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July 30

JAI DEV
v.
THE STATE OF PUNJAB
(And Connected Appeal)

(P. B. GAJENDRAGADKAR, K. C. DAS GUPTA, and J. R. MUDHOLKAR, JJ.)

Criminal Law—Murder—Self-defence-Scope—Threat to possession of land—Indian Penal Code (Act 45 of 1860), ss. 99, 100—Code of Criminal Procedure, 1898 (Act 5 of 1898), s.342.

The appellants along with four others were charged with having committed offences under s. 148 and ss. 202 and 326, read with s. 149, of the Indian Penal Code. The incident which gave rise to the present criminal proceedings related to a cultivable field in respect of which a dispute arose as to its possession between the appellants and the faction of the complainants. On September 14, 1960, a rioting took place in the field which resulted in the death of six persons and injuries to nine persons. The appellant's case was that they were in possessions of the field and were cultivating it at the time of the incident whereas the prosecution contended that the complainant's party was in possession and that the appellants virtually invaded it and caused a massacre. The High Court found that the crop in the field had been ploughed by the appellants and their companions and that when the operations were being carried on by them on the day of rioting, the villagers, who did not tolerate the strangers, came to the field armed with weapons to take forcible possession of the field, that as soon as fire-arms were used for the first time killing a person, the villagers started running away and that after all the villagers had run away, the appellants used their rifles against their respective victims when the latter were standing at a considerable distance from them. The High Court took the view that as at the relevant time the property had been saved from the trespass, there was no justification for using any force against the running villagers and so, the appellants who were proved to have caused the deaths of the victims could not claim protection of the right of private defence and were guilty of the offence of murder under s 302.

Held, that the appellants were rightly convicted under s.302 of the Indian Penal Code on the findings given by the High Court.

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In exercising the right of private defence, the force which a person defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. The use of the force must be stopped as soon as the threat has disappeared. The exercise of the right of private defence must never be vindictive or malicious.

In exercising its powers under s. 342 of the Code of Criminal Procedure the Court must take care to put all the relevant circumstances appearing in the evidence to the accused, so that he might get an opportunity to say what he wanted to do so in respect of the prosecution case against him, but it is not necessary that the Court should put to the accused detailed questions which may amount to his cross-examination.

Held, that the failure to put the specific point of the distance from which the appellants used their rifles, under s. 342 of the Code of Criminal Procedure, did not vitiate the trial or affect the conclusion of the High Court.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 56 and 57 of 1962.

Appeals by special leave from the judgment and order dated October 4, 1961, of the Punjab High Court in Criminal Appeals Nos. 635 and 636 of 1961 and Murder Reference No. 59 of 1961.

Frank Anthony, Ghanshiam and *P.C. Aggarwala* for the appellants.

N. S. Bindra, Kartar Singh, Assistant Advocate-General for the State of Punjab and *P. D. Menon*, for the respondents.

1962. July 30. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.—The two appellants Jai Dev and Hari Singh along with four others Yudhbir Singh, Dhanpat Singh, Sajjan Singh and Parbhati were charged with having committed offences under s.148 and ss.302 and 326 both read with s.149 of the

Indian Penal Code. The case against them was that on September 14, 1960, they formed themselves into an unlawful assembly in the area of Dhani Khord and that the common object of this unlawful assembly was to commit the offence of rioting while armed with deadly weapons and that in pursuance of the said common object the offence of rioting was committed. That is how the charge under s. 148 was framed. The prosecution further alleged that on the same day and at the same time and place, while the accused persons were members of an unlawful assembly, they had another common object of committing the murders of Hukma, Jai Narain, Jai Dev, Amin Lal, Mst. Sagroli and Mst. Dil Kaur and that in pursuance of the said common object, the said persons were murdered. Dhanpat Singh killed Hukma, Sajjan Singh attacked Hukma, Yudhbir Singh shot at Amin Lal, Jai Dev shot at Mst. Sagroli and victim Jaidev, and Hari Singh shot at Jai Narain and Parbhati killed Mst. Dil Kaur. It is the murder of these six victimes which gave rise to the charge against the six accused persons under s. 302/149 of the Indian Penal Code. An assault made by the members of the said assembly on Ram Chander, Jug Lal, Mst. Chan Kaur, Sirya, Murti and Murli gave rise to a similar charge under s. 326/149. At the same trial along with these six persons, Basti Ram was tried on the charge that he had abetted the commission of the offence of murder by the members of the unlawful assembly and thus rendered himself liable to be punished under s. 302/109 of the Indian Penal Code. The case against these seven accused persons was tried by the learned Addl. Sessions Judge, Gurgaon. He held that the charges against Parbhati and Basti Ram had not been proved beyond a reasonable doubte ; so, he acquitted both the said accused persons. In respect of the remaining five accused persons, the learned Judge held that all the three

