

## Nizamuddin and Others Vs State of Delhi

**Court:** Delhi High Court

**Date of Decision:** May 10, 2011

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 157, 174, 313  
Penal Code, 1860 (IPC) â€” Section 302, 34

**Citation:** (2011) 180 DLT 312

**Hon'ble Judges:** S. Ravindra Bhat, J; G.P. Mittal, J

**Bench:** Division Bench

**Advocate:** Keshav Kaushik, Kanica and Govind Narayan Kaushik, for the Appellant; Jaideep Malik, APP, for the Respondent

**Final Decision:** Dismissed

### Judgement

G.P. Mittal, J.

This appeal is directed against the judgment dated 26.11.1997 and the order of sentence dated 28.11.1997 passed by the

learned Additional Sessions Judge (Trial Court) whereby the three Appellants (Nizamuddin, Sirajuddin and Riazuddin) were convicted for the

offence punishable u/s 302 read with Section 34 Indian Penal Code (IPC) and sentenced to undergo imprisonment for life and to pay a fine of Rs.

1,000/ each. In default of payment of fine they were further directed to undergo RI for two months each.

2. During the pendency of this appeal Appellant-Riazuddin died on 29.08.2010. His death certificate was filed; verification in respect of his death

was made and proceedings against him were ordered to have abated by the order of this Court on 14.03.2011.

3. This case was registered on a statement Ex.PW7/A made by PW-7 Sahajuddin. It is alleged that the families of Appellant Nizamuddin and

deceased Jafruddin were not having cordial relations. On 02.03.1995 at about 8:30 p.m. Sahajuddin (PW-7) was on his way back home from the

tailor's shop where he had gone to collect his shirt due to the Eid festival next day. When PW-7 reached near his house he met his father (the

deceased) outside the house. The deceased inquired from him if he had quarreled with the sons of Nizamuddin on that day as Nizamuddin's wife

had complained against him (PW-7). PW-7 replied in the negative and informed the deceased that he was just returning from the tailor's shop.

While this conversation was on between father and the son (the deceased and PW-7), Nizamuddin came running from his house, holding a big

Chhuri in his right hand. Nizamuddin while hurling abuses at him gave a Chhuri blow at the deceased's back. In the meantime Riazuddin and

Sirajuddin, brothers of Appellant Nizamuddin also reached the spot. Riazuddin was armed with a big Chhuri. On seeing them the deceased ran

towards the gali but Appellant Sirajuddin over powered him, and caught hold of his hands, whereas Nizamuddin and Riazuddin repeatedly inflicted

injuries with Chhuries. The deceased and PW-7 raised an alarm, attracting PW-9 (Rahimuddin) and some other persons from the street to the

spot. The Appellants fled the spot. The deceased fell down on the ground in a pool of blood. Rahimuddin (PW-9) removed the deceased to Jaipur

Golden Hospital in a TSR where Dr. Archana Varshneya (PW-6) declared him ""brought dead"".

4. DD No. 22/A Ex.PW4/B recorded in police station Mangolpuri, on receipt of information from the PCR operator (that some persons had given

knife blows to a man at House No. 139, Gali No. 3, Mangolpuri) was assigned to PW-10 SI Ishwar Singh who proceeded to the spot. In the

meanwhile another information was received at the police station that the stabbing incident may also be checked at house No. F-2/150 at

Mangolpuri. This was recorded in the police station by DD No. 23/A marked as Ex.PW-4/C and forwarded to SI Ishwar Singh (PW-10) through

PW- 8 Constable Sushil. The additional SHO was also intimated about this DD entry; he left for F-2/150, Mangolpuri.

5. Another DD Entry No. 24/A was recorded in the police station at 9:35 p.m. that Jafruddin son of Ashraf Ali R/o F-2/150, Mangolpuri had

been admitted as ""brought dead"" in the hospital by his brother Rahimuddin. A copy of this DD entry was forwarded to PW-10 SI Ishwar Singh

through constable Somnath. The SHO of the police station was also informed about the information recorded by DD Entry No. 24/A Ex.PW-4/D.

6. PW-10 SI Ishwar Singh while proceeding to F-2/150 Mangolpuri noticed blood lying in front of house No. F-2/185-186 Mangolpuri. A crowd

had also collected there. On enquiry it was revealed that the injured was taken to Jaipur Golden Hospital. In the meanwhile PW-18 Insp. Arun

Sharma also reached the spot. SI Ishwar Singh and Insp. Arun Sharma along with some police constables reached Jaipur Golden Hospital. Insp.

