

DLNE010002972021



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

CNR No. DLNE01-000297-2021
SC No. 09/21
State v. Shahnawaz @ Shanu etc.
FIR No. 39/20
PS Gokalpuri

**U/s. 144/147/148/149/188/153-A/302/201/427/436/450/120-B/34
IPC**

In the matter of: -

STATE

Versus

1. Mohd. Shahnawaj @ Shanu S/o. Mohd. Rashid, R/o. H.No. 528, Gali No.22, Phase- 10, Shiv Vihar, Delhi.	2. Mohd. Faisal S/o. Mohd. Raeesuddin, R/o. F-14, Gali No.1, Babu Nagar, Main Brijpuri Road, Delhi.	3. Azad S/o. Mohd. Raeesuddin, R/o. C-824, Gali No. 9, Mustafabad, Delhi.
4. Asraf S/o. Mohd. Anisul Haq, R/o. A-18, Chaman Park, Indira Vihar, Delhi.	5. Rashid @ Monu S/o. Mohd. Khalil, R/o. 259, Gali No. 07, Shiv Mandir, Shakti Vihar, Delhi-94.	6. Shahrukh S/o. Salauddin, R/o. B-262, Gali No. 07, Babu Nagar, Near Shiv Mandir, Delhi.

7. Mohd. Shoaib @ Chutwa S/o. Mohd. Islam, R/o. 93, Gali No. 5/2, Behind Rajdhani Public School, Babu Nagar, Delhi.	8. Parvez S/o. Mohd. Riyazuddin, R/o. A-36/6, Gali No.1, Maha Laxmi Enclave, Babu Nagar, Shiv Vihar Tiraha, Delhi.	9. Rashid @ Raja S/o. Mohd. Riyazuddin, R/o. H.No. A-22, Gali No.1, Chaman Park, Mustafabad, Shiv Vihar Tiraha, Delhi.
10. Mohd. Tahir S/o. Mohd. Umar, R/o. H.No.16, Gali no.6, Mustafabad, Delhi.	11. Salman S/o. Shah Mohamad, R/o. H.No.A-44, Gali No.1, Opp. DRP School, Chaman Park, Delhi.	12. Sonu Saifi S/o. Salim, R/o. H.No. B- 230, Gali No.5/6, Babu Nagar, Old Mustafabad, Delhi.

... **Accused Persons**

25.10.2023

ORDER ON THE POINT OF CHARGE

Vide this order, I shall decide the question of charges against accused **1. Mohd. Shahnawaz @ Shanu, 2. Mohd. Faisal, 3. Azad, 4. Ashraf Ali, 5. Rashid @ Monu, 6. Shahrukh, 7. Mohd. Shoaib @ Chhutwa, 8. Parvez, 9. Rashid @ Raja, 10. Mohd. Tahir, 11. Salman and 12. Sonu Saifi.**

1. Brief facts of the present case are that on 26.02.2020 at about 01:04 PM an information was received in PS Gokalpuri vide DD No.17-A to the effect that mob was pelting stone near Kabir Building, Gali No.1, Bhagirathi Vihar. ASI Giri Raj went to aforesaid place. Ct. Vipin met ASI Giri Raj and informed him that rioters had set the house of owner of Anil Sweets, on fire,

which was situated in Chaman Park. Accordingly, ASI Giri Raj and Ct. Vipin reached the aforesaid property in Chaman Park. They found that this house was in burnt condition. During inspection of this house on the 2nd floor, they found half burnt dead body of a person in a hall. Hands and legs of the dead body were missing. On inquiry, it was found that it was house/godown of Anil Pal and that it was dead body of a person namely Dilbar, who used to work as waiter for Anil Pal. Dead body was sent for postmortem examination to GTB hospital and DD No.41-A was recorded in PS at the instance of Duty Constable from GTB hospital. ASI Gajraj obtained MLC of this dead body. DD entries No. 17-A and 41-A were kept in abeyance due to rush of a number of PCR calls. On 28.02.2020 on the basis of DD No.41-A dated 26.02.2020, ASI Gajraj got this FIR registered for offence u/s. 147/148/149/302/201/436/427 IPC.

