

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**(1) Criminal Appeal No.D-478-DB of 2012
Date of Order: 24th December, 2014**

**1. Sukhwinder Singh son of Pritam Singh
2. Satnam Singh son of Pritam Singh**

...Appellants

Versus

State of Punjab

..Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

**Present: Mr. N.S.Boparai, Advocate
for the appellants.
Mr. Rajesh Bhardwaj, Addl.A.G., Punjab
Mr. R.S.Cheema, Senior Advocate with
Mr. A.S.Cheema, Advocate,
for the complainant.**

RAJIVE BHALLA, J.

The appellants challenge judgment and order dated
28.01.2012, passed by the District and Sessions Judge,
Amritsar, convicting and sentencing them in the following terms:-

Under Section 302 IPC Sukhwinder Singh and Satnam
Singh have been sentenced to
undergo imprisonment for life and to
pay a fine of Rs.10,000/- each. In
default of payment of fine further
rigorous imprisonment for a period
of one year each.

Under Section 25 Arms Act Satnam Singh has been sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/-. In default of payment of fine further RI for a period of six months.

Before we appraise the record, consider arguments and record our opinion, it would be appropriate to point out that the incident in the present case also led to a cross case registered against the complainant and others. The cross case was tried separately and is subject matter of Crl. Appeal No.S-640-SB of 2012, which is being decided by a separate judgment of even date.

Sukhwinder Singh and Satnam Singh, appellants, have been convicted for the murders of Davinder Singh and Mahavir Singh and sentenced, under Section 302 of the Indian Penal Code. Satnam Singh has also been convicted and sentenced under Section 25 of the Arms Act, 1959.

Swaran Singh, SI/SHO, Police Station Jandiala, District Majitha and other police officials had set up a picket, at canal bridge, Dharar, where they were informed by MHC Pargat Singh that Rajdeep Singh Sarpanch, resident of Devidasspura, has been admitted in Civil Hospital, with bullet injuries. The SI/SHO, along with other police officials, reached Manawala Civil Hospital, and asked the attending doctor whether Rajdeep Singh is fit to make a statement. The doctor opined that Rajdeep Singh is fit to make a statement. The Investigating Officer recorded a signed statement made by Rajdeep Singh, Ex.P10, dated 05.05.2006, to the following

effect:-

Rajdeep Singh stated that he is the Sarpanch of the village and had entered into an agreement to purchase 7 killas of land from Chanan Singh son of Mangal Singh, Narinder Kaur daughter of Chanan Singh and Dalip Kaur wife of Chanan Singh, residents of Devidaspura. The sale deed was executed with respect to only 1½ kilas of land. As khasra girdawari of this land is in the names of Sukhwinder Singh @ Chhindu, Satnam Singh son of Pritam Singh (appellants), residents of Devidaspura, they raised a dispute. A stay order was granted in favour of Rajdeep Singh and proceedings under Section 145 Cr.P.C., ended in his favour on 02.05.2006. Today, i.e. 05.05.2006, Rajdeep Singh, Harjinder Singh, Member Panchayat, Pal Singh and Rachhpal Singh were standing on the western side of his garden when they noticed that Sukhwinder Singh, Satnam Singh, their wives, Happy son of Sukhwinder Singh, Deba, brother of brother-in-law of Sukhwinder Singh, were setting fire to the wheat crop. They rushed to the spot and tried to put out the fire. Davinder Singh resident of Verka, Mahavir Singh, Bikramjit Singh, residents of Amritsar, who are property dealers, had also reached the spot. Deba raised a "lalkara", that we should be caught and should not be allowed to go alive. Satnam Singh fired a shot from his pistol, hitting Davinder Singh in the chest. Sukhwinder Singh fired from his pistol, hitting Mahavir Singh behind his neck, Deba fired from his pistol, hitting him (Rajdeep Singh) on the right arm and while he (Rajdeep Singh) was running, Deba fired another shot from his pistol, hitting him (Rajdeep Singh) on the right arm and on the rear of

his shoulder. Bikramjit Singh, transported Mahavir Singh and Davinder Singh to Escorts Hospital, whereas he (Rajdeep Singh) was admitted in Civil Hospital, Manawala. Bikramjit Singh informed him (Rajdeep Singh) on his mobile that Mahavir Singh and Davinder Singh have expired on account of bullet injuries. Rajdeep Singh stated that a few days before the occurrence, Sukhwinder Singh had threatened them that he will take possession of the land even if he has to kill someone.

The signed statement Ex.P10 was attested by the SHO and forwarded to Police Station, Jandiala, where it led to registration of FIR No.98 of 2006, under Sections 302/307/435/120-B/ 148/149 IPC and Sections 25/27/54/59 of the Arms Act.

After registration of the FIR, PW14 SI Swaran Singh, the Investigating Officer, proceeded to Escorts Hospital, prepared inquest report, Ex.P55, forwarded the body of Mahavir Singh, for post mortem, vide request Ex.P56, through HC Mukhtiar Singh and HC Janak Raj. The Investigating Officer also prepared inquest report, Ex.P14, pertaining to Davinder Singh and forwarded an application, Ex.P13, for post mortem. The Investigating Officer proceeded to the place of occurrence, where blood stained earth was taken into possession, vide memo Ex.P11, attested by Rachpal Singh and ASI Santokh Singh. The Investigating Officer recovered two empty cartridges, vide memo Ex.P12 and after converting them into a parcel sealed it with a seal bearing mark 'SS'. Two other empty .12 bore cartridges were taken into possession after making them into a parcel and sealing them with the seal 'SS', vide memo Ex.P57. The

parcels are Ex.MO1 and MO2. A plastic shoe (ladies) was taken into possession, vide memo Ex.P58. The parcel of the shoes is Ex.MO3. A rough site plan of the location of the field is Ex.P62, whereas rough site plan, Ex.P63, depicts the place of occurrence. Two gold coloured baseball bats and one black coloured bat were taken into possession. After post mortem examination, Mahavir Singh's clothes were converted into a sealed parcel and taken into possession vide memo Ex.P60, Davinder Singh's clothes were taken into possession, vide memo Ex.P61.