Arun Sharma collected MLC Ex. PW 6/A of deceased Jafruddin where he was declared ""brought dead"".

7. Sahajuddin son of the deceased Jafruddin was available in the hospital. Inspector Arun Sharma (IO) recorded his statement Ex. PW-7/A and

made his endorsement for registration of the case. PW-18 Insp. Arun Sharma accompanied by PW-10 SI Ishwar Singh reached the hospital

mortuary and conducted inquest proceedings. SI Ishwar Singh and Inspector Arun Sharma returned to the spot. Constable Sushil Kumar returned

to the hospital along with a copy of the FIR which was handed over to Inspector Arun Sharma. The scene of incident was photographed, a blood

sample with the help of cotton wool/swab, blood stained earth and control earth were lifted from the spot and sealed separately with the seal of

AK.

8. At about 3:00 a.m. the police party, led by PW-18 Inspector Arun Sharma reached the police picket at Outer Ring Road, Mangolpuri in search

of the culprits. On the basis of secret information the Appellants Nizamuddin and Sirajuddin were arrested when they were sitting at the DESU

Office, Mangopuri Industrial Area. Appellant Nizamuddin made a disclosure statement Ex.PW-10/C and in pursuance of the statement two

Chhuries Exs.P-1 and P-2 were recovered from junk in the workshop situated at F-2/18 Mangolpuri. They were photographed (Ex.PW/11/6 to

Ex.PW/11/10). The two Chhuries were recovered and their sketches Exs.PW-9/D and PW-9/E were prepared. Both the Chhuries were blood

stained. The blades of the Chhuri were wrapped with cotton wool and the Chhuries seized by the IO. Appellant Riazuddin since deceased

surrendered in the Court.

9. Appellant Riazuddin was arrested. He too made a disclosure statement Ex.PW-12/A and got recovered his blood stained shirt and pant from

his house, marked as Exs.P-7 and P-8 respectively. After completion of the investigation a challan was filed in Court.

10. The Appellants pleaded not guilty to the charge for the offence punishable u/s 302 read with Section 34 IPC.

11. In order to bring home the guilt of the Appellants, the prosecution examined 18 witnesses. PW-5 Dr. L.K. Barua, PW-6 Dr. Archana

Varshneya, PW-7 Sahajuddin, PW-9 Rahimuddin, PW-10 SI Ishwar Singh, PW-15 Constable Ramesh Chand and PW-18 Inspector Arun

Kumar are important witnesses for the purpose of disposal of this appeal.

12. PW-7 Sahajuddin is an eye witness of the occurrence. Since this witness was aged only about 15 years at the time of incident, the Trial Court

after satisfying itself that he was mature enough to understand the questions and give intelligible answers examined him on oath. He gave a detailed

account as to how the deceased was attacked firstly by Nizamuddin and followed by all the three together.

13. PW-9 Rahimuddin deposed that on 02.03.1995 at about 8:30 p.m. he was present at his house. He heard a noise from the gali. He went out

and saw that Appellants Sirajuddin had caught hold of his brother Jafruddin and the two other Appellants were attacking him with Chhuries. He

proceeded towards the ramp. All the three Appellants left his brother and escaped from the spot. He took Jafruddin to Jaipur Golden Hospital in a

three wheeler scooter where he was declared ""brought dead"". The witness also deposed about the arrest of Appellants Nizamuddin and

Sirajuddin, the disclosure statements made by them, recovery of Chhuries Exs.P-1 and P-2 at the instance of Appellant Nizamuddin.

14. PW-5 Dr. L.K. Barua performed autopsy on the dead body of Jafruddin. He found 15 injuries on the dead body of Jafruddin. He deposed

that injury No. 1 had entered the right side chest cavity through the 1st intercostals space and had cut the right lung on its upper lobe. Injury No. 2

had entered the chest cavity to the second inter-costal space. Injury No. 3, 4 and 5 all had entered the chest cavity (left) through the 1st, 2nd and

4th inter costal space and had cut the lung and also the heart. The depth of all these injuries could be approximately 5 to 6 cms. on the skin

surface. The both sides chest cavity were full of liquid and clotted blood. Out of three injuries of external injury No. 11, two had entered the chest

cavity, one between the 5th and 6th and other between 6th and 7th rib. Both the injuries had cut the lungs from the back. He opined that injuries

No. 1,2,3,4,5 and 11 were individually sufficient to cause death in the ordinary course of nature.

