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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 12.03.2009

Judgment delivered on: 23.03.2009

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CRL.A. No.399/2007

AMANDEEP

...Appellant

Through : Mr. O.P.Wadhwa, Adv. with
Mr. Javed Akhtar and
Mr. Akashdeep, Advocates

versus

STATE

...Respondent

Through : Ms.Richa Kapoor, Advocate.

CRL.A. No.622/2007

SANJAY @ SANJU

...Appellant

Through : Mr. Anupam Sharma, Advocate
Mr. Javed Akhtar, Advocate

versus

STATE

...Respondent

Through : Ms.Richa Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

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

: PRADEEP NANDRAJOG, J.

1. Criminal law was set into motion when Const. Kanwar Singh PW-13, posted as Duty Constable at DDU Hospital, transmitted information to Police Station Tilak Nagar on the intervening night of 13th and 14th August 2003 that two persons

named Randhir Chandela @Lala (hereinafter referred to as the “deceased”) and Dhanpal (PW-1) have been admitted in an injured condition in the hospital.

2. On the receipt of said information, SI Kashmiri Lal PW-10, accompanied with Const. Dayanand PW-14, reached the hospital. Simultaneously, Inspector R.K. Ojha PW-23, who had also received the said information reached the hospital. On reaching the hospital, they were informed that Randhir Chandela had been brought dead as noted in the MLC Ex.PW-3/B and Dhanpal was admitted in an injured condition as noted in MLC Ex.PW-3/A. It was noted in the MLC Ex.PW-3/A that Dhanpal was conscious but drowsy and the smell of alcohol was present. Statement of Dhanpal could not be recorded.

3. Const. Dayanand PW-14, remained at the hospital. SI Kashmiri Lal PW-10 and Inspector R.K. Ojha PW-23, proceeded to the spot where the incident took place. It may be noted that on what basis the said two police officers reached the place where the offence was committed is not forthcoming on record, but it appears that they must have learnt about the same from Dhanpal, whose statement was not recorded by them. At the spot they met one Neeraj Chandela PW-6, who is the nephew of the deceased. PW-10 recorded the statement Ex.PW-6/A of Neeraj Chandela, and made an endorsement

Ex.PW-10/A thereon and handed over the same to Const. Hari Bhagwan PW-19, for registration of an FIR. Const. Hari Bhagwan took Ex.PW-10/A to the police station and handed over the same to ASI Daya Kishan PW-9, who recorded the FIR No.624/2003 Ex.PW-9/A at 2.20 A.M. on 14.08.03.

4. In the meanwhile at the hospital, Dhanpal had to be given the requisite medical treatment keeping in view he had suffered two stab wounds which were noted by Dr.Renu Nagar PW-3 who had prepared the MLC Ex.PW-3/A. The two injuries are as under:-

- “1. Clean incised wound approximately 3 x 1.5 cm on the left side of the chest medial to the nipple. The depth of the wound could not be assessed.
2. The clean incised wound approximately 3 x 1.5 cm in the epigastric region. The depth of the wound could not be assessed.”

5. On the MLC Ex.PW-3/A Dr.Renu Nagar made an endorsement referring Dhanpal to the Radiologist. Dr.Deepak Kumar, Senior Radiologist, recommended PA view of the chest X-ray of Dhanpal. But, the X-ray technician could not take the X-ray of the PA view of the chest because Dhanpal did not cooperate and as recorded at the place encircled XA in Ex.PW-3/DA i.e. the referral form filled up by the senior radiologist, after recording that the patient was not cooperating, took the

X-ray pertaining to the PA view of the chest. Before the doctors could decide on the course of action to be followed and medical treatment given to Dhanpal he absconded from the hospital at around 1.15 AM on 14.8.2003 i.e. in the middle of the night. Thus, on the MLC Ex.PW-3/A the doctor on duty recorded that no opinion pertaining to the injuries could be recorded because the patient has absconded.

