he went to the spot the second time and volunteered he had asked the public persons and the persons occupying the jhuggis but none gave their statement. He could not give the name of any public person or address of any jhuggi. Thus, PW12 stated that around 40-50 public persons were present at the spot but he did not record the statement of any public person at the spot and he also did not obtain the names and addresses of any public persons

at the spot. He had also stated that no relative or friend of Sanjeev was present in Hindurao Hospital and volunteered only Sanjeev was there though PW5 had stated that his mother had accompanied him to the hospital. PW12 had stated about going to the spot again while returning from the hospital but he did not record the statement of any public person when he went to the spot the second time. As such, PW12 had not recorded the statement of any public person at the spot.

125. During cross-examination PW15 stated that the operator, gunman and office staff had accompanied him when he reached the spot on 07.02.2020. PCR was not there when he reached the spot. He met the SHO at the spot. Later on the SHO had informed him about the details and that the accused had been admitted in Vinayak hospital. At the time when he reached the spot 15-20 persons were present at the spot. He did not record the statement of any person nor asked the SHO Inspector Sudhir Kumar to record the statement of anyone. He did not note the name and address of any person who was present at the spot nor asked the SHO to do so. He stated that the SHO was already present at the spot when he reached there. When he left the spot the SHO was still there. He remained at the spot for about half an hour. He did not inquire from any person at the spot but he issued direction to the SHO to inquire as to how the incident had taken place. He used to meet the SHO routinely after 08.02.2020. The SHO discussed the medical status of the accused with him when he met him in routine after 08.02.2020 as also regarding the medical status of the complainant. Thus, PW15 stated that he met the SHO at the spot. He also stated that at the time when he

reached the spot 15-20 persons were present at the spot though he did not record the statement of any person nor asked the SHO Inspector Sudhir Kumar to record the statement of anyone. However, he had issued direction to the SHO to inquire as to how the incident had taken place.

126. During cross-examination PW16 stated that there were other works so he did not go to the spot himself on receiving the call about the candidate of AAP being stabbed. PW16 stated that it came to his knowledge that after the incident several PCRs had reached the spot. It was not in his knowledge that PCR had reported that the SHO had come to the spot with his team at 12:16 a.m. and volunteered he had not gone to the spot. He denied the suggestion that he was deposing falsely in the said regard or that he was present at the spot before 12:00 a.m. or that the accused was lying unconscious in his presence or that in his presence it came to be known that BJP persons had caused injury to the accused. He denied the suggestion that there was a request to remove the accused to hospital not by PCR but by Ambulance in his presence or that in his presence the accused was removed in an Ambulance. He denied the suggestion that as it was not suiting the case of the prosecution, he changed his stand about being present at the spot as it was an important call or that because of the said reason he had given a vague and false reply that he was doing other work at the PS. Thus, PW16 stated that there were other works so he did not go to the spot himself on receiving the call about the candidate of AAP being stabbed and he denied the suggestions to the effect that he was indeed present at the spot. It is pertinent that PW15 had categorically stated

about the presence of the SHO at the spot when he reached there whereas PW16 stated that he had not gone to the spot which casts doubt on the testimony of PW16. Further, if the candidate of AAP and the sitting MLA had reportedly been stabbed and the elections were to be held the next day, it cannot be believed that the SHO had other works which were more important because of which he did not go to the spot. There is also merit in the contention of the Ld. Counsel for the accused that Ex.PW3/A shows the presence of the SHO at the spot at 12.16.34 and as such, it did not lie in the mouth of the SHO to say that he was not present at the spot.

127. The witnesses were cross-examined on going to the spot of incident and during cross-examination PW11 stated that he came to know about the registration of the case on the day it was registered i.e. 01.03.2020. He did not remember the division in which the spot of incident fell. He had been to the said spot earlier as well. SI Ravi was the Incharge of the said division. He had not seen the house of the complainant earlier but he had seen the locality. SI Ravi was not with them on 21.03.2020. He had not seen the house of the accused who had won the election and whose house was in the area of Lal Bagh. He had not joined investigation in the present case prior to 21.03.2020. He came to know in the morning at about 9:00 a.m. that he had to join in the investigation of the present case. They had gone to the house of the complainant at around 12:30 p.m. They remained at the spot for about 1½ hours. He did not know the complainant from before. He did not know Mohd. Shami from before. He admitted that the spot of incident is densely populated and there are a

number of jhuggis in the area. The nearest jhuggi was around 4 to 5 steps from the spot of incident. He did not note the name or address of any person residing in any nearby jhuggi. ACP had inquired from them. There was none other than the ACP and him who were carrying out the investigation. The statements of witnesses were recorded in the office of ACP. He had typed the said statements. He had not made any entry in the roznamcha register about going to the spot or thereafter returning from the spot. He denied the suggestion that he had been introduced as a witness in the present case as he was asked to do the writing/typing work. He stated that the witnesses remained in the office of ACP till about 5 p.m. He denied the suggestion that he had not disclosed the material facts which did not favour the case of the prosecution. Thus, PW11 stated that he had not joined investigation in the present case prior to 21.03.2020 and on that day, they had gone to the house of the complainant at around 12:30 p.m. He stated that he did not know the complainant from before nor he knew Mohd. Shami from before. It is pertinent that PW11 admitted that the spot of incident was densely populated and there were a number of jhuggis in the area and he had stated that the ACP had inquired from them though the statement of no such person is on record.

