

Biri Singh

Vs

State of U. P. and Others

With

State Of U. P.

Vs

Raj Kumar And Others

Criminal Appeal Nos. 703-705 of 1979

(S. Ratnavel Pandian, J.)

06.03.1992.

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. All the above three appeals are directed against the judgment of the Allahabad High Court dated April 9, 1979 rendered in Criminal Appeal No. 234 of 1979 connected with Criminal Appeal No. 210 of 1979 whereby the High Court had acquitted all the respondents/accused by setting aside the judgment of the trial court passed in Sessions Trial No. 82 of 1976 convicting all the 12 respondents under Sections 147, 148 and 302, 307, 323 and 324 - all read with Section 149 of the Indian Penal Code and sentencing the respondents Raj Kumar and Raghuvir Singh to death subject to the confirmation by the High Court as contemplated under Section 363 of the Code of Criminal Procedure and sentencing each of the remaining respondents to life imprisonment and also to varied terms of imprisonment for other offences with the direction that the sentences imposed on Raj Kumar and Raghuvir Singh should merge with the capital sentence and the sentences imposed on others to run concurrently. The Criminal Appeal No. 703 of 1979 is preferred by the complainant Biri Singh whilst Criminal Appeal Nos. 704 and 705 of 1979 are preferred by the State of U.P. Since all the three appeals arise out of the common judgment, we pass the following common judgment.

2. These respondents (accused) took their trial on the allegations that on August 23, 1971 in the jungle of village Badarkha Sirbas within the limits of Pahasu Police Station in Bulandshahr District they all formed themselves into an unlawful assembly and in the prosecution of the common object of the said assembly, respondents Raj Kumar and Raghuvir Singh committed the murder of Bahori, Tehsil Singh and Kallu Singh by shooting at them with their guns and also committed various offences as indicated above.

3. We would like to refer to the respondents/accused in our judgment as serially arrayed in the Criminal Appeal Nos. 704 and 705 of 1979, preferred by the State. Of the respondents, Raj Kumar and Ajab Singh (i.e. Respondents 1 and 8) are first cousins. Respondent, Ramesh (Respondent 2) is

the son of Raj Kumar (Respondent 1). Respondents - Rameshwar, Raghuraj, Raghuvir, Raghunandan and Ram Saran (Respondents 3 to 7) are brothers. Respondents - Babu and Pan Saran (Respondents 9 and 10) are brothers. Respondents Bani Singh and Karrey Singh (Respondents 11 and 12) are brothers. It is said that all the respondents belong to one group. The brief facts of the case unfolded from the evidence can be summarised thus :

4. Towards the southern side of the scene village Badarkha Sirbas lies the village Kala Nadi. In between these two villages, there is a pasture land lying in two portions belonging to Gram Samaj. Between these two portions there are two fields. In the year 1961 when respondent Ajab Singh (Respondent 8) was the Pradhan of Gram Samaj, he executed a lease deed of the pasture land in favour of Smt Dropdi, Smt Kanchan Devi, Satish Kumar and Vijay Kumar. One Khacheru Singh and Tehsil Singh filed a petition complaining against this lease deed before the Sub-Divisional Officer. All the above-said lessees who were summoned, appeared before the Sub-Divisional Officer and stated that they did not want to take the pasture land.

5. In the year 1971 Respondents 3 to 7 and the sons of Raj Kumar (Respondent 1) - namely, Respondent 2 and Krishna Pratap got the sale deed executed of this disputed land from Smt Dropdi and others. They moved an application for mutation of their names. The above-said Khacheru Singh and Tehsil Singh filed objection to the mutation application which was rejected on October 25, 1971. On the date of occurrence at about 12 noon PW 1 Virendra Singh who was then the Pradhan of the Gram Samaj came to know that Respondents 1 to 3 Raj Kumar, Ramesh and Rameshwar and others had brought a tractor and were planning to plough the disputed pasture land. PW 1 collected Bahori Singh, Tehsil Singh, Kallu Singh (all the three deceased in this case), PW 2 Latoor Singh, Shripal, Ramesh and others and decided that all of them should approach respondent, Raj Kumar (Respondent 1) and others and ask them not to cultivate the pasture land till the dispute was decided by a court of law.

6. On the above decision, all of them came near the northern pasture land where the respondents were found moving towards the pasture land with a tractor by the side of Kala Nadi. Respondents 1, 4 and 6 were each armed with guns. Respondents 2, 3, 5, 9, 11 and 12 were carrying spears. Respondent 10 was having a pharsa. Respondents 7 and 8 were having lathis. PW 1 and others asked the respondents not to plough the pasture land till the matter was decided by a court, but the respondents did not pay heed to the request of PW 1 and others, but moved the tractor onwards. The deceased Bahori Singh came in front of the tractor; made a gesture by stretching his hands and asked the tractor operator not to move the tractor forward, upon which Respondent 8 abused the prosecution party and made an exhortation that they should be killed. At this exhortation, Respondent 1 (Raj Kumar) fired a shot killing the deceased Bahori Singh at the spot. Respondent 2 (Ramesh) gave a spear blow to the deceased Kallu, who on receipt of the injury fell down. Respondent 6 (Raghuvir Singh) fired a shot at the deceased Tehsil Singh who also fell down on receipt of the gun shot injury. Respondent 4 (Raghunandan) fired at and caused injuries to Ramesh and Shripal (PW 3). The rest of the respondents inflicted injuries with their respective weapons in their possession. The deceased Kallu died on the spot. In the meantime, Niranjan Singh, Khacheru Singh and Shailendra Singh and a number of other persons came there. On seeing a crowd coming to the scene all the respondents made good their escape leaving the dead bodies on the scene of occurrence. The tractor operator also fled away with the tractor.