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charges framed against them had been proved beyond a reasonable doubt. For the offence of murder, the learned Judge directed that all the five should be hanged; for the offence under s. 326/149 he sentenced each one of them two years' rigorous imprisonment and for the offence under s. 148 he sentenced each one to suffer R. I. for one year. These two latter sentences were ordered to run concurrently and that too if the death penalty imposed on them was not confirmed by the High Court.

Against this order of conviction and sentence, three appeals were prefered on behalf of the five condemned persons. The sentences of death imposed on them were also submitted for confirmation. The Punjab High Court dealt with the confirmation proceedings and the three appeals together and held that the conviction of Yudhbir Singh, Dhanpat Singh and Sajjan Singh was not justified and so, the said order of conviction was set aside and consequently, they were ordered to be acquitted and discharged. In regard to Jai Dev and Hari Singh the High Court differed from the view taken by the trial Court and held that they were guilty not under s. 302/149 but only under s. 302, of the Indian Penal Code. In the result, the appeals preferred by them were dismissed and their conviction for the offence of murder and the sentences of death imposed on them were confirmed. It is this order which is challenged by the two appellants before us in their appeals Nos. 56 and 57 of 1962. These two appeals have brought to this Court by special leave.

The incident which has given rise to the present criminal proceedings occurred in Khosra No.388 in Mauza Ahrod known as 'Inamwala field' on September 14, 1960, at about 10.30 A.M. This incident has led to the death of six persons already

mentioned as well as the death of Ram Pat who belonged to the faction of the appellants. It has also resulted in injuries to nine persons three of whom belonged to the side of the appellants and six to the side of the complainants. The incident itself was in a sense a tragic and gruesome culmination of the battle for possession of the land which was waged between the appellants on the one hand and the faction of the complainants on the other. One of the principal points which fell to be considered in the courts below was: who was in possession of the said field at the material time? The appellants pleaded that they were in possession of the field and were cultivating the field at the time of the incident, whereas the prosecution contends that the complainants' party was in possession of the field and the appellants virtually invaded the field and caused this massacre.

The prosecution case is that between 9 and 10 A.M. on the date of the offence, the appellants and their brothers Ram Pat and Basti Ram came to the field with their tractor and started ploughing the bajra crop which had been sown by the villagers who were tenants in possession. Jug Lal, Amin Lal, Ram Chander, Sunda, Jai Dev, Hukma and others remonstrated with the appellants that the crops raised by them should not be destroyed. Dhanpat Singh who was driving the tractor was armed with pharsi while the appellants were standing armed with rifles. Yudhbir Singh had a pistol. Sajjan Singh and Parbhati had pharsis and Ram Pat had a bhalla. Thus all the appellants were armed with deadly weapons and three of them had fire-arm. According to the prosecution, the remonstrance made by Juglal and others did not help and the appellants told them that they had got possession of the land and that they would not permit any interference in their ploughing operations. That invitably led to an

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altercation and an attempt was made to stop the working of the tractor. This immediatly led to the terrible scuffle which resulted in so many deaths. Sajjan Singh gave a pharsi blow to Juglal whose left arm was touched. Thereupon, Ram Pat raised his bhalla against Juglal causing injuries to the latter on the left side of the abdome n and on the right hand wrist. Hukma then snatched the bhalla from the hands of Ram Pat and gave a blow to him in self-defence. As a result, Ram Pat fell on the ground and died. Sajian Singh, Dhanpat Singh and Parbhati then gave blows to Hukma with pharsis. Hukma fell on the ground unconcious. At this stage, Amin Lal asked the appellants and their friends not to kill people but the only result of this intercession was that he was shot by the pistol of Yudhbir Singh. Then everybody on the complainnants; side started to run away. Thereafter Jai Narain was shot dead by the appellant Hari Singh. Dil Kaur was killed by Parbhati and others, and victim Jai Dev and Mst. Sagroli were shot dead by the appellant Jai Dev. That, in substance, is the prosecution case.

