REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 581 OF 2007

RAM PAT & ORS. … APPELLANTS

Versus

STATE OF HARYANA … RESPONDENT

J U D G M E N T

S.B. Sinha, J.

1 Appellants, four in number, are before us aggrieved by and dissatisfied with the judgment and order dated 14.2.2007 passed by a Division Bench of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No.298-DBA of 1997, in terms whereof a judgment of acquittal recorded by learned Sessions Judge, Narnaul in case No.27 of 1993 was set aside.

2. We may, at the outset, notice that eight persons were arrayed as accused in the aforementioned case. The High Court, however, did not grant special leave in respect of accused Nos.6 to 8. Accused No.1 died during the pendency of the trial. Accused Nos.2 to 5 only are, therefore, before us.

3. The prosecution case is as under:

Daya Ram and Ram Pat, along with Rajinder, Surinder and Mukesh alias Manoj had purchased 1/36th share of the right of the owners in the land measuring 264 kanals, 12 marlas comprised of Khewat No.10, Khatauni No.69 mustkil and Killa No.24/27 and 1/48th share of 37 kanals 8 marlas of land by reason of a deed of sale dated 7.5.1993. They are said to have purchased 1/18th undivided share in the land measuring 264 kanals 12 marlas and 1/24th share of land measuring 2 kanals 5 marlas totaling 14 kanals 14 marlas of land by reason of a deed of sale dated 24.5.1993. Allegedly, they sowed some Bajra crop therein.

Occurrence is said to have taken place on the land comprised of Khasra No.24/8/1 situated at village Nawadi. Harda Ram (the deceased) claimed himself to be the co-owner and in possession of the said land for a long time. He claimed right thereon on the basis of khasra girdawaries.

Appellants, as noticed hereinbefore, claimed to be in possession thereover in terms of the aforementioned deed of sale dated 7.5.1993 and 24.5.1993. According to the prosecution, however, the deceased was in possession of the land and after the execution of the said deeds of sale, it was the accused persons who had tried to enter into the suit land and plough it.

The prosecution case, as disclosed in the FIR lodged by P.W.8 - Rajbir, was that he was ploughing his agricultural land with his tractor on or about 14.7.1993. His father Harda Ram ("the deceased" for short) was also standing in the field. Sheo Ram, Daya Ram, Bajrang and Raja Ram armed with lathies and Ram Pat and Balwant armed with Jellies came at the spot. The entire occurrence as would appear from the depositions of the prosecution witnesses before the court lasted for hardly two to two and half minutes.

Ram Pat is said to have given a jelli blow on the head of the deceased; Sheo Ram inflicted a lathi blow above his eyes; Balwant Singh gave jelli blow on the back of his neck (Gudhi); Daya Ram inflicted a lathi blow on his back and Bajrang also inflicted a lathi blow on his person.

In the FIR, Rajbir further stated that in the meanwhile his uncle Lal Singh, his aunt Dhankauri wife of Lal Singh and his sister Mamli, who were fetching water from a water tap situated nearby, had arrived at the scene of occurrence. Basanti and Santosh armed with lathis came there. Whereas Basanti dealt a lathi blow on the head of Mamli, Santosh gave a lathi blow on the person of Dhankauri. P.W. 8 further stated that Raja Ram also inflicted a lathi blow on the person of Lal Singh. The occurrence is said to have been witnessed by Ami Lal son of Sohan and Ram Avtar son of Bhuru Ram, who intervened and rescued them from the clutches of the accused and thereafter the accused persons left the spot with their weapons. P.W. 8 further alleged that after getting the injured admitted in the Primary Health Centre, Ateli, he proceeded towards the Police Station for lodging the FIR. His statement was recorded at 1.50 p.m.

The deceased was, however, taken to Civil Hospital, Narnaul. Head Constable Kailash Chand (P.W. 13) came to learn thereabout on reaching Primary Health Centre, Ateli. He recorded the statement of Dhankauri, Mamli and Lal Singh. He thereafter came to Civil Hospital, Narnaul with a view to examine the deceased but it was found that he was not in a position

to make a statement. The doctor had also reported that the injuries suffered by the deceased were dangerous to life and as such the offence was converted to one under Section 307 IPC.

4. Before the learned Sessions Judge, 14 witnesses were examined on behalf of the prosecution. Some of the witnesses although named in the charge-sheet were not examined by the public prosecutor on the premise that it was not necessary to examine them. They are Dr. Vijay Singh Yadav, Dr. Vinay Chaudhary, Dr. O.P. Saroha, Sheo Ram, Babu Lal, Raghbir, Mamli, Dhankauri and Ram Avtar. Lal Singh and Suraj Bhan were also not examined on the ground of having been won over by the accused.

