PETITIONER:
RAM RATTAN AND ORS.

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT26/11/1976

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
BHAGWATI, P.N.
KRISHNAIYER, V.R.

CITATION:
1977 AIR 619 1977 SCR (2) 232
1977 SCC (1) 188
CITATOR INFO :
R 1989 SC2097 (9)

ACT:
Indian Penal Code, S. 441, on accomplishment of possession of property by trespasser, whether trite owner entitled to disposses him and plead right to private defence.

HEADNOTE:
The complainant Ram Khelawan had illegally encroached upon a portion of a public road and grown a paddy crop on it. A complaint against him was pending before the Panchayat. He was in peaceful possession of the land to the knowledge of the appellants who nevertheless went armed and tried to exercise their right over the public road, by passing through the field with their cattle and thereby damaging the crop. The complainants protested and a fight ensued, as a result of which, one of the complainants' party died and injuries were received by both sides. The appellants pleaded the right of private defence of property and person, which they had exceeded, but were concurrently found guilty by both, the Trial Court and the High Court.
Dismissing the appeal the Court,
HELD: (1) A true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under, the law. [235 F-G, 236 A]
Puran Singh & Ors. v. State of Punjab [1975] Supp. S.C.R. 299, applied.
The Court further observed:
It is a peculiar feature of our criminal law that where a trespasser has succeeded in taking recent wrongful possession of the property vested in the public for common enjoyment, the members of the village or the real owner are not entitled in law to throw out the trespasser but have to take recourse to the legal remedies available, and if any member of the public tries to secure public property from the possession of the trespasser he is normally visited

with the onerous penalty of law. [233 A-B]

(2) The complainant Ram Khelawan was in peaceful possession of the land to the knowledge of the appellants and he was in law entitled to defend his possession. The appellants who were the aggressors and had opened the assault, could not claim any right of private defence either of person or property. [237 A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 282 of 1971.

(Appeal by Special Leave from the Judgment and Order dated 12-4-1971 of the Allahabad High Court in Criminal Appeal No.. 1909/68).

S.K. Mehta, for the appellants.

D.P. Uniyal and O.P. Rana, for the respondent,

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R.L. Kohli, for the Intervener.

The Judgment of the Court was delivered by

FAZAL ALI, J. It is a peculiar feature of our criminal law that where a trespasser has succeeded in taking recent wrongful possession of the property vested in the public for common enjoyment, the members of the village or the real owner are not entitled in law to throw out the trespasser but have to take recourse to the legal remedies available, and if any member of the public tries to secure public property from the possession of the trespasser he is normally visited with the onerous penalty of law. This is what appears to have happened in this appeal by special leave in which the appellants appear to have got themselves involved in an armed conflict with the prosecution party resulting in the death of the deceased, injuries to some of the prosecution witnesses and injuries to three of the accused themselves.

The prosecution case in short is that on July 18, 1966, at about 7-30 to 8-00 in the morning when Ram Khelawan and his companions were removing weeds from the paddy crop sown by them in the field which included a portion of the Chak Road which had recently been encroached by the complainants' party and amalgamated with their fields, Ram Ratan and Ram Samujh armed with lathis and Din Bandhu and Ram Sajiwan carrying a ballam and Biroo respectively entered the field of Ram Khelawan with their bullocks and insited on passing through the field along with their bullocks, which according to them was a public road. The complainants protested against the highhanded action of the party of the accused on which Ram Ratan exhorted his companions to assault the deceased Murli as a consequence of which Ram Sajiwan assaulted Murli in the abdomen with his Biroo as a result of which MurIi sustained serious injuries and fell down in the field and ultimately succumbed to the injuries. The other members of the complainants' party, namely, Ram Khelawan Manohar Sarabjit, Mewa Lal and Satrohan were also assaulted by Ram Ratan and his party. Soon after the occurrence Rameshwar Pathak, a police officer, who happened to be present at the spot recorded the statement of P.W. 1 Ram Khelawan which was treated as the F.I.R. and after conducting the usual investigation submitted a chargesheet against all the accused persons who were put on trial before the Sessions Judge, Barabanki. The Learned Sessions Judge acquitted the accused Din Bandhu and convicted the appellant Ram Sajiwan under s. 302 I.P.C. Ram Ratan and Ram Samujh were convicted under ss. 326/34 I.P.C. and sentenced to

