

**IN THE COURT OF MS. TWINKLE WADHWA
ADDL. SESSIONS JUDGE-02 (NORTH EAST)
KARKARDOOMA Courts : DELHI**

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| SESSIONS CASE No. | 220/2024 |
| FIR No. | 271/2024 |
| Police Station | Seelampur |
| Under Section | 307/34 of IPC |
| Instituted on | 15.10.2024 |
| Argued on | 09.04.2026 |
| Decided on | 29.04.2026 |
| Final Order | Irshad Ali @ Shakir is convicted u/s 307/34 IPC. Accused Kasim is acquitted. |

State Vs. (1) Irshad Ali @ Shakir
S/o Rehmat Ali R/o H.No. E-16/B-49, K Block
Jhuggi New Seelampur, Delhi
(2) Kasim S/o Shami Akhtar R/o H.No. 95, 4th Floor
New Seelampur Delhi

For State : Sh. Abhishek Pandey, Additional Public Prosecutor
For Defence: Ms. Sakshi Yadav, Ld. LADC, for the accused Irshad Ali @ Shakir.

Sh. Pradeep Tyagi, Ld. counsel for the accused Kasim.

JUDGMENT

1. By way of this judgment, this Court shall decide the charges levelled against both the accused persons under sections 307/34 of IPC.

Brief facts of the case

2. DD No. 68A dated 03.06.2024 was received, pursuant to which the IO reached JPC Hospital, where he found the injured Azharuddin admitted in the hospital. The IO obtained the MLC of the injured, wherein it was written “physical assault by known persons.” Thereafter, the IO recorded the statement of the victim. According to his statement, accused Irshad Ali @ Shakir along with his associates started giving *galia* to him as he was passing by. Associates of Irshad Ali @ Shakir hit him with belt and he fell down. Subsequently, accused Irshad Ali @ Shakir took out a knife type weapon and attacked on his abdomen. Then they ran away. The brother of Irshad Ali @ Shakir took him to the hospital. An FIR under Sections 307/34 IPC was registered. The IO came to know that CCTV was not present near the scene of crime. Thereafter, Irshad Ali @ Shakir was arrested at the instance of a secret informer. Irshad Ali @ Shakir disclosed about his co-accused ‘A’ (CCL), then, at the instance of Irshad Ali @ Shakir, CCL ‘A’ was arrested. The knife was recovered at the instance of CCL ‘A’. Further, as per the MLC, the injured received grievous injuries and after completion of investigation, charge sheet was filed.

Charge

3. Vide order dated 30.11.2024, charge was framed against both the accused for the offences under sections 307/34 of IPC. The accused persons have pleaded not guilty to the said charges.

Witnesses Examined

| <u>Sr. No.</u> | <u>Prosecuti on witness No.</u> | <u>Name of witness</u> | <u>Description</u> |
|----------------|---|-------------------------------|---|
| 1 | PW-1 | ASI Rameshwar Das | Duty Officer who recorded DD entry, registered FIR, made endorsement and issued 65B certificate. |
| 2 | PW-2 | Nadeem | Relative of injured who took him to hospital; stated he signed blank papers in police station. |
| 3 | PW-3 | Ct. Santosh Kumar | Police constable who accompanied IO, got FIR registered, handled exhibits and assisted investigation. |
| 4 | PW-4 | Azharuddin | Injured/complainant who sustained stab injuries; did not see assailant and named accused on hearsay. |
| 5 | PW-5 | Salimuddin | Brother of injured who reached hospital, later pointed out place of incident and signed site plan. |
| 6 | PW-6 | Sh. Lokesh Kumar (FSL Expert) | Scientific officer who examined exhibits and proved DNA report linking blood samples. |
| 7 | PW-7 | Dr. Nilanjana | Doctor who gave opinion that injuries were grievous and proved medical opinion on MLC. |
| 8 | PW-8 | Dr. Kartik | Doctor who initially examined injured and noted three stab wounds on abdomen. |

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| 9 | PW-9 | Dr. Shalabh Dass | Medical officer who identified signatures of treating doctor and proved MLC details. |
| 10 | PW-10 | HC Azad Vikas | Police official who transported sealed parcels to FSL and proved RC and acknowledgment. |
| 11 | PW-11 | HC Ramvir Singh | Police witness to arrest of accused, recovery proceedings and seizure of knife and mobile. |
| 12 | PW-12 | SI Mahesh Kumar (IO) | Investigating Officer who conducted investigation, recorded statements, arrests, recoveries and filed chargesheet. |

