Puran Singh and Others

Vs

The State of Punjab

Criminal Appeal No. 266 of 1971

(N. L. Untawalia, Syed Fazal Ali JJ)

25.04.1975

JUDGMENT

FAZAL ALI, J. -

1. The appellants Puran Singh, Piara Singh, Bakshish Singh, Bohar Singh and Balkar Singh have been convicted under Sections 302/149 I.P.C. and sentenced to life imprisonment and a fine of Rs. 200 each and in default six months rigorous imprisonment and under Section 326/149 I.P.C. to one year rigorous imprisonment and under Section 148 I.P.C. to one year rigorous imprisonment. The learned Session Judge who tried the present case had also convicted one Pargat Singh the brother of Bakshish Singh and son of Charan Singh but this accused has been acquitted by the High Court of Punjab and Haryana - hereinafter referred to as 'the High Court'. The High Court has, however, affirmed the conviction and sentences of the five appellants and dismissed the appeal filed by the appellants before it-hence this appeal to this Court by special leave.

2. It is not necessary for us to detail the facts of this case, because the decision of the matter lies within a very narrow compass. Mr. R. K. Garg appearing for the appellants has raised a few questions of law and according to his submissions the appeal should succeed on the question of law on the basis of the findings given by the High Court. The unfortunate incident in the present case which led to the loss of two valuable lives appears to be the result of chronic land dispute between the parties and a competitive race for taking possession of the land by the prosecution or the accused. The story opens with a usufructuary mortgage which was executed by Hari Singh, The original owner in respect of 29 Kanals, 14 Murlas of land in favour of the appellants Puran Singh and Piara Singh and one Nishan Singh for a sum of Rs. 3000. Soon thereafter the mortgages sold their mortgage rights to Makhan Singh father of Dilbagh Singh of the prosecution party. On July 28, 1966 the appellants Puran Singh and Piara and one Smt. Chandra daughter of the appellant Bakshish Singh purchased the equity of redemption in the said land from Hari Singh for a sum of Rs. 20,000 and undertook to liquidate the mortgage debt. According to the defence the mortgage debt was actually discharged on May 30, 1967 and a few months later mutation was sanctioned in favour of the accused on July 13, 1967. Having however, failed to take possession of the mortgage property after having redeemed the mortgage, the purchasers of the equity of redemption, namely, the party of the appellants filed a suit for possession against Dilbagh Singh in the Court of the Subordinate Judge, Hoshiarpur on October 27, 1968, when, according to the prosecution, Puran Singh, Piara Singh, Bakshish Singh, Pargat Singh and Chandra Singh entered the land in dispute and demolished the kothas of the complaint. A complaint was filed by Dilbagh Singh on October 30, 1968 against the accused and Ajmer Singh, Sub-Inspector of Police alleging that the accused had entered the land and demolished the Kothas belonging to the complainant with the active aid of the police. In this complaint although the complainant did not admit in so many words that the accused had taken

forcible possession of the land and demolished the kothas, yet from the facts and circumstances proved in this case there was no doubt that it was a fact that the complainant in spite of his best attempts was dispossessed by the party accused. While the complainant was being enquired into, the suit filed by Puran Singh and others was dismissed on November 21, 1968 on the ground that the suit was not maintainable and the plaint was returned to the plaintiff for presentation to the proper authorities, namely, Revenue Courts. Emboldened by this success in a civil suit, it appears that the complainant Dilbagh Singh along with Sohan Singh, Bachan Singh, Sulakhan Singh, Baj Singh and others went to the field in question and started ploughing it and sowing sarson. We might mention here that the definite case of the accused has been that after talking possession of the land in question from the complainant the appellants had grown wheat in the land and on the date of occurrence the complainant party tried to destroy the crop which led to mutual fight between the accused the complaint party resulting in the death of the two deceased persons of the prosecution party and according to the defence injuries on Mohan Singh and Bohar Singh who were on the side of the accused.

