

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

SC No. 221/2022

FIR No. 89/2020

PS New Usmanpur

U/s. 147/148/149/436/120B/34/188/186/353/333/3802/454 IPC

State

Versus

1. Prem Prakash @ Kake

s/o Sh. Sarwan Kumar,

r/o H. No. A-14, Gali No. 2,

Sade Char Pushta, Punjabi Colony,

Gamri, Delhi.

2. Ishu Gupta

s/o Sh. Hari Babu Gupta

r/o H. No. C-44/38, Gali No. 7,

Sudamapuri, Delhi.

3. Rajkumar @ Siwainya,

s/o Sh. Nathu Singh,

r/o H. No. C-4/20, Gali No. 7,

Pipal Wali Gali, Gamri, Delhi.

4. Amit @ Annu,

s/o Sh. Ramesh Kumar,

r/o H. No. C-44/53, Gali No. 6,

Sudamapuri, Gamri, Delhi.

5. Rahul @ Golu,

s/o Sh. Surender Singh,
r/o H. No. H-68, Gali No. 16,
Jai Prakash Nagar, Delhi.

6. Hariom Sharma,
s/o Sh. Chanda Mani Sharma,
r/o H. No. H-11, Gali No. 2,
Jai Prakash Nagar, Delhi.

...Accused

Date of Committal	:	23.07.2022.
Date of Arguments	:	20.01.2026.
Date of Pronouncement	:	31.01.2026

(Section 481 BNSS complied with by both the accused)

JUDGMENT

Facts of Prosecution Case as per Charge Sheet

1.1 Brief facts of the case of the prosecution are, that on 25.02.2020 at about 13:12:05 DD No. 126-A was recorded which was to the effect that “*dukane tor the hai aag laga the hai nare bajî kar the hai dande le rakhe hai*”. This DD was entrusted to ASI Sita Ram, who alongwith Ct. Inder went to Sudamapuri near Aziziyah Masjid, but caller was not found there. Scene of crime was inspected and a large number of bricks and pieces of stones were found scattered in the *gali*. On the basis of the said DD, ASI Sita Ram prepared *rukka*.

1.2 On the basis of the *rukka*, present FIR was registered and the investigation was assigned to ASI Sita Ram.

1.3 During the investigation, scene of crime was got

photographed and efforts were made to search the witnesses but none could be found. Exhibits i.e. burnt foam, ash and pieces of rocks/bricks scattered in the street were seized. Four burnt motorcycles and one *Vikky* two-wheeler found near Aziziyah Mosque, whose registration and engine number had been burnt, were taken into police possession through a seizure memo. During the investigation, statements u/s 161 Cr.P.C of HC Vikash and Ct. Kishan, who were deployed for riots arrangement on the day of incident, were recorded. On the basis of the statements of HC Vikash and Ct. Kishan, Prem Prakash, Amit, Ishu Gupta and Golu were identified amongst the rioters. They further stated that could recognize 4-5 other persons in the mob. On 26.02.2020, ASI Sita Ram collected the MLC of Ct. Kishanlal.

1.4 On 29.02.2020 complainants 1. Sh. Mehboob Ali, S/o. Sh. Maksood Ali, 2. Sh. Asif Ali, S/o. Sh. Shaukat Ali, 3. Sh. Tahir Md., S/o. Sh. Islamuddin, 4. Sh. Shoaib, S/o. Sh. Mushrafin, came to police station and submitted their respective complaints regarding incidents taken place at their respective premises. On 04.03.2020 complainants Md. Raies s/o Md. Anif and Khalid s/o Saddiq filed their complaints regarding the loss suffered by them during the riots.

1.5 During further investigation on 07.03.2020, DVR of the CCTV camera installed at house no. C-4/16, Gali No. 6, Main Sudamapuri Road, near Ajeet Chowk, Gamdi, containing the footage

of mob, was taken into police possession through a seizure memo. Thereafter, on the basis of private CCTV footage seized in FIR No. 111/20 of PS New Usmanpur and on the basis of identification by Ct. Kishan Lal and his subsequent statement, accused Prem Parkash @ Kake and accused Ishu Gupta, Rahul @ Golu, Amit @ Annu and Rajkumar @ Sewaiya were arrested. These accused were further identified by the beat officers HC Vikas and Ct. Kishan Lal in the police station. On 15.03.2020, eye witness Vedprakash @ Vedu was examined, who was subsequently shown certain photographs and from the photographs he identified Rahul @ Golu, Raj Kumar @ Sewaiya, Amit @ Annu, Prem Prakash @ Kake and Ishu Gupta. On 16.03.2020, complainant Ms. Sameena Khatoon, W/o. Sh. Sabir Ali filed her complaint alleging the loss suffered by her during the riots and she further alleged that the mob of the rioters was led by one Hariom Sharma. On 17.03.2020, another complainant namely Sh. Salman, S/o. Md. Furkan submitted his complaint alleging that on 25.02.2020 his barber shop in the name and style of Rangila Hair Saloon was looted and vandalized by the rioters. On 10.07.2020, sealed DVR was sent to FSL for examination. Thereafter on 04.08.2020, investigation of the case was handed over to IO/SI Amit Kumar.

1.6 On 03.02.2021, one CD containing the viral footage of the incident of riots pertaining to the area near Azizia Masjid dated 25.02.2020 was produced by Ms. Sameena Khatoon, which was seized

vide a seizure memo. Same was also sent to FSL Rohini for examination. On 13.11.2021, accused Hariom Sharma was bound down after serving notice u/s 41.A Cr.P.C. on the basis of complaint of Ms. Sameena Khatoon. On 15.11.2021, four burnt motorcycles and one moped, seized in this case were got inspected by FSL mobile team. The exhibits collected after FSL inspection, which were seized through seizure memo, were sent to FSL Rohini for examination.

1.7 After completion of investigation, charge sheet was filed against six accused persons namely Prem Prakash @ Kake, Ishu Gupta, Raj Kumar @ Sewaiya, Amit @ Annu @ Baba, Rahul @ Golu and Hariom Sharma, for offences u/s. 147/148/149/436/120-B/34/188/186/353/333/380/454 IPC.

1.8 On 19.07.2023 second supplementary charge sheet alongwith several documents including FSL reports, photographs etc. and additional statements, was filed.

Charges

2.1 On 24.01.2024, charge for offences punishable u/s 148/186/333 IPC r/w section 149 IPC and section 188 IPC; u/s 427 IPC r/w section 149 IPC; u/s 435 IPC r/w section 149 IPC; u/s 436 IPC r/w section 149 IPC; u/s 380/450 IPC r/w section 149 IPC and u/s 454 IPC r/w section 149 IPC was framed against all the accused, to which they pleaded not guilty and claimed trial.

