

Harbhagwant Singh @ Noopi Son Of Bhag ... vs The State Of Punjab on 13 January, 2009

Equivalent citations: 2009 CRI. L. J. 1659, 2010 (3) SCC 174, 2010 (3) ALJ 103, AIR 2010 SC (SUPP) 651, (2010) 3 MAD LJ(CRI) 120, (2010) 2 ALLCRILR 217, (2010) 2 ALLCRIR 1316, (2010) 1 CURCRIR 429, 2010 (2) SCC (CRI) 48, (2010) 68 ALLCRIC 1020, (2010) 1 MADLW(CRI) 387, (2010) 2 CHANDCRIC 43, (2010) 1 DLT(CRL) 864, (2010) 45 OCR 923, (2010) 1 UC 415, (2009) 2 ALLCRILR 254, (2010) 1 ALD(CRL) 674

Author: K.S. Garewal

Bench: K.S. Garewal

Criminal Appeal No. 104-DB of 2000
Criminal Appeal No. 859-DB of 2004
Criminal Revision No. 538 of 2000

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Appeal No. 104-DB of 2000
Dated of Decision: 13.01.2009

1. Harbhagwant Singh @ Noopi son of Bhag Singh,
2. Harvinder Singh @ Happy son of Bhag Singh,
3. Santokh Singh son of Nijjar Singh,
4. Manjit Singh @ Bhagga Singh son of Santokh Singh,
5. Kuldip Singh son of Santokh Singh,
6. Lekh Raj @ Pappu son of Sant Ram,
All residents of Village Garha, P.S. Phillaur, Distt. Jalandhar.

... Appellants

Versus

The State of Punjab.

...Respondent

Criminal Appeal No. 859-DB of 2004

Dated of Decision: 13.01.2009

7. Bhag Singh son of Harbans Singh, Cultivator, resident of Village Garha, Tehsil Phillaur.

... Appellant

The State of Punjab.

....Respondent

Criminal Revision No. 538 of 2000

Criminal Appeal No. 104-DB of 2000

2

Criminal Appeal No. 859-DB of 2004

Criminal Revision No. 538 of 2000

Dated of Decision: 13.01.2009

Gian Singh son of Mehar Singh aged 50 years, Mason,
resident of Village Garha, P.O. Phillaur, Distt. Jalandhar.

....Petitioner

1. Harbhagwant Singh son of Bhag Singh aged 28 years,
resident of Village Garha, Police Station Phillaur.
2. Harvinder Singh alias Happy son of Bhag Singh aged 26
years, resident of Village Garha, Police Station, Phillaur.
3. Santokh Singh son of Nijjar Singh aged 50 years, resident of
Village Garha, Police Station, Phillaur.
4. Manjit Singh son of Santokh Singh, aged 22 years, resident of
Village Garha, Police Station, Phillaur.
5. Kuldeep Singh son of Santokh Singh aged 30 years, resident of
Village Garha, Police Station, Phillaur.
6. Lekh Raj alias Pappu son of Sant Ram, aged 32 years,
resident of Village Garha, Police Station, Phillaur.
7. Sarwan Singh alias Taboo son of Chanan Singh Saini aged 35
years, resident of Village Lassara Police Station, Phillaur.

... Respondents

CORAM: HON'BLE MR. JUSTICE K.S. GAREWAL
HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. H.S. Sandhu, Senior Advocate,
with Mr. Varun Wadhwa, Advocate,
and Mr. Bikramjit Pannu, Advocate,
for Harbhagwant Singh @ Noopi,
Harvinder Singh @ Happy and Lekh Raj @ Pappu,
appellants, in Criminal Appeal No. 104-DB of 2000.

Mr. P.S. Hundal, Senior Advocate,
with Mr. P.P.S. Hundal, Advocate,
Criminal Appeal No. 104-DB of 2000 3
Criminal Appeal No. 859-DB of 2004
Criminal Revision No. 538 of 2000

for Santokh Singh, Manjit Singh @ Bhagga Singh and
Kuldip Singh, appellants,
in Criminal Appeal No. 104-DB of 2000.

Mr. R.S. Rai, Senior Advocate,
with Mr. Anurag Verma, Advocate,
for Bhag Singh, appellant,
in Criminal Appeal No. 859-DB of 2004.

Mr. D.S. Brar, Deputy Advocate General, Punjab,
for the respondent - State,
in both the appeal.

None for the petitioner,
in Criminal Revision No. 538 of 2000.

SHAM SUNDER, J.

This judgement shall dispose of Criminal Appeal No. 104- DB of 2000, filed by Harbhagwant Singh @ Noopi son of Bhag Singh, Harvinder Singh @ Happy son of Bhag Singh, Santokh Singh son of Nijjar Singh, Manjit Singh @ Bhagga Singh son of Santokh Singh, Kuldip Singh son of Santokh Singh and Lekh Raj @ Pappu son of Sant Ram and Criminal Appeal No. 859-DB of 2004, filed by Bhag Singh son of Harbans Singh, accused (now appellants), against the judgement of conviction, and the order of sentence, dated 12.01.2000 and 23.04.2004, respectively, rendered by the Courts of Additional Sessions Judge, Jalandhar, vide which, they convicted and sentenced them, as under, as also, Criminal Revision No. 538 of 2000, filed by Gian Singh son of Mehar Singh, complainant, for setting aside the Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 acquittal of Sarwan Singh, accused, for enhancement of fine heavily, and payment of the same, as

compensation, to the kith and kin of the deceased:-

Names of the Offence for which Sentence awarded accused convicted (now appellants)

(a) Harbhagwant (a) Under Section Life imprisonment and to Singh @ Noopi 302/149 Indian pay fine of Rs. 1000/-, Penal Code. and in default thereof, to undergo rigorous imprisonment for a period of six months.

(b) Under Section Rigorous imprisonment
307 Indian Penal for a period four years
Code. and to pay a fine of Rs.
500/-, and in default
thereof, to further
undergo rigorous
imprisonment for a
period of three months.

(c) Under Section Rigorous imprisonment
148 Indian Penal for a period of one year.
Code.

(d) Under Sections Rigorous imprisonment
324/149 Indian for a period of one year.
Penal Code.

(b) Harvinder Singh (a) Under Section Life imprisonment and to
@ Happy 302 Indian Penal pay a fine of Rs. 1000/-
Code. and in default thereof, to
undergo rigorous
imprisonment for a
period of six months.

Criminal Appeal No. 859-DB of 2004

Criminal Revision No. 538 of 2000

Names of the accused (now appellants)	Offence for which convicted	Sentence awarded
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(b) Under Section Rigorous imprisonment
307/149 Indian for a period of four years
Penal Code. and to pay a fine of Rs.
500/- and in default
thereof, to undergo
rigorous imprisonment
for a period of three
months.

(c) Under Section Rigorous imprisonment
324 Indian Penal for a period of one year.
Code.

(d) Under Section Rigorous imprisonment
324/149 Indian for a period of one year.
Penal Code.

- (e) Under Section Rigorous imprisonment
148 Indian Penal Code for a period of one year.
Code.
- (c) Santokh Singh (a) Under Section Life imprisonment and to
302 Indian Penal Code pay a fine of Rs. 1000/-
and in default thereof, to
undergo rigorous
imprisonment for a
period of six months.
- (b) Under Section Rigorous imprisonment
307/149 Indian Penal Code for a period of four years
and to pay a fine of Rs.
500/- and in default
thereof, to undergo
rigorous imprisonment
for a period of three
months.
- (c) Under Section Rigorous imprisonment
324/149 Indian Penal Code for a period of one year.
Penal Code.
- (d) Under Section Rigorous imprisonment
148 Indian Penal Code for a period of one year.
Code.

Criminal Appeal No. 859-DB of 2004

Criminal Revision No. 538 of 2000

Names of the accused (now appellants)	Offence for which convicted	Sentence awarded
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- (d) Manjit Singh @ (a) Under Section Life imprisonment and to
Bhagga Singh 302 Indian Penal Code pay fine of Rs. 1000/-
and in default thereof, to
undergo rigorous
imprisonment for a
period of six months.
- (b) Under Section Rigorous imprisonment
307/149 Indian Penal Code for a period of four years
and to pay a fine of Rs.
500/- and in default
thereof, to further
undergo rigorous
imprisonment for a
period of three months.
- (c) Under Section Rigorous imprisonment
324 Indian Penal Code for a period of one year.
Code.
- (d) Under Section Rigorous imprisonment
324/149 Indian Penal Code for a period of one year.
Penal Code.
- (e) Under Section Rigorous imprisonment

- 148 Indian Penal for a period of one year.
Code.
- (e) Kuldip Singh (a) Under Section Life imprisonment and to
302 Indian Penal pay fine of Rs. 1000/-
Code. and in default thereof, to
undergo rigorous
imprisonment for a
period of six months.
- (b) Under Section Rigorous imprisonment
307/149 Indian for a period of four years
Penal Code. and to pay a fine of Rs.
500/- and in default
thereof, to further
undergo rigorous
imprisonment for a
period of three months.