7. After all the respondents had left the place, a car was brought in which the injured Latoor Singh (PW 2), Ramesh and Tehsil Singh were taken to the police station. On the way, the injured Tehsil Singh died. Shripal (PW 3) was left at the place of occurrence with an instruction to keep watch

over the dead bodies of Bahori Singh and Kallu. The Sarpanch of the village met PW 1 and took down a written report from PW 1 under Ex. Ka-1. It was handed over on the same day at about 2.30 p.m. to PW 6, who on that basis prepared a check report under Ex. Ka-105 and made its entry in the General Diary. A case was registered under Ex. Ka-107. The injured PW 2 and Ramesh were sent for medical examination accompanied by a constable. The investigation of the case was taken up by the Sub-Inspector of Police, PW 4. During the course of the investigation, PW 4 recorded the statements of PW 1 and others at the police station, held inquest over the dead body of Tehsil Singh, prepared the inquest report Ex. Ka-2 and sent the dead bodies for post-mortem examination. Thereafter, he proceeded to the place of occurrence. On the way, he found PW 3. After recording his statement, he sent PW 3 for medical examination. At the scene place PW 4 held inquest over the dead bodies of Bahori Singh and Kallu Singh and prepared the inquest reports under Exs. Ka-9 and Ka-13. He found three spent cartridges lying on the scene and took them into his custody under Ex. Ka-6. After preparing a site plan and collecting blood stained earth from the scene under Exs. Ka-7 and Ka-8, he sent the dead bodies for post-mortem examinations. He searched for the accused, but they were not available. Subsequently, investigation was taken up by I. O. Durgpal Singh. On August 26, 1977 PW 4 took proceedings under Sections 87 and 88 of the Code of Criminal Procedure against all the respondents under Exs. Ka-18 to Ka-104. After completing the investigation, a charge-sheet under Ex. Ka-126 was filed.

8. All the respondents pleaded not guilty to the charges levelled against them. Respondent 1 gave a statement stating that there was no pasture land towards the southern side of the village in question and the land towards that side was leased to Smt Dropdi and others. However, he has admitted that Respondents 2 to 7 and Krishna Pratap got the sale deed executed by Smt Dropdi and others of the land lying towards the southern side of the village. He has further stated that an appeal was filed before the Commissioner against the order of the SDO refusing to get the mutation done and a declaratory suit was also filed which was decreed and the mutation was made in the name of the vendees. He has continued to state that the respondents were ploughing the aforesaid land with a tractor and at that time all the three deceased persons along with the injured accompanied by a group of persons attacked them and that he was attacked with a spear whereupon he in the exercise of the right of self-defence of person and property fired one shot, but he did not know who was hit by that shot. Respondents 2 and 3 denied knowledge of the entire occurrence and their participation. Respondent 4 has stated that there was no pasture land as alleged by the prosecution and that he had gone to cultivate the land which they had purchased under a sale deed. In addition to his oral statement, he filed a written statement inter alia stating that they got the sale deed from Smt Dropdi and others who obtained this land on lease from Respondent 8 who was the Pradhan. Respondent 4 further states that PW 2 and the members of his party started litigation in the Revenue Court and that in the year 1974 the Respondents 2 to 7 and another filed a suit for declaration in the court of SDO and won the case, that they were held to be in possession of the land and mutation was made in their favour and that Kallu Singh and others had moved an application for being impleaded as defendants in the declaratory suit, but the court rejected that application. The revision filed against that order before the Commissioner, Meerut Division was also not accepted and the Commissioner made a recommendation to the Board for dismissing the revision. It is further stated that on the date of occurrence at about 2 or 2.30 p.m. the Respondent 1 and the Respondent 8 along with 3 others reached the land purchased from Smt Dropdi whereupon PW 1 along with 40 others forming themselves into an unlawful assembly came to the land and illegally prevented them from ploughing it and attacked the respondents with spears. It was only in these circumstances they in the exercise of the right of private defence of property and person used their guns and other weapons causing injuries to a few of these persons in the crowd. It is further stated that certain shots were also fired

from the side of PW 1 which might have hit some persons of the prosecution party itself. According to him, he and the Respondent 1 were injured. The respondents on getting panicky did not go to the police station and on the next day reached Kashimpur, District Aligarh where both the injured got themselves medically examined. One Ram Jumar, a relation of Respondent 1 has made a complaint by telegram to the Superintendent of Police, Bulandshahr about this occurrence but the police colluding with PW 1, did not make any investigation but charge-sheeted them falsely by shifting the place of occurrence. It is asserted by this respondent that the occurrence took place only in the land which they had purchased. Respondents 5, 6, 7, 9, 10, 11 and 12 denied their presence in the scene village. Respondent 8 supported the statement of Respondent 1 admitting the purchase of the properties, mutation of records and filing of the declaratory suit but denied his presence on the spot.

