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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment dated: 12th May, 2016**

+ **CRL.A.348/2000**

JAHANGIR KHAN

..... Appellant

Through : Mr. R.M. Tufail with Mr. Vishal Raj
Sehijpal, Mr. Farooq Chaudhary and Ms.
Meenakshi Joshi, Advocates

versus

STATE(NCT OF DELHI)

..... Respondent

Through : Ms.Aashaa Tiwari, APP for the State with
SI Suresh Kumar, P.S. Rajouri Garden.

+ **CRL.A.489/2000**

FIRASAT ALI & ANRS.

..... Appellants

Through : Mr. R.M. Tufail with Mr. Vishal Raj
Sehijpal, Mr. Farooq Chaudhary and Ms.
Meenakshi Joshi, Advocates

versus

STATE(NCT OF DELHI)

..... Respondent

Through : Ms.Aashaa Tiwari, APP for the State with
SI Suresh Kumar, P.S. Rajouri Garden.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present appeals arise out of a common judgment dated 30.05.2000 and order on sentence dated 31.05.2000 passed by the learned Additional Sessions Judge, Delhi, in Session Case No.102/97, FIR No.856/96 registered under Sections 452/302/307/324/34 of the Indian Penal Code and 25/27/54/59 of the Arms Act at Police Station Rajouri Garden. Appellant Jahangir Khan has been convicted under Section 452/34 of the Indian Penal

Code and sentenced to undergo rigorous imprisonment for a period of two years and also to pay a fine of Rs.1,000/-, in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.

2. The appellants Firasat Ali and Shah Nawaz have been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs. 2000/- each, in default of payment of fine, to further undergo rigorous imprisonment for a period of three months each. Appellant Firasat Ali has further been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,500/-, in default of payment of fine, to further undergo rigorous imprisonment for a period of two months. The appellants Firasat Ali, Arshad Ali and Shah Nawaz have been further convicted under Sections 452/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of two years each and also to pay a fine of Rs.1,000/- each, in default of payment of fine, to further undergo rigorous imprisonment for a period of two months each. It was directed that all the sentences to run concurrently.
3. We are informed that Arshad Ali has expired during the pendency of the appeal.
4. Both the appeals have been heard together and are being disposed of by a common judgment. The case of the prosecution is as under:

“2..... on 27.9.1996, SI Ramesh Kumar Incharge Police Post Raghbir Nagar on receipt of copy of DD No.14 Ex.PW 6/A reached DDU Hospital along with Head Constable Uday Singh and Constable Tulsi Ram and Yashbir Singh for investigation. There he obtained the MLC of the injured Ishtiaq Ahmed @ Pappu and Riyasat. Both the injured were in the operation theatre and their injuries were opined to have been caused by sharp edged weapon and those were kept under observation. Sharafat Ali brother of the injured met SI Ramesh Kumar in the Hospital and since he claimed himself to be eye witness

of occurrence, his statement was recorded by the SI which is Ex.PW 1/A.

3. In the said statement Shri Sharafat Ali aged 32 years told the police that he was residing at K-373, 374, 25 Sq. Yds Raghbir Nagar along with his six brothers on rent and was dealing in old clothes. They hail from Muradabad. In the second street in their neighbourhood Firasat Ali, Arshad Ali and Shah Nawaj, the three brothers are also residing in Muradabad and they also are dealing in old clothes in Delhi and are residing at Raghbir Nagar, Delhi.

4. At about 5.00 am, all the brothers had gone to purchase old clothes at old cloth market Ghore Wala Mandir. There their neighbour at Muradabad, Shah Nawaz had also come to purchase clothes. He then started purchasing an old saree of Rs.100/-. On this his brother Ishtiaq @ Pappu had said that he could give the saree for Rs.80/-. On this Shah Nawaz had uttered that they would take everything from him together and further told him that he would see the things outside. On this his younger brother Riyasat @ Bhura had said that he was quite young still and so let his older brother come there and then things could be talked about. After doing the purchase they all the brothers had gone to their house and Shah Nawaz had gone to his house.

