

PETITIONER:
GURMUKH SINGH & ORS.

Vs.

RESPONDENT:
THE STATE OF HARYANA(WITH CRL.A. NO. 230/94)

DATE OF JUDGMENT 21/11/1995

BENCH:
MUKHERJEE M.K. (J)
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MUKHERJEE M.K. (J)
PARIPOORNAN, K.S.(J)

CITATION:
JT 1995 (8) 208 1995 SCALE (6)496

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

Seventeen persons were placed on trial before the Additional Sessions Judge, Kurukshetra to answer common charges under Sections 148, 302/149, 307/149 and 447 IPC. Against seven of them (hereinafter referred to as 'the appellants') a separate charge under Section 27 of the Arms Act, 1959 and against one of the appellants, namely, Karam Singh a further charge under Section 302 IPC (simpliciter) were also framed. On conclusion of the trial the learned Judge convicted sixteen of them including the appellants in respect of all the charges framed and sentenced them to different terms of imprisonment, including life. Aggrieved thereby all the convicts preferred a common appeal which was initially heard by a Division Bench comprising two learned Judges of the High Court. Since the learned Judges were divided in opinion the appeal was laid before another learned Judge of the Court in accordance with Section 392 Cr.P.C. The learned Judges affirmed the convictions and sentences recorded against the appellants but acquitted the others. Against such dismissal of their appeal, the appellants have filed one of these two appeals (Crl. Appeal No. 29 of 1987) while the other (Cr. Appeal No. 230/94) has been filed by the State against acquittal of the nine others. Both the appeals have been heard together and this judgment will dispose of them.

The case for the prosecution briefly stated is as follows. To implement the schemes prepared under the East Punjab Land Utilisation Act, 1949 ('Act' for short) 135 acres of land in village Karah Sahab and 35 acres of land in village Mohanpur were leased out by the State Government to various Ex-servicemen hailing from the district of Ropar for periods ranging from 7 years to 20 years, with each of their families getting 10 acres of land. Various groups of those Ex-servicemen then joined together to form Co-operative Societies for effective management and cultivation of the

lands so allotted. The Cooperative Society which was formed by the allottees of village Mohanpur was known as Mohanpur Ex-servicemen Cooperative Society and Sunder Singh, who was allotted 10 acres of land in Killa No. 125/5, became one of the members of that Society. After entering into possession of their respective allotted lands in 1952, the allottees, including Sunder Singh, made those lands cultivable by dint of hard labour and at huge expenses. After expiry of the period of lease in and around the year 1972, the State Government, through its Collector, initiated proceedings for resumption of the lands from the allottees to restore the same to their respective owners. This attempt on the part of the State Government created tension between the owners and the allottees but the latter successfully warded off all efforts of the State to resume the lands and continued to possess the same.

Apprehending fresh trouble in 1979, several Cooperative Societies of the Ex-servicemen including the Mohanpur Ex-Servicemen Cooperative Society filed some writ petitions in this Court and obtained stay orders on January 9, 1979 restraining the Collector from initiating/continuing proceedings against the lessees under Section 7 of the Act. In view of the above interim orders the authorities could not and did not take any action against the lessees but the owners, including Lal Singh, who happens to be the owner in respect of the land allotted to Sunder Singh, could not reconcile to the position that the lands should remain in possession with the lessees in spite of expiry of the period of the lease and started putting pressure upon Sunder Singh to vacate the land as they wanted to cultivate it. Sunder Singh and others, however, told Lal Singh and his sons that they would not vacate the lands till the disposal of their writ petitions pending in the Supreme Court.

On July 11, 1982 at or about 7 A.M. when some of those Ex-servicemen and their family members including Rajinder Singh (deceased), Jiwan Singh (deceased) Hakam Singh (PW4), Gurmukh Singh (PW 5), Surmukh Singh (PW 6), Ranjit Singh (PW 15) and Surjit Singh (PW 16) were cultivating their respective allotted lands, they saw four tractors coming along nearby Guhla-Pehowa road with some people in the trolleys attached to them. They next found another tractor trolley coming along the same road driven by Mehar Singh, son of Lal Singh, with the seven appellants and others seated therein. While each of the appellants was armed with firearms the others were carrying gandasas. The tractor driven by Mehar Singh stopped on the road at a distance of about 20-30 ft. from the land of Sunder Singh but the other four tractors entered the land of Sunder Singh and stopped there. The people who were in the trolleys attached thereto then started forcibly cultivating the land of Sunder Singh. Gurmukh Singh and Surmukh Singh (PW 5 and PW 6), the two sons of Sunder Singh then raised alarms that their land was being forcibly ploughed by the miscreants and then Rajinder Singh (PW 3), his brother Raghbir Singh (deceased), Hakam Singh (PW 4), Jiwan Singh (deceased), Ranjit Singh (PW 15) and Surjit Singh (P.W. 16) rushed towards that direction from their respective fields. When Rajinder Singh went ahead appellant Karam Singh fired from his rifle hitting him on his head and thereby causing his instantaneous death. Karam Singh fired another shot at Jiwan Singh who also fell down. Then the appellant Gurmukh Singh fired the fatal shot at Jiwan Singh. Then the other appellants also started firing from their respective firearms causing injuries to some of the persons present there. The commotion created by such attack attracted the attention of the people living nearby

