



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

| INDEX | | |
|--|--|------------------|
| Sl. No. | HEADINGS | Page Nos. |
| 1 | Description of Case & Memo of Parties | 2-3 |
| 2 | The case set up by the Prosecution | 3-6 |
| 3 | Charges | 6-8 |
| 4 | Description of Prosecution Evidence | 8-19 |
| 5 | Plea of accused under Section 351 BNSS | 19 |
| 6 | Arguments of Defence & Prosecution | 20-24 |
| APPRECIATION OF LAW, FACTS AND EVIDENCE | | |
| 7 | Unlawful Assembly and Riots | 24-26 |
| 8 | Identification of accused | 26-41 |
| 9 | Conclusion & Decision | 42 |

| | | |
|--------------------------|----------|--|
| Sessions Case No. | : | 45/2021 |
| Under Section | : | 147/148/436/454/392/452/427/506 read with 149 IPC & 188 IPC |
| Police Station | : | Gokalpuri |
| FIR No. | : | 142/2020 |
| CNR No. | : | DLNE01-000454-2021 |

In the matter of: -

STATE

VERSUS

- 1. MOHD. SHAHNAWAZ @ SHANU**
S/o. Mohd. Rashid,
R/o. H.No. A-528, Gali No.22,
Phase-10, Shiv Vihar, Delhi.
- 2. MOHD. SHOAIB @ CHHUTWA**
S/o. Late Islam,
R/o. H.No. A-29, Gali No.5/2,
Babu Nagar, Mustafabad, Delhi-94.
- 3. SH. SHAHRUKH**
S/o. Sh. Salauddin,
R/o. H.No. B-262, Gali No.7, Babu Nagar,
Near Shiv Mandir, Delhi.
- 4. SH. RASHID @ RAJA**
S/o. Sh. Riyazuddin,
R/o. H.No.3, Gali No.2, Chaman Park,
Gokapuri, N/E, Delhi-94.
- 5. SH. AZAD**
S/o Late Sh. Riyasat Ali,
R/o. H.No. 824, Gali No. 9, old Mustafabad,
N/E, Delhi.
- 6. SH. ASHRAF ALI**
S/o Sh. Anisul Haq,
R/o. H.No. A-18, A-Block, Chaman Park,
Bhagirathi Vihar,Dayalpur, Delhi-4.
- 7. SH. PARVEZ**
S/o. Sh. Riyazuddin,
R/o. H.No. B-380, Gali No.2,
Indira Vihar, Gokulpur, Delhi-94.

8. MOHD. FAISAL

S/o. Rahisuddin,
R/o. H.No. F-14, Gali No.1, Babu Nagar,
Mustafabad, Delhi-94.

9. SH. RASHID @ MONU

S/o. Sh. Khalil,
R/o. H.No. 259, Gali No.7, Shakti Vihar,
Shadatpur, Delhi-94.

10. MOHD. TAHIR

S/o. Mohd. Umar,
R/o. H.No. 16, Gali No.6,
Old Mustafabad, Delhi-94.

...**Accused Persons**

**Case registered on
the complaint of:**

Sh. Narender Kumar
S/o. Sh. Nathu Singh,
R/o. H.No. C-3/C-2, Chaman Park,
Bripuri Road, Shiv Vihar Tiraha,
Delhi.

Date of Institution : 14.07.2020
Date of reserving order : 28.08.2024
Date of pronouncement : 11.09.2024
Decision : All accused are acquitted.

(Section 481 BNSS complied with by all accused persons)

JUDGMENT

THE CASE SET UP BY THE PROSECUTION

1. The above-named accused persons have been charge-sheeted by the police for having committed offences punishable under Section 147/148/149/436/454/392/452/188/153-A/427/506 IPC.
2. Brief facts of the present case are that on 01.03.2020 complainant Narender Kumar made a written complaint in PS Gokalpuri alleging that he was residing at C-3/C-2, Chaman Park, Brijpuri Road, Shiv Vihar Tiraha, Delhi-94. On the ground floor of his

property a hall was given on rent, wherein a shop namely Pizza Diet was being run. On 24.02.2020, he was present at his home and at about 02:30 PM around 1500 rioters came from the side of Mustafabad, who were equipped with deadly weapon. They started vandalising aforesaid shop. Thereafter, at about 03:45 PM about 50-60 rioters came to the upper floors of house of the complainant. There were two and half floors constructed in his house. Those rioters threatened complainant and his family members to immediately vacate that house, else to burn them to death. Thereafter, rioters looted various articles from his house including 15 tolas gold, half kg silver jewelries and two lacs rupees in cash. They also set fire in other furnitures and articles in his house. They also burnt documents related to that house along with other documents and set fire in the cylinder kept in the kitchen as well. Complainant with his family fled away from his house and took shelter at the place of his relative.

3. On the endorsement made by Insp. Bineet Kumar Pandey on 03.03.2020, FIR was registered in this case on 04.03.2020 for offences under Section 147/148/149/380/427 IPC. ASI Gajraj Singh conducted further investigation.
4. During the course of investigation, ASI Gajraj prepared site plan at the instance of complainant. He also recorded his statement. Complainant could not provide any document related to his burnt or looted properties. Crime Team visited this place on 13.03.2020 and took photographs. Ash was lifted from this place and seized. Further investigation was carried out by PSI Ashish Garg and he attached two complaints as made by Poonam Johar and Rinku, in this case. He examined Poonam Johar on 07.04.2020, but Rinku

was not available. Next IO further examined police officials, who were on duty at that place including Ct. Vipin, Ct. Sanjay and HC Hari Babu, who claimed to be eyewitnesses of the incident. Another eyewitness namely Shyam Sundar was examined on 10.04.2020. All these eyewitnesses had mentioned name of 10 accused persons, who were subsequently arrested in this case. These accused persons were already arrested in FIR No. 39/2020, PS Gokalpuri. It was found that scene of crime as reported in FIR No.39.2020 was adjacent to the scene of crime in the present case.

5. CDR of all the accused persons were obtained and analysed and were placed on the record. Copy of order under Section 144 Cr.P.C. was also placed on the record and Section 454/392/153-A/188/506 IPC were added in this case.
6. After completion of investigation, on 14.07.2020 a chargesheet was filed before Duty MM (North-East), Karkardooma Courts, Delhi, against accused persons namely Mohd. Shahnawaz @ Shanu, Mohd. Shoaib @ Chhutwa, Shahrukh, Rashid @ Raja, Azad, Ashraf Ali, Parvej, Md. Faisal, Rashid @ Monu and Mohd Tahir. Thereafter, on 23.12.2020, Id. CMM (North East), Karkardooma Courts, Delhi, took cognizance of offences punishable under Section 147/148/149/392/427/436/452/454/506 IPC. Vide this order, Id. CMM (North East) declined to take cognizance of offence under Section 153-A/188 IPC, for want of sanction under Section 196 Cr.P.C. and complaint under Section 195 Cr.P.C., respectively. Thereafter, case was committed to the court of sessions vide order dated 12.01.2021.

7. On 09.01.2023, first supplementary chargesheet along with complaint u/s. 195 Cr.P.C., other documents and statement, was filed before this court directly. On 25.09.2023, second supplementary chargesheet was filed directly before this court. In this supplementary chargesheet, IO had mentioned the investigation done on the complaint of Rinku, however, vide order dated 09.10.2023, this court concluded that the complaint of Rinku could not have been clubbed in this case and that supplementary chargesheet was entertained only in respect of sanction under Section 196 Cr.P.C. and some other documents with statement of two police officials.

CHARGES

8. On 07.12.2021, charges were framed against aforesaid accused persons for offences punishable under Section 147/148/436/454/392/452/427/506 IPC read with Section 149 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in following terms: -

“That on 24.02.2020 at about 2:30 pm at H. No. C-3/C-2, Chaman Park, Brijpuri, Shiv Vihar Tiraha, Delhi which includes shop at ground floor within the jurisdiction of PS Gokalpuri, all of you being members of unlawful assembly alongwith your other associates (unidentified), formed an unlawful assembly carrying stones, sticks, petrol bombs and other weapons of rioting and used force or violence in prosecution of a common object of such assembly committed rioting and you all knew being members of the aforesaid unlawful assembly that offences were likely to be committed in prosecution of that common object and thereby you all alongwith your other associates (unidentified) committed offences punishable under Section(s) 147/148 IPC read with Section 149 IPC and within my cognizance.