The accused were arrested, statements of witnesses etc. were recorded. On 06.05.2006, Bikram Datta, Sanjiv Kumar, Rachhpal Singh and Rajwant Kaur were also arrested. Investigation was, thereafter, entrusted to DSP Balbir Singh, who recorded the statements of witnesses. On 05.05.2006, PW13 HC Tarwinder Singh, clicked photographs of the place of occurrence and handed over photographs Ex.P19 to Ex.P37 with negatives, Ex.P38 to Ex.P50, to the Investigating Officer.

Satnam Singh was arrested on 09.06.2006 from his house and produced a pistol along with five cartridges. Inspector Gurdev Singh prepared a rough sketch of the pistol, Ex.P16 and converted the pistol and five cartridges into a separate parcel and sealed them with seal 'SS'. The parcels MO1 and MO2, were taken into possession, vide memo Ex.P15. Sukhwinder Singh was also arrested.

The District Magistrate, accorded sanction Ex.P8, for prosecution of Satnam singh, under Section 25 of the Arms Act, 1959

and upon completion of investigation, a final report was filed against Sukhwinder Singh, Satnam Singh, before the learned Judicial Magistrate, Amritsar, but as the final report disclosed offences under Sections 302/307 of the Indian Penal Code, exclusively triable by a Court of Sessions, the matter was committed to the Sessions Court, where after considering the evidence on record, charges were framed under Sections 302, 435 of the Indian Penal Code and Section 25 of the Arms Act, 1959, against Sukhwinder Singh and Satnam Singh, on 03.04.2007, but as they pleaded not guilty and claimed trial, as a consequence, the prosecution was directed to adduce evidence.

The prosecution in order to prove its charges, examined PW1 Rajdeep Singh, injured complainant, and thereafter filed an application under Section 319 Cr.P.C. for summoning Rajwant Kaur wife of Sukhwinder Singh, Lakhwinder Kaur wife of Satnam Singh, Harpreet Singh @ Happy son of Sukhwinder Singh, Gurdev Singh @ Deba and Ravinderpal Singh @ Kukku as additional accused.

The Additional Sessions Judge (Adhoc), Amritsar, vide order dated 21.04.2007, summoned Rajwant Kaur, Lakhwinder Kaur, Harpreet Singh @ Happy and Gurdev Singh @ Deba as additional accused to stand trial along with Sukhwinder Singh and Satnam Singh but declined to summon Ravinderpal Singh @ Kukku. After the newly summoned accused put in appearance, fresh charges were framed against Sukhwinder Singh, Satnam Singh, Lakhwinder Kaur, Rajwant Kaur and Gurdev Singh for offences under Sections 302, 307, 435, 148, 149 IPC and in addition Section 25 of the Arms

Act against Sukhwinder Singh and Satnam Singh.

The prosecution, thereafter, examined 15 witnesses in all.

PW1 is Dr. Ashok Chanana, Associate Professor, Department of Forensic Medicine and Toxicology, Government Medical College, Amritsar, who proved the post mortem report and deposed as to the injuries on Mahavir Singh and proved the cause of death.

PW2 is Dr. Kirpal Singh, Medical Officer, Medical College, Amritsar, who conducted and proved the post mortem and deposed as to the injuries on Davinder Singh son of Harbhajan Singh and proved the cause of death.

PW3 is Dr. Rupinder Kaur, Medical Officer, PHC Manawala, Amritsar, who deposed that she medico legally examined Rajdeep Singh son of Gurmit Singh, complainant eye witness and deposed as to the injuries.

PW4 is Hardeep Singh, Clerk, office of District Magistrate, Amritsar, who proved sanction for prosecution under the Arms Act.

PW5 is HC Sukhdev Singh, who tendered affidavit, Ex.P9, into evidence, to depose that MHC Pargat Singh handed over two sealed parcels containing clothes of Mahavir Singh and Davinder Singh, duly sealed, which he handed over to the Forensic Science Laboratory, Punjab, Chandigarh, on 03.08.2006.

PW6 is Rajdeep Singh, injured complainant, who deposed as an eye witness in accordance with his statement made to the police.

PW7 is Rashpal Singh, resident of village Devidas Pura, who was produced by the prosecution to corroborate the statement made by Rajdeep Singh and has deposed in consonance with the story set up by the prosecution.

PW8 is SI Balkar Singh, who has deposed about receipt of information that on 05.05.2006, that Rajdeep Singh Sarpanch has received firearm injuries and, therefore, he went to the place of occurrence, took into possession the dead body of Davinder Singh and forwarded the same for post mortem through HC Mukhtiar Singh and HC Janak Raj and prepared inquest report, Ex.P14, pertaining to Davinder Singh.

PW9 is Balbir Singh, who was posted as DSP at Jandiala Guru and proved the recording of statements of witnesses.

PW10 is Gurdev Singh, Inspector, CIA, Amritsar Rural, who deposed that on 09.06.2006, he and other police officials arrested Satnam Singh from his house. Satnam Singh produced a pistol, which was taken into possession vide recovery memo, Ex.P15, attested by ASI Balkar Singh. Satnam Singh also produced five cartridges. PW10 proved sketch of pistol, Ex.P16, pistol and cartridges were converted into separate parcels, MO1 and MO2.

PW11 is Pawan Kumar, Ahlmad, who brought the record of Civil Suit no.217, dated 08.12.2005, titled as "Rajdeep Singh v. Chanan Singh" and proved order dated 01.04.2006, Ex.P17.

PW12 Dr. Dilpreet Singh, Radiographer, CHC, Manawala, stated that he conducted x-ray examination of right shoulder joint and right arm of Rajdeep Singh son of Gurmit Singh and proved a report,

Ex.P18.

