

CASE NO.:
Appeal (crl.) 1404-05 of 1999

PETITIONER:
JASSA SINGH & ORS.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 08/01/2002

BENCH:
D.P. Mohapatra & K.G. Balakrishnan

JUDGMENT:

K.G. BALAKRISHNAN, J.

Ten accused persons were tried by the Additional Court of Sessions, Karnal, for offences punishable under Sections 302, 307 and 148 read with Section 149 IPC, for causing death of two persons, namely, Surmukh Singh and Tehal Singh. All the accused were found guilty and sentenced to imprisonment for life for the offences under Section 302 and 307 read with Section 149 IPC. Accused No. 2, Bakha Singh and Accused No. 7 Sukha Singh were also found guilty under Sections 25 and 27 of the Arms Act. All the accused filed an appeal before the High Court of Punjab & Haryana. The High Court acquitted accused No. 6, Labh Singh, son of Inder Singh and confirmed the conviction and sentence of all other accused persons. Their conviction and sentence are challenged before us in these appeals.

Briefly stated, the facts of the case are thus. Deceased Surmukh Singh was the 'Sarpanch' of Gram Panchayat, Jalmana. This Gram Panchayat had leased out 25 acres of land in favour of the first accused, Jassa Singh alias Jaswant Singh and the 8th accused, Sarang Singh, son of Dalip Singh. They had been in possession of this land for about 10-12 years. About two and half months prior to the date of occurrence of the incident, this land was re-auctioned and Subeg Singh, Narinder Singh and Kehar Singh became successful bidders. Kehar Singh is the brother of deceased Surmukh Singh. Accused Jassa Singh instituted a civil suit to retain possession of the said leasehold land. The Gram Panchayat contested the suit and the civil court passed an order to the effect that Jassa Singh shall be divested of his possession only in accordance with law. Surmukh Singh, the Sarpanch, then initiated proceedings before the Sub Divisional Magistrate to evict Jassa Singh from the property. Jassa Singh made a complaint before the Deputy Commissioner, Karnal, alleging that the Sarpanch Surmukh Singh had leased out the land to his own persons for a lesser amount and stated that he was prepared to deposit an amount of Rs.84,000/-. Pursuant to the direction of the Deputy Commissioner, Jassa Singh deposited the sum of Rs.84,000/- with the Block Development & Panchayat Officer. Narinder Singh, son of Balwant, and Subeg Singh then filed a civil suit before the civil court, Karnal, for an injunction to restrain the officers from putting up the land on re-auction. The civil court granted the injunction in favour of Narinder Singh and others. Sub-Divisional Magistrate, Assandh, took up the proceedings for ejection of Jassa Singh and others. While these proceedings were pending, on 2nd July, 1992 at about 5.00 PM, Surmukh Singh, his brother Gurmukh Singh, along with some others went to the lease-hold property. There were two tractors one was being driven by one Gurvinder Singh and the other by Subeg Singh. Along with

them, Ajmer Singh, Waryam Singh, Narinder Singh, son of Bawa Singh, were also there. At about 6.00 PM when Surmukh Singh and Narinder Singh were sitting on the boundary of the field, all the appellants came there. While appellants Jassa Singh, Bakha Singh & Sukha Singh were armed with guns, other accused persons were having 'Gandasis' with them. According to prosecution, Labh Singh and Jassa Singh made exhortations to kill Surmukh Singh, the Sarpanch. Gurmukh Singh and his deceased brother, Surmukh Singh made an appeal to the appellants not to pick up a quarrel and that they may settle the dispute in court. But the appellants advanced towards the tractor driven by Gurvinder Singh and Jassa Singh fired a shot at Surmukh Singh. Appellant, Bakha Singh also fired a shot at Surmukh Singh. Surmukh Singh fell down on the ground. Appellant Sukha Singh also fired a shot at Surmukh Singh with his 12 bore gun. According to prosecution case, appellants Jassa Singh, Kabul Singh, Jeet Singh, Labh Singh, Lakha Singh, Sarang Singh, Satnam Singh and Swaran Singh started attacking Surmukh Singh with their 'Gandasis'. Appellants Bakha Singh and Sukha Singh fired shots at others also and some of them took shelter behind the ridge of the field. Thereafter, all the appellants went away from the scene. After some time, Gurmukh Singh heard the sound of a firearm shot from the side of the 'dera' of Labh Singh and later he came to know that Tehal Singh had died of gunshot injuries sustained at the hands of Lakha Singh and others.