***Secondly,** on the aforesaid date, time and place, you all being members of unlawful assembly alongwith your other associates (unidentified) committed mischief by fire or explosive substance by setting ablaze the aforesaid shop of Sh. Narender Kumar and his tenant Poonam Johar with the intent to destroy the same and as such, committed offence punishable under Section 436 IPC read with Section 149 IPC within my gnizance.*

Thirdly, on the aforesaid date, time and place, you all being members of unlawful assembly alongwith your other associates (unidentified) committed lurking house trespassing in order to commit offence in the aforesaid house of Sh. Narender Kumar and his tenant Poonam Johar with the intent to destroy the same and as such, committed offence punishable under Section 454 IPC read with Section 149 IPC within my cognizance.

Fourthly, on the aforesaid date, time and place, you all being members of unlawful assembly alongwith your other associates (unidentified) after breaking open in the aforesaid house of the complainants Sh. Narender Kumar and his tenant Poonam Johar vandalized the same and committed robbery of cash, jewelery articles and various household items and as such, committed offence punishable under Section 392 IPC read with Section 149 IPC within my cognizance.

Fifthly, on the aforesaid date, time and place, you all being members of such unlawful assembly alongwith your other associates (unidentified) had committed house trespass after preparation for hurt, assault or wrongful restraint in the aforesaid shop of Sh. Narender Kumar and his tenant Poonam Johar and as such, committed offence punishable under Section 452 IPC read with Section 149 IPC and within my cognizance.

Sixthly, on the aforesaid date, time and place, you an being members of unlawful assembly alongwith your other associates (unidentified) committed mischief by causing wrongful loss and damage in the aforesaid shop of Sh. Narender Kumar and his tenant Poonam Johar and as such, committed offence punishable under Section 427 IPC read with Section 149 IPC within my cognizance.

Seventhly, on the aforesaid date, time and place, you all being members of unlawful assembly alongwith your other associates (unidentified) and criminally intimidated the complainant Sh. Narender Kumar and his family members and his tenant Poonam Johar by threatening to kill them, with a view to cause alarm in their minds and thereby you all have committed an offence punishable under section 506 IPC read with Section 149 IPC and within my cognizance.”

9. Thereafter, on 11.01.2023, additional charge was framed against aforesaid accused persons for offence punishable under Section 188 IPC, to which also they pleaded not guilty and claimed trial. The charge was framed in following terms: -

“That on 24.02.2020 at about 02:30 PM onwards and around the area of Chaman Park, Brijpuri Road, Indira Vihar, Shiv Vihar Tiraha, Bhagirathi Vihar, Delhi, within the jurisdiction of PS Gokalpuri, you all accused persons being member of an unlawful

assembly alongwith your other associates (unidentified) were present at aforesaid place, in prosecution of the common object of an unlawful assembly and in violation of the proclamation issued u/s 144 Cr.PC Cr.PC by the competent authority/DCP, North East vide order dated 24.02.2020 bearing no.10094-170 X-1, North East, Delhi dt. 24.02.2020, which was duly announced in all the localities of District North East including area of PS Gokalpuri, thereby you all committed offence punishable under Section 188 IPC and within my cognizance.”

DESCRIPTION OF PROSECUTION EVIDENCE

10. Several witnesses were dropped on the basis of admission of documents under Section 294 Cr.P.C. and prosecution examined 17 witnesses in support of its case, as per following description: -