Exhibited Documents

| <u>Sr. No.</u> | <u>Exhibit No.</u> | <u>Description of the Exhibit</u> | <u>Proved by/Attested by</u> |
|----------------|--------------------|---|------------------------------|
| 1 | Ex. PW1/A | Copy of DD No. 68A (PCR information entry) | PW-1 ASI Rameshwar Das |
| 2 | Ex. PW1/A1 | Copy of FIR No. 271/2024 | PW-1 ASI Rameshwar Das |
| 3 | Ex. PW1/B | Endorsement on rukka (DD No. 73A) | PW-1 ASI Rameshwar Das |
| 4 | Ex. PW1/C | Certificate under Section 65B Evidence Act | PW-1 ASI Rameshwar Das |
| 5 | Ex. PW3/A | Seizure memo of sealed exhibits (hospital pullanda) | PW-3 Ct. Santosh Kumar |
| 6 | Ex. PW4/A | Statement of injured/complainant Azharuddin | PW-4 Azharuddin |
| 7 | Ex. P-1 | Clothes of injured (T-shirt & trouser) | PW-4 Azharuddin |
| 8 | Ex. PW5/A | Site plan of place of incident | PW-5 Salimuddin |
| 9 | Ex. | FSL biological examination | PW-6 Sh. Lokesh Kumar |

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| | PW6/A | report | |
| 10 | Ex. PW6/B | FSL DNA allelic data report | PW-6 Sh. Lokesh Kumar |
| 11 | Ex. PW7/A | MLC of injured Azharuddin | PW-7 Dr. Nilanjana / PW-8 & PW-9 (identification) |
| 12 | Ex. PW7/B | Medical opinion (nature of injury grievous) | PW-7 Dr. Nilanjana |
| 13 | Ex. PW10/A | Copy of Road Certificate (RC) for sending exhibits to FSL | PW-10 HC Azad Vikas |
| 14 | Ex. PW10/B | FSL acknowledgment receipt | PW-10 HC Azad Vikas |
| 15 | Ex. PW11/A | Arrest memo of accused Shakir | PW-11 HC Ramvir Singh |
| 16 | Ex. PW11/B | Personal search memo of accused Shakir | PW-11 HC Ramvir Singh |
| 17 | Ex. PW11/C | Sketch of knife | PW-11 HC Ramvir Singh |
| 18 | Ex. PW11/D | Seizure memo of knife | PW-11 HC Ramvir Singh |
| 19 | Ex. PW11/E | Apprehension memo of CCL Ayaan | PW-11 HC Ramvir Singh |
| 20 | Ex. PW11/Ar ticle 1 | Mobile phone recovered from accused | PW-11 HC Ramvir Singh |
| 21 | Ex. PW11/Ar ticle 2 | Knife recovered in the case | PW-11 HC Ramvir Singh |
| 22 | Ex. PW12/A | Rukka prepared by IO | PW-12 SI Mahesh Kumar |
| 23 | Ex. PW12/B | Disclosure statement of accused Shakir | PW-12 SI Mahesh Kumar |
| 24 | Ex. PW12/C | Social background report of CCL | PW-12 SI Mahesh Kumar |

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| 25 | Ex. PW12/D | Seizure memo of blood sample of injured | PW-12 SI Mahesh Kumar |
| 26 | Ex. PW12/E | Arrest memo of accused Kasim | PW-12 SI Mahesh Kumar |

Prosecution Evidence

4. Prosecution has examined 12 (twelve) witnesses in this case.
5. PW-1 ASI Rameshwar Das deposed that on 30.06.2024, he was posted as Duty Officer at PS Seelampur and his duty hours were from 4:00 PM to 12:00 midnight. At about 10:12 PM, he received information from the control room regarding an incident at K-Block, Seelampur, with the description that “*caller bol rha hai ki mere dono bhaiyo ke upar kisine hamla kiya, ek bhai ko pet par chaku lagi hai use abhi hospital lekar gaye hai, ek sath hathapai huyi hai*”. The said information was recorded vide DD No. 68A and marked to SI Mahesh. He proved the copy of DD entry as Ex. PW1/A. He further deposed that at about 11:22 PM, Ct. Santosh came to him and handed over the original statement of complainant Azharuddin along with rukka prepared by SI Mahesh Kumar. After perusal and on the directions of the SHO, he got the FIR registered through the CCTNS operator. FIR No. 271/2024 under Sections 307/34 IPC, PS Seelampur was registered and copy of FIR was proved as Ex. PW1/A1. He made endorsement on the rukka vide DD No. 73A, proved as Ex. PW1/B, and also issued certificate under Section 65B of the Indian Evidence Act, proved as Ex. PW1/C. He also produced the original FIR register.

