
(2015) 09 P&H CK 0321

In the Punjab And Haryana At Chandigarh

Case No : CRA-D-595-DB, 1048-DB and 1049-DB-2010 (OandM)

Darshan Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Arms Act, 1959 — Section 25, 27

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 313, 319

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 323

Citation : (2015) 09 P&H CK 0321

Hon'ble Judges : Hemant Gupta and Raj Rahul Garg, JJ.

Bench : Division Bench

Advocate : Baljit Mann and S.P.S. Sidhu, Advocates, for the Appellant; Manjari Nehru Kaul, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Raj Rahul Garg, J.—Darshan Singh son of Gurdial Singh, Harpinder Singh son of Darshan Singh, Balwinder Singh son of Darshan Singh, Amritpal Singh son of Jarnail Singh, Sarabjit Singh son of Jarnail Singh, Pal Singh @ Pali son of Karnail Singh and Sardool Singh son of Ajmer Singh preferred the appeal against the judgment dated 04.06.2010 rendered by the then learned Sessions Judge, Muktsar whereby the appellants-accused were convicted for committing offence punishable under Sections 148 of Indian Penal Code (for short IPC), accused Darshan Singh of the offence under Section 302 IPC and all the remaining accused of the offence under Section 302 read with Section 149 IPC; accused Harpinder Singh of the offence under Section 307 IPC for causing firearm injury to Amarjit Singh and all the remaining accused of the offence under Section 307 IPC read with Section 149 IPC; accused Balwinder Singh @ Raja of the offence under Section 307 IPC for causing firearm injury to Baltej Singh and all the remaining accused of the offence under Section 307 IPC read with Section 149 IPC; accused Sardool Singh of the offence under Section 307 IPC for causing firearm injury to Inderjit Singh and all the remaining accused of the offence

under Section 307 read with Section 149 IPC. Accused Darshan Singh was also held guilty under Section 27 of the Arms Act, 1959. Vide order of sentence of the even date, all the accused were sentenced to undergo RI for 2 years for the offence under Section 148 IPC whereas accused Darshan Singh was sentenced to undergo life imprisonment for the offence under Section 302 IPC and to pay a fine of Rs. 5,000/- with default clause. All the other remaining accused were sentenced to life imprisonment for the offence under Section 302 read with Section 149 IPC and to pay a fine of Rs. 5,000/- each with default clause. Accused Harpinder Singh was sentenced to undergo 5 years rigorous imprisonment for the offence under Section 307 IPC and to pay a fine of Rs. 2,000/- with default clause for causing fire arm injury to Amarjit Singh injured whereas all the remaining accused were sentenced to undergo RI for 5 years for the offence under Section 307 read with Section 149 IPC and to pay a fine of Rs. 2,000/- with default clause. Accused Balwinder Singh was sentenced to undergo RI for 5 years for the offence under Section 307 IPC and to pay a fine of Rs. 2,000/- with default clause for causing fire arm injury to Baltej Singh injured whereas all the other remaining accused were sentenced to undergo RI for 5 years for the offence under Section 307 read with Section 149 IPC and to pay a fine of Rs. 2,000/- with default clause. Accused Sardool singh was sentenced to undergo RI for 5 years for the offence under Section 307 IPC and to pay a fine of Rs. 2,000/- with default clause for causing fire arm injury to Inderjit Singh injured. All the other remaining accused were sentenced to undergo RI for 5 years for the offence under Section 307 read with Section 149 IPC and to pay a fine of Rs. 2,000/- with default clause. Accused Darshan Singh was also sentenced to undergo RI for 5 years of the offence under Section 27 of the Arms Act, 1959 and to pay a fine of Rs. 2,000/- with default clause. However, accused Avtar Singh was ordered to be acquitted finding prosecution case against him doubtful.

2. In cross-version Paramjit Kaur filed a private complaint before Judicial Magistrate 1st Class, Muktsar against Baltej Singh son of Sardara Singh, Gurcharan Singh son of Kartar Singh, Inderjit Singh son of Kartar Singh, Balraj Singh son of Kartar Singh, Harvinder Singh son of Avtar Singh, Amarjit Singh son of Balwinder Singh, Nachhattar Singh son of Jarnail Singh and Paramjit Singh son of Gurdev Singh for the offences under Sections 307/326/324/323/148/149 IPC and under Section 27 of the Arms Act. Paramjit Kaur is the daughter-in-law of Darshan Singh accused of the cross case. The aforementioned accused faced trial and, thereafter, they were ordered to be acquitted for the aforesaid offences by giving them the benefit of self-defence. This judgment is also of the even date i.e. 04.06.2010. Against this judgment Paramjit Kaur being complainant filed the aforementioned appeal where as Darshan singh being victim/injured also filed aforesaid appeal against acquittal of Baltej Singh etc. in a police challan case against six accused except Nachhattar Singh and Paramjit Singh.

3. Brief facts of the case of appeal No. CRA-D-595-DB-2010 are like this; that the police machinery was set in motion on receipt of Ruqa by the police on

08.05.2005 regarding admission of injured Amarjit Singh, Balkaran Singh, Balraj Singh, Baltej Singh, Inderjit Singh and another ruqa of the even date regarding admission of Darshan Singh son of Gurdial Singh, resident of Bura Gujjar at Civil Hospital, Muktsar. ASI Gursewak Singh along with police officials had gone to Civil Hospital, Muktsar and moved application before the doctor seeking his opinion regarding fitness of the injured for recording their statements. Amarjit Singh, was referred to G.G.S. Medical College and Hospital, Faridkot. About Balkaran Singh, doctor gave in writing that he had died on that day at 9:45 P.M. The remaining injured Baltej Singh, Inderjit Singh and Balraj Singh were referred to G.G.S. Medical College and Hospital, Faridkot at 11:30 P.M. Even Darshan Singh of the opposite party was also opined as unfit to make statement by the doctor attending on him. Harvinder Singh, close relation of Baltej Singh expressed his ignorance about the facts of the case as he had not seen the occurrence. Blood stained clothes of injured in the sealed parcels were handed over by the doctor to ASI Gursewak Singh. The Medical Officer also handed over one parcel containing one copy of licence and one cartridge and one cartridge .12 bore and one more parcel containing Rs. 605/- and one note-book sealed with seal impression of "CH", Muktsar and the same were taken into police possession vide recovery memo Ex. PW13/B. One more parcel was also handed over to ASI Gursewak Singh by the Medical Officer containing clothes of Darshan Singh which were also taken into possession. He also collected MLR of Gurcharan Singh at Kotwali, Faridkot, thereafter, ASI Gursewak Singh reached G.G.S., Medical College and Hospital, Faridkot. There statement of injured Baltej Singh was recorded on 09.05.2005 at 10:15 A.M. after seeking the opinion of the doctor about his fitness to make the statement.

