Rajinder & Ors vs State Of Haryana on 12 July, 1995

Equivalent citations: 1995 SCC (5) 187, JT 1995 (5) 272

Author: M.K Mukherjee

Bench: M.K Mukherjee

```
           PETITIONER:
RAJINDER & ORS.

        Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT12/07/1995

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
ANAND, A.S. (J)

CITATION:
 1995 SCC  (5) 187        JT 1995 (5)   272
 1995 SCALE  (4)379


ACT:



HEADNOTE:



JUDGMENT:
```

THE 12TH DAY OF JULY 1995 Present:-

Hon'ble Dr.Justice A.S Anand Hon'ble Mr.Justice M.K.Mukherjee Mr.R.K .Jain, Sr.Adv. and mr.Ravinder Bana, Adv. with him for the Appellants.

Mr.D.B. Vohra, Mr. K.C.Bajaj,Ms. Indu malhotra, Advs. for the respondent.

Mr.R.L.Kohli,Sr.Adv.Mrs.Rani Chhabra, Adv. with him for the complainant.

J U D G M E N T The following Judgement of the court was delivered:

IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO.125 OF 1968 Rajinder & Ors. .....appellants Versus State of Haryana .....Respondent J U D G M E N T M.K. MUKHERJEE. J.

The eighteen appellants herein along with ten others were indicated for an incident that took place on november 17 1985 in village Lawa Khurd within the Police station of Bahadurgarh in which three persons were killed and several injured. Against one of them a charge under Section 6 of the Terrorist and Distrubtive Activities (Prevention) Act, 1985 (Act for short) read with sections 25 and 27 of the Arms Act, 1959 was also framed and therefore they were tried by a Designated Court constituted under Section 9 of the Act. on conclusion of the trial, the Court, while recording an order of acquittal against ten co-accused in respect of all the charges levelled against them, convicted the appellants under Sections 148, 302/149 (three counts), 326/149.325/149,324/149 and 323/149 of the Indian Penal code (I.P.C.for short). Besides, two of the appellants were convicted under Section 307 I.P.C.(two counts) and the remaining sixteen were convicted for the same offences with the aid of Section 149 I.P.C. for the convictions so recorded the appellants were sentenced to different terms of imprisonment, including life. The above order of conviction and sentence is under challenge in this appeal filed under Section 16 of the Act.

The prosecution case as disclosed by the evidence led at the trial is as under; One Prem Raj was the owner of 19 killas of land in village Lawa khurd. He died in May, 1982 leaving behind a will whereby he had bequeathed that land to his only son Shri Krishan. Consequent upon Shri Krishan's death in April, 1983 his wife Sm.Krishna (PW17) became the owner thereof. While in possession of the land she entered into an agreement with mange Ram (PW19) on November 4,1985 for its sale for a total consideration of Rs.2,00,000/- and,on receipt of a sum of Rs.50,000/- out of the said amount at the time of execution of the deed of agreement, handed over the possession to Mange Ram. On november 12,1985, the appellant Rajinder singh, claiming himself to be one of the owners of the said land (hereinafter refered to as disputed land'), as an heir of Prem Raj, and in possession thereof, lodged a complaint with the police alleging that Mange Ram and his men had criminally trespassed therein and cestroyed the crops he had grown thereon. On that report Bahadurgarh Police Station registered a case being No. 532 dated 12.11.1985 against Mange Ram and others put it ultimately ended in their discharge as the police found, on investigation, the accusation to be false.

