

Sukhdev Singh and ors. Vs. State of Punjab

Sukhdev Singh and ors. Vs. State of Punjab

SooperKanoon Citation : sooperkanoon.com/634465

Court : Punjab and Haryana

Decided On : Apr-12-1996

Reported in : 1997CriLJ2404

Judge : V.K. Bali and; K.S. Kumaran, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 325; Code of Criminal Procedure (CrPC) - Sections 107, 151, 161 and 313

Appeal No. : Criminal Appeal No. 1 of 1993

Appellant : Sukhdev Singh and ors.

Respondent : State of Punjab

Advocate for Def. : Mehtab Singh, D.A.G.

Advocate for Pet/Ap. : H.L. Sibal, Sr. Adv.,; Rita Kohli,; Arun K. Batish a

Disposition : Appeal allowed

Judgement :

K.S. Kumaran, J.

1. Along with the appellants (1) Sukhdev Singh (2) Jaswant Singh (3) Raju Singh, three others i.e. Balwant Singh, Nek Singh and Buta Singh faced trial before the Additional Sessions Judge, Barnala, for the murder of Sardara Singh and for

causing injuries to Balbir Singh and Bhag Singh. The learned Additional Sessions Judge acquitted Balwant Singh, Nek Singh and Buta Singh but, convicted appellant Jaswant Singh alias Kaka Singh under Section 302, IPC, and appellants Sukhdev Singh and Raju Singh under Section 302, read with Section 34, Indian Penal Code, and sentenced (hem all to imprisonment for life, to pay a fine of Rs. 5,000/- each and in default to further undergo rigorous imprisonment for two years. Raju Singh was further convicted under Section 325 Indian Penal Code, while, Sukhdev Singh and Jaswant Singh were convicted under Section 325 read with Section 34 Indian Penal Code and sentenced to rigorous imprisonment for two years. He ordered the substantive sentences to run concurrently and that the fine, if collected to be paid to the heirs of Sardara Singh as compensation.

2. The prosecution case is as follows : --

About four years prior to the date of occurrence (15-10- 1 99 1) the complainant Bhag Singh and his family had taken lands measuring 6 Kiliyas belonging to the Dera on lease. Prior to this lease, these lands were in the possession of Sukhdev Singh, Nek Singh, etc. (the accused party). According to the complainant, they (complainant-party) had taken possession of these lands two years prior to the occurrence. Nek Singh, Sukhdev Singh and others filed a case against the complainant party, which was decided in favour of the complainant party. The complainant party had sown paddy in that land. On 15-10-1991 at about 12 noon or 1.00 p.m. when the complainant-party were present in their house, the accused Sukhdev Singh, Nek Singh and others were taking a combine to the fields to harvest the paddy crop of the complainant-party, who told the driver of the combine that he should not harvest it. The driver told the complainant-party to come to the field and say so, and then he would not harvest the crop. All the accused-party went with the combine to harvest the paddy. Afterwards, Sardara Singh, Kulwant Kaur (son and daughter-in-law, respectively, of the complainant-Bhag Singh) and his grandsons Balbir Singh and Jagsir Singh (sons of Sardara Singh) and the complainant-Bhag Singh went to the field and questioned as to why they were harvesting the paddy of the complainant party. Thereupon, all the accused pounced upon them. Sukhdev Singh was armed with a gandasa. Jaswant Singh alias Kaka Singh was armed a Kasia. Buta Singh and Raju Singh were

armed with a gandasa each, Nek Singh was armed with a kulhari and Balwant Singh was armed with a ghop.

3. Sukhdev Singh gave a gandasa blow to Sardara Singh which hit him on the head and Sardara Singh fell down. While he was lying down, Jaswant Singh alias Kaka gave him a kasia blow which hit Sardara Singh on the left temple. Buta Singh caught hold of the complainant-Bhag Singh. Raju Singh gave a gandasa blow which hit on the left arm of Bhag Singh and Bhag Singh also fell down. While he was lying down, all the accused gave him blows. Raju Singh gave a gandasa blow on the left wrist of Balbir Singh. Jaswant Singh alias Kaka Singh sprinkled kerosene oil on the body of Sardara Singh and set him on fire. After dragging Sardara Singh, they threw him on the fields of the complainant-party and set fire to the paddy field. Sardara Singh died on the spot. On the complainant-party raising alarm, the accused after setting the whole paddy crop in their field on fire fled away Surjit Singh, another son of Bhag Singh, brought him to the Civil Hospital Barnala and got him admitted there.

