

For State : Sh. Abhishek Pandey, Additional Public Prosecutor
For Defence: Ms. Garima Shakya and Ms. Supriya Gautam. Ld. Counsel
for all the accused persons.

JUDGMENT

1. By way of this judgment, this Court shall decide the charges levelled against the accused persons namely Asif, Mohd Shakil & Afsar Kuraishi under sections 307/34 IPC.

BRIEF FACTS OF THE CASE

2. As per the prosecution case, information was received vide GD Entry No. 79A dated 03.04.2022 at about 19:18 hours, exhibited as PW11/A, wherein it is recorded that one Jan-E-Alam had received injuries with a knife and had been admitted to the hospital by one Mohd. Kaif. IO reached GTB Hospital, however, Jan-E-Alam was not found at the hospital. IO came to know that he has gone to LNJP hospital and IO reached the hospital where he was found but due to acute pain, he refused to give his statement. On next day, i.e. 04.04.2022, IO went to LNJP hospital but his tests were going on and victim did not give any statement. Then on 05.04.2022, IO had gone to take his statement but still victim could not give his statement but FIR was registered on 05.04.2022 under section 324/34 IPC. On 06.04.2022, victim was discharged from hospital and IO recorded his statement. Then IO obtained footage from CCTV cameras also. IO also obtained final opinion on MLC according to which the nature of injury was

dangerous. Thereafter, charge sheet was filed after completion of investigation.

CHARGE

3. Vide order dated 17.08.2022, charges for offences 307/34 IPC were framed against accused persons namely Asif, Afsar Kuraishi and Mohd. Shakil to which, they pleaded not guilty and claimed trial.

WITNESSES EXAMINED

<u>Prosecution witness No.</u>	<u>Name of witness</u>	<u>Description</u>
PW-1	Mr. Mohd. Kaif	He had seen the incident/ eyewitness
PW-2	Mr. Jan-e-Alam	injured/victim/ complainant
PW-3	Ct. Pramod	Proved the seizure memo of clothes of victim/injured/ complainant
PW-4	HC Sandeep	Proved the arrest memo and personal search memo of accused Asif, Shakil and Afsar & their disclosure statements. Also, proved the pointing out the place of incident memo.
PW-5	Mr. Mohd. Yamin	Turned hostile
PW-6	Mr. Vaqueel Hasan	Made call at 100 number.
PW-7	Sh.Rohit Thakur	He provided the DVD in respect of CCTV camera installed site ID 70119 dt. 03.04.2022 from 05:45 PM to 06:15 PM on the notice sent by PWD

PW-8	Mr.Mujiburrahman	Turned hostile
PW-9	SI Arjun Singh	Proved rukka, copy of FIR and certificate under Section 65B Indian Evidence Act
PW-10	Dr. Ankit Gupta	Proved the MLC of injured Jan-e-Alam
PW-11	ASI Rakesh	DD entry 79A
PW-11 A	Dr. Sushanto Neogi	Proved the discharged slip
PW-12	Sh. Manish Gupta	Proved the FSL report alongwith allelic data
PW-13	Dr. Faheem Akhtar	Proved the MLC 23606 dt. 09.05.2022
PW-14	SI Sukhpal	Filed supplementary chargesheet
PW-15	Ct. Neeraj	Proved the RC No.77/21/22 and acknowledgment of the case acceptance
17. PW-16	Retd. SI Arvind	He is IO of the case and proved the GD entry 79A, seizure memo of clothes of injured. He further proved terhrir, letter, non-recovery of knife memo.

EXHIBITED DOCUMENTS

<u>Exhibit No.</u>	<u>Description of the Exhibit</u>	<u>Proved by/Attested by</u>
Ex. P1	Cloths which he was wearing at the time of incident	PW-2/Jan-E-Alam (injured)
Ex. PW-2/1	Site Plan	PW-2/Jan-E-Alam (injured)
Ex.PW-3/A	Seizure memo of clothes of	PW-3 Ct.

	the victim	Pramod
Ex.PW-4/A	Arrest memo of accused Asif	PW-4 HC Sandeep
Ex. PW-4/B	Personal search memo of accused Asif	PW-4 HC Sandeep
Ex.PW-4/C	Disclosure Statement of Asif	PW-4 HC Sandeep
Ex.PW-4/D	Arrest memo of accused Afsar	PW-4 HC Sandeep
Ex. PW-4/E	Personal search memo of accused Afsar	PW-4 HC Sandeep
Ex.PW-4/F	Disclosure statement of accused Afsar	PW-4 HC Sandeep
Ex.PW-4/G	Arrest memo of accused Shakil	PW-4 HC Sandeep
Ex.PW-4/H	Personal search memo of accused Shakil	PW-4 HC Sandeep
Ex.PW-4/I	Disclosure statement of accused Shakil	PW-4 HC Sandeep
Ex.PW-4/J	Pointing memo pointed by accused persons	PW-4 HC Sandeep
Ex.PW-7/A	Certificate u/S 65A I.E.Act	PW-7/Sh. Rohit Thakur
Ex.PW-7/A	DVD	PW-7/Sh. Rohit Thakur
Ex.PW-9/A	Rukka	PW-9/SI Arjun Singh
Ex. PW-9/B	Computerized copy of FIR	PW-9/SI Arjun Singh
Ex.PW-9/C	Certificate under Section 65 B Indian Evidence Act	PW-9/SI Arjun Singh
Ex.PW-10/A	MLC of Jan-E-Alam	PW-10/Dr.