On the other hand, the defence was that all the accused persons had gone to Inamwala field at about 8.30 A.M. on September 14, 1960, and were engaged in the lawful act of ploughing the land of which they had taken possession. They had put the tractor on the portion of the bajra crop which was 'kharaba' with the object of using it for manure. After this operation had gone on for nearly two hours, a large number of residents of Dhani Sobha and Ahrod, including women, came on the spot armed with deadly weapons and they started abusing and assaulting the accused persons with the weapons which they carried. The accused persons then used jellies, kassi and lathi in self-defence. Amin Lal from the complainants' party was armed with a pistol which he aimed at the accused persons.

Sajjan Singh then gave a lathi blow to Amin Lal and in consequence, the pistol fell down on the ground from his hands. It was then picked up by Yodhbir Singh and he used it is retaliation against the assailants and fired five or six rounds. Basti Ram who was charged with abetment of the principal offences denied his presence, while the six other accused persons admitted their presence on the spot and pleaded self-defence.

The prosecution sought to prove its case by leading oral evidence of the witnesses who were present at the scene and some of whom had received injuries themselves. It also relied on documentary evidence and the evidence of the Investigating Officer. Soon after the incident, First Information Report was filed by the appellant Jai Dev in which the version of the accused persons was set out and a case was made out against the villagers. In fact, it was by resson of this F.I.R. that the investigation originally commenced. Subsequently, when it was discovered that on the scene of the offence six persons on the complainants' side had been killed and six injured, information was lodged setting out the contrary version and that led to two cross-proceedings. In one proceeding the members of the complainants party were the accused, whereas in the other proceeding the appellants and their companions were the accused persons. Since the trial ended in the conviction of the appellants and their companions, the case made out in the complaint filed by the appellant Jai Dev has been held to be not proved.

At this stage, it would be convenient to refer very briefly to the findings recorded by the trial Court and the conclusions reached by the High Court in appeal. The trial Court found that the evidence adduced by the accused persons in support of their case that they had obtained possession of

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the land before the date of the offence, was not satisfactory and that the documents and the entries made in the revenue papers were no more than paper entries and were not "as good as they looked". According to the learned trial Judge, the actual possession of the land all along remained with the complaints' party Jug Lal and his companions and that the crop standing at the spot at the time of the incident had been sown by and belonged to the complaints party. This finding necessarily meant that the ploughing of the land by the accused persons was without any lawful justification and constituted an act of trespass. The trial Court accordingly held that the accused persons were the aggressors and that the complainants' party in fact had a right of private defence. That is how it came to the conclusion that the six accused persons were members of an unlawful assembly and had gone to the field in question armed with deadly weapons with a common object of committing the offences which were charged against them. Dealing with the case on this basis, the trial Judge did not think it necessary to enquire which of the victims had been killed by which of the particular accused persons. As we have already indicated, he was not satisfied that the charge had been proved against Parbhati or against Basti Ram; but in regard to the remaining five persons, he held that the evidence conclusively established the charges under s. 148 and ss. 302 and 326/149. In dealing with the defence, the trial Judge has categorically rejected the defence version that Amin Lal was armed with a pistol and that after the said pistol fell down from his hands it was picked up by Yudhbir Singh. According to the trial Court, no one on the complainants, side was armed with fire-arms, whereas three persons on the side of the accused were armed with fire-arms. Yudhbir Singh had a pistol and the appellants Jai Dev and Hari Singh had rifles.