128. PW15 and PW16 were also cross-examined on going to the spot of incident after the day of incident and during cross-examination PW15 admitted that on 08.02.2020 the elections for Vidhan Sabha were to be held. He was not aware who was the sitting MLA of that area falling within the jurisdiction of Model Town constituency. He was not aware of the result of the election

held on 08.02.2020. The accused was contesting for the elections on 08.02.2020 from AAP. He was aware that at present the accused is the sitting MLA. Prior to 08.02.2020 he did not know the accused at all. He came to know during investigation that the accused had won on AAP ticket twice prior to 08.02.2020. He stated that he had mandatory round the clock duty on 08.02.2020. He could not tell how far the nearest polling centre was from the spot of the incident and volunteered there were 25-30 polling centres. PW15 further stated that he was on patrolling on 08.02.2020. He stated that after he left the spot he did not go to the spot specifically on 08.02.2020 but he was on round in the area and thereafter he visited the spot during investigation of the case on 21.03.2020. He might have visited the spot between 08.02.2020 and 21.03.2020 and volunteered disputes keep happening in the area. Thus, PW15 stated that prior to 08.02.2020 he did not know the accused at all and he came to know during investigation that the accused had won on AAP ticket twice prior to 08.02.2020. PW15 stated that he was on patrolling on 08.02.2020 though he did not go to the spot specifically on 08.02.2020 and thereafter he visited the spot during investigation of the case on 21.03.2020. He might have visited the spot between 08.02.2020 and 21.03.2020 and volunteered that disputes kept happening in the area but it is not the case that any investigation was carried out by him at the spot between 08.02.2020 and 21.03.2020.

129. During cross-examination PW16 stated that he had visited the spot of incident but he did not remember the date. He had gone to the spot prior to the registration of the present case. He

was visiting the polling booths on the day of the election. SI Ravi Kumar had told him about the spot of incident. He did not record the statement of any witness from the neighbourhood at that time. It was a residential area. He admitted that the area is densely populated and there are a number of jhuggis in the area. He had inquired from the surrounding jhuggis and he was told that the incident had taken place in the night but no one gave the details. He did not note the name or address of any of the persons from whom he had made inquiries. Thus, PW16 stated that he had visited the spot of incident but he did not record the statement of any witness from the neighbourhood at that time. He also admitted that the area was densely populated but it is seen that no statement of any public witness other than PW4 and PW6 was recorded in the present case.

130. The witnesses were also cross-examined regarding the site plan and PW11 stated that the site plan was prepared by him on the instructions of the ACP. The signatures of the witnesses or complainant were not taken on the site plan. He also did not sign the site plan. He denied the suggestion that they had never visited the spot of incident or that the site plan was prepared sitting at the PS. PW15 did not remember if the signatures of any witness were obtained on the site plan Ex.PW5/B and volunteered the same was prepared at the instance of Sanjeev Kumar. He was shown Ex.PW5/B and it did not bear the signatures of any witness. He denied the suggestion that he had never inspected the spot or that the site plan was prepared sitting in the police station. Thus, the signatures of the complainant or any witness were not there on the site plan though there is also nothing specific to

dispute the site plan and all the witnesses had stated about the spot of incident.

131. The IO was cross-examined on producing the CDRs of the relevant persons on record and PW15 stated that he had not produced the CDR of all the relevant persons on record in the present case. He had stated about not producing the CDR of PW4 and PW6 and had stated that was because they were eye-witnesses though that cannot be regarded as a cogent explanation.

132. The witnesses were then cross-examined regarding the presence of other persons at the spot and PW4 stated that there were about 15 to 20 people at the spot. There were people from that area as well as outsiders. He stated that the mother and brother of Sanjeev had come to the spot by about 10:45 p.m. Even PW6 had stated about the presence of several persons though he had stated that 150-200 people had gathered at the spot and he had also stated about the mother of Sanjeev coming to the spot. PW5 also stated during cross-examination that the name of his mother is Sobhawati Devi. When the incident took place, his mother, brother and sister came to the spot. His father and other family members had also come to the spot. He stated that after his family members came to the spot there was no physical fight and only exchange of abuses. Before his family members had come to the spot, the persons present there had first physically attacked him. After his mother and uncle had come to the spot no one hit him and volunteered he was made to move to a side. Thus, the witnesses had stated about the family members of PW5

coming to the spot and PW5 had also stated that after his family members came to the spot, there was no physical fight and no one hit him. However, it is seen that none of the family members of the complainant have been joined as witnesses in the present case.

133. During further cross-examination PW4 stated that he did not know Balmiki Mandal, son of Guteswar Mandal, r/o Jhuggi No.25A/360 T, Lal Bagh, Bajrang Chowdhary, s/o Satyadev Chowdhary, r/o Jhuggi No.25 A/190 T, Lal Bagh Azadpur, Raj Deepak son of Ashok Jha, r/o 25A/170 T, Lal Bagh Azadpur, Rangna w/o Ashok Kumar, r/o N-9A/420, Lal Bagh, Azadpur, Sikandar Shah s/o Butan Shah, r/o Jhuggi No.N-25/A-125, Lal Bagh, Azadpur but he knew Arif Khan s/o Rustam Khan, r/o C-323, C Block, Lal Bagh, Azadpur. He did not see Arif Khan at the time of the incident. He denied the suggestion that he knew the said persons during campaigning or that they were present at the spot at the time of the incident. He stated that a crowd had collected at the spot and volunteered he only knew the accused and Raj Khurana. Thus, PW4 stated that he did not know the persons whose names were put to him except Arif Khan and Arif Khan was not present at the spot. He stated about knowing only the accused and Raj Khurana. PW4 further stated that he knew Raj Khurana and the accused from amongst the persons who were present there. Raj Khurana was supporting AAP. He was aware that he resided in Rana Pratap Bagh and not Lal Bagh. He was aware that Raj Khurana had been BJP Councilor.