5. The prosecution in support of its case mainly relied upon the evidence of Rajbir (P.W.8), Lal Singh (P.W.12). We would refer to their evidence a little later.

6. We may, however, notice that in the aforementioned incidence, Mamli, Dhankauri, wife of Lal Singh, as also Lal Singh were injured. They were examined by Dr. S.C. Goel (P.W.5). Mamli was examined immediately after the said occurrence and two injuries were found on her person, namely:

"1. There was a lacerated fresh bleeding would present on parietal prominence, size 5.5 cms x bone deep. X-ray was advised. There was swelling of 2 cms diameter around it.

2. On the back of the chest, there was a reddish contusion of 11 cms x 1/1/2 cms. Tenderness was present. X-ray was advised."

Dhankauri, wife of Lal Singh was found to have suffered four injuries. He was examined at about 1.40 p.m. The injuries suffered by her are as under:

"1. Two cms. long lacerated wound on the left fore-arm of the size, in the bangles area, Fresh bleeding was present.

2. On the top of the scalp a lacerated wound 4 cms x 1 cm, transverse, skin deep with swelling of 1 cm in diameter around it was present. It was freshly bleeding and it was advised x-ray.

3. There was a skin colour swelling on the left side of the fore-head size 4 x 3 cms. Tender was hard and there was 1 cm long reddish abrasion on it was present. X-ray was advised.

4. The left shoulder blade was swollen, tender little reddish on the back on the upper part of the chest. The movement of the shoulder was painful. Advised X-ray.

Lal Singh was examined at about 1.55 p.m. He is said to have suffered the following injuries:

> "1. Below right parietal prominence, there was a lacerated freshly bleeding wound of 4 x ½ cm bone deep with swelling of 1 cm. diameter around it. X-ray was advised.
>
> 2. In front of left parietal prominence, freshly bleeding lacerated wound of 4 x ½ cm was present. It was bone deep with the swelling of 1 // 1/2 of diameter around it. X-ray was advised.
>
> 3. There was a reddish abrasion of 2 cms on the top of right shoulder. Tender. Movement of shoulder was painful. It was kept under observation.
>
> 4. Two penetrated wounds of ½ cm x ½ cm on the right leg, inner side. ½ cms apart from each other. It was 1 //1/2 cm. deep. Freshly bleeding. It was kept under observation. Margins were lacerated.

The doctor opined that the injuries suffered by Mamli, Dhankauri and Lal Singh were inflicted by a blunt weapon and were caused within a duration of 24 hours of examination.

Two of the accused, namely, Raja Ram and Sheo Ram were also found to have suffered injuries. They were also examined by Dr. S.C. Goel (P.W.5).

The injuries suffered by Sheo Ram are as under:

> "1. A lacerated wound of 3 cms present on top and middle of fore-head, upper end on the scalp ¼ cm wide. It was bone deep and freshly bleeding was present on cleaning and swelling of 1 cm diameter around it. X-ray was advised.
>
> 2. Reddish abrasion of 15 x 1 cms on right fore-arm, outside, down to wrist. Tender have black loose clot. Fresh bleeding on cleaning was present. Movement was painful. X-ray was advised.
>
> 3. On top and back of right shoulder, multiple reddish contusions were present, involved shoulder blade and back of chest. Painful tender and the movement was restricted. X-ray was advised.
>
> 4. Reddish abrasion of 2 x 1 cms. on the back of left shoulder. Painful and movements were within limits.
>
> 5. Lacerated freshly bleeding wound was present on the back of left fore-arm. 7 cms. below the elbow joint/ Size 2//1/2 x ½ cm skin deep.

6. On all over the back chest of the left and right, multiple cylindrical reddish contusions were present. X-ray was advised.

7. The patient had complaint of pain all over the body.

The injuries suffered by Raja Ram are as under:

"1. Reddish contusion of 5 x 1 cms on the back of right fore-arm, middle, tender, movements were normal.

2. Reddish contusion of 7 x 1 cms on the top of left shoulder, tender, movements were painful.

3. On the top of right shoulder and deltoid muscle, reddish contusion 11 x 2 cms. tender, movements were painful. X-ray was advised.

4. On the right shoulder blade, three reddish irregular contusions in an area of 8 x 8 cms was present.

5. On the back of right index finger, reddish abrasion of 1 x ½ cms was present. Fresh bleeding was present on cleaning. It was painful.

6. The left wrist joint on the back was swollen. Skin colour and it was painful. Defuse was more on the side of thumb. Movements were painful.

7. On the left parietal prominence, there was reverse L shape wound of 3 x 1 cms and ½

> cm. It was full of burnt cloth. On cleaning, fresh bleeding occurred. Bone deep, tender and swelling of 1 diameter around it. X-ray was advised.