4. Bhag Singh, while he was in the hospital, gave the complaint to Sub-Inspector Sohan Singh (P.W. 10), who was in charge of Police Post Pakho Kenchian, on 15-10-91 itself at about 5.50 p.m.

5. Bhag Singh, the complainant, was not examined as a witness before the learned Addl. sessions Judge on the ground that he was not mentally sound and was unfit to make a statement in the Court. Kulwant Kaur (P.W. 4), wife of Sardara Singh, and Balbir Singh (P.W. 5) son of Sardara Singh, who was also injured in the incident gave evidence supporting the prosecution. Sub-Inspector-Sohan Singh (P.W. 10) is the investigating officer. He deposed that on 15-10-91 when he was posted in charge of Police Post Pakho Kenchian, and was present in the road crossing of Pakho on patrol duty, ASI-Teja Singh informed him about the occurrence that had taken place at Bhotna, on which he went to the place of occurrence in village Bhotna, found the dead body of Sardara Singh lying in a burnt condition in the paddy fields. He also stated that he learnt that Bhag Singh and Balbir Singh (father and son, respectively, of Sardara Singh) had been taken to Civil Hospital Barnala, and went to the said hospital.

6. Dr. Gurdip Singh (P.W. 1), Medical Officer, Civil Hospital Barnala, stated in his evidence that on 15-10-91 at 3.50 p.m. he examined Bhag Singh and found the following injuries on his person : --

(1) Lacerated wound 1.5 cm x 0.5 cm x bone deep on the front of left upper arm 9 cm above the elbow joint associate with diffused swelling, measuring 12cm x 10 cm around the injury. Fresh bleeding was presept. Underlying bone was fractured.

(2) Complained of pain on the left side of the chest.

P.W. 1 stated that injury No. 1 was grievous while injury No. 2 was simple, and that both of them were caused by blunt weapon within a probable duration of six hours. Ex. PD is the medico legal report concerning Bhag Singh.

7. Dr. Gurdip Singh-PW 1 further deposed that on the same day at 3.55 p.m., he examined Balbir Singh and found the following injuries on him : --

(1) Lacerated wound 1 cm x 0.5 cm x 0.5 cm on the front of left forearm, 6 cm above the wrist joint. Fresh bleeding was present.

(2) Diffused swelling bluish in colour measuring 3 cm around the distal phalynx of the right ring finger. X-ray was advised.

(3) Abrasion 0.5 cm. x 0.5 cm. on the tip of the right finger.

He declared injuries 1 and 3 as simple and reserved the opinion with regard to injury No. 2 awaiting the x-ray report. He opined that all the injuries were caused by blunt weapon within a probable duration of six hours. Ex. PE is the medico legal report concerning Balbir singh. He also stated that the injured had reached him at 3.45 p.m. and they were brought by Surjit Singh son of Bhag Singh. The doctor also stated that he had sent intimation about their arrival in the hospital to the police.

8. The doctor deposed that on 15-10-91 at the request of the police (Ex. PF) he declared Bhag Singh fit to make a statement at 4.55 p.m. (Ex. PF/I). SI Sohan Singh (PW 10) stated that after getting the opinion of the doctor, he recorded the statement of Bhag Singh (Ex. PR), made his endorsement (Ex. PR/1) and

forwarded the same to the police station where the formal FIR (Ex. PR/2) was registered. Sub-Inspector Sohan Singh (PW. 10) deposed that he went to the scene of occurrence, held inquest and sent the dead body for post-mortem. Dr. Gurdip Singh-PW 1 deposed that on 16-10-1991 at 11 am. he conducted the post-mortem of Sardara Singh and found that the scalp hair was partially burnt, moustache and beard were singed, and that there was a partially burnt baniyan on the body. He stated that the limbs were in flexed posture, hands were in clasped position, and rigor mortis was present on all the four limbs. He also found the following injuries : --

(1) Lacerated wound 1 cm x 0.7 cm on the top of head in the midline, 3 cms above anterior hairline.