4. As per Baltej Singh, on 08.05.2005, he along with his cousin (his father's brother's son) Inderjit Singh, Balraj Singh and Gurcharan Singh and his brother Balkaran Singh and uncle (Foofa) Amarjit Singh were scraping the water course in their fields. Their turn for getting water was to commence at 9:00 P.M. on that day. At about 6:45 P.M. a Jeep came near their fields from Bura Gujjar side. Darshan Singh armed with rifle, Harpinder Singh armed with rifle, Balwinder Singh @ Raja armed with double barrel .12 bore gun, Sardool Singh, Sarpanch of village Dohak, armed with rifle and Avtar Singh, Amritpal Singh and Sarabjit Singh armed with gandasa and Pali armed with dang, alighted from the jeep and came towards the complainant side. Darshan Singh gave a lalkara not to allow Baltej Singh and others to escape. Darshan Singh opened fire from his rifle at Balkaran Singh; as a result, the left flank of Balkaran Singh was injured. Harpinder Singh opened fire from his rifle at Amarjit Singh which hit him on the left side of his chest. Balkaran Singh and Amarjit Singh fell down on the ground. Amritpal Singh gave 3 gandasa blows in quick succession to Balkaran Singh when he fell down and the same hit his head, right knee and hip joint. Sarabjit Singh gave 2 gandasa blows to Amarjit Singh which hit him on his wrist and right biceps. Sardool Singh, Sarpanch, opened fire from his rifle at Inderjit Singh which hit his right side of the chest. Balwinder Singh opened fire from his gun

towards complainant Baltej Singh which hit his left thigh. Pali gave a dang blows which hit the right side of head and left shoulder of complainant Baltej Singh. Complainant then fell down. Pali then gave 3 dang blows in quick succession on the left side of the head, left eyebrow and left shoulder of Balraj Singh. Amritpal Singh and Sarabjit Singh gave gandasa blows on the right arm and on the right hand of Gurcharan Singh. Amritpal Singh, gave 3 gandasa blows on the abdomen, right leg of Gurcharan Singh. Gurcharan Singh fell down with his face downwards and Sarabjit Singh gave many gandasa blows by its reverse side on his back. Baltej Singh and Gurcharan Singh raised alarm whereupon all the aforementioned assailants had fled away along with their respective weapons by the aforesaid Jeep towards Lambi Dhab. On hearing noise of firing, Harvinder Singh, cousin of the complainant and Jagjit Singh son of Mukhtiar Singh came there. Injured were then removed to civil hospital, Muktsar. Gurcharan Singh was taken to Faridkot by Jagjit Singh. From civil hospital, Muktsar, after first-aid, injured were removed to GGS Medical College and Hospital, Faridkot. Balkaran Singh had succumbed to his firearm injuries in civil hospital, Muktsar. Complainant gave cause of grudge like this; that there has been a land dispute with Darshan Singh and others with complainant for the last many years which is pending in the Court. With intention to take possession of this land, after coming to their land, accused Darshan Singh, Harpinder Singh, Balwinder Singh, Avtar Singh, Sarabjit Singh, Amritpal Singh, Sardool Singh and Pali caused injuries to the complainant party and also caused murder of his brother Balkaran Singh. ASI Gursewak Singh, made his endorsement on the statement of Baltej Singh, which is Ex. PN and, thereafter, formal FIR of this case was recorded as Ex. PN/2. After seeking opinion of the doctor regarding fitness of injured Balraj Singh, Inderjit Singh and Gurcharan Singh, their statements were recorded whereas injured Amarjit Singh was declared not fit to make statement. On reaching Civil hospital, Muktsar, inquest report regarding dead body of Balkaran Singh was prepared. Baldev Singh and Harvinder Singh identified the dead body of Balkaran Singh, thereafter, post-mortem examination of the dead body of Balkaran Singh was got conducted. On reaching the spot, Investigating Officer, ASI Gursewak Singh, lifted from the spot blood stained earth from five different places along with the sample earth. Parcels of blood stained earth and sample earth were made separately and sealed with the seal of "GS" and the same were taken into police possession vide recovery memo Ex. PW13/F. Three empty cartridges of .12 bore and three empty cartridges of .315 bore of Shaktiman express along with one broken stick of gun were lifted and made into 3 parcels which were duly sealed with the seal of "GS" and then taken into police possession vide memo Ex. PW13/G. Two spades were also lifted from the spot. On the blade of one of the spades, the name of Baltej Singh was engraved. Both the spades were taken into possession vide recovery memo Ex. PW13/H. Rough site plan of the spot was prepared as Ex. PW1/J. Statement of witnesses were recorded. When ASI Gursewak Singh, reached near the gate of police station, HC. Joginder Singh and Constable Harjinder Singh produced before him clothes of deceased Balkaran Singh which were duly sealed in a parcel with the seal of "CH" Muktsar and one

vial containing pellet which were also duly sealed with the seal impression "CH", Muktsar and the same were taken into police possession vide recovery memo Ex. PW13/K. Case property was deposited with the seal intact with the MHC of the police station.

5. On 10.05.2005, on receiving a telephonic call regarding lying of one gun near the place of occurrence underneath the heap of wheat crop, ASI Gursewak Singh, reached the disclosed place and lifted from the spot single barrel .12 bore gun No. 2375. The same was made into a parcel and sealed with the seal of "GS" and was taken into police possession vide memo Ex. PW13/L.