3. According to the prosecution while the prosecution party was busy ploughing the land and sowing sarson crop in the field all the appellants variously armed with a gun, barchhas, kirpans, gandasis and axes entered upon the land and Pargat Singh fired his gun as a result of which Dilbagh Singh and Bachan Singh fled away leaving the two deceased persons and Sohan Singh behind. Thereafter the accused Puran Singh and Piara Singh Surrounded Sulakhan Singh and inflicted various injuries on his body with kirpans, while Bakshish Singh gave spear blows in the thigh and abdomen of Sulakhan Singh. The appellants Balkar Singh, Puran Singh and Piara Singh inflicted with their respective weapons blows on Baj Singh. Sohan Singh PW 9 who tried to rescue his brother was also assaulted by Balkar Singh, Bohar Singh And Bakshish Singh. Puran Singh and Piara Singh are also alleged to have assaulted Sohan Singh with their weapons. The victims then fell down on the ground and then the accused made good their escape. The three injured persons were removed to the civil hospital at Hoshiarpur but Sulakhan Singh were admitted in the hospital. The F.I.R. was lodged on November 27, 1968 by Baj Singh one of the injured persons on the basis of which the present case started and after usual investigating a charge-sheet was submitted against the accused which resulted in their ultimate conviction and sentences as mentioned above.

4. The defence of the appellants was that they had redeemed the mortgage debt and thereafter the mortgagee had himself delivered possession of the land to the appellants sometime in 1968, and since then the appellants were in peaceful possession of the land and had grown wheat crop therein. Dilbagh Singh being dissatisfied with his having to part with the possession of the property filed a false complaint against the appellants and thereafter tried to take forcible possession of the land from the appellants with the show of force. According to the defence, the prosecution party was also armed with gun, axe, kirpans and other deadly weapons and the accused tried to resist their being dispossessed and assaulted the prosecution party purely in the exercise of their right of private defence of person and property. According to the defence two persons on their side were injured-one of them Mohan Singh had received gunshot injury, whereas Bohar Singh had also received gunshot injuries. The High Court after discussing the evidence appears to have given a finding in favour of the accused so far as the question of possession of the land is concerned, but in view of the decision of this Court in Munshi Ram v. Delhi Administration ((1968) 2 SCR 455 : AIR 1968 SC 702 : 1968 Cri LJ 806) on its own interpretation, held that as the appellants were not in settled possession of the land and were rant trespassers they could not have any right of private defence.

5. Appearing for the appellants Mr. Garg submitted that the High Court had taken an erroneous view of the law and had misinterpreted the judgment of this Court in Munshi Ram's case (supra). Before,

however, coming to the judgment we would like to extract the findings of fact arrived at by the High Court on the question of possession which forms the basis of the right of private defence claimed by the accused. In this connection the High Court found as follows :

