

DLNE010015672021



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

INDEX		
Sl. No.	HEADINGS	Page Nos.
1	Description of Case & Memo of Parties	2-3
2	The case set up by the Prosecution	3-7
3	Charges	7-9
4	Description of Prosecution Evidence	9-30
5	Description of Court Witnesses	30-31
6	Plea of accused under Section 313 Cr.P.C.	31-32
7	Arguments of Defence	32-33
8	Arguments of Prosecution	33-39
APPRECIATION OF FACTS AND EVIDENCE		
9	Unlawful Assembly, Riot and Murder	39-43
10	Identification of accused	44-57
11	Culpable Homicide Not Amounting to Murder vs. Murder	57-63
12	Conclusion and Decision	63

Sessions Case No.	:	199/2021
Under Section	:	147/148/149/302/120-B/379/411/34 IPC
Police Station	:	Dayalpur
FIR No.	:	87/20
CNR No.	:	DLNE01-001567-2021

In the matter of: -
STATE

VERSUS

1. **Arun Kumar**
S/o. Late Sh. Balwant Rai,
R/o. H.No. A-3/86, Street No.3,
A-Block, Brijpuri, Delhi-110092.
2. **Aman Kashyap**
S/o. Sh. Sanjeev Kumar,
R/o. H.No. A-2/61-A,
Brijpuri, New Delhi-94.
3. **Ashish @ Goli**
S/o. Sh. Raibir Singh,
R/o. H.No. A-2/61-A, Gali No.3,
Brijpuri, Delhi.
4. **Pradeep Rai**
S/o. Sh. Ram Narayan,
R/o. H.No. A-84, Gali No.3,
Brijpuri, Delhi-94.
5. **Devinder Kumar**
S/o. Sh. Hari Ram,
R/o. H.No. A-4/111, Brijpuri,
Delhi-94.
6. **Krishan Kant**
S/o. Late Sh. Rajpal Dheman,
R/o. H.No. 821/3, Gate Wali Gali,
near R.K. Shiksha Niketan School,
Rampuri, Mujjaffar Nagar, U.P.
7. **Rahul Bhardwaj**
S/o. Sh. Ganga Ram,
R/o. H.No. 500/21/21, Gali No.4, Vijay Park,
Maujpur, Bhajanpura, Delhi-53.

...Accused persons

Complainant: ASI Vijyant

Date of Institution : 25.06.2020

Date of reserving Judgment : 26.11.2024

Date of pronouncement : 30.11.2024

DECISIONS

1. Accused 1. Arun, 2. Aman Kashyap, 3. Ashish @ Goli, 4. Pradeep Rai, 5. Devender Kumar, are held guilty of offence punishable under Section 148/304 (I) IPC read with Section 149 IPC.
2. Accused persons namely **Krishan Kant** and **Rahul Bhardwaj**, are acquitted of the charges levelled against them in the present case.
(Section 437-A Cr.P.C. complied with by the accused persons)

JUDGMENT

THE CASE SET UP BY THE PROSECUTION

1. The above-named accused persons have been chargesheeted by the police for offences punishable under Section 147/148/149/302/120-B/379/411/34 IPC.
2. Brief facts of the present case are that GD No. 165-A dated 25.02.2020 i.e. Ex.A-2 was recorded at 20:40:47 hrs. This GD related to information received from GTB hospital in respect of one Rahul Thakur being injured with gunshot in gali no.6, Brijpuri, who was admitted in GTB hospital by one Dharmender Chauhan vide MLC No. D-44/2020. One another unknown/unnamed person aged about 22 years being injured with gunshot at Chand Bagh, was admitted by another unknown person in the hospital and that person who had brought this injured, left the hospital without disclosing anything else. On this DD entry ASI Vijyant Kumar made an endorsement of rukka on 01.03.2020 for registration of case. In the rukka, he mentioned

that aforesaid DD No. 165-A dated 25.02.2020 was not uploaded on CCTNS due to technical fault and it was uploaded on 26.02.2020 vide DD No.45-A. Thereafter, he visited GTB hospital and obtained MLC No. D-52 in respect of unknown person, who was allegedly assaulted by a mob near Chand Bagh on 25.02.2020 at around 6 PM. He did not find any eyewitness. Thereafter, he received another DD No.45-A dated 25.02.2020, wherein information was recorded that unknown person admitted vide MLC No. D-52/2020 had expired. His body was identified by his father Ali Sher on 29.02.2020 and the deceased was identified as Monish. His postmortem was conducted vide PM no. 366/20 and dead body was delivered to his father. GD No. 45-A dated 26.02.2020 recorded at 15:42:42 hrs. mentioned that the unknown person admitted vide MLC No. D-52/2020 had expired during his treatment in GTB hospital.

3. On the basis of GD No. 165-A dated 25.02.2020, MLCs and rukka prepared by ASI Vijyant, DO/HC Sanjay Kumar registered this FIR No. 87/20 u/s. 147/148/149/427/436/302 IPC and 3/4 Prevention of Damage to Public Property Act, 1984. This FIR was, however, registered on 01.03.2020 and the investigation was assigned to Insp. Hukam Singh.
4. As per chargesheet, during the course of investigation, IO Insp. Hukam Singh examined father of deceased and recorded his statement. Thereafter, vide PHQ Order 8266-74/AC-III/CNT/PHQ/Dated 27.02.2020 and no. 216/SO-DCP/Crime (SIU, ISC, dated 04.03.2020), further investigation of the present case was assigned to Insp. Ritesh Kumar from crime branch.

5. IO/Insp. Ritesh Kumar obtained CDR of mobile number of deceased Monish i.e. 8744814196 and found that it was working on 25.02.2020 till about 17:07 hrs. and at that time, last location of phone of deceased Monish was at Brijpuri Road. The last caller to the deceased's mobile, was identified as Ibrahim, S/o. Sh. Gulsher (cousin of deceased). IO recorded his statement. IO also recorded statement of an eyewitness namely Manoj Kaniyal, who claimed to have seen the incident of the present case. He informed that the local residents of Brijpuri namely Ashish Goli, Arun Munna, Aman Kashyap, Pardeep Rai, Devender Yadav were the people who had led the mob, which had attacked on deceased Monish. He also identified deceased in the still photographs/video footage of GTB hospital and confirmed that deceased was the same person who was attacked by this mob. IO examined duty roster of PS Dayalpur and collected the DD entry of departure of picket staff deployed at Brijpuri T-point on 25.02.2020. IO found that ASI Shyam Sunder, ASI Vijyant, HC Ashok, HC Naresh Tyagi, HC Krishan Pal, Ct. Piyush, Ct. Vineet, Ct. Subhash, Ct. Deepak and Ct. Rohit along with the outer force, were deployed at the T-point. Ct. Nikesh was also deployed for assisting day emergency officer of ASI Vijyant. IO called them one by one and showed them the video footages obtained from GTB hospital and all of them recognized the person, who was brought in at 05:49 p.m. on stretcher, wearing red T-shirt and yellow lower. All of them identified the person in video as the same person, who was beaten by mob in riots at Brijpuri at about 5 PM on 25.02.2020, i.e. deceased Monish.

They also divulged the same names of the rioters as Aman, Goli, Munna, Devender and Pradeep, who were playing the lead role during riots on 25.02.2020. Ct. Piyush was the beat constable of the area and hence, he knew them by their names and he had further divulged the rioter's name to other officials.

6. At the instance of Ct. Piyush, IO prepared unscaled site plan of scene of crime i.e. Brijpuri-Mustafabad Road, which was about 40 feet wide. Thereafter, IO got inspected the scene of crime by Insp. Mahesh Ahuja (draftsman/Crime Branch) and obtained scaled site plan from him. On 01.04.2020, IO apprehended accused Aman Kashyap, Ashish @ Goli and Arun Kumar @ Munna from their respective houses, at the instance of Ct. Piyush. IO arrested other two named accused also.
7. IO recorded statement of Rishi Sharma and Gyanender Shukla and apprehended other accused namely Krishan Kant and Rahul Bhardwaj. These two accused had sold mobile phone of deceased to Rishi Sharma. Thereafter, Rishi Sharma further sold it to Gyanender Shukla, from whose possession mobile phone of deceased was recovered. This was so ascertained as IMEI no. of mobile phone of deceased was kept on surveillance.
8. After completion of investigation, on 25.06.2020 a chargesheet was filed before Id. Duty ACMM (North-East), Karkardooma Courts, Delhi, against accused Arun Kumar, Aman Kashyap, Ashish @ Goli, Pradeep Rai, Devendra Kumar, Krishan Kant and Rahul Bhardwaj for offences punishable under Section 147/148/149/302/120-B/379/411/34 IPC. Thereafter on 07.11.2020, Id. CMM (N/E) took cognizance of offences

punishable under Section 144/147/148/149/302/120-B/34 IPC and passed summoning order against accused Arun Kumar, Aman Kashyap, Ashish @ Goli, Pradeep Rai, Devendra Kumar, Krishan Kant and Rahul Bhardwaj. On that day, Id. CMM (N/E) also took cognizance of offence punishable under Section 379/411 IPC. Thereafter, Id. CMM (N/E) committed the case to the court of sessions vide order dated 16.03.2021.

9. On 05.09.2022, first supplementary chargesheet along with complaint under Section 195 Cr.P.C., was filed before Id. CMM (North-East), Karkardooma Courts, Delhi. On same day, Id. CMM (N/E) took cognizance of offences punishable under Section 188 IPC. Id. CMM (N/E) sent this supplementary chargesheet to the court of sessions vide order dated 28.10.2022.

CHARGES

10. On 31.07.2021, charges were framed against accused 1. Arun, 2. Aman Kashyap, 3. Ashish @ Goli, 4. Pradeep Rai, 5. Devender Kumar, 6. Krishan Kant and 7. Rahul Bhardwaj for offences punishable under Section 120-B IPC read with Sections 143/147/148/149 IPC; under Section 143/147/148 IPC read with Section 149 IPC and Section 120-B IPC; and under Section 302 IPC read with Section 120-B IPC and Section 149 IPC, to which they pleaded not guilty and claimed trial. The charges were framed in following terms: -

"That on 25.02.2020 at about 5.00 PM, at Gali No.3, Brijpuri, near Peer Baba Mazar, Chand Bagh, Delhi within the jurisdiction of PS Dayalpur, all of you being members of unlawful assembly alongwith your other associates (unidentified) from a particular community entered into a criminal conspiracy and formed an unlawful assembly, the object

whereof was to cause maximum damage to the property and persons belonging to the other community and use force or violence in prosecution of the common object of such assembly and thereby committed offences punishable under Section 120-B IPC read with Section(s) 143/147/148/149 IPC and within my cognizance.