6. In his cross-examination, PW-1 stated that he was not aware as to by which vehicle Ct. Santosh arrived at the police station. It took about 5–7 minutes in the office of the SHO when Ct. Santosh reached there with the rukka. No written direction was given by the SHO for registration of FIR. It took about 10–12 minutes in registration of FIR by the CCTNS operator. At about 11:40 PM, Ct. Santosh left for the spot after obtaining copy of FIR and original rukka. He denied the suggestion that he had not recorded the FIR or that the FIR was recorded later in connivance with the IO. He further adopted the cross-examination conducted on behalf of co-accused Kasim.
7. PW-2 Nadeem deposed that on 30.06.2024, at night time, while he was present at his house and was having dinner, he suddenly heard noise and commotion coming from the gali near his house. On hearing the same, he immediately came out of his house to see what had happened and noticed that his cousin Azharuddin was sitting there in an injured condition. He further deposed that Azharuddin was holding his stomach and blood was oozing out from his body. He stated that upon making inquiry from Azharuddin as to what had happened, Azharuddin told him that he had been stabbed by someone. He further deposed that without wasting any time, he immediately took the injured Azharuddin to JPC Hospital and got him admitted there for medical treatment. He stated that after some time, the brother of Azharuddin also reached the hospital, and thereafter, he returned back to his house. He further deposed that the Investigating Officer made inquiries from him at the hospital regarding the incident. Later on, he was called to the police station where his statement was recorded by the police officials.

8. In his cross-examination, PW-2 stated that he is illiterate and can only sign. He admitted that the IO had obtained his signatures on some blank papers and that nothing was read over to him at the police station.
9. PW-3 Ct. Santosh Kumar deposed that on 30.06.2024, he was posted at PS Seelampur and was on night emergency duty with SI Mahesh from 8:00 PM to 8:00 AM. At about 10:15 PM, a call regarding a stabbing incident at K-Block, Seelampur was received, upon which he along with IO SI Mahesh reached the spot and came to know that the injured had already been taken to hospital. Thereafter, they reached JPC Hospital where injured Azharuddin was admitted. The IO recorded his statement and prepared rukka and handed it over to him for registration of FIR. He went to the police station, got the FIR registered, and returned to the hospital with copy of FIR and original rukka and handed them over to the IO. The concerned CMO handed over sealed exhibits of the injured to him, which he handed over to the IO and the same were seized vide memo Ex. PW3/A. Thereafter, he along with IO and Salimuddin went to the spot where site plan was prepared at the instance of Salimuddin, and thereafter they returned to the police station where his statement was recorded.
10. In his cross-examination, PW-3 admitted that when they reached the hospital, the IO collected the MLC and sealed pulanda and made inquiries from the injured in presence of his brother Salimuddin. He stated that after preparing the site plan, IO recorded the statement of Salimuddin at the spot and also made efforts to search the accused persons but in vain. He stated that he could not depose these facts

earlier due to lapse of time. He further stated that they left the police station at about 10:15 PM and reached the spot within 10 minutes on the private vehicle of the IO, though he did not remember its registration number. He stated that the spot was surrounded by residential houses/jhuggis and he did not know if any CCTV was installed. He further stated that no public persons were present at the spot when they first reached. He denied the suggestion that no MLC or sealed pulanda was handed over or that no site plan was prepared at the spot. He further denied that he did not join the investigation or that he was deposing falsely at the instance of IO.

