

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal-D No. 797-DB of 2010

Date of Decision:- November 27, 2017

Gurdip Singh and others

.....Appellants

Versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. D.S.Brar, Advocate for the appellants.

Mr. Nakul Sharma, Advocate for the complainant.

Mr. H.S.Grewal, Additional Advocate General, Punjab.

Gurvinder Singh Gill, J.

1. Gurdip Singh, Tarsem Singh @ Harbhajan Singh and Ranjit Singh have filed this appeal challenging judgment dated 19.2.2010 passed by learned Additional Sessions Judge, Ferozepur whereby they have been convicted for offences under Section 302, 324 & 323 IPC and have been sentenced as under :-

Name of convicts	Convicted u/s	Sentence Imposed	In default of payment of fine
Gurdip Singh	(i) 302 IPC	R.I. for life and fine of ₹ 5,000/-.	Further R.I. for 2 years.
	(ii) 324/34 IPC	R.I. for 1 year and fine of ₹ 500/-.	Further R.I. for 1 month.
	(iii) 323/34 IPC	R.I. for 6 months.	— — — —

Tarsem Singh @ Harbhajan Singh	(i) 302/34 IPC	R.I. for life and fine of ₹ 5,000/-.	Further R.I. for 2 years.
	(ii) 324 IPC	R.I. for 1 year and fine of ₹ 500/-.	Further R.I. for 1 month.
	(iii) 323/34 IPC	R.I. for 6 months.	— — — —
Ranjit Singh	(i) 302/34 IPC	R.I. for life and fine of ₹ 5,000/-.	Further R.I. for 2 years.
	(ii) 324/34 IPC	R.I. for 1 year and fine of ₹ 500/-.	Further R.I. for 1 month.
	(iii) 323 IPC	R.I. for 6 months.	— — — —

2. The case arises out of FIR No.116 under Sections 302, 324, 323, 148 and 149 IPC registered at Police Station Ghall Khurd, District Ferozepur on 20.7.2003 at the instance of Hardev Singh son of Surjit Singh resident of Kamaggar. The gist of statement (Ex.PH) of Hardev Singh, when translated to English reads as follows :-

“I am resident of village Kamaggar. We are three brothers. While Jagdev Singh is elder to me, Sukhwant Singh is younger to me. We are agriculturists. Gurdip Singh is younger brother of my father. My father has ancestral property in two villages. My grandfather Bhagwan Singh had executed a WILL, as per which land in village Mahna Singh Wala was bequeathed in favour of my uncle Gurdip Singh, while land in village Kamaggar was given to my father. We shifted our residence from village Mahna Singh Wala to Kamaggar in the year 1986. My uncle Gurdip Singh gave a writing in Panchayat regarding relinquishment of possession of residential plot measuring one

kanal in our favour, as and when the same is required by us. Though we had requested my uncle Gurdip Singh several times to release possession of the said residential plot but he did not give possession. Today, I along with my brothers Jagdev Singh and Sukhwant Singh and Jaspal Singh son of Ajmer Singh, who is my maternal uncle, assembled in order to go to village Mahna Singh Wala to resolve the dispute. We went on tractor trolley make 'Eicher' bearing Registration No.RRK-4195 belonging to my maternal uncle Jaspal Singh. When we reached in the street in front of our '*Haveli*' plot at about 11-11:30 A.M. then Gurdip Singh armed with a '*sabbal*' (crowbar), Ranjit Singh armed with a '*dang*' (stick), Binder Kaur empty handed, Tarsem Singh armed with a '*Gandasa*', came running in the street along with two-three unidentified persons armed with '*dangs*'. Binder Kaur raised '*lalkara*' - "catch hold of them and teach them a lesson for getting possession of one kanal plot". Gurdip Singh gave a blow with '*sabbal*' to Jaspal Singh on back of his neck upon which he fell on the ground. When my brother Jagdev Singh stepped forward, Tarsem gave a blow with '*gandasa*' on his head on right side. When my brother Sukhwant Singh stepped forward to save them, then Ranjit gave a '*dang*' blow hitting on the middle finger of his right hand. My brother Sukhwant Singh and Jagdev Singh were caused more injuries. When we raised alarm '*mar ditta - mar ditta*', my father Surjit Singh and Amrik Singh came to the spot and thereafter assailants ran away with their respective

weapons. The cause of grudge is that our residential plot measuring one kanal was in possession of my uncle Gurdip Singh which we wanted to get released from him but he was not giving possession of the same. The accused, after conspiring with each other had caused injuries to us. After arranging for vehicles we took Jaspal Singh, Jagdev Singh and Sukhwant Singh to Civil Hospital, Ferozepur. However, Jaspal Singh succumbed to his injuries before reaching hospital. I have made my statement. Action be taken.”