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|-------------------------------|---|--|
| PW1/Sh. Narender Kumar | On 24.02.2020 at about 3 PM or 4 PM, when he along with his family member was present at his house bearing C-3/C-2, Chaman Park, Brijpuri Road, Shiv Vihar Tiraha, Delhi, the riot started in the area. They remained indoors, got terrified and made a call at 100 number. Later on, police officials rescued them. PW1 identified his signature at point A on his complaint and site plan. PW1 returned to his house after 3 to 4 days and found that his entire house had been burnt. PW1 did not support the case of prosecution on the point of identification of accused persons and he was declared hostile by the prosecution. | Ex.PW1/A (complaint of PW1); & Ex.PW1/B (site plan) |
| PW2/ Smt. Poonam Johar | On 24.02.2020, at about 01:45 PM, PW2 had seen some people coming from one side of the gali and some people coming from the other side of the gali. They were resorting to stone pelting. The persons in the mob entered into a house in which there was confectionery shop. They climbed upto the roof of that house and then crossed over the roof of the | Ex.PW2/A (complaint of PW2) |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|-----------------------------|--|--|
| | <p>adjoining house from where they crossed over the roof of her house. On seeing this, PW2 along with her son ran down, closing the gate of her house and fled away from there.</p> <p>PW2 made a telephonic call at 100 number, police officials came and rescued her. When she returned to her house after about 4 days, she found that the entire house had been burnt.</p> <p>PW2 had submitted her complaint to the police and she identified her signature at point A on the same.</p> <p>PW2 did not support the case of prosecution on the point of identification of accused persons and she was also declared hostile by the prosecution.</p> | |
| PW3/Sh. Shyam Sunder | <p>On 24.02.2020 at about 2 PM or 02:30 PM, he was present at his Tea Stall situated near Shiv Vihar T-point. PW3 saw a mob coming from the side of Mustafabad towards his Tea Stall. At the same time, a stone thrown by somebody, hit him below his left armpit. The persons from the mob were armed with wooden rods, stones etc. and they told PW3 to shut the shop and accordingly PW3 shut down his Tea Stall and left for his house. PW3 returned to his shop after about two days and found that its locks had been broke open and goods lying therein including his cycle, had been stolen. The shop had also been burnt.</p> <p>PW3 did not support the case of prosecution on the point of identification of accused persons and he was also declared hostile by the prosecution.</p> | |
| PW4/ASI Mahavir | <p>He was In-charge Mobile Crime Team, North-East District, Delhi. On 13.03.2020, he along with Ct. Vikas (photographer) visited the spot i.e. C-3/C-2, Main Brijpuri Road, Bhagirathi Vihar, Chaman Park near Shiv Vihar Tiraha,</p> | Ex.PW4/A (Inspection report prepared by PW4) |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|---------------------------|--|--------------------------------------|
| | <p>Delhi. PW4 inspected the spot and prepared his report.</p> <p>PW4 handed over the same to IO. Ct. Vikas had clicked photographs of the spot with his official camera, on the direction of IO/ASI Gajraj Singh.</p> | |
| PW5/ Mahesh | <p>He did not support the case of prosecution on the point of date of incident and identification of accused persons. He had seen that vehicles were burning on the main road. He had made call at 100 number to police and told them about burning of the vehicles.</p> | |
| PW6/Ct. Vipin | <p>On 24.02.2020 at about 2 PM, he was on duty at Shiv Vihar Tiraha on main Brijpuri Road, which ended at the T-point of Yamuna Vihar. On that road around 1000-1500 persons had assembled raising slogans against NRC/CAA. Members of this mob were carrying dandas, stones and glass bottle containing petrol. They started pelting stones on police party, damaging the vehicles on the road and setting them on fire. PW6 along with Ct. Sanjay, HC Hari Babu and other police officials were present. Around 10-15 police officials were present there. PW6 had seen and identified some of them with naked face, as he knew them since prior to this incident. They were accused Shahnawaz @ Shanu, Shoaib, Rashid @ Monu and Shahrukh. PW6 knew them because he was beat constable in the area of Chaman Park. Shanu had his beetle shop (pan ki dukan) in that area and others used to run their auto in that area.</p> <p>Police party tried to stop accused persons, but since number of the rioters was too huge, they could not control them. At about 03:45 PM, the rioters broke open the shutter of a Pizza Shop in front of Rajdhani Public School and they looted and vandalized that shop. Thereafter, they came to the residential part over that shop and set that part on fire. They were not allowing fire brigade vehicle to come as they continued pelting stones over such vehicles, which were trying to come there.</p> | |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|-----------------------------|--|--|
| | PW6 correctly identified accused Shahnawaz @ Shanu, Shoaib, Rashid @ Monu and Shahrukh. | |
| PW7/HC Vikas Tomar | He was photographer in mobile crime team of North East District. On 13.03.2020 he took 10 photographs of a single shop bearing no. C-2/C-3, which was in burnt condition. Photographs were developed through a private lab and same were deposited in the office. PW7 had taken those photographs using Nikon Cool Pix, P-900 Camera. PW7 identified his signature at circle X on his certificate u/s 65-B of I.E. Act in respect of photographs. | Ex.PW7/A-1 to PW7/A10 (10 photographs taken by PW7) Ex.PW7/B (certificate u/s. 65-B of I.E. Act of PW7) |
| PW8/ASI Gajraj Singh | <p>On 04.03.2020, DO handed him over copy of FIR with original rukka and certificate u/s 65-B of I.E. Act in this case for further investigation. PW8 visited C-3/C-2, Chaman Park, Delhi and met complainant Narender there. There was a shop of Pizza on the ground floor, which was in damaged condition and upper floors were in burnt condition. PW8 prepared site plan (Ex.PW1/B) of this place.</p> <p>On 13.03.2020, PW8 called crime team at aforesaid address and ASI Mahavir alongwith Ct.Vikas came there. They inspected the property and took the photographs. ASI Mahavir handed over SOC report to PW8. PW8 seized ash and burnt articles from the first floor of the property, vide a seizure memo. PW8 had kept the seized articles in a poly bag and thereafter cloth pullanda was prepared of the same.</p> <p>PW8 identified pullanda with ash material contained therein. On 29.03.2020, PW8 handed over file to</p> | Ex.PW8/A (seizure memo of ash and burnt articles from the first floor of C-3/C-2); Ex.PW8/ Article-1 (pullanda with ash material contained therein) |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|---------------------------|---|--------------------------------------|
| | <p>MHC(R) on the instructions of SHO.</p> <p>On 27.08.2023, on the instructions of SHO, he was again handed over file of this case from Record Room, alongwith Sanction u/s 196 Cr.P.C. On 22.09.2023, PW8 recorded statement of Ct. Sarnam, who was working as <i>chitha munshi</i> on 24.02.2020. PW8 also recorded statement of W/SI Deepika on this day. PW8 prepared supplementary charge-sheet alongwith aforementioned materials and filed the same before the court, on 25.09.2023. Ct. Sarnam had handed over copy of duty roster of 24.02.2020 (running into 4 pages), which was placed by PW8 in the supplementary charge-sheet. W/SI Deepika had furnished copy of DD entry related to departure of police officials on 24.02.2020 and PW8 had placed that in the file.</p> | |
| PW9/HC Sanjay | <p>On 24.02.2020, from 02:00 PM onwards he was present on duty at Shiv Vihar Tiraha, in order to control the riots. HC Hari Babu, Ct. Vipin and the staff from other police station were also present there on duty. At that time, there was mob of around 500-600 persons on Brijpuri Road. This mob was vandalising and setting on fire the properties situated around Johripur Road. The mob was equipped with lathi, danda, stone and some inflammable object which used to burst into fire. Police team tried to control them but due to large number of mob, they could not be controlled. Some persons in that mob were wearing helmet etc. and some were having naked face.</p> <p>PW9 knew some of the members of that mob, who were having naked face. They were accused Shahnawaj @ Shanu, Mohd. Faisal, Ashraf Ali and Rashid @ Raja. At about 03:45 PM, this mob forcibly broke open shutter of a Pizza shop situated near Shiv Vihar Tiraha on Brijpuri road. They entered the shop and vandalised the same. They threw some articles out from the shop and burnt the</p> | |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|------------------------------------|---|--------------------------------------|
| | <p>shop. Some persons went to the 1st floor over this shop from the side of adjacent house and vandalised the 1st floor as well. These accused persons were part of the mob, which indulged into aforesaid incident. PW9 knew these accused persons as he had been beat Constable in the area of Chaman Park and during his patrolling duty, he used to meet them.</p> <p>PW9 correctly identified accused Shahnawaz @ Shanu, Mohd. Faisal, Ashraf Ali and Rashid @ Raja. Accused Mohd. Faisal used to work as electrician in the area of Chaman park; accused Shahnawaz @ Shanu had shop of bidi at Shiv Vihar Tiraha; accused Ashraf Ali used to be hawker to sell clothes in the area of Chaman Park; and accused Rashid @ Raja used to work in a hardware shop in Brijpuri. PW9 had given information about this incident to SHO during briefing in the evening on 24.02.2020 at about 9-10 PM in PS.</p> | |
| PW10/ HC Pradeep | <p>He being Reader to SHO at PS Gokalpuri, received an order u/s. 144 Cr.P.C. through Dak on 24.02.2020. This order was passed by DCP, North-East. PW10 showed this order to SHO and on the direction of SHO, PW10 announced that order in the area of PS Gokalpuri i.e. Johripur Extension, Ganga Vihar, Chaman Park, Indira Vihar, Bhagirathi Vihar, Sanjay Colony, Gokalpuri and Gokalpuri Village, through loud hailer.</p> | |
| PW11/SI Ashish Garg | <p>On 30.03.2020, this case was marked to him for investigation and he received case file from MHC(R). On the same day, PW11 was marked and handed over two more complaints, by Reader to SHO. These were complaints of Poonam and Rinku. PW11 clubbed these complaints in the present case on the grounds of proximity of time and place of the incident. On 04.04.2020, on the instructions of SHO, investigation of the present case was assigned to SI Manoj.</p> <p>On 27.12.2022, PW11 was posted in PS Jafrabad. On the instructions of Senior Officer (ld. DCP (N/E)) file of this case was again entrusted to him for the purpose of preparing supplementary chargesheet. PW11 collected certificate u/s. 65-B of I.E. Act from the photographer of</p> | |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|--------------------------------------|--|--|
| | <p>the crime team, in respect of the photographs taken in this case. PW11 also collected certified copy of CDRs as pertaining to accused persons in this case, from MHC(R). PW11 also collected complaint u/s. 195 Cr.P.C. from the office of Id. DCP (N/E). PW11 recorded statement of HC Pradeep who had pronounced order u/s. 144 Cr.P.C. PW11 also collected certificate u/s. 65-B of I.E. Act from complainant Narender in respect of photographs taken by him.</p> <p>PW11 prepared supplementary chargesheet and filed the same along with aforesaid materials in the court during starting month of 2023.</p> | |
| PW12/Sh. Pawan Singh | <p>In February 2020, he was having a shop of Pizza at Shiv Vihar Tiraha, Chaman Park, Delhi. PW12 had taken this shop on rent from Sh. Narender. Mr. Narender used to reside in same property on the first floor. Riot had taken place in that area. At the time of riot, PW12 was present in his office at Yamuna Vihar. At that time, PW12 was using mobile no.7840072456 and 8130100075. PW12 had made call to police at 100 number, on the day of riot from one of his above mentioned two numbers. The aforesaid shop was being run in the name and style of Pizza Diet. PW12 went back to his aforesaid shop after five days from riots.</p> | |
| PW13/ ASI Hari Babu | <p>On 24.02.2020, he was on duty since 2 PM at Shiv Vihar Tiraha. At Shiv Vihar Tiraha, a mob of around 1000-1500 persons had assembled agitating against CAA. They started vandalizing the shops and properties on Brijpuri Road, since about 2 PM. There was a shop of Pizza on Brijpuri road and the mob broke open the shutter of that Pizza shop and entered into the same. They damaged the furnitures and articles lying therein. This mob was carrying some item, which used to burst into fire on throwing the same. Some persons from that mob climbed over terrace of this Pizza shop through adjacent property. A family was residing on the upper floor over terrace of this shop and this mob had come to that floor. This mob vandalized this floor also and set it ablaze. Many persons in that mob had covered their face</p> | |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|--|---|--|
| | <p>by wearing helmet or through cloth. Some were having naked face.</p> <p>He had seen face of 3-4 persons in that mob. PW13 knew 2 of them, since prior to this incident. They were accused Shahnawaz @ Shanu and Mohd. Tahir. PW13 had also seen face of accused Parvez and Azad. This mob had set the Pizza shop also on fire. Police staff was lesser in number and PW13 telephonically informed Addl. SHO of his PS about vandalism and arson taking place there. PW13 was on duty at that place to control the riots. One Ct. Sanjay, Ct. Vipin and 2-3 other police officials from district line, were also there with PW13 on duty. The rioters were also carrying sword, danda etc. The incident at aforesaid Pizza shop took place somewhere between 3-4 PM. This Pizza shop was near Rajdhani Public school. PW13 had seen accused Shahnawaz, Mohd. Tahir, Parvez and Azad among the rioters during aforesaid incident.</p> <p>PW13 correctly identified accused Shahnawaz, Mohd. Tahir, Parvez and Azad, by their name, before the court.</p> | |
| PW14/ HC Sarnam Singh | In the month of February 2020, he prepared duty roster under the directions of SHO. PW14 identified copy of duty roster for 24.02.2020 in his handwriting as he had prepared this duty roster. PW14 had brought original register of duty roster for this period and found above-said copy to be the true copy of the original, as maintained in the register. | Ex.PW14/A (colly 4 sheets OSR) (Copy of duty roster prepared by PW14) |
| PW15/ ASI Anju Devi | On 30.03.2020 at about 01:10 PM, one complaint was sent by SHO to her and she being Duty Officer, made DD entry bearing no.51A through computer operator regarding this complaint. Print of that DD entry was taken out and given to IO/Ashish Garg. | Ex.PW15/ A(Copy of DD No.51- A) |
| PW16/ W/SI Deepika | On 24.02.2020, she alongwith 20-25 other staff of the PS Gokalpuri had been deployed at different points for law and order duty. PW16 was patrolling alongwith 3-4 other | |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|----------------------------------|---|--------------------------------------|
| | staff in the area of Brijpuri T point, Wazirabad road, Gokalpuri metro station & Ganga Vihar market. They were sent on duty vide DD no.25B. | |
| PW17/ Insp. Manoj | <p>On 07.04.2020, he was posted in PS North Rohini and he was working as SI. But on this day, he was attached in PS Gokalpuri, by the orders of senior officers. On this day, PW17 received file of this case for investigation from MHC(R). On 08.04.2020, PW17 went through this file and on the basis of analysis of the file, he came to know that Ct. Vipin, Ct. Sanjay and Ct. Babu, were on duty during the period of riots in the area of Brijpuri. Accordingly, PW17 examined all these 3 officials and recorded their statement in this case.</p> <p>On 09.04.2020, he recorded statement of complainant Narender in the PS. On 10.04.2020, one eye witness namely Shyam Sunder came to PW17 in the PS and PW17 recorded his statement in this case. From the statement of eye witness and aforesaid police officials, name of 10 culprits were revealed namely accused Shahnawaz @ Shanu, Azad, Ashraf, Shahrukh, Shoaib, Mohd. Tahir, Parvez, Rashid @ Raja, Rashid @ Monu and Faisal. After discussing the matter with his senior officers, PW17 came to know that all above-said accused persons were already running into judicial custody in FIR No. 39/20 of PS Gokalpuri. PW17 examined Poonam Johar, who was tenant of complainant Narender, on 11.04.2020. She had also made her complaint, which was already placed in the file.</p> <p>On 16.04.2020, PW17 came to Karkardooma Courts alongwith Ct.</p> | |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|---------------------------|--|-----------------------------------|
| | <p>Sandeep and moved application before concerned MM, seeking permission to interrogate and arrest accused Shahnawaz. PW17 was granted the permission. PW17 reached Mandoli Jail alongwith Ct. Sandeep. In that jail, PW17 interrogated accused Shahnawaz and formally arrested him in this case vide arrest memo, which is Ex.A-20 (admitted document). On next day, PW17 again came to Mandoli Jail and moved application before duty MM at the jail and accused Shahnawaz was sent to J/C in this case accordingly.</p> <p>On 22.04.2020, PW17 again visited Mandoli Jail with Ct. Sandeep and moved application before duty MM at Mandoli jail for interrogation of accused Azad, Ashraf, Shahrukh, Shoaib, Mohd. Tahir, Rashid @ Raja & Parvez. On permission, PW17 interrogated them separately and arrested them in this case vide their separate arrest memos. Arrest memo of Ashraf Ali is Ex.A-17; of Shoaib is Ex.A-25; of Rashid @ Raja is Ex.A-26; of Shahrukh is Ex.A-24; of Mohd. Tahir is Ex.A-21; of Azad is Ex.A-22 and of Parvez is Ex.A-23 (admitted documents). On same day, all of those accused persons were sent to J/C on his application. On 25.04.2020, PW17 moved application before Duty MM at Tihar jail seeking permission to interrogate Mohd. Faisal and Rashid @ Monu. On getting permission, PW17 interrogated them separately vide their separate arrest memos. Arrest memo of Faisal is Ex.A-19 and that of Rahid @ Monu is Ex.A-18. Both of them were sent to J/C on his application. Thereafter, PW17 moved</p> | |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|--|--|--------------------------------------|
| | <p>application in the office of Id. DCP for the purpose of getting CAF, CDR, Cell ID chart in respect of mobiles of accused persons. PW17 sent request letter to provide PCR forms in respect of calls made between 23.02.2020 to 25.02.2020 from the area of PS Gokalpuri. From the record of his PS, PW17 analyzed the mobile number of the PCR callers. PW17 examined PCR caller Vipin and 3 more persons including one Sharad.</p> <p>PW17 collected report and photographs from crime team in respect of scene of crime. Thereafter, PW17 obtained notification u/s 144 Cr.P.C. from ACP Gokalpuri and placed it on the record. PW17 collected photographs of all accused persons from IO of FIR No. 39/20 and placed them on the record. Thereafter, PW17 prepared first charge-sheet and filed it in the court. PW17 correctly identified accused Shahnawaz, Mohd. Faisal, Rashid, Rashid @ Monu, in the display screen. PW17 pointed out to accused Azad, Shoaib @ Chutwa, Shahrukh and Ashraf, without naming them as he had forgotten their names. In his cross examination by prosecutor, he deposed that Ct. Babu mentioned by PW17, was HC Hari Babu. PW17 had obtained order u/s 144 Cr.P.C. from the office of Id. DCP.</p> | |
| <p>Admitted documents under Section 294 Cr.P.C.</p> <p>endorsement on rukka as Ex.A-1; copy of entry from register no.19 as Ex.A-2; FIR as Ex.A-3; certificate u/s 65B of I.E.Act as Ex.A-4; GD nos.52A, 51A, 63A, 88A, 78A and 102A are exhibited as Ex.A-5 to Ex.A-10; PCR form as Ex.A-11 (colly running in 5 pages); PCR form as Ex.A-12 (colly running in 4 pages); PCR form as Ex.A-13 (colly running in 4 pages); PCR form as Ex.A-14 (colly running in 6 pages); PCR form as Ex.A-15 (colly running in 5 pages); prohibitory</p> | | |

