

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

% *Date of Decision: 12th August, 2009*

+ **CRL. APPEAL NO.69/2001**

DHARAMPAL ...Appellant
Through : Ms.Shraddha Bhargava, Advocate

VERSUS

STATE ...Respondent
Through : Mr.Pawan Sharma, Advocate

CRL. APPEAL NO.368/2000

PRAKASH & ORS. ...Appellants
Through : Ms.Shraddha Bhargava, Advocate

VERSUS

STATE ...Respondent
Through : Mr.Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.(Oral)

1. Vide impugned judgment and order dated 8.5.2000, the appellants have been convicted for the offence punishable under Section 302/34 IPC. The appellants have been sentenced to undergo imprisonment for life. One co-accused Mahender (A-6) has been acquitted.

2. The case of the prosecution is based on the testimony of eye witnesses; namely, Rani PW-6, Shama PW-9 and Rakesh PW-10.

3. Two persons named Shyam Sunder and Ram Chander, cousin brothers, died on 23.10.1995. Both were fatally stabbed. Rani PW-9 is the wife of Shyam Sunder. Shama is the sister of Shyam Sunder. Rakesh is the brother of Shyam Sunder. We begin by noting the contentions urged by learned counsel for the appellants for the reason we shall be noting the evidence relatable thereto. This will enable us to pen a short decision.

4. The contentions urged by learned counsel for the appellants are:-

A. The statement of Rani pursuant where to the FIR has been registered has been recorded after 3 hours of the incident thereby giving time to think. With reference to the testimony of PW-14, Insp.Giriraj Singh, it is urged that it is apparent that the FIR was sent to the Ilaqa Magistrate at 10:00 AM on 24.10.1995. The incident took place at around 10:30 PM, in the preceding night. The delay in sending the FIR to the Magistrate leads to an inference that in all probability the FIR was not registered at around 2:00 AM in the night as claimed by the prosecution, but probably much later and in all probability the statement of Rani PW-6 was not recorded, as claimed by the prosecution at around 1:30 AM in the night.

B. The police officers who went to the spot on receipt of information of the incident did not find either Rani or Rakesh at the spot nor did they meet them at the hospital. It was only when they returned for a second time at the spot they met Rani. This makes doubtful whether Rani or Rakesh were eye witnesses.

C. In her testimony Rani does not speak about Shama's presence and thus it is doubtful whether Shama was present and hence her claim of being an eye witness is false.

D. There are serious contradictions in the testimony of PW-6, PW-9 and PW-10 in the manner of commission of the crime and thus neither witness can be believed. The contradictions pointed out are:

(i) As per PW-9 only two accused Prakash and Sunder caught Ram Chander but PW-10 states that Dharampal, Prakash, Sunder and Shri Chand caught hold of Ram Chander. PW-6 does not attribute the role of catching hold to anyone pertaining to the assault on Ram Chander.

(ii) As per PW-6, Prakash exhorted. She stated that the accused caught hold of Shyam Sunder but did not name as to who were the said accused. Further, PW-6 has not described the manner in which Ram Chander was assaulted. PW-9 and PW-10 have attempted to assign specific roles to all the accused.

E. The ocular version of the assault described by PW-6 who said that Mukesh gave churri blows on the chest and stomach of Ram Chander is contradicted by the post-mortem report Ex.PW-12/A of Ram Chander which reveals that there are no multiple stab wounds on the person of Ram Chander. He has received only one stab wound on the chest and on the fifth intercostal space.

F. There are contradictions in the testimony of PW-6 and PW-9 as to who informed the police. Whereas PW-6 claims that Shama PW-9 informed the police, Shama PW-9 has deposed that one Shakuntala informed the police.