Gurmukh Singh gave First Information Statement before the Police, which was recorded by Jarnail Singh, Asstt. Sub-Inspector. The Asstt. Sub-Inspector immediately reached the place of occurrence and made arrangements for taking photographs. PW-25, Rohtash Singh, the Station House Officer visited the place of occurrence and prepared the inquest over the dead bodies of Surmukh Singh and Tehal Singh. The statement of PW-14, Darbara Singh, was recorded by Rohtash Singh. Darbara Singh stated that at about 6.15 PM, he along with his son Gurdev Singh went to the 'dera' of Resham Singh where Tehal Singh and Kuldeep Singh had also come in search of some labourers for planting paddy on the next day. When PW-14, Darbara Singh reached near the field of Resham Singh, appellants Bakha Singh, Jassa Singh, Lakha Singh and Sukha Singh came running to that place. Bakha Singh and Sukha Singh were armed with guns and Jassa Singh and Lakha Singh were armed with 'Gandasis'. Bakha Singh fired two shots at Tehal Singh and Sukha Singh also fired a shot at Tehal Singh. PW-14 Darbara Singh and his son Gurdev Singh made a hue and cry and the appellants ran away from the place of occurrence with their weapons.

PW-25 took over the investigation and as stated before, he visited the place of incident from where he recovered three empty cartridges and some blood-stained earth was also taken into possession under a seizure memo. The blood-stained clothes and other articles were also taken into custody. The dead bodies of Surmukh Singh and Tehal Singh were sent for post-mortem examination.

On the side of the prosecution, 27 witnesses were examined to prove the first incident. PW-9 Gurmukh Singh and PW-10 Gurvinder Singh were examined as eye-witnesses. To prove the second incident relating to the death of Tehal Singh, PW-14 Darbara Singh and PW-15 Gurdev Singh were examined. The Sessions Court as well as the High Court accepted the testimony of these witnesses and based on their depositions, passed orders of conviction and sentence of these appellants.

We heard the learned counsel for the appellants as well as learned counsel for the State of Haryana. Counsel for the appellants contended that all the eye-witnesses examined in this case were highly interested witnesses and the courts below have accepted their evidence without proper scrutiny. He further contended that the appellants were entitled to get benefit of the right of private defence as Surmukh Singh and others had come to the property, which was still in the possession of Jassa Singh, and started ploughing the field. The learned counsel submitted that this was a wanton act of criminal trespass and the appellants were entitled to exercise their right of private defence and, therefore, they have not committed any offence. He also contended that the Sessions Court should not have tried the cases relating to two incidents as one

case and this has seriously prejudiced the case of the appellants.

