

A.F.R.

Judgment Reserved On: 31.08.2021

Judgment Delivered On: 29.10.2021

Court No. - 48

Case :- CRIMINAL APPEAL No. - 530 of 1982

**Appellant :-** Mahabir And Others

**Respondent :-** State Of U.P

**Counsel for Appellant :-** C.S. Saran, Amar Saran, Devendra Swaroop, Sikandar B. Kochar

**Counsel for Respondent :-** D.G.A., A.G.A.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

(Delivered by Hon'ble Syed Aftab Husain Rizvi, J.)

1. Heard Sri Sikandar B. Kochar, learned counsel for the appellants and Sri Ajeet Ray, learned A.G.A. for the State.
2. This criminal appeal has been filed against the judgment and order dated 27.02.1982 passed by IV Additional Session Judge, Muzaffarnagar in S.T. No 259 of 1981, convicting and sentencing the appellant Mahabir, Krishan Pal, Daulat, Topi, Ghasita, and Dharma to 2 years rigorous imprisonment under Section 148 and life imprisonment under Section 302 I.P.C. read with Section 149 I.P.C. Both the sentences shall run concurrently.
3. In brief, the prosecution case is that on 10.03.1980 at about 10:15 a.m. a Case Crime No.70 under Section 148, 149, and 302 I.P.C. was registered at Police Station- Bhopa, District- Muzaffarnagar on an application of Ram Gopal dated 10.03.1980. It was alleged in the application that to construct the houses for weaker sections a unanimous resolution was passed by the Gram sabha Wazirabad, for which a meeting was held a month earlier and plots were already allotted, 32 beneficiaries were selected for the construction of houses and Jagmohan was also included in it and his house was also to be constructed. Jagmohan has laid the foundation of his house, a day before. On 10.03.1980 at about 09 a.m. Jagmohan was raising construction on the foundation. Co- villagers, Mahabir holding a Lathi, Krishan Pal holding a Ballam, Daulat holding a Tabbal, Topi holding a

Ballam, Ghasita holding an axe, and Dharma holding a Bhala in their hands came abusing and started dismantling the foundation. In the meantime, the brother of the complainant Harnam also reached the spot. Harnam and Jagmohan both forbade the accused from abusing and dismantling the foundation. Accused suddenly pounced upon Harnam and started to beat him with the weapons in their hands. Devi Sahai, Rehala Das, and Tilak Ram tried to save Harnam but the accused continued to beat him due to which Harnam suffered serious injuries on his head, mouth, forehead, neck, chest, and abdomen. Jagmohan and Harnam also wielded lathi in defence. Harnam became unconscious and fell down due to injuries suffered by him and died on the spot. As his body was warm he was taken to Government hospital Morna in a horse carriage but the doctor was not present there then he was carried to Bhopa hospital where the doctor declared him dead. The incident was narrated by Jagmohan to the complainant and he has come to lodge the report leaving the dead body of Harnam in the horse carriage at Bhopa hospital and Jagmohan is beside the dead body.

The investigation commenced and the Investigating Officer on the same day recorded the statement of the complainant and came to Bhopa hospital, appointed S.I. Shyam Dhan Gupta for inquest who conducted the inquest proceedings and sent the body for post-mortem examination. Investigating Officer recorded the statements of other witnesses, arrested the accused, and sent them to the police station. Thereafter he searched the houses of the accused and recovered a blood-stained lathi from the house of accused Mahabir and a blood-stained Tabbal from the house of the accused Daulat, sealed it, and prepared its memo. Investigating Officer also visited the place of occurrence and prepared the site plan and collected blood-stained soil and plain soil and sent the articles for chemical examination. Thereafter on different dates recorded the statements of other witnesses and after completion of investigation submitted the charge sheet against all the six accused persons named in the F.I.R. under Section 147, 148, and 302 I.P.C.

4. The learned Trial Court framed charges against the accused Mahabir, Krishan Pal, Daulat, Topi, Ghasita, and Dharma under Sections 148, 302 read with Section 149 I.P.C. Accused pleaded not guilty and claimed for trial. The prosecution produced eight witnesses who have proved 15 papers as Ex.Ka-1 to 15 and 4 material exhibits. The statements of the accused were recorded under Section 313 Cr.P.C. in which they have denied the incriminating evidence. Accused Dharma has said that he was not present on the spot. Accused Ghasita, Topi, and Krishan Pal have said that Ram Gopal, Jagmohan, Rati Ram, and Tilak Ram were forcibly trying to take possession of the land of Hargyan and when it was objected, they assaulted them and Hargyan with lathi and Tabal. The accused also wielded lathi in defence. Accused Mahabir has stated that he was not present on the spot. He went to the police station to lodge a report with Krishan Pal and others, but were detained there. Two defence witnesses Dr. S.R. Rayal DW-1 and Dr. D.C. Mubar DW-2 have been examined. The learned Trial Court by the impugned judgment has held all the accused guilty for charges under Section 148, 302 read with Section 149 I.P.C.