PW13 HC Tarwinder Singh, photographer, proved photographs Ex.P19 to Ex.P37 and negatives Ex.P38 to Ex.P50.

PW14 is SI Swaran Singh, Investigating Officer, who has deposed with respect to the investigation.

After conclusion of the evidence, incriminating circumstances were put to the appellants, under Section 313 of the Cr. P.C., who denied their involvement, pleaded innocence, and stated as follows:-

"Sukhwinder Singh:

The allegations of PWs are false. Chanan Singh was elder brother of my father. Chanan Singh and his daughter had sold their land to me and my brother. Chanan Singh and his daughter had also filed a civil suit and we had deposed even Rs.25 lacs and case was withdrawn by Chanand Singh and his daughter Narinder Kaur. An appeal filed by Chanan Singh was also dismissed. Girdwaris also were in our name. The prosecution party fabricated a false ante-dated agreement in connivance with Chanan Singh and her daughter etc. they manipulated things to get stay order. The proceedings under Section 145 of Cr.P.C., were only decided on the basis of the civil suit. The prosecution party are highly influential and exercised influence over police etc. The deceased in this case are outsiders. We remained in continuous possession of land. The

complainant party came in large number to forcibly dispossess us and take possession of land. They assaulted us and caused us injuries i.e., to me and Satnam Singh. The complainant party consist of persons from distant places. They weredrunk. May be there fire shot hit their companions too. We gave our counter version before the police and other party is also challaned in a cross case. They also manipulated the police and place of occurrence to show our fault. We are innocent. They have involved innocent persons who were not even present at the place of occurrence in the case.

Satnam Singh

They have deposed falsely.”

(statements under Section 313 Cr.P.C.)

In defence, the appellants produced DW1 Dr. Amandeep Kaur, CHC Manawala, who stated that she medico legally examined Satnam Singh and Sukhwinder Singh sons of Pritam Singh and found the following injuries:-

Satnam Singh

“1. Multiple entry wounds .02 cm in diameter on the dorsem of left forearm and hand, clotted blood was present around the wound. Diffused swelling was present. No fresh bleeding was present. Area was tender and movements of hand and forearm were restricted. Advised X-ray.

2. An irregular area 3x3 cm reddish in colour, was

present on the medium of left elbow joint on ventral aspect of left cubital fossa. On palpation underlying heart object was palpable. Area was tender, swelling was present and advised X-ray;

3. 3x3 cm irregular area bright red, 5 cm below injury no.2. On palpation, heart underlying object palpable. Area was tender, swelling was present and advised x-ray.

4. Single entry wound .02 cm in diameter was present on the lateral side of left forearm, 8 cm above and anterior to lateral mealeous. Area was tender to tough, clotted blood was present around the wound and advised X-ray.”

The doctor also opined that injuries no.1 to 4 were simple in nature, weapon used was a firearm and proved MLR, Ex.D2.

Sukhwinder Singh

“1. Single entry wound 0.3 cm in diameter present on the anterior of right forearm, 6 cm below the center of cubital fossa. Clotted blood was present around the wound, area was tender, swelling was present, movement was restricted. Advised X-ray.

2. Single entry wound 0.3 cm in diameter was present on the anterior of right forearm, 4 cm below injury no.1, clotted blood was present, swelling present, movement was restricted and advised X-ray;

3. Two entry wounds .3cm in diameter was present side by side on anterior of right axilla, clotted blood was present around the wound, area was tender to touch, swelling was present and advised X-ray;

4. Two entry wound .3 cm in diameter was present on the epigastrium area, one of which was 2 cm right from mid-line and other 2 cm left to mid line. Clotted blood was present, area was tender and swelling present. Advised X-ray'

5. Single entry wounds .3cm in diameter was present, 11 cm above the left iliac crest on the left mid axillary line. Clotted blood was present, area was tender, swelling was present and advised x-ray;

6. Two entry wounds .3 cm in diameter were present on the left of umbilical region side by side. Clotted blood was present, area was tender and swelling present. Advised X-ray;

7. One entry wound .3 cm in diameter, was present on right side of chest at the level of right manubrium sterni, 4 cm right to mid line of chest. Clotted blood was present, area was tender, swelling present and X-ray was advised;

8. Irregular diffused bruise reddish blue in colour over the whole of right knee joint, whole of patellar region was involved, swelling and tenderness was present, movement was restricted, no bleeding was

present and X-ray was advised;

9. Linear incised wound 2.5x 1 cm was present vertically on anterior of left lower leg, 3 cm below the upper tibial tuberosity, fresh bleeding was present. Margins of wound were clear and advised X-ray;

10. Single entry wound .3 cm in diameter was present on the medial side of left lower leg, 24 cm above the medial malleolus. Clotted blood was present, area was tender. Swelling was present and advised X-ray;

11. 1x0.5 cm lacerated wound present on the base of left index finger on palmar surface. Fresh bleeding was present, area was tender and was advised X-ray;

12. 7.5x1 cm incised wound present on the right parietal region, anterior end of wound was 11 cm above the right pinna and posterior side, 13 cm above the nape of neck. Fresh bleeding was present, area was tender, swelling present and advised X-ray.”

The witness also deposed that a corresponding hole was present on the shirt, co-relating to injuries No.1,2,3,4,5,7 and 10 and clothes were soaked with blood. After receipt of the X-ray report, injuries no.1,2,3,7 to 12 were declared simple. The witness also proved MLR, Ex.D3 and her opinion, Ex.D4 and deposed that injuries

no.4,5, and 6 were declared grievous. The witness also proved X-ray report, Ex.D5.

DW2 Dilpreet Singh, Radiographer, PHC Manawala, deposed with respect to examination of Sukhwinder Singh and proved report, Ex.D6.

DW3 Dr. Palwinder Singh, Medical Officer, Civil Hospital, Amritsar, deposed that Sukhwinder Singh son of Pritam Singh remained under his treatment from 08.05.2006 to 12.05.2006 and was discharged on 12.05.2006.