> Certain admission wrong (sic wrung) out from the prosecution witness in cross-examination, however, do show that about one month or so prior to the occurrence, the vendee-appellants had somehow entered upon the disputed land and taken its physical possession, and had possibly sown wheat crop in it.....
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> After some prevarication, witness admitted that on the day of occurrence Dilbagh Singh had told him that they should go and plough the field and take its possession. Witness thereupon took the kulhari from the house of Dilbagh Singh and proceeded to the place of occurrence with the deceased persons. Sohan Singh does not say a word that they had sowed or were sowing wheat crop at the time of occurrence in this field. He stated that at about 5 p.m. they were busy sowing sarson in the field. . . .
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> Dilbagh Singh, PW 12, in examination-in-chief state that about one month before the occurrence, all the accused, expecting Bohar Singh and Balkar Singh, had demolished his kothas in the disputed field with the help of the police. . . . Though in this complaint it is not specifically alleged that Puran Singh, Piara Singh etc, had taken forcible possession of the land, yet the same read with the admission made by PW Sohan Singh already referred to above, shows that Dilbagh Singh had been ousted from possession of the land on October 27, 1968, and thereafter the appellants continued in its actual possession till the occurrence took place. . . . In Rabi 1968, as has been deposed to by Patwari Behari Lal, PW 14, wheat crop was standing in the disputed Khasra 17/9 when he inspected the harvest at the spot on April 7, 1969.
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> In the visual site-plan, Exhibit PZ, which according to A. S.I. Kartar Singh was prepared by him on November 27, 1968, it is mentioned that the field was under wheat cultivation. It is unfortunate that no question was put to the A.S.I. in cross-examination to show as to what was the size of the wheat crop.
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> If at the time of occurrence sprouted wheat crop was in the field and if, as has been deposed to by PW Sohan Singh, the complainant party had gone there armed to take back the possession from the accused party, this wheat crop might have been sown by the vendee-appellants some days prior to the occurrence. Though the facts elicited in the cross-examination of the prosecution witnesses or otherwise brought on record fall short of positive proof of this wheat crop having been sown by Piara Singh and Puran Singh appellants, yet the possibility of the being a fact cannot be ruled out.
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> Thus even if the view most favourable to the accused, of the evidence on record is taken, then also the possession of the appellants, which commenced about one month prior to the occurrence, was little better than that of a trespasser. It is now settled law that even a person rightfully entitled to immediate actual possession has no right to oust a trespasser by force if that trespasser is in settled possession of the land. Such a trespasser in established possession is entitled - unless he is rejected in due course of

> law - to defend his possession even against the rightful tenure-holder or owner. This what was laid down by their Lordships of the Supreme Court in Munshi Ram v. Dehli Administration (supra)

6. From these findings of the High Court, which are based on the admissions of some of the prosecution witness and are corroborated by the circumstances proved by the prosecution, it is quite clear that the party of the appellants had undoubtedly taken possession of the land in dispute to the knowledge of the complainant Dilbagh Singh at least a month before the occurrence and had sown wheat crop on the land in question. In fact this finding is based on very cogent material because it would appear that PW Sohan Singh one of the eyewitness clearly stated in his evidence that about a month before the occurrence Puran Singh and Piara Singh took possession of the land with the help of the police. This witness further admitted as follows :

> Dilbagh Singh did tell me that we should go and plough the field and take its possession. I had taken the kulhari from the horse of Dilbagh Singh in the field.
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> He further admitted in his evidence that after the Kothas were demolished, Dilbagh Singh used to live in the village. This also corroborates the fact that the complainant's party was dispossessed on October 27, 1968, when the accused had taken forcible possession of the land and since then the complainant Dilbagh Singh had started living with Sohan Singh in the village.

7. Similarly another eyewitness PW 10 Jagtar Singh admitted that he did state to the police that the appellant Puran Singh had taken forcible possession of the land about one month earlier.

8. PW 12 Dilbagh Singh, the complainant himself deposed that he had stated before the police that they had sown sarson as well as wheat in the field and when he was confronted with his previous statement before the police, he merely mentioned the fact that he and his companions had ploughed the field and were preparing the furrows for sowing sarson. The witness further admitted in his evidence that most of the crop was, however, wheat.

9. PW 14 Behari Lal, Patwari, has stated that he effected the Girdwari on April 7, 1969 and found wheat crop standing in Khasra No. 16/2 and 16/9 which was shown to be in possession of Puran Singh. The evidence of this witness fully corroborates the evidence of the prosecution witnesses that the accused party had dispossessed the complainant form the land in dispute as far back as October 27, 1968 which led to the filing of the complaint by Dilbagh Singh and thereafter it was the accused party and not the prosecution party which had sown wheat crop on the land.

10. Finally, even in the F.I.R. it appears that the informant had admitted in categorical terms that the accused Piara Singh and Puran Singh had taken forcible possession of the land. This statement runs thus :

> Dilbagh Singh had been in possession of this land, but some days after the Dewali, Piara Singh took forcible possession of this land. Now, some days ago, both the above mentioned cases were decided in favour of Dilbagh Singh. So, yesterday the 26th November, 1968 at about 4 p.m. Dilbagh Singh along with his brother Gurbachan Singh, having taken myself (Bal Singh) and both of my brothers Sulakhan Singh and Sohan Singh with him, ploughed this land.

