

**IN THE COURT OF SH. PARVEEN SINGH,
ADDL. SESSIONS JUDGE – 03 (NORTH EAST DISTRICT)
KARKARDOOMA COURT : DELHI.**

SC No. 120/2020

FIR No. 65/2020

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

State

Versus

1. Mohd. Tahir Hussain
s/o Sh. Kallan Saifi,
r/o H. No. F-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,

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(Parveen Singh)
ASJ-03/NE/KKD: 13.07.26

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 H. No. 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.

...Accused

Date of Committal : 07.10.2020.
Date of Arguments : 22.05.2026.
Date of Pronouncement : 13.07.2026.

(In compliance of directions passed in judgment Manojbhai Jethabhai Parmar (Rohit) v. State of Gujarat, list of prosecution witnesses is Annexure 1; list of documents exhibited by prosecution is Annexure 2 and list of articles is Annexure 3, list of defence witnesses is Annexure 4 and list of documents proved by defence witness is Annexure 5 to the judgment.)

JUDGMENT

Facts of Prosecution Case as per Charge Sheet

1.1 Briefly stated, the facts of the present case are that on 26.02.2020, complainant Ravinder Sharma lodged GD No. 9A at PS Dayalpur regarding the missing of his son Ankit Sharma since the previous evening. GD No. 63A was recorded at PS Dayalpur. This GD was assigned to ASI Rajender. This GD was regarding Ankit Sharma s/o Ravinder Sharma i.e. son of complainant being brought to GTB Hospital and declared brought dead by the doctor.

1.2 Thereafter, the present FIR came to be registered on the basis of a complaint of Ravinder Sharma. The complaint of Ravinder Sharma was recorded vide DD No. 82A. It was alleged in the

complaint that for 2-3 days, demonstration had been going on by the Anti-CAA and Pro-CAA protesters at Chand Bagh Pulia, Main Karawal Nagar Road. In these demonstrations, the incidents of stone pelting, brick batting, arson, firing and sabotage had taken place from both sides. Mohd. Tahir, who was the then Municipal Councilor had gathered a lot of goons in his office. Complainant further alleged that on 25.02.2020, his son Ankit Sharma, who was posted in Intelligence Bureau, came back from his office and at about 5.00 p.m, Ankit had gone out of house to bring some household goods. 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.9A) of his son Ankit Sharma at PS Dayalpur. Then complainant came to know that after being killed, a boy had been thrown into Chand Bagh nala from the Masjid of Chand Bagh pulia.

1.3 The dead body was recovered from Chand Bagh nala. The body was recovered in underwear. There were numerous injuries on the body caused by sharp weapons. The body was taken to GTB hospital where it was declared brought dead.

1.4 On the basis of this complaint, the present FIR was registered and investigation was assigned to Insp. Hukum Singh.

1.5 During investigation, on 26.02.2020, Insp. Hukum Singh along with ASI Rajender went to GTB hospital and obtained MLC of

Ankit Sharma. Thereafter, dead body was shifted to mortuary of GTB Hospital. On 27.02.2020, post-mortem examination of the body of deceased was conducted at GTB. Hospital. After the post-mortem, exhibits i.e. blood in gauze and clothes of the deceased Ankit Sharma were collected from hospital and seized through a seizure memo. Thereafter, on 28.02.2020, further investigation was transferred to SIT of Crime Branch.

1.6 During further investigation, on 28.02.2020, 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. Physical inspection of the premises was also done. A lot of debris and stones, bricks, broken bottles, some glass bottles with liquid, bullets and burnt articles were found 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 upto 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. A lot of stones, bricks, a catapult, glass bottles containing petrol with bottle neck stuffed with pieces of cloth and other material were found lying on the third as well as on the terrace of the building of Tahir Hussain and also on the road along with damaged/burnt articles lying in front of Tahir Hussain's house. All those articles were seized in FIR No.101/2020, PS Khajuri Khas

by another team of SIT, Crime Branch.

1.7 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. The exhibits i.e. blood on gauze piece were collected from the wall of the nala and a cemented stone from the bank of nala was also collected. Thereafter, both the exhibits were seized and sent to FSL for comparison with the blood of deceased Ankit Sharma. Site plan of the place, from where the body of Ankit Sharma was recovered, was prepared at the instance of Ct. Sachin. One more site plan, showing the distance between the house of deceased and the house of Tahir Hussain and the place of recovery of dead body, was prepared. Ct. Sachin had made videos and clicked photographs of recovery of the dead body of Ankit Sharma. Those video clips and the photographs were collected from Ct. Sachin along with certificate u/s 65-B I.E. Act.

1.8 During further investigation, scene of crime i.e. from the house/building of Tahir Hussain was videographed and photographed. At the pointing out of witness Vikalp Kochar, rough site plan of the place of occurrence was prepared. Photographs of the place of occurrence were also taken. On 09.03.2020, the place of occurrence i.e. Opp. Bunny Bakers Cake Shop beside the wall of nala was also

got inspected by FSL team. 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.

1.9 During 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 the video footage, a person wearing red colour shirt along with two other persons was visible throwing a body in the drain near Chand Bagh Pulia. It was found that the said video was made by one Neeraj Kasana. The mobile phone of Neeraj was seized and sent to FSL, CFU Division, Rohini to provide/retrieve the video files of dated 25.02.2020 from the mobile.

1.10 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 Pardeep Verma and Shamshad Pradhan had identified five accused persons namely Anas, Firoj, Javed, Gulfam and Shoaib Alam who were involved in the act of rioting and arson on the instigation of accused Tahir Hussain. Witness Vikalp Kochar identified accused Tahir Hussain and Anas as the 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. Scaled site plan of the place of incident was also got prepared through draftsman. Statements of two witnesses namely Pardeep Verma and Bharat @ Kalu u/s 164 Cr.P.C were got recorded. Statements of public witnesses namely Vikalp Kochar, Gyanender Kumar Kochar, Bharat @ Kalu, Akash, Pardeep Verma, Surender Pal Singh Senger and Girish Yaduvanshi, who had witnessed the incident, were recorded. 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. Witness Akash identified accused Sameer Khan, who was also involved in the act of killing of Ankit

Sharma.

1.11 During further investigation accused Mohd Tahir Hussain and Haseen @ Mullaji @ Salman were arrested on 16.03.2020. Nazim was arrested on 30.03.2020. Kasim, Sameer Khan, Anas, Firoz, Javed, Gulfam and Shoib Alam @ Bobby were arrested on 09.03.2020 and Muntajim @ Musa was arrested on 12.10.2022.

1.12 After completion of investigation, on 03.06.2020 a chargesheet for offences punishable u/s 109/114/147/148/149/436/153-A/505/365/302/201/120-B/34 IPC was filed.

1.13 Thereafter, on 05.02.2021 first supplementary chargesheet with additional accused Muntajim @ Musa, alongwith FSL report, sanction u/s. 196 Cr.P.C., subsequent opinion of doctor regarding the injuries sustained by deceased, copies of CDRs etc. was filed and sections 25/27/54/59 Arms Act were also added in the charge sheet.

1.14 On 23.06.2022 second supplementary chargesheet, alongwith FSL reports regarding data extracted from the mobile phones of accused and witnesses was filed.

1.15 Subsequently, during further investigation, accused Mutazim @ Musa was arrested by the team of Spl. Cell, Delhi from Gayatri Nagar Bus Stand, Meerpet, Telangana. Thereafter, 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.

1.16 Thereafter, fourth supplementary charge sheet with a sanction u/s 196 Cr.P.C against accused Mutazim @ Musa was filed.

1.17 Thereafter, on 05.04.2024, fifth supplementary charge sheet with FSL result regarding scene of crime was filed.

1.18 On 12.09.2025, sixth supplementary charge sheet with voice samples of PW Faheem @ Chikna and PW Nadeem and FSL report was filed.

Charges

2.1 On 23.03.2023, charge for offences punishable u/s 147/148/302/365 r/w sections 120B and 149 IPC; u/s 188 IPC and u/s 120B IPC r/w sections 147/148/153A/302 IPC was framed against all the accused to which they pleaded not guilty and claimed trial. On the same day, another charge for offence punishable u/s 153A r/w section 120B and 149 IPC was framed against all accused except accused Mutajim @ Mussa to which they all pleaded not guilty and claimed trial. On the same day, another charge for offence punishable u/s 25 Arms Act was framed against accused Nazim and Haseen @ Mullaji @ Salman to which they pleaded not guilty and claimed trial. On the same day, another charge for offence punishable u/s 109/114 IPC r/w sections 147, 148, 149, 153-A, 302 IPC and u/s 505 IPC was framed against accused Mohd. Tahir Hussain to which he pleaded not guilty and claimed trial. On the same day, another charge for offence

punishable u/s 174-A IPC was framed against accused Muntajim @ Musa to which he pleaded not guilty and claimed trial.

Prosecution Evidence

3.1 Thereafter, the prosecution examined 91 witnesses. A table providing details of these witnesses and brief description of their roles and testimonies is annexed as Annexure-1. The list of documents proved by the prosecution and the witnesses who proved them, is Annexure-2. The list of articles proved during trial is Annexure- 3.

Statement of Accused

4.1 Thereafter, statements of accused u/s 313 Cr.P.C of all the accused were recorded and accused Javed, Anas, Mohd. Tahir Hussain, Sameer Khan, Firoz Khan, Kasim, Nazim, Muntazim @ Musa and Haseen @ Mullaji preferred to lead evidence in their defence.

Defence Evidence

5.1 On 23.03.2026, accused Sameer Khan, Nazim, Kasim and Firoz closed their evidence. On 02.04.2026, accused Muntazim @ Musa closed his evidence. Accused Haseen @ Mullaji examined DW1 Dr. Parshu Ram and DW2 Dr. Reeta R Gupta. A table providing details of these witnesses and brief description of their roles and testimonies is annexed as Annexure-4. The list of documents proved by the defence witnesses is Annexure-5.

Contentions of ld. SPP and of ld. Counsel for accused

6.1 I have heard ld. SPP for State as well as ld. counsel for accused and perused the record very carefully.

6.2 It has been contended by Sh. Madhukar Pandey, ld. SPP that the prosecution through its public and official witnesses has proved that on 25.02.2020 at around 4:30 p.m to 5:00 p.m, a large, violent, and riotous mob armed with deadly weapons had unlawfully assembled near Chand Bagh Pulia on the Main Karawal Nagar Road. The police witnesses i.e. PW-5 HC Rahul and PW-33 HC Praveen Kumar had categorically deposed about the presence of an aggressive, communally charged, and heavily armed mob. Public witnesses i.e. PW6 Pardeep Verma, PW13 Aakash, PW14 Bharat, PW19 Vikalp Kochar and PW56 Priyanka Gaur have categorically deposed about the assembly of mob and its violent acts. Thus, from the testimonies of these witnesses, it stands proved that the common object of the mob was to cause harm and to create violence.

6.2.1 It has further been contended that PW5 HC Rahul, PW6 Pradeep Verma, PW13 Aakash, PW14 Bharat, PW19 Vikalp Kochar, PW33 HC Praveen and PW56 Priyanka Gaur have categorically deposed that they saw Tahir Hussain actively instigating the mob and upon his instigation, the rioting mob became more violent and killed Ankit Sharma. They have also deposed that Tahir Hussain was repeatedly seen moving back and forth between his house at E-7,

Khajuri Khas and Chand Bagh Pulia, delivering inflammatory speeches and exhorting the mob to attack Hindus and their properties.

6.2.2 It has further been contended that the prosecution, through the eye witnesses, has proved direct evidence to the fact that Ankit Sharma was being caught by the mob and murdered. PW6 Pradeep Verma and PW14 Bharat had identified accused Nazim and Kasim as a part of the group that had dragged Ankit Sharma. PW13 Aakash had identified accused Samir Khan as a part of the group which was involved in killing Ankit Sharma. Through the testimonies of PW5, PW33 and PW6, the presence of accused Firoz, Javed, Gulfam, Anas, Shoaib Alam @ Bobby in the riotous mob has been established. Through the testimony of PW6, presence of accused Muntazim Musa in the riotous mob has been established.

6.2.3 It has further been contended that the fact that after being murdered, Ankit Sharma was thrown into the drain at Chand Bagh Pulia, has been established through the testimonies of PW13, PW14 and PW66. PW66 had recorded a video in his mobile phone, which was Ex.PW66/V-1. This integrity and authenticity of this video has been proved through the testimony of FSL experts i.e. PW35 Vikas Kumar and PW25 Geetesh Patel.

6.2.4 It has further been contended that the recoveries of knives were effected at the instance of accused Haseen @ Mullaji and Nazim. The subsequent medical opinion (Ex.PW15/2) sought from the board

of doctors who conducted PM of the deceased, proved that that injuries could have been caused by the weapons recovered.

6.2.5 It has further been contended that there is extra-judicial confession made by accused Haseen @ Mullaji in the form of his intercepted phone calls wherein he boasted of killing a person and throwing the body in a drain. These intercepted calls were transferred by PW76 Insp. Jaiveer and were seized by the IO (PW79) vide seizure memo Ex.PW50/I. PW76 had also given his certificate u/s 65B of Indian Evidence Act, which was Ex.PW76/D. PW79 further placed on record transcripts of the recorded conversations, which was Ex.PW79/12. Further, this extra-judicial piece of evidence has been corroborated by the CDR (Ex.PW44/I) and Cell Id Chart (Ex.PW44/R) of accused Haseen, according to which location of accused Haseen was found near Chand Bagh at the place of Incident. It has further been contended that to further corroborate this extra-judicial piece of evidence, voice of accused Haseen was recorded in FSL and as per FSL report (Ex.PW24/A), one of voice in recorded conversation is of accused Haseen Mullaji. The prosecution examined PW58 Nadeem and PW75 Faheem @ Chikna to whom accused made calls however, they both denied having any conversation with the accused Haseen and failed to recognize their voices in recorded conversation. Thereafter, voice samples of PW58 and PW75 were recorded in the CFSL and as per reports of CFSL experts, voice of

PW58 and PW75 matched with the recorded calls found in the memory card of Haseen Mullaji. It has thus been contended that the extra judicial confession coupled with the FSL report and the recovery of the weapon at his instance, forms a powerful and conclusive piece of evidence against Haseen @ Mullaji. It has further been contended that the existence of an unlawful assembly of more than five persons, armed with deadly weapons and sharing a common object of causing violence and harm to the Hindu community has been established through the testimonies of multiple witnesses. The murder of Ankit Sharma by members of this assembly was a direct consequence and in furtherance of this common object. Once it is established that an accused was a member of an unlawful assembly, and an offence was committed in prosecution of its common object, every member becomes guilty of that offence. It has therefore been contended that the prosecution through the testimonies of the witnesses have proved its case beyond all reasonable doubts.

6.3 On the other hand, Sh. Rajiv Mohan, Id. counsel for accused Tahir Hussain had opened his arguments by pointing certain discrepancies in the receipt of information by the police and registration of FIR. It had been contended that as per the statements of witnesses, SHO PS Khajuri Khas was an important witness, but he was not examined and no reasons have been assigned for it. It has further been contended that as per the statement of PW40, even before

recording of DD No. 9A (Ex.PW38/A) and DD no. 63A (Ex.PW1/A), SHO PS Khajuri Khas had the information that Ankit Sharma was missing. The recovery of his dead body statedly happened in the presence of SHO, PS Khajuri Khas and Ct. Sachin. Despite these facts, no record of PS Khajuri Khas was collected and SHO PS Khajuri Khas was not examined. There is no explanation that why, despite the recovery of a dead body having signs of murderous assault, no FIR was immediately registered either at PS Khajuri Khas or at PS Dayalpur. No statement of PW28 was recorded despite him being present during the recovery of dead body. This indicates that police were waiting to implicate Tahir Hussain in the murder so that his name could be included. The only explanation for non examination of SHO PS Khajuri Khas given by PW79 IO is completely unbelievable, because he had merely presumed that the SHO would have no relevant fact in his knowledge.

6.3.1 It has further been contended that the complaint of PW28 was changed and a fabricated statement purported to be the statement of PW28 was made basis of this FIR, as is visible from the testimony of PW28. The only reason for placing on record the fabricated complaint, which is the basis of this FIR, is that Tahir Hussain was introduced by way of this fabricated complaint to falsely implicate him in this case. It has further been contended that even the FIR was ante-dated and ante-timed. In order to buttress this claim, it is

contended that PW9 was assigned DD No. 9A and DD No. 63A and the rukka for registration of FIR was handed over to him. He was also assigned the inquest proceedings and the task of having the autopsy done. These proceedings were conducted in pursuance of DD No. 63A and not in respect of the FIR which had already been registered. It has further been contended that the documents Ex.PW9/A, Ex.PW9/B, Ex.PW9/C and Ex.PW9/D did not have the FIR number but have DD No. 63A mentioned on them. However, PW9 failed to explain why inquest proceedings were done under DD No. 63A. It is further contended that ASI Rajender did not depose about rukka being handed over to him by Insp. Hukum Singh, or the registration of FIR pursuant to the said rukka. Prosecution also did not cross examine PW9 to this effect. These lapses lend credence to the fact that FIR was not registered on 26.02.2020. It is further contended that PS Dayalpur, at 11.40 a.m on 26.02.2020, had the information of Ankit Sharma being missing and by 6.30 p.m, they had the information about his unnatural death and that his body being recovered with injuries. Despite this information about commission of cognizable offence, failure of PS Dayal Pur to register FIR either on DD No. 9A or DD No. 63A makes the genuineness of FIR highly doubtful.

6.3.2 This establishes that FIR was deliberately recorded at a later point of time by fabricating its contents to implicate Tahir Hussain to satisfy public sentiments and give credence to local

rumours. It is therefore, contended that fabrication of the FIR, upon which the whole investigation is based, makes the whole investigation non-est. In this regard, reliance has been placed on paras 107 and 109 of the judgment of Hon'ble Supreme Court in **State of Punjab v. Devender Pal Singh Bhullar (2011) 14 SCC 770** specifically on paras 107 and 109, wherein it has been held as under:-

107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim *sublato fundamento cadit opus* meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

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109. Similarly in Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. & Ors., this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

6.3.3 It is further contended that the prosecution failed to prove the compliance of Section 157 Cr.P.C as no DD entry regarding departure of special messenger with the FIR was brought on record to prove that FIR was sent to higher authorities or to the Ilaka Magistrate. Nothing was brought on record to show that FIR was received by the Ilaqa Magistrate, or the time of such receipt. The fact that the first IO Insp. Hukum Singh stated that he did not collect the

copy of closure DD and that he also did not examine any special messenger show that copy of the FIR was not sent to the magistrate in compliance of section 157 Cr.P.C. It is therefore, contended that this vitiates the entire investigation. Reliance in this regard has been placed on the judgment of Hon'ble Supreme Court in **Sudershan & Anr. v. State of Maharashtra (2014) 12 SCC 312.**

14. No doubt, different persons may react differently to the same situation. However, at the same time, as mentioned above, it appears very improbable that when there were as many as 15 to 20 persons, namely, the complainant and his friends, none of them even thought of going to the police station to report the matter, which is odd and out of ordinary behaviour in such cases. Instead, they chose to go to an Advocate, who was staying at a distance of 15 km. The persons who were allegedly very scared would not take the risk of going a distance of 15 km rather than approaching the nearby police station within the jurisdiction of the area where the incident had taken place. Strangely, in the process of defending the said conduct of the complainant and his friends, the High Court became presumptuous as it itself gave an imaginary story that there was a possibility that these persons had consumed liquor and the material thrown by them included liquor as well. It was not even the case of the prosecution, probable or otherwise. We may have agreed with the High Court that not reporting to the police and going straightaway to an Advocate could have been because of the reason that all these persons were very scared had it been a stand-alone fact. However, when this fact is examined in conjunction with other circumstances, which we narrate hereinafter, we find that approaching an Advocate instead of going to the police station to report the matter, was not that innocent a step as the prosecution has made us to believe.

15. Even after meeting their advocate and his advice that the matter be reported to the police, these persons did not come back to Ballarshah Police Station, which was the proper police station for this purpose. Instead, the FIR was lodged in Chandrapur Police Station. Things do not end here. Mr Umesh, Sub-Inspector, was at

Chandrapur Police Station, who had recorded the FIR. He has appeared as PW 12 during trial. The FIR which was lodged with him is proved as Ext. 213. Column 15 of the FIR pertains to “*date and time of dispatch to the court*”. This column is left blank, which means that no date and time of the dispatch/delivery of this FIR to the court concerned is mentioned. In the cross-examination, PW 12 was specifically asked about the requirement of submitting a copy of the FIR to the Magistrate concerned within 24 hours. He replied in the affirmative insofar as this need is concerned. However, at the same time, he was candid in admitting that he was unable to say as to by whom and when the copy of Ext. 213 was sent to the Magistrate. A specific suggestion was put to him that the copy of the FIR was not sent to the Magistrate concerned. Though he denied, but thereafter no attempt was made to prove as to when and how the copy was sent. The necessity of sending the copy of the FIR to the Magistrate concerned hardly needs to be emphasized. The primary purpose is to ensure that truthful version is recorded in the FIR and there is no manipulation or interpolation therein afterwards. For this reason, this statutory requirement is provided under Section 157 of the Code of Criminal Procedure, 1973.

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21. In the aforesaid scenario, we find that the present case is fully covered by the judgment of this Court in *Meharaj Singh v. State of U.P.* [(1994) 5 SCC 188 : 1994 SCC (Cri) 1391] , wherein the importance of recording of FIR and the requirement of dispatching the copy thereof to the Magistrate within 24 hours with the consequences fraught with danger was highlighted in the following manner : (SCC pp. 195-96, para 12)

12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also

creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.

Neither the trial court nor the High Court has appreciated the aforesaid circumstances which go to the root of the matter and raise sufficient doubt about the involvement of the appellants in the present case.

6.3.4 It is further contended that FIR was ante dated and ante timed and it was so done only to implicate Tahir Hussain. The fact that PW28 did not support the prosecution about the contents of FIR reflects that the allegations against Tahir Hussain, as mentioned in the

complaint, were the interpolations made by the investigating authorities to implicate him in a premeditated manner. It is further contended that PW28 Ravinder Sharma, in his first information given to the police in the form of DD No. 9A (Ex.PW38/A) stated that he did not suspect anyone and this DD was recorded at 11.40 a.m. Despite the fact that in his statement he had stated that a night before, he had visited Tahir Hussain along with police officials to search for Ankit Sharma, he had not named Tahir Hussain in DD No. 9A. This reflects that he had no reasons to suspect the involvement of Tahir Hussain. It is further contended that when the purported complaint of PW28 was shown to him in order to identify his signatures, he stated that complaint did not have his signatures and stated that those signatures were in English and he always sign in Hindi. This fabricated complaint was made the basis of FIR and this was done because the complainant, in his original complaint, might not have named Tahir Hussain, as is visible from DD No. 9A. It is further contended that the police authorities wanted to implicate Tahir Hussain and that is why, this fabrication was done. The prosecution made no efforts to get the said complaint proved through PW28 and even during his cross examination, the contents of the said complaint were not put to the complainant to ascertain if the averments made in that complaint were made to the police in his original complaint or not. Reliance in this regard has been placed on the judgment of

Hon'ble Supreme Court in Meharaj Singh v. State of U.P., (1994) 5 SCC 188 wherein it has been held as under:-

12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under [Section 174 CrPC](#), is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still

in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been 'ante-timed' and had not been recorded till the inquest proceedings were over at the spot by PW 8.

6.3.5 The next limb of arguments of Id. counsel for accused is, that till 06.03.2020, no investigation was done on any material aspects of this case. It is contended that Ankit Sharma was not murdered in secret and it was an open mob violence at Chand Bagh Pulia and naturally, there would have been a lot of public witnesses which could be available there. However, those witnesses were not examined for first 24 hours and thereafter for considerable days, and this fact cannot be taken lightly, without there being any plausible explanation from the prosecution. It is further contended that the only inference that can be drawn is, that the police waited for concoction of a false story so that the statement of public witnesses can be recorded only to implicate Tahir Hussain. It is further contended that in first 24 hours, IO Insp. Hukum Singh did not conduct any effective investigation except recording the supplementary statements of PW28 and PW54 regarding the identification of dead body and other formal witnesses. It is important to note that PW28 and PW54 denied ever giving statements to PW46. It is further contended that PW79 had deposed

that he did not record statements of witnesses as they were not ready to become witnesses but he did not use powers available to him to compel them to give their statements. Till the arrest of Tahir Hussain, there was scarce and scanty investigation and no explanation has come forward for reluctance in conducting the investigation. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in State of A.P. v. Punati Ramulu, 1994 Supp (1) SCC 590, wherein in para 5, it has been held as under:-

5. According to the evidence of PW 22, Circle Inspector, he had received information of the incident from police constable No. 1278, who was on 'bandobast' duty. On receiving the information of the occurrence, PW 22 left for the village of occurrence and started the investigation in the case. Before proceeding to the village to take up the investigation, it is conceded by PW 22 in his evidence, that he made no entry in the daily diary or record in the general diary about the information that had been given to him by constable 1278, who was the first person to give information to him on the basis of which he had proceeded to the spot and taken up the investigation in hand. It was only when PW 1 returned from the police station along with the written complaint to the village that the same was registered by the circle inspector, PW 22, during the investigation of the case at about 12.30 Noon, as the F.I.R., Ex. P-1. In our opinion, the complaint, Ex. P-1, could not be treated as the F.I.R. in the case as it certainly would be a statement made during the investigation of a case and hit by [Section 162](#),

Cr.P.C. As a matter of fact the High Court recorded a categorical finding to the effect that Ex. P-1 had not been prepared at Narasaraopet and that it had "been brought into existence at Pamidipadu itself, after due deliberation". Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stooped to fabricate evidence and create false clues. Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case.

6.3.6 It is further contended that out of 91 witnesses, there are only 07 witnesses which are stated to be the eye witnesses to the murder. They are Vikalp Kochar (PW19), Gyandendra Kochar

(PW21), Pradeep Verma (PW6), HC Rahul (PW5), HC Praveen (PW33), Akash (PW13) and Bharat (PW14). Out of these witnesses, the most natural witnesses are PW19 and PW21 as they were present near their shop i.e. Bunny Bakery. The said shop was also damaged and set on fire by the rioters. It is contended that PW19 had given a detailed description of how the incident had unfolded and how deceased Ankit Sharma was murdered by the rioters. However, he did not identify any of the accused as a part of the rioting mob. Rather he stated, that the mob which had murdered Ankit Sharma was the same mob which was involved in looting and setting ablaze his shop. However, none of the accused (in this case) were made accused in FIR No. 129/20 of PS Khajuri Khas which was registered regarding the burning of shop of PW19. Furthermore, this witness categorically deposed that he had not seen Tahir Hussain on that day between 3-6 p.m and he saw him sometime after 6.00 p.m but he did not know about how much time after 6.00 p.m that he had seen Tahir Hussain. It is further contended that the prosecution claimed that he is natural witness. If that be the case then why this witness did not support the case of the prosecution and therefore not testifying on the lines of the prosecution cannot give an inference that PW19 had been won over by the accused. The prosecution did not bring anything on record that PW19 was not giving true version of the events. It is further contended that the site plan (Ex.PW79/3) is stated to have been prepared at the

instance of Vikalp Kochar but it does not depose depict the position of Tahir Hussain and this falsifies the statement u/s 161 Cr.P.C recorded by the IO and supports the testimony of the witness as had been given in the court.

6.3.7 It is further contended, that PW21 Gyanendra Kochar, who was the owner of Bunny Bakery, also stated that on 25.02.2020 at about 5.00 p.m, he was present outside his shop. He saw a person surrounded by the mob and being attacked. On being asked, if he knew Tahir Hussain, he stated that he had heard his name but had not seen his face. The testimony of PW21 corroborates the testimony of PW19. Their presence is natural and their testimonies make them trustworthy witnesses.

6.3.8 It is further contended that PW6 Pradeep Verma has also deposed about the manner in which Ankit Sharma was killed but has not stated about the presence of Tahir Hussain. According to him, at about 5.00 p.m, he was outside gali no. 6, Moonga Nagar and he gave a detailed description of killing of Ankit Sharma. However, he categorically denied seeing Tahir Hussain. It is further contended that PW56 Priyanka Gaur stated that she was present inside the gate at Gali No. 6 which was closed at that time. During the site visit, it was established that Chand Bagh Pulia was not visible from that position. She was therefore, not a witness to the incident of murder or rioting at Chand Bagh Pulia, as stated in her statement u/s 161 Cr.P.C. and at the

most, she could be a witness to general riot at Karawal Nagar Road. She testified that she had seen Tahir Hussain near his house and through gestures, she could see he was instigating the mob to move in the direction of Dayalpur. No description of the gestures had been elicited and this statement is mere conjecture. She had also made several PCR calls which were Ex.PW91/2 to Ex.PW91/4 but she had not named Tahir Hussain in any of those calls. Therefore, the allegations against Tahir Hussain are improvements which are liable to be discarded. It is further contended that PW56 is otherwise not a reliable witness of the incident because despite her calls on 25.02.2020, her first statement was recorded on 29.04.2020 and no explanation was provided on record for this delay.

6.3.9 It is further contended that the next witness is PW11 Deepak Pradhan. He was not a witness to the incident of murder but at the same time, he is a witness of general riots at Karawal nagar Road. During his cross examination, he admitted that till about 5/5.30 p.m, he was inside the temple in gali no. 5 wherefrom he could not have seen anything happening outside and from there, he returned. In any event, he did not depose about the incident in relation to Ankit Sharma.

6.3.10 It is further contended that of the three witnesses placed by the prosecution around gali no. 6, Moonga Nagar, as per their testimonies, only Pw6 Pradeep Verma could have witnessed the

incident. It is further contended that the statements of these witnesses, who could have been natural persons near the spot, reflect that there was no premeditated conspiracy which lead to killing of Ankit Sharma much less, to kill at the instance of exhortation of any person as the mob was already engaged in arson and rioting, and the acts in relation to Ankit Sharma evidently happened in quick succession within a short span of time. The sequence of events as narrated by these witnesses also rules out any possibility of instigation by any accused, and thus, the charge u/s. 109 r/w section 114 is also not proved. On the contrary, the CDR of Tahir Hussain (mobile no. 9810363925), during and around the time of incident, shows that he was furiously attempting to call police officials, PCR and political leaders to help him. He also received calls during this time and so it cannot be said that he was making calls to cover up.

6.3.11 It is further contended that when IO named Tahir Hussain in the complaint, the agency got a clear path to collect suitable evidence to implicate Tahir Hussain. It is further contended that PW79 had visited Chand Bagh Pulia on 28.02.2020 but recorded the first statement describing the complete chain of events on 06.03.2020. Therefore, it was incumbent upon the prosecution to explain why it took him so much time to record the statement.

6.3.12 It is further contended that there are two police witnesses i.e. PW5 and PW33. However, both these witnesses are completely

untrustworthy and cannot be relied upon. The sum and substance of the arguments with regard to these two witnesses is, that they had made considerable improvements during their testimony in the court. Reliance in this regard has been placed on the judgment of Hon'ble Supreme Court in Harbir Singh v. Sheesh Pal (2016) 16 SCC 418. It is contended that both these witnesses, as per the case of the prosecution, were not the eye witnesses of the incident wherein the deceased was murdered. However, while appearing in the court, they deposed as eye witnesses and that they had seen the murder of the deceased. However, their conduct subsequent to the incident is unnatural. Being police officials, it cannot be presumed that despite seeing a cognizable offence, they would not disclose these details in their statements to the IO. Furthermore, they had been regularly visiting the police station from 25.02.2020 onwards, however, no DD entry was lodged by any of the witnesses; no complaint was made by any of these witnesses; no PCR call was made by any of the witnesses; no site plan was prepared by the IO at the instance of any of these witnesses. Reliance has been placed on the judgments of Sunderam Gurbakash Kalar v. State of Madhya Pradesh (1971) 3 SCC 443 and Arul v. State of Madras (2016) SCC Online Madras 5506.

6.3.13 It is further contended that PW40 had deposed that from 11 pm on 25.02.2020 itself, SHO Khajuri Khas and several other police staff were involved in the search of Ankit Sharma. That being

the case, it would have been natural for this witness to inform the SHO and IO did not examine SHO to find out whether, they had given any information regarding the murder of deceased to the SHO or not. Therefore, these witnesses did not come forward to report the incident and their statements were recorded after 13 days of the incident. This lack of promptness on the part of the IO is not inadvertence, but is illegal. The unnatural conduct of these police officials in not reporting the incident points towards them being planted witnesses in order to create false evidence against the accused.

6.3.14 With regard to two other eye witnesses i.e. PW13 and PW14, it is contended that they are wholly unreliable. They had in fact not witnessed any incident on 25.02.2020 and had been planted at the site by the IO with the intention to implicate Tahir Hussain in the present case.

6.3.15 Apart from the present case, these witnesses were witnesses in two other cases, i.e. FIR No. 114/20 PS Khajuri Khas and FIR No. 88/2020 PS Dayalpur, which were being investigated by the Crime Branch. In three other cases of contemporaneous time of incident, i.e. FIR 91 and 92 of PS Dayalpur and FIR 129 of PS Khajuri Khas, these two have not been named as witnesses. It has further been contended that these two are chances witnesses who interestingly happen to chance upon the IOs in the respective cases to give their statements to them.

6.3.16 It is further contended that their statements came to be recorded for the first time on 11.03.2020. However, the IO has failed to explain the delay in recording their statements after 15 days of the date of the incident. It is further contended that when the statements of these witnesses were recorded by the IO, they failed to explain why they were present at the place. It is further contended that by the time their statements were recorded, IO was aware about the place of killing of Ankit Sharma, the manner of his assault and killing and the disposal of the body. It is further contended that version of these two witnesses is in complete variance with the statements given by the natural and probable witnesses. They claimed to be standing together but there are glaring contradictions in their testimonies inter se. There is a strong probability that they had been arranged and planted by the investigating agency and had been made stock witnesses and that is why, they deposed in multiple cases of riots occurring near Chand Bagh Pulia, between 3-6pm, but their testimonies in each case were carefully crafted to the incident in that case. This could only be if they were told what to say and when to say. It is further contended that it is to be noticed that both of them, despite having mobile phones did not dial the PCR or went to PS Khajuri Khas which was close to their house and workplace; or despite police officials from PS Khajuri Khas visiting their shop, they didn't inform them; between 25.02.2020 and 11.03.2020, they were doing their routine activities and had seen

police on several occasions and the fact that it was only on 11.03.2020, when as per the version of PW13, he saw police officials at Lakhpat school and decided to go and inform them about the incident. This conduct creates serious doubts about they being the eye witnesses. In this regard, reliance has been placed on the judgment of Hon'ble Supreme court in **Puran v. State of Punjab (1952) 2 SCC 454.**

6.3.17 It is further contended that there is probability that the statements of these two witnesses were not recorded on 11.03.2020 because as per the IO on 11.03.2020, he had recorded four statements that is of these two witnesses, witness Pradeep Verma and Ajay Goswami. As per Pradeep Verma and IO, Pradeep Verma was shown certain photographs of the accused which he identified. However, it is not the case of the prosecution that any photograph was shown to these witnesses. Neither it is so stated in their statements u/s 161 Cr.P.C. However, in their statements u/s 161 Cr.P.C, it is stated that they could identify persons in the mob should those persons come in front of them. Therefore, there was no reason not to show them those photographs. It is further contended that Bharat, in his testimony, categorically stated that he met IO for the first time only at the time of preparation of *nishandehi* by Nazim and Kasim, which he stated to have happened only on 30.03.2020. It further reflects that no statements of these witnesses were recorded on 11.03.2020.

6.3.18 It has further been contended that PW14, in his statement u/s 164 Cr.P.C, was silent about witnessing the incident of burning of Bunny Bakery or Aman e-rickshaw or seeing them in burnt condition. This is despite the fact that he had stated that he was present at Chand Bagh Pulia between 4-4.30 pm and despite it being a matter of record that both these shops were burnt prior to the murder of Ankit Sharma. It is therefore, contended that the silence of Bharat regarding any incident in relation to burning of these shops makes his presence on 25.02.2020 at Chand Bagh Pulia highly doubtful. Despite their rehri being near to PS Khajuri Khas where office of SIT was situated, they did not approach the police. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in **Suresh & Anr. v. State of Haryana (2018) 18 SCC 654.**

6.3.19 It is further contended that during their testimonies, both these witnesses failed to disclose any reason or offer any reasonable explanation for being present at the alleged spot of incident. This is despite the fact, that both of them had stated that they were aware that riots were going on in the area for about 2-3 days prior to 25.02.2020. It is also to be noticed that these witnesses were not residing in the vicinity of place of occurrence but were residing in Gali No.1 Khajuri Khas and their *rehri* was at Sonia Vihar Road. Akash had merely stated that they were going for some work which necessitated the need for the prosecution to establish where they were going and from where

had they come. In the absence these facts, their presence cannot be established. Furthermore, they had failed to disclose the side from which they came upon Chand Bagh Pulia. Chand Bagh Pulia can be approached from either Sherpur Chowk or Bhajanpura. Due to riots going on main Karawal Nagar Road and gali no. 6, being a demarcation line between two rioting mobs, it was necessary for the prosecution to establish the route taken by Aakash and Bharat to arrive at Chand Bagh Pulia and their alleged location.

6.3.20 It is further contended that notably since both these witnesses categorically admitted that they did not show position of their standing at or around Chand Bagh Pulia to the IO, the IO failed to ascertain their actual place of standing. IO also admitted that he had not taken them to the location wherefrom they had purportedly witnessed the incident and this was a prerequisite to ascertain the veracity of a witness' statement who claimed to have seen and heard things. This mystery, how Akash and Bharat's position came to be marked by the IO on the site plan, lends credence to the assertion that they were planted witnesses.

6.3.21 It is further contended that as per PW13, the incident of burning of Bunny Bakery and dragging and killing of Ankit occurred in close succession whereas, as per Vikalp Kochar (PW19), burning of his shop and the incident of killing Ankit Sharma were not simultaneous or even in close succession. There was no reason to

disbelieve the statement of PW19, as he was the owner of the shop. PW13 also claimed that upon exhortation of Tahir Hussain, the mob set ablaze a factory/shop of bakery situated near where he was standing. He further stated that this mob engaged in further arson and then engaged in the killing of Ankit Sharma. However, Bharat (PW14) did not mention about setting ablaze of the bakery shop located right next to his purported location. This could not have gone unnoticed by him. It is further contended that any person, who would have reached the spot at around 4.30 pm could have seen the shop in burning condition but contrary to this natural observation, PW14 was silent on the burning all together and PW13 stated that it was in front of him that after Tahir Hussain's exhortation, the mob set ablaze the shop.

6.3.22 It is further contended that on the one hand, PW13 stated that he had seen the entire sequence of events from Ankit Sharma being taken by the mob, being dragged to Chand Bagh Pulia and then assaulted but on the contrary, PW14 stated that when they reached, they saw the mob already assaulting a boy.

6.3.23 It is further contended that PW13 stated that as the boy was being dragged to Chand Bagh Pulia, he and Bharat stepped inside the gate and closed it. PW14, in contrast stated that they stayed near the place of incident when the deceased was being dragged and came in only when the deceased was being thrown from the opposite side of the nala. This change in their position at different times is a material

inter-se contradiction, making their statements completely unbelievable.

6.3.24 It is further contended that while Vikalp Kochar, Akash and Bharat were positioned around the same place, only Viklap gave a vivid description of the incident including the manner in which the body was thrown while Akash and Bharat were significantly silent on how the body was dragged, after being assaulted to be disposed of in the nala. Their narrations were limited to events which were already in the knowledge of the investigating agency, i.e. killing and dragging of Ankit Sharma and throwing of the body from the other side of Chand Bagh Pulia.

6.3.25 It is further contended that while PW13 imputed the averments being made by Tahir Hussain and then stated that Tahir Hussain had a knife in his hand, his brother PW14 who was stated to be standing next to him at the same time, stated that when the mob was assaulting the boy, Tahir was saying “*maaro maaro*”. Bharat makes no mention of Tahir Hussain being involved in the act of assaulting or having a knife. These are interse contradictions. It is further contended that this contradiction became glaring in view of the statement of Vikalp Kochar (PW19), who was also present at the same place at that very particular point of time but he did not state anything about Tahir Hussain’s presence or any role played by Tahir Hussain, rather, he categorically denied any suggestions in relation to presence

of or exhortation by Tahir Hussain. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in **Musa Khan v. State of Maharashtra (1977) 1 SCC 733**. It has also been contended, that as the offence involved a large number of offenders and there were large number of victims, the case should have been supported by 2-3 more witnesses who gave consistent account of the incident. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in **Masalti v State of U.P. AIR 1965 SC 202**.

6.3.26 Then there is the contention of Id. Counsel for accused Tahir Hussain with regard to the recovery of dead body of Ankit Sharma. It is contended that that there has been a difference in the depositions of witnesses with regard to the recovery of body. According to counsel for accused, PW27 and PW28 had stated that body was recovered in the morning because according to PW28, on 26.02.2020, he reached Chand Bagh Pulia at around 6 am and the divers arrived about 10-15 minutes later. According to PW27 Sanjay Singh, at around 8.30-9 am, he saw persons and police present at Chand Bagh Pulia and that some divers were also present there. The divers had taken out the body which was revealed to be that of Ankit Sharma. However, PW17 and PW40 deposed that body was discovered somewhere between 11.30 a.m – 12.00 p.m. On the other hand, PW23 Sudhir Kumar specified the time of recovery of body of deceased at 1.00 p.m whereas MLC shows that body of Ankit Sharma

had reached the hospital at about 12.53 pm. However, the MLC did not reflect any injuries over the body. Even the rukka sent by Insp. Hukam Singh, which was Ex.PW46/A, had not mentioned about any injury on the deceased. Insp. Hukam Singh, during his cross examination, deposed that he had only seen the face of the deceased and there was no injury on the face. He was not aware about the injury to any other part of the body. It is further contended that as per Insp. Hukam Singh (PW48), PW9 had deposited the dead body in the mortuary but at that time, no family member was present, who identified the dead body. No mortuary ticket was placed on record and PW9 was silent about the deposition of dead body on the mortuary. PW41, who had prepared the MLC (Ex.PW41/A), was also silent about any injury on the body and stated that the body was sent to mortuary through hospital staff. The MLC does not reflect any injuries. The prosecution made no efforts to solve this mystery of how the body of Ankit Sharma reached the mortuary. It is further contended that the case of the prosecution shows that a call was made by one Pooja Chaudhary at 6.34 pm informing, '*yaha par musalman hindu ko maar kar naale mein daal rahe hai*'. The same caller at about 6.39 pm informed that '*3-4 ladke maar diye hai*'. In these circumstances, the version of prosecution becomes doubtful. Furthermore, the prosecution is relying upon FSL report, Ex.PW31/A. As per this report, blood lifted from the wall towards Mazar

Bhajanpura and the stone were found containing the blood of the deceased, whereas the blood lifted from a plastic sheet and one poster were of some other person. It is further contended that whatever be the number of the bodies, from the testimony of the witnesses, it has come on record that at each time of recovery of body, police was present but Ct. Sachin (PW40) is the only witness examined, whose videos of alleged recovery of body has not been proved.

6.3.26 It is further contended that prosecution, along with the charge sheet, had relied upon the list of calls made by Tahir Hussain to Emergency Response Support System (ERSS) on 24.2.2020, as well as on 25.02.2020. The record would show that on 25.02.2020 from 3.55 PM to 4.31 PM, Tahir Hussain made about 6 calls to PCR. As per this record, on 24.02.2020 at about 3.53 PM, Tahir Hussain made a call to PCR stating '*caller ke ghar ki chatt par log chad gaye hai aur pathrav kar rahe hai*'. The same information was conveyed by him to PCR on 24.2.2020 at 5.57 PM. It is further contended that on 25.02.2020, using his mobile no. 9810363925, from 2.36 PM to 5.30 PM, Tahir Hussain was continuously making calls to K.P.Singh of Delhi police, several leaders of Aam Admi Party, correspondents of Indian Express, Nigam Parshad of Karawal Nagar and other persons. During the course of investigation, none of these persons were examined. The conduct of accused reflects that he was not involved in this incident and rather was contacting the authorities for seeking help.

In this regard reliance has been placed on the judgment of on'ble Supreme Court in **Ramdass v. State of Maharashtra (1977) 2 SCC 124.** Therefore, it is contended that Tahir Hussain has been falsely implicated. The evidence suggests false implication of the accused persons by way of fabrication, forgery and even planting witnesses.

6.4 Ms. Tara Narula, Ms. Shivangi Sharma and Ms. Sonal Sarda, Id. counsels for accused Gulfam and Shoaib Alam have contended that the allegation against these accused was that on 25.02.2020, they alongwith four other accused persons were identified in the mob and were involved in the act of rioting and arson at Chand Bagh Pulia around 5.00 p.m. It has been contended that as per the charge sheet, to prove its case against these accused, the prosecution has relied on the statements of four eye witnesses namely HC Rahul, Ct Praveen, Pradeep Verma and Shamshad Pradhan. However, witness Shamshad Pradhan was not examined in court. The other independent witness namely Pradeep Verma (PW6) did not identify Gulfam and Shoaib Alam in court. Further no Test Identification Parade (TIP) or proper photo identification of these accused was conducted and the charge sheet itself limits the role of these accused to rioting. Witnesses namely Vikalp, Akash and Bharat were not pressed into service to identify these accused persons. It has further been contended that two police witnesses i.e. PW5 HC Rahul and PW33 Ct. Praveen, had identified Gulfam and Shoaib Alam when they were already in police

custody in another case (FIR No. 98/2020) and these accused were later discharged in that case. Such identification in police custody of accused persons is improper and raises doubts on the credibility of such identification.