15. PW-6 Dr. Archana Varshneya from Jaipur Golden Hospital, Rohini deposed that on 02.03.1995 at about 9:15 p.m. Jafruddin son of Ashraf Ali

was brought to the hospital by his brother Rahimuddin with the history of stab wounds on the chest and on the whole body. After examination the

patient was declared ""brought dead"" by her.

16. PW-10 SI Ishwar Singh had been assigned DD No. 23-A Ex.PW-4/C. He reached the spot F-2/185-186 Mangolpuri, and noticed the blood

lying there. He along with PW-18 Inspector Arun Sharma (who had also reached the spot in the meanwhile) went to Jaipur Golden Hospital. The

SI obtained the MLC of the injured. He deposed about the recording of the statement of the complainant PW-7 and forwarding it to the police

station for registration of the FIR. He also deposed about the arrest of the three Appellants including deceased Riazuddin, making of the disclosure

statements and recoveries of blood stained clothes and Chhuries.

17. To the same effect is the testimony of PW-18 Inspector Arun Sharma.

18. The Appellants were examined u/s 313 Code of Criminal Procedure They denied the prosecution's allegations and claimed innocence. They

took the plea that deceased Jafruddin owed a sum of ` 5,000/- to the Appellant Nizamuddin. They stated that Nizamuddin had also rejected the

proposal of marriage of Jafruddin's sister with his (Nizamuddin) brother Appellant Sirajuddin. The deceased and his family members were

annoyed with the Appellants and therefore they were falsely implicated in the case. The Appellants did not produce any evidence in their defence.

19. By the impugned judgment the Trial Court repelled the contentions made on behalf of the Appellants that Sahajuddin's testimony could not be

relied upon as he was a child and an interested witness and that the conduct of P Ws 7 and 9 was unnatural in not intervening and saving the

deceased. The Trial Court found the testimony of PW-7 to be credible and reliable. Delay in the special report reaching the residence of the

learned Metropolitan Magistrate was found to be inconsequential and the Appellants were convicted, as stated earlier.

20. We have heard Mr. Keshav Kaushik learned Counsel for the Appellants, Mr. Jaideep Malik, learned Additional Public Prosecutor (APP) for

the State and have perused the record.

21. It is urged by the learned Counsel for the Appellants that they (Appellants) have been falsely implicated on mere suspicion in a blind murder

case. Following contentions have been raised:

(i) The prosecution has examined just one eye witness i.e. PW-7 who is of a tender age; he could have been tutored to blow trumpet in favour of

the prosecution. PW-9, who is alleged to have reached the spot immediately after the first part of the incident, is completely silent about the

presence of PW-7 at the time of the incident. In fact P Ws 7 and 9 do not talk about the presence of each other which makes their presence at the

spot at the time of the incident or immediately after the incident doubtful. It is urged that no independent witness has been produced though

according to PW-7 some public persons had gathered on hearing the alarm raised by him and his father (the deceased). The houses of the

deceased and PW-9 were close by, if any alarm was really raised as claimed by PW-7, then other relations of the deceased and PW-9 would

have been attracted to the spot.

(ii) The FIR was anti-timed, though it is shown to have been recorded at 11:30 p.m on 02.03.1995, its copy was received by the Illaqa Magistrate

only at 7:30 a.m. on 03.03.1995. There is no mention of the FIR number on the inquest form sent for holding the post mortem examination. Name

of the assailants do not find mention in the MLC Ex.PW-6/A; thus there was scope for embellishment and introduction of coloured version and

false implication of the accused persons.

(iii) According to Section 174 Cr.P.C the inquest proceedings were required to be held in presence of a Magistrate which has not been complied

with. There is animosity between Appellant Nizamuddin and his brothers (other Appellants) on the one hand and the deceased; they have been

falsely implicated on mere suspicion.

