

DLNE010024102020



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

**CNR No. DLNE01-002410-2020
Sessions Case No. 120/20
State v. Mohd. Tahir Hussain etc.
FIR No. 65/20
PS Dayalpur
U/s 109/114/147/148/149/436/153-A/174-A/505/365/302/201/
120-B/34 IPC & 25/27/54/59 Arms Act**

In the matter of: -

STATE

Versus

- 1. MOHD. TAHIR HUSSAIN**
S/o. Sh. Kallan Saifi,
R/o. H.No. E-7, Main Karawal Nagar Road,
Near Lakhpat Model School, Khajuri Khas, Delhi.
- 2. HASEEN @ MULLAJI @ SALMAN**
S/o. Sh. Mobin,
R/o. H.No.34-35, Gali No.3,
Shani Bazar Road, Sunder Nagri, Delhi.
- 3. NAZIM**
S/o. Md. Azeem,
R/o. H.No. 1378, Gali No.15,
Nala Road, Mustafabad, Delhi.
- 4. KASIM**
S/o. Md. Azeem,
R/o. H.No. 1378, Gali No.15,
Nala Road, Mustafabad, Delhi.

5. **SAMEER KHAN**
S/o. Md. Saheed,
R/o. H.No. 433, F-2 Block,
Sunder Nagri, Delhi.
6. **ANAS**
S/o. Sh. Idrish,
R/o. Gali No.1, Sanjay Chowk,
Mustafabad, Delhi.
7. **FIROZ**
S/o. Sh. Babuddin,
R/o. B-1/3, Main 20 Foota Road,
Chand Bagh, Delhi.
8. **JAVED**
S/o. Sh. Jafruddin,
R/o. Gali No.2, near Sanjay Chowk,
Moonga Nagar, Delhi.
9. **GULFAM**
S/o. Sh. Ramjani,
R/o. B-34, Gali No.2, Chand Bagh, Delhi.
10. **SHOAIB ALAM @ BOBBY**
S/o. Sh. Mustafa Hussain,
R/o. A-10, 20 Foota Road, Chand Bagh, Delhi.
11. **MUNTAJIM @ MUSA**
S/o. Md. Azim,
R/o. I-86, (B-165), Nala Road,
near Firdaus Masjid, Gali No.8, Chand Bagh, Delhi.

23.03.2023

ORDER ON THE POINT OF CHARGE

Vide this order, I shall decide the charges to be framed against accused **1.** Mohd. Tahir Hussain, **2.** Haseen @ Mullaji @ Salman, **3.** Nazim, **4.** Kasim, **5.** Sameer Khan, **6.** Anas, **7.** Firoz, **8.** Javed, **9.** Gulfam, **10.** Shoib Alam @ Bobby and **11.** Muntajim @ Musa.

1. Briefly stated, on 26.02.2020 present FIR was registered at PS Dayalpur, on the complaint dated 26.02.2020 (recorded vide DD No.82A at 23:54 hrs.) made by father of deceased Ankit Sharma, namely Sh. Ravinder Kumar. In his complaint, Sh. Ravinder Kumar alleged that the demonstration had been going on by the Anti-CAA and Pro-CAA protesters for 2-3 days at Chand Bagh Pulia, Main Karawal Nagar Road, in which the incidents of stone pelting, brick batting, arson, firing and sabotage had taken place from both sides. Mohd. Tahir, the then Municipal Councilor had his office at Main Karawal Nagar Road, near Chand Bagh Pulia and he had gathered a lot of goons in his office. The mob had pelted stones, petrol bombs and shots were fired from the roof top of the building/ office of Tahir Hussain and he had created an atmosphere of fear among the public. Complainant further alleged that on 25.02.2020, his son Ankit Sharma, who was posted in Intelligence Bureau, had come back from his office and had gone out of house to bring some household goods at about 05:00 PM. It was further alleged that when his son did not return after a long time, he started searching for his son at nearby places, hospitals etc. but he could not find his son. After waiting overnight, he had lodged a missing report (GD No. 009-A, dated 26.02.2020 at 11.41 Hrs) of his son Ankit Sharma at PS Dayalpur. Then complainant came to know from the local boys that a boy had been thrown into the Khajuri Khas nala from the Masjid of Chand Bagh pulia after he was killed. Body of Ankit Sharma was recovered from Khajuri Khas nala near Chand Bagh pulia. Clothes of Ankit Sharma were missing. There was

underwear only on his body. The deceased Ankit Sharma had sustained sharp injuries on his head, face, chest, back and his waist. His face and other parts of his body had been burnt by acid to conceal his identity. Police and complainant along with one Sudhir (maternal uncle of deceased) took body of deceased to GTB hospital, where he was declared brought dead. In his complaint, complainant also raised strong suspicion that his son Ankit Sharma had been killed by Tahir Hussain and his goons, who had gathered in his office and after killing his son, his body was thrown into the nala from masjid. Investigation of the present case was assigned to Insp. Amleshwar Rai.

2. On receipt of DD No.63-A dated 26.02.2020, Insp. Amleshwar Rai along with ASI Rajender reached GTB hospital and obtained MLC No.BD-753/03/2020 of Ankit Sharma, with history "Patient brought in main casualty in unconscious & unresponsive state with A/H/O found lying unconscious near Chand Bagh Puliya at around 12:00 PM on 26.02.2020, declared brought dead in main casualty at 12:55 PM on 26.02.2020. Thereafter, dead body was shifted to Mortuary GTB Hospital. Statement of complainant was recorded.
3. Post mortem examination of the body of deceased was got conducted at G.T.B. Nagar, Hospital on 27.02.2020 by a Board of Doctors. The complete Post-Mortem proceedings were got video graphed through private photographer and exhibits i.e. blood-in-gauze and clothes of the deceased Ankit Sharma were collected after PM and seized through seizure memo. Same were sent to

FSL for preparation of DNA profile and also to compare with the DNA generated from other biological exhibits, weapons of offence, clothes of accused etc. The PM report of Ankit Sharma revealed 51 injuries caused by sharp edged and blunt objects. The cause of death was opined as shock due to hemorrhage due to injury to lung & brain bearing nos. 18, 19, 34-37 and 42. All these injuries were sufficient to cause death in ordinary course of nature, both independently and collectively. Further injuries nos. 1, 8-19, 25, 27, 29-31 were produced by sharp edged weapon, while injury no. 42 was produced by heavy cutting weapon and rest were by blunt force. All the injuries were fresh before death (i.e. within 24 hours).