| Sl. No. & Name of Witness | Role of witness & Description of documents | Proved documents/ case properties |
|---------------------------|--|--------------------------------------|
| | <p>order u/s 144 Cr.PC as Ex.A-16; arrest memo of accused Ashraf Ali as Ex.A-17; arrest memo of accused Rashid @ Monu as Ex.A-18; arrest memo of accused Mohd.Faisal as Ex.A-19; arrest memo of accused Mohd.Shahnawaz @ Shanu as Ex.A-20; arrest memo of accused Mohd.Tahir as Ex.A-21; arrest memo of accused Azad as Ex.A-22; arrest memo of accused Parvez as Ex.A-23; arrest memo of accused Shahrukh as Ex.A-24; arrest memo of accused Shoaib as Ex.A-25; arrest memo of accused Rashid @ Raja as Ex.A-26; CAF as Ex.A-27; certificate u/s 65B of I.E Act as Ex.A-28; CDR is as Ex.A-29 (colly 27 pages); prohibitory order u/s 144 Cr.PC as Ex.A-30; complaint u/s 195 Cr.PC as Ex.A-31; notice u/s 92 Cr.PC as Ex.A-32; certificate u/s 65B of IE Act as Ex.A-33; CDR as Ex.A-34 (colly 5 pages); CAF as Ex.A-35; CDR related to accused Shahnawaz as Ex.A-36; (colly 9 pages); KYC as Ex.A-37; KYC of accused Mohd. Tahir as Ex.A-38; KYC of accused Rashid as Ex.A-39; CDR related to accused Rashid as Ex.A 40; Delhi Cell ID Chart as Ex.A-41; certificate u/s. 65-B of I.e. Act as Ex.A-42; endorsement made by Bineet Pandey on complaint as Ex.A-43; statement of Hari Babu dated 28.03.2022 recorded in FIR No.40/20 as Ex.D/A-1 (colly.2 pages); statement of Hari Babu dated 28.03.2022 recorded in FIR No.83/20 as Ex.D/A-2 (colly.2 pages); statement of Ct. Sanjay dated 28.03.2022 recorded in FIR No.40/20 as Ex.D/A-3(colly.2 pages); statement of Dr. Sanjay Garg dated 03.08.2023 recorded in FIR No.140/20 as Ex.D/A-4 (colly.3 pages) and statement of Dr. Arun Kumar Aggarwal dated 26.08.2023 recorded in FIR No.140/20 as Ex.D/A-5(colly.3 sheets).</p> | |

PLEA OF ACCUSED PERSONS U/S. 351 BNSS

11. All accused persons denied all the allegations and pleaded innocence, taking plea that they have nothing to do with the commission of alleged offences. They further took plea that they have been falsely implicated in this case. Initially all accused persons opted to lead evidence in their defence, but finally their counsels submitted that they did not require to lead evidence in defence, in view of admission of documents filed on behalf of defence, by Id. Special PP for State.