22. On the other hand, it is argued by the learned APP that PW-7 was aged about 15 years at the time of incident. He was mature enough to

understand the incident. He has stood the test of cross-examination and has been corroborated on material points by PW-9. Another independent

witness PW-16 Dariyai Lal was produced but he did not support the prosecution version and, therefore, the defence plea that no independent

witness had been examined by the prosecution, is not tenable. It is urged that the FIR was quickly recorded and was delivered at the residence of

the Illaqa Magistrate at 12:45 in the night. On mere endorsement of receipt of the copy of the FIR at 7:30 a.m. on 03.03.1995, it cannot be said

that the FIR was anti-timed. It is submitted that the prosecution has established its case beyond shadow of all reasonable doubts and the order of

the Trial Court, therefore, does not call for interference.

23. We have given our thoughtful consideration to the contentions raised on behalf of the parties.

NON EXAMINATION OF INDEPENDENT WITNESS AND TESTIMONY OF TWO RELATION WITNESSES.

24. In addition to PW-7 and PW-9, prosecution witness Daryai Lal who was the resident of the area where the incident took place was produced

as PW-16. According to the prosecution he was attracted to the spot after hearing the alarm ""bachao bachao"" from the side of the park. He,

however, did not support the prosecution case in Court thus if the prosecution made an effort to join an independent witness who turns hostile, the

prosecution cannot be blamed for non-joining of an independent witness. It has also to be kept in mind that many a times the neighbours avoid

appearing as a witness. In such circumstances, the testimonies of other witnesses have to be analysed to reach a conclusion whether the

prosecution case is proved or not.

25. The testimony of PW-7 is quite natural. He deposed that on 02.03.1995 he was returning from the tailor's shop. He reached his house at

about 8:30 p.m. His father (the deceased) met him outside the house. He was having a word with his father when he noticed that Appellant

Nizamuddin come running towards them with a Chhuri in his right hand. He (Nizamuddin) hurled abuses on his father and gave him a Chhuri blow.

He then deposed about the appearance of accused Riazuddin, who also arrived with a Chhuri and Sirajuddin who was empty handed at the scene

of the incident. PW-7 deposed that on seeing them, his father started running towards the gali. He was overpowered by Appellant Sirajuddin and

Appellants Nizamuddin and Riazuddin gave him several blows with the Chhuries. He and his father raised alarm Bachao Bachao attracting his

uncle Rahimuddin (PW-9) and some other persons from the gali. He stated that on seeing them the accused persons took to their heels.

26. PW-9 corroborated PW-7 as per the second part of the incident and deposed that on 02.03.1995 at about 8:30 p.m. he was present at his

house. He heard a noise from the gali. He came out and saw Sirajuddin had caught hold of his brother Jafuddin whereas Nizamuddin and

Riazuddin were attacking him with the respective Chhuries in their hands.

27. PW-7 testified that he and his chacha Rahimuddin (PW-9) took the deceased to Jaipur Golden Hospital where the deceased was declared

brought dead", whereas PW-9 simply speaks about the carrying of the deceased to the hospital by him. Of course PW-9 Rahimuddin had not

specifically mentioned about the presence of PW-7 at the spot at the time of the incident but we are not inclined to attach much importance to the

same for the reason that sometimes a witness is interested in deposing only about his own part. Moreover PW-7 was cross-examined at length as

to the location of the houses of the deceased and the accused, location of the market, location of the tailor shop, reasons for the enmity and

removal of the deceased to Jaipur Golden Hospital. He boldly stood the test of cross-examination. If a witness of such an age i.e 15 years gives

plausible explanation and replies to the questions put in cross examination then he becomes the most reliable witness. We are convinced that PW-7

was mature enough to understand and reply to the questions put to him. He though aged only 15 years at the time of the incident cannot be really

said to be a child. Moreover, his testimony stands corroborated on material aspects by PW-9.

28. PW-7 has been corroborated with regard to the second part of the incident i.e. the holding of the deceased by Appellant Sirajuddin and

infliction of injuries by Appellants Nizamuddin and Riazuddin. PW-9 in his examination-in-chief deposed that on 02.03.1995 at 8:30 p.m. he was

present in his house. He came out on hearing some noise and found that Appellant Sirajuddin had caught hold of the deceased and the other two

Appellants i.e. Nizamuddin and Riazuddin (since deceased) were attacking him with Chhuries. The Trial Court relied upon Kailash and Anr.v.

