

3. The finding of guilt has been returned on the basis of the testimony of Sunil Malhotra PW-1, the son of the deceased who claimed that at 10:20 AM on 14.3.2000 he went to the shop in question and saw his father in an injured condition in the lap of his uncle Ashok Malhotra PW-3 and when he asked his father as to what had happened his father told him that the appellant had stabbed him with a sua. Ashok Malhotra PW-3 who carries on business from shop No.C-186, Basti Chunnot, New Delhi stated that at 10:15 AM on 14.3.2000 he was near the shop of his brother and hear cries of bachao-bachao. He saw the appellant inflict blows with a sua to his brother and while so doing was saying "main tujhe jaan se maar kar hi dam lunga." Sustenance has been found by the learned Trial Judge to the testimony of PW-1 and PW-3 through the testimony of Amar Singh PW-2 as also through the testimony of Naresh Kapur PW-4 and Som Prakash Malhotra all of whom claimed to have seen the appellant inflicting blows with a sua on the deceased Raghubir Malhotra.

4. With reference to the post-mortem report Ex.PW-10/A proved by Dr.Anil Aggarwal PW-10 who conducted the post-mortem is the fact established that the deceased sustained 7 injuries as under:-

“1. Incised wound 2.5 x 1 cm over left ala of nose with the formation of a flap.

2. Linear incised wound 2 x 0.2 x 0.3 over left cheek starting 2 cm away from angle of mouth and 3 cm below injury No.1, with tailing downwards and outwards of 7.5 cm and runs over mandible left side.

3. Punctured wound 0.4 x 0.4 cm and 0.5 cm deep over right cheek, 3.5 cm away from outer angle of right eye and 7 cm in front of right pinna.

4. Abrasion 1.4 x .3 cm over left cheek, 4 cm below injury No.3 and 2.5 cm lateral to the right side of nose.

5. Linear abrasion 3.5 x .2 cm over right shoulder 5 cm below and outer to mid clavicular point right side and 8 cm below the shoulder tip.

6. Punctured wound 0.4 x 0.4 cm x skin deep over front of right chest, 3.2 cm below and medial to injury No.5 and 12 cm above and lateral to right nipple.

7. Penetrating wound 0.4 x 0.4 x 7 cm over front of right side chest, 5 cm away from mid sternum and 7.5 cm above and medial to right nipple, 6 cm below right sternoclavicular joint. The wound punctures the skin and then enters the right 3rd intercostals spaced, through a wound 0.4 x 0.4 cm, causing extensive haemorrhage around in the muscle and beneath the chest wall. The wound then traverses, backwards, almost horizontally and towards the left to enter the ascending aorta, just above the origin. There is a corresponding cut in the pericardium too. Pericardium contains about one litre of blood which spurted heavily on incising the pericardium.”

5. Injury No.7 being opined to be sufficient to cause death in the ordinary course of nature and being the fatal

injury the learned Trial Judge has held that the post-mortem report evidences that it was a case of murder.

6. The two questions which we have to answer is: Firstly whether the eye witnesses have deposed truthfully keeping in view the fact that when cross-examined, Dr.Anil Aggarwal PW-10 stated that *'incised injuries at serial No.1 and 2 are likely to be inflicted by some sharp edged weapon and are not likely by sua'*. He admitted that injury No.4 and 5 may be due to fall or application of blunt force and only injury No.3, 6, and 7 were possible from a sua, and that there are variations pointed out to us in the testimony of stated eye witnesses. The second question which we need to answer is whether Radhey Shyam, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing is either wrong or contrary to law i.e. whether Radhey Shyam is entitled to the benefit of Section 84 of the Indian Penal Code.

7. With respect to the mental health of Radhey Shyam we find that Roshan Lal DW-1 has deposed that Radhey Shyam was not mentally sound and sometimes children used to throw stones at him. He stated that he had never noticed any aggression in Radhey Shyam. On being cross-examined

Roshan Lal stated that he had stated about the innocence of the accused but the police had simply noted his address and asked him to go away. Rajesh DW-2, deposed likewise that children in the locality used to throw stones at Radhey Shyam and that the deceased died due to a quarrel with his brothers and that Radhey Shyam was falsely implicated.

8. On being cross-examined he admitted that he never told the police that somebody else was involved in the murder of the deceased or that Radhey Shyam was insane.