When the matter was argued before the High Court, the High Court was not inclined to accept the finding of the trial Court on the question of possession. In its judgment, the High Court has referred in detail to the disputes which preceded the commission of these offences in regard to the possession of the land. It appears that this land was given as a charitable gift by the proprietary body of the village Ahrod to one Baba Kanhar Dass many years ago. Thereafter, it continued in the cultivation of Amin Lal, Jug Lal, Charanji Lal and Duli Chand as tenants. Kanhar Dass subsequently sold the entire piece of land to the appellants and their brothers Basti Ram and Ram Pat on May 30, 1958, for a sum of Rs. 25,000/-. These purchasers belonged to the village Kulana and so, the villagers of Ahrod treated them as strangers and they were annoyed that the land which had been gifted by the villagers to Kanbar Dass by way of a charitable gift had been sold by him to strangers. In their resentment, the proprietary body of Ahrod filed a declaratory suit challenging the sale-deed soon after the sale-deed was executed. When that suit failed, two pre-emption suits were filed but they were also dismissed. The appellants and their two brothers then filed a suit for possession. In that suit a decree was passed and the documentary evidence produced in the case shows that in execution of the decree possession was delivered to the decree-holders. It appears that some persons offered resestence to the delivery of possession and 15 bighas of land was claimed by the resisters. Litigation followed in respect of that and whatever may be the position with regard to those 15 bighas, according to the High Court, possession of 56 bighas and 6 biswas of land was definitely delivered over to Basti Ram and his brothers on Decembor 23, 1959. In other words, reversing the finding of the trial Court on this point, the High Court came to the conclusion that the field where the offences

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took place was in the possession of the appellants and their companions.

The High Court has also found that the crop in the field had been ploughed by the appellants and their companions and that the operations which were carried on by them on the morning of September 14, 1960, did not constitute trespass in any sense. On the evidence, the High Court has come to the conclusion that the villagers who did not tolerate that the strangers should take possession of the land had come to the filed to take possession and they were armed. It appears that the number of villagers was much larger than the number of persons on the side of the accused party, though the weapons carried by the latter included fire-arms and so, the latter party had superiority in arms. The High Court has, therefore, come to the conclusion that the party of the accused persons was entitled to exercise its right of private defence. The property of which they were in possession was threatened by persons who were armed with weapons and so, the right to defend their propety against an assault whih threatened grievous hurt, if not death, ave them the right to use force even t the extent of causing death to the assailants. It is substantially as a result of this finding that the High Court took the view that Sajjan Singh, Yudhbir Singh and Dhanpat Singh who were responsible for the death of the three of the victims were not guilty of any offence. In the circumstances, they were entitled to defend their property against assailants, who threatened them with death, even by causing their death. That is how these three accused persons have been acquitted in appeal. In regard to the appellents Jai Dev and Hari Singh, the High Court has held that at the time when these two appellants caused the deaths of Jai Dev and Jai Narain respectively, there was no apprehension of any danger at all.

As soon as Amin Lal was shot dead, all the villagers who had come to the field ran away and there was no longer any justification whatever for using any force against the running villagers. Since at the relevant time the property had been saved form the trespass and the assailants had been completely dispersed, the right of private defence ceased to exist and so, the appellants who were proved to have caused the two deaths could not claim protection either of the right of private defence or could not even plead that they had merely exceeded the right of private defence; so, they are guilty of the offence of murder under s. 302. That is how the appellants have been convicted of the said offence and have been ordered to be hanged.

The question which the appeal raises for our decision thus lies within a very narrow compass. The findings of fact recorded by the High Court in favour of the appellants would be accepted as binding on the parties for the purpose of this appeal. In other words, we would deal with the case of the appellents on the basis that initially they and their companions had the right of private defence. Mr. Anthony contends that having regard to the circumstances under which the appellants fired from their rifles, it would be erroneous to hold that the right of private defence had come to an end. According to him, allowance must be made in favour of the appellants in determining the issue. because it is now found that they were faced with an angry mob whose members were armed with weapons and who appeared determined to dispossess the appellants and their friends of the field in question. The decision of the point thus raised by Mr. Anthony would substantially depend upon the scope and effect of the provisions of s. 100 of the Indian Penal Code.

Section 100 provides, *inter alia,* that the right of private defence of the body extends under the

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restrictions mentioned in s. 99, to the voluntary causing of death if the offence which occasions the exercise of the right be an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault. In other words, if the person claiming the right of private defence has to face assailants who can be reasonably apprehended to cause grievous hurt to him, it would be open to him to defend himself by causing the death of the assailant.

In appreciating the validity of the appellants' argument, it would be necessary to recall the basic assumptions underlying the law of self-defence. In a well-ordered civilised society it is generally assumed that the State would take care of the persons and properties of individual citizens and that normally it is the function of the State to afford protection to such persons and their properties. This, however, does not mean that a person suddenly called upon to face an assault must run away and thus protect himself. He is entitled to resist the attack and defend himself. The same is the position if he has to meet an attack on his property. In other words, where an individual citizen or his property is faced with a danger and immediate aid from the State machinery is not readily available, the individual citizen is entitled to protect himself and his property. That being so, it is a necessary corollary to the doctrine of private defence that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is to be averted or which is reasonably aprehended and should not exceed its legitimate purpose. The exercise of the right of private defence must never be vindictive or malicious.