		Ankit Gupta
Ex. PW-11/A	Copy of DD entry.	PW-11/ASI Rakesh
Ex.PW-11/A	Discharge Slip	PW-11/ ASI Rakesh
Ex.PW-12/A	Report dt. 13.07.2023 alongwith allelic Data	PW-13/Asif
Ex.PW-13/A	MLC No. 23606 dt. 09.05.2022	PW-13/Dr. Faheem Akhtar
Ex.PW-15/A	RC No. 77/21/22	PW-15/Ct. Neeraj
Ex.PW-15/B	Copy of the acknowledgment slip	PW-15/Ct. Neeraj
Ex.PW-16/A	GD entry No. 79A	PW-16/Retd. SI Arvind
Ex.PW-16/B	Seizure memo of clothes of injured	PW-16/Retd. SI Arvind
Ex.PW-16/C	Tehrir	PW-16/Retd. SI Arvind
Ex. PW-16/D	Receiving letter	PW-16/Retd. SI Arvind
Ex. PW-16/E	Non-recovery of knife memo	PW-16/Retd. SI Arvind
Ex. PW-16/F	Seizure memo of blood sample of injured	PW-16/Retd. SI Arvind

PROSECUTION EVIDENCE

4. Prosecution has examined 16 (sixteen) witnesses in this case.
5. PW-1 Mohd. Kaif deposed that his father used to sell fruits on a *rehri* at the corner of the gali outside their house. He stated that they are four

brothers and five sisters. His sister Nazmeen was married to Afsar and was residing on rent in their gali. Asif, son of his sister Nazmeen, aged about 22–23 years (as on 13.03.2023), and Jan-E-Alam, his elder brother, was working as a mason. He stated that on 03.04.2022 at about 5:00–6:00 PM, he was present at his house when Asif and Nazmeen came there and Asif started abusing his elder brother Jan-E-Alam. Accused Asif and Nazmeen also told his mother Parveen that Jan-E-Alam was beating Asif. Thereafter, Asif asked his mother Nazmeen to go home and stated that he would deal with Jan-E-Alam. He deposed that Asif then ran away from the house and he followed him. Asif entered his house and brought a knife. He further stated that he saw his brother Jan-E-Alam being caught hold of by Shakil and Afsar at the corner of their gali. He deposed that Asif reached there and inflicted knife blows on the chest of Jan-E-Alam, while Shakil and Afsar were instigating him to kill. He further deposed that he immediately ran back towards his house and after about 10–15 minutes received a phone call from Jan-E-Alam informing him that he had sustained knife injuries. Thereafter, he reached the corner of Gali No. 9, C-Block, Khajuri Khas, Delhi on a motorcycle and found Jan-E-Alam lying injured on the slab of the footpath. He took him to Government Hospital, Zero Pusta, Shastri Park, Delhi where preliminary treatment was provided.

6. PW-1 further deposed that thereafter his brother was referred to another hospital, the name of which he could not recall, and from there he was further referred to Irwin Hospital. His brother was taken there by ambulance, where he remained admitted for about 3–4 days and received medical treatment. PW-1 correctly identified the accused

persons Asif, Shakil and Afsar in Court and stated that accused Shakil is a resident of his gali.

7. In cross examination of PW-1, he deposed that the house of accused Asif is situated about 10–15 houses away from his house and it takes about five minutes to reach there on foot, and that he was at a distance of about 10–15 paces when Asif entered his house to bring the knife. He deposed that public persons were present and moving around at the time of the incident. He admitted that he was aware that Jan-E-Alam had beaten Asif prior to the incident and further admitted that he did not inform the police when he saw Asif proceeding towards Jan-E-Alam with a knife. He further admitted that his brother Saheb-E-Alam is undergoing life imprisonment in a murder case and stated that he had heard that the sister of accused Asif had lodged FIR No. 412/22 at PS Khajuri Khas under Section 354 IPC against his brother Jan-E-Alam on 02.06.2022. He admitted that he did not make any call to the police at number 100 either immediately after the incident or after taking his brother to the hospital and volunteered that a call at number 100 had already been made.
8. PW-2 Jan-E-Alam deposed that the incident occurred on 03.04.2022 at about 5:00–6:00 PM when his wife handed over their 6–7 months old child to him and he came outside the house. He stated that accused Asif was sitting at the fruit stall (*tiya*) of his father, smoking a cigarette, upon which he scolded him and advised him not to smoke. He deposed that accused Asif misbehaved with him, saying “*Tu hota kaun hai mujhe datne wala,*” and slapped him, thereafter leaving for his house,

while he remained at the *tiya*. He further deposed that in the meantime, accused Afsar (father of Asif) and accused Shakil arrived and questioned him for scolding Asif, and when he explained that Asif was smoking, they started abusing him. He stated that accused Shakil caught hold of him and, along with accused Afsar, dragged him inside the gali, during which his child fell from his hands, and despite his request to be released, they continued to restrain him. He further deposed that accused Asif returned with a knife, shouting “*Tujhe maar dunga,*” and while accused Afsar held him from behind with a handkerchief around his neck and accused Shakil also restrained him, accused Asif stabbed him three times on the right side of his chest. He deposed that he showed the injury on his chest during his testimony and somehow managed to free himself and ran towards Gali No. C-4, while the incident had occurred in Gali No. D-5 and the accused chased him, with accused Shakil threatening, “*Aaj bachna nahi chahiye.*” He fell down in the *gali* where public persons gathered, thereafter got up and reached Gali No. C-9, from where he called his brother Mohd. Kaif, who came on a motorcycle and took him to the hospital at Zero Pusta, after which he became unconscious and later regained consciousness at LNJP Hospital. He further deposed that his statement was recorded subsequently, he had pointed out the place of incident to the police, remained admitted in the hospital for about three days and was discharged on 06.04.2022. PW-2 correctly identified the accused persons in Court and also identified his clothes i.e., Ex. P-1 (one shirt and one torn *baniyan* having brown stains) worn at the time of the incident.

