

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

CRA-D-861-DB-2003
Date of decision: 31.05.2017

Nirmal Singh and another

.....Appellants

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep S. Sandhu, Advocate
for the appellants.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

Mr. Bhag Singh, Advocate
for the complainant.

H.S. MADAAN, J.

This appeal has been preferred against judgment of conviction and order of sentence dated 12.09.2003 passed by the Court of learned Additional Sessions Judge, Jagadhri, vide which he had convicted accused-Nirmal Singh and Avtar Singh for offences under Section 302

read with Section 34 of the Indian Penal Code (“IPC” – for short) as well as Section 325 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for life for the former offence and to further undergo rigorous imprisonment for two years for the latter offence. Both the substantive sentences were ordered to run concurrently. However, accused-Mahinder Singh and Amarjit Singh were acquitted of the charge framed against them.

The accused/convicts-Nirmal Singh and Avtar Singh, who are appellants before this Court pray that the appeal filed by them be accepted, the impugned judgment of conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the facts of the case as per prosecution story are that on 09.04.2001, a written intimation was received at Police Station Chhappar from Civil Hospital, Mustafabad regarding Mohan Singh son of Gian Singh resident of Nagla Jagir having been brought dead to that hospital, with a request to send some Investigating Officer. As such, SI/SHO Des Raj (hereinafter referred to as the Investigating Officer/I.O.) of that police station alongwith police officials went to Civil Hospital, Mustafabad, where the police party came across complainant Pavittar Singh present near dead body of Mohan Singh, which was lying on a stretcher. Complainant-Pavittar Singh son of Gian Singh resident of Nagla Jagir, Police Station, Chhappar aged about 45 years in his statement Ex.PQ stated that they were four brothers, eldest being Mohan Singh followed by Pavittar Singh-

complainant then Nirmal Singh with Avtar Singh being youngest. The three elder brothers happened to be ex-servicemen, whereas the youngest brother Avtar Singh has been dealing with milk business; that left leg of Mohan Singh was amputated in a war while he was serving in the Army; that their father Gian Singh, who expired on 09.01.1999 owned 23 kanals 3 marlas of land. *Inter alia* in the statement the complainant stated that his father Gian Singh had executed a Will in favour of Avtar Singh and Nirmal Singh about 15 days prior to his death regarding his landed property; that complainant and his brother Mohan Singh had filed a suit in Civil Courts at Jagadhri on 20.05.1999 challenging that Will, which was fixed for that very day for hearing. However, since Court work was suspended the case was adjourned and they returned home at about 12 noon/1 p.m.; that at about 3 p.m., Nirmal Singh and Avtar Singh put tractor make Swaraj 735 of Amarjit Singh son of Sewa Singh on the tubewell of Harbans Singh son of Mehanga Singh for irrigation purposes; that when he i.e. complainant and Mohan Singh had gone to stop Nirmal Singh and Avtar Singh from irrigating the fields with the help of tractor then Avtar Singh caught hold of Mohan Singh whereas Nirmal Singh gave blow of *Kassi* (spade) on head of Mohan Singh from its reverse side; that complainant and Amar Singh, brother-in-law of Mohan Singh, who had come there, rushed nearby to rescue Mohan Singh, then Avtar Singh gave a *Danda* (club) blow hitting complainant on left hand and mouth. Resultantly,

lower tooth of complainant was broken and he suffered an injury on thumb of left hand. Then Mohinder Singh son of Kartar Singh and Amarjit Singh driver of tractor, both resident of their village caught hold of complainant and Avtar Singh gave *Danda* blow to him hitting elbow of left arm and little finger of his right hand; that Mohan Singh had become unconscious on account of injuries and fell down on the ground; that Amar Singh rescued both the injured from assailants Avtar Singh, Nirmal Singh, Mohan Singh and Amarjit Singh. The accused assailants had left the spot on their tractor taking away their *Kassi* (spade) and *Danda*. Then the complainant alongwith his son Harjinder Singh took Mohan Singh to Civil Hospital, Mustafabad, where he was declared brought dead. That statement was signed by complainant-Pavittar Singh and his signatures were attested by the Investigating Officer.