6.4.1 It has further been contended that the police witnesses i.e. PW5 and PW33 claimed to have witnessed the incident. However, they are unreliable witnesses because they have made major improvements in their evidence. PW5 deposed that at about 5.00 p.m, he saw a mob at Chand Bagh Pulia and the mob was aggressive and pelting stones etc. They dragged one person from the mob of persons from Hindu community towards Chand Bagh Pulia. However, this fact is not mentioned in his statement u/s 161 Cr.P.C. During his cross-examination, PW5 deposed that he did not remember if he had mentioned before the IO of this case about a person from mob of Hindu community being dragged by the other mob on Chand Bagh Pulia. PW33, in his cross examination, admitted that he did not mention in his statement to IO that one boy from Hindu mob, while being assaulted, was dragged towards Chand Bagh Pulia by the persons from the mob on the side of Chand Bagh. Further PW79 deposed that whatever had been stated by HC Rahul and Ct Praveen had been recorded by him in their statements u/s 161 Cr.P.C. Thus, it cannot be presumed that police officers would not disclose details to the IO and would later disclose facts during evidence before Court.

This inconsistency in their evidence shows that PW5 and PW33 are planted witnesses. It has further been contended that PW5 and PW33, despite being police officials, did not lodge any DD entry or any complaint in the PS regarding the incident and did not make any PCR call. This further proves that they were planted witnesses and this unnatural conduct of police officers shows that they are planted witnesses. It has further been contended that statements u/s 161 Cr.P.C of PW5 and PW33 were recorded only on 09.03.2020 i.e. about 13 days after the incident and there is no explanation for this delay. This unexplained delay and failure to report the incident creates a serious doubt about the case of the prosecution. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in **Ganesh Bhavan Patel v State of Maharashtra (1978) 4 SCC 371**. It has further been contended that apart from two witnesses i.e. PW5 and PW33, there is no other witness or evidence against the accused Gulfam and Shoaib Alam.

6.4.2 It has further been contended that the prosecution has not brought forth any credible evidence to establish the charge for offence under section 149 IPC as well. The two witnesses who allegedly identified the accused persons did not give a consistent account of the incident and further failed to show any overt act attributed to accused Gulfam in the present case. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in **Masalti v State of U.P.**

AIR 1965 SC 202 wherein it has been held that “while dealing with the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt that the test that the conviction could be sustained only if it’s supported by two or three or more witnesses who give a consistent account of the incident.”

6.4.3 It has further been contended that the investigation was against Tahir Hussain and Gulfam was unnecessarily added by the prosecution to strengthen its case. It has further been contended that as per the testimony of PW40 HC Sachin from 11 pm on 25.02.2020 itself, SHO Khajuri Khas and several other police staff were involved in the search for Ankit Sharma. Thus, as per HC Sachin, the SHO, Khajuri Khas was also involved in the recovery of the body of Ankit Sharma on 26.02.2020 and PS Khajuri Khas was well informed of the incident of Ankit Sharma, and that a body had been recovered with homicidal injuries. However, the said SHO had not been examined to ascertain whether HC Rahul or HC Praveen told him about witnessing any incident on 25.02.2020. It has thus been contended that the prosecution has failed to prove its case against accused Gulfam and accused deserves to be acquitted of all the charges framed against him.

6.5 Sh. Mehmood Pracha and Sh. Sikandar, Id. counsels for accused Haseen @ Mullaji have contended that the case of the prosecution against this accused rests upon the evidence of eye witnesses Gyanender Kochar (PW-21), and Vikalp Kochar (PW-19);

recovery of knife at the instance of accused Haseen, which as per the prosecution was used in commission of crime; subsequent opinion of the Board that injuries could be caused by the recovered knife; recovery of red shirt at the instance of accused which he had worn at the time of commission of offence; video shot by Neeraj Kasana (PW-66) in which, as per prosecution, Haseen can be seen throwing the body of deceased; extra judicial confession over phone and FSL reports matching the voice of accused Haseen recorded by Special Cell after interception, with voice sample recorded in FSL, as well as subsequent voice sample matching report of Nadeem (PW58) and Faheem@ Chikna (PW75) with their intercepted voices.

6.5.1 It is contended that in his initial statement u/s 161 Cr.P.C dated 07.03.2020, PW21 Gyanendra Kochar had stated that murder of the deceased was committed by an old aged man having white beard and another boy who was aged about 25-26 years wearing jeans and blue jacket and was having skin allergy on both of his cheeks. None of these persons match with the description of accused Haseen @ Mullaji. Despite this statement, IO, after the arrest of accused Haseen @ Mullaji, got the TIP conducted on 18.03.2020. During the TIP, PW21 failed to identify accused Haseen @ Mullaji. Not only this, during his testimony in the court also, he failed to identify accused Haseen @ Mullaji. It is further contended that IO could not give any reason or ground that how he reached the conclusion, that despite the

different role of persons stated by Gyanendra Kochar in his statement dated 07.03.2020, accused Haseen @ Mullaji could be amongst the two persons referred to in the said statement. It is further contended that despite PW21 not identifying accused Haseen @ Mullaji in the court, Ld. SPP during his cross examination, did not even suggest to the witness regarding the identification of Haseen @ Mullaji. The second witness PW19 was also examined by IO and he also gave his statement on similar lines as that of his father. In his first statement u/s 161 Cr.P.C dated 06.03.2020, PW19 made a slight modification when he stated that he saw a boy aged about 18-19 years giving multiple stabs to the deceased with knife. This witness in his statement dated 20.03.2020 i.e. a day after the judicial TIP had failed, identified accused Haseen from the various photographs shown to him by the police. This points towards the fact that IO of the present case from the very beginning took all possible steps to plant witnesses against accused Haseen. Before this court also, PW19 did not identify accused Haseen @ Mullaji. Reliance in this regard has been placed on the judgment of Hon'ble Supreme Court in **Raj Kumar @ Bheema v. State of NCT of Delhi 2025 INSC 1322**. PW19 also failed to identify the deceased in his testimony and also did not recall the date of the incident which he witnessed. It is contended that PW19 had only referred the deceased to be a boy who claimed himself from IB and there is no positive identification of the deceased. It is further

contended that there was another witness Shamshad Pradhan who could have identified the accused. However, the prosecution dropped that witness. Therefore, in view of the testimonies of PW19, PW21 and dropping of witness Shamshad Pradhan, a doubt is created about the case of the prosecution and an adverse inference should be drawn against the prosecution in terms of Section 114 illustration (g) of the Indian Evidence Act. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in Harvinder Singh @ Bachchu v. State of H.P (2023) 13 SCE 157: 2023 INSC 907. Specific reliance has been placed on para 24 of this judgment, which is as under:-

24. Failure on the part of the prosecution in not examining a witness, though material, by itself would not vitiate the trial. However, when facts are so glaring and with the witnesses available, particularly when they are likely to give a different story, the Court shall take adequate note of it. When a circumstance has been brought to the notice of the Court by the defense and the Court is convinced that a prosecution witness has been deliberately withheld, as it in all probability would destroy its version, it has to take adverse notice. Anything contrary to such an approach would be an affront to the concept of fair play. in Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145,

19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not

examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non- examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses...” (emphasis supplied)

6.5.2 With regard to the recovery of knife at the instance of accused Haseen @ Mullaji, it is contended that recovery of knife (Ex.PW15/Article-2) was made pursuant to his alleged supplementary disclosure (Ex.PW12/B). The knife was sent to FSL for matching with the DNA of the deceased and as per the FSL report (Ex.PW31/B), DNA profile generated from the knife did not match with DNA profile generated from the blood of deceased. It is further contended that as per section 27 of Indian Evidence Act, recovery of knife is

inadmissible and the law does not recognize the concept of supplementary disclosure. The disclosure recorded is also hit by section 24 of Indian Evidence Act because the accused was in police custody for about 36 hours i.e. an illegal custody for 12 hours. Here counsel was referring to the fact that accused was arrested on 11.03.2020 by Spl. Cell and was only produced before the court on 13.03.2020. It is further contended that as per PW12, pursuant to first disclosure, accused Haseen had taken them to a *kudedaan* for recovery of knife but nothing could be recovered and thereafter, supplementary disclosure (Ex.PW12/B) was recorded. PW12 further deposed that relative of accused Haseen, namely Baby Zubaida was having the key of the room wherefrom the alleged recovery was made. However, said Baby Zubeda was never examined by the prosecution. Not even her statement u/s 161 Cr.P.C was recorded. On the one hand, PW12 stated that the custody of seal, after sealing the knife, was handed to him by the IO whereas PW29 stated that seal had been given to one Ct. Sohanveer, who appeared as PW57. It is further contended that even the site plan of the place, wherefrom the knife was recovered, was never put to PW12 or PW55, who were the witnesses of this alleged recovery. The site plan (Ex.PW79/10) only bears the signatures of the IO and of no other police witness or independent witness. Therefore, the recovery is doubtful. The subsequent opinion of the forensic report (Ex.PW15/B) was to the effect that injury nos. 1,10,17,25,27 and 29 as

reflected in PM Report (Ex.Pw15/A), were possible by both the weapons i.e Ex.PW15/Article-1 (knife recovered from accused Nazim) and Ex.PW15/Article-2 (knife recovered from accused Haseen). It is contended that even as per the witness, this is mere a possibility and he had admitted in cross examination that the injuries could have been caused by another similar weapon. Secondly, PW15 stated that he did not remember if the subsequent opinion was prepared on the basis of original post-mortem report of the copy thereof. This raises doubts that whether the report was even perused by the Board at the time when subsequent opinion was being considered. The witness also did not recall the nature of discussion that had taken place between the members of the Board regarding the subsequent opinion, or whether there was any difference of opinion between the members of the Board. Furthermore, the DNA report Ex.PW31/B was not sent to the Board for correlation with the weapon. Hence, it is contended that the subsequent opinion is not reliable.

6.5.3 It is further contended that the red shirt of the accused which is stated to have been recovered pursuant to supplementary disclosure (Ex.PW12/B) was sent to FSL. However, the DNA profile generated from the clothes of accused did not match with the DNA profile generated from the blood of the deceased. Similarly, the video of Neeraj Kasana (Ex.PW66/V-1) was examined by PW25 who filed his report Ex.PW25/A and the sum and substance of the report is, that

the images extracted from the video were low pixelated and further image analysis test was not possible. Therefore, there was no reasonable or scientific basis to rely upon the claim of the prosecution that the person wearing red colour shirt seen in this video was Accused Haseen. Even otherwise, nothing can be clearly seen in the video by the normal vision of human eyes and even it is not clear in that video that whether, a dead body was being thrown or not, or what activity was being done.

6.5.4 It has been contended on behalf of accused Haseen @ Mullaji that the alleged recovery of the alleged phone calls of Haseen Mullaji @ Salman are inadmissible because requirements of rule 419A of the Indian Telegraph Rules were not complied with. Nothing has been placed on record that Shri Satya Gopal, who passed the order (Ex.PW53/A), being Addl. Chief Secretary (Home), was competent to pass the sanction for interception because the said order was required to be passed by Secretary to the Government of India in Ministry of Home Affairs, or Secretary to State Government in-charge of Home Department. It has further been contended that in the order, Ex.PW53/A, there is no reasoning to show what was the nature of “public emergency” or “public safety” which led to the direction for interception, and how this interception was necessary or expedient in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for

preventing incitement to the commission of an offence to issue such direction as required u/s 5(2) of the Telegraph Act. The order also does not mention that possibility of acquiring the necessary information by other means was considered by PW53 as required under Rule 419A sub-clause (3). There is also no mentioning of the officer authority to whom the intercepted messages were to be disclosed although, only the designation, i.e. Joint Commissioner (Spl Cell) Delhi was mentioned and thus, there is no compliance of Rule 419A sub-clause (5). It has further been contended that there is no evidence on record that Rule 419A sub-clause (7) had been complied with and directions were conveyed to designated officers of the licensee. Although PW80 deposed about a letter having been sent but no proof that such letter actually reached the designated officer of the licensee or how such letter was sent, by whom and what mode, has come on record. The record required to be maintained by the officer authorized under sub-clause (8) of Rule 419A has not been brought on record. As per rule 419A sub clause (11), the nodal officers of service providers required to issue an acknowledgment letter and the said letter has also not been placed on record. It has further been contended that as per sub clause 16 of Rule 419A, the review committee is required to be constituted and sub clause 17 mandates that such committee has to meet at least once in two months. However, there was nothing on record to indicate that any such exercise pertaining to

this case was done by the Review Committee and in fact, Ex.PW53/A did not even mention whether the order had been forwarded to the Chief Secretary, or any other official who may have been a member of such review committee. In this regard, reliance has been placed on the judgment of Hon'ble Delhi High Court in **Jatinder Pal Singh v. CBI, 2022 SCC OnLine Del 135** wherein the Hon'ble Delhi High Court while relying upon the judgment of Hon'ble Supreme Court in **PUCL v. Union of India, (1997) 1 SCC 301**, had held as under:-

55. In the case of ***People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301*** (hereinafter referred to as "PUCL"), a two Judge Bench of the Hon'ble Supreme Court had held that:

"18. The right to privacy - by itself - has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone-conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone-conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.

28. Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the said Section. "Occurrence of any public emergency" or "in the interest of public safety" are the sine qua non for the

application of the provisions of Section 5(2) of the Act. Unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said Section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression “public safety” means the state or condition of freedom from danger or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorised officer cannot resort to telephone tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of sovereignty and integrity of India etc. In other words, even if the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or for preventing incitement to the commission of an offence, it cannot intercept the messages or resort to telephone tapping unless a public emergency has occurred or the interest of public safety or the existence of the interest of public safety requires. Neither the occurrence of public emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person.

29. The first step under Section 5(2) of the Act, therefore, is the occurrence of any public emergency or the existence of a public safety interest. Thereafter the competent authority under Section 5(2) of the Act is empowered to pass an order of interception after recording its satisfaction that it is necessary or expedient so to do in the interest of (i) sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with foreign States, (iv) public order or (v) for preventing incitement to the commission of an offence. When any of the five situations mentioned above to the satisfaction of the competent authority require then the said authority may pass the order for interception of messages by recording reasons in writing for doing so.”

56. After the judgment in **PUCL (Supra)** and before the judgment in **K.S. Puttaswamy (Supra)**, Rules were framed by the

Central Government. Relevant Rules introduced by G.S.R. 193(4) dated 1st March 2007 (w.e.f. 12th March 2007) read as follows:

“419. Interception or monitoring of telephone messages- (1)
It shall be lawful for the Telegraph Authority to monitor or intercept a message or messages transmitted through telephone, for the purpose of verification of any violation of these rule or for the maintenance of the equipment.

419-A...

(2) Any order issued by the competent authority under sub-rule (1) shall contain reasons for such direction and a copy of such order shall be forwarded to the concerned Review Committee within a period of seven working days.

(16) The Central Government and the State Government, as the case may be, shall constitute a Review Committee. The Review Committee to be constituted by the Central Government shall consist of the following, namely:

- a) Cabinet Secretary — Chairman*
- b) Secretary to the Government of India In-charge, Legal Affairs - Member*
- c) Secretary to the Government of India, Department of Telecommunications — Member*

The Review Committee to be constituted by a State Government shall consist of the following, namely:

- a) Chief Secretary — Chairman*
- b) Secretary Law/Legal Remembrance In-charge, Legal Affairs — Member*
- c) Secretary to the State Government (other than the Home Secretary) — Member*

(17) The Review Committee shall meet at least once in two months and record its findings whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of Section 5 of the said Act. When the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above it

may set aside the directions and orders for destruction of the copies of the intercepted message or class of messages.

(18) Records pertaining to such directions for interception and of intercepted messages shall be destroyed by the relevant competent authority and the authorized security and Law Enforcement Agencies every six months unless these are, or likely to be, required for functional requirements.”

57. As per Rule 419A of the Rules framed under the Telegraph Act, the order of the Home Secretary granting permission to intercept telephonic conversations is to be forwarded to the Review Committee within seven days of passing the order, for the purpose of being reviewed by the Committee. This Court does not find any material on record to establish that any review of the order of the Home Secretary was conducted in compliance of the aforesaid rules framed under the Telegraph Act. Therefore, this Court is convinced that the Special Judge while passing the impugned orders has totally ignored the provisions of the aforesaid rules.

58. This Court is of the view that as per Section 5 (2) of the Telegraph Act, an order for interception can be issued on either the occurrence of any public emergency or in the interest of the public safety as per the law laid down by the Hon'ble Supreme Court in the case of *PUCL (Supra)*. After the perusal of the records, this Court is satisfied that in peculiar facts of the instant case, the mandatory requirements laid down by law for placing reliance on such audio conversations, have not been fulfilled. It is an admitted position that Rule 419(A)(17) which provides for destruction of intercepted message also adopt the said directions. The court below while passing the impugned orders has also ignored the settled legal positions and directions of the Hon'ble Supreme Court.

59. It is also relevant to add here that if the directions of the Hon'ble Supreme Court in *PUCL (Supra)* which are now re-enforced and approved by the Hon'ble Supreme Court in *K.S. Puttaswamy (Supra)* as also the mandatory rules in regard to the illegally intercepted messages/audio conversations pursuant to an order having no sanction of law, are permitted, it would lead to manifest arbitrariness and would promote the scant regard to the procedure and fundamental rights of the citizens, and law laid down by the Hon'ble Supreme Court.

6.5.5 It has further been contended that in the final conclusion, Hon'ble Delhi High Court in para 74 had held that the intercepted calls because of the failure to prosecution to follow the procedure as mandated by Telegraph Act was not admissible. Para 74(iv) is being reproduced as under:-

74 (iv) Tape records of the calls intercepted in the instant case are not admissible since the due procedure for such interception as mandated by the Telegraph Act and the Rules framed thereunder has not been followed. Further, even the same has not been verified in the FSL report. No further witness/evidence to implicate the petitioner is on record.

6.5.6 It has further been contended by Id. counsel for accused Haseen Mullaji that the extra judicial confession of Haseen Mullaji allegedly recorded in phone calls is not admissible. It is contended that accused was first arrested on the basis of calls of mobile no. 9891167837 by Spl. Cell because, these calls were being intercepted on some secret information that some arms supply dealings were going on. It is however, contended that the mobile number, which was under surveillance, did not belong to accused Haseen Mullaji. In fact, this mobile number belonged to Shahid who is stated to be the brother of the accused. Shahid was never examined in the court to depose that at the time of alleged incident, this number was used by accused Haseen @ Mullaji. It is further contended that there is no explanation given by either the witness of Spl. Cell, or the IO that how, without examining Shahid, they reached at a conclusion that this mobile

number was used by accused Haseen @ Mullaji. This belies the logic that how Special Cell, on a secret information, directly arrested accused Haseen @ Mullaji. So it is completely missing the fact that how Spl. Cell reached at a conclusion that the number which belonged to Shahid was being used by accused Haseen @ Mullaji whereas, PW76 categorically deposed that Haseen @ Mullaji was wanted in the murder of Ankit Sharma and that he came to know about this fact on 11.03.2020 and before going to Nand Nagri. It is further contended that 11.03.2020 is the date of arrest of accused Haseen @ Mullaji by Spl. Cell and it is not the case of the prosecution that before 11.03.2020, Haseen was wanted in this case. He was only introduced in this case when PW79 formally arrested him on a kalandra (Ex.PW76/C) on 13.03.2020. Therefore, it is argued that there was no credible basis to introduce accused Haseen @ Mullaji in this case and there is material and irreconcilable contradiction regarding the timing of this accused being introduced in the present case.

6.5.7 It is further contended that no witness had been examined that who, when and by what means by what means had actually intercepted the original phone calls and saved the recordings. Even the certificate u/s 65B of IE Act with the alleged DVD containing intercepted phone calls was not proper. It is further contended that the voice sample has not been proved because the only competent witness for proving this recording in Ex.PW24/Article-2, was the FSL official,

who had conducted the process of recording his voice. No one was examined by the prosecution in this regard and the only police witnesses i.e. PW79 ASI Kuldeep and HC Sanjeev had deposed about the process of voice recording. Hence it is doubtful whether voice recording had taken place or not. The basis of voice matching by PW24 was by critical listening/auditory analysis and spectrographic analysis and both these were absolutely unscientific and unreliable methods as is reflected from the literatures Ex.PW24/D-1, Ex.PW24/D-2, and Ex.PW24/D-3 while PW24 never cited any scientific literature to counter this material. Hence, the entire exercise of voice matching has no credence. It is further contended that as per the prosecution the calls, wherein confession appears to have been made by accused Haseen, were made to Sameer Khan (accused), Muntazzim @ Musa (accused), Saira (bhabhi of accused), Nadeem Khan (friend of accused) and Faheem (friend of accused). Nadeem Khan appeared as PW58 and while appearing as a witness, he categorically denied that he had any telephonic conversation with Haseen @ Mullaji and he was made to listen all the recordings of his alleged conversation with Haseen @ Mullaji and he categorically denied that the recordings contained his voice. Similarly, the second witness Faheem also denied that the conversation purported between him and Haseen @ Mullaji was having his voice. He even denied knowing Haseen @ Mullaji. Thereafter, the prosecution moved for

recording of voice samples of these witnesses for comparison with the recordings. However, after the application being allowed, voice samples were taken at CFSL. However, after the report came, these witnesses were not recalled by the prosecution. They were not even called to prove the fact that they had gone to FSL to have their voice samples recorded. It is further contended that PW83 and PW89 are the witnesses of the fact that PW75 was actually produced from JC at CFSL and his voice sample was recorded. PW89 did not personally verify the identity of Nadeem and Faheem to ensure that they were the same persons. On the other hand, PW89 stated that Faheem@ Chikna was actually produced before CFSL, whereas PW83 stated that the jail staff had produced Faheem to CFSL. It is further contended that PW90 Insp. Priyanka, during her cross examination, stated that she had not retained any copy of forwarding letter which she had sent to the CFSL whereas the forwarding letter was the most essential part which would prove that these opinions were sought. The presence of PW75 and PW58 has not been proved by any public witness or any document. It is further contended that Id. SPP merely stated that as PW58 and PW75 had already turned hostile, the only purpose of the filing of charge sheet was to prove the CFSL record and therefore, no purpose would be served by recalling these witnesses. It is further contended that in the scheme of Indian Evidence Act, witness always have to step into the witness box and depose about the fact. It is only

then it could be proved that such an exercise had happened. The prosecution had even not seized the phone of PW58 and PW75. It is further contended that CFSL expert involved in the matching of voice of PW58 and PW75, in their report, did not give any opinion regarding tampering of the sound recordings, further raising doubts about these recordings. Hence, the entire process is under a cloud of doubt. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in Santosh @ Bhure v. State (GNCT of Delhi) [2023] 7 S.C.R. 719. It has further been contended that even if the transcripts of Haseen @ Mullaji are taken on face value, the accused was mentioning to PW58 about various injuries to him which he got in the riot, however no medical document of accused Haseen was on record to state about any injuries which were inflicted on his body.

6.6 On behalf of accused Mutazim @ Musa, Sh. Mehmood Pracha, ld. counsel has contended that accused Musa was implicated in this case only on the basis of the disclosure statement of co-accused Sameer Khan. It has further been contended that against this accused, the prosecution has relied upon the testimony of PW6 Pradeep Verma and the alleged call recording between accused Haseen and Musa. It has further been contended that on 08.05.2020, statement u/s 164 Cr.P.C of PW6 was recorded and by that time, the name of Musa was already known to the IO because Sameer Khan had disclosed it on 09.04.2020. However, the chargesheet shows that no effort was made

by the IO to get Musa identified by Pradeep Verma through photographs. From 09.04.2020 to 08.05.2020, no attempt was made to have Pradeep Verma identify Musa. It has further been contended that the chargesheet also does not state that the police had tried to collect the photograph of accused Musa but could not find. Till the time of his arrest, only disclosure statement of other co-accused person and alleged call recording of Haseen with him was the only material before the PW81. It has further been contended that on 08.11.2022, about one month after Musa's arrest, Pradeep Verma allegedly met PW81 by chance for the third time and on that day, he was shown photographs of eight persons and he identified Musa amongst them. Therefore, the alleged identification of Musa by Pradeep Verma during the third chance meeting does not inspire confidence. This shows that Pradeep Verma was introduced as a planted witness against Musa. As regards the call between accused Haseen and accused, it has been contended that even if the transcript of the recording (Ex.PW81/8) is accepted as true, it establishes that Haseen and Muntazim were not together. It has further been contended that CDR of accused Musa (Ex. 43/A), if taken on face value, shows that at the relevant time, his location was static at one point and he was continuously taking on phone with other person. Even his location at the given areas in CDR was not unnatural as at that he was a resident of Chand Bagh itself.

6.6.1 As regards offence u/s 174A IPC, it has been contended that the prosecution had neither relied upon nor examined any witness to prove this charge against Musa.

6.7 Mohd. Dilshad, Id. counsel for accused Javed has contended that accused Javed has been falsely implicated in this case. It has been contended that the case of the prosecution mainly relies upon the testimonies of PW6 Pradeep Verma, PW5 HC Rahul and PW33 HC Parveen Kumar. PW6 Pradeep Verma stated that he was a witness in only two cases of riots. However, he was actually cited as a witness in more than six cases of riots. This shows that he is a planted witness. During cross-examination, PW6 admitted that he did not make any call to PCR or make any complaint to any authority to report that he had seen and identified persons involved in the riots on 25.02.2020. It has further been contended that PW6 is not a reliable witness because he had appeared in several riot cases and had made contradictory statements. PW6 admitted that he identified the accused from photographs shown by the IO and the names of the accused were also told to him by the IO. However, the photographs were not shown according to the proper legal procedure. Further no Test Identification Parade was conducted. The accused, while in custody, was allegedly shown to PW6. Therefore, the right of accused to a fair identification process was violated and the benefit of doubt should go to the accused.

6.7.1 It has further been contended that PW5 HC Rahul did not make a call to PCR after allegedly witnessing the incident and did not file any complaint regarding the incident. Thus, this shows that PW5 falsely deposed that he had witnessed the incident and he had identified the accused on the direction of senior police officers. It has further been contended that PW33 was tutored about the identity of the accused at the police station on 09.03.2020 and he gave false evidence to solve a blind case. It has further been contended that police witnesses must be treated with caution because they are interested witnesses. Even when they had ample opportunity to come forward earlier, their statements under Section 161 Cr.P.C were recorded after a considerable delay. This delay is fatal to the case of the prosecution and deteriorates the quality of the evidence of the police witnesses. Thus, it would be unsafe to convict the accused solely on such testimony. It has further been contended that accused Javed was neither present at the place of incident nor has any involvement in the present case and the prosecution has concocted a false story against the accused. It has further been contended that there is no direct, credible and corroborated evidence connecting accused Javed with the alleged offence. It has further been contended that it is a well-established principle of criminal law that the prosecution must prove its case beyond reasonable doubt, however, the prosecution has failed to do so in this case. Thus, the accused is entitled to acquittal.

6.8 Sh. Abdul Gaffar, Sh. Badre Alam and Sh. Danish, Id. counsels for accused Sameer Khan have contended that accused Sameer was arrested from his house on 09.03.2020 and as per the prosecution's case, his name was allegedly surfaced in the disclosure statement of accused Haseen @ Mullaji. It has further been contended that the only witness produced against accused Sameer was PW13 Akash. As per the case of the prosecution, PW13 Akash identified Sameer when IO brought him to the location to prepare a pointing-out memo. Two statements u/s 161 Cr.P.C. of PW13 were recorded on 11.03.2020 and 09.04.2020. However, as per the call attributed to Sameer, at the time of the incident, he was not at the crime scene. It has further been contended that PW13 is a chance witness, allegedly discovered by the I.O. by chance and who by chance identified Sameer. A series of such coincidences like this is very unlikely and hard to believe. It has further been contended that when a witness is produced as a chance witness, his presence at the scene of crime should be naturally explained by the prosecution. However, the prosecution has failed to explain it. Even at the time of alleged identification on 09.04.2020, COVID restrictions were imposed and people were not allowed to be outside without a valid reason. In this regard, reliance has been placed upon the judgment of Hon'ble Supreme Court in **Baby & ors. v. Circle Inspector of Police Adimali (2016) 13 SCC 333**, wherein it has been held as under:-

29. A careful reading of the evidence on record clearly highlights the material contradictions and discrepancies in the prosecution evidence especially the testimonies of Mathai (PW 6) and Eldose (PW 17) upon which strong reliance has been placed by the High Court in convicting both the appellants by setting aside the acquittal order passed by the trial court. From the testimony of PW 6 one thing is clear that he is a chance witness who happened to have witnessed the incident by chance. It is a well-settled legal principle that the evidence of a chance witness cannot be brushed aside simply because he is a chance witness but his presence at the place of occurrence must be satisfactorily explained by the prosecution so as to make his testimony free from doubt and thus, reliable.

30. This Court in *Jarnail Singh v. State of Punjab* [*Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] has elaborately explained the reliability of a chance witness as under: (SCC p. 725, paras 21-22)

“21. In *Sachchey Lal Tiwari v. State of U.P.* [*Sachchey Lal Tiwari v. State of U.P.*, (2004) 11 SCC 410 : 2004 SCC (Cri) Supp 105] this Court while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and passer-by had deposed that he had witnessed the incident, observed as under: (SCC p. 414, para 7)

If the offence is committed in a street only a passer-by will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there.

The Court further explained that the expression “chance witness” is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.

22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of

occurrence (Satbir v. Surat Singh [*Satbir v. Surat Singh*, (1997) 4 SCC 192 : 1997 SCC (Cri) 538] , Harjinder Singh v. State of Punjab [*Harjinder Singh v. State of Punjab*, (2004) 11 SCC 253 : 2004 SCC (Cri) Supp 28] , Acharaparambath Pradeepan v. State of Kerala [*Acharaparambath Pradeepan v. State of Kerala*, (2006) 13 SCC 643 : (2008) 1 SCC (Cri) 241] and Sarvesh Narain Shukla v. Daroga Singh [*Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188]). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan [*Shankarlal v. State of Rajasthan*, (2004) 10 SCC 632 : 2005 SCC (Cri) 579]).”

6.8.1 It has further been contended that as per PW13, rioting had been going on since 23.02.2020. If the riots were going on since 23.02.2020 and there was a situation of violence, no reasonable person would come out of his house unless there was any compelling reason. Thus, it is hard to believe that PW13 would come out in this kind of situation and would witness the incident. The presence of PW13 at the scene of crime is doubtful. It has further been contended that before 11.03.2020, there was no PCR call or complaint mentioning this incident. It has further been contended that accused Sameer was never part of a Test Identification Parade (TIP) and before his arrest, no physical description or role was attributed to him. It has further been contended that in the manner, PW13 describes the incident is not visually possible. PW6 Pradeep Verma stated that the both mobs were about 40-50 steps away each other and PW13 stated to be ahead of Pulia towards the Chandu Nagar yet it is unclear how he could see

activities beyond it in view of maps (Ex.PW79/1 to 3). At about 5:30 p.m. in February, visibility would be further reduced due to dusk and possible smoke from petrol bombs, making such observation highly improbable. It has further been contended that PW13 has materially improved his version during trial by introducing new facts which were not stated earlier and thus it is clear that the testimony of PW13 was an afterthought.

6.9 Sh. Abdul Gaffar, Id. counsel for accused Nazim and Kasim has contended that as per the case of the prosecution, these were arrested from Sambhal, Uttar Pradesh on 30.03.2020 and were identified by PW6 and PW14. However, in his statement recorded u/s 164 Cr.P.C. on 09.05.2020, PW06 stated that he identified the accused only from photographs. He did not mention any identification of the accused at the scene of crime on 30.03.2020. Further, during his testimony before the court, he wrongly identified Haseen @ Mulla Ji as Nazim. This creates serious doubt about the reliability of identification of accused by this witness. It has further been contended that neither of accused was subjected to TIP and no reason for not doing so has been given by the prosecution. It has further been contended that in his statement u/s 161 Cr.P.C., PW6 did not provide any physical description of the accused or assign any specific role to them. However, in his later statement, he suddenly gave detailed roles to the accused which clearly indicates towards tutoring of this witness.

He has further contended that even otherwise, this witness could not have seen the incident because admittedly, there were hundreds of people in both the Hindu and Muslim mob. That being the case, if his position as shown in site plan, Ex.PW79/1, is seen, he is standing behind the Hindu mob which is shown by many small circles. As regards PW14, it has been contended that he is a chance witness who was allegedly found by the IO by coincidence and who also, by coincidence, identified Sameer. Such a series of coincidences appears highly improbable and difficult to accept. It has further been contended that in his statement u/s 164 Cr.P.C., PW14 did not claim that he had identified any member of the alleged mob. Had he actually recognized any accused, he would have mentioned it at the earliest opportunity. No satisfactory explanation has been given for this omission. Therefore, later identification and improved version of this witness is doubtful. In this regard, reliance has been placed upon the judgment of Hon'ble Supreme Court in **Kuldeep Yadav & Ors. v. State of Bihar, MANU/SC/0390/2011**, specifically on para 32(b) of the said judgment, which is as under:-

32 (b) By reading the statement of the prosecution witnesses under Section 164 of the Code and their evidence before the Court clearly show their improvements with due deliberation and consultation and in the absence of credible explanation, conviction based on their testimony cannot be sustained.

6.9.1 It has further been contended that during his cross

examination, PW14 stated that before 30.03.2020, no police officer had questioned him about the incident and that he met the police only about two months after the incident. In these circumstances, the genuineness of his statement u/s 161 Cr.P.C. becomes doubtful. It has further been contended that during his testimony before the court, PW14 made material improvements over his statement u/s 164 Cr.P.C. This makes his evidence unreliable. It has further been contended that on 05.10.2024, during cross examination by Id. counsel Sh. Rajiv Mohan, PW14 stated in para 3 that when the stone pelting started, he and his brother left the spot. Thus in view of this statement, his presence at the scene becomes doubtful and his testimony does not inspire confidence.

6.10 Sh. Abdul Gaffar, Id. counsel for accused Firoz has contended that Firoz was arrested on 06.03.2020 in FIR No. 98/2020, P.S. Khajuri Khas. PW79 deposed that IO of FIR No. 98/2020 informed him that Firoz had disclosed his involvement in this case. However, no such disclosure statement is available in either FIR No. 65/2020 or FIR No. 98/2020. Further, Rajnikant (I.O. of FIR No. 98/2020) while appearing as PW24 in that case deposed that no Crime Branch officer approached him or interrogated Firoz during his custody. With regard to identification of Firoz, it has contended that this accused had been identified by PW5 Rahul and PW33 HC Praveen. Both these witnesses remained silent about the alleged

incident in their statements u/s 161 Cr.P.C. However, during their testimony before the Court, they introduced new facts for the first time. In a murder trial, if the incident had actually occurred in the manner alleged, it is highly improbable that neither the Investigating Officer recorded such crucial facts, nor the witnesses disclosed the same during investigation. Moreover, no official record has been placed on record to substantiate their alleged presence at the spot. Therefore, the testimonies of these witnesses cannot be relied upon and deserve to be discarded. It is further contended that PW6 Pradeep Verma appears to be a stock and interested witness. The prosecution has cited him as a witness in several riot cases including FIR Nos. 91/2020, 92/2020, 88/2020, 65/2020, 80/2020, 114/2020, 98/2020, 101/2020 and 116/2020 relating to P.S. Dayalpur and P.S. Khajuri Khas. It is highly improbable that the same person would be present at so many different places during widespread riots. It has further been contended that in the present case, PW6 stated that he did not know Firoz and identified him only after PW79 disclosed his name and showed him his photograph. However, while appearing as PW21 in FIR No. 98/2020, the same witness stated that he had known Firoz for the last 10–12 years. Thus, this major contradiction seriously affects the credibility of the witness. It has further been contended that Firoz was never subjected to a judicial TIP. If the witness was available with the investigating agency then why no judicial T.I.P. was

conducted raises doubt about the credibility of investigation/witness. It is contended that in a large mob, the first time identification in court in absence of judicial TIP cannot be said to be reliable. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in Usmangani (supra), more specifically para 5, which is as under:-

5. On a careful consideration of the evidence adduced by PWs-25 and 26, we are left with serious doubt as to the evidence of the said two witnesses should inspire the confidence of the court. Identification of a total of 13 accused, who were sent out for trial including the present accused – appellants, in a mob of 1000-1500 people, is by no means an easy task. Over and above that no test identification parade was held so far as accused no. 1 and 5 are concerned. The prosecution has not offered any explanation that why no test identification parade was held in respect of A-1 and A-5 whereas a test identification parade was held in respect of A-13.

6.10.1 It has further been contended that the witness categorically stated that he was standing near the alleged Hindu mob, however, he failed to provide any physical description or identification of any member of the alleged mob. Moreover, he admitted that the alleged mob was not raising any slogans. Such conduct is wholly unnatural and improbable in the facts and circumstances of a riot situation and thus, his presence becomes highly doubtful and unreliable. It has further been contended that the witness claimed that he remained at the spot from 12:30 p.m to 6:00 p.m and was present outside Gali No. 6 at about 3:00 p.m where according to him, two mobs were attacking each other, petrol bombs were being

thrown, stones were being pelted from both sides, and petrol bombs were also being thrown from high-rise buildings. In such a hostile situation, it is highly unlikely that an ordinary person would remain standing between two violent mobs for several hours. The witness also stated that strength of the mob was about 2,000 people which further renders his alleged presence at the spot doubtful and unnatural. It has further been contended that during his cross examination, PW6 admitted that despite repeated police patrolling in the area and several visits by police officials to his parking premises, he never informed any authority about the alleged incident. He did not make any PCR call or submit any written complaint. No explanation has been given for this unusual silence, particularly when the incident was widely reported in the media, continuously telecast on television, and the police had made public appeals seeking information about the riots and the murder of Ankit Sharma. Even according to the witness, police inquiries regarding the incident were being conducted in the area. Despite this, PW6 chose to remain silent. It is highly improbable that a genuine eyewitness to such a serious offence would not voluntarily come forward, and the claim that the police later discovered him merely by chance, makes his testimony wholly doubtful and unreliable. It is further contended that there has been contradictions in the testimonies of PW19 and PW6. PW19 Vikalp Kocher, in his examination in chief, deposed that a huge mob was

present in front of his shop and that he himself entered the mob. However, PW6 stated that the mob pulled him from near a tree. These versions are materially contradictory and strike at the root of the prosecution story. It has further been contended that statement of PW6 is self-contradictory and thus, his testimony cannot be relied upon.

6.11 Sh. Salim Malik, ld. counsel for accused Anas has contended that the prosecution has cited three witnesses against accused Anas and they are PW5 HC Rahul, PW33 Ct. Parveen and PW6 Pradeep Verma. However, during their testimonies, PW5 and PW33 have improved their version and have changed the nature of their statements u/s 161 Cr.P.C. It has further been contended that PW6 is also not a reliable witness because the manner in which PW6 has described the incident, is not visually possible. PW6 Pradeep Verma stated that both the mobs were about 40-50 steps away each other and PW13 stated to be ahead of Pulia towards Chandu Nagar yet it is not clear how he could see activities beyond it in view of maps. Further in the month of February, at about 5:30 p.m., visibility would be further reduced due to dusk and possible smoke from petrol bombs and thus, it is improbable that PW6 would be able to see the incident. It has further been contended that in their statements u/s 161 Cr.P.C, PW5 and PW33 remained completely silent about the alleged incident. However, when they appeared in the court, they made material improvements in their testimonies and introduced new facts. In a

murder trial, if the incident had actually occurred in the manner as alleged, it is highly improbable that neither the IO would record such crucial facts nor the witnesses would disclose the same during investigation. Moreover, no official record has been placed on record to substantiate their alleged presence at the spot. Therefore, the testimony of these witnesses cannot be relied upon and deserves to be discarded. It has further been contended that PW6 had been made a witness in many cases i.e. FIR Nos. 91/2020, 92/2020, 88/2020, 65/2020, 80/2020, 114/2020, 98/2020, 101/2020 and 116/2020 pertaining to Police Stations Dayalpur and Khajuri Khas. It is highly improbable that the same person would be present at several places during widespread riots and violence. In the absence of any material establishing his presence at the spot, his testimony is unreliable and unsafe to rely upon. It has further been contended that accused Anas was never subjected to TIP. It has further been contended that the witness categorically stated that he was standing near the alleged Hindu mob, however, he failed to provide any physical description or identification of any member of the alleged mob. Moreover, he admitted that the alleged mob was not raising any slogans. Such conduct is wholly unnatural and improbable in the facts and circumstances of a riot situation and thus, his presence becomes highly doubtful and unreliable. It has further been contended that the witness claimed that he remained at the spot from 12:30 p.m to 6:00 p.m and

was present outside Gali No. 6 at about 3:00 p.m where according to him, two mobs were attacking each other, petrol bombs were being thrown, stones were being pelted from both sides, and petrol bombs were also being thrown from high-rise buildings. In such a hostile situation, it is highly unlikely that an ordinary person would remain standing between two violent mobs for several hours. The witness also stated that strength of the mob was about 2,000 people which further renders his alleged presence at the spot doubtful and unnatural. He did not make any PCR call or submit any written complaint. No explanation has been given for this unusual silence, particularly when the incident was widely reported in the media, continuously telecast on television, and the police had made public appeals seeking information about the riots and the murder of Ankit Sharma. Even according to the witness, police inquiries regarding the incident were being conducted in the area. Despite this, PW6 chose to remain silent. It is highly improbable that a genuine eyewitness to such a serious offence would not voluntarily come forward, and the claim that the police later discovered him merely by chance, makes his testimony wholly doubtful and unreliable.

6.12 In rebuttal, Sh. Madhukar Pandey, Id. SPP has contended that the defence has raised a futile argument that unless a judicial TIP of accused had been conducted, there is no value to the identification of the accused in the court whereas the law which has been established

by judicial pronouncement is to the contrary. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in **Mukesh & Anr. v. State (NCT of Delhi) & Ors. (2017) 6 SCC 1**, wherein it has been held as under:-

142. Criticising the TIP, it is urged by the learned counsel for the appellants and Mr Hegde, learned Amicus Curiae, that refusal to participate may be considered as circumstance but it cannot by itself lead to an inference of guilt. It is also argued that there is material on record to show that the informant had the opportunity to see the accused persons after they were arrested. It is necessary to state here that TIP does not constitute substantive evidence. It has been held in *Matru v. State of U.P.*, (1971) 2 SCC 75 : 1971 SCC (Cri) 391 that identification test is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines.

143. In *Santokh Singh v. Izhar Hussain*, (1973) 2 SCC 406 : 1973 SCC (Cri) 828 , it has been observed that the identification can only be used as corroborative of the statement in court.

144. In *Malkhansingh v. State of M.P.*, (2003) 5 SCC 746 : 2003 SCC (Cri) 1247 , it has been held thus : (SCC pp. 751-52, para 7)

. ... The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure 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 of Criminal Procedure. 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. ...”

And again : (SCC p. 755, para 16)

“16. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. ...”

145. In this context, reference to a passage from *Visveswaran v. State*, (2003) 6 SCC 73 : 2003 SCC (Cri) 1270 would be apt. It is as follows : (SCC p. 78, para 11)

“11. ... The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. ...”

146. In *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385 , the Court, after referring to *Munshi Singh Gautam v. State of M.P.*, (2005) 9 SCC 631 : 2005 SCC (Cri) 1269, *Harbajan Singh v. State of J&K*, (1975) 4 SCC 480 : 1975 SCC (Cri) 545 and *Malkhansingh v. State of M.P.*, (2003) 5 SCC 746 : 2003 SCC (Cri) 1247, came to hold that the proposition of law is quite clear that even if there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive.

6.12.1 He has further relied upon the judgment of Hon’ble Supreme Court in **Sidharth Vashisht @ Manu Sharma v. State (NCT**

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of Delhi) (2010) 6 SCC 1, and has relied upon the following portions:-

252. It is also contended by the defence that since the photographs were shown to the witnesses this circumstance renders the whole evidence of identification in court as inadmissible. For this, it was pointed out that photo identification or TIP before the Magistrate, are all aides in investigation and do not form substantive evidence. Substantive evidence is the evidence of the witness in the court on oath, which can never be rendered inadmissible on this count. It is further pointed out that photo identification is not hit by Section 162 CrPC as adverted to by the defence as the photographs have not been signed by the witnesses.

254. Even a TIP before a Magistrate is otherwise hit by Section 162 of the Code. Therefore to say that a photo identification is hit by Section 162 is wrong. It is not a substantive piece of evidence. It is only by virtue of Section 9 of the Evidence Act that the same i.e. the act of identification becomes admissible in court. The logic behind TIP, which will include photo identification lies in the fact that it is only an aid to investigation, where an accused is not known to the witnesses, the IO conducts a TIP to ensure that he has got the right person as an accused. The practice is not borne out of procedure, but out of prudence. At best it can be brought under Section 8 of the Evidence Act, as evidence of conduct of a witness in photo identifying the accused in the presence of an IO or the Magistrate, during the course of an investigation.

259. In *Mullagiri Vajram v. State of A.P.* [1993 Supp (2) SCC 198 : 1993 SCC (Cri) 496] it was held that though the accused was seen by the witness in custody, any infirmity in TIP will not affect the outcome of the case, since the depositions of the witnesses in court were reliable and could sustain a conviction. The photo identification and TIP are only aides in the investigation and does not form substantive evidence. The substantive evidence is the evidence in the court on oath.