and seeing them coming the miscreants fled away leaving the four tractors behind. Seeing Raghbir Singh and Jiwan Singh lying dead, the people who had assembled at the spot, removed oil from the oil tanks of the tractors and set them on fire.

In the meantime Ripudaman Singh, brother of Karnail Singh (P.W. 19) and sister's husband of Hakam Singh (P.W. 4), having seen the miscreants proceeding towards the place of occurrence had rushed to the Pehowa police station and lodged a Diary as he apprehended a breach of the peace. On receipt of the information, Inspector Ram Singh (P.W. 24), alongwith ASI Kulwant Rai (P.W.22), ASI Rajinder Kumar (P.W. 23) and other police officials left for the place of occurrence. On the way they came across Rajinder Singh (P.W.3) who gave a detailed version of the incident. Ram Singh (P.W. 24) recorded his statement and after forwarding it to the police station proceeded to the spot to take up investigation of the case. Reaching there he held inquest upon the dead bodies of Jiwan Singh and Raghubir Singh which were lying there and sent them for post-mortem examination. He then seized four tractors, some blood stained earth and some empty cartridges found there.

Dr. N.K. Dhawan (P.W.1) held post-mortem upon the dead bodies of Raghbir Singh and Jiwan Singh and found a number of injuries on their persons, which according to the doctor, were due to gun shots. Among the witnesses Gurmukh Singh (P.W. 5), Surmukh Singh (P.W. 6), Surjit Singh (P.W.16) and Rajinder Singh (P.W.3) were also examined by the doctors and they were found to have sustained injuries which could be caused by fire-arms.

In course of the investigation the Investigating Officer sent the seized blood stained earth, and the empty cartridges alongwith the fire-arms, recovered from the seven appellants for examination by the Forensic Science Laboratory. On receipt of the reports of such examination and completion of investigation the police submitted charge-sheet and in due course the case was committed to the court of Session.

The appellants pleaded not guilty to the charges and except appellant Gurmukh Singh, they denied their presence at the place of occurrence. Gurmukh Singh, however, put up a counter version in his statement recorded under Section 313 Cr.P.C. He stated that on 11th July, 1972 at dawn he was present near his tubewell alongwith his father Lal Singh. Ishar Singh and Lachman Singh, residents of village Tangoli, who were their relations came there on two tractors. They started talking with Gurmukh Singh. Teja Singh who happened to pass that side also came there to greet the guests. Gurmukh Singh and Surmukh Singh (P.Ws.) thought that they had collected those tractors with an intention to forcibly occupying their land. They brought Jiwan Singh, Raghubir Singh, Ranjit Singh, Surjit Singh and Hakam Singh along with them when they were armed with fire-arm and gandasas. These persons raised lalkaras and started firing towards them while they were advancing. He and his other companions took shelter behind the parked tractors and the kotha of tubewell, but before that he, Ishar Singh, Teja Singh and Lachman had been hit by the gunshot. He had picked up the gun of his brother Ram Singh which was lying on their tubewell. So did his father Lal Singh. They fired at the assailants. Raghubir Singh and Jiwan Singh who were armed with gandasas had come near them. All of them received injuries as they were in open. Their tractors were also hit by gun shots. Raghubir Singh and Jiwan Singh, when hit, had retreated and had fallen in the field of Sunder Singh. The

assailants stopped firing on finding their two companions have fallen and they were not able to cause much harm to them. They made good their escape and Lal Singh informed the police. On coming to the spot, the police found that Raghubir Singh and Jiwan Singh were dead. Their tractors were removed from their tubewell to the fields of Sunder Singh. Tractor of Hardial Singh which was standing on the road-side was also removed to the fields of Sunder Singh. The complainant party set their tractors on fire by taking diesel from them in connivance with the police and this was done to show that they were the aggressors. Their tractor was brought from their house alongwith trolley later on and involved in this case. He lastly stated that he was arrested on the same evening but was not got medically examined by the police till 19th of July, 1982.