3. Pursuant to recording of aforesaid statement, FIR was lodged. Inquest proceedings were conducted. The dead body of Jaspal Singh was sent for post-mortem examination. The police visited the spot and prepared rough site plan. The place of occurrence was photographed. Opinion of doctor was obtained as regards the injuries sustained by Jagdev Singh and Sukhwant Singh. The accused Gurdeep Singh, Tarsem Singh and Ranjit Singh were arrested on 10.9.2003, 29.9.2003 & 27.10.2003, respectively. Accused Tarsem Singh produced a '*gandasa*' which was taken into possession vide recovery memo Ex.PM.
4. Upon conclusion of investigation, challan was presented against four accused namely Gurdip Singh, Tarsem Singh, Binder Kaur and Ranjit Singh in the Court of Chief Judicial Magistrate, Ferozepur on 3.1.2004 for offences under Sections 304, 323, 324/34 IPC which was committed to Court of Sessions vide order dated 14.1.2004. The case was assigned to the Court of Additional Sessions Judge, Ferozepur who upon finding sufficient grounds to presume that the accused had committed offences punishable under Sections 302, 323,

324/34 IPC framed charges for the said offences against the accused on 3.2.2004 to which the accused pleaded not guilty and claimed trial.

5. It may here be added that the members of the accused party had also sustained injuries and a cross-version in respect of the occurrence was lodged and the present complainant party has been separately prosecuted and convicted in respect of the said cross-version. The appeal in respect of the cross-version is also being decided today, separately, by this Court.
6. The prosecution, in order to establish charges framed against the accused, examined PW-1 Dr. Jajbir Singh, Medical Officer, Civil Hospital, Ferozepur who proved post-mortem report (Ex.PA) in respect of deceased Jaspal Singh. PW-1 opined that cause of death was shock as a result of injury to upper part of spinal cord. PW-1 further stated that on the same day he had medically examined Jagdev Singh and proved the MLR as Ex.PD. PW-6 Dr. Santokh Singh, Medical Officer, who had medically examined Sukhwant Singh proved his MLR as Ex.PK.
7. PW-2 Hardev Singh who is the complainant stated in tune with his statement Ex.PH on the basis of which FIR was lodged. PW-3 Jagdev Singh, brother of complainant stated in corroboration to the testimony of the complainant Hardev Singh. PW-4 Sukhwant Singh, another brother of the complainant, who was injured in the occurrence stated about the occurrence and thus lent corroboration to the testimony of the complainant.
8. PW-5 Krishan Lal, Draftsman proved the scaled site plan of the place of occurrence as Ex.PJ. The prosecution examined PW-6 Dr. Santokh Singh who stated that on 20.7.2003, he medically examined Sukhwant Singh and proved

the MLR as Ex.PK. PW-7 SI Yadvinder Singh stated that on 29.9.2003, Tarsem Singh appeared before him in Police Station and produced a '*gandasa*' which was taken into possession vide recovery memo Ex.PN and was deposited with MHC. PW-8 Head Constable Satnam is a formal official witness who tendered his affidavit (Ex.PO) in evidence. PW-9 SI Pushpinder Singh who is Investigating Officer in the present case stated in detail as regards the entire investigation conducted in the case right from recording of statement of complainant upto filing of challan.

9. After conclusion of prosecution evidence, entire incriminating evidence appearing against the accused was put to them to enable them to explain the same. The accused while denying the case of prosecution pleaded innocence. Accused Gurdip Singh and Ranjit Singh took a stand that in fact it is the complainant party who had come on three tractor-trolleys loaded with bricks, brick bats, sand and mud and were raising *lalkaras* and abusing the accused and started demolishing wall of the disputed plot and in the process also caused injuries to Binder Kaur. While she was being caused injuries, Gurdip Singh and Ranjit Singh tried to save her and when Gurdip Singh stepped forward then Sukhwant Singh gave a blow with handle of tractor towards Gurdip Singh but the blow missed Gurdip Singh and rather hit on the person of Jaspal Singh. Accused Tarsem Singh took a stand that case had falsely been registered against him due to his relationship with Gurdip Singh and that he was not present at the spot.
10. The accused in their defence examined DW-1 Dr. R.K.Singal who proved the MLR of Binder Kaur as Ex.DA, MLR in respect of Gurdip Singh as Ex.DC and MLR in respect of Ranjit Singh as Ex.DE.

