

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

**(1) Criminal Appeal No.S-1809-SB of 2012
Date of Order: 24th December, 2014**

Amrik Singh son of Gurmukh Singh ...Appellant

Versus

State of Punjab

...Respondent

(2) Criminal Appeal No.S-640-SB of 2012

**1. Rajdeep Singh son of Gurmeet Singh
2. Rachhpal Singh son of Sunder Singh.**

...Appellants

Versus

State of Punjab

...Respondent

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

**Present: Mr. Kanwal Goyal, Advocate,
for the appellant
(in CRA-S-640-SB of 2012)**

**Mr. R.S.Cheema, Senior Advocate with
Mr. A.S.Cheema, Advocate,
for appellant No.1 and
Mr. G.B.S.Dhillon, Advocate,
for appellants no.2 and 3
(in CRA No.S-640-SB of 2012).**

Mr. Rajesh Bhardwaj, Addl.A.G.,Punjab.

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 307 IPC Rajdeep Singh, Rachhpal Singh have been sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/-. In default of payment of fine to undergo further rigorous imprisonment for six months.

Under Section 324 IPC Appellant Amrik Singh has been sentenced to undergo rigorous imprisonment for 3 years.

The appeal in the present case arises from a cross case, registered under Sections 302, 435/34 IPC read with Sections 25,54, 59 of the Arms Act, in FIR No.98, dated 05.05.2006. The FIR was registered pursuant to a statement made by Rajdeep Singh, Sarpanch of village Devidas Pura, appellant no.1, in Crl. Appeal No.S-640-SB of 2012, that there was a dispute regarding land measuring 7 acres, which he had partly purchased. The remaining land had been agreed to be purchased from Chanan Singh. On 05.05.2006, at about 11.00 A.M., when he, Harjinder Singh, Pal Singh and Rachhpal Singh, were present in his orchard, they saw Sukhwinder Singh, Satnam Singh and their wives, Happy son of Sukhwinder Singh and Deba, brother of brother-in-law of Sukhwinder Singh, setting fire to the wheat crop, growing in the disputed land. They tried to stop Sukhwinder Singh etc. from setting fire to the crop. In the meanwhile, Davinder Singh, Mahavir Singh, Bikramjit Singh also reached the spot. Satnam Singh raised a "lalkara" and then fired a shot from his pistol, which hit Davinder Singh on his chest. Sukhwinder Singh fired another shot from his pistol, which hit

Mahavir Singh on the neck. Deba also fired two gun shots from his pistol hitting Rajdeep Singh on the right arm and right shoulder. Rajdeep Singh was admitted to hospital and treated for his injuries. Davinder Singh and Mahavir Singh succumbed to the gun shot injuries.

After recording the FIR, SI/SHO Swaran Singh, received information on 05.05.2006 that Sukhwinder Singh and Satnam Singh, the accused in the FIR have been admitted in Civil Hospital, Manawala, with injuries. The Investigating Officer moved applications Ex.P8 and Ex.P10, seeking the opinion of the attending doctor whether Sukhwinder Singh and Satnam Singh are fit to make a statement. Vide endorsements Ex.P9 and Ex.P11, the doctor declared that Sukhwinder Singh and Satnam Singh are fit to make statements.

Sukhwinder Singh made a signed statement, Ex.P1, that there was a dispute with Rajdeep Singh regarding a parcel of land and proceedings under Section 145 Cr.P.C., had been initiated. At about 11.00 AM, on 05.05.2006, when Sukhwinder Singh, Satnam Singh and Rajwant Kaur wife of Satnam Singh were in their house, Rajdeep Singh and Rachhpal Singh, armed with double barrel guns, Kulwant Singh son of Piara Singh, Harjinder Singh, Sardool Singh, Amrik Singh, Bikram Dutta, Sandeep Dutta, Davinder Singh, Mahabir singh, Hunny, Jugni, Sanjeev, Sahbi @ Amarjit, Raju Chikna @ Tejinder Singh, Dr. Mann @ Mintu, Gursewak Singh and Jaswinder Singh, armed with 'dangs' and 'sotas' along with three other ladies, travelling in three vehicles, a Scorpio, a Qualis and a Maruti Zen,