9. Of the 15 witnesses examined on the side of the prosecution PWs 1 to 3 are the eye witnesses to the occurrence. PW 7 who conducted the post-mortem on the deceased Kallu Singh found one incised penetrating injury in the upper part and middle of epigastrium measuring 1" x 1/2" heart cavity deep, with tapering on the right side. Besides he found two abrasions. According to him death was caused due to shock and haemorrhage as a result of injury No. 1. The same Medical Officer conducted autopsy on the dead body of Bahori Singh and found on his person numerous gunshot wounds on the front and upper part of face, forehead, frontal region. He removed eight pellets embedded in the brain and four from face and handed them over to the police. PW 7 conducted autopsy on the deceased Tehsil Singh and found on his person three gunshot wounds, one on the region of umbilicus, other numerous wounds on the lateral front part of right thigh and in the scrotum and five gunshot wounds on the front and medial side of left thigh. Nine pellets were revived from the dead body. The post-mortem reports are marked as Exs. Ka-108 to Ka-110. PW 8, another Medical Officer radiologically examined the injured Ramesh and found certain pellets on his body. PW 10, another Medical Officer, Incharge of Primary Health Centre, Pahsu, who examined PWs 1 to 3, gave them first aid and sent them to the District Hospital. PW 11, who was a doctor attached to the District Hospital examined Ramesh, son of Latoor Singh (PW 2) and found as many as 6 injuries which were all gunshot wounds. He also examined PW 3 and found two gunshot wounds and a punctured wound. He examined PW 2 and found a punctured wound besides complaint of pain. The respondents on their side examined DW 1 (Dr Jaipal Singh) who has deposed that on August 24, 1971 at about 8 p.m. he examined Respondent 1 Raj Kumar and found on his person three incised wounds, (1) on the outer aspect of right arm; (2) on the left scapular region; and (3) on the front side of the chest ring vertically 5" above the left nipple. In the opinion of the Medical Officer, all the injuries were simple and could have been caused by some sharp-edged weapon and they were one day old. On the same day, DW 1 examined Respondent 4 Raghunandan and found the following injuries on his person, namely, an incised wound measuring 2/4" x 1/2" x 1/2" deep with tail end downwards and laterally on the right side of the abdomen. This injury was in the opinion of the Medical Officer also about a day old and it would have been caused by a pointed sharp edged weapon. Exs. Kha-3 and Kha-4 are the wound certificates issued by the Medical Officer in respect of Respondents 1 and 4. The trial court after examining the oral and documentary evidence as regards the possession of the disputed land, observed :

"It is also no doubt correct that in the sale deed executed in favour of the vendees mentioned about transfer of possession has been made but from this alone it cannot be said that they had come into actual physical possession of the plots in question."

10. Coming to the ocular testimony of PWs 1 to 3, the trial court found :

"In view of the discussion made above and in view of the evidence on record I am of

the opinion that the prosecution has fully established that the occurrence took place at the place as alleged by it and not over the fields by the side of the Kala Nadi....

I am of the opinion that the prosecution has fully established that the occurrence took place upon the date, time and place and in the manner as alleged by it. The accused has failed to substantiate their plea of self-defence of person and property. All of them are, therefore, guilty of the offences charged with."

11. Coming upon the above observations, the trial court convicted all the respondents/accused and sentenced them as aforementioned. On being aggrieved by the judgment of the trial court, the respondents preferred two appeals in Criminal Appeal Nos. 210 and 234 of 1979 before the High Court. The High Court on the evaluation of the evidence made the following observations :

"(1)... during the consolidation proceedings the lessees were found to be in possession of the disputed plots (vide Exs. Kha-15, Kha-16 and Kha-37)...

The Khasaras show their possession and also that crops were raised in these plots.....

No other plot has been shown as Charagah and there is no documentary evidence on the record to support the subsequent case which the prosecution witnesses tried to make out that there are other Charagah plots to the north of these plots beyond two intervening plots. It is further apparent that the lessees deposited ten times of the annual rent and obtained Sandas thereby acquiring Bhumidhari rights before they finally executed the sale deed in favour of the said appellants.

(2) In self-defence Raj Kumar had to resort to firing. There was firing from both sides and some persons were hit. Out of fright, they had absconded and got themselves medically examined next day by DW 1 Dr Sinha.

(3) A telegram was also sent to the Superintendent of Police, Bulandshahr mentioning therein true facts. The telegram is Ex. Kha-31.

(4)... it is impossible to believe that the deceased and their supporters could have gone there unarmed....

There is material on record to show defence version that the party of the deceased also had gone armed which, even in view of the prosecution allegations, appears to be natural.

(5) A perusal of the first information report of which PW 1 Virendra Singh, the then Pradhan of the village was the author will show that initially the definite case of the prosecution was that the incident took place on the pasture land which was the subject matter of litigation and dispute between the parties.