2. In the chargesheet, IO has given account of background of riots taken place in Delhi and several incidents taken place at different parts of Delhi on different dates. Crux of such narration is that communal riot had started in Delhi since 24.02.2020. Insp. Pramod Joshi started investigation in the present case. During investigation, he examined different persons including Devender (brother of deceased), Shyam Singh and Anil Pal.
3. Mr. Devender (brother of deceased) identified dead body of Dilbar. As per statement given by Shyam Singh, on 24.02.2020 Dilbar had gone to the godown at about 02:00 PM to have his lunch. Since around 02:30 PM pelting of stones started near their

shop (Anil Sweets), due to which the shop was closed and all the workers including owner remained inside that sweet shop. After around one hour they left that place and this witness came to rescue brother and nephew of Anil from their Pastry Shop. Thereafter, this witness along with others went to the terrace of Dairy of Anil. From that place they saw that number of persons had gone up to terrace of godown of Anil and they were vandalizing that godown. Those persons were pelting stones towards this witness and other persons. The witness saw the rioters entering their godown along with petrol filled bottles, stones etc. at about 06:40-06:45 PM. Shanu @ Shahnawaz was one of them. At about 07:30-08:00 PM this witness met another worker of his shop namely Mahesh. Mahesh informed him about having telephonic talk with Dilbar and that Dilbar was stuck in the godown in property no.A-29, Chaman Park since afternoon. At about 09:30 PM, this witness made call to Dilbar on his phone, but his phone was switched off and this witness informed this fact to his employer Anil. Next day, they could not visit that godown due to riots and they did not have any information about Dilbar. They had given this information to father of Dilbar.

4. Crime team also inspected the place of recovery of dead body and lifted some mobile phone and batteries in damaged/burnt condition. Subsequently, investigation of this case was transferred to SIT Crime Branch on 05.03.2020. Insp. Surender Kumar started further investigation in this case. FSL team was called at scene of crime on 05.03.2020. He obtained video of

CCTV footage from Rajdhani School, which was seized in FIR No. 134/20, PS Dayalpur.

5. IO examined various witnesses in the case. He also obtained postmortem examination report. On the basis of name of culprits mentioned by the witnesses, IO arrested accused persons on different dates. He also added Section 120-B, 153-A and 34 IPC in this case. He examined CCTV footages also for identification of the accused persons. Witnesses also confirmed presence of named accused persons in the CCTV footages. The exhibits lifted from the scene of crime were sent to FSL for examination. Section 188 IPC was also added in view of operation of proclamation u/s. 144 Cr.P.C. at the relevant time. DNA profile of the deceased was generated and on the basis of DNA match, it was confirmed that the deceased was Dilbar Negi.
6. After completion of investigation, IO prepared a chargesheet on the basis of materials collected, against accused persons Mohd. Shahnawaj @ Shanu, Mohd. Faizal, Azad, Asraf Ali, Rashid @ Monu, Shahrukh, Mohd. Shoaib @ Chhutwa, Parvez, Rashid @ Raja, Mohd. Tahir, Salman (s/o. Shah Mohd.) and Sonu Saifi, for offences u/s. 144/147/148/149/188/153-A/302/201/427/436/120-B/34 IPC. This chargesheet was filed on 04.06.2020 before Duty MM-2 (North-East), Karkardooma Courts, Delhi. On 08.07.2020, first supplementary chargesheet was filed before Id. CMM, North East District, Karkardooma Court, Delhi along with a complaint under Section 195 Cr.P.C. Thereafter on 10.09.2020, Id. CMM (N/E) took cognizance of offences punishable under Section

144/147/148/149/188/302/201/427/436/120-B/34 IPC. Vide this order, ld. CMM (N/E) declined to take cognizance of offence u/s 153-A IPC, for want of sanction u/s. 196 Cr.P.C. Thereafter, case was committed to the court of sessions vide order dated 14.01.2021. Subsequently on 27.10.2022, one more supplementary chargesheet along with sanction u/s. 196 Cr.P.C. and other documents, was filed before this court directly.

7. Thereafter on 30.05.2023, one more supplementary chargesheet was filed by IO/Insp. Kanwar Singh in response to queries raised by this court vide order dated 25.10.2023. Those queries were as under: -

7.1 What conversations had taken place between deceased Dilbar and other persons telephonically since evening till night of 24.02.2020?

7.2 What is the status of missing limb and hands of the deceased and reasons thereof?

7.3 What is the status of other persons named by witnesses in their statement being part of the rioters, in respect of which in the main chargesheet it was reported that investigation is still continuing, but in the subsequent supplementary chargesheets their status was not explained?