entered the disputed land. Sukhwinder Singh and Satnam Singh immediately rushed to the land. Rajdeep Singh raised a lalkara that they should be taught a lesson for preventing them from harvesting the wheat crop. Rajdeep Singh fired two shots from a double barrel gun at Sukhwinder Singh, which hit Sukhwinder Singh on the chest, hip and arms. Amrik Singh, inflicted two blows with a 'kirpan', which hit Sukhwinder Singh on the right side of his head and left leg. Rachhpal Singh fired a shot from the double barrel gun, which hit Satnam Singh on his left arm and left leg and pellets also hit below his ankle. At the instance of Raj Kumar Malhotra, Municipal Councillor, Municipal Committee, Jandiala Guru, injuries were also inflicted on Sukhwinder Singh and Satnam Singh with 'dangs' and 'sotas' etc. The statement, Ex.P1, was endorsed by SI Swaran Singh and forwarded to the Police Station where it led to recording of the DDR, Ex.P5, by ASI Karam Singh, as a cross case in FIR No.98, dated 05.05.2006.

SI Swaran Singh, visited the spot and prepared a rough site plan, Ex.P12, HC Talwinder Singh took photographs Ex.P19 to Ex.P37 and negatives Ex.P38 to Ex.P50. Dr. Amanpreet Kaur, Medical Officer, CHC, Manawala, medico legally examined Satnam Singh and vide MLR, Ex.P15, found four injuries on his person. After receipt of the X-ray report, Ex.P20, she declared the injuries simple. Sukhwinder Singh was medico legally examined by Dr. Amanpreet Kaur, vide MLR, Ex.P17, and found 12 injuries on his person. Injuries No.1,2 3, 7 to 12 were declared simple but were attributed to a firearm. After receipt of the X-ray report, Ex.P21 and clinical report

Ex.P16, injuries no.4,5, and 6 were declared grievous. Sukhwinder Singh was referred to Civil Hospital, Amritsar, for surgery where he was treated by Dr. Palwinder Singh. Sukhwinder Singh remained admitted in hospital from 08.05.2006 to 12.05.2006, as per bed head ticket Ex.P14/A.

Inspector Gurdev Singh arrested Sardool Singh and Kulwant Singh, on 24.05.2006 vide memos Ex.P14/A and Ex.P14/B. ASI Karam Singh and HC Paramjit Singh produced Amarbir Singh son of Gurnam Singh, before DSP Balbir Singh, on 05.06.2006. Amarbir Singh produced a .12 bore double barrel gun with 10 live cartridges, which were taken into possession, vide memo Ex.P22.

Bikram Dutta, Sanjeev Kumar and Rachhpal Singh were arrested on 06.05.2006. Bikram Dutta suffered a disclosure statement, Ex.P6, on 07.05.2006, which led to recovery of a Safari vehicle, which was taken into possession, vide memo Ex. P7. Rajdeep Singh was arrested on 12.05.2006. Amarbir Singh was released on bail. Harjinder Singh and Sandeep Dutta were found innocent.

After completion of investigation, a final report was filed against Jaswinder Singh, Gursewak Singh, Amarbir Singh @ Sahbi, Rajdeep Singh, Bikram Dutta, Sanjeev kumar, Rachhpal Singh, Sardool and Kulwant Singh . A supplementary challan was filed against Amrik Singh, Harpreet Singh @ Hunny, Tejinder Singh @ Raju and Jugni @ Anuj Mehra. The matter was eventually placed before the Court of Sessions, where charges were framed under Sections 148/149/307/323/324 of the Indian Penal Code, against Dr.

Jaswinder Singh @ Mann, Gursewak Singh, Amarbir Singh, Rajdeep Singh, Bikram Singh, Sanjeev Kumar, Rachhpal Singh, Sardool Singh, Kulwant Singh, Amrik Singh, Jugni @ Anuj Mehra, Harpreet Singh @ Hani and Tejinder Singh @ Raju @ Chikna to which the accused pleaded not guilty and claimed trial. The prosecution was, therefore, directed to lead evidence.

The prosecution has examined 17 witnesses, whereas the defence has examined seven witnesses. A large number of documents have been led into evidence.