6.12.2 He has further contended that the duty of the court is to separate chaff from the grain and merely because a witness has made some exaggeration, the entire testimony of the witnesses cannot be discarded because there is a tendency amongst the witnesses to exaggerate and in this regard, reliance is placed on the judgment of Hon'ble Supreme Court in **Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127**, and has relied upon the following portion:-

18. It is a common phenomenon that the witnesses are rustic and can develop a tendency to exaggerate. This, however, does not mean that the entire testimony of such witnesses is falsehood. Minor contradictions in the testimony of the witnesses are not fatal to the case of the prosecution. This Court, in *State of U.P. v. M.K. Anthony*, (1985) 1 SCC 505 : 1985 SCC (Cri) 105, held that inconsistencies and discrepancies alone do not merit the rejection of the evidence as a whole. It stated as follows: (SCC p. 514-15, para 10)

“10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. *Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.* If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of

evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.” (emphasis supplied)

19. In *State of U.P. v. Anil Singh*, 1988 Supp SCC 686 : 1989 SCC (Cri) 48, this Court observed that: (SCC p. 692, para 17)

“17. ... invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses.”

.....

21. Moreover, it is not necessary that the entire testimony of a witness be disregarded because one portion of such testimony is false. This Court observed thus in *Gangadhar Behera v. State of Orissa*, (2002) 8 SCC 381 : 2003 SCC (Cri) 32 : (SCC p. 392, para 15)

“15. To the same effect is the decision in *State of Punjab v. Jagir Singh*, (1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407 and *Lehna v. State of Haryana*,

(2002) 3 SCC 76 : 2002 SCC (Cri) 526. Stress was laid by the appellant-accused on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of *falsus in uno, falsus in omnibus* (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim *falsus in uno, falsus in omnibus* has no application in India and the witnesses cannot be branded as liars. The maxim *falsus in uno, falsus in omnibus* has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded.”

22. In our considered opinion, the trial court as well as the High Court is also justified in concluding that the appellant is liable to be convicted under Section 149 IPC, inasmuch as he is one of the members of the unlawful assembly who had come to the scene of occurrence with the common object of committing the murder of Gopal.

22.1. In *Masalti v. State of U.P.*, AIR 1965 SC 202 : (1965) 1 Cri LJ 226, it was observed that any member of the unlawful assembly can be prosecuted for the criminal act; it need not be proved that he had committed an overt act: (AIR pp. 210-11, para 17)

“17. ... What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC. Section 142 provides that whoever, being aware of facts which render any

assembly an unlawful assembly, intentionally joins that assembly, or continue in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant 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. It is in that context that the observations made by this Court in *Baladin* [*Baladin v. State of U.P.*, AIR 1956 SC 181 : 1956 Cri LJ 345] assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.”

22.2. This Court in *Lalji v. State of U.P.*, (1989) 1 SCC 437 : 1989 SCC (Cri) 211 , observed as follows: (SCC pp. 441-42, para 9)

“9. Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and distinct offence. In other words, it created a constructive or vicarious

liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability of the members of the unlawful assembly extends only to the acts done in pursuance of the common object of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the section, the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hands commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together, armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149. It must be noted that the basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge.”

22.3. These cases were followed in many subsequent cases, including *Shamshul Kanwar v. State of U.P.*, (1995) 4 SCC 430 : 1995 SCC (Cri) 753.

6.12.3 Further relying upon the judgment of Hon’ble Supreme Court in **Sucha Singh v. State of Punjab 2003 (7) SCC 643**, he has

contended that the purpose of the trial is the search of truth and in a case where witness is found to have stated some falsehood at some place but his entire testimony otherwise seems truthful then the court cannot discard the entire testimony because of some small exaggeration amounting to some false statement because latin maxim *falsus in uno falsus in omnibus* is not applicable in India. He has specifically relied upon following paras of this judgment:-

18. To the same effect is the decision in *State of Punjab v. Jagir Singh* [(1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407] and *Lehna v. State of Haryana* [(2002) 3 SCC 76 : 2002 SCC (Cri) 526], stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence, prayer is to apply the principle of “*falsus in uno falsus in omnibus*” (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove the guilt of other accused persons. Falsity of a particular material witness or a material particular would not ruin it from the beginning to the end. The maxim “*falsus in uno falsus in omnibus*” has no application in India and the witnesses cannot be branded as liars. The maxim “*falsus in uno falsus in omnibus*” has not received general acceptance nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a

given set of circumstances, but it is not what may be called “a mandatory rule of evidence”. (See *Nisar Ali v. State of U.P.* [AIR 1957 SC 366 : 1957 Cri LJ 550]) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See *Gurcharan Singh v. State of Punjab* [AIR 1956 SC 460 : 1956 Cri LJ 827] .) The doctrine is a dangerous one, especially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See *Sohrab v. State of M.P.* [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] and *Ugar Ahir v. State of Bihar* [AIR 1965 SC 277 : (1965) 1 Cri LJ 256] .) An attempt has to be made to, as noted above, in terms of the felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel v. State of M.P.* [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and *Balaka Singh v. State of Punjab* [(1975) 4 SCC

511 : 1975 SCC (Cri) 601 : AIR 1975 SC 1962] .) As observed by this Court in *State of Rajasthan v. Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593 : AIR 1981 SC 1390] normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi v. State of Bihar* [(2002) 6 SCC 81 : 2002 SCC (Cri) 1220 : JT (2002) 4 SC 186] . Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as acquitted and convicted accused are concerned.

20. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See *Gurbachan Singh v. Satpal Singh* [(1990) 1 SCC 445 : 1990 SCC (Cri) 151 : AIR 1990 SC 209] .) The prosecution is not required to meet any and every hypothesis put forward by the accused. (See *State of U.P. v. Ashok Kumar Srivastava* [(1992) 2 SCC 86 : 1992 SCC (Cri) 241 : AIR 1992 SC 840] .) A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish.

[See *Inder Singh v. State (Delhi Admn.)* [(1978) 4 SCC 161 : 1978 SCC (Cri) 564 : AIR 1978 SC 1091] .] Vague hunches cannot take the place of judicial evaluation.

“A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties.” [Per Viscount Simon in *Stirlanav. Director of Public Prosecution* [1944 AC 315 : (1944) 2 All ER 13 (HL)] quoted in *State of U.P. v. Anil Singh* [1988 Supp SCC 686 : 1989 SCC (Cri) 48 : AIR 1988 SC 1998] (SCC p. 692, para 17).]

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

21. In matters such as this, it is appropriate to recall the observations of this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : (1974) 1 SCR 489] (SCR pp. 492-93) : (SCC p. 799, para 6)

“The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand special emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. ... The evil of acquitting a guilty person light-heartedly as a learned author (Glanville Williams in ‘*Proof of Guilt*’) has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted ‘persons’ and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the

guiltless. ... 'a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....'

6.12.4 He has further contended that the defence is unnecessarily trying to create confusion by raising a claim that FIR was ante-dated and ante-timed on the ground that the FIR number was not mentioned on inquest report and contending that this is a fatal defect in the case of the prosecution. However, Hon'ble Supreme court in **Shiv Ram & Anr. v. State of UP (1998) 1 SC 149** had held that it does not effect the prosecution story and such minor omissions only reflect that the approach of the investigator was casual but it in no manner affects the basic structure of the prosecution story. He has specifically relied upon para 17 and 18 of this judgment, which are as under:-

17. It was then contended by Mr Sushil Kumar that the claim of the complainant that he lodged the FIR at 9.05 p.m. is false. According to him if the FIR was registered as alleged there was no reason whatsoever why the copy thereof was not sent to the Illaqa Magistrate at the earliest opportunity. As regards the contents of the FIR he urged that it was impossible for any human being to write down the complaint with such details when four dead bodies were lying of which three were without heads in the house. The contents of the complaint manifestly suggest that it was an afterthought exercise with the help of police or somebody to spread a wide net and involve as many accused as possible to take revenge. He, therefore, urged that the complaint lodged by Mahendra Kumar (PW 1) be treated as a false document and be not accepted for the purpose of seeking corroboration to the evidence of PW 1. He also urged that the complainant at the relevant time was serving at a different place and his claim that he had come on leave for two days was totally a concocted plea. According to him the complainant was brought to the village at a later point of time and the police

had manipulated the entire prosecution story. We see no substance in any of these contentions for the simple reason that the police machinery reached the place of incident within a short time i.e. at about 11 p.m. and in fact the evidence of SI Pandey (PW 14) would show that the wheels of investigating machinery started moving during the same night. The statements of some of the persons were recorded during the same night. The inquest on the dead bodies was carried out early in the morning of 24-6-1990. There is nothing in the evidence of SI Pandey (PW 14) to indicate that he had antedated all these documents to suit the complainant's version. There was no earthly reason for SI Pandey (PW 14) to implicate and spread the net so wide as contended for the accused to arraign 24 accused persons in the present crime. To our mind it is only a figment of imagination to contend that the investigation carried out by the investigating machinery was antedated at the instance of the complainant. It is true that the complainant at the relevant time was posted at a far-off place but he testified that he had come to Village Bajarkha on two days' leave as he had not come till then to his village after he joined the service. This explanation given by the witness is quite plausible and the courts below were right in accepting his presence at the time of occurrence. It is also true that there was a delay in forwarding the copy of the FIR to the Illaqa Magistrate but that circumstance would not demolish the other positive and credible evidence on record. This would only show how in such a serious crime the investigating agency was not careful and prompt as it ought to be.

18. It was then contended for the appellants that if really the incident was reported at 9.05 p.m. then surely the inquest reports which were prepared on the following day must mention the title of the crime. But it was left blank and, therefore, this omission was a serious infirmity and demolishes the very substratum of the prosecution based on the first information report which is a concocted document. At the first blush the argument appeared to us attractive but on scrutiny and consideration of the materials on record we are unable to accept this submission. If really the complaint was not lodged at 9.05 p.m. then the police could not have

reached at the place of occurrence at 11.00 p.m. Such minor omission is nothing but a bona fide error or casual approach on the part of the investigating agency which does not affect the substratum of the prosecution story. It was then urged that Kamlesh was taken to the police station in an injured condition but he was not sent to the hospital for treatment. In fact Kamlesh was not traced for the whole night and only on the following day he appeared and was admitted in the hospital where he died after 17 days due to septicaemia. It was, therefore, urged that neither Kamlesh nor the complainant ever went to the police station to lodge a complaint at 9.05 p.m. and this complaint was manufactured at a later stage with the connivance of the police. We see no substance in this contention also because the fact remains that Kamlesh was injured during the incident in question. If he was not sent to the hospital for medical examination and treatment by the investigating agency no fault could be found with the complainant's evidence and the FIR (Ex. Ka-1). In these circumstances we see no merit in all these contentions raised on behalf of the appellants.

6.12.5 He has further contended that the claim of the defence that the dropping of witness namely Shamshad Pradhan by prosecution should result in adverse inference that he was not going to support the story of the prosecution and he would have a different story to tell which would have exonerated the accused is again beyond the tenants of law and in this regard, he has relied upon the judgment of Hon'ble Supreme Court in **Dalbir Kaur & Ors. v. State of Punjab (1976) 4 SCC 158**. He has relied upon following portions of this judgment:-

18. I shall now deal with two important points which were vehemently pressed by Mr Anthony learned counsel for the appellants. In the first place it was contended that the entire

prosecution case should be thrown out because of non-examination of four material witnesses in this case. It was submitted that even according to the evidence of Jaswant Kaur her neighbours Mohinder Singh and Daya Singh had also witnessed the occurrence. Jaswant Kaur stated this fact at p. 46 of paper-book II but she also added that even though they were watching the occurrence they did nothing to help the deceased nor did they raise any alarm. The counsel further submitted that these two witnesses were interrogated by the police and yet they have not been examined to prove and corroborate the evidence of the eyewitnesses. This omission is undoubtedly there and we have to see as to what is its effect on the truth of the prosecution case. In the same token it was also contended that two other witnesses, namely, Mukhtiar Singh and Mohinder Singh who immediately came to the house and to whom the eyewitnesses narrated the occurrence have also not been examined. Particular comment was made regarding the non-examination of Mohinder Singh who had in fact accompanied the informant to the police station. It was argued by Mr Anthony that in view of this deliberate omission to examine material witnesses a reflection is cast on the fairness of the trial so as to vitiate the conviction of the appellants. Strong reliance was placed by counsel for the appellants on the decision of this Court in *Habeeb Mohamma v. State of Hyderabad* [(1953) 2 SCC 231 : AIR 1954 SC 51 : 1954 SCR 475 : 1954 Cri LJ 338] . In that case what had happened was that the only witness examined to prove the firing by the accused was a police jamadar whereas a very senior police officer who is said to be present at the time when the accused gave orders for firing was not produced and what was more was that *no explanation* for the omission to examine this witness was given. In view of these circumstances and the other infirmities appearing in that case generally, this Court held that such an omission to produce a material witness was sufficient to throw doubt on the prosecution case. In this connection this Court observed thus:

“In this situation it seems to us that Biabani who was a top-ranking police officer present at the scene was a material witness in the case and it was the bounden duty of the

prosecution to examine him, particularly when no allegation was made that if produced, he would not speak the truth.... In our opinion, not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of Illustration (g) to Section 114 of the Indian Evidence Act, but the circumstance of his being withheld from the court casts a serious reflection on the fairness of the trial.”

The facts of that case are clearly distinguishable from the facts of the present case. To begin with, in that case, excepting the interested witness the police jamadar there was no other eyewitness to support the occurrence. Secondly, this Court clarified its observations that an adverse inference could be drawn only if no explanation for the non-examination was given or if no allegation was made that the witness if produced would not speak the truth. Thirdly, it appears that although an application was made to the trial court for examination of the witness concerned under Section 540 of the Code of Criminal Procedure, the Court did not accede to this prayer. In the instant case the prosecution has given very reasonable explanation for not examining these witnesses and there is nothing to show that the accused filed any application before the trial court or even before the High Court for examining these witnesses as the court witnesses nor did they choose to examine them as the defence witnesses. The Public Prosecutor in his statement before the Sessions Judge clearly stated thus at p. 57 of paper-book II:

“I give up Inder Singh and Sadhu Singh PWs as the uncles of Dalbir Singh accused, Mohinder Singh as maternal uncle of Dalbir Singh, I also give up Mukhtar Singh, Nazir Masih, Pursan Masih, Chanan Singh and Rabinder Singh PWs as having been won over by the accused. They are not likely to speak the truth and they are present in court.”

The reasons given by the Public Prosecutor are quite understandable, because the witnesses who had been given up either on the ground that they were relatives of the appellant Dalbir Singh or that they had been won over by the accused and were not likely to speak the truth. This statement of the Public Prosecutor which was recorded by the trial court on June 3, 1974 clearly takes the case out of the ambit

of the ratio of the decision in *Habeeb Mohammad case* [(1953) 2 SCC 231 : AIR 1954 SC 51 : 1954 SCR 475 : 1954 Cri LJ 338] .

19. Furthermore, in the instant case, there were two independent witnesses PWs 3 and 4 who had proved the actual occurrence and their evidence was fully corroborated by the medical evidence and the evidence of the recovery of the weapons at the instance of the appellants themselves. In these circumstances, therefore, the principles laid down in *Habeeb Mohammad's case* [(1953) 2 SCC 231 : AIR 1954 SC 51 : 1954 SCR 475 : 1954 Cri LJ 338] will not apply to this case at all. Furthermore in *Habeeb Mohammad's case* [(1953) 2 SCC 231 : AIR 1954 SC 51 : 1954 SCR 475 : 1954 Cri LJ 338] there was a serious violation of procedure because the trial court refused to summon those witnesses who were cited by the defence which was by itself sufficient to vitiate the trial. It was in view of these circumstances that this Court was not prepared to convict the accused. In these circumstances, therefore, the case relied upon by the learned counsel for the appellants has no application to the present case.

21. On the other hand in *Narain v. State of Punjab* [AIR 1959 SC 484 : 1959 Supp (1) SCR 724 : 1959 Cri LJ 537] it was pointed out by this Court that if non-examination of material witnesses was deliberate and intentional then a serious reflection was cast on the prosecution and the Court observed as follows:

“We agree that if a material witness has been deliberately or unfairly kept back, then a serious reflection is cast on the propriety of the trial itself and the validity of the conviction resulting from it may be open to challenge.”

In the instant case it has been seen that the Public Prosecutor has given a statement that the witnesses concerned were either relatives of the accused or that had been gained over by the accused and were, therefore, not likely to speak the truth. In view of this explanation it cannot be said that the witnesses were deliberately withheld or unfairly kept back and therefore no adverse inference could be drawn against the prosecution for non-examination of those witnesses.

22. To the same effect is the decision of this Court in *Masalti*

case [AIR 1965 SC 202 : (1964) 8 SCR 132 : (1965) 1 Cri LJ 226] which was also relied upon by Counsel for the appellants on this point. In that case the Court observed as follows:

“It is undoubtedly the duty of the prosecution to lay before the court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorised. In such a case, it is always open to the defence to examine such witnesses as their witnesses and the court can also call such witnesses in the box in the interest of justice under Section 540 CrPC.”

From the observations made by this Court it is quite clear that there is no duty on the prosecution to examine witnesses who might have been gained over by the accused and even if those witnesses are not produced by the prosecution there is nothing to stop the accused from applying to the court for examining such witnesses under Section 540 of the Code of Criminal Procedure. No such application was ever made by the appellants either before the trial court or the High Court but for the first time it was made in this Court and that too during the course of the arguments. This Court in its special jurisdiction does not entertain such applications, particularly because the accused had an opportunity to make a similar application before the courts below and they have not availed of the same. For these reasons, therefore, Criminal Miscellaneous Petition No. 1291 of 1976 filed by the appellants in this Court is rejected.

6.12.6 He has further contended that father of the deceased, as far as the complaint was concerned, had turned hostile and in this light, the defence had tried to argue that the entire case of prosecution goes because the basis of FIR is gone and in fact the FIR is gone. He has however contended that the issue has been settled by Hon’ble

Supreme Court in **Bable @ Gurdeep Singh v. State of Chhatisgarh, (2012) 11 SCC 181** wherein Hon'ble Supreme Court had held that even in case complaint turns hostile and does not support the prosecution case about making the complaint, the FIR would still stand. He has specifically relied upon following paras of the judgment:-

13. Reverting to the submissions made on behalf of the appellant, we may refer to the fact that the FIR had been lodged upon the statement of PW 1. PW 1 did not completely support the case of the prosecution and with the permission of the Court he was declared hostile. The contention is that the case of the present appellant would also stand equated to the case of the two acquitted accused persons and the High Court has fallen in error of law in not acquitting the appellant-accused as well. It cannot be denied that the FIR, Ext. P-1 was registered upon the statement of PW 1 and he himself has not supported the case of the prosecution, which creates a doubt in the case of the prosecution.

14. Once registration of the FIR is proved by the police and the same is accepted on record by the court and the prosecution establishes its case beyond reasonable doubt by other admissible, cogent and relevant evidence, it will be impermissible for the Court to ignore the evidentiary value of the FIR. The FIR, Ext. P-1, has duly been proved by the statement of PW 10, Sub-Inspector, Suresh Bhagat. According to him, he had registered the FIR upon the statement of PW 1 and it was duly signed by him. The FIR was registered and duly formed part of the records of the police station which were maintained in normal course of its business and investigation. Thus, in any case, it is a settled proposition of law that the FIR by itself is not a substantive piece of evidence but it certainly is a relevant circumstance of the evidence produced by the investigating agency. Merely because PW 1 had turned hostile, it cannot be said that the FIR would lose all its relevancy and cannot be looked into for any purpose.

15. In the present case, PW 11 and PW 14 are the two persons who had reached the place of incident immediately after the occurrence. They were instantaneously told by the deceased as to who the assailants were. They have substantially supported what had been recorded in the FIR which further stands corroborated by the medical evidence and the statements of other witnesses. In these circumstances, we cannot discredit the statements of PW 11 and PW 14 merely because PW 1 has turned hostile. Besides this, in furtherance of the statements of the accused persons, recovery of the weapons used in the crime was effected.

6.12.7 He has further contended that the defence has repeatedly tried to discredit the prosecution witnesses by citing them chance witness. However in **Rajesh v. State 1984 CRI.L.J (NOC) 38 (DEL)**, Hon'ble Delhi High Court held that there is no concept of chance witness in Indian Law and evidence of witnesses cannot be brushed aside merely because they are chance witnesses. He has specifically relied upon para 16, 17 and 18 of this judgment, which are as under:-

16. The next leg of the argument advanced on behalf of the appellant is that the eye witness on whom the prosecution depends are "chance witnesses". It was clear during the course of arguments, that this argument is pressed into service on the ground that the presence of Phool Singh PW6 who is residing at Kailash Nagar, Gandhi Nagar and PW12 Anand Kumar who is residing at New Seelampur, at the scene of occurrence is most improbable and unnatural particularly when the court takes into view the time of the occurrence. We are of the view that this argument needs to be examined in the light of the observation made by the Supreme Court in Rana Pratap and Others v. State of Haryana, AIR 1983 SC 680 which is reported below:

We do not understand the expression "chance witnesses". Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in

dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brother, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passer by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence else where or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses', even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence.

17. In this case with which we are now dealing the learned counsel for the appellant made sustained effort before us that since the two eye witnesses Phool Singh and Anand Kumar reside at the places far off from the scene of occurrence, their testimony should be rejected on the basis of their being "chance witnesses". From our point of view the argument is not only misconceived but is also without basis as both these eye witnesses together with PW7 Khairati Lal have sufficiently explained their presence at the scene of occurrence. We are of the firm belief that in a murder trial or for that matter of fact in any criminal trial the accused cannot extricate himself simply by describing an independent witness as a 'chance witness'. Not very seldom, the expression 'chance witness' is being pressed into service to persuade the court to treat such evidence with suspicion and to declare his presence on the scene of occurrence as doubtful.

18. We feel that the evidence of eye-witnesses cannot and should not normally be brushed aside or looked at with suspicion simply on the ground that they happen to witness the occurrence at a place far away from their moorings. This will be so particularly, if their presence on the scene of occurrence is properly and sufficiently explained. The expression 'chance witness' is not at all suited to the Indian conditions and setting. Academically speaking, if the expression 'chance witness' has any meaning and if a witness is to be treated as such, it must then be shown by cogent evidence that his presence at the scene of occurrence is improbable; that he ought

to have been present at some place other than the scene of occurrence, or that it was something abnormal for him to be present at the scene of occurrence at the crucial hour. This can even be indicated by the defence from proved circumstances of the case. The mere fact that an eye-witness to the occurrence is doubted as 'chance witness', however does not ipso facto render him unreliable. This would be so more particularly, in cases where the witness explains his presence and stands the test of cross-examination and also where the witness does not own any grudge to the accused. In our reluctant to assist the administration of justice for a variety of reasons; uppermost being their own safety and fear of reprisal at the hands of criminals. Under these circumstances, it is necessary for the courts to refrain from approaching the testimony of independent eye-witness with suspicion as that might have effect of deterring genuine and truthful witnesses to come forward and assist the law enforcing agencies. Assuming though not granting that the expression 'chance witness' has a place in our setting, its scope should not be unreasonably stretched to an extent as to make the administration of criminal justice a farce. The only assurance for an independent and truthful witness to come forward in support of truth is a proper, normal and balanced approach by the court for appreciating their testimony, an approach which is helpful in discovering the truth and does not enable a criminal to walk out on flimsy and hyper technical ground. It must be borne in mind that in our social set up the witnesses to crime are also in need of protective assurances more than ever before. With these observations we reject the contention of the learned counsel for the appellant that the eye-witnesses are chance witnesses.

6.12.8 He has further contended that merely because the witness has deposed beyond his statement u/s 161 Cr.P.C, it cannot be said the witness has deposed falsely because of the alleged improvements that have been made. He has contended that even without there being a statement u/s 161 Cr.P.C, a witness can come and depose before a

court. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in Alamgir v. State of NCT, Delhi (2003) 1 SCC 21.

He has relied upon the following portion:-

12. The circumstances noticed above, if read with the evidence of PW 6 Shamim Bano as to the date of departure of the accused with his wife Hazra @ Halima from Bombay to Delhi and the telephonic message after two days that Halima had died in a bus accident and that she had been cremated at a cremation ground in Nizamuddin — this piece of evidence, as noticed above, if read along with the circumstances noticed above, would form a chain without there being any snap. Strenuous submissions have been made as regards the admissibility of the handwriting expert's opinion as also a challenge thrown to the non-admissibility of the entire evidence of Shamim Bano, PW 6. This evidence of Shamim Bano has been challenged on two counts: on the first, Shamim Bano, being the sister of Halima, was an interested witness and secondly, she did not say so in a statement before the police under Section 161 CrPC. Interested witness by itself cannot possibly be a ground to reject the evidence on record. The test of creditworthiness or acceptability, in our view, ought to be the guiding factor and if so, question of raising an eyebrow on the reliability of the witness being an interested witness would be futile — in the event the evidence is otherwise acceptable, there ought not to be any hindrance in the matter of the prosecutor's success. The evidence must inspire confidence and in the event of unshaken credibility, there is no justifiable reason to reject the same. It is on this score the issue of interested witness thus stands negated, as raised by the appellant. The second limb pertains to the statement under Section 161 CrPC. Admittedly, this piece of evidence was not available in the statement of the witness under Section 161 CrPC, but does it take away the nature and character of the evidence in the event there is some omission on the part of the police official? Would that be taken recourse to as amounting to rejection of an otherwise creditworthy and acceptable evidence — the answer, in our view, cannot but be in the

negative. In that view of the matter, the evidence of PW 6 thus ought to be treated as creditworthy and acceptable and it is to be seen the effect of such an acceptability.

6.12.9 He has further contended that there is no specific established principle of law that opinion of an expert witness has to be considered a weak evidence and should not be relied upon by the court. He has further contended that opinion of FSL expert regarding the voice of accused Salman @ Haseen @ Mullaji and the persons to whom he was talking is definitely a reliable piece of evidence.

6.12.10 He has further contended that the defence has tried to draw towards a lot of inferences from the testimonies of witnesses where certain facts were not clear, however, no such exercise is permissible under law and it is a settled position of law that if questions were not put to a witness during his cross examination seeking explanation of a particular issue, the correctness and legality of those facts cannot be raised during the arguments. In this regard, he has relied upon the judgment of **Mahavir Singh v. State of Haryana, (2014) 6 SCC 716.** He has specifically relied upon the following portions of the judgment:-

15. A large number of issues have been raised by the learned counsel for the appellant particularly that independent witness had not been examined. Various issues have been raised regarding recovery of clothes of Suraj Mal, recovery of V-shaped chappals, serious discrepancies in the inquest report and recovery of the clothes of the appellant. In the trial court, no question had been put to Ramphal (PW 15), the

investigating officer or Lakhpal Singh (PW 11), ASI or any other material witness who could furnish explanation for such discrepancies.

16. It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. (Vide *Atluri Brahmanandam v. Anne Sai Bapuji* [(2010) 14 SCC 466 : (2012) 1 SCC (Civ) 644 : AIR 2011 SC 545] and *Laxmibai v. Bhagwantbuva* [(2013) 4 SCC 97 : (2013) 2 SCC (Civ) 480 : AIR 2013 SC 1204] .)

6.12.11 He has further contended that as far as the contention that PW6 could not see the incident, this is merely an attempt to mislead the court. He has contended that it is nowhere stated in the site plan that the small circles which are seen around point D, where PW6 was shown to be standing, are humans. He has contended that in fact the IO has shown the stones which were lying on the road at the time of his inspection, a fact which the IO had clarified to him. He has further contended that had these circles been representing the human beings, these circles would have been shown in the entire Karawal Nagar Road before and after Chand Bagh Pulia as the mob was present before, on and after Chand Bagh Pulia towards Karawal Nagar.

Findings

7.1 I have carefully considered the arguments and counter arguments, the evidence on record and legal precedents cited at the

bar.

7.2 Before proceeding to determine the issue relating to the death of Ankit Sharma, it is necessary to deal with certain preliminary contentions raised on behalf of the accused.

7.2.1 It has been contended by Sh. Rajiv Mohan, learned counsel for accused Tahir Hussain, that the FIR is ante-dated and ante-timed, and that even the original complaint made by the father of the deceased had been changed. He further contended that Section 157 Cr.P.C. was also not complied with. On the strength of these submissions, which have already been reproduced in detail in the earlier part of this judgment, he has argued that the entire investigation stands vitiated and in the eyes of law, is non est. In essence, he seeks to strike at the very foundation of the prosecution case and thereby bring down its entire edifice.

7.2.2 To substantiate these assertions, learned counsel has contended that all the inquest proceedings as well as the post-mortem proceedings were conducted pursuant to DD No. 63A and not on the basis of the FIR in question, which, according to the prosecution, had already been registered. It is pointed out that the documents Ex.PW9/A, Ex.PW9/B, Ex.PW9/C and Ex.PW9/D, prepared by PW9, bear the reference of DD No. 63A instead of the FIR number. It is further argued that PW9 failed to explain this aspect. According to the defence, had the FIR already been registered by the time the post-

mortem was conducted, these documents would necessarily have carried the FIR number. It is, therefore, contended that the FIR was in fact registered at a later point of time but was shown to have been registered on 26.02.2020.

7.2.3 Per contra Ld. SPP had contended that the Ld. defence counsel is trying to draw a presumption where none are available. It was the contention of Mr. Pandey that in the light of the judgment of Hon'ble Apex Court in Shiv Ram(supra), this arguments has to be summarily rejected.

7.2.4 The contention that PW9 failed to explain this issue presupposes that an explanation was sought from him but that he failed to furnish one. However, a bare perusal of his cross-examination reveals that no explanation whatsoever was sought from him regarding the reason for mentioning DD No. 63A instead of the FIR number on these documents. Consequently, the submission that PW9 failed to explain the discrepancy is factually incorrect.

7.2.5 In fact, the argument itself indicates that PW9 was the only person who could have explained this aspect. If the defence considered this circumstance significant, it was incumbent upon it to confront the witness with the issue during cross-examination. Having chosen not to do so, it cannot attempt to now derive a tactical advantage from its own omission. In these circumstances, the mere

fact that DD No. 63A, and not the FIR number, appears on these documents cannot lead either to the conclusion or even to a reasonable probability that the FIR had not been registered by then.

7.3 It has next been contended that at about 6:30 p.m. on 26.02.2020, when DD No. 63A was recorded, the police at PS Dayalpur had already come to know that Ankit Sharma had been murdered. Yet, neither DD No. 9A nor DD No. 63A was made the basis of registration of the FIR. According to the defence, this circumstance renders the FIR highly doubtful.

7.3.1 In my considered opinion, this circumstance by itself cannot lead to the conclusion that the FIR lacks genuineness. Arguments are equally available on either side. Had the FIR been registered on the basis of the DD entries, the defence could very well have argued that the FIR itself was doubtful because, despite the identity of the deceased being known and his father being available to make a statement, the police still chose to register the FIR merely on the basis of a DD entry.

7.3.2 I have also considered the contention that the FIR was registered on the basis of a fabricated complaint allegedly made by PW28, as his original complaint had been changed to introduce the name of Tahir Hussain in order to satisfy public sentiment and lend credence to local rumours. Learned counsel has submitted that PW28

categorically denied his signatures on the complaint forming the basis of the FIR and that even during his cross-examination, the contents of that complaint were not put to him to ascertain whether those averments had in fact been made by him. It is, therefore, argued that the FIR is founded upon a fabricated complaint.

7.3.3 On this aspect, PW28 Ravinder Kumar (father of the deceased) deposed that on 26.02.2020 he had made a complaint at the other police station (referring to PS Dayalpur), which was recorded by the police. The complaint was related to the killing of his son Ankit and the recovery of his dead body. According to him, the police had obtained his signatures on that complaint.

7.3.4 When the complaint on the basis of which the rukka had been prepared was shown to him, he stated that it did not bear his signatures. He further deposed that the police had read over the complaint to him and that one or two facts had been changed. One such change, according to him, related to someone named Kalu being shown as a witness. He stated that he had objected to the inclusion of Kalu's name but was informed by the police that whatever had been written had already been recorded. PW28 further stated that he could identify the complaint signed by him because he had affixed his signatures on it. However, when the signatures encircled at point 'A' were shown to him, stating that those signatures were in English whereas he ordinarily signed in Hindi, he denied that they were his

signatures.

7.3.5 During his cross-examination by the Id. SPP, an attempt was made to confront PW28 with the contents of the complaint upon which he had denied his signatures. However, the very first question, relating to his alleged statement regarding the protest against CAA-NRC on Main Road, Karawal Nagar, was disallowed by my learned predecessor on the ground that no such fact had been put to the witness during his examination-in-chief and, therefore, it could not be put to him by way of confrontation. Immediately thereafter, the learned SPP gave up the line of questioning and made no further attempt to confront the witness by rephrasing the questions or by adopting any other permissible mode.

7.3.6 Thus, the prosecution did attempt to confront the witness with the contents of the complaint in order to ascertain whether those facts had indeed been stated by him to the police. That attempt, however, did not succeed because of the ruling of my learned predecessor. To that extent, therefore, the prosecution cannot be faulted. Nevertheless, the fact remains that the person, on whose complaint the FIR was allegedly registered, refused to identify his signatures on that complaint. In the absence of any further effort by the prosecution, a possibility does arise that PW28 may have signed some other complaint.

7.3.7 This brings me to PW46, who was the only witness capable of clarifying this issue, as it was he who had recorded the statement of PW28. He deposed that Ravinder Kumar Sharma(PW28) came to the police station at about 10:00/10:30 p.m., whereupon he recorded his statement, made an endorsement thereon and handed it over to ASI Rajender for registration of the FIR. He further deposed that his endorsement appeared at point A to A and bears his signatures at point Y. The endorsement was exhibited as Ex.PW46/A.

7.3.8 During his cross-examination on this issue, no attempt was made to elicit any factual clarification from him. He was merely given suggestions, all of which he denied. He denied that the FIR had not been registered till the post-mortem examination was conducted; that he had fabricated the statement of Ravinder Sharma; that the FIR had been registered only after returning from the mortuary and had been ante-dated and ante-timed; and that Ravinder Sharma had never made any statement before him.

7.3.9 Thus, no part of PW28's testimony was put to PW46 to confront him with the situation arising from PW28's denial that the statement forming the basis of the rukka bore his signatures. Only if such a confrontation had been made could PW46 have offered an explanation. Instead, he was merely confronted with bald suggestions, which he naturally denied.

7.3.10 Be that as it may, the testimony of PW28 does create a doubt that there may have existed another statement made and signed by him, which was not made the basis of the FIR. The question, therefore, that arises is whether the possibility that the statement forming the basis of the FIR may have been fabricated is sufficient to demolish the entire prosecution case?

7.3.11 I have carefully considered the judgments of the Hon'ble Supreme Court in Devender Pal Singh Bhullar (supra), Sudershan (supra) and Meharaj Singh (supra), relied upon on behalf of accused Tahir Hussain, as well as the judgments in Shiv Ram (supra) and Bable (supra), cited by the prosecution.

7.3.12 A bare reading of the judgment in Meharaj Singh (supra) makes it evident that the rationale behind insisting upon prompt registration of an FIR is, that it brings forth the earliest and unembellished version of the occurrence. Delay in lodging the FIR may permit the introduction of exaggerated or improved versions based upon afterthought or legal advice. Similarly, the object of Section 157 Cr.P.C., as explained in Sudershan (supra), is to ensure that the FIR is promptly recorded so as to eliminate the possibility of a false case being set up or false witnesses being introduced. At the same time, the failure to comply or a delay in complying with section 157 Cr.P.C does not automatically vitiate the entire investigation and such an advantage can only accrue to the accused if the accused

demonstrates that such a delay has prejudiced his or her case. [**Rama Devi v. State of Bihar, (2024) 10 SCC 462**].

7.3.13 The legal principle that thus emerges is- that any manipulation in the registration of an FIR becomes fatal to the prosecution only where it is established that the delay or manipulation was actuated by mala fides with the object of introducing a version or witnesses which otherwise would not have been available, as was the situation in **Meharaj Singh (supra)**. Equally well settled is the principle that an error, illegality or defect in investigation does not affect the outcome of the trial unless it is shown that such illegality or defect has resulted in serious prejudice to the accused or has occasioned a miscarriage of justice. Reliance in this regard may be placed upon **Union of India v. Prakash P. Hinduja, AIR 2003 SC 2612**.

7.3.14 The Hon'ble Supreme Court has also consistently held that where the prosecution case is otherwise established by credible evidence, any lapse or omission on the part of the investigating officer cannot, by itself, render the prosecution case doubtful. Reliance may be placed upon **Amar Singh v. Balwinder Singh, AIR 2003 SC 1614** and **Sambhu Dass v. State of Assam, AIR 2010 SC 3300**.

7.3.15 Furthermore, under our criminal jurisprudence, an FIR is not substantive evidence. It merely sets the criminal law into motion. Consequently, even if an FIR is found to be fabricated, ante-dated or

deliberately delayed, such a circumstance merely casts a greater responsibility upon the Court to scrutinize the evidence with greater care and circumspection. If, independent of the FIR, the prosecution succeeds in proving its case beyond reasonable doubt through reliable evidence, such defects cannot be regarded as fatal to the prosecution. Reliance in this regard may be placed upon Sukhdev Yadav & Ors. v. State of Bihar, AIR 2001 SC 3678.

7.3.16 Applying the aforesaid legal principles to the facts of the present case, it is apparent that the FIR does not contain any elaborate prosecution version capable of being manipulated or built upon. It does not disclose how, where, when or by whom the deceased was murdered. Nor does it project the complainant as an eyewitness or contain any eyewitness account of the occurrence. In other words, the FIR does not lay the foundation of the prosecution case in the manner suggested by the defence.

7.3.17 However, it has been contended by learned counsel for accused Tahir Hussain that the complaint of the father of the deceased was altered solely to introduce the name of Tahir Hussain in order to satisfy public sentiment.

7.3.18 However, the defence itself stops short of asserting that the original complaint did not contain the name of Tahir Hussain. Rather, it merely suggests that his name may have been subsequently

incorporated. This argument stems from DD No. 9A (Ex. PW38/A), wherein the father of the deceased had reportedly stated that he did not suspect anyone, whereas the complaint forming the basis of the FIR records his belief that Tahir Hussain and the persons assembled in his office had murdered his son and thrown the body into the drain.

7.3.19 At this stage, it is significant to note that PW28 categorically deposed that on the night preceding the recovery of Ankit Sharma's body, he had accompanied the police to the house of Tahir Hussain in search of his missing son. Neither Ankit Sharma nor his body could be found there. This part of his testimony remained unchallenged. It clearly establishes that even before the recovery of the dead body, suspicion had already arisen regarding the involvement of accused Tahir Hussain, which explains why his premises were searched on the very day Ankit Sharma went missing.

7.3.20 Even learned counsel for the accused has argued that the name of Tahir Hussain was inserted into the FIR to satisfy public sentiment and lend credence to prevailing rumours. This submission further acknowledges that suspicion regarding Tahir Hussain already existed and that rumours concerning his involvement were circulating at the relevant time.

7.3.21 Moreover, the original investigating officer, who is alleged to have altered the complaint, admittedly conducted no

effective investigation, as he himself conceded during his testimony. The investigation was subsequently transferred to the Crime Branch and a new investigating officer took over. It is also a matter of record that the new investigating officer did not proceed with alacrity to arrest Tahir Hussain merely because his name appeared in the FIR. Consequently, whatever force the defence sought to derive from the judgment in Devender Pal Singh Bhullar (supra) stands considerably diluted, not only because the investigating officer was changed but also because the investigation itself was transferred out of the local police station.

7.3.22 Accordingly, I am of the considered opinion that even if, for the sake of argument, the defence allegation that the FIR was ante-dated, ante-timed and fabricated is accepted, no benefit can accrue to the accused unless it is further established that such irregularity caused serious prejudice to him or resulted in a miscarriage of justice. This conclusion is inevitable because to discard the prosecution case solely on account of such irregularities, without even making an attempt to evaluate if the case is otherwise proved or not, would itself occasion a miscarriage of justice and result in injustice to the victim.

7.3.23 In the present case, neither has the accused demonstrated how he was prejudiced by the alleged irregularities, nor has any such prejudice been established from the record. On the contrary, as already noticed, the FIR neither introduces a detailed prosecution narrative nor

plants any witness. Prima facie, therefore, the alleged irregularities in the registration of the FIR do not, in any manner, prejudice the accused.

7.4 Another submission advanced by Sh. Rajiv Mohan, learned counsel for accused Tahir Hussain, is that no effective investigation was conducted till 06.03.2020. According to him, the only reasonable inference that can be drawn from this circumstance is, that the investigating agency, in order to concoct a false prosecution story, tutor the witnesses, and record their statements in conformity with that fabricated version, deliberately refrained from carrying out any meaningful investigation during this period.

7.4.1 I have given my thoughtful consideration to the aforesaid submission. At the outset, it must be noted that the mere fact that no substantial investigative steps were taken till 06.03.2020 cannot, by itself, lead to the irresistible conclusion that the investigating agency deliberately withheld the investigation with the object of fabricating a false prosecution case. Such an inference cannot be drawn merely on the basis of inaction unless it is further demonstrated, from the material available on record, that the intervening period was in fact utilized to create false evidence, tutor witnesses, or record statements tailored to a preconceived prosecution narrative.

7.4.2 It has been contended that PW46 did not conduct any effective investigation and, despite there being a high probability of

witnesses being available, failed to examine any witness during the first twenty-four hours. This contention itself makes it evident that the only person who could have explained the reasons for such omission was PW46. However, during his cross-examination, no such question was put to him so as to afford him an opportunity to offer an explanation, if he had one. It is entirely possible that he may not have been able to furnish any explanation or that the explanation offered may not have been found satisfactory. Equally, it is possible that he could have satisfactorily explained the manner in which he conducted the investigation during the said period. Unless such an opportunity was afforded to him, accused cannot invite the court to draw an adverse inference solely on the basis of the omission alleged by the defence. Even otherwise, as per the deposition of PW79 during his cross-examination, in the evening of 27/03/2020 itself a decision had been taken that all cases of murders during the riots had to be transferred to crime branch and the entire district (referring to police) knew about it. This statement remained unchallenged. Hence it may also be possible, that by the evening of 27/03/2020, PW46 might have come to know that he was not to investigate this case and therefore the laggardness. Be that as it may, unless an opportunity was afforded to him to explain his conduct, the accused cannot be permitted to invite the Court to draw a presumptive adverse inference solely on the basis of the omission alleged by the defence.

7.5 Coming now to the contention that PW79 deliberately did not record the statement of any eyewitness till 06.03.2020 because he was occupied in concocting a story to falsely implicate Tahir Hussain, it has been argued that PW79 had admittedly conducted local inquiries and had even prepared a rough site plan on the basis of information gathered during those inquiries. Despite this, he neither recorded the statements of the persons from whom such information was obtained nor exercised the powers available to him under law to compel such persons to make statements if they were unwilling to become witnesses.

7.5.1 On this aspect, I find that the testimony of PW79 that the persons from whom he obtained information during local inquiry did not wish to become witnesses has remained unrebutted. Even otherwise, it is not uncommon for persons to be reluctant to come forward as witnesses, particularly in cases arising out of communal riots. My view is fortified by the fact from 25/02/2020 i.e. the day Ankit Sharma went missing, till the recovery of his dead body, no one from the 500 to 700 persons who, as per the defence, were present during the incident, came forward to report it. One must also bear in mind that even though the Investigating Officer possessed the legal authority to compel such persons to make statements, a reluctant witness may ultimately prove to be an unreliable or hostile witness. Whether or not to exercise such coercive powers was essentially a

matter of investigative discretion and professional judgment, and merely because the Investigating Officer chose not to exercise those powers, it cannot be said that he acted with any ulterior motive.

7.6 It was next contended that the explanation offered by PW79 that witnesses were not forthcoming is inherently improbable because, during the relevant period, several victims of the riots from the area had been approaching the police with complaints and PCR calls. However, during his cross-examination, PW79 categorically stated, in response to a question put by Sh. Rajiv Mohan, that till 05.03.2020 he had not come across any witness who disclosed the identity of the persons involved in the murder of Ankit Sharma. This testimony was allowed to stand without any further probing about the possibility of the riot victims being available and a further possibility of some of them being eyewitnesses to the present offence. Consequently, not only did the explanation furnished by PW79 remain unrebutted, but the absence of any further challenge to this aspect of his testimony also amounts to a tacit acceptance thereof.

7.6.1 In these circumstances, I find no material on record to either conclude or even hold it probable that the Investigating Officers deliberately refrained from recording the statements of witnesses till 06.03.2020 because they were engaged in concocting a false prosecution story or searching for witnesses to falsely implicate accused. Mere delay in recording witness statements, in the absence of

any cogent material indicating that the intervening period was utilized for fabricating evidence or tutoring witnesses, cannot justify the inference sought to be drawn by the defence.

7.7 The question which now needs to be decided is, whether the death of Ankit Sharma was homicidal in nature?

7.7.1 In order to prove this fact, the prosecution has relied upon the post-mortem report, prepared by the medical board which had conducted autopsy upon the dead body.