8. Thereafter on 16.10.2023, Insp. Surender Kumar had furnished clarificatory informations regarding relied upon videos in this case and related facts, which are as under: -

8.1 Three videos pertaining to CCTV footage from CCTV camera installed in Rajdhani Public School, which covers the footage up to around 3 to 05:35 PM.

8.2 Another video of different camera (Ch-1) of Rajdhani Public School, which covered footage till around 4 PM.

8.3 Fifth video covering adjoining gali to Rajdhani Public School till around 4 PM.

8.4 Other three videos recorded by Ankit in his mobile phone of the time around 5 PM.

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

Arguments of Defence

10. In the written submissions dated 04.09.2021, filed on behalf of accused Sonu Saifi by ld. counsel **Ms. Kirti Gupta** (adopted by subsequent counsel as well), it was submitted that accused has been falsely implicated in the present case by the investigating agency, being resident of the same locality. It was further submitted that he has neither been specifically named in the FIR nor has been assigned any specific role in the FIR. It was further submitted that no recovery of any sort has been effected from accused Sonu Saifi in the present case. It was further submitted that there is unexplained delay in registration of FIR. It was further submitted that no real efforts to trace the eye witnesses, real accused persons and technical evidence was made by the investigation agency and there was lack of efforts put in by the investigation agency. It was further submitted that the material evidence in the charge-sheet do not give rise to grave suspicion against the accused. It was further submitted that identification of a few select persons in a large mob by a witness, in the absence of TIP cannot inspire the confidence of court. It was further submitted that there is no electronic evidence available against accused Sonu Saifi either in the form of CCTV footage or video-clip to establish his presence at the spot/crime scene on the date

and time of incident as alleged. It was further submitted that the residence of accused Sonu Saifi is within the radius of 3 KM from the place of incident, hence, the presence of accused cannot be specified at the scene of crime on the basis of CDR. It is further submitted that ingredients of conspiracy are not established because prosecution has not filed any material evidence which shows the prior meeting of mind and agreement of accused with anyone to commit crime. It was further submitted that the sort of investigation conducted in this case, lack of corroborative evidence, planted eye witness, contradiction in the statements, medical documents not supporting and not corroborative of the statement of eye witness, clearly depict that the investigation agency has merely tried to pull the wool over the court's eyes and nothing else. It was further submitted that prosecution failed to produce any prima facie evidence in the present case against accused Sonu Saifi that he was part of the unlawful assembly, criminal conspiracy, active participation in the alleged crime. The allegations, material evidences in the chargesheet against accused Sonu Saifi do not fulfil the ingredients/ essentials of the offences alleged in the present case.

11. In support of his contentions, ld. counsel for accused Sonu Saifi, relied upon certain case laws, which are as follows: -

11.1 **Kalu Mal Gupta v. State, 2000 IAD Delhi 107.**

11.2 **Union of India v. Prafulla Kumar Samal & Anr., 1979 AIR 366.**

11.3 **Usmangani@ Bhura Abdul Gaffar & Anr. v. State of Gujarat, Criminal Appeal No.1041 of 2016, decided on 09.08.2018 by Supreme Court of India.**

12. In the written submissions filed on behalf of accused Azad by ld. counsel **Sh. Z. Babar Chauhan**, it was submitted that prosecution relied upon a single witness who had allegedly identified Azad that too at the time when he was in police custody at the time of his arrest. Therefore, he is not a reliable person, his statement cannot be relied upon, as he is the stock witness of the police. Ld. counsel placed reliance upon case of **Masalti & Ors. v. State of U.P. AIR (1965) SC 202**. It was further submitted that ld. Predecessor Judge had discharged accused Azad on 29.11.2021 in FIR No.100/20, PS Karawal Nagar, in the light of above-mentioned judgment. It was further submitted that while deciding that order ld. Predecessor also relied upon the case of **Khurshid Ahmad v. State of J & K, (2018) 7 SCC 429; Manoka Malik v. State of West Bengal, (2019)18 SCC 721 & Duleshwar v. State of M.P. (2020) 11 SCC 440**. It was further submitted that due to insufficient evidence and materials placed on the record, case of prosecution is not credible and trustworthy and cannot be relied upon in the present facts and circumstances of the case.
13. In the written submissions filed on behalf of accused Shehnawaz @ Sanu, Salman and Parvez by ld. counsel **Sh. Z. Babar Chauhan**, it was submitted that FIR of the present case was registered on the basis of complaint of ASI Gajraj, instead of owner of Anil Sweet Shop. It was further submitted that as per CDR of deceased late Dilber Negi, he had made last call to his friend Mahesh at about 09:07 PM and stated that "waih Building

