
(1971) 10 AHC CK 0021

In the Allahabad High Court

Case No : Criminal A. No. 672 of 1971 and Govt. Cr. A. No. 1627 of 1971

Ram Swarup and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-10-1971

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 40, 96, 97

Citation : (1972) 42 AWR 72

Hon'ble Judges : Gyanendra Kumar, J; B.D. Gupta, J

Bench : Division Bench

Advocate : Ramesh Sharma, P.C. Chaturvedi and C.S. Saran, for the Appellant;
G.A., Virendra Saran, S.N. Mulla and H.C. Rastogi, for the Respondent

Final Decision : Dismissed

Judgement

Gyanendra Kumar, J.—Appeal No. 672 of 1971 and G.A. No. 1627 of 1971 arise out of the same Sessions trial and can be disposed of by a single judgment. The two Appellants, namely, Gangaram and Ram Swarup are father and son. Ram Swarup has been found guilty u/s 302 of the IPC and sentenced to death. He has further been sentenced to seven years rigorous imprisonment u/s 27 and to one years" RI u/s 25(1)(a) of the Arms Act. On the other hand, Gangaram Appellant has been found guilty u/s 302 read with Section 34 of the IPC and sentenced to life imprisonment. He has further been found guilty u/s 25(1)(b) for being in possession of a big knife and sentenced to one months rigorous imprisonment and also u/s 29(b) of the Arms Act for having lent his gun to his son Ram Swarup Appellant and sentenced to six months RI. Ganga Ram was further charged u/s 307 of the IPC of which he has been acquitted by the learned Sessions Judge. The other two brothers of Ram Swarup viz, Somi and Subhash were charged u/s 302 read with Section 34, IPC. However, they were both given the benefit of doubt and acquitted by the trial Judge. Hence the Government appeal by the State against their acquittal.

2. The prosecution story briefly stated is that Sahib Ditta Mal alias Munimji deceased was related to Gangaram accused in this way that the sister of the deceased was married to Tara Chand, brother of Ganga Ram Appellant. Since 1954 Ganga Ram had been taking the annual contract of Tehbazari of the Sabzimandi in the town of Budaun from the Municipal Board and continued to do so till 1969, except for the year 1957, when the deceased had succeeded in taking the contract. The deceased further succeeded in obtaining the contract for the year 1970-71 and joined as co-sharers Sonaram (PW1), Nanak Chand (PW2) and Shiv Ditta Mal (PW5). He also later on succeeded in winning over to his side two of the sons of Gangaram Appellant viz., Ram Swarup accused and his brother Chimman. The result was that Gangaram Appellant started his own Arhat work of vegetables and fruits at his house.

3. The prosecution case is that Ganga Ram did not take his defeat lightly and started inducing vegetable and fruit sellers not to go to the Sabzi-Mandi but to come to his Arhat. It is said that after some time, Ram Swarup and Chimman left the deceased and joined hands with their father Gangaram. The tension between the parties was tried to be resolved by Shri Shabbir Husain, Chairman of the Municipal Board, Budaun but he could not succeed in bringing about a compromise.

4. The prosecution case further is that on the day of the incident i.e., on 7-6-70 at about 7 AM, Gangaram Appellant went to the Sabzimandi and wanted to purchase a basketful of melons but the deceased, who happened to be there, told him that they had already sold it to some other person. This led to an exchange of hot words between Gangaram and the deceased, when the latter told him that he was the Thekedar of the Sabzimandi and his order would prevail in the market. On hearing these provocative remarks, Gangaram is said to have gone away home murmuring, while the deceased went to his seat (gaddi) in the Sabzimandi and after sitting on potato bags, he related the above incident to PWs Sonaram, Nanak Chand, Shanti Lal, Shariyat Ullah, Shivditta Mal and others, who happened to be there.

5. About an hour later, a little before 8 AM Gangaram is said to have reappeared in the Sabzimandi alongwith three of his sons viz., Ram Swarup, Subhash and Somi and went straight to the Gaddi of the deceased uttering threats to him. Gangaram was alleged to have been armed with a big knife, Ram Swarup with a gun, while Subhash and Somi had lathis. All the four accused were allegedly proclaiming that they would see as to whose orders prevailed in that area. Seeing the accused persons in an aggressive mood, the deceased tried to conceal himself in the neighboring Kothari, which has been marked with figure "2" in the site plan prepared by the Investigating Officer. The deceased could, however, only reach the door of the Kothari when Ram Swarup Appellant is said to have fired his gun point blank at him, wounding him mortally.