9. In his cross examination, PW-2 deposed that accused Afsar is his *jija* and accused Asif is his *bhanja*, while he has no relation with accused Shakeel. The incident occurred on 03.04.2022 at about 5:30 PM and volunteered that he had shown the place of incident to the Investigating Officer and the site plan Ex. PW-2/A was prepared. He reached the hospital within about half an hour and that it was JPC Hospital. He stated that no ambulance was called and that he had gone to the hospital on a motorcycle with his brother Mohd. Kaif, and that he had not got his statement recorded in the hospital. He further deposed that no police personnel were present when he reached the hospital and that he had not made any call to the police. He reiterated that accused Asif was smoking at the tiya, which led to the incident, and that his father Mohd. Yameen was also present there. Upon being specifically asked, he stated that it was accused Asif who had assaulted him with the knife.
10. PW-3 Ct. Pramod has deposed that on 03.04.2022, while posted at PS Khajuri Khas as a Constable and on emergency duty, he along with the IO/SI Arvind reached JPC Hospital on receipt of DD No. 79A regarding a stabbing incident. He stated that upon inquiry, the injured was not found at the hospital, however, the IO collected the MLC of the injured, whose name was revealed as Jan-E-Alam, and also received one sealed pulanda along with sample seal from the doctor, stated to contain the clothes of the injured, which was taken into possession vide seizure memo Ex. PW-3/A. He further deposed that it was learnt that the injured had been referred to a higher centre, whereafter they went to GTB Hospital but did not find the injured there, and subsequently reached LNJP Hospital where the injured was found admitted. He

deposed that the injured had sustained injuries and was not in a position to give his statement and no eye-witness was found. He further deposed that the IO conducted local inquiry but no person came forward to give any statement and the facts were informed to the concerned SHO. He further stated that the sealed pulanda was deposited in the malkhana and DD No. 79A was kept pending, and later on his statement was recorded by the IO.

11. HC Sandeep was examined as PW-4. He deposed that on 09.05.2022, while posted at PS Khajuri Khas as Head Constable, he joined the investigation of the present case with SI Arvind and at about 10:00 AM the IO received secret information regarding the presence of three accused persons namely Asif, Afsar and Mohd. Shakil at Rajiv Vihar Puliya. He deposed that the information was received near Primary School, Shri Ram Colony and, acting upon the same, they proceeded to the spot along with the secret informer and at his instance apprehended all three accused persons, who disclosed their names upon interrogation. He further deposed that accused Asif was arrested at about 11:30 AM vide memo Ex. PW-4/A and his personal search and disclosure statement were recorded vide Ex. PW-4/B and Ex. PW-4/C respectively; accused Afsar was arrested at about 12:05 PM vide memo Ex. PW-4/D and his personal search and disclosure statement were recorded vide Ex. PW-4/E and Ex. PW-4/F respectively; and accused Mohd. Shakil was arrested at about 12:25 PM vide memo Ex. PW-4/G and his personal search and disclosure statement were recorded vide Ex. PW-4/H and Ex. PW-4/I respectively. He further deposed that thereafter all the accused persons were taken to JPC Hospital in an ERV

for medical examination and thereafter led the police party to Gali No. 5 between C and D Block, Shri Ram Colony, where they pointed out the place of incident and the IO prepared the pointing out memo Ex. PW-4/J. He further deposed that despite efforts, the case property i.e., the knife could not be recovered as accused Asif did not cooperate. He stated that thereafter the accused persons were taken to the police station and sent to lock-up and his statement was recorded by the IO. PW-4 correctly identified all the accused persons during his testimony and was not cross-examined despite opportunity.

12. PW-5 Mohd. Yamin deposed that he did not remember the exact date and month of the incident, however it had occurred about one and a half years prior.
13. PW-5 Mohd. Yamin was cross-examined by Ld. Add. PP for the State and during his cross-examination, PW-5, in his cross-examination, deposed that the police had never recorded his statement and denied having made statement Ex. X1. He denied all suggestions regarding the incident dated 03.04.2022, including that Asif was smoking, that Jan-E-Alam had scolded or slapped him, or that thereafter accused Afsar and Shakil came and quarrelled with or assaulted Jan-E-Alam. He further denied that Asif brought a knife and inflicted injuries upon Jan-E-Alam or that Mohd. Kaif took the injured to the hospital. He stated that he had not witnessed the incident and could not say how Jan-E-Alam sustained injuries. He also denied that the accused persons were his relatives or that he had compromised the matter and was deliberately deposing falsely. PW-5 was not cross-examined despite opportunity.

14. Vaqueel Hasan was examined as PW-6. He deposed that on 03.04.2022 at about 5:00–6:00 PM, he was taking a bath at his house and upon hearing noise from the gali, he came to the balcony and saw some persons running. He further deposed that he thereafter came downstairs but found no one present. He stated that later he was called to the police station where his name and address were noted and he was inquired about the incident, but he informed the police that he had not witnessed anything and had nothing further to state.
15. PW-6 was cross-examined by the learned Addl. PP for the State and deposed that the police had not recorded his statement and had obtained his signatures on blank papers, and when his alleged statement Mark Z-1 was shown to him, he denied having made the same. He denied all suggestions regarding the incident dated 03.04.2022, including that Mohd. Yameen was selling watermelons, that Jan-E-Alam had beaten Asif for smoking, or that thereafter accused Afsar and Shakil came and quarrelled with him regarding the same. He further denied that the accused persons caught hold of Jan-E-Alam and took him towards Gali No. 5 or that accused Asif came armed with a knife and inflicted injuries upon him. He also denied that Jan-E-Alam raised alarm, that public persons did not intervene due to Iftar time, or that the accused persons fled after threatening him, or that the injured was taken to the hospital by his relatives. He maintained that he had not witnessed the incident. PW-6, however, identified the accused persons as his neighbours but stated that he could not say whether they had committed the offence. He denied the suggestion that he was deposing falsely or had been won over by the accused persons due to compromise.

Opportunity to cross-examine by the defence was given but not availed.

16. Rohit Thakur was examined as PW-7. He deposed that he was working as Project Manager in Transline Technologies and on 19.05.2022, a notice was received in his office from PWD vide letter No. 1769 seeking CCTV footage of cameras installed at Site ID 70119 for 03.04.2022 from 5:45 PM to 6:15 PM. He stated that being the in-charge, he copied the relevant CCTV footage onto a DVD and submitted the same on 20.05.2022 along with a certificate under Section 65B of the Indian Evidence Act i.e. Ex. PW-7/A. He further deposed that the DVD was sent with a covering letter to PWD and upon being shown the DVD mailer placed on the judicial file, he identified his handwriting on the DVD as well as on the mailer. He further deposed that on 03.08.2023, the said DVD was again produced, played before the Court and upon viewing the contents, he confirmed that the footage had been copied on the request of the Investigating Officer, whereafter the DVD was exhibited as Ex. PW-7/Article-1 and placed back on the judicial file.
17. In his cross examination, PW-7 deposed that he had no personal knowledge of the contents of the footage which was copied onto the DVD on the request of the Investigating Officer.
18. Mujiburrahman was examined as PW-8. He deposed that on 03.04.2022, though he did not clearly remember the year, he was returning to his house at about 5:00 PM and upon reaching Gali No. 7, Shri Ram Colony, he saw a crowd gathered there. He further deposed that he went to the masjid to offer Namaz and stated that he had not

witnessed any incident. He also stated that the police had never recorded his statement and that he had nothing further to depose.