4. During investigation, inspection of building of Tahir Hussain i.e. E-7, Khajuri Khas, Main Karawal Nagar Road, Delhi and the adjoining area was got done by the FSL team on 28.02.2020. A lot of debris and stones, bricks, broken bottles, some glass bottles with liquid, bullets and burnt articles were lying scattered in front of Tahir Hussain's house on the Main Karawal Nagar Road from the front of Tahir Hussain's house to half the way to Chand Bagh Pulia. The building of Tahir Hussain had been used by the rioters/miscreants/accused persons for brick batting, stone pelting, pelting of petrol bombs and acid bombs. It is a four storeyed building including the basement. All the rioting materials like of stones, bricks, catapult, glass bottles containing petrol with bottle neck stuffed with pieces of cloth and other material lying on the third as well as on the terrace of the building and also on the road along with damaged/burnt articles lying in front of Tahir

Hussain's house, were seized in FIR No.101/2020, PS Khajuri Khas by another team of SIT, Crime Branch. Seizure memos of FIR No. 101/20, PS Khajuri Khas were placed with file of the present case.

5. During further investigation, scene of crime i.e. Khajuri Nala beside Chand Bagh pulia, Main Karawal Nagar Road, Delhi from where the body of deceased Ankit Sharma was recovered, was also got inspected by the team of FSL at the instance of Ct. Sachin on 28.02.2020. There was a wall of 10 feet height on both sides of the nala and it was fenced with iron grill of about 1 & 2 feet on the west side of nala towards F-Block. Some blood stains were noticed on the wall of the nala on inspection by the FSL team. Thereafter, FSL team went inside the nala by scaling the wall with the help of a ladder and inspected the scene of crime. There was lot of mud and water in the nala. A cemented stone piece having some blood stains was also noticed by the FSL team which was found lying at the muddy bank of nala. The exhibits i.e. blood on gauze piece was collected from the wall and a cemented stone having blood stains from the bank of nala were also collected from the place where the body of Ankit Sharma was found, at the instance of FSL team and both the exhibits were seized in the case and sent to FSL for comparison with the blood of deceased Ankit Sharma. During further investigation, the sample soil/mud from the nala was also collected from where the body of Ankit Sharma was recovered and sent to FSL, Rohini, Delhi for comparison with the soil on the clothes of the deceased.

6. During further investigation, site plan of the place from where the body of Ankit Sharma was recovered from the drain, was prepared at the instance of Ct. Sachin. One more site plan, which shows the distance between deceased Ankit Sharma's house and Tahir Hussain's house and the place of recovery of dead body, was also prepared. Ct. Sachin had made 2 videos on 26.02.2020 catching process of recovery of the dead body of Ankit Sharma from the drain/nala with the help of divers. He captured some photographs of that moment. The video clips and the photographs were collected from Ct. Sachin along with certificate u/s 65-B I.E. Act and placed with the file of the present case.
7. During further investigation, scene of crime i.e. from the house/building of Tahir Hussain bearing No. E-7, Khajuri Khas, Main Karawal Nagar Road, Delhi to the drain/ nala, beside Chand Bagh Pulia, Main Karawal Nagar Road, Delhi, was completely videographed and photographed by videographer ASI Amar Lal and the photographer ASI Ishwar Prakash. The DVDs Containing the complete videography of the scene of crime and 249 photographs of the scene of crime along with certificate u/s. 65-B IE Act were collected and placed with the file.
8. During the course of further investigation, rough site plan of the place of occurrence where Ankit Sharma was beaten to death by the rioters/accused, was also prepared at the pointing out of witness Vikalp Kochar. Photographs of the place of occurrence were also taken by IO from his mobile phone. The place of occurrence was opposite to Bunny Bakers Cake Shop beside the

wall of nala, at the corner of Chand Bagh Pulia, Main Karawal Nagar road, Delhi. The building of Tahir Hussain was about 60-65 meters away from Chand Bagh pulia, where Ankit Sharma was killed and from where his body was recovered from the nala, near Chand Bagh pulia. The place of occurrence, where Ankit Sharma was beaten to death by the rioters/accused, was also got inspected by FSL team on 09.03.2020. Blood was collected from the plastic sheets hanging on the wall of nala and from the paper piece affixed on the wall of nala. Exhibits were seized and were sent to FSL, Rohini for comparison with the blood of deceased Ankit Sharma to establish the place of occurrence. The crime team inspection report from FSL was collected and placed with the file.

9. During the course of further investigation, one video of the incident of throwing body of a person by three persons in the Khajuri nala near Chand Bagh Pulia from F-Block, Khajuri Khas side had been received through some unknown source in this case. In the video footage, a person wearing red colour shirt was visible along with 2 other persons and they were throwing the body of Ankit Sharma in the drain near Chand Bagh Pulia. Though the faces of the persons throwing the body of Ankit Sharma in the nala were not clearly visible in the footage. It was found that this video was made by one Neeraj Kasana s/o Krishan Pal r/o E-511, Gali No. 23, Khajuri Khas, Delhi, from his mobile phone and the same was recovered from him. The video footage had been captured from approx. 300 mtrs away from Chand Bagh Pulia by Neeraj Kasana from the roof top (4th

floor) of E-509, Gali No. 23, Khajuri Khas, Delhi on 25.02.2020 at 5.39 PM. Mobile phone of Neeraj Kasan was seized and sent to FSL, CFU Division, Rohini to provide/retrieve the video files of dated 25.02.2020 from the mobile. Statement of Neeraj Kasana was also recorded to this effect.