PW1 is Sukhwinder Singh, who has deposed in consonance with the statement made before the police that Rajdeep Singh raised a 'Lalkara', whereafter, Rajdeep Singh fired two shots from his gun with an intention to kill, which hit him on his chest, hip and arms. Amrik Singh inflicted two kirpan blows, which hit him on the right side of his head and left leg. Rachhpal Singh fired another shot at Satnam Singh, which hit him on his left arm and left leg. In his cross-examination, PW1 admitted that a civil suit filed by Rajdeep Singh is pending and also admitted that a stay order was granted in favour of Rajdeep Singh and proceeding under Section 145 Cr.P.C., "might" have been decided in favour of Rajdeep Singh but denied that a sale deed had been executed in favour of Rajdeep Singh or that any part of the land was in possession of Rajdeep Singh. PW1 also denied that any crop had been cultivated by the accused or that they had gone to harvest the crop when they fired gun shots, resulting in the death of Mahavir Singh and Davinder Singh. Sukhwinder Singh stated that Rajdeep Singh had only entered into an agreement to

purchase the land. PW1 also denied that he had made an attempt to take forcible possession.

PW2 is HC Sukhdev Singh, who tendered his affidavit, Ex.P2.

PW3 is Anokh Raj, Arms Clerk, DC Office, Amritsar, who proved licence of .12 bore DBBL gun issued to Amarbir Singh son of Gurnam Singh, as Ex.P3.

PW4 is SI Swaran Singh, who conducted investigation, recorded statements of the complainant and the injured, went to the place of occurrence, prepared the site plan, and deposited case property with the MHC. During cross-examination, he denied that Rajdeep Singh had sown wheat crop or that he was in possession of the land, in dispute.

PW5 is Tilak Raj, Record Keeper, Civil Hospital, Amritsar, who proved the admission of Sukhwinder Singh in Civil Hospital, Amritsar, from 08.05.2006 to 12.05.2006 and proved the original bed head ticked, Ex.P13.

PW6 is HC Pargat Singh, who tendered his affidavit, Ex.P14.

PW7 is Dr. Amanpreet Kaur, Medical Officer, CHC Manawala, who medico legally examined Satnam Singh and Sukhwinder Singh, the injured and deposed with respect to the medico legal reports Ex.P15 and Ex.P17 and the injuries on their persons.

PW8 is Dilpreet Singh, Radiographer, PHC Manawala, who medico legally examined Satnam Singh and Sukhwinder Singh,

the injured and deposed with respect to the x-ray examination and reports, Ex. P20 and Ex.P21.

PW9 Balbir Singh is the then DSP, Jandiala, who is a witness to the production of .12 DBBL gun and 10 cartridges by Amarbir Singh son of Gurnam Singh, which were taken into possession vide memo Ex.P22 and deposited with MHC.

PW10 is Satnam Singh, injured, brother of PW1 Sukhwinder Singh, who has deposed in consonance with the statement made by PW1.

PW11 is HC Pargat Singh, who tendered affidavit, Ex.PW11/A.

PW12 is ASI Karam Singh, who recorded report no.16, dated 06.05.2006, at 1.00 P.M., after the report forwarded by SI/SHO Swaran Singh and is a witness to the recovery of a Safari vehicle at the behest of Bikram Dutta and the accused who have been acquitted as well as to the recovery of .12 bore DBBL gun from Amarbir Singh.

PW13 is Dr. Palwinder Singh, Medical Officer and Surgical Specialist, CHC, Khemkaran, who examined Sukhwinder Singh, who was referred from CHC Manawala, for surgical management, and proved original bed head ticket, Ex.PW14/A. In cross-examination, he denied that he had seen any injury, which was caused by a firearm.

PW14 is Inspector Gurdev Singh, who arrested Sardool Singh and Kulwant singh and proved their arrest memos, Ex.PW14/A and Ex.PW14/B.

PW15 is HC Talwinder Singh, photographer, who proved photographs, Ex.P19 to Ex.P37 and negatives Ex.P38 to Ex.P50.

PW16 is Smt. Sawinder Kaur, Clerk, DTO Office, Amritsar, who proved the original record pertaining to a Mahindra Scorpio vehicle and a Safari vehicle.

PW17 is Harvinder Singh, Clerk, DTO Office, Amritsar, who proved the registration with respect to Tata Safari.