Prosecution Evidence

3.1 In order to prove its case, the prosecution has examined 27 witnesses, description of which is given as under:-

Prosecution Witness No.	Name of Witness	Description
PW1	Asif Ali	He is a complainant. As per his testimony, on 25.02.2020, a mob of around 2000-2500 rioters had burnt and looted his hotel by the name of Bismillah Hotel, situated at C-5, Main Gamri Road, Ghonda, Delhi. His complaint is Ex.PW1/A.
PW2	Shoaib	A complainant, and as per his testimony he was running a meat shop at C-15/3, Masjid Wali Gali, 5 th Pushta Gamri Road. On 25.02.2020, during the riots, his said shop was looted and burnt. His complaint is Ex.PW2/A.
PW3	Mehboob Ali	A complainant. As per his testimony, on 25.02.2020, his house bearing no. C-17/2, masjid Wali Gali, Gamri Road was attacked by rioters who burnt two bikes, which were in his house, vandalized the house and looted cash and gold. His complaint is Ex.PW3/A.
PW4	Rahees	A complainant. He was

		running a salon at C-2/4A, gali No. 6, Sudamapuri, Gamri Extension. His salon was burnt and vandalized and cash of Rs.3.50 lacs was looted by the rioters, during riots.
PW5	Mohd. Tahir	Made PCR call on 25.02.2020 after hearing noises of riots.
PW6	HC Suraj	Looking after the work of dossier of PS NU Pur. On 17.03.2020, as per list given by SI Amit, he had handed over photographs of 45 persons from dossier and certificate u/s 65B of Evidence Act to SI Amit.
PW7	Tahir Mohammad	A complainant. As per his testimony, he was running a mobile repair shop at C-22/20. During the riots of 25.02.2020, rioters had vandalized, looted and burned his shop. His complaint is Ex.PW7/A.
PW8	Mohd. Salman	A complainant. As per his testimony, he was running a salon by the name Rangila Hair Salon at C-4/2, Gali No. 3, 5 th Pushta, Sudamapuri Chowk. During the riots of 25.02.2020, his shop was vandalized and looted by

		rioters, His complaint is Ex.PW8/A.
PW9	ASI Naresh Pal	He is an official witness from Record Branch, North East District. He proved the copy of order u/s 144 Cr.P.C vide Ex.PW9/A, and complaint u/s 195 Cr.P.C. for offence u/s 188 Cr.P.C. vide Ex.PW9/B.
PW10	ASI Surender Kundu	He is Reader to ACP Seelampur. He proved the complaint u/s 195 Cr.P.C. made by ACP Seelampur against all the accused for offences u/s 186/353 IPC.
PW11	HC Mohit Tomar	On 13.11.2021, he had gone to the house of Hari Om Sharma and served a notice u/s 41 (A) Cr.P.C upon him.
PW12	Dr. Kunal Kishore	He was the Casualty Medical Officer, of JPC Hospital, Shastri Park. On 25.02.2020, he had examined Ct. Kishan Lal and prepared MLC (Ex.PW12/A) of Ct. Kishan Lal.
PW13	Hazi Aasim	He was the owner / landlord of property no. C-23, wherein a barber shop was burnt in the riots.
PW14	Sanjeev Kumar	Owner of a shop wherein PW8 was running a salon.
PW15	Nawab Ali	Owner of a shop wherein

		complainant PW7 was running a mobile repair shop.
PW16	HC Inder	He had accompanied the IO ASI Sita Ram in response to DD No. 126A, dated 25.02.2020. He is also a witness to seizure of a DVR and the arrest of accused Prem Prakash and Ishu Gupta
PW17	Dr. Anshuman Kumar	He is CCMO of JPC Hospital who gave opinion on the MLC of Ct. Kishan that as per X-ray report of said patient, he had sustained fracture on 5 th multi carpal bone.
PW18	Ved Prakash	Was at home at Sudamapuri, Gamri Extension, at the time of riots. He did not support the case of the prosecution.
PW19	Khalid Salmani	A complainant. As per his testimony, he was running a barber shop which was burnt by the rioters on 25.02.2020. He made a complaint which is Ex.PW19/A.
PW20	V. Lakshmi Narasimhan	FSL witness.
PW21	HC Kishan Lal	Eye witness of riots of 25.02.2020 and had suffered injury in the riots. Identified accused as rioters. Detailed discussion in later part of the judgment.

PW22	Samina Khatoon	Eye witness. Detailed discussion in later part of the judgment.
PW23	HC Mukesh	He deposed that on 28.08.2023, he was shown videos by SI Amit Kumar and he had identified Hari Om in the video.
PW24	ASI Vikas Kumar	He announced imposition of section 144 Cr.P.C and is also an eye witness. Detailed discussion in later part of the judgment.
PW25	Salman Khan	Owner of a cyber cafe, who at the instance on one Sabir ali, had copied some videos from the mobile phone or pen drive onto a CD.
PW26	ASI Sita Ram	Prepared <i>rukka</i> . First IO. Detailed discussion in later part of the judgment.
PW27	SI Amit Kumar	2 nd IO. Detailed discussion in later part of the judgment.

3.2 Further the prosecution proved the documents as given in the table below:-

Exhibit No.	Description of the Exhibit	Proved/ Attested by

Ex.PW1/A	Complaint of Asif Ansari	PW1
Ex.PW2/A	Complaint of Shoaib	PW2
Ex.PW3/A	Complaint of Mehboob Ali	PW3
Ex.PW3/B	Seizure memo of photographs	PW3
Ex.PW4/A	Complaint of Md. Rahis	PW4
Ex.PW6/A	Certificate u/s 65B of Evidence Act regarding 45 photographs from dossier	PW6
Ex.PW6/B1 to Ex.PW6/B5	Photographs	PW6
Ex.PW7/A	Complaint of Tahir Mohd.	PW7
Ex.PW7/B	Certificate u/s 65B of Evidence Act	PW7
Ex.PW7/P1 to Ex.PW7/P4	Photographs	PW7
Ex.PW8/A	Complaint of Salman	PW8

Ex.PW8/B	Certificate u/s 65B of Evidence Act	PW8
Ex.PW8/P1 to Ex.PW8/P4	Photographs	PW8
Ex.PW9/A	Prohibitory order u/s 144 Cr.P.C	PW9
Ex.PW9/B	Complaint u/s 195 Cr.P.C	PW9
Ex.PW10/A	Complaint u/s 195 Cr.P.C	PW10
Ex.PW12/A	MLC of Ct. Kishan Lal	PW12
Ex.PW16/A	Seizure Memo of articles from Azizia Masjid	PW16
Ex.PW16/B	Seizure Memo of Four motorcycles and one Vikky	PW16
Ex.PW19/A	Complaint of Khalid Salmani	PW19
Ex.PW20/A	FSL report	PW20
Ex.PW20/B	FSL report	PW20