9. The other evidence pertaining to the mental health of the appellant is to be found in the judicial record. An application was filed under Section 329 read with Section 330 Cr.P.C. to determine the mental condition of Radhey Shyam. An order was passed on 31st August 2000 directing that Radhey Shyam be examined by a Board of Doctors at the Mental Health Institute and report submitted. A report dated 2.11.2000 is available at page 287 of the Trial Court Record signed by Dr.R.K.Chaddha, Dr.R.A.Singh and Sh.Gauri Shankar, a three Member Board constituted at the Institute of Human Behaviour and Allied Sciences opining that Radhey Shyam did not reveal any psychiatric abnormality and at present did not have psychiatric illness and that he was able to understand the

nature of the offence he had been accused of and its consequences and the defence. Radhey Shyam was certified fit to stand trial.

10. The trial proceeded and by the time PW-4 and PW-5 were to be examined another request was made to the Court to examine Radhey Shyam and have before the Court a report qua his mental health.

11. Pursuant to the order passed by the Court Radhey Shyam was directed to be re-examined and as per report dated 27.11.2001 at page 269 of the Trial Court Record a Board consisting of Dr.R.K.Chaddha, Dr.S.N.Sengupta and Dr.T.B.Singh opined that Radhey Shyam suffers from schizophrenia and requires treatment. It was opined that he was aware of the crime he has been accused of but is unable to understand the seriousness and its consequences and is also not able to make his defence and hence is not able to stand trial.

12. The trial was deferred with a direction that Radhey Shyam should be continuously monitored and report submitted. A third report was submitted on 15.4.2002 which is at page 247 of the Trial Court Record and as per the same Dr.R.K.Chaddha, Dr.S.N.Sengupta and Dr.T.B.Singh opined that

the condition of the patient has been considerably improved. That he was fit to stand trial. However, it was reported that Radhey Shyam suffers from undifferentiated schizophrenia.

13. With the result trial recommenced against Radhey Shyam after the report dated 15.4.2002 was received.

14. It may be noted at the outset that no motive has been alleged against the appellant for having inflicted injuries on the deceased.

15. Another fact may be noted. After the witness of the prosecution had been examined and discharged an application was filed on 9.6.2004 praying that the incharge of van No.033-02 of the PCR in which the deceased was removed to the hospital be summoned since in the form maintained at the PCR it was recorded that one Rakesh was the assailant. The application was dismissed.

16. As noted above, the learned Trial Judge has held that the testimony of PW-1 to PW-5 establishes that the appellant had committed the crime. The learned Trial Judge has also found incriminating evidence in the form of the appellant getting recovered an ice pick from his house after he was apprehended and made a disclosure statement to the police.

17. If we look to the testimony of Sunil Malhotra PW-1 who claims to have not seen the incident but claims that when he reached the shop of his father he found his father in the lap of his uncle Ashok Malhotra PW-3 and on inquiry told him that the appellant had stabbed him, we find that no such fact has been deposed to by Ashok Malhotra. Ashok Malhotra does not refer to the deceased telling anything to his son or that the deceased was in his lap.

18. To a specific question PW-2 stated that Ashok Malhotra PW-3 had reached the shop of the deceased after he i.e. PW-2 reached the shop and that no injury was caused on the person of the deceased after PW-3 arrived at the shop. We find that PW-3 claims that when he reached the shop of the deceased he saw the accused giving a sua blow which fell near the nose of the deceased. It is interesting to note that the only injury on/near the nose of the deceased is injury No.1, which is an incised wound and as admitted by Dr.Anil Aggarwal PW-10 during cross-examination cannot be caused by a sua and has to be caused by a sharp weapon of capable of inflicting incised wounds.

19. PW-4 and PW-5 claim that PW-1 was all throughout present during the time of the incident. As noted above, as

per PW-1 he had reached the shop of his father after the incident was over and that his father told him that Radhey Shyam had inflicted injuries on him.

20. Const.Surender PW-12 who had reached the shop soon after the incident has categorically stated that goods were lying scattered inside the shop. None of the witnesses who claim to have seen the incident have deposed to any scuffle.

21. The post-mortem report Ex.PW-10/A of the deceased and the testimony of Dr.Anil Aggarwal and in particular his answers given during cross-examination clearly prove that two weapons of offences were used. One was a sharp edged weapon capable of causing incised wounds and the second was a sharp pointed object i.e. an ice pick (sua).

22. None of the eye witnesses have deposed to the appellant using two weapons.

23. Though the discrepancies in the testimony of witnesses and as noted above appear to be minor variations at first glimpse but if viewed with reference to the post-mortem report of the deceased and the fact that two weapons have been used in the commission of the offence it is apparent that none of the so-called eye witnesses have deposed truthfully.