***Secondly,** on the aforesaid date, time and place, under a conspiracy you all being members of unlawful assembly alongwith your other associates (unidentified) from a particular community formed an unlawful assembly and used force or violence in prosecution of a common object, committed rioting and you all knew being members of the aforesaid unlawful assembly that an offence was likely to be committed in prosecution of that common object and thereby committed offences punishable under Section(s) 143/147/148 IPC read with Section 149 IPC and Section 120-B IPC and within my cognizance.*

***Thirdly,** on the aforesaid date, time and place, under a conspiracy you all being members of unlawful assembly alongwith your other associates (unidentified) used force or violence in prosecution of a common object and committed murder of Monish, S/o Shri Ali Sher merely on account of the fact that he belonged to the other community and thereby you all alongwith your other associates (unidentified) committed offence punishable under Section 302 IPC read with Section 120-B IPC and Section 149 IPC and within my cognizance."*

11. On same day i.e. 31.07.2021, charge was also framed against accused Krishan Kant Dhiman and Rahul Bhardwaj for offences punishable under Section 379/34 IPC, to which they pleaded not guilty and claimed trial. The charge was framed in following terms: -

" That on 25.02.2020 at about 5.00 PM, at Gali No.3, Brijpuri, near Peer Baba Mazar, Chand Bagh, Delhi within the jurisdiction of PS Dayalpur, both of you in furtherance of your common intention, being members of unlawful assembly alongwith your other associates (unidentified), while

committing the murder of Monish, S/o. Shri Ali Sher, took away his mobile phone having two SIM Cards bearing number(s) 8744814196 and 9125946186, which were later on recovered from the possession of Shri Gyanender Shukla and Shri Rishi Sharma and thereby committed an offence punishable under Section 379/34 IPC and within my cognizance."

12. Thereafter, on 16.01.2023, additional charge was framed against aforesaid accused persons for offence punishable under Section 188 IPC, to which they pleaded not guilty and claimed trial. The charge was framed in the following terms: -

"That, on 25.02.2020 at about 5.00 p.m., in and around the area of gali no.3, Brijpuri, near Peer Baba Mazar, Chand Bagh, Delhi, within the jurisdiction of PS Dayalpur, you all accused persons being member of an unlawful assembly alongwith your other associates (unidentified) were present at aforesaid place, in prosecution of the common object of an unlawful assembly and in violation of the proclamation issued u/s 144 Cr. PC by the competent authority/DCP, North East vide order dated 24.02.2020 bearing no.10094-170 X-1, North East, Delhi dt. 24.02.2020, which was duly announced in all the localities of District North East including area of PS Dayalpur, thereby you all committed offence punishable under Section 188 IPC and within my cognizance. And I hereby direct that you all be tried by this Court for the aforesaid charge."

DESCRIPTION OF PROSECUTION EVIDENCE

13. Several witnesses were dropped on the basis of admission of documents under Section 294 Cr.P.C. and prosecution examined eighteen (18) witnesses in support of its case, as per following descriptions: -

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
PW1/Sh. Shashi Kant	On 25.02.2020 at about 04:00-04:30 PM he was present near his house bearing H. No. D-8/132,	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>Brijpuri, Delhi.</p> <p>At or around that time, PW1 saw that communal riot between Hindu and Muslim Community was going on in the area. The rioters from both the sides were equipped with lathi, sword, danda, scissors and knives. The rioters from Muslim Community had put the properties belonging to Hindu Community on fire. After watching the aforesaid arson, PW1 proceeded towards T-point Brij Puri, where there was sizable strength of police officials.</p> <p>Near Gali no.3, PW1 found a mob of rioters inflicting injuries upon a boy. The victim was wearing red colour T-shirt. Said person (victim) was beaten by the rioters with lathi and other implements. Thereafter, PW1 noted that the victim ran towards gali no.2 and fell down in front of Aggarwal Sweets. After finding the police at that spot, the rioters ran away back towards gali no.3. The injured was lying on the road with his face towards wall, which was probably of Nirankari Samagam. The blood was oozing from the head of injured. PW1 pointed out the injured to the police personnel.</p> <p>PW1 identified some of the boys in the mob, which inflicted injuries upon the victim, and they were Arun, Ashish, Pradeep, Devender, Aman etc. All of them were carrying lathi, dandas. During his examination in chief, PW1 took a look around at all the persons present in the court room including the accused persons, and deposed that none of those rioters as identified by him, were present in the court room. He was declared hostile by the prosecutor and was cross examined.</p> <p>During his cross examination by Id. prosecutor, PW1 pointed towards accused Arun, Ashish, Aman, Pradeep and Devender, saying that they were the boys whose names were taken by him in his deposition dated 21.08.2021 before the court, through video conference (VC). But he denied having stated that these persons</p>	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>had inflicted injuries upon the victim. He further deposed that they were there in the mob and that his statement might have been wrongly recorded through video conference. He denied the suggestion that he had correctly deposed on the previous date to name these accused persons as the persons who inflicted injuries upon the victim.</p> <p>Thereafter in response to other suggestions given by Id. prosecutor, PW1 admitted that on seeing a CCTV footage, PW1 had identified the injured as the same person who was inflicted injuries wearing red T-shirt.</p> <p>PW1 further admitted that he was produced before Id. Magistrate, where he had given statement u/s. 164 Cr.P.C. and that, in that statement he had taken names of accused Arun, Ashish, Devender, Aman and Pradeep. But PW1 added that in that statement also he had mentioned that he had only seen these persons present in the mob and he had not seen them inflicting injuries upon the victim. He further stated that he had correctly mentioned in the statement u/s 164 Cr.P.C. that he had seen accused Krishan Kant and Rahul running away from the spot.</p>	
<p>PW2/Sh. Rishi Sharma</p>	<p>On 25.02.2020 at about 9 AM or 10 AM, he had purchased a mobile phone make and model 'MI' of red colour from an unknown person, for Rs.1,000/-. That person himself had come to his house and offered PW2 to purchase it, as he was not having anything to feed himself and his family. PW2 inserted his own SIM card in the said mobile phone and started using it.</p> <p>After about one week, police officials had come to residence of PW2 and seized the said mobile phone from him, vide a seizure memo dated 10.04.2020.</p>	<p>Ex.PW2/A (seizure memo dated 10.04.2020 of mobile make 'MI'); &</p> <p>Ex.PW2/B and Ex.PW2/C (arrest memos of accused Krishan Kant and Rahul Bhardwaj)</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>After about 14 to 15 days, PW2 was taken to the office of Crime Branch, Chankaya Puri; enquiries were made from him; and his signature was obtained on some documents. PW2 identified his signature at point A on the arrest memos of accused Krishan Kant and Rahul Bhardwaj but in his cross examination, he also stated that he had not heard the names of these two persons nor did he see the seller of that mobile phone. He had used this phone till the time it was seized by the police.</p>	
<p>PW3/Sh. Ibrahim</p>	<p>On 25.02.2020 at about 4 PM, he had received a call from his cousin Mohnish on his mobile no. 8296486286. Mohnish informed PW3 that he was on the way to the house of PW3 and he had alighted from the Bus at Yamuna Vihar Bus Stand. Mohnish further said to PW3 that riots were taking place in Yamuna Vihar and Brijpuri Pulia. However, Mohnish did not reach house of PW3 and later on, PW3 came to know that Mohnish had been killed.</p>	
<p>PW4/Sh. Sher Ali</p>	<p>He was father of deceased Mohnish. On 25.02.2020, Mohnish left his house saying that he was going to the house of his uncle Shabir, who was residing in Mustafabad. However, Mohnish disappeared on the way and did not reach uncle's house.</p> <p>Later on, PW4 came to know that Mohnish had been killed on the way. On 29.02.2020, PW4 visited GTB Hospital, Mortuary where he identified the dead body of his son Mohnish vide a statement. On that day, postmortem examination of the dead boy of Mohnish was conducted</p>	<p>Ex.PW4/A (dead body identification memo)</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	in the hospital. PW4 identified his signature at point A on the request for postmortem and the death report.	
PW5/Sh. Manoj Kaniyal	On 25.02.2020 at about 5 PM, when PW5 was present at his house, he heard some noise from outside. Accordingly, PW5 left his house and went towards Brijpuri Pulia. There was a large mob present at that spot. The persons in the mob were having wooden rods, petrol bombs and other arms in their hands. They set on fire several shops on the road. Some Hindu persons also gathered at the spot and a fight started between the two groups. On seeing the fight and stone pelting, PW5 ran towards Aggarwal T-Point and called police officials. Upon seeing police officials, all the persons in the mob fled from the spot. But he did not identify any person in that mob. PW5 was declared hostile by the prosecutor on the point of identification of accused persons. He denied having seen and identified the accused Aman, Ashish, Devender, Pradeep and Munna among the rioters.	
PW6/Dr. Sharad Verma	<p>He was Nodal Officer, CCTV GTB Hospital, Delhi. On 14.05.2020, he had handed over a pen drive containing the CCTV Camera footages recorded by the CCTV Cameras installed in his hospital, to the IO. The said footage had been downloaded into the pen drive by the CCTV operator in his hospital namely Rahul Kumar.</p> <p>PW6 had also furnished a certificate u/s 65-B of Indian Evidence Act in support of the said pen drive. PW6 identified endorsement in the handwriting of CCTV Operator Rahul Kumar, on the said certificate from point X to X. PW6 was familiar with his handwriting and signature.</p>	<p>Ex.PW6/A (certificate u/s 65-B of I.E. Act in support of pen drive);</p> <p>Ex.PW6/B (endorsement of CCTV operation on Ex.PW6/A);</p> <p>Ex.P.1 (pen drive containing footage of camera installed at</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
		hospital)
PW7/Sh. Surender Kumar	<p>He being Nodal Officer, Bharti Airtel Ltd., brought the summoned record related to the mobile numbers 9210958994, 9958484763, 9650945755 and 9125946186.</p> <p>PW7 proved attested copy of CAF and CDR for the period from 20.02.2020 to 10.03.2020 in respect of: - (i) mobile no. 9210958994 allotted in the name of Raj Kumar; (ii) mobile no. 9958484763 allotted in the name of Gyanender; (iii) mobile no. 9650945755 allotted in the name of accused Aman Kashyap; and (iv) mobile no.9125946186 allotted in the name of Ali Sher.</p> <p>He also proved certificate u/s 65-B of I.E. Act in support of the above printouts of the CDR of the above four mobile numbers. PW7 also brought a printout of Cell ID chart of his company.</p>	<p>Ex.PW7/A and Ex.PW7/B (CAF and CDR in respect of mobile no. 9210958994);</p> <p>Ex.PW7/C and Ex.PW7/D (CAF and CDR in respect of mobile no. 9958484763);</p> <p>Ex.PW7/E and Ex.PW7/F (CAF and CDR in respect of mobile no. mobile no. 9650945755);</p> <p>Ex.PW7/G and Ex.PW7/H (CAF and CDR of mobile no. 9125946186);</p> <p>Ex.PW7/1 (certificate of PW7 in respect of</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
		above prints); Ex.PW7/J (printout of Cell ID chart brought by PW7)
PW8/Sh. Gyanender	In the month of February, 2020, PW8 had purchased a mobile phone make MI of red colour from his known person namely Rishi Sharma, for a sum of Rs.2000/-. PW8 started using that phone by inserting his Sim card with mobile number 9958484763 in the same. On 10.04.2020, PW8 was summoned to PS Chankya Puri in connection with investigation of this case. The said mobile phone was seized vide seizure memo Ex.PW2/A.	
PW9/ACP Mahesh	On 08.04.2020, he was working as Inspector Draughtsman in crime branch. On that day, he received a call from Insp. Ritesh Kumar and he visited main Brijpuri Road, in front of gali no.2, A block, Brijpuri, Delhi. At that place, he took measurements at the instance of Insp. Ritesh Kumar and prepared his rough notes. PW9 also noted down location of 2 witnesses. Subsequently on 02.05.2020, he prepared a scaled site plan on the basis of his rough notes, in his office. Thereafter, he handed over scaled site plan to Insp. Ritesh Kumar.	Ex.PW-9/A (scaled site plan dated 02.05.2020, as prepared by PW9 in this case)
PW10/Ct. Piyush, PW12/HC Deepak &	On 25.02.2020, they along with other police officials were on duty at Brijpuri T-Point, on main Wazirabad road. On this day, at about 5 PM, they saw that one boy wearing red colour T-shirt and yellow lower came running towards them, from the side of Brijpuri. That boy was chased by a mob. That boy fell down near	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
PW13/Ct. Vineet	<p>police barricade beside the wall of water plant at some distance from Brijpuri T-point. The chasing mob kept assaulting him at that place with danda, iron rod. That boy was bleeding from his head. Police team rushed towards that boy and rescued him from the mob. PW10 stopped one auto TSR and with the help of HC Naresh Tyagi and Ct. Rohit, PW10 lifted that boy into that auto. Thereafter, auto driver was asked to take this boy to GTB hospital.</p> <p>PW10, PW12 and PW13 identified 5 persons i.e. accused Arun, Ashish, Aman, Pradeep @ Sandeep and Devender in that mob. PW10 knew them since prior to aforesaid incident, being beat officer of that area. Accused Arun, Ashish, Aman, Pradeep @ Sandeep and Devender, were in front of this mob carrying danda and iron rod as well as sword and were shouting '<i>maaro maaro</i>'.</p>	
PW10/Ct. Piyush & PW13/Ct. Vineet	<p>On 01.04.2020, Insp. Ritesh from crime branch came to PS alongwith his team. On that day, after confirming the location of PW10 from DO, Insp. Ritesh alongwith his team reached at Brijpuri T-point. PW10 also telephonically called PW13 to come to Brijpuri T-point and PW13 reached there from PS. All of other team members (as on duty on 25.02.2020) were also present at Brijpuri T-point. Thereafter, they all went to Roop Kusum Marriage Banquet Hall, situated on main Wazirabad Road near T-Point. In that hall Insp. Ritesh showed them video on his laptop, which related to CCTV footage of GTB hospital. PW10 and PW13 and other team members (who were on duty on 25.02.2020) identified that boy/victim lying on a stretcher in that video and informed about the same to</p>	Ex.PW10/A (site plan prepared by Insp. Ritesh at the instance of PW10)