6. In his statement Ex.PW-6/A, Neeraj Chandela stated that he resides with his father and is a student of class XII. That today he was present in his house when at around 10.45 P.M. one Lala Khabri who is the tenant of his neighbour Praveen and was in a perplexed condition came to his house and told him that some persons have murdered Lala. That on hearing this he rushed to the office A-one properties of his uncle Randhir Chandela @ Lala which was situated at N-231, Main Khayala Road where he found that the door of the office was open and that T.V. was running. That he saw that the deceased who was in an injured condition was lying in an unconscious condition and that Dhanpal, the maternal uncle of the deceased, whose body was soaked in blood was lying on a setti in the room. That both deceased and Dhanpal were having wounds on their bodies. That in the meantime Praveen Chandela also came there and brought his Maruti car at his asking. That he, Praveen Chandela and Dharmpal who is the

brother of Dhanpal removed the deceased and Dhanpal to DDU hospital where doctor declared the deceased as brought dead and admitted Dhanpal in the hospital. That some persons had entered the office of the deceased and had launched a dangerous attack on the deceased and Dhanpal.

7. At the site of the offence, PW-23 prepared the site plan Ex.PW-23/B recording therein the place at points 'A' and 'B' where the deceased and Dhanpal respectively were found lying. The portion of the carpet at the spot which was stained with blood, sample carpet control, the mattress of the setti at the spot which was stained with blood and part of the wall of the room at the spot which was stained with blood were seized vide memo Ex.PW-10/B. HC Vijay (Photographer) PW-17 and SI Devender Singh (Finger Print Expert) PW-24, from the crime team were summoned. 22 photographs (out of which only 21 could be developed) i.e. Ex.PW-17/B1 to Ex.PW-17/B20 and Ex.PW-10/DA; negatives whereof are Ex.PW-17/A1 to Ex.PW-17/A22 were taken. Chance finger-prints were attempted to be lifted. (Vide report Ex.PW-24/A, PW-24 opined that no chance prints could be lifted.)

8. Randhir Chandela was declared brought dead, his body was sent to the mortuary where Dr.L.K. Barua PW-2, conducted the post-mortem at 11.40 A.M. on 14.08.03 and gave his

report Ex.PW-2/A which records that following 4 external ante-mortem injuries on the deceased:-

“1. One incised wound on the right side of epigastrium size 2.5 cms X 1 cm. Both the angles of the wound were acutely cut. The margins were also cleanly cut.

2. Two beveling cut injuries on the left forearm on its middle part of size 1 inch and 1.2 inches. Both the injuries were communicating with each other and was caused by a single blow.

3. Incised wound on the left forearm size 1.8 cms X 1 cm muscle deep.

4. Incised wound on the left hand on its dorsal aspect size 1 cm.”

9. The post-mortem report Ex.PW-2/A further records that the cause of death was excessive bleeding and shock. It was opined that injury no.1 noted above was sufficient to cause death in the ordinary course of nature.

10. Dhanpal surfaced at 5.30 AM on 14.8.2003 at Khetrapal Nursing Home. That was the time recorded by the said Nursing Home as the time of his admission. On 15.08.2003 the statement of Dhanpal was recorded by Inspector R.K.Ojha PW-23, wherein he named that Amandeep Singh @Saibi (hereinafter referred to as the “Accused No.1”), Sanjay @ Sanju (hereinafter referred to as the “Accused No.2”), Arvinder Singh (hereinafter referred to as the “Accused No.3”) and Ankur Singh (hereinafter referred to as the “Accused No.4”) are the assailants of the deceased. The medical record Ex.PW-

5/A of Dhanpal was collected from the nursing home after Dhanpal was discharged from the nursing home.

11. Since Dhanpal had implicated the afore-noted accused, the police set out to apprehend them. The accused were apprehended at 6.30 P.M. on 18.08.03 as evidenced from the arrest memos Ex.PW-10/J to Ex.PW-10/M. They were interrogated by Inspector R.K.Ojha PW-23, in the presence of SI Kashmiri Lal PW-10 and SI Balihar Singh PW-20. Accused No.1 made a disclosure statement Ex.PW-10/Q confessing to his guilt and stated that he can get recovered the T-shirt which he was wearing at the time of the incident and a mobile phone which he was using at that time. Pursuant to his disclosure statement, accused No.1 got recovered a mobile phone and a T-shirt which were seized vide memos Ex.PW-20/A and Ex.PW-10/R respectively. Accused No.3 also made a disclosure statement Ex.PW-10/N confessing to his guilt and stated that he can get recovered a mobile phone which he was using at the time of the incident. Pursuant to his disclosure statement, accused No.3 got recovered a mobile phone which was seized vide memo Ex.PW-20/B. (It be noted here that the other two accused persons also purportedly made a disclosure statements but nothing could be recovered pursuant to their disclosure statements). It may be noted here that no recovery of an object linking the maker of the statement to the crime

was recovered pursuant to the disclosure statements and thus, the disclosure statements are nothing but confessional statements made to the police and hence are inadmissible in evidence.