mai chuppa huwa hai aur Building mai bhout sare log aa ja rhe hai. Use Bhout dar lg rha hai" It was further submitted that postmortem report suggested the cause of death as asphyxia due to inhale of smoke at unkown time during intervening night of 24-25.02.2020. It was further submitted that Shyam Singh was witness to period of crime from 06:40-06:45 PM when he identified accused Sanu @ Shahnawaz. It was further submitted that Anil Kumar identified accused Shahnawaz @ Sanu, Parvez, Khalnayak, Faizan, Kasim, Salman, Arshad, Sonu Saifi, but he admitted that he was witness to period of crime from 07:30 to 8 PM. It was further submitted that Chidda Lal Tomar identified accused Shahnawaz @ Sanu and further claimed that there was one another mob of 30-40 persons led by Parvez. He further claimed that he could identify other persons in the crime. It was further submitted that prosecution also examined Karam Chand Goel, Naresh Goel, Sagar, Amit Pal, Vipin, Ashok Kumar Tomar etc. and they claimed that they could identify the persons involved in the crime. It was further submitted that Himanshu stated that accused persons were resident of same locality and were chanting anti-hindu slogan. It was further submitted that incident of Anil Pastry Shop took place at 3 PM, therefore, witness Himanshu is not the eyewitness. It was further submitted that at the time of alleged incident either accused persons were at their residence or their locality in Dilshad Mohalla, but their presence was never at the alleged spot of crime or near it. It was further submitted that coming forward of witnesses after a long

gap of time without any explanation of delay in recording their statement u/s. 161 Cr.P.C. is not trustworthy and credible, therefore, the prosecution on the basis of said evidence cannot bring home the assumption of guilt against the accused persons.

Arguments of Prosecution

14. A written synopsis-cum-calender of evidence was filed on behalf of prosecution to mention the role of each accused and the evidence in support of the allegations made against each accused. In his written arguments, **Sh. Madhukar Pandey**, Id. Special PP for State submitted that last reported call of deceased Dilbar Negi was to Mahesh on 24.02.2020 at around 08:30 -9 PM. He submitted that accused persons were identified as member of that mob, which was indulging into riotous acts in that area and which also set ablaze the godown, where deceased was hiding to save himself from this mob. It was further submitted that CDR location of all the accused persons show their presence in an around the spot of incident, which corroborates the prosecution case against the accused persons.

Appreciation of arguments, facts and law: -

15. First of all, I shall refer to the provisions dealing with the alleged offences and other relevant offences.
- 15.1 Section 148 IPC provides punishment for rioting being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.
- 15.2 Section 149 IPC provides liability of each member of unlawful assembly for any offence committed by any member of that assembly in prosecution of the common object of that assembly or within knowledge of members

of that assembly to be likely committed in prosecution of that object.

- 15.3 Section 153-A IPC provides punishment for promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
 - 15.4 Section 188 IPC provides punishment for disobedience to order duly promulgated by public servant.
 - 15.5 Section 302 IPC provides punishment for murder.
 - 15.6 Section 436 IPC provides for punishment for committing mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property.
16. The ingredients of offence defined under Section 120-B IPC were explained by Supreme Court in ***Lennart Schussler v. Director of Enforcement, (1970) 1 SCC 152*** in following manner: -

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

do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement.”

17. Account of identification of accused persons as given by the witnesses, is as follows: -

Account of identification				
Srl. No.	Name of witness	Place of incident	Date and Time of incident	Accused identified/ named by witness
1	Ankit Pal	Godown in property no. A-29, Chaman Park.	24.02.2020 at around 6:40-6:45 PM 24.04.20 at around 4-5 PM (Parvez, Salman, Sonu Saifi)	1. Mohd. Shahnawaj @ Shanu 2. Asraf Ali 3. Parvez 4. Salman 5. Sonu Saifi
2	Anil Pal	Godown in property no. A-29, Chaman Park.	24.02.2020 at around 4-5 PM (Parvez, Salman, Sonu Saifi)	1. Mohd. Shahnawaj @ Shanu 2. Asraf Ali 3. Parvez 4. Salman 5. Sonu Saifi