Ex.PW21/A	Complaint of Ct. Kishan	PW21
Ex.PW26/1	Site plan	PW26
Ex.PW26/2	Seizure memo of photos produced by Salman	PW26
Ex.PW26/3	Seizure memo of photos produced by Rahees	PW26
Ex.PW26/4	Seizure memo of photos produced by Asif	PW26
Ex.PW27/1	Seizure memo of CD	PW27

Defence Evidence

4.1 Accused Hari Om led defence evidence and the following witnesses were examined in defence evidence:-

Defence Witness No.	Name of Witness	Description
DW1	Hari Om Sharma	Deposed that on 25.02.2020 at about at about 11.30 a.m -12.00 p.m, he saw that stone pelting was going on near Azizia Masjid and a flower pot landed on his head and he fell down. He was taken to Veer Nursing Home and then

		to JPC Hospital and to LNJP Hospital. Finally, he was taken to Max Hospital from where he was discharged on 04.03.2020. On his statement (Ex.DW1/1), a FIR No. 136/20 with regard to this incident was registered and in the said FIR, Zakir and Shakir were the accused. He further deposed that in order to pressurize him, mother of Zakir and Shakir had falsely implicated him in this case.
DW2	Jyoti Bala	Ahlmad of this court who produced the record of FIR No. 136/20 of PS NU Pur.

Statement of Accused

5.1 Thereafter, on 15.10.2025, statements u/s 313 Cr.P.C/ 351 BNSS of all the accused were recorded and all the accused, except accused Hari Om, preferred not to lead evidence in their defence. Accused Hari Om examined himself as DW1 and Ms. Jyoti as DW2.

Contentions of Id. SPP and of Id. counsels for accused

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

6.2 It has been contended by Sh. Saleem Ahmed, Id. SPP that the prosecution has proved its case against all the accused through testimonies of PW21, PW22 and PW24, who are eye witnesses. PW21

HC Kishan Lal was on duty at Gali No. 8, Sudamapuri and had witnessed the riot. PW21 had also sought assistance in the form of additional force from PS in response to which, PW24 was sent and during the stone pelting by the rioters, PW21 was injured in this case. He has further contended that the fact that PW21 was injured in this case was proved through MLC of this witness, which was Ex.PW12/A and therefore, the testimony of PW21 cannot be doubted. He has further contended that similarly, the fact that both these witnesses were on duty at the relevant place at the relevant time is established from DD entries which are Ex. A-32 and Ex.A-33. This also establishes that these witnesses were present during the riots. In the very initial statement u/s 161 Cr.P.C given to the IO on 25.02.2020 itself, PW24 had stated that he had identified some boys in the said rioting mob because, those boys were the residents of Sudamapuri which was in his beat. He has further stated that he knew Ishu Gupta and Golu and 4-5 other boys were known to him by face. Similarly in his statement u/s 161 Cr.P.C dated 26.02.2020, PW21 stated about the incident which he had witnessed and had stated that he had identified some boys in the said rioting mob. He had further stated that he knew Prem Prakash and Annu and 4-5 boys were known to him by face. PW21 and PW24 had deposed on similar lines before the court and no material contradiction emerged in the testimonies of these witnesses which could make the court disbelieve their testimonies. He has

further contended that apart from these two witnesses, witness Samina Khatoon (PW22) had categorically identified accused Hari Om Sharma as the person who was leading the rioting mob in Azizia Masjid and had burnt, looted her house. Her complaint dated 16.03.2020 was Ex.A-31. It is further contended that the other complainants had proved that during the riots of 25.02.2020, their properties were looted and burnt. Coupled with it the testimonies of 03 eye witnesses had established the presence of accused persons as a part of the mob which had committed this riot. It is further contended that through the videos in DVD, Ex.PW20/A, presence of the accused in the rioting mob is further established and in these videos, during the testimony of PW22, PW23 and PW27, accused Hari Om was identified in one of the videos as a part of the mob. It has further been contended by Id. SPP that accused Hari Om Sharma, through his own testimony, has placed himself at the scene of crime and at the time of commission of crime. It is highly improbable that knowing fully well that the riots were on, accused Hari Om would venture out of the house to bring milk from a place far away from his house. Accused Hari Om had himself stated that the shops around his house were closed on 25.02.2020 due to riots, therefore, he was very well aware about the riots. This gives credence to the testimony of Samina Khatoon that accused Hari Om was leading the rioters.

6.3 On the other hand, Id. counsels for accused have

contended that the prosecution has miserably failed to prove its case. They have further contended that as far as DVD, Ex.PW20/A, is concerned, the same cannot be read in evidence because it has not been proved as per Evidence Act. It is a secondary piece of evidence and there is no certificate u/s 65B of Evidence Act which has been proved by the prosecution. Therefore, as far as the identification of the accused in these videos is concerned, there is no such evidence before the court as the videos have not been proved. Even otherwise no one can be identified in this video. They have further contended that PW21 is not reliable witness because there are many contradictions in his testimony. It is contended that initially PW21 in his statement u/s 161 Cr.P.C had stated that he identified accused Prem Prakash and accused Amit @ Annu as a part of the rioting mob. However, when he appeared for his testimony before the court, he merely deposed that he knew 1-2 persons in that mob by their names and 2-4 persons by their faces and then went on to state that one of those persons was Hari Om and he did not remember the name of the other person. Thus, the statement of PW21 before the court is in contradiction to his statement u/s 161 Cr.PC as he gave completely new name before the court. PW21 was even cross examined by ld. SPP and he deposed that he did not remember if he had told the names of Prem Prakash and Amit @ Anu to the IO. However, then PW21 admitted the suggestion that he had told the IO that Prem Prakash and Amit @ Anu were instigating

the mob to commit riots and then he again contradicted himself when he denied the suggestion that he had informed the names of two persons to the IO. Therefore, as regards the identity of accused, PW21 is completely unreliable. They have further contended that during the identification of accused in the court, PW21 pointed only towards accused Hari Om and wrongly identified him as Om Prakash. They have further contended that PW24 is a unreliable witness because according to PW24, he was present when ASI Sita Ram, the first of the IO the case, had reached the scene of crime on receipt of DD and lifting of burnt material and bricks etc. was done by ASI Sita Ram in his presence and he had signed the seizure memo Ex.PW16/A. If that be the case then ASI Sita Ram could not have given a *tehriz* that no eye witness was found at the scene of crime because according to the prosecution, PW24 was an eye witness and FIR should have been recorded on the basis of his statement regarding what he saw on the date of incident. They have further contended that PW24 in his statement u/s 161 Cr.P.C had stated that he had identified two persons by name in that rioting mob and these were Ishu Gupta and Golu. However, from the date of recording of his statement u/s 161Cr.P.C till the date of arrest of the accused, no efforts were made by the IO to take assistance of this witness to trace these accused.