The prosecution version of the incident that took place on November 17,1985 is that at or about 10 A.M.when Sm.Krishan (P.W.13), niece of Mange Ram. Her father Ran Singh (deceased),her uncles Rattan Singh (deceased), and Dhan Singh, her cousin Satabir (deceased), her sister Ms. Kamlesh (P.W.14). her brother Balbir Singh (P.W.15) and her sister - in Law Sm.Rajo (P.W.16) and Sm.Ramesh were cultivating their ancestral land, which is at a distance of one Killa from the disputed land, Malak ram and Ved Prakash (two of the appellants) came there (the disputed land) with two camel- ploughs. A few minutes thereafter the other accused persons came there in three tempos and one tractor armed with various weapons. Reaching there they asked Ved Prakash and

Malak Ram as to why they had not started ploughing. On being so encouraged when they started ploughing the disputed land, Sm.Krishna along with her eight companions went there and implored the accused not to plough as that land had been purchased and ploughed by them. then Ram Karan (since acouitted) instigated the other accused to kill them. Immediately thereupon, the appellants Bhup Singh and Ishwar. Who were two of the tempo drivers started their tempos and dashed against Rattan Singh, Ran Singh, Satbir Sing and Sm. Kamlesh as a result of which they fell down. Then the other accused persons started hitting them with jailis, lathis, balams and pharsas as a result of which Rattan Singh, Ram Singh and satbir Singh fell down dead at the spot while others sustained injuries - some of them grievous. All the appellants then left the place leaving behind two tempos and the camel ploughs.

Sm. Krishna who had also sustained some injuries at the hands of the miscreants rushed to her house and narrated the incident to Mange Ram. Both of them then left for the Police Station to lodge an information about the incident, when they arrived at the local bus stand for that purpose, they met Police Inspector Rattan singh (PW22), who along with other police personal was coming to their village in a jeep for investigating into the case lodged on the information of appellant Ranjinder Singh on 12.11.1985.P.W22 recorded the statement of Sm.Krishna at the bus stand and sent it to the police station through Constable Rambhagat, who was accompanying him, for registration of a case. he then proceeded to the disputed land along with Sm.Krishna and Mange Ram to take up investigation of the case. Reaching the spot he recorded the supplementary statement of Sm.Krishna and sent her for medical examination. He held inquest into the death of Ran singh and Rattan singh while S.I. Phool Singh (Pw 21), who was accompanying him, held inquest into the death of Satbir Singh. Some blood stained earth from five different spots were seized by him and two tempos, two camels, two ploughs and some pieces of bricks were taken possession of. After preparing a site plan and despatching the dead bodies for post-mortem examination, P.W.22 went to Medical college hospital, Rohtak where injured Dhan Singh, Sm.Ramesh, Balbir, Sm. Kamlesh and Sm.Rajo had got themselves admitted on their own for treatment. There he recorded the statement of all the injured except Dhan Singh, as according to the doctor he was not recorded by P.W.22 on the following day. The accused were arrested on diverse dates and various weapons were recovered from them. Those weapons along with the blood stained earth earlier seized were sent to Forensic Science laboratory(F.S.L) for chemical examination. After receipt of reports of chemical examination and post-mortem examination and oncompletion of investigation P.W.22 submitted charge sheet against the accused.

The appellants pleaded not guilty to the charges levelled against them. Their version, as given out by them in their statements recorded under Section 313 of the Code of Criminal Procedure and by Attar Singh (DW15), who claimed to be an eye witness, was that they were cul;tivating the disputed land for a number of years. Having learnt a few days before the incident that Mange Ram was planning to destroy their crops, two of them personally asked him not to do so. As, Mange Ram refused to oblige and threatened to cause harm to them, they lodged complaints against Mange Ram on 6.11.1985 and 11.11.1985 but no action was taken by the police thereon. Encouraged thereby,in the night of November 11/12,1985, Mange Ram and his men uprooted the crops they had sown on the disputed land a month earlier. For this mischief they again lodged a complaint against Mange Ramand his men and some of them were arrested. As regards the incident on november 17, 1985 their version

was that at or about 6 A.M. seven of them- who are all appellants before us_ went to the disputed land with camel ploughs and a tempo carrying fertiliser and seeds. While they were ploughing the land, seven persons, namely, Ran Singh, Rattan Singh, Dhan Singh, satbir, Sm.Kamlesh, sm. Rajo and Sm. Ramesh came there carrying lathis and jails. Ran Singh, father of Sm. Krishna (PW13), trespassed into the disputed land and shouted that they should be killed and forcible possession of the land taken. Then satbir shattered the wind screen of their tempo with a jaili while others caused hurt to some of them. Finding no other alternative they exercised their right of private defence of property and person as a result of which all the seven persons who had trespassed into the land were injured. The other appellants however denied their presence at the spot and contended that they had been falsely implicated. The appellant, Ishwar put forward a plea of a alibi contending that he was a conductor of Haryana Roadways and at the time of the alleged incident he was on duty in a bus plying from Delhi to Katra.