6. There are five eye witnesses of the occurrence viz., Sonaram, Nanak Ghand, Shanti Lal, Shariyat Ullah and Shiv Dutta Mal (PWs. 1 to 5). It is said that after

Ram Swarup had fired his gun at the deceased, PW 2 Nanak Chand gave a Danda blow at the hands of Ram Swarup Appellant, with the result that his gun fell down on the ground and he ran away. Nanak Chand PW and others as well as Ganga Ram Appellant wanted to pick up the gun. So Gangaram aimed a knife blow at PW 2 Nanak Chand, which did not hit him but cut the left hand pockets of his Bandi and Kurta. Meanwhile PW 5 Shivdutta Mal and one Shah Alam gave Danda blows to Gangaram Appellant and scotched him down. It was at this stage that the other two sons of Gangaram viz., Somi and Subhash also ran away. PWs Sonaram, Nanak Chand and others took Gangaram accused to the Kotwali along with gun the (Ex. 5) (which also contained a fired cartridge case in its barrel) and the knife (Ex. 1). Sonaram then lodged a report (Ex.-Ka 1) at 8.12 AM the same morning. The Bandi and Kurta of PW Nanak Chand (Exts. 2 and 3) were also deposited at the Kotwali and the injuries of Gangaram Appellant were noted down in the General Diary.

7. Sahibdutta Mal was taken on a rickshaw to the Hospital by PW Shivdatta Mal and others but he died on the way. PW 6 Dr. N.A. Farruki, conducted the post mortem examination on the corpse of Sahib Ditta Mal on 7-6-70 at 4 p.m. and found that there was a single gun shot wound 1"x 3/4"x chest cavity deep on the left side front of the chest 2 1/2" below the nipple at 6 O'clock position i.e. just beneath the left nipple. The doctor also found three anti-mortem abrasions. The first one was 2 1/2"x1/2" on the right side of the forehead just above the eye brow. The second was 1/2"x1/2" below the outer angle of the right eye and the third 2"x1/2" on top of the right shoulder. As a result of the gun-shot wound a hole 2 1/2" x 1 1/2" had been created beneath the 7th and the 9th left ribs. The 8th rib was absent in the length of the hole, while the end of 9th left rib had been fractured. The gun-shot wound had blackening and tattooing marks around it to an extent of 1" and had torn Pericardium and had lacerated the left lung, peritoneum and left side heart. Likewise the Doctor also found that the liver had been lacerated and lead pellets were embedded in it. The Doctor in all removed 49 lead pellets from the dead body. In the opinion of the doctor, the death was due to the gun-shot injury which had been caused from within 5 ft. He further opined that the three abrasions could be caused by friction. He deposed that the lower front part of the shirt was altogether missing and the Baniyan had also been torn.

8. On the same day (7-6-70) the doctor had examined the injuries of Ganga Ram Appellant at 11.30 AM and found four recent contusions which were about three hours old, as detailed under:

1. Contusion 5"x1" on the left side back.
2. Contusion 6"x 3/4" left side kokh.
3. Contusion 2"x1" on the left shoulder top and outer part and
4. Straight contusion 6"x1" on left shoulder blade.

In his opinion all the injuries had been caused by a blunt weapon like lathi.

9. PW 15 Gajraj Singh Tyagi SI was present at the Kotwali when the FIR was lodged, so he reached the place of occurrence at 8.25 A.M. The SI inspected the locality and prepared the site plan Ex. ka-15. He found blood marks about 6 inches outside the Chaukhat of Kothari No. 2 and collected blood stained earth therefrom. He also saw marks of pellets in the southern Chaukhat and Pakkha of that Kothari at a height of 4" above the ground. He also discovered 43 pellets lying inside the room and a tickley (carkboard-Wed) at the door and took them in his possession. He also found a Danda (Ex 1) lying at the Chaukhat, the blood stained portion whereof he also took into his possession.