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>Insp. Ritesh.</p> <p>PW10 and PW13 informed Insp. Ritesh about identifying 5 persons in the aforesaid mob. PW10 led Insp. Ritesh and his team as well as other police officials including PW13, to the house of accused Arun, Aman, Ashish @ Goli. Accused Arun, Aman and Ashish @ Goli were found present in the respective house and were apprehended by Insp. Ritesh, in the present case. Thereafter, at the instance of PW10, Insp. Ritesh prepared site plan.</p> <p>On 03.04.2020 at about 12 PM, Insp. Ritesh came to PS Dayalpur alongwith his team and accused Pradeep and Devender. PW10 was present in the PS and on his query, PW10 confirmed that accused Pradeep and Devender were also present in the mob, as stated here-in-above. On 25.02.2020, just before this incident, ASI Vijayant, HC Krishan Pal, Ct. Nikesh and Ct. Subhash had left that place, in order to attend another call received by them. ASI Shyam Sunder had also left for PS.</p>	
PW11/ASI Manoj Kumar	On 25.02.2020, he was working as Chitha munshi in PS Dayalpur. PW11 had prepared duty roster for 25.02.2020 and he had signed the same. PW11 identified copy of said duty rosters, which is Ex.A-7 and Ex.A-9 (7 pages) (admitted documents). IO of this case had obtained aforesaid documents from PW11 and had prepared a seizure memo, which is Ex.A-6 (admitted document).	
PW14/Dr. Anil Kohli	On 29.02.2020, he alongwith Dr. K.K. Banerjee and Dr. N. K. Aggarwal	PW14/A (opinion of

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>conducted autopsy on the body of deceased Monis s/o Ali Sher. After postmortem examination, the findings were recorded in their report, which is Ex.A-1 (colly 3 pages) (admitted document).</p> <p>The cause of death was shock as a result of ante mortem injury to the brain, as a result of blunt force impact to the head. The dead body was identified by parents of deceased. Subsequently, an application was received in the department from Insp. Ritesh Kumar, requesting for opinion on 3 parcels stated to be containing wooden rod, wooden piece and sword respectively. These 3 parcels were also received with this request in sealed condition. PW14 had taken up this request letter for further examination and after examining the postmortem report and the aforesaid articles, PW14 alongwith aforesaid 2 doctors gave their opinion.</p> <p>The aforesaid articles were resealed with the seal of 'AK' and were handed over alongwith aforesaid opinion to the police. This request was received by them on 14.07.2020 and within 2-3 days, aforesaid opinion was given by PW14 and other two doctors.</p>	<p>PW14 and other two doctors)(colly 3 pages back-to-back)</p>
<p>PW15/Dr. Naresh Kumar</p>	<p>On 09.04.2020, he was working as Senior Scientific Officer, Biology, FSL, Rohini, Delhi. On that day, five sealed parcels were received in the office of FSL, Delhi, along with FSL form and sample seals. Same were marked to PW15 for examination.</p>	<p>Ex.PW15/A (Report of PW15) (back to back);</p> <p>Ex.PW15/B (DNA Allelic Data prepared</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>PW15 checked the seals over each parcel with the sample seal and found them to be the same. Parcels No.1 to 3 were sealed with the seal of 'PK' and Parcels No.5 and 6 were sealed with the seal of 'KKB'. Thereafter, PW15 opened all five parcels and he had given mark of Exhibit-1 to one bamboo stick contained in Parcel No.1; Exhibit-2 to one wooden stick contained in Parcel No.2; Exhibit-3 to one sword contained in Parcel No.3; Exhibit-5 to blood on gauze of deceased contained in Parcel No.5; Exhibit-6(a) and 6(b) to one T-shirt and one underwear contained in Parcel No.6. Query was made to check blood on the above-mentioned exhibits and to prepare DNA profile and to match the blood on Exhibits 1 to 3 and Exhibit 6 with blood on Exhibit 5. PW15 examined all the Exhibits for aforesaid purpose.</p> <p>Blood was detected on Exhibits 5 & 6(a). PW15 also prepared DNA profile on the basis of Exhibit 5 & 6(a) and compared the same. As per DNA profile, blood on these two Exhibits pertained to same person. PW15 prepared his report accordingly. PW15 had also prepared DNA Allelic Data. After examination, all the Exhibits were re-sealed in separate parcels and sealed with the seal of 'NK FSL Delhi'. PW15 deposited the parcels along with his report in his department.</p> <p>HC Deepak from PS Dayalpur had produced Parcel-6 and Parcel-5 in</p>	<p>by PW15);</p> <p>Ex.PW15/ Article-1 and Article-2 (one red colour full sleeve T-Shirt and a green colour underwear, respectively);</p> <p>Ex.PW15/ Article-3 (small piece of gauze)</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>sealed condition, bearing same seal of "NK FSL Delhi". Both parcels were opened. From Parcel No.6, one red colour full sleeve T-Shirt and a green colour underwear were taken out and PW15 identified them.</p> <p>From Parcel-5 one white envelope in open condition with a slip pasted on the same, was taken out. A small piece of gauze was found placed in this open envelope.</p>	
<p>PW16/Insp. Pawan Kumar</p>	<p>On 12.08.2022, he was working in Crime Branch, Chanakya Puri. On this day, on the instructions of ACP, investigation of this case was handed over to him by Insp. Satender Mohan.</p> <p>On 20.08.2022, PW16 sent a request letter to DCP/NE for complaint u/s 195 Cr.P.C. in respect of offence u/s 188 IPC. On 21.08.2022, PW16 recorded statement of HC Vikas posted in PS Dayalpur, who had announced order u/s 144 Cr.P.C. in the area of PS Dayalpur. On 23.08.2022, PW16 sent a request letter to PS Dayalpur, to provide attested copy of relevant pages from register no.19 and register no.21, which related to case properties of present case. On 25.08.2022, PW16 received complaint u/s 195 Cr.P.C. from the office of DCP/NE. On 26.08.2022, PW16 collected certificate u/s 65B of I.E. Act from CCTV operator namely, Rahul in GTB hospital, in respect of CCTV footages already collected in this case by previous IO. PW16 also recorded his statement. Thereafter,</p>	<p>Ex.PW-16/A (request letter sent by PW16 to SHO, PS Dayalpur)</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>PW16 prepared a supplementary charge-sheet and filed the same in the court of Id. CMM/NE alongwith aforesaid materials. PW16 had received attested copies of pages from register no.19 and register no.21 from PS Dayalpur on the day of request itself. The pages from register no.19 Ex.A-37 (colly 10 pages); 3 pages from register no.21 Ex.A-38 to Ex.A-40; certificate u/s 65-B of I.E. Act Ex.A-41; complaint u/s 195 Cr.P.C. Ex.A-42; request letter to DCP/NE for aforesaid complaint Ex.A-45 and request letter to SHO, PS Dayalpur were the documents which were collected and issued by PW16 in this case.</p>	
<p>PW17/SI Pawan Malik</p>	<p>In March, 2020, he was posted as SI in ISC Crime Branch, Chanakyapuri, Delhi. On 30.03.2020, PW17 joined investigation with IO/Insp. Ritesh. PW17 accompanied him to PS Dayalpur. IO obtained Duty Roster (chittha), departure entries, and DD entries related to duty of officials on emergency duty for 25.02.2020 as prepared on 24.02.2020. IO had seized aforesaid six documents vide a memo, which is Ex.A-30 (admitted document).</p> <p>On 01.04.2020, IO/Insp. Ritesh along with PW17, SI Dheeraj, HC Rambir, ASI Surender and Ct. Satpal went to PS Dayalpur. On the instructions of IO, all the officials who were on duty on 25.02.2020 at Brijpuri T-point, were directed to reach Kusum Banquet Hall near Brijpuri T-point.</p>	<p>Ex.PW-17/A (seizure memo of mobile phone recovered from accused Aman Kashyap);</p> <p>Ex.PW17/E, Ex. PW17/F & Ex.PW17/G (seizure memo of sword, wooden stick (danda) and wooden stick (lathi), respectively);</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>The staff from PS Dayalpur reached there and thereafter, IO played CCTV footages of riots and footages from GTB hospital before the officials from PS. Ct. Piyush identified five rioters in the video and informed IO that they were involved in the incident with the deceased in this case. Ct. Piyush informed their names also to the IO. Thereafter, Ct. Piyush led to a place on Brijpuri Main Road, near Aggarwal Sweets and Sant Nirankari Boundary Wall. Ct. Piyush pointed out that place to be the same where deceased was lying. Ct. Piyush had also pointed out place of his position/duty at the relevant time.</p> <p>PW17 deposed on the lines of PW10 and PW13 in respect of apprehension of accused Arun, Aman and Ashish @ Goli from their respective houses. PW17 was witness to arrest and personal search of accused Arun, Aman and Ashish @ Goli as well as recording of their disclosure statement by IO. PW17 was also witness to seizure of mobile phone from the possession of accused Aman Kashyap and identified his signature at point A on its seizure memo.</p> <p>PW17 identified his signature at point A on arrest and personal search memo of accused Arun as Ex.A-14 and Ex.A-18; of accused Aman Kashyap as Ex.A-13 & Ex.A-20; and of accused Ashish @ Goli as Ex.A-15 and Ex.A-19 (admitted documents).</p> <p>PW17 recovered a sword, wooden</p>	<p>Ex.PW17/H (seizure memo of mobile phone recovered from accused Devender);</p> <p>Ex.PW17/K (seizure memo of mobile phone recovered from Gyanender).</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>stick (danda) and wooden stick (lathi) at the instance of accused Aman, Ashish @ Goli and Arun from their respective premises. PW17 came back to Kusum Banquet Hall; took measurement of recovered sword, wooden stick (danda) and wooden stick (lathi); and seized them vide separate seizure memos.</p> <p>Ct. Piyush reached Kusum Banquet Hall. Thereafter, PW17 alongwith Ct. Piyush, HC Ramveer and Ct. Satpal took accused Aman Kashyap to the house of other accused Pradeep and Devender. Accused Pradeep and Devender were found present in their respective houses and were apprehended on the identification of Ct. Piyush and accused Aman. PW17 produced all accused persons before IO/Insp. Ritesh. IO interrogated and formally arrested accused Pradeep and Devender vide separate arrest memos, which are Ex.A-17 and Ex.A-16, respectively. IO seized a mobile phone recovered from accused Devender vide a seizure memo.</p> <p>On 03.04.2020, on the application of IO, accused persons were sent to J/C in this case.</p> <p>On 10.04.2020, IO informed PW17 in the office that mobile phone of the deceased was operating from the area of Vijay Park. On the direction of IO, PW17 alongwith HC Ramvir, ASI Surender Rathi and Ct. Satpal went to Vijay Park, Maujpur, on the backside of Yamuna Vihar. PW17 recovered</p>	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>said mobile phone from one Gyanender Shukla, who informed PW17 that he had purchased this phone for Rs.2000/- from one Rishi Sharma, who was also resident of Vijay Park. They took Gyanender to the house of Rishi Sharma, who was present at his home. Rishi Sharma informed that he had purchased this mobile phone from accused Rahul and Krishan Kant for Rs.1000/-, around a month back. PW17 brought Rahul and Krishna Kant before IO. PW17 was witness to interrogation and arrest of accused Rahul and Krishan Kant by IO in the office at Chankya Puri. IO had seized that mobile phone, vide a seizure memo. PW17 identified accused persons before the court.</p>	
<p>PW18/Insp. Ritesh Kumar Sharma</p>	<p>On 06.03.2020, the then ACP/Crime branch had handed him over the case file of this case for further investigation. PW18 inspected the case file. PW18 obtained CDR of mobile number used by deceased Mohnish from Idea Company. From the CDR and location of his mobile phone, PW18 found that the last communication was made at 17.03 hours on 25.02.2020 at Brijpuri road. PW18 obtain CCTV footage of the emergency from GTB hospital, so as to find out that who had brought this injured to the hospital. On 07.03.2020, PW18 called parents and other family members of the deceased to Roop Kusum Banquet and recorded their statements. From their statements, PW18 came to know that deceased</p>	<p>Ex.PW18/A, Ex.PW18/B and Ex.PW18/C (disclosure statement made by accused Aman, Ashish and Arun Kumar, respectively).</p>