(6) A perusal of the statement made by DW 1 Dr Sinha will show that though the nature of injuries was simple, both the appellants had incised wounds and one of them had an injury on the abdomen which do not appear to have been self-suffered. Therefore, there is material on the record to support the defence version that the party of the deceased also had gone armed which, even in view of the prosecution allegations, appears to be natural.

(7) Moreover, the prosecution evidence is so very unreliable that it is difficult to determine what really happened.

(8) The defence version, no doubt, appears to be highly exaggerated one, but because of that, it cannot be held that the prosecution version must be true. The prosecution has to stand on its own legs and prove its case beyond reasonable doubt. This the prosecution has failed to do so."

12. On the basis of the above observations, the High Court set aside the judgment of the trial court rejecting the reference made by the learned Sessions Judge, under Section 363 of the Code of Criminal Procedure and allowed the appeals and consequently directed the respondents to be acquitted. Hence these appeals.

13. The main argument was advanced by the learned senior counsel, Mr Prithvi Raj, representing the State in Criminal Appeal Nos. 704 and 705 of 1979 which argument was adopted by the learned counsel in Criminal Appeal No. 703 of 1979 supplementing some more submissions. The learned senior counsel appearing on behalf of the State strenuously contended that the judgment of the High Court is liable to be quashed both on the question of law and facts. According to him, the High Court has committed a grave mistake in coming to the conclusion that the respondents were in the actual and physical possession of the land in dispute when nothing has been placed on records by the respondents either by way of documentary or oral evidence to establish their plea that, before the date of the occurrence, the respondents had obtained the possession and raised crop over the land, that the High Court was not justified in holding that the dead bodies were removed from the place of occurrence thereby holding that the place of occurrence had been changed on the basis of certain immaterial and trivial contradictions appearing in the evidence of PWs 1 to 3, that the High Court ought to have accepted in toto the unblemished evidence of PWs 1 to 3 of whom PWs 2 and 3 are injured witnesses and sustained the well-reasoned judgment of the trial court and that the High Court has departed from the well-settled law of self-defence and has gone wrong in holding that the respondents were well within the right of their private defence of persons and property. The learned counsel impeached the judgment of the High Court stating that the finality has been drawn on wrong conclusions which are bad in law and hence the impugned judgment deserves to be set aside and the judgment of the trial court which is manifested by logical conclusions is to be restored. Mr R. K. Garg, senior counsel appearing on behalf of the respondents advanced his argument refuting the contentions raised on behalf of the appellants, contending inter alia that the prosecution has not come before this Court with clean hands and has suppressed the very origin and genesis of the occurrence, that it was the prosecution party which came to the scene in a large crowd armed with deadly weapons and started attacking the respondents who were exercising their legitimate right of ploughing the land, that the respondents in the circumstances in which they were placed were justified in exercising their right of private defence of persons and property and that the death of 3 persons cannot be taken as a factor to destroy the defence. According to him, the trial court had been influenced and carried away by the number of deaths on the side of the prosecution party and rendered its judgment ignoring all other salient features appearing in favour of the defence. He stated that the fragmental evidence of PWs 1 to 3 does not command acceptance as the said evidence suffers from the vices of self-contradictions and improbabilities.

14. No doubt, it is a very drastic incident in which three persons had lost their lives of whom two on account of gunshot injuries and the other on account of a penetrating injury evidently due to piercing by a pointed and sharp-edged spearing weapon. In addition to that, three persons sustained injuries, namely, PWs 2 and 3 and one Ramesh (not examined). The motive for the occurrence

indisputably is over the enjoyment of the disputed land. Through the evidence of DW 1, it is brought on record that all the respondents, i.e. Respondents 1 and 4, namely, Raj Kumar and Raghunandan sustained incised wounds. It is the defence of the Respondents 1 and 4 that they fired the gunshots in the exercise of their private right of persons and property.

15. In the above background, let us now analyse and examine the evidence both oral and documentary and see whether the High Court has committed any manifest error or illegality in reversing the judgment of the trial court.

16. Much arguments were advanced by both the learned counsel in regard to the nature and characteristic of the land as well as its possession on the date of occurrence. The case relating to the land in dispute as put forth by the prosecution is as follows :