10. All the four accused pleaded not guilty. Subhash and Soni denied their presence and pleaded alibi. Ganga Ram and Ram Swarup Appellants, however, admitted their presence but gave a different version of the incident. They denied the incident alleged to have taken place earlier on the morning of 7-6-1970 between the deceased and Gangaram Appellant. Their case was that as usual, Gangaram and his son Ram Swarup Appellants had gone at about 4.30 AM to their vegetable farm in village Naushehra, situate about 4 miles away from Budaun. Gangaram had taken his gun to the farm as usual. At about 7.45 AM, they returned to Budaun and on their way home they came to the Sabzimandi to purchase some melons (Kharbuzas) for the children. As they were trying to collect good melons, a boy came running and told Gangaram that he was wanted by the deceased at his gaddi situate in the Mandi. The defence case further is that inasmuch as about 2 days ago compromise talks had taken place between the parties at the house of the Chairman of the Municipal Board, Shri Shabbir Husain, they thought that they were being invited for further talks at the gaddi of the deceased. Nevertheless, when they reached the Gaddi, the deceased told Gangaram that he had been warned at the house of the Chairman that he should not come to Sabzi Mandi, but he had paid no heed to the warning. Gangaram is alleged to have replied that the deceased had got only a contract for realizing tahbazari dues and had no right to prevent him from coming to the Mandi. Thereupon, the deceased started abusing Ganga Ram, who abused the deceased in return. The deceased and Gangaram then grappled with each other as a result whereof the shirt and Baniyan of the deceased got torn. In this process the gun of Gangaram fell down on the ground and was picked up by his son Ram Swarup Appellant. Meanwhile two servants of the deceased started belabouring Gangaram with their lathi and danda. Seeing his father being beaten, Ram Swarup fired the gun towards the assailants but it hit the deceased. The servants of the deceased then snatched away the gun from the hands of Ram Swarup and he ran away home. Ganga Ram denied having attacked PW 2 Nanak Chand with a knife or possessing it all, while Ram Swarup denied having fired his gun towards the Kothri. They also disputed the presence of the so called eye witnesses and stated that they were either related to the deceased or belonged to his party. Thus the main defence case is that Ram Swarup Appellant fired the gun in order to save his father Ganga Ram from being belaboured by the

deceased and his servants.

11. The crucial point for decision in this appeal is whether the eye witnesses are independent and reliable and whether their testimony is corroborated by the facts and attending circumstances, including the medical evidence. As already mentioned earlier, there are five eye-witnesses of the occurrence. PW 1 Sonaram is the first cousin of the deceased. He as well as PW 2 Nanak Chand and PW 5 Shiv Datta Mal are admittedly the co-sharers of Sahib Ditta Mal deceased in the theka of Tehbazari of Sabzimandi Budaun, which the deceased had taken from the Municipal Board for the year 1970-71. Moreover on 29-5-70 Gangaram had moved an application against PWs Nanakchand and Shiv Datta Mal. PWs Sona Ram and Nanak Chand were also named as co-accused in the First Information Report lodged by Ganga Ram Appellant, only two days before the occurrence. As regards the other two eye-witnesses, PW 3 Shanti Lal is also the first cousin of the deceased, while PW 4 Shariatullah was a constituent of the deceased and his partners and is alleged to have gone to them for striking a transaction of sale of his stock of Onion through them. PWs Sona Ram, Nanak Chand and Shiv Ditta Mal being co-sharers in the Theka of the Sabzimandi, they were expected to be moving about in the market, supervising the realisation of Tehbazari at the peak hours of about 8 AM, rather than remaining at Gaddi of the deceased, where he was shot down. Therefore, the evidence of these witnesses has to be viewed with great caution. All these witnesses depose that at about 7.15 in the morning of the fateful day of 7th June, 1970 Gangaram Appellant had alone visited the Sabzimandi to purchase a particular basket of melons but the deceased told him that it had already been sold to another person. This led to an exchange of hot words between the deceased and Ganga Ram Appellant, whereupon the latter went away home grumbling and murmuring. Strangely enough, no witness has been produced regarding this occurrence, which is only said to have been related to the eye-witnesses by the deceased. In the Sabzimandi there must have been a large number of customers, besides the vegetable and fruit vendors, selling their goods at that time, but not a single man has been produced in support of these allegations. Even the person to whom that particular basket of melons belonged has not been called to support the prosecution case.