10. During the course of further investigation, photographs of various suspects/accused persons arrested in other riot cases were shown to various public persons and witnesses. In the process of identification, witnesses namely Pardeep Verma and Shamshad Pradhan had specifically identified five accused persons namely **Anas, Firoj, Javed, Gulfam and Shoaib Alam**. According to them, these persons were involved in the act of rioting and arson on the instigation of accused Tahir Hussain. Witness Vikalp Kochar correctly identified the accused Tahir Hussain and stated that he was the then Municipal Councillor of the area and Anas was also present among the rioters/ accused persons, who were involved in the act of murder of Ankit Sharma. Vikalp Kochar further stated that accused Haseen and other had killed Ankit Sharma. The statements of several witnesses regarding the identification of accused had been recorded to this effect.
11. During further investigation, the scaled site plan of the place from Tahir Hussain house to nala, Chand Bagh pulia, where body was dumped in the nala and of the place from where the body was recovered was also got prepared by draftsman/ Inspr. Mahesh Kumar. The scaled site plan was collected and placed with the file.

12. During further investigation, use of modern technology like face recognition system was also made to identify the perpetrators behind Delhi riots. Public persons, media persons and others were requested to provide whatever video footage or still photographs they could provide related to the incidents of riots. Data regarding Voter ID with photographs of the persons from the Electoral offices, data of driving license holders with photographs from Transport authority of Delhi and UP West and data of the criminals with photographs from the Dossiers of Delhi and UP West, were fed into the Face Identification Software and the same was used to identify suspects in the riot cases.
13. During further investigation, the statement of two witnesses namely Pardeep Verma and Bharat @ Kalu were got recorded before Magistrate u/s 164 Cr.P.C., wherein they stated that Tahir Hussain was provoking the rioters/ accused persons against the Hindus and on his provocation, the rioters were pelting stones, petrol bombs, acid bombs and were firing at the Hindus and were setting ablaze their shops. On provocation by Tahir Hussain, a group of rioters/accused persons caught hold of Ankit Sharma and killed him. Witness Pardeep Verma stated that he had identified 5-6 accused persons on seeing their photographs shown by the police.
14. During the course of further investigation, statements of public witnesses namely Vikalp Kochar, Sh. Gyanender Kumar Kochar, Bharat @ Kalu, Akash, Pardeep Verma, Surender Pal Singh

Senger and Girish Yaduvanshi, who had witnessed the incident were recorded u/s 161 CrPC. The eye-witnesses categorically stated in their statements that Tahir Hussain was present on the spot on 25.02.2020 and he was leading the mob present at Chand Bagh Pulia and. He kept on moving from Chand Bagh Pulia to his house. Some witnesses also stated that Tahir Hussain was also present at his house from where the mob was pelting stones, bricks and petrol bombs on the Hindus. The witnesses stated that Tahir Hussain was provoking and instigating the mob against the Hindus/ kafirs to kill them. Above witnesses have stated that they had witnessed the incident. HC Rahul and Ct. Praveen Kumar of PS Khajuri Khas had identified accused Anas, Firoj, Gulfam, Shoaib Alam and Javed, stating that they were also involved in the act of rioting and arson at Chand Bagh Pulia on 25.02.2020. These five accused persons were also identified by other public witnesses namely Pardeep Verma and Shamshad Pradhan on seeing their photographs. Witness Vikalp Kochar, on seeing the photographs of various arrested accused persons in other riot cases and the accused arrested in the present case, identified Anas and stated that he was also present among the rioters/ accused persons who had killed Ankit Sharma. Vikalp Kochar also identified accused Haseen @ Mullaji @ Salman among the photographs of various persons and stated that he had stabbed Ankit Sharma with knife. Witnesses Pardeep Verma, Bharat @ Kalu and Girish Yaduvanshi identified accused Nazim and Kasim and stated that they were also involved in the act of killing of Ankit Sharma and on their identification, both Nazim and Kasim

were arrested. Witness Akash identified accused Sameer Khan, who was also involved in the act of killing of Ankit Sharma.

15. During further investigations accused **1.** Mohd Tahir Hussain and **2.** Haseen @ Mullaji @ Salman, were arrested on 16.03.2020; **3.** Nazim was arrested on 30.03.2020; **4.** Kasim, **5.** Sameer Khan, **6.** Anas, **7.** Firoz, **8.** Javed, **9.** Gulfam and **10.** Shoib Alam @ Bobby, were arrested on 09.03.2020; and **11.** Muntajim @ Musa was arrested on 12.10.2022.
16. After completion of investigation, on 03.06.2020 a chargesheet was prepared by IO/Insp. Amleshwar Rai against 10 accused persons except Musa, for offences punishable u/s. 109/114/147/148/149/436/153-A/505/365/302/201/120-B/34 IPC before Duty MM-02 (North East), Delhi. On 21.08.2020, ld. CMM (North East), Delhi, took cognizance of alleged offences except offences u/s. 153-A/505 IPC for want of sanction u/s. 196 Cr.P.C. Thereafter, this case was committed to the sessions court vide order dated 30.09.2020. Vide order dated 05.01.2021 ld. CMM(N/E) declared accused Muntajim @Musa as proclaimed offender. Thereafter, on 05.02.2021 first supplementary chargesheet with additional accused namely Muntajim @ Musa, alongwith FSL report, sanction u/s. 196 Cr.P.C., subsequent opinion of doctor on post mortem report, copies of CDRs etc. was filed by IO before ld. CMM (N/E). Sections 25/27/54/59 Arms Act were also added in the present supplementary. Subsequently, on 23.06.2022 second supplementary chargesheet alongwith FSL reports was filed before ld.CMM (N/E).

Subsequently, on 09.12.2022 third supplementary chargesheet along with a complaint u/s. 195 Cr.P.C., prohibitory order u/s. 144 Cr.P.C. and other certain documents was filed by Insp. Amit Prakash before Link MM (Reliever) (N/E). Thereafter, vide order dated 13.12.2022, Id. CMM (N/E) took cognizance of offence u/s. 188 IPC and sent this supplementary chargesheet to the court of sessions vide order dated 04.01.2023.

