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(1994) CriLJ 2812

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 3-DB of 1993

Hardial Singh alias Giani and Others	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision: Dec. 15, 1993

Acts Referred:
Arms Act, 1959 â€" Section 25, 27#Criminal Procedure Code, 1973 (CrPC) â€" Section 313, 391, 482#Penal Code, 1860 (IPC) â€" Section 100, 103, 148, 149, 302

Citation: (1994) CriLJ 2812

Hon'ble Judges: J.S. Sekhon, J; J.B. Garg, J

Bench: Division Bench

Advocate: R.S. Cheema, M.J.S. Wariach, Pankaj Bhardwaj and Amarjeet Markan, for the Appellant; J.S. Wasu G.S. Nahar and C.L. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Jai Singh Sekhon, J.
All the appellants along with their co-accused Jarnail Singh and Harpal Singh were tried by the learned Additional

Sessions Judge, Patiala, on charge for offences Under Sections 148, 302, 302/149, 307, 307/149 of the Indian Penal Code (for short "the

Code") while Gurnam Singh, Sarup Singh, Shahib Singh and Kuldip Singh appellants were also tried on charge for offence u/s 27 of the Indian

Arms Act. Jarnail Singh and Harpal Singh accused were acquitted of all the above referred charges while the appellants were found guilty,

convicted and awarded sentences as under :-

Sr. Name of the accused- Offence Sentence

No. appellant1. 148 of Rigorous Iprisonment

1. i) Hardial Singh; the Code. for one Year.

ii) Sarup Singh;

iii) Gurnam Singh;

iv) Sahib Singh;

v) Kuldip Singh and

vi) Surinder Pal Singh

2. Hardial Singh 302 of Life imprisonment and fine

the Code. of Rs. 2,000/-, or in default

of payment thereof to suffer

further Rigorous imprisonment

for two Years.

3. i) Sarup Singh; 302/149 of -do-

ii) Gurnam Singh; the Code

iii) Sahib Singh;

iv) Kuldip Singh and

v) Surinder Pal Singh

4. i) Gurnam Singh; 307 of Rigorous Imprisonment for ten years

ii) Sarup Singh; the Code and fine of Rs. 1000/ - or in

iii) Sahib Singh and default of payment thereof to

iv) Kuldip Singh suffer further Rigorous

Imprisonment for one Year.

5. i) Hardial Singh and 307/149 -do-

ii) Surinder Pal Singh of the Code.

6. i) Gurnam Singh; 27 of the Rigorous Imprisonment for two

ii) Sarup Singh; Indian Arms years

iii) Sahib Singh and Act.

iv) Kuldip Singh

2. All the substantive sentences were, however, ordered to run concurrently. Feeling aggrieved against their convictions and sentences, the

appellants have preferred this appeal. The State of Punjab has also preferred Criminal appeal No. 262-DBA of 1993 against the acquittal of

Jarnail Singh and Harpal Singh accused, but while granting leave to appeal, the Division Bench of this Court had only allwoed the leave for filing the

appeal against the acquittal of Harpal Singh, accused-respondent Banarsi Dass complainant had also filed Criminal Revision No. 642 of 1993

against the acquittal of Jarnail Singh and Harpal Singh accused as well as for awarding extreme penalty of death and awarding of compensation to

the legal representatives of the deceased. This revision petition was ordered to be heard with this appeal. All these matters shall be disposed of by

this common order as these arise out of the same judgment of the trial court and involve the appraisal of the same evidence.

3. In breief, the facts of the prosecution case, as contained in the First Information Report lodged by Banarsi Dass (P.W. 2), are as under:-

The land of Dera Sat Kartarian measuring 250 Killas, situated in village Matauli, is in the names of about 7/8 co-sharers. Out of these co-sharers,

Gurjit Kaur alias Rupinder Grewal is also one of the co-sharers. About 2/3 months back, Salwinder Singh son of Gurdial Singh, Inderpal Singh

son of Jaswant Singh and Jarnail Singh son of Kapoor Singh, residents of Rashidan, got the land measuring about 15 Kilas transferred in their

names by producing some other lady in place of Gurjit Kaur and regarding this dispute civil suits between both the parties are pending in the Court.

Mr. Surinder Singh etc., who are residents of Rashidan, had purchased this land. Hardial Singh alias Giani son of Iqbal Singh resident of Village

Rashidan and his friends help these persons. At about 3.00 p.m., Hardial Singh alias Giani came on tractor for ploughing the said land. I along with

Baba Balwant Singh, Bhagwan Singh and Kirpal Singh son of Arjan Singh Sewadar, on hearing the sound of the aforesaid tractor came out of the

Dera on the metalled road, a little ahead of the Dera towards Shergarh and saw that two tractors bearing registration No. PUR-4747 (HMT-59)

being driven by Surinderpal Singh son of Wadhawa Singh resident of Galoli, while the other tractor bearing registration No. HRJ-7461 of "Ford"

mark was being driven by Gurnam Singh son of Sohan Singh, resident of Galoli, who was armed with. 12 bore single barrel gun. Harpal Singh son

of Wadhawa Singh resident of Galoli was driving the third tractor which was without any registration number, near the tubewell of Hardial Singh

alias Giani son of Iqbal Singh armed with a carbine, Sarup Singh alias Rupa son of Iqbal Singh armed with .315 bore rifle, both residents of

Rashidan, Sahib Singh son of Jagir Singh resident of Shergarh armed witwh .455 bore revolver, Kuldip Singh son of Khazan Singh resident of

Garhi, Haryana, armed with .315 bore rifle and Jarnail Singh son of Gurdial Singh resident of Rashidan armed with a Dang were standing near a

jeep bearing registration No. HYB-10. All of us asked Hardial Singh alias Giani etc., the aforesaid perons, as to why they were driving tracators in

the field known as Rawanwala. On hearing so, Hardial Singh alias Giani fired a shot from his carbine at Mahant Balwant Singh which hit him in the

abdomen, on the left side of the navel and passed through and through. As a result of it, he fell down on the spot. Then Sarup Singh alias Rupa

fired shots form his .315 bore rifle which, however, did not hit anybody. Gurnam Singh also parked his tractor, alighted from the same and fired,

shots from his . 12 bore gun, hitting me on my left eye, left ear and the head towards the left side. Sahib Singh and Kuldip Singh also continued

firing from their respective weapons and continued raising lalkaras saying, ""none of you will be allowed to escape, because all of you have raised

controversy over the land"". Out of us, Bhagwan Singh armed with licenced .12 bore gun also fired shots at the aforesaid persons in our defence.