There can be no doubt that in judging the conduct of a person who proves that he had a right of

private defence, allowance has necessarily to be made for his feelings at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that inevitably creates in his mind some excitement and confusion. At such a moment, the uppermost feeling in his mind would be toward off the danger and to save himself or his property, and so. he would naturally be anxious to strike a decisive blow in exercise of his right. It is no doubt true that in striking a decisive blow, he must not use more force than appears to be reasonably necessary. But in dealing with the question as to whether more force is used than is necessary or than was justified by the prevailing circumstances, it would be inappropriate to adopt tests of detached objectivity which would be so natural in a court room, for instance, long after the incident has taken place. That is why in some judicial decisions it has been observed that the means which a threatened person adopts of the force which he uses should not be weighed in golden scales. To begin with, the person exercising a right of private defence must consider whether the threat to his person or his property is real and immediate. If he reaches the conclusion reasonably that the threat is immediate and real, he is entitled to exercise his right. In the exercise of his right, he must use force necessary for the purpose and he must stop using the force as soon as the threat has disappeared. So long as the threat lasts and the right of private defence can be legitimately exercised, it would not be fair to require, as Mayne has observed, that "he should modulate his defence step by step, according to the attack, before there is reason to believe the attack is over" (1). The law of private defence does not require that the person assaulted or facing an apprehension of an assault must run away for safety. It entitles him to defend himself and law gives him the right to

(1) Mayne's Criminal Law of Indians, 4th Ed. P. 23.1

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secure his victory over his assailant by using the necessary force. This necessarily postulates that as soon as the cause for the reasonable apprehension has disappeared and the threat has either been destroyed or has been put to rout, there can be no occasion to exercise the right of private defence. If the danger is continuing, the right is there; if the danger or the apprehension about it has ceased to exist, there is no longer the right of private defence, (*vide* ss. 102 and 105 of the Indian Penal Code). This position cannot be and has not been disputed before us and so, the narrow question which we must proceed to examine is whether in the light of this legal position, the appellants could be said to have had a right of private defence at the time when the appellant Jai Dev fired at the victim Jai Dev and the appllant Hari Singh fired at the victim Jai Narain.

In dealing with this question, the most significant circumstance against the appellants is that both the victims were at a long distance from appellants when they were shot dead. We will take the case of victim Jai Dev first. According to Gurbux Singh (P. W. 37), Assistant Sub-Inspector, the dead body of Jai Dev was found at a distance of 70 paces from the place of the tractor, but it was discovered that it had been dragged from a place at a longer distance where Jai Dev stood when he was fired dead. From that place to the place where his dead body was actually found there was a trail of blood which unambiguously showed that Jai Dev fell down at a more distant place and that he was dragged nearer the scene of the offence after he fell down. This statement is corroborated by the memo prepared on September 14, 1960 (item No. 104). Blood-stained earth was taken from both these spots. Roughly stated, the spot where Jai Dev was shot at can be said to be about 300 paces away from the tractor where the appellant Jai Dev stood. It is

true that Gurbux Singh made no express reference to the trail of blood in rough site plan which he had prepared on the day of the offence. But iten 8 in the plan, we were told, does refer to the dragging and that is enough corroboration to the evidence of Gurbux Singh. Besides, in considering the effect of the omission to mention the trail of blood in the rough plan, we cannot ignore the fact that at that time Gurbux Singh's mind was really concentrated on the F. I. R. received by the Police from the appellant Jai Dev himself and that means that at that time the impression in the mind of Gurbux Singh must have been that the deceased Jai Dev belonged to the party of the aggressors and so, blood marks caused by the dragging of his body may not have appeared to him to be of any significance. However that may be, the sworn testimony of Gurbux Singh is corroborated by the memo contemporaneously prepared and it would be idle to suggest that this evidence should be disbelieved because the rough site plan prepared by Gurbux Singh does not refer to the trail of blood.