12. The investigation was conducted. Statements of Vijay Singh PW-7 and Atul PW-8 as also the statement of Lal Babu PW-11 were recorded. We may note that Vijay Singh and Atul informed the police of an incident which had taken place on 11.8.2003 i.e. 3 days prior to the date of offence and if true, establishes past enmity of the appellants with the deceased and hence the motive for the crime. Lal Babu informed the police that in the night of 13.8.2003 he had heard noise from the office of the deceased and when he went there he saw four persons running away and the deceased and Dharampal lying inside in an injured condition.

13. The four accused persons were sent to trial with the charge of having entered into a criminal conspiracy to murder Randhir Chandela as also Dhanpal and in furtherance thereof having murdered Randhir Chandela, but having failed in the endeavour to kill Dhanpal, having committed the offence of attempt to murder. 25 witnesses have been examined by the prosecution. The deposition of Dhanpal PW-1, Vijay Singh PW-7, Atul PW-8 and Lal Babu PW-11 needs to be noted because,

as conceded by learned counsel for the appellants and the State, only their testimony is relevant. The various police officers who deposed only proved that an offence had been committed and their deposition is not relevant to determine as to who the offender was. The deposition of the doctors need not be considered because they spoke nothing more than what was recorded in the MLCs of the deceased and Dhanpal as also the medical record Ex.DW-5/A of Dhanpal pertaining to the treatment given to him at Khetrapal Nursing Home. Since the injuries for which treatment was given to Dhanpal by Dr.Anil Khetrapal PW-5 at Khetrapal Nursing Home have been spoken of by PW-5 and something turns on the said treatment we shall be noting the testimony of Dr.Anil Khetrapal.

14. The deposition of Dhanpal PW-1 can be broken into two components. Part-I pertaining to a fight which he claims took place on 11.8.2003 and the second part relating to who inflicted the knife injuries on the deceased and on himself i.e. Dhanpal.

15. Pertaining to the incident of 11.8.2003 he deposed that he was present in his office with his nephew Randhir @Lala at about 8.30 PM. Vijay Singh (PW-7) a partner of Randhir was present in the office. The time was 8.30 PM. All were taking liquor. At 9.00 PM Atul (PW-8) a friend of Randhir came and

said that he owed some money to Mandeep @Raju @Pista. He informed that Mandeep was threatening him that either his money should be returned or else he would tell sons of Gurnam Singh (A-2 and A-3 are the sons of Gurnam Singh). That Atul told that Mandeep had threatened that if his money was not paid he would have him beaten up. That on hearing Atul, Randhir, Vijay, Atul and himself i.e. Dhanpal went to N-38 and reached there at around 9.00 PM. A-1, A-2 and A-3 were present at N-38. Randhir said to A-1, A-2 and A-3 as to why they were acting as gangsters. An altercation ensued and A-1 started hurling abuses at Randhir and gave him fist blows. He i.e. Dhanpal intervened and separated them.

16. Pertaining to the events which transpired on 13.8.2003, we propose to note the deposition in its entirety, but by giving serial number to each statement because of facility of reference to the different parts of his deposition while discussing the same when we reach the stage of discussing the evidence. He deposed:-

“(I) On 13-8-03 at about 10.45 p.m. I and my nephew Randhir @ Lala were present in the office of at N-38, A One Properties and were taking liquor. (II) At that time accused Saibi and Sanju, both present in court, came and accused Saibi gave blow on the table lying in front of us and then accused Saibi hurling abuses retorted 'Saale aaj bata deta huin badmashi kya hoti hai'. (III) Then accused Saibi pulled out a knife from dub of his pant and started giving blows to Randhir @ Lala with that knife. (IV) I am not sure if accused Saibi had