11. PW-4 Azharuddin deposed that about one year prior to his deposition, at about 10:00 PM, he was present on the ground floor of his building, while his residence is situated on the third floor. He stated that at that time, accused Irshad Ali @ Shakir along with 4–5 associates came there and started abusing and kicking the vehicles parked near his house. He objected to their conduct, the said persons started abusing him and manhandled him, and a scuffle ensued between them. Some local residents intervened and the accused persons left the spot; however, after about 2–3 minutes, they returned again, surrounded him, and during that time, one of the associates stabbed him with a knife on the left side of his chest. He stated that someone informed the police and a local resident took him to JPC Hospital, from where he was referred to GTB Hospital for further treatment. He further deposed that his statement was recorded by the police in the hospital, which is Ex. PW4/A. He further deposed that he sustained serious injuries and had difficulty in breathing due to the said incident. He further deposed that

he had heard that accused Irshad Ali @ Shakir had stabbed him; however, he himself did not see the assailant as many persons had surrounded him at the time of the incident. He correctly identified accused Irshad Ali @ Shakir present in court but stated that he could not identify any other associate involved in the incident. He further deposed that his neighbour Nadeem had taken him to the hospital. He also stated that he did not know about the other accused persons apprehended in the present case. He identified his clothes (trouser and T-shirt) produced in court as Ex. P-1. He further deposed that he had informed the police that he had heard that one Ayan was also involved in the incident and that he knew accused Kasim, but he had not seen Kasim at the time of the incident.

12. In his cross-examination, PW-4 stated that the place of incident remains dark at night. He admitted that he had not seen accused Irshad Ali @ Shakir stabbing him and had named him on the basis of information given by local persons after the incident. He stated that he does not know how to read. He denied the suggestion that he had wrongly identified accused Irshad Ali @ Shakir or that Irshad Ali @ Shakir was not present at the time of incident.
13. PW-5 Salimuddin deposed that on 30.06.2024, at about 10:00 PM, he received a phone call from his mother informing him that a quarrel had taken place involving his brother Azharuddin. He stated that upon receiving the said information, he immediately left for his house on foot and reached there within approximately 20 minutes. He further deposed that upon reaching near his house, he found that a number of

public persons had gathered there, who informed him that his brother had been stabbed and had already been taken to JPC Hospital. He stated that he made a call at 112 and thereafter proceeded to JPC Hospital, where he reached at about 10:45 PM. From there, his brother was referred to GTB Hospital for further treatment. He further deposed that he accompanied his brother to GTB Hospital and remained there throughout the night. On the next day, the IO SI Mahesh contacted him, whereupon he showed the place of incident to the IO. He further deposed that the IO prepared the site plan at his instance, which he signed, and the same is Ex. PW5/A. He also stated that the IO did not record his statement

14. PW-6 Sh. Lokesh Kumar, Senior Scientific Officer (Biology), FSL Rohini, deposed that on 06.09.2024, three sealed parcels were received in FSL through HC Azad Vikas. The seals were found intact. Parcel No.1 contained a cut/torn dirty T-shirt (Ex.1a) and a banian (Ex.1b) having stains. Parcel No.2 contained a knife with rusty stains (Ex.2). Parcel No.4 contained gauze cloth (Ex.4) described as blood sample of injured. On biological examination, blood was detected on all exhibits. DNA profile was generated from Ex.1b and Ex.4, but not from Ex.1a and Ex.2 due to degradation/inhibition. The alleles generated from Ex.4 were accounted for in Ex.1b. He concluded that DNA profiles from Ex.1b and Ex.4 were similar and of male origin. He proved his report as Ex. PW6/A and allelic data as Ex. PW6/B.
15. PW-7 Dr. Nilanjana, Senior Resident, GTB Hospital, deposed that on 01.08.2024, she examined the record of patient Azharuddin (CT No.

1075) and opined that the nature of injury was grievous. She proved her opinion on the MLC as Ex. PW7/A and the report as Ex. PW7/B.

