

Baljit Singh and Another

Vs

State of Uttar Pradesh

Hari Chand and Others

Vs

State of Uttar Pradesh

Criminal Appeal Nos. 251

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

06.09.1976

JUDGMENT

FAZAL ALI, J. -

1. Criminal Appeal 251 of 1971 and Criminal Appeals 273 and 274 of 1971 arise out of the same trial and a common judgment given by the trial Court and the High Court. Criminal Appeal 251 of 1971 filed by Baljit and Sunehra appellants is an appeal under Section 24 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the judgement of the High Court dated October 21, 1970 which on reversing the order of acquittal passed by the Sessions Judge convicted the appellants under Section 302/149 I. P. C. and sentenced them to imprisonment for life. The appellants were also convicted under Sections 147 and 323/149 I. P. C. and sentenced to six months and one month rigorous imprisonment respectively. Criminal Appeals 273 and 274 of 1971 are appeals by special leave against the same judgment affirming the convictions of the appellants Sumer Chand, Hari Chand, Ranjeet, Murli, Sarjeet, Prakash and Seeta Ram under Section 302/149 I. P. C. sentencing them to imprisonment for life and under Section 147 and 323/149 I. P. C. to six months and one month rigorous imprisonment respectively. As the correctness of the judgement of the High Court is in question in both the sets of appeals we have been taken through the entire evidence-oral and documentary - in order to find out if the judgment of the High Court can be sustained.

2. The unfortunate occurrence which resulted in the death of Sher Singh is the result of chronic land dispute between the parties for which the complainant's party is entirely to blame. The dispute arose with respect to chak No. 74 comprising 11 bighas which had been allotted to CW 2 Kartar Singh during the consolidation of holdings proceedings. In fact Dharam Singh the original owner or the entire properties divided his properties into three khatahs - one in favour of Kartar Singh CW 2, the other in favour of Sher Singh the deceased and the third was kept by him for himself. Kartar Singh who was the eldest son appears to be a person of a religious bent of mind and had become a sadhu and was mostly absent from the village in connection with the pathshallas and other institutions established by him. The evidence, however, shows that despite the absence of Kartar Singh he kept himself informed regarding cultivation of the land which, according to Kartar Singh, was done by battaidars and sometimes even by his brother Sher Singh. Before the occurrence, the relations

between Kartar Singh and his brothers Sher Singh and Jabbar Singh appear to have been quite cordial. In fact the evidence shows that only 20 days before the occurrence Kartar Singh had come to village and had stayed with his brother Sher Singh in order to solve a domestic dispute. The trouble, however, seems to have started when Kartar Singh decided to sell his land in chak No. 74 to the appellant Sumer Chand Kahar. We might mention here that all the other appellants are close relations of Sumer Chand Kahar being members of his family. On March 22, 1966 Kartar Singh executed a registered sale deed of the lands comprising chak No. 74 in favour of Sumer Chand Kahar and delivered possession to the vendee in his presence. The prosecution case however, is that as the vendee was not able to take possession of the lands which were being cultivated by Sher Singh and Jabbar Singh, the appellants came variously armed on July 2, 1966 in order to disposses Sher Singh and Jabbar Singh and to uproot the chari crop which had been grown by them. The prosecution case is that the party of the accused entered the field with their ploughs and bullocks and started ploughing down the crops. When Sher Singh came to know about it he reached the spot and protested to the accused against their highhanded act which resulted in an altercation in the course of which the deceased was assaulted by the appellants and sustained as many as 72 injuries. On hearing the alarm PW 2 Ghanshyam the son of the deceased and Jabbar Singh his brother rushed to the spot armed with lathis, but they were also beaten away. These two witnesses left on a cycle and lodged the first information report at police station Titavi at 9 a.m. The Investigating Officer PW 19 visited the spot soon thereafter, prepared an inquest report and after the usual investigation submitted chargesheet against all the accused on the basis of which the present trial started against the accused resulting in their conviction. The Sessions Judge, however, while convicting the other appellants acquitted Kripa, Baljit and Sunehra mainly on the ground that the prosecution evidence did not show that the prosecution evidence did not show that these three appellants had committed any overt act against the deceased. The appellants who were convicted by the Sessions Judge went up in appeal to the High Court and the State filed an appeal to the High Court against the order of the Sessions Judge acquitting Kripa, Baljit and Sunehra. The High Court dismissed the appeal of the appellants Hari Chand and other and affirmed their convictions and sentences and allowed the appeal of the State by convicting Baljit and Sunehra as indicated above but maintained the acquittal of Kripa.