5. Learned counsel for the appellants contended that Ram Gopal the brother of complainant and deceased was Pradhan of Goan Sabha Wazirabad and he illegally allotted a plot to his brother Jagmohan. This allotment was cancelled but Jagmohan and his brothers were trying to forcibly take possession of the disputed land and raised construction on it, when objected by the accused and Hargyan they assaulted them with lathi and tabbal causing grievous injuries. The accused also defended themselves and in exercise of such right injuries were caused to Harnam causing his death. The act of the accused are covered by the right of private defence of person. The complainant party has no right of private defence of property as they have no right or title on the disputed land. The learned trail Court has failed to appreciate the evidence in its right perspective and findings recorded by it are erroneous and bad in law. Learned counsel for the appellants further contended that accused Dharma, Daulat and Mahabir were not present at the time of occurrence and they have been falsely implicated. They have gone to police station with injured accused Krishna Pal, Topi and Ghasita and other

injured Hargyan to lodge the report but they were detained at the police station. The report was not lodged and after registration of the F.I.R. of the complainant the report of the accused was lodged. The accused persons are liable to be acquitted.

6. Learned A.G.A. contended that the disputed land was allotted to Jagmohan in 1972 and he has taken possession of it and constructed a hut on it. Jagmohan was in possession of the disputed land and one day before the incident he has laid the foundation of his house. At that time no objection was raised by the accused. At the time of incident when Jagmohan with Manson and labourers was at the site to construct the walls on the foundation, the accused persons in pre-planned manner armed with deadly weapons came on the spot and started to dismantle the foundation and assaulted Harnam and Jagmohan. Harnam suffered serious injuries in this assault and died on the spot. The accused persons have no right of private defence and they are aggressors. The learned trial Court has fully discussed and appreciated the entire evidence on record and findings recorded by it is proper and there is no illegality or perversity in it. The appeal is liable to be dismissed.

7. Post-mortem of Harnam (deceased) was conducted on 11.03.1980 at 12:30 p.m. by Dr. Pramod Kumar. According to the post-mortem report Ex.Ka-12 age of the deceased was 32 years, average built body, rigor mortis was present in both upper and lower extremities, eyes closed, mouth half-open.

Following antemortem injuries were found on the body of the deceased:-

1. *Lacerated wound 1 ½" x ¾" x bone deep on left eye brow.*
2. *Lacerated wound ½" x ¼" x muscle deep on left eye outer angle.*
3. *Incised wound 2 ½" x ½" x bone deep present on left side head, 2½ above the left ear, direction antero posterior, underlying bone was fractured. Margins contused.*
4. *Incised wound 1 ½" x ½" x bone deep present on left of head mid line anteroposteriorly placed, margins contused.*
5. *Incised wound ½" x ¼" x scalp deep present on left side head at hair line anteroposteriorly placed, 3" above the left eye brow.*

6. *Incised wound 1/2" x 1/4" x scalp deep present on left side head, 1/2" below and parallel to injury no. (5)*
7. *Lacerated wound 1/2" x 1/4" x muscle deep on left side back of about 1" left to the mid line at the level of the inferior angle of the scapula.*
8. *Abrasion 5" x 1 1/2" on back of right side chest just below the inferior angle of the scapula (Rt)*
9. *Punctured wound 1/2" x 1/4" x chest cavity deep present on the left front of the chest at Costo sternum junction of 5th rib, junction is cut-The injury direction directly backward.*
10. *Punctured wound 1/2" x 1/4" x chest cavity deep present on the left front of chest just below the middle of left clavicle, direction- directly backward.*
11. *Lacerated wound 1/2" x 1/4" x muscle deep on front of left abdomen 3 1/2" away at 1' O clock position to umbilicus, direction Horizontal.*
12. *Lacerated wound 1/2" x 1/4" x bone deep on the outer aspect of left forearm 1/2" above left wrist, direction horizontal.*
13. *Lacerated wound 1" x 1/4" on front of Right leg-(bone deep), 3" below Right knee.*

In the internal examination, the left parietal bone was fractured under injury no.3, a small external haematoma on the left side of the cerebrum. Left Pleura contains 6 oz blood, left lung was punctured under injury no.10. The pericardium was punctured and 2 oz blood was there. The left ventricle of the heart was punctured under injury no.9 and the heart was empty. In the stomach semi-digested food, large Intestine faecal matter and gases were present. The small intestine was empty. Gall Bladder was half full and the bladder was full.

The cause of death was shock and haemorrhage due to ante-mortem injuries and the duration was about one day.