17. As per chargesheet, the role and evidence against each accused are as follows: -

S. No.	Name of accused	Evidence against accused
01	Mohd. Tahir Hussain	<p>1. Statement of witness Bharat u/s. 164 dated 08.05.2020, who saw accused Tahir Hussain instigating the mob who attacked murderously on Ankit Sharma. In his supplementary statement u/s. 161 Cr.P.C. dated 11.03.2020, he stated that on 25.02.2020 at about 4.00-4.30 pm, near Chand Bagh Pulia, he saw gathering of huge mob of muslim community. Accused Tahir Hussain was also standing near mosque and was instigating the mob. After that mob got agitated and started pelting stones and burning the shops of Hindu persons. This witness also stated that accused Tahir Hussain was instigating the mob again and again. After that mob attacked a person of about 25-26 years and killed him.</p> <p>2. Statement of witnesses Vikalp Kochar and Gyanendra Kochar, who narrated the killing of Ankit Sharma by the muslim mob. They saw accused</p>

S. No.	Name of accused	Evidence against accused
		<p>Tahir Hussain instigating the mob which attacked on Ankit Sharma. Witness Vikalp Kochar was shown 35-36 photographs attached in the file, in which he correctly identified accused Tahir Hussain and further identified Anas and Hassen Mullaji.</p> <p>3. Statement of witness Deepak Pradhan, wherein he stated that on 25.02.2020 at about 4-5 pm he was at temple. Muslim mob had once again started pelting stone and throwing petrol bombs from terrace of accused Tahir Hussain's house. Accused Tahir Hussain was coming and going to mosque near Chand Bagh and was instigating the mob.</p> <p>4. Statement of witness HC Rahul, wherein he stated about seeing accused Tahir Hussain while instigating the mob on 25.02.2020 near Masjid.</p> <p>5. Statement of witness Pradeep Verma, wherein he stated that on 25.02.2020 at about 5 pm, he had seen that on the instigation by accused Tahir Hussain, riotous mob got agitated and they grabbed Ankit Sharma. After that, mob started beating Ankit Sharma and took him towards the gate of Tahir Hussain's building. After that mob took him towards pulia and killed him. This witness had been shown photographs in which he identified accused Anas, Firoz, Gulfam, Javed and Shoaib Alam. They all were part of rioting mob who got instigated by accused Tahir Hussain</p>

S. No.	Name of accused	Evidence against accused
		<p>and thereafter killed Ankit Sharma.</p> <p>6. Statement of witness Akash, wherein he stated that on 25.02.2020 at about 4.00-4.30 pm, near Chand BaghPulia, he had seen gathering of huge mob of Muslim community. Accused Tahir Hussain was standing near mosque and was instigating the mob. After that mob got agitated and started pelting stones and burning the shops of Hindu persons. Accused Tahir Hussain was instigating the mob again and again. After that mob attacked a person of about 25-26 years and killed him.</p> <p>7. Statement of witness Girish Raghuvanshi, who stated that on 25.02.2020 at about 4.00-4.30 pm, when he was present at Karawal Nagar Road, he saw gathering of huge mob of muslim community. Accused Tahir Hussain was standing near mosque and was instigating the mob. After that mob got agitated and started pelting stones and burning the shops of Hindu persons. Accused Tahir Hussain was instigating the mob again and again. After that mob attacked a person of about 25-26 years and killed him.</p>
02	Haseen @ Mullaji @ Salman	<p>1. Statement of witnesses Vikalp Kochar, Faheem @ Chikna and Nadeem.</p> <p>2. Extra judicial confession over phone about murder of one person (referring to Ankit Sharma).</p> <p>3. FSL report of voice sample matched</p>

S. No.	Name of accused	Evidence against accused
		<p>with the voice of recorded calls.</p> <p>4. Recovery of knife, which was used in commission of crime, at his instance.</p> <p>5. Subsequent opinion indicating injuries could be caused by the recovered knife.</p> <p>6. Recovery of red shirt worn by him at the time of commission of offence, at his instance.</p>
03	Nazim	<p>1. Statement of witnesses Pradeep Verma, Bharat @ Kalu and Girish Raghuvanshi, who identified accused Nazim, as being involved in the killing of Ankit Sharma.</p> <p>2. Recovery of knife used in commission of crime, at his instance.</p> <p>3. Subsequent opinion indicating injuries could be caused by recovered knife.</p>
04	Kasim	<p>Statement of witnesses Pradeep Verma, Bharat @ Kalu and Girish Raghuvanshi, who identified accused Nazim, as being involved in the killing of Ankit Sharma.</p>
05	Sameer Khan	<p>1. Statement of witness Akash, who identified this accused stating that he was involved in killing of Ankit Sharma on 25.02.2020.</p> <p>2. Conversation between Salman and Sameer.</p>
06	Anas	<p>1. Statement of witnesses HC Rahul and HC Praveen, who identified</p>
07	Firoz	

S. No.	Name of accused	Evidence against accused
08	Javed	accused Anas, Firoz, Javed, Gulfam and Shoaib Alam, who were active in rioting on 25.02.2020 at Chand Bagh Pulia. 2. Statement of witness Pradeep Verma, who confirmed the presence of accused Anas, Firoz, Javed, Gulfam and Shoaib Alam to the Police. 3. Statement of witness Vikalp Kochar who identified accused Anas in the photographs shown to him by Police. 4. Statement of witness Shamshad who identified accused Anas, Firoz, Javed, Gulfam and Shoaib Alam in the photographs shown to him by Police. He also identified accused Anas and Javed as fruit sellers, accused Firoz as tea seller, accused Gulfam as fish seller and accused Shoaib Alam as worker in the Muslim Hotel.
09	Gulfam	
10	Shoib Alam @ Bobby	
11	Muntajim @ Musa	1. Statement of witness Pradeep Verma, who identified accused Muntajim @ Musa in the photographs shown to him by the police and he informed police that this accused was involved in the riotous mob on 25.02.2020 and the same mob was instigated by Tahir Husain, which killed Ankit Sharma. 2. Statement of witness Shamshad Pradhan, who identified accused Muntajim @ Musa in the photographs shown to him by the police and he informed police that this accused was involved in the riotous mob on 25.02.2020 at about 04-05:30 PM.