In support of their respective cases the prosecution examined twenty two witnesses and the defence sixteen.

On consideration of the evidence, both oral and documentary, the trial court held, firstly, that the accused were in settled possession of the disputed land and not Sm.Krishana (PW 17) widow of Shri Krishan and, consequently the question of her delivering possession of that land to Mange Ram after the execution of the agreement for sale old not arise. As regards the sequence of events on the fateful morning the trial court observed that the prosecution version that on seeing the accused entering into the disputed land for ploughing, the complainant party came from their ancestral land and with folded hands requested them to withdraw therefrom was patently false. With the above observation, the Court drew the following conclusion:-

> <SLS> "What appears is that in the morning of 17.11.1985. the complainant party trespassed into this land, and when the accused party came to know about, they immediately mounted a full-strength assault on them to throw them out. I am aware that this is not the version of either party. I am also aware of the dictum that court is not to evolve third story. But I am also conscious that it is one of the bounden and sacred duties of the Court to sift the truth, to separate the grain from the chaff. And after giving a serious thought to the matter on record and the circumstances emerging therefrom, I have come to the conclusion recorded above".

<SLE> The trial court next posed the question as to whether the complainant party's illegal and unauthorised entry into the land entitled the accused to cause harm to them - and particularly to the extent they had caused - and answered the same with the following words:

> <SLS> "Here, the first thing is the injuries sustained by theaccused. they have just been reproduced above in paragraph No.
>
> 24. They are eight in number and all are superficial. As against this, the total number of injuries found on the complainant party is sixty - five. It is true that comparative number of injuries is not the sole decisive factor, but it is one of the guiding factors

for the court to determine the extent of right of self-defence. Another important fact is the parts of body involved. The injuries on the deceased were on vital parts and it has not been disputed that they were sufficient to cause immediate death. Indeed, this could not be disputed, because the deeths occurred at the spot itself. Thus it is clear that the accused have committed much more harm then was necessary."

<SLE> In recording the above finding the trial Court took into consideration the fact that no explanation was forth coming either from the accused or from D.W.15, as to how the three victims met with their death. In negativing the plea of right of the private defence of property and person raised by the accused the Court lastly observed:

<SLS> "Furthermore, since the accused were not present in the fields when the complainant's party entered there, as held by me, above, there was no immediate danger to their person.

Therefore, no right of private defence of person accrued to them. In any case, there was no danger of death or grievous hurt and, therefore, they had no right to cause the harm which they have caused to the complainant party. As regards the right of private defence of property, the only offence committed by the complainant party, was that under Section 447 of the Indian Penal Code, and that would not give the accused a right of self-defence to the extent of causing grevious hurt to death.

Thus the action of the accused party was neither within the scope of section 100 of the Indian penal Code nor within the purview of Section 103.

Above all, the accused had time to have recourse to the protection of public authorities as well. Therefore, no right of private defence accrued to the accused at all even on the holding that they were in settled possession and the complainant party had committed trespass on the morning of 17.11.1985."

<SLE> In assailing the judgement the learned counsel for the appellants first submitted that having disbelieved the prosecution case as to the manner in which the onslaught originated, the trial Court was not justified in basing the conviction on a case made out by itself.It was next contended that the trial Court having disbelieved the evidence of the four eye-witnesses examined by the prosecution as against ten of the accused ought not to have relied upon the self same evidence to convict the appellants. It was then contended that having regard to the findings recorded by the trial Court that the accused party were in settled possesion of the disputed land and that the complainant party had criminally trespassed thereon and the uncontroverted evidence on record that four of the accused sustained injuries in the incident, the trial Court ought to have held, in view of section 96 of the Indian Penal Code, that no offence was committed by the accused as they acted in bonafide exercise of their right of private defence of property and person. The learned counsel lastly submitted that even if the entire case of the prosecution was believed the conviction under section

302 read with 149 I.P.C. could not be sustained and it was liable to be altered to one under Section 304 (Part 1) I.P.C as the facts of the case were squarely covered by exception 2 to section 300 IPC.