Dr. Pramod Kumar in his statement has stated that the death may have occurred on 10.03.1980 at 09 a.m. and all the injuries were sufficient in the ordinary course of nature to cause death. Lacerated wounds were possible from lathi while incised wounds were possible from Tabbal and axe. Injuries no. 9 and 10 were possible from Ballam and abrasions were possible from fiction or from fall on the ground. Witness has also confirmed that injuries no. 3 and 4 may be caused by Tabbal Ex.-2/1.

8. Prosecution to prove its case has produced 8 witnesses, out of which 3 are public witnesses. Ram Gopal is the informant but he is not an

eyewitness. The Incident was narrated to him by his brother Jagmohan and on this, he wrote the application and lodged the report. The witness in his examination-in-chief has said that he is Pradhan of Wazirabad since 1972. He has made allotment of Gram Samaj land and has also allotted one plot measuring 154 square-yards to his brother Jagmohan in the village Abadi. Jagmohan has deposited Rs.50/- for its value and a receipt dated 30.12.1972 was issued to him under his signature. The witness has proved this receipt as Ex.Ka-1. Witness has further stated that after this allotment Jagmohan was in possession of this plot and he constructed a hut on the said plot. In 1980 under the Government Scheme, the houses for weaker sections were to be constructed on such plots, and an amount of Rs.1,570/- was fixed for each house. One month before the incident, a meeting of Goan Sabha was held in which B.D.O., A.D.O. (A.G.), Gram Sevak, Secretary and he himself were present and it was decided to construct houses for 32 families whose income were less than Rs.2,000/- per annum. The resolution was written in the register. He has filed the original register and proved it as Ex.Ka-2. Witness has further stated that the khasra number of Jagmohan's plot is 541 and the total area is 3 bigha, 1 biswa, 5 biswansi and in Khatauni it is entered as Harijan Abadi. Narrating the other allegations of the F.I.R. witness has proved the F.I.R. as Ex.Ka3. Witness has further stated that Sub-Inspector came into the village on the day of the incident and in his presence, the houses of Mahabir and Daulat were searched. One lathi with blood stains was recovered from the house of the Mahabir and one Tabbal with blood stains was recovered from the house of Daulat. Sub-Inspector prepared its memo exhibits Ka 4 and 5. Witness has proved its signature on it and pieces of lathi and tabbal as exhibits 1/1 to 1/4 and 2/1 to 2/3.

9. Jagmohan is the eyewitness. In his examination-in-chief the witness has stated that Harnam was his real brother. 8 years earlier a plot of 154 square yards (14 yards in length and 11 yards in width) was allotted to him by the Gram Samaj in village Wazirabad. He has taken possession of the land after 10-15 days of the allotment and constructed a hut on it. The wall of the hut was of bricks with a thatched roof. A meeting of B.D.O., A.D.O. (A.G.), Gram Sevak, and others was held in which it was decided that an

amount of Rs.1,500/- will be given to each of 30-32 families for construction of the houses. His name was also included in the list of beneficiaries. A day before the incident he laid the foundation and wanted to construct one room and verandah on it. On the day of the incident at 9 a.m., he with Devi Sahai Mason, Rulha, and Tilak Ram was on the site to erect walls. Suddenly Mahabir, Daulat, Krishan Pal, Topi, Ghasita, and Dharma came there. Mahabir was holding a Lathi, Krishan Pal holding a Ballam, Daulat holding a Tabbal, Topi holding a Ballam, Ghasita holding an axe, and Dharma holding a Bhala in their hands. They started abusing and said that they will not permit the construction of the house there and started to dismantle the foundation. In the meantime, Harnam also came there. He was holding a lathi. Harnam asked them why they are dismantling the foundation. Accused said that he will be taught a lesson and killed. All the accused with the weapons in their hands started to assault Harnam. He and Harnam wielded lathi in their defence. He did not suffer any injury. Harnam suffered several injuries. Receiving injuries and moving back Harnam fell down on the way in the north of well. Devi Sahai, Daulat Ram, Rulha also saw the incident. He went to his brother Ram Gopal and narrated the incident, then he and Ram Gopal came on the spot. As the body of Harnam was warm but he was not talking, they carried him to Morna hospital in a horse carriage where the doctor was not present, then he was carried to Bhopa hospital where the doctor examined him on the horse carriage itself and declared him dead. From there Ram Gopal went to lodge the report.

**10.** Devi Sahai P.W-3 is also an eyewitness. In his examination-in-chief, the witness has said that he has gone on the plot of Jagmohan in village Wazirabad for mason work with Rehla Das and Tilak Ram the two labourers. This plot is near the houses of the accused and there is one public well in the north of this plot. On 09.03.1980 he has laid one feet high foundation beneath the ground. On the next day at about 8:30 a.m. they reached at the site. Jagmohan was also there. The foundation was constructed by Jagmohan. The incident is of 10.03.1980. The construction work was about to start. Mahabir holding a Lathi, Krishan Pal holding a Ballam, Daulat holding a Tabbal, Topi holding a Ballam, Ghasita holding an axe, and

Dharma holding a Bhala in their hands came and prevented Jagmohan from construction work. Jagmohan said he will certainly construct his house, then the accused started abusing. In the meantime, Harnam holding a lathi came there and he also abused and said that they will construct the house. The accused started to assault. Before the arrival of Harnam accused have dismantled the foundation. Harnam and Jagmohan beat the accused with lathi. Jagmohan did not suffer any injury. Harnam died on the spot due to injuries. Harnam when assaulted fell moved back down on the way near the well where blood oozed out and spilled on the ground.