DW4 Harbhajan Singh, deposed that Davinder Singh, deceased was his son and on the day of incident, Mahavir Singh, Sarpanch, of their village had taken his son Davinder Singh along with him.

The defence counsel tendered into evidence attested copy of judgment dated 27.10.2003 passed by Shri Dhian Singh, the then Addl. Sessions Judge (Adhoc), Amritsar, as Ex.D3; attested copy of judgment dated 4.3.2004 passed by Shri M.R.Batra, the then Sessions Judge, Amritsar, Ex.D4, copies of khasra girdwaris, Ex.D5 and Ex.D5/1; certified copy of order passed by Shri Maninder Singh Sidhu, Assistant Collector, Amritsar, Ex.D6; attested copy of plaint, Ex.D7; copy of order dated 20.12.2005, Ex.D8; copies of statements of Chanan Singh and Satnam Singh, Ex.D9 and Ex.D10; certified copy of compromise deed, Ex.D11; certified copy of order of Shri Ajaib Singh, ACJ(SD), Amritsar, dated 30.03.2009, Ex.D12; certified copy of order dated 28.04.2009 of Shri S.P.Bangarh, the then District Judge, Amritsar, Ex.D13.

After considering the evidence on record, the trial court held that possession of the land, was disputed as there is no evidence on record to prove that Rajdeep Singh had sown wheat crop or wheat crop was standing on the land. The trial court also held that there is no evidence that wheat crop had been burnt, whether proved from the site plan, Ex.P62 or photographs Ex.P22 and Ex.P23. The trial court thereafter examined the ocular testimony, the medical evidence, the recovery of weapons and held that it does not prove an unlawful assembly and proves a free fight, requiring each accused to be convicted for his own individual act. As a consequence, the trial court convicted the appellants for their individual gun shots for the murders of Davinder Singh and Mahavir Singh in terms referred to in the opening paragraph of the judgment and acquitted all the other accused.

Counsel for Sukhwinder Singh and Satnam Singh, the appellants submit that the appellants have been convicted for the sole reason that two persons on the complainant side had died. The trial court did not consider that the appellants were in settled possession of the disputed land duly proved by the sale deed and the khasra girdwari in their favour. Rachhpal Singh etc. tried to dispossess the appellants. The appellants while defending their person and property received serious injuries for which Rajdeep Singh and Rachhpal Singh have been convicted under Section 307 of the Indian Penal Code and Amrik Singh under Section 325 of the Indian Penal Code, thereby clearly proving that Rajdeep Singh etc. were the aggressors and the appellants, if at all, caused injuries in

self defence. The question before the trial court was not the nature of the injuries or the fatal attack, but which of the parties were in possession, which party initiated the attack and which party was the aggressor. Thus, before answering the question of culpability, the trial court was required to record a finding as to the person in possession and then identify the aggressors but has ignored relevant evidence that proves that the appellants were in possession.

Counsel for the appellants further submits that Sukhwinder Singh and Satnam Singh had admittedly purchased the land, in dispute, vide registered sale deed dated 04.08.2004. The Naib Tehsildar-cum-Assistant Collector IInd Class, Amritsar-I, had ordered correction of khasra girdwari, in their favour, vide order, Ex.D6, dated 13.10.2005. The khasra girdwaris Ex.D5 and Ex.D5/1, record Sukhwinder Singh and Satnam Singh in possession of the land, in dispute, thereby proving that the appellants were and are in possession of the land, in dispute. The appellants' possession having been proved. Rajdeep Singh etc. were necessarily to be held to be aggressors and as a consequence the right of private defence invoked by the appellants had to be accepted, but the trial court has held that possession was disputed. The very foundation of the story set up by Rajdeep Singh that he was in possession and the appellants set fire to the wheat crop is false being belied by the sale deed, order, Ex.D6 and khasra girdwaris Ex.D5 and Ex.D5/1. It is further submitted that the appellants' vendors filed a civil suit challenging sale deed dated 04.08.2004, which ended in a compromise, dated 20.12.2005, after their vendors accepted Rs.25

lacs, in Court. The plaint is, Ex.D7 and order passed by the Civil Court is Ex.D8. A perusal of the order Ex.D6, the khasra Girdwaries, the plaint, Ex.D7 and order Ex.D8 further prove that the appellants are owners in settled possession and, therefore, had a right to defend their person and possession, by any means and when read along with injuries on their person, proved by the depositions of DW1 Dr. Amandeep Kaur, DW2 Dr.Dilpreet Singh, DW3 Dr. Palwinder Singh, Ex.D2 the MLR of Satnam Singh and Ex.D3 the MLR of Sukhwinder Singh, prove beyond a shadow of doubt that the appellants were in possession and the complainant side tried to dispossess the appellants and inflicted injuries upon the appellants. The fact that two persons on the complainant side, who had come to dispossess the appellants, received fatal injuries, cannot translate into the culpability under Section 302 of the Indian Penal Code, as the incident at its worst discloses a free fight that falls under an exception to Section 300 and leads to an offence under Section 304 Part-II and at its worst an offence under Section 304, Part-I of the Indian Penal Code.