Two courts have found that the appellants had formed themselves into an unlawful assembly and caused the death of Surmukh Singh. As regards the death of Tehal Singh, the court held that four appellants, namely, Jassa Singh, Bakha Singh, Lakha Singh and Sukha Singh were responsible. We are not unmindful of the fact that when two courts have entered a finding on a question of fact, this Court would very rarely interfere with such finding, but if there is serious infirmity in the appreciation of evidence and there was miscarriage of justice on that account, then this Court would venture to re-appreciate the evidence and to enter a finding. In the instant case, there are certain glaring infirmities. Though the incident happened in an agricultural field where so many others were likely to be present, only two interested witnesses were examined to prove the first incident. PW-9, Gurmukh Singh is the brother of the deceased Surmukh Singh. PW-10 Gurvinder Singh is also related to the deceased. According to these two witnesses, all the ten appellants, who came to the place of occurrence were armed with various deadly weapons. These witnesses also deposed that the appellants Bakha Singh and Sukha Singh fired shots at the deceased Surmukh Singh and all other eight accused persons started causing injuries to the deceased Surmukh Singh with 'Gandasis'. It is pertinent to note the injuries sustained by deceased Surmukh Singh. Injury No. 1 was an incised wound on the right side of the skull; injury no. 2 a punctured wound with lacerated margins on the left side of the chest; injury no. 3 a multiple punctured wound with lacerated margins on the left arm; injury no. 4 multiple punctured wounds with lacerated margins on the right arm; injury no. 5 a multiple punctured wound with lacerated margins on the right side of the chest; injury no. 6 a lacerated wound on the right elbow; and injury no. 7 multiple bruises on the back. PW-2, the doctor gave evidence to the effect that while injury no. 1 was caused by a sharp weapon, injury nos. 2, 3, 4 & 5 were caused by fire-arms and injury nos. 6 & 7 by a blunt weapon. So this evidence will indicate that the deceased Surmukh Singh had sustained one injury alleged to have been caused by a 'Gandasi'. It is, therefore, clear that the evidence of the two eye witnesses that all the eight accused were armed with "Gandasis" and they caused series of injuries on the deceased, is belied by the medical evidence. It is all the more pertinent to note that the statement of appellant, Jassa Singh, when questioned under Section 313 Criminal Procedure Code, was to the effect that he and Bakha Singh alone were present at the scene of occurrence and the other appellants were falsely implicated. In such circumstances, the evidence led by the prosecution is to be scrutinised carefully. Yet another factor of the prosecution case to be taken note of is that ten minutes after the first incident, the second incident happened. PW-14 and PW-15 are the two eye-witnesses. According to them, they saw that Jassa Singh, Bakha Singh, Lakha Singh and Sukha Singh came to the place of incident and Bakha Singh and Sukha Singh fired shots at Tehal Singh and the other two accused persons, Jassa Singh and Lakha Singh caused injuries to Tehal Singh by 'Gandasis'. These two witnesses, namely, PW-14 and PW-15 did not see any of the other six accused persons who were allegedly present at the time of the first occurrence. If all the accused persons had formed an unlawful assembly and their common object was to do away with these two persons, necessarily, the other six accused also should have been present at the second stage of the incident. Except the testimony of PW-9 and PW-10, there is no evidence to speak about the presence of ten accused persons together at the place of incident. The 'Gandasis' were alleged to have been recovered pursuant to their statement. But the recovery of these weapons was not proved by independent witnesses. There is also no evidence to show that these 'Gandasis' were stained with human blood. All possible independent evidence to connect these five appellants to the crime is lacking. That apart, the second incident wherein Tehal Singh was done to death, is projected by prosecution as a sequel to the first incident, but there is no explanation as to where the six persons had gone leaving the four persons who allegedly caused the death of Tehal Singh.

The presence of one injury on the body of Surmukh Singh alleged to have been caused by 'Gandasi' casts serious doubts about the presence of all the appellants at the place of occurrence. However, the evidence of PW-14 and

PW-15 can safely be accepted as regards the presence of Jassa Singh, Bakha Singh, Lakha Singh and Sukha Singh. The other appellants are certainly entitled to benefit of doubt that arises out of this weak and fragile evidence. As the presence of other accused, namely, Kabul Singh, Jeet Singh, Sarang Singh, Swaran Singh and Satnam Singh is doubtful, they are entitled to be acquitted.

Counsel for the appellants contended that the appellants were entitled to exercise their right of private defence as Surmukh Singh and others had trespassed into the property possessed by Jassa Singh and caused mischief by destroying the standing crops.

Right of private defence is valuable right and it is basically preventive in nature and not punitive. Sections 96 to 104 lay down the general principles governing the right of private defence. Section 96 IPC lays down that nothing is an offence which is done in the exercise of the right of private defence and Section 97 proceeds to divide the right of private defence into two parts --- the first part relating to private defence of his own body, and the body of any other person, against any offence affecting him; and the second part deals with the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass. We are concerned with the private defence of property. Section 103 IPC states that the right of private defence may even extend to causing death, but this right of private defence can be exercised only as against certain criminal acts which are enumerated in that Section. The right of private defence of property would extend to causing death only in the case of robbery, house-breaking by night; mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as place for the custody of property. It is further stated that in the case of theft, mischief or house-trespass these offences must have been committed under such circumstances as may reasonably cause apprehension that death or grievous hurt would be consequence. Though private defence is available in respect of criminal trespass or mischief as against the property owned by himself or of any other person, but criminal trespass is not enumerated as one of the offences under Section 103 IPC. Therefore, the right of private defence of property will not extend to the causing of death of the person who committed such acts, if the act of trespass is in respect of an open land. Only a house-trespass committed under such circumstances as may reasonably cause apprehension that death or grievous hurt would be the consequence is enumerated as one of the offences under Section 103.

