

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment reserved on: January 11, 2010
Judgment delivered on: July 02, 2010

+ **CRIMINAL APPEAL NO. 548/2009**

RANDHIR SINGH **....APPELLANT**
Through: Mr. U.U.Lalit, Sr. Advocate with Mr. Alok K. Agarwal, Mr. Naveen Chawla, Ms. Neha Mishra, Mr. Mayank Bughani & Mr. Mukesh Vats, Advocates.

Versus
STATE (NCT OF DELHI) **....RESPONDENT**
Through: Mr. Pawan Sharma, Standing Counsel with Mr. Sunil Sharma, APP.

WITH

CRIMINAL APPEAL NO. 592/2009

DIPENDER SINGH @ DEEPA @ DEEPU **....APPELLANT**
Through: Mr. Sushil Kumar, Sr. Advocate with Mr. Naval Kishore, Mr. Anmol Thukral & Mr. Aditya Kumar, Advocates.

Versus
STATE (NCT OF DELHI) **....RESPONDENT**
Through: Mr. Pawan Sharma, Standing Counsel with Mr. Sunil Sharma, APP.

AND

CRIMINAL APPEAL NO. 594/2009

BIJENDER SINGH **....APPELLANT**
Through: Mr. Siddharth Luthra, Sr. Advocate, Mr. Anirudh Yadav, Advocate with Mr. Anurag Ahluwalia, Advocate.

Versus
STATE (NCT OF DELHI) **....RESPONDENT**
Through: Mr. Pawan Sharma, Standing Counsel with Mr. Sunil Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. Above referred appeals are directed against the impugned judgment dated 06.07.2009 in Sessions Case No.36/08 FIR No.238/88 Police Station Malviya Nagar in terms of which the appellants Bijender Singh @ Biju, Dipender @ Deepu and Randhir Singh @ Tata have been convicted on the charges under Section 302 IPC read with Section 34 IPC and Section 307 IPC read with Section 34 IPC as also the consequent order on sentence dated 08.07.2009.
2. At the outset we may record that the co-accused Joginder Pal Singh absconded during trial at the stage of final arguments and he was declared proclaimed offender.
3. Briefly stated, case of the prosecution is that on 31.08.1988 at about 2.40 p.m. Rajinder Singh PW-10 was brought to All India Institute of Medical Sciences (for short 'AIIMS') by one Dinesh Kumar s/o Dujia Ram with alleged history of being stabbed at the college on the chest, head and left limb. This information was conveyed to P.S. Malviya Nagar by Duty Constable Dalbir Singh posted at AIIMS and was recorded as DD No.10A at 3.05 p.m. Copy of the DD report was sent to S.I. Surjit Singh

through Constable Suraj Prakash who had gone to Aurobindo College in connection with investigation of DD No.8A dated 31.08.1988.

4. On the same day at about 2.45 p.m., injured Yaad Ram (hereinafter referred to as 'deceased') was brought to Safdarjung Hospital by one Raj Kamal s/o Inderpal, resident of PTS 138, Mehrauli with alleged history of being stabbed with a knife with complaint of pain in abdomen. This information was conveyed by Duty Constable Ramesh Chand, Safdarjung Hospital to the Police Station Malviya Nagar which was recorded as DD No.11A dated 31.08.1988 at 3.10 p.m. Copy of the aforesaid DD report was also forwarded to S.I. Surjit Singh through Constable Rajpal.
5. S.I. Surjit Singh, on receipt of the copies of aforesaid DD reports, visited Safdarjung Hospital along with Constable Naresh Kumar and moved an application addressed to Medical Officer, Safdarjung Hospital seeking permission to record the statement of injured Yaad Ram(deceased). He, however, was declared 'unfit for statement'. S.I. Surjit Singh then came to AIIMS and sought permission from Medical Officer, AIIMS to record the statement of injured Rajinder Singh (PW-10). He was declared 'fit for statement' and his statement was recorded by S.I. Surjit Singh