eight years' rigorous imprisonment. Three appellants Ram Ratan, Ram Sajiwan and Ram Samujh were further convicted under s. 447 I.P.C. to three months' rigorous imprisonment and under ss. 324/34 I.P.C. to two years 'rigorous imprisonment under each of the two counts. and under ss. 323/34 I.P.C. to six months' rigorous imprisonment and ordered that all the sentences shall run concurrently. The accused persons filed an appeal before the High Court of Allahabad which was also dismissed and thereafter they obtained special leave of this Court and hence this appeal before us.
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The defence of the accused was that shortly before the occurrence proceedings for consolidation of holdings had taken place in the village as a result of which the Revenue authorities provided a Chak Road which passed through plot Nos. 853, 854, 864, 823 and 887. This Chak Road was meant to boa public road to enable the. residents of the village to pass through this road with their cattle. This road happened to be adjacent to the field of Ram Khelawan P.W. 1 and he took undue advantage of the proximity of the road and encroached upon the same and amalgamated it with his cultivable field. The accused persons wanted t0 assert their lawful right over the Chak Road and it was the prosecution party which was the aggressor and started assaulting the accused as a result of which three persons on the side of the accused received serious injuries. The accused, therefore, assaulted the deceased in self-defence. Even otherwise, the accused pleaded innocence.

Both the courts below have come to a concurrent finding of fact that the occurrence took place as alleged by the prosecution and that the accused persons were the aggressors and had opened the assault on the deceased. The Trial Court has also the High Court have concurrently found, on a full and complete appreciation of the evidence., that although the place of occurrence was a part of the Chak Road, yet the complainant Ram Khelawan had encroached on the same and some time before the occurrence had brought the land under cultivation over which he had grown paddy crop. The evidence of the Sub-Inspector who visited the spot clearly shows that he found paddy crop grown at the height of 4 or 6 digits. The learned counsel for the appellants has not been able to show that the concurrent finding of fact arrived at by the Sessions Judge and the High Court on this point is in any way not borne out by the evidence. The learned counsel for the appellants submitted two points before us. In the first place, he submitted that the finding of the High Court impliedly shows that the accused were trying to, assert their lawful right over the Chak Road which was wrongfully occupied by the complainant and was in possession of the villagers. The accused, therefore, had every right to throw out the complainants' party who were trespassers by force. The accused were, therefore, acting in the exercise of their right of private defence of person and property and were. justified in causing the death of the deceased, particularly in view of the serious injuries received by three of the party of the accused. Reliance was placed, particularly on the Injury Reports of Ram Samujh, Harnam and Ram Ratan. It appears that Ram Samujh received two injuries one being a lacerated wound 3 cm X 3/4 cm X 1 cm deep on the posterior part of head and a contusion on the right side of the head, while Harnam had four contusions and Ram Ratan had two. lacerated wounds in the region of the ear, one punctured wound in the left forearm and one contusion. It was submitted that in view of the serious injuries, some of which were inflicted by sharp-cutting weapons, it would

not be said that the appellants had exceeded their right of private defence. The argument is no doubt attractive, but on closer scrutiny we find that it is not tenable. In view of the clear finding of the High Court and the Sessions Judge that the land in dispute was in the settled possession of the complainant Ram Khelawan
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who rightly or wrongly encroached upon the road and converted it into his cultivable land the accused had no right to throw the complainant by force. In fact the Sessions Judge found thus:

> "There is also no doubt that from the evidence on record adduced by the prosecution and the defence, it appears that the Chak Road, if any was existing, was encroached upon by Ram Khelawan and his family members. ..... So far as the question whether the Chak Road was encroached upon, there was hardly any discrepancy between the statements of the prosecution witnesses and the defence. It has been admitted by Ram Khelawan P.W. 1 that before the occurrence Ram Rattan and several other villagers whose Chaks are situated in the east of Ram Khelawan Chak used to say that he had encroached upon the Chak Road, and that in the absence of that Chak Road, from where they should take their bullocks to their Chaks.
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> .....From these admissions also it is amply proved that in fact there was a Chak Road but it was later encroached upon by the complainant Ram Khelawan."