134. During cross-examination PW5 stated that he did not know Balmiki Mandal, son of Guteswar Mandal, r/o Jhuggi No.25A/360 T, Lal Bagh, Bajrang Chowdhary, s/o Satyadev Chowdhary, r/o Jhuggi No.25 A/190 T, Lal Bagh Azadpur, Raj Deepak son of Ashok Jha, r/o 25A/170 T, Lal Bagh Azadpur, Rangna w/o Ashok Kumar, r/o N-9A/420, Lal Bagh, Azadpur, Sikandar Shah s/o Butan Shah, r/o Jhuggi No.N-25/A-125, Lal Bagh, Azadpur but he knew Arif Khan s/o Rustam Khan, r/o C-323, C Block, Lal Bagh, Azadpur. He did not remember if Arif Khan was present at the time of the incident. He denied the suggestion that he knew the said persons during campaigning or that they were present at the spot at the time of the incident. Thus, PW5 also did not know the said persons except Arif Khan but he did not remember if Arif Khan was present at the time of the incident and he denied the suggestion that he knew the said persons during campaigning or that they were present at the spot at the time of the incident.

135. During cross-examination PW15 stated that it did not come to his knowledge during investigation that Balmiki Mandal, son of Guteswar Mandal, r/o Jhuggi No.25A/360 T, Lal Bagh, Bajrang Chowdhary, s/o Satyadev Chowdhary, r/o Jhuggi No.25 A/190 T, Lal Bagh Azadpur, Raj Deepak son of Ashok Jha, r/o 25A/170 T, Lal Bagh Azadpur, Rangna w/o Ashok Kumar, r/o N-9A/420, Lal Bagh, Azadpur. Sikandar Shah s/o Butan Shah, r/o Jhuggi No.N-25/A-125, Lal Bagh, Azadpur and Arif Khan s/o Rustam Khan, r/o C-323, C Block, Lal Bagh, Azadpur were present at the spot at the time of the incident. He denied the suggestion that all the said persons informed him about the

incident after he reached there in the intervening night of 7th and 8th February 2020. He denied the suggestion that he had deliberately neither recorded himself nor directed anyone else to record the statement of the eye-witnesses referred to. Thus, PW15 had stated that it did not come to his knowledge that the persons referred to were present at the spot at the time of the incident and he denied the suggestion that he had deliberately neither recorded himself nor directed anyone else to record the statement of the said witnesses. The Ld. Addl. PP had argued that DW1 had stated that her statement was recorded by police officers at the spot but no suggestion was put to PW11 that public persons were present at the spot or their statements were recorded at the spot and the names of the said persons were not put to PW11 during cross-examination but it is pertinent that PW11 had stated that he had not joined investigation in the present case prior to 21.03.2020 and as such when PW11 had not gone to the spot, the question of putting names of persons who were allegedly on the spot on the day of the incident does not arise.

136. The accused in support of his case that the complainant was campaigning against the guidelines of the Election Commission and that when he objected to the same, he was attacked by the complainant and supporters of BJP had examined two defence witnesses. DW1 had deposed that she saw that the complainant Sanjeev was distributing election material; he told her also that the elections were to be held on 08.02.2020 and that she should vote for BJP; the accused Akhilesh Pati Tripathi came from the gali where he used to reside i.e. near Mithla Park and

told Sanjeev not to do so and that the Election Code of Conduct was in place; there were 10 to 15 persons with Sanjeev; they did not agree to what the accused told them and they attacked him; one boy had a knife in his hand and he attacked the accused with the same; the accused fell unconscious; the SHO had also come to the spot and inquired from her and she told him what had happened; one Ambulance had come to the spot and took the accused. It was the contention of the Ld. Addl. PP for State that the testimony of the defence witnesses could not be relied upon and DW1 had deposed falsely about her children playing near the Jhandewala Chowk at 11.30 p.m. During cross-examination by the Ld. Addl. PP for State, DW1 stated that she did not know the address of the Beauty Parlour which she was running. The parlour was at a distance from her house but her house was close to the spot of incident. The parlour was around 10 galis away from her house. Jhandewala Chowk was about 4 to 5 galis from her house and volunteered the children were playing on the main road. She admitted that there were a number of jhuggis between her house and the spot of the incident. She admitted that a Subzi Mandi was also put in the area and volunteered during the day. She stated that her children were playing at 11:30 p.m. as during the day due to the Mandi they did not get any place to play. She stated that she had come to call her children when she saw the incident. She had come alone and volunteered her house was close to the spot of incident. She denied the suggestion that she was deposing falsely that her children were playing at Jhandewala Chowk or that the distance between Jhandewala Chowk and her house was quite big so her children could not

have been playing there at 11:30 p.m. in the night. However, DW1 had stated that as there used to be a Mandi during the day so her children used to play at the spot in the night. DW1 stated that there was no park near her house and volunteered there was a small park called Mithla Park near her house. She denied the suggestion that she was deposing falsely regarding the fact that there was no park near her house despite the fact that one Mithla Park was only at a distance of 70 metres away from her house. She denied the suggestion that there was one another park in the name of M2K park which was only 100 metres away from her house and volunteered the said park was located in Azadpur. She denied the suggestion that the location of the said park reflected that she created a false story regarding the playing of her children at the spot at odd hours. Thus, DW1 had denied the suggestions put to her though she had herself volunteered that there was a small park called Mithla Park near her house.

137. DW1 was also cross-examined on her political affiliation and she stated that she was supporting the Congress in the elections which took place on 08.02.2020. She was the Block President of Congress. She had letter showing that she was supporter of Congress. She stated that she was 10th pass. She was the Block President of Congress for almost 6 years. DW1 had brought a letter issued by District President Shri Kamlesh Choudhary showing that she was Secretary, Chandni Chowk District Mahila Congress. The same is **Ex.DW1/A**. She admitted that the same was not dated and did not contain any reference number and the place for reference number was blank and also did not contain any stamp of anyone and volunteered she had

received the same as it is. She denied the suggestion that Ex.DW1/A was a fabricated document or that the same had been falsely created by her as an afterthought to show that she was working with the Congress. Thus, DW1 had denied the suggestion that Ex.DW1/A was a fabricated document but the said document cannot also be relied upon as the same was not dated and did not even contain the stamp of anyone.