19. PW-8 was cross-examined by the learned Addl. PP for the State and deposed that the police had not recorded his statement and when his alleged statement dated 08.04.2022 (Mark Z2) was shown to him, he denied having made the same. He denied all suggestions regarding the incident, including that Mohd. Yameen used to sell watermelons near his shop or that he was present and had witnessed any quarrel on 03.04.2022. He further denied that Jan-E-Alam had slapped Asif or that thereafter accused Afsar and Shakil came and quarrelled with or assaulted him, or that accused Asif, along with them, took Jan-E-Alam towards Gali No. 5 and stabbed him with a knife. He also denied that the accused persons threatened the injured and fled from the spot. Upon being confronted with the accused persons in Court, he denied that they had committed the incident and stated that he had not witnessed anything and could not say how Jan-E-Alam sustained injuries. He further denied that he had compromised the matter or was deposing falsely. PW-8 was not cross-examined by the defence despite opportunity.
20. PW-9 Arjun Singh deposed that in the year 2023 he was posted at PS Khajuri Khas as ASI and on 05.04.2022, while working as Duty Officer, at about 11:00 PM SI Arvind handed over to him a rukka, on the basis of which the present FIR was registered. He further deposed that he made endorsement on the rukka i.e. Ex. PW-9/A, prepared the computerized copy of FIR i.e. Ex. PW-9/B and issued certificate under

Section 65B of the Indian Evidence Act i.e. Ex. PW-9/C. He stated that after registration of the case, he handed over the copy of FIR and original rukka to SI Arvind for further investigation. Opportunity to cross-examine the witness was given, however no questions were put on behalf of the defence.

21. PW-10 Dr. Ankit Gupta deposed that he was posted as CMO at JPC Hospital since 2016 and on 03.04.2022 examined patient Jan-E-Alam, aged about 32 years, who was brought to casualty in a conscious state with alleged history of physical assault by three known persons. He found an incised wound over and above the right nipple measuring approximately $5 \times 4 \times 2$ cm and after providing primary treatment, referred the patient to the Surgery Department for further management. He further deposed that the clothes of the injured were removed and handed over to the Investigating Officer in sealed condition and that he prepared the MLC i.e. Ex. PW-10/A in his own handwriting. PW-10 was not cross-examined despite opportunity.
22. PW-11 ASI Rakesh deposed that in the year 2022 he was posted at PS Khajuri Khas as Head Constable and on 03.04.2022, while performing duty as Duty Officer from 04:00 PM to 12:00 midnight, at about 07:18 PM a call was received from JPC Hospital regarding admission of injured Jan-E-Alam, son of Yameen, with knife injuries. He further deposed that he recorded the said information in CCTNS vide DD No. 79A i.e. Ex. PW-11/A and marked the same to ASI Arvind for necessary action. PW-11 was not cross-examined despite opportunity.
23. PW-11 Dr. Sushanto Neogi, Director Professor Surgery deposed that he

had been posted at LNJP Hospital since 2008 and in the year 2022 was working as Unit In-charge of the General Surgery Branch. He stated that on 03.04.2022, patient Jan-E-Alam was admitted on referral from JPC Hospital with an alleged history of stab injury, was examined and treated, and was discharged on 06.04.2022. He identified the signature of Dr. Sarmista Roy on the discharge slip, which was exhibited as Ex. PW-12/A. He denied the suggestion that Manu Vats and Dr. Sarmista Roy were working under his supervision. No questions were put to the witness in cross-examination despite opportunity.

24. PW-12, Sh. Manish Gupta, Junior Forensic Chemical Examiner (Biology), FSL Rohini, Delhi, deposed that he had completed his M.Sc. in Forensic Science in 2007 from Dr. Bhim Rao University, Agra. He further stated that he had been working at FSL Rohini since 2011 and had examined about 1000 cases relating to biological and DNA analysis. He deposed that on 18.05.2022, three sealed parcels along with a forwarding letter and sample seal were received from PS Khajuri Khas and were marked to him for examination. He stated that upon opening the parcels, he examined the exhibits and prepared his report dated 13.07.2023, wherein all details of the exhibits, results of biological and DNA examination, and conclusions were mentioned. He further deposed that blood was detected on Ex.1a (shirt), Ex.1b (torn baniyan), Ex.2 (blood on gauze of the victim), and Ex.3a and Ex.3b (blood samples of the victim). He concluded that the DNA fingerprinting profile (STR analysis) established that the blood stains on Ex.1a and Ex.1b originated from the same source as Ex.3a (blood sample of the victim). He further proved his detailed report along with

allelic data as Ex. PW13/A bearing his signatures at point A. Despite opportunity, the witness was not cross-examined.

25. PW-13, Dr. Faheem Akhtar, CMO, JPC Hospital, Delhi, deposed that on 09.05.2022, he was posted as Casualty Medical Officer at the said hospital. He stated that on that day at about 05:30 PM, one patient namely Zahne-E-Alam, the victim in the present case, was brought by SI Arvind/NE, PS Khajuri Khas for medical examination and for collection of blood samples. He further deposed that he collected the blood samples of the patient in an EDTA vial, plain vial, and on gauze. He stated that thereafter he prepared two sealed parcels, one containing the blood-stained gauze and the other containing the blood vial, and handed over the same to the IO SI Arvind. He further deposed that after completing the necessary formalities, he obtained the thumb impression of the patient. He also stated that no fresh injuries were found on the person of the patient at the time of his examination. He further proved the MLC No. 23606 dated 09.05.2022 as Ex. PW-13/A. In his cross-examination, he stated that the parcels were not sent to FSL in his presence.
26. PW-14, SI Sukhpal Singh, deposed that in October, 2024, he was posted at PS Khajuri Khas and during that period the present case file was handed over to him by the MHCR. He further deposed that he went through the case file and received the FSL report, i.e., Ex. PW12/A, from the MHCM. He stated that thereafter he prepared the supplementary charge-sheet and filed the same before the Court. Despite opportunity, the witness was not cross-examined.