ARGUMENTS OF DEFENCE & PROSECUTION

12. I heard ld. Special PP and ld. counsels for accused persons. I have perused the entire material on the record.
13. **Sh. Z Babar Chauhan** and **Sh. Dilshad**, ld. defence counsels for accused Mohd. Shahnawaz @ Shanu, Azad and Parvez, argued that all cited public witnesses as eyewitnesses did not support the case of prosecution to identify any accused. It was further argued that police officials are not credible witnesses. It was further submitted that no caller, DD entry or complaint was made by any police official and they gave statement after long gap. Ld. counsel also referred to judgment passed in the case of **Harbeer Singh vs. Sheeshpal & ors. (Crl. Appeal 1624-1625 of 2003 decided on 20.10.2016)**, to challenge the credibility of prosecution evidence, on the grounds of delay in recording statement of alleged eyewitnesses. In the case of **Harbeer Singh** (supra), Hon'ble Supreme Court observed that: -

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

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

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

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

14. In the written synopsis filed on behalf of accused Shahnawaz @ Shanu, Parvez and Azad, **Sh. Z. Babar Chauhan**, ld. counsel submitted that PW1/Sh. Narendra Kumar, PW2/Smt. Poonam Johar, PW3/Sh. Shyam Sundar and PW5/Sh. Mahesh, did not support the prosecution story at all. Ld. counsel referred to testimony of ASI Hari Babu recorded on 28.03.2022, in FIR Nos.40/20 and 83/20, PS Gokalpuri, wherein this witness did not support the case of prosecution on the point of identification of accused Shahnawaz @ Shanu, Parvez and Azad. Similar reference was given for HC Sanjay pertaining to FIR No. 40/20, who was examined as PW9 in the present case. In respect of PW6/Ct. Vipin, it was submitted that he is not reliable witness being police witness and he had been planted by the prosecution to boost up the prosecution story, as his statement was recorded after the gap of about one and half months i.e. on 08.04.2020, which cast doubt upon the credibility of PW9/Ct. Vipin. Even this witness did not make any call at 100 number after seeing the incident, nor did he make any written complaint to show that he

had seen some of the rioters.

15. **Sh. Salim Malik**, ld. counsel for accused Shoaib @ Chhutwa, Rashid @ Raja, Shahrukh and Mohd. Tahir, argued that three public officials identified separate accused and no accused except Shahnawaz, was identified by more than one witnesses.
16. In the written synopsis filed on behalf of accused Shoaib @ Chhutwa, Rashid @ Raja, Shahrukh and Mohd. Tahir, **Sh. Salim Malik**, ld. counsel added that PW6/Ct. Vipin, PW9/HC Sanjay and PW13/ASI Hari Babu are not reliable and trustworthy witnesses, and they seemed to be stock witnesses, as they have claimed themselves as eyewitnesses of the incident dated 24.02.2020 and 25.02.2020 in many cases. It was submitted that accused Shahrukh and Shoaib @ Chhutwa were identified by PW6 only; accused Rashid @ Raja was identified by PW9; and accused Mohd. Tahir was identified by PW13/ASI Hari Babu, stating that these persons were part of the mob. It was further submitted that there is no other corroborative piece of evidence against these accused persons and site plan is also defective.
17. **Sh. Abdul Gaffar, Sh. Badre Alam** and **Sh. Nadeem**, ld. counsels for accused Ashraf Ali, Rashid @ Monu and Mohd. Faisal, argued that PW9 identified accused Faisal as Shahrukh, thus, all evidence of identification was an afterthought. It was further argued that no one identified accused Ashraf. It was further argued that PW7 deposed time of incident as 1-2 PM, which is different from the time mentioned by others.
18. In the written synopsis filed on behalf of accused Ashraf Ali, Rashid @ Monu and Mohd. Faisal, **Sh. Abdul Gaffar**, ld. counsel

submitted that these accused persons have only been identified as a part of the mob based on testimony of PW6/Ct. Vipin, who identified accused Rashid @ Monu and that of PW9/HC Sanjay, who identified accused Mohd. Faisal and Ashraf Ali. However, PW13/ASI Hari Babu did not identify any of these accused persons. It was further submitted that there is no explanation of delay in recording statement of PW6 and PW9, despite the fact that they used to participate in daily briefing along with IO. It was further submitted that prior to 08.04.2024, no formal complaint or DD or PCR calls were made by these witnesses. It was further submitted that as per duty roster dated 24.02.2020, SOC denotes as Beat No.6 i.e. Chaman Park. PW9 was not deputed there. Whereas as per DD No. 25-B at 11 AM, PW9 and PW6 left for Brijpuri T-point. However, PW9 claimed to be on duty from 2 PM. However, in FIR No. 140/20 (wherein he was examined as PW4) PW9 claimed to be on duty since 8 AM along with Hari Babu. Therefore, either DD No.25-B is manipulated or his version is incorrect. It was further submitted that there is no record regarding the point of their duty, over which investigation was yet to be done. Ld. counsel placed reliance upon the case of **Masalti v. State of U.P. AIR 1965 SC 202**, wherein Hon'ble Supreme Court has established the well followed test of support of at least two or three corroborative witnesses, who give a consistent account of the incident for conviction in an offence involving a large number of offenders and large number of victims. In the present case, the only material against the accused is the testimony of two police witnesses, who admitted to know the accused since prior to the incident and had alleged no overt

act on his part. It was further submitted that inconsistencies in the statement of the two witnesses are illustrative of grave doubt regarding the veracity and reliability of the statements.

19. Per-contra, **Sh. R.C.S. Bhadoria**, ld. Special PP for State argued that incident had taken place on 24.02.2020 at C-3/C-2, Chaman Park. Complainant was PW1/Sh. Narender Kumar, who had given ground floor of abovesaid building on rent to PW-12/Pawan. PW12 was running his shop of Pizza Diet. PW2/Smt. Poonam Johar was his tenant at 2nd floor. It was further argued that PW1 and PW2 proved that this entire house was burnt. Ld. Special PP further argued that PW6/Ct. Vipin, PW9/HC Sanjay and PW13/ASI Hari Babu were eye witnesses, being deployed on duty and they identified different accused persons, during the incident. It was further argued that Ex.PW14/A is duty roster, which proves that PW6, PW9 and PW13 were on duty on 24.02.2020. Ex.PW7/A-1 to Ex.PW7/A-10 are photographs of aforesaid property, as taken by Crime Team photographer. PW10 announced order u/s. 144 Cr.P.C. Ld. Special PP further argued that prosecution has proved its case.

APPRECIATION OF FACTS AND EVIDENCE

UNLAWFUL ASSEMBLY & RIOTS

20. Complainant/PW1 proved his complaint as Ex.PW1/A, wherein he alleged vandalism and arson in his property bearing no. C-3/C-2, Chaman Park, Brijpuri Road, Shiv Vihar Tiraha, Delhi-94, by the rioters on 24.02.2020. As per his testimony, on 24.02.2020 at about 3 PM or 4 PM, when he along with his family member, was present at his house bearing C-3/C-2, the riot started in the area. They remained indoors, got terrified and

made a call at 100 number. Later on, police officials rescued them. He returned to his house after 3 to 4 days and found that his entire house had been burnt.

21. Even PW2 was shown to be residing in the same property and she also deposed that on 24.02.2020, she saw mob coming in her gali from both sides and subsequently persons from this mob came on the terrace of her house, through terrace of adjoining property. She had fled away with her family and when she came back, she found her home in burnt condition.
22. PW7/HC Vikas Tomar was photographer in crime team, who deposed about visiting this property. He proved ten (10) photographs stating that same were taken by him. He also proved certificate under Section 65-B of I.E. Act in respect of these photographs. Those 10 photographs, which are Ex.PW-7/A-1 to PW-7/A-10. These photographs leave no doubt that at least upper part of that property would have been set on fire by the rioters. During his cross-examination, PW7 denied the suggestion that he did not visit the aforesaid address or that the certificate was manipulated by him or that he did not take any photographs.
23. As per testimony of PW3/Sh. Shyam Sunder, on 24.02.2020 at about 2 PM or 02:30 PM, he was present at his Tea Stall situated near Shiv Vihar T-point. PW3 saw a mob coming from the side of Mustafabad towards his Tea Stall. At the same time, a stone thrown by somebody, hit him below his left armpit. The persons from the mob were armed with wooden rods, stones etc. and they told PW3 to shut the shop and accordingly PW3 shut his Tea Stall and left for his house. PW3 returned to his shop after about two days and found that its locks had been broke open and goods

lying therein including his cycle, had been stolen. The shop had also been burnt.