6. Rajinder Singh (PW-10) in his statement Ex.PW-10/A claimed that on 31.08.1988 he along with the deceased Yaad Ram had gone to Aurobindo College to attend a party organised by one Kapoor Singh Dagar to celebrate his election for College Student Union. They reached at the gate of the college at about 2.15 p.m. where they met Dinesh Kumar PW-14. The appellants as well as their co-accused Joginder Pal Singh (proclaimed offender) were also present at the gate of the college. PW-10 Rajinder Singh claimed in his statement that when they asked the appellants about Khazan Singh and Kapoor Singh Dagar, the accused persons responded rudely by saying “Hame Pata Nahin Hei Kahan Bhad Mein Gaye”. When they protested against the said rude behaviour of the accused persons, they started abusing them. PW-10 Rajinder Singh further claimed that when he protested against the abuses, appellant Bijender Singh exhorted the other accused persons by saying “this Rajinder is uncle of Khazan Singh and a supporter of Kapoor Singh Dagar, therefore he should be beaten”. On this exhortation, appellant Dipender @ Deepu and the proclaimed offender Joginder Pal Singh caught hold of Rajinder Singh from his hands and appellant Bijender Singh and Randhir Singh attacked him with knives. Bijender Singh inflicted stab injury on his head whereas Randhir Singh stabbed him on his left armpit and the left hip. When Yaad

Ram tried to intervene, appellant Randhir Singh exhorted Bijender Singh, Deepu and Joginder Pal Singh to kill him. On his exhortation, Deepu, Joginder Pal Singh and Bijender Singh caught hold of Yaad Ram and Randhir Singh inflicted a knife blow in his abdomen. On the receipt of injury, Yaad Ram ran towards the market holding his abdomen. PW-10 further stated that the incident was witnessed by Dinesh Kumar and some other persons who ran away from the spot. However, someone brought him to AIIMS and got him admitted there. S.I. Surjit Singh appended his endorsement on the statement of PW-10 Rajinder Singh and sent the rukka to the police station for registration of formal FIR under Sections 307/34 IPC.

7. From the hospital, S.I. Surjit Singh went to the place of occurrence and prepared the rough site plan Ex.PW-22/A on the pointing of the witness Dinesh Kumar. Injured Yaad Ram died on 31.08.1988 itself and information of his death was conveyed by the Duty Constable to P.S. Malviya Nagar which was recorded as DD No.32 on 31.08.1988 at 6.10 p.m.
8. On 01.09.1988, PW-2 Chanderhas visited the hospital where his statement under Section 161 Cr.P.C. was recorded by S.I. Surjit Singh. S.I. Surjit Singh also conducted the inquest proceedings and sent the dead body of Yaad Ram for post mortem examination.

9. Subsequent investigation of the case was taken over by S.I. B.L.Meena, PW-22, the then SHO P.S. Malviya Nagar. He arrested appellant Bijender Singh as well as proclaimed offender, Joginder Pal Singh on 07.09.1988. On interrogation, appellant Bijender Singh as well as the co-accused Joginder Pal Singh (P.O.) made disclosure statements about the incident and stated that they had kept their blood stained clothes which they were wearing at the time of occurrence with their friend Vijay Kumar. Pursuant to the aforesaid disclosure statement, they led the police party to House No.701, Sector-1, R.K.Puram from where Vijay Kumar, s/o Om Prakash produced a plastic bag containing a blood stained T-shirt purportedly belonging to Bijender Singh and a bushirt purportedly belonging to Joginder Pal Singh, which were converted into separate packets and taken into possession. Appellant Dipender @ Deepu was also arrested and he made a disclosure statement pursuant to which he got recovered a dagger(*chhuri* Ex.P-1) which was purportedly used in the occurrence. Said dagger was also taken into possession after preparing its sketch and converting it into a sealed packet.
10. Appellant Randhir Singh surrendered in the Court of Metropolitan Magistrate on 15.09.1988. He claimed to be innocent and requested for holding a Test Identification Parade to fix his identity. So, the Investigating Officer moved an