27. PW-15, Ct. Neeraj, deposed that on 18.05.2022, he was posted at PS Khajuri Khas. He stated that on that day, he received sealed exhibits from the MHCM (CP), PS Khajuri Khas, which consisted of two samples bearing the seal of CMO, the FSL form, along with three sealed pullandas. He further deposed that he received the said exhibits vide RC No. 77/21/22, the copy of which is Ex. PW-15/A bearing his signature at point A. He stated that thereafter he took the exhibits to FSL, Rohini and deposited the same there. He further deposed that so long as the exhibits remained in his custody, they were kept intact and were not tampered with. He also proved the acknowledgment of case acceptance issued by FSL as Ex. PW-15/B. In his cross-examination, nothing material came on record.
28. PW-16, Retd. SI Arvind, deposed that on 03.04.2022, he was posted as SI at PS Khajuri Khas and at about 07:18 PM he received information vide GD No. 79-A, Ex. PW-16/A, which was marked to him for investigation. He stated that thereafter he along with Ct. Pramod went to JPC Hospital, Shastri Park, where he obtained MLC No. 18410/22 of the injured Zahne Alam. He further deposed that the doctor informed him that the injured had been referred to a higher centre for further treatment and handed over one sealed pullanda containing the clothes of the injured along with one sealed sample, both bearing the seal of CMO. He deposed that he seized the said pullanda and sample vide seizure memo Ex. PW-16/B and thereafter went to GTB Hospital, but the injured was not found there. He further deposed that he then went to LNJP Hospital where he met the injured, however, the injured did not give any statement and no eye-witness was found there. He stated that

the GD entry was kept pending and after discussion with the SHO, he again visited the hospital on 04.04.2022 and 05.04.2022, but the injured still did not give any statement. He further deposed that thereafter, on the basis of the MLC and discussion with the SHO, he prepared the tehrir Ex. PW-16/C and got the FIR registered, and on 06.04.2022, upon receiving information that the injured had been discharged, he went to his house, recorded his statement, and at his instance prepared the site plan Ex. PW-2/A and recorded statements of witnesses. He further deposed that during investigation he noticed a government-installed CCTV camera at the place of occurrence and sent an application to PWD for obtaining the footage; the SHO received the CCTV footage in DVD format, which was marked to him and annexed with the case file along with the receiving letter Ex. PW-16/D. He further deposed that he sent the MLC for final opinion and as per the opinion the nature of injury was declared dangerous, whereafter Section 326 IPC was invoked. He further deposed that on 09.05.2022, he received secret information that the accused persons were present at Rajeev Vihar Pulia in Shriram Colony, Khajuri Khas.

29. PW-16 further deposed that thereafter he along with HC Sandeep went to the said place and at the instance of the secret informer, who left thereafter, they apprehended accused Asif, Afsar and Sakeel. He stated that he arrested them vide arrest memos Ex. PW-4/A (Asif), Ex. PW-4/D (Afsar) and Ex. PW-4/G (Sakeel) and conducted their personal search vide memos Ex. PW-4/B (Asif), Ex. PW-4/E (Afsar) and Ex. PW-4/H (Sakeel). He further deposed that the accused persons present in Court were correctly identified by him. He stated that he recorded

their disclosure statements vide memos Ex. PW-4/C (Asif), Ex. PW-4/F (Afsar) and Ex. PW-4/I (Sakeel) and thereafter all the accused persons took the police party to the place of incident and pointed out the same, whereupon he prepared the pointing-out memo Ex. PW-4/J. He further deposed that despite efforts, the accused persons did not get the knife used in the offence recovered and accordingly he prepared the non-recovery memo of the knife Ex. PW-16/E, and thereafter the accused persons were produced before the Ld. MM, who remanded them to judicial custody. He further deposed that on 09.05.2022, he took the injured to the hospital for collection of blood sample, which was taken and handed over to him in a sealed condition with the seal of CMO, and he seized the same vide memo Ex. PW-16/F and deposited it in the PS Malkhana. He stated that on 18.05.2022, the exhibits were sent to FSL, Rohini through Ct. Neeraj vide RC No. 77/21/22. He further deposed that during investigation he also invoked Section 307 IPC, recorded statements of witnesses and thereafter prepared the charge-sheet and filed the same before the Court.

30. In his cross-examination, PW-16 stated that the date of incident was 03.04.2022 and that he received the information on the same day at about 07:18 PM through GD Entry No. 79-A, already Ex. PW-16/A. He further deposed that he went to JPC Hospital along with Ct. Pramod on a private motorcycle, though he did not remember its registration number, and reached there at about 08:00 PM. He stated that he did not measure the distance between the police station and the hospital but it takes about 10–15 minutes by motorcycle. He further deposed that at JPC Hospital he did not find the injured Jan-E-Alam and did not return

to the police station thereafter, and volunteered that he made efforts to search for the victim in the hospital. He stated that he then went to GTB Hospital, where also he did not find the victim, and thereafter went to LNJP Hospital, where he reached at about 10:00 PM. He further deposed that when he met the injured at LNJP Hospital, his relatives were present, though he did not remember their names, and the victim was not in a position to give his statement, and even his relatives did not give any statement or complaint for registration of FIR. He also stated that he had not recorded the statement of the doctor, though he had spoken to him, and did not remember his name, and that as per the opinion of the doctor, the victim was not fit to give a statement. He further deposed that thereafter he visited the place of incident, where he did not find any eye-witness, and stated the address of the place of incident as Gali No. 5, D-Block, Shri Ram Colony, Khajuri Khas, though he did not remember the exact time of his visit, and by that time FIR had not been registered. He further stated that the FIR was registered on 05.04.2022 under Section 324 IPC after discussion with the then SHO, and thereafter he visited the house of the victim on 06.04.2022, where the victim gave his statement. He further stated that he had also visited the hospital on 05.04.2022 and it was correct that on that day the doctor had opined that the victim was fit for statement, however, the victim had still not given his statement. He further deposed that the arrest process was carried out after recording the statement of the victim and other witnesses, and at the time of recording the statement of the victim, he was alone, though the relatives were present in the house but were kept separate. He further stated that

the accused persons were not called to the police station and were arrested on 09.05.2022 at Rajiv Vihar Pulia, and at the time of arrest only HC Sandeep was with him.