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

Arguments/Written Arguments of Defence

19. **Sh. Rajiv Mohan**, ld. counsel for accused Tahir Hussain, argued that out of a larger mob, a smaller mob consisting of 20-25 persons was involved in the incident in question. It was further argued that the alleged role imputed to accused Tahir Hussain was to mobilize the mob. It was further argued that witness Pradeep stated about instigation by Tahir Hussain in the morning, but he did not say about such instigation in the evening. Witnesses have given generic statement about instigation. It was further argued that witness Bharat mentioned about time of 04-04:30 PM and he gave general statement. It was further argued that recorded conversation of Haseen, shows that he boasted killing one person alone. It was further argued that there are three kinds of statements against accused Tahir Hussain. It was further argued that accused Tahir Hussain was not involved in murder and vicarious liability has been wrongly invoked. It was further argued that generic instigation is not sufficient for specific incident of murder of Ankit. It was further argued that accused Tahir Hussain was not part of smaller mob of 15-20 persons, which attacked upon Ankit. Accused Tahir Hussain has been shown as part of bigger mob; hence, Section 149 IPC is not made out. It was further argued that riot was continuing. A conspiracy was continuing and at the best accused Tahir Hussain joined that

running conspiracy. There is no evidence to show conspiracy peculiar to murder of Ankit.

20. In the written submissions filed on behalf of accused Gulfam and Shoaib Alam @ Bobby, it was submitted that these accused have already been discharged in FIR No.98/20, PS Khajuri Khas, by Id. Predecessor Judge vide order dated 04.04.2022. It was further submitted that there is no video or photographic evidence that places accused Gulfam and Shoaib Alam @ Bobby on the spot. No TIP was ever conducted by investigating agency despite the availability of eye-witnesses. Accused Gulfam and Shoaib Alam @ Bobby were not named in FIR and were arrested on the basis of statement of two police constables and were thereafter allegedly identified by only two public witnesses namely one Pradeep Verma and one Shamshad Pradhan. None of these public witnesses made any complaint or provided description of accused Gulfam and Shoaib Alam @ Bobby to the police prior to their identification from photographs shown by the police. Statement u/s. 161 Cr.P.C. of these public witnesses were recorded with considerable delay. There is no reliable evidence that suggests involvement or even presence of accused Gulfam and Shoaib Alam @ Bobby in the incident alleged in the present FIR and they have been wrongly and maliciously roped into the present case. None of the witnesses describe any remote role or participation of these accused in the unfortunate death of Ankit Sharma, for which the assailants have been separately and clearly identified. Accused Gulfam and Shoaib Alam @ Bobby are arraigned in the present FIR only for riot and arson and charges

for rioting and arson had already been framed against this accused in FIR No.114/20, PS Khajuri Khas, therefore, accused had no role in the murder of Ankit Sharma. Statement u/s. 161 Cr.P.C. of witnesses HC Rahul and Ct. Praveen Kumar, was recorded on 09.03.2020 i.e. after arrest of these accused on 07.03.2020 in FIR No.98/20, PS Khajuri Khas, in which accused Gulfam and Shoaib Alam @ Bobby has already been discharged. Despite having good understanding of law and order, police officials had never made a PCR call or made any DD entry regarding presence of accused Gulfam and Shoaib Alam @ Bobby or identifying these accused by them, as part of the mob. Witness Vikalp Kochar never identified or named accused Gulfam and Shoaib Alam @ Bobby from the photos, which were shown to him, nor was a TIP conducted. Therefore, accused Gulfam and Shoaib Alam @ Bobby were never in the vicinity wherein the deceased Ankit Sharma was brutally assaulted and murdered. Neither accused Gulfam and Shoaib Alam @ Bobby have been identified by witness Bharat @ Kalu, nor described nor TIP was conducted by the prosecution. It was further submitted that nothing is available on the record to show that accused Gulfam and Shoaib Alam @ Bobby were part of the mob which assaulted and killed the deceased Ankit Sharma. Neither any recovery of weapon nor any other material evidence was ever obtained from accused Gulfam and Shoaib Alam @ Bobby, which would prove that they were involved in such crime. Accused Gulfam and Shoaib Alam @ Bobby have no role to play in the kidnapping and murder of the deceased Ankit Sharma and

that they have been wrongly implicated in the present FIR. Neither any overt act nor any direct or circumstantial evidence has been attributed to accused Gulfam and Shoaib Alam @ Bobby to prove that they were involved in the offence as alleged. It was further submitted in respect of accused Shoaib Alam @ Bobby that there is nothing on the record to show that accused Shoaib Alam @ Bobby was using mobile no.9871938081, which was registered in the name of Shamamudin and which was handed over to the police by brother of accused Shoaib Alam @ Bobby. Location of accused Shoaib Alam @ Bobby cannot be established by the CDR, because restaurant where he works as well as his home are situated very close to the spot. CDR annexed with the main chargesheet shows several entries in the location column stating "error not found", but in the supplementary chargesheet the very same CDR inexplicably shows a location. This change/amendment is not explained in the supplementary chargesheet or otherwise and further gives rise to apprehension of mala fide on the part of the investigating agency. In absence of TIP, identification through photo was not valid.

21. In support of her contentions, **Ms. Tara Narula**, ld. counsel for accused Gulfam and Shoaib Alam @ Bobby, relied upon certain case laws, which are as follows: -

- **D.Gopalakrishnan v. Sadanand Naik & Ors. (2005) 1 SCC 85.**
- **Usmangani @ Bhura Abdul Gafar & Anr. v. State of Gujarat, (2018) SCC OnLine SC 3270.**
- **Muthu Naicker v. State of Tamil Nadu, (1978) 4 SCC 385.**
- **State of Maharashtra v. Ramlal Devappa Rathod & Ors. 2015 4 SCC 77.**

● **Musa Khan & Ors. v. State of Maharashtra, (1977) 1 SCC 733.**

22. In the common written submissions filed on behalf of accused persons namely Nazim and Kasim, it was submitted that nothing incriminating material was recovered from the possession of these accused persons at the time of their personal search and arrest from their home town district Sambhal, U.P. Prosecution claimed that one knife used in crime was recovered at the instance of accused Kasim, but DNA profile generated from the knife, did not match with DNA profile of Ankit Sharma. As per CDR, mobile phone recovered from possession of accused Kasim, was not in use. There is no electronic evidence against these accused persons either in the form of video, CCTV footage or mobile location to ascertain their presence at the spot. Prior to arrest of accused Nazim and Kasim, investigating agency examined all eyewitnesses namely HC Parveen, Pardeep Verma, Bharat @ Kallu, Vikalp Kochar, Gyanender Kochar and Shamshad Pardhan, who claimed that they could identify the rioters, but these accused persons never subjected to judicial TIP. These witnesses failed to describe any unique feature that can be used to identify accused Nazim and Kasim. After arrest of accused Nazim and Kasim, witnesses Pardeep Verma and Bharat Kallu in their statement dated 30.03.2020 claimed that these accused persons in police custody are rioters, who were involved in crime. Apart from these witnesses, one witness namely Gajender Nagar in his statement dated 30.03.2020 also identified these accused persons. Witness Pardeep Verma in his 3rd

statement u/s. 164 Cr.P.C. stated that he identified both these accused persons in photograph, which is contrary to his earlier stand, whereas witness Bharat @ Kallu in his 3rd statement u/s. 164 Cr.P.C. had not uttered a single word against these accused persons.