application Ex.PW-18/A in the court of the concerned Magistrate, requesting for holding of Test Identification Parade to fix the identity of the appellant Randhir Singh. The application was marked to Link Magistrate for necessary action. Test Identification Parade was conducted by Shri N.K.Kaushik, the then Metropolitan Magistrate on 22.09.1988 wherein appellant Randhir Singh was correctly identified by PW-2 Chanderhas. However, the other two witnesses PW-10 Rajinder Singh and PW-14 Dinesh failed to identify him as one of the culprits. On 23.09.1988, appellant Randhir Singh made a disclosure statement Ex.PW-22/G and pursuant to the said disclosure statement, he led the police party to House No.1204, Sector-19, Faridabad from where Ms.Asha Rani produced a shirt from an almirah which appellant Randhir Singh was allegedly wearing at the time of the occurrence. Said shirt was seized after converting it into a sealed packet.

11. The blood stained clothes seized at the instance of the appellants and their co-accused Joginder Pal Singh as well as blood stained clothes of the deceased and the injured Rajinder Singh were sent to CFSL for examination and after collecting the result of chemical analysis and completing the formalities of investigation, the appellants and their co-accused were challaned and sent for trial.

12. The appellants as well as their co-accused Joginder Pal Singh were charged by the learned Trial Judge for committing murder of Yaad Ram in furtherance of their common intention for the offence punishable under Section 302 IPC read with Section 34 IPC and also for attempt to commit murder of PW-10 Rajinder Singh in furtherance of their common intention for the offence punishable under Section 307 IPC read with Section 34 IPC. The appellants as well as Joginder Pal Singh pleaded not guilty to the charges and claimed to be tried.
13. In order to bring home the guilt of the appellants as well as their co-accused Joginder Pal Singh, prosecution has examined 22 witnesses in all, including purported eye-witnesses to the occurrence, namely PW-2 Chanderhas, PW-10 Rajinder Singh and PW-14 Dinesh Kumar.
14. On conclusion of prosecution evidence, the appellants were examined under Section 313 Cr.P.C. to afford them an opportunity to explain the incriminating evidence appearing against them. The appellants in their respective statements denied the prosecution story in its entirety and claimed that they have been falsely implicated by the police. No witnesses in defence have been examined.
15. The case of the prosecution is mainly based upon the eye-witness account of the occurrence. Therefore, before adverting to the submissions made on behalf of the appellants and the

State, we deem it appropriate to have a look on the testimony of the three eye-witnesses examined by the prosecution.

16. PW-2 Chanderhas has stated in the Court that on 31.8.1988 at about 2.15 p.m. while he was going towards Aurobindo College from the side of MMTC Market, he heard a noise and saw that accused Joginder Pal Singh (P.O.) and appellant Dipender were physically holding PW-10 Rajinder Singh and the appellants Bijender Singh and Randhir Singh were stabbing him with knives. He deposed that Bijender Singh inflicted knife injury on the forehead of PW-10 Rajinder and Randhir Singh inflicted knife injuries on the left hip and the left arm pit of Rajinder. When the deceased Yaad Ram tried to rescue Rajinder, appellant Randhir Singh exhorted his co-accused persons by saying 'Pakar Lo Sale Ko Yaad Ram Ko' and on his exhortation, appellants Bijender and Dipender as well as their co-accused Joginder Pal Singh (P.O.) caught hold of Yaad Ram and appellant Randhir Singh inflicted knife blow on the left side of the abdomen of Yaad Ram. Appellant Dipender Singh also gave fist blows to him. The witness claimed that when he tried to intervene, all the four accused persons ran away towards MMTC Market. He further stated that on 01.09.1988 he went to Safdarjung Hospital where he met SHO, P.S. Malviya Nagar and gave his statement. The witness further claimed that on 09.09.1988 on the request of the father of the deceased, he visited Police Station Malviya Nagar to inquire about the progress of investigation in the case. When he

