

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDING

CRIMINAL APPEAL No. 775 of 1999@@
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Balbir Singh & Ors. ..Appellants
Vs.
State of Punjab ..Respondent
(With Office Report)

Date : 27/11/2001 This/these Petition(s) was/were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE S.N. PHUKAN

For Appellant
Mrs. Amita Gupta,Adv.

For Respondent
Mr. Lokesh Kumar,Adv, for
Mr. Rajeev Sharma,Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.

.SP1
Mrs. Amita Gupta, Adv. started arguments at 3.25 p.m. and was on her legs when the court rose for the day. Matter remain part-heard.

.SP1
(N.K. Goel) (H.K. Bhatia)
Court Master Court Master

ITEM NO. 101(Part Heard) COURT NO. 4

Date : 28.11.2001
CORAM AND APPEARANCE SAME AS ABOVE

UPON hearing the counsel the Court made the following

O R D E R

.SP2
Mrs. Amita Gupta, Adv. resumed arguments at 11.45 a.m. and argued till 2.25 p.m. Thereafter, Mr. Lokesh Kumar, Adv. argued till 3.00 p.m. Appeal is allowed in terms of the signed order.

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(N.K. GOEL) (H.K. BHATIA)@@
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COURT MASTER COURT MASTER@@
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(Signed order is placed on the file)

by the persons in possession of the land all the accused launched a massive attack on the deceased as well as the other people who went along with PW4 -
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Hazara Singh. Al Balbir Singh had a gun with him and he fired at the deceased which caused fatal injury on his back and consequently Darshan Singh fell at the spot and died instantaneously.

The line of defence adopted by the appellants in the trial court was the following:

The said land belonged to Mohinder Kaur wife of A-2 Hussan Singh who purchased the same in May 1988 and from then on this land was in the cultivation of A-2 Hussan Singh. On the date of occurrence when A-2 Hussan Singh and his associates were cultivating the land PW4 - Hazara Singh brought his own men armed with lethal weapons and launched an attack on the accused. In the exercise of right of private defence accused made the counter attack which resulted in injuries being caused to the prosecution party.

The trial court found that the land was in the possession of PW4 - Hazara Singh on the date of the occurrence. On its premise the trial court found that the accused had no right to enter upon the land forcibly and cultivate, and therefore they had no right of private defence of the property. The Division Bench of the High Court has confirmed the said view of the trial court. Consequently the
..4/-

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accused were found to be the aggressors and thus the conviction and sentence were passed on them.

The High Court was right in pointing out that the crucial question in this case is whether the accused were in possession of the land on the date of the occurrence. It is an admitted fact that ownership of the land vested with Mohinder Kaur wife of A-2 Hussan Singh. It is an admitted fact that Mohinder Kaur claimed that she was in possession of the land from the date she purchased the land. We have noticed that PW4 - Hazara Singh has instituted a civil suit prior to the date of occurrence and obtained an order of ad-interim injunction which was later vacated, but the District Court in an appeal had restored the said ad-interim injunction restraining Mohinder Kaur and her party from forcibly ousting PW4 - Hazara Singh from the property. We are now told that ultimately the suit had been decreed in favour of Mohinder Kaur. The certified copy of the judgment passed by the Additional District Judge, Kapurthala has been produced as Annexure P4. The said document was produced along with the Special Leave Petition, the authenticity of which has not been disputed thus far. That judgment shows that the
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civil court had finally held that the land on which the occurrence took place was in the possession of Mohinder Kaur on the date when the suit was filed.

That apart, exhibit DH is an ex-parte injunction order secured by Mohinder Kaur on 1.8.1988 in a suit filed by her in respect of the same

property. The said order shows that PW4 - Hazara Singh was temporarily injuncted from interfering with the possession of Mohinder Kaur. We are told by the learned counsel for the appellants that the said injunction had never been vacated thereafter. In support of the said submission learned counsel invited our attention to an order passed by the same court which granted the ex-parte injunction that the said suit will remain stayed till the disposal of the earlier suit. The stay order was passed on 13.10.1990 on an application filed by Mohinder Kaur. The said application for stay was not opposed by the defendant in the case including PW4 - Hazara Singh.

Again that apart, PW6 - the Surpanch, PW7 - the Revenue Patwari of the locality have stated in unambiguous terms that Mohinder Kaur was in possession of the disputed land from the date she purchased this land. No question whatsoever had been

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put to those two witnesses, who were examined as prosecution witnesses, to show that the said version is incorrect. That evidence is binding on the prosecution.

From all the above broad features it is quite reasonable to reach the conclusion that A-2 Hussan Singh and his party ploughed the land in exercise of their right to be in possession of the land. While they were ploughing the land PW4 - Hazara Singh and his cohort reached the place around 4 p.m. It is possible for us to presume that PW4 - Hazara Singh and his cohort were variously armed. We deduced the said inference in the light of multiple injuries sustained by appellants Balbir Singh, Darshan Singh, Sohan Lal, Lachhman Dass (who died later) and Kulwinder Singh. PW1 Dr. Chetna and PW3 Dr. L.R. Badan had examined those accused and noted various injuries sustained by them. We perused their evidence and found that injuries sustained by those accused included very serious injuries on vital part of their persons. In fact the index figure of A3 had been chopped off and serious injury on the index figure of A4 would indicate that they would have resisted the onslaught made on them with sharp

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cutting weapons. The lacerated injuries caused on the head portion of some of the accused would show that they were subjected to incessant attacks by the armed assailants.

In the above broad features of the case we are able to deduce that the appellants acted in exercise of their right of private defence, when the prosecution party reached the land for resisting the agricultural operations carried on by appellant Hussan Singh and his men. The grievous injuries sustained by the accused would show that the exercise of right of private defence was well within the bounds prescribed by law.

In the result, we allow this appeal and set aside the conviction passed on the appellants. We acquit all of them. We direct them to be set at liberty forthwith. If they are on bail their bail bonds will stand discharged.

.....J.@@
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(K.T. THOMAS)@@
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.....J.@@
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(S.N. PHUKAN)@@
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