The Investigating Officer put his endorsement Ex.PQ/1 below that statement. Pavittar Singh-complainant/injured had submitted his MLR before the Investigating Officer, in which, the doctor had observed five injuries on his person caused by blunt weapon. Injuries No.1, 3 and 4 had been kept under observation for X-ray, injury No.2 for dental surgeon opinion and injury No.5 was declared as simple. Observing that, from statement of complainant, commission of offence punishable under Sections 302, 323/34 IPC was disclosed, the Investigating Officer sent ruqa to police station through UGC Babu

Ram, on the basis of which formal FIR Ex.PA was recorded at Police Station, Chappar by ASI Ram Chander. ASI Ram Chander put his endorsement on the original ruqa and sent it back along with a copy of FIR to SI Des Raj. The Investigating Officer carried out inquest proceedings with regard to dead body of Mohan Singh preparing report Ex.PK/2 in that regard. He deputed UGC Babu Ram and C. Ajay Kumar to get post-mortem examination conducted on the dead body of Mohan Singh, handing over application Ex.PK/1 to them.

On 10.04.2001, the police party headed by SI/SHO Des Raj went to the spot, the Investigating Officer carried out spot inspection. He prepared rough site plan of place of occurrence as Ex.PU. He recorded statements of witnesses at the spot. UGC Babu Ram and C. Ajay Kumar had got the post mortem examination conducted on dead body of Mohan Singh and they produced a copy of post-mortem report alongwith other papers before the Investigating Officer, which were taken into possession vide recovery memo Ex.PB. Accused-Nirmal Singh appeared before the police party at bus stand Chhappar. He was formally arrested in this case and was interrogated, during the course of interrogation, he suffered a disclosure statement that he had concealed the *Kassi* near the field of Lal Singh, which was within his knowledge and he could get the same recovered. His disclosure statement Ex.PC was recorded. Thereafter accused-Nirmal Singh, while in police custody led the police party to the disclosed place and got the *Kassi*

recovered. The Investigating Officer prepared rough sketch of the *Kassi* Ex.PE and then it was taken into possession vide recovery memo Ex.PD. The Investigating Officer prepared rough site plan of the place of recovery Ex.PV. On return to the police station, the Investigating Officer deposited the case property with MHC and put the accused in lock up.

On 11.04.2001, Manphool Singh, Sarpanch produced Mahinder Singh and Amarjit Singh-accused before the Investigating Officer alongwith tractor and documents relating to tractor. Accused were arrested in this case. The tractor and its documents were taken into possession vide recovery memo Ex.PX.

On 13.04.2001, Manphool Singh, Sarpanch produced Avtar Singh-accused before the Investigating Officer at village Nagla Jagir. Accused-Avtar Singh was interrogated, during course of which he made statement under Section 27 of the Evidence Act Ex.PR and then in pursuance thereof got recovered *Danda* Ex.P7 from the disclosed place which was taken into possession vide recovery memo Ex.PS. The Investigating Officer prepared rough sketch of the *Danda* Ex.PT, besides, rough site plan of the place of recovery Ex.PW.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Jagadhri. Copies of documents relied therein were supplied to the accused free of cost as provided under Section 207

Cr.P.C..

Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, Judicial Magistrate Ist Class, Jagadhri committed the case to the Court of learned Additional Sessions Judge(1), Yamunanagar at Jagadhri vide his order dated 24.05.2001.

On receipt of the case, finding a prima facie case, charge for the offences under Section 302 read with Section 34 IPC as well as under Section 325 read with Section 34 was framed against the accused, to which they pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as fourteen witnesses as per details below:-

PW-1 Constable Tarsem had delivered the special report of this case to Illaqa Magistrate, Jagadhri, SP and DSP Jagadhri on 09.04.2001 as per instructions of ASI Ram Chander. He stated that first of all he had gone to the residence of DSP-Head Quarter and delivered the special report there, then to the Magistrate at about 10 p.m..