11. DW-2 Manpreet Kaur daughter of Gurdip Singh stated that her grand father Bhagwan Singh had transferred land situated at village Mahna Singh Wala in favour of his father by way of a Will and the land situated at Kamaggar in favour of his uncle Surjit Singh. She further stated that Surjit Singh etc., however, wanted to take forcible possession of plot measuring one kanal which had fallen to their share and that on the day of occurrence i.e. on 20.7.2003, Surjit Singh, Hardev Singh, Jagdev Singh and Sukhwant Singh along with 20-25 unidentified persons came on three tractor-trolleys loaded with bricks, brick-bats, sand, loose earth, sticks etc. and started hurling abuses and raising *lalkaras* and demolished their wall and entered their house forcibly. She further stated that her mother Binder Kaur came forward but was given blow with '*gandasa*' by Hardev Singh on her head upon which she fell on the ground and then Surjit Singh gave a blow with '*dang*' on her right shoulder. She further deposed that Jagdev Singh gave a blow with iron pipe on the back of her leg. She further stated that when her father Gurdip Singh and brother Ranjit Singh came forward to rescue her mother then Sukhwant Singh gave a blow with tractor handle towards her father but missed him and the blow hit Jaspal Singh on the back of his neck.
12. DW-3 Dr. Hardut Jyoti, Assistant Professor, Medical College, Patiala tendered his affidavit Ex.DW3/A wherein he deposed that on 20.7.2003, he had conducted X-ray examination of Binder Kaur and had observed fracture of parietal bone of skull. He further stated that on the same day he had also conducted X-ray examination of Gurdip Singh and had observed a cut extended upto cortex of Ulna and also found fracture of Acromion process of scapula on the right side. He further stated that upon X-ray examination of

Ranjit Singh no bone injury was found. He has proved the aforesaid X-ray reports as Ex.DW-3/B, Ex.DW-3/C and Ex.DW-3/D.

13. The learned trial Court upon considering the evidence on record, while acquitting Binder Kaur, convicted the appellants for offences under Section 302, 324 and 323 vide judgment dated 19.2.2010. Aggrieved against the same, the appellants have filed the present appeal.
14. The learned counsel for the appellants while assailing the impugned judgment submitted that the trial Court fell in error in convicting the appellants, though the evidence on record clearly established that it is the complainant party which was the aggressor and injuries, if any, caused to the complainant party had been inflicted in self-defence as the accused had demolished a wall of plot belonging to the complainant party and wanted to take forcible possession of the plot belonging to the complainant party, situated in village Mahna Singh Wala. The learned counsel for the accused thus prayed for acceptance of appeal and for acquittal of the appellants by setting aside the impugned judgment.
15. On other hand, the learned counsel for the State submitted that the evidence on record clearly shows that a large number of injuries had been caused by the accused to the complainant party with deadly weapons and that the injury inflicted on head of Jaspal Singh proved fatal. The learned counsel for the State further submitted that there is no evidence on record to establish that the plot in question was in possession of the accused so as to vest them with right of private defence. The learned State counsel, thus, submitted that the evidence led by the prosecution fully establishes the charges framed against the appellants and that there is no misreading of evidence and thus prayed for

dismissal of the appeal.

16. We have considered rival submissions addressed before this Court and with able assistance of learned counsel have also perused record of the case.
17. Before proceeding to consider the contentions put forth by the learned counsel, it will be apposite to refer to medical evidence led by the prosecution. The prosecution in order to establish the factum of death of Jaspal Singh examined PW-1 Dr. Jajbir Singh who deposed that on 20.7.2003, he had conducted post-mortem examination on the dead body of Jaspal Singh and found the following injuries on the dead body:-

1. Swelling 10 cm x 5 cm on the nape of neck. On dissection dark red colour blood came out of the wound, ligamentum flavum between atlas and axis vertebra was torn and impinging upon membrane and spinal cord. There was fracture dislocation of atlanto-axial joint of cervical spine, surrounding tissue was infiltrated with blood.