3. The defence was that the accused Sumer Chand had been put in possession of the land in dispute and he was ploughing the land with his bullocks and had actually grown chari crop. It was further contended by the defence that some of the accused were undoubtedly present at the spot and that chari crop had not been uprooted, and the appellants having taken a sale deed from Kartar Singh and having been given possession of the land in dispute were ploughing the vacant portion of the land as it was the ploughing season. The prosecution party wanted to forcibly dispossess the appellants which resulted in a mutual altercation in the course of which the deceased received the injuries. Some of the other accused contended that they were not present at the spot at all. In view of the arguments advanced before us by the learned counsel for the parties, the case lies within a very narrow compass and it is not necessary for us to examine the defence case put forward by some of the appellants that they were not present. The sole question to be determined is as to who was in possession of the land in chak No. 74 and who started the assault.

4. Before, however, taking up this point, we would like to take up the appeal of Baljit and Sunehra who had been acquitted by the Sessions Judge but convicted by the High Court. The only ground given by the learned Session Judge for acquitting these two accused was that the evidence did not clearly indicate that these appellants caused any injuries to the deceased. In this connection, the trial Court observed as follows :

"It will be noticed that the names of Baljit and Sunehra and incidentally Kripa have not come for specific mention by any of the above three witnesses who had occasion during their evidence to assign certain specific acts to individual accused. This may be a weak basis for differentiating the cases of Baljit, Sunehra and Kripa but I feel that this tilts the scales in a small way to entitle these accused individually to a benefit of doubt regarding their personal participation in the fight. I must add though that it is only a benefit of doubt and not a finding of falsity of the prosecution case with regard to any of these accused."

The High Court rightly pointed out that the reasons given by the learned Sessions Judge were wrong and based on serious error of record. The finding of the learned Sessions Judge that no specific parts were assigned to the two appellants was based on an error of record, because, according to the evidence of the eyewitnesses produced by the prosecution, it was clearly alleged that both these appellants, along with Kripa, had undoubtedly taken part in the assault on the deceased. Three witnesses to which reference has been made by the Sessions Judge are PW 2 Ghanshyam, PW 9 Jai Singh and CW 1 Khazan. PW 2 Ghanshyam clearly stated thus :

"When we reached the spot, we saw that Sarjit, Ranjit, Baljit, Murli, Sumer Chand, Hari Chand, Prakash, Sita Ram, Kripa and Sunehra were assaulting my father in the chari field with lathis."

In cross-examination also the witness has stuck to his statement that all the accused had assaulted the deceased, some of whom being ahead and others being them. So far as the assault on his father was concerned, the witness has consistently deposed that all the accused participated in the assault.

5. Similarly PW 9 Jai Singh another eyewitness stated thus :

"Kripa, Sumer Chand, Hariya, Prakash, Sita Ram, Ranjit, Multi, Sarjit, Baljit and Sunehra accused assaulted Sher Singh with lathis."

The statement of CW 1 Khazan is also to the same effect. He stated thus :

"I was at my chak on the day of occurrence. Sher Singh raised an alarm. I had also gone there. Sumer Chand, Ranjit, Hari Chand, Murli, Prakash, Sitaram, Baljit, Sunehra, Sarjit and Kripa accused assaulted Sher Singh with lathis."

Thus it would appear that the three witnesses referred to by the learned Sessions Judge had clearly and categorically stated that Baljit, Sunehra and Kripa, just like the other appellants, did participate in the assault on the deceased. We are unable to agree with the learned Sessions Judge that the statements of these witnesses on this point suffer from any vagueness or uncertainty. As regards Kripa, the High Court and the Sessions Judge gave good reasons for acquitting him, because he had serious enmity with the complainant and he appears to have been falsely implicated due to that enmity. So far as Sunehra and Baljit are concerned, the reasons given by the learned Sessions Judge are not only wrong on a point of law but also wrong on a point of fact. The Session Judge was in error in acquitting these two accused by misreading the clear evidence of PWs 2 and 9 and CW 1 as indicated above. This is not at all a case where the High Court has taken a view different from that of the Sessions Judge or where two views were reasonably possible, but this is a case where the view of the Sessions Judge was both factually and legally erroneous and the High Court has corrected that error by reversing the acquittal of these two appellants. This, therefore, disposes of

the finding of the High Court regarding the acquittal of Baljit and Sunehra with which we fully agree and hold that the acquittal of these two appellants by the Sessions Judge was rightly set aside by the High Court.