138. DW1 was then shown a photograph Mark Y and she identified herself at point A in the same. She was shown photographs Mark Y1 and Y2 and she identified herself at point A in the same. She admitted that in Mark Y, she was wearing cap of AAP along with other persons and there was a banner of the accused in the background and volunteered a camp had been put by AAP and she had got the photograph clicked out of fun. She denied the suggestion that she was deposing falsely regarding the said fact i.e. she had got the photograph clicked out of fun and in fact the photograph Mark Y was clicked during the campaigning for elections i.e. before the date of incident. She admitted that the photographs Mark Y1 and Y2 were clicked during the victory procession of the accused. She denied the suggestion that she was also celebrating the victory of the accused or that the same showed that she was a supporter of AAP and volunteered the procession was passing from there and she stood there. The Ld. Addl. PP had argued that photographs were put to DW1 which she admitted and which showed that she supported AAP. It is true that DW1 had volunteered explanations for being in the said photographs and the said photographs have also not been proved on record but she had identified herself in the photographs Mark

Y, Y1 and Y2.

139. During further cross-examination DW1 stated that she had not made any call to the police on seeing that the complainant was distributing election material in violation of Election Code of Conduct and volunteered that it was not her job. However, if she had affiliation with any party, she would have brought it to the notice of higher officials if there was any violation of the Election Code of Conduct. She stated that she did not make a call to the police and volunteered someone from the public had made a call and she was trying to save her children. She stated that she knew the complainant Sanjeev as he resided in Lal Bagh. He had one brother and a sister. She could not tell their names. She denied the suggestion that Sanjeev was not distributing any election material or that she had deposed falsely in that regard at the instance of the accused. She stated that Sanjeev was at a distance of 5 steps from her when she saw him distributing the election material and volunteered children were also playing there. She denied the suggestion that the complainant and his persons had not attacked the accused or that she had not witnessed any such incident or that she was an introduced witness at the behest of the accused or that she was not present at the spot at the time of the incident. She denied the suggestion that Sanjeev/complainant along with his friend Raj Kishore was going towards the garbage bin on scooty and accused was standing with his 30-40 supporters or that the accused stopped the scooty and took out the key of the scooty or that thereafter the accused caught hold of the collar of the complainant and gave a slap and stated “*iss chamaar ko maro, iska baap bahut bada neta*

banta hai, iss chammaar ko iski aukat dikhao". She denied the suggestion that the other persons who were accompanying the accused also started beating the complainant or that with the intervention of Mohd. Shami Khan and other persons including the family members of the victim, they could save the complainant. Thus, DW1 had denied the suggestions put to her and reiterated that the complainant was distributing campaign material.

140. DW1 had further stated about her statement being recorded by the police at the spot but during cross-examination DW1 stated that she could not provide copy of the statement which the SHO had recorded and volunteered he was recording statements of everyone at the spot. She had not signed the statement which was recorded. She had not inquired from the police as to whether any action was taken on the basis of her statement which was recorded and volunteered there was no need for her to inquire about the same. She denied the suggestion that she was deposing falsely regarding the fact that her statement was recorded at the spot which reflected from the fact that there was no such statement on the official record of the Court or she was deposing falsely at the instance of the accused. Thus, no statement of DW1 which was allegedly recorded at the spot has been produced on record. It may be mentioned that DW1 could not even be expected to produce the said statement on record as it is not the case that a copy of the statement, if recorded at the spot would have been provided to her. The Ld. Addl. PP had argued that the cross-examination of PW12 falsified the version of the accused that statement of public persons was recorded at the spot and it is

seen that PW12 had stated about going to the spot but he did not record the statement of any public person when he went to the spot. At the same time, it is interesting that the SHO had denied being at the spot though the record shows and even PW15 had stated that the SHO had gone to the spot on the day of the incident and DW1 had stated about the SHO inquiring from her at the spot.

141. The accused had further examined DW2 Balmiki Mandal who deposed that on 07.02.2020, he was returning after his work as a waiter; at about 11-11.15 p.m. he reached Jhandewala Chowk and he saw that Sanjeev Kumar was distributing campaigning material of BJP; the accused Akhilesh Pati Tripathi came from Mithla Park and he told the complainant that Election Code of Conduct was in place and he should not distribute the pamphlets; on hearing the same, Sanjeev Kumar and his supporters attacked Akhilesh Pati Tripathi; one of the supporters of Sanjeev Kumar tried to attack Akhilesh Pati Tripathi with a knife due to which he became unconscious and fell on the ground; after sometime PCR came and SHO also came from the PS; after about 10 minutes Ambulance came and took the accused to the hospital; SHO inquired from him and he noted something. During cross-examination DW2 stated that he was working as a waiter since he was 14-15 years old. He was working with Apni Rasoi since about 2-3 months prior to the date of the incident. He had no documentary proof of working with Apni Rasoi at the relevant time. He used to commute by Battery Rickshaw or on foot. On that day he had come by Battery Rickshaw. He was in possession of a mobile phone bearing

No.8750220523 at the time of the incident and volunteered the same was switched off at the relevant time as the battery had got exhausted. He denied the suggestion that he did not have any documentary proof of working with Apni Rasoi as he was not working there or that he had deposed falsely that his phone was switched off at the relevant time as the battery had got exhausted. He had never worked with PWD and volunteered he was working with the Irrigation Department as a Mali. He used to work as a waiter part time after 6 p.m. whenever there was work available. Thus, there is nothing to doubt that DW2 was working as a waiter though he might have worked with the Irrigation Department as a mali.