taken out the knife from right or left dub of his pant. (V) Randhir @ Lala received 2-3 blows on his arm and one knife blow on his chest. (VI) Randhir @Lala fell on the table after receiving knife blows. (VII) I tried to come forward towards accused Saibi and Sanju and then accused Sanju started giving me fists blows and kicks. (VIII) I gave a forcible push to Sanju and then managed to catch hold of accused Saibi from behind. (IX) Accused Saibi then gave two knife blows in my chest but I hugged him and caught him. (X) In the meantime accused Ravinder and Onkar (Arvinder and Ankur) came inside the office and both gave me fist blows and kicks and got freed of Saibi. (XI) I raised an alarm and on hearing my noises one person Lal Babu Khabadi came inside the office. (XII) I saw Lal Babu coming in the office and then I became unconscious and fell on the setty in the office. (XIII) I regained consciousness at about 11 p.m. on 14-08-03 and I was present in Khetrapal Nursing Home, Bali Nagar at that time. (XIV) On 15.08.03 police met me at the Nursing Home at 12.00 noon but I am not sure about the time."

17. We may note that Saibi is Amandeep Singh and Sanju is Sanjay i.e. A-1 and A-4.

18. In cross-examination Dhanpal admitted that the deceased was an accused in a murder case and that even he was an accused in a murder case. We eschew reference to the various improvements made by Dhanpal Singh while deposing in Court vis-à-vis his statement recorded by the police under Section 161 Cr.P.C. But, we note that when questioned as to for how long he continued to hug accused Saibi, he replied that he hugged him for 1-1½ minutes.

19. Vijay Singh PW-7 and Atul PW-8 deposed to a quarrel which had taken place on 11.8.2003 i.e. the quarrel about which Dhanpal had deposed, but each gave a materially different description thereof.

20. Lal Babu PW-11 deposed that on 13.8.2003 he heard noises from the office of the deceased and went there. He saw four persons coming out of the office and running away, but could not identify them as he had not seen their faces. That he saw the deceased and Dhanpal lying injured.

21. Neeraj Chandela PW-6 deposed the facts which were told to the police and form part of his statement Ex.PW-6/A.

22. Dr.Anil Khetrapal PW-5 proved the medical records Ex.PW-5/A of Dhanpal and deposed that three injuries were noted on the person of Dhanpal namely (1) a small lacerated wound in the midline about 3/4 inches x 1 inch, depth of which could not be ascertained; (2) a wound at the level of fourth IC transversely placed at about 1 x 1/3 inch; (3) a wound at the ventral aspect of the left arm subcutaneous deep about 1 x 3/4 inches x 1 inch. He deposed that the injuries sustained by Dhanpal were dangerous in nature as they involved the liver, pancreatic and peri-splenic region.

23. It is apparent that the case of the prosecution hinged upon the testimony of PW-7 and PW-8 as also part testimony

of Dhanpal PW-1 to prove the motive for the crime in relation to the incident which took place on 11.8.2003. To prove that the appellant Amandeep had inflicted the knife injuries on the deceased as also Dhanpal and that appellant Sanjay and the two other co-accused Arvinder and Ankur had facilitated the attack, the testimony of Dhanpal became relevant; limited to some extent for corroboration to the testimony of Lal Babu PW-11 who had seen four persons leaving the site of the crime, but failed to recognize them.

24. It is relevant to note that the alleged weapon of offence was never recovered and no clothes stained with blood of either of the accused persons were recovered. No finger print of either accused was lifted from the site where the crime took place.

25. Pertaining to the incident of 11.8.2001, noting serious discrepancies in the deposition of Dhanpal PW-1 as also Vijay Singh PW-7 and Atul PW-8, the learned Trial Judge has recorded a finding as under:-

“39. I have gone through the arguments from both the parties. The main point to consider whether there was any conspiracy by all the accused to kill Randhir @ Lala. I have gone through the evidence of PW-1, 7 and 8. It is clear that there was no enmity between Ankur Singh, Arvinder Singh and the deceased. On 11.08.01 deceased with other went into the search of Amandeep @ Rajue and not for Ankur Singh and Arvinder Singh. It is also on the record that the deceased had scuffle with Amandeep Singh and not