6. On 11.05.2005, after obtaining opinion of the doctor regarding fitness of injured Amarjit Singh, his statement was recorded.

7. On 22.05.2005, ASI Gursewak Singh, joined the police party of SHO Inspector Bikramjit Singh and arrested accused Avtar Singh. Further investigations of the case were conducted by Bikramjit Singh, SHO Inspector.

8. On 13.05.2005, Harpal Singh, Ex. Sarpanch, produced accused Amritpal Singh, Sarabjit Singh and Pal Singh along with their weapons before Bikramjit Singh. They were arrested. Their personal search memos were prepared. Accused Amritpal Singh produced before him one gandasa. After preparing its rough sketch plan, the same was taken into possession vide memo Ex. PW15/H. Gandasa produced by accused Sarabjit Singh before Investigating Officer Bikramjit Singh, was also taken into possession after preparation of its sketch vide memo Ex. PW15/J. Accused Pal Singh produced one dang before Bikramjit Singh, Investigating Officer, which was also taken into possession vide memo Ex. PW15/K. Statement of witnesses were recorded. Case property was deposited with the MHC of the police station.

9. On 16.05.2005, when Bikramjit Singh, Investigating Officer, was present in the police station, Naib Court of the Court of Sh. H.S. Gill, SDJM, Muktsar informed him regarding the production of gun in the Court. Investigating Officer reached the aforesaid Court and gave the application Ex. P15/L. Gun and the license of .12 bore gun duly sealed with the seal of "HS" was handed over to him by passing order Ex. PW15/L/1. After giving the receipt on the application Ex. PW15/L/2, the aforesaid parcel was taken into police possession vide recovery memo Ex. PW15/M.

10. On 18.05.2005, Harpal Singh, Ex. Sarpanch, produced before the Investigating Officer accused Balwinder Singh who was arrested and his personal search memo was also prepared. Accused Darshan Singh and Harpinder Singh were arrested on 25.05.2005. Their personal search memos were also prepared but nothing incriminating material could be recovered from their possession at that time.

11. On 26.05.2005, accused Darshan Singh gave disclosure statement to the police having kept concealed one .315 bore rifle in the fields near the rice sheller

on the back side of his house about which he alone knew and could get the same recovered. In pursuance with his above said disclosure statement Ex. PW15/T, accused Darshan Singh got recovered one .315 bore gun which was in working condition and after making it into a sealed parcel sealed with the seal of "DS", the same was taken into police possession vide memo Ex. PW15/T/1. On 26.05.2005, itself, on interrogation, accused Harpinder Singh also suffered disclosure statement having kept concealed two cartridges of .315 bore in the kotha of Darshan Singh about which he alone knows and can get the same recovered. This disclosure statement is Ex. PW15/W. In pursuance with this disclosure statement, on 27.05.2005, accused Harpinder Singh led the police party to the disclosed place and got recovered two cartridges of the same bore which were made into a sealed parcel and sealed with the seal of "BS" and were taken into police possession vide memo Ex. PW15/W/1. Rough site plan of the place of aforesaid recoveries were also made. Sukhmander Singh son of Hardita Singh produced before Investigating Officer one Jeep No. PB-30A-2282 along with copy of registration number which was also taken into police possession vide recovery memo. Scaled site plan of the spot was also got prepared. The reports of FSL were received. On completion of investigations of this case, accused Sardool Singh was found innocent and thus kept in column No. 2 whereas challan against remaining accused was put in the Court.

12. Finding a prima-facie case against the accused for the offence under Sections 148 IPC, 302/307/149 IPC and under Section 27 of the Arms Act, the accused were charge-sheeted, to which they did not plead guilty but claimed trial.

13. Supplementary challan was presented by the police, finding accused Avtar Singh innocent but the Court preferred to frame charges against him on 09.12.2005 for the offences under Sections 148 IPC, 302/149IPC, 307/149 IPC and 27 of the Arms Act and, thereafter, the statement of PW1 Baltej Singh complainant was recorded. Accused Sardool Singh was summoned as an additional accused invoking the provision of Section 319 of Cr.P.C. on 18.01.2006. After his appearance, fresh charges against all the accused for the offences under Sections 148 IPC, 302/149 IPC, 307/149 IPC and 27 of the Arms Act were against framed on 05.07.2006 to which all the accused including additional accused Sardool Singh did not plead guilty but claimed trial.

14. After taking entire prosecution evidence and obtaining reports FSL Ex. PR and PS, statement of accused under Section 313 Cr.P.C. were recorded wherein they denied each allegation of the prosecution appearing against them and pleaded their innocence.

15. The defence taken the accused is like this; that as per Darshan Singh accused, on the fateful day at about 6:00 P.M., he along with his sons and "seeri" had gone to his fields to take his turn of water starting from 6:30 P.M. to 9:00 P.M. At about 6:30 P.M., Baltej Singh, Gurcharan Singh, Inderjit Singh, Balraj Singh, Harvinder Singh, Amarjit Singh, Nachhatar Singh, Paramjit Singh and Balkaran Singh (deceased) armed with .12 bore gun and other deadly weapons

like gadasa, kahi, lathies came in his land in order to forcibly take illegal possession from them. He stopped, then Amarjit Singh fired towards him and others started causing injuries for which complainant party had been challaned. He raised alarm which attracted some persons including his sons and the complainant party received injuries in self-defence on his person and property. He has been in established possession of the land in question for the last many years. He was also in possession of the land in question of the fateful day as well as has been held vide judgment and decree dated 15.05.2001 passed by learned Additional District Judge, Muktsar against complainant party. The complainant party is resourceful and has concocted a false case by citing interested and relation witnesses. Balwinder Singh and Harpinder Singh adopted the same defence as was taken by Darshan singh.