17. In the year 1961, Respondent 8 Ajab Singh, who was then the Pradhan of Gram Samaj of village Badarkhas Sirbas executed the lease deed of the pasture land in dispute in favour of one Dropdi Devi, Smt Kanchan Devi, Satish Kumar and Vijay Kumar. One Khacheru Singh Harijan and Tehsil Singh filed an application under Section 198 of the Zamindari Abolition and Land Reforms Act before the SDO Khurja complaining against the lease of the land and sought cancellation of the lease deed (Ex. Ka-122). All the four lessees filed a reply before the SDO stating that they did not want to take the pasture land and their names be struck off the record as lessees (vide Ex. Ka-123). The SDO sent the file to the Tehsildar for necessary action. But before the names could be deleted from the record the consolidation operations started. Therefore, the file was returned by the Tehsildar to the SDO who stayed the proceedings. The file was consigned to the record room. During the consolidation operations an objection was filed under Section 9-A(2) of the Consolidation of Holdings Act by Gram Samaj. The objections were dismissed in default of Gram Samaj by the Consolidation Officer. As Respondent 8 Ajab Singh was the Pradhan at that time and as he did not peruse the objections, Dropdi Devi and others were recorded as Sirdars during the consolidation operations even though they disclaimed any right over the property. PW 1 became the Pradhan in the year 1966-67. On January 1, 1971 the four lessees, namely, Smt Dropdi and others deposited ten times of the annual rent and obtained Bhoomidari rights. Within 3 days thereafter, that is on January 4, 1971 Respondents 2 to 7 and one Krishna Pratap, got a sale deed of the pasture land in their favour executed by Smt Dropdi and others (i.e. lessees) and moved an application for mutation of their names. Khacheru Singh and others filed an application before the SDO Khurja upon which the file of the case under Section 198 of Zamindari Abolition and Land Reforms Act was summoned from the record room. The SDO by his order dated January 23, 1971 marked as Ex. Ka-124 expunged the names of Smt Dropdi and others (lessees) from the revenue records relating to the pasture land. A copy of the order was sent to the Tehsildar for compliance with a direction that the land in question be restored in the name of Gram Samaj and that the Pradhan of Gram Samaj could take over possession of the land immediately. The vendees - namely Respondents 2 to 7 and another filed an application for setting aside the aforesaid order dated January 23, 1971 (Ex. Ka-125), but this application was rejected. Feeling aggrieved by the said order of rejection the vendees filed a revision before the Commissioner, Meerut Division, who stayed the operation of the order. In the months of February and August 1971 the vendees moved a mutation application in respect of the pasture land, to which objections were filed. This mutation application was also rejected. According to the prosecution on the date of the incident, that is on August 23, 1971 the names of Dropdi and others (the original lessees) were continued in the revenue records.

18. Mr Garg interpreted various provisions under the Zamindari Abolition and the Land Reforms Act and the Consolidation of Holdings Act and stated that PW 1 who by then had become the

Pradhan of the village had not raised any objection during the consolidation proceedings which had become final and that it was finally held that the lessees were the Sirdars of the plots leased out to them which were Charagah of the Gaon Samaj which filed an objection under Ex. Kha-16. Thereafter the lessees were shown to be the Sirdars of these plots from 1977 F. Both in khasras and Kataunis and that the khasras show their possession and also reveal the facts that crops were raised in these plots. In these plots the old numbers of which were 435/3 and 437 correspond to the new numbers 699 and 735 respectively after the consolidation proceedings. He points out that even the Investigating Officer has shown in the site plan plot Nos. 699 and 735 as Charagah. He continues to state that no other plot has been shown as Charagah and there is no documentary evidence in support of the prosecution case that these are Charagah plots to the north of these two plots beyond the intervening plots and that the lessees after depositing the ten times of the annual rent had obtained Sandas thereby acquiring Bhoomidari rights before executing the sale deed in favour of the Respondents 2 to 7 and Krishna Pratap, that the vendees obtained their possession from their vendors which fact is made mentioned of in the sale deed and that the vendees (Respondents 2 and 7) continued their actual and physical possession of the land exclusively enjoying the same.

19. Notwithstanding the interpretation of the various provisions of the Zamindari Abolition and Land Reforms Act and Consolidation of Holdings Act and the proceedings taken thereunder, a question that would arise before this Court in this criminal proceeding is as to whether the respondents/vendees were in possession of the property as on the date of the occurrence. As pointed out by the High Court despite the fact that the applications of the respondents/vendees dated December 18, 1971 for setting aside the order of the SDO dated January 23, 1971 and the mutation applications, the order dated January 23, 1971 appears to have been never given effect to. The lessees who had become Sirdaras and subsequently as Bhoomidhars cannot be said to have not been put in possession of the property in view of the consolidation proceedings. It follows that the transferors, namely, respondents/vendees in whose favour the lessees executed the sale deed should have and in fact had handed over the possession of the property as revealed from the recital of the sale deed. The vendees were enjoying the land having been put in physical possession. As pointed out by the High Court during the consolidation proceedings the lessees who are the vendors of the land in question were found to be in possession of the disputed plots as borne out by Exs. Kha-15, Kha-16 and Kha-37. The finding of the trial court in paragraph 27 of its judgment is that the mere mentioning of the transfer of possession to the vendees in the sale deed in their favour will not be sufficient to hold that the vendees had come into actual physical possession of the plots in question. We are unable to agree with that finding because the consistent case of the defence is that the respondents had taken possession of the property as borne out from the recital of the sale deed; secondly the vendors were found to be in possession of the disputed land during the consolidation proceedings; thirdly the khasras show the possession of the vendors and also the fact that crops were raised in those plots; and fourthly the prosecution has not examined any of the vendors to speak that they did not obtain the possession of the property nor they handed over the possession to their vendees. All these circumstances attending the case in our opinion would lend support to the defence that the disputed plots were under the actual and physical possession of the vendees/respondents and they were enjoying the same as on the date of the occurrence.