with these two accused. There is a discrepancy regarding the glasses which were used for consuming liquor on 11.08.03. On witness says that two glasses were used and other say that three glasses were used for consuming liquor. There is discrepancy in respect of bottle of liquor as PW-1 states that he had asked for half bottle whereas in the photograph the full bottle is shown. PW-8 Atul had stated that when he reached the office on that day he had found only PW-7 Vijay and not PW-1 Dhanpal. PW-8 did not mention that Dhanpal had accompanied them to Gurnam's house whereas PW-7 stated that he along with deceased, Dhanpal and Atul went to Gurnam's house. All these above noted discrepancies point out that Dhanpal may not be present on 11.08.03 when the scuffle between Saibi and Lala took place. It is also established that on 11.08.03 accused Arvinder Singh and Ankur Singh were not involved in any kind of brawl or scuffle with the deceased or any other person as per the evidence on record."

26. Pertaining to the issue whether at all the prosecution has proved a conspiracy amongst the accused, learned Trial Judge has held that no evidence whatsoever has been brought on record pertaining to the charge of conspiracy. The learned Trial Judge has held that the charge of conspiracy was predicated on the premise that the accused persons hatched a conspiracy after the incident of 11.08.03 which itself was a doubtful incident. Thus, it has been held that the charge of conspiracy has not been established.

27. As to what happened on 13.08.03, the learned Trial Judge has returned a finding in paras 43 to 45 as under:-

"43. The incident dated 13.08.03 when Randhir @ Lala and PW-1 were stabbed by Amandeep Singh the PW-1 is alleged to have caught him from back. It is admitted by PW-1 that after receiving injuries his

clothes were blood soaked but no blood was found the shirt (Ex.P-5) of Amandeep Singh. An inference can be drawn here that either PW-1 had not caught hold of Amandeep Singh or he is not truthful on the aspect of catching the accused from behind. He also admitted that he had seen the blood on his clothes when accused Amandeep Singh @ Saibi managed to free himself. In his statement u/s 161 Cr.P.C. he had not given the names of Arvinder Singh and Ankur Singh giving him fist cuffs and blows on 13.08.03. This fact he was confronted as had mentioned this fact in the Court for the first time.

44. The statement of PW-1 was recorded on 15.08.03 as he had gained consciousness of Khetarpal Nursing home on 14.08.03 at 11.00 pm. This gave him sufficient time to thin over the entire episode and names the accused persons to the police. Accused PW-1 is stated to be 57 years old as stated before the court and 70 years in the MLC. This becomes clear that he is an aged persons and cannot match a young man of 25 years approx. It also seems improbable that after receiving two stab wound in the chest area he was able to caught hold the accused Amandeep Singh for one and half minute from behind in such a manner that it required Ankut Singh and Arvinder Singh to beat him in order get Amandeep Singh freed. In that case, the blood of PW-1 should also be present on the back side of shirt of Amandeep Singh which is not the case. The shirt of Saibi is clean and without blood spots.

45. In my consider opinion there is some doubt on the statement of PW-1 as far as the implication of Arvinder Singh and Ankur Singh is concerned. Even PW-11 Lal Babu Kadi who had heard the noises in the shop of Randhir deceased found four persons running away but he failed to recognize them."

28. In a nut shell the learned Trial Judge has held that it would be unsafe to convict co-accused Arvinder and Ankur on the testimony of Dhanpal, but it could safely be concluded that appellant Amandeep inflicted the fatal knife blows on the deceased and the stab wounds on Dhanpal and that Sanjay

acted in concert with Amandeep in the murder of the deceased. The result is the acquittal of Arvinder and Ankur. The appellants have been convicted for the offence of murder of Randhir Chandela. Appellant Amandeep has been convicted for the offence punishable under Section 324 IPC for the injuries caused to Dhanpal. Both have also been convicted for the offence punishable under Section 452 IPC. For the offence of murder sentenced imposed upon the appellants is to undergo imprisonment for life and pay a fine of Rs.5,000/- each; in default of payment of fine to further undergo simple imprisonment for 6 months. Appellant Amandeep has been sentenced to undergo a sentence for 2 years and pay a fine of Rs.1,000/-; in default of payment of fine to undergo simple imprisonment for a period of 1 month for the offence punishable under Section 324 IPC. For the offence punishable under Section 452 IPC both have been sentenced to undergo imprisonment for 2 years and pay a fine of Rs.1,000/-; in default of payment of fine to undergo simple imprisonment for 1 month. Needless to state, the sentences have been directed to run concurrently.