Mr. Anthony has, however, strongly relied on the statement of Juglal (P. W. 13) who has narrated the incident as it took place, and in that connection has stated that the accused Jai Dev then opened fire from his rifle killing Jai Dev deceased at the spot. It is suggested that the words "at the spot" show that the victim Jai Dev was standing at the spot when the appellant Jai Dev shot at him. We are not inclined to accept this contention. What the witness obviously meant was that from the spot where the appellant Jai Dev was standing he fired at the victim Jai Dev. Besides, reading the account given by Juglal as a

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whole, it would not be fair to treat the words "at the spot" in that technical way. Similarly, the argument that according to Jai Dev all the shots were fired almost simultaneously, is also not well-founded. When a witness gives an account of an incident like this, he is bound to refer to one event after anotner. That does not mean that the two appellants and their companions fired almost simultaneously. Therefore, we are not satisfied that the evidence of Juglal supports the argument that the victim Jai Dev was near the scene of the offence when the appellant Jai Dev fired at him.

Mr. Anthony has also relied on the statement of Chuni Lal (P.W. 16), in support of the same argument. But it is clear that this witness was obviously making a mistake between the two documents P.N.F. and P.N.E. A statement like this which is the result of confusion cannot legitimately be pressed into service for the purpose of showing that victim Jai Dev was near about the scence of the offence. Then again, the statement of Hira Lal (P.W. 5) on which Mr. Anthony relies shows that in the committing Court he had said that Jai Dev had been injured at the spot; but he has added that he had said so because subsequently after the occurrence, he saw the dead body of Jai Dev near the scene of the offence. Therefore, in our opinion, having regard to the evidence on the record, the High Court was right in coming to the conclusion that Jai Dev deceased was standing at a fairly long distance from the scene of the offence when he was shot at.

That takes us to the case of the victim JaiNarain. Jai Narain was in fact not in the Inamwala field at all. According to the prosecution, he was on the machan in the adjoining field which he was cultivating and it was whilst he was in his own field that the appellant Hari Singh fired at him. The distance between

the appellant and the victim has been found to be about 400 paces. Now this conclusion is also supported by evidence on the record. Jai Narain's mother, Chand Kaur (P.W. 10) says that she saw her son falling on the ground from the machan, and that clearly means the machan in the field of which Jai Narain was in possession. The position of this field is shown in the rough plan and sketch prepared by the Sub-Inspector (P.A.J.). The evidence of Hira Lal (P.W. 5) supports the same conclusion, and Gurbux Singh swears to the same fact. He says that the dead body of Jainarain was found lying at a distance of more than 400 paces from the point where the tractor was said to be standing at the time of the occurrence. That is the effect of the evidence of Juglal (P. W. 13) also. Thus, there can be no doubt that the victim Jainarain was at a long distance from the field in question and like the appellant Jai Dev who took a clean aim at the victim Jai Dev who was standing a distance and shot him dead, the appellant Hari Singh also took a clean aim at the victim Jai Narain who was away from him and shot him dead. That is the conclusion of the High Court and we see no reason to interfere with it.

In the course of his arguments, Mr. Anthony relied on the fact that some of the prosecution witnesses on whose evidence the High Court has relied were not accepted by the trial Court as truthful witnesses, and he contends that the High Court should not have differed from the appreciation of evidence recorded by the trial Court. There are two obvious answers to this point. In the first place, it is not wholly accurate to say that the trial Conrt has completely disbelieved the evidence given by the prosecution witnesses. It may be conceded in favour of Mr. Anthony that in dealing with a part of a prosecution case relating to Parbhati and Basti Ram, the trial Court did not accept the evidence of