24. According to testimony of PW6/Ct. Vipin, PW9/HC Sanjay and PW13/ASI Hari Babu, all of them were on duty at Shiv Vihar Tiraha. On 24.02.2020, a mob had assembled there which indulged into rioting, vandalism and arson. This mob at about about 03:45 PM, forcibly broke open shutter of a Pizza shop situated near Shiv Vihar Tiraha on Brijpuri road. They entered the shop and vandalised the same. They threw some articles out from the shop and burnt the shop and upper floors
25. 1st IO/PW8 also deposed that he visited this property on 04.03.2020. He found the shop on ground floor in vandalized condition and upper floors in burnt condition. All these evidences regarding condition of this property and incident at this property, have remained unchallenged from defence. On taking overall view of the same, I find that it is well established that an unlawful assembly had attacked this property, while being indulging in riotous acts. They vandalized and burnt different parts of this property.

IDENTIFICATION OF ACCUSED

26. In respect of identification of the members of responsible mob, prosecution relied upon the evidence of PW6/Ct. Vipin, PW9/HC Sanjay and PW13/ASI Hari Babu. The relevant part of their examination in chief has already been mentioned in the description of prosecution evidence. Their testimony during cross-examination by defence is reproduced herein-after for the purpose of ready reference.

(a) **Testimony in cross-examination of PW6/Ct. Vipin dated 06.06.2022:** -
“ **XXXX by Sh. Z. Babar Chauhan, Id.counsel for accused Md. Shahnawaz, Azad and Parvez and XXXX by Sh.Parvez Hasan, Id.counsel for accused Ashraf Ali, Rashid @ Monu and Md. Faisal.**

6. *I had made departure entry in PS before going to the aforesaid area. The houses in Chaman Park area are there upto Shiv Vihar Tiraha. I am witness in about 10-12 cases of riots. I am not confirmed as to in which particular FIR, my statement u/s 161 Cr.PC was recorded first. I had not made any call at 100 number or at my PS regarding aforesaid incident because my seniors were already present at the spot.*

7. *My statement was first of all was recorded on 08.04.2020. I did not meet IO of this case prior to 08.04.2020. I myself had gone to the IO for recording of my statement and he did not come to me. My statement was not recorded before 08.04.2020 because the case was registered only after the victim made his complaint and on the basis of same, FIR was registered and thereafter, my statement was recorded. I am not confirmed if this FIR was registered before any complaint being made by a victim, hence I can not admit or deny the suggestion that this FIR was registered prior to complaint being made by any victim. I do not know when did this FIR was registered.*

8. *My statement was recorded at PS during evening hours in this case on 08.04.2020. I had stated before IO that those persons were raising slogans against NRC/CAA. My distance with rioters was not constant. Sometimes we used to go near to them and on pelting of stones, we also used to take back step. I had gone upto about 40-50 metres near to that mob. In my knowledge, no police men was injured during pelting of stones.*

9. *I knew Shahnawaz @ Shanu since about 10-11 months prior to aforesaid incident. I did not take beetle from his shop as I do not take beetle. He also used to sell bidi, cigarette etc.*

10. *I do not remember as to what time I went back to PS from aforesaid place. I do not know residential address of any of aforementioned four accused persons. They used to reside in the area around Mustafabad, but I am not confirmed about the same.*

11. *It is wrong to suggest that I was not present at Shiv vihar Tiraha on 24.02.2020, as stated by me or that I did not see any incident of riot or that I had identified accused persons at the instance of IO or that I had falsely deposed in this case, as a planted witness at the instance of IO.*

XXXX by Sh.Salim Malik, Id.counsel for accused Md. Tahir, Md. Shoiab, Shahrukh and Rashid @ Raja.

12. *I had seen other shops and houses also being damaged and set on fire on 24.02.2020. All those shops and houses were located at aforesaid Shiv Vihar Tiraha itself. I do not know house/property*

number of those properties.

13. *I had returned back to PS on 24.02.2020. I had verbally informed my SHO that I had identified four persons among the rioters on 24.02.2020. I had not taken any steps for getting registered FIR in respect of aforesaid incident of 24.02.2020. I do not know if any such step was taken by any other police official, who was with me. I did not inform other senior officers like DCP etc. about identifying abovesaid four rioters.*

14. *Whenever I went near to rioters, they did not listen to me so as to pacify. When their activities slowed down, only then we could reach near to them. I do not remember as to when did I last meet Shoaib or Shahrukh prior to aforesaid incident. There is no counting of times I met these persons while petrolling/roaming around that area, prior to aforesaid incident. I can not point out any particular day, month or year of meeting aforesaid persons.*

15. *It is wrong to suggest that I identified aforesaid persons today in the court as I was shown these accused persons outside this court room and I was told about their names, on the basis of which I identified them. I had come to the court for the purpose of giving evidence in FIR no.40/20 of PS Gokalpuri on 02.05.2022. My statement was recorded in the court on that day in aforesaid case. It is correct to suggest that on that day, I had pointed out to one Faisal as Shahrukh. Vol. this mistake happened because that person Faisal was wearing mask and I did not get his mask removed before identifying him. I do not remember if Shahrukh was wearing mask on that day or not.”*

(b) Testimony in cross-examination of PW9/HC Sanjay dated 01.02.2023: -

“XXXXX by Sh. Salim Malik and Ms.Shavana, ld.counsels for accused Mohd. Tahir, Md. Shoiab, Shahrukh and Rashid @ Raja;XXXX by Sh. Z. Babar Chauhan, ld. counsel for accused Md. Shahnawaz, Azad and Parvez; and XXXXX by Sh. Abdul Gaffar and Mohd. Nazim, ld. counsels for accused Ashraf Ali, Rashid @ Monu and Mohd.Faisal.

4. *There were around 28-29 police officials at Shiv Vihar Tiraha. I did not have any weapon and I am not sure about the others. I had not mentioned before IO about informing SHO in respect of aforesaid incident during briefing in PS. I do not remember, if I made any DD entry or informed any senior officer about recognizing aforesaid four persons in the mob on 24.02.2020. I am eye witness in about 8-10 cases of riots. I do not remember that on which date my first statement was recorded in any riot case. I do not remember if such first statement was recorded prior to 08.04.2020. My statement in this case was recorded on 08.04.2020. I do not remember, if I proceeded on leave between 24.02.2020 and 08.04.2020. I do not remember, as to when my last statement in any riot case was recorded*

by concerned IO. There had been briefing in police station every day after riots and I attended the same. The briefings were attended by other staff of PS including SI Manoj. I was patrolling, when incident took place in aforesaid shop. I would have been at a distance of about 20-30 feet from the aforesaid shop. There were around 60-70 persons, who had attacked on the aforesaid shop. The last row of the persons in the aforesaid mob would be at a distance of about 8-10 feet from me. I do not remember, if the persons in the last row of this mob were facing me. All the aforesaid 4 persons were seen by me, while they were entering the shop. I had seen their faces. I am not confirmed if any public notice was pasted outside PS to seek any information related to riot. I do not remember, if the officer of the rank of DCP/ACP visited our PS subsequently. I do not remember as to in which case, I deposed before the court for the first time in any riot case. I do not remember, if my statement has been recorded before the court in FIR no.40/20. The aforesaid accused persons were accused in the other cases also, wherein I deposed before the court. I have deposed before the court in 3 cases of riots, wherein aforesaid 4 accused persons were also accused. I had correctly identified all aforesaid 4 accused persons, before the court in all those 3 cases. I do not remember, if in one of such cases i.e. FIR no.40/20, I had not correctly identified accused Shahnawaz, Faisal and Rashid, hence I can not admit or deny this suggestion. I know Shahnawaz @ Shanu since the year 2019.

5. *It was 3 storey building, wherein aforesaid Pizza shop was situated. I do not remember, as to on which side of this property, there were stairs for upper floors. The shop opened on the main road and there was a street on the back side of this property.*

6. *It is wrong to suggest that I identified accused Rashid @ Raja, Ashraf Ali, Shahnawaz @ Shanu and Faisal in the court today on tutoring by IO of the case, or that I had not seen any incident at aforesaid shop, or that I had not seen aforesaid four persons in the mob, or that I have deposed falsely about identifying them in the mob at the instance of IO and senior officers, or that my statement was falsely prepared by IO with purpose to solve this case. It is wrong to suggest that I have falsely given evasive answer on the suggestion about incorrectly identifying 3 accused persons, before the court in FIR no.40/20, or that I have falsely deposed about informing SHO in the briefing in respect of aforesaid incident, or that I am a planted witness.”*

(c) Testimony in cross-examination of PW13/ASI Hari Babu dated 03.01.2024: -

“ XXXXX by Sh. Salim Malik and Ms.Shavana, ld.counsels for accused Mohd. Tahir, Md. Shoiab, Shahrukh and Rashid @ Raja; XXXX by Sh. Abdul Gaffar and Sh. Badre Alam, ld. counsels for accused Ashraf Ali, Rashid @ Monu and Mohd.Faisal; and XXXX by Mohd. Dilshad, ld. counsel for accused Md. Shahnawaz, Azad and

Parvez.