16. Accused Avtar Singh took the defence that he is innocent. He is brother of Darshan Singh accused. He deposed against PW Amarjit singh and against Avtar Singh son of Buggar Singh, the real uncle of Baltej Singh complainant in a case FIR No. 215 under sections 366/368 and 376 IPC in the year 1972. He has nothing to do with the present occurrence. He has no concern with the accused Darshan Singh and his sons. He has been separated in mess, residence and agriculture for the last many years from them. He has no concern with the land in dispute. He was not party to the civil litigation. He had gone to the police station for giving information by Jeep of Babli son of Baldev Singh on the day of alleged occurrence. He was found innocent in the inquiry conducted by DSP. Report under Section 173 (8) Cr.P.C. for his discharge was also filed by the police in the Court. He has been falsely implicated in this case.

17. Accused Amritpal Singh took the defence that he is son of Jarnail Singh. His father deposed as DW in case titled as Gurcharan Singh v. Darshan Singh which was pending in the Court of Civil Judge (Sr. Division) and, thereafter, Gurcharan Singh plaintiff and his family started nursing personal grudge against his family and on account of this, they have falsely implicated him and his brother Sarabjit Singh in this case. In fact, they were not present at the time of alleged occurrence. It was further stated that they have taken land measuring 8 1/2 acres on lease at the rate of Rs. 6300/- per acre from Avtar Singh. The above said land is situated at Udhekaran Road. On the day of alleged occurrence, the turn of the canal water started from 7:21 P.M. to 9:42 P.M. He and his brother Sarabjit Singh remained present to get water on their turn to irrigate their fields from 6:00 P.M. to 11:00 P.M. They have been falsely implicated in this case. Accused Sarabjit Singh also took the same defence as was taken by Amritpal Singh.

18. Accused Pal Singh simply pleaded his innocence and false implication by way of defence.

19. Accused Sardool Singh took the defence that he is innocent. He has no concern with this occurrence. He did not participate in such occurrence nor met any of the co-accused. He is Ex-Sarpanch of his village having one .12 bore gun

license and one .32 bore license. There is a party faction in the village. Amarjit Singh PW belongs to the opposite group. He was firstly involved at the instance of Amarjit Singh PW. In fact, on 08.05.2005, he remained busy in his village from morning till late night i.e. uptill 11:00 P.M. He took Kuldeep Kaur wife of Gugga singh, son of Bagher Singh to mid-wife (dai) Sukhjit Kaur of village Seerwali by his car bearing No. PB-30C-6217 as she gave birth to a child. After that at about 4:00 P.M. Sardool Singh and Tikka Singh son of Gurmail Singh, discussed with him regarding auction of Varabandi of village Panchayat land as during the previous year, the water of village Panchayat was with them and in the evening from 6:30 P.M. to 7:30 P.M. Gurdwara Committee, President Charanjit Singh along with Jaskaran Singh came to his house at Dohak in connection with funds for Gurdwara Building as it was under construction and also gave some amount to them for construction of building. Inquiry was also conducted in his village regarding the aforesaid fact by Bikramjit Singh, SHO, Police Station Sadar, Muktsar and in the inquiry, he was found innocent. DSP Gurmit Singh again inquired into the same and he was found innocent.

20. By way of leading defence evidence, accused examined DSP Gurmit Singh as DW1, Charanjit Singh as DW2 and Balwinder Singh @ Babli as DW3. Certified copy of judgment titled as Darshan Singh v. Mukhtiar Singh etc. Ex. DX and certified coy of Rapat Roznamacha of Patwari Ex. DY were tendered in evidence.

21. In this case, cross-version is also available. On the statement of Darshan Singh, initially DDR was recorded as FIR No. 162 dated 09.05.2005 under Sections 302/307/324/323/148/149 IPC and under Sections 25 and 27 of the Arms Act was already registered on the statement of Baltej Singh. A police case was also registered against Baltej, Amarjit, Inderjit, Harvinder, Gurcharan and Balraj Singh with FIR No. 162 dated 09.05.2005 under Sections 148/323/324/326/336/149 IPC. Since Nachhattar Singh and Paramjit Singh were not challaned by the police and further as offence under Sections 307 IPC and 27 of Arms Act, was not against the accused, therefore, Parmjit Kaur, daughter-in-law of Darshan Singh, filed a private complaint under Sections 307/326/324/323/148/149 IPC and under Section 27 of the Arms Act. Under these circumstances regarding cross-version, there are two cases and the judgment in both the cases was rendered on the same day i.e. 04.06.2010 whereby the accused of both the aforesaid two cases were acquitted by giving them benefit of self-defence.

22. As per case of Paramjit Kaur and that of Darshan Singh, they have been in possession of 73 kanal 01 marla of land adjoining to their land which was purchased by them. They were in possession of this land even on 08.05.2005. Accused wanted to take forcible possession of the land from the complainant side. Darshan Singh filed a civil suit against Mukhtiar Singh etc. which was decided in favour of complainant party by the Court of Additional District Judge, Muktsar.

23. On receipt of ruqa bearing No. 392 dated 08.05.2005 by the police regarding

admission of Darshan Singh at civil hospital Muktsar, ASI Gursewak, along with police officials had gone to civil hospital, Muktsar and obtained opinion of the doctor regarding fitness of Darshan Singh to make statement to which doctor opined that he was unfit to make the statement. As such, statement of Darshan Singh was recorded on 09.05.2005, after declaration by the doctor that he was fit to give statement. As per Darshan Singh, the turn of water for irrigation of his fields was from 6:30 P.M. to 9:00 P.M. on Sunday. He along with his son Harpinder and Balwinder had gone to his fields for irrigation purpose. At about 6:30 P.M. on 08.05.2005, when they started watering their fields, at about 6:45 P.M. or 7:00 P.M., Inderjit armed with gandasa, Gurcharan armed with dang, Balraj armed with gandasa, Harvinder armed with gandasa, Balkaran and Baltej armed with spades, Amarjit Singh armed with .12 bore single barrel gun, Nachhattar Singh armed with gandasa and Paramjit armed with gandasa, came there by Jeeps and Tractors on the road and started raising lalkaras. Balkaran Singh stated that Darshan Singh complainant be not allowed to escape whereupon Harvinder Singh gave gandasa blow on the two fingers of left hand of complainant. Balraj gave gandasa blow on the little finger of left hand of complainant. Inderjit gave gandasa blow by its reverse side which hit the head of Darshan Singh. Paramjit Singh gave gandasa blow on the left ear of complainant. Gurcharan gave a dang blow on the left shoulder and left arm of the complainant. Nachhattar Singh gave gandasa blow on the left hand thumb of the complainant. Amarjit opened two/three rounds of the fire from his gun in the air. Gurcharan gave dang blow on the left side of neck of complainant whereupon complainant fell down. Sons of complainant and Jarnail Singh son of Dalip Singh, Buta Singh son of Prithi Singh came on the spot who had seen the entire occurrence. They raised alarm, whereupon, the assailants went away along with their respective weapons towards village Buragujjar by the jeeps. Complainant Darshan Singh was taken home by his sons. Kaur Singh son of Tara Singh, the relation of the complainant, arranged for the removal of the complainant Darshan Singh to civil hospital, Muktsar and got him admitted there. The cause of occurrence was given like this; that all the accused in prosecution of common object of the unlawful assembly came to the land of the complainant to take forcible possession of the land of the complainant and thus caused injuries to him. On this statement, ASI Gursewak Singh, made his endorsement whereupon formal FIR was recorded.