It is further submitted that Chanan Singh and Narinder Kaur, the appellants' vendors connived with the complainant Rajdeep Singh, and after the land has already been sold to the appellants, Rajdeep Singh filed a suit for specific performance on the basis of an ante dated agreement to sell. Rajdeep Singh played a fraud upon the Court and, though, the appellants had not been served, obtained an injunction to restrain the appellants from interfering in his possession, over the land, in dispute. Rajdeep Singh has admitted

in his deposition, in Court, that the appellants were not served before the civil court. The ex-parte order dated 01.04.2006, was eventually recalled on 30.03.2009 and the injunction order was vacated. The order vacating the injunction was upheld by the District Judge, vide order dated 28.04.2009. It is argued that as the sale deed, the revenue record and the other evidence prove that the appellants were in possession, the trial court committed a serious error, by ignoring this evidence and convicted the appellants. It is also argued that the story set up by Rajdeep Singh that the appellants set fire to his wheat crop, is false as the prosecution did not taken into possession any burnt wheat crop or prove that any crop was burnt. It is further submitted that the deposition by PW1 Rajdeep Singh and the other evidence on record, reveal that about 20 persons were accompanying Rajdeep Singh, in cars etc., thereby proving that they had come to dispossess the appellants. The deceased Davinder Singh and Mahavir Singh have a criminal background and, therefore, had been brought by Rajdeep Singh and other property dealers, to dispossess the appellants. It is further submitted that failure of the prosecution to explain grievous injuries on the person of the appellants, proves that the story set up by the prosecution, is false. The story put forth by the appellants is more probable and, therefore, should have been accepted. It is contended that conviction of Rajdeep Singh etc., in the cross case for offences under Sections 307 and 324 of the Indian Penal Code, clearly proves the contention raised by the appellants and, therefore, the appeal may be allowed and the appellants may be acquitted.

Counsel for the State of Punjab as well as counsel for the complainant, submit that the relevant date for determining possession is the date of occurrence, i.e. 05.06.2006. The appellants' plea that they were in possession and, therefore, had a right of private defence, is based upon an order passed by a Naib Tehsildar, directing correction of khasra girdwaris. The khasra girdwaris may have been considered as evidence of possession but for an order dated 01.04.2006, passed by a Civil Court, granting an injunction to Rajdeep Singh restraining the appellants and others from interfering in the possession of Rajdeep Singh. A perusal of order, dated 01.04.2006, Ex.P17, reveals that the civil court recorded a prima facie finding that Rajdeep Singh is in possession and consequently restrained the appellants and others from interfering in his possession rendering irrelevant orders passed by a revenue officer and entries in the khasra girdwaries. A revenue officer does not exercise judicial or quasi judicial power and no presumption of truth attaches to entries in khasra girdwaries. It is, thus, argued that as on the date of the occurrence, a civil court had recorded a prima-facie finding that Rajdeep Singh was in possession, the trial court has rightly held that the appellants were the aggressors and while trying to take forcible possession, inflicted injuries, both fatal and simple. The subsequent setting aside of this order or that this order was ex-parte, is irrelevant, as a court dealing with a criminal case, is required to appraise facts obtaining on the date of commission of an offence. On 05.06.2006, the date of offence, a civil court order was in subsistence and the SDM had restrained the appellants from

interfering in the possession of Rajdeep Singh, there can be no dispute that the appellants were the aggressors and, therefore, not entitled to invoke the right of private defence of property much less of their person. It is further submitted that the fact that burnt crop was not lifted by the police is an error by the Investigating Officer, that does not entitle the appellants of any benefit particularly as in their defence, they have admitted the occurrence and have received injuries. The injuries on the persons of the appellants prove the incident, establish their presence and the recovery of a pistol from Satnam Singh, proves the prosecution case, in its entirety.

We have heard counsel for the parties, appraised the evidence on record and the impugned judgment.

An altercation over a parcel of agricultural land is the cause for this unfortunate incident which has led to death of two persons and injuries to others. Both sides allege their respective possession, allege that the other party made an attempt to take forcible possession, that the other side was the aggressor and both parties invoke their right of private defence of person and property. At this stage, it would be once again appropriate to point out that the appellants along with their co-accused, who have been acquitted, were arraigned as accused pursuant to a statement made by Rajdeep Singh, recording the facts that led to the murder of Mahavir Singh and Davinder Singh and injuries to Rajdeep Singh who has along with Rachhpal Singh and Amrik Singh been convicted in a cross case for causing injuries to Sukhwinder Singh and Satnam Singh, appellants in the present case.

The trial court has after appraising the evidence on record, held that it is not possible to record a finding as to which of the parties was in actual possession and, therefore, held that possession was disputed. The trial court has also held that it is not possible to determine which of the parties was the aggressor and, therefore, proceeded to infer a free fight and convicted the appellants for their individual acts. Thus, the questions that arise from these diametrically opposing version of the same incident are whether there is any conclusive evidence to prove the possession of the appellants or the complainant, which of the parties, was the aggressor and in case such a conclusion is possible, then which of the parties, is entitled to invoke its right of private defence and to what extent and if not so proved, whether they should be convicted for their individual acts, by concluding that the incident that led to the death of two persons and injuries to others was a free fight.

The occurrence took place on 05.05.2006, in village Devidaspura, Tehsil and District Amritsar, as per the prosecution led to injuries to Rajdeep Singh, the death of Mahavir Singh and Davinder Singh, for which the police lodged FIR No.98, dated 05.05.2006 and injuries to Sukhwinder Singh and Satnam Singh for which the police registering a cross case.

Before we proceed to answer the questions posed, it would be necessary to refer to the evidence adduced by the prosecution, namely medical evidence, depositions by eye witnesses, evidence of recoveries other than evidence and reports received from the Forensic Science Laboratory. The prosecution, in

order to prove, that the appellants inflicted fatal injuries, relies upon the ocular testimony by PW6 Rajdeep Singh, the complainant and PW7 Rachhpal Singh. The law as set into motion by Rajdeep Singh making a statement before SI/SHO, Police Station Jandiala, District Majitha, on 05.05.2006, that he is the Sarpanch of the village and entered into an agreement to purchase 7 kilas of land from Chanan Singh son of Mangal Singh, Narinder Kaur and Dalip Kaur, daughter and wife, respectively. The sale deed was executed with respect to ½ acres of land but as the khasra girdwari of this land was in the name of Sukhwinder Singh @ Chhindu, Satnam Singh son of Pritam Singh, the appellants, they began to raise a dispute. Rajdeep Singh obtained an injunction from a Civil Court and proceedings under Section 145 Cr.P.C., ended in his favour but despite these orders, when on 05.05.2006, Rajdeep Singh, Harjinder Singh, Pal Singh and Rachhpal Singh were standing on the western side of his garden, they saw Sukhwinder Singh and Satnam Singh, accompanied by their wives, Happy son of Sukhwinder Singh, Deba, brother of bother-in-law of Sukhwinder Singh, setting fire to the wheat crop. Rajdeep Singh and others rushed to the spot and tried to put out the fire. In the meanwhile, Davinder Singh resident of Verka, Mahavir Singh, Bikramjit Singh, residents of Amritsar, who are property dealers, also reached the spot. Deba raised a "lalkara" at which Satnam Singh fired a shot from his pistol, which hit Davinder Singh in the chest. Sukhwinder Singh, followed suit by firing a shot from his pistol, which hit Mahavir Singh behind the neck. Deba also fired from his pistol, which hit Rajdeep Singh on the right arm and while