6. We have been taken through the entire evidence and the circumstances of the case and we have now to determine whether the prosecution has proved its case against all the accused beyond reasonable doubt. While there cannot be the slightest doubt that the deceased had been severely beaten up by the appellants and had sustained as many as 72 injuries as proved by the eyewitnesses who have been examined by both the courts below and some of whom are independent witnesses also, yet the main question to be determined in this case is under what circumstances the deceased was given the beating? In fact the assault on the deceased has been proved by PW 2 Ghanshyam, PW 8 Dhan Singh, PW 9 Jai Singh, PW 16 Ram Singh, PW 18 Jabbar Singh and CW 1 Khazan Singh. After perusing their evidence on the question of assault we are satisfied that they have spoken substantial truth and there was absolutely no reason to distrust their evidence, particularly when the F.I.R. was lodged within an hour and a half of the occurrence. All these witnesses have been subjected to a very searching cross-examination, but nothing of importance has been elicited so far as the assault on the deceased is concerned, though the evidence of these witnesses throws a good deal of light on the circumstances under which the deceased was assaulted.

7. We, therefore, proceed to discuss the evidence with respect to the origin and genesis of the occurrence. In this connection the most important question to be determined is the question of possession. Here also the matter lies within a very narrow compass, because the title of CW 2 Kartar Singh in respect of the land in question is not disputed. It is also not disputed by the prosecution that chak No. 74 was allotted specifically to Kartar Singh who was given possession thereof. The case of the prosecution, however, was that as Kartar Singh was an absentee landlord, the land in question was being looked after by Sher Singh and Jabbar Singh who used to cultivate the same and give the share of Kartar Singh to him. The dispute between the parties became acute only when Kartar Singh executed a sale deed in favour of Sumer Chand Kahar which was seriously resented by Sher Singh and Jabbar Singh. Thus the limited question is whether the appellant Sumer Chand Kahar had been given actual possession of the land by Kartar Singh after the sale deed was executed in his favour. A complete consideration of the circumstances of the case clearly reveals that the prosecution is not correct in contending that Sher Singh continued to be in possession of the land in dispute even after the sale deed. The circumstances with which we shall deal hereafter would tend to show that the appellants were undoubtedly in possession of the land and it was Sher Singh and his family who wanted to dispossess them forcibly. Before taking up the evidence on this point, it may be necessary to refer to one important factor which merits serious consideration in this case. The appellants are Kahars who are admittedly a socially and educationally backward class and are in a hopeless minority in the village. According to the evidence, while the complainants' party who are Rajputs consist of 18 to 19 families, the Kahars constitute only 8 to 9 families in the village. Coming back to the question of possession we would like to take the evidence of CW 2 Kartar Singh who appears to be the most competent witness to depose regarding the actual possession of the land. It may be necessary to reiterate that Kartar Singh's evidence is very material, because he happens to be the own brother of the deceased and there does not appear to be any reason why he would take sides with the appellants and shield the murderers of his own brother. Kartar Singh has categorically stated that he was allotted a chak under the consolidation proceedings consisting of 11 bighas of farm land. He further stated the land was in his possession and cultivation and he used to get it cultivated through labourers of battaidars. He emphatically denied the allegation of the prosecution that Sher Singh and Jabbar Singh cultivated his land. He further stated that after execution of the sale deed he himself delivered possession of the land to the appellant Sumer Chand and in this

connection he stated as follows :

"After the execution of the sale deed I delivered possession to Sumer Chand on the March 24. At that time unripe barsin crop was standing in 3 or 4 bighas kham of land, barley in somewhat less than a bigha and sugarcane ratoous which had grown a little in about 3 bighas of land. I had got this sugarcane cut before the execution of the sale deed. I had kept barley for my own use and had cut it after March 24."