29. A perusal of the decision of the learned Trial Judge and the discussion of the evidence in para 43 of the decision shows that the learned Trial Judge has disbelieved the deposition of Dhanpal pertaining to the manner in which he described

appellant Amandeep inflicting the injuries on him. The reason is obvious. While noting the relevant testimony of Dhanpal where he described the assault firstly on Randhir and thereafter on him, we have, for facility of reference, given serial number (I) to (XIV) to his deposition while reproducing the same in para 16 above. Describing how he i.e. Dhanpal received the injuries with a knife, Dhanpal has deposed that when Amandeep inflicted 2-3 blows with a knife on the arm of Randhir @ Lala and a blow on his chest, he i.e. Dhanpal came forward towards accused Amandeep and accused Sanjay started giving fist blows and kicks to him. He gave a forcible push to Sanjay and managed to catch hold of Amandeep *from behind*. He went on to state that thereafter Saibi i.e. Amandeep gave two knife blows on his chest, but he hugged him and caught him and in the meanwhile accused Arvinder and Ankur came inside and gave him fist blows and kicks and got freed Saibi i.e. Amandeep. For facility of reference, we once again note his testimony on said aspect. It reads:- *Randhir @ Lala received 2-3 blows on his arm and one knife blow on his chest. Randhir @Lala fell on the table after receiving knife blows. I tried to come forward towards accused Saibi and Sanju and then accused Sanju started giving me fists blows and kicks. I gave a forcible push to Sanju and then managed to catch hold of accused Saibi from behind. Accused*

Saibi then gave two knife blows in my chest but I hugged him and caught him. In the meantime accused Ravinder and Onkar (Arvinder and Ankur) came inside the office and both gave me fist blows and kicks and got freed of Saibi.

30. With reference to the two injuries suffered by Dhanpal and as recorded in his MLC Ex.PW-3/A it is apparent that one injury is on the left side of the chest, medial to nipple. The other injury is in the epigastric region. It is just not possible that Amandeep who was being hugged by Dhanpal from the back could have inflicted the two injuries in the manner as described by Dhanpal. We fail to understand as to how a man who is caught from behind can assault the person who is holding him from the behind on the chest of the said person. At best the person holding the knife can give jab thrusts by holding the knife inwards and in said eventuality can at best cause injuries on the extremities of the chest on the side portion of the torso. Faced with this dilemma, in para 43 to 45 of the decision, the learned Trial Judge has rightly opined that PW-1 could not be believed regarding the manner in which he received the injury.

31. But, after holding so, we fail to understand as to how could the learned Trial Judge return a finding that Amandeep has caused the injuries. In our opinion if an injured eye

witness cannot explain how he received the injuries or his explanation is found to be untrustworthy, a serious doubt arises on the credibility of his testimony pertaining to the nature and manner of the assault.

32. In our opinion, once the learned Trial Judge, in para 43 of the decision opined: *'an inference can be drawn here that either PW-1 had not caught hold of Amandeep Singh or he is not truthful on the aspect of catching the accused from behind'*, it became imperative for the learned Trial Judge to further consider the conduct of Dhanpal on the night of the fateful day i.e. the intervening night of 13th and 14th October, 2003 and with reference thereto answer the question whether Dhanpal was avoiding the police? If yes, why?

33. In his deposition (refer statement XII extracted in para 16 above) Dhanpal stated that when he saw Lal Babu coming in the office he became unconscious and regained consciousness at about 11:00 PM on 14.8.2003 in Khetrapal Nursing Home. It has to be noted that Dhanpal's statement was recorded by the police at about 12:00 noon on 15.8.2003. Dhanpal is obviously lying when he stated that he regained consciousness at 11:00 PM on 18.8.2003. Firstly, for the reason, the X-ray requisition form prepared by the radiologist at DDU Hospital shows that the radiologist recommended PA view of the chest X-ray.