Criminal Appeal No. 859-DB of 2004

Criminal Revision No. 538 of 2000

Names of the accused (now appellants)	Offence for which convicted	Sentence awarded
	(c) Under Section Rigorous imprisonment 148 Indian Penal for a period of one year. Code.	
	(d) Under Section Rigorous imprisonment 324/149 Indian for a period of one year. Penal Code.	
	(e) Under Section Rigorous imprisonment 324 Indian Penal for a period of one year. Code.	
(f) Lekh Raj Pappu	@ (a) Under Section Life imprisonment and to 302 Indian Penal pay fine of Rs. 1000/- Code. and in default thereof, to undergo rigorous imprisonment for a period of six months.	
	(b) Under Section Rigorous imprisonment 307/149 Indian for a period of four years Penal Code. and to pay a fine of Rs. 500/- and in default thereof, to undergo rigorous imprisonment for a period of three months.	
	(c) Under Section Rigorous imprisonment 324 Indian Penal for a period of one year. Code.	
	(d) Under Section Rigorous imprisonment 324/149 Indian for a period of one year.	

Penal Code.

(e) Under Section Rigorous imprisonment
148 Indian Penal for a period of one year.
Code .

(g) Bhag Singh (a) Under Section To undergo rigorous
148 Indian Penal imprisonment for one
Code. year.

Criminal Appeal No. 859-DB of 2004

Criminal Revision No. 538 of 2000

Names of the accused (now appellants)	Offence for which convicted	Sentence awarded
	(b) Under Section 302 read with Section 149 Indian Penal Code.	To undergo life imprisonment and to pay a fine of Rs. 1000/- and in default of payment of fine, to undergo rigorous imprisonment for six months.
	(c) Under Section 307 read with Section 149 Indian Penal Code.	To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 500/- and in default of payment of fine, to undergo rigorous imprisonment for three months.
	(d) Under Section 324 read with Section 149 Indian Penal Code.	To undergo rigorous imprisonment for one year for causing injuries to Jatinder Singh.
	(e) Under Section 324 read with Section 149 Indian Penal Code.	To undergo rigorous imprisonment for one year for causing injuries to Jagir Singh, PW.

All the substantive sentences, were ordered to run concurrently.

2. The unfortunate catastrophe, in the instant case, which led to the loss of one valuable life and injuries, on the person of two injured, on the side of the complainant, seems to be the result of chronic land dispute, and a competitive race for taking possession of the same (land) by the complainant or the accused. The story Criminal Appeal No. 859-DB of 2004 Criminal Revision No.

538 of 2000 commenced with the purchase of two kills of land from Santokh Singh, accused, by Jagir Singh, injured, vide registered sale-deed, about four years earlier to 16.10.96. As emerges, from the record, Santokh Singh, vendor, was not delivering the possession of the land to Jagir Singh, vendee. The said land was adjacent to the passage. Bhag Singh, accused, and his sons were helping Santokh Singh, in that matter. On 16.10.96, at 10.00 PM, Gian Singh, complainant, his son Manjit Singh (now deceased), Jagir Singh, and his son Jatinder Singh, had gone for cultivating the land aforesaid of Jagir Singh. After doing so, Gian Singh, in Tata Siera, bearing registration No. PB-37-7580, with a point 12 bore gun, placed in the same, Manjit Singh, on his scooter, bearing registration No. PB-37-7406, whereas Jagir Singh and Jatinder Singh, in a tractor, bearing registration No. PUL-1638, keeping a licenced .315 rifle, in the same (belonging to Jagir Singh), were coming back to village Garha, and, when they were still at some distance, from the grid station of village Garha, Sarwan Singh, accused (since acquitted), came, driving a four wheeler Tata 407, bearing registration No. PB-08-P-8479 and stopped the same, in front of the tractor of Jagir Singh and Jatinder Singh. Santokh Singh, accused, armed with a gandassi, Kuldeep Singh, accused, armed with a kirpan, Bhagga Singh @ Manjit Singh, accused, armed with a datar and Lekh Raj @ Pappu, accused, armed with a datar, alighted from that vehicle. The vehicle was followed, by one motor-car, bearing registration No. Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 DL-3C-B-4498. That car also stopped at that place. Harbhagwant Singh @ Noopi, accused, armed with a rifle, Harvinder Singh @ Happy, accused, armed with a datar, and Bhag Singh, accused, empty handed, came out of the same. Bhag Singh, raised an exhortation, that no member of the complainant party, should go unhurt. On such exhortation, having been raised by Bhag Singh, Kuldeep Singh, gave two blows with kirpan, on the right leg of Manjit Singh (now deceased) and Bhagga Singh @ Manjit Singh, accused, gave a blow with his datar, on the left leg of Manjit Singh (since deceased) , as a result whereof, he fell down, on the ground. Gian Singh, after coming out of his car, tried to save his son Manjit Singh (now deceased), upon which, Santokh Singh, gave two blows, with gandassi, on his head. Harvinder Singh @ Happy, gave blow with his datar, on the left shoulder of Jagir Singh and Kuldeep Singh, gave a blow with his sword (kirpan), on the right thigh of Jagir Singh. Bhagga Singh @ Manjit Singh, accused, gave a blow with datar, on the right wrist of Manjit Singh. Lekh Raj @ Pappu, also gave datar blow, on the right hand of Manjit Singh. Santokh Singh, accused, gave blows with his gandassi, on the head of Manjit Singh. Lekh Raj @ Pappu, gave blow with his datar, on the arms of Manjit Singh and Harvinder Singh @ Happy, also gave blows with his datar, on the head of Manjit Singh. Gian Singh and Jatinder Singh, raised an alarm of 'killed-killed' and entered the sugarcane fields. Bhag Singh, accused, exhorted Harbhagwant Singh @ Noopi, Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 accused, to fire at them, towards the sugarcane fields. Harbhagwant Singh @ Noopi, accused, then fired shots from his rifle towards Gian Singh and Jatinder Singh, but luckily, they escaped. They kept on raising alarm, from the sugarcane fields, which attracted Gurpreet Singh, to the spot. Thereafter, all the accused escaped from the place of occurrence, with their respective weapons, leaving their vehicles, at the spot. The occurrence was witnessed by the injured and the witnesses in the head-light of the vehicles, which were at the spot. It was stated that they were attacked by the accused, under the apprehension, that they were going to plough the land, aforesaid, which was so purchased, by Jagir Singh, from Santokh Singh. Manjit Singh, who was, in injured condition, was taken to Civil Hospital, Phillaur, where, he succumbed to his injuries after sometime. Jagir Singh and Jatinder Singh, were taken to Daya Nand Medical College and Hospital, Ludhiana, by Gurpreet Singh. Gian Singh, was

going to the Police Station, to lodge a report, when Angrej Singh, Sub Inspector/Station House Officer, Police Station Phillaur, met him, at the bus-stand. He made statement exhibit PJ, before Angrej Singh, Sub Inspector/Station House Officer, which was read-over and explained to him. Endorsement exhibit PJ/1, was appended thereon, by Angrej Singh, Sub Inspector/Station House Officer, and the same was sent to the Police Station, on the basis whereof, FIR exhibit PJ/2, was recorded.

3. Thereafter, Angrej Singh, Sub Inspector, came to Civil Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 Hospital, Phillaur, and prepared the inquest report, exhibit PB, of the dead-body of Manjit Singh. The dead-body was sent to the doctor alongwith application exhibit PA, for conducting post-mortem examination. Thereafter, Angrej Singh, Sub Inspector, came to the spot. After inspecting the same, he prepared site-plan exhibit PZ/1, with correct marginal notes. The blood stained earth, from the spot, was lifted and converted into a parcel exhibit P23. The parcel was sealed and taken into possession, vide memo PQ. Three empty cartridges were found, at the spot, which were also lifted and converted into a parcel P30, sealed with the seal, and taken into possession, vide a separate memo. 12 bore gun and five live cartridges were recovered from the car Tata Siera, bearing registration No. PB-37-7580, which were converted into parcels P1 and P2 to P6, duly sealed, and taken into possession, vide memo PK. The tractor, bearing registration No. PB-37-7406, which was lying, at the spot, was taken into possession, vide memo PM. The vehicle make Tata 407, bearing registration No. PB-08-P- 8479, and the Esteem car, bearing No. DL-3C-D-4498, were taken into possession, vide recovery memos PN and PO, respectively. From the car, one rifle .315 bore, exhibit P7 and ten live cartridges P8 to P17, were recovered and those were taken into possession, vide memo PR. The photographer was called to the spot, and the same was got photographed. On reaching the Police Station, the case property was deposited with the Moharrir Head Constable.

Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000

4. Thereafter, Angrej Singh, Sub Inspector/'Station House Officer, Police Station Phillaur, proceeded to Daya Nand Medical College and Hospital, Ludhiana. He made applications exhibits PW12/A and PW12/E, before Dr. Gaurav Singal, for obtaining his opinion, about the fitness of Jatinder Singh and Jagir Singh, for making their statements. The doctor declared them fit, vide endorsements exhibits PW12/C and PW12/D. Thereafter, their statements were recorded.

5. On the same day, Angrej Singh, Sub Inspector, conducted a raid, at village Garha, for arresting the accused, but no one was found. He came back to Civil Hospital, Phillaur. The post-mortem examination, on the dead-body of Manjit Singh, was performed, by a board of doctors, headed by Dr. Hari Singh. As many as, 12 ante- mortem injuries, were found, on the dead-body of Manjit Singh. It was opined that the cause of death was shock and hemorrhage, due to multiple injuries, leading to cardio-pulmonary arrest and death, and those were sufficient to cause the death, in the ordinary course of nature. Harbhajan Singh, Constable, through whom, the dead-body, was sent to the doctor, produced the wearing apparels, exhibits P18 to P22, found on the dead-body, before Angrej Sijngh, Sub Inspector, and the same were taken into possession, vide memo exhibit PZ/3.

6. On 19.10.96, Angrej Singh, Sub Inspector, went to village Garha. He arrested Harvinder Singh @ Happy, accused. When he was Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 returning from that place, and reached near the Committee Ghar, Phillaur, Madan Lal Chauhan, produced before him, Bhag Singh, Manjit Singh @ Bhagga, Kuldeep Singh and Lekh Raj @ Pappu, accused. He arrested all those accused, and prepared their personal search memos PZ/4 to PZ/8. On 21.10.96, Angrej Singh, Sub Inspector, interrogated Manjit Singh @ Bhagga Singh, accused, in the presence of Balwinder Singh, Assistant Sub Inspector and Gian Singh. He disclosed that he had concealed one datar, in the dry bed (Nala), on the eastern side of village Garha, under the dry sticks, of which, he only knew and could get the same recovered, by pointing out. Thereafter, Lekh Raj @ Pappu, accused, was interrogated, who made a disclosure statement PT, to the effect, that he had concealed one datar, in the dry bed (Nala), on the eastern side of village Garha, of which, he only knew and could get the same recovered, by pointing out. Both these accused were taken to the dry bed (Nala), wherefrom, Manjit Singh @ Bhagga Singh, accused, got recovered one blood stained datar, in pursuance of his disclosure statement. Rough sketch PU/2, thereof, was prepared, and after converting the same into a parcel, duly sealed, it was taken into possession, vide memo PU/1. Rough site plan PU/3 of the place of recovery of datar, was prepared. Thereafter, Lekh Raj @ Pappu, accused, in pursuance of his disclosure statement, got recovered a blood stained datar, from the spot. Rough sketch PT/2 of datar was prepared and after converting the same into a parcel, duly sealed, it was Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 taken into possession, vide recovery memo PT/1. Rough site plan PT/3, of the place of recovery of the aforesaid datar, was prepared. On coming back, to the Police Station, the case property was deposited with the Moharrir Head Constable. On 23.10.96, Jatinder Singh, produced one scooter, before Angrej Singh, Sub Inspector. The same was taken into possession, vide memo PZ. On the same day, Angrej Singh, Sub Inspector, interrogated Harvinder Singh @ Happy, accused, in the presence of Balwant Singh, Assistant Sub Inspector, upon which, he made a disclosure statement, exhibit PZ/10, that he had concealed one datar, on the eastern side of his sugarcane field, in village Garha, of which, he only knew and could get the same recovered by pointing out. Thereafter, Angrej Singh, Sub Inspector, interrogated Kuldeep Singh, accused, who suffered a disclosure statement PZ/11, that he had concealed a kirpan, in the sugarcane fields of Joga Singh, situated in the area of Phillaur, of which, he only knew and could get the same recovered by pointing out. Harvinder Singh @ Happy, accused, took the Police party, to the sugarcane fields, and got recovered a blood stained datar. Rough sketch PZ/12, of the same was prepared. The datar was duly sealed, after converting the same into a parcel, and taken into possession, vide memo PZ/13. Rough site plan of the place of recovery PZ/14, was prepared. Thereafter, Kuldeep Singh, accused, took the Police party, to the fields of Joga Singh, wherefrom, he got recovered a blood stained kirpan. The sketch thereof, PZ/15, was Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 prepared and the same was converted into parcel, duly sealed, and taken into possession, vide PZ/16. Rough site plan of recovery was prepared. On reaching the Police Station, the case property was deposited with the Moharrir Head Constable.

7. On 30.10.96, Angrej Singh, Sub Inspector, was present at Octroi Post, Village Tang, in connection with holding a picket, when Santokh Singh and Sarwan Singh @ Tabbo (since acquitted), accused, were produced before him. They were arrested in this case. On 01.11.96, Angrej Singh, Sub Inspector, was patrolling the area of City Phillaur, and Gian Singh, was also accompanying the Police party, in bus-stand Phillaur. Gian Singh, pointed out towards Harbhagwant Singh, accused.

He was arrested by Angrej Singh, Sub Inspector. He was interrogated. He made a disclosure statement PZ/18, that he had concealed one rifle .315 bore alongwith 22 live cartridges, in his residential house, situated in village Garha. In pursuance of that disclosure statement, he got recovered the rifle and cartridges from the said place. The rifle and the cartridges were converted into parcels, duly sealed, and taken into possession, vide a separate memo. Rough site plan of the place of recovery was prepared. On the same day, Angrej Singh, Sub Inspector, interrogated Santokh Singh, accused, in the presence of Balwinder Singh, Assistant Sub Inspector, and Gian Singh, upon which, he made a disclosure statement exhibit PW, that he had concealed a gandassi, in his fields, under the chaff, of which, he Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 only knew and could get the same recovered, by pointing out. In pursuance of that disclosure statement, he got recovered a blood stained gandasi, the rough sketch whereof, exhibit PX/2, was prepared. After converting the same into a parcel, which was duly sealed, it was taken into possession, vide memo PX/1. Site plan PX/3 of the place of recovery was prepared. On reaching the Police Station, the case property was deposited with the Moharrir Head Constable. The scaled plan of the place of occurrence PW5/A, was got prepared from Dalip Singh, Draftsman. The parcels containing the weapons, got recovered, by the accused, blood stained earth and wearing apparels of the deceased were sent to the Chemical Examiner. All the articles were found stained with human blood. The parcel containing rifle .315 bore and the parcel containing the empty cartridges, which were found, at the spot, were sent to the Forensic Science Laboratory, Chandigarh. It was reported by the Director of that Laboratory, that those cartridges were fired from that rifle. After the completion of investigation, the challan was presented.

8. On their appearance, in the Court of the Committing Magistrate, the accused were supplied the copies of documents, relied upon by the prosecution. After the case was received, by commitment, charge under Sections 148, 302, 307, 324 and 323 read with Section 149 of the Indian Penal Code, was framed, against the accused, which was read-over and explained to them, to which they pleaded not guilty, Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 and claimed judicial trial.