The public prosecutor, thereafter, tendered into evidence FSL reports, Ex.PX and Ex.PY and closed the prosecution evidence.

Upon conclusion of prosecution evidence, the incriminating circumstances were put to the appellants under Section 313 Cr.P.C., who denied their involvement and pleaded their innocence.

The accused examined DW1 Dr. Ashok Chanana, Associated Professor, Department of Forensic Medicine and Toxicology, Government Medical College, Amritsar, who had conducted post mortem on Mahavir Singh son of Darman Singh, proved the post mortem report, Ex.DA and described the injuries.

DW2 Dr. Rupinder Kaur, Medical Officer, PHC Manawala, who proved the copy of MLR, Ex.DB pertaining to Rajdeep Singh son of Gurmit Singh, the complainant, in FIR No.98, dated 05.05.2006 and an appellant in the present appeal.

DW3 is Manish Kumar, Clerk, Judicial Record Room, Amritsar, who produced the record with respect to Civil Suit No.446 (Rajdeep Singh v. Chanan Singh), dated 08.12.2005/04.05.2010 and proved order dated 01.04.2006, whereby an application for injunction

filed by Rajdeep Singh was allowed. A certified copy of this order is Ex.DF.

DW4 is Smt. Rupali, Clerk, Office of Deputy Commissioner, Amritsar, who proved the record pertaining to security proceedings under Section 145 Cr.P.C., and also proved order dated 02.05.2006, Ex.DG.

DW5 is Dilpreet Singh, Radiographer, PHC, Manawala, who proved x-ray report pertaining to Rajdeep Singh son of Gurmit Singh, Ex.DW5/A.

DW6 is Dr. Kirpal Singh, Lecturer, Government Medical College, Amritsar, who conducted post mortem on the dead body of Davinder Singh, Ex.DW6/A.

DW7 is Dr. R.S.Boparai, Professor of Orthopaedic, Government Medical College, Amritsar, who brought the bed head ticket of Rajdeep Singh son of Shri Gurmeet Singh, Ex.DW7/A and deposed that he was operated on 24.07.2006 and suffered a gun shot injury on his right arm.

After considering the evidence on record, the trial court convicted Rajdeep Singh, Rachhpal Singh and Amrik Singh, appellants, in terms referred to in the opening paragraph of the judgment but acquitted all the other accused by giving them the benefit of doubt.

Counsel for appellants Rajdeep Singh, Rachhpal Singh and Amrik Singh submits that the evidence on record reveals that Sukhwinder Singh and Satnam Singh, fired gun shots that led to the death of Mahavir Singh and Davinder Singh. The statement by

Sukhwinder Singh before the police and his deposition reveals that he does not allege much less claim that they were in possession and in fact admits that there was a stay order in favour of Rajdeep Singh. The failure to assert or prove possession whether in the statement made before the police or while deposing in Court, when read along with the subsisting injunction by a Civil Court, dated 01.04.2006, holding Rajdeep Singh, appellant in possession and order dated 02.05.2006 (Ex.D3), passed under Section 145 Cr.P.C., clearly prove that Rajdeep Singh was in possession. PW1 and PW10, Sukhwinder Singh and Satnam Singh have merely stated that the appellants entered the disputed fields. The appellants having proved their possession, had a right to defend their person and possession and, therefore, injuries if any on the person of the appellants, were inflicted in self defence. It is also argued that injuries on Sukhwinder Singh and Satnam Singh were found to be simple in nature and though the doctors have deposed that these injuries were caused by a .12 bore cartridge, no pellets were recovered. The injuries on Sukhwinder Singh have been wrongly held to be grievous as a perusal of the MLR and other relevant documents reveals that these injuries were not dangerous to life. It is further submitted that a perusal of the deposition of PW1 and PW10 does not refer to any sale deed much less any claim that they had purchased the land and, therefore, the conviction of Rajdeep Singh and Rachhpal Singh under Section 307 and Amrik Singh under Section 324 of the Indian Penal Code is not warranted. It is also argued that a perusal of the medical evidence produced in defence, clearly proves that the complainant

side was the aggressor and, therefore, the evidence has been wrongly discarded by the trial court. The delay by Sukhwinder Singh in making the statement before the police has not been explained.