reached the police station at about 6.15 p.m., SHO Malviya Nagar was sitting in the police van along with the appellants Bijender and Dipender as well as the proclaimed offender Joginder Pal Singh. SHO told him that the above referred accused persons had made disclosures and the police party was going to effect recoveries pursuant to the disclosure statements and he joined in the investigation. Thereafter, accused Dipender led the police party to a pagdandi (pathway) which led towards Lado Sarai and got recovered one dagger Ex.P1 which was hidden under a stone. SHO prepared the sketch of the dagger Ex.PW-2/A and converted it into a sealed packet and took it into possession vide memo Ex.PW-2/B. He identified his signature as a witness on the said two memos. He also stated that thereafter appellant Bijender Singh and P.O. Joginder Pal Singh led the police party to Quarter No.107, Sector-1, R.K. Puram and called PW Vijay Kumar from that house. They asked Vijay Kumar to bring their clothes which they had kept with him on 01.09.1988. On this, Vijay Kumar produced a black plastic bag which was found to contain one T-shirt with yellow and red stripes belonging to appellant Bijender Singh and one white and blue check shirt as well as white and blue check pant belonging to the accused Joginder Pal Singh (P.O.), which clothes were taken into possession. This witness identified the T-shirt as Ex.P2 and the bushirt and pant belonging to Joginder Pal Singh as Exhibits P3 and P4 respectively.

17. PW-10 Rajinder Singh, injured, has not supported the case of the prosecution regarding the identity of the accused persons. He was declared hostile on the request of the learned APP and was cross-examined at length by him. According to him, on 31.8.1988, he and Yaad Ram went to Aurobindo College for attending a party organized by Kapur Singh Dagar who had won student union elections held on 26.8.1988. They reached Aurobindo College at about 2.15 p.m. and met the appellant Bijender and his co-accused Joginder Pal Singh (P.O.) there, who were accompanied by 10/12 persons. PW-10 stated that when he asked them as to where he could find Khazan Singh they rudely replied 'Hame Pata Nahin Hei Kahan Bhad Mein Gaye'. On this, he told them to behave and talk properly and suddenly one of them remarked that he (witness) was uncle of Khazan Singh and he should be beaten up. On this, Bijender etc. caught hold of him and Sardarji i.e. Joginder Pal Singh gave him a knife blow. When Yaad Ram tried to rescue him, he was also given knife blows. The witness claimed that at the time of incident, Dinesh and Chanderhas were also standing nearby. He was taken to the hospital by somebody where his statement Ex.PW-10/A was recorded by the police. However, during his cross-examination by learned APP, he failed to identify appellant sDipender Singh and Randhir Singh. In his cross-examination on behalf of the appellants, he stated that he was not aware as to who had caused injuries to him and Yaad Ram. He stated that he did not

see the person who caused injuries to Yaad Ram and in his statement to the police he had stated that some boys had inflicted injuries on his person but he had not mentioned their names. He was in semi-conscious condition at that time and police told him the name of boys who had inflicted injuries on him as well as Yaad Ram and he appended his signature on the said , which was not read over to him. He further stated that none of the assailants were present in the Court. He also stated that PW-2 Chanderhas was not present at the spot at the time of occurrence and he had come to the hospital later.

18. PW-14 Dinesh Kumar, the third purported eye-witness is totally hostile to the case of the prosecution and has stated that he had not witnessed any fight or quarrel at Aurobindo College. He also stated that neither Rajinder Singh nor Yaad Ram sustained injuries in his presence. He was cross-examined by learned APP but he denied the prosecution case suggested to him and nothing of importance could be elicited from his cross-examination.
19. Prosecution has endeavoured to establish the guilt of the appellants by examining three eye-witnesses, namely, PW2 Chanderhas, PW10 Rajender Singh, injured complainant and PW14 Dinesh Kumar. PW10 Rajender Singh and PW14 Dinesh Kumar are hostile witnesses and they have not supported the prosecution story. Thus the case of the prosecution is mainly based upon the testimony of PW2 Chanderhas.