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3	Amit Pal	Godown in property no. A-29, Chaman Park.	24.04.20 at around 4-5 PM (Parvez, Salman, Sonu Saifi) 24.02.20 at 3:41:59 PM (Mohd. Tahir)	1. Mohd. Shahnawaj @ Shanu 2. Asraf Ali 3. Shahrukh 4. Parvez 5. Mohd. Tahir 6. Salman 7. Sonu Saifi
4	Chidda Lal Tomar	Godown in property no. A-29, Chaman Park.	24.02.2020 at 9 PM	1. Mohd. Shahnawaj @ Shanu
5	Gulshan	Godown in property no. A-29, Chaman Park.	24.02.20 at around 04:00 – 04:30 PM And also, at 9 PM	1. Mohd. Shahnawaj @ Shanu
6	Shyam Singh	Godown of property no. A-29, Chaman Park.	24.02.20 at around 6.40 – 6.45 PM	1. Mohd. Shahnawaj @ Shanu
7	Himanshu	In front of Godown of property no. A-29, Chaman Park. Brijpuri pulia Road, Rajdhani School (accused Shahrukh, Mohd. Shoaib @ Chutwa)	24.02.2020 at 03.44.51 hrs (accused Faisal) 24.02.2020 at 04.09.09 PM (Azad) 24.02.2020 at 3:27:20 PM (Shahrukh) 24.02.2020 at 3:37:04 PM (Mohd. Shoaib @ Chutwa)	1. Mohd. Faisal 2. Azad 3. Rashid @ Monu 4. Shahrukh 5. Mohd. Shoaib @ Chutwa 6. Ashraf Ali 7. Salman 8. Sonu Saifi

8	Anil Kumar	Pastry shop situated in front of A-29 Chaman Park Main Road (Rashid @ Raja) Godown A-29 (Tahir)	24.02.20 at 3:41:17 PM (Rashid @ Raja) At 03.41.59 PM (Tahir)	1. Parvez 2. Rashid @ Raja 3. Tahir
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18. CDR of mobile phone being used by deceased Dilbar Negi, was analysed during investigation and it was found that last two calls were made from the mobile phone of Dilbar Negi to another worker of Anil namely Mahesh Yadav, at 08:18 PM and 09:07 PM, respectively. IO made telephonic conversation with Mahesh and Mahesh informed him that he was away to his native place in Gonda Basti. Mahesh further told IO that during telephonic talk Dilbar had informed that he was hiding in that building and that a number of persons were moving up and down in that building. Due to which he was quite afraid. However, statement of Mahesh Yadav could not be recorded as he was not present in Delhi at that time. Mobile phone being used by Dilbar could not be traced though from CDR of his mobile number, it was found that his location had been at the same place, where his dead body was recovered since afternoon of that day. After postmortem examination, cause of death was given as Asphyxia due to inhalation of smoke. IO examined owner of “Anil Sweets” namely Anil Kumar. He also stated that on 24.02.2020 at about 01:30-02:00 PM Dilbar had left the shop for godown at A-29, Chaman Park. Since about 02:00-02:30 PM, 250-300 muslim persons started assembling at Mustafabad equipped with danda,

stone and other weapon. For such reasons, all the shops on the road from Republic school towards Shiv Vihar Tiraha, were closed. For same reasons, Anil also closed his shop and they remained locked inside their shop till 03:30 PM. The rioters were also pelting stones on his shop during this time and were raising slogans against Hindus. At about 04:00 PM Anil along with other employees came out of his shop, locked it and went to his terrace. This mob had also burnt their scooty and motorcycle, which were parked in front of the other shop. In this shop, brother and nephew of Anil, were locked who were taken out and all of them went to terrace of their dairy. His nephew Ankit had also prepared a video from his mobile phone of the persons, who were present in the building A-29. At about 06:00-06:30 PM Anil and others came to the corner of their gali. At that time, the rioters looted his shop and set it on fire. At the same time, Anil saw that a number of persons had climbed up to terrace of his godown in A-29 and were vandalizing that godown. They had already set the house on fire situated near A-29. Smoke from the other houses was coming to his godown also. Thereafter at about 06:40-06:45 PM Anil saw rioters entering in his godown with stone and bottles of petrol/diesel. He identified accused Shanu @ Shahnawaz in that mob. He had also seen his companions. All these persons were pelting stones and petrol bombs on Hindus after climbing over his godown and Rajdhani School. In this mob, somewhere between 04:00-05:00 PM, Anil had also seen Parvez, Arif, Faizan, Sonu Saifi, Salman, Arshad as well as