5. It is further in the statement of Sh. Sharafat Ali that today at about 4.30 p.m. they all the brothers were taking rest in the room. In the meantime, Shah Nawaz along with his two brothers Firasat or Arshad Ali and one associate Jahangir Khan who also was dealing in old clothes came to their room. All the three brothers were holding knives in their hands and all the four uttered "MARO SALO KO" i.e., attack them. His younger brother Ishtiaq @ Pappu was in the bathroom. Firasat Ali and Shahnawaz immediately attacked Pappu on his neck and chest with knife. Due to the knife blows Pappu had fallen in the bathroom while bleeding profusely. Thereafter all the four proceeded towards the other brothers. Jahangir caught hold of his other brother Bhura and Arshad Ali had attacked Bhura on his chest with knife. When his other brother Dabbu tried to save him, Arshad Ali attacked Dabbu also with knife on his shoulder. Due to the fear, he closed his room by holding the latch and started uttering "BACHAO BACHAO" i.e., "save, save.". After hearing the noise all the four fled away from there. He had brought his injured brothers to the DDU Hospital. Shah Nawaz, Arshad Ali, Firasat Ali and Jahangir in furtherance of their common intention has had murderous assault

on his three brothers after entering into their house. He requested the police to take action against them.

6. *On the above statement of Shri Sharafat Ali, SI Ramesh Kumar recorded his endorsement Ex.PW 20/A and got a case under Sections 452/307/324/34 IPC registered and took up the investigation.*

7. *During investigation, SI Ramesh Kumar recorded the statements of the witnesses, inspected the spot got the scene of crime photographed and also got the site plan prepared. He also took the blood sample and earth control and other exhibits into possession from the spot.*

On 29.9.1996, accused Firasat Ali and Arshad Ali were arrested. During their interrogation, they both made disclosure statements which were recorded. On the pointing out of the accused, the blood stained clothes and weapon of offence i.e., knives were recorded. SI Ramesh Kumar prepared the sketch of the knives and put them into parcels and took them into possession by making a recovery memo. Section 25/27/54/59 Arms Act were also then added in the case. Dabbu after getting first aid from the DDU Hospital left the same without getting his MLC prepared. The blood stained clothes were also put in separate pullandas and were taken into possession. On 30.9.96 SI Ramesh Kumar recorded the statement of injured Riyasat @ Bhura, after he was declared fit to make a statement. Accused Jahangir Khan was also arrested in this case.

8. *On 8.10.96 injured Ishtiaq Ahmad @ Pappu had died in the DDU Hospital and thereupon section 302 IPC was invoked in this case. SI Ramesh Kumar got proceedings under sections 174 Cr.P.C done regarding deceased Ishtiaq Ahmed @ Pappu. Thereafter his post mortem was got done at DDU Hospital. On 14.10.96 accused Shah Nawaz surrendered in the court of Metropolitan Magistrate and he was arrested. SI Ramesh Kumar also got scaled site plan prepared from the draftsman of crime branch, Delhi. The SI also got the opinion of the doctor regarding the injuries received by deceased Ishtiaq Ahmad @ Pappu after showing the weapon of offence to him and thereupon the doctor had opined that the possibility of the injuries having been caused by that weapon could not be ruled out. The exhibits collected in this case were sent to CFSL for test and report. MLC of Riyasat @ Bhure was deposited in the DDU Hospital for opinion regarding the nature of injury received by him and the opinion of the doctor was obtained. After the completion of the investigation, charge sheet was filed in the court.*

9. *Charge under section 302 IPC was framed against accused Firasat Ali and Shah Nawaz. Another charge under sections 307/34 IPC was framed against accused Arshad Ali and Jahangir Khan. Charge under section 452/34 IPC was framed against all the four accused while separate charge under section 324 IPC was framed against accused Arshad Ali. Charge under Section 25/27/54/59 of Arms Act was also framed against accused Arshad Ali and Firasat Ali. All the accused persons pleaded not guilty to the respective charges and claimed to be tried.”*

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5. Mr. Tufail, learned counsel appearing on behalf of the appellant Jahangir Khan submits that as far as the order on conviction of Jahangir Ali is concerned, the same is not pressed, but as far as the order on sentence is concerned, he submits that considering the role which has been ascribed to this appellant, the order on sentence should be modified to the period already undergone. He submits that in this case, the prosecution had relied upon the testimonies of eye witnesses being PW-1 Sharafat Ali, PW-2 Akram, PW-3 Bablu, PW-4 Dabbu, PW-5 Riyasat, PW-7 Mohd. Ikram and PW-10 Vijay Kumar, though PW's 3, 4, 5, 7 and 10 have turned hostile, but the testimonies of PWs-1 and 2 would show that the appellant Jahangir Khan was not related to the other co-accused, the appellants herein and he was merely present at the spot of the incidence as per the prosecution.
6. It is contended that it is not the case of the prosecution that Jahangir Khan was armed with any weapon or Jahangir Khan inflicted any injury on the deceased Ishtiaq @ Pappu and the act of catching hold of Riyasat @ Bhura by Jahangir has also not been proved inasmuch as that this appellant stands acquitted under Sections 307/34 and thus since the offence under Sections 307/34 of the Indian Penal Code has not been proved, the Trial Court did not appreciate the evidence in the right perspective in convicting the appellant Jahangir under Section 452/34.