9. The prosecution, in support of its case, examined Dr. Hari Singh (PW1), who conducted the post-mortem, on the dead-body of Manjit Singh son of Gian Singh, on 17.10.96, Dr. Kamaljeet Singh (PW2), who conducted the medical-examination of Gian Singh, and found two injuries, on his person, which were declared simple, in nature, caused by sharp edged weapon, as also, of Santokh Singh son of Nijjar Singh, accused, and found, as many as, seven injuries, on his person, out of which, one injury on his fore-arm was declared grievous in nature, Dr. Charan Pal Singh (PW3), who conducted medico-legal- examination of Jatinder Singh son of Jagir Singh, and found, as many as, four injuries, on his person, which were simple in nature, caused by sharp edged weapon, Dr. R.P. Verma, Medical Officer, Civil Hospital, Phillaur (PW4), who was a member of the Medical Board, which was constituted for conducting the post-mortem examination, on the dead- body of Manjit Singh, deceased, Dalip Singh, Draftsman, Civil Courts, Jalandhar (PW5), who prepared the scaled map, Lakhwinder Singh, Head Constable (PW6), who tendered his affidavit PA, Gian Singh (PW7), first informant, as also an eye-witness, Jatinder Singh (PW8), injured witness, Jagir Singh (PW9), injured witness, Joginder Singh, Senior Clerk, RTO Office, Jalandhar (PW10), who proved the ownership of Tata 407 vehicle, in relation to Harbhagwant Singh and Parmod Kumar of Village

Garha, Jagir Singh, Licence Clerk of the Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 office of District Magistrate, Jalandhar (PW11), who stated that Harbhagwant Singh son of Bhag Singh resident of Garha, was issued an armed licence, for non-prohibited bore revolver/rifle, Dr. Gaurav Singal (PW12), who declared, Jatinder Singh and Jagir Singh, fit to make statements, Amarjit Singh, Head Constable (PW13), who took the case property to the office of the Chemical Examiner, Subhash Chander, Head Constable (PW14), who tendered the affidavit PW14/A, Harjinder Singh, Constable (PW15), who was handed-over the dead- body of Manjit Singh, for post-mortem examination alongwith an application, for the same, and who entrusted the parcels of clothes of the deceased, delivered to him, by the doctor, after post-mortem examination, to Angrej Singh, Sub Inspector, Hans Raj, Registration Clerk, office of Sub Divisional Magistrate, Phillaur (PW16), who proved that Manjit Singh son of Gian Singh, resident of Garha, was the registered owner of scooter No. PB-37-7406, and Jagir Singh son of Lakha Singh and Jatinder Singh son of Jagir Singh, were the owners of Tata Siera No. PB-37-7580, Jarnail Singh, Constable (PW-17), who tendered his affidavit PW17/A, Rakesh Kapoor, Ahlmad, in the Court of Civil Judge (Jr. Division), Phillaur (PW18), who brought the record, relating to civil suit file No. 22 of 1994, titled as 'Sukha Singh @ Santokh Singh Vs. Jagir Singh, which was instituted on 25.01.94, in which, the sale-deed dated 27.09.90, was challenged, being the result of fraud etc., Jaswinder Singh (PW19), who sold tractor international PUL Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 1638, Model 1969, in the sum of Rs. 52,000/-, to Jagir Singh son of Lakha Singh, resident of Garha, Gurmit Singh, Junior Assistant, office of the DTO, Ludhiana (PW20), who proved the ownership of Dalip Singh son of Munshi Singh, in relation to tractor PUL 1638, Gobind Sharma, Judicial Head Clerk, office of the District Magistrate, Jammu (PW21), who deposed, with regard to the renewal of armed licence of Gian Singh son of Mehar Singh, on 31.12.98, Shailender Chawla (PW22), who proved the ownership of car No. DL-3-08-4498, in the name of M/s Shah Enterprises, G4 Sakuntla Apartments, 59 Nehru Place, New Delhi, Angrej Singh, Sub Inspector, (PW23) the Investigating Officer of this case, Jit Singh, Constable (PW24) and Ashok Kumar, Clerk, office of the Deputy Commissioner, Amritsar (PW25).

10. The Additional Public Prosecutor for the State, gave up Pritpal Singh and Gurpreet Singh, prosecution witnesses, as won-over, by the accused. Thereafter, the Additional Public Prosecutor for the State, closed the prosecution evidence.

11. The statements of the accused under Section 313 Cr.P.C., were recorded. They were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. Harvinder Singh @ Happy son of Bhag Singh, accused, in his statement, under Section 313 of the Code of Criminal Procedure, took up the plea, as under:-

Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 "I am innocent. My father Bhag Singh had two brothers. Tejpal Singh and Gurinder Singh. They were in possession of 92 Kanals 7 Marlas of land situated in the area of cantonment (Chauni) at Phillaur belonging to the Union of India on lease from 1973-74. Sh. G.S.Aujla, IPS, who was Principal of Police Training College, Phillaur and as desirous of taking the possession of the said land for establish a school, College Authorities approached the Municipal Committee, Phillaur. A resolution was

passed on 29.5.94 for transferring the possession of the said land to Police Training College, Phillaur. My uncle Gurinder Singh filed a Civil Writ against the State of Punjab, Municipal Committee, Phillaur, and Principal, Police Training College, Phillaur for restraining them from taking forcible possession. A Local Commissioner was appointed by the Hon'ble High Court who visited the spot on 10.8.95 and filed his report that the land was in possession of our family. Earlier, in February 1994, Municipal Committee, Phillaur, moved an application under Public Premises Act etc. on the ground that the said property was leased to my grandfather Harbans Singh and rent has not been paid and prayed for eviction and recovered about Rs.30,000/- . My father was partner in Liquor Vend in the year 1996-97 and the case was registered in June 1996, under Sections 392/295 I.P.C. etc. against me and my father and others at the behest of Shamsher Singh Dollu, the then Excise Minister, Punjab.

The registration of the case was challenged in the Hon'ble High Court and quashed the F.I.R. Of 26.8.96. My father is a heart patient and he was admitted in escort Hospital at Delhi in June 1996 and under Angio plastery and was advised complete rest. On 16.10.1996, my father was feeling rerstlessness. My brother Harbhagwant Singh went to Dr. J.S.Bath at Phillaur at about 9.00 P.M. and brought him to Garha. He was examined and medicines were administered and my father went to sleep. Dr. bath stayed there for more than a hour and thereafter my brother Harbhagwant Singh put him back to Phillaur. I remained with my father. Police visited our Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 house on 17.10.96 in the morning and took my father to the police station alongwith me and my brother Harbhagwant Singh. Where my father again suffered set back and was got admitted in Jyoti Nursing Home, Opposite Police Station, Phillaur, where he was treated and was referred to a Cardiologist for further investigation. On the next day, police took my father to Civil Hospital, Jalandhar, and got him admitted there.

He was got discharged on 19.10.1996 and was taken into formal custody by the police. He was produced before the Magistrate and was sent to Judicial lock up. We have no connection in the land in dispute. My father was Sarpanch of the village and it Lambardar. He appeared as a witness for Santokh Singh regarding correction of Khasra Girdawari in a dispute between Jagir Singh PW and Santokh Singh co-accused. Jagir Singh and Gian Singh were aggrieved against order and on that account we have been falsely implicated. Police Officers like Sh. G.S.Aujla, IPS, were also aggrieved because our family did not vacate the land in possession inspite of their best efforts for establishing a school. Dr. J.S.Bath was also examined during the investigation by Balkar Singh, S.P.(D) and subsequently by Dr. S.S.Chauhan, IPS, the then SP, Jalandhar. He also submitted report under Section 173(8) Cr.P.C. declaring my father and brothers as innocent after examining number of witnesses. My father also under went open heart surgery at Appolo Hospital, New Delhi, during the pendency of this trial."

12. Harbhagwant Singh @ Noopi son of Bhag Singh, accused, also took up the same plea, as was taken up, by Harvinder Singh, his co-accused, in his statement, under Section 313 of the Code of Criminal Procedure.

Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000

13. Santokh Singh son of Nijjar Singh, took up the following plea, in his statement under Section 313 of the Code of Criminal Procedure:-

"I am innocent. I and my son Kuldip Singh were present at the tubewell when Jatinder Singh came there on a tractor and armed with Gandasi. He criminally trespassed into my fields and started damaging the crops standing in the fields. At that time, he was accompanied by Manjit Singh, who was armed with .12 bore gun and Jagir Singh who was armed with a rifle. I myself and my son went to that place and requested them not to take forcible possession of our land as civil litigation regarding the land was already pending in the Civil Court and the decision was being awaited. Jagir Singh and parties did not accede to my request and attacked me. Jagir Singh and Manjit Singh fired from their respective weapons towards me. But luckily the shots did not hit me and my son. The gun from Manjit Singh misfired. When I was being caused injuries by jatinder Singh with the help of Gandasi and by Jagir Singh and Manjit Singh with the help of butts of Gun and Rifle. I myself in the exercise of right of private defence of person and property, caused injuries to the assailants. No other my co- accused was present, at that time.

Jagir Singh PW was indulging in sending person abroad. My son Kuldip Singh was desirous for going abroad and with that view I paid substantial amount to Jagir Singh. He failed to send my son abroad and I filed a complaint against him before Chanchal Singbh, Inspector C.I.A. Staff, Jalandhar who summoned the accused and referred the matter to the Arbitrator as per wishes of the parties Jagir Singh nominated Gian Singh and Dalip Singh PWs and I nominated Hans Raj and Sant Ram father of Lekh Raj accused as my representatives. Jagir Singh was made to pay Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 Rs.80,000/- as decided by the said arbitrators. There was no other vehicle except the tractor at the spot. In the Civil Litigation which was pending in the civil courts at Phillaur, an interim relief was given in my favour before this incident. Gian Singh PW was not present there. He has been falsely introduced as a witness. I was taken to the hospital at Phillaur, where I was medically examined and admitted and my statement was recorded by the police but no action was taken. I was arrested in the hospital after getting me discharged by the police and my former arrest was shown later on."