In any case, the witnesses have not been able to explain how the deceased received two injuries as a result of a sharp edged weapon capable of causing incised wounds being used and three injuries being the result of the use of a pointed sharp object such as an ice pick.

24. If for no other reason, the appellant is entitled to be granted the benefit of doubt.

25. With respect to the plea of insanity of Radhey Shyam, as noted herein above the only evidence are the three reports as per which Radhey Shyam suffered from undifferentiated schizophrenia which means that the symptoms of schizophrenia are not sufficiently formed or specific enough to permit classification of the illness into one or the other sub-types. Literature informs that undifferentiated schizophrenia is difficult to diagnose because negative symptoms have not developed with definite characteristics. Unless the doctor/expert concerned is guided with reference to the past history of hallucinations, delusions or earlier manifestations of psychotic episodes it may be difficult even for an expert to notice such symptoms. Indeed, this has happened in the instant case. When first examined and report submitted on 2.11.2000 the experts could not

detect any psychiatric illness or abnormality. At the second stage when the report dated 27.11.2001 was submitted the experts detected Radhey Shyam to be suffering from schizophrenia but with sufficient cognitive faculty to understand the crime he was accused of but with cognitive faculty impaired to understand the seriousness of the crime and its consequence. At the third stage of examination leading to the report dated 15.4.2002 being submitted, the doctors opined that Radhey Shyam suffers from undifferentiated schizophrenia and that at that point of time he was fit enough to be tried.

26. We are noticing that whenever a defence of insanity is set up, members of the legal fraternity remain satisfied by attempting to prove that the accused was schizophrenic. Is that enough?

27. The defence of insanity is recognized in India by virtue of Section 84 of the Indian Penal Code which reads as under:-

“Sec.84: Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

28. A bare reading of Section 84 IPC reveals that the mental status of the accused has to be considered *at the time of the doing of the act* complained of. Thus, it would be useless evidence to simply prove that the accused suffered from schizophrenia or any other psychiatric or psychological disorder.

29. The second facet which emerges from a bare reading of Section 84 IPC is the proof of the fact that by reason of unsoundness of mind, at the time of commission of the offending act, the offender was either incapable of knowing the nature of the act or was incapable of knowing that what he is doing is wrong or contrary to law.

30. It is apparent that there is a distinction between medical insanity and legal insanity. From a doctor's point of view a patient of schizophrenia would be treated as a mentally sick person. But for the purposes of Section 84 IPC such a person would escape being classified as a normal person and to be treated insane vis-à-vis the offence only on proof of the cognitive faculties being impaired at the relevant time i.e. at the time the crime was committed.

31. Now, cognitive faculties can be impaired due to a psychological reason or an imbalance directly affecting the

brain. In the latter situation would be idiots and lunatics. If proved to be an idiot or a lunatic, where the disability of the brain is permanent, no further proof of the mental condition at the relevant time would be needed to discharge the onus which law places on the defence i.e. it is for the defence to prove the plea of insanity, for the reason an idiot or a lunatic is permanently mentally disabled and 24 hours a day, for the entire 365 days of the year would not be in a position to know the nature of his act as also the quality thereof.

32. The problem arises where insanity is taken up as a defence and sought to be proved not with reference to the accused being a lunatic or an idiot but suffering from a psychiatric or a psychological disability.

33. To put it in laymen's language, idiocy and/or lunacy may be called permanent insanity and a psychiatric or psychological disability which may be called temporary insanity.

34. Historical evolution of the law pertaining to the defence of insanity at a criminal trial is usually traced by the legal fraternity to the celebrated decision reported as 1843 Revised Reports, Vol.59: 8ER 718 (HL) R vs. Daniel Mc Naughten. The defence of insanity in said case was set up on

the evidence that the accused suffered from an insane delusion that the Prime Minister Sir Robert Peel had injured him. Mistaking the deceased for Sir Robert Peel, the accused killed him by shooting him. The jury returned the verdict of not guilty on the ground of insanity. The question of law pertaining to insanity was referred to the House of Lords. Five questions were posed to the House of Lords, as enunciated below:-

1. What is the law respecting alleged crimes committed by persons afflicted with insane delusion, in respect of one or more particular subjects or persons: as, for instance, where at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?
2. What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?
3. In what terms ought the question. to be left to the jury, as to the prisoner's state of mind at the time when the act was committed?
4. If a person under an insane delusion, as to existing facts, commits an offence in consequence thereof, is he thereby excused?

5. Can a medical man conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act, that he was acting. contrary to law, or whether he was labouring under any and what delusion at the time

35. Lord Chief Justice Tindal expressed opinion upon the above said terms of reference as follows:-

Opinion upon Question 1

"..In answer to which question, assuming that your Lordships' inquiries are confined to those persons who, labour under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law; by which expression we understand your Lordships to mean the law of the land...."