another Salman who resided in front of gali of DRP School. Anil went back to his home at 07:30-08:00 PM and once again made inquiry from his employee Shyam about Dilbar. However, they could not find any other information about Dilbar, who was at his godown in A-29 since afternoon. At about 09:45 PM, Chhida Lal Tomar made call to Anil and informed that Shanu @ Shahnawaz along with other boys had set his godown on fire. However, due to fear Anil did not go there. Due to presence of rioters on 25.02.2020 around his godown, he could not visit his godown on 25.02.2020 also. On 26.02.2020 he saw that his godown was burnt, but out of fear they did not go inside. Subsequently, he came to know that police had gone to his godown and found one dead body on 2nd floor. CDR of Anil Pal was also obtained by IO and his location of the given time period as per his statement were found in accordance with his statement. Even location of Shyam Singh was also found to be at same place. Chhida Lal Totmar was also examined by IO, who claimed having seen Shanu @ Shahnawaz on 24.02.2020 joining a mob of 200/250 muslim persons at about 3-4 PM. He also stated that he saw Shanu and his friends climbing over terrace of Rajdhani School and pelting stone and petrol bombs on the house of Hindu persons.

19. During riots, various incidents had taken place and this case pertains to one of such incidents, wherein deceased Dilbar Negi was killed. Prosecution has cited numerous witnesses in this case, however, after going through statement of all these witnesses, I

find that not all of the witnesses are directly related to the alleged incident of killing of Dilbar Negi. Many of them have mentioned about different incidents taken place during riot at that day, rather than incident in which Dilbar Negi was killed. Therefore, I am referring to statement of only those witnesses, which have some bearing on the incident of killing of Dilbar Negi.

20. As per statement of Ankit Pal, he was present at his shop bearing no. C-1, Mahalakshmi Enclave, Shiv Vihar on 24.02.2020. At about 02:00-02:30 PM, a number of persons assembled towards the side of Mustafabad. They were equipped with stones, danda etc. After some time, they started pelting stones on the shops and passersby. They were raising slogans against Hindus. Ankit Pal along with his family and others went to the terrace of his dairy. From that place he took photographs and video through his mobile phone, of the persons who were standing on the building no. A-29. He was rescued from that place at about 4 PM by his uncle. At about 6 PM another shop of pastry was looted by that mob and it was set on fire. Ankit saw that in the godown of his uncle in property no. A-29, Chaman Park, a number of persons had come on the terrace of the same through the terrace of adjoining property and from the side of backside gali. At about 06:00-06:30 PM, Ankit and others had taken position at the corner of gali. He asked an employee of his shop namely Mahesh about presence of any other boy/employee in that godown. At that time, Ankit was informed that Dilbar Negi was probably inside the godown. Ankit saw that from the terrace of that

godown the mob was pelting stones on other persons and were also setting fire in nearby houses. Ankit also saw rioters entering into this godown in A-29 at about 06:40-06:40 PM, equipped with stone, petrol bottles etc. He had identified one person in that mob, who was Shanu @ Shahnawaz. He had seen his companions also and could identify some of them. At about 07:30-08:00 PM Ankit along with his family members went back to his home.

21. As per statement of Surender Kumar Bansal, a number of persons had assembled on 24.02.2020 at about 3 PM, from the side of Mustafabad. They were raising slogans against Hindus. They were vandalizing the shops and nearby houses. This witness saw them vandalizing book shop of Chawla Ji and godown of Anil. At about 8 PM, this witness went back to his home.
22. As per statement of Amit Pal i.e. brother of Ankit Pal, on this day about 07:30-08:00 PM, they had come back to their home. Prior to that he had also seen the mob pelting stones and petrol bombs from the terrace of his godown as well as Rajdhani School. At about 09:30 PM, his uncle Anil asked one Shyam Singh about Dilbar. Shyam Singh was employee of his uncle. At that time, Shyam Singh informed his uncle Anil that another person namely Mahesh informed him that Mahesh had telephonic talk with Dilbar and Dilbar was stuck in the godown. A number of persons had been present over the terrace of that godown. At about 09:45 PM neighbour of his shop namely Chhida Lal Tomar, telephonically informed Anil (uncle of Amit Pal) that Shahnawaz