At this, all of them while firing shots from their firearms fled away from the spot on their tractors and jeep. Lt. Col. Sarabjit Singh Aulakh and Surjit

Lal also came to the spot and took care of us. After leaving Kirpal Singh son of Arjan Singh resident of Tafazalpur, Patiala, a Sewadar of the

Dera, at the Dera, when we were being removed to the Police Station in the Matador, Baba Balwant Singh die on the way. We have come to the

police station to lodge the report. Action may be taken.

4. The above referred First Information Report was lodged by Banarsi Dass (P. W.) at 5 p.m. on November 22, 1987, when he along with the

dead body of Balwant Singh (deceased) was taken in a matador to the police station Patran by Bhagwan Singh, Surjit Lai and Lt. Col. Sarabjit

Singh Aulakh.

5. After recording the above-referred First Information Report under Sections 302/307/148/149 of the Code and Sections 25/27 of the Arms

Act, Sub Inspector Man Singh (since dead) prepared the injury statement of the injuries of Banarsi Dass (P. W. 2). Thereafter, he examined the

dead body of Balwant Singh and drafted inquest report (Exhibit P.G.) The dead body was entrusted to Constables Ajit Singh and Salwinder Singh

for autopsy. The Sub-Inspector also despatched the special report of the case through Constable Gulab Singh (P.W. 11), who conveyed the same

to the Judicial Magistrate at Patiala at 2.05 a.m. during the same night.

6. Banarsi Dass (P.W. 2) was sent for medical examination through Constable Areet Singh. Dr. P.K. Singla (P.W. 1) medically examined him at

11.15 p.m. on that evening and found a pellet wound on the upper left eye-lid. Another pellet wound was found on the tragus of left ear. Multiple

pellet wounds were found on the front of left side of the head in an area of 8 cms. x 4 cms. Pellet wounds of variable dimensions were also found

on the left side of the head behind the left ear in an area of 6 cms. x 4 cms. All these injuries were kept under observation. These were caused with

a firearm and within the duration of twelve hours. On X-ray examination, this doctor found multiple radiopaque shadows resembling pellets under

these injuries. The injuries were ultimately decalred simple in nature.

7. Sub-Inspector Man Singh along with Assistant Sub-Inspector Chanan Singh (P.W. 6), Assistant Sub-Inspector Gurmel Singh (P.W. 8) and

other police officials arrived at the spot and seized bloodstained earth there from after putting it in a seated parcel. The Sub-Inspector also lifted

four empties (Exhibits P-7 to P-10) of .12 bore cartridges from the spot after putting these in a sealed parcel. He also lifted three empites (Exhibits

P-l 1 to P-l 3) of .12 bore from the spot after putting them in a sealed parcel. One empty of .455 bore (Exhibits P-14) was also seized after putting

it in a sealed parcel. Two empty shells of .315 bore (Exhibits P-l5 and P-l6) were also lifted from the spot and taken into possession after putting

in a sealed parcel. Three empty cartridges of .315 bore (Exhibits P-l7 to P-l9) were taken into possession from the spot after putting these in a

sealed parcel. One empty cartridges of carbine (Exhibit P-20) was also seized from the spot after putting it in a sealed parcel. The Sub-Inspector

also prepared the rough site plan in the presence of Assistant Sub-Inspector Gurmel Singh (P.W. 8). He also recorded the statements of Bhagwan

Singh and other witnesses.

8. The autopsy on the dead body of Balwant Singh was conducted by Dr. P. K. Singla (P.W. 1) on November 23, 1987, at 9 a.m. He found the

following injuries on the dead body :-

1. Wound of entrance 11/2 cms x 1 cm on the left side of front of abdomen near the umblicus. Margins of the wound were inverted and

blackened.

Corresponding tear was present over the shirt. On passing a probe this wound communicated with another wound i.e. injury No. 2 which was

present on the back of the body, right side lumber region and it measured 2 cms x 11/2 cms. It had inverted margins. On dissection the skin

subcutaneous tissues, muscles, vessels had been torn. The small and large intestines had been ruptured at multiple places. The liver, the right kidney

were torn and the third lumber vertebra had been fractured. Liquid blood was present in the abdominal cavity.

These injuries were found ante mortem and sufficient to cause death in the ordinary course of nature.

9. All the accused continued absconding till they were arrested by different police officials at different places on November 26,1987. Surinderpal

Singh and Hardial Singh accused were arrested while riding a tractor and Harpal Singh and Jarnail Singh accused were arrested while riding on

another tractor. Sarup Singh accused along with his rifle and Gurnam Singh accused along with single barrel .12 bore gun were arrested by

Assistant Sub-Inspector Chanan Singh (P.W. 6) on the Kaithal road while coming on a jeep. Sahib Singh and Kuldeep Singh accused were

arrested by Assistant Sub-Inspector, Gurmel Singh (P.W. 8) while coming on a tractor. Sahib Singh accused was found carrying revolver .455

bore loaded with five live cartridges. It was taken into possession after putting in a sealed parcel. At the time of arrest Hardial Singh, accused, was

having a carbine which was taken into possession.

10. Sarup Singh, Sahib Singh and Gurnam Singh accused were having injuries on their persons at the time of their arrest and were got medically

examined.

11. Dr. P.K. Singla (P.W. 1) examined Sahib Singh at 4.40 p.m. on November 26, 1987, and a pellet wound was found on his forehead. Another

pellet wound was found on the left side of the face near the lower eye-lid. This doctor also found a scabbed abrasion on the right side of the face

outside the right eye and another abrasion on the front of right knee. The first two injuries were caused with firearm and the rest two with blunt

weapon.

12. Dr. P.K. Singla (P.W. 1) also examined Sarup Singh accused at 4.50 p.m. on November 26,1987, and found a pellet wound measuring 1 / 2

cm x 1 / 3 cm on the left side of his face below the lower lip. This injury was caused with a firearm, but found simple in nature.

13. This order also examined Gurnam Singh accused at 5.05 p.m. on that day and found a pellet wound on the outer side of left leg upper part.

Another pellet wound was found on the left upper arm while a scab wound was found inside the left leg. On X-ray examination radiopaque

shadows resembling pellets were seen on the left leg and knee of Gurnam Singh accused while two radiopaque shadows resembling pellets were

detected under the injury of Sarup Singh accused. Radiopaque shadow resembling pellet was also observed under the injuries on the person of

Sahib Singh accused.