7. In response to the submissions made by Mr. Tufail, Ms. Aashaa Tiwari, learned counsel appearing on behalf of the State submits that the presence of Jahangir Khan stands established. It is also established by the testimony of PW-1 that the appellant Jahangir Khan had caught hold of Riyasat @ Bhura when Arshad Ali had inflicted the knife injury on the left side under the shoulder. It is contended that since the presence of the appellant Jahangir Khan was proved, Section 452 of the Indian Penal Code would be applicable.

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8. As far as the appellants Firasat Ali and Shah Nawaz are concerned, Mr. Tufail submits that the judgment of the Trial Court is based on surmises and conjectures. Counsel submits that the appellants are peace loving citizens and they have been falsely implicated by the prosecution. It is also contended that the material witnesses, whom the prosecution had cited as eye-witnesses, have turned hostile and they have not supported the case of the prosecution. There are material discrepancies in the statements of PW-1 Sharafat Ali and PW-2 Akram. It is also contended that as per Dr. Komal Singh (PW-11), who conducted the post mortem, the cause of death is septicemia of the wounds which were sustained seven days back. Thus, counsel contends, it cannot be said that the death was a result of any injuries caused by the appellants herein.
9. Ms. Aashaa Tiwari, learned counsel for the State submits that the evidence of PW-1 and PW-2 clearly established the presence of the appellants at the place of the incident. Specific role has been ascribed to them. The injuries were caused with a knife which was recovered at the instance of the appellant Firasat Ali. She further submits that the cause and motive also stand established as the parties had met at the market on the fateful day at 5:00 a.m. in the morning and the appellants had come to the house of the

deceased at about 4:30 in the evening armed with knives. She submits that the dispute between the parties were with respect to the price of *sarees*. Since the deceased did not accede to the request of the appellants, the appellants had entered the house of the deceased and caused injuries. Counsel further submits that the clothes of the deceased containing blood and the clothes of the appellants were seized and sent to the FSL for comparison. Although the result has been inconclusive, but human blood was found on them. Counsel has drawn the attention of the Court to the endorsement Ex.PW-20/G on an application Ex.11/B wherein it has been endorsed that the possibility of injuries caused by weapon no.856/96 cannot be ruled out. She further submits that the septicemia was the result of injuries inflicted on the deceased and, thus no benefit can accrue to the appellants in this case.

10. We have heard the learned counsel for both the parties and considered their rival submissions and perused the impugned judgment as well as the material available on record.
11. Before we deal with the rival submissions of the counsel for the parties, we deem it appropriate to refer the testimonies of some of the material witnesses in detail. The case of the prosecution rests on the testimonies of PW-1 Sharafat Ali and PW-2 Akram.
12. PW-1 Sharafat Ali in his testimony deposed that he knew the accused persons present in the court as they were also resident of Moradabad in his neighbourhood. He used to reside in House No.373-374, Raghbir Nagar, Delhi. PW-1 testified that he used to deal in old sarees/clothes. He testified that on 27.9.96 at about 5:00 a.m., he along with his brothers Bhura @ Riyasat, Babloo @ Aslam, Akram went to the Ghoda Wali Market, Old Cloth Market to purchase old sarees. The appellant Shah Nawaz met them there who gave a call that he could sell the silk saree for

Rs.100/- to his brother and to this my brother Ishtiaq replied that he could sell the same saree for Rs.80/-. On this the appellant Shah Nawaz asked his brother that he would take everything collectively. The brother of PW-1 asked PW-1 to wait till the elder brother of Shah Nawaz came. PW-1 testified that thereafter we came to our house after purchasing the clothes. PW-1 testified that at about 4:30 p.m., when he was taking rest along with his brother Bhura at his house the appellant Shah Nawaz, Firasat Ali, Arshad and Jahangir came to their house. He testified that his brother Ishtiaq @ Pappu was taking bath in the bathroom. The appellants were armed with knives. Appellant Firasat and Shah Nawaz caused injury on the neck with knife and also caused injury on other part of the body as a result of which his brother started bleeding from various parts of the body. His brother Bhura was caught hold by appellant Jahangir and appellant Arshad inflicted injury with knife on the left side under his shoulder. When his brother Pappu came to rescue, appellant Arshad gave a knife blow on the left side back of the shoulder as a result of which he sustained injury. Thereafter, when PW-1 made a noise, all the appellants ran away from the place of incidence. He took his brother in the injured condition to DDU Hospital with the other injured Ishtiaq. He testified that at about 6:30 p.m., In-charge of the police post came to the hospital who recorded his statement Ex.PW1/A which bears his signature at point 'A'.