State of Uttar Pradesh, 1997 (V) AD SC 331 and Shankar Lal and Ors. v. State of M.P., JT 1996 (5) SC 523 in support of the proposition that

the testimony of a relation witness cannot be rejected merely only on the ground that he or she is a close relation of the victim. What has to be seen

is, if the testimony of such witness inspires confidence after a careful and conscious scrutiny. We are in agreement with the reasoning adopted by

the Trial Court and hold that the presence of PW-7 and PW-9 at the spot as deposed by them was natural. PW-7 had seen the entire incident

whereas PW-9 had seen the later part of the incident when the Appellant Sirajuddin had caught hold of the deceased whereas the other two

Appellants inflicted several injuries. In the circumstances the plea raised on behalf of the Appellants that relation witnesses should not be believed in

the absence of any independent witnesses cannot be accepted.

29. According to the prosecution, PW-9 brother of the deceased was attracted to the spot on hearing the alarm ""bachao bachao"". Some other

persons had also gathered there. PW-16 (alleged to be an eye witness) examined by the prosecution as stated above has not supported the

prosecution version. It is true that the houses of deceased and PW-9 were near to the spot but it has not been brought on record as to who were

the other family members and if they really reached the spot later or not. The non-examination of other family members of the deceased and of

PW-9 does not effect the prosecution case because had they been produced the criticism would have been that all the relation witnesses have

been produced. The prosecution cited three witnesses to the occurrence including an independent witness PW-16. As stated earlier PW-16 did

not support the prosecution. In the circumstances the plea that other witnesses have not been cited/examined is of no avail.

#### DELAY IN FIR

30. Ex.PW-4/B DD No. 22/A which was recorded in the police station at 9:23 p.m. shows that the information was passed on by the wireless

operator that a person had stabbed another with a knife in House No. 139, Gali No. 3 Mangolpuri.

31. The second information DD No. 23/A (Ex.PW 4/C) was recorded at 9:30 p.m. in respect of stabbing incident at premises F-2/150

Mangolpuri. Many a times such information is passed on to the control room by any person who may not be aware of the details of the incident.

The absence of the name of the assailants in the DD and the manner of assault is immaterial. Initially SI Ishwar Singh reached the spot followed by

Inspector Arun Kumar, Additional SHO of the police station. Since injured was reported to have been removed to Jaipur Golden Hospital

Inspector Arun Kumar and SI Ishwar Singh reached Jaipur Golden Hospital. Inspector Arun Kumar recorded the statement Ex.PW-7/A of

Sahajuddin which was completed at about 11:10 p.m. and the rukka Ex.PW-10/A was sent to the police station for registration of the case with

instructions to the duty officer to send the FIR through special messenger and to send the photographer to the spot. We have perused the MLC

Ex.PW-6/A prepared by Dr. Archana Varshneya, name of the assailant has not been mentioned in the MLC though it is recorded that

injured/deceased was brought to the hospital by Rahimuddin (brother).

32. Learned Counsel for the Appellants referred to the request Ex.PW-18/E through which the dead body was sent for post mortem examination.

The dead body and the papers for post mortem examination were received in the civil hospital on 03.03.1995 at 12:30 p.m. It is argued that the



absence of the FIR number in Ex.PW-18/E coupled with a receipt of the special report by the Illaqa Magistrate on 7:30 a.m. would show that the

FIR was anti-timed. We do not agree. Request for post mortem examination Ex.PW-18/E is a printed performa where certain details are required

to be mentioned. As per Ex.PW-18/E the dead body was received at 12:30 p.m. on 03.03.1995. Admittedly the copy of the FIR was received

by the learned Illaqa Magistrate at 7:30 a.m. on 03.03.1995, therefore, it cannot be said that the FIR had not come into existence by the time the

dead body was sent. It may be noticed that in column No. 2 relating to the date and time of the incident the date and time of incident as mentioned

on 02.03.1996 was 8:45 p.m. and date and time of death has been mentioned in DD No. 24/A dated 02.03.1995 as 9:35 p.m., PS Mangolpuri.

This DD relates to the recording of the information in respect of the death of Jafruddin. It seems that in the absence of any column in this performa,

the FIR number was not mentioned. Along with this request for post mortem information, another application for post mortem examination

Ex.PW-18/D, brief facts Ex. PW-18/C and inquest report Ex.PW-18/B were sent which do contain FIR number in the relevant column.