11. On a consideration of the admissions of the prosecution witnesses and the findings arrived at by

the High Court, the following propositions of fact emerge :

> (1) That although the accused had purchased the equity of redemption, yet there is no reliable evidence to show that they had paid off the mortgage debt and taken possession from the mortgage in spite of that mutation was sanctioned in favour of the appellants in 1967 there would be no occasion for them to file a civil suit for possession on October 4, 1967 against the Mortgage, Dilbagh Singh and others;
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> (2). That on October 27, 1968 the appellants undoubtedly entered the field and took forcible possession of the land form the complainants who were unable to resist the entry of the accused as a result of which Dilbagh Singh filled a complaint on October 30, 1968. It is not necessary for us to say anything regarding the allegation about demolition of the Kothas;
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> (3). The complainant knew fully well that he had been dispossessed by the appellants at least a month before the occurrence and that appellants had sown wheat crop and in spite of his knowledge he deliberately went there with the avowed object of taking forcible possession from the appellants;
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> (4). That on the date of occurrence the prosecution party undoubtedly went to the field armed with the gun and axe. It would appear from the injuries on Bohar Singh and Mohan Singh on the side of accused that the present occurrence took place as a result of mutual fight over the land; and
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> (5). That although the defence has proved beyond reasonable doubt that both Mohan Singh and Bohar Singh had received injuries on their person, the prosecution has given no explanation for the same.

The question that arises for consideration is whether in view of these findings of the fact it can be said that the accused had no right of private defence or that of the prosecution party in entering upon the land was protected by the right private defence of Property. This brings us to the decision of this Court-Munshi Ram v. Delhi administration (supra)-on which great reliance has been placed by the High Court, where this Court observed as follows :

> It is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner. But stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than necessary. Such entry will be viewed only as a reinstate to an intrusion upon possession which has never been lost. The persons in the possession by astray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, though not in actual possession at the time, to remove the obstruction even by using necessary force.

12. In this case there was a concurrent finding of fact that Jamuna was in effective possession of the field on the date of occurrence and the prosecution had alleged that the PWs 17 and 19 had taken possession of the property but the finding of the Court was that PWs 17 and 19 had not been put in possession by virtue of the delivery of possession given by the Court. It was against this context that the observations referred to above were made. This Court clearly pointed out that where a trespasser was in settled possession of the land he is not entitled to be evicted except in due course of law and he is further entitled to resist or defend his possession even against the rightful owner who tries to dispossess him. The only condition laid down by this Court was that the possession of the trespasser must be settled possession. The Court explained that the settled possession must be extended over a sufficiently long period and acquiesced on by the true owner. This particular expression has persuaded the High Court hold that since the possession of the appellants' party in this case was only a month old, it cannot be deemed to be a settled possession. We, however, think that this is not what this Court meant in defining the nature of the settled possession. It is indeed difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into a settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisturbed and to the knowledge of the owner or without any attempt at concealment. For instance a stray or a casual act of possession would not amount settled possession. There is no special charm or magic in the world 'settled possession' nor is it a ritualistic formula which can be confined in a straitjacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner. Similarly an occupation of the property by a person as an agent or servant at the instance of the owner will not amount to actual physical possession. Thus in our opinion the nature of possession in such cases which may entitled a trespasser to exercise the right of private defence of property and person should contain the following attributes :

> (i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;
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> (ii) that the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possendie (sic possidendi). The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each case;
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> (iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and
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> (iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any corp. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession, in which case the trespasser will have a right to private defence and the true owner will have no right of private defence.

These principles logically flow from long catena of cases decided by this Court as well as other High Courts some of which have been refereed to in the judgment of this Court in Munshi Ram's case (supra).