Place of Occurrence :

20. According to the prosecution, the occurrence took place at the Charagah which is at a distance of about 50-60 yards from the plots which Respondents 2 to 7 had purchased from Dropdi and others. Contrary to that the case of the defence is that the occurrence took place in the fields which were purchased. The evidence adduced on behalf of the prosecution is that there are two Charagahs

(pasture land) in the village of which one is by the side of Kala Nadi and the other is on the northern side of the first pasture land, that is two fields off and that the occurrence took place near the second pasture land (Charagah). The site plan prepared by the Investigating Officer shows that in between the places where the dead bodies were found and the land by the side of Kali Nadi two fields intervene. The I. O. states that he found the blood at the places shown by letters B, C, D and E in the site plan where the dead bodies were lying and the dead bodies were not found by the site of the field which the respondents had purchased. The place of occurrence has been described by the I.O. as a graveyard.

21. A perusal of the first information report given by PW 1 who was none other than the Pradhan of the village spells out that the incident took place in the Charagah land which was in dispute. The exact recital the first information report reads thus :

"Raj Kumar today borrowed a tractor belonging to Ghanshyam Das of village Rislu and in order to plough the said Charagah land he went to the said land at about 12 a.m. They did not listen to it and wanted to plough the land by force. On being stopped Raj Kumar fired upon Bahori Singh and Raghubir Singh alias Raghudas fired upon Tehsil Singh."

22. The Investigating Officer has admitted in his cross-examination that he noted down the various spots in the site plan wherefrom he seized certain articles only on the instructions of PW 1. Much effort has been taken by the prosecution to show that the tractor did not enter into the pasture land, but it was stationed at two fields away from the pasture land where the occurrence took place. It is very unfortunate that the Investigating Officer has not satisfactorily fixed the scene of occurrence. He, when confronted, has given evasive answers stating that he found the dead bodies in the plots known as Charagah where he found the blood stains. Admittedly, the blood stains have not been sent to the chemical analyst. The Investigating Officer has not stated anything in his evidence as to whether there was any ploughing in the land or whether there was any crop in that land. But on the other hand, as we have earlier pointed out he did not make any effort even to find out as to who was in possession of the property. The trial court has strained too much to fix the scene of occurrence. Though the case of the prosecution is that the occurrence took place in the pasture land which is two fields off the disputed field, that the prosecution party did not remove the dead bodies from the scene of occurrence and that they were lying in the place where the deceased were murdered, there is some concrete evidence, admitted by the prosecution witnesses themselves that the dead bodies were removed from one place to another. Of course, PWs 1 to 3 throw the blame of removing the dead bodies on the accused persons. Now we will examine this part of the case with reference to the evidence of PWs 1 to 3. PW 1 has answered the questions with regard to the removal of the dead bodies from the scene of occurrence as follows :

"After beating us the accused tried to drag the dead bodies of Bahori Singh and Kallu Singh after tying them. In the meantime Niranjan Singh, Khacheru Singh and Rajendra Singh came there. On seeing them the accused left the dead bodies of Bahori Singh and Kallu Singh and escaped."

PW 2 has given the following answer :

"Bahori Singh, Kallu Singh and Tehsil Singh fell down there and their bodies were dragged up to some distance by Raj Kumar etc. and left there."

PW 3 has deposed :

"When accused person ran away from the place of occurrence I went to the place where dead bodies were lying."

23. The above answers given by these witnesses indicate that the dead bodies were removed from the scene of occurrence, but they were not lying at the place where the incident took place. The question is who removed the dead bodies. It is beyond one's comprehension in the circumstances of the case the respondents would have tried to remove the dead bodies after the occurrence because such a removal would be detrimental to their defence. The fact of removal of dead bodies from the scene is demonstrably established from the evidence which we have extracted above. Therefore, if at all any one had obliterated the scene of occurrence by removing the dead bodies, it must have been only by the prosecution, obviously, for putting up a theory that the occurrence did not take place in the field in dispute but in some other pasture land, that is two fields away from the disputed land.

24. Be that as it may, in the teeth of the first information report and from the evidence of I.O. PW 4, it can be inferred that the case of the defence that the occurrence took place only in the disputed field at the time of preventing the respondents from ploughing the land, purchased by them cannot be completely brushed aside as devoid of any merit. In such circumstances, we are in total agreement with the finding of the High Court that the prosecution had shifted the place of occurrence to "parti" land situated further north which has been described by PW 4 as Margat Banjar and that the disputed land ceased to be Charagah and the occurrence took place in the land, purchased by Respondents 2 to 7 and another.