In repudiating the above contentions, the learned counsel appearing on behalf of the respondent- state urged that the findings of the trial Court, that the accused party were in settled possession of the disputed land and that the complainant party had criminally trespassed therein before the former's arrival, were, in view of the evidence on record, patently wrong. He however, urged that the other findings recorded by the trial Court were fully porne out by the evidence on record. As regards the contention of the appellants that they were antitled to an order of acquittal in view of acquittal of ten others the Counsel urged that the principle "Falsus in uno, Falsus in omnibus" was not available in criminal trial. Besides, he submitted, the reasons which weighed with the trial court for the acquittal of the ten others were not available to the appellants. He lastly urged that considering the manner in which the assault took place and the nature and number of injuries the accused inflicted on the deceased and other members of the complainant party Exception 2 to Section 300 of the Indian Penal Code had no manner of application.

Having carefully considered and assessed the evidence on record, so far as they relate to the appellants, we are unable to accept any of the contentions raised on their behalf even proceeding on the assumption that the finding of the trial Court that the accused were in settled possession of the disputed land is unassailable. Prosecution led evidence through Sm.Krishna (P.W.13) Sm.Kamlesh (P.W.14), Balbir (P.W.15) and Sm.Rajo(P.W.16) that in the morning of November 17,1985,when they along with their other family members namely, Ran Singh, Dhan singh, Satbir Singh, Balbir singh and Sm. Ramesh were cultivating their ancestral land, which separated the disputed land by a killa, accused Ved Prakash and Malak Ram came there with two camel ploughs. A few minutes thereafter the other accused came there in three tempos and one tractor armed with various weapons including pharsas, ballams and lathis and asked Ved Prakash and Malak Ram as to why they had not started ploughing the disputed land. At that stage all the members of the complainant party went to the disputed land and requested the accused with folded hands to withdraw from that land as they had purchased the same and also ploughed it. According to the above four witnesses. Immediately thereupon on the instigation of Ram Karan (since acquitted) Bhup and Ishwar (two of the appellants) put into motion the two tempos, of which they were the drivers and dashed against some of them felling them down. Then Bhup and Ishwar stopped their tempos. The accused persons then started beating the members of the complainant party with the various weapons they were carrying as a result of which Ram Singh, Rattan Singh and Satbir Singh fell down dead on the spot, Dhan Singh, Sm. Rajo and Sm. Kamlesh sustained grievous injuries including fractures and the other three sustained minor injuries. Then the accused persons left in one tempo and a tractor.

The accused in their turn led evidence through D.W.15 Attar Singh to prove that in the morning when he had gone to plough his land, adjacent to the disputed land, he found Nafe, Phool Chand, Bhup, Nathu, Mahinder, Surte and Ramesh (all appellants before us) ploughing the disputed land. Sometimes thereafter he saw Ran Singh, Rattan singh, Dhan Singh, Satbir Singh, Sm. Kamlesh, daughter of Dhan singh and Sm. Ramesh and Sm. Rajo, two daughters-in-law of Dhan Singh (seven members of the complainant party) coming there. According to him while the male members were carrying jailis the ladies were carrying lathis. He next stated that Ran Singh raised lalkara and then starting beating Mahinder, Ramesh and Bhup causing injuries on them. Besides, nafe was also beaten up but the witness could not say who beat him. Then Rajinder and others picked up jailis and lathis in their defence causing injuries to the above mentioned seven members of the complainant party.