7.7.2 On the other hand, it was contended by Sh. Rajiv Mohan, Id. counsel for Tahir Hussain that that there had been discrepancies in the depositions of witnesses with regard to the recovery of body. According to him, PW27 and PW28 had stated that body was recovered in the morning because according to PW28, on 26.02.2020, he reached Chand Bagh Pulia at around 6 am and the divers arrived about 10-15 minutes later. According to PW27 Sanjay Singh, at around 8.30-9 am, he saw persons and police present at Chand Bagh Pulia and that some divers were also present there. The divers had taken out the body which was revealed to be that of Ankit Sharma. However, PW17 and PW40 deposed that body was discovered somewhere between 11.30 a.m – 12.00 p.m. On the other hand, PW23 Sudhir Kumar specified the time of recovery of body of deceased at 1.00 p.m whereas, MLC shows that body of Ankit Sharma had reached the hospital at about 12.53 pm. However, the MLC did not

reflect any injuries over the body. Even the rukka sent by Insp. Hukam Singh, which was Ex.PW46/A, had not mentioned about any injury on the deceased. Insp. Hukam Singh, during his cross examination, deposed that he had only seen the face of the deceased and there was no injury on the face. He was not aware about the injury to any other part of the body. It is further contended that as per Insp. Hukam Singh (PW48), PW9 had deposited the dead body in the mortuary but at that time, no family member was present, who identified the dead body. No mortuary ticket was placed on record and PW9 was silent about the deposition of dead body on the mortuary. PW41, who had prepared the MLC (Ex.PW41/A), was also silent about any injury on the body and stated that the body was sent to mortuary through hospital staff. The MLC does not reflect any injuries. The prosecution made no efforts to solve this mystery of how the body of Ankit Sharma reached the mortuary. It is further contended that the case of the prosecution shows that a call was made by one Pooja Chaudhary at 6.34 pm informing, '*yaha par musalman hindu ko maar kar naale mein daal rahe hai*'. The same caller at about 6.39 pm informed that '*3-4 ladke maar diye hai*'. In these circumstances, the version of prosecution becomes doubtful. Furthermore, the prosecution is relying upon FSL report, Ex.PW31/A. As per this report, blood lifted from the wall towards Mazar Bhajanpura and the stone were found containing the blood of the deceased, whereas the blood lifted from a plastic sheet

and one poster were of some other person. It is further contended that whatever be the number of the bodies, from the testimony of the witnesses, it has come on record that at each time of recovery of body, police was present but Ct. Sachin (PW40) is the only witness examined, whose videos of alleged recovery of body has not been proved.

7.7.3 I have considered this contention.

7.7.4 Interestingly, Mr. Rajiv Mohan had argued this point at length, but never rendered the purpose of taking this line of argument or the point sought to be proved through it and despite being asked what argument, he wanted to develop by strenuously and at length pointing towards the alleged discrepancies in the testimonies of witnesses to the recovery of the body; he insisted that he would not elaborate any further on it and it was for the court to make of it what the court thought fit of it.

7.7.5 I am also unable to completely sure of the line of arguments that ld. counsel for accused is trying to take. However, if I were to take a guess, it appears to me that counsel for accused is trying to put forward a two-body theory and that it is possible, that the body which was recovered was not of Ankit Sharma and the post-mortem was not conducted on his body. I say so because the three contentions raised by ld. counsel for accused point towards this line of argument. First is his reliance upon the FSL report where the blood groups of

two different people were found near Chand Bagh Pulia. The second is that the body, according to the father of the deceased and PW27, was recovered in the morning hours of the day whereas, other witnesses have stated that the body was recovered at around 11.30 a.m-12.00 p.m. and PW23 stated that the body was recovered at around 1.00 p.m. The third is the assertion that “whatever be the number of the bodies, from the testimony of the witnesses, it has come on record that at each time of recovery of body, police was present”.

7.5.6 There are five witnesses to the recovery of body which have been cited by the prosecution. These are PW17, PW20, PW23, PW28 and PW40.

7.5.7 PW17 Shehjad Ali is the diver who had helped in recovery of the dead body. As per his testimony, on 26.02.2020, he reached for his duty at about 9.00 a.m. At around 11.00 a.m, his in-charge, Harish Kumar, received a call about drowning of a boy at Chand Bagh Pulia, Khajuri Khas. He alongwith Harish Kumar, Saleemudin, Saddam, Rahees and Sarfaraz went to that place. He, Saleemuddin and Sarfaraz entered into that drain in search of the boy and after about 30 minutes, they found that boy in the drain. The body was taken out from there. There was clothes (sic) on his body. On the body, blood was found on the stomach, face, back etc. He did not minutely notice all the injuries on his body.

7.5.8 During his cross examination, there were questions that

were asked about the width of the boat which they had, why the boat did not enter the drain, the depth of nala, the width of the nala, which in my opinion are irrelevant. So in effect, his testimony, that on that day i.e. on 26.02.2020 at around 11.30 a.m, he along with his team members had recovered the dead body of a boy, has been unrebutted.

7.5.9 The defence has stressed that while the deceased's father (whose testimony will be discussed later) stated there was only underwear on the body, this witness testified that the body had clothes on. However, a review of the transcript reveals the use of phrase: *"there was clothes on the body"*. In my view, this is a clear typographical error. The use of the singular verb **"was"** strongly indicates that the witness used a singular term, making it highly probable that the letter "s" at the end of "clothes" was a typing mistake. Furthermore, since this testimony was recorded in the presence of the accused, it was also the defence's duty, in all fairness, to clarify this apparent grammatical error at the time. Rather than seeking a clarification, the defence chose to let the mistake stand in an attempt to leverage it later in an advantage although, there is none to be taken.

7.5.10 The next witness is PW20. About the recovery of body, he deposed that on the next day (26.02.2020), he was called by the police at Chand Bagh Pulia. At that time, divers had gone inside the drain and a dead body was found. It was revealed that it was dead

body of Ankit Sharma and was so identified by his father. The body was wearing an underwear and a black cloth was tied around its neck.

7.5.11 On this point, there was no cross examination of this witness.

7.5.12 The next witness is PW23 Sudhir Kumar Sharma. He was the maternal uncle of the deceased. Regarding the recovery of the dead body, he deposed that during the search of Ankit Sharma they, alongwith police, reached Chand Bagh Pulia when someone had informed them that a body was lying in the drain. Police called some divers. 3-4 divers reached who dived into the drain and after some search, they came out with the dead body of Ankit Sharma. Some stones were tied on the neck of Ankit Sharma with the help of rope or some other material. The body, except for his underwear, was completely naked. Ambulance was called and he accompanied the body to GTB Hospital.

7.5.13 During his cross examination, he denied that he had seen the dead body of Ankit for the first time at about 9-9.30 a.m and volunteered, that the divers had come at about 10.00 a.m and he would have seen the body of Ankit Sharma at around 1.00 p.m. He further deposed that it was possible that dead body of Ankit Sharma might have reached the hospital by 12.53 p.m. He further deposed that he had mentioned the time of 3.00 p.m on the basis of estimation, but as it had been 04 years, he did not have idea of exact time.

7.5.14 The next witness is PW28 Ravinder Kumar, the father of the deceased. On the point of recovery of dead body, he deposed that on 26.02.2020 at around 5.00 a.m, he received a telephonic call from someone who informed him that one boy was thrown in the drain at Chand Bagh Pulia. On reaching that drain, he found a number of persons from Hindu community and he was informed that one boy was thrown in that drain after being lifted above the water tank. He again made a telephonic call to his officer (probably referring to his superior) and was informed that by 6.00 a.m, police including senior officers would reach. At about 5.30-5.45 a.m, he got a message that police was summoning him at the drain. He reached that place again. Divers came a bit late after around 10-15 minutes. He pointed the place in the drain where body of a boy was stated to have been thrown. 2-3 divers dived into the drain. Divers first took out hand of the body. In that hand, there was a black thread and on the basis of the black thread, he stated that it was the body of Ankit Sharma. Thereafter, complete body was taken out. Body was in underwear without any other cloth. Being overwhelmed with emotions, he could not see that body any longer as the body had so many wounds on it. There were wounds on his back, stomach and other parts of the body. The dead body was thereafter taken to GTB Hospital.

7.5.15 He was also not cross examined on this point.

7.5.16 The next witness is PW40 HC Sachin. He was posted as

Constable at PS Khajuri Khas at the relevant time. He deposed about search for Ankit Sharma being made during the night of 25.02.2020 and that during the course of inquiry, they came to know that a dead body was thrown in drain at Chand Bagh Pulia. They searched with the help of torch in the drain till about 5.30 a.m on 26.02.2020 but they could not find Ankit Sharma. On the same day, at around 10-11 a.m, SHO called some divers at Chand Bagh Pulia. 4-5 divers searched for Ankit in the drain. At about 11.45 a.m -12.00 p.m, divers brought a dead body from the drain. The body was only in underwear and a torn vest was wrapped around his neck. There were several injury marks over that dead body. Ravinder informed that it was the body of his son. From his mobile phone, he had recorded two videos during the process of dead body being recovered. On the directions of the IO, he had transferred the videos in two DVDs which were seized vide memo Ex.PW40/A. He also issued certificate u/s 65B of IE Act which was Ex.PW40/B.

7.5.17 During his examination, the DVD, which was in open condition, was sought to be played. However, my learned predecessor disallowed the playing of DVDs on the ground that in absence of forensic examination of the DVDs, they were not be admissible in evidence.

7.5.18 During his cross examination, he deposed that he did not know whether, any police staff from PS Dayal Pur was present at the

place of recovery at around 10-11 a.m on that day. He denied that he was not present at Chand Bagh Pulia during the recovery of dead body.

7.5.19 A bare perusal of the aforesaid testimonies of the witnesses reflects that none of the witnesses have stated that the body was recovered at around 5-6 a.m or a little thereafter. The imputation to PW28 is only an inference drawn by defence because according to PW28, at around 5.30-5.45 a.m, he got a message that police was calling him to the drain. He reached that drain and 10-15 minutes thereafter, divers arrived. However, what is noticeable is, that he does not state the time of his arrival at Chand Bagh Pulia and only states about the time at which he receives message to reach Chand Bagh Pulia. This information was not elicited from the witness during the cross examination and therefore, it cannot tactically be used to raise an inference where a specific information could have been gathered.

7.5.20 On the other hand, PW23 deposes about reaching the house of PW28, who was his brother-in-law, at around 4.00 a.m on 26.02.2020. He further deposes about searching for the deceased at hospitals near ISBT including St. Stephens Hospital, returning to PS Khajuri Khas, then going to PS Dayalpur and then the divers being called. He does not state the time of the recovery of the body in his examination in chief but in his cross examination, he categorically states that divers came at around 10.00 a.m, which would mean that as

per him, the body might have been recovered after 10.00 a.m.

7.5.21 The testimony of PW17 has been entirely unrebutted about the time when he discovered the dead body. Similarly, apart from giving a bald suggestion to PW40 that he was not present at the time of recovery of dead body, no cross examination of PW40 upon his testimony that the dead body was recovered at 11.45 a.m -12 p.m, has been conducted. This is coupled with the fact that the dead body had reached the hospital at 12.53 p.m.

7.5.22 There is also no challenge to the time as recorded in the MLC. This MLC had been proved by PW41 Dr. Nadeem Akhtar, who was CMO of GTB Hospital on 26.02.2020. As per his testimony, this MLC was prepared by Dr. Richa Verma who had worked with him and he could identify her signatures and handwriting. On the date of his testimony, Dr. Richa Verma was not working in the hospital and her whereabouts were not known. He identified her signatures at point X and the MLC was exhibited as Ex.PW41/A.

7.5.23 Throughout his cross examination, there is no challenge that the time on the MLC was incorrect or that it was not of Ankit Sharma. Therefore, it is completely improbable that the body, which might have recovered at 6 a.m, would have been taken to hospital, which was not too far away from the place of recovery at 12.53 p.m.

7.5.24 Furthermore, during the cross examination of PW17, he was asked and he deposed that except on the date he had deposed

about, he was not called by the police to dive in the same drain again and that he was not aware whether his other team members were called to dive in the same drain. At least this witness suggests that never again had he dived into that drain to find another body. Secondly this witness only deposes about taking out one body from the drain. Had there been second dead body taken out by this diver, he would have deposed about two bodies. It was never suggested to this witness that on that day, he had taken out two bodies from the drain.

7.6 Similar is my observation with regard to the fact that MLC did not mention the nature of injuries. PW41 specifically and satisfactorily answered this question when during his cross examination he deposed, that the description of injuries on the body of a person, who is declared 'brought dead' is not mentioned in the MLC of such person. This stand of his was not even controverted. Furthermore, I find it to be correct approach or the usual approach because once a person is declared brought dead, examination of body is the job of the autopsy surgeon.

7.7 Similarly, an argument for the sake of arguments has been raised on behalf of defence that the rukka did not mention the nature of injuries. In my considered opinion, rukka need not mention the nature of injuries because such injuries, wherever they are found, are to be gleaned from the MLC or post-mortem report, as the case may be.

7.8 A further argument has been raised that this was not the dead body which was recovered from the drain because the MLC records that a dead body was found in unconscious condition near Chand Bagh Pulia.

7.8.1 Here again, I must find that the consistent testimonies of witnesses that body was recovered from the drain have remained un rebutted.

7.8.2 In view of the consistent testimonies of witnesses in this regard, not much weightage can be given to this argument.

7.9 Then there is an argument on behalf of the defence about deposition of dead body in the mortuary.

7.9.1 As per the MLC (Ex.PW41/A) and emergency registration card (Ex.PW41/C), the body was sent to mortuary for post-mortem.

7.9.2 However, it has been argued on behalf of the defence that according to PW46, it was PW9 who had deposited the dead body in the mortuary but at that time, no family member was present to identify it; no mortuary ticket had been placed on record either and PW9 was silent about depositing the dead body on the mortuary.

7.9.3 Before proceeding to the testimony of these witnesses, it is important to look at the testimony of PW41 which emerged during his cross examination.

7.9.4 PW41 Dr. Nadeem deposed that as a safety measure,

while shifting the dead body from emergency to mortuary, the staff of the hospital takes the dead body to the mortuary. The name of such staff is not mentioned in the MLC and nursing staff makes note of his/her name in his / her record.

7.9.5 Therefore, it is a usual practice in the hospital, as is visible from uncontroverted testimony of PW41, that from the emergency, the dead body, for the deposition in the mortuary, is taken to the mortuary in the custody of hospital staff. If the defence so wanted, such record could have been summoned to confront the witnesses.

7.9.6 Now coming on the testimonies of PW46 and PW9.

7.9.7 PW46 Insp. Hukum Singh deposed that on receipt of DD no. 63-A, he along with ASI Rajender, went to GTB Hospital where he collected the MLC in the name of Ankit Sharma who had been declared brought dead. The dead body was shifted to mortuary of GTB Hospital. He directed ASI Rajender to prepare documents for proceedings u/s 174 Cr.P.C. After depositing the dead body in the mortuary, he returned to casualty to look for Ankit Sharma's father but he could not find him.

7.9.8 During his cross examination, he deposed that at the time when body of Ankit Sharma was being shifted from casualty to mortuary, he did not find any family member of Ankit Sharma inside the casualty. He admitted that the dead body of Ankit Sharma was

shifted to mortuary in seal packed condition. He did not know about the token number vide which the body would have been deposited in the mortuary and volunteered, that ASI Rajender might have been aware of such token number because, he had taken the dead body to the mortuary. He met ASI Rajender outside the mortuary when he came out of the same after depositing the dead body.

7.9.9 It is on this part of the cross examination of PW46 that it is contended that it was ASI Rajender who had deposited the dead body in the mortuary.

7.9.10 However, I cannot miss sight of the fact during his examination in chief, PW46 stated that after depositing the dead body in the mortuary, he came to the casualty to look for the father of Ankit Sharma but could not find him and then during the part of his cross examination, which has been relied, he again stated that at the time of shifting the body of Ankit Sharma from casualty to mortuary, he did not find any member of the family of Ankit Sharma inside the casualty.

7.9.11 On the other hand, PW9 ASI Rajender deposed that on receipt of DD No. 63-A, he alongwith Insp. Hukum Singh reached GTB Hospital and obtained the MLC. The dead body was shifted to the mortuary.

7.9.12 Therefore, a careful analysis of both these testimonies reflects that both the witnesses have spoken about dead body being

deposited in the mortuary. The mere fact, that PW9 did not say that it was he, who had gone to mortuary to deposit the dead body, could not lead to a conclusion that he had not so gone. It is an immaterial detail which this witness missed and even the other witness also provided these details when, during his cross examination, these were asked for. Hence, there is no material contradiction regarding the deposition of dead body in the mortuary.

7.9.13 This brings me to the next contention which is with regard to two different DNAs found on the blood found near the place of recovery of dead body.

7.9.14 It is correct that two different DNAs were found. However, the contention of defence, that the DNA lifted from poster sheet was of some other person, is absolutely false and is misleading because the poster sheet was marked as Ex.4, as is visible from report Ex.PW31/B and the DNA profile could not be generated from this source.

7.9.15 However, as far as the contention with regard to Ex.3 i.e. plastic sheet is concerned, it is correct that the DNA generated from the blood found on the plastic sheet did not match the deceased. However, only fact that is established from this report is, that from the blood spots found at the place of recovery, there were two DNAs that were generated. One was of the deceased and one was of an unknown person. But how would it lead to a conclusion that there was a second

body recovered from that place is beyond my comprehension.

7.9.16 Thus, I find that the two dead body theory is nothing but an effort made by the defence to confuse the court. Therefore, I am of the considered opinion that the prosecution has succeeded in proving beyond all reasonable doubts that body of deceased Ankit Sharma was recovered from the drain near Chand Bagh Pulia on 26.02.2020 and was thereafter taken to GTB Hospital where MLC (Ex.PW41/A) was prepared and he was declared 'brought dead'.

7.9.17 The post-mortem upon the dead body was conducted on 27.02.2020.

7.9.18 Insp. Hukum Singh, appearing as PW46, deposed that on 26.02.2020, he was directed by the SHO to visit GTB Hospital and he, along with ASI Rajender who had already been assigned DD No. 63A, went to GTB Hospital. They collected the MLC. The body was shifted to mortuary and he directed ASI Rajender to prepare documents for proceedings u/s 174 Cr.P.C. Next day (which would be 27.02.2020), he along with ASI Rajender again went to mortuary. ASI Rajender had prepared inquest papers and submitted them before the mortuary. On his directions, ASI Rajender summoned the videographer. A board of doctors conducted the post-mortem, which was video recorded. Prior to post-mortem, the dead body was identified by Ravinder Sharma. After the post-mortem, the dead body was handed over Ravinder Sharma. From the videographer, he collected CDs of the

video of post-mortem, through seizure memo, Ex.PW2/B and deposited one CD in malkhana and two CDs were kept on file.

7.9.19 When he was cross examined on this point, he deposed that he did not remember the time of starting of post-mortem and its end. He did not collect the copy of post-mortem report on that day. He further deposed that on that day, ASI Rajender had handed over a duplicate copy of inquest papers but he did not remember the time of the same. He also did not remember whether he had gone through the inquest papers. He had not conducted inquest proceedings himself and information of Ankit Sharma was assigned to ASI Rajender. The statements of identification of dead body were recorded by ASI Rajender on a typed format. He did not seek any clarification from ASI Rajender regarding inquest papers. He further deposed that all the inquest papers were prepared on 27.02.2020.

7.9.20 On the other hand, PW9 ASI Rajender Kumar deposed that on 27.02.2020, he got the dead body identified by father and uncle of the deceased and prepared two identification memos, which were exhibited as Ex.PW9/A and Ex.PW9/B. He filled inquest papers and form 25.35 for conducting postmortem examination and handed over the same to the doctors alongwith identification memos. The inquest form was Ex.PW9/C. The form 25.35 was Ex.PW9/D. A videographer was summoned by him to conduct videography. After the post-mortem examination, dead body was handed over to the father of the

deceased and a handing over memo was prepared by him. The doctor had handed over him one sample seal, blood on gauze and pullanda of underwear and handkerchief of the deceased. The blood on gauze was in an envelope which was sealed with seal of AK. The pullanda was also sealed with seal of AK. Sample seal was also of AK. He took these items in his possession vide memo Ex.PW9/E and handed over these items to Insp. Hukum Singh in the police station.

7.9.21 This brings me to the testimony of PW15, who was one of the autopsy surgeons. He deposed that on 27.02.2020, he was posted as Assistant Professor in UCMS and GTB Hospital in Forensic Department. On that day, a board comprising of him, Dr. K.K. Banerjee and Dr. S.K. Verma, had conducted postmortem examination on the dead body of deceased Ankit Sharma s/o Sh. Ravinder Kumar Sharma, in which they found 51 ante mortem external injuries on the body. The cause of death was opined as 'shock due to haemorrhage due to injuries to lung and brain'. As per the opinion of the board, injuries no.18, 19, 34 to 37 and 42 were sufficient to cause death individually as well as collectively, in the ordinary course of nature. The injuries no.1, 8 to 19, 25, 27, 29 to 31, were produced by sharp edged weapon. Injury no.42 was produced by heavy cutting weapon. Rest of the injuries were produced by blunt force. All the injuries were found to have been caused within 24 hours of the death. Time since death was found to be about 2 days. Report as prepared by them was

having his signatures as point X, of Dr. S.K Verma at point Y and of Dr. K. K Bannerjee at point Z. The report was exhibited as Ex.PW15/A. He further deposed that after the postmortem examination, they had preserved clothes of the deceased and his blood on gauze. Both were converted into separate pullandas which were sealed. However, he did not remember whose seal was applied on them. Such pullandas were delivered to police by their staff, who maintain a register in this regard and hand over the pullandas to the police.

7.9.22 He was cross examined at length by ld. counsels for accused. There were questions about who had taken notes or who had not taken notes, whether the board together had conducted any other post-mortem examination on that day or, whether he individually had conducted any other post-mortem examination on that day or, whether during the post-mortem the notes, which were being recorded, were checked etc. These questions seem to be checking the memory of the witness rather than his competence as autopsy surgeon. I accordingly do not find them relevant to be taken up for discussion in this judgment.

7.9.23 Further, during his cross-examination, he deposed that apart from pointing out the injuries, they had examined organs, but he did not remember which doctor had done which particular examination. He further deposed that generally, two copies of

postmortem report are prepared. In case viscera is preserved, third copy of the report is prepared. The first copy was to be handed over to IO. Second copy was to be kept in their record. Third copy was to be sent to FSL alongwith viscera. He admitted that he had no personal knowledge if the staff had handed over same report to the IO which was prepared by their Board. In response to court query, he answered that the report, as placed on the judicial case file, was the report prepared by the board. He further deposed that he had received 08 inquest papers and deposed that in the inquest papers, there was no reference of any drain rather there was reference of one pulia.

7.9.24 Further during his cross-examination, he deposed that factors on the basis of which 'time since death' was ascertained, were the changes in the dead body after death. Those changes were mentioned in the postmortem report under heading of 'General Observations'. The recorded changes were 'rigor mortis present over lower limb' and 'no sign of decomposition'. There are different phases of rigor mortis and different signs of decomposition. He admitted that the report did not refer to any particular phase of rigor mortis and volunteered, that it was the practice only to mention the place of presence of rigor mortis rather than the phase of it. He denied that they had not recorded the phase of rigor mortis in the report and rough notings as they were inconsistent with time since death as given in the postmortem report, or that the signs of decomposition and their place

were not mentioned in postmortem report because it was inconsistent with time since death as mentioned in the report and volunteered, that since there was no sign of decomposition, there was no occasion to mention any sign or place of the same. In the rough notes, they had mentioned that there were no signs of decomposition and denied that it was not mentioned in the rough notes. On being specifically suggested that he had not mentioned the factors, features & characteristics of the injuries to lung and brain bearing injury no.18, 19, 34 to 37 and 42, which led the Board to conclude that the cause of death was 'shock due to hemorrhage', he answered that all the features were mentioned in the injuries and the internal hemorrhages were mentioned in the column of internal injuries. He denied that it was to hide the correct facts and to suit the narrative tutored to Board, by the police that the details of injuries were not mentioned in the report. He denied that the report did not mention the reasons for recording a particular injury as ante mortem injury and volunteered, that the colour of the injuries and the hemorrhages inside the injuries as mentioned in the description of external and internal injuries were suggestive of the reasons to indicate that they were ante mortem injuries. He denied that the reasons for injuries to be ante mortem had not been mentioned in the report, to hide the correct facts and to suit the narrative tutored to Board by the police. The basis to record that all injuries were fresh before death i.e. within 24 hours was the colour of the injuries and

absence of any sign of healing. He admitted that in their report, they had not mentioned about absence of any sign of healing. He denied that it was not so mentioned on the basis of tutoring of police officials. They did not undertake any exercise to rule out that cause of death could be other than which was mentioned in the report because, all three of them were in agreement that the cause of death was same as had been mentioned in the report. On being asked the reason for not preserving the viscera, he deposed that it was not preserved because the wall of stomach was found normal, there was no such history given and no request was made by the police to preserve the viscera. The heart of the deceased was reported as enlarged on the basis of weight of the heart and not on the basis of its measurements. He denied that the Board had manipulated the findings of the postmortem at the behest and on the tutoring of the police, or that incomplete and deceptive report was prepared at the behest of police.

7.9.25 It is apparent that except for asking whether they tried to rule out the possibility that the cause of death could be other than what was stated by them; the opinion of the Board that injuries no. 18, 19, 34 to 37 and 42 were sufficient to cause death individually as well as collectively, has remained unchallenged. The defence did not come with any alternate theory about the cause of death of Ankit Sharma and did not bring their own expert to counter the finding of the Board. Therefore, merely putting suggestion that the phase of rigor mortis

was not mentioned because this could have shown that the time since death, as provided in the report, was inconsistent with the phase of rigor motis in body, without bringing anything to raise a probability of it, will not discredit the post-mortem report.

7.9.26 I have carefully perused this report. The number of injuries is reflective of the manner and the brutality inflicted upon the deceased. On the face of it to any layman even, it could be a clear indication of homicidal death, which was the purpose of framing this question. At the same time, the purpose of reproducing the cross-examination of PW15 in such detail was to reflect that except constantly raising doubts about the integrity of the post mortem board through suggestions, no serious scientific cross-examination of this witness was conducted to discredit the opinion about the cause of the death of Ankit Sharma.

7.9.27 In these circumstances, I have no reasons to disbelieve the post-mortem report, Ex.PW15/A. I accordingly find that the death of Ankit Sharma was homicidal in nature.

7.10 The next questions which then arise and need to be answered are when, where, how and by whom was the homicide of Ankit Sharma committed?

7.10.1 In order to prove these facts, the prosecution had examined as many as 10 direct witnesses. These are police witnesses PW5 HC Rahul and PW33 HC Praveen Kumar and public witnesses

PW6 Pradeep Verma, PW11 Deepak Pradhan, PW13 Aakash, PW14 Bharat, PW19 Vikalp Kochar, PW21 Gyanendra Kochar and PW56 Priyanka Gaur. Therefore, the testimonies of these witnesses are required to be considered in detail.

7.10.2 **PW5 HC Rahul** deposed that on 25.02.2020, while posted at PS Dayalpur, he was on law and order duty in his beat on Main Karawal Nagar Road and Wazirabad Road, where he reached at about 9–10 a.m. Between 4.30–5.00 p.m., he was at Main Karawal Nagar Road near Chand Bagh Pulia. There was a mob of 1000–1200 people near Chand Bagh Pulia on Main Karawal Nagar Road. At about 4.20–4.25 p.m., due to the stone pelting and being unable to control the mob, police retreated towards Bhajanpura Mazar on Main Wazirabad Road.

7.10.3 At about 5.00 p.m., additional police force along with outer force reached near Chand Bagh Pulia. There were two mobs: a mob of persons from the Muslim community on Chand Bagh Pulia and a mob of the Hindu community on Main Karawal Nagar Road opposite Chand Bagh Pulia. The mob from Chand Bagh Pulia was pelting stones at the opposite mob. He also saw shops on the left side of Chand Bagh Pulia, including Bunny Bakery and a rickshaw shop, being burnt.

7.10.4 The councillor of the area, Tahir Hussain, was present at Chand Bagh Pulia and raised the slogan: *"Sherpur chowk par hinduo*

ne hamare muslim bhaiyo ki dukano mein aag laga di hai aur hamare muslim bhaiyo ko maar diya hai, in hindu kafiro ko sabak sikhana hai, aaj inme se koi bhi bachna nahi chahiye." On hearing these slogans, the mob became aggressive, started pelting stones and setting ablaze the shops.

7.10.5 At about 5.00 p.m., when the mob had become aggressive and was pelting stones, it dragged one person from the Hindu mob towards Chand Bagh Pulia. The mob then started pelting stones at the police and they were pushed back.

7.10.6 He identified five persons in the mob at Chand Bagh Pulia, whom he knew by name and face, namely Tahir Hussain, Gulfam, Firoz, Javed, Shoiab Alam @ Bobby and Anas. According to him, all these persons were part of the mob when it was pelting stones and indulging in arson. He correctly identified Firoz, Anas, Gulfam, Javed, Shoiab Alam @ Bobby and Tahir Hussain in court.

7.10.7 During cross-examination, he stated that his statement in this case was recorded on 09.03.2020. Between 25.02.2020 and 09.03.2020, he regularly visited the police station but did not lodge any DD entry regarding the incident. Although senior police officers, including the ACP, visited the police station during that period, he did not inform the ACP about having witnessed the incident. He did not remember whether he had informed the SHO that during the incident,

he had seen the accused, named by him. Though he had a mobile phone, on 25.02.2020 he did not call the Duty Officer to have an entry of the incident recorded; did not make a PCR call and he also did not take the photo or video of the incident.

7.10.8 He stated that since December 2019 he was posted in Beat No. 7/F Block, Khajuri Khas and knew the accused persons by their names. He knew the fathers' names of Firoz and Tahir Hussain and knew only Tahir Hussain's address. He did not remember whether he had informed the IO about Firoz's parentage. He denied the suggestions that he was not on duty on 25.02.2020, had not witnessed the incident, or had falsely implicated the accused. His statement was recorded in FIR No. 98/20 but he did not remember whether, prior to 09.03.2020, he had disclosed before the IO of FIR No. 98/20 the names of the accused mentioned in this case.

7.10.9 He stated that he knew it was a case of murder of Ankit Sharma though initially, he did not know the deceased's name. The fact that it was a murder case became known to him, when he was examined by the IO. However, the information that Ankit Sharma was an IB officer was received through the news. He could not recall whether he had informed the IO that how did he know about Anas.

7.10.10 He denied the suggestions that he had not named Anas or the other accused before the IO; that the IO had tutored him to include

Anas's name; that he had deposed falsely at the instance of his senior officers; that he had falsely stated that a person was dragged by the mob; that he had not given any statement before the IO; or that he had been tutored by the IO before coming to court; that he had not seen any incident on 25.02.2020.

7.10.11 He stated that, as far as he recalled, he had seen the statement recorded by the IO. In response to a court query, he stated that he did not remember whether he had noticed any mistake in it or pointed out any mistake to the IO.

7.10.12 Regarding the method of recording statements, he stated that IOs usually asked whether he knew anything about a particular incident, whereupon he narrated the incident and answered any further queries, and the same method was adopted by the IO of this case.

7.10.13 He stated that, to the best of his memory, this was the only murder case arising out of the February 2020 riots in which he was a witness. He did not remember whether he had given a statement in FIR No. 114/20, PS Khajuri Khas, on 21.04.2023. He denied the suggestion that, after his deposition on 21.04.2023, he had been reprimanded by his superior officers for stating that on 25.02.2020 he had reached Main Wazirabad Road near Bhajanpura Mazar at about 8.20–8.25 p.m. and remained on duty until about 12–12.30 midnight.

7.10.14 **PW6 Pradeep Verma** deposed that in February 2020, he

was running a parking at E-98, Khajuri Khas. On 25.02.2020, riots were taking place in that area. He reached his parking at about 12.30–1.00 p.m. and though he was not static at one place, but more or less, he remained in front of gali till about 5.30 p.m.

7.10.15 At about 3.00 p.m., he was standing outside Gali No. 6, Moonga Nagar. A mob of the Muslim community was on the side of Chand Bagh Pulia and a mob of the Hindu community was in front of Lakhpat School on the main Karawal Nagar Road. Both mobs were pelting stones at each other.

7.10.16 At about 5.00 p.m., while standing in front of Gali No. 6, he saw Ankit Sharma coming from the side of the Hindu mob and going towards the Muslim mob with both hands raised- apparently to end the quarrel. The Muslim mob advanced, surrounded him, assaulted him, dragged him, and took him towards Chand Bagh Pulia. Two other boys were accompanying Ankit Sharma, but they managed to escape. He identified about six faces in the Muslim mob, but did not know their names. However, later on he came to know their names. He knew that Tahir Hussain was a Municipal Councillor. At no point of time on 25.02.2020, did he see Tahir Hussain in the mob, though he had later seen him in videos of the riots. Then contradicting this statement, he deposed that at about 3.00 p.m., he felt that Tahir Hussain was near Chand Bagh Pulia, but he did not actually see him in the mob ("*mujhe aisa laga tha ki wo wahan par hain lekin bheer mein*")

maine nahi dekha tha"). During that time, both mobs were pelting stones. A voice from the Chand Bagh Pulia side shouted "*kafiro ko maaro*." Near his parking was the house of Tahir Hussain which had been occupied by several persons who were pelting stones and petrol bombs from its terrace.

7.10.17 On 11.03.2020, police inquired from him regarding the incident involving Ankit Sharma. He informed the police of what he had seen, read his typed statement, and found that it had been correctly recorded. On that day, police showed him certain photographs from which he identified about six or seven persons whose faces he had seen in the Muslim mob, though he did not know their names. Police informed him the names of those persons. At the time of his testimony, he could only recollect four names: Firoz, Anas, Musa and Javed.

7.10.18 On 30.03.2020, also some photographs were shown to him by the police and on the same day, police had shown him two persons at Chand Bagh Pulia whose names were disclosed as Nazim and Kasim. He stated that he had seen both of them on 25.02.2020 as part of the Muslim mob. He stated that when Ankit Sharma was being taken away by the mob, Nazim and Kasim were in that mob, and Nazim was carrying a knife. He did not remember whether any document was prepared there, though Inspector Amlesh was writing while making inquiries.

7.10.19 He further deposed that, in the same year, on the 8th day of either March or May, his statement was recorded before a Judge at Karkardooma Courts. He stated true facts as seen by him. His statement under Section 164 Cr.P.C. was taken out from a sealed cover, he identified his signatures, and it was exhibited as Ex. PW6/A.

7.10.20 After recording of that statement, at about 2.30 p.m., while travelling from Bhajanpura to Sherpur, he met police officer Amit Prakash. They discussed the Ankit Sharma case. He was shown some photographs, and he identified one person as a member of the Muslim mob, who he had seen between 3.00 and 4.00 p.m. on 25.02.2020. Police disclosed his name as Musa, and his signatures were obtained on that photograph.

7.10.21 In court, he identified accused Kasim, Firoz, Anas, Musa and Nazim. He also identified accused Haseen @ Mullahaji by taking his name as Nazim. He identified Javed, though he could not recall his name. He could not identify Shoaib Alam @ Bobby. On seeing Tahir Hussain, he stated that he knew him, but had not seen him in the mob. He did not identify Sameer and Gulfam. He was shown photographs Mark PW6/P1 to PW6/P7 and identified his signatures on them.

7.10.22 Found resiling from his earlier statements, he was cross examined by ld. SPP.

7.10.23 During cross-examination by the learned SPP, he was

asked why he had felt that Tahir Hussain was near Chand Bagh Pulia. He answered: "*Bheed mein mujhe jhalak lagi thi ki Tahir Hussain hain lekin aage pura confirm nahi hu.*" (I had a glimpse to feel that Tahir Hussain was in mob, but I was not totally confirmed.) He clarified that he had seen only the upper half of Tahir Hussain from the back, including his face from side, and had not seen him doing anything in particular. At that time both mobs were pelting stones. He did not remember whether he had earlier stated before police that he had seen Tahir Hussain at 3.00 p.m. and 5.00 p.m. instigating the mob by saying "*Hindu Kaafiro ko maarna hai.*" He denied having clearly seen Tahir Hussain instigating the mob to kill Hindus. He stated that when he had the glimpse (referring to his earlier statement that he had a glimpse of Tahir Hussain), the Muslim mob was raising slogans and shouting "*Kaafiro ko maaro.*"

7.10.24 He stated that he did not know the name of the person in photograph Mark PW6/P-2 and therefore could not say whether he had seen him in the mob. He knew Bharat @ Kalu, who had come to Inspector Amleshwar on 30.03.2020 near his parking. Inspector Amleshwar typed a document in his vehicle and obtained his signatures, stating that it related to the identification of Nazim and Kasim. He did not know whether arrest documents had been prepared. On being shown the arrest and personal search memos of Nazim and Kasim, he identified his signatures but stated that, due to lapse of time,

he could not recollect when or where he had signed them. When Shoaib Alam was shown to him, he stated that he could not recollect whether Shoaib had been part of the mob and denied that he was not deliberately identifying him.

7.10.25 During defence cross-examination, he stated that till that day, he knew of only two riot cases in which he had been cited as a witness: the present case and another relating to arson at his parking on 24.02.2020. He did not remember how many times was it that his statements had been recorded by police. He had not made any PCR call or informed any authority that he had identified rioters involved in the riots of 25.02.2020. He did not remember whether he himself had gone to the police on 11.03.2020. He was directed to do so. A number of photographs had been shown to him that day, but he could not provide their estimated number.

7.10.26 He stated that the strength of Muslim mob at 3.00 p.m. as well as 5.00 p.m. was of around 2,000 persons. The two mobs were about 40–50 steps apart, while he himself was about 10–15 steps away from the Hindu mob. He denied that he had not seen any of the accused in the mob or that at the instance of senior police officers, he had falsely identified the accused before the police and in the Court.

7.10.27 He stated that even prior to the day of the incident, Ankit Sharma was known to him, but he did not know Ankit Sharma's

address. Before 25.02.2020, beat constables regularly visited his parking. Between 25.02.2020 and 09.03.2020 also, beat constables and other police officials visited his parking, though he did not remember the dates of such visits. During this period also, they inquired from him about the murder of Ankit Sharma. Between 26.02.2020 and 29.02.2020, police teams patrolled the area to restore peace.

7.10.28 On 25.02.2020, the strength of Hindu mob could have been around 800-1000, but he did not know anyone in the Hindu mob. The Hindu mob was present on the main Karawal Nagar Road from Gali Nos. 6 to 9 of Moonga Nagar. The distance between Gali Nos. 6 and 7 was about 60–65 feet. The documents that were signed by him on 30.03.2020 were also signed by Bharat @ Kalu. He denied that police force had remained present near Chand Bagh Pulia and his parking continuously from the morning of 24.02.2020 till the evening of 25.02.2020. He denied that on that day, he had not gone to his parking because his parking having been burnt on 24.02.2020, he had no business at his parking. He admitted that as compared to accused identified by him, Tahir Hussain was better known to him. In response to court query, he stated that the other accused identified by him were not known to him at all. He deposed that in his statement u/s 164 Cr.P.C, he had stated that he was standing in front of Gali No. 6, Moonga Nagar between 3.00 to 5.00 p.m. but it was not found

mentioned in the statement Ex.PW6/A. In his statement u/s 164 Cr.P.C, he had not stated about identifying 6-7 rioters from the photographs or signing any such photographs.

7.10.29 Then there was his cross examination about his parking being run without valid permissions etc. and suggestion that he was running illegal parking, he was under police pressure and deposed falsely under such pressure, which he denied. However, nothing was brought on record by defence to substantiate this claim.

7.10.30 **PW11 Deepak Pradhan** deposed that for about 18 years, he had been residing at C-229, gali no.2, Chandu Nagar, Delhi. On 25.02.2020, at about 5.00 p.m., he had gone to Shiv Sanatam Mandir in Moonga Nagar. He used to visit that temple at about 4 p.m. everyday and hence, on that day also, he had gone to the temple. After reaching the temple, he saw that stones and petrol bombs were being pelted from the terrace of house of Tahir Hussain. This temple was situated at the corner of the gali and house of Tahir Hussain was across the road. Stones and petrol bombs were being pelted towards the road and the temple. There was a mosque at Chand Bagh pulia on the side of the temple itself and after 3 galis from this temple. Near this mosque, there was Muslim mob. Tahir Hussain was going to the mob and coming back to his house. He did not know what Tahir Hussain said to those persons but probably he instigated (them) because after his visit, all of a sudden, the mob combined together and while

damaging the nearby shops and properties, moved towards Sherpur chowk. He correctly identified Tahir Hussain in the court and deposed that he had not identified any person in the said mob.

7.10.31 During his cross examination, he deposed that on 25.02.2020, he was carrying a mobile phone but did not make any PCR call. He denied that he had not seen any incident on 25.02.2020. The Shiv Sanatan mandir would be at a distance of about 500 meters from his home and since the year 2015, he had been going to this temple. He had gone to the temple on 23.02.2020 and 24.02.2020 and admitted, that on those days also, riot had happened. He did not see any police force on main Karawal Nagar road on 23.02.2020 and 24.02.2020 but he had seen them on this road on 25.02.2020. Before the police, he had mentioned about stones being pelted on the temple but did not mention about the petrol bombs. His statement u/s 161 Cr.P.C was exhibited as Ex.PW11/D-1. He had mentioned before the police that tiles of the temple were damaged. He was confronted with his statement, Ex.PW11/D-1, wherein this fact was not so recorded. He had mentioned before the police that stones were coming at the shop near the temple and had fallen on the tiles of the temple.

7.10.32 At that stage, ld. counsel for accused sought to confront the accused with the portions from Ex.PW11/D1. However, my learned Predecessor, in view of the judgment of Hon'ble Supreme Court in Tehsildar Singh, did not find any case of confrontation.

7.10.33 He further deposed that he had not stated before the police that the temple was at the corner of gali and rather he had mentioned before police that it was after 2 properties. The iron gate of gali of the temple was closed since morning of 25.02.2020 and generally it used to remain closed. He admitted that on 25.02.2020, he had gone to the temple for the purpose of its protection. Two-three other persons were present in the temple on that day. When he reached the temple and went inside the temple, he did not close the door of temple. When he was inside the temple, he could not see what was happening outside. On that day, he remained in the temple till about 5-5.30 p.m. He admitted that from the temple, he had gone to his house. He had gone to his house via gali no.6, Moonga Nagar. He admitted that if he stood in front of the temple in the gali, from that place he could not see the mosque of Moonga Nagar. Similarly, mosque at Chand Bagh pulia would also not be visible from that place. He had reached the temple on that day at about 4.15 p.m. He denied that he had made a false statement regarding pelting of stones on the temple, or that from the house of Tahir Hussain, there was no pelting of stones towards temple and nearby shops. He denied that he falsely deposed about the activity taking place at Chand Bagh pulia, or that he deposed falsely about involvement of Tahir Hussain in such activity, or that he did not see Tahir Hussain coming or going out from his house or meeting with the persons, or that he had given false

observation regarding the activities of Tahir Hussain. He denied that while being inside the temple, he heard a lot of noise coming from outside and on the basis of hearing that noise, he presumed that riot was taking place or that he did not witness any rioter.

7.10.34 **PW13 Aakash** deposed that he had been residing at H. No. 51, Gali No. 1, Khajuri Khas Village, Delhi for about 15–16 years. On 25.02.2020 at about 4.30 p.m., he and his brother Bharat were present near an iron gate at Chand Bagh Pulia on Nala Road for some personal work. The bigger gate was closed and the smaller gate was open. A Muslim mob of about 500–700 persons was present near Chand Bagh Pulia, Nala Road and the mosque. This mob was raising slogans of "*Allah-hu-Akbar*."

7.10.35 According to him, Tahir Hussain was delivering an instigating speech, stating that Hindus had vandalized and burnt Muslim houses and shops and had molested Muslim women, and therefore the 'Kafirs' should be taught a lesson ("*Hinduon ne tumhare ghar loote... un Kafiro ko sabak sikhana hai* ").

7.10.36 At that time, the mob set fire to a bakery/pastry shop or factory situated nearby, the name of which he did not know. The mob then vandalized and set ablaze shops on the Chandu Nagar side and proceeded towards Sherpur Chowk. He explained that if one came from Bhajanpura, Tahir Hussain's house was situated on the left after crossing Chand Bagh Pulia.

7.10.37 Three boys were going in the lane immediately after Tahir Hussain's house. At about 5.00 p.m, around 15–20 persons from the mob dragged one of those boys towards Chand Bagh Pulia. He and his brother stepped back in to the smaller iron gate and closed it. The mob assaulted the boy with knives, dandas, swords, bricks and iron rods and then threw him into the drain from the opposite side. His body was put over a tank and pushed in the drain.

7.10.38 When asked whether he identified anyone involved, he stated that Tahir Hussain was holding a knife, participated in assaulting the boy and in throwing him into the drain. He had also identified one more person, though he did not know his name. Out of fear, he and his brother retreated and thereafter, returned home. That night, after seeing television news, he came to know that the boy thrown into the drain was Ankit Sharma. Changing his stand, he deposed that he learnt the deceased's name on the evening of the following day.

7.10.39 On 11.03.2020, near Lakhpat School and Tahir Hussain's house, he, of his own, informed the police about the incident. On 09.04.2020 at about 3.00 p.m., while going towards Chand Bagh Pulia from Bhajanpura for personal work, he saw police officials with an accused. He recognized that it was the same police officer to whom he had given information on 11.03.2020. He called the IO aside and informed him that the accused accompanying the police was one of

the persons he had seen among the 15–20 assailants on the day of the incident. That accused pointed out the tank in his presence and he signed the pointing-out memo (*nishandehi*), which was exhibited as Ex. PW10/C. He identified his signatures on the memo and identified accused Tahir Hussain in Court. He further stated that the person whom he had identified before the IO on 09.04.2020 was the same person who introduced himself in Court as Sameer.

7.10.40 During his cross examination, he stated that his father and brother sold chhole-kulche, cold drinks and later tea from a cart on Khajuri Pusta Road in front of Rajkiya Uchatar Bal Vidyalaya and Rajkiya Sarvodaya Bal Vidyalaya. He occasionally assisted them. By 25.02.2020, the new PS Khajuri Khas had become operational and it was about 200–250 meters from their cart. He denied that police officials regularly purchased cold drinks or water from their cart.