Ocular testimony of PWs 1 to 3 :

25. Of the witnesses examined PWs 1 to 3 are the eye-witnesses to the occurrence. PW 1 became the Pradhan of the village in 1966-67 succeeding Respondent 8. He speaks the motive for the occurrence stressing the history of the land dispute from its initial stage of leasing out. According to him, on the date of the occurrence at about 12 of 12.30 noon Respondents 1 to 3 and others brought a tractor for ploughing the pasture land and therefore he collected the three deceased and the injured persons along with Tehsil Singh and decided to approach the respondents and ask them not to plough the land. Accordingly they all came near the land and found the respondents armed with weapons. It is stated by him that Respondents 1, 4 and 6 were each armed with a gun. Respondents 2, 3, 5, 9, 11 and 12 were each armed with a spear. Respondents 7 and 8 were each armed with a stick and Respondent 10 armed with a pharsa. It is the evidence of PW 1 that all of them on reaching the field requested the respondents with folded hands not to plough the land, but the respondents paying no heed to the request of PW 1 and others moved the tractor onwards, whereupon the deceased Bahori Singh came and stood before the tractor and stopped the tractor by stretching his hands. At this point of time, Respondent 8 abused the prosecution party and instigated the respondents to kill the members of the prosecution party. At this exhortation of Respondent 8, Respondent 1 fired a shot on the deceased Bahori Singh with his gun. Bahori Singh on receipt of a gunshot injury fell down. Respondent 2 gave a spear blow to the deceased Kallu Singh, who fell down on receipt of the injury. Respondent 6 Raghuvir Singh fired at Tehsil Singh, who also fell down. Thereafter Respondent 4 fired at the prosecution party as a result of that Ramesh son of PW 2 and PW 3 were hit with pellets. Then all the respondents started beating the prosecution party with lathis and spears and tried to drag bodies. In the meantime, Niranjan Singh, Khacheru Singh and Rajendra Singh came there. On seeing them all the respondents leaving the dead bodies made good

their escape. The tractor operator also fled away with the tractor. After the respondents left the scene, PW 1 and others removed the injured Tehsil Singh, PW 2 and Ramesh to the police station leaving PW 3 at the scene spot to keep watch over the dead bodies. Tehsil Singh (sic died) on the way to police station. PW 1 on the way met the Sarpanch who took a report from PW 1 under Ex. Ka-1 at his shop to the narration of PW 1. Then PW 1 took the report to the police station and handed over the same to the station House Officer. In the cross-examination PW 1 expressed his ignorance that he was not aware of the fact whether the vendors had become Bhoomidhars from Sirdars of the said land by paying 20 times of the revenue or not. He has admitted that he and other persons had gathered before moving to the land and none of them suggested that the police should be informed first and the respondents would be stopped from ploughing the land with the help of the police. But on the other hand, they all decided to go in a body and ask the respondents to desist from ploughing. He has denied the suggestion that the respondents with tractor went to the land in dispute and started ploughing. He admits of not specifically mentioning in his earlier report, on the basis of which the crime was registered, as to which of the respondents was carrying pharsa, spear and lathi. When it was brought to his notice that he has not mentioned in his report that Respondent 4 also had a gun and fired, his reply was that he could not give any reason for that omission. But at the same time he unreservedly accepts that the report was read over to him after it was reduced to writing and that he did not raise any objection for the omission. Similarly, he states that he could not give any reason for the averment in the report that the occurrence took place in the first pasture land. Reiterating his information in the report, he states that he deposed in the Court also that other respondents also fired after Respondents 1 and 6 fired the gunshots. According to him, none of the persons belonging to the prosecution party carried any weapon nor they beat any of the respondents and that Respondents 1 and 4 might have received injuries, but he did not know as to how. He admits that 6 or 7 years ago, there was a report against him and some others and he did not know whether Respondent 8 was against him in that case. Further he admits that there was a proceeding under Section 107 CrPC against him and Respondent 8 and that Respondent 8 had lodged a report against him on August 2, 1978 for misappropriation, on the basis of which he was removed from the office of Pradhan. Without any reservation he further admits that he was in the habit of making complaints and that he was charge-sheeted for an offence under Section 386 IPC but was acquitted. He denied the suggestion that he was a history sheeter. It is also brought in the cross-examination that he had leased the Gram Samaj land in favour of one Surinder Singh, son of Latoor Singh but that lease was cancelled on an objection application given by Respondent 4. He has denied the suggestion that the prosecution party went in a body consisting of a large number of persons armed with deadly weapons and obstructed the respondents from exercising their legal right of enjoying the land and also attacked them with weapons and caused injuries.

26. After carefully reading in evidence of PW 1, we are not much impressed. Firstly, PW 1 admittedly was not well disposed towards the respondents on account of various criminal proceedings which he has admitted in his cross-examination and so his evidence is highly interested and biased. Secondly, PW 1 who claims to have been standing at the scene throughout and witnessing the entire occurrence has not been attacked by any of the respondents and there was not even a scratch on his body. Thirdly, though he claims to be a full occurrence witness his evidence before the Court is an exaggeration over his earlier version made in his first report in which he has not stated that the Respondent 4 was armed with a gun. Fourthly, in the first information report PW 1 has stated that all the respondents barring Respondents 1 and 6 also fired and indulged in attacking the prosecution party with spears, pharsas and lathis. Fifthly, though PW 4, the Investigating Officer has categorically stated that PW 1 assisted him in the investigation and pointed out the places from where various material objects were seized, PW 1 emphatically denies PW 4 visiting the place of