Counsel for the State of Punjab as well as counsel for the complainant submit that it is proved that Sukhwinder Singh and Satnam Singh were in possession, duly proved by order passed by the Naib Tehsildar and entries in the khasra girdwaries. The civil court order was obtained by concealing relevant facts, Sukhwinder Singh and Satnam Singh were in possession and when Rajdeep Singh and others made an attempt to dispossess them, Sukhwinder Singh and Satnam Singh defended their possession and person and, therefore, injuries on their person caused by the appellants, have rightly been held to invite conviction and sentence under Section 307 and 324 of the Indian Penal Code. It is further argued that prosecution has proved its case by the depositions of PW1 and PW10 injured eye witnesses, corroborated by recovery of weapons and medical evidence and, therefore, the impugned judgment and order of conviction and sentence are legal and valid and do not call for interference.

Before appraising the evidence, the impugned judgment and order, as well as considering arguments, it would be appropriate to point out that the appeal arises from a cross version, set up by Sukhwinder Singh and Satnam Singh, accused in FIR No.98, dated 05.05.2006, lodged by Rajdeep Singh, one of the appellants in the present case, alleging that Sukhwinder Singh and Satnam Singh (complainants) murdered Davinder Singh and Mahavir Singh, while

attempting to dispossess the appellants from the land, in dispute.

Rajdeep Singh, the appellant, in the present case is the complainant in FIR No.98, dated 05.05.2006, in which Sukhwinder Singh and Satnam Singh have been convicted for the murder of Mahavir Singh and Davinder Singh. The appellants have been convicted for injuries to Sukhwinder Singh and Satnam Singh. A piece of land, a dispute regarding its ownership and possession is the foundation of the present case.

The appellants, claim that Rajdeep Singh was in possession of the land, in dispute, is proved by grant of an injunction in his favour by a Civil Court. The appellants also claim that the SDM, pursuant to an order passed under Section 145 of the Cr. P.C, directed Sukhwinder Singh and Satnam Singh not to interfere in the possession of Rajdeep Singh. The complainant side, on the other hand, which we may once again point out are accused in the FIR and have been convicted for the murders of Mahavir Singh and Davinder Singh, allege to the contrary and assert their ownership by alleging that the appellants made an attempt to take forcible possession of the land, in dispute, leading to injuries to the complainant's party.

The prosecution in order to prove its case, relies upon the ocular testimony by PW1 Sukhwinder Singh and PW10 Satnam Singh, injured eye witnesses, the deposition by PW7 Dr. Amanpreet Kaur, to prove the extent and nature of injuries on the person of Sukhwinder Singh and Satnam Singh, PW8 Dilpreet Singh, Radiographer, PHC Manawala, to prove the x-ray report, PW13 Dr. Palwinder Singh, Medical Officer and Surgical Specialist, CHC

Khemkaran, to prove the medical treatment provided to Sukhwinder Singh, the recovery of a weapon allegedly used to fire the gun shots and other link evidence collected by the police and a reports received from the FSL.

The prosecution case was set into motion, as a cross case in FIR No.98, dated 05.05.2006, registered under Sections 307/323/324/148/149 IPC, after the complainant Sukhwinder Singh, recorded a statement before SI/SHO Swaran Singh, Police Station Jandiala, Ex.P1, stating that there was a dispute over a parcel of land with Rajdeep Singh. At about 11.00 AM, on 05.05.2006, Sukhwinder Singh, Satnam Singh and Rajwant Kaur were present in their house when Rajdeep Singh and Rachhpal Singh, armed with DBBL gun, Kulwant Singh son of Piara Singh, Harjinder Singh, Davinder Singh, Mahabir Singh, Bikram Dutta, Sandeep Dutta, Davinder Singh, Mahabir Singh, Hunny, Jugni, Sanjeev, Sahbi @ Amarjit, Raju Chinka @ Tejinder Singh, Dr. Mann @ Mintu, Gursewak Singh and Jaswinder Singh armed with "dangs" and "sotas" along with three other ladies, came on Scorpio, Qualis and Maruti Zen and entered the disputed land. Sukhwinder Singh and Satnam Singh reached the land but Rajdeep Singh raised a "Lalkara" that they should be taught a lesson for preventing them from harvesting the wheat crop. Rajdeep Singh fired two gun shots at Sukhwinder Singh, which hit Sukhwinder Singh on the chest, hip and arms. Amrik Singh gave two kirpan blows, which hit on the right side of head and left leg and Rachhpal Singh fired from a DBBL gun at Satnam Singh, hitting the left arm and left leg and pellets also hit below his ankle.