142. During further cross-examination DW2 stated that there were 7-8 persons with Sanjeev. The Ld. Addl. PP had argued that during his statement under Section 313 Cr.P.C. the accused had not stated that DW1 and DW2 were present at the spot but it is seen that specific suggestions were put to witnesses regarding the presence of DWs at the spot. It was also argued that DW1 had stated that there were 10 to 15 persons with the complainant whereas DW2 had stated that there were 7-8 persons but nothing much turns on the same as both DW1 and DW2 had stated about the complainant being accompanied by some persons. DW2 stated that when he reached the spot, there was no police person and volunteered police persons came later. He did not support any party in the elections. He knew Akhilesh Pati Tripathi as he was the MLA of the area. He had never had personal interaction with him but had seen him when he came to the area and volunteered he voted for BJP. He was shown a photo Mark Z and

he stated that the person at point A was not him. He denied the suggestion that the person in the said photograph was him or that he was deliberately denying the same. He denied the suggestion that he used to work with PWD and the accused had got him employed with PWD. Thus, DW2 stated that he never had personal interaction with the accused and he also denied that the person in Mark Z was him or that the accused had got him employed with PWD. He admitted that children played in Mithla Park even in the night-time and volunteered during the day-time, there was a market. As such DW2 had stated that the children played in Mithla Park even in the night-time and corroborated DW1 by volunteering that during the day-time, there was a market. He stated that when the supporters of Sanjeev tried to attack the accused with a knife, the public raised noise. Before he could intervene, the accused had fallen unconscious. He denied the suggestion that the incident as stated by him of a supporter of Sanjeev trying to attack the accused with a knife had not taken place or that he had deposed falsely in that regard. Thus, DW2 had reiterated about the supporters of the complainant trying to attack the accused with a knife.

143. The Ld. Addl. PP had submitted that during cross-examination the DD entry regarding stabbing of the accused was admitted but no such incident had taken place as there was no such alleged history in the MLC of the accused and the MLC did not show any stab injury and different stances had been taken by the DWs wherein DW1 had stated about the accused being stabbed and DW2 had stated about one boy trying to stab the accused and there was no proof that the stabbing incident had

taken place and there was a contradiction in the testimony of DW1 and DW2 in that DW1 had stated that one boy had a knife in his hand and he attacked the accused with the same whereas DW2 had stated that one of the supporters of Sanjeev Kumar tried to attack Akhilesh Pati Tripathi with a knife due to which he became unconscious and fell on the ground but it is pertinent that both DW1 and DW2 had stated about one person attacking or trying to attack the accused with a knife. Even DD No.2A is to the effect that BJP persons had stabbed AAP candidate. The Ld. Addl. PP had argued that there was nothing from the MLC of the accused to show that he had sustained any stab injuries and the suggestion regarding the knife was falsified as there was no medical evidence and there was no corroborating evidence that stab injury was sustained by the accused and the doctor had also not stated so and also that during his statement under Section 313 Cr.P.C. the accused had given a false statement so it had to be read against him as there was nothing to show stab injuries. It is seen that the MLC of the accused Ex.P1 does not mention any injury as would be consistent with a stab injury and there is no such alleged history in the MLC of the accused. The Ld. Counsel for the accused had argued that none of the witnesses had stated that the accused was attacked from the sharp side of the knife and may be the knife did not go in due to the clothes the accused was wearing and that the accused was attacked from the blunt side of the knife and even if there were no injuries correlating to stab injuries, it would not make the defence of the accused doubtful. While no stab injuries are seen in the MLC of the accused, it is pertinent that bruises were seen over upper abdomen and what is

important is that as per the MLC, the accused was drowsy and not obeying commands and he was declared unfit for statement. So even if it may be that the accused had not sustained stab injuries, he had sustained injuries and even the complainant had stated about hitting the accused though he again said, he did not know whom he had hit in the crowd.

144. DW2 further stated during cross-examination that he came to know about the case when he received the summons. He came to know what the case was about as he had witnessed the incident. He never came to know that the present case had been registered till he received the summons. He denied the suggestion that Sanjeev was not distributing any election material or that he had deposed falsely in that regard at the instance of the accused. He denied the suggestion that the complainant and his persons had not tried to attack the accused or that he had not witnessed any such incident or that he was an introduced witness at the behest of the accused or that he was not present at the spot at the time of the incident. He denied the suggestion that Sanjeev/complainant along with his friend Raj Kishore was going towards the garbage bin on scooty and accused was standing with his 30-40 supporters. He further denied the suggestion that the accused stopped the scooty and took out the key of the scooty or that thereafter the accused caught hold of the collar of the complainant and gave a slap and stated “*iss chammaar ko maro, iska baap bahut bada neta banta hai, iss chammaar ko iski aukat dikhao*”. He denied the suggestion that the other persons who were accompanying the accused also started beating the complainant or that with the intervention of Mohd. Shami Khan

and other persons including family members of the victim, the complainant was saved. He admitted that there were several ways to reach Mithla Park. He denied the suggestion that he had deposed falsely as he had been won over by the accused. Thus, DW2 had denied the suggestions put to him. It is thus seen that though there is some discrepancy in the statements of DW1 and DW2, both had stated about the complainant distributing campaign material to which the accused objected and then the complainant and his supporters attacked him and he sustained injuries.