@ Shanu and other boys had set his godown on fire. Anil Pal i.e. uncle of Ankit and Amit Pal mentioned in his statement that on this day, he was informed by Mahesh that Dilbar Negi was probably inside the godown in property no. A-29, Chaman Park. At that time i.e. 06:00-06:30 PM Anil saw that the rioters had also went up the terrace of his godown and they were vandalizing his godown. This mob was also pelting stones on the other persons and nearby houses from that terrace. The nearby houses were already set on fire and smock was coming up to godown of the Anil. Anil made call at 100 number also. At about 06:45 PM, Anil saw rioters entering his godown equipped with stone, petrol bottles etc. and he had identified Shanu @ Shahnawaz among them. At about 07:30-08:00 PM, Anil came back to home along with family members. He asked his employee Shyam Singh about Dilbar Negi and came to know that Dilbar Negi was in his godown at A-29 since afternoon. At about 09:30 PM, he again asked Shyam Singh to find out about Dilbar Negi and at that time Shyam Singh informed him that Mahesh had telephonic talk with Dilbar Negi and that Dilbar was stuck in the godown. Shyam Singh at that time tried to call Dilbar Negi on his mobile phone, but the mobile phone of Dilbar Negi was found switched off.

23. Mr. Chhida Lal Tomar was resident of A-23. According to his statement during evening time a number of muslim boys were coming in and going out from godown of Anil in A-29. At about 9 PM Chhida Lal Tomar was present at the corner of opposite gali and at that time he saw Shanu and his friends going along

with petrol bomb alike article in the godown of Anil i.e. A-29 and after some time they set that godown on fire. Sh. Chhida Lal Tomar informed Anil Pal telephonically about this incident.

24. Mr. Gulshan also stated that Shanu along with other companions had entered godown of Anil at A-29 about 9 PM and thereafter, they set that godown on fire.
25. Shyam Singh i.e. employee of Anil also stated about seeing number of rioters on the terrace of his godown and pelting stones from that place over other persons and other property. He further stated that at about 06:45 PM he saw Shanu @ Shahnawaz along with other persons entering his godown with stone, petrol bottles etc. At about 07:30-08:00 PM his co-worker Mahesh informed him about having telephonic talk with Dilbar and that Dilbar was stuck in the godown since afternoon. In the night Anil asked him to get information about Dilbar and at about 09:30 PM Shyam Singh again tried to call Dilbar, but phone of Dilbar was found to be switched off.
26. Sh. Mahesh @ Malhu, who was co-worker with Shyam and deceased Dilbar Negi, stated that he had telephonic conversation with Dilbar on this day about 07:30 PM. However, due to lot of noise they could not converse longer. At the same time, he could realise that Dilbar was in panic. At about 08:00-08:15 PM, he again had telephonic talk with Dilbar Negi. Dilbar Negi was scared and he was not able to come out from that godown. Dilbar informed him that he was hearing sound of persons moving in that building up and down and that he was hiding in a room.

Mahesh again had telephonic conversation with Dilbar at about 9 PM. Dilbar was again very scared and was crying. Dilbar informed that he was not able to find a way out, thereafter the phone was disconnect.

27. Another person Sanjay Singh, who was cousin of Dilbar Negi, had also telephonic conversation with Dilbar on this day. At that time, Dilbar had informed that a number of persons were going up and down in that building. This call had taken place at about 8 PM when Dilbar was very scared and due to lot of noise, conversation could not continue longer. Dilbar had informed another person namely Manmohan Singh at about 4 PM. During their telephonic conversation, Dilbar had informed that he was in the godown and number of persons were going up and down in that building. Dilbar told him that he was very scared.
28. On perusal of above mentioned statements of different witnesses, it is reflected that rioters had been active in that area. Since afternoon vandalism and arson in different properties were going on. The rioters were also pelting stones and petrol bombs taking position on the terrace of godown of Anil in property no. A-29, Chaman Park. During evening time the rioters were also vandalizing this godown at that time and there had been regular movement in and out of this godown since late evening till night. At about 9 PM, accused Shanu @ Shahnawaz along with his other companions had again gone inside this godown and thereafter, this godown was set on fire. Dilbar Negi was hiding in this godown, since afternoon, who was not able to get a way out