13. In the case of Horam v. Rex (AIR 1949 All 564,567 : 50 Cri LJ 868) which was relied upon by this Court in Munshi Ram's case (supra) the Division Bench of Allahabad High Court observed as

follows :

> where a trespasser enters upon the land of another, person in whom the right of possession is vested, while the trespasser is in the process of acquiring possession, may turn the trespasser out of the land by force and in doing so he inflicts such injuries on the trespasser as are warranted by the situation, he commits no offence. His action would be covered by the principal of self-defence embodied in Sections 96 to 105 (sic 106), Penal Code. If, on the other hand, the trespasser had already accomplished or completed his possession and the person with the right of possession has acquiesced in his accomplishment, it is not open to the later of avail himself of the doctrine of self-defence and by inflicting injuries on the trespasser to re-acquire possession of his land.

It may be noted that in this case the accused had remained in possession for ten days and had sown the field and this was held to be sufficient possession to enable the trespasser to resist the entry of the true owner. In fact this case appears to be on all fours with the facts of the present case where also the appellants' party after having taken possession of the land in dispute a month before the occurrence had grown wheat crop on it and the complainant party tried to re-enter the land destroy the crop grown by the accused.

14. Another decision to which reference has been made by this Court in Munshi Ram's case (supra) is Sangappa v. State (ILR 1955 Hyd 406) where a Division Bench of the Hyderabad High Court observed as follows :

> If somebody enters on his land during his absence and he does not acquiesce in the trespass, he would still retain possession of the land and as the possessor of the land, he is entitled to that possession.... If a person acquiesces in his dispossession and subsequently under claim of title comes again to dispossess his opponents then he and his friends would be members of unlawful assembly.

This case also fully covers the facts of the present case which falls under the second category laid down by the Court.

15. A similar view was taken in In re Mooka Nadar (AIR 1943 Mad 590 : 44 Cri LJ 783) where Horwill, J. observed as follows :

> It seems to be true that the party of PW 2 were on the field first on the morning on which this offence happened; but that does not necessarily mean that they were then in possession of the said field. A person does not loss possession of a field by going home to have a meal, or sleep. If somebody enters on his land during his absence and he does not acquiesce in the trespass, he would still retain possession of the land; and as the possessor of the land he is entitled to defend that possession... If a person acquiesces in his dispossession and subsequently under the claim of the title comes again to dispossess his opponents, then he and his friends would be members of an unlawful assembly and guilty of rioting.

16. These were the cases referred to in the judgment of this Court in Munshi Ram's case (supra) and it would appear from all these cases that the case of the appellants is fully covered by these decisions. Apart from that in the case of Hazara Singh v. State (AIR 1959 Punj 570 : 1959 Cri LJ

358) it was held that the accused was protected by the right of private defence having cultivated and sown bajra in the field. In this connection, Chopra, J. observed as follows :

> When once Resham Singh had taken possession of, cultivated and sown bajra in the field and had remained in possession of it for couple of months, Hazara Singh even though he was the owner was not entitled to take the law into his own hands and use force in ousting trespasser. He had ample time to have recourse to the protection of public authorities. He was himself liable for committing trespass and mischief by taking forcible possession of the land and uprooting the crop would would not therefore be entitled to the right of private defence of property.

The learned judge relied on two Judgments one of the Allahabad High Court in Bhartu v. State (AIR 1954 All 35 : 1954 Cri LJ 54) and other of Lahore High Court in Phula Singh v. Emperor (AIR 1927 Lah 705 : 28 Cri LJ 848)

17. In view of these decisions it is, therefore, manifest that the finding of the High Court on the facts of the present case that the appellants were not is settled possession of the land is legally erroneous and cannot be allowed to stand. The ratio of the judgment of this Court in Munshi Ram's case (supra) has not been correctly applied by the High Court.