G. There are contradictions in the testimony of police officers namely Const.Tek Singh PW-4 as per whom he was on patrolling duty and when he reached the spot SI Ram Sunder PW-13 and Insp.Giriraj Singh PW-14 were already present, but PW-13 has stated to the contrary i.e. that when he and PW-14 reached the spot, PW-4 was already present. Counsel urges that the prosecution has not proved the daily diary entry recorded in the police station which led PW-13 and PW-14 to go to the spot.

H. Counsel urges that there are contradictions qua the arrest of the accused because as per PW-13 and PW-14, all the accused except Mukesh were arrested from the hospital, but PW-6 claims that Prakash was arrested from his house.

I. With reference to the testimony of PW-4 that after the senior police officers returned from the hospital, they had with them the relatives of the deceased, who according to learned counsel were Rakesh and Raju. Counsel submitted that it has not been explained why the investigating officer did not record the statement of Rakesh PW-10 at the hospital itself.

J. The learned Trial Judge has given the benefit of doubt to co-accused Mahender qua whom only PW-9 and PW-10 gave adverse evidence. Counsel urges that all the accused are related to each other and so are PW-6, PW-9 and PW-10. Thus, counsel urges that due to enmity, the witnesses have deposed falsely.

K. With reference to the testimony of Shama PW-9 that appellants Dharampal, Shri Chand and the co-accused Mahender (who has since been acquitted), switched off the light, counsel urges that it is just not possible that the witnesses could see the assault. Counsel urges that admittedly both the deceased were fatally stabbed at around 10:30 in the night. The place of the attack is outside the jhuggi of the deceased. The site plan does not show any street light.

5. The case of the prosecution is that the accused had fatally stabbed Shyam Sunder and Ram Chander outside the house of Shyam Sunder being Jhuggi No.T-177, Sangam Park which jhuggi was constructed on an open space next to four storeyed flat at Sangam Park and the flat adjoining the jhuggi

was the residence of Rakesh PW-10. The stabbing took place at around 10:30 PM on 23.10.1995. It was Deepawali night. On receiving information about a stabbing incident at about 11:50 PM, Insp.Giriraj Singh PW-14 accompanied by SI Ram Sunder reached the spot. Const.Tek Singh PW-4 was at the police post and on receipt of information of stabbing, in the company of HC Mahavir Singh even he reached the spot. A crowd had gathered. There were blood stains on the ground. The police officers learnt that many persons who were injured had been removed to hospital. Insp.Giriraj Singh and SI Ram Sunder proceeded to Hindu Rao Hospital. Const.Tek Chand and Const.Mahavir stayed back. In the hospital Insp.Giriraj Singh and SI Ram Sunder learnt that Shyam Sunder and Ram Chander, both brothers, had died. They learnt that a few other persons were availing medical aid pertaining to simple injuries sustained by them. Collecting the MLCs of the deceased, the two police officers returned to the spot where they met Rani PW-6, wife of Shyam Sunder whose statement Ex.PW-6/A was recorded as per which she disclosed how her husband and her brother-in-law were fatally attacked by the appellants. Relevant would it be to note that Rani uttered not a word about the involvement of Mahender who has been acquitted by the learned Trial Judge. Making an endorsement Ex.PW-14/A under the statement of Rani and recording dispatch of the tehrir at 1:40 AM, the date being 24.10.1995, the statement of Rani was

forwarded to the police station through Const.Tek Singh for an FIR to be registered. The FIR was registered somewhere around 2:00 AM and Const.Tek Singh returned to the spot at 2:15 AM. On learning that the appellants were also at Hindu Rao Hospital since two of them namely Dharampal and Sunder were injured and were getting themselves treated, the investigating officer went to Hindu Rao Hospital and arrested the accused. They collected the MLC Ex.PW-7/C of Sunder which evidences a three inch incised wound on his cheek and the MLC Ex.PW-1/A of Dharampal which evidences a lacerated wound on the dorsum of left hand and a lacerated wound on the left thumb. They also collected the MLC Ex.PW-7/D of Rakesh which records a one inch lacerated wound on the left side of the forehead. The dead bodies of Shyam Sunder and Ram Chander were sent to the mortuary and post-mortem reports Ex.PW-12/A pertaining to Ram Chander and Ex.PW-12/B pertaining to Shyam Sunder were obtained. Whereas Ram Chander had received a solitary, but fatal, stab injury on his chest resulting in his death due to his heart getting pierced, Shyam Sunder had received two stab wounds and multiple abrasions on different parts of the body. The stab wounds were directed towards the chest and had resulted in death due to excessive internal bleedings since blood arteries were cut.