Sukhwinder Singh and Satnam Singh, injured eye witnesses, stepped into the witness box and deposed in consonance with their statements made before the police. A perusal of their cross-examination reveals that they have remained steadfast as to the particulars of the incident, namely, the firing of the gun shots and the inflicting injuries with a kirpan by Rajdeep Singh, Rachhpal Singh and Amrik Singh, respectively.

After receiving injuries, Satnam Singh and Sukhwinder Singh were removed to CHC, Manawala, where they were examined by PW7 Dr. Amanpreet Kaur, who found the following injuries:-

Satnam Singh

“1. Multiple entry wound .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 hard object was palpable. Area tender, swelling was present. Advised x-ray;

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

4. Single entry wound .02 cm in diameter was present on the lateral side of left forearm, 8 cms above and anterior to lateral malleolus. Area was tender to touch, clotted blood was present around the wound and advised x-ray."

After receipt of the X-ray report, the doctor declared injuries no. 1 to 4 as simple in nature but the weapon used was a firearm and proved MLR, Ex.P15.

Sukhwinder Singh

"1. Single entry wound 0.3 cm in diameter present on the anterior of right forearm, 6 cms 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. 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 tender to touch, swelling present. 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,

swelling present. Advised x-ray'

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

6. Two entry wound .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 advised x-ray;

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. Leniar 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 .3cm 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 palmer 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.”

After receipt of the x-ray report, the doctor declared injuries no.1,2,3,7 to 12 as simple in nature and opined that the nature of weapon used was a firearm and injuries no.4,5 and 6 were declared as grievous. The doctor also proved MLR, Ex.P16, opinion, Ex.P17 and x-ray report Ex.P19.

PW8 Dilpreet Singh, Radiographer, PHC, Manawala, who conducted x-ray examinations of Satnam Singh and Sukhwinder Singh and deposed as follows:-

Satnam Singh

“X-ray left forearm including elbow joint-AP lateral view

X-ray left hand including wrist joint-AP lateral view

X-ray left lower leg including ankle joint view-AP lateral view”

Sukhwinder Singh

"X-ray right forearm	AP Lateral View
X-ray right arm	AP Lateral View
X-ray right shoulder joint	AP Lateral View
X-ray right knee joint	AP Lateral View
X-ray right lower leg	AP Lateral View
X-ray chest	AP Lateral View
X-ray abdomen	AP Lateral View
X-ray left lower leg	AP Lateral View
X-ray left hand	AP Lateral View

PW8 further stated that X-ray examination was conducted under the supervision of Dr. Hardeep Singh, who proved reports, Ex.P20 and Ex.P21, respectively.

PW13 Dr. Palwinder Singh, Medical Officer and Surgical Specialist, CHC, Khemkaran, has deposed that on 08.05.2006, he examined Sukhwinder Singh son of Pritam Singh, who was referred from CHC, Manawala, for surgical management. PW13 proved the bed head ticket Ex.PW14/A and stated that Sukhwinder Singh was discharged on 12.05.2006.

The medical evidence, namely, depositions by PW7 Dr. Amanpreet Kaur, PW8 Dilpreet Singh, Radiographer, and PW13 Dr. Palwinder Singh, the medico legal reports, x-ray reports and bed head tickets when read with the ocular testimony, proves in all material particulars that injuries upon Sukhwinder Singh and Stanam Singh, which were firearm and kirpan injuries, were inflicted by Rajdeep Singh, Rachhpal Singh and Amrik Singh. It would be

appropriate to point out that, though, injuries on Satnam Singh were declared simple, it was opined that they had been inflicted with a firearm. The injuries on Sukhwinder Singh, numbered twelve. Injuries no.1,2,3,7 to 12 were found to be simple and the nature of weapon used were said to be a firearm. Injuries no.4,5, and 6 were declared grievous. Injuries no.9 and 10, though, stated by the doctor to have been inflicted with a firearm, appears to be an error as the dimensions of the injury and their location etc. prove that they were caused by a sharp edged weapon, namely a Kirpan. The medical evidence corroborates in all material particular, the depositions by PW1 and PW10, Sukhwinder Singh and Satnam Singh injured witnesses.