18. PW-1 proved the post-mortem report as Ex.PA and opined that the cause of death was shock and as a result of injury to upper part of spinal cord. PW-1 also stated that on the same day, he had medically examined Jagdev Singh. He proved the MLR as Ex.PD wherein the injuries have been described as follows :-

1. Incised wound 4 cm x 0.75 cm on right side of fronto parietal region, 3 cm from anterior hair line and 6 cm from right pinna. Fresh bleeding was present. Injury was bone deep. X-ray was advised.
2. Reddish contusion 7.5 cm x 2.5 cm on right scapula just behind right shoulder. Tenderness was present. X-ray was advised.

19. The prosecution also examined PW-6 Dr. Santokh Singh who stated that on 20.7.2003, he medically examined Sukhwant Singh and found the following injuries on his person :-

1. A lacerated wound $\frac{1}{2}$ cm x $\frac{1}{4}$ cm skin deep on the later side of little finger in the centre of the left hand, clotted blood was present at the wound side. Pain in tenderness was present.
2. Complaint of pain in the middle of right forearm but no injury visible. X-ray was advised.
3. Complaint of pain on left side of head behind the left ear but no injury was seen. X-ray was advised.

20. PW-6 proved the MLR of Sukhwant Singh as Ex.PK. Both the aforesaid witnesses were cross-examined on behalf of the accused, but nothing substantial could be elicited during cross-examination so as to doubt the veracity of their statements or their opinion as regards cause of death or existence of injuries. In any case, we find that the occurrence is virtually admitted inasmuch as the accused Gurdip Singh and Ranjit Singh in their statements recorded under Section 313 Cr.P.C. have admitted that Gurdip Singh had given a blow with tractor handle towards Sukhwant Singh but somehow the blow missed Sukhwant Singh and hit Jaspal Singh. In these circumstances, the factum of existence of injuries cannot be doubted. As such, while it is held that Jaspal Singh died a homicidal death, Jagdev Singh and Sukhwant Singh had sustained injuries on their person.

21. While as per the complainant, it is the accused party, who had attacked them resulting in death of Jaspal Singh and injuries on person of Jagdev Singh and Sukhwant Singh, the accused party has taken a stand that in fact it is the

complainant Hardev Singh and others who were the aggressors and had caused injuries to the accused party and the accused party had acted in self-defence.

22. The prosecution relies upon the testimony of the complainant PW-2 Hardev Singh as well as the eye-witnesses PW-3 Jagdev Singh and PW-4 Sukhwant who are all brothers who have all stated in tune with the case of prosecution as set out in the FIR. A perusal of FIR as well as the statement of aforesaid eye-witnesses shows that the complainant himself admits that his grandfather Bhagwan Singh owned property in two villages i.e. in village Mahna Singh Wala and in village Kamaggar. Bhagwan Singh had two sons namely Surjit Singh and Gurdip Singh. As per FIR itself, while Bhagwan Singh executed a WILL bequeathing his property situated at village Mahna Singh Wala in favour of Gurdip Singh while the property situated at Kamaggar was given to Surjit Singh. Thus, the property at village Mahna Singh Wala where the occurrence took place had fallen to the share of Gurdip Singh - accused.
23. However, the complainant has set up a case that in fact as per a writing furnished by Gurdip Singh in the Panchayat, a residential plot measuring one kanal situated at Mahna Singh Wala had been relinquished by Gurdip Singh in favour of complainant party and that Gurdip Singh would hand over possession to them as and when required by the complainant party. It is the case of the complainant that despite several requests Gurdip Singh had not given possession and that on the day of occurrence the complainant party had in fact gone to village Mahna Singh Wala to resolve the matter when they were attacked.

24. The fact that Bhagwan Singh had property in two different villages & had given property at Mahna Singh Wala to Gurdip Singh and property at Kammagar to Surjit by way of WILL and that Surjit Singh had shifted to Kammagar in 1986 is admitted by accused as would be evident from a perusal of statement recorded under Section 313 Cr.P.C. and also from testimony of DW-2 Manpreet Kaur, daughter of accused Gurdip Singh.
25. However, as regards complainant's assertion that Gurdip Singh had agreed to give plot measuring one kanal situated at Mahna Singh Wala to Surjit Singh, apart from the aforesaid bald recital in the FIR regarding a writing having been furnished by Gurdip Singh in the Panchayat, no documentary evidence has been led by the prosecution to establish that Gurdip Singh had indeed agreed to relinquish plot measuring one kanal in village Mahna Singh Wala in favour of Surjit Singh. Since the complainant has admitted that his grandfather Bhagwan Singh who was owning land in two villages had given his land by way of a Will situated in Mahna Singh Wala to Gurdip Singh and the land situated in village Kamaggar to Surjit Singh, therefore, it was for the complainant party to lead convincing evidence to show that despite the said Will, Gurdip Singh had agreed to relinquish the plot measuring one kanal situated in village Mahna Singh Wala in favour of his brother Surjit Singh. However, there is no evidence to this effect on record. As per the FIR itself, the complainant party had shifted to village Kamaggar in the year 1986 after his grandfather had given away his land situated in two villages to his two sons.
26. The Investigating Officer i.e. PW-9 Sub-Inspector Pushpinder Singh, during his cross-examination stated that during investigation, he came to know that the complainant party had come to the spot to take forcible possession of one