6.4 Ld. counsel for accused Hari Om has further contended that accused Hari Om has been falsely implicated in this case at the

instance of Samina Khatoon because Hari Om had been injured in the riots and on his complaint, children of Samina Khatoon were arraigned as accused and it is only thereafter, that she had made this complaint after a delay of 16 days.

Findings

7.1 I have considered the rival submissions.

7.2 First I shall take up the issue of electronic evidence in the form of the videos. These videos had been stored in DVD, Ex.PW20/Article-1. This exhibit was marked on the DVD during the testimony of PW20 Lakshmi Narsimhan, who had examined this DVD in order to check whether, there was any addition, alteration or tampering in the videos in the DVD. As per the testimony of PW20, this DVD contained 12 video files and 51 snap shots and after his examination he found, that there was no indication of alteration or tampering in any of the video files. In this regard, he had prepared his report Ex.PW20/A. However, as he was not the maker of this DVD, it could not have been proved by him and thus, mere marking of exhibit upon it during his testimony is not sufficient to prove it as the Indian Evidence Act.

7.3 In this case, as per the prosecution, the said DVD was handed over to IO SI Amit Kumar by witness Samina Khatoon and it was seized by the IO vide memo Ex.PW27/1. As per seizure memo Ex.PW27/1, the videos were received by complainant Samina

Khatoon through Whatsapp. These were then saved upon the DVD which was seized vide Ex.PW27/1. Therefore, evidently the DVD is not the original medium upon which these videos were recorded. Hence, DVD (Ex.PW20/Article-1) is a secondary piece of evidence.

7.4 It is now well settled law that secondary electronic evidence can be proved only in accordance section 65B of Indian Evidence Act. Unless the requirements of section 65B of the evidence Act are met, secondary electronic evidence will not be admissible and cannot be looked into by the court. Legal position on this issue has been settled by Hon'ble Apex Court in Anvar P.V v. P.K Basheer & Ors, (2014) 10 SCC 473 followed by Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, 2020 SCC OnLine SC 571. In Arjun Panditrao (supra), it has been held as under:-

33. The non-obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf - Sections 62 to 65 being irrelevant for this purpose. However, Section 65B(1) clearly differentiates between the “original” document - which would be the original “electronic record” contained in the “computer” in which the original information is first stored - and the computer output containing such information, which then may be treated as evidence of the contents of the “original” document. All this necessarily shows that Section 65B differentiates between the original information contained in the “computer” itself and copies made therefrom – the former being primary evidence, and the latter being

secondary evidence.

34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where “the computer”, as defined, happens to be a part of a “computer system” or “computer network” (as defined in the [Information Technology Act, 2000](#)) and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). This being the case, it is necessary to clarify what is contained in the last sentence in paragraph 24 of [Anvar P.V.](#) (supra) which reads as “...if an electronic record as such is used as primary evidence under [Section 62](#) of the Evidence Act...”. This may more appropriately be read without the words “under [Section 62](#) of the Evidence Act,...”. With this minor clarification, the law stated in paragraph 24 of [Anvar P.V.](#) (supra) does not need to be revisited.

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61. We may reiterate, therefore, that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in [Anvar P.V.](#) (supra), and incorrectly “clarified” in [Shafhi Mohammed](#) (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor v. Taylor* (1876) 1 Ch.D 426, which has been followed in a number of the judgments of this Court, can also be

applied. Section 65B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose.

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73.1 Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

73.2 The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the “computer” happens to be a part of a “computer system” or “computer network” and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in Anvar P.V. (supra) which reads as “...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act...” is thus clarified; it is to be read without the words “under Section 62 of the Evidence Act,...” With this clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.

7.5 Thus, the electronic evidence contained in DVD (Ex.PW20/Article-1) can not be said to have been proved by a mere fact that during the testimony of PW20 it was exhibited.

7.6 The certificate u/s 65B of Evidence Act issued by FSL expert would not be a valid certificate as far as proving the contents of the DVD by way of secondary evidence is concerned. This could only have been done by the maker of these videos or at the most, by the person who transferred these videos on this DVD. As per the testimony SI Amit Kumar, the 2nd IO, he did not even make an effort to find the original source of these videos. This leaves us with PW22 Samina Khatoon and PW25 Mohd. Salman. However, neither any certificate u/s 65B of Evidence Act of Samina Khatoon nor of PW25 Mohd. Salman, who had copied the videos in this DVD, was proved by the prosecution. Therefore, in absence of any certificate u/s 65B of Evidence Act, the contents of this DVD cannot be considered in evidence by this court. Hence, any testimony relating to this DVD or recognition of any of the accused in the videos of this DVD has to be disregarded.

8.1 Coming onto the oral testimonies of the witnesses.

8.2 The case of the prosecution rests upon three witnesses who are PW21 HC Kishan, PW22 Samina Khatoon and PW24 ASI Vikas.

8.3 The first witness examined by the prosecution is PW21

HC Kishan. He deposed that on 25.02.2020, he was beat constable of Gamri in PS New Usmanpur and on that day, he was assigned the duty of announcing the imposition of section 144 Cr.P.C. where-after, he made the said announcement in the area of Gamri. With regard to the incident he deposed, that at about 12-1.00 p.m., he saw a mob of around 20-30 persons near Azizia Masjid, Gamri road and that mob started vandalising the nearby shops. He made a telephonic call to PS and sought assistance of additional staff. After about 10 minutes later, HC Vikas (PW24) reached that place. They moved ahead to disperse the mob but the mob started pelting stones on them. One of the stones hit on his right hand. HC Vikas then made telephonic call to duty officer and informed that he (PW21) had been injured. In about 10-15 minutes, some more police staff reached there and HC Vikas took him to JPC hospital, where he was examined. His MLC was prepared and he was discharged from the hospital on same day. In the mob of rioters, he knew 1-2 persons by their name and 2-4 persons by their faces. One of them was BC of their PS, namely Hari Om, but he did not remember name of other person, whom he knew by name. He further deposed that on 07.03.2020, ASI Sita Ram called him in duty officer's room, showed him two boys and asked him if he knew them. He stated that he did not know names of those 2 persons, but they were involved in the riots that had taken place on 25.02.2020 near Azizia Masjid. ASI Sita Ram then informed him about the names of

two boys but he did not remember the names of those boys on the day he testified before the court. On 09.03.2020, ASI Sita Ram again called him in the PS, showed three persons to him and asked him if he knew them. He identified those 3 persons by their faces as they were part of the mob, which was vandalising the shops at Azizia Masjid, Gamri road. He did not know the names of those three persons but IO disclosed the names of those three persons to him. He further deposed that he had given a complaint in the PS N.Usmanpur regarding the incident taken place on 25.02.2020, but he did not remember the date of said complaint. He was shown the said complaint during his testimony and he identified his signatures upon the said complaint, which was Ex.PW21/A. He then deposed that he could identify the accused whom he had seen on 25.02.2020, 07.03.2020 and 09.03.2020. While pointing towards accused Hari Om, he stated that he was the BC of their PS and his name was Om Prakash. He also identified accused Rahul @ Golu as one of the persons who was a part of the rioting mob. He then pointed towards four other persons and stated that they were also a part of the rioting mob but he did not know their names.