14. Kuldeep Singh accused, was inter rogated on November 28, 1987, by Assistant Sub-Inspector Chanan Singh (P.W. 6) in the police station in

the presence of Head Constable Dhararn Dev and Swaran Singh. He disclosed having kept concealed a rifle in the heap of Parali near the canal

minor in the area of Village Shergarh. Thereafter, he led the police party to the said place and got recovered rifle (Exhibit P-6). It was loaded with

two cartridges. The rifle was unloaded and taken into possession after putting it in a sealed parcel. The accused could not produce any licence for

possessing this rifle and a separate case u/s 25 of the Indian Arms Act was registered against him.

15. The sealed parcels of the empty cartridges and shell recovered from, the spot were deposited with the Forensic Science Laboratory, Punjab,

Chandigarh, on November 26, 1987 while the sealed parcels of the firearms recovered from the accused were deposited with the said laboratory

on December 4,1987. On comparision, the Ballistics" Expert found that one of the empty shells had been fired through the carbine. The .445 bore

empty shell was also found to have been fired from .455 bore revolver and three empty shells of .315 bore were found to have been fired from the

sporting rifle bearing No. 8084 while two of the .12 bore empty cartridges were found to have been fired from the left barrel of double barrel gun

bearing No. 64033. However, no definite opinion could be given regarding the other empty cartridge of .12 bore about it having been fired from

the right barrel of the said gun, but it was found to have not been fired from its left barrel. No definite opinion could be given by the expert qua the

firing of one empty shell from 7 x 57 mm. rifle No. 3598, but he found that one of the empty shells had not been fired from 7 x 57 rifle.

16. The sealed parcels of the earth lifted from the spot as well as of shirt and Chadra of the deceased were sent to the Chemical Examiner, who

found blood thereon while the serologist vide his report (Exhibit P-Z) confirmed the origin of the blood to be human on all these articles except on

the earth.

17. After obtaining the sanction from the District Magistrate under the Arms Act and completion of investigation, all the accused were arraigned for

trial on such like allegations by submitting the charge-sheet before the Committing Magistrate, who committed the case against them to the Court of

Sessions.

18. Before the trial Court, in order to prove its above referred case, the prosecution examined eighteen witnesses including the tendering of formal

evidence of Head Constable Dharam Dev, Assistant Sub-Inspector Chanan Singh and Constable Vas Dev on affidavits which were ordered to be

read as the examination-in-chief, respectively, as these witnesses were also examined as P.W. 5, P.W. 6, and P.W. 7, respectively, because the

defence had opted to cross-examine them. The reports of the Chemical Examiner, Serologist and Ballistics'' Expert were also tendered in

evidence. Certified copies (Exhibits P.W. 16/A to P.W. 16/E) of registered sale deeds, copy of the order of the Court of Mr. M.S. Virdi (Exhibit

P.W. 16/G), another copy of the judgment of the Court of Mr. M.S. Virdi (Exhibit P.W. 16/H) and copy of the plaint (Mark "F") were also

tendered in evidence.

19. Banarsi Dass (P.W. 2) and Bhagwan Singh (P.W. 3), eye-witnesses, supported the above-referred version of the prosecution while Kirpal

Singh, another eye-witness, was given up being unnecessary in order to avoid multiplicity of prosecution evidence. The prosecution also gave up

Surjeet Singh, Revenue Patwari, who had prepared the scaled plan of the spot as having been won over by the accused.

20. Sarup Singh accused, before the trial Court in his statement u/s 313 of the Code of Criminal Procedure set up the following version :-

I am innocent. We have purchased land from Pritam Kaur and Savinder Kaur which land Balwant Singh wanted to purchase, but we purchased

the same. On the day of occurrence, I along with Gurnam Singh went to the fields to plough the land with a tractor. Gurnam Singh started

ploughing with a tractor and in the meantime Sahib Singh also came there whose fields are nearby. In the meantime, Banarsi Dass and Balwant

Singh armed with .12 bore guns and along with 4/5 persons armed with firearm and carbine came there and started indiscriminate firing. As a result

of this indiscriminate firing, I, Gurnam Singh and Sahib Singh received injuries and Balwant Singh also hit by the fellowmen. ""We went to the Police

Station to lodge the report but we were illegally detained there. We narrated the occurrence to the police but they took no action. Telegrams were

given by our relations about our illegal detention and non-medical examination. It was only then that we were got medically examined. In these

turbulent/disturbed conditions in Punjab I used to carry my revolver and when the firing from the opposite side had taken place, I used fire from

revolver in self-defence.

Sabin Singh accused in his statement u/s 313 of the Code of Criminal Procedure before the trial Court set up the following version:-

I. am innocent. Rup Singh alleged co-accused was ploughing the land and my land adjoining, that land. I went to Rup Singh, who was ploughing

the land. Gurnam Singh was ploughing the land with the tractor. I sat with Hup Singh at about noon time. In the meantime from the side of Dera,

Balwant Singh and Banarsi Dass armed with .12 bore guns and four/five other persons fully armed other and one of them was carrying cirbirte as;

well. They started indiscriminate firing as a result of which I and Rup Singh were injured from firearm. We went to the Police Station but were

detained there illegally by the police and we had narrated the true facts to the police. We were got medically examined by the police after

telegrams ""were given about cur illegal detention by our relations. Rup Singh fired from his revolver in self-defence, otherwise we would have been

killed.

Gurnam Singh accused also in his statement u/s 313, Criminal Procedure Code, set up the following version before the trial Court :-

I am innocent. On the day of occurrence I had gone with Rup Singh to plough the land with a tractor. I was ploughing the land when at about noon

time, Balwant Singh and Banarsi Dass armed with .12 bore guns along with four/five other persons fully armed with firearms including carbine

came there. They started indiscriminate firing as a result of which, I, Sahib Singh and Rup Singh were injured from firearm. Balwant Singh received

injuries from indiscriminate firing from the fellow men. We went to the Police Station but were detained illegally by the police and we narrated the

facts to the police. We were illegally detained. Telegrams were given about our illegal detention and non-medical examination and it was then that

police got us medically examined.

Surinder Pal Singh, Kuldeep Singh and Hardial Singh, accused-appellants, however, set up the plea of denial simpliciter and false implication.