kanal of plot which was in possession of Gurdip Singh etc. PW-9 further stated therein that during investigation, it had also come to light that the complainant party had demolished the outer wall of plot by hitting the back of the trolley against the wall. He further stated therein that the place of occurrence in this case is the courtyard of Gurdip Singh and that the place of occurrence was in possession of Gurdip Singh. A perusal of photographs Ex.D1 to D6 shows that the Eicher tractor bearing Registration No.RRK-4195 along with trolley is loaded with bricks etc. which would indicate the intention of the complainant party and it cannot be said that the complainant party had gone to the place of occurrence just to amicably resolve the matter regarding possession. The said tractor number is mentioned in FIR itself and admittedly the complainant party had gone on this tractor.

27. It is also established from record that in fact Binder Kaur, Gurpreet Singh and Ranjit Singh of the accused party had also sustained injuries. The injuries found on the person of members of the accused party, as per MLRs Ex.DA, Ex.DC and Ex.DE are described as follows :-

Binder Kaur

1. 5 cm x 0.5 cm incised wound, horizontally placed in the middle of head. Fresh bleeding was present. X-Ray was advised.
2. 7 cm x 2 cm reddish contusion involving right shoulder and lateral end of right clavicle.
3. 10 cm x 2 cm reddish contusion obliquely placed on lateral surface of middle of right leg.
4. The patient complained pain the back of right thigh. There was no obvious swelling or injury..

Gurdip Singh

1. 3 cm x 0.5 cm lacerated wound in the middle of head, obliquely placed just above the forehead. Fresh bleeding was present. X-Ray was advised.
2. 5 cm x 1 cm incised wound across the middle of posterior surface of left fore-arm. X-Ray was advised.
3. 4 cm x 1 cm reddish contusion on top of right shoulder.
4. 4 cm x 1 cm reddish contusion in right scapular region. X-Ray was advised.
5. 8 cm x 8 cm reddish contusion involving middle of right arm. X-Ray was advised.
6. 5 cm x 5 cm reddish contusion involving back of lower end of right arm. X-Ray was advised.
7. 3 cm x 1 cm reddish contusion on posterior surface of right fore arm 2 cm below elbow joint.

Ranjit Singh

1. 15 cm x 3 cm reddish contusion on right side of back of chest, just below scapulla.
2. 7 cm x 3 cm reddish contusion on right side just, medial to top of shoulder.
3. 12 cm x 8 cm reddish contusion on back of right shoulder.
4. 2 cm x 0.5 cm lacerated wound with fresh bleeding on left side of back of the head. X-ray was advised.

28. The medical evidence further reveals that the injuries sustained by accused Binder Kaur and Gurdip Singh included greivous hurts. DW-3 Dr. Hardut Jyoti, Assistant Professor, Medical College, Patiala who had conducted X-ray examination of Binder Kaur stated that she had a fracture of parietal bone of

skull. He further deposed that upon X-ray examination of Gurdip Singh he observed a cut extending upto cortex of Ulna and also found a fracture of Acromion process of scapula on the right side.

29. Since the place of occurrence was situated in village Mahna Singh Wala and the land situated in said village had been given to Gurdip Singh-accused by way of a WILL, as admitted by both the parties, and the assertion of accused regarding relinquishment of a plot in their favour in the said village having not been established, therefore, it is clearly borne out that it is the complainant party who is the aggressor who had gone to the village of accused i.e village Mahna Singh Wala, to take possession of plot which was in possession of the accused party.
30. Having held that the plot where the occurrence took place belonged to Gurdip Singh who was in possession of the same, it goes without saying that the accused would have a right to protect their property. If the complainant party had entered the plot and started demolishing wall of the disputed plot in an apparent bid to take possession of the same, it was, but natural, for the accused party to restrain the complainant party from interfering into their possession and to do all that was needful for protecting their possession.
31. Section 96, 97 and 100 of IPC for the sake of ready reference are reproduced below :-