12. According to the prosecution, it was at about 8 AM that very day that Ganga Ram made his appearance again in the Sabzimandi, this time along with his three sons armed with different weapons, Gangaram was said to have been armed with a long knife, Ram Swarup with a gun and the other two accused with lathis.

13. On the other hand, the defence case is that it was only Ganga Ram and Ram Swarup Appellants, who, on way back from their vegetable farm, reached Sabzimandi at about 7.45 AM to purchase melons for the children and that they were sent for through a boy to the Gaddi of the deceased, where, after exchange of hot words, grappling and beating of Gangaram, the unfortunate incident of gun fire took place. As noticed earlier, the defence case was that Ganga Ram and

Ram Swarup used to go out very early in the morning to their vegetable farm in village Naushera and used to return from there at about 8 A.M. As they used to set out for their farm in the small hours of the morning, they used to carry their gun with them and that it was on their return to Budaun on the fateful morning that they went to the Sabzimandi in order to purchase melons. Thus according to the prosecution there were two incidents on the day of the occurrence the first one took place at about 7 AM between Ganga Ram Appellant and the deceased over the purchase of a basket-ful of melons and the second one at about 8 AM that very-day in which all the four accused were involved. On the other hand, according to the defence, there was only one incident at about 8 AM between Ganga Ram and Ram Swarup Appellant on one side and the deceased and his partymen on the other.

14. The admitted case of the parties is that Ram Swarup had fired his gun once and that it was only in one of its barrels that a spent up cartridge case was found. It has not been suggested that any of the accused carried a cartridge belt or otherwise possessed extra cartridges. In the first place the 7 AM incident was of minor nature and did not call for a drastic action attributed to the accused persons. At any rate, it does not stand to reason that the Appellants and their two other companions (sons of Ganga Ram) would walk into the lions den in broad day light and be caught and beaten up and even be done to death by the deceased, his partners and servants, besides hundreds of people who were bound to be present in the Sabzimandi at about 8 AM. Such a large congregation could have easily disarmed the Appellants and their two other companions and given them a thorough beating if not mortal injuries. Secondly, even if the Appellants and their companions would have been so very hazardous, they could not have exposed their lives by carrying only one cartridge in the gun, if they had really gone to murder the deceased and make a safe retreat. It might very well have been that the first shot went stray and did not hit the deceased. It was, therefore, necessary to have atleast both the barrels loaded with cartridges. In fact one would expect the ready availability of more cartridges with the Appellants, because they were bound to fire some rounds of shots to create a scare in the crowded Sabzimandi, before making good their escape. For this reason also one would expect them to keep both the barrels loaded with cartridges and also to carry some spare cartridges for the sake of contingency and safety. As it happened, the complainant party actually succeeded in snatching; the gun after one shot had been fired therefrom. This shows that the defence theory is more probable and acceptable that the two Appellants had reached the sabzimandi just to purchase melons on their way back from their vegetable farm, where they used to carry their gun and that the occurrence took place at the Gaddi, all of a sudden, after an exchange of abuse between Ganga Ram and the deceased, leading to grappling between them followed by belabouring of Ganga Ram accused by the servants and sympathesiers of the deceased. It is noteworthy that PW1 Sonaram clearly admits that Ganga Ram had a farm in village Naushera, which is at a distance of two miles from Budaun.

It is very likely that the two Appellants must have been going every early morning to have a round of their vegetable farm and returning home therefrom at about 8 AM in the sultry month of June. It is not surprising that on such return to Budaun on the morning of June 7, 1970, the Appellants went to the Sabzimandi in order to purchase melons, when they were called to the Gaddi of the deceased, ultimately resulting in the fatal occurrence, as suggested by the defence. It is the prosecution's own case that two days before the occurrence the parties had a compromise talk at the house of Shri Shabbir Husain, Chairman of the Municipal Board who had also tried without much success to resolve the tension between them. Therefore, the Appellants could have readily believed that they were being called by the deceased to his Gaddi for further conversation on the subject. Unfortunately, instead of conciliatory talks, the conversation became hot, leading to exchange of abuse, followed by grappling between the deceased and Gangaram Appellant, then lathi assault on the latter and finally firing by Ram Swarup Appellant resulting in the death of Shibditta Mal.