As noticed earlier the trial Court disbelieved both the versions relating to the genesis of the assault and gave a version of its own which has already been reproduced. We are in complete agreement with the learned counsel for the appellants that the trial Court was not justified in making out a case of its own, disbelieving and discarding the respective cases made out by the parties; but then, having given our anxious consideration to the evidence adduced by the parties regarding the origin of the incident of that fateful day, we are of the opinion that the trial Court ought to have accepted the prosecution version. The trial Court held that keeping in view the incidents that took place earlier on November 12 and November 14, 1985 and the fact that a large number of miscreants came in three tempos and one tractor armed with deadly weapons for a murderous assault it would be an insult to common sense to believe the prosecution story that the nine members of the complainant party went there with folded hands to persuade them to withdraw. In the context of the evidence on record we are constrained to say that the above remark made by the trial Court is not only uncalled for and unsustainable but unfortunate. Admittedly only a few days back - on November 12, 1985 to be precise - the appellant Rajinder had lodged a complaint against some members of the complainant party including Mange Ram for committing trespass into and damaging crops of the disputed land and in connection therewith some of them were arrested. Again on November 14, 1985 Sm Rajo (P.W.16) had lodged an F.I.R. against some of the accused persons alleging commision of offences under Section 452 and 323 IPC. The motive for the assault as given therein was that the complainant party had ploughed the disputed land. In the context of these facts, which the trial Court also noticed, it was not likely that the complainant party would venture to forcibly cultivate the disputed land immediately thereafter and face another prosecution. Judged in that light their assertion that at the material time they were cultivating their ancestral land does not seem to be improbable more so, when the accused did not even suggest, much less prove, that they had no such land near the disputed land.

Besides, the evidence of P.Ws. 13,14,15 and 16 as to the manner in which the trouble started and the assault took place is not only cogent and consistent but also stands

corroporated by other materials on the record, which may be summarised as under:-

i) The accused admitted the presence of seven out of the nine members of the complanant party (except P.Ws. 13 & 15) at the time of the incident and of their having sustained injuries.

ii) Dr. S.K. Bhutani (P.W.2) examined P.W.13 on 17.11.1985 at 1.45 p.m. and found three injuries on her person; one of which, he opined, could be caused by a pointed weapon and other two by blunt weapon.

iii) On the same afternoon (17.11.1985) Dr. J.S. Lamba (P.W.4) examined Dhan Singh, Sm. Ramesh, Sm. Kamlesh (P.W.14) Sm. Rajo (P.W.16) and Balbir (P.W.15) and found lacerated injuries on their persons. On X'ray examination Dhan Singh was found to have sustained compound fractures of both bones of right forearm and of right humerus and fracture of left radius; Sm. Kamlesh sustained fracture of shaft of right femur and Sm. Rajo sustained fracture of left parietal bone. According to Dr. Lamba injury No. 8 of Dhan Singh - deformity of right upper limb with angulation -

could be caused by being hit by a tempo and also by being run over by it.

iv) Dr. K.K. Chawla (P.W.1) who held the post-mortem examinations on the three deceased on 18.11.1985 found fifteen injuries on Satbir, fourteen of which were incised and/or penetrating woulds on the upper part of the body, that is chest, neck and head; twenty five injuries on Ran Singh of which eight were abrasions, two lacerations and the rest either incised or penetrating wounds and seventeen injuries on Rattan Singh, most of them incised and penetrating wounds. In the opinion of Dr. K.K. Chawla the incised wounds could be caused by pharsa and incised penetrating wounds by ballams. He further opined that injury No.17 on the person of Ran Singh could be caused if some projective portion of the tempo hit the victim on the thigh and injury No. 16 on the person of Ran Singh and injury No. 14 on the person of Rattan Singh could be caused if a tempo ran over the victims.

v) P.W.22, the Investigating Officer testified that on reaching the spot he found two tempos and two camel ploughs and that later on Rajinder (the appellant) produced documents of those two tempos.

vi) The evidence of P.W.22 also proves that P.W.13 lodged her complaint with him with utmost dispatch, in as much as it was made before him at 12.15 P.M; and that the same was forwarded to and received by local Magistrate on the self same day at 3.45 p.m. and

vii) The F.I.R. contains the sub stratum of the prosecution case as detailed by P.W.13 at the trial.