24. Darshan Singh was medico-legally examined at Civil Hospital, Muktsar on 08.05.2005. ASI Gursewak Singh, received sealed parcel of clothes of Darshan Singh injured during the course of investigation from the concerned doctor of civil hospital, Muktsar and the same were taken into police possession vide separate memo. ASI Gursewak Singh, visited the place of occurrence and prepared the rough site plan of the spot. Statement of witnesses were recorded, thereafter, investigations of the case was taken over by Bikramjit Singh, the then SHO of police station, Sadar, Muktsar. He arrested the accused in this case.

25. Accused Balraj Singh produced gandasa after preparing its sketch plan before

Investigating Officer Bikramjit Singh. The same was taken into police possession vide separate recovery memo. Gandasa produced by Harvinder Singh was also taken into possession vide separate memo, after preparing its sketch. Accused Inderjit produced gandasa before the police, after preparation of its sketch and the same was taken into police possession vide separate recovery memo. Accused Gurcharan Singh produced tractor make Mahindra bearing registration No. PB04-9640 which was also taken into possession vide separate recovery memo.

26. After investigations, accused Nachhattar Singh and Parmajit Singh were found innocent. As such, they were not challaned by the police but since Paramjit Kaur, daughter-in-law of Darshan Singh, filed a private complaint, therefore, they were also summoned as accused in this case and faced trial.

27. Parmjit Kaur, alleged that the police helped the accused party and has not properly investigated the case. The police has not recorded the statement of witnesses of the complainant party correctly. As such, Paramjit Kaur, filed a private complainant.

28. In both the aforesaid cases due procedure was followed and finding a prima-facie case against accused, they were charge-sheeted for the offence under Sections 148 IPC, 326/324/323/149 and 307/149 IPC.

29. After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation and pleaded their innocence. Accused Baltej Singh, by way of defence stated that he along with Balkaran Singh, Inderjit Singh, Amarjit Singh and Gurcharan Singh, were scraping the watercourse for watering the fields at 6:45 P.M. Darshan Singh along with Harpinder Singh, Balwinder Singh, Amritpal Singh, Avtar Singh, Sarabjit Singh, Pal @ Pali Singh and Sardool Singh armed with double barrel gun, rifles and gandasas as well dang, attacked them and caused injuries to Baltej Singh, Balkaran Singh, Inderjit Singh, Amarjit Singh and Gurcharan Singh. They caused death of Balkaran Singh. They (accused) have been in peaceful cultivating possession of the land for the last 30 years. They had not caused any injury to Darshan Singh and the same have been fabricated after due deliberations and consultations as a counter blast to a case against him for murder of Balkaran Singh. Similarly, Gurcharan Singh accused denied the allegations of the prosecution case and adopted the aforesaid plea as adopted by Baltej Singh in his statement under Section 313 Cr.P.C. Accused Inderjit Singh, Harvinder Singh, Amarjit Singh and Balraj Singh have also denied the case of the prosecution and adopted the same plea, as mentioned above and as adopted by Baltej Singh. They pleaded their false implication as a counter blast. By way of their defence, they examined Dr. Sudhir Khichi as DW1, Dr. Simmi Garg as DW2 and Dr. Jaidev Singh as DW3. Documents Ex. D22 to Ex. D24, were also tendered in evidence.

30. After hearing counsel for the parties and appraising the entire evidence and

material coming on record, the learned trial Court recorded the aforementioned impugned judgments of the even date whereby accused Darshan Singh etc. were convicted whereas Baltej etc. accused of the cross-case registered on the statement of Darshan Singh and that of private complaint filed by Paramjit Kaur, were acquitted by giving them benefit of self-defence, as mentioned in the earlier part of this judgment.

31. We have heard learned counsel for the parties besides appraising the entire material and evidence coming on record.

32. Since there are cross versions, therefore, it has to be seen as to who is the aggressor party. The occurrence had taken place in the fields, where as per both the sides, they were present as they were to irrigate their fields on their turn which was to start at a specified time.

33. Learned counsel for appellant-accused Darshan Singh etc. contended that Darshan Singh etc. are in actual possession of land in question and it is the other side i.e. Baltej Singh etc. who by forming an unlawful assembly came at the spot for taking possession of land forcibly.