PW-2 HC Babu Ram, who on 09.04.2001 alongwith C. Ajay Kumar had been deputed by SI/SHO Des Raj to get post-mortem examination conducted on dead body of Mohan Singh from Civil Hospital, Jagadhri deposed in that regard stating that the post-mortem was conducted on the next day and on 10.04.2001, the doctor had

handed over to him clothes of deceased i.e. one shirt Ex.P1, one pajama Ex.P2, baniyan (vest) Ex.P3, underwear Ex.P4 and socks Ex.P4 (again re-numbered). These clothes were in the form of a sealed parcel sealed with seal impression "DR" and that parcel had been taken into possession vide memo Ex.PB.

PW-3 Om Parkash deposed that on 10.04.2001, while he was posted at Police Station Chapper, on that day he was member of police party headed by SI/SHO of Police Station Chapper; that the police party was present at bus stand Chapper, on that day Nirmal Singh-accused was interrogated during the course of which he suffered a disclosure statement Ex.PC that he had kept concealed spade (Kassi) used in the incident in the fields of Lal Singh and he could get the same recovered. Nirmal Singh-accused also signed the disclosure statement. HC Om Parkash, HC Krishan Lal signed that statement. Thereafter accused-Nirmal Singh, while in police custody led the police party to the disclosed place and got recovered Kassi (spade) from the fields of Lal Singh, which was taken into police possession vide memo Ex.PD. The Investigating Officer prepared rough sketch of the Kassi (spade) Ex.PE. Accused-Amarjit Singh had produced one tractor at police station alongwith its registration certificate. The tractor was having registration No.PB-42-A-1730 and it was taken into police possession vide recovery memo Ex.PF. He proved photocopy of RC of the tractor as Ex.PG.

PW-4 Dr. Reenu Aggarwal, Dental Surgeon, CHC, Mustafabad deposed that on 26.04.2001 she was posted at CHC Mustafabad and on that day she examined Pavittar Singh with regard to his tooth injury and on seeing the X-ray film Ex.PH, she observed the teeth present in the mouth, as has been shown in the report Ex.PJ with regard to injury No.2, the tooth was absent. There was no injury and swelling corresponding to the missing tooth on the internal or external surface of lips.

PW-5 Dr. Sumesh Garg, MO, ESI Hospital, Jagadhri deposed that on 10.04.2001, he was posted at Civil Hospital, Jagadhri on that day he alongwith Dr. Vaneet Gupta conducted post-mortem examination on dead body of Mohan Singh son of Gian Singh resident of Nagla Jagir aged about 54 years. The dead body was identified by Pavittar Singh and Jeet Singh and it was brought by UGC Babu Ram and C. Ajay Singh. He stated that his observations were as follows:-

The length of body was 5'7" and the marks of ligature was nil. The dead body was well built of middle aged bearded male, wearing kurta and Pajama, cream colour, green kachha, green baniyan, white metallic kara in right wrist, and white metallic ring in ring finger, eyes and mouth were closed. Rigor mortis were partially present in the neck, fully present in all the four limbs. The left leg amputated (old amputation) below the knee just above the ankle joint present. Stump formed around the amputated part. Scalp, skull and vertebra, walls,

spinal cord, ribs and cartilages, plourse, larynx and tracheae, right lung and left lung, pericardium, abdominal wall, mouth pharynx, and esophagus, liver, kidneys, organs of generation external and internal were NAD.

- 1. Abrasion was present on the forehead 1 cm towards the right of midline 1 cm x 1 cm in size. Swelling of both/eye lid was present, left eye lid present with blackish discoloration. Defused swelling was present on the occipital region on dissection underlying hematoma was present. On opening the skull sub dural hematoma below the cerebral hemisphere was present.*
- 2. Contusion in the form of two parallel line was present on the left hypochondria region was present. Obliquely 12 cm x 3 cm in size. Another contusion present 6cm above the first contusion, present in the form of two parallalise, 10 cm x 3 cm in size, on lower left chest obliquely placed.*
- 3. Contusion present right upper arm on interior medial surface obliquely present 10 cm x .5 cm.*
- 4. Abrasion present right hand posterior surfaces between little finger and right finger 2 cm x 1.5 cm.*
- 5. Abrasion present left index finger dorsal surface 1 cm x 1 cm proximal phalanx.*

Left chamber of the heart was empty and right contains 5 to 7cc of blood, large vessels were healthy contained 50 cc of semi digested food particles. Small intestine and their contents were intact.