14. Manjit Singh @ Bhagga son of Santokh Singh, accused, also took up the same plea, as was taken up, by his father, in his statement under Section 313 of the Code of Criminal Procedure.

15. Lekh Raj @ Pappu son of Sant Ram, accused, in his statement under Section 313 of the Code of Criminal Procedure, stated that he was innocent. It was further stated by him, that he was working, as a casual labourer, with the F.C.I., Phillaur, and had no connection with the other co-accused. There was a dispute, between Jagir Singh, prosecution witness and Santokh Singh, accused, regarding the payment made by the latter, to the former, for sending his son Kuldip Singh, abroad. A complaint was made to CIA Staff, Jalandhar, by Santokh Singh. Sant Ram father of Lekh Raj, was nominated by Santokh Singh, as one of the arbitrators, on the panel, with the intervention of

Chanchal Singh, Inspector of CIA Staff, Jalandhar. It was further stated by him, that his father announced the award alongwith other arbitrators against Jagir Singh, who was compelled to Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 pay a sum of Rs. 80,000/-, to Santokh Singh, earlier to the present occurrence. It was further stated by him, that Gian Singh, prosecution witness, was a nominee of Jagir Singh. It was further stated by him, that Jagir Singh, had a grudge, against his father and, as such, he was falsely involved in this case.

16. Sarwan Singh, accused (since acquitted), stated that he was innocent. It was further stated by him, that he was not present, at the time of the alleged occurrence, but was falsely implicated.

17. Bhag Singh, accused, was facing the trial, alongwith his co- accused, and when almost the entire prosecution evidence, was complete, he absented from the Court, and was declared proclaimed offender. Later on, he was arrested and after the completion of the remaining evidence, against him, his statement under Section 313 of the Code of Criminal Procedure, was recorded, wherein, he pleaded false implication. He took up the following plea, in his statement, under Section 313 of the Code of Criminal Procedure:-

"I am innocent. I had two brothers Tejpal Singh and Gurinder Singh. They were in possession of 92 Kanals 7 Marlas of land situated in the area of Cantonment Phillaur belonging to Union of India on lease from 1973 to 1974. Shri G.S.Aujla who was Principal of Police Training College, Phillaur and was desirous of taking the possession of the said land for establishing a school.

College authorities approached the Municipal Committee, Phillaur. A resolution was passed on 29.05.1994 for transferring the possession of the said land to Police Training College, Phillaur. My brother Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 Gurinder Singh filed a Civil Writ Petition against the State of Punjab, Municipal committee, Phillaur, and Principal, Police Training College, Phillaur for restraining them from taking forcible possession and a Local Commissioner was appointed by the Hon'ble High Court who visited the spot on 10.08.1995 and filed his report that the land was in possession of our family. Earlier in February 1994, Municipal Committee, Phillaur moved an application under the Public Premises Act etc. on the ground that the said property was leased to my father Harbans Singh and rent has not been paid and prayed for eviction and recovered about Rs.30,000/-. I was partner in Liquor Vends in the year 1996-97 and a case was registered in June 1996 under Sections 392/395 I.P.C. Etc. against me, my sons and others at the behest of Shamsher Singh Dullo the then Excise Minister, Punjab. The registration of the case was challenged in the Hon'ble High Court and the Hon'ble High Court qhashed the FIR on 26.08.1996. I am a Heart patient and I was admitted in escort Hospital at Delhi in June 1996 and underwent Angio Plasty and was advised complete rest. On 16.10.96, I was feeling restlessness. My sons Harbhagwant Singh went to doctor J.S.Bath at Phillaur at about 9.00 P.M. and brought him to Garha. I was examined and medicines were administered and I went to asleep. Dr. Bath stayed there for more than an hour and thereafter my son Harbhagwant Singh took me back

to Phillaur. My other sons Harvinder Singh remained with me. The police visited our house at Garha on 17.10.1996 in the morning and took me to the Police Station alongwith my sons Harbhagwant Singh and Harvinder Singh where I again suffered set back and was got admitted in Jyoti Nursing Home opposite Police Station Phillaur where I was treated and was referred to a Cardiologist for further investigation. On the next day, police took me to Civil Hospital, Jalandhar, and got me Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 admitted there. I was got discharged on 19.10.1996 and was taken into formal custody by the police. I was produced before the Magistrate and was sent to Judicial Lock up. We have no connection in the land in dispute. I was Sarpanch of the village and Lamberdar. I appeared as a witness for Santokh Singh regarding correction of Khasra Girdawari in a dispute between Jagir Singh, PW, and Santokh Singh, co-accused. Jagir Singh and Gian Singh were aggrieved against the order and on that account we have been falsely implicated. Police officials like Sh. G.S.Aujla, IPS, were also aggrieved because our family did not vacate the land in possession inspite of their best efforts for establishing a school. Dr. J.S.Bath was also examined during the investigation by Sh. Balkar Singh, S.P.(D) and subsequently by Dr. S.S.Chohan, IPS, the then S.P. Jalandhar. He also submitted report u/s 173(8) Cr.P.C. declaring me and my son Harbhagwant Singh as innocent after examining a number of witnesses. I also underwent an open Heart Surgery at Appolo Hospital, New Delhi, during the pendency of this trial."

18. The accused examined Sarabjit Rai, Sub Inspector (DW1), Dr. R.P. Verma (DW2), Neelam Sharma, Staff Nurse, Civil Hospital, Jalandhar, at the relevant time, posted in Civil Hospital, Phillaur (DW3), Pankaj Kumar, Constable (DW4), Dr. Jaswinder Singh Bath (DW5), Gurpreet Singh (DW6), Dr. Gurbir Kaur Bath of Jyoti Nursing Home, Phillaur (DW7), Dr. Kanwaljit Singh (DW8), Jaswant Singh, Junior Engineer, Phillaur (DW9), Dr. H.R. Garg, Senior Medical Specialist, Civil Hospital, Jalandhar (DW10) and Dr. Sharad S. Chauhan, IPS (DW11). Harbhagwant Singh, accused, tendered into Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 evidence, certified copy of the statements of Bhag Singh, dated 27.09.97, exhibit DW, order dated 28.11.94, and order dated 26.08.96, exhibit DX. Thereafter, the accused, closed their defence evidence.

19. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Courts, convicted and sentenced accused Harbhagwant Singh @ Noopi, Harvinder Singh @ Happy, Santokh Singh, Manjit Singh @ Bhagga, Kuldip Singh, Lekh Raj @ Pappu and Bhag Singh, as stated above, but acquitted, Sarwan Singh @ Tabbo, accused.

20. Feeling aggrieved, the aforesaid appeals, were filed by the appellants, and the criminal revision, was filed by the complainant.

21. We have heard the Counsel for the parties, and have gone through the record of the case, carefully.

22. The Counsel for the appellants, submitted that Santokh Singh, and his sons were in possession of the land, in dispute, though the same had already been sold through the sale-deed. They further submitted that Jagir Singh and other members of the complainant party, had no right, whatsoever, to take forcible possession of the land, in possession of Santokh Singh and his sons. They further submitted that since Jatinder Singh, armed with gandassi, accompanied by Manjit Singh and Jagir Singh, armed with gun and rifle, respectively, wanted to take forcible possession of the land, in dispute, damaged the crops sown therein, with tractor and refused to accede to the request of Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 Santokh Singh, etc., from indulging into such nefarious activities, as also, caused injuries, on the person of Santokh Singh, they in exercise of their right of private defence of body and property, caused injuries, on the person of Jatinder Singh, Jagir Singh and Manjit Singh. They further submitted that the members of the complainant party, were the aggressors. They further submitted that the prosecution suppressed the very genesis of the occurrence, as also the place of occurrence. It was further submitted by them, that Gian Singh, was not present, at the spot, but was introduced later on. It was further submitted by them, that the trial Court, was not right, in reconstructing a new version, which had not been set up, by the parties, nor emerged from the record. They further submitted that the remaining members of the accused party were not present, but they were falsely implicated. It was further submitted by them, that even the injuries, on the person of Santokh Singh, were not explained by the prosecution.