8.3.1 He was cross examined by Id. SPP and during his cross examination, he deposed that he did not remember and hence he could not admit or deny that IO had recorded his statement on 26.02.2020 but admitted that he remembered about his statement being recorded

on 07.03.2020 & 09.03.2020. He deposed that he did not remember if he had told the names of Prem Prakash and Amit @ Anu to the IO and then went on to admit the suggestion, that he had told the IO that Prem Prakash and Amit @ Anu were instigating the mob to commit riots and then, he again went on to deny, that he had informed the names of two persons to the IO and was confronted with his statement u/s 161 Cr.P.C dated 07.03.2020. He further went on to depose that Hari Om was the BC of his beat area. He knew Hari Om as every month, being Beat Constable, he had to check his activities and he used to visit his residence. He further went on to depose that Hari Om was leading the mob from front. Thereafter, ld. SPP pointed towards accused Hari Om and stated that he was Hari Om and not Om Prakash and that suggestion was admitted by the witness.

8.3.2 During his cross examination on behalf of accused, he deposed that he had seen accused Rahul @ Golu prior to 25.02.2020. He did not remember the date of seeing them prior to 25.02.2020, but he had seen all of them in the area of his beat. He did not remember the purpose of seeing them. He thereafter deposed that during the investigation of this case, he had met ASI Sita Ram for the first time on 26.02.2020 when ASI Sita Ram had telephonically called him in the PS. Complaint Ex.PW21/A was given by him on 26.02.2020. He had mentioned the date over the complaint. He was then confronted with the complaint where the date was not mentioned. He then went

on to state that the complaint was got typed by ASI Sita Ram. He denied that he had falsely identified all accused persons or that none of them were seen by him during the riots on 25.02.2020, or that he had identified them on the tutoring and at the instance of IO. He admitted that he had not mentioned name of any accused before ASI Sita Ram but denied, that he had not mentioned name of any accused before SI Amit.

8.4 The next witness is PW22 Samina Khatoon. She deposed that a riot had happened in her *gali* at about 11.00 am on 25.02.2019. On hearing the noise, she looked on the road from the window of her house and saw a mob of around 50-60 persons coming from the side of Sudamapuri Chowk. They were carrying *dandas* and were raising slogans of '*Jai Siya Ram*'. The mob broke open the locks of a medical shop being run by her nephew Firoz. That shop was situated just in front of her house. The mob looted articles from that medical shop where-after, they set it afire. Some persons from that mob broke open the lock put over iron gate of the mosque namely Ajijia Masjid and set fire to the mosque also. The mob was carrying bottles filled with petrol and it was used to set fire. The mob pelted stones on their house also and glass panes of all the windows were broken by them. There was a shop on the ground floor of her house and the mob, after breaking open the locks of shutter of that shop, entered into that shop. There was a door inside that shop to enter the residential part. That

door was also broken by the mob. She, along with her family, had gone to the terrace of her house and from the terrace, they shifted to the terrace of adjoining house and took shelter. She returned to her house after about 08 days of the riots and gave a complaint (Ex.A-31). She further deposed that she knew one person in the said mob and he was in front of the mob. That person was Hari Om Pandit. She did not know anyone else in that mob and as there were so many people, she could not retain face of anyone. She identified accused Hari Om in the court.

8.4.1 She was cross examined by ld. SPP and during the cross examination, she deposed that she remembered only about the year 2019 and hence she denied the suggestion that the incident had taken place in the year 2020 but further during the cross examination, she deposed that the disease of Corona had come after 7-8 days of this incident and in the same year, lockdown was imposed after about 20 days.

8.4.2 During her cross examination on behalf of accused, she deposed that on the day of incident, they had left their home at about 01:00 pm and they had left the house on the backside of her home at about 05:00 pm. She did not remember after how many days of the incident was it, that she had given a complaint to the police, or whether in the complaint, she had mentioned that she had returned to her house on 15.03.2020. She admitted that a FIR was registered

regarding riot case against her sons Zakir and Shakir and also admitted that in that case, name of Anas, Iqbal and Firoz were also mentioned. She did not know, if that case was registered for injury to head of Hari Om. She did not know FIR number of that case. She denied that in the present case, she had given a false complaint to the police because, the said case had been registered against her sons and other relatives, or that she had falsely identified accused Hari Om in the court at the instance of her family members and the IO.

8.5 The next witness is PW24 ASI Vikas. He deposed that on 25.02.2020 since about 09.00 a.m, he was on law and order duty at Shiv temple, Brahmupuri. At about 02.00 p.m, he received a call from duty officer who informed him that a mob of rioters had assembled near Azizia Masjid where HC Kishan was present. Duty officer asked him to reach that place. He reached Azizia Masjid. On reaching there, he saw a mob of around 30-40 persons near Ajijiya Masjid. Some shops had already been set on fire and some articles were already lying in damaged condition. The mob was still attacking on the shops and other properties. They were dragging the articles out of the shops and damaging them. They were pelting stones on the properties. He, along with Ct. Krishan, tried to stop them but that mob became more aggressive and it started pelting stone towards them. In that process, Ct. Krishan was hit on his hand by a stone and sustained injury. Ct. Krishan was also in his beat and both of them knew some persons in