The evidence extracted clearly shows that the witness is fully conscious of the nature of the land possessed by him, the crops grown thereon and the portions vended to the appellants Sumer Chand Kahar. The witness makes a categorical statement that he got the land ploughed by the vendee and that the Kahars who are commonly known as Dhimars had done the levelling of the field for sowing chari crop in his presence, though the crop was not sown in his presence. He, however, states that even the chari crop had been sown and was in possession of the Dhimars. According to him, consolidation of holding took place sometime in the year 1961 and he got possession of the chak as far back as 1963 his old khasra no. being 45. He, however, admitted that Sher Singh or Jabbar Singh used to pay rent on his behalf whenever he was out of station and they had been authorised by him to obtain receipt on his behalf. The evidence of this witness which has not been properly considered by any of the courts below clearly shows the circumstances under which the occurrence must have taken place. Kartar Singh must be regarded as an independent witness and as there is nothing to show that his relations with the deceased were strained there was no reason for him to depose falsely in order to help the accused. Moreover what Kartar Singh has said is substantially supported even by the prosecution witnesses. For instance, PW 2 Ghanshyam clearly admits at p. 11 of paper book I that the chaks relating to the land in question stood recorded in the name of Kartar Singh and his father and were made separate in the course of chakbandi. He further admits that at the spot, the cultivation of all the three chaks was carried on by his father and his uncle i.e. Jabbar Singh. The witness admits in clear terms that chak No. 74 was allotted to Kartar Singh and was in his cultivating possession. The mere fact that Kartar may have permitted Sher Singh or Jabbar Singh to realize the rent or to cultivate the land in his absence does not show that he had discontinued actual possession.

8. Similarly PW 18 Jabbar Singh another brother of the deceased who is said to have been in cultivating possession of the land admits at p. 58 of the paper book I that as a result of the consolidation proceedings separate chaks were carved out and the fields were separated at the spot. The witness further admitted as follows :

"I or my brother did not raise any objection at the time the land was transferred in the name of Kartar Singh. No dispute arose between me and my brothers any Kartar Singh when it was transferred. The panchayat was called by Kartar Singh. He wanted to carry on cultivation separately."

He further admitted at p. 67 of the paper book that the land was in the name of Kartar Singh and that his name was not recorded in any capacity against the land. He further admitted that the land revenue was also paid in the name of Kartar Singh and that the witness or his son never submitted any application in the Consolidation Department for being made sirdars. Sirdars under the U.P. Tenancy Act are the persons who are in actual personal cultivation of the land. Thus the statement of Kartar Singh that he was in cultivating possession of the land before he sold it to the appellants Sumer Chand Kahar is substantially corroborated even by the evidence led by the prosecution as shown above. If, therefore, Kartar Singh was in physical possession of the land he was undoubtedly

in a position to deliver possession of it the vendee Sumer Chand Kahar under the sale deed as Kartar Singh seems to have done. It is very likely that being the eldest son, the younger brothers would not dare to resist his attempts to give possession of the land, because they knew full well that the land belonged to him and was in his possession. In these circumstances, therefore, the case of the defence that they had been handed over possession of the land by Kartar Singh has a ring of truth and is supported by the evidence of Kartar Singh and the circumstances of the case.

9. Furthermore, it appears that, immediately after the sale deed, when the vendee had applied for mutation, PW 18 Jabbar Singh had filed objections against the sale deed and the appellant Sumer Chand Kahar had filed an application under Section 107/117 of the Code of Criminal Procedure for taking action against Jabbar Singh who had threatened to kill the vendee if he tried to take possession of the property. This matter was referred for inquiry to Babu Ram DW 1 a Sub-Inspector of Police who has deposed on oath that he went to the spot and submitted a report to the effect that there was no apprehension of breach of peace. The report, which is quoted at p. 120 of the paper book I, runs thus :

"It is submitted that enquiry in respect of this application was made by me, the S.I., at the spot. The facts are that in gram Pilakhni Sumer Chand obtained sale deed from Kartar Singh in respect of chak No. 74 measuring 11 bighas kham. This chak stood recorded in the name of Kartar Singh. It was separate. Jabbar Singh and Sher Singh are own brothers of Kartar Singh. They felt it and wanted that this sale deed be cancelled, and that they should get the land. They have already filed an objection in the court. It is pending decision. Kartar Singh delivered possession by getting the same ploughed by Sumer Chand but the opposite party did not want it to be ploughed. Both the parties have been directed that they should not fight with each other and should seek legal remedy. At present there is no apprehension of breach of peace."