96. Things done in private defence.—Nothing is an offence which is done in the exercise of the right of private defence.

97. Right of private defence of the body and of property.—Every person has a right, subject to the restrictions contained in section 99, to defend—

(First) - His own body, and the body of any other person, against

any offence affecting the human body;

(Secondly)- The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

100. When the right of private defence of the body extends to causing death.—The right of private defence of the 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 reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly. – Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault; (emphasis supplied)

Thirdly. – An assault with the intention of committing rape;

Fourthly. – An assault with the intention of gratifying unnatural lust;

Fifthly. – An assault with the intention of kidnapping or abducting;

Sixthly. – An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Seventhly. – An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.

32. Hon'ble the Supreme Court in (2010)2 SCC 333 Darshan Singh vs. State of Punjab , while interpreting section 100 of Indian Penal Code held as follows:

- “22. Section 100 of the Indian Penal Code justifies the killing of an assailant when apprehension of atrocious crime enumerated in several clauses of the section is shown to exist. First clause of Section 100 applies to cases where there is reasonable apprehension of death while second clause is attracted where a person has a genuine apprehension that his adversary is going to attack him and he reasonably believes that the attack will result in a grievous hurt. In that event he can go to the extent of causing the latter's death in the exercise of the right of private defence even though the latter may not have inflicted any blow or injury on him.
23. It is settled position of law that in order to justify the act of causing death of the assailant, the accused has simply to satisfy the court that he was faced with an assault which caused a reasonable apprehension of death or grievous hurt. The question whether the apprehension was reasonable or not is a question of fact depending upon the facts and circumstances of each case and no strait-jacket formula can be prescribed in this regard. The weapon used, the manner and nature of assault and other surrounding circumstances should be taken into account while evaluating whether the apprehension was justified or not ? ”
33. In the present case, the fatal injury attributed to Gurdip Singh which resulted in death of Jaspal Singh was caused with a '*sabhal*' (crowbar or thick iron rod). Though two of the appellants, in statements recorded under Section 313 Cr.P.C., have given a different version in respect of said injury by stating that infact the injury was a result of blow given by Sukhwant of complainant party itself but the blow accidentally landed on Jaspal Singh instead of Gurdip Singh but said story is apparently an afterthought and cannot be accepted. It is, however, a case of single blow on the neck of deceased Jaspal Singh as per FIR and also as per medical evidence. Keeping in view the fact that the accused in the present case were outnumbered by the complainant party and that the members of the complainant party, who had come in trolleys loaded with bricks, and had in fact caused injuries including grievous hurt on vital parts to

members of the accused party, the appellants would have nursed genuine apprehension that the opposite party would cause more injuries and, thus, they would be well within their right to defend themselves and to cause injuries to the opposite party. The effort may be just to demobilize the opponents rather than to cause fatal injuries. Infact, Jaspal Singh was caused a single blow only with a blunt weapon, which per chance landed on vital part of body and ultimately proved fatal.

34. In these circumstances, the present case would be fully covered within the condition described at '*secondly*' to Section 100 of IPC so as to vest the present appellants with the right to defend themselves and in case any death is caused in the said process, no offence can be said to be made out. As such, it is held that the injury caused to Jaspal Singh resulting in his death, was caused by accused in private defence. Similar would be the case in respect of injuries inflicted to two other injured on complainant side namely Jagdev Singh who had sustained two simple injuries and Sukhwant Singh who had sustained three simple injuries. Thus, the injuries attributed to other two accused are also held to have been caused by accused in their self defence when complainant party attempted to take forcible possession of plot in possession of accused party and in the process had also caused injuries to accused including grievous hurts.

35. As a sequel to our discussion made above, it is held that the present case is fully covered within the condition described at '*secondly*' to Section 100 of IPC. The accused were well within their right to inflict injuries to complainant party in self defence and that in the given circumstances where complainant party has been found to be aggressor, having caused grievous injuries to accused, no offence can be said to be made out even though the injury on

person of Jaspal Singh proved fatal. It is certainly not a case of exceeding right of private defence. Consequently the accused are entitled to be acquitted.

36. The appeal, thus, merits acceptance and is hereby accepted. The impugned judgement is set aside and the appellants are acquitted of all the charges framed against them.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

November 27, 2017

kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No