16. PW-8 Dr. Kartik, Senior Resident (Surgery), JPC Hospital, deposed that on 30.06.2024 he examined the patient Azharuddin as per MLC No. 1075. On examination, he found three stab wounds on the left upper quadrant of the abdomen of approximate sizes 3×1 cm, 2.5×1 cm, and 2×0.5 cm, with uncertain depth. After primary treatment, he advised referral to higher centre in view of suspected breach in peritoneum. He identified his observations and signatures on the MLC (Ex. PW7/A).
17. PW-9 Dr. Shalabh Dass, Senior Medical Officer, JPC Hospital, deposed on behalf of Dr. Farhan Ahmad who had left service. He stated that he could identify the signatures of Dr. Farhan Ahmad on the MLC (Ex. PW7/A) at points E and F, having worked with him. As per the MLC, the injured Azharuddin had sustained three stab wounds on the left upper quadrant of approximate sizes 3×1 cm, 2.5×1 cm, and 2×0.5 cm with depth uncertainty, and was referred to surgery. He further deposed that the doctor had sealed and packed the blood-stained clothes (black T-shirt and white inner) with the seal of CMO.
18. PW-10 HC Azad Vikas deposed that on 06.09.2024, while posted at PS Seelampur, he received three sealed pullandas and two sample seals from MHC(M) vide RC No. 115/21/24. He took them to FSL and obtained acknowledgment (Ex. PW10/B). He proved the copy of RC as Ex. PW10/A. He stated that during transit, the parcels remained untempered and his statement was recorded by the IO.
19. PW-11 HC Ramvir Singh deposed that on 30.06.2024, he joined

investigation with IO SI Mahesh and went in search of accused Shakir. Upon secret information, they reached Dharampura Red Light where accused Irshad Ali @ Shakir was apprehended and arrested vide arrest memo Ex. PW11/A. His personal search was conducted (Ex. PW11/B) and one mobile phone was recovered. The accused was taken for medical examination and then lodged in lock-up. On 01.07.2024, the accused led them to the house of CCL Ayaan, who was apprehended. The CCL produced a vegetable cutting knife which was seized (Ex. PW11/D) after preparation of sketch (Ex. PW11/C). The witness identified the knife (Ex. PW11/Article 2) and the mobile phone (Ex. PW11/Article 1). He also stated that the parcels were sealed with the seal of MK and the seal was handed over to him.

20. In cross-examination, PW-11 admitted that Dharampura Red Light is a crowded area and no public person joined the arrest despite being asked. He stated that the knife was not recovered from accused Irshad Ali @ Shakir but was produced by the CCL 'A'. He further admitted that the knife was an ordinary vegetable cutting knife and he did not remember the exact place from where it was recovered. He denied tampering with the case property and stated that the seal remained in his possession during investigation.
21. PW-12 SI Mahesh Kumar deposed that on 30.06.2024, he received PCR call (DD No. 68A) and went to JPC Hospital where he collected MLC of injured Azharuddin and seized sealed pullanda. He recorded the statement of injured (Ex. PW4/A), wherein it was stated that accused Irshad Ali @ Shakir along with associates assaulted and

stabbed him. He prepared rukka (Ex. PW12/A) and got FIR registered through Ct. Santosh. He inspected the spot and recorded statements of witnesses including Nadeem and Salimuddin. He stated that accused Irshad Ali @ Shakir was known to the complainant being a resident of the same locality. On 01.07.2024, acting on secret information, he along with HC Ramvir reached Dharampura Red Light and apprehended accused Irshad Ali @ Shakir. He further deposed about recovery of knife at the instance of CCL 'A' and seizure proceedings.

22. PW-12 SI Mahesh Kumar deposed that on 30.06.2024, he received PCR call (DD No. 68A) and reached JPC Hospital, where he collected the MLC of injured Azharuddin and seized the sealed pullanda. He recorded the statement of the injured (Ex. PW4/A), prepared rukka (Ex. PW12/A), and got the FIR registered through Ct. Santosh. He visited the place of incident, prepared the site plan (Ex. PW5/A), and recorded statements of witnesses including Nadeem and Salimuddin. He stated that accused Irshad Ali @ Shakir was known to the complainant as they resided in the same locality. On 01.07.2024, acting on secret information, he along with HC Ramvir apprehended accused Irshad Ali @ Shakir at Dharampura Red Light. The accused was arrested vide memo Ex. PW11/A and personally searched vide memo Ex. PW11/B, during which one mobile phone was recovered. During interrogation, accused Irshad Ali @ Shakir disclosed that he, along with a CCL and Kasim, had quarreled with the complainant and that the CCL had stabbed him at his instance. The disclosure statement is Ex. PW12/B. Thereafter, accused Irshad Ali @ Shakir led the police to the house of the CCL, where the CCL produced a knife from his jhuggi. The knife