It is, however, of some significance to notice that according to Dr. Goel, injuries Nos.2 to 6 on the person of Sheo Ram and injuries Nos. 1 to 6 on the person of Raja Ram could be caused by a fall on a hard surface.

It may further be placed on record that Sheo Ram and Raja Ram were not admitted in the Hospital. There was no X-ray facility in the Primary Health Centre, Ateli.

It, however, stands admitted that X-ray of the aforementioned two accused were not taken subsequently. No complaint was made; no further medical complication was found and no further treatment was found to be necessary.

Harda Ram, the deceased, was examined by Dr. A.K. Chhakkar (P.W. 10) at about 1.40 p.m. at Civil Hospital, Narnaul. He is found to have suffered the following injuries.

"1. A reddish contusion 6 cms. x 6 cms. on left side parietal temporal region. Swelling was present. It was kept under observation and advised X-ray.

2. A reddish contusion 3 x 3 cms in size on the right side of temporal parietal region. Swelling was present. X-ray was advised.

3. A reddish contusion 3 x 1 cm. on the lateral aspect of left wrist. Swelling was present.

4. Bleeding from teeth was present. Referred Dental surgeon."

7. Harda Ram died on the same day. A post-mortem examination was conducted by a panel of doctors at 10.30 a.m. on 15.7.1993. The report shows the presence of following ante-mortem injuries on his person:

"1. There was swelling of 10 cms. x 3 cms on the left side of tempo parietal region. There was scalp haemotoma size 11 cms x 8 cms on the left side front parieto temporal region, reddish in colour. On dissection, there was fracture of left frontal bone and parietal bone. Extra dural haemotoma and sub-dural haemotoma, thickness 1 cm was present on the parieto temporal region.

2. There was a reddish black contusion around right eye. On dissection, there was fracture of right side frontal bone.

3. Bleeding (haemotoma) was present in the socket of right side, upper medial and incisor teeth. Surrounding teeth were unhealthy, Dental carries was present. There were in all 6 teeth in upper jaw and 7 teeth in the lower jaw. No corresponding injury over lip was present.

4. Reddish abraded contusion 3 x 1 cm. on the posterior surface of the left arm middle 1/3rd was present."

8. The learned trial judge recorded a judgment of acquittal as noticed by the High Court on the following grounds:

"1. The accused having purchased the land and received the possession of the land from the vendors, were in possession of the same since 16 days prior to the occurrence, whereas the complainant party had no right to destroy the Bajra crop as sown by them on 28.6.1993. Consequently, when asked complainant party inflicted injuries upon them, therefore, they in exercise of right of private defence of the person and property has been fully protected under the law and inflicted injuries to the complainant party.

2. The presence of Rajbir (PW8) at the time of occurrence is doubtful.

3. The accused party also suffered injuries which were not explained by the prosecution, therefore, they would be

> deemed to have suppressed the genesis of occurrence.
>
> 4. The FIR is anti dated and anti timed"

9. The High Court, however, by reason of the impugned judgment reversed the said judgment of the trial court, holding:

> "From the consistent and trustworthy testimony of Rajbir (PW8), Amar Singh (PW9) and Lal Singh (PW12) it is amply established that all the five accused, armed with jallies and lathies, while entering into the land of the complainant challenged Harda Ram (deceased) not to plough the land and they in furtherance of their common intention inflicted numerous injuries to him as a result of which he died. They not only caused injuries to the deceased but also to other three persons Mamli, Dhankauri and Lal Singh. The accused party has also not denied having caused injuries to them but they have taken a specific defence that the injuries were caused by Sheo Ram and Raja Ram only that too in their self-defence. But the factum of with regard to the presence of the present respondents has been duly taken note of by us and the plea of right of private defence has been turned down in the preceding paras. It would not be inappropriate to observe that the trial Court while acquitting the accused on the basis of some inadmissible evidence and also overlooking the facts as discussed in the preceding paras, fell in error and formed a view which was not practically

reasonable in the facts and circumstances of the case. Consequently, interference in the impugned judgment has become inevitable.

As an upshot of the above discussions, necessary conclusion which can be drawn is that the prosecution has been successful in leading sufficient evidence against the accused to prove the fact that they in furtherance of their common object inflicted injuries to Harda Ram which were found sufficient to cause death in the ordinary course of nature. Since Dr. Dinesh Poddar (PW11) opined that cause of death was coma, due to compression of brain as a result of head injury which is attributed to Ram Pat accused, therefore, he is convicted under Section 302 IPC and the remaining accused namely Sheo Ram, Daya Ram, Balwant and Bajrang are convicted under Section 302/149 IPC. Consequently, they are also convicted under Sections 447/148/506 IPC.