11. B.M. Mishra, S.O. PW-8 is the Investigating Officer. In his examination-in-chief, he has stated that on 10.03.1980 he started the investigation of this case, recorded the statements of the complainant and constable Prakash Chandra. He reached Bhopa hospital and directed S.I. Shyam Dhan Gupta to conduct inquest proceedings. He visited the place of occurrence and raided the houses of the accused and arrested them and sent them to the police station through S.I. Surendra Singh. Then he recovered a blood-stained lathi from the house of Mahabir and a blood-stained tabal from the house of Daulat and prepared its memo. He visited the place of occurrence and prepared the site plan and collected blood-stained and plain soil from the place of occurrence in two separate containers and prepared its memo and sealed it. Recorded the statement of other witnesses, and sent the materials for chemical examination and after completion of investigation submitted the charge sheet. The witness has proved all the papers as Ex.Ka-4, Ka-5, and Ex.Ka-13 to Ka-15 and material exhibits 1/1 to ¼, 2/1 to ⅔, and 3 and 4.

12. Remaining witnesses are formal in nature. Constable Dharmvir PW-4 has carried the dead body for post-mortem after the inquest proceedings and has proved the same from his statement. Constable Prakash Chandra PW-5 is the Chik and G.D. writer and he has proved both the documents as Ex. Ka- 6 and 7. He has also proved the G.D. entry of arrest of accused as Ex.Ka-8. S.I. Shyam Dhan Gupta PW-6 has conducted the inquest proceeding and

prepared related papers. Witness has proved the inquest report and related papers as Ex.Ka-9 to Ex.Ka-11.

13. The prosecution version is that at the time of the incident Jagmohan, the brother of complainant Ram Gopal and deceased Harnam was on the site for the construction of his house. The foundation was laid one day before. The accused persons armed with sharp-edged weapons and lathi came there and started abusing and dismantling the foundation. In the meantime, Harnam, the brother of Jagmohan holding a lathi came there. Harnam and Jagmohan both prevented the accused from dismantling the foundation. Suddenly the accused with weapons in their hands attacked and severely beat Harnam who after receiving serious injuries fell down on the way in the north of the well and died. It is also the prosecution version that Jagmohan and Harnam wielded lathi in defence causing injuries to accused Topi, Krishan Pal, and Ghasita. From the material on record it also appears that there is a cross-version and according to defence Ram Gopal, Jagmohan, Harnam, Rati Ram and Tilak Ram wanted to forcibly occupy the land of Hargyan and when it was objected, they assaulted Topi, Ghasita, Krishan Pal and Hargyan with lathi and tabal. The aforesaid accused wielded lathi and Ballam in self-defence. Mahabir, Daulat, and Dharma were not present on the spot. The injured accused and Mahabir and Hargyan went to the police station to lodge a report but they all were detained and their report was not registered at that time and after lodging the F.I.R. of the complainant ante-time, the report of the accused was lodged.

14. From the accused side, two witnesses have been examined. Dr. R.S. Ruyal DW-1 has examined the injuries of Hargyan, Topi, Krishan Pal, and Ghasita and according to the medical examination report of Hargyan Ex.Kha-2 his medical examination was conducted on 10.03.1980 at 2 p.m. and he was brought by Constable Rohtash Singh, police out post-Morna, Police Station- Bhopa, District- Muzaffarnagar. Following injuries were found on his body:-

1. Abrasion (unscabbed) 2 cm x 1 cm on the back of the left wrist.

2. Lacerated wound 2 cm x 0.5 cm x skin deep on back and root of left middle finger, obliquely placed. Bleeding on touch.
3. Abrasion (unscabbed) 0.5 cm x 0.5 cm on back and root of the left index finger.
4. Abrasion(unscabbed) 0.5 cm x 0.5 cm on back and root of the left ring finger.
5. Tender swelling 7 cm x 6 cm on top of the left shoulder (outer half of left collar bone).

All injuries were simple in nature except injury no. (5) which was kept under observation and advised X-Ray in both views.

Object-Blunt, except injury no.1, 3, and 4 which were caused by friction against a rough surface. The duration was fresh.