7.10.41 He admitted that neither he nor Bharat made any PCR call between 25.02.2020 and 11.03.2020, but volunteered that he had informed police personnel present near Lakhpat School. He did not remember whether he visited PS Khajuri Khas during that period.

7.10.42 When confronted regarding his statements in FIR No. 114/20 and FIR No. 88/20, he stated that he could not recollect the dates but admitted that police had recorded his statements on four occasions in three cases. He admitted that FIR No. 114/20 related to

Bunny Bakery and Aman E-rickshaw. He could not recall details regarding FIR No. 88/20. He admitted that on all the three occasions, when the police met, the meetings were unplanned. He did not remember and thus, could not admit or deny whether, at the time when these statements were recorded, lockdown restrictions were then in force. He stated that on 09.04.2020 police asked him about the reason for his presence at that place. He replied that he had gone for personal work.

7.10.43 Between 25.02.2020 and 11.03.2020, he went out of his house but did not take his vehicle anywhere. He did not remember whether he visited Khajuri, Moonga Nagar, Sherpur Chowk, Chand Bagh Pulia, Karawal Nagar, Chandu Nagar, Bhajanpura or Pusta Road, or whether he saw police deployment or flag marches during that period. He denied that he had not witnessed any incident on 25.02.2020 or that he had therefore failed to contact the police. During this period he visited his father's cart every day for about 30 minutes and had seen police presence there. He denied that he had failed to disclose the incident to police before 11.03.2020 because he had witnessed nothing.

7.10.44 He stated that while giving his statement to police he had not mentioned the time of returning home, although he had stated that he remained at the spot for about one hour. He was confronted with his statements Ex.PW13/D1 and Ex.PW13/D2, where these facts were

absent.

7.10.45 He admitted that he had not told police that Tahir Hussain was carrying a knife. However, he had stated, that he had informed police that Tahir Hussain was involved in killing the boy and throwing him into the drain. At this stage, learned counsel for the accused sought to confront the witness with his previous statement, but it was not allowed by my learned predecessor.

7.10.46 He stated that police met him near Lakhpat School around noon on 11.03.2020. The school was about 150–200 metres from Chand Bagh Pulia. He did not take the police to Chand Bagh Pulia that day and remained with them for about one hour. He did not remember whether his statement was recorded by hand, on a computer or a laptop. Some police personnel were in uniform and others in civil clothes.

7.10.47 He stated that on all four occasions, it was he who approached the police and volunteered, that rather than responding to questions, he narrated the facts.

7.10.48 He used to visit the area near Lakhpat School even before the riots and stated that 11.03.2020 was not his first visit there. He, however, did not remember if prior to 11.03.2020 also, he had seen any police on main Karawal Nagar Road. He denied that he had never disclosed the incident to police, that the police prepared statements on

their own; that he was tutored to depose in Court; or that he falsely implicated Tahir Hussain.

7.10.49 He further stated that in connection with this case, he met police officials on 26.02.2020, 11.03.2020 and 09.04.2020. On 26.02.2020 he met an officer in front of Lakhpat School for about five or six minutes but did not remember the officer's name.

7.10.50 He stated that when he met police on 09.04.2020, other persons were also present. He did not remember whether police asked anyone else to join the investigation. He denied that he never met police with an accused on that day or that he signed the pointing-out memo subsequently without participating in the proceedings.

7.10.51 His attention was drawn to the last line of Ex.PW13/D1, which he admitted to have read on 09.04.2020. He did not remember raising any objection regarding any errors in that statement, or whether he had gone through his other statement Ex.PW13/D2.

7.10.52 He denied that he had been tutored by police. He did not remember whether he had told police that the assaulted boy had been placed on a tank. He denied that he had not informed police that besides Tahir Hussain he had identified one more person involved in assaulting the boy and throwing him into the drain.

7.10.53 He denied that he had never identified any other person besides Tahir Hussain, that this fact was subsequently introduced after

tutoring; that he had not gone to Bhajanpura on 09.04.2020; that police had asked him to memorize the photograph of accused Sameer Khan; or that after being tutored, he falsely identified Sameer Khan in Court.

7.10.54 **PW14 Bharat** deposed that for about 15–20 years prior to his deposition, he had been residing at H. No. 51, Gali No. 1, Khajuri Khas, Delhi. He, along with his father, had been selling chhole kulche near Bal School, Khajuri Khas.

7.10.55 On 25.02.2020 at around 4:00–4:30 p.m., he and his brother Akash (PW13) were going to fetch some articles from a place beyond Chand Bagh Pulia. Due to the presence of a mob, they could not reach that place and remained near Chand Bagh Pulia around an iron gate situated on the nala road. There was a Muslim mob of around 500–700 persons near the bakery shop, Chand Bagh Pulia and a mosque. The mob was raising slogans of "*Allah-hu-Akbar*" and was armed with stones, dandas, swords, knives, etc.

7.10.56 At a distance of about 15–20 steps from them, around 20–25 persons were assaulting a boy. Tahir Hussain was standing in front of the mosque saying "*maaro maaro*". Those persons dragged the boy to the corner of the drain on the opposite side and threw him into the drain. At that time, Tahir Hussain was standing a little ahead of the mosque, while the witness was standing near the gate and had stepped

backwards out of fear. Thereafter, being afraid, he and his brother returned home. The next evening, while watching the news, they came to know that the boy was Ankit Sharma. Apart from Tahir Hussain, he identified two boys who had climbed over the water tank to throw the body into the drain.

7.10.57 One noon, about two months after the incident, police along with two boys was present near the aforesaid bakery. He identified them as the persons who had climbed over the water tank. His signature was obtained on a blank paper which police described as a *Nishan Dehi*. He identified Nazim and Kasim in court and stated that the police officer had informed him that their names were Nazim and Kasim and that they were the persons who had climbed over the water tank. He also identified accused Tahir Hussain.

7.10.58 About 4–5 months later, the same police officer met him near Bal Vidyalaya, Khajuri, obtained his signatures on another paper, the contents of which he did not know. His statement was also recorded by a Magistrate under Section 164 Cr.P.C. On being shown the statement (Mark PW14/A), he identified his signatures at point X. In response to a court query, he stated that he had narrated the true facts before the Magistrate.

7.10.59 During his cross examination, he deposed that in February 2020, both he and his brother Akash were using mobile

phones and disclosed their numbers. He admitted that till the time he had met the police, neither he nor his brother had made any call to the police at 100 regarding the incident. He admitted that, apart from this case, his statements were also recorded regarding the arson at Bunny Bakery and Aman E-Rickshaw. In those statements, he had stated that after stone pelting started, he and Akash left the place and went home.

7.10.60 He did not remember whether his statement was recorded on the day he signed the paper described as *Nishan Dehi*. The police officer who obtained his signatures introduced himself as being from the Crime Branch and was in civil clothes. He admitted that prior to that day, he had not met the police. Before that day, no police official had made any inquiry from him regarding the riots.

7.10.61 He admitted that PS Khajuri Khas was only a 3–5 minute walk from the place where he used to sell *chhole kulche*, and that police officials used to visit his cart. Despite this, before signing the *Nishan Dehi*, he had not informed any police official about the incident he claimed to have witnessed. He denied that he had not seen any such incident and this was the reason of him not informing the police.

7.10.62 On 25.02.2020, he had come to know about riots in Chand Bagh, Khajuri Khas and Sherpur, but had not seen any riot between Bhajanpura Chowk and the place where he used to put up his

cart. He did not remember the time at which they reached home.

7.10.63 When he signed the *Nishan Dehi*, his brother was not with him. On that day, he had not been summoned to that place and reached there of his own. He did not remember whether the police asked him to point out any place and admitted that he did not take the police to Chand Bagh Pulia, the gate, any gali, or any other place. From that day until his statement u/s 164 Cr.P.C. was recorded, he had not met any police official. However, on the day his statement u/s 164 Cr.P.C was recorded, he was accompanied by another person, referring to that person as 'parkingwala' whose statement was also recorded on that day.

7.10.64 He stated that during his statement u/s 164 Cr.P.C., he had mentioned the purpose of leaving his house on 25.02.2020, though he did not remember whether he had stated the same in his statement u/s161 Cr.P.C. He denied the suggestion that he had falsely claimed to have stated this fact in his statement u/s164 Cr.P.C.

7.10.65 He further stated that during his statement u/s 164 Cr.P.C. he had stated that when the deceased was thrown into the drain, Tahir Hussain was standing a little ahead of the mosque. He did not remember whether he had stated that he himself was standing near the gate, but remembered stating that he had stepped backwards out of fear. He denied the suggestion that these facts were absent from his

statement u/s 164 Cr.P.C.

7.10.66 He further deposed that during his statement u/s 164 Cr.P.C. he had mentioned that two boys climbed over the water tank to throw the deceased into the drain. He did not recollect whether he had also stated in that statement that he had identified those two boys; or that after seeing them with the police he identified them as the same boys who climbed the water tank; or that the police had informed him that their names were Nazim and Kasim.

7.10.67 About three or four days after the murder of Ankit Sharma, he came to know that the police was investigating the murder. He did not remember whether, by the time he had first met the investigating police officer, COVID lockdown had been imposed. He denied the suggestion that he had falsely implicated Tahir Hussain at the instance of the police or that he had not seen Tahir Hussain on 25.02.2020.

7.10.68 He denied the suggestions that the police forced him to repeat a fabricated version, reprimanded him for not following a tutored version in his statement u/s 164 Cr.P.C; repeatedly tutored him after his statement u/s 164 Cr.P.C; repeatedly showed him photographs of Nazim and Kasim; physically showed them to him inside or outside the court; or that he identified them solely because of police tutoring.

7.10.69 **PW19 Vikalp Kochar** deposed that for about 5-6 years prior to his testimony, his father had been running bakery shop at E-17, Khajuri Khas, Chand Bagh pulia, Delhi, in the name and style of M/s Bunny Bakers. During February 2020, he had been visiting this shop. Riots in the area where his shop was situated, had started on 20.02.2020 and continued for 3 days and again said, that he did not remember the date exactly. During the riots, his shop was burnt. On that day, between 3-4 p.m, his shop and the shop adjacent to his shop started catching fire and at around 5-6 p.m, he was present outside his shop and was also going to his shop and upto the terrace of his shop. Between 3-6 p.m, his father and his younger brother namely Sankalp Kochar were also present. On specifically being asked the situation at Chand Bagh Pulia and around and in front of his shop between 5-6 p.m, he became evasive and said that he could narrate the incident without reference to time as he had not seen the time. However, on being reminded by Id. predecessor, that he could very well answer that question with reference to time because having stated his location with reference to the same time period, he was very well aware of the time, he stated; that during 5-6 p.m on that day, a big mob had gathered on the road in front of his shop at Chand Bagh Pulia and this mob had caught hold of one boy. The persons in the mob were assaulting that boy with danda and one sharp/pointed object and this continued for about 10-15 minutes. Then on being specifically asked that what that

boy was doing during this beating, the witness sought to explain something to form background and then deposed, that there was fire in his shop; some kids had entered his shop, who were throwing chocolate and other food items/articles outside the shop and other elder boys were collecting the same. Some articles were flying out of the shop due to impact of fire and gas. He then deposed, that somewhere between 4-5.30 p.m., when the mob was looting the articles pertaining to his bakery shop, one boy along with 2-3 boys claiming to be belonging to IB, entered into that mob. His companion boys were provoking him to go ahead and they were also carrying danda in their hands. The IB guy was also carrying danda in his hand, when he entered into the mob. The moment he entered the mob, he was immediately surrounded by the persons in the mob. Thereafter, he could only see that the said boy, while he was standing, was being hit on his head with some danda and he was repeatedly being stabbed by some pointed object. This continued for about five to ten minutes and in the last five minutes, though he was not very sure about it, probably that IB guy had already died. At that time, he was standing near an iron gate situated just on the side of his shop. On the left side of this gate, there was his shop and on the right side of this gate, there was drain (nala). That gate was closed at that time. One end of this gate was fitted into their shop and another end of that gate was fitted into the boundary wall erected beside the drain. There was fencing over

that boundary wall beside the drain. During the last five minutes, he had mentioned to his father that the boy had probably died and in the meantime, the body of that boy fell down just before him at a distance of about half an arm. The persons from the mob, who were holding him till this time, had moved away and as a result, his body fell down. Even when he had fallen down, three or four or may be more persons from the mob were badly hitting his body with danda and blood was oozing out from his mouth. When the body had fallen down, it was nude. Thereafter, one person wearing helmet came there from the mob. Two boys handed to him a knot prepared of clothes. That knot of clothes was put in the neck of body of IB boy. The person wearing helmet tried to drag this body through that knot but he could not do so as body of IB boy was heavy. Thereafter, he was joined by other 2 boys, who had handed over said knot of clothes to him. All three of them dragged this body upto the middle of pulia over the drain. They brought one wooden plank and with help of that plank, they tried to lift that body and throw it in the drain. There was fencing around that drain and due to the height of the fence at that place, the body could not be thrown into the drain. These persons in the mob kept trying to throw that dead body from that place into the drain, but could not succeed. Thereafter, they took that body to the other side of pulia/drain. He could not see as to how did they take that body to the other end of that pulia/other side of drain. He remained on his side of

drain. There was a similar kind of gate on the other side of drain. That gate was in open condition and on that side, the boundary wall was lower. That portion of boundary walls used by the people to throw garbage into the drain. Using the plank, the mob threw body of IB guy into drain from the side of lower fence. Due to continuous throwing of garbage from that side, a slope had developed from that place upto the water level of drain. The body of IB boy rolled over that slope, but the time he had observed, body had not gone into the water and it had stopped before the water level of the drain. He did not remember the distance between the body and the water level of the drain.

7.10.70 He then deposed that throughout this process, he did not identify any person in that mob as there was no person in that mob who was already known to him. He deposed that he could not identify anyone from that mob though he had seen some faces. He only remembered that one of them was having red patch over his face, who was having heavy built and was a person aged about 30 years. That person was wearing blue colour shirt. One of the persons in the mob, who had handed over the knot of clothes to the other person, wearing helmet, was having music sign tattoo on his neck and he was wearing a cap. That person would be below 25 years. It was the same mob, which was involved in looting and setting ablaze the shops including his shop. He did not remember but it was about three days after the incident that police had come to make inquiries from him. On

being asked whether he knew the month or the year of the incident, he answered in negative. He further deposed that he had shown to the police all the places at which the above mentioned incident had taken place however, no site plan was prepared in his presence. Police had recorded his statement but it contained few twists and turns and he informed the police official that it did not reflect the correct position.

7.10.71 He was then cross examined by Id. SPP. During such cross examination he deposed that during the entire incident, his father was with him but not always. Due to the huge mob and commotion, many times he could not see his father. As he did not remember the date and year, he could not admit or deny that riot had taken place in the area of his shop on 24/25.02.2020. He however deposed that it was month of February.

7.10.72 He knew a person by the name of Tahir Hussain who was something in Aam Aadmi Party and used to come to his shop with his kids. He pointed towards Tahir Hussain and identified him in the court. He further deposed that he had not seen Tahir Hussain between 3-6 p.m on the day of the incident with IB boy. He had seen Tahir Hussain after 6 p.m., but he did not remember the time. He could not even tell the time gap between 6.00 p.m and him seeing Tahir Hussain. House of Tahir Hussain was situated after some plots, parking and shops from his shop. The house of Tahir Hussain would be about 30 steps from his shop. Across the road and in front of his

shop was a mosque. He then deposed that due to lapse of time, he could not admit or deny that he had stated before the police that on 25.02.2020 between 4-6 p.m., he had seen Tahir Hussain near the said mosque. He could not recall that after this incident, police had met him for the first time on 06.03.2020. Though he reiterated that he had narrated the whole incident and shown the police the places which he had mentioned in his testimony; he denied that the site plan was prepared in his presence. As far as he remembered, he would have been shown about 7-8 photographs and therefore, he could not admit that he was shown 30-35 photographs by the police. He admitted that when he was shown photographs by police, he was present on Chand Bagh pulia for the purpose of renovation of his shop. He did not remember and therefore, he could not admit or deny that from the photographs, he had identified the photograph of Tahir Hussain and had informed the police that Tahir Hussain was Municipal Councillor. He denied that he had pointed out photograph of any person to mention before police that such person was present in the mob at Chand Bagh pulia and on provocation of Tahir Hussain, had stabbed IB boy namely Ankit Sharma; or that his name was disclosed to him by police as Haseen; or that he had pointed out to one photograph to mention before the police that the said person was also in the mob which killed the IB guy; or that police had disclosed name of that person in photograph as Anas and volunteered, that police officials

were talking among themselves wherein they had taken name of 3-4 persons and name of Anas was taken during that process. He denied that he had deposed falsely under influence of accused and their family; or that he knew that the aforesaid incident of murder of IB official Ankit Sharma had taken place on 25.02.2020; or that he had seen Tahir Hussain in front of the mosque on 25.02.2020 between 4-6 p.m; or that Tahir Hussain was instigating the mob to kill Ankit Sharma.

7.10.73 During his cross examination on behalf of accused, he admitted that just beside his shop, there was a road going beside the drain and on the other side of the drain also, there was a similar kind of road. He denied that iron gate, besides his shop, was situated after going some steps inside the aforesaid road. He admitted that said iron gate was closed since the time riot had started. He denied that on the day this incident had taken place, the mob had also assembled on aforesaid road beside his shop.

7.10.74 **PW21 Gyanendra Kochar** deposed that he was the owner of Bunny Bakery. Since the night of 22.02.2020 until about 5:00 p.m. on 25.02.2020, rioting had happened in the area where his shop was situated.

7.10.75 On 25.02.2020 at about 3:00 p.m., because of the riots, he was present outside his shop along with his son. A mob of about 1,000 Muslims was present near Chand Bagh pulia Another mob of Hindus

of similar strength was on the Karawal Nagar side about 10–15 houses away. The two mobs were pelting stones at each other. The Karawal Nagar mob was raising slogans of "*Jai Shree Ram*," while no particular slogans were raised from the Chand Bagh side. The Chand Bagh mob was also throwing objects that burst into flames, and some members of the mobs carried dandas, iron rods, and wore helmets.

7.10.76 The mob from the Chand Bagh side came to his shop, threatened to set it on fire and despite his requests, approximately between 3:00 p.m. and 4:00 p.m., attacked the shop. It broke the shutter and glass, looted articles from the shop, and set it ablaze. He remained there until about 5:00–5:15 p.m., by which time, the police had arrived, fired tear gas shells from the Karawal Nagar side, and the stone pelting had stopped.

7.10.77 Around 5:00 p.m., while he remained outside the shop, his son Vikalp went inside in an attempt to save whatever he could. Before leaving, the witness saw that a person running from the Karawal Nagar side towards Chand Bagh pulia, was surrounded and attacked by the Chand Bagh mob. He saw the person fall on the road near his shop. Frightened, he and his son fled together.

7.10.78 The witness stated that he personally did not know any member of the Chand Bagh mob. Owing to the size of the mob and because many of the persons were wearing caps or helmets, he could

not properly see or remember anyone's face and therefore, could not identify any rioter. He also did not see the face of the person who was attacked and fell near his shop.

7.10.79 He stated that Tahir Hussain was the Municipal Councillor of the area. Although he had heard Tahir Hussain's name, he had never met him. He did not recognize Tahir Hussain by his face. He knew the location of Tahir Hussain's house as it had been pointed out to him by others. He also stated that there was no parking after 6–7 shops from his bakery; the parking was adjacent to Tahir Hussain's house and approximately 15 shops from it.

7.10.80 He was cross examined by Id. SPP and during such cross-examination, he initially stated that the police had not made any inquiry from him regarding the incident. However, it was recorded by the Court that, while the question was being explained, the witness stated that the police had visited the place several times and spoken to him regarding the incidents of 25.02.2020.

7.10.81 When confronted with the suggestion that Inspector Amleshwar Rai of the Crime Branch had recorded his statement on 07.03.2020, the witness stated that although he did not know the officer by name, he had gone to PS Khajuri Khas and narrated the same facts to the police as he had stated before the Court, though he did not remember the date.

7.10.82 He denied having stated to the police that he had seen and identified Tahir Hussain instigating the Chand Bagh mob; or Tahir Hussain had made inflammatory statements against Hindus; or Tahir Hussain repeatedly visited his house and returned to instigate the mob; or that he knew that the person attacked by the mob was Ankit Sharma; or that he saw Ankit Sharma's body being dragged across the pulia and thrown into the drain; or that Tahir Hussain was a customer at his bakery and used to visit with his children etc.

7.10.83 When his attention was drawn to Tahir Hussain appearing through video conferencing, he identified him as Tahir Hussain. On being asked to clarify his earlier statement where he had stated that he did not recognize Tahir Hussain by his face; he explained that he was in fact aware of Tahir Hussain's face and that his earlier answer had been given out of confusion. He denied the suggestion that he had deliberately changed his version because he had been won over by Tahir Hussain's family; or that he had falsely denied identifying Tahir Hussain or other rioters.

7.10.84 **PW33 HC Praveen Kumar** deposed that on 25.02.2020 he was posted as a Constable at PS Khajuri Khas. On that day, from 8.00 a.m., he was deployed on duty near Chand Bagh Pulia on Main Karawal Nagar Road. At about 3:00 p.m., he was present near Chand Bagh Pulia, where a mob comprising persons from the Muslim community was pelting stones at persons belonging to the Hindu

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community and police officials, who were positioned near a private school on the Karawal Nagar side of the road. The mob also indulged in arson in shops situated in E-Block, Khajuri Khas, on the Karawal Nagar side.

7.10.85 At about 5:00 p.m., he was again present near Chand Bagh Puliya along with HC Rahul. Some persons from the mob on the Chand Bagh side caught a person from the Hindu side and while assaulting him, dragged him towards Chand Bagh Pulia. In response to a Court query, he stated that he was standing about 7–8 steps from Chand Bagh Puliya on the Karawal Nagar side and about 15–20 steps away from the persons dragging the boy.

7.10.86 When asked whether he had identified anyone from the mob assaulting the boy, he stated that he had identified 5–6 persons, although he did not know them prior to the incident. He further stated that he had also seen those persons on 24.02.2020 at Bhajanpura Chowk and Wazirabad Road during daytime, though he did not remember the exact time.

7.10.87 He stated that at about 4:30–5:00 p.m. on 25.02.2020, he had seen Tahir Hussain, whom he already knew by face, at Chand Bagh Puliya. According to the witness, Tahir Hussain was delivering an instigating speech, saying that Muslim shops at Sherpur Chowk had been burnt and some Muslims had been killed, and that on that day,

they will not spare the Hindu kafirs. After hearing this speech, the Muslim mob became aggressive and indulged in stone pelting and arson. He also stated that Tahir Hussain was a Municipal Councillor.

7.10.88 He deposed that because the mob had become aggressive, he and others stepped back. Although he tried to stop the mob from dragging and assaulting the boy, he had to retreat due to the mob's aggression. At that time, HC Rahul was present about 4–5 steps away from him.

7.10.89 He further stated that written proceedings were conducted in respect of those persons. Their disclosure statements were recorded in FIR No. 65/20 by Insp. Amleshwar Rai on 09.03.2020. He also stated that further documentary proceedings ("*Kagzi Karwai*") took place, though despite repeated questioning, he could not remember the number or nature of the documents.

7.10.90 He stated that he could identify those 5–6 persons as well as Tahir Hussain. In court, he identified accused Bobby, Firoz, Gulfam, Anas and Javed physically present, and identified Tahir Hussain appearing through video conferencing.

7.10.91 During cross-examination by the learned Special Public Prosecutor, he admitted that on 09.03.2020, Insp. Amleshwar Rai had arrested accused Bobby, Firoz, Gulfam, Anas and Javed in his presence, prepared their arrest memos, and that he had signed those

arrest memos, identifying his signatures thereon.

7.10.92 During cross-examination by the defence, he stated that he did not remember on which date Insp. Rajni Kant had interrogated those 5–6 persons, whose disclosure statements were recorded by Insp. Amleshwar Rai on 09.03.2020. He stated that Insp. Rajni Kant was posted at PS Khajuri Khas. A Crime Branch team had come to PS Khajuri Khas on 09.03.2020, though he did not know which of the officers of that team were Investigating Officers. When the disclosure statements were recorded, some members of the Crime Branch team were present with Insp. Amleshwar Rai. He did not remember whether Insp. Rajni Kant was also present, but admitted that the accused persons were in Insp. Rajni Kant's custody at that time. He did not remember whether any Crime Branch officer had interrogated those persons in his presence before 09.03.2020.

7.10.93 He stated that he might have taken Insp. Amleshwar Rai to Chand Bagh Puliya to point out the place of occurrence in the present case, though he did not remember the date or time. In response to a Court query, he affirmed that he was certain he had taken Insp. Amleshwar Rai there in connection with this case.

7.10.94 He deposed that after 09.03.2020, Insp. Amleshwar Rai did not record any further statement of his in this case. On that date, he had signed two documents prepared by Insp. Amleshwar Rai. He

stated that Insp. Amleshwar Rai recorded his statement at PS Khajuri Khas on 09.03.2020. He did not recollect whether he was ever called to the Crime Branch office or to PS Dayalpur in connection with this case after that date.

7.10.95 He admitted that in his statement to Insp. Amleshwar Rai on 09.03.2020, he had neither mentioned that a Hindu boy was being dragged towards Chand Bagh Pulia while being assaulted, nor had he stated that he was standing 15–20 steps away. He volunteered, that he had answered only the questions put by the Investigating Officer. He also admitted that he had not mentioned seeing Tahir Hussain at 4:30–5:00 p.m. at Chand Bagh Puliya in that statement. However, he stated that he had informed the Investigating Officer that he stepped back because the mob had become aggressive, but that fact was not recorded.

7.10.96 He stated that he had not made any call to the police control room (100 number) on 25.02.2020 and that he was not carrying any wireless set.

7.10.97 He denied the suggestions that he was not present near Chand Bagh Puliya on 25.02.2020, that he had not witnessed the dragging of any boy; that he had not seen Tahir Hussain or the accused persons; that he falsely implicated them at the instance of the Investigating Officer or senior police officers; that he identified the

accused after being tutored at the police station; that he never pointed out the place of occurrence to Insp. Amleshwar Rai, that his statement was fabricated to falsely implicate the accused; or that he had deposed falsely. He denied the suggestions that the Investigating Officer or other police officials had repeatedly showed him videos, photographs of the accused persons to tutor him regarding their identity and instructed him to falsely implicate or identify them, advised him to take cues from the prosecutor, obtained his signatures on blank papers or documents without actual proceedings, or that he had given false evidence.

7.10.98 **PW56 Priyanka Gaur** deposed that up to April 2024 she had been residing at H. No. 360, Gali No. 6, Moonga Nagar, Karawal Nagar Road, Delhi, and in July 2024 she shifted to Gandhi Nagar. While in Delhi, she worked as an Advocate.

7.10.99 Riots took place in the area of Moonga Nagar on 23, 24 and 25.02.2020. On 24 and 25.02.2020, she was at home. On 25.02.2020, she came out of her house on three or four occasions and went up to the gate at the corner of her gali, which opened onto Main Karawal Nagar Road. Lastly she went there at about 5.00–5.30 p.m. and had previously visited that place at about 4.00 p.m.

7.10.100 Facing Main Karawal Nagar Road, Chand Bagh Pulia was on the left of her street. A huge mob of at least 100–150 persons,

or more, was present on and around Chand Bagh Pulia. In that mob she saw her Municipal Councillor, Tahir Hussain. His house was situated near Chand Bagh Pulia and he was standing on the road near his house. From his body language and gestures, she inferred that he was not asking the mob to disperse but was instead instigating them to move towards the Dayalpur side. Other persons were also witnessing these events.

7.10.101 The mob was carrying dandas, petrol bombs and stones. Stones were lying on the road and were being thrown towards her side, though she had remained inside the gali and was not hit. Petrol bombs were also being thrown. She recognized some persons in the mob from the Muslim community. The persons on her side were residents of her gali and belonged to the Hindu community.

7.10.102 She made several calls to the police at 100. One call connected around 4.00 p.m. and another around 6.00–6.15 p.m., during which she informed the police that riots were taking place and sought help. These calls were made from mobile number 7982307564.

7.10.103 In the mob, apart from Tahir Hussain, she knew one Tanvir and knew some others only by face. She stated that she could identify Tahir Hussain and Tanvir. During her deposition through video conferencing, she correctly identified Tahir Hussain as the person wearing a white shirt and having a white beard. She also

correctly identified Tanvir by name but could not identify the other persons shown to her as members of the mob.

7.10.104 During her cross examination, she stated that in her last call made around 5.30–6.00 p.m., she had taken the name of Tahir Hussain. She denied the suggestion that she had never mentioned Tahir Hussain's name in any of her PCR calls.

7.10.105 She could not estimate the width of her gali. She admitted that the gate of her gali was closed on that day. The mob from Chand Bagh Pulia had spread up to the road in front of Gali No. 3, Moonga Nagar, or slightly beyond, but not up to R.P. School.

7.10.106 She admitted that there was a market with several shops between Gali No. 6 and Chand Bagh Pulia. She knew of Bunny Bakery in front of Gali No. 1 on the Khajuri Khas side but did not know whether Aman E-rickshaw shop was also nearby. Between her second-last and last visit to the gate she could not observe activity at Bunny Bakery because of the crowd.

7.10.107 She admitted that the mosque at Chand Bagh Pulia was not visible from the gate of her gali and volunteered, that it was so because it was in the same line.

7.10.108 She denied that police had shown her photographs on 15.09.2021; or that she identified Tahir Hussain in Court on the basis of those photographs; or that she had not seen Tahir Hussain on

25.02.2020. She also denied that police never recorded her statement regarding the incident; or that she was tutored by police on 15.09.2021 about the statement to be given in the court. Police had not sent her any statement to prepare her for court (deposition).

7.10.109 She further stated that stones thrown from the Chand Bagh Pulia side were reaching up to Gali No. 5. At about 4.00 p.m., when she went to the gate of her gali, it was open, but it was during her later visit, she found it to be closed. There were about 5–6 persons standing ahead of her towards the main road and about 4–5 persons standing behind her. She had known Tanvir for about 10 years.

7.10.110 She had read the statements recorded by the police, but did not remember whether she had mentioned Tanvir's name in those statements and denied that she was deliberately pretending not to remember this fact, because she had omitted his name.

7.10.111 She stated that she had informed police that the mob was carrying dandas and petrol bombs and was throwing petrol bombs. It was recorded by the learned predecessor that these facts were not specifically mentioned in her statements recorded in FIR Nos. 65/20, 91/20 and 92/20, PS Dayalpur. She further stated that she had not described before police in such detail that she knew some persons in the mob only by face. She never attempted to ascertain what action had been taken on the basis of her PCR calls. She had not submitted

any written complaint regarding the incident, but volunteered that police had come to her gali and inquired from her and at that time she narrated everything she had seen.

7.10.112 She denied that she had not witnessed any incident on 25.02.2020, that she never went to the gate of her gali that day, that she had not seen Tanvir in the mob, or that she falsely named and identified him at the instance of the police.

7.10.113 I have carefully evaluated the testimonies of the witnesses as summarized above and also considered the rival contentions.

7.11 In my considered opinion, for answering the questions - when, where and how was it, that Ankit Sharma was killed, only one testimony will suffice. This is the testimony of PW19 Vikalp Kochar. The reason that his sole testimony will be sufficient to answer these questions is, that he is one witness, who even the defence believes to be truthful. My reason for so observing is, that after his examination in chief was recorded, except for accused Tahir Hussain, Gulfam and Shoaib Alam, no other accused chose to cross examine him. Even during such cross-examination, his presence had not been challenged and his narration of events also remained unchallenged. Even during the course of final arguments, the veracity of this witness was not challenged. On the contrary, time and again, during the final arguments, the defence, more specifically Sh. Rajiv Mohan, asserted

that he was the most natural witness of the incident.

7.11.1 However, an attempt has been made by Mr. Pracha to impress upon the court that the testimony of PW19, cannot be considered to be an eyewitness account of murder of Ankit Sharma because, he failed to positively identify the deceased, and only referred to to boy who claimed himself to be from IB and the witness did not even recall the date of incident. I have weighed his contention.

7.11.2 Noticeably , as per PW19, the incident, as had been seen by him, had happened between 4.00 to 5:30 p.m on the day his shop was burnt and in respect of the arson at his shop, FIR No. 114/2020 was registered. I can take judicial notice of the fact that as per FIR No. 114/2020 of PS Khajuri Khas, M/s Bunny Bakers was set afire on 25/02/2020. Therefore, it can be safely concluded that as per the testimony of PW19, the incident had happened on 25/02/2020 between 4.00 to 5:30 p.m, near Chand Bagh Pulia.

7.11.3 It is correct that during his entire testimony, PW19 did not specifically take the name killing of Ankit Sharma and referred to the one who was killed before his eyes as the ‘IB guy’. However, there is no denial to the fact the Ankit Sharma was an IB official. It is not the case either put up by Mr. Pracha, or proved by him that during the North-East Delhi riots of 2020, more than one official of IB had ben killed. Had it been the case, a he could have called upon the court

to consider a possibility that this witness might have seen the homicide of some IB official other than Ankit Sharma. It is also not the case argued or set up by Mr. Pracha that apart from the body of Ankit Sharma, any other body was also recovered from the place wherefrom his body was recovered. On the contrary, the testimony of the IO that no second body was recovered from this drain has remained unrebutted. Moreover, an attempt made by Mr. Rajiv Mohan to introduce a two-body theory, as already discussed, has not found favours with the court. Therefore, in the light of the fact that there was no other IB official who was killed during those riots and more importantly, the fact that no other body was recovered from the nala near Chand Bagh Pulia, a fact of which I have taken a judicial notice, being special designated court for the trial of cases arising out of the riots in North-East District, I find this attempt an to deflect the attention from the real issue i.e. issue of homicidal death of Ankit Sharma, must necessarily fail.

7.11.4 Hence, I find that through the testimony of PW19, it stands established that on 25/02/2020 between 3.00 to 6.00 p.m, on the main Karawal Nagar Road, upon which the shop of PW19 was situated, a big mob was present in front of the shop of PW19 and upon the Chand Bagh Pulia. During this period between 4.00 to 5:30 p.m, this mob sucked in Ankit Sharma, where after he was ruthlessly assaulted for around five to ten minutes and by the time he collapsed

to ground, he had, probably already died. His body was then dragged to middle of Chand Bagh Pulia where an unsuccessful attempt was made to push the body in to the drain. The body was then taken across the pulia and from across the wall parallel to the drain, the body thrown in to the drain.

7.11.5 Therefore, it stands proved that Ankit Sharma was killed approximately between 4.00 to 5:30 p.m on 25.02.2020. That he was killed on main Karawal Nagar Road, near Chand Bagh Pulia and that his body was thrown in the drain upon which the said pulia was, and that he was killed by a mob which was murderously armed.

7.11.6 The fact that this mob, armed with weapons, dragged Ankit Sharma in its midst and then launched an attack with lathis, dandas and sharp weapons reflects the intention to kill Ankit Sharma or at the very least cause injuries to Ankit Sharma. It has also been proved through PW15 that the injuries caused by this mob were sufficient to cause his death in ordinary course of nature, making it culpable homicide amounting to murder.

7.12 The next question which would arise for decision is, whether this mob was an unlawful assembly as per the provisions of section 141 IPC?

7.12.1 Here again, I find that I can decide this question only on the basis of testimonies of witnesses which have remained

unchallenged and about whose presence at the time of the incident, the defence has not raised any questions or doubts. These are PW19 Vikalp Kochar, his father-PW21 Gyanendra Kochar and PW56 Priyanka Gaur.

7.12.2 As far as PW19 is concerned, he was only cross-examined on behalf of accused Tahir Hussain, Gulfam and Shoaib Alam. However, during the said cross-examination, no challenge was raised to his presence at the place of incident and the fact that he had seen the killing of Ankit Sharma and therefore, his testimony regarding the description, nature, activities of the mob at Chand Bagh Pulia has remained unchallenged.

7.12.3 PW21 Gyanendra Kochar was not cross examined by any of the accused and therefore, whatever he has stated about this mob, has to be taken to be a fact that stands proved.

7.12.4 Similarly, PW56 was cross examined only on behalf of accused Tahir Hussain, Shoaib, Gulfam, Nazim, Kasim and Firoz. Even during the cross-examination on behalf of these accused, except bald suggestions, that she had not seen any incident on 25.02.2020 as had been deposed by her, no substantial challenge was raised to her presence at the place of the incident which otherwise stands established by PCR forms, Ex.PW91/2 to Ex.PW91/4.

7.12.5 In order to qualify as an unlawful assembly, the assembly at Chand Bagh Pulia will have to be proved to be an assembly of more

than five persons and it will further be required to be proved that this assembly was having one or more of the common objects as provided in section 141 IPC.

7.12.6 With regard to the number of members of this assembly, all these witnesses had stated that this mob, which constituted this assembly, was huge. With regard to numbers, PW56 stated that there would be around 100-150 persons or even more than that. PW19 stated that it was a huge mob but did not state any specific number. However, if the tone and tenor of his testimony is seen, it is clear that the number was definitely more than five. PW21 during his testimony put the membership of this mob to be around a thousand. Therefore, in view of the testimonies of these three witnesses, I can safely conclude that the constituents of this assembly at Chand Bagh Pulia were more than five in number.

7.13 The next question which comes up for decision is, whether this assembly had a common object, and whether such shared common object of this assembly was covered within the four corners of the objects provided in section 141 IPC?

7.13.1 As is usual, in this case also, there is no direct evidence whether this assembly had a common object and what was this object. Therefore for answering the question, the nature of the assembly, the activities and behaviour of the assembly, and whether this assembly was armed or unarmed would be the relevant factors that can help in

gathering the object of the assembly. (**Chikkarange Gowda v. State of Mysore, AIR 1956 SC 731 & Lalji v. State of U.P., (1989) 1 SCC 437**)

7.13.2 The deposition of PW19 in totality reveals that this mob was engaged in rioting, loot and arson at his and nearby shops, and thereafter it is this mob that had attacked Ankit Sharma and thrown his body in the nala. The mob was armed with heavy dandas and sharp objects. PW21 has described this mob as a mob which was rival to the mob of Hindu community and both these mobs were pelting stones on each other. This mob i.e. the mob at Chand Bagh Pulia was throwing objects which would burst into flames, members of the mob were armed with weapons like danda and iron rods and some of them were wearing helmets. This is the mob which had set his shop ablaze. PW56 in her deposition, stated that at around 5-5.30 p.m, she had seen this huge mob which was on the pulia and has spread on both its side. The mob was carrying danda, petrol bombs and stones and this mob was throwing stones and petrol bombs towards her direction.

7.13.3 The testimonies of these witnesses establish that this assembly, whose constituents were more than five in number:

- (a) was an assembly whose members were armed with stones, molotovs, iron rods, dandas and knives etc. or sharp weapons,
- (b) some of the members of this assembly were wearing helmets,
- (c) this assembly was clashing with another such assembly belonging to the Hindu community,

(d) this assembly was pelting stones and petrol bombs on the rival mobs, and

(e) this assembly was indulged in rioting, loot and arson.

7.13.4 Hence, the members of this assembly were armed, were indulging in crimes such as rioting, affray, arson and loot and at the same time, clashing with the rival assembly and attacking it with the arms it was carrying. Hence, it can be gathered that the shared object of this unlawful assembly was to commit offences which would include rioting, loot and arson and causing damage to the life and property of the members of the rival community. Therefore, the common object of this assembly was within the prohibition of section 141 IPC.

7.13.5 Resultantly, I hold that from the evidence on record, it stands proved beyond all reasonable doubts that the mob, which had attacked, killed and disposed of the body of Ankit Sharma, was an unlawful assembly within the definition of section 141 IPC.

7.14 However, can it be said that the killing of Ankit Sharma was in pursuance of the common object of this assembly? It can be argued that the common object of this assembly did not include the killing of Ankit Sharma because it would not have been specifically aware about the existence of Ankit Sharma, and it can also be argued that murder was not the common object of this assembly because such an object is not visible from the activities of this assembly.

7.14.1 Section 149 IPC fastens a vicarious criminal liability on every member of unlawful assembly for any offence which is committed in prosecution of the common object of such an assembly. At the same time, such liability is also fastened upon the members of unlawful assembly for an act which the members of the assembly knew to be likely to be committed in prosecution of the object of the assembly. Therefore, the members of an unlawful assembly are not only liable for an offence which was directly committed to achieve the object of the assembly but also for an offence, which they knew was likely to be committed for achieving the common object of the assembly. The likelihood of the commission of offence for the prosecution of the object of unlawful assembly can only be gathered from the nature of the assembly, the strength of the assembly engaged in prosecution of the object and the weapons with which members of such an assembly had armed themselves. In this regard, Hon'ble Supreme Court while discussing the scope of application of section 149 IPC, in **Gangadhar Behera & Ors. v. State of Orissa, (2002) 8 SCC 381** had held :

22. Another plea which was emphasized relates to the question whether Section 149 IPC has any application for fastening the constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the

help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object"? It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

23. "Common object" is different from a "common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It

may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident on the spot eo instanti.

24. Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard-and-fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or

before or after the scene of incident. The word “knew” used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of “might have been known”. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first, offences committed in prosecution of the common object would be generally, if not always, within the second, namely, offences which the parties knew were likely to be committed in the prosecution of the common object.

7.14.2 Further, in **Prabhu Dayal (supra)**, the Hon’ble Supreme Court had held as under:-

22.2. This Court in *Lalji v. State of U.P.* [*Lalji v. State of U.P.*, (1989) 1 SCC 437 : 1989 SCC (Cri) 211] , observed as follows: (SCC pp. 441-42, para 9)

“9. Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and distinct offence. In other words, it created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability of the members of the unlawful assembly extends only to the acts done in pursuance of the common object of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in

prosecution of that object. Once the case of a person falls within the ingredients of the section, the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hands commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together, armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149. It must be noted that the basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge.”

7.14.3 As has already been found that this unlawful assembly was heavily armed with deadly weapons, it had a considerable strength of hundreds of people and had a shared object of arson, vandalism, rioting, looting and causing damage to property and person of the members of the rival community. It has also been found that this assembly was, since about 3.00 p.m, continuously engaged in prosecuting these shared objects. Hence, any prudent person, being a member of this assembly, would have known that as this unlawful

assembly, which was heavily armed with dandas, stones, petrol bombs and swords etc. and was clashing continuously with a rival assembly, it was likely that in such clashes which were based upon communal hatred, it was likely that a person belonging to the opposite community could be killed in achieving the common object of causing damage to person and property of the members of the rival community. It also must be noted that neither does it appear to be the case, nor has it been pleaded by the defence that the weapons were concealed by some of the members of this assembly and the others would not have been aware of it.

7.14.4 Hence, even though the members of this unlawful assembly might not have specifically known that the killing, particularly of Ankit Sharma, could be a likely offence committed in the prosecution of the common objects of this assembly; but in my considered opinion, they would have certainly known that a killing was likely to be committed especially, when the object of the assembly was causing damage/ injury to the persons of the opposite community and when this unlawful assembly, heavily armed as it was, was pursuing this object.

7.14.5 Before proceeding further, it is also appropriate to deal with a contention raised on behalf of the accused that a mere presence at the assembly site or in the assembly is not sufficient to attract vicarious liability u/s 149 IPC unless some overt act or omission as a

member of such assembly is proved on the part of the person upon whom such liability is sought to be fastened.

7.14.6 I have considered this submission and I find that law in this regard, has been settled by the Full Bench of Hon'ble Supreme Court in Masalti (supra), where a similar similar proposition was raised before hon'ble Supreme Court in the light of an earlier judgment of Baladin v. State of U.P, AIR 1956 SC 181. The legal principles that emerge from the judgment of Hon'ble Supreme Court in Masalti (supra) are:

- (a) it is not a general principle of law that a person cannot be said to be a member of an unlawful assembly unless an overt act is proved against him, and to hold so will not be correct in law;
- (b) an overt act on the part of a person is required to be proved only in case where a relevant consideration could be the fact that the assembly could have consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity but not intending to entertain the object of the assembly;
- (c) where a large unlawful assembly acts in prosecution of its common object, it may not always be possible to attribute specific overt acts to each individual member of the assembly; and
- (d) section 149 IPC clearly lays down that the punishment prescribed by this section is vicarious and does not require that the offence or an offence should have actually been committed by every member of the

unlawful assembly.

7.14.7 These principles were further elaborated and consolidated by Hon'ble Supreme Court in Gangadhar Behera (supra). Thus, it is only in cases where it could be said that the persons seen in the assembly could have been merely curious onlookers and were not entertaining the object of the said assembly, would it be required that an overt act against a person sought to be punished with the aid of section 149 IPC is proved.

7.14.8 Therefore, whether the accused were curious onlookers or mere bystanders and whether they did not share the common object of the unlawful assembly is a question of fact and needs to be proved before the court. By its nature, it is obvious, that this fact has to be pleaded by the accused and then proved at least by preponderance of probabilities. However, in this case, none of the accused has claimed either during the prosecution evidence or their statements u/s 313 Cr.P.C. or by leading evidence in defence that they were innocent bystanders or curious onlookers, or that they did not share the common object of the unlawful assembly. Even a suggestion on these lines was not given to any of the prosecution witnesses to at least indicate an intent to set up such defence. On the contrary, by the nature of the assembly and the activities it was engaged in and the situation which existed at the relevant time, it is less than likely that any person who was a part of this assembly would have been a mere

curious onlookers.

7.14.9 At this stage it will be pertinent to take up the legal proposition of special evidentiary requirement raised by the defence. On the strength of Masalti(supra), Sh. Rajiv Mohan and Sh. Abdul Gaffar have contended that this being case involving a large number of accused upon whom vicarious liability is sought be fastened with the aid of Sec. 149 IPC, the case of the prosecution can be accepted only against those accused against whom two or more witnesses have given consistent versions. In order to bring home this point they have relied on the following portion of this judgment:

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.

