

KAPUR, J. I agree

APPELLATE CRIMINAL

*Before Falshaw and Dulat, JJ.*

LAL SINGH AND OTHERS,—Convicts-Appellants.

versus

THE STATE,—Respondent.

Criminal Appeal No. 114 of 1954.

1954

8th April.

*Indian Penal Code (Act XLV of 1860)—Section 141—Unlawful assembly—Persons collected together to maintain their right by force and not to enforce it—Preparation for resistance to invasion of right made—Whether constitute unlawful assembly—Sections 97, 100 and 104—Right of defence of person and property—Extent of—Singling out of accused exceeding right of defence not possible—Death, cumulative result of many injuries given by many persons—Conviction, whether permissible.*

One of the accused was the tenant in possession of the land which had been ploughed by the complainant. Early in the morning on the day of occurrence some accused began to level up the land to which the complainant party objected and a fight ensued, as a result of which one

person died, one received grievous injuries and three received simple injuries. Out of the accused three persons received minor injuries. Ten accused were committed for trial on charges under Section 302, 307 and 323 read with Section 149, Section 148 and Section 447, Indian Penal Code. Two of the accused were acquitted while the remaining eight were convicted and sentenced to different terms of imprisonment, one of them being sentenced to death. On appeal it was contended that the appellants did not constitute an unlawful assembly, that they acted in exercise of the right of defence of person and property and did not exceed either of these rights and if the causing of the death of Jagmal deceased could be held to be in excess of any right enjoyed by the accused, it was still impossible to convict any of them, since the death of the deceased was cumulative result of multiple injuries and it was not possible on the evidence to fix individual responsibility on any of the accused for causing his death.

*Held*, that the party of the accused were within their rights in peaceably occupying the field in dispute when it was lying vacant and preparing it for cultivation and were entitled to resist by force any attempt by the rival claimants to the land to prevent them from doing so. It is no offence for a person who is acting within his rights to make preparations for resisting an invasion of those rights. The accused, therefore, did not form an unlawful assembly.

*Held*, that the accused had the right to use force as a defence against criminal trespass and were entitled under the law to cause any harm short of death. They had also the right of defence of the person and although no grievous injury was caused to any of the accused, the voluntary causing of death is justified in defence of the person even when there is only reasonable apprehension that grievous injury might be caused.

*Held*, that in the circumstances of this case, it was not possible to single any of the accused out for conviction for having exceeded the right given to them to resist criminal trespass. The death of the deceased was due to the combined effect of a large number of injuries and it was not possible to fix individual responsibility on any of the accused for causing his death.

*Appeal from the order of Shri Chhaju Ram, Sessions Judge, Hissar, dated the 30th January, 1954, convicting the appellants.*

J. G. SETHI, H. S. DOABIA and V. K. RANADE, for Appellants,  
KARTAR SINGH CHAWLA, Assistant Advocate-General, for Respondent.

## JUDGMENT

Falshaw J.

FALSHAW, J. Ten accused were committed for trial in the Court of the Sessions Judge of Hissar, on charges under sections 302, 307 and 323 read with section 149, section 148 and section 447, Indian Penal Code. Two of the accused named Diwan Singh and Ram Sarup, who were boys of 13 and 15, were acquitted, but the remaining accused were convicted on all the charges. One of them Lal Singh was sentenced to death on the main charge under section 302 read with 149 and the rest to transportation for life. They were also given various minor concurrent sentences under the other sections.

The case is the result of a fight which took place at about sunrise on the morning of the 25th July, 1953. In the fight on the complainant's side Jagmal deceased received fatal injuries and Brij Lal, Birbal, Kumbha Ram and Ramji Lal P.Ws. received lesser injuries. Jagmal had ten outward marks of injury including two incised wounds on the head, and the *post-mortem* revealed a fracture of the skull and opening of the sutures of which the doctor has not given the details, the fracture of two left ribs, fractures of both bones in the left forearm and also of one bone in the left arm at another place and both bones in the right forearm. Brij Lal P.W. had a large incised wound on the left side of the head and face under which the parietal, frontal and cheek bones were cut, but he fortunately recovered from this injury. Birbal, Kumbha Ram and Ramji Lal had six, five and seven minor simple injuries respectively. Three of the accused also received injuries in the fight. Lal Singh who had two, Teja Singh who had one, and Mohna who had two, minor injuries.