34. In the presence of copy of judgment Ex. PY dated 02.12.1998, rendered by Sh. S.K. Garg, Additional Civil Judge, (Sr. Division), Muktsar and copy of judgment Ex. DX dated 12.05.2001 rendered by Sh. S.M.S. Mahal, learned Additional District Judge, Muktsar, it is established on the file that Darshan Singh had been litigating with Mukhtiar Singh, Kartar Singh and Avtar Singh sons of Buggar Singh, Jasvir Singh, Jagjit Singh sons of Mukhtiar Singh, Gurcharan Singh, Rajinderjit Singh sons of Kartar Singh, Balkaran Singh son of Sardara Singh and Sardara Singh son of Buggar Singh. Complainant party i.e. Baltej Singh etc. are the sons of Sardara Singh, Kartar Singh and Avtar Singh sons of Buggar Singh. Darshan Singh filed a civil suit for permanent injunction against Mukhtiar Singh etc. In this case, he had also claimed adverse possession but since he did not implead the owner of the land as party, therefore, his plea of adverse possession was rejected. Regarding his actual possession at the spot, it was found by the learned Additional Civil Judge, (Sr. Division), Muktsar in para 7 of the judgment Ex. PY that it is an admitted fact that defendants No. 1 to 3 and 9 (i.e. Mukhtiar Singh, Kartar Singh, Avtar Singh and Sardara Singh) prior to them their father Buggar Singh were recorded in possession of the suit property uptill 1987. In the year 1987, an entry in the roznamcha (Ex. P6) was made by the then Kanungo vide which the girdawari was changed to the name of the plaintiff. It was also observed in that very judgment by the Court that admittedly, none of the defendants was present at the time of change of khasra girdawari nor any notice was issued to them before effecting the correction in the khasra girdawari by Kanungo. As such, since change in khasra girdawari entry was effected by Kanungo without notice to the other side, by making entry in the aforesaid roznamcha, therefore, only from that point, trouble started.

35. Taking into consideration the fact that khasra girdawari entry cannot be

corrected without notice to the affected parties, the learned Additional Civil Judge, (Sr. Division), Muktsar held Mukhtiar Singh etc. are in established possession of the suit property. The Court of Additional District Judge, Muktsar vide judgment Ex. DX simply ignored the aforesaid law on the point observing that since the change in the khasra girdawari entry was effected in the presence of Ex. Sarpach, Namberdar, member Panchayat and Chokidar, therefore, Darshan Singh is in actual possession of the suit property since 1987. Of course, subsequent entries in the revenue record are in the name of Darshan Singh etc. but the question arises as to if the change in the khasra girdawari entry made by Kanungo vide aforesaid rapat roznamcha was in accordance with law or not. There is in fact nothing on record to show as to when and under what circumstances Darshan Singh had taken the possession of land in dispute after aforesaid change in khasra girdawari entries. Thus taking into consideration all these facts, this High Court vide Ex. PX ordered that "status quo order dated 25.05.2001 to continue". As such, much emphasis laid by learned counsel for the appellant-accused on the judgment Ex. DX, is devoid of any force for the reasons that the order of this Court ordering the party to maintain status quo as overriding effect on the judgment Ex. DX. As the successors of Buggar Singh etc. were recorded in established possession of suit property uptill 1987 and there is nothing on record to show that the change in khasra girdawari entries without notice to the affected parties was in accordance with law and further that as to when they were dispossessed actually, therefore, it is the accused party i.e. Darshan Singh etc. are the aggressor. The aggression of appellant-accused is further evident from the fact that accused party was armed with firearms, gandasas and dang. As per prosecution case, Darshan Singh armed with rifle, Harpinder Singh armed with rifle, Balwinder Singh armed with double barrel .12 bore gun, Sardool Singh armed with rifle, Amritpal Singh and Sarabjit Singh armed with gandasa and Pali armed with dang, came near to their fields by Jeep where complainant party was scraping the water course and then inflicted injuries on the person of complainant party with the use of firearms, gandasas and dang. As a result of firearm injury, Balkaran Singh of the complainant party had died whereas on the other hand the complainant party was unarmed. There were only 2 spades available with them. The same were also taken into police possession during the course of investigation. As such by no stretch of imagination, it can be said that the complainant party was the aggressor or that they had gone to the spot with an intention to take possession of the suit land from Darshan Singh etc. accused party. Viewing from another angle, since the complainant party was in established possession of the suit land, therefore also, there was no point for them to go to the spot for taking possession of the suit land. Even otherwise, for the sake of arguments, it be deemed that they had gone over there, in that eventuality they would not have gone unarmed as in this case accused party had gone fully armed with firearm, gandasas and dang etc.

36. It was next contended by learned counsel for the appellant-accused Darshan Singh etc. that it is the case of the opposite side that they were scraping the

water course in their fields as their turn of getting water was to commence at 9:00 P.M. As per prosecution, the occurrence had taken place at 6:45 P.M. Thus, it is not understandable as to why the complainant party would go to their fields before 3 hours prior to the time of their turn of water. On the other hand, as per the case of Darshan Singh etc. their turn of water was from 6:30 P.M. to 9:30 P.M. As such, their presence at the spot was quite natural and this fact also goes to show that it is the complainant party who is the aggressor. This contention of learned counsel for the appellant-accused is devoid of any merit as it is specifically mentioned in the FIR that complainant party was present in their fields and were scraping the water course. Recovery of 2 spades by the Investigating Officer further proves the fact that the complainant party was scraping the water course at the relevant time. If water course was to be put in order, that had to be done much prior to their turn of water, even otherwise the complainant party could well go to their fields for work. With the above-discussed evidence on the file, it is established that appellant-accused Darshan Singh etc. are the aggressor party.

37. It was vehemently argued by Ms. Baljit Mann, Advocate, that the FIR of this case is delayed one. The alleged occurrence had taken place at 6:45 P.M. on 08.05.2005 whereas the FIR of this case was registered on the statement of Baltej Singh Ex. PN/2 at 10:15 A.M. Thus, there is delay of almost 30 hours in recording the FIR. The parties were already litigating on a piece of land. They were inimical to each other. As such, the complainant party got considerable time in roping in innocent persons and fabricating injuries in a mathematical manner. After seeing the MLRs, the complainant party got FIR recorded attributing injuries shown in the MLR to each accused. In fact, there was ample time for the injured to make statement before the police on the intervening night of 8-9 May, 2005. Under these circumstances, serious doubt has arisen regarding genuineness of the case of prosecution on account of delay in lodging the FIR.