20. Learned Shri Sushil Kumar, Sr. Advocate appearing for the appellant Dipender Singh @ Deepu, learned Shri U.U. Lalit, Sr. Advocate appearing for the appellant Randhir Singh and learned Shri Siddhartha Luthra, Sr. Advocate appearing for the appellant Bijender Singh have argued on almost similar lines. They submitted that the learned Trial Judge has committed a grave error in relying upon the testimony of PW2 Chanderhas. Their first criticism to the testimony of PW2 Chanderhas is that as per his testimony, injured Rajender Singh and the deceased Yaad Ram were earlier known to him and he had even gone to the hospital to find out about their condition in the evening of 31st August 1988 i.e. the date of incident and remained there from 7.00 p.m. to 8.30 p.m. This version, if correct, gives an impression that he was friendly with the deceased as well as the injured Rajender Singh. Despite of that though he claims that he was present at the spot of occurrence he did not care to attend to the injured Rajender Singh as well as the injured Yaad Ram or make any effort to take them to the hospital. It was further pointed out by learned counsels appearing for the appellants that PW2 Chanderhas claims that on 31.08.1988 he did not report the matter to the police nor did he bother to inform the family of Yaad Ram about the incident, which conduct of PW2 Chanderhas is highly unnatural and casts strong doubt against his presence at the spot. Learned

counsels appearing for the appellants drew our attention to the rough site plan of the place of occurrence purportedly prepared by S.I. Surjit Singh in the evening of 31.08.1988 wherein the position of PW2 Chanderhas as well as Dinesh Kumar has been specifically marked. Admittedly, PW2 Chanderhas did not contact the police on 31.08.1988, therefore, only other person who could have assisted S.I. Surjit Singh in preparing the rough site plan could be Dinesh Kumar. Learned counsels submitted that PW14 Dinesh Kumar has nowhere stated in his testimony that the rough site plan was prepared at his instance. On the other hand, he denied having seen the occurrence; therefore, it is a mystery as to how S.I. Surjit Singh came to know on 31.08.1988 that PW2 Chanderhas was present near the spot of occurrence at the time of incident. Learned counsels have urged us to infer from the aforesaid circumstance that the rough site plan Ex.PW22/A is a fabricated document in which the position of PW2 Chanderhas has been shown after deciding to plant him as a witness to strengthen the case of the prosecution. Thus, it has been strongly urged on behalf of the appellants that it is not safe to place reliance upon the testimony of PW2 Chanderhas.

21. Learned counsel for the State has refuted this argument by contending that unfortunately S.I. Surjit Singh could not be examined as he had retired and shifted to Punjab and merely

because PW14 Dinesh Kumar has opted not to support the case of the prosecution, the version of PW2 Chanderhas, which is consistent with the prosecution case as narrated in the FIR Ex.PW19/A which was recorded within three hours of the incident on the basis of the statement of PW10 Rajender Singh, cannot be suspected particularly when there is nothing on record to suggest any motive or reason on the part of PW2 Chanderhas to falsely implicate the appellants.

22. We find substance in the above submissions made on behalf of the appellants. PW2 Chanderhas has stated that in the morning of 01.09.1988 he had gone to the hospital where he met the SHO and gave a statement to him. He also stated that his statement under Section 161 Cr.P.C. was recorded by the SHO himself. This version however, is belied by the record. On perusal of record and the case diaries it transpires that the purported statement of PW2 Chanderhas under Section 161 Cr. P.C. is recorded in the hand of S.I. Surjit Singh. No doubt much importance cannot be given to this discrepancy in the statement of PW2 Chanderhas and it can be attributed to failure of memory due to the time gap between 01.09.1988 and the date of recording the statement of the witness, particularly when the witness claimed that S.I. Surjit Singh was also present at the hospital when the statement was recorded. Nevertheless this discrepancy raises a doubt