31. PW-16 further stated that at the time of seizure of the sealed pullandas handed over by the doctor, the victim was also present, though he did not remember which other police official was present at that time. He further deposed that despite efforts, no recovery of the weapon of offence could be effected. He stated that he recorded the disclosure statements of all the accused persons in the presence of HC Sandeep as witness. He further deposed that Section 307 IPC was invoked by him during the course of investigation on the basis of facts and circumstances that emerged. He further stated that, in further cross-examination, PW-3 had affirmed that the victim herself had refused for internal examination (subject to verification).
32. On 15.11.2025, statements of the accused persons were recorded separately under Section 313 of Cr.P.C to which they did not wish to lead defence evidence.
33. On 05.12.2025, Ld. Counsel for accused persons moved application under Section 315 Cr.P.C for examining the accused Asif. Application was allowed.

DEFENCE EVIDENCE

34. On 12.01.2026, accused Asif was examined as DW-1. He deposed that on 03.04.2022 at about 5:30 PM, prior to the opening of roza, he went to the tarbooj (watermelon) rehri of his grandfather Yameen to ask for

money allegedly lent by his father to Yameen. He further deposed that while he was talking to Yameen regarding the said money, his maternal uncle Jaane Alam arrived there and objected to the same. He stated that Jaane Alam slapped him and also gave leg blows on his chest, due to which the buttons of his shirt broke, and thereafter some persons gathered at the spot, and Shakil also intervened to pacify the matter. He further deposed that thereafter Yameen asked him to go home and he left the place. He further stated that later in the evening he came to know that Jaane Alam and Yameen had sustained knife injuries and were admitted to the hospital, but he had no knowledge as to how the said injuries were caused.

35. DW-1 Asif was cross-examined at length by the Ld. Addl. PP. He deposed that he is 9th class fail and unemployed, and that his father, Afsar Qureshi, is engaged in loading and unloading of coconuts. He admitted that he had gone to the rehri of his grandfather to ask for money allegedly lent by his father to Yameen, though no document regarding such lending existed. He denied the suggestion that he was smoking a cigarette at the rehri or that Jaane Alam had objected to the same.
36. In his further cross-examination, DW-1 admitted that Jaane Alam had slapped him, whereafter he went home and informed his father, but he neither sought any medical treatment nor lodged any complaint with the police. When the CCTV footage contained in the DVD, Ex. P-1/DW1, was played in Court, he identified himself sitting with his grandfather Yameen at the tarbooj rehri and also identified Jaane Alam

arriving there holding his child in his lap. He denied the suggestion that he had attacked Jaane Alam with a knife or that he, along with the other accused persons, had assaulted the injured persons. He further denied that any knife was recovered from his possession or that he was falsely deposing.

FINDINGS

37. As per the prosecution case, information was received vide GD Entry No. 79A dated 03.04.2022 at about 19:18 hours, exhibited as PW11/A, wherein it is recorded that one Jan-E-Alam had received injuries with a knife and had been admitted to the hospital by one Mohd. Kaif. IO reached GTB Hospital, however, Jan-E-Alam was not found at the hospital. IO came to know that he has gone to LNJP hospital and IO reached the hospital where he was found but due to acute pain, he refused to give his statement. On next day, i.e. 04.04.2022, IO went to LNJP hospital but his tests were going on and victim did not give any statement. Then on 05.04.2022, IO had gone to take his statement but still victim could not give his statement but FIR was registered on 05.04.2022 under section 324/34 IPC. On 06.04.2022, victim was discharged from hospital and IO recorded his statement. Then IO obtained footage from CCTV cameras also. IO also obtained final opinion on MLC according to which the nature of injury was dangerous. Thereafter, charge sheet was filed after completion of investigation.
38. As per the statement of PW-2/Jan-E-Alam, he deposed that accused Afsar is his *jija* and accused Asif is his *bhanja*. On 03.04.2022, he was

present near the *tiya* of his father, when he saw that accused Asif was smoking a cigarette. On seeing accused Asif smoking cigarette, PW-2 Jan-E-Alam scolded him but accused Asif started misbehaving with him then PW-2 slapped him, thereafter, upon which Asif fled for his house. In the meantime, accused Afsar who is the father of accused Asif, came to the spot along with one Shakil who is friend of Afsar. Accused Afsar started misbehaving with PW-2 Jan-E-Alam and asked why he slapped Asif. PW-2 Jan-E-Alam explained him that accused Asif was smoking cigarette, however, the accused started abusing him. Thereafter, accused Shakil caught him and started taking him towards the *gali*. PW2 was holding his 6-7 months old child in his hand but he had fallen from his hand as he was taken to gali by accused Shakil and Afsar. In the meantime, he saw accused Asif entering the gali with a knife in his hand and saying that “*tujhe maar denge*” PW-2 begged them to release him.

39. PW-2 / Jan-E-Alam further deposed that accused Afsar was holding victim from behind with the help of handkerchief around his neck while accused Shakil was holding him from behind. Accused Asif stabbed him with three knife blows on his right chest. PW2 showed his wounds on his chest in the Court. Victim somehow rescued himself and ran towards *gali* but all accused ran behind him. Accused Shakil also threatened PW2 saying “*aaj bachna nahi chahiye*”. Public persons assembled in the *gali* then he made a call to his brother namely Mohd. Kaif who took him to the hospital.
40. This witness has stood the test of cross-examination, there is nothing in his testimony to lead to an inference that he is not speaking the truth.

There is a bare suggestion to this witness that he is deposing falsely due to old enmity but what is this 'old enmity' is not put to the witness in cross examination. The version of victim is also corroborated by MLC of the hospital where he was immediately taken for his treatment after the incident. It is mentioned on the MLC that he was physically assaulted by three known persons. Further, as per MLC, he had incised wound over the right nipple of size approximately 5x4x2 cm. This supports the case of prosecution that he was given knife blows around his right chest.