38. In this regard, statement of Gursewak Singh, Investigating Officer is significant. He deposed that on receipt of ruqa No. 391 dated 08.05.2005 in respect of Amarjit Singh and ruqa No. 392 dated 08.05.2005 in respect of Darshan Singh, he along with police officials had gone to civil hospital Muktsar. Vide applications Ex. PG/1 for Baltej Singh, Ex. PH/1 for Balraj Singh, Ex. PJ/1 for Inderjit Singh, Ex. PF/1 for Amarjit Singh, he sought opinion of the doctor for recording their statements but the doctor reported that the aforesaid injured were referred to G.G.S., Medical College, Faridkot. At that very time he also received ruqa Ex. PL from Emergency Medical Officer, civil hospital, Muktsar regarding death of Balkaran Singh. He also took into possession a sealed parcel handed over to him by doctor and also taken up other proceedings. He further specifically stated that one Harvinder Singh, close relation of Baltej was present in the hospital but he expressed his ignorance about the facts of the case. Even otherwise, with this kind of the occurrence in which one life has been lost and in which Balkaran, Amarjit, Inderjit and Baltej received firearm injuries besides others who also received serious injuries on their person, it is quite natural for

them to reel under the shock. Even PW3 Dr. Sudhir Khichy, who examined Amarjit Singh, reported that the patient was drowsy, not well oriented in time place and person. As such, it cannot be said that even if the injured were conscious, they were in a position to make statement. It is also very difficult for a villager to attribute injuries to the accused mathematically as per MLR. He must not be in a position to read and understand the contents of the MLR. When a person had died, the considerable time has to be taken in reconciling to move forward for lodging the FIR. Not only one but 3 more persons had received firearm injuries. As such, it is always the endeavour of the complainant party to save life in the first instance. Under these circumstances, it cannot be said that the time taken in lodging the FIR is unreasonable or in any way gives room to the coloured version or to prejudice the rights of the accused. The contention of learned counsel for the appellant-accused that the accused have been taken to G.G.S. Medical College Hospital, Faridkot to gain time as some known doctor to the complainant party was posted there at, so that they could seek his help there, as such, delay in FIR raises serious doubt in the prosecution case; is again devoid of any force. Only on the basis of suppositions, surmises and conjectures, no case can be decided. There is no material on the file to show as to who was the particular doctor posted there at G.G.S. Medical College, Hospital, Faridkot and further as to that very doctor helped complainant party and if so in which manner. The learned State counsel also contended that with simple injuries on the person of Darshan Singh, he has been opined as not fit for statement. This clearly shows that the doctor has helped him by writing not fit for statement. However, we do not agree with the contentions raised by learned counsel for the parties. There is no material on the file to show that the doctor has given the opinion regarding fitness of the patient only in order to help them. In the absence of the same, we cannot conclude that the injured of complainant party were referred to G.G.S., Medical College, Hospital, Faridkot, only on account of the fact that there was some known doctors to the complainant party.

39. It was next argued by counsel for the appellant-accused Darshan Singh that PW-2 Madan Gopal Sharma, vide MLR proved the injuries on the person of Darshan Singh. There were 9 injuries on his person. Injury No. 7 was an incised wound 2.5 cm x .75 cm obliquely placed on left index finger underlying bone was found cut, only a tag of skin on ventral aspect was attached and it was grievous in nature. Thus, for non-explanation of injuries on the person of Darshan Singh, the prosecution case becomes doubtful.

40. It is settled proposition of law that it is not the law that prosecution case shall fail only because the injuries on the person of accused have not been explained. Darshan Singh in his statement, whereupon, a police case was registered against Baltej singh etc. complainant party, stated before the police that accused Amarjit Singh opened fire from his single barrel .12 bore gun. He opened 3-4 fires in the air but while appearing in the Court, he had tried to improve his version by stating that he fired 3-4 rounds from his gun aiming at him. As per MLR of Darshan Singh, he did not receive any firearm injury.

Darshan Singh, also did not explain as to if any such shot hit him or not. Thus, with this evidence on the file of cross-case, the genuineness of the case, lodged by Darshan Singh against complainant party, itself becomes doubtful.

41. Regarding injuries on the person of Darshan Singh, it was argued by learned State counsel that since Balkaran Singh had died, therefore, in order to create self-defence and to lodge FIR against complainant party, accused party of Darshan Singh etc. fabricated the injuries on the person of Darshan Singh, who is an aged person. The fabrication of such like injuries is very common in the villagers. In the absence of any evidence regarding fabrication of injuries at the instance of Darshan Singh etc., without commenting anything, we are of the view that the findings of the learned trial Court regarding injuries on the person of Darshan Singh, in self-defence, does not suffer from any illegality. During the course of infliction of injuries on the person of complainant party by the accused, if Darshan Singh has suffered injuries on his person as well and if the complainant party did not put forward any explanation to that, it cannot be said to be fatal for the prosecution case.

42. The next argument raised by learned counsel for the appellant-accused is this; that Amrajit Singh was armed with single barrel .12 bore gun. The gun of Amarjit Singh was broken but this circumstance has not been explained by the prosecution in its case which makes the prosecution case doubtful. Darshan Singh did not suffer any firearm injury even none of the accused party suffer any firearm injury. This single barrel gun was also not recovered from Amarjit Singh by the police. As per prosecution case and as per the statement of Investigating Officer, on 10.05.2005, on receipt of telephonic secret information about lying of gun near the place of occurrence underneath the heap of wheat crop; a single barrel .12 bore gun was taken into police possession. This evidence nowhere connects accused Amarjit Singh with the single barrel gun. There is no material on the file to show that Amarjit Singh was possessing single barrel .12 bore gun or that he caused any injury to any member of accused party or that the same was recovered from his possession. Thus this argument of learned counsel for the appellant-accused is devoid of any force.