whether the statement of Chanderhas was at all recorded by the police on 01.09.1988. In order to clarify this doubt we have gone through the case diaries recorded by the Investigating Officer. On perusal of the case diary recorded by the Investigating Officer Inspector Banwari Lal, SHO, P.S. Malviya Nagar on 01.09.1988 it transpires that the SHO has recorded proceedings in this case diary from the period w.e.f. 12.55 a.m. till 6.05 p.m. when the case diary was closed. In the entire case diary pertaining to the date 01.09.1988 there is no mention of PW2 Chanderhas meeting the SHO or S.I. Surjit Singh in the hospital and making a statement under Section 161 Cr. P.C. However, the purported statement of PW2 Chanderhas dated 01.09.1988 purportedly recorded by S.I. Surjit Singh is in the case diary. From the record of case diaries it is apparent that the investigation of this case was taken over by SHO Inspector Banwari Lal Meena at least w.e.f. 12.55 a.m. on 01.09.1988, therefore, it is a mystery as to why and on whose instructions S.I. Surjit Singh recorded the statement of PW2 Chanderhas and why there is no mention of recording of such statement in the case diary. This circumstance raises a strong possibility that PW2 Chanderhas might have been introduced as a witness at a later stage. This doubt could be clarified only by S.I. Surjit Singh who has not been examined as a witness. The explanation given by

learned counsel for the State for non-appearance of S.I. Surjit Singh as a witness is not sound because on perusal of Trial Court record, it transpires PW2 Chanderhas was examined as a witness for the first time on 24.09.1991 and the evidence of the prosecution was finally concluded on 07.03.2001. During this period of ten years, summons for production of S.I. Surjit Singh were issued on several occasions but he was not produced by the prosecution. It is not clear from the record as to when S.I. Surjit Singh retired. Even if he had retired, he being a pensioner, his address must have been available in the police record and therefore, he could easily have been served with the summons if the prosecution was serious in examining him as a witness. Thus, non-production of S.I. Surjit Singh as a witness goes against the case of the prosecution as his non-appearance has caused serious prejudice to the defence.

23. The rough site plan Ex.PW22/A is purportedly prepared by S.I. Surjit Singh on 31.08.1988. On perusal of this plan, it transpires that the incident took place near the main gate of Aurobindo College towards the side of MMTC Market. Witness Dinesh is shown to have been standing at some distance from the place of occurrence near the main gate at point D shown in the plan and witness Chanderhas is shown to be standing in the opposite direction across the service road towards MMTC Market at some distance from the place of occurrence.

Ex.PW13/A is the scaled site plan which was subsequently prepared by B.M. Nagar on 26.10.1988. As per the scaled site plan, the distance between the place of occurrence and the spot where witness Dinesh was standing is 14.45 metres and the distance between the place of occurrence and the spot where PW2 Chanderhas was purportedly standing is slightly more than 19.55 metres (14 metres + 5.55 metres). Thus if the site plan is taken to be correct then the distance between the witness Dinesh and PW2 Chanderhas was almost 34 metres. Therefore, it is unlikely that the said witness Dinesh could have seen Chanderhas present at the spot C shown in the rough site plan. PW14 Dinesh has denied having seen the occurrence; therefore, he possibly could not have assisted S.I. Surjit Singh in preparation of rough site plan. Learned counsel for the State has tried to get out of this situation by contending that PW14 Dinesh Kumar has been won over by the appellants. This however does not help the prosecution because there is one other Dinesh in picture. As per the MLC of PW10 Rajender Singh Ex.PW6/A, he was taken to the hospital by one Dinesh Kumar, s/o Dooja Ram whereas PW14 Dinesh Kumar is the son of Chotte Lal. It is possible that S.I. Surjit Singh might have referred to Dinesh Kumar, s/o Dooja Ram in the rough site plan Ex.PW22/A. Said Dinesh Kumar, s/o Dooja Ram has not been produced as a witness to establish

that rough site plan was prepared at his instance. PW14 Dinesh Kumar has also not supported this story, therefore a possibility of fabrication in the site plan Ex.PW22/A at a later stage to introduce Chanderhas as a witness cannot be ruled out, particularly when S.I. Surjit Singh has not been examined to clarify this doubt. In view of the above, a possibility cannot be ruled out that PW2 Chanderhas has been introduced as witness on an after-thought. Thus we do not find it safe to rely upon his testimony.