Accused Topi was medically examined on 10.03.1980 at 02:30 p.m. and according to his medical examination report Ex.Kha-3, the following injuries, were found on his body:-

1. *Lacerated wound 2.5 cm x 0.5 cm x skin deep on the left eyebrow, obliquely placed. Bleeding on touch.*
2. *Abraded contusion (Unscabbed and red) 4cm x 2 cm in front of chest Rt. Side at 4'O clock position, 8 cm from Rt. Nipple.*
3. *Abraded contusion (unscabbed and red) 5cm x 1cm on outer left forearm just above the left wrist, with swelling 6 cm x 4 cm around it.*
4. *Abrasion (Unscabbed) 5 cm x 2 cm on the back of the left forearm, 2 cm above injury no.3.*
5. *Three abrasions (unscabbed) 5cm x 0.5 cm: 5cm x 0.5 cm and 1 cm x 1cm respectively on middle joints and outer surface of Rt. Index finger, middle finger, and right little finger.*

*All injuries were simple in nature except injury no.3 which was kept under observation and advised X-ray in both views.*

*All injuries were caused by blunt objects except injuries no.4 and 5 which were caused by friction against a rough surface.*

*All injuries were fresh in duration.*

Accused Krishan Pal was medically examined on 10.03.1980 at 3 p.m. and according to his medical examination report Ex.Kha-4, the following injuries, were found on his body:-

1. *Lacerated wound 4 cm x 0.5 cm on left side top of the head, 13 cm above left ear, obliquely placed. Bleeding on touch.*
2. *Abrasion (Unscabbed) 3 cm x 2 cm on front and outer of the left knee, 3 cm from left tibial tuberosity.*

*Complaint of pain Rt. Knee and back but no visible injury was there.*

*Nature-Simple.*

*Object- Injury No.1 caused by a blunt object and No.2 by friction against a rough surface.*

*Duration-Fresh.*

Accused Ghasita was medically examined on 10.03.1980 at 3:30 p.m. and according to his medical examination report Ex.Kha-5, the following injuries, were found on his body:-

*1. Incised wound 3cm x 0.5 cm x bone deep on Rt. Side forehead, 5 cm above Rt. Eyebrow, obliquely placed. Margins of the wound were clean-cut and no tailing was there. Bleeding on touch.*

*2. Lacerated wound 3cm x 1m x scalp deep on Rt. side head, 7cm above the right ear. Bleeding on touch.*

*3. Incised wound 3cm x 1cm x bone deep on outer par of left elbow joint, transversely placed. Inj. back to front direction. Margins of the wound were clean-cut and the wound was continual with 3 cm x 11 near abrasion at its anterior part. Bleeding on touch.*

*4. Abraded contusion (unscabbed and red) 9 cm x 3 cm on the back and middle 1/3rd of Rt. forearm, obliquely placed, 13 cm x 8 cm swelling around it.*

*Complaint of pain left shoulder left forearm and left leg but no visible injury was there.*

*All injuries were simple in nature except injury no.4 which was kept under observation and advised X-Ray in both views.*

*Injuries No.1 and 3 were caused by a sharp-edged weapon and No.2 and 4 by a blunt object.*

*All injuries were fresh in duration.*

Dr. R.S. Rayal DW-1 has proved the aforesaid medical examination report as Ex. Kha- 2 to Ex. Kha- 5.

Dr. D.K. Mubar DW-2 in his examination-in-chief has stated that on 17.03.1980 the X-Ray of the left shoulder of Hargyan was conducted under his supervision and a fracture of the collar bone was detected. The witness has proved the X-Ray report as Ex.Kha-6 and X-Ray plate.

15. So, the date and time and place of occurrence are admitted. What is to be judged is that who are aggressors and whether accused Dharma, Daulat, and Mahabir were involved in the incident or not and the presence of Hargyan at the time of occurrence.

16. It is cardinal principle of law that in criminal cases primarily it is the duty of the prosecution to prove its case beyond reasonable doubt. The

burden is on the prosecution alone but when there are two versions of the parties about the same occurrence the Court cannot loose the sight of either of them and has to consider both the versions in order to come to a conclusion as who was the aggressor and what was the real genesis of occurrence. The accused are not required to prove their case to the hilt like the prosecution, but it is to be seen if the defence version is probable.