The next piece of evidence, is the recovery of weapons. It would be appropriate to point out that no weapon was recovered from the appellants. A .12 bore DBBL gun with 10 live cartridges was produced by Amrik Singh son of Gurnam Singh and taken into possession vide memo Ex.P22, dated 05.06.2006. PW11 HC Pargat Singh filed an affidavit that the DBBL gun was deposited in the malkhana and thereafter was taken out on 18.06.2006 and sent to the Forensic Science Laboratory, Chandigarh and once again deposited on 19.06.2006. This apart, no other weapon was recovered. The kirpan used by Amrik Singh to inflict injuries was also not recovered by the police. The DBBL gun was sent for forensic examination, but the reports received from the FSL, Ex.PX and Ex.PY, does not record a forensic examination of the DBBL gun.

The police is, therefore, is unable to prove the weapon whether the

firearm or the 'kirpan' used to inflict injuries on the complainants. The failure to recover firearms can at best be said to be an aberration on the part of the prosecution but in the facts and circumstances of the present case, cannot be held to be destructive of the prosecution case. The recovery of a weapon of offence is normally a significant circumstance but where police is unable to recover the weapon, it cannot by itself be the sole factor to acquit an accused. The peculiar facts of the present case, namely, both parties admitting a fight over a parcel of land, injuries on both side, fatal and grievous, the admitted presence of both side, as discernible from prosecution evidence as well as evidence adduced in defence, in our considered opinion, renders failure of the prosecution to recover the weapons, insufficient to record an order of acquittal.

The next question that would necessarily determine the outcome of this appeal is whether the appellants are entitled to invoke the right of private defence. A perusal of the evidence adduced in defence, reveals that a few days before the occurrence, Rajdeep Singh obtained an injunction from a Civil Court restraining the complainants from interfering in his possession. The SDM also passed an order in consonance with the interim injunction granted by the Civil Court. Counsel for the appellant has forcefully canvassed that the injunction, proves that the appellants, were in possession and as they were attacked by the complainants, have if all, inflicted injuries in furtherance of their right of private defence of person and property.

We have considered this argument, perused the order

passed by the Civil Court and the SDM and, though, we may have held in the face of a subsisting injunction that a presumption of possession would arise in favour of the person holding an injunction but the absence of any sale deed, document of possession, revenue entry recording Rajdeep Singh or Rachhpal Singh in possession, or evidence that Rajdeep Singh and Rachhpal Singh had sown wheat crop or were in settled physical possession of the land, in dispute, are not inclined to hold that the injunction order, entitles the appellants to invoke their right of private defence of person and possession. The nature of the occurrence, which led to death of two and injuries to others, in our considered opinion proves that possession at best was tenuous, i.e., neither party was in settled possession, with each party trying to dispossess the other to perpetuate its possessory rights. On the fateful day, both parties assembled at the site and inflicted injuries. A perusal of the evidence on record reveals that gun shots are attributed to Rajdeep Singh and Rachhpal Singh, whereas injuries with a sharp edged weapon are attributed to Amrik Singh, thereby, leading to a singular conclusion that a dispute over this parcel of land led to a free fight between the parties, thereby requiring each accused liable for his individual culpable act. The appellants, who fired gun shots and inflicted a 'kirpan' blow on a vital part of the body, inflicted these blows with intention and knowledge to cause death, thereby placing their acts within the mischief of Section 307 of the Indian Penal Code. The depositions by two eye witnesses, the MLR supported by deposition by doctors and a radiographer, the evidence produced in defence

proves the prosecution case in its entirety.

Consequently, accepting the evidence adduced by the prosecution and rejecting the evidence adduced by the defence, we affirm the judgment and order passed by the trial court and dismiss both the appeal. The appellants are on bail. In view of the dismissal of the appeal, their bail bonds are cancelled. The appellants be taken into custody forthwith to undergo the remainder of their sentences.

(RAJIVE BHALLA)
JUDGE

24th December, 2014
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(AMOL RATTAN SINGH)
JUDGE