(2) Superficial and deep burns involving whole of the body except top and front of left shoulder, lower part of left chest, most of the back of chest on the left and partially on the right side of the chest, genetalia and scalp. At place the body was charred, including left hand and forearm. The burnt area was approximately 90%. Other organs were healthy.

9. He opined that death was due to shock caused by burns, which were sufficient to cause death in the ordinary course of nature. That all the injuries were ante-mortem, that death was immediate, and that the probable time that had elapsed between death and post-mortem was within 24 hours.

10. Sub-Inspector Sohan Singh (PW-10_ deposed that on 16-10-1991 he again went to the spot and took into possession blood-stained earth, one fellow chappal, pieces of kachha and pyjama in burnt condition, a 'karucha' which was also in a burnt condition, an iron can, burnt paddy crop, and a harvesting combine from the spot. PW-8 Bant Singh also, deposed about the recoveries made from the place of occurrence. PW-9-Nishan Singh who is the Patwari of village Bhotna, deposed that he prepared a plan (Ex. PQ) at the instance of Kulwant Kaur and Jagsir Singh.

11. Sub-Inspector-Sohan Singh (PW-10) further deposed that on 1 -11 -1991 the ex-Sarpanch of village Sehna produced before him the accused Jaswant Singh alias Kaka Singh, Balwant Singh, Raju Singh, Buta Singh and Sukhdev Singh, that

he arrested them, and that on interrogation of all the accused on 3-11 -1991, accused Sukhdev Singh and Raju Singh made disclosure statements (Ex. PU and Ex. PV) and led the police party to their houses from where a gandasa each was recovered. Sub-Inspector-Sohan Singh also deposed that on 4-11 -1991 Harnek Singh accused was arrested by him.

12. PW-3 Bhagwan Dass who is Chela Mahant Hari Dass of village Bhotna, deposed that he had executed the lease deed (copy of which is Ex. PH) in favour of Sardara Singh, and at that time Sukhdev Singh was in possession. PW-3 also stated that about 1 years after lease deed, Sardara Singh had cultivated the land covered by the lease deed but, he did not know how he got possession.

13. When question under Section 313, Cr. P. C., the accused Sukhdev Singh, Balwant Singh, Nek Singh and Buta Singh generally denied the allegations and stated that they were not present at the time of the occurrence. Accused-Nek Singh also stated that he is a disabled person who cannot stand without support, and cannot lift anything by his hands. Accused Jaswant Singh stated that he was innocent, that previously his father-Harnam Singh was in possession of the lands in dispute, and after his father's death, himself and his three brothers came into possession of this land and are continuing in possession since then. According to him, the paddy crop was sown by them, and that on the day of occurrence they had brought a harvesting combine to harvest the crop. He stated that he and accused-Raju Singh were present there, while the other accused were not. He further stated that Sardara Singh (deceased) and two other unknown persons, armed with Gandasa, came there and that he gave a kassia blow from the wrong side to Sardara Singh. He further stated that Balbir Singh, Jagsir Singh, Bhag Singh and Kulwant Kaur were not present there. This accused also stated that Sardara Singh set the standing crop on fire saying that he would not permit them to harvest the crop, and that the companions of Sardara Singh and the driver of the combine ran away. According to this accused, Sardara Singh was engulfed in the flames of the fire arising from the crop and was burnt. Accused-Raju Singh adopted the statement made by accused-Jaswant Singh.

14. The defence examined Dr. B.R. Gupta, Medical Officer, Civil Hospital, Barnala, as D.W. 1, who stated that Bhag Singh was admitted in the hospital on 6-7-1992 as he was suffering from gastro-enteritis with dehydration for which he was treated, and discharged on 7-7-92, and that this ailment has nothing to do with the brain. Constable-Gurdip Singh (DW-2) produced the Roznamcha of Police Post Pakho (Ex. DW/1 and DW/2), the correct copies of certain DDR entries dated 1-10-91 and 16-10-91. Accused-Jaswant Singh also produced the copies of Jamabandis (Ex. DD, DD/1 to Ex. DD/7, the copy of Khasra Girdawari Ex. DD/8, copy of judgment Ex. DC, copy of order Ex. DF, copy of Kalandara under Section 107/151, Cr. P.C. (Ex. DG), copy of Jamabandi Ex. DK and certain other documents. Accused-Jaswant Singh produced the certified copy of certain decrees (Ex. DE/1 and Ex. DB/1, (DJ/1).