23. **Sh. Abdul Gaffar**, ld. counsel for accused Sameer Khan, argued that only one witness namely Akash has stated about accused Sameer Khan. There is no electronic evidence or recovery against this accused in the present case.
24. In the written submissions filed on behalf of accused Javed, it was submitted that witnesses against the accused are stock witnesses and planted by the police against him. Their statements u/s. 161 Cr.P.C. have been recorded after a long time and there was no explanation regarding such delay by the prosecution on the record. In the additional written submissions filed on behalf of this accused, it was submitted that sanction u/s. 196 Cr.P.C. is delayed and is not maintainable at this stage. It was further submitted that ld. Predecessor Judge had discharged this accused in FIR No.98/20, PS Khajuri Khas, vide order dated 04.04.2022.
25. **Sh. Ajay Kumar**, ld. counsel for accused Muntajim @ Musa submitted that he did not want to make any argument on the point of charge.

Written Arguments of Prosecution

26. A written synopsis-cum-calender of evidence was filed on behalf of prosecution to mention the evidence in support of the allegations made against each accused. In his written arguments,

Sh. Madhukar Pandey, Id. Special PP for State submitted that witness Neeraj Kasana had captured the video of throwing of dead body in naala from the pulia. It was further submitted that CDR location of all accused persons except accused Anas, Nazim and Kasim, show their presence in and around the spot of incident which corroborates the prosecution case against the accused persons. It was further submitted that Section 188 IPC is also made out against all accused persons, because they violated the order u/s. 144 Cr.P.C. dated 24.02.2020

Appreciation of arguments, facts and law: -

27. First of all, I shall refer to the provisions dealing with the alleged offences and other relevant offences.
- Section 141 IPC defines unlawful assembly as assembly of five or more persons with common object to overawe by criminal force or show of criminal force, any public servant in the exercise of the lawful power of such public servant; or to commit any mischief or other offence etc.
 - Section 142 IPC provides that whoever being aware of facts rendering any assembly as an unlawful assembly, initially joins that assembly or continues in it, is said to be a member of unlawful assembly.
 - Section 146 IPC defines rioting providing that whenever force or violence is used by unlawful assembly or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.
 - Section 148 IPC provides punishment for rioting being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.
 - Section 149 IPC provides liability of each member of unlawful assembly for any offence committed by any member of that assembly in prosecution of the common object of that assembly

or within knowledge of members of that assembly to be likely committed in prosecution of that object.

- Section 109 IPC provides punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.
- Section 114 IPC provides that whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.
- Section 153-A IPC provides punishment for promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
- Section 188 IPC provides punishment for disobedience to order duly promulgated by public servant.
- Section 365 IPC provides punishment for kidnaping or abducting any person with intent to cause that person to be secretly and wrongfully confined.
- Section 302 IPC provides punishment for murder.
- Section 427 IPC provides punishment for committing mischief and thereby causing loss or damage to the amount of fifty rupees or upwards.
- Section 454 IPC provides punishment for lurking house trespass or house breaking in order to commit offence.
- Section 436 IPC provides for punishment for committing mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property.
- Section 505 IPC provides punishment for making statements conducing to public mischief.
- Section 34 IPC defines act done by several persons in furtherance of common intention.

- Section 25 Arms Act provides punishment for possessing or carrying any prohibited arms or prohibited ammunition in contravention of section 7 of Arms Act.
 - Section 27 Arms Act provides punishment for using any arms or ammunition in contravention of section 5 of Arms Act.
28. The ingredients of offence defined under Section 120-B IPC were explained by Supreme Court in ***Lennart Schussler v. Director of Enforcement, (1970) 1 SCC 152*** in following manner: -

“9. It now remains to be seen whether the alleged agreement which A-1 and A-2 arrived at in Stockholm in 1963 and again in Madras in 1965, would, if established, amount to a criminal conspiracy. The first of the offence defined in Section 120-A of the Penal Code which is itself punishable as a substantive offence is the very agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means subject however to the proviso that where the agreement is not an agreement to commit an offence the agreement does not amount to a conspiracy unless it is followed up by an overt act done by one or more persons in pursuance of such an agreement. There must be a meeting of minds in the doing of the illegal act or the doing of a legal act by illegal means. If in the furtherance of the conspiracy certain persons are induced to do an unlawful act without the knowledge of the conspiracy or the plot they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established. It is also clear that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement.”

29. First of all, I shall deal with the arguments of delay in recording statement of witnesses. Just because statements of the eye witnesses were recorded in the case at belated stage, without affording an opportunity to the prosecution and the witnesses to explain the reasons, court cannot declare them to be unreliable.

Secondly, one must not forget that at the relevant time riots continued in Delhi for some days. Delhi Police and other security forces were pressed into service to stop the riots. Hence, focus of police was more on the aspect of controlling the riots rather than start investigating each incident of the riots. At a time of panic, everything cannot be expected to happen in very streamlined manner. Even the victims and witnesses did not have courage to make complaints against anyone. They were more concerned about their safety. Thereafter, people fought against the pandemic of Covid and there was complete lockdown. Delay in registration of FIR or recording of witnesses in a case, thus, may be due to any such reasons and requires scrutiny during the trial. At this stage, therefore, this court cannot raise any presumption against veracity of the statement of the cited witnesses on account of delay.

30. Defence also challenged the credibility of cited eye witnesses, by making comparison of their different statements and otherwise. However, credibility of evidence of any witness cannot be looked into at this stage, and same shall be subject matter of test during the trial. As if now there is no clear cut contradiction in the different statements of any witness.
31. At this stage I am not giving much attention to evidence of mobile location because, this piece of evidence in itself is not sufficient to either frame the charges or to discharge any accused. Such evidence is for the purpose of corroboration. Description of locations of mobile phones will require to be explained by the person having knowledge of the working of this software.