Opinion upon Question 2 and 3

"...These two questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a

defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between, right and wrong: which mode, though rarely; if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put. generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course therefore has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong: and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require....”

Opinion on Question 4

“..The answer must of course depend on the nature of the delusion: but, making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take

away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment...”

Opinion on Question5

“..In answer thereto, we state to your Lordships, that we think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right...”

36. The law afore-noted has come to be known as the M'Naughten's Principles. Pithily stated, a person laboring under a delusion or a psychological or a psychiatric ailment would not be entitled to be acquitted on the ground of insanity unless it is established that at the time when the crime was committed he was suffering the delusion, psychological or psychiatric condition and was incapable of knowing the nature of his act or that he was not knowing that what he was doing was wrong or contrary to law.

37. In this connection uncontrollable or irresistible impulses have to be factored and distinction drawn with precision for the reason a person acting under an uncontrollable or irresistible impulse would not be entitled to the defence of insanity.

38. It would be virtually impossible to lead direct evidence of what was the exact mental condition of the accused at the time of the commission of the crime. Thus, law permits evidence to be led where from the trier of the facts can form an opinion regarding the mental status of the accused at the time when the crime was committed. Thus, evidence which can be led can be characterized as of 'inferential insanity'. This evidence, common sense tells us would be the immediately preceding and immediately succeeding conduct of the accused as also the contemporaneous conduct of the accused.

39. Thus, with reference to the past medical evidence or the medical history of the accused as the backdrop, the duty of the Court is to evaluate the conduct of the accused before, at the time of and soon after the crime and then return a finding of fact, whether the accused was of such unsound mind that by reason of unsoundness he was incapable of

knowing the nature of the act done or incapable of knowing that the act was wrong or contrary to law.

40. Under Section 45 of the Evidence Act an opinion of an expert on a matter of science, technical or special knowledge is admissible evidence to guide the trier of the fact to understand the scientifically recognized principles with reference whereto a question of fact has to be determined. Thus, where a plea of insanity has been set up as a defence, the trier of the facts may seek the assistance of an expert but the decision cannot be delegated to the expert and has to be by the trier of the facts i.e. the Court.

41. In England the general practice adopted is to examine an expert after appraising the expert the conduct of the accused, before, at the time of or soon after the crime was committed as spoken of by the witnesses and elicit the expert opinion of the medical expert who should be required to clearly bring out the principles applied by him on basis whereof the opinion has been rendered as also to establish that the said principles have been recognized by the experts in the field. Thereafter, it is the duty of the trier of the fact to return a finding of fact pertaining to the consciousness of the

accused of the bearing of the act of the accused on those affected by it.

42. Many a times if the crime is committed without a motive and in a grotesque manner, at the first blush, without applying the mind, one tends to rush to the conclusion that no sane person could do the act and hence a post haste conclusion is arrived at that the act has to be of an insane person. This is not the approach warranted in law.

43. Pertaining to motive or the lack thereof as quoted in a passage appearing at page 22 of Vol.9 of Halsbury's Laws of England, 2nd Edn. : *The mere fact that an act or omission is without apparent motive is not by itself sufficient to establish insanity. But if there is other evidence of insanity, such a fact may be of importance as helping to prove insanity.*

44. Thus, absence of motive in the commission of a crime is merely one out of the many factors to be taken note of while returning an opinion.

45. In the decisions reported as AIR 1964 SC 1563 Dahyabhai Chagganbhai Thakker vs. State of Gujarat and AIR 1972 SC 2443 Sheralli W. Mohammed vs. State of Maharashtra, merely because of the grotesque and diabolical

nature of the crime it could not be inferred that the accused was insane; there being no other evidence of insanity for the reason there are hundreds and thousands of reasons why people do things which they ought not to do.

46. Thus, a fair trial would require that if there is available proof before the Judge that the accused was suffering from a psychiatric or psychological disorder i.e. there was a history of insanity, it is the duty of the Court to require the investigator to subject the accused to a medical examination and place the evidence before the Court as observed in the decision reported as AIR 2009 SC 97 Sidhapal Kamala Yadav vs. State of Maharashtra.

47. A fact has to be treated as proved when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

48. Thus, the Court would have to fall back applying the test of a prudent man, with the help of expert evidence if any, after weighing the quality of the acts of the accused, soon before, at the time of or after the crime, to return a verdict as

a prudent person whether the same have reached the proof of the accused being insane at the time of the commission of the crime.