13. PW-1 has also testified that the appellants Arshad and Firasat were interrogated in his presence and their blood stained shirts were taken into possession vide memo Exhibit PW-1/D and E.
14. PW-1 was cross-examined at great length and his testimony remained unshaken. During cross-examination, PW-1 has testified that he used to visit the premises of the appellants prior to the alleged incident. PW-1 has denied the suggestion that no abuse or quarrel took place in the market.

Also during cross-examination, he has categorically deposed that he had seen the appellants stabbing the deceased, brother Pappu, with knife (*churi*). Amongst other things, PW-1 has also stated that he did not come to the rescue of his brother as he was frightened.

15. PW-2 Akram in his testimony deposed that the deceased was his cousin brother. He also identified the appellants in Court as they were related to him. On 27.9.1997, at about 5.00 a.m. he was present at old kapra mandi along with his brother Shahnawaz to purchase old sarees in the cloth market. Shahnawaz was calling customers and selling sarees at the rate of Rs.100/-. PW-2 has also deposed that the deceased had told Shahnawaz that he could purchase sarees from him at the rate of Rs.50/- per saree. Shahnawaz asked the deceased to come out of the market. In the meanwhile, brother of Shahnawaz came there and asked him not to entangle himself with him and the matter would be discussed with the elder brother of the deceased. Thereafter, they all were dispersed and went to their house.
16. PW-2 has also testified that at about 4.30 p.m. all the appellants came to their house and they started quarreling and beating them. He has further deposed that Firasat Ali, Shahnawaz and Arshad, whom PW-2 has identified in Court had caused injury to his brother Pappu with a knife. After an alarm was raised by his elder brother Sharafat Ali all the appellants ran away. The deceased was taken to hospital by his brother Sharafat.
17. PW-2 was also cross-examined at length. We do not find anything in his cross-examination, however, when this witness was recalled for cross-examination he stated that he did not know whether Jahangir had caught hold of Bhure or not.

18. We may notice that PW-3 Bablu, PW-4 Dabbu, PW-5 Firasat, PW-7 Mohd. Ikram and PW-10 Vijay Kumar claimed that they were present at the spot and testified that injuries were caused to their deceased brother but they have failed to identify the persons who caused the injuries.
19. PW-11 Dr. Komal Singh, CMO, Sanjay Gandhi Memorial Hospital conducted post mortem on the body of the deceased Ishtiaq @ Pappu. His testimony reads as under:

“On 9.10.96 at 1.10 P.M. I conducted a post mortem on the body of deceased Istyak Ahmed @ Pappu. On external examination there were was (i) one gangrenous on the left elbow and forearm about 15 c.m. x 4 c.m.

(ii) 5 cm x 2 cm on the left arm having pus and granulation tissue.

(iii) stitched surgical wound from epigastric towards umbicus vertically placed 8 cm size granulation tissue present on his edges.

(iv) stitched wound on the left side of the chest 3 cm in size granulation tissue present and partially healed. Granulation

(v) Partially healed wound on the left side of the neck near stern mastoid.

(vi) partially stitch and healed wound obliquely placed over the neck 3 cm x 2 cm size.

(vii) Stitch wound on the left index finger.

Opinion - The cause of death is septicemic shock caused by the sustained wounds seven days back. All injuries are ante mortem and are of same duration. My report is Ex.PW11/A which bears my signature at point B.

On 4.12.96 one application was received from the IO of this case for giving re-opinion on the use of weapon. I requested to seek opinion regarding weapon of offence from the treating Surgeon. My endorsement is Ex.PW11/B which is signed by me.”

20. During cross-examination, he stated that *“septicemia means presence of bacteria in the blood following the wound infection. Cause of infection could be many including non sterilization of the instrument used or unhygienic conditions around the patient or some visitors bringing with him the cause of infection. It is correct that the patient Ishtiaq now*

deceased was operated in the hospital. It cannot be said that the instrument were not sterilize in the hospital and that could have caused infection to the Ishtiaq as I am personally sure that the instruments are properly sterilized in the hospital because they are used in the Surgery. It is correct that I was not a part of the surgery team who operated the Ishtiaq.”