Babu Ram DW 1 is an independent witness and is not at all in any way interested in or connected with the appellants. In these circumstances, therefore, there is no reason why he would give a false report, to his officers. It is true that the complainant had complained against him because of the adverse report but that by itself would not falsify his report. The report extracted above fully corroborates the evidence of Kartar Singh that he had delivered possession by getting the land ploughed by Sumer Chand although the prosecution party did not want the land to be ploughed. Babu Ram DW 1 had, however, directed both the parties not to fight. Thus the evidence of Kartar Singh is amply corroborated not only by the statements of some of the prosecution witnesses and the circumstances of the case but also by the independent evidence of Babu Ram DW 1. It is most surprising that neither the High Court nor the Sessions Judge had ever referred to the evidence of DW 1 which throws a flood of light on the question of possession.

10. Lastly there is one more important circumstance which demolishes the case of the prosecution that Sher Singh and Jabbar Singh were in actual cultivation of the land. PW 19 the Investigating Officer has tacitly admitted in his evidence at p. 75 of the paper book I that on July 8, 1966 he obtained copies of khasra and khatauni from Atma Ram Lekhpal. These two documents would conclusively show as to who was in actual cultivating possession of the land in question, and yet even though the Investigating Officer had these documents in his possession he did not choose to file them. From this fact, the only inference that the court can draw was that if these documents had been produced they would have gone against the prosecution and would have confirmed the stand of Kartar Singh that the land was not in cultivating possession of Sher Singh or Jabbar Singh, but was

in the cultivating possession of Kartar Singh, and after the sale deed in possession of the vendee. In this view of the matter we are satisfied that Kartar Singh has correctly deposed when he says that he had given physical possession of the land to Sumer Chand Kahar under the sale deed and had got the land ploughed by the accused. This being the position, it is difficult to accept the sweeping statement of the interested prosecution witnesses that chari crops were grown by the prosecution party. If once it is held that the appellant Sumer Chand Kahar had taken physical possession of the land in dispute, then the question of the prosecution party growing chari crops would not arise at all. There is no doubt that the chari crops had been grown, but the same must have been grown by the vendee after taking possession of the land from Kartar Singh. None of the two courts have tried to approach the case from this angle, or vision, concentrating on the question of possession, which, in our opinion, is a decisive factor in arriving at the truth of the matter in this case.

11. Apart from this, there are a large number of circumstances which show that it was the complainants' party which wanted to forcibly dispossess the appellants from the land after having filed objections before the revenue authorities against the sale deed.

12. Before, however, coming to the circumstances, we would like to analyse the evidence regarding the sowing of the chari crops. We have already referred to the evidence of CW 2 Kartar Singh who has categorically stated that in his presence levelling of the land was done by Sumer Chand appellant for sowing chari crops and the land was later ploughed by the purchaser. Sumer Chand in his statement under Section 313 of the Code of Criminal Procedure has stated in unmistakable terms that he had got possession of the land and had sown the chari crops. The statement of the accused and that of Kartar Singh is corroborated by the report of Babu Ram DW 1 to which reference has been made earlier. All the prosecution witnesses have clearly admitted that the accused persons had entered the land with ploughs and bullocks. According to the evidence there were two ploughs and four bullocks. It has also been admitted by the witnesses that a part of the land was vacant and it was the ploughing reason. In these circumstances, therefore, it is difficult to accept the case of the prosecution witnesses that the accused had entered their own fields with ploughs and bullocks in order to uproot the chari crops, which according to the evidence accepted by us was grown not by the complainants' party but by the accused. The appellants must have gone to the land for the purpose of cultivating the vacant land and that is why they had taken their ploughs and bullocks. PW 16 Ram Singh at p. 52 of the paper book I stated that four bighas of land were vacant, and similar is the evidence of PW 2 Ghanshyam at p. 13 of the paper book.