Prosecution and defence will have to prove use and non-use of the given mobile numbers.

32. As far as allegation of conspiracy is concerned, it is to be appreciated that if the alleged conduct of the accused persons, show existence of an agreement to act in such manner, which are alleged by the prosecution, then inference can be raised about existence of a criminal conspiracy, because it is well recognized by the courts that there remain least chances of getting direct evidence of conspiracy. Therefore, the court raises inferences on the basis of conduct of the accused persons and probable reason behind such conduct. The observations made in paras no. 23 to 26 in the judgment of **Firozuddin Basheeruddin V. State of Kerala (2001) 7 SCC 596**, lend support to such approach.
33. From the statements of above-mentioned witnesses, presence of all named accused in the mob is well reflected. It is also well apparent that this mob continuously indulged into firing of gunshots, pelting of stones and petrol bombs towards Hindus and houses of Hindus. These acts of the mob make it clear that their objective was to harm Hindus in their body and property to maximum possible extent. It is also clearly shown that this mob consciously wanted to even kill Hindus. It cannot be said that being member of this mob, accused persons were oblivious of such objective of this mob. Apparently, this was an unlawful assembly, acting in pursuance of aforesaid object. Tahir Hussain or for that matter, any other accused were not supposed to be static in their movement. Different witnesses hence, stated that Tahir Hussain was present at his home, and he was moving

between his home and Chand bagh pulia as well as mosque. He was instigating the mob to take revenge against Hindus, citing incidents at Sherpur Chawk.

34. The facts and evidence of this case also show that a number of persons had assembled at and around the house of Tahir Hussain. Some of them were equipped with firing weapons. Petrol bombs were also arranged, by accumulating the required materials in the house of Tahir Hussain. Bottles of Montain Dew were being filled with petrol near house of Tahir Hussain and was being taken inside his house, in his presence. Tahir was continuously acting in a manner of supervising and motivating this mob. All these things were done to target Hindus. Every member of the mob assembled there participated in achieving the objective of targeting Hindus. Such conducts of the members of this mob, show that they were acting out of meeting of their mind and with a clear-cut objective in mind, to kill and harm Hindus. Thus, a criminal conspiracy to indulge into riot and to kill Hindus and harm properties of Hindus, is well reflected from the evidence on the record.
35. Next question is based upon the arguments made for Tahir Hussain, that it was ongoing riot and conspiracy, hence he can be only said to have joined this conspiracy and that he cannot be said to be a conspirator for killing of Ankit Sharma. Arguments were also made that no role has been imputed to Tahir Hussain in the killing of Ankit. Only a small group of around 20 persons pulled Ankit forcefully and killed him and therefore, it was act of a smaller mob rather than the bigger mob, for which no liability

can be fastened upon alleged members of bigger mob with aid of S. 149 IPC.

36. To answer this question, I will pose a question for demonstration of legal consequence. What would have been the liability of this bigger mob, had Ankit been fired upon and killed, with a firearm by one person from this mob? The obvious answer would be that if this firing would have been done in pursuance to common object of the mob, then every member of the mob would have been liable for consequence of such firing by virtue of S. 149 IPC. If this is so, then how does it make a difference when a group of around 20 persons from the so-called bigger mob caught hold of Ankit Sharma, dragged him to a place near pulia while assaulting him and then unknown number of persons kept beating and assaulting Ankit, followed by stabbing him by different persons from the mob till his death? Meaning thereby that if the act of only one person from the mob can make all members of the mob liable for such act with aid of S. 149 IPC, then in similar manner act of a group of more than one person from that mob can make everyone liable for such act. In the present case, hence, it was not necessary for all members of that mob to play some overt act in killing of Ankit Sharma. As per evidence, the mob was acting in well prepared manner to attack Hindus and their properties, which signifies existence of prior meeting of their mind. Tahir Hussain also played role of instigator to kill Hindus and exhorting this mob as to not to spare Hindus. He instigated the mob, when Ankit came forward towards this mob. The conspiracy need not be specifically to kill Ankit. When the

accused persons were acting in pursuance to conspiracy and common object to kill Hindus, it covered killing of Ankit as well for the reasons that Ankit was killed because he was Hindu. It is well settled law that to invoke S. 149 IPC, there is no need to explain overt act of every member of the mob.

37. Reference was made to order of discharge in FIR 98/2020 PS Khajuri Khas. However, I do not find reference to that order to be helpful to accused Gulfam and Shoaib Alam in the present case. This is a different case, which is not based on simplicitor evidence of arrest of these accused persons in FIR 98/20. Rather, these accused persons have been identified to be member of same mob, which was present near house of Tahir Hussain and which attacked on Hindus on 25.02.2020 from about 4.00 pm onwards. Ankit was also killed by this mob. Therefore, if police are prosecuting accused persons separately for separate incidents, it cannot be said that they are being prosecuted for same facts and for same cause of action in different cases. Accused persons have to be prosecuted for every criminal act and incident, which took place because of their indulging into riot with the above mentioned particular common object. This case is based on additional evidence related to killing of Ankit by this mob, which had also been behind other incident at that place. Order of discharge in other case is not binding in this case and, hence, cannot be followed in this case also.
38. Now I shall deal with the argument if test referred in the judgment passed in the case of ***Masalti & Ors. v. State of U.P., AIR 1965 SC 202***, applies to the facts and circumstances of this

case. In FIR 98/20, order of discharge was based on this judgment and for accused Samir, it was argued that only one witness identified him. In the case of Masalti, hon'ble Supreme Court dealt with a case of multiple murder by an unlawful assembly. The court while dealing with the aspect of identification of members of that mob, made certain observations regarding test of consistent testimony by four witnesses as applied by High Court. The relevant part of the same is as follows: -

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

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

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

“whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly”, this Court at SCR pp. 148-49 in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 observed that his participation as a member of the unlawful assembly ought to be spoken by more than one witness in order to lend corroboration. The test so adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 was only to determine liability of those accused against whom there was no clear allegation of having committed any overt act but what was alleged against them was about their presence as members of the unlawful assembly. The test so adopted was not to apply to cases where specific allegations and overt acts constituting the offence are alleged or ascribed to certain named assailants. If such test is to be adopted even where there are specific allegations and overt acts attributed to certain

named assailants, it would directly run counter to the well-known maxim that “evidence has to be weighed and not counted” as statutorily recognised in Section 134 of the Evidence Act.”