6. The investigating officer recorded the statement of Rakesh PW-10 under Section 161 Cr.P.C. in the intervening

night soon after the incident took place as also the statement of Shama PW-9. Both of them claimed to have witnessed the assault on Ram Chander; the assault on Shyam Sunder preceding the assault on Ram Chander as per the first information report.

7. With reference to the testimony of PW-6, PW-9 and PW-10, holding their presence at the spot as natural and further noting that even PW-10 was injured and the same being an additional reason not to doubt his presence, the learned Trial Judge has returned a finding of guilt against the appellant while acquitting Mahender the 6th co-accused. While acquitting Mahender the learned Trial Judge has given him the benefit for the reason PW-6 categorically stated that Mahender was not present when the incident took place and the other two eye witnesses assigned a different role to him. Whereas PW-10 stated that Mahender caught hold of Ram Chander along with the other accused PW-9 simply stated that Mahender had assisted Dharampal and Shri Chand in switching off the light. But qua the appellants, the learned Trial Judge has held that their involvement and meeting of the mind was fully established.

8. In view of the submissions made by learned counsel for the appellants and as noted in para 4 above, we proceed to note the testimony of PW-6. She deposed that on Deepawali day after customary puja she slept inside her room and her

husband was lying on a cot outside the house. A curtain was hanging on the door of the room. Her house is a jhuggi, opposite to which is the jhuggi of accused Prakash. Accused Dharampal, the younger brother of accused Prakash was present and asked her husband as to why a parda (curtain) was hung. He quizzed whether her husband was hiding a queen inside. This led to exchange of hot words between her husband and Dharampal. Accused Shri Chand, Prakash, Mukesh and Sunder joined from the side of Dharampal. The verbal duel turned into grappling. Neighbours intervened and separated her husband from said five accused. The matter rested. After about 10 minutes accused Prakash, Sunder, Dharampal, Shri Chand and Mukesh launched an assault on her husband. The rekindling was at the behest of Mukesh who was not present when the altercation had taken place about 10 minutes back. When Mukesh came, his father, Prakash, told him that her husband had troubled him and that her husband should be finished. Prakash gave an exhortation: 'iska kaam tamam kar do'. At that, Shri Chand, Dharampal and Sunder caught her husband and Mukesh inflicted churri blows on the chest and stomach of her husband who fell down. People from the locality including her brother-in-law Ram Chander reached. Accused Prakash said that even Ram Chander should not be spared. Accused Mukesh inflicted churri blows in the chest and stomach of Ram Chander who fell down. When Prakash said

that even Ram Chander should be done away with, the accused had caught Ram Chander.

9. We may note that Rani was declared hostile by the public prosecutor since she did not name Mahender as an accused and deposed nothing about him. She denied having told the police that even Mahender had caught hold of her husband and her brother-in-law.

10. On being cross examined by counsel for the accused she admitted that there was no public light in the street but volunteered that there was electric bulb at the house of accused Prakash which was opposite her house and the distance between the two houses was 5/6 paces. She denied that there was darkness. She stated that her statement was recorded by the police before going to hospital. She stated that her sister-in-law Shama informed the police. She admitted that accused Prakash was arrested at his house.