13. Learned counsel for the State has placed great reliance on the evidence of PW 19 the Sub-Inspector of Police at p. 74 of the paper book I, where he states that he had found 1 1/2 span high chari lying uprooted and pressed due to ploughing. The witness has further stated that there were marks of footprints in it like those caused as a result of fighting. In the first place, the small portion of the chari crop may have been uprooted because there was mutual fight between both the parties for a quite some time and due to the trampling of the land chari crop might have got uprooted. It is, however, difficult to believe the evidence of the Investigating Officer, because he contradicts himself in the next breath when certain questions were put to him by the court. At p. 75 of the paper book, the witness states thus :

"In the field marks were found showing that attempts had been made to remove the marks of blood by levelling the earth. That day I did only this much work, and searched for the accused in that village and its neighbourhood. I spent the night at Pilakhni. Returning to the police station in the morning I went to the spot again on the 4th and recorded the statement of Dharam Sing, father of the deceased. I recorded

the statement of the chaukidar of Nanwa."

This statement would show that on the first day when he reached the village all that he found was that attempts were made to remove the marks of blood by levelling the earth and except this he did no other work at all. Indeed if this is true, then his statement in his examination-in-chief that he found that 1 1/2 span high chari crop was lying uprooted is totally falsified, otherwise he would have mentioned this fact in his answer to the court questions also.

14. Another important circumstance which falsifies the story of the uprooting of the chari crop by the appellants is the statement of CW 1 Khazan where he admits that Sher Singh did not tell him that the Kahars were upturning the chari. In this connection the witness deposed as follows :

"I saw the Kahars carrying ploughs. They had gone half an hour before the departure of Sher Singh Sher Singh also did not speak to me and did not tell me that the Kahars were upturning the chari."

It is obvious that Khazan CW 1 is an independent witness and if the crop had been uprooted by the appellants, Sher Singh would undoubtedly have told this fact to this witness. This, therefore, completely knocks the bottom out of the story of the prosecution that the chari crops had been uprooted.

15. On the other hand there are intrinsic circumstances to show that the prosecution party was bent on forcibly dispossessing the appellants from the land in dispute, and their previous conduct is a clear pointer to this fact. To begin with, soon after the sale deed the complainant's party started threatening the appellants not to go "to the land otherwise they would be killed". This led the appellant Sumer Chand to file an application under Section 107/117 of the Code of Criminal Procedure against the complainants which is Ext. Kha-13 and is mentioned in the judgment of the trial Court at p. 143 of the paper book I where the learned Judge observed thus :

"Thirdly, we have on record a certified copy of an application dated April 11, 1966, Ext. Kha-13 made by Sumer Chand himself to the A.D.M.(J). This is directed against Sher Singh, Jabbar Singh and Ghanshyam and mentions that these persons were threatening him and declaring that he and his family members would be killed if they dared approach the land purchased by him."

This clearly shows the aggressive designs of the prosecution party. Furthermore, after the sale deed was executed, Sher Singh and Jabbar Singh filed objections to the mutation proceedings initiated by the vendee. It is obvious that the land did not belong to Sher Singh or Jabbar Singh but had fallen to the exclusive share of Kartar Singh. There was, therefore, no justification for filing any objection against the sale deed executed by Kartar Singh. The prosecution itself admits that Kartar Singh was the undoubted owner of chak No. 74. PW 2 Ghanyam the son of the deceased at p. 15 of the paper book I clearly admits that he did not want to part with the possession of land and in this connection the witness states thus :

"The dispute between us and the Kahars was this that they wanted to take possession by force and we did not want to give it."

Similarly PW 18 Jabbar Singh at p. 61 of the paper book I states that they wanted to purchase the land and that they filed the objection petition dated April 11, 1966. This witness further stated at p. 63 thus :

"Sumer Chand had asked me and Sher Singh at the house of Kripa either to deliver them possession or they would take the same forcibly. We had told him that we would not deliver possession so long as the objection was pending."

Once it is found that the appellant Sumer Chand had taken possession of the land under the sale deed, it is obvious that Sher Singh and Jabbar Singh resented the fact that the land had gone out of their possession and were bent on retaking it by means fair or foul.

16. Finally, there is plenty of evidence to show that PW 2 Ghanshyam and PW 18 Jabbar Singh reached the field armed with lathis and they also wielded lathis in order to assault the appellants. PW 9 Jai Singh at p. 37 of the paper book I has stated that the "Kahars must have been hit with the lathis of Jabbar Singh and Ghanshyam". At another place, namely at p. 34 of the paper book I, the witness stated thus :

"The accused persons made an attack on them as well. They plied (?) lathis. Ghanshyam was hit by it on his hands while stopping the same."