17. Admittedly, Ram Gopal, the brother of Jagmohan and Harnam (deceased) was Pradhan of Goan Sabha Wazirabad. In his cross-examination, Ram Gopal PW-1 has said that he remained suspended in 1976 for three months in relation to the allotment of land made by him in 1972. He has further admitted that a case was also filed to cancel the allotments made by him and allotments made by him were cancelled by the S.D.M. An appeal was filed before the Collector and the Collector cancelled some of the allotments. He has further said that in the order of Collector it was not made clear that which of the allotments were cancelled and which were not. He has given an evasive reply in this respect but has not specifically denied that allotment of Jagmohan was not cancelled by the Collector. So from the statement of Ram Gopal PW-1 the then Pradhan of Goan Sabha Wazirabad, it is clear that allotment made in favour of the Jagmohan was cancelled and there was no valid allotment in favour of Jagmohan of the disputed land so Jagmohan has no right in respect of the disputed land. Further prosecution has also filed a receipt of allotment dated 30.12.1972 Ex. Ka-1. In this receipt, the particulars of the land allotted to Jagmohan is described as 11x14 yards, 154 sq. yards of land from Khasra number 541, boundaries of which are East- Ram Ratan, West- public way, North- well of Harijans, and south- Rasta. The boundaries as mentioned in this receipt do not match with the boundaries of the disputed plot as shown in the site plan Ex. Ka-13. In the site plan Ex. Ka-13 in the west vacant land of Plot No. 542 and in the South Plot No. 543 having a wheat crop are shown and there is no Rasta either in the west or in the south as mentioned in the receipt Ex. Ka-1. Further, the public way (Khadanja) is situated in the west of vacant Plot No. 542 in the site plan exhibit Ka-13. So the description of the boundaries as mentioned in the receipt Ex. Ka-1 does not tally with the spot position and it is clear that

the land allotted vide receipt Ka-3 is not the disputed land and its location is different. Jagmohan PW-1 in his cross-examination could not tell the Khasra numbers of the lands allotted by him. He has also said that he does not remember whether any map was prepared by the Lekhpal. Plots were not marked on any paper. He has also said that some area of this plot was allotted earlier and the remaining area was allotted to Jagmohan and others. He has further said that he has pointed to the I.O., the land where Jagmohan has laid the foundation. Adjacent to it in the west there is Khasra No. 542 and rasta is in the west of Khasra No. 542 and in the South adjacent to it there was a wheat field at the time of occurrence. The oral statement of Jagmohan PW-1 also does not confirm the description of boundaries as mentioned in the receipt of allotment Ex.Ka-1. The learned trial court has not considered the fact that allotment made in favour of Jagmohan was cancelled and there was no valid allotment of the disputed land in favour of Jagmohan. The learned trial court has also failed to appreciate that the description of the land allotted as mentioned in the receipt exhibit Ka-1 does not match with the disputed land. The learned trial court has misread the evidence regarding the boundaries and has failed to properly appreciate it. The learned trial court has presumed the possession of the complainant party on the disputed land on the grounds that after allotment Jagmohan has constructed a hut on it and further that Jagmohan has laid the foundation on the disputed land one day before the incident and since Jagmohan was in possession of this land the accused had no right to disturb his possession or to use force against him. These observations of the learned trial court are not justified. Jagmohan PW-2 in his cross-examination has said that 4-5 days before the incident he has removed the hut and has thrown the bamboo and straws in the ditches but no sign or remains of any hut has been found on the spot by the investigating officer. The disputed land is in form of an open land and is situated near the houses of the accused persons. Since there was no valid allotment in favour of Jagmohan, they have no right or title on disputed property. It appears that the complainant party was trying to forcibly occupy the disputed land and raised construction on it. So their position was that of a trespasser. No settled possession can be presumed in

favour of the complainant party just because foundation was laid one day before the incident. So from material on record, the defence version that the complainant party was forcibly trying to occupy the land got established and in such a situation the right of private defence of property will not be available to the complainant party. The learned trial Court has erred in holdings that complainant party has right of private defence of property.

18. From the evidence on record, it also stands proved that it was complainant party who first started the assault. Devi Sahai PW-3 the independent witness in his cross-examination has said that labourers have prepared the *gara* when accused persons came there and prevented Jagmohan from the construction work. Jagmohan said that he will construct his house then both the parties started abusing each other. Meanwhile, Harnam holding a lathi came there and abused and said that he will certainly construct the house. The witness has further said that before arrival of Harnam the accused started to remove the bricks then Jagmohan and Harnam assaulted the accused with lathi. The witness on another place has also said that Jagmohan has also abused the accused and when the parties were abusing each other then Harnam said that he is ready with a lathi and at the time Jagmohan has also picked up a lathi. The witness has also said that when accused were removing the bricks then Jagmohan and Harnam started to assault the accused with lathi. As soon as the accused started to remove the bricks Jagmohan and Harnam started to assault the accused. The witness has further said that Jagmohan and Harnam have assaulted the accused for 15 minutes while they remain indulged in removing the bricks of the foundation. When all the bricks were taken out from the foundation then accused started to assault. From the above statement of the witness, it is clear that both the parties were abusing each other and when accused persons prevented the complainant party from construction work and started to remove the bricks of the foundation complainant party started the assault. So the genesis of the occurrence is that the complainant party with Devi Sahai Mason and two laboures came on the spot to raise construction on the disputed land. The accused came there and objected. Both the parties indulged in abusing each other. Accused in order to prevent the complainant

party from raising construction started to remove the bricks from the foundation then complainant party started to assault them. From the evidence on record, it is also established that from the accused side Topi, Krishna Pal, and Ghasita have suffered visible injuries. Accused Topi has one lacerated wound on the head, one contusion on the chest, two contusions on the four arms, and three abrasions on the fingers while accused Krishna Pal has suffered one lacerated wound on the head and one abrasion on the left knee and accused Ghasita has suffered one incised wound on the forehead above right eyebrow, one incised wound on the left elbow joint and one lacerated wound on the head and one contusion on the right forearm. The injuries no. 1 and 3 of the accused Ghasita are incised wounds and according to the opinion of the doctor, these injuries have been caused by sharp-edged weapons.