Rajdeep Singh was running, Deba fired another shot from his pistol, hitting Rajdeep Singh on the right arm and the rear shoulder. Rajdeep Singh stepped into the witness box as PW6 and deposed as follows:-

"I am a Sarpanch of village Panchayat. I had entered into an agreement for the purchase of land measuring 7 killas from Chanan Singh son of Mangal Singh. Dalip Kaur wife of Chanan Singh, Narinder Kaur d/o Chanan Singh in the year 2003. Out of the said land, I had got executed a sale deed regarding land measuring 2½ kilas. Sukhwinder Singh accused and his brother Satnam Singh were having dispute regarding said land with me and they were doing so at the instance of Narinder Pal Singh who is president of Nagar Palika, Jandiala Guru. I got stay order since I was in possession. Police initiated proceedings u/s 145 Cr.P.C. and same were decided on 2.5.06. On 5.5.06, at 11 AM, I along with Harjinder Singh Member Panchayat, Rachhpal Singh, member panchayat was present on the western side of my garden. I saw Sukhwinder Singh, Satnam Singh, Rajwant Kaur, Lakhwinder Kaur, Harpreet Singh alias Happy son of Sukhwinder Singh, Gurdev Singh @ Deva setting my wheat crop on fire which was cultivated in the disputed land. I, Harjinder Singh, Rachhpal

Singh, Bikram Dutta, Ravinder Singh and Mahabir Singh tried to put off the fire, then Gurdev Singh alias Deba gave lalkara that I be caught hold and be not allowed to go alive. Satnam Singh fired from his pistol at Davinder Singh hitting on his chest. Sukhwinder Singh fired shot hitting Mahabir Singh on the back of neck, Gurdev Singh @ Deba fired a shot from his pistol hitting on my right arm, from distance 4/5 karams. Then, I started running and Gurdev Singh fired again at me. Davinder Singh and Mahabir Singh were got admitted in Escort Hospital, Amritsar, by Bikram Dutt. Harjinder Singh took me first to CH. Manawala after getting document from the police. Later on I came to know that Davinder Singh and Mahabir Singh had died. About 2/3 days earlier Ravinder Pal Kitchlu had stated at Gurdwara that he would have to get persons killed and he will not allow us to enter the land. My statement Ex.P10 was recorded by the police which was signed by me after admitting as correct.”

The cross examination of Rajdeep Singh was directed primarily against the injunction granted to him by a civil court, order passed under Section 145 Cr. P.C., as well as attempt by persons accompanying him to take forcible possession.

PW7 is Rachhpal Singh is the other eye witness, who has

deposed as follows:-

“On 5.5.06, at 11 AM there was auction of the Panchayat land I along with Rajdeep Singh Sarpanch was standing there. Harjinder Singh son of Sardara Singh was also with us. Sukhwinder Singh armed with a pistol, Satnam Singh also having a pistol, Gurdev Singh @ Deba was also having pistol, Rajwinder Kaur and Lakhwinder Kaur were putting the crop on fire. Happy was also setting the crop on fire. Rajdeep Singh asked us to help in extinguishing the fire. We tried to extinguish the fire. Gurdev Singh gave lalkara that we should not be allowed to go alive. Satnam Singh fired a shot which hit Davinder Singh in the chest. Sukhwinder Singh fired a shot hitting on back side of neck of Mahabir. Then Gurdev Singh fired a shot hitting on right arm of Rajdeep Singh. Then the accused ran away with their respective weapons while firing. Harjinder Singh had taken Rajdeep Singh to hospital. We had come to know that Mahabir Singh and Davinder Singh were taken to hospital. Police had come to the spot. Police picked up from the spot blood stained earth and 4 empties of the firing. The same were made into parcel and taken into possession. I had attested the memo Ex.P11 regarding the taking into

possession blood stained earth and Ex.P12 regarding empty of pistol. My statement was recorded. The occurrence had taken place due to the dispute of land.”

Rachhpal Singh was cross-examined but the defence was unable to elicit any answer as would cast any doubt on his deposition and his presence as an eye witness.

The ocular testimony by Rachhpal Singh and Rajdeep Singh is consistent in all material particulars and is devoid of any exaggeration or embellishment vis-a-vis statements recorded by the police. Thus, we find no reason to doubt their depositions that gun shots fired by Sukhwinder Singh and Satnam Singh hit Mahavir Singh and Davinder Singh, respectively and led to their deaths but these depositions can only be accepted if they are corroborated, in all material particulars by medical evidence.

The medical evidence adduced by the prosecution to prove the homicidal death of Mahavir Singh and Davinder Singh, gun shots are depositions by PW1 Dr. Ashok Chanana and PW2 Dr. Kirpal Singh. PW1 Dr. Ashok Chanana, Associate Professor, Department of Forensic Medicine and Toxicology, Government Medical College, Amritsar, has deposed that on 06.05.2006, he conducted post mortem on Mahavir Singh son of Darman Singh and found the following injuries:-

“1. A lacerated wound with inverted margins, abraded margins, 1.3 x 1.00 incised oval in shape with dark reddish brown colour. Staining of margins

and dark bluish infiltration of the blood around the wound was present on the back and right side of neck 0.5 cm below the posterior hair line.