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>had made last call to Ibrahim, on 25.02.2020.</p> <p>PW18 played CCTV footage of GTB hospital emergency, before family members of Mohnish and all of them pointed out to an injured being taken in at 15.49 hours in the emergency as Mohnish. That injured was wearing red T-shirt and yellow lower. PW18 developed photograph from that particular frame of that video. Thereafter, on the basis of that photograph, PW18 made local investigation in the area of Brijpuri to find out, if anyone had seen him in that area on 25.02.2020.</p> <p>On 13.03.2020, PW18 collected postmortem report from GTB hospital. PW18 analyzed PCR calls and made other investigations to find out any eye witness. On 30.03.2020, one Manoj Kaniyal was found in the area of Brijpuri, who claimed to have seen deceased on 25.02.2020. PW18 recorded his statement. In his statement, Manoj disclosed name of 5 assailants, claiming that he had seen the incident with Mohnish on 25.02.2020. From his statement, it was also disclosed that some police officials positioned at a police picket near Aggarwal Sweets, Brijpuri, had come to rescue this injured and had taken him away.</p> <p>He visited PS Dayalpur and obtained list of police officials on duty in that area on 25.02.2020, from Chitha Munshi/Deployment officer. PW18</p>	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>seized that list, vide a seizure memo, which is Ex.A-30. PW18 deposed on the same lines as deposed by PW10, PW13 and PW17 in respect of apprehension of accused Arun, Aman and Ashish on 01.04.2020, from their respective houses. PW18 recorded disclosure statement made by accused Aman, Ashish and Arun Kumar.</p> <p>PW18 also deposed on the lines of PW17 in respect of apprehension of other accused Pradeep and Devender on 02.04.2020 and sending accused Arun, Aman, Ashish, Pradeep and Devender, to J/C.</p> <p>On 02.04.2020, SI Pawan had handed over 3 sealed pullandas with seal of 'PK' alongwith 3 separate seizure memos. PW18 got deposited those pullandas in malkhana of PS Dayalpur, through HC Ramvir and kept the seizure memos in the file. On 07.04.2020 during analysis of PCR calls, PW18 found one PCR call made by one Shashikant. PW18 called that Shashikant in his office on this day. PW18 showed photograph of deceased in this case to Shashikant and Shashikant claimed having seen deceased on 25.02.2020. Shashikant also mentioned name of accused Arun, Aman, Ashish, Pradeep and Devender and PW18 recorded his statement on this day.</p> <p>On 08.04.2020, PW18 called draughtsman Insp. Mahesh at the place of incident and he took measurements of that place, at the</p>	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>instance of PW18. Subsequently, PW18 obtained scaled site plan from Insp. Mahesh.</p> <p>On 09.04.2020, PW18 got sent all the exhibits i.e. the exhibit received from doctor, who had conducted postmortem examination, & the weapons recovered at the instance of accused persons, to FSL Rohini for their examination and comparison. The IMEI number of mobile phone set used by deceased was found active with another mobile number and it was so discovered by PW18 on 10.04.2020. PW18 sent a team under SI Pawan to Maujpur, where the address of mobile subscriber was found. PW18 also deposed on the same lines as deposed by PW17 in respect of recovery of mobile phone of deceased Mohnish and apprehension of other accused Krishan Kant and Rahul.</p> <p>PW18 recorded disclosure statement of other accused Krishan Kant and Rahul and arrested them in this case vide their arrest memos, which are Ex.PW2/B and Ex.PW2/C, respectively. PW18 seized the mobile phone of deceased Mohnish from Gyanender on this day, vide a seizure memo Ex.PW2/A. On the same day, PW18 got the inspection of the spot of crime done by FSL team. Shashikant also identified accused Rahul and Krishan Kant as assailants in this case. Both of them were produced before the court on 11.04.2020 and sent to</p>	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>J/C.</p> <p>On 13.04.2020, all mobile phones seized in this case were sent to CERT, for their analysis and to retrieve the data from the mobile phone, which related to riots. On 22.05.2020, PW18 produced witness Shashikant before the court with request to record his statement u/s 164 Cr.P.C. His statement was recorded by Ms. Richa Manchanda, MM/Karkardooma Courts, on same day. On the application of PW18, he was provided a copy of that statement. On 25.06.2020, PW18 filed charge-sheet in this case against accused persons.</p> <p>On 07.07.2020, he received report from FSL Rohini alongwith exhibits. On 13.07.2020, PW18 sent all weapons seized in this case to GTB hospital for subsequent opinion regarding possibility of use of those weapons in causing injuries upon the deceased. On 19.08.2020, PW18 received subsequent opinion from GTB hospital. On 07.09.2020, PW18 also received report from CERT. On 01.10.2020, PW18 filed aforesaid materials alongwith supplementary charge-sheet before the court. PW18 identified accused persons before the court.</p>	
<p><u>Admitted documents under Section 294 Cr.P.C.</u></p> <p>Postmortem report no. 366/2020 conducted on the dead body of Monis, s/o. Ali Sher, as Ex.A-1 (colly. 3 pages); GD No.165-A as Ex.A-2; GD No.45-A as Ex.A-3; request for postmortem of Monis as Ex.A-4; prescription bearing CR No.63435, dated 25.02.2020 of GTB</p>		

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>hospital, declaring unfit for statement as Ex.A-5; DD No.45A dated 25.02.2020 regarding MLC No.D-52/20 as Ex.A-6; DD No.45A dated 25.02.2020 intimating death in relation to MLC No.D-52/20 as Ex.A-7; letter of Vijyant Kumar dated 26.02.2020 addressing CMO, GTB hospital, Delhi, regarding preservation of dead body for about 72 hours in relation to aforesaid MLC as Ex.A-8; death certificate having registration no. 18424 dated 25.02.2020, issued from GTB hospital, Delhi, as Ex.A-9; death summons dated 25.02.2020, issued from GTB hospital as Ex.A-10; CD of postmortem report as Ex.A-11; seizure memo dated 29.02.2020 as Ex.A-12; arrest memo of accused Aman Kashayap, Arun Kumar, Ashish @ Goli, Devendra Kumar and Pradeep Rai as Ex.A-13 to Ex.A-17, respectively; personal search memo of accused Arun Kumar, Ashish @ Goli, Aman Kashyap, Devendra Kumar, Pradeep Rai, Krishan Kant and Rahul Bhardwaj as Ex.A-18 to Ex.A-24; identification memo as Ex.A-25; statement of Jajima as Ex.A-26; copy of Aadhar card of Monis, Jajima and Ali Sher as Ex.A-27 to Ex.A-29, respectively; seizure memo of attested copies of deployment chart alongwith departure daily diary entry as Ex.A-30 to Ex.A-32; duty roster of PS Staff as Ex.A-33; prohibitory Order u/s 144 Cr.P.C. as Ex.A-34; crime scene report (Biology) as Ex.A-35; copy of Road certificate as Ex.A-36; copy of relevant entry from register no.19 & 21 alongwith acknowledgment from FSL are exhibited as Ex.A-37, Ex.A-38 and Ex.A-39; copy of road certificate no. 41/21/20 as Ex.A-40; certificate u/s 65-B of I.E. Act as Ex.A-41; complaint u/s 195 Cr.PC as Ex.A-42; FIR as Ex.A-43; certificate u/s 65-B as Ex.A-44; request to provide permission u/s 195 Cr.P.C as Ex.A-45; G.D. No. 515A as Ex.A-46; DD No. 10B as Ex.A-47; DD No. 13B as Ex.A- 48; photos of deceased Monis as Ex.A-49 to Ex.A-51; regarding acceptance of exhibits as Ex.A-52; notice u/s 91 Cr.P.C. through Vodafone Idea as Ex.A-53; certificate u/s 65-B of I. E. Act of Nodal officer Vodafone as Ex.A-54; CAF of accused Rahul (9718956820) as Ex.A-55; CDR (9718956820) as Ex.A-56; CAF of accused Aman Kashyap (9650945755) as Ex.A-57; CDR (9650945755) as Ex.A-58; CAF (Ali Sher) (9125946186) as Ex.A-59; CDR (9125946186) as Ex.A-60; notice u/s 91 Cr.P.C to vodafone Idea</p>	