15. Considering the materials placed before him, learned Addl. Sessions Judge, Barnala, acquitted the accused Balwant Singh, Nek Singh and Boota Singh giving them the benefit of doubt, against which there is no appeal. He convicted and sentenced the appellants as mentioned above.

16. We have now to consider whether the prosecution has succeeded in establishing the guilt of the appellants beyond reasonable doubt.

17. The motive for the murder is the dispute over certain lands. PW-3-Bhagwan Dass is alleged to have leased out the lands in dispute in favour of Sardara Singh (deceased) under Ex. PH. According to the prosecution, this lease was granted four years prior to 15 -10-1991, the date of occurrence, on which date at about 12 noon or 1 pm when the complainant-party was present in their house, the accused-Sukhdev Singh, Nek Singh and others were taking a harvesting combine to the lands in dispute for harvesting the crop. The complainant party is alleged to have told the driver of the combine not to harvest the crop, but in spite of that, all the accused allegedly went with the harvesting combine to the lands in dispute. The prosecution claims that Sardara Singh (deceased), his wife Kulwant Kaur (PW-4), his sons Balbir Singh (PW-5) and Jagir Singh and Bhag Singh-complainant (father of Sardara Singh) went to the fields and questioned the accused party as to why they were harvesting their paddy crop. Thereupon,

accused-Sukhdev Singh is alleged to have dealt a blow with the gandasa on the head of Sardara Singh, that Sardara Singh fell down, and accused-Jaswant Singh alias Kaka Singh is stated to have given a blow with the kassi which hit him on the left temple. Accused Raju Singh is stated to have given a gandasa blow on the left arm of Bhag Singh, and a blow with the gandasa on the left wrist of Balbir Singh also. Jaswant Singh alias Kaka Singh is stated to have sprinkled kerosene and set the body of Sardara Singh on fire. It is alleged that Sardara Singh was dragged and thrown into the paddy fields in dispute. The accused party are also stated to have set the paddy fields on fire. But the appellants, on the other hand, contend that the lands in dispute are in their possession, and that while appellants/Jaswant Singh and Raju Singh were in the fields harvesting the paddy crop, which was raised by them, Sardara Singh, with two unknown persons, came there and prevented them from harvesting the crops. According to the appellants/accused, Sardara Singh and the other two unknown persons were armed with gandasas and accused-Jaswant Singh gave a blow with the kassi on the head of Sardara Singh, and that Sardara Singh himself set fire to the paddy fields and was engulfed in the fire lit by him, and was burnt. According to the appellants, except appellants/accused Jaswant Singh and Raju Singh, the other accused were not even present at the scene of occurrence.

18. We will have to now see as to whether Sardara Singh was in possession of the lands in dispute or whether the accused party was in possession and had raised paddy crops. One thing which is clear is that appellants/accused Jaswant Singh and Raju Singh were harvesting the paddy crops from the lands in dispute. If the accused party were in possession of the lands in dispute and had raised the crops, they had every right to harvest the paddy crop raised by them, and Sardara Singh had no right whatsoever to go and prevent the accused party from harvesting the crops either in the company of two unknown persons as alleged by the defence or in the company of his family members. Then Sardara Singh and others become the aggressors and the appellants had every right to cause injuries to them in the exercise of their right of self defence for protecting their property.