was sketched (Ex. PW11/C) and seized vide memo Ex. PW11/D, and sealed with the seal of MK. On 02.07.2024, the CCL was apprehended (Ex. PW11/E), and the social background report was prepared (Ex. PW12/C). The accused Irshad Ali @ Shakir was produced before the Court, while the CCL was produced before the JJB. He further deposed that efforts were made to trace accused Kasim, and NBWs were obtained. Later, Kasim was granted anticipatory bail by the Hon'ble High Court and was formally arrested vide memo Ex. PW12/E. PW-12 also stated that he seized the blood sample of the injured vide memo Ex. PW12/D and sent the case property (knife and blood sample) to FSL. As per the MLC, the injury was grievous and caused by a sharp weapon. After completion of investigation, he filed the charge-sheet. He identified the case property, including clothes (Ex. P-1), mobile phone (Ex. PW11/Article 1), and knife (Ex. PW11/Article 2).

23. The cross-examination of PW-12 (SI Mahesh Kumar) reveals several material admissions and inconsistencies affecting the prosecution case. The witness admitted that only one person was injured and the initial PCR call was made by Nadeem, who in haste might have given incorrect information. He conceded that no alleged belt was recovered and that public persons were asked to join the proceedings but none agreed. He further admitted that the knife was not recovered from accused Irshad Ali @ Shakir but was produced by the CCL from his house, and that it was an ordinary vegetable cutting knife. He also acknowledged delay in collection of the blood sample of the injured, which was taken about 10–15 days after the incident and formally seized nearly two months later. He admitted that although he claimed

blood stains were present on the knife, the same were not mentioned in the seizure memo. Importantly, he stated that the injured Azharuddin had not named accused Kasim at any stage and that before the arrest of Irshad Ali @ Shakir, neither the injured nor his family members had disclosed the involvement of Kasim. He further admitted that even during investigation, accused Irshad Ali @ Shakir did not disclose the name of Kasim as an assailant. He also could not recall whether the complainant had appeared during bail proceedings of Kasim, though it was reflected in the bail order that Kasim was known to the complainant and resided in the same locality, and if involved, would have been named in the FIR. The witness denied suggestions of false implication, fabrication of documents, preparation of site plan at the police station, and tampering with case property, asserting that the seal remained intact and in custody of HC Ramvir. Overall, the cross-examination brings out lack of direct recovery from the accused, absence of independent witnesses, delay in crucial forensic collection, and non-naming of co-accused, thereby creating significant doubt in the prosecution version.

Statement of accused persons

24. After examination of all the witnesses, statement of both the accused under section 313 of Cr.P.C. has been recorded on 25.03.2026 to which they did not wish to lead defence evidence.

Findings and reasons

25. The eye witness in this case is PW-4 Azharuddin, who is also the injured. He deposed before the Court that about a year back, at around 10.00

p.m., he was standing on the ground floor of the building of his house. Accused Irshad Ali @ Shakir alongwith four-five associates, came and started abusing him. They also started giving kicks with their legs to the vehicle and motorcycle standing near the building of his house. PW-4 asked them to stop, but Irshad Ali @ Shakir and his associates started abusing him. They also manhandled him and scuffled with him, but local residents compelled them to go away. After 2–3 minutes, they returned. They surrounded PW-4 Azaruddin, and one of them stabbed him with a knife on the left side of his chest. Then someone called the police and one of the local residents took him to JPC Hospital. From JPC Hospital, he was referred to GTB Hospital, where his statement was recorded. He further deposed that he was seriously injured at that time and was facing difficulty in breathing. He further deposed that he had heard at that time that Irshad Ali @ Shakir had stabbed him, but he had not seen with his eyes, as they were many in number and had come in close association to him at that time. He correctly identified the accused Irshad Ali @ Shakir present in Court. He further deposed that accused Kasim resides in his locality, but he had not seen him at the time of the incident. He further deposed in Court that he knows accused Kasim, who was present in Court, but he was not the one who was involved in the incident against him. He further deposed in his cross-examination that he had not seen accused Irshad Ali @ Shakir stabbing him, but stated against him on the basis of information given by local persons.

26. PW-4 has specifically deposed that accused Irshad Ali @ Shakir arrived at the spot with four-five persons and they collectively assaulted him.

They again came together for the second time. This shows the common intention of the accused persons in the commission of the crime. Coming to the spot together, leaving the spot together, and again coming to the spot together shows the common intention of the accused persons in the commission of the crime. All the accused persons collectively surrounded him and assaulted him with the knife thrice. This further establishes the common intention on the part of the accused persons. Knife blows were inflicted upon the victim, although the witness could not specifically identify which accused delivered the knife blow as he was attacked together by the assailants and, therefore he could not specifically state which accused had given the knife blow.