that mob. He knew Ishu and Rahul @ Golu by their names. He knew some other persons by their faces. They were carrying dandas in their hands. He took Ct. Krishan to Jag Parvesh Chander Hospital and left him there. He remained in the hospital for about 1-1.30 hours and thereafter, again reached near Ajjiya Masjid. In the same evening, ASI Sitaram reached there and he lifted some half burnt wrappers from a medical store situated just adjacent to Ajjiya Masjid, stone and pieces of bricks lying on the road, burnt piece of *dari* from Ajjiya Masjid, and put them in a white sack and sealed it. He did not remember that seal perfectly and it was something like SR. A seizure memo was prepared which was signed by him. He identified his signatures at point Y on the seizure memo, Ex.PW16/A. He further deposed that on 07.03.2020, he saw two of the rioters involved in that incident with ASI Sitaram in the DO room. One of them was Ishu and name of other person was disclosed as Prem Prakash. On 09.03.2020, he again saw three more boys, who were involved in this incident of riot, with ASI Sitaram. Their names were disclosed as Amit @ Annu, Rahul @ Golu and Rajkumar. He already knew name of Rahul @ Golu and name of other two persons were disclosed to him for the first time. He correctly identified accused Ishu Gupta, Prem Prakash, Rahul @ Golu, Rajkumar, Amit and Hariom by their names in the court. On being asked by the court whether he had seen Hari Om in the mob when he reached Azizia Masjid, he answered that he did not remember

that. He further went on to state that he had seen Prem Prakash, Ishu, Rajkumar, Amit, Rahul @ Golu in that mob being active therein.

8.5.1 During his cross examination, he deposed that he had been working in beat no.8 for about 8-10 months. During that period, he had been visiting house of Hariom Sharma for the purpose of checking. He further deposed, that he would have reached the place of incident at about 2.15 pm and after leaving Ct. Krishan at hospital, he would have reached that place at about 4-5.00 p.m. When he reached the place of incident, only Ct. Krishan was present at that place. Other police staff of around 7 persons had reached there during the period when Ct. Krishan was injured. He further deposed that on 25.02.2020, he returned to PS late at night and had informed DO about his arrival. IO did not prepare any site plan at his instance. Apart from Hariom, there were about 6-8 more bad characters in his area and some of them were Jagdish and Rambabu. Apart from Hari Om, he had never served any notice or summons upon any of the accused. He had not called them for any sort of inquiry. He had not given any written information, or complaint about the incident that had taken place before him. He denied that he had not reached aforesaid place or that he had not seen any incident or that he did not know any of the accused persons prior to aforesaid incident.

8.6 The next witness is the first IO ASI Sita Ram, who appeared as PW26. He deposed that on 25.02.2020, he was on

emergency duty in PS NU Pur. At about 1.00 p.m, he received information about riots. Thereafter, he alongwith Ct. Inder went to that place but could not find the complainant. He noticed that mosque had been set afire, stones were lying in the street and motorcycles had been burnt. He made a call to the informer who stated, that due to fear, he had left the area and that he could not come at the informed place. Thereafter, he collected stones and bricks from inside the mosque and from the street. He also seized four motorcycles and one Vicky, which had been burnt. He also seized some burnt materials such as *dan* and foam etc. from the mosque. The seized articles i.e. the stones, burnt articles and bricks were placed in a white sack and the mouth of the sack was sealed with the seal of SRS. Those articles were seized vide memo Ex.PW16/A and four motorcycles and one moped were seized vide memo Ex.PW16/B. On return to the PS, he prepared a *tehrii* and gave it to DO for registration of FIR. After registration of FIR, the investigation was marked to him. He returned to the scene of crime and prepared a site plan Ex.PW26/1. On 07.03.2020, he proceeded to search for the accused and found one CCTV camera installed at the house of one Raj Kumari. The DVR of said camera was taken into custody. However, Raj Kumari refused to sign the seizure memo. The DVR was placed in a cloth, converted into parcel and sealed with the seal of SRS. Before that, the relevant footage had been taken in a pendrive. On return to the PS, the DVR was deposited in the

malkhana. On the same day, on the information of secret informer, Ishu Gupta was apprehended at 4 ½ pusta and after interrogation, he was arrested in this case. On the disclosure of Ishu Gupta, Prem Prakash was arrested from PS. On 09.03.2020, one more accused Raj Kumar was arrested from a park in Shastri Park. Rahul @ Golu was arrested on the same day but he did not remember how and from where he was arrested. Amit was arrested from the PS. During the investigation, he received 4-5 complaints of the same place and all those complaints were clubbed in this FIR. Thereafter, he was transferred and he handed over the file to MHCR. He correctly identified accused Ishu Gupta, Rahul @ Golu, Amit by their names and incorrectly identified Raj Kumar as Prem Prakash.

8.6.1 During his cross examination, he denied that he did not conduct proper investigation in this case or that he had prepared all the documents while sitting in the PS or that he did not visit house of any accused persons.

8.7 The second IO is SI Amit Kumar, who appeared as PW27. He had deposed about the seizure of CD provided by Samina Khatoon. He also collected duty roster of 25.02.2020. During his investigation, he had interrogated Hari Om and bound him down in this case. The burnt motorcycles and moped were inspected by FSL team and he got the exhibits deposited with the FSL. On 30.11.2021, he filed the charge sheet. As per his testimony, on 01.01.2022, he

received complaint from Ct. Kishan Lal and also received a complaint u/s 195 Cr. PC from the DCP office. On 04.01.2022, he collected another complaint u/s 195 Cr. PC from the ACP office, Seelampur. On 07.02.2022, he filed a supplementary chargesheet in this case. He received FSL results and filed second supplementary charge sheet. He further deposed that he did not make any efforts to find the source of the videos, which were in the CD provided to him by Sameena Khatoon. He identified accused Hari Om and in response to court query, he deposed that he had made Hari Om an accused on the basis of the fact that Sameena Khatoon in her complaint had named him.

8.7.1 During his cross examination, he deposed that he could not tell after how many days was it after the incident, that Samina Khatoon had made a complaint in this case. He admitted that there was another FIR no.136/20 of PS N. Usmanpur, wherein accused Hari Om was the complainant and the family members of Sameena Khatoon had been mentioned as the accused persons. However, he could not tell whether complaint of Sameena Khatoon was received prior to registration of FIR no.136/20 or after registration of this FIR. He admitted that the complaint of Sameena Khatoon had been filed by him was Ex.A-31 and it was received in the PS on 16.03.2020. In response to court query, he deposed that apart from the statement of Sameena Khatoon in the video footage, accused Hari Om was seen leading the rioting mob and that is why he had charge sheeted him.

8.7.2 During his testimony, at the request of ld. counsel for accused, DVD (Ex.PW20/Article-1) was played and video VID-20200316-WA0001 was played and the witness pointed towards a person in red shirt, stating that he was accused Hari Om.

8.7.3 In response to court query that the video had been shot from a very long distance and the face or even the body structure of that person was not visible at all then how could he identify that person as Hari Om and whether his face is seen in any other video, he answered that the complainant had told him that he was Hari Om and on the said basis, he identified that person in the said video.