23. On the other hand, the Counsel for the respondent, submitted that, the first information report, was lodged promptly i.e. within five hours of the occurrence. It was further submitted by him, that since the land had been sold, in favour of Jagir Singh, and his sons they were in possession of the same. It was further submitted by him, that the injuries, on the person of Santokh Singh, accused, were simple, in nature, and even if the same were not explained, the prosecution case, did not become doubtful. It was further submitted by him, that Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 keeping in view the nature of injuries, the number of injured and the death of Manjit Singh, on the side of the complainant party, it could be said, that it was the accused party, which was the aggressor. It was further submitted that even after Manjit Singh, fell down, on receipt of some injuries, more injuries were caused, on his person, which showed that the alleged, right of private defence of body and property was exceeded by the accused. It was further submitted that the trial Court was right, in recording conviction, and awarding the sentence.

24. From the record, it emerges, that the occurrence was almost admitted by the parties, but only the mode and manner, the presence of number of persons, on the side of both the parties, and the place of occurrence were disputed. In these circumstances, the Court is required to determine, as to which party, was the aggressor, and which party was the aggressive. For determining this question, in the first instance, it is to be decided, as to which party, was in settled possession of the land, which had been sold by Santokh Singh, accused, in favour of Jagir Singh, in the year 1990, as the main dispute was, with regard to the same (possession). It is also required to be determined, whether a party in settled possession of the land, could be dispossessed therefrom forcibly, by anybody, including the true owner. Exhibit PJ, is the statement of Gian Singh son of Mehar Singh, complainant, on the basis whereof, the first information report, was registered. It contains the first version of the occurrence. In this statement, he in clear-cut terms, Criminal Appeal No. 859-DB of

2004 Criminal Revision No. 538 of 2000 stated that the bone of contention was that four years earlier to the occurrence, Jagir Singh, purchased two killas of land, from Santokh Singh, but he (Santokh Singh), was not leaving the possession thereof. He also stated that two hours, prior to the occurrence, they had gone to plough the land of Jagir Singh, situated near drain and he (Santokh Singh), suspected that they would plough the same at night. Exhibit DJ, is a copy of the application, for initiation of contempt proceedings, against Santokh Singh, Kuldip Singh and Manjit Singh, his sons, which was filed by Jagir Singh, in civil suit No. 367/1994. It is evident from para 3 of this document that, on the night, intervening 20/21.08.94, Santokh Singh, Kuldip Singh and Manjit Singh, accused, took possession of the land, in dispute. Accordingly, a prayer was made, that they disobeyed the stay order, granted by the Court, in favour of Jagir Singh. No such stay order was produced, on record, as the same was not apparently in existence. DK is a copy of the amended plaint of the suit, aforesaid, wherein, a relief for mandatory injunction, directing Santokh Singh, Kuldip Singh, Gurdeep Singh and Manjit Singh, to restore the possession of the suit land, was sought by Jagir Singh. In para 5 of this amended plaint, it was, in clear-cut terms, stated that, Santokh Singh, Kuldip Singh and Manjit Singh, took forcible possession of the land in dispute. DL is also a copy of the amended plaint wherein, relief for mandatory injunction for restoration of possession against Santokh Singh, Kuldip Singh and Gurdeep Singh, Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 was sought, by Jagir Singh. These documents, therefore, contained the admission of Jagir Singh, that he was not in possession of the land, in dispute, on the date of occurrence, but, on the other hand, Santokh Singh, and his sons, accused, were in possession of the same. Jatinder Singh, PW8, and Jagir Singh, PW9, no doubt, stated that they were in possession of the land, in dispute. However, they could not produce any evidence, in that regard. In case, the land, in dispute, had been in their possession, after the purchase thereof, in the year 1990, they could produce the revenue record or some other documents, to prove the same. On the other hand, their possession, in respect of the land, in dispute was belied by the aforesaid documents. Even, it is proved, from the evidence, on record, that, in the land, in dispute, which was in possession of Santokh Singh and his sons, they had sown crop. It was not that only a stray entry existed, with regard to possession, in favour of Santokh Singh, and his sons, in respect of the land in dispute. On the other hand, from the admission, made by Jagir Singh, in exhibit DJ, DK and DL, Santokh Singh and his sons had come into possession of the land, in dispute, in the year 1994, whereas, the occurrence took place on 16.10.96. Santokh Singh and sons, accused, were, therefore, in established possession of the land, in dispute and could by no stretch of imagination, be said to be the trespassers, over the same. One of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not, the trespasser, after having Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 taken possession, had grown any crop. If the crop had been grown, by the trespasser, then even the true owner has no right to destroy the crop grown, by the trespasser, and take forcible possession, in which case the trespasser will have a right of private defence and the true owner will have no right of private defence. In *Munshi Ram Vs. Delhi Administration* AIR, 1968 S.C. 702, it was held by the Apex Court, that "It is true that no one including the true owner has a right to dispossess the trespasser by force, if the trespasser is in settled possession of the land and, in such a case, unless he is evicted in due course of law, he is entitled to defend his possession, even against the rightful owner. But stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend, against the rightful owner, must be a settled possession, extending over a

sufficiently long period and acquiesced in by the true owner. A casual act of possession, would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than necessary. Such entry will be viewed only as a resistance, to an intrusion, upon possession, which has never been lost. The persons in possession by a stray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, though not in actual possession at the time, to remove the obstruction even by using Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 necessary force." Since the possession of the land, in dispute, was proved, in relation to Santokh Singh, and his sons, accused, on the date of occurrence, the motive lay with the members of the complainant party, to cause injuries, on his (Santokh Singh's) person, with a view to take forcible possession of the same. The trial Court was also right, in holding, that the prosecution miserably failed to prove that Jagir Singh, and his sons, were in actual physical possession of the land, in dispute, on the date of occurrence, but, on the other hand, it was proved, that it was Santokh Singh, and his sons, who were, in actual physical possession of the land, in dispute. The findings of the trial Court, in this regard, being based, on the correct appreciation of evidence and law, on the point, are upheld.

25. The next question, that arises for consideration is, as to whether, the occurrence took place, in the land, in dispute, or at a far off distance therefrom, as the prosecution, failed to satisfactorily pinpoint the exact place of occurrence. In exhibit PJ, Gian Singh, in clear-cut terms, stated that the members of the accused party were apprehensive that the members of the complainant party, had gone to the land, which was sold by Santokh Singh, in favour of Jagir Singh, to take forcible possession of the same, on the date of occurrence. Gian Singh, PW7, in his statement admitted, that all the vehicles were standing by the side of the disputed land, and not towards the side of sugarcane fields. He, however, made it clear, that the scooter was Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 parked in between four wheeler and the tractor. The distance between the four wheeler and tractor was about four karams. He further stated that his Tata Siera was at a distance of five-seven karams, from the tractor. He further stated that the car of the accused was at a distance of 20 feet, from the four wheeler. He also stated that the disputed two killas of land is located at two separate places. One part of the disputed land is near the place of occurrence. He further stated that sugarcane field was towards the west, from the place of occurrence. He further stated that the disputed part of land was towards the east from the place of occurrence. It was also stated by Gian Singh, in his statement, that the blood stained earth was lifted from inside the passage and by the side of the ridge of the land in dispute. He further stated that the crops were standing, in the fields, by the side of the place, where the occurrence took place. Jatinder Singh, PW8, during the course of his statement stated that maize (makki) and bazra crops, were sown, in the disputed field, which was purchased, by his father, from Santokh Singh. He further stated that he ploughed through the field, in dispute, with tractor. He further stated that they were carrying arms, because in those days, law and order situation was disturbed, and there was fear of extortion. Angrej Singh, Sub Inspector, PW23, in his statement, admitted as correct, that crop of green fodder was standing, in the field of Jagir Singh. He further stated that he picked up the blood stained earth only from one place. He, however, stated that he did not Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 remember, that when he took the blood stained earth, from the field, on the southern side, the green fodder was lying ploughed. Exhibit PZ/1, is the site plan, which