19. The defence version is that the complainant party tried to forcibly occupy the land of Hargyan when objected assaulted Hargyan, Krishna Pal, Topi and Ghasita with lathi and tabal. This defence version also gets support from the medical evidence on the record. Besides the three accused persons, Hargyan also has visible injuries. According to his medical examination report Ex.Kha-2 five visible injuries one abrasion on the left wrist, one lacerated wound on the middle finger, two abrasions on the fingers and tender swelling on top of the left shoulder were found on the body of Hargyan and in the opinion of the doctor the duration of injuries was fresh. Injury no. 5 was kept under observation and X-Ray was advised. According to the X-Ray report Ex. Kha-6 fracture of clavicle bone was detected. It is also pertinent to mention that Hargyan was taken for medical examination by the police constable Rohtas Singh along with the other injured accused persons and it is mentioned in the G.D. No. 28, of 10.03.1980 at 13.00 p.m. He was medically examined along with injured accused persons by the same doctor at 2 P.M. and his injuries have been found fresh in duration which corresponds to the time of occurrence. So from the medical evidence on record, it stands proved that Hargyan has suffered injuries at the time of occurrence. The prosecution has failed to give any explanation of the injuries of Hargyan. The prosecution witnesses have simply denied the

presence of Hargyan on the spot but the medical evidence supports the defence version that Hargyan was very much present on the spot and suffered injuries in this incident.

The learned trial Court has held that Hargyan was not a participant in this *marpit*. The learned trial Court has observed that *“Although the accused are not required to prove their own case to the hilt in the present case the absence of F.I.R. lodged by the accused and absence of Hargyan from witness-box clearly show that accused have not come with clean hands and they do not wanted to assert and bring true facts before the Court. It cannot be said that the report of the complainant was written ante time because there is no evidence that accused reached the police station before 1.30 p.m.. If Hargyan had received injuries in this occurrence he could state this fact before the Investigating Officer when the accused persons were arrested. I’m not supported by any circumstances or evidence on the file to say that there was any other motive for the prosecution not to name Hargyan amongst the accused. The only inference which can be drawn is that Hargyan was not a participant in this marpit. The defence has not shown any reason as to why Hargyan himself did not come in the witness box.”* The aforesaid observations of the learned trial Court are against evidence on record and unsustainable. The defence version is that after the incident the injured accused along with Krishna Pal and Hargyan have gone to police station to lodge the report but there report was not registered and they were detained at the police station. This defence version also stands proved from the circumstantial evidence on record. According to the prosecution, on search of the houses of the accused a blood-stained lathi from the house of accused Mahabir and a blood-stained tabbal from the house of the accused Daulat were recovered by the Investigating Officer B.M. Mishra S.O.. During this search none of the accused were present. The Investigating Officer has searched the houses in their absence while it is also the prosecution version that Investigating Officer B.M. Mishra S.O. after instructing S.I. Shyam Dhan to conduct inquest proceedings and recording statement of Jagmohan came back to police out post Morna and from there proceeded to place of occurrence. Investigating Officer in his statement has

said that thereafter he conducted a raid on the houses of the accused persons and arrested all the six accused from their houses and sent them to police station through S.I. Surendra Singh. Witness has further said that thereafter he made a search of the houses of the accused persons. It was unnatural on the part of the Investigating Officer not to search the houses of accused at the time of their arrest in their presence. The natural conduct should be that if the accused were arrested from their houses, search should have been made at that very moment but contrary to it the search has been made in absence of the accused persons. This conduct of the Investigating Officer is highly unnatural and improbable and clearly indicates that accused were not arrested from their houses as stated by him. Further the occurrence has taken place at 9 a.m. while the entry of accused at police station has been registered in the G.D. at 13.00 p.m. after four hours of the incident. One person has lost his life in the incident and the accused persons were conscious of the aforesaid fact. They were also injured in the incident. So it is highly improbable that in injured condition they should have remained in their houses waiting for the police to arrive and arrest them. The G.D. entry also discloses the presence of Hargyan at the police station. Hargyan was neither named in the F.I.R. nor was an accused in the case. Why he reached the police station has not been made clear by the prosecution. The above circumstances clearly establishes that the accused after the incident went to the police station with Hargyan in injured condition to lodge the report but they were detained at the police station and after lodging of the F.I.R. of the complainant their presence at police station was shown in the G.D. at serial no. 28 dated 10.03.1980 at 13.00 p.m.. In the aforesaid circumstance there is a probability that F.I.R. of this case may be ante timed. The learned trial Court has lost the sight of the circumstantial evidence and its findings in this regard are against the evidence on record and perverse.