There are two types of chest X-ray examination i.e. PA view or Posteroanterior view and AP View or Anteroposterior view. In a PA view, a patient stand in front of the X-ray unit with his hands on hips, shoulders swallowed and chin lifted. The X-ray machine operator makes the patient stand still with breath held while taking the X-ray. AP view is taken when a patient is unable to sit up or who cannot go to the radiology section. It is apparent that for a PA view of the chest the patient has to co-operate. The fact that the radiologist recommended the PA view of the chest to be X-rayed evidences that the radiologist found Dhanpal responsive and in a condition that a PA view of the chest X-ray could be carried out. It is apparent that in the night of 13.8.2003, Dhanpal was not unconscious. It is also important to note that the X-ray technician could not take the PA view of the chest because Dhanpal did not co-operate, a fact noted by the technician in Ex.PW-3/DA. This corroborates the consciousness of Dhanpal. It may be argued that non-cooperation by Dhanpal for the PA view of the chest to be X-rayed could well be the result of his being semi-conscious. But, this is not so for the reason as recorded in MLC of Dhanpal i.e. Ex.PW-3/A he absconded from the hospital at around 1:15 AM on 14.8.2003 i.e. the intervening night of 13th and 14th August, 2003. The evidence on record conclusively establishes that Dhanpal was fully conscious in DDU Hospital

and was somehow or the other attempting that the police should not record his statement.

34. The answer to the question, why Dhanpal did so is obvious. Dhanpal was admittedly an accused in an offence relating to murder. Knowledge can be imputed to him of how the police investigates a crime and in particular a serious crime like murder. Knowledge can be imputed to him of being aware that the police would ask him questions as to how Randhir @ Lala was killed and how did he i.e. Dhanpal sustain the injuries. That Dhanpal had no ready statement to make is an inference possible from his conduct of not cooperating with the doctors at DDU Hospital and in absconding from the hospital. An inference can be drawn that Dhanpal was buying time to cook up a story.

35. If Dhanpal is to be disbelieved, God alone knows as to what happened in the room in which Randhir @ Lala was killed and Dhanpal was injured.

36. What is relevant is the fact that Dhanpal's conduct evidences his disinclination to make a statement to the police and his desire to buy time and then make a thought over statement. Thus, whatever was told by Dhanpal to the police on 15.8.2003 has to be taken with a pinch of salt.

37. The fact that the manner in which Dhanpal has explained the injuries suffered by him, which is just not possible, coupled with his conduct discussed hereinabove is sufficient to totally discard the version of Dhanpal more so for the reason a tainted evidence requires corroboration for such part of the evidence which appears to be truthful.

38. Not only that. It is apparent that at Khetrapal Nursing Home, Dhanpal has managed to fake a surgery. As noted in para 4 above, at DDU Hospital, Dr. Renu Nagar PW-3 recorded two injuries on Dhanpal being:-

- “1. Clean incised wound approximately 3 x 1.5 cm on the left side of the chest medial to the nipple. The depth of the wound could not be assessed.
2. The clean incised wound approximately 3 x 1.5 cm in the epigastric region. The depth of the wound could not be assessed.”

39. At Khetrapal Nursing Home, as deposed to by Dr. Anil Khetrapal PW-5, three injuries were noted on Dhanpal being: (1) a small lacerated wound in the midline about 3/4 inches x 1 inch, depth of which could not be ascertained; (2) a wound at the level of fourth IC transversely placed at about 1 x 1/3 inch; (3) a wound at the ventral aspect of the left arm subcutaneous deep about 1 x 3/4 inches x 1 inch.

40. Wherefrom injury No.3 has emerged, is a mystery. If he compare the description of injury No.1 and 2 as recorded in the

MLC Ex.PW-3/A and injury No.1 and 2 as deposed to by Dr. Anil Khetrapal, it becomes evident that the injury No.1 recorded in the MLC Ex.PW-3/A is noted as injury No.2 by Dr. Anil Khetrapal and injury No.2 recorded in the MLC Ex.PW-3/A is injury noted as No.1 by Dr. Anil Khetrapal.

41. Dr. Renu Nagar could not record the depth of the injury in the MLC Ex.PW-3/A because Dhanpal absconded from the hospital. But, from the deposition of Dr. Anil Khetrapal it is apparent that the depth of the injury referred to him as injury No.1 could not be ascertained by him. Thus, the other injury i.e. injury No.2 deposed to by Dr. Anil Khetrapal could be the only injury which could have damaged the liver, pancreatic and peri-splenic region for the reason the third wound deposed to by Dr. Anil Khetrapal was at the ventral aspect of the left arm and was subcutaneous deep about 1 x 3/4 inches x 1 inch.