43. It was further argued by learned counsel for the appellant-accused that learned trial Court has found Avtar Singh as innocent and thus acquitted him. Even Sardool Singh was found innocent by the police. Inquiry in that regard was conducted. In the inquiry, he was found innocent. DSP Gurmit Singh as DW1 and Charanjit Singh as DW2 deposed about his innocence. Charanjit Singh (DW2) deposed that Sardool Singh was present at village Dohak on the date of occurrence. Even Bikramjit Singh (PW15) also deposed about the innocence of Sardool Singh. Charanjit Singh (DW2), deposed that he is Ex-President of Gurdwara Committee of his village and he had gone to the house of accused Sardool Singh at about 6:15 P.M. and remained there upto 8:00 P.M. in connection with the construction of Gurdwara of the village. He had gone to the house of accused Sardool Singh for taking funds for the purpose. This argument

of learned counsel for the appellant-accused is again devoid of any force. As there is absolutely no convincing evidence available on the file so as to show that accused Sardool Singh was present in the village at the time of this occurrence so as to oust his presence at the spot. Accused Sardool Singh had taken the plea of alibi by way of defence. It is settled proposition of law that plea of alibi has to be proved by the accused on the record. For this burden of proof lies on the accused. It is of course true that for proving the defence, burden of proof on the accused is not as strict as on the prosecution and if the accused succeeds in showing the defence version as probable it is sufficient to create doubt for the prosecution but so is not in the case if accused sets up the plea of alibi by way of defence. DSP Gurmit Singh (DW1) during the course of his cross-examination deposed that he did not record the statements of the witnesses or injured in this case while inquiring on the application of Sardool Singh. He further deposed that it is correct that he did not go at the place of occurrence at that time. He further deposed that it is correct that by the time when orders were passed by Sh. L.K. Yadav, the then SSP to re-investigate the matter, the challan was already presented in the Court. Under these circumstances, it is not understandable as to how the police came to the conclusion that Sardool Singh was innocent particularly when there is a direct and positive evidence available against him that he has caused injuries with .315 bore rifle to Inderjit Singh. Inderjit Singh (PW9) categorically stated that Sardool Singh opened fire from his rifle which hit right side of his chest. Dr. Madan Gopal Sharma (PW2) found corresponding injuries with firearm on right side of chest of Inderjit Singh as per MLR Ex. PD. Even Baltej Singh (PW5) and Amarjit Singh (PW11) also deposed about causing of firearm injuries by Sardool Singh to Inderjit Singh. As such, when the presence of Sardool Singh is established at the place of occurrence, his plea of alibi stands negated. Even the witnesses whose statements were recorded in the inquiry by Bikramjit Singh (PW15), did not appear in the Court to substantiate the case of Sardool Singh regarding his absence at the time of occurrence. Likewise, the argument advanced by learned counsel for appellant-accused Amritpal Singh and Sarabjit Singh that they could not be connected with this crime as the injuries attributed to them are not supported by the medical evidence; is devoid of any force. Their presence have been proved on the spot by Baltej Singh (PW5), Inderjit Singh (PW9) and Amarjit Singh (PW11) that they were armed with gandas and caused injuries to Balkaran Singh and Amarjit Singh.

44. Lastly, it was argued by learned counsel for the appellant-accused that if at all any injury was caused to the complainant party that was in private defence of the accused. In fact, the right of private defence in this case is not available to accused Darshan Singh etc. First of all, it is the settled proposition of law that aggressor has no right of private defence. In this case Darshan Singh accused caused firearm injury on the left flank of Balkaran Singh. Harpinder accused caused firearm injury on the left side chest of Amarjit Singh. Sardool Singh accused caused firearm injury on the right side chest of Inderjit Singh. Amritpal

Singh caused injuries on the person of Balkaran Singh with gandasa. Sarabjit Singh caused injuries on the person of Amarjit Singh with gandasa. Balwinder Singh caused firearm injuries to Baltej Singh. Pali caused injuries on the person of Baltej with dang and also on the person of Balraj Singh. Amritpal Singh and Sarabjit Singh caused injuries with gandasa at Gurcharan Singh. Sarabjit Singh also caused injuries to Gurcharan Singh by giving many gandasa blows by using it by its reverse side. Two injuries caused on the person of Balkaran Singh by firearm by Darshan Singh, were found as sufficient to cause death in ordinary course of nature and ultimately Balkaran Singh died. Big pellet along with small pellet from the anterior abdomen wall of Balkaran Singh were recovered. Thus injuries on the person of complainant party are in large number and serious injuries, even dangerous to life whereas on the other hand no injury was there on the person of Darshan Singh on his vital part. He also did not suffer any firearm injury. As such, it is not understandable as to how he apprehended his death at the instance of complainant party so as to cause them injuries dangerous to life and also cause death of Balkaran Singh. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. As such, in this case, the right of private defence is not available to the appellant-accused.

45. On the other hand, there is no explanation with Darshan Singh etc. on whose statement a police case was registered against complainant party Baltej Singh etc.; and also a private complaint was filed by Paramjit Kaur, daughter-in-law of Darshan Singh; and also that Paramjit Kaur, who filed a private complaint against Baltej Singh etc. as to how death of Balkaran Singh with firearm injury has taken place on the spot and further as to how firearm injuries, dangerous to life, were received by Amarjit Singh and Inderjit Singh and further as to how the firearm injuries were received by Baltej Singh. Also, there is no explanation on the file as to how Gurcharan Singh received grievous injuries on his person as proved by Dr. Simmi Garg. Not only this, even in the aforementioned cross-cases Gursewak Singh stated that he recorded the fact in zimni that complainant Darshan Singh attacked the accused party and caused injuries to Baltej Singh, Balkaran Singh, Balraj Singh, Inderjit Singh, Amarjit Singh and Gurcharan Singh, after entering into the fields of Balkaran Singh. He also deposed that he took 2 spades in possession from the spot meant for scraping the watercourse. He further deposed that he recorded the fact in zimni that Baltej Singh etc. were cultivating the land and Darshan Singh's party attacked them to take forcible possession. Thus, with this evidence on the file, it is proved beyond reasonable doubt that Darshan Singh's party is the aggressor party and they caused dangerous to life as well as grievous injuries on the person of complainant party and also caused death of Balkaran Singh by giving him firearm injury.

46. For the reasons recorded above, finding no merit in the aforesaid appeals, maintaining the aforementioned judgments of even date i.e. 04.06.2010 as well order of sentence of even date, these appeals are ordered to be dismissed.