9.1 I have carefully considered the testimonies of these witnesses.

9.2 On the face of it, the testimonies of PW21 and PW24, more specifically of PW21 seemed to be inspiring a lot of confidence as having been injured in the incident, he is a stamped witness. However, on the closer scrutiny, there are certain discrepancies which I observed in the testimonies of these witnesses.

9.3 The first and foremost being the failure of PW21 and PW24 to recognize Hari Om Sharma and name him as one of the rioters in their initial statements u/s 161 Cr.P.C. The reason for this observation is, that both these witnesses had consistently testified that they very well knew Hari Om Sharma because, he was the BC of their police station and they had, many times, visited his house to check

upon him. It is also not the case that this accused was unnoticeable in the large mob. PW21 HC Kishan as well as PW22 Samina Khatoon have stated that Hari Om Sharma was in the front of the mob and PW21 even went to the extent of stating, that Hari Om Sharma was leading the mob from front. Therefore, the absence of this person, who was very well known to both PW21 and PW24 and was in the forefront, in their initial statements u/s 161 Cr.P.C which was recorded on 26.02.2020 and 25.02.2020 respectively, seems odd.

9.4 Further PW21, in his statement u/s 161 Cr.P.C dated 26.02.2020, had stated that amongst the members of the mob, he knew two persons by their names. These were - Prem Prakash and Amit @ Anu. However, while testifying in the court, he deposed that he only remembered the name of Hari Om Sharma and not of the other person whom he knew by name. It could be argued and can be quite possible that as his testimony before the court was recorded after 05 years of the incident; he could have forgotten those names and therefore, when he was reminded and suggested by Ld. SPP that he had told the IO that Prem Prakash and Amit @ Anu were instigating the mob to commit riots, he admitted this suggestion. However, during his cross examination, he went on to state that he had not told the names of any of the accused before ASI Sita Ram. At the same time this witness's denial of the suggestion of Ld. SPP that he had informed names of two persons before the IO makes one wonder that something is amiss.

9.5 Another point which attracted my attention was that according to PW21, he had given a written complaint (Ex.PW21/A) to the IO on 26.02.2020 whereas according to 2nd IO SI Amit Kumar, this complaint was given to him by Ct. Kishan on 01.01.2022.

9.6 Coming onto the testimony of ASI Vikas. He had been consistent in his testimony. However, it was contended by the defence, that if HC Vikas was present during the first visit of the IO to the scene of crime why would the IO give *tehriit* stating that he did not meet any eye witness. I have tested the evidence to evaluate this contention.

9.7 PW24 ASI Vikas, in his examination in chief, was categorical that after he had dropped Ct. Kishan at JPC Hospital, he returned to Azizia Masjid where, ASI Sita Ram reached in the evening and seized certain articles vide Ex.PW16/A. As per him, Ex.PW16/A was bearing his signatures at point Y. He also deposed that ASI Seeta Ram had recorded his statement.

9.8 This part of his examination in chief establishes that when ASI Sita Ram, on receipt of information regarding the riot at Azizia Masjid, had reached the informed place, HC Vikas was present, met ASI Sita Ram and was a witness to seizure memo Ex.PW16/A. However, his statement u/s 161 Cr.P.C dated 25.02.2020 was silent about him being present during the seizure vide Ex.PW16/A. Thus, a question certainly arises that if he had an eye witness, whose

statement he recorded on 25.02.2020 itself and in whose presence, before giving *tehriit* for recording of FIR, he had seized certain articles from the scene of crime; then why would he state in his *tehriit* that he did not find any eye witness? This became more intriguing in view of the fact that both PW26 ASI Sita Ram and PW16 Ct. Inder were completely silent about the presence of HC Vikas during the first visit of the IO.

9.9 Furthermore, according to the IO, on 07.03.2020, he had seized DVR of CCTV footage from the house of one Raj Kumari and before sealing the DVR, the relevant footage was transferred by him in a pen drive.

9.10 PW16 also deposed about the seizure of this DVR and transferring the CCTV footage in a pen drive. He further deposed about CCTV footage being shown to a secret informer who identified accused Prem Prakash in that footage. It is thereafter that at the instance of the secret informer, Prem Prakash was arrested. Therefore, the CCTV footage of that DVR was the breakthrough in this case. Surprisingly, there was no seizure memo of this DVR. However, this DVR was sent to FSL where the contents of the DVR were transferred into a hard drive. However, neither the contents of DVR were played and proved in the court, nor the FSL report was proved.

9.11 After the arguments had been heard, the court had raised a query regarding the seizure of this DVR and the FSL report and it

was submitted by ld. SPP, through a written reply of the IO, that during investigation on 07.03.2020, DVR of CCTV camera installed at H. No. C-4/16, Gali No. 6, Main Sudamapuri, Near Ajeet Chowk was seized and was sent to FSL for examination, however, during analysis, no fruitful evidence was noticed.

10.1 These discrepancies raised serious doubts in my mind about the sanctity of the investigation and the manner in which the investigation had proceeded and thus, I felt that it was my bounden duty to call for the case diary to verify the relevant entries of the case diary in order to arrive at a just and fair decision. Reliance is placed on the judgments of Hon'ble Supreme Court in Khatri & Ors. v. State of Bihar, AIR 1981 SC 1068 and Mukund Lal v. UOI, AIR 1989 SC 144.

10.2 On the orders of the court, case dairy was sent by the SHO PS NU Pur to the court. A perusal of the case diary left me dumbfounded. It revealed a brazen fabrication of evidence.

10.3 The first case diary supports the stand of the IO that when he reached the place of incident on 25.02.2020, he did not meet any eyewitness. At the same time, it also establishes that he had met HC Vikas (PW24) and he was not an eyewitness. I say so because, the case diary has a statement of Ct. Vikas u/s 161 Cr.P.C dated 25.02.2020. That statement is to the effect that in his presence, IO had reached the place of incident pursuant to DD No. 126A, where he had seized the burnt articles, brick pieces, ash, four burnt motorcycles and

one vicky and it further goes to state that no eye witness was found. However, this statement was not filed with the chargesheet. In its stead was filed a completely different statement where in HC Vikas was not only recorded to be an eyewitness but he also named Ishu Gupta and Golu as the members of the rioting mob but this does not state about him being witness to seizures vide Ex.-PW16/A. Neither was this statement found in the case diary, nor was found any reference to it or the fact that a second statement of HC vikas was recorded on 25.02.2020. Thus, evidently he was introduced as an eyewitness at a later stage and a fabricated and ante dated statement U/S 161 Cr.P.C replaced his original statement Dt. 25.02.2020.