The High Court also found:

> "It is thus clear that assuming that the consolidation authorities had formed a Chak Road adjoining the Chak of Ram KheIawan, it had been taken possession of by Ram Khelawan included in his Chak ploughed by him and paddy crop had been sown therein. It is thus obvious that Ram Khelawan had established his possession over the land where the incident took place and had been in peaceful possession thereof for 2 to 3 weeks at least before the occurrence took place."

It is well settled that a true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law. In view of the clear finding of the High Court that the complainant Ram Khelawan even after encroachment had established his possession over the land in dispute for two to three weeks before the occurrence, for the purpose of criminal law, the complainant must be treated to be in actual physical possession of the land so as to have a right of private defence to defend his possession even against the true-owner. While it may not be possible to lay down a rule of universal application as to when the possession of a trespasser becomes complete and accomplished, yet, as this Court has indicated recently, one of the tests is to find out who had grown the crop on the land in dispute. In Puran Singh & Others v. State

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of Punjab(1), this matter was comprehensively considered and on of us (Fazal Ali, J.) who spoke for the Court observed as follows:

> "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 ..... 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:
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> (i) that the trespasser must be in actual physical possession of property over a sufficiently long period;
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> (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;
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> (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
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> (iv) that one of the usual tests to determine the quality of settled possessions, 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."

In this case there is a clear finding of the High Court and the Sessions Judge that the complainant Ram Khelawan had encroached upon the land in dispute, had converted it into culturable field and had grown paddy crop which the complainants' party was trying to weed out on the day when the occurrence took place. In these circumstances, therefore, the complainant was undoubtedly in posses-

(1) [1975] Supp. S.C.R. 299.

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sion of the land and the appellants had no right to commit

trespass on the land and engage the complainants in a serious fight. As the complainant Ram Khelawan was in peaceful possession of the land to the knowledge of the appellants, he was in law entitled to defend his possession. The complainant, therefore, was fully justified in protesting to the accused when they tried to pass through his field and caused damage to the paddy crop by forcibly taking the bullocks through the field. In these circumstances the appellants who were undoubtedly the aggressors and had opened the. assault could not claim any right of private defence either of person or property. For these reasons, therefore, we agree with the finding of the High Court that the accused are not entitled to claim the right of private defence, nor can it be said that in causing the murderous assault on the deceased they had merely exercised their right of private defence of property. It is true that the appellants were trying to exercise their lawful right over a portion of the land which had been left apart as a public road for the use of villagers by the Revenue authorities, but as a complaint had already been filed before the Panchayat the appellant should have allowed the law to take its course instead of taking the law in their own hands by making an armed trespass into the property. However, there can be no doubt that there was no common intention on the part of all the accused to cause the death of the deceased Murli or to cause grievous injuries to him which was an individual act of the appellant Ram Sajiwan. The other appellants Ram Rattan and Ram Samujh, therefore, cannot be convicted under ss. 325/34 I.P.C.

Another point canvassed before us by counsel for the appellant was that although three persons on the side of the accused had sustained serious injuries, the prosecution has not given any explanation which shows that the origin of the prosecution is shrouded in mystery. This contention is also without any substance. The evidence of the eye witnesses examined by the prosecution clearly shows that some of them were also armed with lathis and sharp-cutting weapons, and they have also stated that they wielded their weapons when the accused attached the complainants' party and that this was done in selfdefence. In view of the injuries on the person of the deceased and the prosecution witnesses, namely, Manohar, Sarabjit, Mewa Lal, Satrohan and Ram Khelawan, there can be no. doubt that there was a mutual fight. Thus in the instant case, the prosecution has given sufficient explanation for the injuries sustained by the accused persons and the prosecution case cannot be thrown out on this ground.