18. The second point that falls for determination is as to what is the extent of right of private defence which the accused can claim in this case ? In this connection, the High Court has given a finding that since the prosecution party had entered the land in possession of the accused were tying to plough it, the appellants should have taken recourse to the public authorities instead of indulging in free fight with the prosecution. In other words, the High Court found that the right of private defence available to the accused was under the limitations provided for in Sections 99 to 102 of the Indian Penal Code and these limitations apply to the facts of the present case, and the accused cannot claim any right of private defence. With respect we find ourselves unable to agree with this some what broad statement of the law. It is true that the right of private defence of person or property is to be exercised under the following limitations :

> (i) that is there is sufficient time for recourse to the public authorities the rights is not available;
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> (ii) that more harm than necessary should not be caused;
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> (iii) that there must be a reasonable apprehension of death or grievous hurt to the person or damage to the property concerned.

19. The first limitation obviously does not apply to this case. In the first place the accused after having dispossessed the complainant to his knowledge were in conscious and peaceful possession of the land and had grown wheat crop therein. The complainant had already filed a complaint and thereafter it was not open to the complainant to take the law in his own hands and to try to dispossess the accused by show of force. That the complainant had entered the land in question along with other persons variously armed with gandasis and a gun cannot be disrupted, because this is the finding of the Court which is supported by the injuries on the person of Mohan Singh and Bohar Singh for which the prosecution has given no explanation whatsoever. It is not the law that a person when called upon to face an assault must run away to the police station and not protect himself or when his property has been the subject-matter of trespass and mischief he should allow

the aggressor to take possession of the property while he should run to the public authorities. Where there is an element of invasion or aggression on the property by person who has no right to possession, then there is obviously no room to have recourse to the public authorities and the accused has the undoubted right to resist the attack and use even force if necessary. The right of private defence of property or person, where there is real apprehension that the aggressor might cause death or grievous hurt to the victim, could extend to the causing of death also, and it is not necessary that death or grievous hurt should be caused before the right could be exercised. A mere reasonable apprehension is enough to put the right of private defence into operation. We are fortified in this view by the decision of this Court in Jai Dev v. State of Punjab ((1963) 3 SCR 489 : AIR 1963 SC 612 : (1963) 1 Cri LJ 495) where this Court observed as follows :

> This, however, does mean that a person suddenly called upon to face an assault must run away and thus protect himself. He is entitled to resist the attack and defend himself. The same is the position if he has meet an attack on his property. In other words, where an individual citizen or his property is faced with a danger and immediate aid from the State machinery is not readily available, the individual citizen is entitled to protect himself and his property....
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> There can be no doubt that in judging the conduct of a person who proves that he had a right of private defence, allowance has necessarily to be made for his feeling at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that inevitably creates in his mind some excitement and some confusion. At such a moment, the uppermost feeling in his mind would be to ward off the danger and to save himself or his property, and so he would naturally be anxious to strike a decisive blow in exercise of his right.

In this very case, while adverting to the question as to whether the force used should not be more than what is necessary, the Court observed :

> But in dealing with the question as to whether more force is used than is necessary or than was justified by the prevailing circumstances, it would be inappropriate to adopt tests of detached objectivity which would be so natural in a court room, for instance, long after the incident has taken place. That is why in some judicial decisions it has been observed that the means which a threatened person adopts or the force which be uses should not be weighed in golden scales.

To the same effect is the decision of this Court in Amjad Khan V. State (1952 SCR 567 : AIR 1952 SC 165 : 1652 Cri LJ 848) where it was observed :

> It was impossible for him to know whether his shop would or would not suffer the same fate if he waited, and on the findings it was reasonable for him to apprehend death or grievous hurt to himself and his family once they broke in, for he would then have had the right to protect and indeed would have been bound to do what he could to protect his family. The threat to break in was implicit in the conduct of the mob and with it the threat to kill or cause grievous hurt to the inmates;... The circumstances in which he was placed are amply sufficient to give him a right of private defence of the body even to the extent of causing death. These things cannot be weighed in too fine a set of scales or, as some learned Judges have expressed it, in golden scales.