11. Shama PW-9 deposed that she was the sister of the deceased and on Deepawali day had gone to the house of Shyam Sunder at 10:00 PM in the night where her brother Shyam Sunder had a quarrel with the accused (including Mahender). Neighbours intervened and pacified the accused. The matter was settled. She went upstairs to the house of her mother and after 10/15 minutes heard the cries of Rani PW-6. She saw from upstairs and found her brother Shyam Sunder lying on the ground. She came down and saw the accused

persons engaged (chipke hue thae) with her brother Ram Chander. Mukesh had a knife in his hand and before she and other people could rescue Ram Chander, Mukesh stabbed Ram Chander. Prakash and Sunder were holding her brother Shyam Sunder when he was attacked. Her brother Rakesh sustained injuries in his head when he tried to apprehend the accused who fled after attacking her brothers. In cross examination she stated that Mahender was seen by her simply standing when her brothers were assaulted.

12. Rakesh PW-10 deposed that on Deepawali night i.e. the intervening night of 23rd and 24th October 1995 at about 10:00 PM he was upstairs in his DDA Flat which was adjoining Jhuggi No.T-177, Sangam Park. His family was busy with Deepawali puja. He heard cries of Rani PW-6 who was the wife of his brother Shyam Sunder who lived in Jhuggi No.T-177, Sangam Park. On hearing the cries he came down and saw his brother Shyam Sunder lying in a pool of blood. Mukesh was standing with a knife and the other accused (including Mahender) were holding Ram Chander, his cousin. Mukesh gave a knife blow on the chest of Ram Chander. When he tried to apprehend Mukesh, he i.e. Mukesh inflicted a blow on his head from the handle of the knife. All accused ran away. He and Raju removed Shyam Sunder to Hindu Rao Hospital where both were declared dead.

13. From the testimony of PW-6 and the testimony of PW-9 it is apparent that two incidents took place with a time interval of 10 minutes at 10:00 PM. PW-6 and PW-9 have witnessed the same. We can call it stage 1 of the incident. At stage 1 of the incident, as deposed to by PW-6 and PW-9 an altercation took place between Shyam Sunder and Dharampal when Dharampal posed a taunting question to Shyam Sunder resulting in a verbal duel between the two and at that point of time save and except co-accused Mukesh, all other appellants were present and joined. The matter was got pacified with the intervention of neighbours. PW-10 has not claimed to be a witness to this incident i.e. stage 1. Stage 2 of the incident commenced when Mukesh came to the spot after about 10 minutes. What happened thereafter can again be split into two parts. We can call it part A and part B of stage 2. Part A of stage 2 is the narration of events by PW-6 of Prakash exhorting to Mukesh i.e. his son and other accused that Shyam Sunder should be finished and Shri Chand, Dharampal and Sunder catching hold of Shyam Sunder and Mukesh stabbing him. Part A of stage 2 has not been seen by PW-9 and PW-10 who saw part B of stage 2 of the incident when cries of PW-6 attracted them. They saw the assault of Ram Chander who also got attracted to the spot on hearing the cries of PW-6. The poor fellow intervened to save his cousin Shyam Sunder. The accused stabbed him.

14. The socio-economic background, PW-6, PW-9 and PW-10 who are slum dwellers cannot be lost sight of. Their memory, the language at their command, their communication skills and their confidence levels have to be considered with reference to said background. It has also to be kept in mind that the incident relates to the night of 23rd and 24th October 1995. Rani PW-6 deposed in Court on 18.11.1997. Shama deposed in Court on 19th and 20th January 1998. Rakesh deposed in Court on 20th and 21st January 1998. The three witnesses narrated events seen two years prior when they narrated the facts in Court as the witnesses of the prosecution.

15. Indeed, appreciation of ocular evidence is a Herculean task and there can be no fixed or strait-jacket formula for appreciation of ocular evidence. In a recent decision pronounced by a Division Bench of this Court, of which Bench, one of us; namely Pradeep Nandrajog, J. was a Member of; being the decision dated 29.5.2009 in CrI.A.No.327/2007 Akbar & Anr. Vs. State 13 principles evolved regarding appreciation of ocular evidence in a criminal trial were extracted with reference to the decisions of the Supreme Court reported as Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat AIR 1983 SC 753, Leela Ram Vs. State of Haryana AIR 1997 SC 3717 and Tahsildar Singh Vs. State of UP AIR 1959 SC 1012. The same are as under:-

I While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence.