Now coming to the sentence, since the minimum sentence is being awarded against the accused, therefore, we do not feel the necessity to hear them on quantum of sentence. Consequently, accused – respondent Ram Pat is sentenced to undergo imprisonment for life and to pay fine of Rs.500/-. In default of payment of fine to further undergo rigorous imprisonment for one month under Section 302 IPC. The remaining accused are also awarded the same sentence under Sections 302/149 IPC, as has been awarded to the accused Ram Pat under Section 302 IPC.

Since the accused have already been sentenced for graver offence, therefore, we do not

> feel necessity to sentence them under Sections 148, 447 and 506 IPC separately."

Appellants are, thus, before us.

10. Mr. Sushil Kumar, learned Senior Counsel appearing on behalf of the appellants would submit

i. Learned trial judge having assigned sufficient and cogent reasons in support of his findings and its view being a plausible one, the High Court should not have interfered therewith.

ii. "Settled possession" on the part of the accused having been found as of fact by the learned trial judge inter alia on the basis of the admission made by the first informant himself in Exhibits DN & DQ, the High Court was not correct in interfering therewith.

iii. Exercise of right of private defence on the part of the injured accused persons, namely, Sheo Ram and Raja Ram having been accepted and the High Court itself having not granted special

leave to appeal so far as they are concerned, it must be held to have committed a manifest error insofar it failed to extend the said benefit to the appellants also.

iv. In any event, the prosecution having not explained the injuries sustained by two of the accused and the FIR having been anti-dated and anti-timed, no interference with the judgment of the trial court was warranted at the hands of the High Court.

11. Mr. T.V. George, learned counsel appearing on behalf of the State, on the other hand, would support the impugned judgment.

12. The accused admittedly did not purchase any specific portion of the property. They purchased undivided share. By reason thereof, in law, they did not acquire any right to obtain possession of the lands. Harda Ram and his family being the co-sharers did not give any consent for hading over their possession in their favour. In law, therefore, the accused persons being purchasers of an undivided share merely acquired a right to sue for partition.

In M.V.S. Manikayala Rao vs. M. Narasimhaswami & Ors. [(AIR 1966 SC 470], this Court held:

> "Now, it is well settled that the purchaser of a coparcener's undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased."

{See also Hardeo Rai vs. Sakuntala Devi & Ors. [(2008) 7 SCC 46]}

Recently in Peethani Suryanarayana & Anr. vs. Repaka Venkata Ramana Kishore & Ors. [2009 (2) SCALE 461], this Court held:

> "It is also not in dispute that the appellants, being purchasers of undivided share in a joint family property, are not entitled to possession of the land that they have purchased. They have in law merely acquired a right to sue for partition"

The two deeds of sale were executed in their favour on 7.5.1993 and 24.5.1993. The learned trial judge, in our opinion, was wholly incorrect keeping in view the aforementioned legal position that having regard to the stipulations contained in the said deeds of sale, possession of the vended properties had been handed over; the vendees would be deemed to be in possession. That is not the law. Handing over of possession is a physical

act. Nothing has been brought on record to establish that in fact physical possession had been handed over by all the co-sharers.

12. It is true that some overt acts were committed by the accused on 28.6.1993. It now, however, stands admitted that questioning the validity or otherwise of the aforementioned deeds of sale dated 7.5.1993 and 24.5.1993, father of the deceased Harda Ram filed a suit and an ad interim order of injunction was passed in their favour. Exhibit DN whereupon strong reliance has been placed is a complaint before the court of City Magistrate, Narnaul being under Sections 107 and 151 of the Code of Criminal Procedure (for short, "the Code"). The translated version thereof reads as under:

> "It is submitted that the under mentioned persons cultivated our field after trespassing: Sheo Ram s/o Sh. Ganpat, Daya Ram s/o Sheo Ram, Ram Pat s/o Sheo Ram, Surendra s/o Tarachand, Ami Lal s/o Ganpat, Raja Ram s/o Ami Lal, Jagdish s/o Ami Lal, Narendra s/o Raja Ram, Bajrang s/o Jaisukh, Lala Ram s/o Ganpat, Balwant s/o Kabul Singh, Omvir s/o Kabul Singh, Rajender s/o Ramswaroop, al r/o Gandala and relatives of Sheo Ram. These persons cultivated the land before we reach there in which our date was fixed on 28.6.93 before the City Magistrate, Narnaul. The tractor was belonged to Rajender r/o Gandala. The said

land/field is situated near the school and (DHANI) at Nawabi. When we reached at the village then Amar Singh s/o Sohan Lal told us that those persons were holding Axes and sticks (Lathis). After hearing it we reached at Ateli. Neither they have any Registry nor any mutation in their names. And from whom registry has been done have been injuncted.