5. *On 24.02.2020, I returned back to PS at about 10 p.m. For the purpose of riot control, my duty started at 2.00 p.m. Prior to 2.00 p.m., my duty was at Chaman Park. I had come to Chaman Park after attending briefing at 9 a.m. for duty of patrolling. I remained at Shiv Vihar tiraha for about 40-45 minutes & when the mob proceeded further on Brijpuri road, then I also proceeded on that road. At Shiv Vihar tiraha, I was not able to distinguish as to mob was of Hindu or of Muslim persons. At Shiv Vihar tiraha, I had come from the side of Chaman Park and was present on the side of Chaman Park.*

Q: How many persons were there on the side of Shiv Vihar, in the mob?

A: The total persons in that mob would be around 1000-1500 persons. I can not tell the specific number of persons on the side of Shiv Vihar.

6. *I did not go towards Shiv Vihar side, to control that mob. Vol. I was trying to control the mob on the side of Chaman Park. The mob on the side of Shiv Vihar would be at a distance of 100-150 meters, from my position. The mob on the side of Shiv Vihar were having danda and they were pelting stones. I did not notice as to what slogan was being raised by the mob on the side of Shiv Vihar. After seeing mob, I had not made call to senior officer between 2.00 p.m. to 2.45 p.m., so as to seek additional force. At 3.45 p.m., my position was in front of aforesaid Pizza shop. The nearest person of the mob at this time would be at a distance of about 100 meters from me. When this mob was breaking open the shutter of the shop, face of maximum persons was towards that shop. When they were coming out of the shop, then face of this mob was towards me. I use eye glasses for near distance. I can not tell my eyesight for distant and near vision. At 3.45 p.m., there would be mob of around 500-600 persons near aforesaid Pizza shop. The width of that Pizza shop would be between 10-15 feet. There was no street/gali on either side of that Pizza shop. Vol. There were shops on both sides of this Pizza shop. Before aforesaid incident, I lastly visited this Pizza shop around 2-2 ½ months, prior to the incident. There was no restaurant near that Pizza shop.*

7. *I am witness in about 10-12 cases of riots dt.24.02.2020. I am witness in 3 cases of riots dt.25.02.2020. The cases related to 24.02.2020 include FIR no.140/20. I do not remember other FIR numbers. However, I am witness in the cases related to incidents at the shops/properties situated on Brijpuri road from Shiv Vihar tiraha.*

8. *After coming back to PS on 24.02.2020, I had informed SHO about witnessing incident at aforesaid Pizza shop. I did not make any arrival entry after coming back to PS nor did I inform DO about the same. I did not lodge FIR or make complaint in respect of any of the incident seen by me, on 24.02.2020. I used to meet ASI Gajraj in PS after 24.02.2020. I came to know for the first time about registration of*

this FIR regarding incident at Pizza shop, on 08.04.2020. I met SI Manoj also after 24.02.2020 during briefings in the PS. I used to meet ASI Gajraj and SI Manoj in PS before 08.04.2020 also. Prior to 08.04.2020, none of them asked me about incident at Pizza shop. At the time of incident at this Pizza shop, I did not see owner of that shop or his neighbour. I would have remained near this Pizza shop upto around 4 p.m.

9. *I did not make any departure entry in PS on 24.02.2020. I did not notice any public notice outside PS to seek information from public about the riots. I did not proceed on leave between 24.02.2020 and 08.04.2020. There were 2 complete floors and one half floor in that Pizza shop. It is correct that during my examination in the court in FIR no.40/20 and 83/20, I could not identify Shahnawaz, Azad and Parvez.*

10. *It is wrong to suggest that I was not present on duty at Shiv Vihar tiraha or near Pizza shop, on 24.02.2020; or that I have been planted as a witness in this case; or that I have identified the accused persons on tutoring by the senior officers; or that I have deposed falsely in this case.”*

27. Defence counsel had referred to the test mentioned in the case of **Masalti** (supra). I shall first deal with this argument that whether test referred in the judgment passed in the case of **Masalti** (supra) applies to all the cases. In the case of **Masalti** (supra), 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.”

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

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

idle curiosity without intending to entertain the common object of the assembly”, this Court at SCR pp. 148-49 in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 observed that his participation as a member of the unlawful assembly ought to be spoken by more than one witness in order to lend corroboration. The test so adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 was only to determine liability of those accused against whom there was no clear allegation of having committed any overt act but what was alleged against them was about their presence as members of the unlawful assembly. The test so adopted was not to apply to cases where specific allegations and overt acts constituting the offence are alleged or ascribed to certain named assailants. If such test is to be adopted even where there are specific allegations and overt acts attributed to certain named assailants, it would directly run counter to the well-known maxim that “evidence has to be weighed and not counted” as statutorily recognised in Section 134 of the Evidence Act.”

29. In the same case, Supreme Court explained the nature of cases wherein test mentioned in the case of **Masalti** (supra), 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.”

30. The above-mentioned observations of Supreme Court, make it clear that for inviting liability by virtue of Section 149 IPC, it is not required to prove overt act on the part of every member of the mob. However, a rule of prudence has been spoken about, for fastening vicarious liability with aid of S.149 IPC. That rule of

prudence is the genesis of test mentioned in the case of **Masalti** (supra). In that case also, it was approved as a mark of precaution, rather than laying it down as a hard and fast rule. Therefore, it shall depend upon the facts and circumstances of this case and quality of evidence of PW6, PW9 and PW13, before taking any decision in this case, so as to apply this rule of prudence.

31. Defence took plea that PW6/Ct. Vipin, PW9/HC Sanjay and PW13/ASI Hari Babu had though knowledge of the names and particulars of the accused persons, but they did not take any step to formally get this information recorded, before 08.04.2020. Defence claimed that PW6, PW9 and PW13 were planted and tutored witnesses and hence, there was delay in recording their statements by IO. In respect of delayed examination of these witnesses by IO in this case, **Mr. Babar** referred to judgment passed in the case of **Harbeer Singh** (supra). Relevant observations made in that judgment have already mentioned herein-above.
32. It is true that in normal circumstances delayed examination of an eyewitness would give rise to a reason to be suspicious against statement of such eyewitness. However, it depends upon case to case and facts and circumstances of each case, to look into the credibility of given reasons behind such delay. It is not the ratio of aforesaid judgment that in all the cases delayed examination of any eyewitness would result into rejection of his evidence in toto. In the case of **John Pandian v. State, (2010) 14 SCC 129**, on the point of effect of delayed examination of witnesses, hon'ble Supreme Court observed that statement of eyewitnesses should

be recorded immediately or with least possible delay. Early recording of statement gives credibility to evidence of witnesses, but it is not an absolute rule that where statement is recorded late, witness is a false or a trumped-up witness. Supreme Court held that it will depend upon the quality of evidence of the witness.

33. In the present case, it is matter of common knowledge that on account of unexpected riots, which rocked North-East part of Delhi for about four days, there had been huge pressure upon the police agency. Large number of complaints were bound to pour in and it so happened. It is matter of common knowledge that huge damage was done in this riot, affecting a large number of victims. Police was having task to tackle such grave situation. It is well within knowledge of everyone that year 2020 was also rocked on account of unexpected pandemic of Covid-19. There had been cases since beginning of the year and because of highly accelerated increase in the positive cases of Covid-19, even Government of India was compelled to take a hard decision for complete lock-down in the whole country since 24.03.2020. It does not mean that prior to 24.03.2020, the situation was normal. On account of everyday reporting of positive cases of Covid-19, there had been advise and guidelines issued for all for least interaction, to avoid physical contact and to maintain physical distance etc. Therefore, there was impact on the functioning of every organization. Police organization could not be exception to this impact. Police in Delhi would have been recovering from the impact of riots taken place during concluding days of February 2020, when they were also expected to enforce the directions of government given on account of Covid-19. For such reasons, I

find that the delay in recording statement of witnesses, was much probable in the given scenario, hence, same cannot be a reason to discard the evidence of PW6, PW9 and PW13.