On dissection, injury no.1 communicated with the oral cavity after injuring the intervening soft tissue structures and fracturing the laminae of cervical second and cervical third vertebrae, membrans, spine, pedicles and bodies of cervical second and third vertebrack, soft tissue structure of right side of laryngopharynx. The oral an nasal cavity contained 50 CC and 20 CC of fluid and clotted blood respectively. Dark reddish brown discolouration/infiltration of blood was present in the back of the projectile which was of divergent type. Infiltration of blood was also present at the site of fractures.”

The doctor opined that the injury which was ante mortem in nature, is the result of a firearm and is sufficient in the ordinary course of nature to cause death. It would be appropriate to point out that the fatal injury was at the rear right side of the neck and is in consonance with depositions by the eye witnesses Rajdeep Singh and Rachhpal singh, that a shot fired by Sukhwinder Singh from his pistol hit Mahavir Singh behind the neck, thereby corroborating the deposition by these eye witnesses.

PW2 Dr. Kirpal Singh, Medical Officer, Medical College, Amritsar, conducted post mortem on Davinder Singh son of

Harbhajan Singh and found the following injuries:-

“1. Perforated lacerated wound .8x.7 cm oval shape present on front and right side of chest 3 cm distal to medial end of clevical. Margins were inverted and abraided. Clotted blood was present.

2. Lacerated wound 10 cm on right side of back of chest 1.9 cm above lower end of scapula. Margins were everted and divergent. Clotted blood was present”.

The doctor opined that the injury was ante mortem in nature and the result of firing of a firearm. It would be appropriate to point out that the fatal injuries were two in numbers, namely, an entry wound and an exit wound. The entry wound is on the front right side of the chest whereas the exit wound is on the right side of the back of the chest, thereby corroborating the depositions by eye witnesses that Satnam Singh fired a shot from his pistol that hit Davinder Singh in the chest.

PW3 Dr. Rupinder Kaur, Medical Officer, PHC Manawala, Amritsar, deposed that she medico legally examined Rajdeep Singh son of Gurmit Singh, complainant eye witness and found the following injuries:-

“1) An entry wound 1x1.3 cms incised, was present on front and medial part of right arm at the level of elbow joint and 4 cms medial to mid line and 24 cms above wrist joint. A red colour abrasion 5x1 cm in size, was emerging into the lower end of above

mentioned wound.”

The margins of wound were levelled and skin was of black colour. No thread or foreign body was present on wound surface. Fresh bleeding was detected on the wound. No corresponding hole was present on the sleeves of shirt. The clothes were soaked with fresh blood. X-ray was advised for shoulder joint for right arm and elbow and forearm for bullet and pellet.

“2) An another wound 1x0.5 cm in size, was present on right scapular, 20 cms below shoulder joint, 9 cms. Away from posterior axillary line.”

The skin of wound margins was not black. Margins were clean. No foreign body was seen on the wound surface. Fresh bleeding was present. X-ray was advised for right scapular region. Probable duration of injuries was within six hours. The doctor proved copy of MLR as Ex.P4. The doctor further stated that after receipt of x-ray report, injuries no.1 and 2 were declared simple in nature and proved report Ex.P5.

The medical evidence thus corroborate ocular evidence and is further corroborated by recovery of a country made pistol and five live cartridges from Satnam Singh, vide recovery memo, Ex.P15, which were converted into sealed parcels No.MO1 and MO2. A report was received from the Forensic Science Laboratory, Chandigarh, Ex.P7, that the pistol recovered from Satnam Singh, a . 30 inch country made pistol, and cartridges from cases marked C1 and C2 contained in parcel 'A' were fired from the country made pistol Mark W-1, thereby proving that country made pistol recovered

from Satnam Singh was fired at Davinder Singh, hitting the latter on his chest and leading to his ultimate demise.

As regards, Sukhwinder Singh, two empty 12 bore cartridges were recovered from the spot and during investigation, a .12 bore double barrel gun along with ten .12 bore cartridges and two .12 bore special cartridges recovered from Satnam Singh were sent to the FSL, Chandigarh. The report, Ex.P7, corroborates the prosecution case that Sukhwinder Singh has fired from a .12 bore double barrel gun and the shot so fired hit Mahabir Singh on the rear of his neck, leading to a fatality.

The ocular testimonies duly corroborated by medical evidence, recovery of the weapons of offence prove without a semblance of doubt that the fatal gun shots were fired by the appellants but as counsel for the appellants, has argued that prosecution has not been able to explain injuries on the persons of the appellants, which have been duly proved by the depositions of Dr. Ashok Chanana, Dr. Kirpal Singh and Dr. Rupinder Kaur, who found four injuries on the person of Satnam Singh, though, simple in nature, and 12 injuries on the person of Sukhwinder Singh, out of which injuries Nos. 4,5, and 6 were declared grievous, it would be appropriate to deal with this evidence and argument. The failure to explain injuries on the person of appellants does not detract from the depositions by Rajdeep Singh and Rachhpal Singh that gun shots fired by the appellants led to fire arm injuries that led to the ultimate demise of Davinder Singh and Mahavir Singh. The oral testimonies are duly corroborated by medical evidence and recoveries thus, the

only questions that remains, in view of injuries to the person of the appellants is which party was in possession, which party was the aggressor, was it a free fight, is any party entitled to invoke the right of private defence of person and property?