Lastly it was submitted that so far as Ram Sajiwan was concerned the evidence given by the eye witnesses regarding the manner of the assault is inconsistent with the medical evidence. In this connection reliance was placed by counsel for the: appellants on the evidence of the Doctor which is to the effect that the injury on the deceased Mufti was undoubtedly caused by a Biroo but it could have been caused only if the Biroo after being struck in the abdomen was rotated. Much capital has been made out of this admission made by the Doctor,but on a close scrutiny we find that this circumstance is not sufficient

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to put the prosecution out of court. There is clear and consistent evidence of the eye witnesses that the deceased had been assaulted in the abdomen and this fact has been accepted by the two courts concurrently that the deceased Murli was assaulted by Ram Sajiwan with a Biroo. The medical evidence clearly shows that the deceased had an injury

in the abdomen which could be caused by a Biroo. The exact manner in which the Biroo was pierced in the abdomen of the deceased could not have been observed by the witnesses, particularly in view of the mutual fight. Since the injury could be caused if the Biroo was rotated after being pierced, it must be presumed in the circumstances that the assailant must have rotated the Biroo after having pierced it in the abdomen of the deceased, otherwise the injuries could not have been caused to the deceased. In these circumstances, therefore, we are not able to agree with counsel for the appellants that the assault on the deceased by Ram Sajiwan is in any way inconsistent with the medical evidence. For these reasons, therefore, we find ourselves in agreement with the High Court that the prosecution has proved its case against this accused beyond reasonable doubt.

The injuries caused by the other appellants on the person of Manohar, Sarabjit, Mewa Lal, Satrohan and Ram Khelawan have been proved by the eye witness whose evidence has been accepted by the High Court as also the Sessions Judge.. We see no reason to interfere with the assessment of the evidence by the two Courts.

The only point that remains for consideration is as to the exact offence committed by the appellants. In the first place, once it is held that the appellants had no right of private defence of person of property, appellant Ram Sajiwan cannot escape conviction under s. 302 I.P.C. simpliciter, because the injury caused by him to the deceased was sufficient to cause the death of the deceased. The appellant Ram Sajiwan was rightly convicted under s. 302 I.P.C. and as the minimum sentence is life imprisonment we cannot do anything about the sentence either. We would like to observe, however, that the facts, of the case do raise some amount of sympathy for the accused Ram Sajiwan who was really trying to assert his lawful right against the complainant who was a trespasser. The appellant was fighting for a just and righteous cause though not in a strictly lawful manner. If the appellant had succeeded he would have been able to secure the right over the Chak Road which was left by the Revenue authorities for the benefit of the villagers. These considerations, therefore, may weigh with the Government for considering the question of remitting a portion of the sentence imposed on the appellant Ram Sajiwan and the learned counsel appearing for the State has assured us that these considerations would be conveyed to the Government. So far as the other appellants are concerned, as the object of the appellants was merely to assert a supposed or bona fide claim of right, it cannot be said that they had any common intention to cause-grievous hurt.

In these circumstances, therefore, the charge under ss. 326/34 I.P.C. must necessarily fall. The conviction under s. 447 I.P.C. as also that under ss. 324/34 and 323/34 I.P.C. cannot be interfered with in view of the evidence of assault made by the appellants on the
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witnesses Ram Khelawan, Manohar, Sarabjit, Mewa Lal, Satrohan with their respective weapons. Having regard to the fact that the appellants made a concerted attack either with a Biroo or lathis respectively on the aforesaid prosecution witnesses they had undoubtedly a common intention to cause simple hurt to these witnesses.

For these reasons, therefore, we would affirm the convictions and sentences passed on the appellant Ram Sajiwan but allow the appeal of the other appellants viz. Ram Rattan and Ram Samujh to this extent that their convictions and

sentences under ss. 326/34 I.P.C. are set aside, but their convictions and sentences under ss. 324/34, 323/34 and 447 I.P.C. will stand. If the appellants have already served out their sentences they may be released.

M..R. Appeal dismissed.

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