19. Even in the FIR the complainant Bhag Singh has stated that the lands in dispute were taken on lease by them four years prior to the occurrence, but they

had taken possession of the land and are in possession of the lands for the last two years only. When the lands are alleged to have been leased out to them four years prior to the occurrence, it is not explained by the prosecution as to why they had not taken possession of the lands (allegedly leased out to them) for nearly two years. But, it is admitted in the FIR itself that earlier to this lease, the accused party were in possession of the lands. PW-3, who stated that he had executed a lease deed in respect of this land in favour of Sardara Singh, admitted that he does not know how Sardara Singh got possession of the lands, and that he does not know whether Harnam Singh, the father of accused-Sukhdev Singh, was in possession of the lands in question from 1959 to 1978 or whether thereafter Sukhdev Singh continued in possession (Harnam Singh is the father of four of the accused namely Sukhdev Singh, Jaswant Singh, Balwant Singh and Nek Singh. The fifth accused Raju Singh is the son of Nek Singh while the 6th accused Buta Singh is the brother-in-law of the first four accused mentioned above.). But even PW-3-Bhagwan Dass admitted that there was a civil suit by Sukhdev Singh (accused) against Sardara Singh concerning the very lease deed, and that he appeared as a witness for Sardara Singh. But he stated that he does not know that the lease deed was not accepted by the Court and the suit was decreed in favour of Sukhdev Singh. Kulwant Kaur (P.W. 4), the wife of deceased-Sardara Singh, admitted in her evidence that Harnam Singh, the father of accused-Sukhdev Singh, was cultivating the lands, and that after his death, the accused started cultivating the lands in question. She admitted that the complainant party did not get possession through Court, and had taken possession of their own accord. Although she stated that there is a written report in the record of the Patwari about their taking possession, no such record appears to have been produced. But, she admitted that accused Sukhdev Singh filed a suit concerning this lands against Sardara Singh (deceased) which was decreed upholding his (Sukhdev Singh's) possession. She also admitted that mutation was not sanctioned in their (complainant party's) favour, but, was even rejected. Ex. DB is the copy of the judgment in Civil Court No. 301 dated 23-7-1987 (decided on 29-9-1989) filed by Sukhdev Singh against Sardara Singh and others for a permanent injunction. The suit was decreed in favour of the plaintiff Sukhdev Singh, Harnek Singh and Jaswant Singh, and two other accused who were impleaded defendants 3 and 4 in

that suit. There fore, we find that although a lease deed was executed by PW-3- Bhagwan Dass in favour of Sardara Singh, the lands concerned in the lease deed were actually in the possession of the family of the accused. Prior to Sukhdev Singh and his brothers, the lands were in the possession of their father Harnam Singh. So, it is clear that Sardara Singh was not in possession of the land in dispute and he had not raised the paddy crops. By simply obtaining a lease deed, Sardara Singh had attempted to prevent the accused party, who are in possession of the lands in dispute and were harvesting the crops, from doing so. PW-4 Kulwant Kaur (wife of Sardara Singh) admitted in her evidence that they went to prevent the accused from harvesting the crop. PW-5 Balbir Singh also stated that when the accused had harvested some of the crops, they reached there and Sardara Singh told them not to harvest. So, when Sardara Singh had no right whatsoever to go and prevent the appellants from harvesting the crops which they had raised in the lands in question, the appellants were entitled to act in exercise of their right of self-defence. If in the course of acting in self defence, they had caused injuries to Sardara Singh, Bhag Singh and Balbir Singh, the appellants cannot be held liable, since they are entitled to protect their property by doing so.

20. That is why an attempt has been made in the FIR itself to make it appear that Sardara Singh did not enter the fields in dispute, but yet he was attacked and dragged by the accused and thrown into the fields in dispute. In the FIR, it has been stated that after attacking Sardara Singh and set-ling him on fire, he was dragged and thrown into the disputed fields. But such a case has not been clearly spelt out in the FIR, because, in the earlier part, it has been stated that Sardara Singh and his family members went to the field and questioned the accused as to why they were harvesting the paddy crops. It has not been specifically mentioned therein that Sardara Singh did so by standing on the boundary or outside the boundary lines of the disputed lands. The evidence of PW-4 Kulwant Singh is also to the effect that all the five members of their family went to their lands which they had taken on lease. In the course of the examination-in-chief, she did not specifically state that Sardara Singh did not even enter the lands in dispute. Although she stated that the accused dragged Sardara Singh and threw him in their land, she did not say from where Sardara Singh was dragged. But, she stated that they had gone to prevent the accused from harvesting the crops. If they had