33. FIR Ex.PW-4/A has an endorsement of Illaqa Magistrate which shows that it was received by him on 03.03.1995 at 7:30 a.m. Testimonies of

PW-4, PW-7, PW-15, and PW-18 are relevant in this regard. PW-7 deposed that his father was declared dead in hospital. Police reached there

and recorded his statement. According to the prosecution version Ex.PW-7/A was recorded by Inspector Arun Sharma and after making an

endorsement it was sent to the police station at 11:10 p.m. When cross-examined, PW-18 deposed that he reached the hospital (from the spot) at

about 10:00 p.m. He went to the emergency ward and met the doctor on duty and inquired about the deceased. He deposed that he met

Sahajuddin (son of the deceased) after obtaining MLC of the deceased, proceeded to record the statement of Sahajuddin and sent the same to the

police station at 11:10 p.m.

34. PW-4 HC Omkar Singh deposed that on the night of 02.03.1995 at 11:35 p.m. Constable Sushil Kumar brought a rukka from Additional

SHO Inspector Arun Sharma on the basis of which he recorded FIR No. 131/1995. He proved copy of the FIR Ex.PW-4/A and sent the special

report through Constable Ramesh Chand to the Metropolitan Magistrate and higher police officers. In cross examination he denied the suggestion

that the IO had prepared the rukka in the police station itself.

35. PW-15 Ramesh Chand deposed that he took the copy of the FIR from the duty officer at about 11:55 p.m. and delivered the envelope at the

residence of the Magistrate at Gulabi Bagh at about 12:45 in the night. When cross-examined, he deposed that as per the instructions from inside

the house (of learned Magistrate) by some lady he slipped the special report through the closed door of the residence of the Magistrate and

thereafter he went to the residences of Additional C.P. and the D.C.P.

36. It is possible that as per the instructions from inside the house of the Illaqa Magistrate the Special Report may have been pushed inside the

door and endorsement might have been made by the Illaqa Magistrate in the morning at 7:30 a.m. on 03.03.1995.

37. Even if it is assumed that the FIR was received at the residence of the Magistrate at 7:30 a.m. on 03.03.1995 the question for consideration is

whether this delay is fatal to the prosecution case. The Trial Court relied upon Subhash @ Bassi v. State (Delhi Admn.), 1997 VI AD Del 345. A

division bench of this Court held that delay in sending the report to the Magistrate as required u/s 157 Code of Criminal Procedure would not

necessarily mean that the FIR was anti-timed. It was held that where from clinching evidence, by way of recording the DD, recording of statement

of the complainant, sending of rukka to the police station, registration of the FIR are proved, all such recordings settle the time and date of FIR.

38. In Alla China Apparao and Others Vs. State of Andhra Pradesh, it was held that if any delay is caused in sending the FIR to the Magistrate

which the prosecution fails to explain by furnishing reasonable explanation that by itself cannot be taken to be a ground for throwing out the

prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. In Sunil Kumar and Another

Vs. State of Rajasthan, the Supreme Court observed as under:

If any delay is caused in sending the FIR to the Magistrate, which the prosecution fails to explain by furnishing reasonable explanation, ipso facto

the same cannot be taken to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence

which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same may affect the

veracity of the prosecution case, more so when there are circumstances from which an inference can be drawn that there were chances of

manipulation in the FIR by falsely roping the accused persons after due deliberations.

39. It is true that name of the assailant has not been mentioned in MLC Ex.PW-6/A prepared by Dr. Archana Varshneya. The Trial Court relied

upon Sunil Kumar v. State of Rajasthan (supra) and held that it was not necessary for the brother of the deceased to have disclosed the names of

the assailants to the doctors who medically examined the deceased. To the same effect are the observations of this Court in Yudhvir Singh and

Ors. v. State (Delhi Administration), 1994 III AD (Del) 617 and Laxmi Narain Vs. State, We have to keep in mind that the investigating officer

acted very quickly and promptly immediately after recording the FIR and completion of the inquest proceedings at 11:50 p.m. as there was

immediate police action for apprehension of culprits. Two of the assailants Nizamuddin and Sirajuddin were apprehended on the basis of secret

information at about 3:00 a.m. near DESU office. Therefore, delay, if any, in sending the special report to the Illaqa Magistrate and non-mention of

the names of the assailants on the MLC Ex.PW-6/A do not affect the prosecution case.