41. It is also argued during final arguments that there is contradiction in the testimony of Jan-E-Alam i.e. his deposition in Court as compared with what he had stated in his statement under section 161 Cr.P.C to the police. However, a statement under Section 161 Cr.P.C. can be used only for the purpose of corroboration or contradiction of the witness. Even if the deposition of PW-2 is somewhat different than the version in his statement under Section 161 Cr.P.C., this discrepancy could have been explained by the witness if these inconsistencies had been put to him. However, the statement under section 161 Cr.P.C of this witness was not put to him during his cross-examination. It was not explained why these inconsistencies were not put to the witness if these inconsistencies were material according to them. Hence argument that the deposition of witness is different as compared with the statement under section 161 Cr.P.C, does not hold ground at this stage.
42. It is further argued that there is delay in recording the statement of Jan-E-Alam due to which he had time to make alterations / improvements in his statement. However, this delay is properly explained in the

charge sheet. It is mentioned by IO that he went to the hospital but the victim was in pain due to which he was unable to give his statement. This version of prosecution is corroborated by the MLC wherein it is mentioned that the nature of injury is dangerous. A person suffering from a dangerous injury on a vital body part like chest would have been in severe pain and hence he might have been unable to give his statement for next two-three days, which is a plausible explanation by the prosecution for delay. This statement of injured is consistent throughout. There is nothing in his testimony to show that he is not speaking the truth, nor any specific motive is imputed on him due to which he is deposing falsely in the Court. Further, there is no reason why the injured, who had suffered dangerous injury, would try to save real culprits.

43. There is no reason why an injured person would try to implicate an innocent person for his injuries. The testimony of a injured person stands on very high footing as is observed by the by Hon'ble Supreme Court of India in the judgment of '**Rajan Vs. State of Haryana (Criminal Appeal No. 3904/2025, CrI. SLP No. 13881/2025, Diary No. 43582/2018)**' that:

“33. When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured

witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) then or immaterial If there be any exaggeration embellishments in the evidence of an injured witness, exaggeration such contradiction, embellishment should be discarded from the evidence of injured, but not the whole evidence or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

44. To corroborate this version of prosecution, IO has obtained CCTV footage, which was played in the court as well on 16.03.2026. The Footage footage is duly proved with the help of testimony of PW-7. In fileNo.701119_Camera.No._2_2022_04_03_17_55_00_2022_04_03_17_57_00, in the video, at 17.55 pm, it could be seen that Jaan-E-Alam held accused Asif with collar while he was sitting. Then, Jaan-E-Alam gave him few slaps, then Asif and Jaan-E-Alam went in a gali. After few seconds, Jaan-E-Alam came back from the gali with Afsar Qureshi. This CCTV footage shows the presence of Asif and Afsar at the spot alongwith victims. Though this incident does not give

capture the actual act of giving knife blows, but this CCTV footage shows the presence of accused at the spot.

45. It is also argued that it was victim himself who was the aggressor and gave slaps to Asif as per the own case of prosecution. However, PW2 has explained the reason for the same i.e. Asif is his *bhanja* who was smoking cigarette and when he scolded him, he used abusive language against PW2 due to which he slapped him. However, the incident had happened between Jan-E-Alam and Asif. Accused Afsar and Shakil joined later.
46. PW-2 Jan-E-Alam did not hide the fact that he had slapped accused Asif who is son of his sister. He has given a justifiable reason for the same i.e. he tried to stopped him from smoking cigarette, an act which is socially and morally justified. His act was intended to discipline the son of his sister and preventing him from smoking cigarette which is harmful. There is no such suggestion to this witness in cross examination that in such circumstances, he was not justified in slapping accused Asif. There is no such suggestion to PW-2 that Asif was not smoking cigarette at all. The intention of victim of slapping Asif was not malafide. This act of slapping is visible in CCTV also. Further, he slapped Asif considering him as a family member, being the son of his sister. However, his act was not taken on a positive note. Further, as per the version of PW-1, after being slapped Asif went to the house of PW-1 with his mother. Hence, Asif had sufficient time to deliberate on the act of victim and cool down but he escalated the situation.
47. Further, as per prosecution case, the incident was witnessed by another

witness i.e. Mohd. Kaif, who is elder brother of victim Jan-E-Alam. He deposed that on 03.04.2022 at around 05.00 to 06.00 p.m., he was present at his house when accused Asif came with his mother Nazmeen. Accused Asif started abusing Jan-E-Alam in his presence, that why Jan-E-Alam had given beatings to Asif. Then Asif told his mother to go to their house and he would himself see Jan-E-Alam. Then Asif ran away from PW-1's house, but PW-1 Mohd. Kaif followed him. He saw Asif coming from his house with one knife. Then he saw Jan-E-Alam was caught hold by Shakil and Afsar in the gali while Asif gave knife blows to Jan-E-Alam on his chest. Shakil and Afsar were telling Asif to kill him. Then he immediately ran towards his house. After 10-15 minutes, he received a call of his brother to inform him about knife blows. He took his brother to the hospital. This witness was also cross-examined by Defence counsel. This witness deposed that public persons were moving around the place where this incident happened.

48. This witness has stood the test of cross-examination and there is nothing in his testimony to believe that he is not deposing the truth. The prosecution case is supported by GD entry number 79A, exhibit PW11/A on record, wherein it is mentioned that Mohd. Kaif got him admitted in the hospital and this witness also states that he took injured to the witness. It is also mentioned in MLC that injured was brought to the hospital by Mohd. Kaif. Further, this witness is also relative of accused persons. Accused Afsar is husband of his real sister and Asif is his *bhanja*. There is no motive imputed to him in his cross-examination to depose falsely in the Court. There is no reason why he would falsely implicate his own family members in this case unless for truth.