7.14.10 With all humility at my command, I must say that the Ld. counsels have completely misinterpreted the dictum of the Hon'ble Apex Court. Here the Hon'ble Court was dealing with a challenge mounted to the High court adopting a test, that a conviction could be sustained only if it was supported by consistent version of two or more witnesses. The fact that the Hon'ble Supreme Court, finding that such test was neither unreasonable nor irrational, shot down this challenge doesn't mean and cannot lead to a conclusion, that the Hon'ble Court also held that such a test has to be mandatorily adopted.

7.14.11 The court opens its observations with a reiteration of the cardinal principle of evidence, that is the quality of evidence, and the not quantity that matters and then reemphasizes it before concluding its observations. The choice of words of the court in concluding its observations is of the most significance. The court said in such cases- "sometimes it is useful to adopt a test like the one which the high court has adopted". The use of the words 'sometimes' and 'useful' makes it amply clear that the Hon'ble Supreme court did not intend to lay down a law that the test adopted by the high court had to be mandatorily followed. Had it so intended, instead of the words 'sometimes' and 'useful', it would have used always and necessary or some other similar words to convey that for arriving at a finding of

guilt in such cases, conviction can only be handed down by following the special evidentiary test as had been laid down by the Hon'ble Allahabad High Court. Resultant to the discussion herein above, I find that there are no special rules of evidence that govern this case and the time-honoured rule that it is the quality of evidence and not the quantity that matters, has to govern this case also.

7.15 This brings me to the question whether the prosecution has been able to successfully prove that the accused facing trial were the members of the unlawful assembly which had killed Ankit Sharma?

7.16 I shall now proceed with the case against each individual accused.

Accused Tahir Hussain

7.17 The case of the prosecution against accused Tahir Hussain is not only that he was a member of this unlawful assembly but it is also alleged that he was actively instigating this assembly. In order to prove its case against Tahir Hussain, the prosecution had cited PW5 HC Rahul, PW33 HC Praveen Kumar, PW6 Pradeep Verma, PW11 Deepak Pradhan, PW13 Aakash, PW14 Bharat and PW56 Priyanka Gaur.

7.17.1 The testimonies of these witnesses have been briefly summarized in the earlier part of the judgment.

7.17.2 I have evaluated the evidence and given my considered

thought to the contentions advanced at bar.

7.17.3 As regards PW5 HC Rahul and PW33 HC Praveen Kumar, both these witnesses have deposed about being on duty on 25.02.2020 at Main Karawal Nagar Road. They have also deposed about seeing this unlawful assembly and witnessing the activities of accused Tahir Hussain as well as the act of assault upon Ankit Sharma. However, these are all improvements upon the statements u/s 161 Cr.P.C. In these statements, there was no mention of accused Tahir Hussain or the incident as had happened with deceased Ankit Sharma. Their statements u/s 161 Cr.P.C were generalized statements about the rioting that had happened on 25.02.2020 at Chand Bagh Pulia and not about any specific incident. They have not even stated the time of the general riots seen by them.

7.17.4 PW5 HC Rahul, when asked about these improvements, during his cross-examination, stated that he had not specifically mentioned that the mob had started setting fire nearby shops including Bunny Bakery and further, that he did not remember if he had mentioned about a person from Hindu community (referring to Ankit Sharma) being dragged by the other mob on the Pulia. He deposed that as far as he remembered he had seen his statement recorded by the IO but he did not find any mistakes or pointed out any mistakes to the IO. Regarding the method of recording statements, he stated that IOs usually asked whether he knew anything about a particular incident,

whereupon he narrated the incident and answered any further queries, and the same method was adopted by the IO of this case.

7.17.5 Similarly, PW33 HC Praveen Kumar in his cross-examination deposed that he had not mentioned in his statement given to Insp. Amleshwar about a boy from Hindu Mob being assaulted and being dragged to Chand Bagh Pulia, or that 15-20 persons were dragging that boy and volunteered, that he was answering the queries of IO. He had also not mentioned about seeing Tahir Hussian at Chand Bagh Pulia at around 4.30-5.00 p.m. He further went on to state that though he had stated to the IO that as the mob was aggressive, he had to step back, but IO did not record this fact.

7.17.6 It is evident that both these witnesses, while testifying in the court, have made considerable improvements. However, when asked, whether these facts which they had added, were stated in their statements u/s 161 Cr.P.C; instead of putting forward an explanation for not stating these facts, they either simply admitted not stating these facts, or stated that they did not remember whether these facts were stated or not. The improvements made by these witnesses are not minor variations, embellishments or small additions. They have significantly and without putting forward an explanation, deposed as eye witnesses to the grabbing, assaulting and dragging of deceased Ankit Sharma to Chand Bagh Pulia, facts which were completely missing in their statements u/s 161 Cr.P.C. In their statements u/s 161

Cr.P.C, they had stated about accused Tahir Hussain instigating the mob but no time frame during which they had seen was provided. However, while appearing as witnesses before this court, they put a time to such instigation and that was of around the same time when as per the case of the prosecution, Ankit Sharma was murdered.

7.17.7 However, Id. SPP had valiantly tried to defend these testimonies and contended that it is not necessary to even record a statement u/s 161 Cr.P.C and a witness, whose statement u/s 161 Cr.P.C has not been recorded, can still depose in the court and if his testimony is found to be reliable, it has to be acted upon. He had contended that in the present case, the court has to test the veracity of these witnesses and cannot discard their testimonies merely on the ground that they have made significant improvements. In this regard he has relied upon the judgment in Alamgir(supra).

7.17.8 I have given my consideration to this argument of Id. SPP. However, the reliance of Id. SPP on Alamgir(supra) is completely misplaced. A witness whose statement u/s 161 Cr.P.C has not been recorded stands on a completely different footing than a witness whose statement u/s 161 Cr.P.C had been recorded. I say so because a witness who deposes for the first time in the court, does not have anything to improve upon. However, a witness who had been given opportunity to narrate what he had seen regarding a particular incident and who during the such first opportunity, completely omits to provide

the vital details which he subsequently adds while testifying in the court, owes an explanation for not disclosing such facts in the earlier statement, failing which serious doubts would arise about his veracity. Therefore, in my considered opinion, the fact that a witness owed an explanation and failed to provide one, affects his veracity and dents his credibility.

7.17.9 Even if the improvements are ignored, their testimonies have established that they could not have seen the incident which they have deposed about.

7.17.10 Both the witnesses claimed to have been on duty together and specifically stated that they were with each other. As per PW5, he was on duty on Main Wazirabad Road and main Karawal Nagar Road and as per PW33, he was on duty on Main Karawal Nagar Road near Chand Bagh Pulia. During the scene of crime inspection, I had observed that Chand Bagh Pulia divides the Main Karawal Nagar Road and on the one side of this Pulia is the road from Main Wazirabad Road to Karawal Nagar i.e. the road that is called Main Karawal Nagar Road. Taking into consideration the fact that they were together, from the deposition of PW5, it is apparent that they were on duty on Main Wazirabad Road and Main Karawal Nagar Road. As there was a huge mob on Chand Bagh Pulia, which as per PW5 had a strength of around 1000-1200, these two would not have been able to cross the Chand Bagh Pulia and reach the second part of the Karawal

Nagar Road beyond this Pulia. This fact is further established by the testimony of PW5 that at around 4.20-4.25 p.m., the mob succeeded in pushing them onto Main Wazirabad Road and being so pushed, they reached Bhajanpura Mazar on Main Wazirabad Road. So if at all, they would have reached Chand Bagh Pulia at around 5.00 p.m, as had been deposed by them, they would have only managed to reach the Chand Bagh Pulia but could not have crossed over to the other side because that would have required dispersing the huge mob which had occupied the Pulia and the road a little beyond the Pulia towards Karawal Nagar. Even otherwise, these witnesses had not deposed that they crossed the Chand Bagh Pulia to reach the other side and hence, in all probability, they would have remained near the Chand Bagh Pulia on the side wherefrom the body of Ankit Sharma was thrown. This being the case, they neither could have seen, beyond a crowd of thousands, the apprehension of Ankit Sharma and him being dragged towards them and the Chand Bagh Pulia, nor they could, in such pandemonium, have been able to see or hear Tahir Hussain beyond the mob of the thousands which was between them and Ankit Sharma and Tahir Hussain because both Ankit Sharma and Tahir Hussain were across Chand Bagh Pulia towards the place where the house of Tahir Hussain and Lakhpat School etc. were situated.

7.17.11 I accordingly find that in view of the considerable improvements made by these witnesses, their failure to explain these

improvements and the improbability of them having seen the incident, which formed a part of their improvements only, makes them unreliable witnesses.

7.17.12 The next witness is PW6 Pardeep Verma. He has deposed about the incident and has identified some of the accused but as far as the identity of accused Tahir Hussain, he has turned hostile and has not supported the case of the prosecution that Tahir Hussain was a part of this unlawful assembly or was instigating this assembly. In view of this fact, ld. counsel for accused Tahir Hussain has, during the course of arguments, claimed that the presence of PW6 Pradeep Verma was natural at the place of incident. In the light of his testimony, ld. counsel has tried to discredit the testimonies of PW11 and PW56 claiming that of these witnesses and PW6, it is only he who could have seen the incident.

7.17.13 Thus, evidently accused Tahir Hussain is relying upon PW6 Pradeep Verma as a truthful and natural witness.

7.17.14 I have carefully considered the testimony of this witness. Apparently, this witness almost completely supports the case of the prosecution and deposes substantially on the lines of his earlier statements u/s 161 Cr.P.C. and 164 Cr.P.C. However, when it comes to accused Tahir Hussain, he resiles from his earlier statements and either to attribute any role to him and to acknowledge his presence in the unlawful assembly.

7.17.15 As reproduced earlier, while narrating the incident, he deposed that he had identified six faces in the mob from the Muslim community, whose names were not known to him at that time and there was no one in the mob whom he knew by name. Thereafter, in response to a specific question, he answered that he knew that Tahir Hussain was a Municipal Councilor at the relevant time but denied having seen him in the said mob at any point of time. He then went on to state that at about 3.00 p.m., he felt that Tahir Hussain was near Chand Bagh Pulia, but he did not actually see him in the mob (*mujhe aisa laga tha ki wo wahan par hain lekin bheer mein maine nahi dekha tha*) When questioned as to why did he so feel, he answered that he had a glimpse in the crowd as if Tahir Hussain was present there but beyond that he was not fully confirmed. He then further stated that he had a glimpse of the upper half portion of Tahir Hussain from the back side and the side portion of his face. He however stated that he had not seen that person doing any particular act. Thus, even when he was categorically stating about having seen Tahir Hussain, although partially, he refrains from attributing any act to him.

7.17.16 Interestingly, he deposed that his statement u/s 164 Cr.P.C. had been recorded. The said statement was shown to him, he identified his signatures thereon, it was proved as Ex.PW6/A. In that statement, he had specifically assigned a role to Tahir Hussain by stating that Tahir Hussain was joining the mob off and on and, in

between, would return to his house. Significantly, while testifying in the court, he had deposed that he had stated the true facts in his statement u/s 164 Cr.P.C., and despite the statement having been shown to him, he did not object to or disown any part thereof.

7.17.18 The fact that the said statement was indeed made by this witness stands established not only from his own admission but also from the testimony of PW47 Sh. Rakesh Kumar Rampuri, the then learned Metropolitan Magistrate, who had recorded the statement. Notably, there was no challenge during the cross-examination of PW47 that PW6 had not made such a statement before him. As far as the questions regarding voluntariness and free will of PW6, as asked to PW47 are concerned, I find that they stand answered in view of the fact that the deposition of PW6 does not indicate any pressure or coercion upon him and on the contrary, his stand that he had stated true facts reflects a voluntary act.

7.17.19 At the same time, the manner in which this witness attempts to explain his earlier stand about seeing Tahir Hussain and his involvement, is glaringly a well thought and rehearsed plan to escape the pains of perjury. At one stage, he altogether denied having seen Tahir Hussain on that day. He thereafter stated that he merely felt as if Tahir Hussain was present. Subsequently, during his cross-examination by Ld. SPP he stated that he had a glimpse of the upper half portion of Tahir Hussain from the back side, including the side

portion of his face. This assertion of his that he had seen the side portion of Tahir Hussain's face was independent and categorical. Significantly, this part of his testimony remained unchallenged in cross-examination, and no clarification whatsoever was sought by the defence.

7.17.20 If the testimony of PW6 is wholistically seen, it is evident that he supports the prosecution case almost in its entirety, except insofar as it concerns the role of accused Tahir Hussain. This, coupled with his feeble and unconvincing attempt to distance himself from his earlier statements implicating Tahir Hussain, leads to an inference that he had been won over by accused Tahir Hussain.

7.17.21 Moreover, the prosecution, during his cross-examination, was able to extract from him that he had seen side view/profile of Tahir Hussain's face. It is now the appropriate stage to have look at his statement u/s 164 Cr.P.C. which stands proved on record as Ex. PW6/A and has been admitted by him to be his true statement. In this statement he was categorical about the fact that Tahir Hussain was a member of this unlawful assembly. Therefore, his statement recorded under Section 164 Cr.P.C. corroborates his deposition where he deposed that he had seen Tahir Hussain, albeit only his side profile.

7.17.22 I am further of the opinion that once this witness had admitted that Ex.PW6/A was his statement u/s 164 Cr.P.C. and that it

was a true statement, in view the fact that it is apparent that he had been won over by the accused, this statement can be relied upon by the court. The testimony of the Ld. magistrate who had recorded this statement further enhances its credibility. For this opinion, I derive strength from the judgement of Hon'ble Supreme Court in Vijay Singh and Another v State of Uttarakhand, 2024 SCC OnLine SC3510 where it was held:

28. Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence. Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. For, even if a witness has retracted from a statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, the reasons stated by the witness for retracting from the statement etc. Ultimately, what counts is whether the Court believes a statement to be true, and the ultimate test of reliability happens during

the trial upon a calculated balancing of conflicting versions in light of the other evidence on record.

29. In the present case, the statements of PW-3 and PW-4 were recorded by the Judicial Magistrate on 09.10.2003 i.e. almost 25 days after the incident. Thus, their statements were recorded after the passage of a considerable time and could not be termed as hasty statements as there was sufficient cooling period for the witnesses to think over and contemplate the consequences of their statements. During this entire period, both PW-3 and PW-4 remained with their family and it is not their case that they were kept under influence or were tutored during this period. Pertinently, PW-1 has also deposed that on certain occasions, PW-3 had accompanied the deceased Devaki to her maternal home, which indicates that PW-3 had a sense of attachment with the deceased and the same could have been the reason for giving a statement against her own brother and mother. In fact, the retraction of these statements by PW-3 and PW-4 before the Court appears to be a result of tutoring and manipulation as the said witnesses could have easily been won over by their family members during the intervening period. Furthermore, the witnesses have admitted that the statements were signed by them and there is no suggestion to the effect that the witnesses could not have understood the statements. The statements have been certified by the concerned Magistrate to the effect that they have been read by the witnesses and their consequences have been explained to the witnesses.

30. PW-3 and PW-4 have deposed that they were under threat from the concerned Investigating Officer who was present along with them before the Magistrate. The concerned Investigating Officer has been examined as PW-8 in the present case and during his examination, there is not even a suggestion from the appellants to the effect that he was present along with PW-3 and PW-4 at the time of recording their statement under Section 164 or to the effect that he had threatened them to give incriminating statements against the appellants. Furthermore, the concerned Magistrate could have been examined as a witness in the present matter to clear the controversy on this aspect and for unexplained reasons, he was never called for examination especially when a completely hostile version was being provided by the witnesses qua the proceedings which were conducted before him. The appellants failed to place any material on record to justify the allegation of threat

and as discussed above, the statements of PW-3 and PW-4 recorded under Section 164 CrPC reflected the correct version of the events that transpired on the fateful day.

31. Having said so, we deem it fit to observe that a statement under Section 164 CrPC cannot be discarded at the drop of a hat and on a mere statement of the witness that it was not recorded correctly. For, a judicial satisfaction of the Magistrate, to the effect that the statement being recorded is the correct version of the facts stated by the witness, forms part of every such statement and a higher burden must be placed upon the witness to retract from the same. To permit retraction by a witness from a signed statement recorded before the Magistrate on flimsy grounds or on mere assertions would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate. In the present matter, there is no reasonable ground to reject the statements recorded under Section 164 CrPC and reliance has correctly been placed upon the said statements by the courts below.

7.17.23 Present case of the prosecution stands on a much better footing than Vijay Singh(supra). As against that case, the witness in this case has neither resiled from his statement, nor has he alleged it to have been made involuntarily. Contrary to it he has owned it up as his truthful statement. Hence, I have all the more reason to rely upon this statement. It is also to be observed that once the witness admitted this statement to be his truthful statement, it was open for the defence to cross examine him and discredit this statement. However, no such effort was made by the defence.

7.17.24 Hence, this witness has placed accused Tahir Hussain in the unlawful assembly on 25.02.2020 at around 5.00 p.m at Chand Bagh Pulia.

7.17.25 While we are at it, it will be apt to deal with the contentions and stand of other accused with regard to the credibility of this witness. It is necessary to do so because if the other accused succeeded in denting the credibility of this witness, no part of his testimony despite their being no challenge on behalf of Tahir Hussain, can be used even against him. The sum and substance of the contentions of other accused as far as this witness is concerned are:

(a) that he is a chance witness (accused Muntazim @ Musa)

(b) he is a stock witness as he has been cited witness in FIR numbers 91/2020, 92/2020, 88/2020, 65/2020, 80/2020, 114/2020, 98/2020, 101/2020 and 116/2020 pertaining to Police Stations Dayalpur and Khajuri Khas. That in these cases, he gave contradictory statements which were crafted and confined to that particular case only. (accused Javed, Firoz, Anas)

(c) he is a partisan witness because he did not attribute any slogans to the Hindu mob and stated that he did not identify anyone in the Hindu mob (accused Firoz, Anas)

(d) he could not have observed the facts he deposed about because of a huge crowd, smoke from petrol bombs etc., and the time of incident being of dusk. Furthermore, he stated himself to be standing in front of Gali no. 6. The site plan Ex.PW79/1 reflects his position at point D which is beyond a huge number of people as have been shown by small circles in site plan, (accused Firoz, Anas)

(e) his conduct is unnatural as no ordinary person would stand for six long hours between two clashing mobs which were constantly pelting stones and hurling petrol bombs (accused Firoz, Anas)

(f) during his deposition, he had contradicted himself. (accused Firoz)

7.17.26 Before taking up these contentions, I find it interesting to note that as per one set of accused, PW6 is one of the most natural witness who could have clearly seen this incident whereas, to some other accused, he not only is a chance and partisan, but he could not have been in a position to see anything during this incident. Be that as it may, as arguments have been advanced, it is my duty to answer those.

7.17.27 The argument that he is a chance witness [point (a) above] has been raised but is not supported by any reasoning. He is the person who was running a parking lot which, as observed by me during the scene of crime inspection, was hardly at a distance of around 20 meters approximately from Chand Bagh Pulia. Although the said parking had been set afire on the previous day, he still had every reason to be in and around the area. Therefore, in the natural course of things, his presence at that place and during the period he states that he was present, would be more probable than not. Hence, unless the defence during the trial demonstrated any special circumstances which on that particular day would make his presence

unnatural, there would be no substance in the argument that PW6 was a chance witness. The defence has failed to prove or even put forward any such special circumstances.

7.17.28 It is also contended that the again by chance meeting between the IO and this witness happens when on 11.03.2020 IO was investigating about this case and this witness meets him by chance. The next chance meeting is stated to be that he meets the IO on 30.03.2020 when IO brings accused Nazim and Kasim at the scene of crime and then by chance he meets the IO when he identifies the photograph of Mutazim@ Musa.

7.17.29 I have considered these submissions as well, but I do not find any merit in them for a very simple reason. As observed earlier, the scene of crime was situated in close proximity to the place of business of the witness. In such circumstances, it would be neither unusual nor unnatural for him to notice the Investigating Officer conducting the investigation. It is, therefore, entirely probable that the attention of the witness, who was naturally present in the vicinity owing to the location of his business, would have been drawn towards the Investigating Officer carrying out the investigation. Consequently, on this aspect, I do not find any basis to characterize him as a chance witness.

7.17.30 It is also contended that being a stock witness [point (b)

above] of the police, he had been cited as a witness in many cases related to the riots, and in all these cases, he had given contradictory statements. It was countered by Id. SPP by contending that before the riots of 2020, this witness had never ever been cited by the police as a witness and apart from riot cases, he has not been cited as a witness in any case registered subsequently and hence, he cannot be said to be a stock witness of the police.

7.17.31 I have considered the rival contentions. The basis of the claim that this witness is a stock witness is, that he had been cited as a witness in many riots cases. However, in my considered opinion, he is not a stock witness but a stamped witness. I so hold because he was running a parking lot which had been burnt down by the rioters on 24.02.2020 and he thus suffered injury to his property. This parking lot was situated near the place of incident and as discussed earlier, he would have naturally been present in the area on the day of incident.

7.17.32 I have also carefully perused the testimonies given by this witness in various other cases, as have been placed on record on behalf of accused Javed. What emerges from these testimonies is, that all these cases pertained to 24.02.2020 and 25.02.2020 and are of the area around his parking and Chand Bagh Pulia. Therefore, a person who has been a victim of riot and whose presence would be natural at the place where incident had happened, would if he comes forward, be necessarily cited as a witness in multiple cases of riots which had

happened in this area during the same duration. Hence, unless it was shown that even prior to being cited as a witness in riot cases, he was a regular witness for the police, the defence cannot even allege that he was a stock witness.

7.17.33 Furthermore, it has been contended that there are inconsistencies in his testimonies in the cases in which he appeared as a witness. However, apart from minor variations, which are natural, I do not find any significant departure or contradiction between his testimonies inter-se, as had been given in various cases. There also been a contention that in each case he has deposed about the incident of that case only and this reflects that his testimony had been carefully tutored to him for that specific case only because had he been a natural witness, he would have narrated all the incidents that had been seen by him in all the cases. However, a perusal of the certified copies of the testimonies reflect that the tone and tenor of his testimonies about the general incidents that had happened was more or less and to a large extent consistent and thereafter, he had deposed particularly about the incident which was the subject matter of the case in which he had come to depose. This is exactly consistent with the process adopted in courts as has been my experience in last 20 years. A witness, who comes to depose in a a court, is only required to depose the facts relevant to the case wherein he/she is deposing and is asked to confine his statement to the particular incident about which he/ she

appears in court to depose about. The exception could only be where a general background of the incident is provided or where the facts which would otherwise be irrelevant are so interwoven with relevant facts that in their absence, the deposition would lose its meaning. My view is fortified by the testimony of this witness in FIR No. 114/20 which is related to an incident dated 25.02.2020. During his examination in chief in that case, he did not depose about this incident and more or less confined his testimony to the facts relevant to that case. However, during cross-examination by Sh. Mehmood Pracha, he deposed that he had identified Ankit Sharma in the mob of persons from Hindu community, and thus a reference to deceased Ankit Sharma could only come on being specifically asked.

7.17.34 It has next been contended that he is a partisan witness [point (c) above] and thus unreliable. The reason to so contend is that this witness when asked about the Hindu mob he stated that this mob was not raising any slogans and that he did not identify anyone in this mob. However, in my considered opinion these facts are not sufficient to hold that the witness is partisan and bring his deposition in doubt. The fact that he does not make any imputations against his own community may lead to a conclusion that he wants to save the members of his community. It however cannot be deduced that because he wants to save the members of his community, he would conversely, irrespective of truth, be interested in having punishment

being handed down to the members of the other community. Evidence suggests to the contrary. Certified copy of the testimony of this witness in FIR No. 116/20 of PS Khajuri Khas has been filed on behalf of accused Javed. This FIR related to arson at his own parking lot. However, he did not support the case of the prosecution and did not identify any of the accused in his own case. Had he been actuated by community feelings, he would not have done so as all the accused in that case also were Muslims. Even otherwise, it has now been well settled that deposition of a witness cannot be discarded merely on the ground that he is an interested or as claimed in this case, a partisan witness. The only word of caution is that such evidence has to be evaluated carefully **{Masalti(supra) para 14}**.

7.17.35 Then there is the contention that because of a huge crowd, smoke from petrol bombs etc. and it being dusk ([point (d) above], he could not have observed the facts that he had deposed about. No doubt, petrol bombs were being hurled and there was arson and it would have resulted in smoke, but the question is, how much smoke was generated? Was it of the level that it could have created a cloud of smoke or a smokescreen which would reduce the visibility or, was it that the smoke was of the level which could not have had much effect upon visibility? I have no way of knowing it because no questions were asked from any witness to establish the level or amount of smoke that was generated wherefrom the level of visibility on that day and at

that time could be inferred. With regard to contention that dusk could have reduced the visibility, I find that at 05.30 p.m in February in Delhi, the visibility is perfectly fine. This brings me to the contention that the witness could not have seen anything because he was behind a large crowd and to establish this, the reliance is placed upon site plan, Ex.PW79/1. It is argued that the witness is shown to be standing behind a large crowd as is depicted by many small circles drawn in front of his position at point D in this site plan. I find this contention to be completely presumptuous in nature because the IO was never asked what this circles represented and the ld. counsel for accused merely presumed that the circles, which had been drawn in front of and around the position of this witness, depicted humans. Not only was the IO, who prepared this site plan, not asked what these circles depicted but even during arguments, no basis for contending that these circles represented humans was provided. On the contrary, one look at the site plan, and the explanation of these circles as given by ld. SPP is found to be completely convincing because had it been humans, these circles would have spread entirely upto Chand Bagh Pulia and beyond. However, there is not even a single circle around Chand Bagh Pulia where the witnesses have deposed, and to which there has been no contest from the defence, there were hundreds of people. I accordingly find that this contention is not based on facts but is a product of fertile imagination.

7.17.36 Then there is a contention that it is not natural that for six long hours [point (e) above], a person would stand at a place where there was a continuous rioting and stone pelting. Therefore, his conduct is unnatural and he is unreliable. I do not find much force in this contention because human bodies and minds act and react differently in the same situation. At the same time, it was his area where the riot was going on and he had also deposed that he was not static at one place.

7.17.37 It has been contended on behalf of accused Firoz that there have been internal contradictions in his own testimony [point (f) above] which makes him an unreliable witness. It is contended that during his examination in chief, he had deposed that on 30.03.2020 when inquiry was being made by Amlesh, there was no person known to him in the public which had assembled whereas during his cross-examination on 23.08.2023, he deposed that on 30.03.2020 he knew a person namely Bharat @ Kalu who had come up to Insp. Amleshwar on 30.03.2020 and further during his cross-examination, he deposed that the documents, signed by him on 30.03.2020, were also signed by Bharat. He further deposed that during his examination in chief that he did not remember if any documents were prepared by Amlesh at Chand Bagh Pulia on 30.03.2020, whereas during his cross-examination by Id. SPP, he deposed that on that day, Insp. Amleshwar typed document, brought it to him and obtained his signatures

informing him that the said document was in respect of identification of Nazim and Kasim. That in his examination in chief, he had stated that he had gone through the statement which was recorded by the police whereas during his cross examination done by Sh. Pracha, he stated that he did not remember if police had shown him his statement after recording it.

7.17.38 In my considered opinion, by no stretch of imagination, these can be said to be contradictions. These are minor variations which otherwise are unconnected to the substance of the testimony of this witness and hence, cannot be used as a test to check the veracity of this witness.

7.17.39 However, on the material aspect of his testimony, Id. counsel for accused has sought to contradict him on the basis of testimony of PW19. It is contended that PW19 in his examination in chief had stated that there was a huge mob in front of his shop and he (referring to the deceased), himself entered the mob whereas, this witness (PW6) deposed that the mob had pulled him from near a tree. It is therefore, contended that both these versions are materially contradictory and strike at the root of the prosecution story which renders the testimonies of both these witnesses unreliable.

7.17.40 I have considered this submission also and I find that the no deposition as attributed to PW6 by Id. counsel for accused was

made by him. He had nowhere stated that the deceased was pulled in the mob from near a tree. On the contrary, on how the deceased fell into the hands of the mob, he and PW19 are more or less corroborating each other. According to him, deceased came from the side of Hindu mob and approached the Muslim mob with his hands raised. The Muslim mob came forward. The deceased could not retract and was dragged in by the mob. He also talks about two other boys accompanying the deceased who managed to flee. The deposition of PW19 is also about the deceased walking towards the mob, him being accompanied by two boys who were egging him on, him entering the mob and being surrounded by the mob. Both these testimonies are more or less on the same lines and the differences which appear are natural because different person perceive the events differently. And with regard to the intent of the deceased, both the witnesses are merely speculating and thus, their testimonies to this extent have to be disregarded.

7.17.41 The next witness cited against accused Tahir Hussain is PW11 Deepak Pradhan. His testimony has been contested only by accused Tahir Hussain. It is submitted that during his cross-examination, he admitted that till about 5/5:30 pm, he had remained inside the temple, situated in gali no. 5 and thereafter, he returned home. Therefore this witness from the place he was i.e. inside the temple could not have seen anything. By the further submission that

he had not deposed about the incident with Ankit Sharma, the intended argument appears to be that his testimony is irrelevant.

7.17.42 I have considered the testimony of this witness and evaluated the challenge mounted thereto.

7.17.43 His presence at the temple which is situated in gali no.5. Moooga Nagar has not been challenged by the defence, on the contrary it has been reinforced during his cross-examination. It is necessary to note here that the witness had nowhere stated that throughout, from the time he reached the temple, till he left for his home, he remained inside the temple. No attempt was made during his cross-examination to elicit this information from him. Here again, Ld counsel failed state the basis for his assumption but during oral arguments, on a query of court, he indicated that his contention is based on the part of the cross-examination of this witness where he stated that- “When I reached there and went inside the temple, I did not close the door for its protection.” It on the basis of this sentence that the Ld counsel wants to lead the court to believe that immediately on reaching the temple, the witness had gone inside the temple. Even if this sentence is read as a complete standalone statement, the inference attempted to be drawn by the Ld. counsel is not available. However, the situation is completely clarified by the context in with this statement was made by the witness. This statement came to be made after he had admitted that he had gone to the temple to protect it

and that two or three others were also present. Now, if the sentence is read in this context, it becomes amply clear that it was on response to the question that (as he gone to protect the temple) whether, after reaching there and going inside the temple, he had closed the temple door to protect it? Hence, the use of the word 'and' between the phrases 'reaching there' & 'went inside the temple' cannot be taken to mean that immediately on reaching the temple, the witness proceeded inside the temple. Hence, the creditworthiness of his testimony cannot be challenged on the ground that, being inside the temple, he had no vantage point. I further find that during the cross-examination of this witness, the accused has not been able to dent his credibility. Thus, at around 04.15 to about 5.30 p.m, this witness had placed accused Tahir Hussain in the unlawful assembly that had gathered at Chand Bagh Pulia. However, the assertion of this witness that Tahir Hussain was instigating the mob is conjecture and an estimation of the witness which does not have any evidentiary value.

7.17.44 Coming on to the testimonies of PW13 and PW14.

7.17.45 The primary challenge to the testimonies of PW13 and PW14 is, that they are chance witnesses, who were discovered by the IO by chance and who identified the accused by chance. The defence, in order to consolidate its arguments, has relied upon the judgments of Hon'ble Supreme Court in Puran (supra) and Suresh (supra) and further has relied upon the judgment of Hon'ble Supreme Court in

Baby (supra).

7.17.46 On the other hand, Id. SPP has contested this claim and contended that the concept of chance witness is alien to Indian jurisprudence. A witness is a witness and there is no concept of chance witness. He has further contended that both these witnesses had categorically stated that they were going beyond Chand Bagh Pulia for their personal work and therefore, they had explained the reason for being at that place. He has contended that in case of a murder at a road, a passer-by would be a natural witness and not a chance witness. In this regard, he has placed reliance about the judgment of Hon'ble High Court of Delhi in **Rajesh (supra).**

7.17.47 I have considered the rival submissions and in order to decide this issue, the first question which needs to be considered is whether the presence of these witnesses at that place is ex-facie unnatural, or whether the reason provided by them for being present there is prima-facie improbable?

7.17.48 It is only if the answer to these questions comes in affirmative that witnesses would be accepted as chance witnesses, and only then it would have been incumbent upon the prosecution to further satisfactorily account for their presence at the place of incident as observed by Hon'ble Supreme Court in **Baby (supra).** Otherwise, it would be upon the defence to demonstrate through the cross-examination of the witnesses that their presence at that place was

unnatural and they could not satisfactorily, despite being given an opportunity, account for their presence.

7.17.49 On this issue, PW13 in his examination in chief deposed that on 25.02.2020 at around 4.30 p.m, due to his personal work, he along with his brother Bharat was present at Chand Bagh Pulia in front of Noora Masjid. They were present near an iron gate at Chand Bagh Pulia on a nala road. At that time, the bigger gate was closed and the smaller was open. On the other hand, PW14 deposed that on 25.02.2020 at around 4-4.30 p.m, he along with his brother Akash was going to fetch some articles from a place beyond Chand Bagh Pulia. However, they could not reach that place and due to the presence of the mob, remained around an iron gate on Chand Bagh Pulia.

7.17.50 The incident in question had happened on a public road and during the afternoon/ evening hours of the day. Therefore, if a person states that he was passing by and happened to see the incident, he cannot be said to be a chance witness because a passer-by could be said to be a natural witness to the incident which had happened in broad day light and on a public road. Hence, their presence is not found to be prima-facie improbable. A similar observation was made by Hon'ble Supreme Court in Raju v. State of Maharashtra, MANU/SC/0814/1998 wherein it was observed:

in absence of anything elicited in the cross-examination to indicate that these two witnesses were interested in the prosecution of the appellants, we are in agreement with the above quoted observation

of the High Court. The other criticism levelled by the trial court that they were chance witnesses is also wholly unmerited for in respect of the incident that takes place at a public road, the passer-by would be the best witness. We have, therefore, no hesitation in concluding that the claim of above two witnesses that they had seen the incident cannot be disputed at all.

7.17.51 Further guidance can be taken from the judgment of Hon'ble Supreme court in Rana Pratap & Ors. v. State of Haryana, AIR 1983 SC 680, wherein it was held:

3. There were three eyewitnesses. One was the brother of the deceased and the other two were a milk vendor of a neighbouring village, who was carrying milk to the dairy and a vegetable and fruit hawker, who was pushing his laden cart along the road. The learned Sessions Judge and the learned counsel described both the independent witnesses as "chance witnesses" implying thereby that their evidence was suspicious and their presence at the scene doubtful. We do not understand the expression "chance witnesses". Murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed on a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witnesses" is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are "chance witnesses", even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence.

7.17.52 Therefore, on the face of it and in the natural course of things, merely because they were the passers-by, that too at a place not

far away from their house, these witnesses cannot be termed as chance witnesses to strike at their credibility. At the same time, it is to be noticed that the reason for their presence at that place has been provided by these witnesses in their examination in chief.

7.17.53 It has however been contended on behalf of the accused, that because of on going riots, there was no reason for these witnesses to venture out, and that they were also required to provide the route which they had taken to reach this place from their house or place of work.

7.17.54 Why they had ventured out of their house and the work for which they had ventured out, could have been disclosed only by them. The route which was taken by them could also have been disclosed by them alone. However, during their cross-examination, no attempt was made by the defence to elicit this information from the witnesses. When despite having an opportunity to elicit this information during the cross-examination of these witnesses, the defence failed to do so; it cannot now use the absence of this information to paint the witnesses as chance witnesses and then claim, that they had not been able to satisfactorily account for their presence at the place of incident. On the contrary, it appears that the defence had chosen not to ask these questions. It can be illustrated from the fact that when PW14 during his cross-examination, on being specifically asked to state the reason for his presence at Karawal

Nagar Road on 09.04.2020, stated that it was due to some personal work that he was there; he was repeatedly asked to disclose the nature of his work that would require him to be at that place.

7.17.55 It has next been contended that till, 11/03/2020, these witnesses neither called the PCR, nor personally informed the police. This conduct of witnesses despite having a cart near two police stations is highly unnatural and this reflects that they were tutored and planted in this case. I do not find much force in this contention because there is no universally accepted and standard conduct or reaction which all humans should have in a given situation. On the contrary, it is universally accepted that each individual reacts differently. Even PW19, who has been accepted as truthful witness by defence, for his testimony remained unchallenged, did not call the PCR or voluntarily approach the police to offer the information he had. Thus, this cannot even be a ground to challenge their credibility.

7.17.56 It has further been contended that the purpose of IO's visit at Karawal Nagar Road on 11.03.2020 was the identification of the accused through their photographs. These photographs were shown to Pradeep Verma as is visible from his statement u/s 161 Cr.P.C. However, despite examining PW13 and PW14 on the same day, the IO did not show any photographs to these witnesses. This portrays that these witnesses were not examined on 11.03.2020, but were subsequently planted.

7.17.57 I have considered this submission. It is correct that on 11.03.2020, the IO had shown certain photographs to Pradeep Verma and had not shown those photographs or any photograph to these witnesses. However, why he did not do so was for the IO to answer who, during his cross-examination, was never asked to explain the reason for not doing so. It was not even suggested to him that he did not do so because on that day, these witnesses were not available and they were planted later on. So the assertion that the photographs were not shown to PW13 and PW14 because they were not available on 11.03.2020 and were planted later on, in absence of an explanation being sought from the IO (PW79), would merely be a speculative guess unless, it is the only inference that can be drawn from this circumstance. However, there could be many other reasons for the IO not showing any photographs to these witnesses. It could also be speculated that photographs might have been shown to these witnesses but the IO did not make it a part of their statements u/s 161 Cr.P.C, because they did not identify any of the persons whose photographs were shown by the IO on that day and this speculation would also have a basis because none of the persons, whose photographs were identified by PW6 on that day, were identified by these two witnesses as the members of the unlawful assembly. Hence, it is clear that the inference sought to be drawn by ld. counsels for accused is not the only inference that can be drawn from this circumstance. Even

otherwise, inferences are to be drawn where direct answers are either not available, or the answers available are insufficient to form a definitive conclusion. This is not the case here because the answers, if the defence so wanted, could have been sought from PW 79 during his cross-examination. Therefore, it is not now not open to the defence to draw such inference and hope that the court will accept it.

7.17.58 It was also contended that PW13 and PW14 were positioned around the same place where PW19 was positioned. However, it is only PW19 who gives a vivid description of the incident including the manner in which the body was thrown in the nala, a fact which was not known to the police. The narration of PW13 and PW14 was limited to the events which were already in the knowledge of the investigating agency i.e. the killing and dragging of Ankit Sharma and throwing the body from the other side of Chand Bagh Pulia.

7.17.59 I have considered this submission which was probably made to indicate that these witnesses, being planted witnesses, only had that much knowledge as was available to the police and had they seen the incident, their narration of events would have been as detailed as that of PW19.

7.17.60 It has to be kept in mind that prior to examining of PW13 and PW14 the IO, through PW19, had the entire picture of how, when and where was it that Ankit Sharma was murdered. Therefore, if these

witnesses had been tutored and planted, nothing stopped the police from keeping their narration of events as close as possible – if not exact, to the narration of PW19.

7.17.61 The credibility of both PW13 and PW14 has also been challenged because their testimonies in the court lack the vividness and the minute details of the gruesome incident which have been provided by PW19. However, one cannot lose sight of the fact that every individual has a different power or capability to perceive, absorb, retain and reproduce the events of what has been witnessed by him or her. An individual's IQ, physical and mental health, the functioning of sensory organs, age, and education etc. are few of the factors which will have a bearing on the ability of an individual to perceive, absorb, retain and reproduce the events seen by him/ her. Reliance is placed upon the judgment of Hon'ble Supreme Court in **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217** wherein it was held:

5.We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :
(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.
(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprised. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him — Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

7.17.62 In the present case, this big differentiator seems to be education. PW19 holds a masters in journalism and mass communication. Thus, by his education and training, he would, without much effort, absorb each minute detail of the incident. He was trained to reproduce and reproduce vividly so that his readers or audience, as the case may be, could have a picture so clear of the event

as if they themselves had seen it, and hence his graphic narrative makes this murder comes alive before our eyes.

7.17.63 PW13, on the other hand, is only 9th pass and thus, merely has had a basic education. When compared to PW19, his depiction of the events misses a lot of details. His narration also lacks the flow which is available in the narration of PW19. However, when compared to PW14 who is illiterate, his testimony is much more detailed. The testimony of PW14 is more sketchy than that of PW13 and PW14 only provides the major details and events.

7.17.64 Hence, it is apparent that of the three, the most educated and with a specific kind of education had narrated the incident in most detail and the uneducated has provided the least details but has given the major event. Therefore, in my considered opinion, merely because the narration of PW13 seems sketchy compared to PW19 and that of PW14 seems sketchy as compared to PW13, it cannot be said that this is because of the fact that PW13 and PW14 had not seen the incident or that they had been planted as witnesses. At the pain of repetition, I observe that had they been planted and tutored, they would have parroted as close as possible to the deposition of PW19.

7.17.65 Another contention to portray that these witnesses were planted witnesses is that the IO never attempted to check the veracity of these witnesses by taking them to the location wherefrom they had purportedly witnessed the incident and he mysteriously came to know

about their position and marked it in the site plan. It is correct that as per these witnesses, they had never taken the IO to Chand Bagh Pulia, however, their position had been detailed by them in their testimonies. It is also correct that the right approach for the IO would have been to have the witnesses show him their position and then mark it on the site plan, however, apparently the IO marked it in the site plan on the basis of their narration of their position. Be that as it may, it is now well settled that an irregularity in investigation conducted by the IO is in no manner a reflection upon the veracity of a witness.

7.17.66 It has further been contended that as per PW13 the incident of burning of Bunny Bakery and killing Ankit Sharma occurred in close succession whereas as per PW19, burning of his bakery and incident of killing of Ankit Sharma were neither simultaneous, nor in close succession.

7.17.67 I have carefully considered both the testimonies and I find that as per the testimony of PW19, it was somewhere around 4 to 5.30 that the mob started looting his bakery shop which was on fire and thereafter, he narrates about Ankit Sharma approaching the mob, being dragged in and killed around this time only. Therefore, this witness also states in continuity about bakery being set on fire and Ankit Sharma's killing. However, his testimony that mob was looting his bakery which was on fire indicates, that fire might have started during this time only because had the fire been started much earlier, it would

have been too ferocious making impossible to enter the shop. On the other hand, PW13 also does not say that these events had happened in quick succession. He states that after setting the bakery on fire , the mob started setting fire to other shops and then proceeded towards Sherpur Chowk and it is thereafter that he states about Ankit Sharma being caught by the mob. Therefore, even though he speaks about these events in continuity, but by nature of the events, it is apparent that they would not have happened in very close proximity. Therefore, I do not find any contradictions between the testimony of PW19 and PW13 and on the contrary, I find that their narration, with the variance in the style of narration, is more or less on the same lines.

7.17.68 It has also been contended that PW13 and PW14 could not have seen the body of Ankit Sharma being thrown into nala from the side opposite to which they were standing. It was contended that the height of the wall of the nala was such that they could not have been able to see it.

7.17.69 First of all, the witnesses were not questioned on these lines and no suggestions were given on these lines. Second of all, during the scene of crime inspection, I had found that while standing inside the gate of the street, where the witnesses were standing, one could have seen what was happening upon the wall of the nala on the other side. Even otherwise, there were vents in that wall which were big enough to give a clear vision of what was happening across the

nala.

7.17.70 Another contention that had been raised was that these witnesses had claimed that the iron gate at the end of the street besides the nala was open, whereas PW19 had deposed that the iron gate was closed. In the light of these facts, it was argued that these witnesses were not present at the time of the incident and therefore, they wrongly stated about the iron gate.

7.17.71 I have considered this submission and I find that in fact, there is no contradiction on this account between the statement of PW19 and those of PW13 and PW14. PW13 had stated that at the time of incident, they were present near an iron gate at the Chand Bagh Pulia on nala road. He spoke about the bigger gate being closed and the smaller gate being open at that time. On the other hand, PW19 during his cross-examination admitted that the iron gate had been closed since the time the riots had started. Interestingly, despite being fully aware of the testimony of PW13 wherein he had talked about a smaller gate within the big gate, ld. counsel for accused during the cross-examination of PW19 did not seek to clarify whether PW19 was stating about bigger gate or the smaller gate within. During the scene of crime inspection, the fact, that there was a smaller gate within the bigger iron gate, was confirmed by me. Hence, not only does the argument advanced by the ld. counsel for the accused deserve no weight, but the fact that the witness specifically referred to the smaller

iron gate within the larger gate, lends credence to his testimony.

7.17.72 It has further been contended that there are inter-se contradictions between the testimonies of PW13 and PW14 which make them unreliable witnesses. These as per the accused are: that PW13 speaks about the bakery being set ablaze and PW14 is silent about this significant event; PW13 deposes to have seen the entire sequence of events from Ankit Sharma being taken by mob to being dragged to Chand Bagh Pulia and being assaulted. Whereas PW14 states that when they reached Chand Bagh Pulia, they saw mob already assaulting a boy; according to PW13 when the boy was being dragged to Chand Bagh Pulia he and PW14 stepped inside the gate and closed it whereas according to PW14, when the boy was being dragged, they stayed near the place of incident and entered the gate only when the deceased was being thrown in the nala from the opposite side.