Pitted against the evidence of the prosecution witnesses as discussed above is the evidence of Attar Singh (D.W.15) who gave the defence version of the incident, and Dr. Ravi Kanta (D.W.1) who examined the appellants nafe, Ramesh, Mahinder and Bhup Singh and found injuries on their persons. Though 14 other witnesses were also examined on behalf of the defence their evidence,

however, is not relevant for our persent purposes. On a careful analysis of the evidence of D.W.15, which we have detailed earlier, in the light of other evidence on record we are unable to place any reliance thereupon. According to D.W.15 when he saw the accused working in the disputed land there was only one tempo standing by their side, but then, as noticed earlier, the evidence of P.W.22 clearly proves that there were two tempos at the spot and that Rajinder (the appellant) produced documents of those two tempos. Such presence of two tempos not only discredits D.W.15 but also makes the version of the appellants that they came with one tempo which carried fertilisers untrustworthy. D.W.15 next stated that the male members of the complainant party were carrying jailis and the ladies lathis and that Ran Singh had caused hurt to Mahinder, Ramesh and Bhup. If this part of his evidence is to be believed Ran Singh must have assaulted them with jaili, which admittedly is a sharp weapon, but Dr.Ravi Kanta (D.W.1) opined that all the injuries he found on their persons were caused by blunt weapons. Then again, according to D.W.15, after the above named four persons were injured the accused persons present there took up the jailis and lathis and beat the seven members of the complainant party present there to defend themselves, but as noticed earlier, Dr. Chawla (P.W.1) testified that most of the injuries found on the persons of the deceased could be caused by ballams, pharsas and spears. While being cross- examined he asserted that some of the injuries could not be caused by jaili or by lathi and they could be caused on being run over by tempo. The other reason which prompts us to discard the evidence of D.W.15 is that he did not give any explanation whatsoever as to how Ran Singh, Rattan Singh and Satbir Singh met with their death at the spot. Indeed, according to him nobody had died on the field even though he claimed to have left the field after the fight was over. According to this witness only Ran Singh was lying on the ground while others were standing. We are in complete agreement with the trial Court that having regard to the nature and number of injuries sustained by Rattan Singh and Satbir it was absurd to claim that he found them standing.

Coming now to the evidence of D.W.1, we find that he examined the appellants Nafe Singh and Ramesh in the night of 17.11.1985 at 11.30 p.m. He found two lacerated wounds and one diffused swelling on the person of Nafe Singh and two lacerated wounds on the person of Ramesh. His evidence further discloses that on 21.11.1985 he examined appellant Rajinder Singh and Bhup Singh and found one liner lacerated wound on the person of the former and one linear injury and a scab on the person of Bhup Singh. He testified that the injuries seen by him on the above two persons were four days old. In cross- examination D.W.1 admitted that the injuries found by him on the persons of the above four could be sustained by fall. He further opined that injuries found by him on Mahinder and Bhup Singh could be caused in agricultural pursuits like striking with plough.

From the above discussion the only legitimate and reasonable inference that can be drawn is that the accused party had gone to the disputed land with a determination to cultivate it and, for that purpose, fully prepared to thwart any attempt made by Mange Ram and his men to disturb such cultivation and meet any eventuality. As they were about to cultivate the land the complainant party which was cultivating their ancestral land nearby, went there and entreated them to vacate the land claiming to be its owner and in possession. Immediately thereupon the accused party launched a murderous attack on the complainant party resulting in death of three, grievous injuries to three and simple injuries to other three. In course of that attack four members of the accused party received some injuries at the hands of one or other of the accused party received some injuries at the

hands of one or other of the complainant party (as testified by P.W.14).