10.4 The next case diary is dated 26.02.2020. It is the date on which, according to the charge sheet, IO had recorded the statement of Ct. Kishan (PW21) who in his statement had named two persons- Prem Prakash and Amit as being a part of the rioting mob and had claimed that he had recognized faces of 4-5 more persons. However, the statement of 26.02.2020 of this witness, as placed in the case diary, is to the effect that he was at the place of incident during the riots, was injured during the riots and was taken to the hospital by HC Vikas (PW24). It further goes on to state, that the injury had been caused to him by unknown persons. Therefore, the statement of this witness which the IO had recorded on 26.02.2020, is to the effect that he did know anyone in that mob. It also does not state that he had seen

one or more persons in that mob and could recognize them. However, while filing the charge sheet, this statement was withheld and was replaced by a statement u/s 161 Cr.P.C wherein it was recorded, that this witness had, amongst the rioters, identified two persons by their names and faces and 4-5 persons by their faces. Hence, the manipulation becomes completely evident. The statements of witnesses have been subsequently recorded to implicate the accused, the fabricated statements have been produced before the court, the original statements, were withheld from the court, and witnesses were suborned.

10.5 Hence, a perusal of the case diary revealed that till the first arrest was made on 07.03.2020, at least from these two witnesses, IO had no lead regarding the culprits of the present crime.

10.6 Thereafter come the case diary of arrest of accused Prem Prakash and Ishu Gupta. The case diary dated 07.03.2020 is on the lines of what had been deposed by PW16, that CCTV footage of the DVR seized from the house of Raj Kumari was shown to the secret informer and in the said CCTV footage, he recognized accused Prem Prakash where-after, he led the IO to accused Prem Prakash.

10.7 However, despite it being a vital piece of evidence which led to the arrest of accused Prem Prakash and which established his presence at the scene of crime, this CCTV footage was never proved in the court. As observed earlier, when the court specifically inquired

about this CCTV footage, it was stated by ld. SPP and the IO that the house, wherefrom this CCTV footage was collected, was around 500-600 meters from the place of incident and no rioting had been recorded in that CCTV camera and that is why, it was not proved on record.

10.8 However, the court on its own, accessed the said pen drive which was later sealed with the court seal. When the video files in the pen drive, when played, it was only a black screen. Therefore, if that video was not of this riots and if the video files in the pen drive were blank, as seen by me, I fail to understand by what divine intervention ASI Sita Ram, IO of the case, would come to know that Prem Prakash was involved in this riot.

10.9 What is further revealed by this case diary is, that ASI Sita Ram, as per the case diary dated 26.04.2020, had already prepared the charge sheet against accused Prem Prakash @ Kake, Ishu Gupta, Amit @ Anu @ Baba, Rahul @ Golu and Raj Kumar @ Sewaiya and he records that the charge sheet would be filed in the court. However, the present charge sheet was not filed by ASI Sita Ram but was filed by SI Amit Kumar against accused Prem Prakash @ Kake, Ishu Gupta, Amit @ Anu @ Baba, Rahul @ Golu, Raj Kumar @ Sewaiya and Hari Om Sharma and, that too in November 2021. In the said charge sheet, the statements, which were a part of the case diary till the investigation is conducted by ASI Sita Ram, were replaced and

completely different statements of HC Vikas and Ct. Kishan, which were filed with the charge sheet and at the same time, Hari Om Sharma was also charge sheeted. I could only guess why it could have been done and my guess is, the chargesheet which might have been prepared by ASI Sita Ram had nothing to support the case against the accused because there was no witness and no videos.

11.1 This brings me to the testimony of PW22 Samina Khatoon. Considering the overall case, as had been built up by the police, her testimony has to be considered with a great care. Samina Khatoon had filed a complaint, which was Ex.A-31, on 16.03.2020.

11.2 In the said complaint, she stated that Hari Om Sharma was leading the group of rioters on 25.02.2020. She further stated that due to fear, they left the area and had gone to their relative's house. She only returned on 15.03.2020.

11.3 She was cross examined and during her cross examination, she admitted that a FIR regarding the riots was registered against her sons Zakir and Shakir. She denied that she did not know whether it was with regard to the injury to the head of Hari Om Sharma, and deposed that she did not know the FIR number of that case. She denied the suggestion that she had given a false complaint to the police because, the said case had been registered against her sons and other relatives. She denied that before she made the complaint to the police, police had already taken away her sons Zakir and Shakir, or

that she had falsely identified accused Hari Om Sharma at the instance of her sons and relatives.

11.4 IO SI Amit Kumar was also cross examined on this point and he admitted, that there is another FIR no. 136/20 PS NU Pur wherein, Hari Om was the complainant and family members of Samina Khatoon had been mentioned as accused. However, he could not state whether, the complaint of Samina Khatoon was received prior to the registration of FIR No. 136/20 or after the registration of the said FIR.

11.5 Therefore, it stands established that during the riots, accused Hari Om Sharma was injured and on his complaint, FIR No. 136/20 was registered wherein the children of Samina Khatoon (PW22) and her relatives were made the accused. Hence, there could be a motive for this witness to depose against accused Hari Om Sharma. It is also noticeable that PW21 and PW24, despite knowing him very well, did not name this accused until after the complaint by PW22 was filed with the police and therefore, I find that it will be unsafe to rely upon the sole testimony of PW22, who could be motivated, to arrive at a finding of guilt against accused Hari Om Sharma.

11.6 Hence, the case of the prosecution is found to be a built up case on the basis of the witnesses who as per their initial statements had not seen any of the rioters but who as per their subsequent

tampered, manipulated and fabricated statements u/s 161 Cr.P.C went on to state that they had in fact seen and recognized four persons by their names and who surprisingly even in those fabricated initial statements, did not name the bad character of their area, who was leading the mob. Therefore, I find that the prosecution has miserably failed to prove its case against the accused and all the accused are acquitted of all the charges framed against them.

12.1 Before parting, I must observe that the audacity and impunity with which the record was tampered with reflects a complete breakdown of the supervisory mechanism because, the fabricated charge sheet was forwarded by the supervisory officers i.e. the then SHO and the ACP concerned. Had that mechanism worked as it is expected to work, the rights of the accused and the expectation of the society at large that criminal cases are investigated fairly would not have been bulldozed and pulverized. Therefore, I hereby direct that the copy of this order be placed before the worthy Commissioner of Police Delhi who shall initiate necessary action against those responsible and it is expected that steps will be taken to avoid reoccurrence of such ignominy. File be consigned to record room.

Pronounced in open court
on 31.01.2026.
(This judgment contains 45 pages
and each page bears my signatures)

(Parveen Singh)
ASJ-03, North East Distt.,
Karkardooma Court, Delhi.