gone there to prevent the accused from harvesting the crops from the land in dispute, it is improbable that Sardara Singh and others would not have entered the lands in dispute from where the crops were being harvested. During the course of the evidence in cross-examination PW-4 Kulwant Kaur stated that Sardara Singh went to the adjoining land belonging to Puran Singh to request the accused not to harvest the crop and did not go into the fields from which the crop was being harvested. If the crops had been raised by the complainant party then there was no reason for Sardara Singh for not entering into the lands in dispute for the purpose of preventing the accused-party from harvesting the crops. Further, PW 4 even stated that she and her son Jagsir Singh were standing in the land in dispute at the time of occurrence. She also stated that Sardara Singh, after going just near the harvesting combine, told the accused to stop the combine. Sub-Inspector Sohan Singh (P.W. 10) stated that the place of occurrence adjoins a tubewell, and that the combine was standing in the field adjoining the tubewell. PW-5 Balbir Singh stated that the combine was stopped where it was asked to stop. All these aspects show that Sardara Singh had entered the lands in dispute while the accused were harvesting the crop by using the combine.

21. Of course, PW-5 Balbir Singh stated that the dead body of Sardara Singh was dragged from the adjoining field of Puran Singh to the lands in dispute by accused Raju. He also stated that Sardara Singh was standing in the field of Puran Singh at a distance of about 12/13 Karams from the combine, and that none of them entered the lands, in which there was paddy. But, PW-4 did not state to the police that all the accused dragged Sardara Singh and throw him in the land in dispute, and PW-5 had not stated to the police that Raju Singh dragged his father from the place where he had fallen, to the lands in their possession. The body of Sardara Singh was found lying in the disputed fields. Realising that they had no right whatsoever to enter the lands in question, the prosecution had attempted to make it appear that Sardara Singh did not even enter into the lands in dispute from which the crops were being harvested. As pointed out already, it is improbable that a person who goes to the fields with four members of his family to prevent the harvesting, would stand outside the fields and object, if really he had raised the crops. The normal conduct of a person, who had raised the crop, would be to enter into the land and prevent the harvesting. So, this attempt on the part of the

prosecution to make it appear that Sardara Singh did not even enter the lands is wholly unacceptable.

22. PW 8 Bant Singh is the witness for the recovery of blood-stained earth. He stated that the blood-stained earth was taken from the fields of Puran Singh. He also stated about the recovery of one fellow of chappal, a torn pyjama, a can of kerosene oil, the combine and burnt paddy crop. He is the brother's son of Bhag Singh, the complainant. He stated that blood was lying scattered in three places and was lifted from all the three places. But, he had to admit that blood was present in the burnt field also, though he stated that it was just near the boundary of the field of Puran Singh, which also shows that Sardara Singh and others must have entered the lands in dispute and prevented the appellants from harvesting the crops raised by the appellants (accused party).

23. PW-9 Nishan Singh, the Patwari, who had prepared the plan Ex. PQ on instructions from Kulwant Kaur and Jagsir Singh, stated that Sukhdev Singh and other accused were in cultivating possession of this land for 10 or 12 years as per the record. He admitted that the PWs did not point out to him the places from where blood, the can, kerosene, ujjama or chappal were lifted.

24. In the inquest report (Ex. PC), in column No. 1 relating to the place where death occurred or where dead body was found, it has been mentioned as 'the paddy field belonging to Sardara Singh situated in the area of village Bhotna'. In column No. 24, it has been stated that the dead body found in the paddy field belonging to Sardara Singh. As pointed out already, Sub-Inspector Sohan Singh (PW 10) stated that the place of occurrence adjoins a tubewell, and that the combine was standing in the field adjoining the tubewell. This apart, the case of the prosecution as set out in the FIR is that after assaulting and setting Sardara Singh on fire, 'they' (the accused) dragged him and threw him into the fields in dispute and set the whole paddy crop in the field on fire. It is not specifically mentioned as to who actually dragged Sardara Singh and then threw him into the fields in dispute and set the paddy crop in the field on fire. In view of the use of the word 'they', we will have to take it that according to the FIR, all the accused did so. In her evidence, PW-4 Kulwant Kaur also merely stated that 'they', dragged