We have revenue entries (GIRDAWARI) in our name for last 32 years.

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These persons are going against the law. They have not their names in the Revenue papers (JAMANBANDI). The action be taken against them and they should cultivate the land only after partition. Whether the residents of Gandala will be able to give the possession forcibly to them? Which is not in the possession of the person who has to give the possession. And one appeal dated 15.2.93 is pending against them in the court of Narnaul and a stay order dated 14.6.93 is also against them. They are working against the law. They must be restricted. Neither they have any order of PATWARI and TEHSILDAR nor they are owner of any number. They have 1/12 share. They should get it after partition and cultivate that portion which they are to be entitled for. There is not any mutation in their names.

These persons should be restricted. They are going against the law."

P.W. 8 was not confronted with the purported admission by him. He could have explained the same. In any event, admission on his part was not such which was admissible against him proprio vigore.

Mr. Sushil Kumar has drawn our attention to a decision of this Court in Bharat Singh & Anr. vs. Bhagirathi [(1966) 1 SCR 606], wherein this Court held:

> "Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of ss. 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions."

That was, however, a decision which was rendered in a civil matter. Admission made by one of the parties thereto was clear and unequivocal.

We may, however, notice that in certain situations even an admission can be explained.

In a case of this nature, therefore, the statement made in the aforementioned documents or before the Deputy Superintendent of Police cannot be said to be an admission that they had been totally dispossessed which would be admissible against P.W.8 proprio vigore.

Another purported admission made by P.W. 8 was said to have been made in Exhibit DQ. The said document disclosed that the Subordinate Judge First Class, Narnaul had confirmed the order of injunction dated 14.6.1993 by an order dated 9.12.1994 whereagainst an appeal was preferred by Daya Ram and Ram Pat in the Court of Additional District Judge, Narnaul. The parties admittedly had also been litigating before the Revenue Authorities in regard to their respective claims in the matter of getting their respective names mutated in the revenue records.

The entries in the revenue records stood in the name of the deceased and his family.

13. Mr. Sushil Kumar made two inconsistent submissions before us; firstly, relying on or on the basis of the decision of the Privy Council in (Thakur) Nirman Singh & Ors. vs. Thakur Lal Rudra Partab Narain Singh & Ors. [1926 Privy Council 100], it was urged that the entry in the revenue

records do not prove possession;, on the other hand, our attention was drawn to the order passed by the Financial Commissioner dated 25.2.2002 in terms whereof the order of the appellate authority whereupon reliance has been placed by the High Court to contend that the order passed by the revenue authorities mutating the names of the accused had been set aside. The Financial Commissioner, even if the subsequent event is to be taken note of, in his order held that actual possession cannot form the basis of mutation of the name of a person claiming to be in possession in the revenue records.

14. We would, therefore, proceed on the basis that the entries made in the revenue records were not decisive for proving actual possession.

For the purpose of appreciation of evidence on possession, however, the legal position should have been considered. Appellants herein were purchasers. We have noticed hereinbefore that they did not obtain any right to possess the land having not purchased any definite portion of the land; they merely purchased undivided share. Thus, even their vendor could not have put them in possession. Even otherwise, it has not been denied or disputed that the deceased and his family were in possession prior to 28.6.1993.

If that be so, having regard to the provisions contained in Section 110 of the Indian Evidence Act, 1872, a presumption would arise that the deceased and the members of his family continued to be in possession.

The sole question, therefore, which arose for consideration before the learned trial judge and consequently before the High Court was as to whether the purported overt acts committed by the accused on 28.6.1993 would amount to 'settled possession' so as to enable them to exercise their right of private defence in respect of the property. Strong reliance has been placed before the learned trial judge as also before us on Puran Singh & Ors. vs. The State of Punjab [(1975) 4 SCC 518] wherein Fazal Ali, J. speaking for the Bench considered the earlier decision of this Court in Munshi Ram vs. Delhi Administration [(1968) 2 SCR 455], to hold:

> "…This particular expression has persuaded the High Court to hold that since the possession of the appellants party in this case was only a month old, it cannot be deemed to be a settled possession. We, however, think that this is not what this Court meant in defining the nature of the settled possession. It is indeed difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into a settled possession. But what this Court really meant was that the possession of a trespasser must be effective,

undisturbed and to the knowledge of the owner or without any attempt at concealment. For instance a stray or a casual act of possession would not amount to settled possession. There is no special charm or magic in the word 'settled possession' nor is it a ritualistic formula which can be confined in a strait jacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner. Similarly an occupation of the property by a person as an agent or a servant at the instance of the owner will not amount to actual physical possession. Thus in our opinion the nature of possession in such cases which may entitle a trespasser to exercise the right of private defence of property and person should contain the following attributes:

(i) that the trespasser must be in actual physical possession of property over a sufficiently long period;

(ii) that the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus prossendie. The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of

culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession, in which case the trespasser will have a right of private defence and the true owner will have no right of private defence.