due to presence of the rioters. He was compelled to confine himself in a room in this godown so as to escape the attention of the rioters. This godown was set on fire somewhere after 9 PM and as a consequence of the same Dilbar Negi could not come out of this godown. Dead body of Dilbar Negi was recovered on 26.02.2020. His body was completely charred, both lower limbs were missing. As per postmortem report, he died out of asphyxia due to inhalation of smoke. Apparently, his death was caused due to fire being set in this godown and his body was completely burnt in this fire.

29. Prosecution has chargesheeted 12 accused persons in this case for several offences as already mentioned hereinabove. As already observed by me, this case was in respect of homicide of Dilbar Negi during riots. It is matter of common knowledge that police has registered different FIRs/cases in respect of different incidents taken place during riots. Therefore, the general allegation of riots are to be looked into with their connection with incidents of culpable homicide of Dilbar Negi. It is a case of culpable homicide. This culpable homicide took place on account of riotous acts of a mob. Section 149 IPC provides for vicarious liability of every member of such mob for the direct consequences with the accused of such mob, which is done in pursuance to common object of that unlawful assembly. The other accused persons except Mohd. Shahnawaz, have been chargesheeted in this case making them vicariously liable for the culpable homicide of Dilbar Negi, on the basis of their presence

in the riotous mob during afternoon and evening in that area, as seen by different witnesses. However, presence of these accused persons in the mob during different point of time and their involvement in other incidents of riot, cannot be a basis to make them vicariously liable for the incident of setting godown in property no. A-29, Chaman Park, on fire resulting into death of Dilbar Negi. For arson in godown at A-29 and death of Dilbar Negi, only those persons can be made vicariously liable who were made present in the concerned mob, which was behind setting this godown on fire. All the witnesses cited in this case had not seen act of setting this godown on fire. However, Mr. Chhida Lal Tomar and Mr. Gulshan had seen accused Shanu @ Shahnawaz and his companions going into this godown at about 9 PM and thereafter, this godown being set on fire. In that situation, there remains no doubt in respect of involvement of accused Shanu @ Shahnawaz in setting this godown on fire somewhere after 9 PM. However, other accused persons were not identified to be companion of Shanu at this time. In that situation, they cannot be made vicariously liable for setting this godown on fire, resulting into death of Dilbar Negi as well. It is worth to mention here that many accused persons were identified in the video of riots of different times, but they were not identified even on the basis of video by any of these two eye witnesses to say that these accused persons had also accompanied Shanu while entering into the godown just before the godown being set on

fire. Therefore, the other accused persons except Shanu @ Shahnawaz, are entitled for discharge in this case.

30. As far as accused Shanu is concerned, the evidence on the record shows him to be part of the riotous mob, which was indulging into acts against persons from Hindu communities and their properties, so as to vandalize and set on fire such properties. Their act was also to damage the Hindu person in his body. This mob was out there in defiance of proclamation made u/s. 144 Cr.P.C. and their act was apparently prejudicial to harmony and public tranquility as mentioned in Section 153-A (1) (b) IPC. While pelting petrol bombs and setting any property on fire a person knows it well that the person present in such property or being hit with petrol bomb and catching fire, will burn to his death. The acts were also being done by this mob with this motive. Therefore, this mob was liable for culpable homicide of Dilbar Negi. The mob was also liable for setting this godown on fire.
31. However, for the purpose of criminal conspiracy, something more is required to be shown by prosecution i.e. to show a prior agreement among members of such mob to do a particular act. It is also possible that on spur of the moment or on instant call a person joins a mob indulged into any act as per motive of the mob. Therefore, I do not find any evidence in support of charge u/s. 120-B IPC or 34 IPC.
32. Thus, on the basis of above-mentioned description of evidence and discussion, I find that accused Mohd. Shahnawaz @ Shanu is

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liable to be tried for offences punishable u/s. 148/153-A/302/436/
450 IPC r/w. 149 IPC as well as for offence u/s. 188 IPC.
Ordered accordingly.

Announced in the open court **(PULASTYA PRAMACHALA)**
today on 25.10.2023 **ASJ-03(North East)**
(This order contains 26 pages) Karkardooma Courts/Delhi