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

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

41. The approach adopted in the case of Masalti, was as a mark of precaution before assuming guilt of an accused with aid of S.149 IPC. The court did not lay down any law in that case. The rule of prudence can be applied only after trial, at the time of assessment of the evidence on the parameters of credibility. Hence, reliance on this case for seeking discharge is not sustainable.
42. Questions have been also raised regarding absence of TIP of accused persons and against identification through photographs. Arguments have been made that identification through photo is not permissible and cannot inspire confidence, and TIP should have been conducted. As far as judgment in the cases of **D.**

Gopalakrishnan (supra) and **Usmangani** (supra) are concerned, the findings therein were based on appreciation of peculiar evidence in those cases, while assessing the credibility of evidence on the record. In case of ***Mahaveer vs. State of Delhi*** AIR 2008 SC 2343, Supreme Court, while dealing with the aspect of TIP, made following observations: -

“12. “9. As was observed by this Court in *Matru v. State of U.P.* [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See *Santokh Singh v. Izhar Hussain* [(1973) 2 SCC 406 : 1973 SCC (Cri) 828] .) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act, 1872 (in short ‘the Evidence Act’). It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

13. “7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the

accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.”

43. The above-mentioned observations and the underlined portions of this judgment show that TIP is a matter of prudence and additional safeguard for the case of prosecution. Absence of the same cannot be used by accused for seeking discharge. Identification of accused through photo cannot be termed as illegal or inadmissible in evidence. The same would require to be appreciated on the basis of overall situation behind such identification. This exercise can be done only after the trial.
44. Arguments were also made that there is no video of incident in question. However, it must be appreciated that allegedly CCTV camera were broken by the mob. Hence, getting a video of the incident was just a matter of chance, which was not available.

This situation does not wash away the other evidence collected by IO. Other video and photographs were used merely to identify the culprits, and no exception can be taken for the same.

45. Absence of name of accused persons in the FIR or absence of recovery of actual weapon of the offence, do not make the case of prosecution unbelievable. Significance of such omissions, depends upon facts of each case and that too at the final stage of the case. In the FIR of this case, name of any accused with specific role could not have been there as it was not based on account of fact given by any eye witness. Actual weapon used for crime in a case may or may not be recovered. Deceased was injured with sharp edged weapons and as per opinion of the expert, injury to deceased could be inflicted by knife recovered at the instance of Haseen @ Salman and Nazim. So, even though these knives did not have stain of Ankit's blood, still this is one circumstantial evidence, along with others.
46. For accused Haseen, it was argued that his alleged extra judicial confession did not mention name of Ankit and hence, he cannot be charged. However, it has to be seen that apart from this extra judicial confession, this accused was also identified by eye witness as member of that mob, which attacked on Ankit. Moreover, this confession of killing one person is not without significance because of its proximity in time with the killing of Ankit and reference to throwing of dead body in the drain, as had happened with Ankit.
47. Section 153A(1)(b) IPC, shows that if any person does such act, which is prejudicial to the maintenance of harmony between

different religious groups or communities and which disturbs or is likely to disturb the public tranquillity, he becomes liable to be punished under this provision. In this case, all accused indulged into targeting Hindus and their such acts were apparently prejudicial to the harmony between communities of Muslims and Hindus. They did disturb the public tranquillity as well.

48. It is well apparent that despite proclamation made under Section 144 Cr.P.C. and public announcement of the same, aforesaid accused persons indulged into aforesaid activity in disobedience to the proclamation. If a person disobeys the proclamation made u/s. 144 Cr.P.C., he commits offence u/s. 188 IPC. That person may cease to disobey such proclamation after one instance and in that situation, he shall be liable for prosecution for single instance of defiance only. However, if that person keeps disobeying such proclamation and goes on to commit one after another offence, he is literally disobeying such proclamation every time and therefore, he shall be liable for offence u/s. 188 IPC each time. Same would be kind of liability for offence u/s 153A IPC. Therefore, prima facie case for offence u/s 188 IPC is made out against all accused.

49. A knife each was recovered the instance of accused Haseen @ Salman and Nazim. Therefore, a case for offence punishable u/s 25 Arms Act is made out against them. On the basis of utterances imputed to Tahir Hussain, offence u/s 505 IPC is also made out against him. Accused Muntajim @ Musa has been also charged with offence u/s 174 A IPC, as he was declared proclaimed offender in this case vide order dt. 05.01.2021. However, there is

no sanction against accused Musa u/s 196 Cr.P.C., for his prosecution for offence u/s 153A IPC.

50. Thus, on the basis of above-mentioned description of evidence and discussion, I find that accused persons namely **1. Mohd. Tahir Hussain, 2. Haseen @ Mullaji @ Salman, 3. Nazim, 4. Kasim, 5. Sameer Khan, 6. Anas, 7. Firoz, 8. Javed, 9. Gulfam, 10. Shoib Alam @ Bobby and 11. Muntajim @ Musa**, are liable to be tried for offence punishable u/s 120B IPC r/w/with Sections 147, 148, 153A, 302 IPC. They are also liable to be tried for offences punishable u/s 147, 148, 302, 365 IPC r/w/with 120B and 149 IPC; and 188 IPC. All accused except Muntajim @ Musa are also liable to be tried for offences punishable u/s 153A IPC r/w/with 120B and 149 IPC. Accused Haseen @ Mullaji @ Salman and Nazim are also liable to be tried for offence punishable u/s 25 Arms Act. Accused Tahir Hussain is also liable to be tried for offence punishable u/s 505 IPC. Accused Tahir Hussain is also liable to be tried for offence punishable under Sections 109/114 IPC r/w/with Sections 147, 148, 149, 153-A & 302 IPC. Accused Muntajim @ Musa is also liable to be tried for offence punishable u/s. 174-A IPC.

Ordered accordingly.

Announced in the open court today on 23.03.2023
(This order contains 39 pages)

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