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

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

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

(See also Rame Gowda (Dead) by L.Rs. vs. M. Varadappa Naidu (Dead) by L.Rs. & Anr. [(2004) 1 SCC 769]

The four attributes of settled possession referred to in Puran Singh (supra), in our opinion, ought to be read conjunctively and not disjunctively.

15. We may also add that the question must be considered keeping in view the facts and circumstances of each case. The parties were on litigating terms. The first informant and his family were attending the court in connection with litigations concerning the very self same land. The accused persons came stealthily with a tractor and cultivated it. The High Court, in our opinion, for good reasons opined that they had not sown any Bajra which was the specific defence taken by the accused. Ram Avatar, Halka Patwari (PW7), who was an independent witness, in his evidence, categorically stated that he could not say as to whether any crop was sown.

He, however, opined that had the crop been sown 16 days prior to the occurrence, then the same would have grown to the extent of 6 inch to 1 feet.

Such a solitary overt act which had not been repeated on days subsequent to 14.6.1993 in respect whereof even some litigations started and, thus, the same cannot give rise to an inference that the accused were in settled possession of the land and other attributes in regard thereto have been satisfied so as to enable them to claim a right of private defence in respect of the property.

In view of the decision in Puran Singh (supra), the trespassers not only must be put in actual physical possession of the property but also must continue to be in possession. Acquiescence to act of purported possession by the accused on the part of the complainant would arise only if an attempt is made to take possession in their presence. On the date of occurrence, PW 8 started cultivating. It has been amply proved that the scuffle lasted for only two minutes to two and half minutes. PW8 – Rajbir was not armed with any weapon, so was not Harda Ram (the deceased). It was Lal Singh alone who had in his hand a small twig (Kamari). According to him, the same is used to drive camels. Kamari was said to be used by Lal Singh in his sole

defence as a result whereof Sheo Ram and Raja Ram were injured. We have noticed hereinbefore that the injuries on the person of the said two accused were simple in nature. It is true that the fact that two of the accused persons had suffered injuries had not been disclosed in the FIR or in their statement before the Investigating Officer, but the same, in our opinion, was not necessary inasmuch as they got themselves medically examined by Dr. Goel almost at the same time when the other prosecution witnesses got themselves examined. By that time they had already been arrested. It was the police authorities who had submitted an application along with the injuries chart. They had been brought by Constable Satbir Singh. Thus, the fact that two of them had suffered injuries in the same incident was known to the Investigating Officer.

It has furthermore well settled that whereas grievous injuries suffered by the accused are required to be explained by the prosecution, simple injuries need not necessarily be. Non explanation of simple injuries of the nature suffered by the accused would not be fatal.

In Hari vs. State of Maharashtra [2009 (4) SCALE 103], this Court held:

> "30. On the other question, namely, non-explanation of injury on the accused persons, learned Counsel for the appellant has cited a decision in Lakshmi Singh and Ors. v. State of Bihar (1976) 4 SCC 394. In the said case, this Court while laying down the principle that the prosecution has a duty to explain the injuries on the person of an accused held that non-explanation assumes considerable importance where the evidence consists of interested witnesses and the defence gives a version which competes in probability with that of the prosecution case.
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> 31. But while laying down the aforesaid principle, learned Judges in paragraph 12 held that there are cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This would "apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries." Therefore, no general principles have been laid down that non-explanation of injury on accused person shall in all cases vitiate the prosecution case. It depends on the facts and the case in hand falls within the exception mentioned in paragraph 12 in Lakshmi Singh (supra)."

16. The nature of injuries suffered by the deceased and the prosecution witnesses have been noticed by us. They had been caused by lathis and/or

jallies. Accused, therefore, were fully armed with when they came to the place of occurrence. They not only assaulted the deceased indiscriminately, but the prosecution witnesses were also not spared. The learned trial judge laid emphasis on the fact that the injuries on the person of Sheo Ram and Raja Ram had not been explained. We may notice that Lal singh in his examination-in-chief itself disclosed as under:

> "I had a Kamari with which I used to drive the camel. I had inflicted an injury with Kamari blow to Raja Ram hitting over his head. One Kamari blow had been given by me to Sheo Ram. Two-four Kamari blows had been blown by me in the air and the same might have hit the accused party.