A perusal of the evidence adduced in defence reveals that the appellants' have proved that they purchased the land, in dispute from Chanan Singh, vide registered sale deed dated 04.08.2004 and on 13.10.2005. It is also true that the Naib Tehsildar, passed an order correcting the khasra girdwari in their names. After execution of the sale deed, their vendors Chanan Singh and Narinder Kaur, filed a civil suit challenging the sale deed. The suit was eventually settled by compromise dated 20.10.2005. The appellants press this evidence in support of their plea that they were in settled possession. The prosecution, on the other hand, asserts that as on the relevant date, an injunction order dated 01.04.2006 was subsisting in favour of Rajdeep Singh, entries in khasra girdwaries and orders passed by revenue authorities, ordering correction of khasra girdwaries cannot prevail over an order passed by a civil court and, therefore, there is no question of the appellants being in possession. As regards order dated 01.04.2006, passed by a civil court issuing an injunction restraining the appellants from interfering in the possession of Rajdeep Singh, it is argued that the order is not binding as they were never served and eventually the civil court itself vacated this order on 30.03.2009. It is also asserted that Rajdeep Singh has himself admitted, in his deposition as PW6 that the appellants were never served before the civil court.

A due consideration of the arguments advanced by counsel for the parties and appraisal of the documentary evidence, in our considered opinion, does not enable us to record a firm finding as to the person(s) in actual physical possession on 05.05.2006. The evidence on record, namely, sale deeds, order by a Tehsildar, khasra girdwaries pressed by the appellants, a sale deed and an injunction pressed by the complainant in proof of their respective possession, in our considered opinion prove that the appellants and Rajdeep Singh, were admittedly in serious conflict over this parcel of land. The appellants claim a sale deed in their favour whereas Rajdeep Singh claims a prior agreement to sell. A Naib Tehsildar, vide order dated 13.10.2005 directed correction of khasra girdwaries to record the possession of Sukhwinder Singh and Satnam Singh. The khasra girdwaries are Ex.D5 and Ex. DW5/1 and do indeed, record the cultivating possession of Sukhwinder Singh and Satnam Singh but as admitted by all concerned, in a civil suit for specific performance, filed by Rajdeep Singh, arraying the appellants as defendants along with Chanan Singh and Narinder Kaur, the Civil Court passed an order dated 01.04.2006, restraining the appellants Chanan Singh and Narinder Kaur from interfering in the possession of Rajdeep Singh. The order led to the SDM, passing an order asking Sukhwinder Singh and Satnam Singh to comply with this order. An order passed by a civil court, recording a prima facie finding as to the person in possession, even in an application for temporary injunction, must necessarily prevail over any order passed by a revenue officer or entries in khasra girdwaries which merely point to an existing state

of affairs, on the date of their recording and not on the date of a particular incident. A khasra girdwari is a mere fiscal entry and as it is neither an annual record nor part of the record of rights a presumption of truth is not attached to such an entry. A prima facie finding of a civil court must necessarily prevail over a khasra girdwari entry and, therefore, a party claiming possession shall have to prove actual physical possession by other tangible and credible evidence. The order passed by the Civil Court, therefore, does pose a degree of difficulty. We would have had no hesitation in holding that Rajdeep Singh was in possession of the property in dispute but there are certain significant facts, that cast a doubt on the actual physical possession of Rajdeep Singh. In his statement, Ex.P10, made to the police, Rajdeep Singh stated that his wheat crop was set on fire by the appellants, but strangely enough, there is no evidence of his having sown any wheat crop. The site plan prepared by the police does not indicate any burnt wheat crop, nor did the police take possession of any burnt remains of wheat crop and most significant of all photographs Ex.P20 to Ex.P23 do not show any burnt wheat crop. This apart, Rajdeep Singh has not proved that pursuant to the agreement to sell, which was the foundation of his civil suit and the injunction order, actual physical possession was ever delivered to him by Chanan Singh and Narinder Kaur. At this stage it would be necessary to point out that our conclusion may appear to contradict our opinion that an order of a civil court shall prevail over khasra girdwari but we cannot loose sight of the fact that in a criminal case where facts and presumptions play a vital role proof of actual

physical possession would determine the rights of parties. It would, therefore, be necessary to recapitulate that the sale deed executed in favour of Sukhwinder Singh and Satnam Singh, is dated 04.08.2004, the compromise with their vendors is dated 20.12.2005 but the injunction order is dated a few days before the occurrence thereby fortifying our opinion in the peculiar facts and circumstances of this case that it cannot be said with any degree of certainty as to which of the parties was in actual physical possession and concur with the opinion recorded by the trial court.

The revenue record and the injunction order apart, it appears that possession over the land was tenuous with both parties asserting and claiming possession using, revenue record and orders by courts to perpetuate possession. To hold on the basis of a khasra girdwari to which a presumption of truth is not attached or the order by the Assistant Collector passed in summary proceedings or on the basis of a temporary injunction, which was eventually vacated that Sukhwinder Singh etc. or Rajdeep Singh etc. were in settled possession would require us to traverse the realm of speculation. We are, therefore, one with the trial court in holding that it cannot be held with any degree of certainty which of the parties was in settled possession and, therefore, which was the aggressor and which of them is entitled to invoke the right of private defence. The appellants would, therefore, as held by the trial court be liable for the injuries attributed to them.

As regards the injuries on the appellants, suffice is to state that as we have recorded an opinion that there was a free fight

with both parties inflicting injuries, each party would be held liable for its own separate act. The complainant side has also been convicted in a cross case which we would deal with, while dealing with the cross case against the complainant side.

We, therefore, affirm the findings recorded by the trial court that the appellants are not entitled to invoke their right of private defence and person and, therefore, must be convicted for their individual acts. The evidence on record, proved by the depositions of two eye witnesses, read along with the medical evidence, as well as recovery of weapons, which have been linked to the fatal shots, point out without ambiguity that a free fight between the appellants and the complainant side led to the firing of gun shots, the ultimate demise of Mahavir Singh and Davinder Singh and, therefore, affirm the judgment of the trial court convicting and sentencing the appellants for the murders of Davinder Singh and Mahavir Singh. The appeal is consequently dismissed.

(RAJIVE BHALLA)
JUDGE

24th December, 2014
nt

(AMOL RATTAN SINGH)
JUDGE