7.17.73 I have considered this contention and on the face of it, the alleged contradictions, as have been reproduced above, are variations which do not strike at the root of the testimonies of these witnesses so as to shake their credibility. Nevertheless, if these variations had been absent from their statements, the argument of the defence would have been that the extraordinary similarity in their statements being unnatural was a result of tutoring, reflecting that they were planted witnesses. As discussed earlier, both these witnesses have different

capabilities to perceive, retain and reproduce, and hence, these variations have a reasonable explanation. [**Bharwada (supra)**]

7.17.74 However, there is the question of a material improvement made by PW13 when he stated that Tahir Hussain was having a knife in his hand and had physically attacked Ankit Sharma. This indeed is a significant improvement made by this witness as neither the prosecution had attributed any such role to Tahir Hussain nor had this witness ever stated so in any of his previous statements. It is insisted by the defence that this material improvement is a falsehood on the face of it and this erodes the credibility of this witness.

7.17.75 It is not unknown that witnesses are prone to embellishments and sometimes in order to sound convincing, they resort to embroidering their statements and such embroidery can even extend to an outright false statement. However, their entire statements cannot be completely disregarded because of such falsehood [**Gangadhar Behera (supra)**]. The maxim *falsus in uno, falsus in omnibus* has on application India as falsehood on a particular point will not ruin the entire testimony from beginning to end. [**Suchha Singh supra and Lehna v State of Haryana (1971) 3 SCC 277.**]

7.17.76 Therefore, to me it appears to be an over zealous attempt by the witness to sound more convincing because in his cross-examination, he admitted that he had not stated this fact before the police. I also find that his statement in court about exhortations by

Tahir Hussain is also substantially different from his statement u/s 161 Cr.P.C. In the statement u/s 161 Cr.P.C, the exhortations attributed to Tahir Hussain was: '*Hinduo ne humare kai Muslim bhaiyo ko maar diya hai or humare bhaiyo ke ghar jala diye hai aaj koi kafir bachna nahi chahiye.*' However, while appearing as PW13, he stated that the instigation to the mob was provided by Tahir Hussain by stating: '*Hinduo ne tumhare ghar loote, hinduo ne tumhari dukan looti or jalai. Hinduo ne tumhari behan beti ki ijrat looti. Un kafiro ko sabka sikhana hai.*' Hence, both these exhortations are materially different. On the contrary as per PW14, the only exhortation by Tahir Hussain was that he was shouting – '*maaro, maaro*'. It could be argued that this has so happened because it is more difficult to remember the words spoken. However, a complete dissimilarity cannot be justified by this argument. Therefore, because of these variant versions, it would be difficult to accept the testimonies of these witnesses about the exact words used by accused Tahir Hussain to instigate the crowd.

7.17.77 Therefore, I am of the considered opinion that despite their sustained cross-examination, the defence has failed to bring forth any material contradictions in the testimonies of these witnesses that would shake the credibility of their account of the murder of Ankit Sharma and the surrounding events. Added to it is the fact that their testimonies are largely corroborated by PW6 and PW19.

7.17.78 However, when it comes to believing that by virtue of

coincidence these witnesses would be near the scene of crime on the same days and at the exact at same time when the IO would bring accused Sameer, Nazim and Kasim for spot identification, I find it too serendipitous. I am further wary of accepting these parts of their testimonies because on the days when they claimed to have met the IO near Chand Bagh Pulia i.e. 30.03.2020 and 09.04.2020 a strict lock down was in place, and it makes there presence highly improbable. Even when they were asked about COVID restrictions being in place, instead of explaining that how despite these restrictions they were on open streets, they stated that they had no remembrance whether on those two days, these restrictions were in place or not. Furthermore, PW13 was specifically asked for his reason of being at the place where he met the IO and he stated that he had been there because of some personal work. However, despite being repeatedly asked what this personal work was, he evaded to provide an answer and thus, as far as the identification of accused Sameer by PW13 on 09.04.2020 and of accused Nazim and Kasim by PW14 on 30.03.2020 are concerned; I will be wary of accepting their testimonies.

7.17.79 This brings me to the testimony of PW56. The presence of this witness is established by PCR calls that had been made by her and the PCR forms has been exhibited as Ex.PW91/2 to Ex.PW91/4. There has been no challenge at least to the fact that she had made these calls. As per her deposition, on 25.02.2020, she was residing in

gali no 6, Moonga Nagar, Karawal Nagar Road, Delhi. On that day, she had visited the corner of her gali which opened on the Main Karawal Nagar Road. From that place, she had seen the rioting and the mob that indulged in rioting. Her deposition is to the effect that she had seen Tahir Hussain in the mob. As per her, apart from accused Tahir Hussain, she had also recognized one more person namely Tanvir in that mob.

7.17.80 Her testimony has been challenged on behalf of accused Tahir Hussain on the ground that she had deposed that during this time, she was present inside the gate of her gali no. 6, that gate was closed at that time and it has been established during the site visit (by the court), that from that position, the Pulia would not have been visible. It is therefore, contended that she is not a witness to the incident of murder or rioting at Chand Bagh Pulia as stated in her statement u/s 161 Cr.P.C. At the most, she is a witness to the general riot at Karawal Nagar Road on 25.02.2020. It is further contended that although she testified that she had seen Tahir near his house and that through his gestures, she could see that he was instigating the mob to move towards Dayalpur but no description of such gestures had been elicited and this statement of hers is mere conjecture. It is also contended that in her PCR calls, she had not named Tahir Hussain and thus, her allegations regarding presence of Tahir is an improved statement which is liable to be discarded. It is further contended that

her statement was recorded on 29.04.2020 and no explanation has been brought on record for this delay.

7.17.81 I have considered these contentions and carefully evaluated the testimony of PW56.

7.17.82 The fact that she is a witness to the riots of 25.02.2020 has not been challenged. What has been challenged is, as she was inside the gate of her gali, she could not have seen the Chand Bagh Pulia. It is contended that this fact was established during visit of the scene of crime by me. However it is to be noticed that witness had never stated in her examination in chief that she had witnessed this incident from inside the gate of gali no. 6. Her statement, that she had come up to the gate of her gali and then seen the incident, cannot be interpreted that when she had come up to the gate, she remained inside the gate. Her position near this gate, whether inside or outside the gate, was never clarified from her. It is also not her deposition that the gate of her gali was closed during all her visits, because she had stated that it was open and only on her last visit, she found it to be closed.

7.17.83 From the corner of the street where it joins the Main Karawal Nagar, Chand Bagh Pulia is very much visible. Even otherwise, the witness had not stated that she had seen accused Tahir Hussain at Chand Bagh Pulia. She had stated that she had seen him near his house which was near Chand Bagh Pulia. During the scene of crime inspection, I had observed that even if one stood inside the gate

of gali no. 6, the house of Tahir Hussain and Pradeep's parking were visible and one could see upto 5/10 meters before the starting point of Chand Bagh Pulia. It is this area wherein the rioting was going on and up to which the mob had spread and thus, the said mob, even from inside the gate, would be well within the vision of this witness and if Tahir Hussain was in the mob near his house, she could have very well seen him.

7.17.84 With regard to the contention that naming Tahir Hussain is an improvement made by this witness because in the PCR calls, she had not named Tahir Hussain as one of the rioters; I find that this is stretching the concept of improvements too far.

7.17.85 About the contention that the deposition of this witness that from the gestures of Tahir Hussain she could make out that he was instigating the mob is a mere conjecture; I find that unless the gestures of Tahir Hussain had been narrated by the witness so that the court from those gestures could form its own opinion; it would merely be the opinion of the witness and not a fact established.

7.17.86 As far as delay in recording her statement is concerned, I find that the delay on the part of the IO is no reflection on the credibility of the witness and the explanation was owed by the IO which the defence did not seek from him.

7.17.87 Before concluding I deem it appropriate to deal with another argument put forward on behalf of the accused Tahir Hussain.

It is contended that the conduct of accused Tahir Hussain reflects that rather than being involved in the riots, he was in fact a victim of the riots and was frantically calling the police control room for help. It is even reflected from the chargesheet that on 25/02/2020 from 3:55 PM to 4:31 PM, Tahir Hussain had made around six calls to the PCR. Prior to that on 24/02/2020 around 3:53 PM Tahir Hussain made a call to the PCR stating, '*caller ke ghar ki chhat par log chadh gaye hai aur pathrav kar rahe hain.*' The same information was again given by him to the PCR at 5:57 PM. It is also contended that the prosecution has relied upon the CDR of mobile phone belonging to Tahir Hussain. This record shows that on 25/02/2020 from 2:36 PM to 5:30 PM Tahir Hussain was continuously making calls to KP Singh of Delhi Police, several leaders of Aam Admi Party, correspondents of Indian Express, Nigam Parshad of Karawal Nagar and other persons. During the course of investigation, none of these persons, whose names were mentioned in the CDR relied upon by the prosecution was examined.

7.17.88 I have weighted this contention and I find that as far as the fact that Tahir Hussain had made these PCR calls is concerned, the same is proved from the record placed on the file by the prosecution. However, whether these PCR calls were made by the accused in earnest or as the news had already started circulating about his terrace being used by the rioters, this was a ploy to set up a defence for the future?

7.17.89 This could only have been established by the accused by leading evidence in defence and specifically by stepping in to the witness box as his intent would have been in his personal knowledge and his conduct could only have been explained and proved by him. However, he failed to do so and therefore merely on the basis of these PCR calls, I am unable to draw a presumption that these calls were made in earnest. With regard to the persons whom he had called on that day, the prosecution may not have examined those persons, but nothing stopped the accused from examining them as witnesses to demonstrate through them that he in fact was calling them for seeking their help and was not involved in any incident of which he is accused. As it is an outright defence, the duty to prove it was of the accused and the accused failed to do so.

7.17.90 The accused is also facing a charge u/s 153A r/w section 149 IPC. At this stage, it would be relevant to decide the question of sanction u/s 196 Cr.P.C. The prosecution to prove this sanction examined Sh. L.K. Gautam who deposed on 22.06.2020, he was working Deputy Secretary (Home) GNCT of Delhi. A proposal was received from Delhi police headquarters seeking sanction under section 196 Cr.P.C against accused Mohd. Tahir Hussain, Haseen, Nazim, Kasim, Sameer Khan, Anas, Firoz, Javed, Gulfam and Shoaib Khan. Along with it, copy of FIR, draft charge sheet, seizure memo, arrest memo, etc. and statements of witnesses were also received. The

proposal was sent to legal team and thereafter on 24/07/2020 and 11/09/2020, a request was sent to Delhi police seeking some documents and information. The requisitioned information and documents were received on 27/07/2020 and 22/09/2020. This additional material along with the material earlier received was again sent to the Legal team and a draft sanction order was also sent. After the vetting of the Legal branch, an office note was prepared and complete file with all materials, including the draft sanction order, was sent to the competent authority i.e. The Hon'ble LG of Government of NCT of Delhi. The file after his approval was received on 11/12/2020. Accordingly sanction order was prepared on 16/12/2020 and was signed by him. Thereafter, he conveyed the sanction to different agencies, including the office of Hon'ble LG, Commissioner of Police, DCP (Special Cell and HQ) Delhi police and Director of prosecution. He identified his signatures upon the sanction order at point X and it was exhibited as PW34/A.

7.17.91 During his cross-examination, he deposed that he had personally not prepared any notes, and there was no case where his office had prepared a note for denying the sanction. He was never summoned by the Hon'ble LG for any clarification. Apart from the disclosure statement of Haseen @ Mullaji, there was no evidence against him on the file which could connect him to this crime. He could not say how much time he had exactly spent on personally

reading the file and going through the material. He denied that the file was sent to Hon'ble LG in a mechanical manner and without application of mind. He further admitted that the format of sanction order in all cases of riots is similar. He denied that there was no due application of mind before granting the sanction or that the Sanctioning Authority had merely appended its signature on a pre prepared draft order.

7.17.92 A careful consideration of the testimony of witness reveals that along with the proposal the material required for independently appreciating a case for grant of sanction was sent. It is also revealed that additional information and documents were also sought, a fact which has not been challenged. Therefore, on the basis of mere suggestions that the sanction was granted without due application of mind, or that it was granted in mechanical manner, the defence cannot dent the credibility of this witness and the process of grant of sanction. Hence, I find that by virtue of Ex.PW34/A, sanction u/s 196 Cr.P.C against accused Mohd. Tahir Hussain, Haseen @ Mullaji@ Salman, Nazim, Kasim, Anas, Javed, Firoz, Sameer Khan, Gulfam and Shoaib Alam @ Bobby stands proved.

7.17.93 There is also a charge against this accused u/s 188 IPC for violating the prohibitory order u/s 144 Cr.P.C.

7.17.94 In order to prove the prohibitory order, prosecution examined PW8 ASI Naresh Pal from Record Branch, North East Distt.

7.17.95 He had brought the office record of the original order u/s 144 Cr.P.C, passed by the then DCP (NE) Sh. Ved Prakash Surya. He deposed that as he had worked with Sh. Surya and had seen him signing and writing in the course of his official duty, he could identify his signatures. He identified the signatures of Sh. Surya at point X. The order u/s 144 Cr.P.C was exhibited as PW8/A (OSR). He had also brought the office record of complaint u/s 195 Cr.P.C dated 07.10.2022 against accused Mohd. Tahir Hussain, Haseen @ Mullaji@ Salman, Nazim, Kasim, Anas, Javed, Firoz, Sameer Khan, Gulfam, Shoaib Alam @ Bobby and Mutazim @ Musa pertaining to this FIR. He recognized the signature of Sh. Sanjay Kumar Sain, the then DCP (NE) upon the complaint u/s 195 Cr.P.C at point X and the complaint was exhibited as PW8/B.

7.17.96 During his cross-examination, he deposed that he had worked under Sh. Ved Prakash Surya from June 2020 to February 2021 and with Sh. Sanjay Kumar Sain from February 2021 to February 2023. He did not know about any register being maintained in the office of DCP regarding the issuance of order u/s 144 Cr.P.C. he came to know about this order in the evening of 24.02.2020 through news. On being asked whether there is any record in his department or in his knowledge to reflect that this order was signed on 24.02.2020, he answered that the dispatch record is maintained in HAX Branch which can show that the order was signed on 24.02.2020. He had not

maintained any record in HAX Branch. The order was not signed in his presence. He did not have any conversation with Sh. Sain with regard to this complaint. He denied that he was deposing falsely on behalf of his senior officers.

7.17.97 PW7 Ct. Pawan Kumar deposed that on 24.02.2020, the duty officer of the police station and the Reader to the SHO informed him that section 144 Cr.P.C had been invoked in the area. He was instructed to make announcement of section 144 Cr.P.C imposition in the area. He collected a loud hailer from malkhana, thereafter, went to Chand Bagh Mazar, Karawal Nagar Road to Sherpur Chowk, Moonga Nagar, and made announcements in these areas that section 144 Cr.P.C had been imposed and two or more than two persons should not stand together and that they should not keep anything in hand with which violence can take place and failure to comply would call for legal action. Next day, also he along with Ct. Sudan undertook the same exercise. During his cross-examination, he deposed that he had not asked the duty officer to record his departure entry and he had not recorded his arrival. On both 24/02/2020 and 25/02/2020 he had seen public at some places and that he had collected loud hailer from the malkhana, but did not make any entry to this effect. He had made the announcement from Chand Bagh to Sherpur Chowk and in the lanes of Chand Bagh and Chandu Nagar. Further, during his cross-examination, he denied that he had not stated about making

announcement until he had been asked by the prosecutor because on that day he had not made any such announcement and volunteered, that earlier he had not mentioned about making announcement on 25.02.2020 because the court had asked him about 24.02.2020. He further deposed that he was carrying a smart phone, but did not record any audio or video of the announcements made by him. He denied that he had not made any such announcement and was merely deposing on the instructions of his superiors

7.17.98 From the analysis of testimony of PW8, it is evident that there is no substantial challenge to the fact that an order u/s 144 Cr.P.C was passed by the then DCP (NE), Delhi on 24.02.2020 or that Ex.PW8/A was the said order. Furthermore, there is no challenge to the fact that the complaint u/s 195 Cr.P.C was signed by Mr. Sanjay Kumar Sain.

7.17.99 As far as the pronouncement of the proclamation is concerned, from the evaluation of the testimony of PW7, I find that no material contradiction has emerged which would make me disbelieve his testimony about the fact that he had made the announcement of imposition of section 144 Cr.P.C in the areas of Chand Bagh and Karawal Nagar Road up to Sherpur Chowk.

7.17.100 I accordingly find that the prosecution has successfully proved that on the date of incident, section 144 Cr.P.C had been imposed in the entire North East District including the place of

incident i.e. the Chand Bagh Pulia.

7.17.101 From the discussion, already undertaken, it is apparent that the mob at Chand Bagh Pulia was very huge in number and thus, the assembly was in violation of section 144 Cr.P.C and hence, being a member of this assembly, accused Tahir Hussain had committed an offence punishable u/s 188 IPC and is liable to be convicted for the same.

7.17.102 In view of these afore-said discussions, I find that through the testimonies of PW6, PW13, PW14, which were duly corroborated by PW11 and PW56, the prosecution has successfully proved beyond all reasonable doubt that at the time of the incident, accused Tahir Hussain at around 5.00 p.m on 25.02.2020, was a member of a large crowd and unlawful assembly which, with animus against Hindus, had assembled at Chand Bagh Pulia with a common object to commit rioting, loot, arson and to cause damage to the property and person of the members of the Hindu community; and that the members of this assembly knew that it was likely that in prosecution of the objects of this assembly, death could result and someone could be killed.

7.17.103 It is further proved beyond all reasonable doubts through the testimonies discussed above that the members of this assembly, being heavily armed, had used violence and indulged in rioting, arson and loot. It is further established that the members of this assembly had surrounded and dragged Ankit Sharma towards Chand Bagh Pulia

and had thereby abducted him where after in a savage and relentless assault upon his person, had murdered him. I accordingly find that being a member of this unlawful assembly, accused Tahir Hussain, in view of section 149 IPC, is vicariously liable for the afore-said offences.

7.17.104 I accordingly find that the prosecution has proved its case beyond all reasonable doubts against accused Tahir Hussain for commission of offences punishable u/s 188 IPC, u/s 153A r/w section 149 IPC, section 147 r/w section 149 IPC, section 148 r/w section 149 IPC, section 365 r/w section 149 IPC and section 302 r/w section 149 IPC.

7.17.105 However, I find that prosecution, through the evidence led during the trial, has not been able to establish beyond all reasonable doubts that accused Tahir Hussain by instigation had abetted the offences committed by this assembly and had committed offences punishable u/s 109 and 114 IPC. The accused is also entitled to be acquitted for the charge u/s 505 IPC as the exhortations allegedly made by him, which would fall foul of section 505 IPC, have not been proved.

7.17.106 With regard to the charge of conspiracy, I find that the fact that the CCTV cameras around the area had either been damaged or had been covered or turned away, points towards a pre-planning and thus the fact, that a conspiracy might have been afoot.

However, no evidence had been led by the State to prove when, where and how this conspiracy was formed and who all were the conspirators and therefore, there is no evidence against accused Tahir Hussain and for that matter, against any of the accused which can lead to their conviction u/s 120B IPC.

Accused Haseen @ Mullaji @ Salman

7.18 Against accused Haseen @ Mullaji, there is no ocular evidence which has been led by the prosecution to establish that accused Haseen @ Salman@ Mullaji was a member of this unlawful assembly. This despite the fact that very specific role had been assigned to this accused. During the investigation, Vikalp Kochar was the only witness who had identified this accused as a part of the unlawful assembly in question. However, during his deposition in the court he refused to identify the accused as the member of this unlawful assembly at Chand Bagh Pulia. Despite his sustained cross-examination, Ld. SPP failed to elicit anything that could support his case against the accused.

7.18.1 Hence, as far as ocular evidence goes, I do not have any evidence which would place accused Hassen @ Salman@ Mullaji in that unlawful assembly.

7.18.2 However, the prosecution has also relied upon recovery of a knife and clothes at the instance of accused Haseen @ Mullaji and some telephonic conversations, which as per the prosecution he had

with different persons.

7.18.3 As per the case of the prosecution, accused Haseen @ Mullaji was arrested by SI Jaiveer of Spl. Cell on 11.03.2020 u/s 41.1(b) of Cr.P.C. Appearing as PW76, he deposed that they were searching for Salman because his mobile had been on interception and his intercepted conversations revealed that he had killed a person during the riots. It was also found that this accused was also wanted in the murder of Ankit Sharma. A secret informer met them near a park in Sunder Nagri and pointed towards accused Salman who was then apprehended. He was intensively interrogated till 12.03.2020 when his disclosure was recorded. Thereafter, he was arrested vide DD No. 2A and a kalandra was prepared. A mobile phone was recovered in his personal search and was deposited in malkhana of PS spl. Cell. He proved the arrest memo of this accused vide Ex.PW76/A and personal search memo vide Ex.PW76/B. The information of his arrest was given to Crime Branch, and on 13.03.2020, he was produced before the court.

7.18.4 IO PW79 Insp. Amleshwar deposed that on 13.03.2020, he received an information that accused Haseen @ Mulla had been arrested and he would be produced before the court on 13.03.2020. On 13.03.2020, he reached the court and with the permission of the court, interrogated and then arrested accused Haseen @ Mulla vide arrest memo Ex.PW79/9. During his interrogation, he disclosed that he

could get a knife recovered but pursuant to that disclosure, no recovery could be effected. On 16.03.2020, he again disclosed that the knife used and the clothes worn by him in the incident had been hidden by him in his house, and he could get them recovered. Pursuant to the disclosure, on 17.03.2020, accused Haseen led him and other staff members to H. No. 3435, Gali No. 3, Shani Bazar, Sunder Nagri. He requested the people in the locality to join the investigation but none agreed. The house was found locked. Accused informed that the key would be with a neighbour namely Baby Zubeda. She was summoned and she led them to the second floor of the said house where the accused had a rented accommodation. From the middle rack of an almirah in the room, he took out a white round neck T-shirt, one red colour full sleeves shirt and blue greyish jeans trouser. From the lowest portion of the almirah, he took out a knife which was hidden between the clothes. He observed blood stains on the knife as well clothes. He prepared the sketch of the knife, kept it in a cloth parcel and sealed it with the seal of AR. Clothes were also kept in a parcel which was sealed with the seal of AR. The knife was seized vide memo Ex.PW12/E. The sketch of knife having his signatures at point Y was Ex.PW12/C. He also prepared the site plan of the place of recovery which was Ex.PW79/10.

7.18.5 During his cross-examination, he deposed that after the recovery, the seal was handed over to ASI Birender and on reaching

the office, he returned it to him on the same day. The fact that the accused informed that the key would be with Zubeda was not recorded in the charge sheet and in response to court query, he answered that it was mentioned in the case diary. He denied that no person by the name of Baby Zubeda existed, her address and the fact that the key was with her were not mentioned in the charge sheet. The names of persons who had refused to join investigation were not recorded in charge sheet. He had a smart phone but did not record any video. He denied that no recoveries as described in Ex.PW12/D and Ex.PW12/E were effected, or that the site plan Ex.PW79/10 was prepared while sitting in the police station.

7.18.6 The second witness is PW12 SI Birender Singh. He deposed that in March 2020, he was posted as ASI in AHTU, Crime Branch, Sector 16, Rohini. On 16.03,2020, he had joined the investigation of this case and in his presence the IO had recorded the disclosure statement of accused Haseen. The said disclosure had his signatures at point X and was Ex.PW12/B. Pursuant to the disclosure, he along with IO and other members of the team had taken accused Haseen to his rented accommodation in house bearing no. 34/35, Gali No. 3, Shani Bazar Road, Sunder Nagari. Accused led them to his room on the second floor which was found locked. IO summoned a relative of accused namely Baby Zubeda who brought the keys to this room. Haseen took out one white T shirt, one red colour shirt and one

blue jeans from the middle rack of an iron almirah which was in that room. He also took out a knife from the lower rack and presented it before the IO. IO made a pullanda of the clothes and sealed it with the seal of AR. A pullanda of knife was also prepared which was also sealed with the seal of AR. The knife was seized vide seizure memo Ex.PW12/E. The sketch of the knife was also prepared which was Ex.PW12/C. He also deposed that IO had prepared a site plan of place of recovery which was signed by him and then again said, that he did not remember whether he had signed it or not.

7.18.7 During his cross-examination, he deposed that on the next day, he returned the seal to the IO. He denied that no recovery proceedings had taken place, or that all the documents were prepared and signed by him in the office, or that accused Haseen was never taken to any place as stated by him. He did not record any video of the proceedings. Baby Zubeda had not informed her name to him or to the IO in his presence. In his presence, IO did not record any statement of Baby Zubeda.

7.18.8 On being asked if he could produce any document to prove that on the dates stated by him, he had joined the investigation of this case; he answered that whenever he had joined the investigation arrival and departure entries were recorded and he could produce them. On being so directed, he produced these entries. The relevant departure and arrival entries were exhibited as PW12/D3 and

PW 12/D4 respectively. He was then asked to produce the original Roznamacha register of these entries.

7.18.9 He produced this register when he next appeared before the court. It was then pointed to him that a page between page no. 006 and 007 had been torn and removed and he was asked if he would admit this fact. While admitting this fact he explained that each page in the roznamcha register was in duplicate. A carbon paper was placed between two such pages and the carbon copy was taken out and sent to senior officers. In answer to a court question he said that he stated that all second pages with same serial number would be found torn away/taken out from the register.

7.18.10 It has been contended on behalf of the accused that the recovery of the knife has not been proved as per law and the knife has been planted upon him. Challenging this recovery, the first contention of the accused is that admittedly, as per the statement of PW12, pursuant to the initial disclosure of the accused, no recovery could be made and the law does not recognise the concept of supplementary disclosure.

7.18.11 I have considered the argument and I find that there is no legal bar to recording of more than one disclosure of the accused, and accept for arguing that the second disclosure is not permissible, the learned counsel has failed to provide any legal basis or precedent to support this contention.

7.18.12 It is not uncommon for accused to try and mislead the investigator by provide false information. If such information on verification is found to be false, as was in this case, law does not stop the police from further interrogating the accused and if during such interrogation, accused provides any further information that can lead to discovery of a fact, the necessary consequence has to be recording of this information /disclosure.

7.18.13 The next contention of Id. counsel for the accused is that under section 27 of the Indian Evidence Act, the discovery of a fact must be pursuant, to a free, frank and full disclosure. However, beyond so stating, no effort was made to, demonstrate that the disclosure, pursuant to which the alleged recovery of the knife had happened, was not full or fair. However, it was argued that as the accused had been in police custody for almost 36 hours, that is illegal custody of 12 hours, the disclosure and recovery were hit by section 24 of the Indian Evidence Act.

7.18.14 I have carefully considered the submission and evaluated the evidenced on record. It is correct that as per the testimony of PW76 Insp. Jaiveer, the accused was apprehended on 11/03/2020 and was produced before the court on 12/03/2020. Hence, on the face of it, before being produced in court accused had been kept in custody for more than 24 hours. Therefore, prima facie the contention the he was in illegal custody for 12 hours cannot be brushed aside. However, it

cannot be lost sight of that during this period he was not in the custody of IO Inspector Amleshwar but he was in custody of SI Jaiveer. It must be also noticed that SI Jaiveer was in Special Cell and the IO was posted in Crime Branch. The office of SI Jaiveer was in Janakpuri and that of the IO was in Rohini. It is neither an assertion of the accused, nor has it been proved that from the time of his arrest and till his production in the court, the IO of this case had any access to or contact with this accused. Furthermore, it is also not a case of the accused, argued or proved, that during the period he was in custody of Special Cell, the accused was taken to the house from where the recovery was effected and the knife and the clothes were planted at that place. Hence, any illegality committed by the arresting officer, upon whom the IO of this case had no direct control or supervision, can in no manner affect the investigation conducted by the IO of this case. It is not even argued that the alleged disclosure of the accused was a result of any threat, coercion or torture etc. Hence, it has not been established and I have no reasons to believe that the disclosure Ex.PW 12/B was made by the accused under threat, coercion etc.

7.18.15 During the course of arguments and also during the cross-examination of witnesses, a lot of stress has been laid by the accused on the fact that the name of baby Zubaida was neither mentioned in any seizure memo, nor did it find mention in the statement of any witness to the recovery. Furthermore, no statement of alleged Miss

Zubaida was recorded. On factual aspect of this contention, I have no contest with the submission made on behalf of the accused. I also find that in the scheme of things, it would have been proper if the IO, at least on the documents, would have mentioned that the key to the room of the accused was provided by Miss Zubeda. However, the mere omission of this name would not vitiate the recovery if it is otherwise proved. It is more so because during his testimony in the court, the IO had stated that this fact had been mentioned by him in the case diary. This claim has been verified by me and found to be correct. The case diary dated 16.03.2020 has been initialed by me.

7.18.16 It is also to be noted that during the cross-examination of PW 12, conducted on behalf of this accused, to check the veracity of the witness and verify whether on 16/03/2020 the police team had in fact left its office with accused Haseen and thereafter returned with the recovered articles; the ld. counsel had asked if the witness could produce any documentary evidence of it. The witness stated that in the Roznamcha DD entries of their departure and arrival had been recorded, and he could produce them. The counsel for accused asked for the production of these entries, and when the witness appeared next, he produced the DD entries which were exhibited as Ex.PW12/D3 and D4 respectively.

7.18.17 Faced with this situation, in order to discredit these daily diary entries ld. counsel for accused further sought, the original

Roznamcha register to be produced. Next time when the witness appeared before the court, he produced the original register where in these entries were recorded. The learned Counsel then made an effort to discredit the Roznamcha register and through it discredit these DD entries. He did so by suggesting that as there was a page that had been torn from this register, there were manipulations in it. The explanation of the witness defeated the effort as he stated that every page number the Roznamcha register was, as a practice, in duplicate. In between the pages with having the same serial number, a carbon would be placed so that a carbon copy of each entry could be prepared. Thereafter, the page having the carbon copy would be torn off and sent to senior officers. In response to a question of my learned predecessor, he answered that all second pages with the same serial number would be found torn away/taken out from the register. Further effort made to discredit these entries was that there was an over writing upon these DD entries. However, the perusal of these entries by me reveals that there is no overwriting on any material part.

7.18.19 I, therefore, find that through the evidence on record, the prosecution has successfully and beyond all reasonable doubts proved that the knife exhibit article PW 15/Art1 was recovered at the instance of accused Haseen@ Mulla.

7.18.20 However, the prosecution has failed to link this knife to the commission of the offence in question. The first attempt was made

by the prosecution through PW 15 Dr. Arvind Kumar during whose testimony this knife was first produced in court and exhibited. This knife was sent to him for his opinion if the injuries upon the body of the deceased had been caused by this knife. He had opined that injuries number 1, 10, 17 17 and 29 were possible by this weapon. His report to this effect was exhibited as PW 15/B.

7.18.21 However, this opinion merely raises a probability and is not a definitive conclusion that this in fact was the knife that had caused these injuries and hence on the basis of this opinion alone, it does not stand proved that the injuries upon the person of the deceased had been caused by the use of this knife.

7.18.22 The second attempt to connect this knife to the murder of the deceased was made through the report of the DNA expert, and the knife was sent to FSL Rohini to examine whether it had any blood on it, and if there was blood, did it belong to the deceased? The report of the DNA expert had been proved by him when appeared as PW31. The said report is Ex.PW31/B and the allelic data chart is Ex.PW31/C. From this report it is evident, that the blood found on the knife was not that of the deceased. Therefore, the recovery of this knife is also not sufficient to connect him with the commission of this offence. However, the allelic data chart, Ex.PW31/C, reveals that the human DNA generated from the blood found on the knife recovered at the instance of accused Haseen @ Mullaji and his clothes was matching

with the DNA found on the knife alleged to be recovered at the instance of accused Nazim. This circumstance does point towards a connection between both the accused as the weapons recovered at their instance had the same DNA, but this circumstance also is not of much consequence as far as the present case is concerned. Sadly, despite this curious coincidence, this connection was not further investigated by the IO to rule out the possibility of another crime.

7.18.23 The next evidence to link the accused to the murder of the deceased that has been pressed into service by the prosecution is the recordings of intercepted phone calls of the accused. As per the prosecution the recordings of these calls were also recovered from the phone of accused. It was contended that in these calls the accused is confessing to the murder of Ankit Sharma. It has been contended by Id. SPP that at the relevant time when these calls were made, the location of this accused, as per his call detail records, was near the place of incident. The fact that in one of these calls he's asking someone to come near the mosque and also states that a person has been loaded (*banda lad liya hai*). He can be further heard asking for a gunny bag which reflects that he had been asking for the bag to dispose the body of Ankit Sharma. More shocking are his conversations with someone he addresses as Bhabhi and with Faheem Chikna (PW75) and Nadeem (PW58), where he confesses to murdering a person. This confession is also in close proximity to the

murder of Ankit Sharma.

7.18.24 He has further contended that two of the persons with whom he had conversations, namely Faheem, Chikna and Nadeem while deposing in court, having been won over by the accused, had refused to identify their voices in these conversations and denied having any calls with accused. In the circumstances, with the permission of the court, the voice samples of both these accused were sent for matching their voices with the voices in the telephone conversation, which Haseen @Mulla was having with them. As per the FSL report, duly proved on record, the voices in the telephonic conversation matched with these two. Also the sample voice of accused Haseen @ Mullaji had been found to be matching with his alleged voice in these conversations. In the circumstances through the confessional statements of accused, the prosecution has proved that the accused had murdered Ankit Sharma.

7.18.25 On the other hand, learned counsel for accused, as detailed earlier, had countered the arguments of ld. special prosecutor and through his own arguments attempted to demonstrate that this evidence in the form of call recordings and voice analysis results is a fabricated and manipulated evidence. He had also contended that the evidence being violative of Telegraph Act was not admissible.

7.18.26 Without even referring to the arguments of learned counsel for the accused, I cannot find myself in agreement with the

assertion of Id. SPP that through these recorded conversations, the prosecution has proved its case against this accused. It has been well settled by now that an extrajudicial confession is, more often than not, of corroborative value only. A finding of conviction cannot be handed down solely on the basis of such a confession, which is generally considered to be a weak evidence. In the present case, this confession in the form of recorded conversations is further weakened by the fact that there is no clear statement attributable to the accused where he has confessed to the murder of Ankit Sharma. No doubt, there are conversations, imputed to the accused where he allegedly boasts of killing a person, of participating in the riots and sounds as if he had been fighting a war. However, there is nothing on record that would establish that the person who is stated in those conversations to have been killed, was Ankit Sharma. Hence this confession is not even a complete confession of the crime in question. In absence of an unequivocal confession, the fact that at the as per the call detail records of the number attributed to this accused, his location at the relevant time is of the area of Chand Bagh will also be of no help to the prosecution.

7.18.27 Therefore, I am of the opinion that evidence adduced by the prosecution is not sufficient to prove that accused was a member of the unlawful assembly in furtherance of whose common object Ankit Sharma was murdered.

7.18.28 Coming onto the charge against accused Haseen under the provisions of Arms Act. It is correct that a knife has been recovered at the instance of this accused. However, this accused was not found carrying this knife in a public place and therefore, he could only be found to be in possession of a prohibited weapon if the blade of this knife was either having a length of more than 9 inches or having a width of more than 2 inches so as to be covered within category V of part A of Schedule 1 to the Arms Rules 2016. However, as per sketch Ex.PW12/C, the length of the blade is 21.5 cms and its breadth is 3 cms and hence, the knife does not fall within the prohibited category of weapons and no case is made out for convicting this accused for violation of Arms Act.

Accused Sameer Khan

7.19 As against accused Sameer, the only witness that has deposed about him being a member of the lawful assembly is PW13 Aakash. However, as already discussed, I have found it difficult to rely upon the testimony of PW13, as far as it relates to identification of Sameer. At the cost of repetition, the reasons for not believing this identification are, that it was too convenient a coincidence that PW13, notably during the period when a very strict lock down was in place, would be on a public street and that too at the same time when the IO would be bringing accused Sameer at that place for spot identification. It was also found by me that if at all the coincidence was to be

accepted, PW13, on being asked, was required to explain why and how during the lock down, he was present at the place of the incident to identify accused Sameer. As already observed, despite repeated questioning, PW13 could not satisfactorily account for his presence. I accordingly find that the identification of this accused by the witness in court would also not inspire much confidence and certainly require corroboration which is absent. I therefore, find that the prosecution has failed to prove its case against this accused.

Accused Nazim & Kasim

7.20 The case against accused Nazim and Kasim stands on the sole testimony of PW6 Pradeep Varma. This is because as already discussed, I have found it unsafe to rely upon the testimony of PW 14, with respect to identification of these accused.

7.20.1 As per the deposition of IO(PW79), it is during the interrogation of accused Haseen @ Mulla that the names of these two accused had emerged. On 30/03/2020, these accused were apprehended from their houses in Mia Saria Sambhal, Uttar Pradesh. On the same day after being brought to Delhi, they were taken to the place of incident where a lot of public persons gathered around and two of them, Bharat and Pradeep Verma, identified the accused as the persons who had been involved in this crime. Thereafter, they were arrested in this case vide memos Ex.PW50/A and Ex.PW/50/B.

7.20.2 During his cross-examination, he denied that prior to

30/03/2020, there was no disclosure of Salman @ Haseen @Mulla where he had named Nazim and Kasim. He denied that the statement of Pradeep Verma under section 161 Cr.P.C had been inserted after 30.03.2020, or that Nazim and Kasim had been falsely implicated in this case.

7.20.3 The testimony of PW6 Pradeep Varma has already been discussed in detail. To recapitulate his deposition specific to these accused, he had stated that on 30.03.2020 at around 5:30 PM, he was in his parking when the IO reached there and started making inquiries outside his parking. He also went there and saw that IO was making inquiries from the public persons. Nazim and Kasim were with him. During this time, and he pointed them to the IO. He further deposed that when Ankit Sharma was being taken by the mob, Nazim and Kasim were present in that mob, and Nazim was having a knife in his hand. He had informed the IO of these facts.

7.20.4 During cross-examination on behalf of these accused and specifically on his testimony related to these accused, he deposed that the documents which were signed by him on 30/03/2020 were also signed by Bharat @ Kalu in his presence. He did not remember that how many days prior to identifying Nazim and Kasim was it that he had identified their photographs before the police.

7.20.5 The challenges to the testimony of this witness, insofar as they are common to all the accused, have already been considered and

answered.

7.20.6 With regard to Nazim and Kasim specifically, it was contended that this witness in his statement and section 164 Cr.P.C had stated that his identification of the accused was only through photographs and he completely remained silent about the alleged identification proceedings dated 30/03/2020 at the scene of crime.

7.20.7 However, a perusal of his statement u/s 164 Cr.P.C reveals that this assertion is absolutely incorrect as he had stated in Ex.PW6/A, that he identified accused Nazim and Kasim in their photographs and also stated that, he had physically identified them before the police near the nala.

7.20.8 It is further contended that during his deposition in court, he had wrongly identified Haseen@ Mullaji as Nazim. This seriously dents the credibility of his identification. It is contended that none of the accused were subjected to judicial TIP and no explanation has been furnished by the prosecution for non-conducting the TIP.

7.20.9 I have considered this argument and the perusal of the part of his testimony where he identified the accused during his deposition in the court reflects, that it has been recorded that he had identified accused Kasim, Firoz, Anas, Musa and Nazim. It is only thereafter that he stated Haseen's name also as Nazim. However, what is noticeable is, that prior to that he had correctly identified accused Nazim by his name. Sadly, no effort was made by Id. SPP to clarify

this issue. At the same time, no effort was also made by ld. counsel for accused Nazim on this point. Merely because a confusion appeared and it was allowed to remain by the defence as well as the prosecution, the original identification of accused Nazim by this witness cannot be wished away.

7.20.10 A further contention is that this witness in a statement under section 161 Cr.P.C has not attributed any specific role to any of the accused. However, while deposing in the court, he suddenly attributed specific roles to the accused and this indicates material improvement and tutoring.

7.20.11 On consideration of this contention, I find that it is not supported by the material on record. During his testimony, PW6 has not assigned any specific role to any of these accused as a member of the unlawful assembly or in the murder of deceased Ankit Sharma. During the cross-examination also, no such material improvement was put to the witness and he was not confronted with his earlier statement to project that he had made any material improvement. However, I myself had gone through the statement u/s 161 Cr.P.C of this witness dated 30.03.2020 and in comparison to it also, there is no material improvement in his testimony before the court.

7.20.12 With regard to the contention that a judicial TIP was not conducted, I find that the sum and substance of law cited at bar is, that not having the judicial TIP conducted does not affect the identification

in court.

7.20.13 In view of the testimony of the witness particularly against accused Nazim and Kasim and his cross-examination on behalf of these accused, it is apparent that no material contradiction could be brought out which could discredit the testimony of this witness as far as these two accused are concerned. As already discussed, in the earlier part of this judgment while analysing the evidence qua the case of the prosecution against Tahir Hussain, this witness has been found to be a natural and credible witness to the rioting, loot, arson and murder of Ankit Sharma by the unlawful assembly that had assembled on Chand Bagh Pulia at around 5.00 p.m on 25.02.2020.

7.20.14 In view of these afore-said discussions, I find that through the testimony of PW6, the prosecution has successfully proved beyond all reasonable doubt that at the time of the incident, accused Nazim and Kasim at around 5.00 p.m on 25.02.2020, were both members of a large crowd and unlawful assembly which, with animus against Hindus, had assembled at Chand Bagh Pulia with a common object to commit rioting, loot, arson and to cause damage to the property and person of the members of the Hindu community; and that the members of this assembly knew that it was likely that in prosecution of the objects of this assembly, death could result and someone could be killed.

7.20.15 It is further proved beyond all reasonable doubts through the testimonies discussed above that the members of this assembly, being heavily armed, had used violence and indulged in rioting, arson and loot. It is further established that the members of this assembly had surrounded and dragged Ankit Sharma towards Chand Bagh Pulia and had thereby abducted him where after in a savage and relentless assault upon his person, had murdered him. I accordingly find that being a member of this unlawful assembly, accused Nazim and Kasim, in view of section 149 IPC, are vicariously liable for the afore-said offences. As already discussed, the prosecution has successfully proved the sanction u/s 196 Cr.P.C(Ex.PW34/A). I further find that as they had violated the prohibitory order u/s 144 Cr.P.C and the complaint u/s 195 Cr.P.C (Ex.PW8/B) against them as been proved, they are liable to be convicted for an offence punishable u/s 188 IPC. They are further liable to be convicted for offence punishable u/s 153A r/w section 149 IPC.

7.20.16 There is also a charge under Arms Act framed against the accused Nazim for violation of section 7 Arms Act. However, the knife allegedly recovered at the instance of the accused could not be connected to the crime as the DNA found on the knife did not match with that of the deceased. Furthermore, even if it is admitted that the button actuated knife was recovered at the instance of accused Nazim, prosecution has not led any evidence to show that the accused had

knife in his possession for the purpose of sale of that knife and the size of the knife is not covered within the definition of prohibitive arm as per category V of part A of Schedule 1 to the Arms Rules 2016. Therefore, for the possession of this knife by the accused, even if it admitted to have been proved, no offence punishable u/s 7 of the Arms Act is made out. The accused is entitled to an acquitted for the charge u/s 7 r/w section 25 of Arms Act.

7.20.17 I accordingly find that the prosecution has proved its case beyond all reasonable doubts against both the accused Nazim and Kasim for commission of offences punishable u/s 188 IPC, u/s 153A r/w section 149 IPC and section 147 r/w section 149 IPC, section 148 r/w section 149 IPC, section 365 r/w section 149 IPC and section 302 r/w section 149 IPC.

7.120.18 With regard to the charge of conspiracy, it has already been found in earlier part of this judgment that the prosecution has not led any substantive evidence to prove the charge of section 120B IPC against any of the accused. I accordingly find that these accused are entitled to an acquittal for the offence punishable u/s 120B IPC.

Accused Gulfam, and Shoaib Alam

7.21 The only evidence that had been brought on record during the trial against these accused was in the form of testimonies of PW5 HC Rahul and PW33 HC Praveen, who had identified these two accused as the members of the unlawful assembly which was involved

in the killing of Ankit Sharma. Apart from their ocular testimonies, there is no other witness or evidence against these accused. However, in the earlier part of this judgement, these two witnesses have not been found to be credible and therefore, a finding of guilt cannot be given against these accused on the basis of these two testimonies. I accordingly find that both these accused are entitled to benefit of doubt and are therefore, acquitted of all the charge framed against them.

Accused Anas, Firoz and Javed

7.22 The only witness to establish the membership of these accused of the unlawful assembly is PW6 Pradeep Verma. His testimony in detail and the common challenges thereto have already been considered and answered in the earlier part of this judgment.

7.22.1 These accused were arrested in this case 09/03/2020. Giving account of their arrests, the IO.(PW79) deposed that on 9/03/2020, after the FSL team had concluded the inspection of scene of crime, he reached his office at Khajuri Khas. At the office, he met Insp. Rajnikant, who informed him that he had apprehended five persons who were involved in rioting at Chand Bagh Pulia on 25/02/2020. He interrogated and arrested accused Anas, Gulfam, Firoz, Javed and Shoaib Alam in this case. During his deposition, he identified his signature on the arrest memo of accused Anas (which was proved by PW 18 as PW18/B) at point Z. He identified his

signatures on the arrest memo of accused Firoz (which was proved by PW 18 as Ex.PW18/C) at point Z. He identified his signatures on the arrest memo of accused Javed (which was proved by PW 18 as Ex.PW18/D) at point Z.

7.22.2 As per the deposition of PW6 on 11/03/2020, the police had inquired from him about the incident with Ankit Sharma. His statement was recorded by the police. He was shown certain photographs to identify the rioters. He identified about six or seven persons in these photographs. He had seen their faces, but he did not know their names. However, he had seen them in the Muslim mob. The police had informed him of the names of those persons. During his deposition, he was only able to recollect four names. These were Anas, Firoz, Musa, and Javed. He correctly identified accused Firoz and Anas. He pointed towards accused Javed as the person he had seen in the mob but was unable to recall his name.