**20.** From the evidence on record it is proved that accused Topi, Krishna Pal and Ghasita have suffered injuries. Accused Ghasita has also suffered injuries of sharp-edged weapon. Hargyan has also suffered injuries in this incident and one of his injuries is grievous in nature. So from the evidence on record it is proved that it was the complainant party who started the

assault. They used lathi and tabbal in the assault causing injuries on three accused persons and Hargyan. Some of the injuries are on the vital part of the body and one of the injuries of Hargyan is grievous in nature.

21. Section 100 of I.P.C. provides for the right of private defence of the body and is as follows:-

*“100. When the right of private defence of the body extends to causing death.—The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—*

*(First)— Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;*

*(Secondly)- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;”*

In **Satya Narain vs State Of Rajasthan (1997) 11 SCC 83**, it has been held that “having received injuries on their heads on account of the assault made by the deceased, the accused persons were well within their right to cause such injuries which were likely to cause the death of the deceased.

In **Jai Dev vs The State Of Punjab AIR 1963 SC 612**, the Hon’ble Apex Court has observed thus”

*“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 feelings 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. It is no doubt true that in striking a decisive blow, he must not use more force than appears to be reasonably necessary. But in dealing with the question as to whether more force is used than is necessary or than was justified by the prevailing circumstances, it would be inappropriate to adopt tests of detached objectivity which would be so natural in a court room, for instance, long after the incident has taken place. That is why in some judicial decisions it has been observed that the means which a threatened person adopts of the force which he uses should not be weighed in golden scales. To begin with, the person exercising a right of private defence must consider whether the threat to his person or his property is real and immediate. If he reaches the conclusion reasonably that the threat is immediate and real, he is entitled to exercise his right..... The law of private defence does not require that the person assaulted or facing an apprehension of an assault must run away for safety. It entitles him to defend himself and law gives him the right to secure his victory over his assailant by using the necessary force. ”*

22. Applying the aforesaid law and legal proposition on the facts of the present case, it is quite clear that complainant party was forcibly trying to occupy the disputed land and when objected they started to assault, Complainant party and in that assault apart from lathi, sharp-edged weapon was also used causing injuries on three accused persons namely Krishna Pal, Ghasita and Topia and a non accused Hargyan. In this assault accused have suffered some injuries on the vital part of their body and Hargyan has suffered a grievous injury. So accused were within their right of private defence of person and injuries inflicted on Harnam is in the exercise of their right of private defence. In the circumstance of the case it is also clear that there was apprehension that the death otherwise will be a consequence of such assault and grievous injury was inflicted on one of the person from the accused side, so Section 100 of I.P.C. is fully applicable on the facts of the present case and the right of private defence of person extends to causing death.

23. The observation of the learned trial Court that the accused have not come with clean hand and they do not want to assert and bring the true facts before the Court are also not just and proper. From the material on record, it appears that it is the prosecution which has not come with clean hands and has not put the correct facts before the Court. The prosecution has denied the presence of Hargyan at the time of occurrence which stands proved from the evidence on record. The prosecution has also failed to explain the incised wound caused on the body of accused Ghasita as prosecution has put the case that at the time of occurrence Harnam was holding a lathi and Jagmohan picked a lathi from nearby during the course of incident. While from the evidence on record it is proved that sharp-edged weapon was also used from the accused side. The manner of arrest as shown by the prosecution also stands belied from the material on record and it is also proved that accused were not arrested from their houses as alleged by the prosecution and there is probability that F.I.R. is ante timed.

24. From the above discussions, it is clear that learned trial Court has failed to properly appreciate the evidence on record and findings recorded by

it that the complainant party has the right of private defence of property and accused have no right of private defence of person is against the evidence on record and perverse, erroneous and not sustainable in the law. The learned trial Court has committed error in holding accused guilty for charges under Section 148 and 302 read with Section 149 I.P.C.. From the evidence on record it is clear that prosecution has failed to prove its case and accused are entitled for acquittal. The criminal appeal is liable to be allowed.

25. The criminal appeal is **allowed**.

26. The appellants no.3 to 6- Daulat, Topi, Ghasita and Dharma have died during the pendency of the appeal and appeal on their behalf has abated.

The appellant nos. 1 & 2- Mahabir, Krishna Pal are alive. They are on bail. They are acquitted from the charges under Section 148 and 302 read with Section 149 I.P.C.. Their bail bonds and sureties bonds stand cancelled. They need not surrender.

27. Lower court record along with copy of the judgment be transmitted immediately to the trial Court.

**Order Date :-** 29.10.2021  
Krishna\*