Mr. Sushil Kumar, however, drew our attention to his denial to the suggestion made to the said witness, which is in the following terms:

> "It is further incorrect to suggest that Harda Ram and I had caused injuries to Raja Ram and Sheo Ram."

From the question put to the said witness, it is evident that two questions were clubbed together which should not have been permitted by the learned trial judge. The fate of the said statements must, therefore, be

considered having regard to the nature of the suggestion put to him. It is also worthwhile to notice that Rajbir (P.W.8) also accepted that Lal Singh had caused injuries to Sheo Ram and Raja Ram in his self defence. Lal Singh's presence at the spot, therefore, cannot be denied or disputed. The fact that some incident had taken place also could not be denied or disputed.

17. It has been contended that the FIR was anti dated and anti timed. Such a contention was raised inter alia on the premise that the first informant got his father admitted in the General Hospital, Narnaul at about 1.35 p.m. whereas the FIR was lodged at about 1.50 p.m. at Ateli having regard to the fact that one has to take at least half an hour to reach Ateli from the General Hospital, Narnaul in his own conveyance and also having regard to the fact that Head Constable Kailash Chand (P.W. 13) reached the hospital at about 5.00 p.m.

The High Court, on the other hand, opined that by the time the examination of the deceased had ended which may be at about 2.30 p.m.; the first informant (P.W. 8) must have reached the hospital as, according to the High Court, it takes about 15-20 minutes to cover the distance from Ateli to Narnaul.

The said contention cannot be sustained having regard to the fact that by 1.30 p.m. or 1.40 p.m. even accused persons were arrested; they had been produced before Dr. Goel and they had been examined; even P.W.12 and other witnesses were also examined.

The FIR might have been recorded at a later stage. But the information about the occurrence must have been given by P.W. 8. to the office in-charge of Ateli Police Station prior thereto. Even a copy of the FIR was received by the Magistrate concerned at about 10.30 p.m. on the same day. Furthermore, the Investigating Officers were not cross examined on that point. In any event, it is wholly unlikely that the FIR was anti-timed and anti-dated. Even assuming that the same was anti-timed or anti-dated, the fact that an incident had occurred was not disputed. At least two of the accused persons accepted their presence. The defence story is that two accused persons had sustained injuries at the hands of the prosecution witness Lal Singh (P.W.12).

If occurrence of the incident stands admitted, in our opinion, even if some delay has been caused in writing of the FIR, the same would not render the entire prosecution case suspicious.

18. This brings us to the question as to whether a case for exercise of right of self defence has been made out.

We have noticed hereinbefore that the appellants cannot be said to have been in 'settled possession' of the land in question. Furthermore, they came wholly armed, whereas except Lal Singh who was having a small twig (Kamari), deceased party were not armed with any weapon. It was not a dangerous weapon. No grievous injuries could have been caused by use thereof and in fact no grievous injuries have been suffered by the accused Sheo Ram and Raja Ram.

Appellants herein did not raise any plea of self defence. According to them, they were not present at the spot at all. Learned Senior Counsel would contend that Accused No.1 and Accused No. 6 raised the plea of self defence. The learned trial judge although accepted the said plea but the same was accepted not with particular reference to the said accused. All the accused persons did not raise the defence of exercise of right to private defence. In regard to claim of right of self defence, the matter may have to be considered from somewhat a different angle. Accused Nos. 6, 7 and 8

were attributed with assault of Lal Singh and two ladies, namely, Mamli and Dhankauri.

19. The second part of the story was not relied upon. Any overt act on their part, thus, having regard to the fact that the deceased – Harda Ram – had already been assaulted, there was no evidence against Raja Ram as also accused Nos. 7 and 8 that they had participated in assaulting the deceased.

The right of private defence can be exercised provided any occasion arises therefor. The learned trial judge wrongly held so, on the premise that the appellants were in settled possession of the property. If they were not, they had no right of private defence to defend the possession of the property. They were, thus, the aggressors being fully armed.

We are not unmindful of the fact that right of private defence need not be specifically raised. {See Bishna Alias Bhiswadeb Mahato & ors. vs. State of W.B. [(2005) 12 SCC 657]}.

We may notice that in Surendra & Anr. v. State of Maharashtra [(2006) 11 SCC 434], this Court held:

"26. We are not unmindful of the fact that in all circumstances injuries on the person of the accused need not be explained but a different standard would be applied in a case where a specific plea of right of private defence has been raised. It may be true that in the event prosecution discharges its primary burden of proof, the onus would shift on the accused but the same would not mean that the burden can be discharged only by examining defence witnesses.