27. However, this does not dilute the case of the prosecution. The material aspect is pre-arranged participation and coordination of all the accused persons, including Irshad Ali @ Shakir. PW-4 has specifically deposed that Irshad Ali @ Shakir arrived along with the co-accused persons. The act of arriving together, surrounding the victim together, and assaulting him together clearly shows a common intention to cause such bodily injury which was likely to cause death. The surrounding of the victim together, itself indicates preparation and facilitation of the assault, thereby making them equally liable. Further, each of them can be imputed with knowledge that such injury may cause death. An average man knows that stabbing a person on vital body part can cause death.
28. In such circumstances, Section 34 IPC, relating to common intention, clearly applies. It is not necessary for the prosecution to prove the specific overt act of each accused when a criminal act is done in

furtherance of the common intention of all. The participation and conduct of accused Irshad Ali @ Shakir clearly establish that he shared common intention with the other co-accused. Hence, even if Irshad Ali @ Shakir himself did not inflict the knife injury, he is vicariously liable for the said act.

29. Further, PW-4 received grievous injuries and is an injured witness. There is no plausible explanation as to why an injured person would try to save the real culprits or falsely implicate the accused persons. The injuries of the victim establish his presence at the spot. The MLC shows that the offence had actually taken place and corroborates the prosecution case. It is further mentioned in the MLC that he was physically assaulted by known persons.
30. It is observed by Hon'ble Supreme Court of India in the judgment of '**Rajan Vs. State of Haryana (Criminal Appeal No. 3904/2025, Crl. 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."

*34. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence. (See *Balu Sudam Khalde and Another v. State of**

31. Further, it is argued that PW-4 deposed in the Court that Irshad Ali @ Shakir came along with four-five persons, while in the FIR it is mentioned that accused Irshad Ali @ Shakir came with two of his co-accused. However, it is a settled principle of law that an FIR is not an encyclopedia of the facts of the case, but only a document which sets the criminal law into motion.
32. Minor discrepancies between the FIR and the deposition before the Court are not fatal unless they go to the root of the prosecution case. Further, the FIR is used for the purpose of corroboration or contradiction of the witness. In the present case, it needs to be analyzed whether this discrepancy is a material contradiction or merely a natural discrepancy. The FIR may be lodged in a state of shock and confusion, especially in cases where the injured has received grievous injuries. The witness, being under distress and injured, may not have been in a position to accurately state the number of assailants at that time and may, during trial, upon reflection and recollection, may state the same more clearly. A more detailed and accurate version may emerge during the course of the trial.
33. Mere variation in the number of accused may not discredit the case of the prosecution. What is material are the consistencies regarding the role of the accused who has been identified and put to trial.
34. Further, the purpose of prior statements under Section 161 Cr.P.C, or the FIR, is to contradict or corroborate the witness. This contradiction was not put to PW-4 in his cross-examination. This discrepancy could have been explained by the witness himself if it was put to him.

Further, it has not been explained by defence that, if this discrepancy was material one, why it was not put to the witness in cross-examination.

35. It is further argued that in the FIR it is not mentioned that Irshad Ali @ Shakir returned to the spot along with the other accused persons. As already observed above, FIRs are generally lodged in a state of shock and confusion, hence, discrepancies between the FIR and deposition in Court may appear. Further, the fact that the accused had returned again, was not put to the witness in cross-examination, had it been put to him he could have explained it.
36. It is further argued that in the FIR it is mentioned that a knife blow was given on his abdomen, whereas in his testimony before the Court as PW-4, he stated that he was given an injury on his chest. However, a perusal of the testimony of the doctor (PW) shows that victim received injuries on his left upper quadrant region, injuries are three in number. The left upper quadrant region of the body includes both the upper abdomen as well as the lower part of the chest. Hence, there is no discrepancy in the statements at all. It covers the area of the chest towards the left side as well as the area slightly below the chest, thereby covering both the chest and abdomen.
37. PW-5 Salimuddin is the real brother of PW-4 Azhruddin. He specifically deposed that he received call from his mother on his mobile number i.e. 8826XX2674 that a quarrel has taken place outside his house involving his brother and asked him to come immediately. He reached on foot at the spot where he saw public persons had assembled. He was stated by public person that his brother Azharuddin has been