145. From the material on record and the evidence adduced on behalf of the prosecution, it stands established that elections for Vidhan Sabha were to take place on 08.02.2020 in which the accused was contesting from AAP. The complainant and his father were supporting the candidate for BJP. In the intervening night of 07.02.2020 and 08.02.2020, an altercation had taken place. As submitted by the Ld. Addl. PP for State, it was the admitted fact that the accused and the complainant were present at the spot and all the witnesses whether of the prosecution or the defence witnesses had deposed about the same. It is the case of the prosecution through the complainant that the said incident had taken place when the complainant was going to throw waste in the dustbin and the accused and his supporters had stopped his scooty and beaten him and passed caste related remarks. On the other hand, as per the version put forth by the accused, the incident happened as the complainant was distributing campaign material in violation of guidelines laid down by the Election Commission and when the accused objected to the same, the

complainant and his supporters attacked the accused with the blunt side of the knife due to which the accused sustained injuries, fell down and became unconscious. It is pertinent that both the complainant and the accused had sustained injuries and were taken to hospital as has come in evidence and as seen from the MLCs Ex.PW13/A of the complainant and Ex.P-1 of the accused. During cross-examination PW13 stated that regarding the treatment administered to Sanjeev, conservative management was done. He was not admitted in the hospital. He remained in the hospital for maximum 2 hours and volunteered CT scan was also done and report was normal. Thus, the complainant was not admitted in the hospital and only conservative management was done in his respect.

146. It is significant that during cross-examination PW5 stated that he had not stated to the Doctor in Hindurao Hospital as to who had abused and injured him and volunteered the same was not asked. A perusal of the MLC Ex.PW13/A shows that it is mentioned therein that there was alleged history of physical assault near Jhandewala Chowk, Lal Bagh at approximately 12.00 a.m. on 08.02.2020 as told by the patient and the person who had brought but the name of the person who had assaulted was not stated. The Ld. Addl. PP had argued that the complainant had explained why the name of the accused and the caste specific words were not mentioned in the alleged history in the MLC as the same were not asked and the complainant was a layman. Per contra, the Ld. Counsel for the accused had argued that there was no history with regard to any of the atrocities that were allegedly committed with the complainant in the MLC and the complainant

had not told the history to the doctor at the hospital. It is true that the complainant cannot be entirely regarded as a layman as he was a law student and he had even stated that he was aware that use of caste specific words attracted the offence under SC/ST Act and admittedly the name of the person who had abused and assaulted are not mentioned in the MLC of the complainant but only on that basis the case of the prosecution cannot be doubted.

147. During cross-examination PW15 did not remember the date on which he obtained the MLC but the same was after 01.03.2020. He did not examine any doctor who had examined the complainant or the accused in the present case. He examined the accused in the present case. He was interrogated but no statement of the accused was recorded. Thus, the statement of the doctor was not recorded by the IO but the MLC of the complainant is on record and the same shows simple injuries.

148. It has further come on record that the complainant even as per his own version was going to throw campaign material which he stated was waste and from his testimony it is also clear that the office was open on 07.02.2020. Further, he had stated about hitting the accused though he again said, he did not know whom he had slapped. It is also pertinent that PW6 who was stated to be accompanying the complainant at the time of the incident did not support the case of the prosecution except to the extent that some incident had taken place on the said date. Further, it has come on record that PW4 was closely associated with BJP and the father of the complainant and as such his testimony cannot be considered entirely reliable, moreso as there are improvements in

what he had stated in the Court over his statement under Section 161 Cr.P.C. and he had stated during cross-examination that he had not seen the complainant coming on the scooty while in the statement under Section 161 Cr.P.C. he had not stated the caste specific words. Further, he was not named in the complaint as an eye-witness and his statement was recorded for the first time on 21.03.2020 and prior to that he had not made any complaint or representation to the police or any other authority and he had also stated that he had gone to the police station on being asked by the father of the complainant. There are also contradictions between his testimony and that of PW5 with regard to the number of persons who used caste related words and on how many occasions the said words were used. Further, PW4 had stated that the accused had not sustained any injuries whereas it is on record that the accused had sustained injuries and was removed from the spot by an ambulance which would show that he was either not present at the spot or that he was not stating the true version.

149. There are also material contradictions in the testimony of PW5 and PW8 as to the giving of the scooty and taking back of the scooty and the scooty was never seized in the present case. Further, there are contradictions in the statements of PW15 and PW16 in that PW15 had stated that he had met PW16 at the spot whereas PW16 stated that he had not gone to the spot which appears unbelievable as when so many people had gathered and as per the report, the candidate of AAP had been stabbed, it would be natural for the SHO to go there, moreso if the ACP was also present at the spot and the record also shows the presence of the SHO at the spot. It is also pertinent that despite so many

persons being present at the spot, statement of no public person was recorded at the spot. Even the family members of the complainant had come to the spot but statement of none of them was recorded nor they have been cited as witnesses nor they had themselves made any complaint. It is also significant that PW5 had not given any complaint on the date of the incident though he was not even admitted in hospital which is evident from the testimony of PW13. Further, he had gone to vote on 08.02.2020 so it cannot be said that he was not in a position to go to the police station but the complaint was given only on 10.02.2020 and there is no cogent explanation for the delay in giving the complaint and thereafter the FIR was registered only on 01.03.2020 though the information regarding the incident was received by the police in the intervening night of 07.02.2020 and 08.02.2020. It is also seen that PW5 had named Bansi Tripathi, Om Singh and Vishal Pandey as the persons who were beating him but as per the supplementary charge sheet, no evidence was found against the said persons and their CDRs were also obtained which showed that they were not at the spot which falsifies to some extent the version put forth by the complainant. Further, apart from the present accused, no other person has been joined as an accused in the present case. It is also surprising that other than PW6 who had turned hostile and PW4 who cannot be regarded as an independent witness, no other witness has been examined who could support the version put forth by the complainant.

150. The accused in the present case has been charged with the offences under Sections 3(1)(r) and 3(1)(s) of the SC/ST Act. The

Ld. Counsel for the accused had submitted that the objective of passing the SC/ST Act was to save weaker sections who were socially, financially, educationally and economically weaker from atrocities and the sections were not meant to be misused to achieve ulterior motive which was the purpose of the present case. It was submitted that the complainant in the present case belonged to a fairly good family and was from a metropolitan city, he had a car, a scooter, multiple houses and offices and one office was given to BJP for operation. Educationally he was a law student at the time of the alleged incident and had been residing in Delhi for decades and he was claiming protection of a law which was meant for weaker sections which he was not and the alleged intimidation and threat did not fall in the ambit of SC/ST Act. While it may be that the complainant was a law student and residing in Delhi and had several houses, car and scooty but the law does not make any distinction on that ground and it has to be seen whether from the material on record, the offences under the SC/ST Act are made out in the present case. It was then contended that there was a tendency of the opposition party to implicate AAP persons and the complainant and his father were supporting Kapil Mishra who was the BJP candidate and who had defected from AAP. However, it is to be seen from the material on record whether the case is made out against the accused or not.