In support of its case the prosecution examined twenty four witnesses of whom Rajinder Singh (P.W.3) Hakam Singh (P.W.4), Gurmukh Singh (P.W.5), Ranjit Singh (PW 15) and Surjit Singh (P.W.16) figured as eye-witnesses. The appellants in their turn, examined seven witnesses. The appellants in their turn, examined seven witness in support of their defence. The trial Court held that the evidence on record clearly proved that the incident took place on the land which was allotted to and was in exclusive possession of Sunder Singh. The trial Court further held that, the accused persons had forcibly trespassed into the land to take possession of the same and to commit murders of the people who were cultivating the land, was evident from the fact that they came in tractors with fire-arms and that the story given out by the accused persons was wholly unreliable. The High Court concurred with the findings of the trial Court that the rioting had taken place on the land of Sunder Singh and that the common object of that unlawful assembly was to commit the murders of Raghubir Singh and Jiwan Singh. The High Court, however, held that it could not be conclusively said that nine of the accused persons (the respondents in Crl. Appeal No. 230 of 1994) shared the common object of the other seven (the appellants) as none of them was armed with fire-arms nor did they commit any overt act and, therefore, they were entitled to the benefit of reasonable doubt.

We have gone through the impugned judgments and the evidence on record. On perusal of the judgments we find that both the trial Court and the High Court have discussed the entire evidence from a proper perspective and given cogent and convincing reasons for excepting the case of the prosecution in preference to that of the defence. Evidence on record unmistakably proves that Killa No. 125/5 was in possession of Sunder Singh and there was an order of restraint from this Court from interfering with his possession. Uncontroverted evidence adduced during the trial further proves that the two dead bodies of Raghubir Singh and Jiwan Singh and four tractors belonging to the accused persons were found on the above land of Sunder Singh. When the above facts and circumstances, are considered along with the evidence of the eye witnesses, some of whom were injured, the only conclusion that can be drawn are that the accused persons were not only trespassers but also were the aggressors and that the defence version was a concocted one. Judged in that context, even if some of the appellants had sustained some injuries, which, they asserted were received in course of that attack, cannot claim any right of private defence. The evidence of the doctor and the reports of Forensic Science Laboratories also go a long way to support the prosecution version. Once it is established that the

seven accused appellants had entered the field with deadly weapons, namely, fire-arms and fired at random resulting in the death of two of them and injuries to others it must be said that the prosecution has been able to prove its case.

It was, however, strenuously argued on behalf of the appellants that even if the entire prosecution case was believed only those who had actually fired at the deceased could be convicted under Section 302 IPC, and not the others. In elaborating this argument it was submitted that according to the prosecution case, the common object of the unlawful assembly was to forcibly drive out Sunder Singh who was in occupation of the land in question and in prosecution of that common object the members of the assembly intended to assault or knew that grievous hurt was likely to be caused, but it could not be said that all of them shared the common object of committing the two murders. In other words, according to the learned counsel for the appellants, only Karam Singh who had fired at the two deceased was liable under Section 302 IPC (simpliciter) and the others could be convicted, at best, under Section 326 read with 149 IPC.

As already stated, the evidence laid by the prosecution - clearly establishes - that the appellants had come to the land of Sunder Singh in a tractor driven by Mehar Singh, the son of the owner of the land and at that time each of them was armed with a fire-arm. On coming near the field of Sunder Singh, Karam Singh had taken his position near the tubewell of Lal Singh obviously with the intention of seeing that no outside help was made available to the complainant party. When Jiwan Singh and Raghubir the two deceased came to the rescue of the complainant party Karam Singh fired at them from his rifle hitting them on their head. Gurmukh Singh also fired at Jiwan Singh and both died on the spot. The other five accused appellants who were holding guns stood near the tractors and fired at the complainant party at random injuring Rajinder Singh (P.W. 3), Gurmukh Singh (P.W. 5), Hakam Singh (P.W. 4) and Surmukh Singh (P.W. 6), and of them, except Surjit Singh all the others were injured on the upper parts of their bodies by the fire-arms. In such circumstances it is difficult to hold that the common object of the unlawful assembly extended only upto causing grievous injuries and not beyond that - and, in any case, that the other appellants did not know that in achieving the object of unlawful assembly murder was likely to be caused. Keeping in view the background and judged in the context of all the materials on record we cannot but hold that all the appellants have rightly been held guilty and convicted of the offences under Sections 302 and 307 read with 149 IPC. We, therefore, do not find any merit in Criminal Appeal No. 29/87.

So far as the other appeal filed by the State is concerned the reasons which weighed with the High Court in recording the order of acquittal in favour of the nine accused respondents cannot be said to be perverse. It is of course true that a different view of the evidence could have been taken as against them but that cannot be made a ground for setting aside an order of acquittal. The appeal (Criminal Appeal No. 230/94) filed by the State, therefore, merits dismissal.

In the result both the appeals fail and are hereby dismissed. The appellants, who are on bail, will now surrender to their bail bonds to serve out the sentences imposed upon them.