was prepared by Angrej Singh, Sub Inspector, PW23. At point 'A', in the said site plan, he showed the Tata Siera of Gian Singh standing. Point 'B', is shown, in the said site plan wherefrom, 12 bore single barrel gun from Tata Siera was recovered. Point 'C', in the site plan was shown, as the place wherefrom, tractor Mahindra, PUL 1638, was recovered. Point 'D', in the site plan, is shown, as the place, wherefrom, scooter, bearing No. PB-37-7406 was recovered. Point 'E', was shown, as the place, wherefrom, the blood stained earth was lifted by the Investigating Officer, and where the injuries were caused, on the person of Manjit Singh. Point 'F', is shown, as the place, in the said site plan, wherefrom, rifle .315 bore and ten cartridges were recovered. Point 'G', is shown, as the place, in the site plan, wherefrom, Tata 407 PB-08-P-8479 was recovered. Point 'H', is the place wherefrom, Esteem car No. DL-3C-D-4498, was recovered. Point 'I', is shown, as the place, wherefrom, empty cartridges of .315 bore rifle, were recovered. Point 'J', is shown, as the place, where the spikes of sugarcane were lying down, on account of impact of shots. Point 'K', is shown, as the place, where foot prints were found. Point 'L', is shown, as the place, where the foot prints were also shown. Points 'M', 'N', and 'O', are shown, where the injuries were caused, on the person of Gian Singh, Jagir Singh and Jatinder Singh. Points 'A', Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 'B', 'C', 'D', 'E', 'F', 'G', 'H', 'M' and 'N', are shown, in the passage, adjoining the land, in dispute. Points 'E' and 'M', are just on the ridge of the land, in dispute. It was from point 'E', as stated above, that the blood stained earth, was lifted, by the Investigating Officer, and, after converting the same into a parcel, was taken into possession. The presence of blood stained earth, on the ridge of the land, in dispute, adjoining the passage and the presence of the vehicles aforesaid and, recovery of weapons etc, admittedly in possession of the parties clearly showed that the occurrence took place, in the land, in dispute. The story of the prosecution, to the effect, that after ploughing the land, when the members of the complainant party were coming back, on the way, they were way-laid and caused injuries, by the accused, is proved to be false from the aforesaid evidence. Men may tell lies, but the documents and circumstances can't. Jagir Singh and his sons alongwith Manjit Singh son of Gian Singh, went to the land, in dispute, in possession of Santokh Singh and his sons, ploughed the crops sown therein, by the latter, with an attempt to take forcible possession thereof, on 16.10.96 at 10.00 PM. The bone of contention between the parties was, thus, the possession of the land in dispute. The trial Court, was, thus, wrong in coming to the conclusion, that the place of occurrence was not proved from the evidence on record. No doubt, the prosecution, tried to create a confusion, by not leading the proper evidence, to prove the place of occurrence, yet the Court is required to sift the chaff from the grain, to Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 find out, as to where, the occurrence took place.

26. The occurrence, is proved to have taken place, in the disputed land, the next question, that requires determination, is, as to whether, the accused caused injuries, on the person of some members of the complainant party, in private defence of their body and property, or not. The right of private defence, envisaged in Sections 96 to 106 of the Indian Penal Code, is based on the instinct of self preservation. The instinct of self preservation is indomitable, in a human being, and this instinct has been recognized, as a lawful defence, in the laws of all civilized countries. If the danger to the body or property is there to a citizen, he need not flee away. He is entitled to hold his ground, and strike back, in defence. But he can do so, within the limits, prescribed in Sections 96 to 106 of the Indian Penal Code. The gist of these sections, when read together, is that the apprehension of danger to life and property, must be real and well-founded and the harm inflicted on the assailant,

should not be more than necessary, demanded by a given situation. The apprehension must be imminent. It is the imminence of the danger and the urgency of the situation, that is material. Whether the apprehension was real or not, is always a question of fact, depending upon the circumstances, and the background, in which the incident had taken place. In evaluating the circumstances, and background, one should place himself, in the position of the accused, and to assess, how he would have reacted, in that given situation, and Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 in face of that particular apprehension of danger. The situation should be viewed with the stand point of the accused, and not with the spectacles of a cool by-stander. In *Munney Khan V.State of M.P.* AIR 1971 SC 1491, it was explained by the Apex Court, that the right of private defence, is essentially a defensive right, circumscribed by the statute, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed of, as a pretext, for a vindictive, aggressive or retributive purpose. This right is available, against an offence, and, therefore, where an act is done in exercise of the right of private defence, such act, cannot give rise to any right of private defence, in favour of the aggressor in return. This would be so, even if, the person exercising the right of private defence, has the better of his aggressor, provided he does not exceed his right, because the moment he exceeds it, he commits an offence. In the instant case, Santokh Singh, and his sons were in settled, continuous and peaceful possession of the land, in dispute. They had grown the crops therein. Jagir Singh, had already filed a suit for permanent injunction, and mandatory injunction, against Santokh Singh and his sons. As stated above, in the application, under Order 39 Rule 2-A of the Code of Criminal Procedure, exhibit DJ, he had admitted that Santokh Singh, and his sons, had taken possession though forcibly, in the year 1994 of the land, in dispute, from him, and he be granted the relief of mandatory injunction, by way of restoration of the same (possession). Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 It has also been held above that the accused at 10.00 PM, on 16.10.96, had gone to the land, in dispute, which was in possession of Santokh Singh and his sons. They had ploughed the crop, already sown by Santokh Singh, and his sons, with an avowed object, to take forcible possession of the same. Santokh Singh, and his sons were present there, at that time. Jagir Singh, his son Jatinder Singh and Manjit Singh son of Gian Singh (now deceased), were armed with gandassi and fire arms. The motive, as stated above, was with the members of the complainant party, to take forcible possession of the land. When Santokh Singh, and his sons requested them, not to plough their land, with a view to take forcible possession thereof, they failed to accede to such request. Jagir Singh, his son Jatinder Singh and Manjit Singh, then opened attack, at Santokh Singh, and in exercise of right of private defence of body and property, the injuries, on the person of Manjit Singh, Jatinder Singh and Jagir Singh, were caused, by them. It is not the law, that a person, when called upon to face an assault, must run away to the Police Station, and not protect himself and when his property has been the subject matter of trespass and mischief, he should allow the aggressor to take possession of the same, while he should run to the public authorities. Where there is an element of invasion, or aggression, on the property, by a person, who has no right to possession, then there is obviously no room, to have recourse to the public authorities, and the accused has the undoubted right to resist the Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 attack and use even force if necessary. The right of private defence of property or person, where there is real apprehension, that the aggressor might cause death or grievous hurt to the victim, could extend to the causing of death also, and it is not necessary that death or grievous hurt should actually be caused, before the right could be exercised. A mere

reasonable apprehension, is enough, to put the right of private defence into operation. We are fortified, in this view, by the decision in *Jai Dev Vs. State of Punjab*, AIR 1963, SC 612, wherein, the Apex Court, observed, as follows:-

"This, however, does not mean that a person suddenly called upon to face an assault must run away and thus protect himself. He is entitled to resist the attack and defend himself. The same is the position if he has to meet an attack on his property. In other words, where an individual citizen or his property is faced with a danger and immediate aid from the State machinery is not readily available, the individual citizen is entitled to protect himself and his property.

There can be no doubt that in judging the conduct of a person who proves that he had a right of private defence, allowance has necessarily to be made for his feeling at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that inevitably creates in his mind some excitement and confusion. At such a moment, the uppermost feeling in his mind would be to ward off the danger and to save himself or his property, and so, he would naturally be anxious to strike a decisive blow in exercise of his right."

Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000

27. To the same effect, is the decision of the Apex Court, in *Amjad Khan Vs. State*, AIR, 1952, SC, 165, wherein, it was observed, as under:-

"It was impossible for him to know whether his shop would or would not suffer the same fate if he waited, and on the findings it was reasonable for him to apprehend death or grievous hurt to himself and his family once they broke in, for he would then have had the right to protect and indeed would have been bound to do what he could to protect his family. The threat to break in was implicit in the conduct of the mob and with it the threat to kill or cause grievous hurt to the inmates; the circumstances in which he was placed were amply sufficient to give him a right of private defence of the body even to the extent of causing death. These things cannot be weighed in too fine a net of scales or as some learned Judges have expressed it, in golden scales."

28. Since, in the situation, in which, Santokh Singh, and his sons, accused, had been placed, as Jagir Singh, his son and Manjit Singh were taking forcible possession of the land, in dispute, by damaging the crops sown therein, by them (Santokh Singh and his sons) and were armed with fire arms, as also, sharp edged weapon, and also attacked one of the members of the accused party, the other members of the accused party, certainly apprehended imminent danger to their lives or causing of grievous hurt, it was not necessary for them to wait for further damage, having been caused, at the hands of Jagir Singh, and his party members, to them. In those circumstances, any Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 prudent person would have taken the same decision, as was taken by Santokh Singh and his sons, to repel the attack, by causing injuries, on the person of Manjit Singh, Jagir Singh and Jatinder Singh. It is, therefore, held that the members of

the accused party had a right to cause injuries, on the person of Manjit Singh, Jatinder Singh and Jagir Singh, in exercise of the private defence of their body and property. Their right could also extend to the extent of causing the death of Manjit Singh, in the situation, they were placed, which has been summarized hereinabove.