There is no doubt that the origin of the fight was a dispute regarding the possession of some land in the village of the parties, Budha Bhana, belonging to Mst. Kauri Bai, P.W. to whom 73 *bighas* 7 *biswas* of land in the village had been allotted. This land had been leased by Ram Chand, P.W. 13, the

brother-in-law of Mst. Kauri Bai who resides at Bhatinda, to Ram Karan accused. It is, however, alleged that a portion of the land had been actually cultivated by Ramji Lal, P. W. to whom the deceased and other injured P.Ws. are related and it is alleged that the remainder of the land has been abandoned by Ram Karan accused, who had gone to live in a distant village called Ladh, and that on the 4th of July 1953, Ram Chand had leased the land hitherto cultivated by Ram Karan to Ramji Lal by means of the document Exhibit P.A. It is further alleged that between the 4th of July and the day of the occurrence Ramji Lal and his relations had ploughed the land thus leased to them and in *Khasra* No. 371, where the fight took place, had sown *bajra* and *gowar* which had sprouted by the day of the occurrence.

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The story of the occurrence is that soon after sunrise Ramji Lal and his relations noticed that Lal Singh, Jas Raj and Mohna accused had started to level the field in which the *bajra* and *gowar* had been sown with an implement called a *sohaga*. The five of them accordingly gathered together and went to the field where, in addition to the three accused who were actually working the *sohaga*, the rest of the accused were also assembled close by armed with sticks and hatchets. The deceased and his companions appealed to the accused to stop damaging their crop, and Jagmal deceased actually stood in the way of the *sohaga* and prevented its being driven any further. On this Ram Karan accused said that he had been cultivating the land, and at his instigation the accused as a whole fell upon Jagmal and his companions and beat them. It is alleged that Jagmal was felled by a hatchet blow on the head from Lal Singh and that he was then beaten by others of the accused, and the various prosecution witnesses also received injuries at the hands of different accused. The beating was also seen by Siri Chand, P.W. 9 Arian Das, Lambardar, P.W. 10 and Rup Ram, barber, P.W. 11 who went towards the spot on hearing the commotion. On the approach of these witnesses the accused left the spot. Thereafter Ramji Lal and

Lal Singh and Arjan Das, Lambardar went to the Police Station  
 others at Rori on a camel and the report of Ramji Lal was  
 v. recorded at noon, the distance being 10 or 12 miles.  
 The State Head constable Surat Singh then went to the spot  
 — where he arrived at about 4 p.m. Four of the  
 Falshaw, J. accused, Ram Karan and the three who bore in-  
 juries viz., Lal Singh, Teja Singh and Mohna were  
 arrested by Assistant Sub-Inspector Pritam Lal,  
 P.W. 28 while he was on his way to the spot from  
 the Police Station after hearing of the incident later  
 in the day. According to these accused other than  
*actually* - ~~Ram Karan~~ they were ~~actually~~ on their way to the  
 Police Station to make a report when they were  
 arrested.

The defence case was that in fact Ram Karan, Lal Singh, Teja Singh and Mohna were engaged in cultivating the field in which Ram Karan was the lawful tenant in possession when the complainant's party came there and made a forcible attempt to drive them out which they resisted. The participation of the remaining accused was denied. Ram Karan actually changed his story, since after setting up the above defence in the Court of the Committing Magistrate, he thought better of it, and at the trial accepted the prosecution version that he had gone away for good to live in another village, and he denied that he was present at or knew anything about the present occurrence. This denial on his part is, however, obviously futile in view of his statement in the Committing Court, and also the fact that he was arrested the same day in company of the three injured accused who struck to their story at the trial while going towards the Police Station. No defence evidence was produced.

The argument advanced on behalf of the appellants may be summed up as being that, apart from the fact that the participation of all the appellants is not established by the interested evidence produced by the prosecution, they did not under the circumstances revealed by the evidence constitute an unlawful assembly, and that whatever those who took part in the fight did, they acted in exercise of the right of defence

of person and property and did not exceed either of these rights. It is further argued that even if the causing of the death of Jagmal deceased could be held to be in excess of any right enjoyed by the accused, it is still impossible to convict any of them, since the death of the deceased was the cumulative result of multiple injuries and it is not possible on the evidence to fix individual responsibility on any of the accused for causing his death.