Peritoneum-cavity contains clotted blood on left side below spleen. Stomach and its contents were healthy contained chyle and gases large intestine and their contents were healthy contained faecal matter and gases. Spleen, tear present size 3 cm x 1.5 cm posterior surface of spleen. Bladder contains 10 to 15 cc of urine.

The cause of death in their opinion was due to injuries to the vital organs leading to haemorrhage and shock, injuries were ante mortem in nature which in normal course of events are sufficient to cause death. They handed over to the police well sutured dead body with its clothes, copy of PMR, police papers 24 in number and duly signed by them. The duration between injury and death was within few hours and between death and post mortem within 24 hours. As per the police papers, the death had occurred at 5.30 p.m. on 09.04.2001.

He proved carbon copy of MLR Ex.PK, police request for post-mortem examination Ex.PK/1 and inquest report Ex.PK/2. The witness further stated that on 20.04.2001 police moved an application Ex.PL before them alongwith two sealed parcels containing one Kassi (spade) fitted with handle and one Danda. The sealed parcels were opened by them and after seeing the Kassi (spade) and Danda they had opined that the possibility of all the injuries mentioned in the post-

mortem report in respect of Mohan Singh son of Gian Singh, having been caused by the blunt side of the weapon No.1 and its dasta, could not be ruled out vide opinion Ex.PL/1.

PW-6 Gian Chand a formal witness tendered in evidence his affidavit Ex.PM praying that it be read as part of his statement.

PW-7 Ram Kumar Patwari Halqa Talakaur stated that on 26.04.2001, he had prepared scaled site plan Ex.PN on the pointing out of Pavittar Singh using the scale of 40 karams = 1”.

PW-8 Dr. D.P.Singh, MO, Civil Hospital, Jagadhri, deposed that on 12.04.2001, he had conducted X-ray examination of Pavittar Singh son of Gian Singh resident of Nagla Jagir and took X-ray films Ex.PH to Ex.PH/6. He stated about fracture of terminal phalanx of left middle finger and no fracture was seen in the X-ray skull and X-ray right hand. He proved X-ray report Ex.PH. He stated that report regarding Ex.PH was to be given by Dental Surgeon. He proved his own report Ex.PO.

PW-9 ASI Ram Chander deposed that on 09.04.2001, while he was posted at Police Station Chapper on that day on receipt of statement of Pavittar Singh Ex.PQ, he had recorded formal FIR Ex.PA, thereafter, he had made endorsement Ex.PQ/1 on statement Ex.PQ.

PW-10 Shri Sham Lal, deposed that in his presence Avtar Singh-accused had suffered a disclosure statement Ex.PR to the effect that he had kept concealed Danda in the *dol* of fields of Mehma Singh

and Lal Singh and no other person had knowledge of the same; thereafter, such accused while in pursuance of the disclosure statement got the Danda Ex.P7 recovered from his possession and the said Danda was taken into police possession vide memo Ex.PS. He stated that sketch of Danda Ex.PT was also prepared.

PW-11 Pavittar Singh/complainant-injured provided the eye-witness account of the incident supporting the prosecution story on material aspects.

PW-12 Amar Singh another eye-witness cited by the prosecution supported the prosecution story on material aspects.

PW-13 SI/SHO Des Raj the Investigating Officer of this case deposed regarding the investigation conducted by him proving various documents.

PW-14 Dr. Kulbir Singh, PG Student, PGIMS, Rohtak, deposed that on 09.04.2001 he was posted as Medical Officer at CHC, Mustafabad. On that day a ruqa Ex.PX was sent by him to Police Station Chappar regarding death of Mohan Singh, who had been brought dead to the hospital. Alongwith the dead body of Mohan Singh, an injured Pavittar Singh had reported in the hospital with injuries. On examination, following injuries were found on his person:-

1. Distal part of the thumb left hand chopped off.

Approximately 0.5 of the distal most part (tip).