The plea of the appellants is that acts committed by them would not amount to murder but only culpable homicide punishable under Section 304 Part-II, IPC. In order to sustain that plea, there should have been evidence to show that appellants had exceeded in exercising the private defence to property against acts of criminal trespass and the appellants fulfilled the conditions given in Exemption 2 to Section 300 IPC.

It is relevant to note Exception 2 of Section 300 IPC which reads as follows:

"300 Murder. --- ..

Exception 1 ..

Exception 2.-- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

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If only it comes within Exception 2 to Section 300 IPC, the gravity of the offence be reduced and the acts committed by the assailants would come

within the purview of culpable homicide not amounting to murder.

In the instant case, the appellants went to the place of occurrence with guns and deadly weapons. This would clearly indicate that there was pre-meditation on the part of the appellants and from the acts committed by the appellant, it is evident that they had intention of doing more harm than was necessary for the purpose of self-defence. Therefore, the acts committed by the appellants will not come within Exception 2 of Section 300 IPC so as to make it culpable homicide not amounting to murder. There were disputes between the parties and there was also pending litigation. The appellants had also resorted to civil remedies. That apart, the evidence also does not indicate that there was a serious apprehension that death or grievous hurt would be the consequence of the act allegedly committed by Surmukh Singh and others. Therefore, the assailants had no right to take away the life of Surmukh Singh in exercise of the alleged right of private defence.

This Court, in similar circumstances, on two occasions declined to extend benefit of private defence. In *Rajinder & Ors. vs. State of Haryana* (1995) 5 SCC 187, this Court held in paragraphs 21 and 22 as under :

"It is evident from the above provision that unauthorized entry into or upon property in the possession of another or unlawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate, insult or annoy the person in possession of the property. In other words, unless any of the intentions referred in Section 441 is proved no offence of criminal trespass can be said to have been committed. Needless to say, such an intention has to be gathered from the facts and circumstances of a given case. Judged in the light of the above principles, it cannot be said that the complainant party committed the offence of "criminal trespass" for they had unauthorisedly entered into the disputed land, which was in possession of the accused party, only to persuade the latter to withdraw thereupon and not with any intention to commit any offence or insult, intimidate or annoy them. Indeed there is not an iota of material on record to infer any such intention. That necessarily means that the accused party had no right of private defence to property entitling them to launch the murderous attack. On the contrary, such murderous attack not only gave the complainant party the right to strike back in self-defence but disentitled the accused to even claim the right of private defence."

In *State of Rajasthan vs. Ram Bharosi* AIR 1998 SC 3016, it was observed by this Court as under :

"Though there would be right of private defence under Section 97 IPC when offence of criminal trespass or attempting criminal trespass is committed, under Section 103 IPC it is only in the case of house trespass that right of private defence can extend to causing death. That is not the case here. On the assumption that it was the accused party which was in possession of the land the complainant party could not have said to have committed or attempted to have committed offence of criminal trespass. Both Shiv Ram and Vijay Kumar were unarmed. High Court has not reached any finding on the assumption, which we are drawing, if the complainant party could be said to have committed or even attempted to have committed criminal trespass.

There is nothing to show that Shiv Ram and Vijay Kumar entered upon the land in question with the intent to commit an offence or to intimidate, insult or annoy the accused party."

On a careful consideration of the two appeals, we are of the view that the presence of the appellants, Kabul Singh, Jeet Singh, Sarang Singh, Swaran

Singh and Satnam Singh at the scene of occurrence is doubtful and they are entitled to benefit of doubt. Their conviction and sentence are accordingly set aside, they are acquitted of all the charges framed against them and their appeal is allowed.

The conviction and sentence of appellants Jassa Singh alias Jaswant Singh, son of Labh Singh; Bakha Singh, son of Labh Singh; Lakha Singh, son of Labh Singh; and Sukha Singh, son of Asha Singh are confirmed on all counts and the appeal filed by them is dismissed.

Consequently, Criminal Appeal No.1405 of 1999 is allowed. Criminal Appeal No. 1404 of 1999 would stand allowed partly.

..J
[D.P. Mohapatra]

..J
[K.G. Balakrishnan]

January 8, 2002.