21. When called to enter upon their defence, the accused examined as many as eight witnesses. Kulwant Singh (D.W. 1), Hari Ram (D.W. 2),

Surinder Kaur, Clerk in the office of Deputy Commissioner, Patiala (D.W. 4), Constable Tej Pal Singh (D.W. 5), Om Prakash Guglani Assistant

Superintendent, Telegraph Office, Patiala (D.W. 7) and Anup Singh (D.W. 8), were examined in order to prove that Anup Singh son of Iqbal

Singh, uncle of Hardial Singh and Sarup Singh accused, had given telegrams to the higher authorities on different dates complaining that the

accused had been detained at the Police Station prior to November 23, 1987. Anup Singh (D.W. 8) also deposed having stated in the telegrams

that, five/six persons armed with firearms had attacked and given injuries to the accused. Kulvir Singh, Patwari (D.W. 3) deposed about the

preparation of Aksh Sajra (Exhibit D.W. 3/A) showing the Dera"of Sat Kartarian and the lands of Pritam Singh son of Sunder Singh, Jagjit Singh

son of Balwant Singh and Rup Singh and Hardial Singh accused. He also proved the copies of the Khasra girdawri (Exhibit D.W. 3/B) and

Jamabandi (Exhibit D.W.3/C). Dr. J.S. Dalai, Professor and Head of the Department of Forensic Medicine, Guru Gobind Singh Medical College,

Faridkot (D.W. 6) was examined in order to prove that Balwant Singh (Deceased) has suffered the injuries from a close range. The accused also

tendered in evidence copy of the order of Subordinate Judge 1st Class, Patiala, dated October 21, 1987 (Exhibit D-X) copy of the order of

District Judge in appeal dated August 1,1988 (Exhibit D.X/1), copy of the application for withdrawal of the appeal (Exhibit D.X/2), copy of the

title of the suit filed by Mst. Rani against Banarsi Dass (P. W.) Exhibit D. Y and copy of the khasra girdawri (Exhibit D.Z).

22. The trial Court, believing the ocular evidence of Banarsi Dass (P. W. 2) and Bhagwan Singh (P.W. 3) coupled with the medical evidence and

other corroborative evidence, convicted and sentenced the accused-appellants, as referred above. Jarnail Singh and Harpal Singh, co-accused of

the appellants, were, however, acquitted by giving them the benefit of doubt. The defence version, however, did not find favour with the trial

Court.

23. Yesterday, the accused-appellants had filed Criminal Miscellaneous Application No. 16817 of 1993 u/s 391 read with Section 482 of the

Code of Criminal Procedure for placing on the record certified copy dated November 26, 1987 of the telegram dated November 23, 1987, sent

at the instance of Anup Singh (D.W. 8) contending that this copy was handed over to Late Mr. Sat Sehgal, Advocate, representing the accused

before the trial Court and due to his untimely death during the pendency of the trial the certified copy remained untraceable and that it has now

been traced. Permission was sought to tender the same in evidence as Exhibit D.W. 8/5.

24. We have heard the learned counsel for the parties on the merits of the appeal and revision petition as well as on the above-referred application

besides perusing the record.

25. Through the application for additional evidence u/s 391 read with Section 482 of the Code of Criminal Procedure, the appellants seek to

produce certified copy of the telegram given by Anup Singh (D.W. 8), brother of Hardial Singh and Sarup Singh - appellants, to the Governor,

Punjab, on the ground that it was handed over to their counsel late Mr. Sat Pal Sehgal and could not be produced at the stage of trial due to his

untimely death. It is further averred that Om Prakash Guglani, Assistant Superintendent, Telegraph Office,.Patiala, was examined as D.W. 7 and

he proved his signatures on the photo-copy of this certified copy of the telegram. The photostat copy was exhibited as Mark "AA" while the

signatures were exhibited as Mark "BB". Anup Singh (D.W. 8) also categorically deposed before the trial Court that the certified copy of the

telegram obtained by him was handed over to Mr. Sat Pal Sehgal, Advocate. This telegram was given by Anup Singh (D.W. 8) on November 23,

1987, alleging the arrest of the accused as well as their illegal detention and non-examination of the injuries on the persons of Sarup Singh alias

Roop Singh, Gurnam Singh and Sahib Singh accused. This evidence could not be fabricated at a later stage and, as a matter of fact, during the

course of arguments, the learned Assistant Advocate General or the learned counsel for the complainant had not assailed its authenticity. Thus, in

the interest of justice, the certified copy of the telegram is ordered to be read in evidence as Exhibit D.W. 8/5.

26. On merits of the case, the learned counsel for the appellants contends that the land in dispute was in actual possession of the vendees and not

in the possession of Gurjit Kaur, who had already sold the same. It was further submitted that the ownership of no land in the revenue estate of

Village Matauli was recorded in the name of Dera Sat Kartarian and that the order (Exhibit D.X) dated October 21, 1987, of the Civil Court

further shows that the vendees were in possession of the land and not Mst. Gurjit Kaur, vendor. The non-examination of the Revenue Patwari who

had prepared the scaled plan of the place of occurrence was also pressed in service besides relying upon the copy of Aksh Sajra (Exhibit D. W 3/

A) prepared by Kulvir Singh Patwari (D.W. 3) and the rough site plan (Exhibit P.W. 8/H) prepared by the Investigator depicting the various

relevant situations of the place of occurrence. It was further maintained that the accused were ploughing the land in their possession and that the

complainant-party was the aggressor and that the appellants had acted in exercise of the right of self-defence of property and person.

27. The learned Assistant Advocate General as well as Mr. J.S. Wasu, the learned counsel for the complainant, contended that Dera Sat Kartarian

had purchased the land in village Matauli in the name of its followers, namely, Gurjit Kaur, Banarsi Dass and others and that the revenue records

do reflect the cultivation of these co-sharers. It was also stressed that there was no question of the right of property being available to the accused

as the occurrence took place on the metalled road running along this land.

28. It is admitted case of the parties that in the revenue estate of village Matauli, the ownership of any land is not reflected in the name of Dera Sat

Kartarian. Mst. Gurjit Kaur or other followers of the said sect cannot be said to be co-sharers with the Dera qua their land as the Dera itself owns

no land in village Matauli. Moreover, the prosecution had not led any evidence in order to prove that Mst. Gurjit Kaur had purchased this land

from the funds advanced by the Dera. Thus, the Dera cannot be said to be the real owner of the land belonging to Mst. Gurjit Kaur. There is no

necessity to go into the warring contentions of the parties whether Pinder Pal Singh, Jarnail Singh and Salvinder Singh, relations of Hardial Singh

accused-appellant had purchased the land from Mst. Gurjit Kaur, the real owner of this land, or had got executed the sale deed by producing

some other lady as for determining the right of property the actual possession of the land is the only relevant consideration. The perusal of the

certified copy (Exhibit D.X) of the order of Mr. M.S. Virdi, Sub-Judge 1 st Class, Patiala, dated October 21, 1987, reveals that the interim stay

granted in favour of Mst. Gurjit Kaur restraining the defendants from interfering in her peaceful possession over the suit land was vacated by

holding that the defendants were in actual cultivating possession of the suit land. The parent suit was filed by Mst. Gurjit Kaur for declaration that

she was the owner in possession of the land comprised in Khasra Nos. 75/20/2(2-13), 21(7-14), 76/16/ 2(3-2), 17/2(3-2), 18/2(3-2), 24(8-0),

25(8-0), 85/51(6-13), 6(7-12), 15(7-12), 16(7-12), 25(7-12), 26(1-7), 86/1(7-9), 18(8-0), 11(8-0), 20/1(6-8), 86/23/1(0-10), 24(8-0) and

25(8-0). Strangely enough, the prosecution had failed to examine Gurjit Kaur in order to prove that she was in possession of the land or was the

follower of the Sat Kartarian Sect - what to say of proving that the land in her name was purchased from different persons on behalf of the Dera.