Complaint of pain at site. Advised X-ray.

2. *Complains of missing tooth right lower first. Clotted blood present in the socket. No injury under lips. Advised dental opinion.*
3. *Complaint of pain head and forehead. Diffuse swelling present on forehead right side. Advise X-ray.*
4. *Abrasion back of ring finger of right hand. Complaint of pain and difficulty in movement. Advised X-ray.*
5. *Complaint of pain chest. No external injury was seen.*

The witness stated that in his opinion injuries Nos.1, 3 and 4 were subjected to X-ray report, whereas injury No.2 for dental opinion and injury No.5 was simple. All injuries occurred within a period of 12 hours and were caused by blunt weapon. He proved carbon copy of the MLR Ex.PY.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case.

Accused-Nirmal Singh further took up a plea that their father had executed a registered Will in his favour and in favour of his brother Avtar Singh regarding the land situated in the village; that they are in possession of the said land; that he and Avtar Singh had gone to

the land to irrigate the same and as they were irrigating the land, Mohan Singh and Pavittar Singh reached there; that Pavittar Singh gave blow with a lathi on the head of Avtar Singh; that he tried to rescue him and during that scuffle Mohan Singh fell down on the ground and suffered injury on his head. They did not cause any injury to Mohan Singh. At that time, a case for mutation was pending in the Court regarding the said land and this false case was got registered with a motive to grab the land. The mutation has been sanctioned in their favour on the basis of the registered Will. Accused Mohinder Singh and Amarjit Singh were not present at the spot. Mohan Singh and Pavittar Singh were the aggressors who entered their land to which they had no right.

Accused Avtar Singh has also taken up almost the similar plea.

During defence evidence accused examined DW-1 Joginder Singh son of Mehnga Singh aged about 60 years, agriculturist resident of village Nagla Jagir, who stated that he knows all the four accused residents of village. His agricultural land is situated near the land of Nirmal Singh and Avtar Singh; that father of Nirmal Singh had died four years ago and after his death, the land was being cultivated by his both the sons namely Nirmal Singh and Avtar Singh; that their father had executed a Will in their favour. He supported the defence version as regards the manner of the incident.

DW-2 Ram Singh son of Hari Singh, agriculturist resident

of village Bhambol a maternal uncle of complainant-injured and deceased and the accused deposed that about 30 years earlier, he had taken 23 kanals of land from Gian Singh on Chakota for a period of 20 years and Chakotanama was executed which was got registered. He proved the Chakotanama as Ex.DE. He stated that he cultivated the land as a lessee for a period of 20 years from the year 1977 to 1997 and at asking of Gian Singh he had given possession of the land to accused Nirmal Singh and Avtar Singh. Since then Nirmal Singh and Avtar Singh are cultivating this land. Pavittar Singh and Mohan Singh deceased were never in possession of the land at any time either during the life time of Gian Singh or after his death.

Accused Nirmal Singh and Avtar Singh tendered in evidence certified copy of an order dated 28.05.1999 passed by Civil Judge (Junior Division), Jagadhri Ex.DC, copy of Jamabandi for the year 1999-2000 Ex.DD and certified copy of mutation Ex.DE alongwith photocopy of Will Mark A.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced accused-appellants as mentioned above, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants and learned Assistant Advocate General, Haryana, besides, going through the record.

Here the incident is almost admitted. When appellants-accused Nirmal Singh and Avtar Singh have taken up plea of self-defence, that means the incident stands admitted. However, the origin and genesis thereof is in dispute. The appellants-accused claim that they had been irrigating the fields, which they had inherited from their deceased father by way of testamentary succession and they happened to be in exclusive possession thereof; Mohan Singh and Pavittar Singh, who had been disinherited by their father Sh. Gian Singh had no concern with that land and had no reason to come there, even then came to that chunk of land with aggressive designs, to interfere in possession of the accused, in the process, assaulting Avtar Singh and Nirmal Singh and then in the scuffle Mohan Singh fell down and hit on ground a tree suffering injury on his person, to which he succumbed. However, we do not see any merit in these contentions. The parties are not at dispute that their father Sh. Gian Singh was earlier owner of the agricultural land in dispute regarding which he had executed a Will in favour of Nirmal Singh and Avtar Singh. Testamentary succession is deviation from the natural inheritance. If Sh. Gian Singh had died intestate, then his agricultural land would have devolved upon all his children in equal shares alongwith his wife and mother, if alive. By executing a Will, the land holder wanted to deviate from the natural succession. However, it is not in dispute that mutation had not been sanctioned in favour of Nirmal Singh and Avtar Singh on the date of incident, rather civil