IV Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX By and large people cannot accurately recall a conversation and reproduce the very words used by them or

heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to

contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

16. We need not note and make a list of various judicial pronouncements wherein it has been held that in India, for unexplainable reasons, witnesses just cannot withhold giving embroidery to a story however true in its essence. One hardly comes across a witness who does not make exaggerations or embellishments in his testimony. The duty of the Court is to separate the truth from falsehood. The latest decision on the point is reported as Manni @ Udattu Mann Vs. State JT 2009 (4) SC 169.

17. It has to be noted at the outset that neither PW-6 nor PW-9 have been questioned on the aspect of their testimony pertaining to stage 1 of the incident. Thus, their version qua stage 1 of the incident has gone unchallenged. The effect thereof is that the appellants had accepted their version that 10 minutes prior to the actual stabbing, Dharampal, brother of Prakash had an altercation with Shyam Sunder and there was exchange of hot words between the two. Prakash, Shri Chand and Sunder also joined by taking side of Dharampal. The verbal altercation resulted in pushing. Tempers were cooled due to intervention of neighbours. It is apparent that 10 minutes prior to the actual stabbing incident

the situation at the ground level was fairly hot. This evidence brought on record through the testimony of PW-6 and PW-9 shows the presence of all the appellants save and except Mukesh at the spot at stage 1.

18. It is apparent that the appellants were nursing a grievance against deceased Shyam Sunder. Stage 2 of the incident commenced, as deposed to by PW-6, when Mukesh came to the spot and his father Prakash told him that Shyam Sunder had troubled them. Prakash exhorted: 'iska kaam tamam kar do'. It was followed by the other accused catching Shyam Sunder and Mukesh stabbing him. This part of stage 2 of the incident was witnessed only by PW-6. Interestingly, we may note, that while cross examining PW-6 a suggestion has been given to her (probably to explain the injury suffered by Dharampal) that Dharampal sustained the injury when he intervened to rescue Shyam Sunder. Now, this lets the cat out of the bag. Dharampal admits his presence but wants to be called a savior. Stage 1 of the incident now assumes importance. Why should Dharampal who had quarreled with the deceased and had grappled with him 10 minutes earlier become his savior? The answer defies any logical reasoning.

19. That Dharampal and Sunder have received injuries which are minor lend assurance to the testimony of PW-6 and PW-9 that some grappling had taken place at stage 1 of the incident. Rakesh PW-10 being a witness to part B of stage 2 of

the incident is corroborated by the MLC Ex.PW-7/D of Rakesh which corroborates his testimony that Mukesh hit him on his forehead with the handle of the knife when he tried to apprehend Mukesh.

20. The variations in the testimonies of PW-6, PW-9 and PW-10 pertaining to the events which span part B of stage 2 of the incident which have been brought to our notice and as recorded in sub-para D and F of Para 4 above are not of a material nature and cannot be classified as contradictions. These are minor variations which are bound to occur when 3 people speak of the same incident involving five accused. What is relevant is that the core facts i.e. Mukesh being armed with a knife and assaulting and the other accused facilitating the assault have been spoken of with the same signature tune by the three witnesses. Contention noted in sub-para C of Para 4 is too trivial a fact to discredit the presence of Shama. After all, Rani's husband was fatally stabbed and she was bound to be in a terrified and shocked state of mind and hence may not have noticed Shama's presence at the spot at stage 2 (part B) of the incident.