151. The Ld. Addl. PP had submitted that the words uttered by the accused satisfied the ingredients of Sections 3(1) (r) and (s) of the SC/ST Act as it was shown that the accused intentionally insulted or humiliated the complainant knowing that he was the

son of the Ex-Councilor and belonged to SC category, further the incident had taken place in public view where public persons were present and caste specific words were uttered in the presence of independent witnesses. It was submitted that motive for using caste specific words was also shown as the father of the complainant was earlier the Councilor and it was also shown why the incident had happened. The said Section in so far is material is as under:

*“3. Punishments for offences atrocities.-(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -
(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view..
shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”*

Thus, for the offences under the said Section to be attracted, the accused should not be a member of a Scheduled Caste or a Scheduled Tribe. Regarding the argument that the prosecution had not proved that the accused did not belong to SC category, the Ld. Addl. PP had submitted that no suggestion was put to PW15 in that regard and he had filed the charge sheet and even otherwise Tripathi was not a lower caste. There is merit in the said contention that no suggestion was put to PW15 that the accused was not a member of the Scheduled Caste or Scheduled Tribe. But even if the onus to show the same was on the prosecution, it is pertinent that column 11 of the charge sheet contains the particulars of the accused and a blank was put on the

question whether the accused was SC/ST. As such there is no merit in this contention.

152. The second requirement to attract the punishment under Sections 3(1)(r) and 3(1)(s) SC/ ST Act is that the victim must be a member of the Scheduled Caste or Scheduled Tribe. As submitted by the Ld. Addl. PP for State, it is not disputed that the complainant was SC/ *Chamar* and the relevant caste certificate is also there. Moreover there is also merit in the contention that the complainant belonged to SC category which was in the knowledge of the accused as the accused was the sitting MLA of the area and the father of the complainant had been the Councilor for ten years from SC category and no suggestion whatsoever was put to PW5 that the accused did not know who the complainant was or that the accused was not aware that the complainant belonged to SC category so it was in the knowledge of the accused that the complainant belonged to SC category and the same has not even been specifically disputed on behalf of the accused.

153. It is also essential to attract the offence under Sections 3(1)(r) and 3(1)(s) SC/ST Act that the incident must take place in any place within public view. It is settled law that the 'place' could be a private place belonging to a private individual or a public place owned/ leased by the government or any of its instruments which has been laid down in several judgments such as **State of M.P. & Anr. v. Ram Krishna Balothia & Anr.** (1995) and **Prathvi Raj Chauhan v. Union of India** (2020). Even otherwise it is not in dispute that the incident had taken place at Jhandewala Chowk

and that a number of persons had gathered at the spot. The words 'public view' mean that the public is able to witness the offence committed under the Act. In **Sanapala Uma Pathi v. The State of Andhra Pradesh** decided on 23.09.2022, it was observed that it appeared that the ingredient requiring that the offence should be committed within public view, was included to eliminate the possibility of frivolous prosecution. “While affording protection to the members of SC or ST precaution is taken to discourage misuse of the provision.” The Hon'ble High Court of Delhi in **Daya Bhatnagar & Ors. v. State** (2004) Delhi Law Crimes 915 referred to the Objects and Reasons for enactment of the statute, dictionary meaning of the word “public” given in Corpus Secundum and Blacks Law Dictionary and the principles of interpretation of statute and it was observed as under:

“The SC and ST Act was enacted with laudable object to protect vulnerable section of the society. Sub-clauses (I) to (XV) of Section 3(1) of the Act enumerate various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, Sub-clause (x) is the only clause where even offending “utterances” have been made punishable. The Legislature required intention as an essential ingredient for the offence of insult, intimidation and humiliation of a member of the Scheduled Caste or Scheduled Tribe in any place within public view. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression “public view” in section 3(1)(x) of the Act has to be interpreted to mean that the public persons present, (however small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close

relationship or association with the complainant, would necessarily get excluded.”

In **Balu v. State of Maharashtra** AIR 2006 Bom 251, it was held as under:

Considering the judicial pronouncements on the subject, the expression within public view must be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of at least one independent person. The test of audibility and visibility can be taken to have been satisfied if an independent person is actually present or is at a place where the utterances are clearly audible and reaches the scene of occurrence while the incident is still in progress.”

Thus, it was held that the expression 'public view' has to be interpreted to mean that the public persons present should be independent and impartial and not interested in any of the parties and the expression must be construed to mean that the act must take place in the presence of or in the proximity of at least one independent person. In the present case, while it is not in dispute that public persons were present at the time of the incident, only two public witnesses were examined to corroborate the statement of the complainant. However, PW6 had turned hostile and even otherwise he was stated to be a friend of the complainant. As regards PW4, it is borne out from the record that he had close association with the father of the complainant and the complainant addressed him as uncle. Even otherwise, it is evident from the record that he could not be regarded as an independent witness apart from the fact that there are contradictions between the testimony of PW4 and PW5 and no other independent witness has been examined. Hence, the requirements of this ingredient cannot be said to be fulfilled.