Sl. No. & Name of Witness	Role of witness & Description of documents	Proved documents/ case properties
	<p>dated 27.05.2020 as Ex.A-61; certificate u/s 65-B of I.E. Act of Nodal officer Vodafone as Ex.A-62; Vodafone Cell I. D. Chart as Ex.A-63; CAF (Rajpal) (9210783894) as Ex.A-64; CDR (9210783894) as Ex.A-65; CAF of accused Devinder Kumar (9811094676) as Ex.A-66; CDR (9811094676) as Ex.A-67; CAF (8744814196) (Ali Sher) as Ex.A-68; CDR (8744814196) as Ex.A-69; CAF (Manoj) (9668552700) as Ex.A-70; CDR (9868552700) as Ex.A-71; letter to Crime Branch Nodal Office of Bharti Airtel dated 20.04.2020 as Ex.A-72; Certificate u/s 65-B of I. E. Act of Airtel, Nodal officer as Ex.A-73; CAF (9210958994) (Raj Kumar) as Ex.A-74; CDR (9210958994) as Ex.A-75; CAF (9958484763) (Gyanander) as Ex.A-76; CDR (9958484763) as Ex.A-77; Certificate u/s 65-B of I.E. Act as Ex.A-78; CAF (Shashi Kant) (7827195918) as Ex.A-79; CDR (7827195918) as Ex.A-80; CAF of accused Pradeep Rai (7982084320) as Ex.A-81; CDR (7982084320) as Ex.A-82; Digital Forensic Data and Retrieval System as Ex.A-83; certificate u/s 65-B of I.E. Act as Ex.A-84; letter from Digital Forensic Data and Retrieval and Analysis System of seized items in FIR No.87/20, PS Dayalpur to ACP Crime Branch, Chanakypuri as Ex.A-85; and complete proceedings including statement u/s. 164 Cr.P.C. of Shashi Kant as Ex.A-86.</p>	

DESCRIPTION OF COURT WITNESSES

14. Subsequently by invoking Section 311 Cr.P.C. read with Section 165 of I.E. Act, this court vide order dated 07.06.2024 summoned Nodal Officer, M/s. Reliance JIO Infocom Ltd. to produce fresh certified copy of CDR of mobile no. 7982084320 and 7827195918. Vide order dated 24.07.2024, court also summoned HC Manoj and HC Sanjeev in respect of PCR form related to the call made by PW1/Shashikant on 25.02.2020 and certificate under Section 65-B of I.E. Act. During their examination, they

testified as under: -

15. **CW1/Sh. Praveen Kumar** was Alternate Nodal Officer in Reliance Jio Company. He proved certified copy of CDR, D-KYC and Cell ID Chart pertaining to mobile no. 7827195918, which are **Ex.CW1/A**, **Ex.CW1/B** and **Ex.CW1/D**, respectively. This mobile number was issued in the name of Mr. Shashi Kant. CW1 also proved certificate u/s. 65-B of I.E. Act in respect of aforesaid CDR and D-KYC, which is **Ex.CW1/C**.
16. **CW2/HC Sanjeev** deposed that on 25.02.2020, he had recorded the information given by the caller. This call was received from mobile no. 7827195918 and the event ID of this PCR call was generated as 931209.
17. **CW3/Sh. Sanjay Goyal** brought certificate u/s. 63 BSA in respect of certified copy of CDR and ECAF of mobile no. 7982084320 obtained in the name of Sh. Pradeep Rai. CW3 proved certified copy of above-mentioned CDR and ECAF, which are **Ex.CW-3/A** and **Ex.CW3/B**, respectively. He also proved above-mentioned certificate as **Ex.CW3/C** and Cell ID Chart pertaining to afore-said mobile number as **Ex.CW3/D**.
18. **CW4/Insp. Sunil Kumar** had generated PCR form for event ID No. 931209 dated 25.02.2020. CW4 brought certificate u/s. 63 BSA in this respect. He proved PCR form along with certificate u/s. 63 BSA as **Ex.CW4/A**.

PLEA OF ACCUSED UNDER SECTION 313 CR.P.C.

19. Accused persons denied all the allegations and pleaded innocence, taking plea that they are innocent and were falsely implicated in this case by the investigating agency. They also

took plea that witnesses had deposed falsely against them and witnesses were planted in this case. They further took plea that they had not committed any crime as alleged against them in the present case. Accused persons did not opt to lead any evidence in their defence.

20. Same plea was taken by all the accused persons, during their additional statements recorded under Section 351 BNSS.

ARGUMENTS OF DEFENCE

21. I heard Sh. Madhukar Pandey, ld. Special PP as well as ld. counsels for accused persons and I have perused the entire material on the record.
22. **Sh. Rakshpal Singh**, ld. counsel for Arun Kumar, Devender Kumar, Pradeep Rai and Rahul Bhardwaj, argued that PW1/Sh. Shashi Kant is eyewitness in the present case, but he was declared hostile and he did not identify anyone. It was further argued that PW10/Ct. Piyush, PW12/HC Deepak and PW13/Ct. Vineet claimed to be on duty, who identified accused. However, they were examined by IO on 01.04.2020. They did not make any DD entry or complaint about seeing this incident. Ld. counsel further argued that PW2/Sh. Rishi Sharma said that he had purchased mobile phone on 25.02.2020 at around 9-10 AM, though, this incident allegedly took place in the evening. Ld. counsel further argued that FSL report regarding examination of weapon and clothes of deceased was negative.
23. **Sh. Sujeet Kumar**, ld. counsel for accused Aman Kashyap, Ashish and Krishan Kant, argued that PW13/Ct. Vineet and IO/PW18/Insp. Ritesh Kumar Sharma gave different sequence of

visiting home of accused persons. All weapons were planted and nothing was recovered from the possession of these accused persons.

24. **Sh. Rakshpal Singh** and **Sh. Sujeet Kumar**, ld. defence counsels further argued that PW1/Sh. Shashikant did not identify the accused persons as member of the rioters, during his examination-in-chief. It was only during his cross-examination when he identified them, but even at this time PW1 denied any role played by the accused persons. Both of them submitted that PW1 came up with two set of versions regarding identity of accused persons, which create doubt and benefit of the same has to be given to the accused persons. They further submitted that the three police officials cited as eye-witnesses, are planted witnesses, who did not give their statement to identify and name any of the accused persons immediately after the incident. Their statements were recorded at belated stage and same creates doubt over their credibility.

ARGUMENTS OF PROSECUTION

25. Per contra, **Sh. Madhukar Pandey**, ld. Special PP for State conceded that there is no evidence related to conspiracy in this case. Ld. Special PP further conceded that prosecution could not prove the charges of theft against two accused persons.
26. In his written submissions filed on behalf of prosecution, **Sh. Madhukar Pandey**/ld. Special PP strongly placed reliance upon evidence of the police witnesses i.e. PW10/Ct. Piyush, PW12/HC Deepak and PW13/Ct. Vineet, for them being the eyewitness to the incident pertaining to the present case. It was further

submitted that they precisely narrated the rioting incident, stating the active involvement of accused persons in the rioting mob. These witnesses testified that they had seen and identified the deceased Mohnish (Monish) in the CCTV footage of GTB Hospital, when it was shown to them by IO/Insp. Ritesh Kumar on his laptop. Before the court, these witnesses identified all five (5) accused persons namely Arun, Ashish, Aman, Pradeep @ Sandeep and Devender as part of the riotous mob, which assaulted the Victim on that day. He further argued that even PW1 identified five accused persons, as part of the rioters. He submitted that PW1 had named these accused persons in his statement u/s 164 Cr.P.C. and he also supported the case of prosecution.

27. Reliance was placed on the case of **Pramod Kumar v. State (Government of NCT of Delhi)**, 2013 SCC OnLine SC 502 wherein, the Hon'ble Apex Court held that: -

"12.The witnesses from the Department of Police cannot per se be said to be untruthful or unreliable. It would depend upon the veracity, credibility and unimpeachability of their testimony.

*13. This Court, after referring to **State of U.P. v. Anil Singh** [1988 Supp SCC 686: 1989 SCC (Cri) 48], **State (Govt. of NCT of Delhi) v. Sunil** [(2001) 1 SCC 652: 2001 SCC (Cri) 248] and **Ramjee Rai v. State of Bihar** [(2006) 13 SCC 229: (2007) 2 SCC (Cri) 626] has laid down recently in **Kashmiri Lal v. State of Haryana** [(2013) 6 SCC 595: 2013 AIR SCW 3102] that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the*

course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence."

28. Ld. Special PP further submitted that the testimony of PW10/Ct. Piyush, PW12/HC Deepak and PW13/Ct. Vineet are reliable and trust-worthy, as the said witnesses were eye-witnesses to the rioting incident, which took place at the time of their duty near Brijpuri T-Point on 25.02.2020 at around 5 PM. PW10 had in his testimony confirmed that he knew accused persons i.e. Arun, Ashish, Aman, Pradeep @ Sandeep and Devender by their name and their faces, as he was beat constable of the area. Ld. Special further submitted that PW1/Sashikant also corroborated the presence of police staff during his testimony and had partly supported the prosecution case. It was further argued that PW15/ Dr. Naresh Kumar through his DNA Report (Ex.PW-15/A) and Allelic Data (Ex.PW-15/B) also corroborated the presence of deceased Mohnish as blood found on the red T-shirt (Ex.PW-15/Article-1) matched with the blood of deceased Monish. Thus, the victim was wearing red color t-shirt and yellow lower stood corroborated.
29. Ld. Special PP further submitted that it is the quality and not quantity of the evidence which is necessary for proving or disproving a fact. To buttress this argument, ld. Special PP placed reliance upon the case of **Mohd. Nasim v. State, 2023 SCC OnLine Del 7073**, wherein Hon'ble High Court of Delhi observed

that: -

*"12. The counsel for the petitioner also argued that the Investigating Officer did not include any other public person in the investigation which is raising doubt as to the prosecution story. It is correct that the Investigating Officer did not include any public person in the investigation who is stated to have witnessed the accident. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The evidence should be cogent, credible and trustworthy. It was observed in **Kuna @ Sanjaya Behera v. State of Odisha, 2017 SCC OnLine SC 1336** that the conviction can be based on the testimony of single eyewitness if he or she passes the test of reliability and that is not the number of witnesses but the quality of evidence that is important. The Supreme Court in **Veer Singh v State of UP, (2014) 2 SCC 455** observed as under: -*

Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided Under Section 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness, provided he is wholly reliable."