- stabbed and he was taken to JPC Hospital. He made call at 100 number from his mobile.
38. His version is supported by Ex.PW1/A which is GD Entry No. 68A dt. 30.06.2024 at 22.12 hours wherein it is mentioned that someone has attacked both his brothers with knife. This shows that PW-5 reached at the spot and made 100 number call. GD entry number bears the mobile number of PW5 Salimuddin.
39. There is an argument by Ld. Defence that when PW5 was not at the spot and is not an eye witness, why the site plan was prepared at his instance. However, it is deposed by him that he had reached at the spot and had seen the spot where his brother was lying, thereafter, he made call to police. Hence, IO was justified in getting the spot identified from him and preparing the site plan at his instance instead of his brother PW-4 who he was unable to move due to his injuries.
40. It is argued that it was deposed by PW5 in his cross examination that for next two days, he remained in JPC Hospital. He has also mentioned that he has shown the place of incident to IO. It is further argued that if he was in the hospital for two days, it is not stated by him when he went with IO to the spot. However, the witness has specifically stated that he has shown the place of incident to IO. If further clarification on this aspect was required which was material for defence, it was expected from defence to ask this question from this witness but no such question was asked from PW-5. When any such question was not asked from a witness, it cannot be expected from Court to draw any adverse inference at the time of final arguments. Further, if there was

any discrepancy in the statement of PW5 and in his section 161 Cr.P.C, the same should have put to the witness in cross examination.

41. Further, as per FSL report Ex.PW6/A and PW6/B the blood was matched on the basis of DNA. The blood on the *baniyan* of accused matched with that of injured. Further, as per MLC, the nature of injury is grievous. As per MLC, there are three stab wounds of size i.e. (a) 3 x 1 cm, (b) 2.5 x 1 cm and (c) 2 x 0.5 cm, the same is proved by PW-8 Dr. Kartik. FSL report is proved by Scientific Expert PW-6 Lokesh Kumar. It is further submitted that there is public witness to the recovery of knife, however, the knife was recovered from CCL 'A' and not from accused in the present case.
42. It is further submitted that there is no public witness to the arrest of accused Irshad Ali @ Shakir. However, only because there was no public witness to the arrest of accused, it cannot be said that the arrest is not valid or proper. The police witnesses have specifically deposed about the arrest and the manner of arrest. Further, injured PW-4 has named accused Irshad Ali @ Shakir in the FIR, hence even if it is presumed that there is some irregularity regarding the arrest, it does not affect the case of prosecution on merits as he is named in the FIR and known to PW4 and prosecution has been able to prove their case against him.
43. It is argued that the knife with which victim was injured and is recovered in the present case is a normal vegetable cutting knife and

hence it cannot be called a dangerous weapon. However, merely because the weapon used was a vegetable cutting knife, it cannot be said that the same was not a dangerous weapon. The determinative factor is not the ordinary use of the weapon, but the manner in which it is used. A knife, though ordinarily used for domestic purposes, when used to inflict injuries on a human body, it becomes a deadly weapon. In the present case, the weapon was used in a manner capable of causing death. Thus, only because the nature of the weapon used was a vegetable knife, this itself does not weaken the case of prosecution.

44. It is further submitted argued that the offence is not made out u/s 307 IPC as they had no intention to kill him. However, accused persons left the spot after initial quarrel and they came back again. They together surrounded PW4 Azharuddin and one of them stabbed him. The act of arriving together, surrounding the victim together and assaulting him together with knife, by giving multiple stabs on / near chest and abdomen, shows a common intention to cause such bodily injury which they knew was likely to cause death. Any injury on abdomen or chest may prove to be fatal to the victim. Hence accused Irshad Ali @ Shakir is hereby convicted for the offence u/s 307/34 IPC.
45. As far as accused Kasim is concerned, it is stated by PW4 Azharuddin that he knows accused Kasim but he was not involved in the incident against him. In the circumstances, accused Kasim is hereby acquitted for the charge offence.

Conclusion :

46. In the overall circumstances of the case, accused Irshad Ali @ Shakir is hereby convicted for the charge offence u/s 307/34 IPC. Further, accused Kasim stands acquitted for the charged offence.

Announced in Open Court
as on 29.04.2026

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