34. Defence challenged the credibility of PW13 on the basis of his previous testimony recorded in FIR No.40/20 and 83/20, PS Goklapuri on 28.03.2022. Certified copy of those testimonies are Ex.D/A-1 and Ex.D/A-2. At that time this witness could not identify the accused persons in FIR 40/20, taking plea of lapse of long time. However, he had stated that he had seen some persons in the mob and identified them. He had disclosed names of those persons as Shahrukh, Parvez and Azad. In that case, he was talking about the riotous act of the mob as taken place on Main Brijpuri Road on 25.02.2020 at about 01-02 PM. He was cross-examined by Id. Special PP at that time also and in that process, he admitted that the person identified by him during riot was Shahnawaz and not Shahrukh. Ld. defence counsel made contentions that this witness identified the same accused Shahnawaz in FIR 83/20, subsequent to his examination in FIR No.40/20, on same day only because of tutoring. His other argument was that since this witness had not seen any accused, therefore, he could not identify any accused during his examination in FIR No.40/20, but subsequently this witness identified same accused persons in other cases. In this respect, Id. Special PP submitted that at the time of examination in FIR No.40/20, this witness was not in fit condition.
35. Though, prosecution did not produce any evidence of treatment of PW13, but defence filed certified copy of statement given by Dr. Sanjay Garg and Dr. Arun Aggarwal, as recorded in FIR No.

140/20, PS Gokalpuri. Both these doctors deposed about medically examining PW13 and treating him. Prosecution admitted their testimonies, which are Ex.D/A-4 and Ex.D/A-5, respectively.

36. **Mr. Babar** argued that Dr. Sanjay admitted that PW13 did not make complaint of memory loss or mind problem before him. Dr. Arun also admitted that PW13 did not complain about memory loss before him. However, treatment being given by Neurologist for the purpose of not being able to recollect any fact or face of a person correctly, it is not necessary that the person concerned would be suffering from some sort of mental illness. There is nothing like mind problem. The term used by this witness, was a term used by layman, which was given over-emphasis by defence. In fact, even without suffering from any particular illness, it is a normal tendency of any person that he does not recollect an incident taken place in the past completely or very accurately. If I compare the condition of PW13 with such normal person, then as per testimony of both aforesaid doctors, apparently his condition was worse than others. As per the statements given by both these doctors, PW13 was admitted in Garg hospital on 12.01.2022 with complaint of high-grade fever with vertigo. He was discharged on 15.01.2022 and was found suffering from acute vertigo with cervical spondylosis with Covid-19. Thereafter also, he remained under treatment in Garg hospital. On 21.01.2022, he visited Jain hospital with complaint of dizziness, nousea and his sleep was also reported to be disturbed. As per common knowledge of medical science, the problem of vertigo does make a person unstable and very

uncomfortable because of severe giddiness etc. In that state of mind, it can be possible with anyone that he does not recollect all the things very correctly and accurately.

37. Moreover, testimony of Dr. Arun is very relevant in respect of condition of this witness at that time period. Dr. Arun was cross examined at length by the defence counsels and he came up with very natural answers to the questions put to him. His cross examination rather made it very clear that PW13 was actually having severe physical problem at that time, which was defined as Peripheral Vestibulopathy. Dr. Arun explained that this symptom meant dis-function of vestibular system, which is responsible for balance of the body. Dis-function can cause vertigo and imbalance. Dr. Arun further affirmed that the complaint made by ASI Hari Babu was relating to brain and that he had made complaint of dizziness before him. Thus, the problem of PW13 was not a simple problem. His problem must have acted as aggravating factor to make him confused, being in uncomfortable physical condition. Therefore, forgetting the things or mixing up several faces in the memory, was very much possible for this witness during that period.
38. On appreciating the probable mental state of this witness (PW3) during his examination in FIR No.40/20, I am in agreement with his plea for not remembering face of Shahnawaz with accuracy. It is also worth to mention here that after his examination in FIR No.40/20, this witness was examined in another FIR No.83/20 on same day, wherein he had identified some of the accused persons and at that time the court had recorded its observations about failure of this witness to identify those accused in FIR No.40/20

and his subsequent identification in FIR No. 83/20. However, at that time the court could not and did not assess the reasons behind such conduct of this witness and therefore, those observations cannot be given much weightage. The subsequent identification could be because the witness would have occasion to recollect the faces during his cross examination in the previous case i.e. FIR 40/20. Therefore, testimony of PW13 in this case cannot be discarded merely on account of nature of his testimony as recorded in FIR No. 40/20 and 83/20. Having said so, I do not mean to say that evidence of PW13 is found credible in this case. That question is to be dealt with herein-after.

39. PW1 though denied having seen any rioter, but he admitted that he had made complaint before police, which was proved as Ex.PW1/A. In this complaint he did not allege about fire being set in the shop on ground floor, wherein Pizza shop was being run. PW6, who claimed to have seen this incident with PW9 and PW13, also deposed, that rioters broke open the shutter of this shop, vandalized and looted this shop and went to residential part over that shop and that part was set on fire. PW8 was 1st IO, who vouched to visit this property on 04.03.2020. He also deposed that the shop on the ground floor was in damaged condition and upper floors were in burnt condition. The seizure memo of burnt article and ash also refer to collecting the same from the house rather than shop. PW12 was running this shop and he did not make any claim regarding his shop being burnt by the rioters.
40. However, PW9 and PW13 gave a different picture of the incident. Both of them claimed that shop was also burnt by the rioters. This contradictory stand taken by these two alleged eye-

witnesses, create a dent in their credibility.

41. PW14 proved the duty roster for 24.02.2020 as Ex.PW14/A. This roster mentions that PW6 and PW13 were assigned duty in Beat 6 i.e. Chaman Park. However, PW9 was assigned duty in Beat 8 i.e. Johripur. But PW9 in his deposition claimed that he was on duty with PW6 and PW13. He also claimed that he was Beat Officer of Chaman Park. PW6 and PW13 also claimed that PW9 was on duty with them. Prosecution did not prove any other document to show if duty of PW9 was changed after preparation of aforesaid duty roster. PW9 did not come up with such stand that he was directed to join PW6 and PW13 for duty. Thus, there is another gap in the evidence of prosecution, to give a contradictory picture. This gap goes on to adversely affect the credibility of claim made by all aforesaid three eye-witnesses.
42. PW17 was 3rd IO of this case. He claimed that he was assigned investigation of this case on 07.04.2020. Prior to him PW11 was IO for brief period and as per his testimony, he only clubbed two more complaints in this case. PW8 being 1st IO had not placed any record of duty roster in the file before handing over file to MHC(R) on 29.03.2020. By this time, he did not examine any of PW6, PW9 or PW13. As per his testimony, he obtained duty roster from PW14 on 22.09.2023 and recorded his statement. Thereafter, he prepared a supplementary chargesheet and filed it in the court on 25.09.2023. Thus, this duty roster was not there in the file on 08.04.2020. But, PW17 claimed that on 08.04.2020 he went through the file and on analysis of the file he came to know that during riots PW6, PW9 and PW13 were on duty in the area of Brijpuri. The question is that if duty roster was not placed in

the file when PW17 received it on 07.04.2020, then how could he know about duty of PW6, PW9 and PW13 on analysis of the file. Thus, there appears to be element of artificiality in such claim of PW17. Moreover, record shows that on paper, PW17 had already examined PW2 under Section 161 Cr.P.C. on 07.04.2020, wherein name of accused Shahnawaz had already cropped up. But, PW17 did not mention about the same at all. Rather he deposed about examining PW1, and then PW3 on 09.04.2020 and 10.04.2020 respectively, and PW2 on 11.04.2020. He claimed that names of accused persons were revealed from the statement of these eye-witnesses and aforesaid police officials. His testimony also shows that all accused were already arrested in FIR 39/20 of same police station and PW17 was informed about the same by SHO. All these scenarios go on to cast doubt over the manner, in which PW17 claimed to examine aforesaid police eye-witnesses, who were otherwise posted in the same police station since beginning of the investigation. I can understand that due to ongoing other problems in the form of managing after effect of riots and Covid-19, there could have been delay in going ahead with investigation. However, the artificiality of claim, is different thing which creates doubt regarding genuineness of the claim made by IO and aforesaid police eye-witnesses. PW1, PW2 and PW3 did not support the case of prosecution on the aspect of identification of accused persons. Thus, the overall effect remains that I find it unsafe to rely upon the evidence of PW6, PW9 and PW13, to believe that all the accused persons were part of the mob, which had attacked upon the property of PW1.

CONCLUSION & DECISION

43. In view of my foregoing discussions, observations and findings, I find that charges levelled against all the accused persons in this case are not proved beyond reasonable doubts. Hence, accused Mohd. Shahnawaz @ Shanu, Mohd. Shoaib @ Chhutwa, Shahrukh, Rashid @ Raja, Azad, Ashraf Ali, Parvej, Md. Faisal, Rashid @ Monu and Mohd Tahir, are given benefit of doubt and they are acquitted of all the charges levelled against them in this case.

Announced in the open court (PULASTYA PRAMACHALA)
today on 11.09.2024 ASJ-03 (North- East)
(This order contains 42 pages) Karkardooma Courts/Delhi