42. The entry wound No.2 deposed to by Dr. Anil Khetrapal was at the level of fourth IC. It has been described in the MLC as on the left side of the chest, medial to the nipple. The knife which had entered the chest cavity at the fourth IC i.e. between the fourth and fifth rib had to cut through the lung before piercing the liver, the pancreas and the peri-splenic region. A book on human anatomy guides us that the knife had to traverse not only downward but towards the back because the

pancreatic and peri-spleenic region is towards the back. It is just not possible that the knife which has entered the chest at the fourth IC could have damaged the liver and the pancreatic and peri-spleenic region for the reason admittedly, the left lung of Dhanpal was not damaged.

43. The totality of the circumstances noted hereinabove render it most unsafe to believe Dhanpal who appears to have lied on virtually every material aspect.

44. Even the injuries on the deceased as recorded in his MLC appear not to be possible in the manner Dhanpal has deposed about the manner in which they were caused. The site plan Ex.PW-16/A shows that the room in which the fight took place ad measures 12 feet x 10 feet. The setty on which Dhanpal claims having fallen after receiving the injuries is about 6 feet long and 4 feet wide. It is placed just next to the door adjoining the northern wall of the room. Just adjacent to the setty is a table ad-measuring 2 feet 6 inches x 6 feet. On the other side of the table just next to the Eastern wall of the room are three chairs. As per the site plan Randhir was sitting on the chair in the center. A fourth chair is shown on the side of the table towards the Southern wall. Referring back to the deposition of Dhanpal, as noted in para 16 above, when Saibi and Sanju i.e. the appellants came inside the room, Saibi gave a blow on the

table and hurled abuses and pulled out a knife from the dub of his pant and started giving blows to Randhir with a knife. It is apparent that Saibi i.e. Amandeep was on one side of the table and deceased Randhir was sitting on a chair which was on the other side of the table. The width of the table is 2 feet 6 inches. The person standing on one side of the table, to injure a person sitting on the chair on the other side of the table, width of which is 2 feet 6 inches would swipe i.e. hit or try to hit with a swinging blow. The likely injury to be caused would be a cut wound and not an incised penetrating wound cutting into the liver by about 5 cms. We note that in his testimony Dr. L.K.Barua PW-2, the doctor who conducted the post-mortem has deposed that injury No.1 on the epigastrium region, on internal examination revealed having cut through into the liver by about 5 cms. Assuming that Amandeep lunged forward to thrust the knife into the chest or the abdomen of Randhir, the natural and instinctive reaction of Randhir would be to take evasive action by leaning backward on the chair and recreating the said offensive act of Amandeep and the defensive reaction of Randhir it becomes most unlikely that such a deep injury could be caused in the manner as deposed by Dhanpal.

45. To sum up, the testimony of Dhanpal has been disbelieved by the learned Trial Judge pertaining to the incident of 11.8.2003. His testimony pertaining to how he was attacked

by Amandeep and how Amandeep inflicted two stab injuries on his chest, with reference to the place where the injuries were found on the chest, has been disbelieved. The learned Trial Judge has not discussed the conduct of Dhanpal, which, as discussed hereinabove is not only suspicious but evidences a conscious mind telling the body to avoid contact with the police. The past record of Dhanpal shows his criminal background. Dhanpal has managed to obtain papers pertaining to a fake surgery is also another circumstance to be kept in mind and lastly his deposition pertaining to how Randhir @ Lala was attacked appears to be untrue. The totality of the above renders it most unsafe to believe Dhanpal.

46. It is not out of place to incidentally mention that even the learned Trial Judge was in a quandary evidenced by the fact that pertaining to the injuries caused on Dhanpal, the learned Trial Judge has convicted Amandeep for the offence of causing hurt by a dangerous weapon and not for the offence punishable under Section 325 IPC or Section 307 IPC. If the testimony of Dr. Anil Khetrpal has to be believed, indeed, the injury noted by him is grievous and life threatening.

47. The appeals are allowed.

48. Impugned judgment and order dated 4.5.2007 convicting the appellants is set aside. The appellants are acquitted of all

the charges. The appellants are directed to set free if not required to be kept in custody in some other case.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

**March 23, 2009
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