21. PW-1 Sharafat Ali has testified that at about 4:30 p.m., when he was resting along with his brother Bhura at his house the appellants Shah Nawaz, Firasat, Arshad and Jahangir came to his house. His other brother Ishtiaq @ Pappu was taking bath. The appellants were armed with knives. He has categorically testified that appellants Firasat and Shah Nawaz have caused injury on the neck of Ishtiaq @ Pappu. The only role ascribed to the appellant Jahangir Khan is that he had caught hold of Bhura. Although when PW-2 was recalled for cross-examination he testified that he had seen Jahangir at the place of occurrence and he was standing there but he did not know as to what he had done. In his cross-examination by the learned APP, PW-2 stated that he did not know whether Jahangir had caught Bhure or not. We may notice that a charge under Sections 307/34 of the Indian Penal Code was also framed against the appellant Jahangir Khan but the Trial Court has acquitted this appellant for the offence under Sections 307/34 of the Indian Penal Code.
22. Having regard to the very limited role played by the appellant Jahangir Khan and that primarily he has been convicted by virtue of his presence at the spot, we are of the view that it is a fit case where the order on sentence of the appellant Jahangir Khan be modified to the period already undergone. We ordered accordingly.
23. The appeal being CrI.A. 348/2000 is partly allowed. Bail bonds be cancelled.

24. In addition to the eye witnesses, the prosecution has also examined formal witnesses. On analysis of the testimonies of the witnesses, more particularly, PW-1 Sharafat Ali and PW-2 Akram it stands established that on 27.09.1996 at about 5:00 a.m., Bhura @ Riyasat, Babloo @ Aslam and Akram had gone to Ghoda Wali Market (Old Cloth Market) to purchase old sarees. The appellant Shah Nawaz had met them and he had called out that he could sell the silk saree for Rs.100/- to the brother of PW-1 while his brother Ishtiaq replied that he could sell the same saree for Rs.80/-. Shah Nawaz had asked his brother that he would take everything collectively. In response thereto, PW-1's brother Riyasat @ Bhura had asked him (PW-1) to let the elder brother Shah Nawaz come. This conversation between appellant Shah Nawaz and deceased Ishtiaq @ Pappu stands corroborated by the testimony of PW-2 Akram as well. PW-2 has also testified on the lines of PW-1. Both PW-1 and PW-2 have also testified on identical lines with respect to the time of the incident which is about 4:30 p.m. Both PW-1 and PW-2 have testified that the accused persons being appellants herein had come to their house and started beating their brother. PW-1 has testified that the appellants were armed with knives. Firasat Ali caused injury on the neck and other parts of the body of his brother who started bleeding from various parts of the body. Although both PW-1 and PW-2 were cross-examined at length on various aspects, however, we are of the view that testimonies of PW-1 and PW-2 are truthful and there is nothing to show that PW-1 and PW-2 were inimical to the appellants or that they had any motive to falsely implicate them. We also find that the weapon of offence being the knife was recovered and then seized at the instance of the appellant Firasat Ali. We also find that a opinion was sought from the Autopsy Surgeon, DDU Hospital by making an application Ex.PW-11/B

and the opinion was made vide endorsement Ex.PW-20/G. The endorsement reads as under:

“The possibility of the injury caused by the weapon No.856/96 u/s 302, 307, 324/34 IPC cannot be ruled out.

*Sd/-
9.12.96”*

25. Testimony of PW-20 SI Ramesh Kumar would show that the seized articles were sent to FSL for opinion. The opinion was received being Ex.PW-20/H. Although as per the opinion, human blood was found on the clothes, the earth control had AB Group which matched with the blood group of the deceased whose underwear also had AB blood Group and so did the blood stains were. Other than that, although human blood was found on the article, but there was no reaction and the result was inconclusive. The submission of the learned counsel for the appellants that the deceased had not died on account of injuries but on account of septicemia, in our view, is without any force as PW-11 Dr. Komal Singh had opined that the septicemia shock was caused by the wounds sustained seven days back. We find that there is no infirmity in the judgment of the Trial Court on the order of sentence with respect to the appellants Firasat Ali and Shah Nawaz.
26. Accordingly, the appeal being CrI.A.489/2000 of the appellants Firasat Ali and Shah Nawaz stands dismissed. The appellants would surrender before the Superintendent Jail concerned within four weeks from today.
27. As already observed above, the appeal being CrI.A.348/2000 has been partly allowed, order on sentence of the appellant Jahangir Khan is modified to the period already undergone and bail bonds qua this appellant stands cancelled.

28. Crl.A.348/2000 stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 12, 2016

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