occurrence in his presence and also his helping PW 4 in preparing the site plan. Sixthly, in the first information report he has mentioned that the incident was witnessed by Khacheru Singh, son of Chiddah Harijan, Shailendra Singh son of Balbir Singh, Niranjana Singh son of Babu Singh, etc. residents of Badarakha, but none of the witnesses mentioned in the report has been examined by the prosecution before the court. Seventhly, he pleads totally ignorant of any of the respondents sustaining injuries. Lastly, he denies knowledge of the vendees filing a declaratory suit and obtaining a decree. All the above points which are in the nature of omissions, contradictions and exaggerations compel this Court to arrive to a conclusion that the evidence of PW 1 is tainted with interestedness and that it is unsafe to act upon his evidence and that he is not coming forward with the entire truth. PW 2 has deposed that the disputed pasture land lies between the scene pasture land and the river where the quarrel took place and they moved the tractor forward, saying the prosecution party be killed. He after giving a description of the occurrence states that Respondent 5 gave him a spear blow. PW 3 totally denied the defence case that the prosecution party caused injuries to Respondents 1 and 4 and that the respondents/accused acted in self-defence. PW 3 after narrating about the incident states that Pan Singh (Respondent 9) gave him a spear blow and that he was also hit with the pellets from the shots fired by Raghunandan (Respondent 4). When he was asked as to whether Respondent 8 was aged about 84 or 85, he states he did not know anything about it. The other injured Ramesh, son of PW 2 has not been examined for the reasons best known to the prosecution.

27. After going through the evidence of these witnesses we are left with an indelible impression that these three witnesses are not speaking the whole truth, but on the other hand they have suppressed certain material facts, which if revealed would go against the prosecution case.

Defence of the accused :

28. We have already given a detailed version of the defence of the respondents in the earlier part of this judgment. Therefore, it is not necessary for us to reiterate the same, but suffice to say that the specific case of the respondents is that at the time when they purchased the land, the possession of the land was also handed over to them by the vendors and that they continued to enjoy the land having been in physical and actual possession and that on the date of the occurrence when they started ploughing the land with a tractor a crowd inclusive of the deceased and the injured persons headed by PW 1 forming themselves into an unlawful assembly came to the field in their possession and not only physically prevented them from ploughing the land but also attacked them with spears and caused injuries to a few to them, inclusive of the Respondents 1 and 4. According to Respondents 1 and 4 on reasonably entertaining apprehension of death or of grievous hurt they fired their guns in the exercise of their right of private defence of their person and the property. Though the Respondent 4 has given some exaggeration in his statement that the prosecution party also fired and caused injuries to some of the respondents no evidence has been placed before the court to substantiate that statement. A question that arises for consideration is as to who were the aggressors and whether the respondents were within the limit of their private defence of person and property in putting an end to the lives of three persons and causing injuries to others. The High Court has considered this aspect of the matter and concluded as follows :

"Moreover, the prosecution evidence is so very unreliable that it is difficult to determine what really happened.... The defence version, no doubt, appears to be a highly exaggerated one, but because of that, it cannot be held that the prosecution version must be true. The prosecution has to stand on its own legs and prove its case beyond reasonable doubt. This the prosecution has failed to do so."

29. It cannot be denied that Respondents 1 and 4 have been injured. The nature of the injuries found on their persons as spoken to by DW 1 support their version that they were attacked. It is but natural and probable that PW 1 would have collected a large number of people from the village inclusive of these three unfortunate victims and gone to the field and prevented the respondents from ploughing the land since strong objection was being taken by PW 1 and the villagers for a considerable length of time as regards the sale and enjoyment of the land. In fact, there were several litigations in respect of the enjoyment of this land. Had the investigating officer noted certain features as to whether any crops had been raised previously and as to whether there was any actual ploughing on the ill-fated day, it would have gone a long way and helped the court in coming to a correct conclusion, but unfortunately the investigating officer has not taken any step in that line. It appears from the records that a telegram marked as Ex. Kha-31 was given by one Ram Jumar from the side of the respondents, but that telegram is not placed before us. The trial court dealing with the telegram has stated that the respondents after taking some legal advice could have caused the telegram to be given by a third party to the Superintendent of Police, Bulandshahr in order to make out a case of self-defence and that the said telegram was given on hearsay and the author of the telegram has not been examined. Had the copy of the telegram been produced before us, we would have been in a position to know as to what was the earlier version of the defence, but as we have stated supra the prosecution has not annexed the copy of the Ex. Kha-31 in this appeal papers.

30. At the risk of repetition, it may be mentioned that (a) the criminal trespass into the land under the actual possession of the respondents, (b) the physical prevention of the respondents' legitimate right of ploughing the land and (c) the aggressive wrongful attack on the vital parts of the body of the Respondents 1 and 4 with dangerous weapons coupled with the non-mentioning of the injuries found on the persons of Respondents 1 and 4 leave apart the explanation for that are all important points which go in favour of the respondents/accused.

31. In our considered opinion, this is a case where it is not possible to disengage the truth from falsehood and to sift the grain from the chaff, because the truth and falsehood are so inextricably intertwined together. Indeed if one tries to do so, it will amount to reconstructing a new case for the prosecution which cannot be done in a criminal case.

32. For all the aforementioned discussion, we are of the firm view that the judgment of the High Court is not suffering from any manifest perversity or illegality warranting an interference at the hands of this Court and there is no compelling reason to discredit the finding of the High Court.

33. In the result, the appeals are dismissed.

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