15. PW 1 Sonaram admits that there is no entry in the account books of the deceased regarding the sale transaction of the basket of melons made through the agency of the deceased, which gave rise to the dispute between him (deceased) and Gangaram Appellant at about 7 AM on the fatal morning. This also militates against the prosecution theory of an earlier incident between them at about 7 AM.

16. A grappling scuffle between the deceased and Gangaram is proved by the fact that the front portion of the shirt of the deceased got altogether removed and the shirt was torn at several other places. His Baniyan was also badly torn. This supports the defence theory of grappling fight between the deceased and Gangaram. Moreover, PW 6 Dr. A.N. Farruki noticed three abrasions on the person of the deceased, which in his opinion could be caused by friction or fall. To us they appear to have been more likely caused by friction during a grappling fight. At any rate, we fail to understand how an abrasion 2" x 1/2" on the top of the right shoulder could be caused by a fall, particularly when the deceased was wearing both a Baniyan and a shirt.

17. The explanation of PW 5 Shivdatta Mal about tearing off the front portion of the shirt of the deceased is that its right shoulder top was already torn in part, which got entangled in a projecting bolt or nail of the rickshaw, as he was being placed on it for taking him to the hospital. Some persons tried to disentangle the stuck up shoulder of the shirt, whereupon the brother of the deceased said that it should better be torn off; so the upper portion of the shirt was torn. But there is no explanation how the front portion of the shirt got completely removed. There is again no explanation how other portions of the shirt and the whole of the Baniyan got torn at various places, as found by Dr. Farruki. The shirt and Baniyan of the deceased have been produced before us. They appear to have been torn at numerous places as a result of repeated violence done to them, such as during a scuffle.

18. As to the alleged infliction of danda blows on Gangaram Appellant by PW Shiv Datta Mal and servants of the deceased, while he was engaged in a grappling fight with him (deceased), it is noteworthy that when Gangaram was taken to the thana the police had found several injuries on his body, which were duly noted down in the General Diary. PW 6 Dr. A.N. Farruki had medically examined Gangaram at 11.30 AM that very day (7-6-70). As noticed earlier the doctor had found as many as four lathi injuries on his person which were about three hours old. The FIR and the prosecution witnesses state that these injuries had been caused to Gangaram during his arrest, when he had attacked P.W. Nanak Chand with a knife and further wanted to pick up the gun which had fallen down from the hands of his son Ram Swarup. If that were so, Gangaram should have received lathi blows on his legs and more particularly on his hands, as he was being beaten in order to be disarmed of his dangerous knife and for preventing him from picking up the gun dropped by Ram Swarup. But we find that all the lathi injuries exist on his left back, left kokh, left shoulder top and left shoulder blade. These injuries more fit in with the defence version that Gangaram was given these hard lathi blows, while he was engaged in a grapple with the deceased, in a standing posture. If Gangaram was being given repeated lathi blows by P.W. Shiv Datta Mal and servants of the deceased, then Ram Swarup had full justification to fire his gun in the right of private defence of the person of his father. It may be that the gun fire injured the deceased, rather than those who were belabouring Gangaram with lathis. But once we come to the conclusion that it was not unlikely that Ram Swarup had used his gun in the circumstances narrated above, i.e. in order to save his aged father from the clutches and assaults of his assailants, he cannot be held guilty of murder or for the matter of that of any other offence, nor can Gangaram be found guilty of an offence Under Sections 302/34 IPC as his presence in the Sabzimandi was not for the purpose of killing the deceased, as suggested by the prosecution, but he had more probably reached there alongwith his son Ram Swarup, on way back from their vegetable farm, in order to purchase melons, as already discussed above.