Admittedly, according to Banarsi Dass (P.W. 2), she is the widow of Gian Singh, brother of the deceased. Strangely enough, she was not even

cited as a witness by the prosecution in the list of reliance. Due to her close relationship with the deceased, it cannot be said that she was prone to

the influence of the accused-party. This is not an innocent omission on the part of the prosecution because in view of the finding of the Civil Court

in its order (Exhibit D.X) that the plaintiff Gurjit Kaur in that case probably was not the real owner of the land, the prosecution had deliberately

withheld her by not citing or producing her as a witness in order to keep this fact as a guarded secret. (Exhibit D.X. further reveals that Mst. Gurjit

Kaur had given her temporary address as Dera Sat Kartarian of Village Matauli, but she was permanent resident of Kothi No. 6, Link Road,

Model Town, Jalandhar City.The perusal of certified copy of the order dated August 1, 1988 of the District Judge, Patiala, further reveals that

aforesaid Mst. Gurjit Kaur had got the appeal preferred, against the order (Exhibit D.X) dismissed as withdrawn. The prosecution had not led any

evidence that the appellate Court had granted an interim stay order in favour of Mst. Gurjit Kaur. On the other hand, the conduct of Mst. Gurjit

Kaur in getting this appeal dismissed clearly spells out that no such interim stay was granted by the appellate Court. Thus, the contention of Banarsi

Dass (P.W. 2) that this land was being cultivated by the management of the Dera Sat Kartarian is belied by the factum that till the year 1988 no

entry in the revenue record in the ownership column or in the cultivation column figured in favour of this Dera. The perusal of the copy of

Jamabandi (Exhibit P.Z./l) for the year 1981-82 reveals that Swaran Singh, Ajit Singh and Arjan Singh having 2771 share equally in the land in

dispute had sold it to Mst. Gurjit Kaur wife of Gian Singh son of Darshan Singh resident of Dera Sat Kartarian. In the remarks column of this

Jamabandi, the transfer of ownership of the land on the basis of sale by Mst. Gurjit Kaur through three mutations bearing Nos. 777, 778 and 779

in favour of Jarnail Singh son of Kapur Singh, Salwinder Singh son of Kirpal Singh and Chhinder Pal Singh son of Jaswant Singh figures. In Exhibit

P.Z./3 to 7, an extract from the khasra girdawries, in column No. 11, it is depicted that the correction regarding the girdawri of Sawni 1988 crop

in favour of Trust/Dera Sat Kartar, Jalandhar, was ordered by the Naib-Tehsildar on August 31, 1989. The occurrence having taken place on

November 22, 1987, i.e. during the Girdawri of Sawni crop of the year 1987, the above referred correction of Khasra Girdawri of Sawni 1988 is

of no help to the prosecution to conclude that the Dera Sat Kartar was in cultivating possession of the land mentioned therein.

29. The trial Court, in para 49 of the judgment, had discarded the case of the accused-appellants being in possession of the land by holding as

under:-

Attempt has been made by the accused to prove their possession by producing Kulvir Singh Patwari appearing as D.W. 3, who has proved Aksh

Sajra Exhibit D.W. 3/A and proved copies of Khasra girdawri (Exhibit D.W. 3/C). There is nothing in those documents to prove their possession

over the land in dispute. On the other hand, it stands duly proved that Gurjit Kaur was shown in possession over the land in the column of

cultivation. Only red entries with regard to transfer of land in favour of vendees allegedly by her were made, but that is insufficient to show the

possession of the vendees on November 22, 1987, the day of occurrence.

30. The perusal of the above observations leaves no doubt that the trial Court had not taken into consideration the import of order of the Civil

Court (Exhibit D.X) in civil suit and copy of the order of the appellate Court (Exhibit D.X/1) holding that the vendees, who had purchased the land

from aforesaid Mst. Gurjit Kaur were in possession of the land. It is noteworthy that order (Exhibit D.X) was passed on October 21, 1987 i.e. a

month prior to the present occurrence. There being no indication from the prosecution evidence that in appeal filed by Smt. Gurjit Kaur the District

Judge had given any interim stay, it cannot be said that Mst. Gurjit Kaur - what to say the Management of the Dera - was in actual cultivating

possession of this land. It is not noteworthy that in the sale deeds (Exhibit P.W. 16/A, P.W. 16/B and P.W. 16/C) whereby Mst. Gurjit Kaur had

purchased the land from the vendors, there is a specific mention of the delivery of the possession of the land. Similarly, in the sale deeds (Exhibits

P.W. 16/D and P.W. 16/E) pertaining to sale of this land by Mst. Gurjit Kaur to aforesaid Salwinder Singh etc., there is a specific mention of the

delivery of the possession. Thus, this documentary evidence which came into existence much prior to the present occurrence, also supports the

above-referred conclusion that the aforesaid vendees, who happened to be close relations of Hardial Singh appellant, were in possession of the

disputed land. Thus, the findings of the trial Court in this regard, being not well founded, are not sustainable.