#### **VIOLATION OF SECTION 174 Code of Criminal Procedure IN HOLDING INQUEST**

40. It was argued by the learned Counsel for the Appellants that the inquest proceedings as per Section 174 Code of Criminal Procedure ought to

have been conducted by the Magistrate though the same were held by Inspector Arun Sharma, Additional SHO of PS Mangolpuri and thus, the

provisions of Section 174 Code of Criminal Procedure have been violated. This contention raised on behalf of the Appellants is misconceived.

What is required u/s 174 Code of Criminal Procedure is that intimation of any suicide or killing has to be sent to the nearest Executive Magistrate.

The inquest proceedings are to be conducted by the police officer unless otherwise directed by a rule prescribed by the State Government or by a

general or special order of the district or Sub Divisional Magistrate. No such order passed by the District Magistrate has been brought to our

notice. Thus there was no defect in holding of the inquest by Inspector Arun Sharma.

41. It is argued by the learned Counsel for the Appellants that blood stained clothes of P Ws 7 and 9 were not seized by the IO which casts doubt

on the presence of P Ws 7 and 9 at the spot at the time of the incident. We do not agree. It is proved on record (from testimony of PW-5 L.K.

Barua, Autopsy Surgeon) that there were as many as 15 stab injuries. Admittedly, the deceased must have bled profusely. He was taken to the

hospital by P Ws 7 and 9. Name of PW-9 is recorded in the MLC Ex.PW-6/A prepared in the hospital at the time of admission of the deceased.

Thus, there is no doubt that the clothes of P Ws 7 and 9 must have been stained with blood. Non-seizure of the clothes of these two witnesses is a

lapse on the part of the prosecution. It, however, does not affect the prosecution case because of the facts stated earlier in this para.

#### **ENMITY BETWEEN THE DECEASED AND NIZAMUDDIN**

42. It is argued by the learned Counsel for the Appellants that there was enmity between the Appellant Nizamuddin and the deceased which led to

the false implication of Nizamuddin and his two brothers. Enmity is a double edged weapon. It cuts both ways. It gives a motive for commission of

an offence. It may also be a reason for false implication. PWs 1 and 2 produced by the prosecution seem to suggest that there was some enmity

between Appellant Nizamuddin and the deceased. PW-7 when cross-examined admitted that a quarrel had taken place between Rahijuddin (son

of Appellant Nizamuddin) and him three or four days before festival of Eid and in that quarrel he (PW-7) had beaten Rahijuddin (son of

Nizamuddin). This suggestion given on behalf of the Appellants in fact corroborates the prosecution version. According to PW-7 on the day of the

incident his father (Jafruddin) met him outside the house to inquire if he had quarreled with the sons of Nizamuddin. It appears that Nizamuddin had

a grievance because of the beatings given by PW-7 to his (Nizamuddin) sons. Thus we are not inclined to believe that the Appellants were

implicated in this case falsely because of enmity between the Appellant Nizamuddin and the deceased. Rather the circumstances indicate that it was

a motive for causing fatal injuries on the person of the deceased.

43. As stated earlier PW-5 Dr. L.K. Barua found 15 injuries on the person of the deceased. Injuries No. 1,2,3,4,5 and 11 were individually

sufficient to cause death in the ordinary course of nature. Appellant Nizamuddin came out of his house armed with a Chhuri. He gave one blow at

the back of the Appellant. Then he was joined by Riazuddin (since deceased) and Sirajuddin. Proceedings against Riazuddin have already been

ordered to have abated (order dated 14.3.2011). The number and nature of injuries on the vital parts of the body which were very serious show

that the Appellants shared a common intention to cause death. They also had the common intention to cause injuries on the person of the deceased

which were sufficient in the ordinary course of nature to cause death. Appellants Nizamuddin and Riazuddin were, therefore rightly convicted by

the Trial Court u/s 302 read with Section 34 IPC.

44. There is no error or infirmity in the impugned order. The appeal is without any merit; it is accordingly dismissed. The Appellants shall surrender

before the Trial Court on 23rd May, 2011 to serve the remainder of their sentence. The Registry shall transmit the Trial Court records and this

judgment, forthwith, to ensure compliance.