30. Ld. Special PP further submitted that the prosecution did not require number of eyewitnesses to prove its case beyond reasonable doubt. Even if there is one eyewitness and his testimony is up to the mark, the conviction can be based upon the same. Ld. Special PP placed reliance upon the case of **Namdeo v. State of Maharashtra, (2007) 14 SCC 150**, wherein Hon'ble Supreme Court observed that: -

*"In the leading case of **Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793**, this Court held that even where*

a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."

31. Ld. Special PP also placed relied upon the case of **Girja Prasad v. State of M.P. (2007) 7 SCC 625**, wherein **Hon'ble Supreme Court** observed that: -

"25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

*26. It is not necessary to refer to various decisions on the point. We may, however, state that before more than half a century, in **Aher Raja Khima v. State of Saurashtra, Venkatarama Ayyar, J. stated: (AIR p. 230, para 40)***

"40. The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration."

27. In **Tahir v. State (Delhi)**², dealing with a similar question, Dr. A.S. Anand, J. (as His Lordship then was) stated: (SCC p. 341, para 6)

"6... Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

32. Ld. Special PP further argued that PW1/Shashikant though saw and identified the accused persons, but could not see the whole incident due to large crowd. But he saw some part of the incident about which he had deposed during his testimony. Reliance was placed upon the case of **Atmaram & Ors. v. State of Madhya Pradesh, 2012 (5) SCC 738**, wherein Hon'ble Supreme Court observed that: -

"13. It is a settled cannon of criminal jurisprudence that every statement of the witness must be examined in its entirety and the Court may not rely or reject the entire statement of a witness merely by reading one sentence from the deposition in isolation and out of context."

33. Ld. Special PP further submitted that deposition of a witness who had been cross examined by the Prosecutor for resiling away from his statement given to police was considered by Hon'ble Supreme Court in the case of **Jodhraj Singh v. State of Rajasthan, 2007(15) SCC 294**, where Court observed that: -

"14. It is trite that only because a witness, for one reason or the other, has, to some extent, resiled from his earlier statement by itself may not be sufficient to discard the prosecution case in its entirety. The Courts even in such a situation are not powerless. Keeping in view the materials available on record, it is permissible for a Court of law to rely upon a part of the testimony of the witness who has been declared hostile."

34. Ld. Special PP also placed reliance upon the case of **State of U.P. v. Ramesh Prasad Misra and Another**, (1996) 10 SCC 360, which was referred by Hon'ble Supreme Court in the case of **Jodhraj** (supra) observing that: -

"7. The question is whether the first respondent was present at the time of death or was away in the village of DW 1, his brother-in-law. It is rather most unfortunate that these witnesses, one of whom was an advocate, having given the statements about the facts within their special knowledge, under Section 161 recorded during investigation, have resiled from correctness of the versions in the statements. They have not given any reason as to why the investigating officer could record statements contrary to what they had disclosed. It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. One clinching circumstance, viz., that PW 2 and PW 6 had heard some quarrels in the house of the respondents and the deceased was crying out, is not on record as substantive evidence. PW 2 and PW 6 had no regard for truth; they fabricated the evidence in their cross-examination to help the accused which did not find place in their Section 161 statements that they had seen one man of white complexion and aged between 30 to 35 years, going to the house of the deceased on the fateful night and leaving the house at 8.00 a.m. on the next day."

APPRECIATION OF FACTS AND EVIDENCE

UNLAWFUL ASSEMBLY, RIOT & MURDER

35. PW1, PW5, PW10, PW12 and PW13 were the relevant witnesses, who testified regarding riot taking place at Brijpuri road. PW11 proved duty roster of PS Dayalpur for this place for 25.02.2020, which mentions name of PW10, PW12 and PW13. They were assigned duty vide duty roster Ex. A-33 and same

shows that they were deputed for Brijpuri T point. All of them deposed about being on duty at Brijpuri T point at about 5 p.m. on 25.02.2020. All of them referred to a mob, which was assaulting and chasing a boy, while carrying weapons like danda, iron rod, sword etc.

36. On 25.02.2020, one PCR call was received at 18:10:49 hrs in PS Gokulpuri, which was recorded vide GD No. 515-A with reference of ID-931209. Vide this GD, it was informed that "*1 LADKA JALA DIYA GAYA HAI 2 KO LATHIYO SE MAAR DIYA GYA HAI OR 1 LADKA BRIJ PURI MAIN ROAD AGGARWAL SWET PR MARA PADA HAI.*" This call was received from mobile no. 7827195918 in police control room. This GD was assigned to SI Satyadev Panwar. The PCR caller was identified as Shashikant, s/o. Sh. Girwar Singh, R/o. D-8/132, Brijpuri, Delhi. This Shashikant was examined as PW1, by the prosecution in this case. PW1 deposed before the court that on 25.02.2020 at about 4-4.30 p.m., communal riot was going on between mob of persons from Hindu and Muslim community. When PW1 proceeded towards Brijpuri T point, he saw a boy being assaulted near gali no. 3, by a mob with lathi and other implements. The relevant PCR form with certificate u/s 63 Bharatiya Sakshya Adhiniyam, 2023, was proved by court witness CW4 as Ex. CW4/A. That PCR form also mentions the same information, as mentioned in aforesaid GD 515A/Ex.A-46.
37. PW5 also deposed that on 25.02.2020 at about 5 p.m., he went towards Brijpuri Pulia. A fight between two mobs had started there and PW5 ran towards Aggarwal T point and called police.

The prohibitory order/Ex. A-43, passed by DCP (North-East) on 24.02.2020, was in operation on this day. This order prohibited assembly of more than 4 persons and carrying of any kind of weapons. Thus, above-mentioned evidences point out towards presence of two separate unlawful assemblies on Brijpuri road. Such unlawful assemblies were indulging into attack upon each other. In that process a boy was brutally assaulted by one mob and that boy was identified to be victim of this case. Postmortem report/Ex.A-1 leaves no doubt that victim died because of injuries sustained by him in this attack.

38. Description of injuries sustained by victim as mentioned in the postmortem report are as follows: -

1. V-shaped lacerated wound present on the front of right side of skull of size 3.0 x 1.0cm bone deep, 3.0cm away from mid line, the apex of V is 3.0 cm above the front hair line of the scalp.
2. Lacerated wound size 2.0cm x 0.4cm bone deep present on right side of head behind the injury no.1 obliquely placed.
3. Lacerated wound of size 3.5cm x 0.5cm bone deep, vertically placed on left side of head, 7.0cm from mid line and 6.0cm above the front hair line, 8.0cm above tip of left pinna.
4. Red abrasion 3cm x 0.5cm, present on the forehead between the two eyebrows, obliquely placed 2cm above the fronto nasal junction, 6cm below the front hair line.
5. Cresentic lacerated wound present on upper lip measuring 1cm x 0.3cm x 0.3cm.
6. Red abrasion 0.8cm x 0.4cm present on left side of upper chest on the mid clavicular line, 10.5cm above and medial to anterior axillary fold.
7. Red bruise 6.0cm x 3.5cm present on the lateral aspects of left

upper front chest 4.5cm below anterior axillary fold.

8. Red abrasion 0.5cm x 0.3cm present on left side of chest in the mid axillary line, 9.0cm below the left axilla on the chest, 17cm above left anterior superior iliac spine.
9. Red bruise 4cm x 1.5cm present on upper part of side of left arm 5cm below the left axillary fold 11cm above the left cubital fossa.
10. Red bruise 9cm x 12cm present on dorsum of left hand.
11. Lacerated wound 1cm x 0.2cm x soft tissue deep, present at the base of left middle finger on the palmar surface.
12. Red abrasion 3cm x 2cm present on front of right side of chest 5.5cm away from mid line, 3cm above the costal margin on right side in the mid clavicular line.

Head and Neck

Scalp: - On reflection extravasation of blood was present all over.

Skull: - Linear fracture of vertex starting from left coronal suture crossing the mid line going upto the right mastoid process of skull.

Brain: - Weight 1295gms, sub dural haemorrhage was present in the left frontal, left parital and occipital lobes, cerebellum. Sub arachanoid haemorrhage was present over right temporal lobe and left frontal lobe. Contusion was present on the right temporal and occipital lobes.

Chest (Thorax)

Rib Cage: - Left 6th rib in the mid clavicular line was fractured with extravasation of blood in the surrounding tissue.

39. The final opinion given by PW14 and his team, was that the death was on account of shock as a result ante-mortem injuries to the brain as a result of blunt force impact on the head. The injuries mentioned at serial no. 1, 2 and 3 were sufficient to independently cause death in ordinary course of nature.

40. PW1 also deposed during his cross-examination conducted by Id. Special PP that at a later stage upon seeing a CCTV footage, he had identified the injured as the same person wearing red T-shirt, who was inflicted injuries in this incident. This CCTV footage in the pen-drive was proved by PW6, which is Ex.P-1. His testimony was not challenged by the defence. The testimony of IO regarding obtaining the CCTV footage from GTB hospital is also not under challenge. The description of cloth worn by the boy as appearing in the CCTV footage is same as described by PW1 as well as afore-said three police eyewitnesses. The given time period of the incident and the time when this injured was being taken in emergency in GTB hospital, are compatible with the theory that this injured could have been the same boy, who was assaulted by mob near Brijpuri T-point. All of aforesaid eye witnesses identified this boy on stretcher as the victim, and there is nothing on record to doubt their identification. Therefore, I do not find any doubt in respect of identity of the boy, who was assaulted and the identity of aforesaid injured bearing same cloth and as appearing in the CCTV footage of GTB hospital, to be the same.
41. Defence did not challenge the above-mentioned facts and evidence. From the evidence it is also apparent that two opposite mobs had the common object to attack on each other i.e. to attack on any person belonging to the rival community. The persons in these mobs were acting in pursuance to such common object. Thus, it is proved that unlawful assemblies indulged into riot being equipped with the deadly weapons and in that process such

one mob killed the victim of this case.

IDENTIFICATION OF ACCUSED PERSONS

42. The prime bone of contention involved in this case, revolves around the question that whether accused persons were among the rioters, who brutally assaulted the victim Monish to his death? Since, this is very hotly contested question between the parties, I deem it fit to reproduce the relevant part of testimonies of the alleged eye witnesses and two other witnesses.
43. During his testimony dated 21.08.2021 in this case, PW1/Shashikant testified as under: -

"..... The victim was wearing red colour T-shirt and probably blue coloured pant. The said person (victim) was beaten by the rioters with lathi and other implements which I could not see because of a huge crowd. Thereafter, I noted that the victim ran towards gali no.2 and ultimately fell down in front of Aggarwal Sweets. After finding the police at that spot, the rioters ran away back towards gali no.3. The injured had suffered such injuries that I could not even imagine. The blood was flowing from his head. The injured had probably died. I pointed out to the police personnel towards the injured. I had identified some of the boys who had inflicted injuries upon the victim as Ashish, Arun, Pradeep, Devender, Aman etc. All the aforesaid boys were carrying lathi, Dandas.