19. As regards the manner of gun fire at the deceased, the prosecution case is that Ram Swarup shot him down when he had partially entered kothri No. 2 on hearing the threatening words uttered by the two Appellants and their companions Somi and Subhash. It is said that the charge of the gun first hit the southern chaukhat and pakkha and then hit the deceased on his chest. At the request of the learned Counsel for the Appellants, the material exhibits were sent for in the High Court and we had the advantage of examining the same in detail. We find that there are a number of angular marks on the front side of the chaukhat in an area of about 5"x 4". The upper layer of the chaukhat in a corresponding area has been blown off to the depth of about one quarter of an inch. According to the Investigating Officer and the eye witnesses, there were also shot marks on the southern pakkha of the door, which was about 2 feet broad. The above facts clearly show that dispersal of the discharge of the gun fire had already begun to the extent of about 5" even before it touched the

chaukhat and penetrated the chest of the deceased. Naturally the chest of the deceased must have been atleast 2 feet farther away from the Chaukhat (because of the intervening Pakkha) entailing much greater dispersal of the shots by the time they entered the chest of the deceased. However, the post-mortem examination report and the testimony of P.W. 6 Dr. A.N. Farruki reveal that there was a single gun shot wound of entry measuring 1"x 3/4" x chest cavity deep, with blackening and tattooing around it to an extent of 1", on the left side chest of the deceased. There was not a single pellet mark on any other part of the body around the gun shot wound. The nature of the gun shot injury clearly shows that the whole charge had entered the body of the deceased en masse, before it had started spreading. The existence of a single gun shot wound, with a dimension of 1" x 3/4 only, without any other pellet mark around it, is indicative of the fact that the gun fire which hit the chaukhat was not the one which struck the deceased and that he was not fired upon in the manner deposed to by the eyewitnesses. If the gun shot in question had hit the front side of the chaukhat in an area of about 5" x 4", blowing off its upper surface, the corresponding injury on the person of the deceased would have been in a much wider area, also having scattered shot wounds. In that event, it could not have been of the nature and dimension found by the doctor. Ram Swarup Appellant has stated at the trial that he had not fired his gun towards the kothri at all and that the firing took place near the jungla of the Gaddi. For the reasons given above, it is impossible to accept the prosecution version regarding the manner in which Ram Swarup is said to have shot the deceased. That being so, the testimony of the eye witnesses to the contrary becomes highly improbable.

20. The prosecution case is that as soon as Ram Swarup Appellant shot down the deceased, PW 2 Nanak Chand gave him a Danda blow, with the result that the gun fell down from the hands of Ram Swarup who then ran away home. Ganga Ram Appellant as well as i Nanak Chand and others wanted to pick up the gun. So in order to prevent PW Nanak Chand from lifting the gun, Ganga Ram is said to have aimed a knife blow at Nanak Chand, which did not hit him but cut the pockets of his Kurta and Bandi on the right side. It was then that PW Shiv Datta Mal and others started showering their lathis on Ganga Ram in order to scotch him down. Admittedly Nanak Chand did not receive any knife injury. We have examined the Kurta and Bandi of Nanak Chand. There is no cut mark at all either on the Kurta or Bandi. The Bandi has just been torn near the right hand side pocket, while only some stitches of the Docket of the Kurta are missing without causing any cut or tear. This complexly belies the prosecution story.

21. It is noteworthy that if Ganga Ram Appellant were to attack PW Nanak Chand with his knife, while facing each other, the knife blade should have cut the left hand side pockets of his Kurta and Bandi and not the right hand side pockets. In fact the very existence of the knife (Ex.1) in the possession of Gangaram Appellant becomes doubtful. Thus the prosecution theory that the Bandi and Kurta of PW Nanak Chand had been cut by the knife blow which Ganga had aimed at him appears to be imaginary. Ganga Ram has, therefore, been rightly

acquitted of the offence u/s 307 IPC.