29. Having come to the conclusion, that Santokh Singh, and his sons, having a right of private defence of their body, and property, were fully justified, in causing injuries, on the person of Jagir Singh, Jatinder Singh and Manjit Singh, it is to be seen, as to whether, they used more force than necessary and, thus, exceeded their right of private defence, or not. We are satisfied that, in the present case, it cannot be said that the appellants, although one person lost his life and two persons received simple injuries, on the side of the complainant, had exceeded the right of their private defence. To begin with, Santokh Singh, and his sons were undoubtedly, in established possession of the land, in dispute, where the occurrence took place, and had sown the crops therein. The members of the complainant damaged the crops at 10.00 PM on 16.10.96, by ploughing the same with a tractor, with an intention to take forcible possession thereof. The Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 appellants were, therefore, entitled to resist the invasion of the members of the complainant party, as they were armed with guns and sharp edged weapons. Santokh Singh, one of the accused, had received as many as seven injuries, at the hands of the members of the complainant party. Out of these injuries, one was declared grievous in nature. In such a situation, in which, Santokh Singh, and his sons, were placed, it was not possible for them, to weigh their blows in golden scales, in order to assault the members of the complainant party. Since Santokh Singh, and his sons entertained a real apprehension, that the members of the complainant party, with their fire arms and sharp edged weapons, could cause, death or grievous hurt to them, they were fully justified, in causing the death of Manjit Singh, in exercise of their right of private defence. Such an apprehension could not be said to be hypersensitive or based on no ground and it will be idle to contend that the accused should have waited, until one of their party members, would have died, or received serious injuries, before acting, on the spur of moment, nor can one expect a person, who is attacked by an aggressor, to modulate his blows, in accordance with the injuries he receives. In these circumstances, therefore, it cannot be said that the accused had, in any event, exceeded their right of private defence. If the prosecution did not come out, with the true version of the nature, and the origin of the occurrence, it cannot blame the Court, if the entire version presented by it, is rejected. Reference may be made, in this Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 behalf, to State of Gujarat Vs. Bai Fatima, 1975, SCC (Crl.), 384. Exactly, a similar question fell for decision in Puran Singh and others Vs. The State of Punjab (1975) 4 Supreme Court Cases, 518,. The Apex Court, thus, held that the accused, who were in possession of the land, in dispute, in that case, were fully justified, in causing the death of two persons of the complainant party, as also, injuries to two other persons, of their party, when they had invaded their right of possession and tried to take forcible possession thereof. In that case, only gun shot injuries, to two members of the accused party, had been caused by the members of the complainant party. In Subramani and Others Vs. State of Tamil Nadu, 2002(4) RCR (Criminal), 213, (SC), the complainant party had trespassed upon the land of the accused party, to take forcible possession, thereof, and caused simple injuries, on the head of the accused party. The accused party caused death of one person of the complainant party. In these circumstances, it was held that the members of the accused party, did not exceed right of private defence, as they were justified in entertaining a

reasonable apprehension, that the grievous hurt may be caused to them. For the reasons, recorded above, we are clearly of the opinion, that the accused in exercise of the right of private defence of their property and person, were justified in causing the death of Manjit Singh and injuries on the person of Jagir Singh and Jatinder Singh. They did not exceed the right of private defence of their body and property.

Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000

30. Even, the prosecution suppressed the very genesis of the occurrence. The injuries, caused on the person of Santokh Singh, accused, were not explained by any of the prosecution witnesses. Gian Singh, PW7, the first informant, in this case, was wholly disbelieved and his evidence was completely discarded by the trial Court, in paras 17, 18, 19 and 20 of its judgement for valid reasons. We have thoroughly scrutinized the finding of the trial Court, in completely disbelieving and discarding the statement of Gian Singh. We find that the trial Court was wholly right, in coming to the conclusion, that Gian Singh, first informant, was not at all present, at the time of occurrence, but was introduced, later on, as his son, had died, in the said occurrence. In our opinion, there is absolutely, no reason, to differ with the conclusion, arrived at by the trial Court, in disbelieving and discarding the statement of Gian Singh, PW7, by making elaborate discussion of the evidence, in the aforesaid paragraphs. As stated above, even the prosecution, tried to suppress the place of occurrence itself. No doubt, all the injuries, on the person of Santokh Singh, except one, were simple in nature. However, it was required of the prosecution, to explain the same. On account of non-explanation of the same, by the prosecution witnesses, an adverse inference could be drawn that the prosecution was guilty of suppressing the genesis of the occurrence and, thus, did not present the true version before the Court. On account of non-presentation of the true version, before the Court, Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 suppression of place of the occurrence, as also the introduction of Gian Singh, as a witness, later on, the prosecution case was liable to be thrown out as a whole. This fact, therefore, clearly proved that the prosecution did not come to the Court with clean hands. The entire story of the prosecution is, thus, liable to be rejected.

31. The accused, thus, did not commit any offence, for which, they were convicted, by the trial Court. In other word, the trial Court, was wrong, in recording the conviction and awarding sentence to them.

32. Coming to the revision petition, it may be stated here, that the same is also liable to be dismissed, for the reasons, to be recorded, hereinafter. The trial Court, acquitted Sarwan Singh, accused, for valid reasons. We have gone through the judgement of the trial Court, minutely and find that the same does not suffer from any infirmity so far as the acquittal of Sarwan Singh, is concerned. In these circumstances, there is no justification, for this Court, to interfere in exercise of its revisional jurisdiction, in the findings of the trial Court, acquitting Sarwan Singh, accused. The High Court, in its revisional jurisdiction, is not to reach a finding, different from the trial Court, at the instance of the private party. In a revision, at the instance of a private party, the Court exercises only a limited jurisdiction, and cannot act as an Appellate Court. The scope of revision against acquittal, was well discussed by the Apex Court, in a judgement rendered in Bindeshwari Prasad Singh @ B.P. Singh and others Vs. Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538

of 2000 State of Bihar (Now Jharkhand) and another 2002(4) RCR (Criminal) 61 (S.C.). In the said case, their Lordships of the Apex Court observed that, in the absence of any legal infirmity, either in the procedure, or in the conduct of trial, there was no justification, for the High Court, to interfere in exercise of its revisional jurisdiction. In Bindeshwari Prasad Singh's case (supra), their Lordships also placed reliance on D. Stephens Vs. Nosibolla AIR 1951, Supreme Court 196, K.C. Reddy Vs. State of Andhra Pradesh AIR 1962 SC 1788, Akalu Ahir and others Vs. Ramdeo Ram (1973) 2 SCC 583, Patakalapti Narayana Gajapathi Raju and others Vs. Bonapalli Peda Appadu and another, AIR 1975 SC 1854, and Mahendra Pratap Singh Vs. Sarju Singh AIR 1968 SC 707. Similar principle of law, was laid down in Gurmail Singh Vs. Boga Singh and others, 2005(1) RCR (Criminal) 623. In our considered opinion, the trial Court was right, in coming to the conclusion, that the participation of Sarwan Singh, accused, in the commission of crime, was not proved. The findings of the trial Court, in this regard, do not suffer from any factual infirmity, illegality or perversity. Since it has been held above, that the prosecution failed to prove its case, beyond a reasonable doubt, against all the accused, the question of enhancement of fine, prayed for, by the complainant and payment thereof, to the kith and kin of the deceased does not at all arise. In such a situation, no interference is called for, with the findings of the trial Court, regarding the acquittal of Sarwan Criminal Appeal No. 859-DB of 2004 Criminal Revision No. 538 of 2000 Singh, accused. The revision petition is, thus, liable to be dismissed.

33. For the reasons, recorded above, Criminal Appeal No. 104- DB of 2000, filed by Harbhagwant Singh @ Noopi son of Bhag Singh, Harvinder Singh @ Happy son of Bhag Singh, Santokh Singh son of Nijjar Singh, Manjit Singh @ Bhagga Singh son of Santokh Singh, Kuldip Singh son of Santokh Singh and Lekh Raj @ Pappu son of Sant Ram and Criminal Appeal No. 859-DB of 2004, filed by Bhag Singh son of Harbans Singh, accused (now appellants), are accepted. The judgements of conviction and the orders of sentence dated 12.01.2000 and 23.04.2004, are set-aside. The appellants are acquitted of the charge, framed against them. If the appellants are on bail, they shall stand discharged of their bail bonds. If, they are in custody, they shall be set at liberty, at once, if not required, in any other case.

34. Criminal Revision No. 538 of 2000, filed by Gian Singh son of Mehar Singh, complainant, is dismissed.

35. The Chief Judicial Magistrate, shall comply with the judgment immediately.

(K. S. GAREWAL)
JUDGE

13.01.2009
Amodh

(SHAM SUNDER)
JUDGE

Referred to reporter.