litigation was pending between them in the court of law. Unless mutation was sanctioned on the basis of Will in favour of Nirmal Singh and Avtar Singh and their names appeared in the revenue record to be owners in possession to exclusion of Mohan Singh and Pavittar Singh, they could not possibly claim to be in exclusive possession of the land. Law is well settled that inheritance does not remain in abeyance. On death of a land holder, his legal heirs immediately step into his shoes. As already observed natural succession is a rule with testamentary succession an exception, it is to be taken that after death of Sh. Gian Singh all his four sons stepped into his shoes by natural succession becoming co-owners in joint possession to the extent of $\frac{1}{4}$ share each. Furthermore, law is very clear that a co-sharer has got right and interest in every inch of the land. Though the accused claim that they had been in exclusive possession of the land in question, but then they have not been able to substantiate these assertions by producing in evidence the revenue record like *Jamabandi* and *Khasra Girdawari*. Such revenue record is best type of evidence to determine ownership and possession of land bearing *Khasra* numbers, since the officials preparing such record in discharge of their official duties have no reason to prepare record contrary to the factual position at the spot. It is for that reason presumption of truth is attached to entries in *Jamabandi* under Section 44 of the Land Revenue Act and *Khasra Girdawari* is a relevant piece of evidence to show possession. The accused have not placed on file

any *Jamabandi* or *Khasra Girdawari* showing that they have been in exclusive possession of land in question to exclusion of Mohan Singh-deceased and Pavittar Singh-injured, at the relevant time.

The accused have examined DW-1, their maternal uncle-Joginder Singh and DW-2 Ram Singh to show their exclusive possession. But such oral evidence is not enough to prove exclusive possession of the accused-party, since as already observed, the relevant and important piece of evidence to show possession and title of the agricultural land is the revenue record. As such, it is to be taken that after death of Sh. Gian Singh, all his four sons, acquired right and interest in his estate by way of natural succession becoming co-sharer in joint possession in equal shares. In that way Mohan Singh and Pavittar Singh coming to the land in dispute cannot be taken to be an act of trespass or aggression inviting use of violence by the accused-party on the pretext of exercising right of self-defence.

Although as per defence version Mohan Singh holding *Gandasa* and Pavittar Singh holding *Saria* had come to the fields and Mohan Singh had given Gandasa blow on forehead of Avtar Singh, whereas Pavittar Singh had given a Saria blow on the back of Avtar Singh and when Nirmal Singh intervened and pushed Mohan Singh in backward direction, Mohan Singh was hit against a tree. Thereafter, both Mohan Singh and Pavittar Singh left the fields. The version is highly improbable and unconvincing for several reasons; firstly when

the police had gone to the spot after registration of the FIR it did not find any *Saria* or *Gandasa* at the spot. If in fact Mohan Singh had been holding *Gandasa* and Pavittar Singh *Saria*, then after suffering injuries they in normal course would have dropped their weapons there and then nothing of that sort had happened. Then two persons armed with dangerous weapons like *Gandasa* and *Saria* going to the fields with aggressive designs would have caused much more injuries to Avtar Singh and Nirmal Singh but here except for one minor visible injury caused with the blunt weapon no other injury was found on person of Avtar Singh. As regards Nirmal Singh, he does not claim to have suffered any injury in the fight. Therefore, to our mind no right of self-defence was available to the accused and there is no question of their exceeding the same.