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the witnesses which incriminated them, and in that connection, he has referred to the criticism made by the defence against those witnesses and has observed that there is force in that criticism. But, while appreciating the effect of the observations made by the trial Court in dealing with that particular aspect of the matter, we cannot lose sight of the fact that as to the actual occurrence the trial Court, in substance, has believed the major part of the prosecution evidence and has stated that the said evidence is quite consistent with medical evidence. In other words, the sequence of events, the part played by the assailants as against the specific victims and the rest of the prosecution story have, on the whole, been believed by the trial Court. In this connection, we ought to add that the trial Court did not feel called upon to consider the individual case of each one of the accused persons because it held that a charge under s. 149 had been proved. But when the High Court came to a contrary conclusion on that point, it became necessary for the High Court to examine the case against each one of the accused persons before it, and so, it would not be accurate to say that the High Court has believed the witnesses whom the trial Court had entirely disbelieved. That is the first answer to Mr. Anthony's contention. The second answer to the said contention is that even if the trial Court had disbelieved the evidence, it was open to the High Court, on a reconsideration of the matter, to come to a contrary conclusion. It is true that in dealing with oral evidence a Court of Appeal would normally be reluctant to differ from the appreciation of oral evidence by the trial Court, because obviously the trial Court has the advantage of watching the demeanour of the witnesses; but that is not to say that even in a proper case, the Appeal Court cannot interfere with such appreciation. Besides, the criticism made by the trial Court is not so much in relation to the demeanour of the witnesses as in

regard to their partisan character and the over-statements which they made as partisan witnesses are generally apt to do. Therefore, we see no justificaiton for contending that the finding of the High Court as to the distances at which the victims Jai Dev and Jai Narain were shot at should not be accepted.

Mr. Anthony then argued that the fact that the victims were at a long distance from the assailants when they were fired at, will not really be decisive of the point which we are called upon to consider in the present appeal. He contends that if the assailants were surrounded by a very big mob some of whom were armed with deadly weapons and all of whom were determined to dispossess them at any cost, it was open to the appellants and their companions to shoot at the mob because they were themselves reasonably apprehensive of an assault by the mob which would have led at least to grievous hurt, if not death; and he argues that if three of the assailants who had fire-arms fired almost simultaneously, that would be within the legitimate exercise of the right of private defence and the fact that somebody was killed who was standing at a distance, would make no difference in law. The argument thus presented is no doubt prima facie attractive; but the assumption of fact on which it is based is not justified in the circumstances of this case. The High Court has found that at the time when the appellants fired shots from their rifles, the villagers had already started running away and there was no danger either to the property or to the bodies of the assailants. In this connection, it is important to remember that the defence version that Amin Lal had a pistol had been rejected by both the courts, so that whereas the crowd that threatened the appellants and their friends was larger in number, the weapons in the hands of the assailants were far more

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powerful than the weapons in the hands of the crowd. Having regard to the events that took place and the nature of the assault as it developed, it is clear that Amin Lal who was one of the leaders of the villagers was shot dead and that, according to the evidence, competely frightened the villagers who began to run away helterskelter. Sunda (P. W.4) has described how Amin Lal stepped forward for the help of Hukma, but he was fired at from the pistol by Yudhbir Singh, and having received a fatal injury on his chest Amin Lal fell down dead on the ground. This witness adds "the members of the complainant party feeling frightened because of the firing opened by Yudhbir Singh ran in the direction of the village abadi". Similarly, the statement of Mst. Sarian (P. W. 12) would seem to show that when the victim Jai Dev was fired at, he had run away. On the probabilities, it is very easy to believe that when the villagers found that the appellants and their friends were inclined to use their fire-arms, they must have been frightened, even the large number of the villagers would have meant nothing. The large number would have merely led to a large number of deaths— that is about all. Therefore, as soon as fire-arms were used for the first time killing Amin Lal on the spot, the villagers must have run away. That is the evidence given by some of the witnesses and that is the conclusion of the High Court. It is in the light of this conclusion that we have to deal with the point raised by Mr. Anthony. If, at the time when the two appellants used their rifles against their respective victims standing at considerable distances from them, all the villagers had run away, there was obviously no threat continuing and so, the right of private defence had clearly and unambiguously come to an end. That is why

we think the High Court was right in holding that the appellants were guilty of murder under s. 302 of the Indian Penal code.

That leaves two minor questions to be considered. Mr. Anthony has contended that the examination of the appellant Hari Singh under s. 342 of the Code of Criminal Procedure has been very defective in regard to the question of distance on which the prosecution strongly relied against him before the High Court, and he argues that this defect in the examination of the appellant Hari Singh really vitiates the trial. It is true that in asking him questions, the learned trial Judge did not put the point of distance between him and the victim Jai Narain clearly; but that in our opinion, cannot by itself necessarily vitiate the trial or affect the conclusion of the High Court. In dealing with this point, we must have regard to all the questions put by the trial Judge to the appellant. Besides, it is not so much the point of distance by itself which goes against the appellant Hari Singh as the conclusion that at the time when he fired at Jai Narain, the threat had ceased; and if the threat had ceased and there was no justification for using the firearms, the appellant would be guilty of murder even if Jai Narain was not far away from him. It is unnecessary to emphasise that it is for the party pleading self-defence to prove the circumstances giving rise to the exercise of the right of self-defence, and this right cannot be said to be proved as soon as we reach the conclusion that at the relevant time there was no threat either to the person of the appellant or the person or property of his companions.