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In connection with this argument the first point to be considered is who was entitled to the possession of the field where the fight took place on the day of the occurrence. The prosecution case on this point is that simply by failing to cultivate the land during the previous harvest Ram Karan had abandoned his tenancy and that in consequence of this abandonment, Ram Chand, P. W. acting as the agent of his sister-in-law had leased the land to Ramji Lal, who had actually placed the field in question under cultivation. There is no doubt that Ram Karan had not cultivated the land in dispute during the previous harvest as is clear from the *khasra girdawari* entries which have been produced, but at the same time it is quite clear that other land in the vicinity had not been cultivated during that same harvest. The land is in fact, like so much land in the District of Hissar, entirely dependent on rainfall for irrigation, and if there is no rain then there is no question of any harvest, and in my opinion it cannot possibly be held that merely by failing to cultivate the land for one harvest Ram Karan had abandoned his tenancy. There is no proof, and indeed no very definite allegation, that Ram Karan had in any way formally abandoned his tenancy by notifying Ram Chand or Mst. Kauri Bai that he did not wish to cultivate the land any longer, and in my opinion it cannot be held that his tenancy had definitely come to an end. The story that on the 4th of July, Ram Chand had formally leased the land to Ramji Lal by means of a written instrument appears to me to

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be false and an afterthought. No such allegation was contained in the first information report and no such allegation appears to have been made, and no document produced during the investigation, until the 3rd of August. The two documents which are supposed to have been drawn up on behalf of Ramji Lal in favour of Ram Chand and on behalf of Ram Chand in favour of Ramji Lal could have been drawn up at any time and on the whole I am inclined to accept the contention of the learned counsel for the appellants that they were drawn up later during the investigation in order to give greater authenticity to the supposed title of Ramji Lal, and Ram Chand himself has admitted that he had never notified to the Patwari either that Ram Karan had given up the land or he had leased it to Ramji Lal, and he also admitted that he never notified Ram Karan that his tenancy was at an end. In the circumstances, even if these documents were executed on the 4th of July, they could have no legal force and could not have had the effect of validly terminating the tenancy of Ram Karan.

The position would thus appear to be that in the weeks before the occurrence some rain had fallen, and Ramji Lal and his relations had begun to bring the field in dispute under cultivation, probably with the consent or approval of Ram Chand, although they had no right to usurp the tenancy of Ram Karan. I do not, however, find it possible to accept the evidence that any crop was actually growing above the ground on the land, although the witnesses, including Head Constable Surat Singh, have now alleged that a crop 2 or 3 inches high was sprouting on the land on the day of the occurrence. This allegation was not made in the first information report or in any of the witnesses' statements to the Police, nor was the allegation made in the Court of the Committing Magistrate. Head-Constable, Surat Singh has stated in re-examination that he made a note about the presence of a crop in the *zimni*, but I have not been able to find any such note. At best it must be held that Ramji Lal and his relations

had ploughed the land and possibly sown seed therein, but I do not find it proved that any crop was growing, and if these actions of theirs established their possession of the field in dispute it could only in the circumstances be as trespassers, and it cannot make any difference to the fact that in preparing the land for cultivation Ram Karan and his friends were acting within their rights on the morning of the occurrence. If on that morning Ramji Lal and his relations had been the first to take physical possession of the field, and then the accused had come to the spot with the object of turning them out by force, the position would be different. The relevant portion of section 141 which defines an unlawful assembly reads—

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“An assembly of five or more persons is designated an ‘unlawful assembly’, if the common object of the persons composing that assembly is—

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Fourth—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right.”

The distinction to be drawn is between *enforcing* a right and *maintaining* a right. It seems to me in the present case that if the party of the accused were within their rights in peaceably occupying the field in dispute when it was lying vacant and preparing it for cultivation they were entitled to resist by force any attempt by the rival claimants to the land to prevent them from doing so. There cannot be any doubt in the present case that Ramji Lal and his relations went to the spot armed at least with sticks with a view to



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stopping Ram Karan and his companions from levelling the field, and the fact that the only three accused who received injuries are the three who are actually said to be working the *sohaga* lends strong support to the contentions of the learned counsel for the appellants that in fact the fight started between Ramji Lal and his companions and these three accused, and that it was when the latter were beaten that the rest of the accused joined in and beat Jagmal who was playing the most prominent part in stopping the *sohaga* from proceeding and his companions.