However, as it appears it was a case of sudden fight erupting between brothers over irrigation of the land. The accused party is also not shown to be carrying any weapons. The spade (*Kassi*) being carried by Nirmal Singh is an agricultural implement used for digging of earth and diversion of water channel etc. It cannot be termed as a weapon of offence. Similarly, *Danda* said to have been used by Avtar Singh in the incident is usually kept by the village people being helpful to them in the avocation of agriculture and to keep away stray animals of various types. There does not appear to be any pre-planning or pre-meditation of causing injuries to Mohan Singh and Pavittar

Singh. In our considered view the offence which is disclosed against accused-appellant is not one of murder punishable under Section 302 IPC but that of culpable homicide not amounting to murder punishable under Section 304 Part II IPC. When we say so, we are supported by various factors, first as already observed, there does not appear to have been any pre-planning or pre-mediation of the incident by the accused and the incident seems to have occurred suddenly at spur of moment. Secondly, the accused were not armed with dangerous weapons and Kassi with Avtar Singh and Danda with Nirmal Singh do not come within definition of deadly weapon under the circumstances and are to be taken as usual agricultural implements and articles being carried by village folks. Thirdly, as per prosecution story Nirmal Singh had given a single blow of Kassi on head of Mohan Singh that too from blunt side. In case Avtar Singh had intention to commit murder of Mohan Singh, then in normal course he would have given repeated blows of Kassi that too from sharp sides on vital parts of body of deceased. Keeping in view that there is only single blow of spade attributed to Nirmal Singh it cannot be said that the act was done by accused-convicts with intention of causing death or with intention of causing such bodily injury as they knew was likely to cause death of Mohan Singh or that it was done with intention of causing bodily injury to Mohan Singh and bodily injury intended to be inflicted was sufficient in ordinary course of nature to cause death or that they knew the act

was so imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death. Rather, the act of accused-convict falls within definition of Section 304 Part II IPC, since it comes out that act done by the accused was with the knowledge that the same was likely to cause death but that was without any intention to cause death or to cause such bodily injury as was likely to cause death. It is pertinent to note here that as discussed, supra, accused-convicts do not seriously deny the incident taking plea of self-defence, which means that incident by them stands admitted. However, they have not specifically conceded that injuries on person of Mohan Singh and Pavittar Singh had been caused by them. According to them Mohan Singh fell down and his head hit against tree resulting in injury to which he succumbed. However, defence plea is not plausible and convincing, PW-Pavittar Singh who himself had suffered injuries in the incident is a stamped witness and his presence at the spot cannot be doubted. He has supported the prosecution story on material points. Similarly, the other eye-witness Amar Singh has also supported the prosecution story on material points. We find presence of Amar Singh at the spot at the relevant time to be natural and probable. Both the witnesses have stood the test of cross-examination well and their credibility could not be shaken on any material points. We find that their depositions are creditworthy which deserves to be relied upon. The medical evidence in this case corroborates the ocular evidence.

Both the accused while being interrogated during police custody had suffered disclosure statements and Nirmal Singh had got Kassi recovered from his possession, whereas Avtar Singh had got a Danda recovered from his possession, which had been seized by the Investigating Officer. Those also corroborate the prosecution version. The motive was also there for the accused to attack Mohan Singh and Pavittar Singh for the reason of civil litigation pending between them with regard to dispute regarding inheritance of their father. Furthermore, as it comes out from the record, both the accused-convicts shared a common intention to commit such criminal act.

Under the circumstances the appeal is allowed partly, conviction and sentence of both the accused for offence under Section 302 read with Section 34 is set aside and rather they are convicted for offence under Section 304 Part II read with Section 34 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay fine of ₹10,000/- each, in default of payment of fine to undergo further simple imprisonment for one year each, whereas conviction and sentence of both the appellants/accused-convicts for offence under Section 325 read with Section 34 IPC is maintained as such. Both the substantive sentences of imprisonment shall run concurrently.

The appeal is disposed of in such a manner.

The accused-convicts Nirmal Singh and Avtar Singh are stated to be on bail. They be taken into custody and made to undergo

the remaining sentence.

Necessary directions be issued to the quarter concerned.

31.05.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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|----|------------------------------|-----------------|
| 1. | Whether reportable? | Yes / No |
| 2. | Whether reasoned / speaking? | Yes / No |