7.22.3 During the cross-examination on behalf of accused Javed, PW6 deposed that there were a number of photographs that were shown to him on 11.03.2020 but he could not tell the total number of such photos and also could not give estimation of their numbers. He denied that he had not seen any accused in the mob at Chand Bagh Pulia or that he had falsely, at the instance of senior police officers, identified the accused in court and some of their photographs before the court as well as before the police.

7.22.4 It has been contended on behalf of accused Javed that PW6 had been made a witness in more than six cases and his testimony in these cases suffer from serious infirmities. The certified copies of his testimonies in other cases were filed with written final submissions.

7.22.5 I have carefully considered this contention. As far as the allegation that PW6 is a stock witness is concerned, the same has already been rejected in earlier part of the judgment. The contention that there are serious discrepancies between his statement in this case and between his statements as he had given in other cases deserves to be rejected on a simple ground that during his cross examination he was never confronted with his earlier statements and never given an opportunity to explain. However, I still have perused those statements and I find that all those statements are on similar lines as far as the common facts are concerned. There are no material contradictions between these statements inter-se and the statement given in this case. Hence, I do not find any force in this contention.

7.22.6 It has been further contended that the photo identification of the accused was not proper as at least 10 photographs should have been shown which is the requirement of the law. However, in my considered opinion, there is no such requirement of law. Even otherwise, as is visible, the witness stated that he had been shown a number of photographs but he could not tell the exact number. It was

not even asked from him whether number of such photographs was around 10 or less or more than 10 and therefore, on what basis it has been argued that 10 photographs were not shown is unfathomable.

7.22.7 It has further been contended on behalf of accused Javed that PW6 is not a credible witness because he was cited as a witness in FIR No. 98/20 where he had identified accused Javed as one of the offenders. However, in that case, accused Javed was discharged by the predecessor of this court and this casts a serious doubt upon his credibility. The certified copy of that order was filed during the final arguments. A bare perusal of that order reveals that there is not a single sentence written about the credibility of this witness. The discharge order came to be passed on the ground that this witness was the sole witness against accused Javed and as per the judgment of Masalti (supra), the requirement was that there had to be two or more witnesses, an interpretation to which I have not found myself be in agreement. Hence, this contention does not hold water.

7.22.8 In view of these afore-said discussions, I find that through the testimony of PW6, the prosecution has successfully proved beyond all reasonable doubt that at the time of the incident, accused Javed at around 5.00 p.m on 25.02.2020, was the member of a large crowd and unlawful assembly which, with animus against Hindus, had assembled at Chand Bagh Pulia with a common object to commit rioting, loot, arson and to cause damage to the property and person of the members

of the Hindu community; and that the members of this assembly knew that it was likely that in prosecution of the objects of this assembly, death could result and someone could be killed.

7.22.9 It is further proved beyond all reasonable doubts through the testimonies discussed above that the members of this assembly, being heavily armed, had used violence and indulged in rioting, arson and loot. It is further established that the members of this assembly had surrounded and dragged Ankit Sharma towards Chand Bagh Pulia and had thereby abducted him where after in a savage and relentless assault upon his person, had murdered him. I accordingly find that being a member of this unlawful assembly, accused Javed, in view of section 149 IPC, is vicariously liable for the afore-said offences. As already discussed, the prosecution has successfully proved the sanction u/s 196 Cr.P.C(Ex.PW34/A), he is further liable to be convicted for offence punishable u/s 153A IPC r/w section 149 IPC and I further find that as he had violated the prohibitory order u/s 144 Cr.P.C and the complaint u/s 195 Cr.P.C (Ex.PW8/B) against him as been proved, he is liable to be convicted for an offence punishable u/s 188 IPC.

7.22.10 I accordingly find that the prosecution has proved its case beyond all reasonable doubts against accused Javed for commission of offences punishable u/s 188 IPC, u/s 153A r/w section 149 IPC and section 147 r/w section 149 IPC, section 148 r/w section

149 IPC, section 365 r/w section 149 IPC and section 302 r/w section 149 IPC.

7.22.11 With regard to the charge of conspiracy, it has already been found in earlier part of this judgment that the prosecution has not led any substantive evidence to prove the charge of section 120B IPC against any of the accused. I accordingly find that this accused is entitled to an acquittal for the offence punishable u/s 120B IPC.

Accused Anas

7.23 During his cross examination on behalf of accused Anas, PW6 was asked whether he had any NOC from fire department, permission from MCD, Police or pollution control board for running his parking lot, and he had answered that he had no knowledge about such NOCs or permission. He further deposed that at no point of time, any official from fire department, police, MCD visited his parking and demanded to see any NOC or permission to run the parking. He was then asked whether he remembered the facts deposed by him during his examination by a prosecutor before some other Judge Saheb in the year 2020 and he deposed that he did not remember what all he had stated during that examination. He denied that he did not remember that statement because that had been given on the basis of tutoring by the police. On being asked to give explanation, he stated that he did not remember those facts because it had been three years. Then he was specifically asked about what he had stated in his statement u/s 164

Cr.P.C by putting each fact and if found to be incorrect, confronted with that statement and it is only then it became clear, that the counsel was referring to statement u/s 164 Cr.P.C. He denied the suggestions that he was repeatedly tutored by the police by showing the photos of the accused, or that despite being repeatedly shown the photos, he could not identify all the accused because he neither knew them, nor had seen them. He denied the suggestion that he was illegally running the parking and therefore, came under the pressure of police in this case to depose false facts about seeing and identifying the rioters in the incident with Ankit Sharma. He denied that he had not identified photograph of any rioter before the police at any point of time.

7.23.1 The contentions on behalf of accused Anas with regard to PW6 being a stock witness, a partisan witness and the circumstances to show that he could not have seen the incident have already been considered in the earlier part of the judgment and answered.

7.23.2 It is further contended on behalf of accused Anas that statement of PW6 was recorded on 11.03.2020 but the witness has not mentioned regarding the present case. However, I find this contention to be incorrect as in his first statement u/s 161 Cr.P.C. he has spoken about this incident and identified the photographs of some rioters.

7.23.3 I have also considered the testimony of this witness and the cross examination on behalf of this accused. It is apparent that there was not material contradiction which had emerged in the cross

examination of this witness which would make me disbelieve his testimony. However, it is clear that from the very beginning when the cross examination of this witness was started on behalf of this accused, an attempt was made to overawe this witness and make him nervous. I say so because initially it was asked whether he had good memory or not and on the question being overruled, he was asked whether he had taken any treatment for his memory and other ailment and when that question was also disallowed, it was suggested to him that he was feigning loss of memory to avoid telling the truth to the court. If that was not enough, he was questioned about his parking and whether it was legal or illegal and thereafter, it was suggested that as he was running an illegal parking, he had deposed falsely under the pressure of the police. At the same time, it must be remembered that no evidence was brought on record even to establish that this witness needed any permission for running a parking lot at his own premises. Not surprisingly, even during the final arguments, this point was not stressed. It is in the light of this cross examination that the next cross examination by the same counsel is to be read where he was unable to recall the exact facts of his statement u/s 164 Cr.P.C. However, be that as it may, the witness, as already discussed in detail, has been found to be credible as far as his testimony with regard to the incident relating to murder of Ankit Sharma is concerned. I accordingly find that I have no reasons to disbelieve his testimony where he has placed this

accused amongst the rioters and as a member of the unlawful assembly at Chand Bagh Pulia on 25.02.2020 at around 5.00 p.m.

7.23.4 In view of these afore-said discussions, I find that through the testimony of PW6, the prosecution has successfully proved beyond all reasonable doubt that at the time of the incident, accused Anas at around 5.00 p.m on 25.02.2020, was the member of a large crowd and unlawful assembly which, with animus against Hindus, had assembled at Chand Bagh Pulia with a common object to commit rioting, loot, arson and to cause damage to the property and person of the members of the Hindu community; and that the members of this assembly knew that it was likely that in prosecution of the objects of this assembly, death could result and someone could be killed.

7.23.5 It is further proved beyond all reasonable doubts through the testimonies discussed above that the members of this assembly, being heavily armed, had used violence and indulged in rioting, arson and loot. It is further established that the members of this assembly had surrounded and dragged Ankit Sharma towards Chand Bagh Pulia and had thereby abducted him where after in a savage and relentless assault upon his person, had murdered him. I accordingly find that being a member of this unlawful assembly, accused Anas, in view of section 149 IPC, is vicariously liable for the afore-said offences. He is further liable to be convicted for offence punishable u/s 153A r/w section 149 IPC and as already discussed, the prosecution has

successfully proved the sanction u/s 196 Cr.P.C(Ex.PW34/A). I further find that as he had violated the prohibitory order u/s 144 Cr.P.C and the complaint u/s 195 Cr.P.C (Ex.PW8/B) against him as been proved, he is liable to be convicted for an offence punishable u/s 188 IPC.

7.23.6 I accordingly find that the prosecution has proved its case beyond all reasonable doubts against accused Anas for commission of offences punishable u/s 188 IPC, u/s 153A r/w section 149 IPC and section 147 r/w section 149 IPC, section 148 r/w section 149 IPC, section 365 r/w section 149 IPC and section 302 r/w section 149 IPC.

7.23.7 With regard to the charge of conspiracy, it has already been found in earlier part of this judgment that the prosecution has not led any substantive evidence to prove the charge of section 120B IPC against any of the accused. I accordingly find that this accused is entitled to an acquittal for the offence punishable u/s 120B IPC.

Accused Firoz

7.24 The case of the prosecution against this accused also stands on the testimony of PW6. However, with regard to accused Firoz, it has been argued that the witness due to his personal reasons has falsely implicated this accused. In order to prove this point, it was argued by Id. Counsel for accused that this witness during his cross examination dated 28.03.2023, was suggested that in comparison to other accused persons, Tahir Hussain was better known to him and he

admitted this suggestion. Thereafter, in response to a court query, he stated that he did not at all know the other accused persons whom he had identified in this case. However, later on during his testimony recorded in this court itself in FIR no. 98/20 of PS Khajuri Khas, he deposed that he had known accused Firoz for about 10-12 years prior to 24.02.2020 because Firoz had a tea stall in the locality. On being asked by the court, why he did not tell the name of Firoz or his profession to the IO when the IO first met him; he answered that nobody asked him. He has filed certified copy of that statement and contended that this reflects that accused has been falsely implicated.

7.24.1 Countering it, ld. SPP has contended that the witness was not confronted with this statement and had no opportunity to explain and thus, it cannot be used to discredit his testimony.

7.24.2 I have considered the rival submissions and also gone through the certified copy of the statement of this witness in FIR No. 98/20, PS Khajuri Khas.

7.24.3 As far as the contention of ld SPP that the witness was not confronted with his statement in FIR No. 98/20 is concerned, I find that as this statement was recorded subsequent to the deposition of the witness in this case, the accused did not have any opportunity to do so. At the same time, the rigors of section 145 Evidence Act will also not be applicable as section 145 IE Act applies to previous statements.

7.24.4 A bare perusal of the statement of this witness in FIR No.

98/20 reflects that he had categorically stated that he had known the accused even about 10-12 years prior to the riots. This being the case, his testimony in this case that he did not know accused Firoz at all creates a serious doubt about his identification of accused Firoz. This becomes more specific because of the intent of question of my learned predecessor, as he had recorded, was to know whether the witness had any acquaintance with other accused persons or had prior knowledge of any of the other accused persons and, this witness answered with an emphatic no. I accordingly find that a probable circumstance has been established on behalf of accused Firoz that the witness may have deposed against him due to ulterior motives and it will be unsafe to convict this accused solely on the basis of the testimony of this witness, without there being any corroborative evidence.

7.24.5 I accordingly find that accused Firoz is entitled to a benefit of doubt and to be acquitted for all the charges framed against him.

Accused Muntazim @ Musa

7.25 With regard to accused Muntazim, the case of the prosecution again rests solely on the testimony of PW6. However, as far as this accused is concerned, his testimony has to be looked at very cautiously because the identification of accused Muntazim @ Musa was done by this witness on 8.11.2022 i.e. after more than two years and eight months of the incident. By then the accused had already

been declared a proclaimed offender and I am unable to understand that why before the apprehension of the accused, at least his photos could not have been identified by this witness. The identification of this accused after his apprehension by the witness more than two years after his arrest does not inspire confidence and in my considered opinion cannot be acted upon without any corroboration. The alleged conversation of this accused with Haseen @ Mullaji cannot be of corroborative value because those conversations could not even prove the case against Haseen @ Mullaji against whom the evidence was primarily cited.

7.25.1 There is an additional charge against this accused which is u/s 174A IPC. However, the prosecution has not led any evidence to prove this charge. Even the process server, who had executed the process u/s 82 Cr.P.C, was not examined.

7.25.2 I accordingly find that for accused Muntazim @ Musa is entitled to a benefit of doubt and to an acquittal for all the charges framed against him.

Conclusion

7.26 In view of my above discussion:

(i) Accused Haseen @ Salman @ Mullaji, Firoz, Gulfam, Shoaib Alam @ Bobby, Sameer Khan and Muntazim @ Musa are hereby acquitted of all the charges framed against them. Their bail bonds stand cancelled. Sureties stand discharged.

(ii) Accused Tahir Hussain is convicted for commission of offences punishable u/s 188 IPC, u/s 153A r/w section 149 IPC, section 147 r/w section 149 IPC, section 148 r/w section 149 IPC, section 365 r/w section 149 IPC and section 302 r/w section 149 IPC. He is acquitted of the charges u/s 120B IPC, 505 IPC and 109/114 IPC.

(iii) Accused Nazim is convicted for commission of offences punishable u/s 188 IPC, u/s 153A r/w section 149 IPC, section 147 r/w section 149 IPC, section 148 r/w section 149 IPC, section 365 r/w section 149 IPC and section 302 r/w section 149 IPC. He is acquitted of the charges u/s 120B IPC and 7 r/w section 25 of Arms Act.

(iv) Accused Kasim is convicted for commission of offences punishable u/s 188 IPC, u/s 153A r/w section 149 IPC, section 147 r/w section 149 IPC, section 148 r/w section 149 IPC, section 365 r/w section 149 IPC and section 302 r/w section 149 IPC. He is acquitted of the charges u/s 120B IPC.

(v) Accused Javed is convicted for commission of offences punishable u/s 188 IPC, u/s 153A r/w section 149 IPC, section 147 r/w section 149 IPC, section 148 r/w section 149 IPC, section 365 r/w section 149 IPC and section 302 r/w section 149 IPC. He is acquitted of the charges u/s 120B IPC.

(vi) Accused Anas is convicted for commission of offences punishable u/s 188 IPC, u/s 153A r/w section 149 IPC, section 147 r/w section 149 IPC, section 148 r/w section 149 IPC, section 365 r/w

section 149 IPC and section 302 r/w section 149 IPC. He is acquitted of the charges u/s 120B IPC.

7.26.1 The convicts be heard separately on the point of sentence.

Pronounced in open court
on 13.07.2026.
(This judgment contains 293 pages
and from page no. 294 to 320 are
the annexure 1 to annexure 5
each page bears my signatures)

(Parveen Singh)
ASJ-03, North East Distt.,
Karkardooma Court, Delhi.

ANNEXURE -1

LIST OF PROSECUTION WITNESSES

Prosecution Witness No.	Name of Witness	Description
PW1	ASI Ram Prakash	He was the DO and proved the FIR.
PW2	Sh. Gautam Khanna	He was running photo studio in the name of 'Impression Photo Studio' and video recorded postmortem examination of a dead body.
PW3	ACP Mahesh	He was working as draughtsman and at the instance of IO, he prepared scaled site plan on the basis of his rough notes.
PW4	SI Ishwar Prakash	He was working as photographer in photo section of crime branch and took the photographs of the scene of crime.
PW5	HC Rahul	He was the material eye witness of the incident and his detailed testimony shall be discussed later on.
PW6	Sh. Pradeep Verma	He was an eye witness of the incident and his detailed testimony shall be discussed later on.
PW7	Ct. Pawan Kumar	He made announcement of order u/s 144 Cr.P.C. in the

		area.
PW8	ASI Naresh Pal	He was the formal witness and proved copy of order u/s 144 Cr. PC and complaint u/s 195 Cr.PC.
PW9	ASI Rajender Kumar	After receipt of DD no.63A in respect of Ankit Sharma being brought dead in GTB Hospital, he got the dead body identified by father Ravinder and uncle Rajiv. He filled the request form and form 25.35 and also seized the items which were handed over to him.
PW10	ASI Joginder Singh	He participated in investigation of this case on 09.04.2020 alongwith other team members, proved arrest & p/search memo of accused Samir and also proved pointing out memo at his instance.
PW11	Sh. Deepak Pradhan	He witnessed the riots taking place on 25.02.2020 and after reaching Shiv Sanatam Mandir in Moonga Nagar, he witnessed that stones and petrol bombs were being pelted from the terrace of house of Tahir Hussain.
PW12	SI Birender Singh	He participated in investigation of this case on 14.03.2020 alongwith other team members. He proved pointing

		out memo at the instance of accused Haseen, disclosure statement of Haseen, sketch & seizure memo of knife, seizure memo of container containing soil/earth control, seizure memo of mobile phone Realme and seizure memo of title documents of building of Tahir Hussain.
PW13	Sh. Aakash	He was an eye witness of the incident and proved pointing out memo.
PW14	Sh. Bharat	He was an eye witness of the incident.
PW15	Dr. Arvind Kumar	He alongwith a board comprising of Dr. K.K. Banerjee, Dr. S.K.Verma , had conducted postmortem examination on the dead body of Ankit Sharma. He has proved postmortem report and subsequent opinion.
PW16	Sh. Sushil Kumar	He was a witness of recovery of dead body from the drain near Chand Bagh Pulia.
PW17	Sh. Shehjad Ali	He being a diver under supervision DM (East), took out dead body of a boy from the drain and handed over to the police.
PW18	Insp. Karamveer	He participated in investigation of this case on 28.02.2020

		alongwith IO and other team members. He proved seizure memo of blood lifted from 2 places & one piece of cement block, mobile phone of Gulfam, mobile phone of Firoz and mobile phone of Shoeb. He also proved arrest memo of accused Anas, Firoz, Javed, Gulfam & Shoib Alam.
PW19	Sh. Vikalp Kochar	He witnessed his shop M/s Bunny Bakers, being burnt & looted in Chand Bagh Pulia during the month of February 2020. He also witnessed the incident happened with deceased with danda and sharp object. His detailed testimony shall be discussed at a later stage.
PW20	Sh. Rahul Kumar	He was a witness of recovery of dead body.
PW21	Sh. Gyanender Kumar Kochar	He witnessed his shop M/s Bunny Bakers, being vandalized, looted and set on fire. His detailed testimony shall be discussed later on.
PW22	ASI Praveen	He was a formal witness in whose presence two mobile phones make Samsung were collected and he has proved the seizure memo of said mobile phones.

PW23	Sh.Sudhir Kumar Sharma	He was the maternal uncle (mamaji) of the deceased and was a witness of identifying & recovery of dead body from the drain near chand bagh pulia.
PW24	Sh. C.P. Singh	He was the expert of the Forensic Lab in Physics division and has proved the voice comparison of accused Haseen @ Mullaji @ Salman.
PW25	Sh. Geeetesh Patel	He was the expert of the Forensic Lab in Physics division and has checked the continuity of PD-A i.e. the data retrieved by Sh. Vikas Kumar, Assistant Director (FSL).
PW26	Sh. Ajay Kumar	He was the Nodal Officer of Bharti Airtel Ltd. and has proved CDRs of 4 mobile numbers alongwith certificate u/s 63 BSA and Cell ID chart.
PW27	Sh. Sanjay Singh	He was a witness of recovery of dead body from the drain near chand bagh pulia.
PW28	Sh. Ravinder Kumar	He was the father of the deceased Ankit Sharma. His testimony shall be discussed at a later stage.
PW29	ASI Jaiveer	He was a formal witness and has proved the seizure memo of mobile phone make I-Tel.
PW30	SI Satbir Singh	He was a witness of depositing the exhibits in FSL Rohini, on

		the instructions of IO/Insp. Amleshwar. He has proved the true photocopy of R/C no.20/21/20 & case acceptance acknowledgment of FSL.
PW31	Dr. Indresh Kumar Mishra	He was a witness of visiting scene of crime i.e. Chand Bagh pulia, Khajuri nala alongwith other officials of FSL. He has proved biological inspection report.
PW32	ASI Pramod Singh	He was a witness of collecting the exhibits from malkhana Crime branch and depositing the same in FSL Rohini. He has proved acknowledgment letter.
PW33	HC Praveen Kumar	He was an eye witness of the incident. His testimony shall be discussed at a later stage.
PW34	Sh. L. K. Gautam	He was a witness of according sanction u/s 196 Cr. PC for offences u/s 153A/505 IPC and has proved the sanction order dt. 16.12.2020.
PW35	Sh. Vikas Kumar	He was an expert of Forensic Lab, who retrieved the data from exhibits and copied the same in a pendrive. He has proved the certificate in respect of CD.
PW36	HC Kuldeep	He deposited the exhibits in FSL Rohini.

PW37	Sh. Surendra Pal Singh	He was a formal witness.
PW38	ASI Sanjay Kumar	He was the duty officer and has proved DD no.9A.
PW39	ASI Jasbir Singh	He handed over the exhibits to Ct. Kuldeep for depositing the same in FSL. He has proved R/C no.59/21/20
PW40	HC Sachin	He was a witness of recovery of dead body from the drain near chand bagh pulia. He has proved seizure memo of DVDs and certificate u/s 65B of IE Act.
PW41	Dr. Nadeem Akhtar	He had prepared the MLC of Ankit Sharma and has proved his death certificate.
PW42	W/HC K.M. Neetu	He uploaded the FIR of this case on CCTNS.
PW43	Sh. Prakash Saxena	He was the Nodal Officer of Reliance Jio Infocom Ltd and has proved the CDRs & CAFs of different numbers. He has also proved the Cell ID chart and certificate u/s 63 of BSA.
PW44	Sh. Shashank Tyagi	He was the Nodal Officer of Vodafone Idea Ltd.and has proved the CDRs & CAFs of different numbers. He has also proved the Cell ID chart and certificate u/s 63 of BSA.
PW45	SI Ravi Kumar	He was a witness of apprehension of accused Muntazim @ Musa (PO).

PW46	Insp. Hukam Singh	He was the first IO and was a witness of inquest and transfer of case to SIT.
PW47	Sh. Rakash Kumar Rampuri	On 08.05.2020, being posted as ld. MM, he has proved proceedings u/s 164 Cr. PC.
PW48	HC Veeresh	On 31.10.2022, he was working as MHC(M) and has proved the RC no.411/21/22 and seizure memo of two mobile phones.
PW49	ASI Yogender	On 12.10.2022, he joined the investigation of this case with IO/Insp. Amit Prakash. He has proved the arrest memo of Muntajim @ Musa & pointing out memo of place of incident.
PW50	ASI Sanjeev Kumar	He was a witness of recovery of dead body and knife. He has proved the arrest & p/search memo of accused Nazim & Kasim and seizure memo of knife.
PW51	SI Satender Malik	On 20.04.2010, he was working as MHC(M), who handed over mobile phone to ASI Jaiveer Singh from SIT, AHTU, Crime branch. He has proved R/C no.96/21/20.
PW52	Sh. Hamender Kumar	He was a surveillance witness, who proved intercepted calls and linkage of accused Salman.
PW53	Sh. Satya Gopal	He was Addl. Chief Secretary

		(Home), GNCT, who had passed order, permitting interception of incoming and outgoing calls and messages.
PW54	Sh. Rajeev Kumar Sharma	He was a witness of identification of dead body of Ankit Sharma.
PW55	ASI Kuldeep Singh	He participated in investigation of case alongwith IO and other team members. He was a witness of FSL proceedings, seizure of exhibits lifted from the place near the boundary wall of the drain, as well as arrest of accused Tahir Hussain.
PW56	Ms. Priyanka Gaur	She was an eye witness, who had seen Tahir Hussain instigating the mob.
PW57	Ct. Sohanveer	He deposited the exhibits to FSL Rohini.
PW58	Nadeem Khan	He used to have telephonic conversation with Haseen.
PW59	Dr. Parshuram Singh	He was an expert of FSL
PW60	Shakeel Anwar	He was a formal witness, whose two government cameras, affixed on outer wall of his factory were found in damaged condition.
PW61	Akram	He was a public witness, who obtained one SIM card for one Mahender, who was working with him.

PW62	Insp. Ram Kumar	He took the 2 mobile phones from malkhana of Special Cell PS Lodhi colony, seized them and deposited the same in the malkhana of crime branch.
PW63	Rahisuddin	He was a witness, who had seen a person covering the cctv camera which was facing towards chand bagh pulia.
PW64	ASI Pankaj	On 13.04.2020, he was working as MHC(M) in PS Dayalpur, who has proved custody and despatch of case properties.
PW65	HC Harender Kumar	He was a witness of seizure of mobile phone of accused Shoiab Alam, Gulfam and Firoz.
PW66	Sh. Neeraj Singh	He was a witness who recorded the riots on video and has proved the seizure memo of his mobile phone.
PW67	Ms. Nidhi	He was an expert of FSL.
PW68	Sh. Rohtash Singh	He received one video on his WhatsApp, wherein 3 persons were seen throwing something in the drain and thereafter forwarded the same through WhatsApp to one police official.
PW69	HC Sanjay Kumar	He was a witness of seizure of mobile phone of accused Javed.

PW70	Sh. Dharmender Kumar	He was examined to produce the kalandra vide DD n.2A, PS Special Cell.
PW71	Sh. Anil Kumar Tripathi	He was also examined to produce the kalandra.
PW72	ASI Naresh Kumar	He was a witness of arrest of accused Muntajim @ Musa (PO) from Telangana.
PW73	ASI Ashok	He was the MHC(M) in PS Dayalpur.
PW74	Sh. Brajesh Kumar	He was an expert of RFSL, Bihar
PW75	Sh. Faheem @ Chikna	He was a public witness. He did not support the case of prosecution.
PW76	Insp. Jaiveer	He was a witness who proved arrest of accused Salman @ Mullaji, under kalandra vide DD no.2A. He has also proved certificate u/s 65B of IE Act and seizure memo of interception of mobile phone of Salman.
PW77	Rajan Bhatnagar	He was a witness of conveying the prosecution sanction (accorded by Hon'ble LG) to DCP, HQ-II, DCP Crime-I, HQ and the Commissioner of Police, Delhi.
PW78	Sh. Kaushlendra Kumar	He was an expert of SFSL, Patna, Bihar.
PW79	Insp. Anleshwar Rai	He was the IO of this case. His

		detailed testimony shall be discussed at a later stage.
PW80	Sh. Sanjeev Yadav	He authorized the interception of mobile no.9891167837 alongwith 3 other numbers.
PW81	Insp. Amit Prakash	He was the IO of this case, who filed the supplementary chargesheet. He has proved the digital analysis, transcripts and arrest of absconding accused.
PW82	Sh. Dattatray Atmaram	He was a witness, who collected the result and exhibits from the CFSL, Lodhi Colony and thereafter deposited the same in malkhana Crime branch and malkhana PS Dayalpur.
PW83	SI Vikash Kumar	He was a witness, who recorded the voice of Faheem @ Chikna.
PW84	W/Ct. Ankita	He was a witness, who collected the exhibits and deposited the same with CFSL, Lodhi Colony. He has proved R/C no.625/21/25.
PW85	HC Somesh	He was also a witness, who after collecting the exhibits deposited the same with CFSL, Lodhi Colony. He has proved R/C no.88/21/25.
PW86	SI Manoj	He was a witness in whose presence, recording of voice of Nadeem was done.

PW87	Ct. Nishant	He was a witness of collection of original FSL result and deposition of the same in malkhanas of Dayalpur and Crime branch.
PW88	Sh. Arun Kumar Gupta	He was an expert of CFSL, Lodhi Colony.
PW89	Sh. Amitosh Kumar	He was an expert of CFSL, Delhi
PW90	Insp. Priyanka	She was the supervisor of the procedure in voice sample proceedings of Nadeem and Faheem @ Chikna. She has proved the transcript of Nadeem and Faheem.
PW91	ASI Praveen Kumar	He downloaded some event IDs from server and taken out a printout of the same. He has proved a certificate u/s 65B of IE Act and PCR forms.

ANNEXURE -2

LIST OF PROSECUTION DOCUMENTS

Exhibit No.	Description of the Exhibit	Proved/Attested by
Ex.PW1/A	Copy of DD no.63A	PW1
Ex.PW1/B	Endorsement on rukka	PW1
Ex.PW1/C	FIR	PW1
Ex.PW1/D	Kayami DD entry no.82A	PW1
Ex.PW2/A	Certificate u/s 65B of IE Act	PW2
Ex.PW2/B	Seizure memo of DVD	PW2
Ex.PW3/A	Site plan	PW3
Ex.PW4/A	Certificate u/s 65B of IE Act	PW4
Ex.PW4/P1 to Ex.PW4/P11	Photographs	PW4
Ex.PW6/A	Statement u/s 164 Cr. PC	PW6
Ex.PW8/A	Copy of order u/s 144 Cr.PC	PW8
Ex.PW8/B	Complaint u/s 195 Cr.PC	PW8
Ex.PW9/A & Ex.PW9/B	Identification memos signed by Ravinder and Rajiv	PW9
Ex.PW9/C	Request form	PW9
Ex.PW9/D	Form 25.35	PW9
Ex.PW9/E	Seizure memo of sample seal, blood on gauze, pullanda of underwear and handkerchief of deceased	PW9
Ex.PW10/A & Ex.PW10/B	Arrest memo and p/search memo of accused Samir	PW10
Ex.PW10/C	Pointing out memo of the place of incident at the instance of accused Samir	PW10

Ex.PW12/A	Pointing out memo of the place of incident at the instance of accused Haseen.	PW12
Ex.PW12/B	Disclosure statement of accused Haseen	PW12
Ex.PW12/C	Sketch of the knife	PW12
Ex.PW12/D	Seizure memo of pullanda of apparels	PW12
Ex.PW12/E	Seizure memo of knife	PW12
Ex.PW12/F	Seizure memo of container containing soil/earth control.	PW12
Ex.PW12/G	Seizure memo of mobile phone Realme	PW12
Ex.PW12/H	Seizure memo of title documents of building of Tahir Hussain	PW12
Ex.PW12/I	Seizure memo of mobile phone of Javed	PW12
Ex.PW15/A	Postmortem report	PW15
Ex.PW18/A	Seizure memo of plastic box containing blood and one piece of cement block	PW18
Ex.PW18/B	Arrest memo of accused Anas	PW18
Ex.PW18/C	Arrest memo of accused Firoz	PW18
Ex.PW18/D	Arrest memo of accused Javed	PW18
Ex.PW18/E	Arrest memo of accused Gulfam	PW18
Ex.Pw18/F	Arrest memo of accused Shoaib Alam	PW18
Ex.PW18/G	Seizure memo of mobile phone of accused Gulfam	PW18
Ex.PW18/H	Seizure memo of mobile phone of accused Firoz	PW18
Ex.PW18/I	Seizure memo of mobile phone of	PW18

	accused Shoeb	
Ex.PW22/A	Seizure memo of mobile phones	PW22
Ex.PW24/A	Report in respect of conducting auditory analysis of recorded speech sample of speakers	PW24
Ex.PW25/A	Report in respect of conducting frame by frame analysis by using Video Analyst System	PW25
Ex.PW26/A & Ex.PW26/B	Certified copy of CDR of mobile no.9871938081 & certified copy of scanned CAF	PW26
Ex.PW26/C & Ex.PW26/D	Certified copy of CDR of mobile no.9911275010 & certified copy of DKYC	PW26
Ex.26/E & Ex.PW26/F	Certified copy of CDR of mobile no.9810363925 & certified copy of scanned CAF	PW26
Ex.PW26/G & Ex.PW26/H	Certified copy of CDR of mobile no.9958106778 & certified copy of DKYC	PW26
Ex.PW26/I	Certificate u/s 63 BSA	PW26
Ex.PW26/J	Cell ID chart	PW26
Ex.PW29/A	Seizure memo of mobile phone	PW29
Ex.PW29/B	Copy of entry in register no.21	PW29
Ex.PW30/A	True photocopy of R/C no.20/21/20	PW30
Ex.PW30/B	Case acceptance acknowledgment of FSL	PW30
Ex.PW31/A	Report in respect of proceedings conducted by FSL team	PW31
Ex.PW31/B	Report dt. 09.06.2020	PW31

Ex.PW31/C	Report of Allelic data	PW31
Ex.PW32/A	Acknowledgment letter from FSL	PW32
Ex.PW34/A	Order dt. 16.12.2020 as passed by Hon'ble LG	PW34/A
Ex.PW35/A	FSL report dt. 30.09.2020 in respect of Mobile Phones Ex.MP1 to MP6 with its memory cards & Sim cards Ex. SC1 to SC5.	PW35
Ex.PW35/B	FSL report dt. 31.08.2020 in respect of Mobile Phones Ex.MP1 & MP2 with Sim cards Ex. SC1 and SC2.	PW35
Ex.PW35/C	Certificate u/s 65B of IE Act in respect of CD	PW35
Ex.PW36/A	True photocopy of RC no.139/21	PW36
Ex.PW38/A	DD no.9A	PW38
Ex.PW39/A	True photocopy of R/C no.59/21/20	PW39
Ex.PW40/A	Seizure memo of DVD	PW40
Ex.PW40/B	Certificate u/s 65B of IE Act	PW40
Ex.PW41/A	MLC	PW41
Ex.PW41/B	Carbon copy of death certificate of Ankit Sharma	PW41
Ex.PW41/C	Emergency registration card of Ankit Sharma	PW41
Ex.PW43/A & Ex.PW43/B	CDR of mobile no.9354042257 and certified copy of EKYC	PW43
Ex.PW43/C and Ex.PW43/D	CDR of mobile no.6395632069 and certified copy of EKYC	PW43
Ex.PW43/E	Certificate u/s 63 BSA in respect of mobile no. 9354042257	PW43

Ex.PW43/F	Certificate u/s 63 BSA in respect of mobile no. 6395632069	PW43
Ex.PW43/G	Cell ID chart in respect of mobile no. 9354042257	PW43
Ex.PW43/H	Cell ID chart in respect of mobile no. 6395632069	PW43
Ex.PW44/A & Ex.PW44/B	CDR of mobile no.8588924129 & certified copy of scanned CAF	PW44
Ex.PW44/C & Ex.PW44/D	CDR of mobile no.9891967512 & certified copy of DKYC	PW44
Ex.PW44/E & Ex.PW44/F	CDR of mobile no.9990263650 & certified copy of EKYC	PW44
Ex.PW44/G & Ex.PW44/H	CDR of mobile no.8512013294 & certified copy of DKYC	PW44
Ex.PW44/I & Ex.PW44/J	CDR of mobile no.9891167837 & certified copy of EKYC	PW44
Ex.PW44/K & Ex.PW44/L	CDR of mobile no.7055907361 & certified copy of DKYC	PW44
Ex.PW44/M & Ex.PW 44/N	CDR of mobile no.7290014859 & certified copy of DKYC	PW44
Ex.PW44/O	CDR of mobile no.7290014859	PW44
Ex.PW44/P	Certified copy of DKYC in respect of mobile no.9278935412	PW44
Ex.PW44/Q	Certified copy of DKYC in respect of mobile no.9540206037	PW44
Ex.PW44/R	Certificate u/s 63 BSA	PW44
Ex.PW44/S	Cell ID chart	PW44
Ex.PW45/A & Ex.PW45/B	Arrest memo and p/search memo of accused Muntazim @ Musa.	PW45
Ex.PW45/C	Receiving on application for grant of	PW45

	transit remand of accused Muntazim @ Musa	
Ex.PW45/D	Kalandra u/s 41.1 Cr. PC	PW45
Ex.PW46/A	Endorsement on statement of Ravinder Sharma	PW46
Ex.PW47/A	Proceedings u/s 164 Cr. PC	PW47
Ex.PW47/B	Proceedings u/s 164 Cr. PC dt. 08.05.2020	PW47
Ex.PW48/A	True photocopy of RC no.411/21/22	PW48
Ex.PW49/A	Arrest memo of accused Muntajim @ Musa	PW49
Ex.PW49/B	Pointing out memo of place of incident	PW49
Ex.PW50/A	Arrest memo of accused Nazim	PW50
Ex.PW50/B	Arrest memo of accused Kasim	PW50
Ex.PW50/C	P/search memo of accused Nazim	PW50
Ex.PW50/D	P/search memo of accused Kasim	PW50
Ex.PW50/E	Pointing out memo of place of incident	PW50
Ex.PW50/F	Sketch of the knife	PW50
Ex.PW50/G	Seizure memo of knife	PW50
Ex.PW50/H	Disclosure statement of Nazim	PW50
Ex.PW50/I	Seizure memo of DVD containing call interception records of mobile no. 9891167837, copy of interception order issued by DCP/Spl.Cell, certificate u/s 65B of IE Act and sample seal	PW50
Ex.PW50/J	True photocopy of RC no.39/21/20	PW50
Ex.PW50/K	Seizure memo of the cassettes	PW50

Ex.PW50/L	True photocopy of RC no.143/21	PW50
Ex.PW50/M	Acknowledgment of case acceptance dt. 05.05.2020	PW50
Ex.PW53/A	Copy of order dt. 23.01.2020 passed by Addl. Chief Secretary (Home), GNCT.	PW53
Ex.PW55/A	Seizure memo of two exhibits lifted from near the boundary wall of the drain in front of bunny cake shop.	PW55
Ex.PW55/B	Arrest memo of accused Tahir Hussain	PW55
Ex.PW55/C	True photocopy of RC no.101/21/20	PW55
Ex.PW57/A	True photocopy of RC no.137/21	PW57
Ex.PW57/B	True photocopy of RC no.138/21	PW57
Ex.PW57/C & Ex.PW57/D	Two acknowledgment receipts dt.23.04.2020 in respect of exhibits of two forwarding letters	PW57
Ex.PW57/E	Carbon copy of R/C no.62/21/20	PW57
Ex.PW57/F	Seizure memo of mobile phones of Nazim and Kasim	PW57
Ex.PW59/A	FSL report in respect of handkerchief, underwear and soil material.	PW59
Ex.PW64/A	Entry made in register no.19 in column no.5 against S.No.122	PW64
Ex.PW64/B	Entry made in register no.19 in column no.5 against S.No.135	PW64
Ex.PW64/C	Entry made in register no.19 in column no.5 against S.No.120	PW64
Ex.PW64/D	Entry made against S.no.58	PW64
Ex.PW64/E	Entry made against S.no.83	PW64

Ex.PW64/F	Entry made against S.no.99	PW64
Ex.PW64/G	Entry made against S.no.49	PW64
Ex.PW67/A	Certificate dt. 08.05.2025	PW67
Ex.PW67/B	Hash value of the mirror copy	PW67
Ex.PW69/A	Carbon copy of R/C no.63/21/20	PW69
Ex.PW73/A	Entry made in register no.19 vide S.no.49	PW73
Ex.PW73/B	Entry made in register no.19 vide S.no.58	PW73
Ex.PW73/C	Entry made in register no.19 vide S.no.83	PW73
Ex.PW73/D	Entry made in register no.19 vide S.no.99	PW73
Ex.PW73/E	Entry made in register no.19 vide S.no.120	PW73
Ex.PW73/F	Entry made in register no.19 vide S.no.122	PW73
Ex.PW73/G	Entry made in register no.19 vide S.no.135	PW73
Ex.PW74/A	Report in respect of inspection taken place on 09.03.2020	PW74
Ex.PW76/A & Ex.PW76/B	Arrest and p/search memo of accused Salman @ Mullaji	PW76
Ex.PW76/C	Kalandra vide DD no.2A	PW76
Ex.PW76/D	Certificate u/s 65B of IE Act	PW76
Ex.PW77/1	Copy of sanction order	PW77
Ex.PW78/1	Crime scene report dt. 29.9.2020	PW78
Ex.PW79/1, Ex.PW79/2 & Ex.PW79/3	Three Site plans	PW79

Ex.PW79/4	Application moved before FSL for inspection of scene of crime	PW79
Ex.PW79/5	Certificate u/s 65B of IE Act in respect of photos	PW79
Ex.PW79/6 to Ex.PW79/8	Photographs	PW79
Ex.PW79/9	Arrest memo of accused Haseen @ Mulla	PW79
Ex.PW79/10	Site plan of the place of recovery	PW79
Ex.PW79/11	Another site plan of the place of recovery	PW79
Ex.PW79/12	Transcripts of version of accused Haseen @ Salman	PW79
Ex.PW79/13	Seizure memo of DVD	PW79
Ex.PW79/14	White envelope containing cotton wool swab	PW79
Ex.PW80/1	Copy of forwarding letter dt. 28.01.2020	PW80
Ex.PW81/1 & Ex.PW81/2	Transcripts of the conversation between Haseen and Saira	PW81
Ex.PW81/3, Ex.PW81/4 & Ex.PW81/5	Transcripts of the conversation between Haseen and Nadeem	PW81
Ex.PW81/6 & Ex.PW81/7	Transcripts of the conversation between Haseen and Faheem @ Chikna	PW81
Ex.PW81/8	Transcripts of the conversation between Haseen and Muntajim @ Musa	PW81
Ex.PW81/9 & Ex.PW81/10	Transcripts of the conversation between Haseen and Sameer Khan	PW81

Ex.PW83/1	Seizure memo of SD card	PW83
Ex.PW83/2	White envelope bearing mark S-1	PW83
Ex.PW83/3	The original packing of SD card make Sandisk 16 GB	PW83
Ex.PW83/4	Folder 01 containing one audio file	PW83
Ex.PW84/1	True photocopy of RC no.625/21/25	PW84
Ex.PW85/1	True photocopy of RC no.88/21/25	PW85
Ex.PW86/1	Seizure memo of micro SD card	PW86
Ex.PW86/2	White envelope	PW86
Ex.PW86/3	Original packing of SD card make Sandisk 16 GB	PW86
Ex.PW86/4	Folder 01 containing one audio file	PW86
Ex.PW87/1	True photocopy of RC no.782/21/25	PW87
Ex.PW87/2	True photocopy of RC no.294/21/25	PW87
Ex.PW87/3	True photocopy of RC no.121/21/25	PW87
Ex.PW88/1 & Ex.PW88/2	Print outs of generated hash value	PW88
Ex.PW88/3	Opinion with regard to the fact that questioned voices matched with sample voice.	PW88
Ex.PW88/4	The envelope Exhibit S1	PW88
Ex.PW89/1	FSL opinion	PW89
Ex.PW90/1	Transcript of Nadeem	PW90
Ex.PW90/2	Transcript of Faheem	PW90
Ex.PW91/1	Certificate u/s 65B of IE Act	PW91

ANNEXURE -3

LIST OF ARTICLES PROVED BY PROSECUTION

Exhibit No.	Description of the Exhibit	Proved/Attested by
Ex.PW2/Article-1	DVD	PW2
Ex.PW15/Article-1 & Ex.PW15/Article-2	Weapons i.e. knives	PW15
Ex.PW24/Article-1	DVD	PW24
Ex.PW24/Article-2	Audio cassette	PW24
Ex.PW25/Article-1	Pendrive	PW25
Ex.PW35/Article-1	CD	PW35
Ex.PW35/Article-2 & Ex.PW35/Article-3	Mobile phones with Sim cards	PW35
Ex.PW35/Article-4	Mobile phone with memory card	PW35
Ex.PW35/Article-5	Mobile phone with keypad make Samsung and One SIM card bearing endorsement of SC-2	PW35
Ex.PW35/Article-6	Mobile phone with keypad make I-Tel and one SIM card bearing endorsement of SC-3.	PW35
Ex.PW35/Article-7	Mobile phone make Samsung, one SIM card and one memory card bearing endorsement of SC-4 and MC-2.	PW35
Ex.PW35/Article-8	Mobile phone with keypad	PW35

	make I-Tel, one SIM card bearing endorsement of SC-5 & one memory card bearing endorsement of MC-3.	
Ex.PW59/Article-1	Handkerchief	PW59
Ex.PW59/Article-2	Underwear	PW59
Ex.PW59/Article-3	Soil material	PW59
Ex.PW67/Article-1	Pendrive	PW67
Ex.PW79/Article-1	Jeans Trouser	PW79
Ex.PW79/Article-2	Round neck T-shirt	PW79
Ex.PW79/Article-3	Red shirt	PW79
Ex.PW79/Article-4	Plastic container box	PW79
Ex.PW79/Article-5	Cement stone piece	PW79
Ex.PW79/Article-6	Cotton wool swab	PW79
Ex.PW83/Article-1	Micro SD card	PW83
Ex.PW86/Article-1	Micro SD card	PW86

ANNEXURE -4

LIST OF DEFENCE WITNESSES

Defence witness no.	Name of Witness	Description
DW-1	Dr. Parshuram Singh	He was the witness from FSL, Rohini (Physics Division) and had brought the quality manual and printout of International Standard ISO/ ISE 17025.
D.W-2	Dr. Reeta R Gupta	She was the witness from CFSL, N.Delhi and had brought the working procedural manual of the physics division as is applicable for voice sampling and auditory analysis.

ANNEXURE -5

LIST OF DOCUMENTS PROVED DURING DEFENCE
EVIDENCE

Exhibit No.	Description of the Exhibit	Proved/Attested by
D.W1/1	Quality manual	DW-1
D.W1/2	Printout of International Standard ISO/ ISE 17025.	D.W-1
D.W2/1	Working procedural manual of the physics division.	D.W-2