The argument of the learned Assistant Advocate-General for the State was that even if Ram Karan and a few chosen companions were within their rights in going to the field and beginning the levelling operations, Ram Karan had no right to collect the rest of the accused in the field for the purpose of beating off an anticipated attack by the complainant's party, and that this alone makes the accused an unlawful assembly. I do not, however, consider that this is a correct view of the law, and the more correct view appears to be that it is no offence for a person who is acting within his rights to make preparations for resisting an invasion of those rights. The leading case on this point appears to be *Pachkauri and another v. Queen-Empress* (1), the facts of which appear to be somewhat similar to those in the present case. In that case the accused, receiving information that the complainant's party were about to take forcible possession of a plot of land which was found by the Court to be in possession of the accused, collected a large number of men some of whom were armed and went through the village to the land in question. While they were engaged in ploughing the complainant's party came up, some of them being armed, and interfered with the ploughing. A fight ensued in the course of which one of the complainant's party was grievously wounded and subsequently died and two of the accused's party were hurt. It was

(1) I.L.R. 24 Cal. 836.

held by Ghose and Gordon, JJ., that if the accused were rightfully in possession of the land and found it necessary to protect themselves from aggression on the part of another body of men, they were justified in taking such precautions as they thought were required and using such force or violence as was necessary to prevent the aggression, and that under such circumstances they could not rightly be held to be members of an unlawful assembly. This view was followed by Jenkins, C. J., and Mookerjee, J., in *Silajit Mahto v. Emperor* (1), which was again a case in which the accused who were entitled to the possession of certain land had gathered there in force and resisted an invasion by the complainant's party. These two decisions were followed by Curgenvin, J., in *Veerabhadra Pillai and others v. King Emperor* (2), it being held that in such circumstances the accused were maintaining and not enforcing a right.

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An argument was advanced on behalf of the State that the accused were not entitled to gather in force in the field in order to protect their rights rather than have recourse to the public authorities. It is, however, clear in the present case that the Police Station is more than 10 miles from the village, and it seems to me that it would have been quite useless for any of the party of the accused to go to the Police Station and inform the Police that they intended to cultivate a field in which one of the accused was a tenant, and that they anticipated that certain persons who had already trespassed in the field, and were anxious to gain possession of it, might attempt forcibly to oust them. It seems very doubtful to me indeed whether under such circumstances the Police would have given any relief to the accused by way of sending Police to the village for their protection, and in my opinion, it cannot be held that the accused acted illegally in making arrangements for their own protection against invasion.

(1) I.L.R. 38 Cal. 865.

(2) I.L.R. 51 Mad. 91

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I thus consider that the accused were entitled to use force as a defence against criminal trespass by the deceased in the field, and even if the offence against which they were protecting themselves was only criminal trespass they were entitled under the law to cause any harm short of death. The matter is, however, also complicated by the question as to what extent defence of person also affects the matter. As I have said, the fight seems to have started in the first instance between the complainants and the three accused who were actually working the *sohaga* and it may even be that first blows in this fight were given to one or more of these accused by members of the complainant's party, who were clearly trespassers and in the wrong. If so, it can hardly be said that the right enjoyed by the accused was exceeded since, although no grievous injury was caused to any of these accused, the voluntary causing of death is justified in defence of the person even when there is only reasonable apprehension that grievous injury might be caused. However, even on the assumption that it was the party of the accused which first resorted to violence I do not consider it is possible to single any of them out for conviction for having exceeded the right given to them to resist criminal trespass. The death of the deceased was due to the combined effect of a large number of injuries and there is hardly any definite evidence as to who caused these injuries except that the first blow is alleged to have been given by Lal Singh with a hatchet on the head of the deceased. The evidence is very vague indeed as to who fractured two of the ribs of the deceased or who broke the bones in his arms. The only accused who could possibly be held to have exceeded the right of defence of property are those whose individual actions resulted in the death of the deceased, and it is impossible to hold that any one of them was responsible for the death. I thus consider that it is impossible to hold any of the accused guilty of any offence in the present case and I would accordingly accept the appeal and