31. The matter does not rest here as the prosecution is trying to suppress the material facts from the Court regarding the actual place where the

occurrence had taken place. It is noteworthy that during the investigation of the case Revenue Patwari Surjeet Singh had prepared the scaled plan

of the spot, but strangely enough that Patwari was given up as having been won over by the accused, obviously, in order to suppress the version of

the witnesses qua the place of occurrence as pointed out to this Patwari during the investigation of this case. On the other hand, the accused had

examined Kulvir Singh, Revenue Patwari (D.W. 3), who had proved copy (Exhibit D.W. 3 / A) of the AkshSajra depicting the location of Dera

Sat Kartarian and the land belonging to Pritam Singh son of Sunder Singh, l/4th share, Jagjit Singh son of Balwant Singh, 1/4th share, Rup Singh

and Hardial Singh (accused appellant), 1/2 share. He also prepared copy of the Khasra girdawri (Exhibit D.W. 3/B) and extract of the jamabandi

(Exhibit D.W. 3/C). Extract of the Jamabandi (Exhibit D.W. 3/C) reveals that Rup Singh and Hardial Singh sons of Iqbal Singh son of Bir Singh

(accused-appellant) along with Pritam Singh son of Sunder Singh, Jagjit Singh son of Balwant Singh had been depicted joint owners of the land to

the extent of shares mentioned therein having purchased it from Kulwant Singh, Basant Singh, Amrik Singh, Iqbal Kaur and Narinder Kaur co-

sharers. The entries in copy of khasra girdawari register (Exhibit D.W. 3/B) reveal that this land is depicted in the cultivating possession of the

above-referred vendees including Hardial Singh and Rup Singh accused. This land is depicted by Kulbir Singh, Revenue Patwari (D.W. 3) in the

copy of Aksh Sajra (Exhibit D.W. 3/A). The authenticity of the copy of Aksh Sajra was not challenged by the prosecution during the cross-

examination of this witness. He denied the suggestion that the land of Pritam Singh etc. is in the cultivation of Dera Sat Kartarian. He, however,

admitted having prepared extract of Khasra girdawries (Exhibit P.Z/3 to 7). For ascertaining the place of occurrence, the rough site plan (Exhibit

P.W. 8/H), of the spot which was prepared by Sub-Inspector Man Singh on November 23, 1987, would be relevant to the extent it is based upon

the personal observations of this police officer. Unfortunately, Sub-Inspector Man Singh died before his testimony could be recorded in this case.

This plan was got proved from Assistant Sub-Inspector Gurmel Singh (P.W. 8) who deposed that on November 22, 1987, he was posted at

Police Station Patran and had accompanied Sub-Inspector Man Singh and other police officials to the spot. He had identified the signatures of

Sub-Inspector Man Singh on this plan besides seizure memos of other articles recovered from the spot. During cross-examination, he admitted that

the spot inspection was started in his presence at 9 a.m. on November 23, 1987, and the rough site plan was prepared by Sub-Inspector Man

Singh in his presence. The perusal of this plan shows that the Dera Sat Kartarian is located towards the East of the metalled road while across the

metalled road in front of this Dera are godowns and the houses of Rai Sikhs. The place of occurrence described as "Rawan Wali Field", obviously

due to the factum that it falls near the habitation of Rai Sikhs. The metalled road running between the Dera Sat Kartarian and the houses of Rai

Sikhs connects village Matauli with village Shergarh as per the noting on this plan and the evidence of Banarsi Dass (P.W. 2). Banarsi Dass (P.W.

2) admitted that the land in dispute falls at a distance of 1 1/2 to 2 killas towards village shergarh from the Dera and across the metalled road. Sub-

Inspector Man Singh, during spot inspection, had found bloodstains at points "A" and "D", but the spilling of blood at these places is of no help for

determining the actual place of occurrence where Balwant Singh (deceased) and Bhagwan Singh (P.W. 3) had received the injuries and fallen

down because the origin of the blood to be human could not be determined by the Serologist due to its disintegration. Moreover, it being a case

where Balwant Singh (determined) and Bhagwan Singh injured were removed from the spot and taken to the hospital, the blood was bound to fall

on the way while removing them from the spot. Consequently, there is no escape but to conclude that the prosecution had failed to prove the

occurrence having taken place on the metalled road especially when in the First Information Report (Exhibit P. J.) lodged by Banarsi Dass (P.W.

2), there is no specific indication as to Where the occurrence had taken place except the narration that Balwant Singh (deceased) and Banarsi

Dass (P.W. 2) had come out on the metalled road on hearing the sound of tractor and they asked the accused not to plough the land, when

Hardial Singh fired at him with carbine and on receipt of the bullet injury, Balwant Singh fell down at the spot. It is further alleged that Gurnam

Singh accused then alighted from his tractor and fired shots from his 12 bore gun hitting this witness on the left eye, left ear and on left side of the

head. He has nowhere stated as to where he was present at the time of receiving gun shot injuries. It appears that, during the investigation of the

case, at a later stage it dawned upon the investigator that the possession over the disputed land being not of Mst. Gurjit Kaur or of the Dera, the

place of occurrence should be shifted to the metalled road. In that sequence of events, for the first time, in the rough site plan (Exhibit P.W. 8/H) of

the spot, Sub-Inspector Man Singh had tried to depict the place of occurrence on the Eastern side of the metalled road in the Khal by showing the

presence of blood at two places therein.

32. In the rough site plan, Sub-Inspector Man Singh had depicted point "J", the place from where he had collected one empty shell of carbine, one

empty shell of .455 bore revolver, two empty cartridges of .315 bore and three empty cartridges of .315 bore. It"is further mentioned that this

place falls at a distance of 14 Karams from point mark "A". As per marginal notes, mark "A" falls at a distance of 1 Karam from mark "B" where

he had found some blood lying spilled. The empty shells fired from different weapons will fall at the place from where they were fired because

carbine being an automatic weapon, the empty shells will be ejected in the process of firing. Moreover, according to Banarsi Dass (P.W. 2) and

Bhagwan Singh (P.W. 3), eye-witness, the accused had indulged in repeated firing from their weapons. Thus, it can be well inferred that at the

investigation stage, the case of the prosecution witnesses was that Baba Balwant Singh (deceased) was fired at by Hardial Singh accused from a

distance of 13 Karams, which roughly amounts to 65 feet or a little less .than 22 yards. In the case of firing from a carbine from a distance of 22

yards, there is no question of blackening being present around the wound of entry. On the other hand, the evider&e of Dr. P. K. Singla(P.W. 1}

reveals that during autopsy he had observed the following injuries on the deadbody of Balwant Singh:-

1. Wound of entrace 1 x/1 1/2 cms x 1 cm on the left side of front of abdomen near the umblicus. Margins of the wound were inverted and

blackened. Corresponding tear was present over the shirt. On passing a probe this wound communicated with another wound i.e. injury No. 2

which was present on the back of the body, right side lumber region and it measured 2 cms x 1 1 1/2 cms. It had everted margins. On dissection

the skin subcutaneous tissues, muscles, vessels had been torn. The small and large intestines had been uptured at multiple places. The liver, the right

kidney were torn and the third lumber vertebra had been fractured. Liquid blood was present in the abdominal cavity.