PW 2 Ghanshyam the son of the deceased candidly admitted thus :

"I do not know how did Hari Chand receive the injuries. I and my uncle had plied lathis as I have stated above I cannot tell as to who, out of them, were engaged in lathis fight with us and who were assaulting my father."

PW 18 Jabbar Singh at p. 59 of the paper book I admitted thus :

"I and Ghanshyam advanced with lathis to save my brother. Out of them Hari Chand, Sumer Chand, and one or two persons advanced towards us, and lathies were plied by both the sides."

CW 1 Khazan at p. 70 of the paper book I admitted that Jabbar Singh and Ghanshyam had entered the field and both of them had lathis.

17. Thus the following facts are established :

- (1) that the land in dispute belonged to Kartar Singh who transferred the same to the appellant Sumer Chand and delivered possession of the land to him;
- (2) that after taking physical possession of the land, the appellants started cultivating the land and grew chari crops;
- (3) that Sher Singh and Jabbar Singh had unequivocally expressed their anger and resentment at the appellants taking possession of the land and had gone to the extent of threatening them;
- (4) that the assault was not onesided but was a mutual 'marpeet' in which lathi blows were wielded by two of the prosecution witnesses, namely, PW 2 Ghanshyam and PW 18 Jabbar Singh, and one of the accused Hari Chand was admittedly injured; and
- (5) that the appellants who were Kahars were socially and educationally backward class of people constitute a minority in the village.

In these circumstances we find it extremely difficult to believe that the appellants pitted against the mighty and powerful Rajput zamindars of the appellants pitted against the mighty and powerful Rajput zamindars of the village would have had, in the year 1966, courage and audacity to launch such a major offensive against the zamindars with a view to dispossess them and go to the extent of brutally belabouring the deceased without any pretext or provocation. They could have mustered courage to assault the deceased only if they were, under the force of circumstances, compelled to defend their person and property. On the other hand, the circumstances proved in this case lead to the inescapable conclusion that as it was the ploughing season, the accused must have gone to the field for ploughing the vacant portion of the land, and the complainants' party which was bent on retaking possession must have entered the field and tried to take possession by force. Faced with this situation, the appellants tried to defend their possession and in doing so assaulted the deceased and some of them received injuries at the hands of two of the prosecution witnesses - Ghanshyam and Jabbar Singh. This is what seems to have happened in the present case.

18. The serious question that now arise is as to what is the nature of the offence that has been committed by the appellants in these circumstances ? The accused have been proved to be in actual possession of the land and were sought to be dispossessed by the complainants' party who trespassed on their land armed with lathis. The appellants, therefore, would undoubtedly have a reasonable apprehension of hurt being caused to them and were, therefore, entitled to defend their person and property in exercise of their right of private defence. As large number of injuries on the deceased clearly show that the appellants had undoubtedly exceeded their right of private defence. As many as 72 injuries were caused to the deceased, some of which are fractures on vital parts of the body of the deceased. The appellants, therefore, on doubt grossly exceeded their right of private defence, and their case is, therefore, completely taken out of the purview of Section 302 I.P.C. and falls within exception 2 to Section 300 I.P.C.

19. In view of our finding that the appellants exceeded their right of private defence, the common object with which they were charged fails and their conviction under Section 147/149 I.P.C. cannot be sustained. The fact, however, remains that as the appellants made a combined assault on the deceased inflicting a large number of injuries on the deceased, they must be deemed to have common intention to assault the deceased by causing such bodily injuries which were likely to result in his death. The common intention, as it is obvious, developed at the spot when the deceased was assaulted by the appellants. In these circumstances, therefore, the appellants are liable to be convicted under Section 304 part one of the Indian Penal Code.

20. For these reasons, therefore, we allow these appeals to this extent that the convictions and sentences passed on the appellants under Section 147 and 323/149 I.P.C. are hereby set aside and the conviction of all the appellants under Section 302/149 I.P.C. is altered to that under Section 304 part one read with Section 34 I.P.C. and the appellants are sentenced to seven years rigorous imprisonment thereunder. The order of the High Court reversing the acquittal of the appellants Baljit and Sunehra is upheld with the modifications indicated above.

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