Sardara Singh and threw him in their land, but, on the other hand her son Balbir Singh (PW-5) stated that it was appellant/accused Raju Singh who dragged the dead body of Sardara Singh from the field of Puran Singh to the fields in dispute. But, he admitted that he did not say so in his statement to the police. This is also a point which goes to show that the case of the prosecution that Sardara Singh did not at all enter the lands in dispute, that he objected to the accused harvesting the crops while he was standing in the adjoining fields belonging to Puran Singh, that he was attacked by the accused there, that the accused then dragged him from there and threw him into the fields in dispute cannot at all be true. Therefore, we hold that Sardara Singh and his family members must have entered the fields in dispute and prevented the accused party from harvesting the crops raised by the accused party. So, the appellants/accused had every right to cause injuries to Sardara Singh, Bhag Singh and Balbir Singh to protect their property.

25. But the further question is whether the appellants/accused while acting in the exercise of their right of self defence of their property, did exceed the said right. the contention of the prosecution is that the complainant party was unarmed and had gone only to prevent the accused from harvesting the crops and, therefore, the accused had no right to kill Sardara Singh. The prosecution also contended that after having hit on the head of Sardara Singh and after Sardara Singh had fallen down, the accused had no right to set him on fire and cause his death, and, therefore, the accused had exceeded their right of self-defence, if any. We will have to consider whether this contention of the prosecution can be accepted. From the evidence of the doctor (PW-1) who performed the post-mortem on the body of Sardara Singh, we see that there was only one injury on the head, i.e., a lacerated wound 1 cm x 0.7 cm on the top of the head in the midline, 3 cm above anterior hairline. There was no second injury either on the head or on the left temporal region. The weapons allegedly used by the accused are gandassa and kassi which are sharp-edged weapons. But the, the only injury on his head was a lacerated wound of very small dimensions of 1 cm x 0.7 cm. If the intention of the appellants was to cause death then the injury on the head of Sardara Singh would have been more severe. Further, Sardara Singh did not die of this injury. But as per the opinion of the doctor (P.W.1) he died due to shock as a result of the burns he had sustained. The case of the appellants/accused is that Sukhdev Singh was

not present at the scene of the occurrence and at the time of occurrence. It is stated even by the appellant/accused Jaswant Singh in his statement under Section 313, Cr. P.C. that it was he who gave a kassi blow from the wrong side on Sardara Singh. So, it is clear that he had done so in the exercise of his right of self defence and cannot be made liable for that act when death of Sardara Singh had not resulted as a consequence of that blow. Even if the appellant/ accused had caused injuries to Bhag Singh and Balbir Singh, we have to hold that they have acted in the exercise of their right of self defence and, therefore, cannot be made liable for the same.

26. But, the further question is whether appellant Jaswant Singh alias Kaka Singh sprinkled kerosene on Sardara Singh and set him on fire and whether the appellants dragged him and threw him in the fields in dispute and set those fields also on fire. Because, as pointed out already Sardara Singh had died as a result of shock due to the burn injuries which, according to the doctor (PW-1), were sufficient to cause death in the ordinary course of nature. Of course, in the FIR it has been stated as follows : --

Within our sight, Kaka Singh sprinkled kerosene oil over the body of my son Sardara Singh and set him on fire. After dragging him, they threw him in our fields and set the whole paddy crop of our field on fire

Kulwant Kaur (PW-4) also stated in her evidence that Jaswant Singh accused poured kerosene on Sardara Singh from a plastic can and put him on fire with a Match box and that they dragged Sardara Singh and threw him in their (complainant's) land. Balbir Singh (PW-5) also stated that it was Jaswant Singh who put Sardara Singh on fire, and that all the accused then put the paddy crop on fire. Before examining this question whether appellant Jaswant Singh alias Kaka Singh set Sardara Singh on fire, we will consider the question as to who set fire to the fields, because, the contention of the appellants is that they had raised the crops and that they were harvesting it also and, therefore, it is wholly improbable that they would set on fire their own crops. The appellants also contend that it was Sardara Singh who had set the paddy fields on fire, and was burnt by the flames which he had himself set on the paddy fields. So, we consider now whether the