22. The next question which comes up for consideration is whether the conviction of Ram Swarup and Ganga Ram Appellants under various sections of the Arms Act can be upheld even though they are acquitted of the main offences Under Sections 302 and 302/34 IPC respectively. At the very out-set we may observe that we are not inclined to believe the defence case that Ganga Ram, who was aged about 65 years, had carried the gun all the way from his house to village Noshara, even when his young son aged about 35 was accompanying him, particularly when we find that the gun has no strap to sling it over or across the shoulder. Therefore, we are not prepared to believe the case of the accused that Ganga Ram Appellant was in possession of the gun at all relevant times, till it fell down on the ground during his scuffle with the deceased and was at that stage picked up by Ram Swarup Appellant, who then fired the same at the deceased. It is impossible that the old man, Ganga Ram, was holding his unstrapped gun in one hand, even when he entered into a serious scuffle with the deceased. The question still remains whether the two Appellants can be convicted of the offences under the Arms Act, as found by the learned Sessions Judge, presuming that the gun was all the time in possession of Ram Swarup ever since he and Ganga Ram entered the Sabzimandi together.

23. Section 40 read with Ch. IV IPC lays down that the word "offence" denotes a thing made punishable under this Code or any other special or local law. It cannot be disputed that the Indian Arms Act 54 of 1959 is a special law relating to arms. Therefore, an offence under the Arms Act would be an "offence" as defined by Section 40 of the IPC read with Ch. IV IPC.

24. Ch. IV of the IPC relates to general exceptions, covering Sections 76 to 106. Section 96 says that "nothing is an offence which is done in the exercise of the right of private defence" which of course, includes the private defence of one's own person or property or that of another. Thus it is clear that an act, which would otherwise be an offence, would cease to be so if it is done in exercise of the right of private defence. Section 97 specifically lays down that "every person has a right, subject to the restrictions contained in Section 99, to defend his own body and the body of any other person, against any offence affecting the human body."

25. Applying the principles of Sections 96 and 97 IPC to the present case, it would be clear that Ram Swarup Appellant had full right to use the gun of his father, when it was fired in the exercise of the right of private defence of the body of Gangaram Appellant, while he was being badly belaboured with lathis. His conviction and sentence u/s 27 of the Arms Act cannot, therefore, be sustained, because Section 27 makes possession of any arms or ammunition punishable, only when it is intent to use the same for any unlawful purpose. It can hardly be doubted that the use of firearms and ammunition for a lawful purpose of defending one's own body or that of the another person, is not an offence contemplated by Section 27 of the Arms Act.

26. Ram Swarup has further been convicted u/s 25(1)(a) of the Arms Act for possessing the gun in question for which he had no licence, the licence holder being his father Gangaram Appellant. Likewise, Gangaram has been convicted u/s 29(b) of the Arms Act for having delivered his gun into the possession of his son Ram Swarup, who did not hold a licence for the same. It is the prosecution case itself that when Ram Swarup entered the Sabzimandi on the fateful morning he was carrying the loaded gun in question, but was accompanied by his father Gangaram, who was its licence-holder. It only means that Ram Swarup was carrying the gun with a live cartridge in one of its barrels, in the presence and company of his father. Gangaram for the latter's use-Gangaram being the licence holder of the gun. In this context the provisions of Section 3 may be noted with advantage, which run as under:

No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.

Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

The above quoted section read with its proviso makes it abundantly clear that Ram Swarup Appellant was not acting illegally in possessing the loaded gun of his father and carrying it in the latter's presence for his use. We have already held that Ram Swarup had fired the gun in the lawful exercise of his right of private defence of the body of his father Ganga Ram. Therefore, the conviction of Ram Swarup u/s 25(1)(a) and that of Ganga Ram u/s 29(b) of the Arms Act is wholly unjustified and must be set aside.

27. Coming to the State appeal against the acquittal of Somi and Subhash accused, the Govt. Advocate has not been able to show us any illegality or error in the judgment of the Sessions Judge pertaining to these two accused. We have perused the sessions judgment carefully and we agree with the reasoning and finding of the learned trial judge in ordering their acquittal on the facts and circumstances obtaining in the case.

28. In the result we allow the appeal of Ram Swarup and Ganga Ram in toto and set aside their conviction and sentences under various counts. Ram Swarup is in jail and must be released forthwith unless wanted in connection with some other case. Ganga Ram is already on bail. He need not surrender to his bail bonds which are hereby discharged. The reference made by the Sessions Judge for the confirmation of the death sentence of Ram Swarup is rejected.

29. The Govt. appeal against acquittal of the remaining two accused Somi and Subhash is hereby dismissed.