27. The learned courts below committed a manifest error of law in opining that the Appellants had not discharged the initial burden which is cast on them. Even such a plea need not be specifically raised. The Courts may only see as to whether the plea of exercise of private defence was probable in the facts and circumstances of the case.

32. In regard to the duty of the prosecution to explain the injuries on the part of the accused, this Court observed:

> '78. Section 105 of the Evidence Act casts the burden of proof on the accused who sets up the plea of self-defence and in the absence of proof, it may not be possible for the court to presume the correctness or otherwise of the said plea. No positive evidence although is required to be adduced by the accused; it is possible for him to prove the said fact by eliciting the necessary materials from the witnesses examined by the prosecution. He can establish his plea also from the attending circumstances, as may transpire from the evidence led by the prosecution itself.

> 79. In a large number of cases, this Court, however, has laid down the law that a person who is apprehending death or bodily injury cannot weigh in golden scales on the spur of the moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force. All circumstances are required to be viewed with pragmatism and any hypertechnical approach should be avoided.
>
> 80. To put it simply, if a defence is made out, the accused is entitled to be acquitted and if not he will be convicted of murder. But in case of use of excessive force, he would be convicted under Section 304 IPC."

In Satya Narain Yadav v. Gajanand & Anr. [2008 (10) SCALE 728], this Court held:

> "14. As noted in Butta Singh v. The State of Punjab (AIR 1991 SC 1316), a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries

> required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private-defence can legitimately be negatived. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact."

(See also Ravishwar Manjhi & Ors. vs. State of Jharkhand [2008 (16) SCALE 45)

In Bhanwar Singh & Ors. vs. State of M.P. [2008 (7) scale 633], this Court held:

"51. To put it pithily, the right of private defence is a defence right. It is neither a right of aggression or of reprisal. There is no right of private defence where there is no apprehension of danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self creation. Necessity must be present, real or apparent.

52. The basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the state machinery is not readily available, that individual is entitled to protect himself and his property. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. We may, however, hasten to add that the means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon host of factors like the prevailing circumstances at the spot, his feelings at the relevant time; the confusion and the excitement depending on the nature of assault on him etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicious. It would be repugnant to the very concept of private defence."

It was furthermore observed that it is not in all situations that such a right can be claimed only because some of the accused persons have suffered injuries even if they are simple.

20. We have been taken through the depositions of P.W. 8 and P.W. 12. P.W.12's presence stands admitted. P.W.8's presence has been doubted by the learned Sessions Judge only on the ground that he got his father admitted at 2.30 p.m. The presence of P.W. 8 – Rajbir, in our opinion, could not have been doubted on such slender evidence. He was driving the tractor. Accused persons came prepared to assault the deceased. By the time the first informant could come and intervene, the entire incident must have occurred as it is stated that the same took place only for two to two and half minutes. No suggestion had been given to any of the prosecution witnesses by the defence that no tractor was found at the place or it was the deceased who himself was driving the tractor. P.W. 8 in his evidence categorically stated that he left the tractor at that place. Furthermore, his evidence, taking a holistic view of the matter, in our opinion, appears to be trustworthy. He vividly described the entire incident. He was cross examined on all material

points. He had also explained as to why he did not suffer any injury categorically stating and that too in cross-examination that by the time he reached all the accused had started running with their weapons towards their respective houses.

21. There cannot be any doubt or dispute whatsoever that if two views are possible, the Appellate Court should not interfere with a judgment of acquittal, but this has many exceptions.

In State of Punjab vs. Gurnam Kaur & Ors. [2009 (4) SCALE 343] this Court held:

> "18. The jurisdiction of this court to interfere with a judgment of acquittal is limited. When two views are possible, a judgment of acquittal should not be interfered with."

In U.O.I. vs. Bal Mukund & Ors. [2009 (4) SCALE 606], this Court held:

> "41. Furthermore, we are dealing with a judgment of acquittal. The High Court, for good and sufficient reasons, had arrived at findings of fact both with regard to voluntariness of the purported confessions made by the respondents as

> also compliance of the mandatory statutory provisions vis-à-vis directions issued by the Central Government in making search, seizure as also taking of samples for the purpose of chemical examination having been doubted, we do not see any reason why we should take a contrary view as it is well-known that the appellate court would not interfere with a judgment of acquittal only because another view is possible. On the other hand, if two views are possible, it is trite, the appellate court shall not interfere."

It is one of those cases, where two views were not possible.

22. For the aforementioned reasons, the appeal is dismissed. Appellants are on bail. Their bail bonds shall stand cancelled. Accused persons are directed to surrender forthwith to serve out the remaining sentence.

…….J.
[S.B. Sinha]

...……..….J.
[Dr. Mukundakam Sharma]

New Delhi;
May 12, 2009