appellants could have set the paddy fields on fire. As rightly contended by the accused, it is wholly improbable and unbelievable that the appellants would have set fire to the paddy crops which they had raised. On the contrary it would have been only Sardara Singh who must have had a grievance against the appellants and the other accused as he was unable to get possession under the lease granted to him by Bhagwan Dass (PW-3) and as he had lost in the litigation also. Therefore, Sardara Singh had all the reasons to set the paddy crops on fire, in as much as he had not raised the paddy crops. Further the evidence on the side of the prosecution is not cogent and convincing. While PW-4 Kulwant Kaur stated in her evidence that it was accused Balwant Singh who set the paddy crops on fire, her son Balbir Singh (PW-5) stated that all the accused put the paddy crop on fire. So, the evidence of PW-4 and PW-5 is not worthy of credence. In these circumstances, we hold that it was Sardara Singh (the deceased) who must have set the paddy crops on fire. If we consider the contention of the defence in this back-ground, then it leads us to conclude that it is quite probable that Sardara Singh became a victim of his own act in setting fire to the paddy crops. The medical evidence also, in our opinion, lends support to our view, about which we will discuss later. The case of the prosecution in the FIR as well as the evidence of (PW-4) Kulwant Kaur is that Jaswant Singh alias Kaka Singh sprinkled kerosene oil over the body of Sardara and set him on fire. While PW-5 Balbir Singh simply stated that Jaswant Singh accused put Sardara Singh on fire, PW-4 Kulwant Kaur stated in her evidence that Jaswant Singh accused poured kerosene oil on Sardara Singh from a plastic can and put him on fire with a match from a match box. But, Kulwant Kaur (PW-4) had not stated in her statement to the police under Section 161, Cr. P.C. about the 'plastic can' and the 'match box'. The omission to mention about the plastic can assumes importance because the appellants were harvesting crops in their fields, and ordinarily there was no reason for them to have kerosene with them in a can. Further, Dr. Gurdip Singh (PW-1) who performed the post-mortem of Sardara Singh stated in his evidence in cross-examination that he did not mention in the post-mortem report about the presence of any smell of kerosene oil on the dead body. He also stated that the burns caused by kerosene oil are very severe and are characterised by its odour. When the Doctor had not mentioned anything in the post-mortem report about the smell

of kerosene coming from the dead body, it is obvious that there was no such smell, as otherwise he would have mentioned about it. The doctor also stated that distribution of burns on the clothing may throw light upon the manner in which it was ignited, posture of the victim, the path taken by the flames and possibly the presence of the inflammable material. He also stated that there was no clothing on the legs when he conducted the post-mortem examination and that the lower portion of the body was burnt. The Doctor further stated that there was the possibility of the flames having come from below towards upper side of the body in this case. These aspects of the evidence of the Doctor lend support to the contention of the appellants that Sardara Singh himself had set fire to the fields and fell a victim to the fire which he had set on to the fields. The facts that there was no smell of kerosene on the body, that the lower portion of the body was burnt and that there was no clothing on the legs when the post-mortem was conducted, and the possibility that the flames could have come from below towards the upper side of the body, probabalise the defence version that while Sardara Singh was setting fire to the paddy fields, he must have caught fire and the flames must have progressed from down to the upper side of his body, and he must have then fallen down and died as a result of shock due to the burns.

27. We have already referred to that aspect of the prosecution case that Sardara Singh was dragged from outside the fields in dispute, and then thrown into the fields in dispute, and have held that it is not true. If really Sardara Singh was standing in the adjoining fields of Puran Singh and if kerosene had been sprinkled on him and if he was set on fire, then there should have been evidence in the fields of Puran Singh regarding the same. If there were standing crops at least some part of the crops should have caught fire. If the fields had been already harvested then the remnants left after harvest should have been scorched and the investigating officer would not have failed to notice the same. But, in this case there does not appear to any acceptable evidence' to show that either the paddy crops or remnants left after harvest in the fields of Puran Singh were burnt or scorched. This also shows that the story of the prosecution that Sardara Singh was dragged from the fields of Puran Singh into the fields in dispute cannot at all be true.

28. Therefore, taking into consideration, all these aspects, we hold that the prosecution has not been able to establish the guilt of the appellants-accused also and, that they are entitled to be acquitted.

29. In the result, the appeal is allowed setting aside the conviction of and the sentence passed against the appellants-accused. The appellants-accused are acquitted and the fine, if any, paid by them will be refunded to them.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com