Thus the question whether the appellants used more force than was necessary would determine on the facts and circumstances of this case. We are satisfied that in the present case it cannot be said that the appellants, although two persons have lost their lives, had exceeded the right of their private defence. To begin with, the appellants were undoubtedly in possession of the land and had grown wheat crop and that the prosecution party had tried to destroy the wheat crop. The appellants were, therefore, entitled to resist the invasion to their right by the prosecution party. The High Court has also found that the probabilities are that the prosecution party were also armed with gun and gandasis. Mohan Singh one of the persons on the side of the accused had received a gunshot injury which has been proved by the Injury Report (Ext. D.D.) which shows that Mohan Singh received as many as four injuries one of them under the right eye. Similarly the accused Bohar Singh who was examined by PW 5 Dr. Pritpal Singh, had two injuries which according to the doctor were gunshot injuries having been caused by a gun. This doctor also says that after examining the injuries of Mohan Singh he was of the opinion that they were also gunshot injuries. The Sub-Inspector of Police also found pellets at the place of occurrence which confirms the fact that the complainant must have fired from his gun. The High Court has also pointed out that the complainant Dilbagh Singh was prosecuted for having been in possession of an unlicensed gun and has since been absconding. These facts, therefore, clearly establish that the prosecution party was undoubtedly armed with lethal weapons and that a gun was also fired. The High Court has also found that the prosecution party was the aggressor in the sense that they were bent upon destroying the crop of the appellants and taking back possession of the land forcibly. This is also supported by the fact that the injuries on the person of the accused have not been explained by the prosecution and in fact Mohan Singh was deliberately kept back from being made an accused so that the prosecution may be absolved from the duty to explain the injuries on him.

20. In State of Gujarat v. Bai Fatima ((1975) 2 SCC 7 : 1975 SCC (Cri) 384), one of us (Untwalia, J.) speaking for the Court, observed as follows : [SCC p. 13 : SCC (CRI) p. 390, para 17]

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow :

> (1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.
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> (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
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> (3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners or either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case.

21. It was, however, contended by Counsel appearing for the State that on the allegations made by the prosecution the accused had mercilessly assaulted the prosecution party including the (sic) Sulakhan Singh and Baj Singh and therefore even if they had the right of private defence they had exceeded the same. We are, however, unable to accept this contention. In the first place as the

prosecution has deliberately suppressed they very material part of the origin of occurrence, we do not know as to how the occurrence started. Secondly when two persons on the side of the accused were injured by gunfire it was not possible for the appellants to weigh their blows in golden scales in order to assault the prosecution party. As held by us this was a case where the appellants were fully entitled to the exercise of the right of self-defence of their property and person both because their persons had been attacked and their property had been trespassed upon and damaged. It is manifest that after the two persons on the side of the accused received gunshot injuries as found by the High Court and by us, the accused party would have undoubtedly a reasonable apprehension that either death or grievous hurt could be caused to the appellants or one of them. This being the position they were fully justified in causing the death of the deceased persons in the exercise of their right of private defence of person. Such an apprehension could not be said to be hypersensitive or based on no ground and it will be idle to contend that the accused should have waited until one of their party members would have died or received serious injuries before acting on the spur of moment nor can one expect a person who is attacked by an aggressor to modulate his blows in accordance with the injuries he receives. In these circumstances, therefore, it cannot be said that the accused had in any event exceeded their right of private defence. If the prosecution did not come out with the true version of the nature and origin of the occurrence, they cannot blame the Court if the entire version presented by them is rejected, as held in the recent judgment of the Court in State of Gujarat v. Bai Fatima (supra). For these reasons, therefore, we are clearly of the opinion that the accused are protected by the right of private defence of their property and person and the prosecution case against the appellants must fail. In any event, the prosecution case has not been proved beyond reasonable doubt.

22. The appeal is, therefore, allowed, the conviction of and the sentences passed on the appellants are set aside and the appellants are directed to be set at liberty forthwith.

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