154. For the offences under Sections 3(1)(r) and 3(1)(s) of the SC/ST Act to be attracted, there should also be intentional insult or intimidation or abuse and it is the case of the prosecution that the accused intentionally insulted or intimidated with intent to humiliate the complainant by using the words "*Chamar ko maro, iska baap bahut bada neta ban raha hai*" and '*iss chamar ko iski aukat dikha do*" and also abused the complainant by use of the said words, that is by caste name. The Ld. Counsel for the accused had argued that the complainant due to his background could say about the caste specific words and it is seen that the complainant had stated that he was aware that caste specific words would attract the offence under SC/ST Act. It was also submitted that since the case was under the SC/ST Act, the onus was on the prosecution to show that the intention behind the provisions was fulfilled but there was no reference in the examination in chief to the caste or that the complainant belonged to SC/ST caste or to a caste which was SC about which utterances were made. It was submitted that there was not even a whisper that the accused tried to intimidate or humiliate the complainant as he belonged to a particular caste and it had to be seen if the utterances were made to humiliate a person of a particular caste. Despite the fact that the complaint was lodged after deliberation and consultation, there were no such allegations and it was only if alarm was caused due to intimidation that the offence would be made out. It was submitted that it was necessary for the complainant to have stated that with a view to insult and humiliate him as he belonged to a particular caste that the utterances were made which would attract the offence. There

is merit in this contention of the Ld. Counsel for the accused as in his examination in chief, the complainant had only stated “*The accused Akhileshpati Tripathi was standing with about 30-40 supporters. They saw him and stopped his scooty and the accused took the key of his scooty. The accused stated that he was the son of Madhav Prasad. He took him off the scooty, caught hold of his collar and gave him a slap. He stated “iss chamaar ko maro, iska baap bahut bada neta banta hai, iss chamaar ko iski aukaat dikhao”*. The others also started beating him. The main persons were Bansi Tripathi, Om Singh and Vishal Pandey. He stated that his uncle who stayed in the neighbourhood Dr. Mohd. Shamim Khan came to the spot and intervened. He was also pushed. His mother also came to the spot. He called on 100 number. Police came to the spot” and it was not stated that the complainant was intimidated or insulted or abused as he belonged to a particular caste.

155. The Ld. Counsel for the accused in this regard had relied upon the judgment of the Hon’ble Supreme Court in **Hitesh Verma v. State of Uttarakhand and Another** (2020) 10 SCC 710 wherein it was held that if it was a property dispute, Section 3 (1) (r) of the SC/ST Act would not be attracted. In the said judgment, it was observed as under:

“12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as “1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and 2) in any place within public view”.

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult

and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that Respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that Respondent No.2 is a member of Scheduled Caste.

xxx

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.”

In the said case the Hon’ble Supreme Court had held that charges against the appellant under Section 3 (1) (r) of the Act were not

made out and the charge sheet to that extent was quashed. In the present case as well, it can be said that the incident arose out of political rivalry, moreso given the fact that the elections were to be held on 08.02.2020 and the incident took place in the intervening night of 07.02.2020 and 08.02.2020. Further, in the circumstances of the case, it is difficult to believe the case of the prosecution that the accused had uttered any caste related remarks against the complainant, much less to show any intention to humiliate or intimidate the complainant as he belonged to Scheduled Caste. Though the complainant had stated about the accused abusing him by caste name, but in the circumstances of the case as referred to above the offences under Sections 3(1)(r) and (s) of the SC/ST cannot be said to be established in the present case.

156. The Ld. Addl. PP had submitted that the ingredients of the offences referred to in the complaint were fulfilled and Section 341 IPC was attracted as the scooty of the complainant was stopped so there was wrongful restraint of the complainant. However, as regards the offence under Section 341 IPC, there is nothing to support the version of the complainant that his scooty was stopped by the accused given the contradictions in the testimony of PW5 and PW8 and PW6 not supporting the case of the prosecution and PW4 also stating that he had not seen the scooty being stopped. As such the offence under Section 341 IPC also cannot be said to be made out against the accused. Even the offence under Section 506(1) IPC cannot be said to be attracted in the present case as there is nothing to show that any alarm was caused to the complainant by the alleged threat “*iss chamaar ko*

maro, iska baap bahut bada neta banta hai, iss chamaar ko iski aukaat dikhao”.

157. The Ld. Addl. PP had submitted that the complainant had been beaten and the MLC was there which showed simple injuries so Section 323 IPC was attracted. The Ld. Counsel for the accused had argued that it was in fact the accused who was beaten. However, it cannot be discounted that the incident had taken place and the MLC of the complainant shows simple injuries. The MLC of the accused also shows simple injuries but on that basis, the offence committed by the accused cannot be washed away. In view of the same, the offence under Section 323 IPC would be made out against the accused.

CONCLUSION

158. In view of the above discussion, the prosecution has proved the guilt of the accused Akhilesh Pati Tripathi beyond reasonable doubt for the offence under Section 323 IPC and he is convicted for the same while he is acquitted of the offences under Sections 341/506 (1) IPC and under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities Act), 1989.

159. In terms of the judgment of the Hon’ble High Court of Delhi in **Karan v. State NCT of Delhi** in CrI. A. 352/2020 decided on 27.11.2020, the accused is directed to furnish affidavit of his assets and income in format of Annexure A appended to that judgment within 10 days. The State is also directed to furnish an affidavit of expenses incurred by the

prosecuting agency within 7 days (this being a matter pertaining to an MLA needs to be disposed of expeditiously). The Victim Impact Report be called for in respect of the complainant Sanjeev Kumar from the Ld. Secretary- II, Central District Legal Services Authority, Rouse Avenue Court Complex, Delhi before the next date. Put up for arguments on the point of sentence on 13.04.2023.

ANNOUNCED IN THE OPEN COURT (GEETANJLI GOEL)
On this 25th day of March, 2023 ASJ/SPL. JUDGE (PC ACT) (CBI)-24
(MPs/MLAs CASES),
ROUSE AVENUE DISTRICT COURT,
NEW DELHI