24. Otherwise also, the conduct of PW2 Chanderhas post occurrence is highly doubtful. He claimed to have known the deceased Yaad Ram as well as PW10 Rajender Singh since prior to the occurrence. He also claimed that after the stabbing when he tried to separate the parties all the four accused ran away towards MMTC Market. Despite that he admittedly did not attend to the deceased Yaad Ram and injured Rajender Singh and went away to his residence without even bothering to ensure that they were taken to the hospital for treatment. He admittedly did not even inform the family members of deceased Yaad Ram about the injuries suffered by him in the occurrence and he also did not care to report the matter to the police. The explanation given by him for such unnatural conduct is that he was scared and because of fear he went away from the spot. Aforesaid explanation is

unacceptable, being inconsistent with his evidence to the effect that at the time of occurrence he tried to intervene and separate the parties. If he was not afraid to intervene in the matter immediately after the stabbing, it is highly improbable that after the accused persons ran away he got scared for his life. Thus it is apparent that the conduct of PW2 Chanderhas post occurrence is highly unnatural, which, coupled with the infirmities pointed out in the earlier discussion makes his presence at the time of occurrence highly doubtful and we do not find it safe to rely upon his testimony. It is worth noting that even PW10 Rajender Singh (injured) in his cross-examination has stated that he knew Chanderhas since prior to the incident and Chanderhas was not present at the spot.

25. The other incriminating evidence relied upon by the prosecution is the purported recovery of weapon of offence i.e. dagger Ex.P1 at the instance of the appellant Dipender Singh @ Deepu and also the purported recoveries of their respective blood-stained clothes at the instance of the appellant Randhir Singh from House No.1204, Sector-19, Faridabad and at the instance of appellant Bijender Singh from the house at Sector - 1, R.K. Puram of PW20 Vijay Kumar. Aforesaid recoveries were purportedly affected vide seizure memos Exs.PW22/B, PW22/C and PW22/J respectively. On perusal of the seizure memo Ex.PW22/A, it transpires that as per the case of the

prosecution the '*churi*' was recovered by SHO Banwari Lal in presence of PW2 Chanderhas and S.I. Surjit Singh. Similarly as regards the recovery of blood-stained clothes of Bijender Singh, appellant at his instance the purported witnesses to the recovery are S.I. Surjit Singh, PW2 Chanderhas and PW20 Vijay Kumar, besides the Investigating Officer. We have already concluded that PW2 Chanderhas is not a reliable witness. PW20 Vijay Kumar has not supported the prosecution version regarding recovery of blood-stained clothes at the instance of appellant Bijender Singh and S.I. Surjit Singh has not been examined by the prosecution to prove aforesaid recoveries. In view of the above fact, we find ourselves unable to accept the testimony of PW22 Inspector Banwari Lal Meena regarding said two recoveries, particularly when there is a question mark on the fairness of investigation conducted in this case. To establish the recovery of blood-stained shirt belonging to appellant Randhir Singh at his instance, prosecution is relying upon the recovery memo Ex.PW22/J. It is proved on record by PW22 Inspector Banwari Lal Meena who is neither the author of the recovery memo nor a witness to the same. Perusal of the recovery memo reveals that this recovery has purportedly been affected by S.I. Surjit Singh in presence of the witnesses Ms.Asha Rani and S.I. Ashok Kumar. Neither of them have been examined by the prosecution to prove said recovery,

therefore, it is obvious that prosecution has failed to establish the recovery of blood-stained shirt at the instance of appellant Randhir Singh. The net result of this discussion is that the prosecution has even failed to establish the recovery of incriminating articles i.e. dagger Ex.P1 as well as blood-stained clothes belonging to appellants Randhir Singh and Bijender Singh at their instance in furtherance of their disclosure statements.

26. In view of the above, we find that the prosecution case is full of doubts and it is not safe to rely upon the ocular evidence produced by the prosecution. Thus, we find ourselves unable to sustain the impugned judgment of conviction and consequent order on sentence. We, therefore, accept the appeals and acquit the appellants Dipender Singh, Bijender Singh and Randhir Singh, giving them benefit of doubt. Their conviction and consequent order on sentence is hereby set aside.
27. Appellants are in judicial custody. They be released forthwith if not required in any other case.
28. The appeals are disposed of accordingly.

AJIT BHARIHOKE, J.

JULY 02, 2010/gm/ks

A.K. SIKRI, J.