I can identify all the aforesaid boys, if shown to me today."

44. During the testimony dated 21.02.2022 of PW1/Shashikant, court observed as under: -

"(The witness was asked as to whether any of those rioters to whom he had seen beating the victim near Gali No. 3 Brijpuri, is present in court today. Upon having a look on all the persons present in the court today including the seven accused, the witness states that none of those rioters is present in court)"

45. During his cross-examination by Id. Special PP for the State, PW1/Shashikant testified as under: -

"It is correct that I had deposed on 21.08.2021 that I had identified some of boys, who had inflicted injuries upon the victim, as Ashish, Arun, Pradeep, Devender, Aman etc. I can identify all of these five boys. (The witness points towards accused Ashish, Arun, Aman, Pradeep and Devender saying that these are those boys whose names I had taken in my deposition dated 21.08.2021. (Vol. I had seen them only as part of the mob but I did not see them beating or hitting the victim). It has been recorded incorrectly in my deposition dated 21.08.2021 that I had seen these boys inflicting injuries upon the victim. It has happened for the reason that my deposition was recorded on that day through VC.

.....However, it is correct that at the later stage and upon seeing a CCTV footage, I identified the injured as the same person who was inflicted injuries wearing red T-shirt.

It is correct that during the investigation of this case, I was produced before the Ld. Magistrate, who recorded my statement u/s. 164 Cr. P.C. It is correct that in that statement also, I had taken the names of Ashish, Arun, Devender, Aman and Pradeep. (Vol. In that statement also, I had mentioned that I had only seen these persons present in the mob and I did not see them inflicting injuries upon the victim).

.....

It is wrong to suggest that in statement Mark-X made by me u/s. 164 Cr.P.C, I correctly stated that I saw five persons giving beatings to the boy wearing red T-shirt and I also identified them as Aman, Arun, Devender, Pradeep and Ashish as I already knew them. I have correctly mentioned in the said statement that I have seen accused Krishan Kant and Rahul running away from the spot alongwith the mobile phone of the victim."

46. During his testimony, PW2/Sh. Rishi Sharma testified as under: -

"On 25.02.2020 at about 9 am or 10 am, when I was

present at my house, a person reached there. He seem to be in a distressed state of mind. He told me that he is not having anything to feed himself and his family. He offered to sell his mobile phone to me. Accordingly, I purchased his Red Colour MI Mobile Phone for Rs.1,000/-. I did not know that person. I inserted my own SIM card in the said mobile phone and started using it.

*After about one week, police officials had come to my residence and seized the said mobile phone from me. I have seen the seizure memo dated 10.04.2020. It bears my signature at point A. The same is **Ex.PW2/A**.*

After about 14 to 15 days, I had been taken to the office of Crime Branch, Chankaya Puri. Upon reaching there, enquiries were made from me and my signature was taken on some documents. I have seen the arrest memos of accused Krishan Kant and Rahul Bhardwaj from the court record. Both of these bear my signatures at point A. "

During his cross-examination by defence, this witness testified that: -

"I have not seen that person, who had sold me the above mobile phone, till now. I have not heard the name of Krishan Kant and Rahul Bhardwaj."

.....

"The above mobile phone remained in my use only till it was seized by the police."

47. Another witness namely Gyanender was examined by Prosecution as PW8. During his testimony, PW8/Gyanender testified as under: -

"..... it was in the month of February, 2020 when I purchased a mobile phone of make MI and colour Red from my known person namely Rishi Sharma for a sum of Rs.2000/-. I started using that phone by inserting my Sim card with mobile number 9958484763 in the same.

On 10.04.2020, I had been summoned to Chankya

Puri PS in connection with investigation of this case. The said mobile phone was seized by the said PS on that day vide seizure memo already Ex.PW 2/A."

48. During his testimony, PW10/Ct. Piyush testified as under: -

"1. I saw one boy running towards us from the side of Brijpuri and a mob chasing him. This boy had worn red colour T-shirt and yellow lower and probably he would be around 22-23 years old. There was police barricade beside the wall of water plant at some distance from Brijpuri T point. That boy fell down near that police barricade and the mob kept assaulting him at that place with danda, iron rod. He was bleeding from his head. We the police team rushed towards him and the mob was driven away from that place. Thereafter, I stopped one auto TSR and with the help of HC Naresh Tyagi and Ct. Rohit, I lifted this boy into that auto. Thereafter, auto driver was asked to take this boy to GTB hospital.

2. I had seen and identified 5 persons in that mob, which chased this boy upto the police barricade and which was assaulting that boy. These 5 persons were Arun, Ashish, Aman, Pradeep @ Sandeep and Devender. I knew all these 5 persons since prior to aforesaid incident, as being bea- officer I had seen and met them in my area. All these 5 persons were in front of this mob and were shouting 'maaro maaro'. They were carrying danda and iron rod, as well as sword. All the accused persons are present in the court today (correctly identified)."

During his cross-examination by defence, PW10 testified that: -

" 7. When this incident of the boy running towards us took place, my position was at point C in site plan Ex. PW 10/A. The boy had fallen down at point B, as shown in the site plan. This point B was in front of gali no.2, A block, Brijpuri. I did not prepare any video of aforesaid incident, because we were more concerned about saving that boy, rather than making video of the same. I did not make any written complaint, or DD entry about aforesaid incident. I had only informed SHO."

49. During his testimony, PW12/HC Deepak testified as under: -

" 1.At around 5 p.m., HC Naresh Tyagi, HC Ashok, Ct. Piyush, Ct. Vineet and Ct. Rohit were present with me at Brijpuri T point. At that time, I saw one boy aged about 22 years, who was wearing red T-shirt and yellow lower came towards the picket from the side of Brijpuri. That boy sat near the wall of the water plant at a distance of about 20-25 feet from the picket. I saw that the boy was bleeding from his head and a mob comprising of 300-400 persons were following him and were shouting 'maaro maaro'. The rioters in the said mob were carrying sticks, iron rods and swords in their hands. The said mob reached near the boy and started beating him. I had identified some of rioters, whose names were revealed by Ct. Piyush. They were Aman, Munna, Devender, Sandeep, Pradeep and Ashish. Thereafter we dispersed the mob with the help of dandas and rescued the injured boy. Thereafter HC Naresh Tyagi, Ct. Piyush and Ct. Rohit lifted the boy and made him sit in an auto and asked the auto driver to take him to a hospital.

.....

During his cross-examination by defence, PW12 testified that: -

" 3. The aforesaid accused persons identified by me were leading that mob, which assaulted the boy and when they were assaulting the boy, at that time itself Ct. Piyush had told me about their respective names."

50. Similarly, PW13/Ct. Vineet testified that "one boy wearing red colour T-shirt and light yellow lower, aged about 22-23 years, came towards our picket and fell down near the barricades kept near the wall of the water plant, at some distance from our picket. That boy was bleeding from his head and became unconscious. This boy was being chased by the mob. The members of this mob were carrying lathi, danda, rod and sword. I did not know any member of this mob personally, but Ct. Piyush, who was beat constable of that area, identified and informed us about five persons, who were members of this mob. He had

pointed out to those persons telling their names as Arun @ Munna, Ashish @ Goli, Aman, Pradeep @ Sandeep and Devender. I had seen faces of these persons and I can identify these five persons even today. This mob consisted of many persons and may be around 300-400 persons, but aforesaid 5 persons were leading and in the front part of the mob. When the aforesaid boy fell down, this mob including aforesaid 5 persons continued beating and assaulting that boy. Then, we the police team charged towards that mob and the aforesaid mob took back steps. Thereafter, HC Naresh, Ct. Piyush and Ct. Rohit lifted that injured boy. One TSR was passing by which was stopped and this injured person was put in that TSR. We informed Insp. Ritesh about aforesaid 5 persons, who were involved and were identified in the mob, which assaulted aforesaid boy. Ct. Piyush also informed Insp. Ritesh that he knew residence of these five persons."

51. In his cross-examination by defence counsel, PW13 testified that *"After the incident in the case, from about 6.30 p.m., DCP had again come to Brijpuri Pulia and had remained there for about 2-3 hours. DCP Saheb was not informed about incident in question in this case by any of us. Ct. Piyush had telephonically informed SHO about this incident. He had made this call to SHO immediately after the aforesaid injured was sent to hospital in auto. The names of accused persons were informed to me by Ct. Piyush, when they were assaulting the injured. After the incident (injured) was sent to the hospital in auto, the same mob was again coming forward and were being pushed back. During*

this process, Ct. Piyush had pointed out to the respective persons whose names were told by him. Second time also, these accused persons were leading that mob. "

52. It is admitted position that neither PW1 nor anyone from PW10, PW12 or PW13, had lodged any formal DD entry or complaint in respect of afore-said incident. As per testimony of PW10, PW12, PW13 and IO/PW18, these police officials were called by IO on 01.04.2020. According to IO, after examining one Manoj Kaniyal (PW5) on 30.03.2020, he came to know that some police officials positioned at the police picket near Aggarwal Sweets, Brijpuri, had come to rescue the victim. Thereafter, IO had obtained list of police officials, who were on duty in that area on 25.02.2020. Accordingly, IO came to examine afore-said three police eyewitnesses on 01.04.2020.
53. During examination of these police eye-witnesses, IO had shown them CCTV footage as obtained from GTB hospital. This footage covered the area of entry to emergency and afore-said police eyewitnesses identified a boy on stretcher being taken inside at the time line of 5:49 p.m., as the same boy who was assaulted in afore-said incident. Thus, identity of the victim was established as the same boy who was injured by the mob in front of these police eyewitnesses.
54. Defence has raised questions over credibility of all these four eyewitnesses of the prosecution. It is true that PW1 did not identify any of the accused persons during his examination in chief. However, it is worth to note that he had vouched for having identified some of the boys who had inflicted injuries

upon the victim. At that time, he had mentioned name of Ashish, Arun, Pradeep, Devender and Aman. Subsequently, in his cross-examination conducted by Id. Prosecutor, he stood by his statement about having identified some of the boys with afore-said names. Thereafter, he pointed out to these five accused persons in the court and clarified that he had taken their names. One cannot be oblivious of the fact that the examination-in-chief of PW1 was stopped on 21.08.2021, just before the stage of identification of the accused persons. At that time, his statement was recorded through video conference, but subsequently he was examined physically in the court. PW1 did try to disown his statement regarding role of accused persons, as given on the previous date of 21.08.2021, on his second appearance. However, that part of his statement appears to be given under some influence. I say so because this witness was also examined under Section 164 Cr.P.C. on 22.05.2020 by Id. Duty MM. This witness admitted having given statement. He tried to disown some part of that statement also, which related to the given role of afore-said accused persons. However, it is not permissible in law to retract from any such statement given on oath in such casual manner. The statement under Section 164 Cr.P.C. i.e. part of Ex.A-86, was given in unequivocal terms by this witness to say that this witness knew about a boy being beaten in gali no.3, Brijpuri by some persons and that boy was wearing red colour T-shirt. This witness had identified five persons from those assaulters as they were leader kind of personality of his colony. That boy had fallen down near police barricade near gali no.2. Subsequently, this

witness was called by police when he was shown some photographs in the computer. This witness had identified those five assaulters namely Ashish, Arun, Devender, Pradeep and Aman. This witness had also vouched having seen two boys taking away the mobile phone which had fallen down from the pocket of injured boy and subsequently on 11th day of the month, he had seen those two boys with the police at Brijpuri T-point and their names were disclosed as Krishan Kant and Rahul.