Having drawn the above inferences we have now to ascertain whether the unauthorised entry of the complainant party in the disputed land, which according to the trial Court was in settled possession of the accused party legally entitled the latter to exercise their right of private defence and, if so, to what extent. The fascicule of Sections 96 to 106 I.P.C. codify the entire law relating to right of private defence of person and property including the extent of and the limitation to exercise of such right. Section 96 provides that nothing is an offence which is done in the exercise of the right of private defence and Section 97 which defines the area of such exercise reads as under:

> <SLS> 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 moveable or immoveable, of himself or of any other 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.
>
> (emphasis supplied) <SLE> On a plain reading of the above section it is patently clear that the right of private defence, be it to defend person or property, is available against an offence. To put it conversely, there is no right of private defence against any act which is not an offence. In the facts of the instant case the accused party was entitled, in view of Section 97 and, of course, subject to the limitation of Section 99, to exercise their right of private defence of property only if the unauthorised entry of the complainant party in the disputed land amounted to "criminal trespass", as defined under Section 441 I.P.C. The said Section reads as follows: <SLS> "Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate.
>
> insult or annoy any person in possession of such property.
>
> Or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".
>
> It is evident from the above provision that unauthorised entry into or upon property in the possession of another or uniawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate insult or annoy the person in possesion of the property. In other words, unless any of the intentions referred in Section 441 is proved no offence of criminal trespass can be said to have

been committed. Needless to say, such anintention has to be gathered from the facts and circumstances of a given case. Judged in the light of the above principles it cannot be said that the complainant party committed the offence of "criminal trespass" for they had unauthorisedly entered into the disputed land, which was in possession of the accused party, only to persuade the latter to withdraw thereupon and not with any intention to commit any offence or to insult, intimidate or annoy them. Indeed there is not an iota of material on record to infer any such intention. That necessarily means that the accused party had no right of private defence to property entitling them to launch the murderous attack. On the contrary, such murderous attack not only gave the complainant party the right to strike back in self defence but disentitled the accused to even claim the right of private defence of person.

We hasten to add, that even if we had found that the complainant party had criminally tresoassed into the land entitling the accused party to exercise their right of private defence we would not have been justified in disturbing the convictions under Section 302 read with Section 149 I.P.C., for Section 104 I.P.C. expressly provides that right of private defence against "criminal trespass" does not extend to the voluntary causing of death and Exception 2 to Section 300 I.P.C. has no manner of application here as the attack by the accused party was premeditated and with an intention of doing more harm than was necessary for the purpose of private defence. Which is evident from the injuries sustained by the three deceased, both regarding severity and number as compared to those received by the four accused persons. However, in that case we might have persuaded purselves to set aside the convictions for the minor offences only: out then that would have been, needless to say, a poor solace to the appellants.

As regards the contention raised on behalf of the appellants that having acouitted some of the accused persons disbelieving the evidence of the prosecution witnesses the trial Court ought not to have relied upon the same to convict them, we can only say that the learned counsel for the State was fully justified in contending that the maxim 'Falsus in uno, Falsus in omnibus' does not apply to criminal trials and it is the duty of the Court to disengage the truth from falsehood instead of taking an easy course of rejecting the evidence in its entirety solely on the ground that the same is not acceptable in respect of some of the accused. On perusal of the impugned judgtment we find that the trial Court took great pains to consider and discuss the case of the individual accused including the pleas of alide raised on behalf of appellant ishwar and others and on a threadbare discussion thereof found that the participation of the appellants before us in the incident stood proved beyond all reasonable doubt, while acquitting others on grounds which were available to them only. Having carefully considered the evidence against each of the appellants we do not find any reason to take a different view from the one taken by the trial Court so far as the appellants are concerned except appellant Jai Narain as we feel that the trial Court having acquitted those whose names old not find place in the F.I.R. ought

to have recorded an order of acquittal in his favour also as he stood on the same footing.

In the result we dismiss this appeal of all the appellants except appellant Jai Narain, whose appeal we allow. Since all the appellants are on bail, Jai Narain will stand discharged from his bail bond while others will now surrender to their bail bonds to serve out the sentences imposed upon them by the trial Court.