49. The past is always helpful to seek guidance as to how men of prudence i.e. Judges in the past returned verdicts either way.

50. In the decision reported as 1993(1) Crimes 430 (Orissa) Raghu Pradhan v. State of Orissa the immediately previous conduct of the accused i.e. quarrelling with mother and throwing brickbats at her, along with the subsequent conduct of rushing to the police station confessing the incident and producing the knife and also the fact that the crime was committed in broad daylight was held to be a sufficient indicator of the infirm mental condition of the accused at the time of commission of the offence. In light of the past mental history of the accused in the form of medical reports by 2 doctors confirming the accused to be mentally unsound, it was held that the plea of insanity was successfully established.

51. In the decision reported as AIR 1969 SC 15 Jai Lal v. Delhi Administration despite having a medical history of insanity proved by evidence in court, the court convicted the

accused based on his subsequent conduct viz. his act of concealing the weapon, bolting the door to prevent arrest and absconding thereafter as the said acts were held by the court to be a display of consciousness of the guilt.

52. In the decision reported as AIR 1960 Ker. 24 Unniri Kanan v. State the statements of relatives of accused, deposing accused to be insane, along with the facts that no attempt was made by the accused to conceal his crime or escape i.e. when the police arrived they found the accused sitting quietly by the side of the house with his hands and clothes smeared with blood and a complete absence of motive or provocation along with the manner in which the murder was committed (nature and multiplicity of weapons and duration of attack) were held to be indicative of the fact that the accused was insane.

53. In the decision reported as (1960)1 MLJ 333 In re: Parvati Anmal despite the fact that it was proved that the accused was suffering from depression, her suicidal act of jumping in the well along with her two children was held to be outside the ambit of Sec.84 as it was held that the facts show her mental consciousness towards the act.

54. In the decision reported as AIR 2002 SC 3399 Shrikant Anandrao Bhosale Vs. State of Maharashtra there was past evidence of the accused suffering from Paranoid Schizophrenia since 1992. The conduct of the accused who killed his wife in day light and made no attempt to hide or run away from the scene of crime was held indicative of a mind not knowing the consequences of its acts.

55. In the decision reported as AIR 1968 Delhi 177 Shanti Devi Vs. The State the conduct of the accused in sitting next to the dead body of his child and crying and on seeing the people leaving the child and sitting on a cot and throwing the razor i.e. the weapon of offence under the cot was held indicative to be evidencing an unsound mind.

56. In the decision reported as AIR 1949 Cal. 182 Ashiruddin Ahmed Vs. The King the conduct of the accused who had told his maternal uncle that in a dream he was commanded by somebody in paradise to sacrifice his son and his taking the son to a mosque and killing him by thrusting a knife in the throat i.e. an act of sacrifice (*kurbani*) was held to be indicative of the accused acting under delusion and hence insane.

57. In the decision reported as AIR 1961 SC 998 State of Madhya Pradesh Vs. Ahmadullah, inspite of evidence of the accused being in a disturbed state of mind in the evening of the date of occurrence and having not taken food for 2 prior days was held no evidence of insanity when the crime was committed in view of evidence that the accused bore ill will towards the deceased. The manner of crime showed a mind in concert with the body. The accused took a torch in the night and stealthily scaled the wall of the house of the deceased.

58. In the instant case, we have no evidence pertaining to the conduct of the appellant on the day when the crime was committed and on the assumption that the appellant committed the crime, we just do not know what he was doing prior to, at the time of and after the crime. Neither his acts or utterances save and except the witnesses speaking that he used an ice-pick to assault the deceased have surfaced. Thus, the evidence pertaining to the mental health of the appellant brought on record during the trial which shows early stages of schizophrenia is insufficient evidence where from it can be said that the appellant was insane at the time when he is alleged to have committed the crime. The testimony of the two defence witnesses is too vague.

59. We may add a clarificatory note. In view of our positive findings that there is doubtful whether the appellant could have caused the injury as alleged, we have ventured to answer the question of insanity should our decision be challenged in Appeal. Our observations with respect to the proof of insanity of the appellant may be read on the assumption that the evidence establishes that the appellant committed the crime.

60. The appeal is allowed. The appellant is acquitted of the charge framed against him. The impugned judgment and order dated 7.7.2004 is set aside. The appellant is acquitted of the charge of having murdered Raghbir Malhotra.

61. Since the appellant is in jail a copy of this decision be sent to the Superintendent, Central Jail, Tihar who is directed to forthwith release the appellant if not required in any other case.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

FEBRUARY 08, 2010
dkb / mm