33. The blackening range at the most will extend to 9 inches from the muzzle end of the rifle as per Major Sir Gerald Burrard on "The Identification

of Firearms and Forensic Ballistics" at page 59. Thus, the medical evidence not only belies the case of the eyewitnesses that the victim was fired at

by Hardial Singh from a distance of 13 karams, but also probabilises the version of the accused that the deceased along with Banarsi Dass (P.W.

2), armed with guns besides three or four persons carrying firearms including a carbine had assaulted them in order to prevent them from cultivating

the land; because in that case only the victim would come in close range of Hardial Singh accused. The mere fact that Sarup Singh, Gurnam Singh

and Sahib Singh accused had suffered injuries from the gun shots from a considerable distance is, thus, of no consequence to hold that Baba

Balwant Singh - victim was at a considerable distance because of the presence of blackening around the wound of entry. There is no question of

confusing the blackening with grease collar as the bullet had pierced the shirt worn by the deceased before entering his body. The opinion of Dr.

J.S. Dalai (D.W. 6) that Baba Balwant Singh had re-, ceived the injury from close range, thus appears to be well founded.

34. Admittedly, Sarup Singh, Gurnam Singh and Sahib Singh appellants had receiv-i ed gun shot injuries during this occurrence; and so did Banarsi

Dass (P.W. 2).

35. Dr. P. K. Singla (P.W. 1) had found the following injuries on the person of Banarsii Dass during medical examination:-

1. Pellet wound l/2 cm x l/2 cm on,the upper eye-lid of left eye, eye-lid was swollen and tender, subcojunctival haemorrhage was present in the

eye

2. Pellet wound 1/2 cm x 1/2 cm on the tragus of left ear.

3. Multiple pellet wound on the front and left side of the head in an area of 8 cms. x 4 cms.

4. Pellet wounds of variable dimensions on the left side of the head behind the left ear in an area of 6 cms x 4 cms.

36. For the sake of ready reference, it would be worthwhile to reproduce the injuries observed on the persons of Sarup Singh alias Roop Singh,

Gurnam Singh and Sahib Singh-appellants during medical examination by Dr. P. K. Singla (P.W. 1). These are as under:-

Injuries on the person of Sarup Singh alias Roop Singh:-

1. Pellet wound Vi cm x 1 / 3 cm on the left side of the face below the lower lip, scabformation was present. Advised X-ray.

Injuries on the person of Gurnam Singh:

1. Pellet wound Vi cm x >/Ã¯Â¿Â½ cm on the outside of left leg upper part, scab formation w"as present. Advised X-ray. Corresponding cut was

present over the Pyjama.

2. Scab wound 1 cm x XA cm on the inside of left leg upper-half area.

3. Pellet wound 1/3 x 1/3 cm on the outside of left upper arm. Scab formation was present. Advised X-ray.

Injuries on the person of Sahib Singh:

1. Pellet wound Vi cm x 1/3 cm on the right side of the forehead, 2 cms above the right eye-brow. Scab formation was present. Advised X-ray.

2. Pellet wound XA cm x Vi cm on the left side of the face near the lower eye-lid. Scab was present.

3. Scabbed abrasion 2 cms x 2 cms on the right side of the face, outside the right eye.

4. Abrasion 3 cms x 2 cms on the front of right knee. Wound was septic, pus discharged was coming out.

37. The above-referred version of the accused that some of the companions of Baba. Balwant Singh (deceased) were armed with firearms

including carbine is also supported from the report of the Ballistics" Expert (Exhibit P.X) as against item No. 7 he had given the opinion that one of

the empty shells had not been fired from the rifle whereas regarding one of the .12 bore cartridges he" failed to give any definite opinion whether it

had been fired from the right barrel of the gun of Gurnam Singh; but he had given specific opinion that one of the cartridges had been fired from its

left barrel. He has also opined that one .455 bore cartridge had been fired from the revolver of this bore while three cartridges of .315 bore had

been fired from sporting rifle bearing No. 8084. The remaining cartridge had been fired from the carbine. This carbine was recovered from Hardial

Singh appellant. Strangely enough, the investigator had not sent four empties of .12 bore cartridges (Exhibits P-7 to P-10) recovered from the

place near point "D" where the blood was found lying spilled by Sub-Inspector Man Singh, as is apparent from the rough site plan (Exhibit P.W.

8/H). According to the case of the prosecution, these cartridges pertained to the gun of Bhagwan Singh (P.W. 3), who had fired them in self-

defence. This circumstance not only belies the version of Banarsi Dass (P.W. 2) and Bhagwan Singh (P.W. 3) that the latter had fired only two gun

shots in self-defence, but also reveals that the investigators were trying to suppress the fault of the complainant-party by not getting these cartridges

compared with the licensed gun of Bhagwan Singh (P.W. 3) or that of the deceased for the obvious reason to rule out the version of the accused

that apart from Balwant Singh (deceased), Banarsi Dass (P.W. 2) and three/four other persons had also participated in the assault.

38. Confronted with the above-referred situation, Mr. J.S. Wasu, Senior Advocate, learned counsel for the complainant, contended that the very

act of the accused in going armed with deadly weapons like rifle, carbine and gun etc. for cultivating the land shows that they were the aggressors.

There is no force in this contention as the land of Hardial Singh accused adjoins the land which was purchased by aforesaid Pinderpal Singh,

Jarnail Singh and Salvinder Singh from Mst. Gurjit Kaur. One of the tractors driven by Harpal Singh accused (since acquitted) was near the

tubewell of Hardial Singh, shown at point "H" in the rough site plan (Exhibit PW8/H) while the other two tractors were driven by Gurnam Singh

and Surinder Pal Singh-appellants. It is noteworthy that due to the above referred civil litigation, the accused party did apprehend resistance from

the opposite faction in cultivating this land especially when this land falls across the metalled road to the Dera of Sat Kartarian Sect. Therefore,

their conduct in coming armed with licenced weapons to the spot cannot be said to be that of aggression, but only an attempt to thwart the

apprehended aggression from the other side Thus, there is no force in this contention especially when the complainant-party had the motive to

assault the accused-party in order to restrain the latter from cultivating the land in dispute.