55. The proceedings conducted by Id. MM shows that before recording statement of PW1, Id. MM had tested his voluntariness and that the witness had confirmed knowing meaning of oath as well. He was a graduate from Delhi University and hence, it cannot be said that he was a kind of illiterate person.
56. In a recent case of **Vijaya Singh & Ors. v. State of Uttarakhand, MANU/SC/1259/2024**, Hon'ble Supreme Court dealt with a similar situation, wherein two witnesses had sought to retract from their statement recorded under Section 164 Cr.P.C., while giving their statement before Sessions Court. Those witnesses had given reason for retraction that such statements were given under threat. Hon'ble Supreme Court observed that "*such statement under Section 164 Cr.P.C. is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposed before the court and is subjected to cross-examination. However, such statement under Section 164 Cr.P.C. could be used to corroborate the testimonies of other witnesses.*" The Court further observed that "*a statement under Section 164 Cr.P.C., 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." The court further observed that *"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."*

57. In the present case, in order to confirm presence of PW1 at the given site, above mentioned PCR form and CDR as pertaining to mobile phone of PW1, were proved on the record. This witness had used mobile number 7827195918 which was found in his name vide CAF Ex.CW-1/B. CDR of this number Ex.CW-1/A seen along with Cell ID Chart Ex.CW-1/D, shows presence of this witness in the area of Brijpuri at the relevant point of time. Exact and pin pointed location of the mobile user cannot be ascertained on the basis of CDR. However, the information passed on by this witness to police control room, leaves no doubt that he had seen the victim of this case being assaulted. He was resident of same area having his house in D-Block, Brijpuri and was running a mobile repair shop. The accused persons are also resident of same area. Beat officer/PW10 also deposed that accused persons were residents of same area and were prominent persons.

58. If I read the testimony of PW1 along with the testimony of PW10, PW12 and PW13, I find that the facts deposed by them are almost consistent with each other. The sequence of incident is also mentioned by these witnesses in identical manner. Identification of afore-said five accused persons by PW1 and by police eyewitnesses, cannot be a matter of coincidence.
59. PW1 did not give any other reason to retract from a part of his testimony given during examination-in-chief before the court as well as his statement given before Id. Duty MM under Section 164 Cr.P.C. The only given reason by him before the court was that he had not made such statement, which on the face of it is a false statement. However, barring this particular part of statement, which explained the role of the five accused persons being involved in inflicting injuries upon the victim, even PW1 stood by his version about presence of these five accused persons in the same mob, which had inflicted these injuries upon the victim.
60. As far as delay in recording the statement of police eyewitnesses, is concerned, it is relevant to mention here that none of PW10, PW12 or PW13 were asked to explain the reasons for not giving their statement suo-moto to IO, immediately after the incident in question. Since they were not asked such questions, they were not expected to come up with any explanations, on their own. However, such questions were asked to the IO/PW18 and IO deposed that when he made inquiry from PW10 for not reporting about being witness of this incident in the PS up to 01.04.2020, PW10 had informed IO that PW10 was not even aware of death

of that injured person, who was rescued by him and others in this case, nor did PW10 know the FIR number of this case. IO had further explained about the reasons for delay in recording statement of such witnesses. He deposed that there were many cases registered for riots at that time and no one could know as to which IO related to which particular case and hence, there was no such possibility for any police staff to come to him suo-moto. It was further explained by IO that due to Corona, public persons were not allowed to come out of their houses and that he had called Shashikant to his office on 07.04.2020.

61. It is even otherwise a well-known fact that on account of pandemic of Covid-19, there was a nation-wide lock-down since 24.03.2020. It is not difficult to assume that huge number of incidents taken place during riots in North-East Delhi and prevailing problem of pandemic of Covid-19, must have their adverse effect on the speed and quantum of investigation. Therefore, the delay in recording statement of afore-said witnesses, cannot be attributed to any mala fide reason. I find merit in the explanation given by IO.
62. Recovery of weapons at the instance of accused, is insignificant fact because, evidence/FSL report shows that none of the weapons had any blood or other such material, which could connect these weapons with the crime. Inconsistency in testimony of IO and other witness in respect of sequence of visit to the house of accused persons, is also insignificant. Duty roster of PW10, PW12 and PW13 rule out argument of planting of these witnesses.

63. PW2 deposed that he had purchased the mobile phone, which was discovered to be belonging to deceased, on 25.02.2020 at about 9-10 a.m. However, this was a false statement given by PW2 because this mobile phone was used by victim till evening. This fact is well established by evidence of PW3/Ibrahim and CAF/CDR of mobile sim card used by deceased. PW3 deposed that victim Monish was his cousin and he had telephonic conversation with Monish at about 4 p.m. on 25.02.2020. PW3 had received this call on his mobile number 8296486286. Nodal officer from Airtel company i.e. PW7 proved CAF/Ex.PW7/G in respect of mobile/sim card number 9125946186. He also proved CDR of this number. This number was allotted in the name of Ali Sher, who was father of deceased/victim Monish. So, apparently this number could be used by Monish. CDR/Ex.PW7/H shows that on 25.02.2020 at 2:12 p.m. Monish had conversation with aforesaid number of PW3. At 4:09 p.m. there was call from the number of PW3 at the number of Monish. Thus, apparently this mobile phone set was not in the possession of PW2 at least upto 4:30 p.m., when last conversation took place with sim number of Monish on this day.
64. PW8 deposed that he had purchased this mobile phone set from PW2 and it was seized by police on 10.04.2020. On the other hand, PW2 claimed that this phone was seized by police after about one week from 25.02.2020. At the same time PW2 identified his signature on seizure memo dated 10.04.2020. Thus, it is well obvious that PW2 gave a false statement. Therefore, his statement cannot be basis to doubt the veracity of evidence of eye

witnesses.

65. The conjoint appreciation of the testimonies of PW1, PW10, PW12 and PW13, leave no doubt in respect of accused persons namely Ashish, Aman, Devender, Pradeep and Arun being part of the same mob, which badly assaulted the victim of this case namely Mosin.

Culpable Homicide Not Amounting to Murder vs. Murder

66. In the case of **Laxman v. State of M.P.**, MANU/SC/4098/2006, Hon'ble Supreme Court explained the distinction between murder and culpable homicide not amounting to murder in the following terms: -

"6. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 IPC. The following comparative table will be helpful in appreciating the points distinction between the two offences.

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done -	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done -
INTENTION	
(a) with the intention of causing death; or (b) with the intention of causing such bodily injury as is likely to cause death; or	(1) with the intention of causing death; or (2) with the intention of causing such bodily injuries as the offender knows to be likely to cause the death of the

Section 299	Section 300
	<p>person to whom the harm is caused; or</p> <p>(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or</p>
KNOWLEDGE	
(c) with the knowledge that the act is likely to cause death.	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

Clause (b) of Section 299 IPC corresponds with Clauses (2) and (3) of Section 300 IPC. The distinguishing feature of the mens rea requisite under Clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of Clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of Clause (2) is borne out by illustration (b) appended to Section 300 IPC.

Clause (b) of Section 299 IPC does not postulate any such knowledge on the part of the offender. Instances of cases of falling under Clause (2) of Section 300 IPC can be where the assailant causes death by a fist blow intentionally given knowing

that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result: of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In Clause (3) of Section 300 IPC, instead of the words likely to cause death' occurring in the corresponding Clause (b) of Section 299 IPC, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between Clause (b) of Section 299 IPC and Clause (3) of Section 300 IPC is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or of the lowest degree. The word likely in Clause (b) of Section 299 IPC conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury.....sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

For cases to fall within Clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant and Anr. v. State of Kerala AIR 1966 SC 1874 is an apt illustration of this point.

7. In *Virsa Singh v. State of Punjab* MANU/SC/0041/1958 : 1958CriL J818, Vivian Bose, J. speaking for the Court, explained the meaning and scope of Clause (3). It was observed that the prosecution must prove the following acts before it can bring a case under Section 300 IPC, "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly the

nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeded further, and fourthly it must be proved that the injury of the type just described made up the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

8 . The ingredient of clause "Thirdly" of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows: -

"12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, "thirdly".

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

The learned Judge explained the third ingredient in the following words-

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did

not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

These observations of Vivian Bose, J. have come locus classicus. The test laid down by Virsa Singh's case (supra) for the applicability of clause "Thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury, which in the ordinary course of nature, was sufficient to cause death, viz., that the injury found to be present the injury that was intended to be inflicted.

9. Thus, according to the rule laid down in Virsa Singh's case, even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 IPC clearly brings out this point.

Clause (c) and Clause (4) of Section 300 IPC both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that Clause (4) of Section 300 IPC would be applicable where the knowledge of the offender as to the

probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid."

67. In the present case, though it is well established that afore-said five accused persons were involved in assaulting victim Moshin, but it is not in the evidence to show that these accused persons were the concerned rioter, who inflicted injuries mentioned at serial no. 1, 2 and 3 in the postmortem report. Thus, their criminal liability for causing death of Moshin has to be based on invocation of Section 149 IPC. On the basis of legal principles explained in the case of **Laxman** (supra), even if I presume that they were having knowledge about the consequence of hitting a person with danda on sensitive part of his body viz. head, it has to be further appreciated that the liability imposed by virtue of Section 149 IPC, is in the nature of vicarious liability. When one is not very sure, if these accused persons intended to cause blows on the head of the victim or these blows were given by these accused persons, then for want of specific role attributed to any of these five accused persons for causing head injuries on the victim, I find that their liability should be limited for causing culpable homicide not amounting to murder.
68. As far as accused persons Krishan Kant and Rahul Bhardwaj are concerned, neither they were identified as part of afore-said mob nor it has been proved that they had stolen the mobile phone from the possession of the victim. Had they been identified as

member of same mob, which assaulted the victim, then the alleged act of taking away mobile phone from the possession of the victim could amount to dacoity. However, as already mentioned, they have not been identified by any of the witnesses to be part of same mob. Anything stated in statement u/s 164 Cr.P.C. cannot be that evidence. In that situation, as already conceded by Id. Special Public Prosecutor, the charge of theft against these two accused persons, is not proved.

CONCLUSION & DECISION

69. In view of my foregoing discussions, observations and findings, I find that accused persons 1. Arun, 2. Aman Kashyap, 3. Ashish @ Goli, 4. Pradeep Rai, 5. Devender Kumar, are guilty of offence punishable under Section 148/304 (I) IPC read with Section 149 IPC and they are convicted accordingly.
70. Accused persons namely **Krishan Kant** and **Rahul Bhardwaj**, are acquitted of the charges levelled against them in the present case.

Announced in the open court (PULASTYA PRAMACHALA)
today on 30.11.2024 ASJ-03 (North- East)
(This order contains 63 pages) Karkardooma Courts/Delhi