In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr. Anthony has relied on a decision

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of this Court in *Hate Singh Bhagat Singh* v. *State of Madhya Bharat* (1). In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the point used against the accused person has not been put to him, either the trial in vitiated or his conviction is rendered bad. The examination of the accused person under s. 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under s. 342, the Court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the Court should put to the accused person detailed questions which may amount to his cross examination. The ultimate test in determining whether or not the accused has been fairly examined under s. 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which

(1) A. I. R. 1953 S. C. 468.

the accused person should be examined under s. 342. Broadly stated. however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of s. 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material.

The last argument which Mr. Anthony has urged before us is that the prosecution should have examined a ballistic expert in this case and since no expert has been examined, it cannot be said that the prosection has proved its case that the appellants caused the deaths of the two victims by shooting from the rifles which they carried. In support of this argument, Mr. Anthoy has referred us to the decision of this Court in *Mohinder Singh* v. *The State* (1). In that case, it has been observed by this Court that it has always been considered to be duty of the prosecution, in a case where death is due to injuries or wounds caused by a lethal weapon, to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. We do not see how this principle can be invoked by Mr. Anthony in the present case. The rifles which the appellants are alleged to have used have not been recovered and so, there was no occasion to examine any expert in respect of the injuries caused to the two victims by the appellants. What Mr. Anthony suggests is that an expert should have been examined for the purpose of determining whether any of the injuries found on the persons of the several victims could

(1) A. I. R. 1953 S. C. 415.

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have been inflicted by the revolver which had been recovered in this case. Now, the story about the recovery of this revolver is very interesting. According to the defence, Amin Lal was carrying a revolver and when he was hit with a lathi by Sajjan Singh, the revolver fell down from his hands and Yudhbir Singh picked it up and fired it at Amin Lal. Now this revolver was carried away by Yudhbir Singh to his house and he says that he produced the same before the Police Investigating Officer. On the other hand, according to Gurbux Singh, it was the accused Sajjan Singh who after his arrest produced the pistol and two live cartridges before him. It would thus appear that the revolver had been produced by one of the accused persons on the allegation that it was carried by Amin Lal and had been used by Yudhbir Singh in self-defence after it had fallen down from Amin Lal's hands. It has not been the prosecution case that it is this revolver which had been used by Yudhbir Singh. It may well be that the revolver has been deliberately surrendered by the accused in order to introduce complications in the case. We think, in such a case it is difficult to understand for what purpose the prosecution was expected to examine the expert. Therefore, in our opinion, the decision in the case of *Mohinder Singh* v. *The State* (1) has no application to the case before us.

In the result, we agree with the High Court in holding that the two appellants are guilty of murder under s. 302.

The only question which now remains to be considered is one of sentence. Mr. Bindra for the State has left this question to us since, presumably, he did not feel justified in pressing for the imposition of the sentence of death. We have carefully

(1) A. I. R. 1953 S. C. 415.

considered all the facts leading to the commission of this offence and we are not inclined to accept the view of the High Court that the circumstances of this case require the imposition of the maximum penalty on the two offenders. On the question of sentence, it would be relevant to take into account the background of the incident, the nature and extent of the threat held out by the crowd of villagers, the excitement which must have been caused at the time of the incident, and so, though we have felt no difficulty in agreeing with the decision of the High Court that at the time when the two appellants fired shots from their rifles the threat had ceased to exist, it would not be unreasonable to take into account the fact that the excitement in their minds may have continued, and that, in the special circumstances of this case, may be regarded as an extenuating circumstance. We, therefore, think that the ends of justice would be met if the sentence of death imposed on the two appellants is set aside and instead, an order is passed directing that they should suffer imprisonment for life. Accordingly, we confirm the conviction of the appellants under s. 302 and convert the sentence of death imposed on them into one of imprisonment for life.

Conviction confirmed. Sentence reduced.