39. The version of Amar Singh (PW 4), Head Constable Dharam Dev (PW5), Assistant Sub-Inspector Chanan Singh (PW b), Head Constable

Vas Dev (PW 7) and Assistant Sub-Inspector Gunnel Singh (PW 8) that the accused were arrested on November 26, 1987 is belied by the

factum that Anup Singh (DW 8), brother of Sarup Singh alias Roop Singh and Hardial Singh-appellants had given telegram (Exhibit DW8/5) on

November 23,1987, to the; Governor, Punjab, alleging that the police had falsely registered the case against his brothers and others for the alleged

murder of Balwant Singh and that it is illegally detaining and torturing Roop Singh alias Sarup Singh, Sham Singh alias Sahib Singh, Hardial Singh,

Gurnam Singh, Harpal Singh, Surinder Singh, Jarnail Singh and one Ram Kumar and is not getting Sarup Singh alias Roop Singh and Sham Singh

alias Sahib Singh medically examined for fire-arm injuries. It, on the other hand, clearly supports the version of the accused that they had gone to

the Police Station for lodging the report, but were detained there and their arrest was depicted later on. Keeping in view that the sympathies of the

investigators are usually with the party whose person had been killed in the assault, the above-referred version of the accused cannot be said to be

improbable.

40. There is considerable force in the contention of the learned counsel for the appellants that apart from the land in dispute, Balwant Singh

(deceased) as well as Banarsi Dass (PW2) had motive to assault Hardial. Singh accused because Mst. Rani, sister of the deceased, was married

with Jagjit Singh son of Balwant Singh and the latter was the uncle of Hardial Singh, accused-appellant, as admitted by Banarsi Dass (PW 2)

during cross-examination. Banarsi Dass further admitted that marriage of Mst. Rani was performed by her maternal uncle Mohinder Singh and

Baba Balwant Singh (deceased) had not attended the same. Admittedly, according to Banarsi Dass (PW 2) civil suits challenging the validity of the

Will allegedly executed by Mst. Rani in. favour of Banarsi Dass (PW2) are pending at Civil Courts at Panipat and Patiala. Banarsi Dass being not

in any way related to or connected to Mst. Rani, it looks highly improbable as to why she will execute a Will bestowing her property upon him.

Copy of the index of the civil suit (Exhibit DY) further shows that Civil Suit No. 237 of 1988 was instituted on December 24, 1986 by Mst. Rani

daughter of Late Shri Darshan Singh against Banarsi Dass alleged chela of Balwant Singh and was pending in the Civil Court at Panipat.

Consequently, it can be well-inferred that Baba Balwant Singh and Banarsi Dass (PW2) were conniving with each other to grab the land of Mst.

Rani and were inimical towards Hardial Singh-accused because the aforesaid Mst. Rani was married with his first cousin. 41. The question then

arises whether only Sahib Singh, Sarup Singh alias Roop Singh and Gurnam Singh accused had participated in this occurrence or that the remaining

accused had also done so. This controversy is purely academic because even if it is taken that all the accused-appellants had participated in this

occurrence, it would be of no consequence in the light of the above-referred finding that the accused party was in possession of the land and the

complainant party was the aggressor. Anyhow, the participation of Surinder Pal Singh accused, who was not carrying any weapon but was simply

plying a tractor as well as that of Harpal Singh (since acquitted by the trial Court) who was also plying a tractor and was empty-handed, is highly

doubtful especially when there is no evidence on the file as to how the land was being ploughed with the help of three tractors before this

occurrence took place. It is not the case of the prosecution that any of these tractors bore the pellet marks of at least four gun shots fired by the

complainant-party or that the tyre marks of three tractors were observed during spot inspection. Participation of Jarnail Singh, accused-respondent

(since acquitted by the trial Court) is also doubtful as it looks ridiculous that he will go armed with a Dang with his co-accused, who were armed

with effective weapons like carbine, rifle, gun etc. He is the cousin brother I of Hardial Singh and Sarup Singh accused. Thus, it cannot be said that

the order of the trial Court acquitting Jarnail Singh and Harpal Singh, accused-respondents, is ill founded.

42. There is no force in the contention of Mr. G.S. Nahar, Assistant Advocate General, Punjab, that the accused-party had exceeded the right of

exercise of self-defence of property and person because in view of the above-referred conclusion that Hardial Singh and his co-accused were

cultivating the land in their possession, the act of Baba Balwant Singh (deceased), Banarsi Dass (PW 2) and others going armed for preventing

them from cultivating the land would clearly amount to mischief as they had done so with the intention of causing wrongful loss or damage to these

persons Obviously, the act of preventing a person, in possession of the land, from its cultivation would amount to debarring him from sowing the

crop and, thus, result in wrongful loss. The offence of mischief was committed by the complainant-party while armed with deadly weapons like

guns, rifle and carbine. Consequently, under these circumstances, the accused reasonably apprehended that death of grievous hurt would be the

consequence if the right of private defence was not exercised. The facts of the case clearly attract the provisions of clause fourthly toSection 103 of

the Code, which read as under:-

103. When the right of private defence of property extends to causing death. - The right of private defence of property extends, under the

restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of

which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated,

namely:-

Firstly to Fourthly xx xx xx

house-trespass, under such circumstances as may reasonably cause apprehension that ,. death or grievous hurt will be the consequence, if such

right of private defence is not exercised.

43. The reasonable possibility of Baba Balwant Singh (deceased) having fired his gun cannot be ruled out especially when he had received the

bullet injury in the abdomen from a close range. It is the case of the prosecution that Sarup Singh alias Roop Singh, Gurnam Singh and Sahib Singh

-accused received gun shot injuries in this! occurrence. Thus, the provisions of clause First to Section 100 of the Code are also well-attracted in

this case, which read as under:-

100. When the right of private defence of the body extends to causing death. - The right of private defence of body extends under the restrictions

mentioned in the last preceding Section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the

exercise of the right be of any of the descriptions hereinafter enumerated, namely :---

First:- Such an assault as may reasonable cause the apprehension that death will otherwise be the consequence of such assault;

Secondly to Sixthly:-- xx xx xx.

44. it cannot be said that there was enough time for the accused to have recourse to the protection of public authorities especially when the

complainant-party after arming itself with deadly weapons, had assaulted them in the fields in their possession. Thus, the above-referred accused-

appellants were justified in causing the death of Baba Balwant Singh and injuries to Banarsi Dass (PW 2) in the exercise of the right of self-defence

of property and person. Consequently, by giving them the benefit of that right, all the accused-appellants are acquitted of the above-referred

charges by setting aside the orders of conviction and sentence of the trial Court. All the accused-appellants except Surihder Pal Singh are in

custody. They are ordered to be released forthwith in case not required in any other! case. The bail bonds of Surinder Pal Singh; accused are

discharged.

45. In view of the ! above findings, the appeal against acquittal, i.e., Criminal! Appeal No. 262-DBA of 1993 as well as Criminal Revision No.

642 of 1993; fail and are hereby dismissed.