21. Contention noted in sub-para E of Para 4 is again irrelevant and immaterial. PW-6 hardly understands the difference between singular and plural. The embellishment that two blows were inflicted on the person of Ram Chander, the fact being that only one was inflicted, is not of a kind which

can discredit her testimony. We re-emphasize that by the time Ram Chander was attacked, husband of PW-6 had been fatally attacked and her mental condition has to be kept in view. Her being terrified and in a state of shock and hence her memory failing her or her power of retention being lost at the very moment cannot be ruled out. On this reasoning the variation in the claim of PW-6 and PW-9 as to who informed the police is also explainable. This takes care of submission noted in sub-para F of Para 4 above.

22. It is no doubt true that the FIR has been delivered to the Ilaqa Magistrate at 10:00 AM on 24.10.1995 and not promptly as required by law. But, we find that the police officers who have deposed to the registration of the FIR and it being delivered to the Ilaqa Magistrate have not been questioned as to why the delay took place. It is settled law that unless a person is given a chance to explain a lapse, the same cannot be held against him. Further, a lapse by the police cannot discredit a case, if otherwise established by good evidence. In the instant case, a possible reason for belated transmission of the FIR to the Ilaqa Magistrate is the fact that the night in question was Deepawali night and the entire police force in Delhi was patrolling on the streets being on emergency duty. Lack of manpower could be a reason.

23. That the police officers who went to the spot did not find any eye witness nor did they find any eye witness at the

hospital does not mean that Rani and/or Shama and/or Rakesh were not eye witnesses. Admittedly, two of the appellants apart from Rakesh had received injuries albeit minor ones. Two persons had died. The scene was fairly chaotic. Natural conduct of the family members was to rush to the hospital. On finding one to many relatives in the hospital, some returned. In the meanwhile the police reaching the spot and proceeding to the hospital i.e. the police and the relatives crossing each other cannot be ruled out. Be that as it may, PW-6 and PW-9 have not been cross examined with reference to their deposition pertaining to stage 1 of the incident and thus the defence admitting the correctness thereof, requiring an inference to be drawn that the defence admitted the presence of the said two witnesses at the spot.

24. Contradictions in the testimony of PW-4, PW-13 and PW-14 as to which police officer reached the spot first is neither here nor there. It is too minor a fact to be remembered by a police officer as to in which sequence they arrived at the spot.

25. Merely because PW-6 made an embellishment that Prakash was arrested from his house; the fact being that he was not arrested from his house, is again an embellishment of a minor nature in the testimony of PW-6.

26. The plea that since Mahender was acquitted there was no reason not to extend the same benefit to the other accused except Mukesh has to be rejected for the reason the

rule of prudence applicable to one accused may not be holding good for the others. The rule of prudence to which we have referred to is the rule adopted by Courts that if qua anyone accused, on account of variation in the evidence qua his involvement, a doubt arises in the judicial mind, prudence requires to extend the benefit of doubt to said accused. The learned Trial Judge has given good reasons to give the benefit of doubt to Mahender qua whom PW-6 spoke not a word and PW-9 ascribed the role (during cross examination) of standing at the spot.

27. The last submission with reference to the testimony of Shama PW-9 wherein Shama said that Mahender switched off the light of her house and hence it was obvious that nobody could have seen the assailants requires to be rejected for the reason both PW-6 and PW-9 have categorically spoken about a bulb being lit in the house of accused Prakash which was opposite to the house of deceased Shyam Sunder and the distance between the two houses was 5/6 paces. Besides, it has come in evidence that it was Deepawali night and we can take judicial notice of the fact that the inhabitants of the colony had lit diyas, candles or had put strings of bulbs to attract Goddess Laxmi to their house i.e. there was sufficient light to see the faces of the assailants. That the accused are the neighbours of the victims has also to be kept in mind for the

reason a known person can be recognized by an acquaintance even in dim light.

28. We find no merits in the appeals.

29. The appeals are dismissed. The accused are on bail. Their bail bonds and surety bands are cancelled.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

August 12, 2009
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