49. Further, the FSL result shows that the blood on the shirt was of victim only. It is further argued that the weapon of offence i.e. knife, is not recovered in this case. It is mentioned in disclosure statement of Asif i.e. EX.PW6/E, that after commission of offence, he had disposed of the knife in a nala which could not be traced.
50. Further, only because of offence of weapon i.e. knife, is not recovered, does not make the prosecution case false. Injuries are established by MLC, there is FSL report showing blood on cloths, as well as the statement of witnesses. It was held in the case of '**Rajan Vs. State of Haryana (Criminal Appeal No. 3904/2025, CrI. SLP No. 13881/2025, Diary No. 43582/2018)**' that non-recovery of weapon of the offence is not material in the prosecution case which is otherwise proved by way of ocular evidence. The relevant extract is:-

“35. Just because the firearm alleged to have been used and fired by the appellant—herein was not recovered or discovered under Section 27 of the Indian Evidence Act at any point of time during the course of the investigation would not render the ocular version of the two eyewitnesses doubtful.

36. Discovery or recovery of the weapon as the case may be, if any, could be brought in aid of the other evidence which the prosecution has led at the time of trial.

37. In the aforesaid context, we may refer to and rely upon few decisions of this Court. In the State of Rajasthan v. Arjun Singh and Others reported in (2011) 9 SCC 115, this Court observed in paras 17 and 18 respectively as under:

“17. Learned senior counsel for the accused persons contended that in the absence of recovery of pellets from the scene of occurrence or from the body of the

injured persons, it is highly doubtful as to the scene of occurrence and whether such incident did take place in the manner suggested by the prosecution. Learned counsel appearing for the complainant pointed out that though there was an entry in Malkhana Register (Ex. P31A) wherein it was stated that a sealed packet containing pellets was deposited but prosecution failed to lead any evidence on this point. It was also pointed out that though a report was received from the Forensic Science Laboratory, no evidence regarding recovery of the pellets was produced.

18. As rightly pointed out by the learned Additional Advocate General appearing for the State that mere nonrecovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, blood stained clothes etc. cannot be taken or construed as no such occurrence had taken place. As a matter of fact, we have already pointed out that the gun shot injuries tallied with medical evidence. It is also seen that Raghuraj Singh and Himmat Raj Singh, who had died, received 8 and 7 gun shot wounds respectively while Raj Singh (PW-2) also received 8 gun shots scattered in front of left thigh. All these injuries have been noted by the Doctor (PW-1) in his reports Exs. P-1 to P-4.”

(emphasis supplied)

38. In Krishna Mochi and Others v. State of Bihar reported in (2002) 6 SCC 81, this Court observed in para 37 as under:

“It has been then submitted on behalf of the appellants that nothing incriminating could be recovered from them which goes to show that they had no complicity with the crime. In my view, recovery of no incriminating material from the accused cannot alone be taken as a ground to exonerate them from the charges, more so when their participation in the crime is unfolded in ocular account of the occurrence given by the witnesses, whose evidence has been found by me

to be unimpeachable.”

(emphasis supplied)

51. It is further argued that most of the witnesses have turned hostile, which shows that incident had never happened. However, PW-5 is a food vendor on street where this incident happened, PW-6 is a resident of this area, PW-8 is a passerby. However, only because independent witnesses have not supported the case of prosecution, it cannot be said that prosecution has not been able to prove their case with the help of testimonies of PW1 and PW2. Testimonies of PW1 and PW2 are found to be completely reliable.
52. Defence has examined DW-1 Asif in defence evidence. He has deposed that his father had given 1 – 1.5 lakhs to Yameen who is his grand father. He also admitted that this money was given by his father when DW-1 was a baby. He further deposed that on the day of incident, he was asking money from Yameen when Jan-E-Alam came there. He further deposed that Jan-E-Alam slapped him because he asked money from Yameen. This witness admitted in cross examination that money was never given in his presence as he was a child at that time.
53. The version of money matters between family members is brought before this Court for the first time in the year 2026. The incident is of the year 2022, the charge was framed in 2022 and PW-1 was examined and cross examined in 2023. PW-2 was examined in 2023 and cross examined in 2025. This money matter, as is deposed by DW-1, was never put to PW1 or PW2 in the cross examination. The defence of money dispute was taken for the first time during recording of SA on 15.11.2025 and thereafter, DW-1 deposed about it in 2026. There is no

plausible explanation given why this defence and the cause of dispute as alleged by defence, was not put to PW1 and to PW2 during their cross examination. It is not explained why it was not stated at the time of framing of charge. Taking a fresh defence at the stage of SA which is elaborated further by DW1, has taken this Court by surprise. The defence which is taken at a belated stage while recording SA, does not inspire any confidence.

54. In view of above discussion, it is proved on record that accused Asif had given stab injuries on the chest of Jan-E-Alam while other two accused were holding him. The other two accused holding the victim, show their active involvement in the commission of crime and that they also shared common intention with accused Asif.
55. The next question for consideration is if offence is made out u/s 307 / 34 IPC. Attempt means an endeavor to commit a crime. It has been observed that intention, preparation and attempt are the three stages for establishing this offence. According to section 307 IPC, a person is said to have committed an offence under this section if he intends to commit that particular offence, and he has made preparation and with the intention of committing that offence does an act towards its commission.
56. Hence for committing an offence under this section, it is necessary to have an intention to cause death or act is done with knowledge that if death is caused, he would be guilty of murder. However, there is nothing on record to establish that accused had any prior intention to cause death. As per the own case of prosecution, the incident happened

suddenly when victim saw accused Asif smoking and slapped him in order to stop him from smoking. However, the matter was escalated by accused Asif who brought his father accused Afsar and Mohd. Shakil at the spot. They both caught hold of victim and accused Asif gave knife blows.

57. The perusal of MLC would show that there is a single stab wound on the chest of victim. If the intention of accused had been to cause his death, the accused who were three in number could have given multiple injuries to the victim/PW2. But as per MLC, there is only a single incised wound and there is no other injury at all. This shows that accused had no intention of causing his death. However, stabbing a person with knife implies an obvious knowledge that grievous hurt would be caused to that person. As per MLC, the nature of injury is dangerous. Hence, accused persons have in furtherance of their common intention caused grievous hurt by knife to victim and are hereby convicted for offence u/s 325/34 IPC.

CONCLUSION

58. In the overall circumstances of the case, all the three accused persons are liable for the offence punishable u/s 325/34 IPC and they are hereby convicted for the said offence.

Announced in Open Court
as on 18.04.2026

(Twinkle Wadhwa)
Additional Sessions Judge-02
North East, Karkardooma Courts, Delhi