

other members of the complainant party. The number, nature and seat of injuries received by the deceased and Balwinder Singh and Harjinder Singh PWs. clearly indicate, that Manjit Singh accused was the aggressor, and, not the complainant party. No right of self-defence would accrue to Manjit Singh alias Pappi accused in the circumstances of the case. The learned trial court has erred in convicting Manjit Singh alias Pappi accused under Section 302 I.P.C. mainly on the ground that in his statement under Section 313 of the Code of Criminal Procedure he has admitted that he was responsible for inflicting all the injuries to the deceased. The plea of the accused which is in nature of admission, or, confession has to be accepted or rejected as a whole, and the same cannot be dissected, or, partially relied upon, in respect of inculpatory part alone. The onus would still be on the prosecution to prove its case beyond any reasonable doubt.

(10) Since the fatal injury is not attributed to Manjit Singh accused, his conviction under Section 302 of the Indian Penal Code cannot be sustained, and the same is hereby set aside. The prosecution has only been able to bring home charge under Section 325 of the Indian Penal Code and 452 of the Indian Penal Code against Manjit Singh alias Pappi accused beyond reasonable doubt. As Manjit Singh alias Pappi accused is undergoing imprisonment since 21st June, 1986 the substantive sentence of imprisonment is reduced to that already undergone by him both under Section 325 of the Indian Penal Code, as well as under Section 452 of the Indian Penal Code. However, under Section 325 I.P.C. Manjit Singh alias Pappi accused is sentenced to pay a fine of Rs. 2,000 and in default of payment of fine he shall undergo rigorous imprisonment for six months. The sentence of fine or in default thereof imposed by the trial Court under Section 452 I.P.C. is also maintained. The entire fine, if realised, shall be paid as compensation to the nearest legal heirs of Sardara Singh deceased. This appeal as well as Revision No. 582 of 1987 preferred by Harjinder Singh is partly allowed to the extent indicated above.

S.C.K.

Before : Ujagar Singh, J.
 RANBIR SINGH,—Appellant.
versus
 STATE OF HARYANA,—Respondent.
 Regular First Appeal No. 185 of 1988
 11th May, 1989

Code of Civil Procedure, 1908—S. 149, O. 6, Rl. 17—Compensation for land acquired assessed by High Court at higher rate—Owner

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claiming lesser amount—Application to amend memorandum of appeal to claim at the rate fixed by the High Court—Such application filed after decision of appeal —Competency of such application—Claimant seeking time to make good deficiency in court fee—Time granted.

Held, in accordance with the judgment by the Supreme Court the necessary amendment is allowed and the grounds of appeal in the respective R.F.As be considered to have been amended and the appellants petitioners are allowed to pay the deficiency in Court-fee; within 3 months from today to enable them to claim the full compensation.

(Para 2)

Application Under Order 6, Rule 17 read with Order 41 Rule 3 and 22 Section 151, 153, 149 and 114 and Order 47, Rule 1 of the Code of Civil Procedure praying that this application may kindly be accepted, the applicant/appellant be permitted to amend the memorandum of appeal so as to claim Rs. 7 per sq. yard as enhanced amount of compensation and the applicant/appellant also be allowed to pay the additional amount of court fee on the enhanced amount of compensation by this Hon'ble Court and the judgment of this Hon'ble Court dated 12th May, 1978 may kindly be recalled and modified so as to allow the appellant/applicant at the rate awarded by this Hon'ble Court with solatium and interest at the statutory rates on the amount of Rs. 7 per sq. yard.

Present :

Aman Dhaiya, Advocate, for the Appellant.

S. V. Rathi, Advocate, for the Respondent.

JUDGMENT

Ujagar Singh, J.

(1) This order will dispose of C.M. No. 149-C-I of 1986 in R.F.A. No. 185 of 1968, C.M. No. 143-C-I of 1986 in R.F.A. No. 188 of 68, C.M. No. 136-C-I of 1986 in R.F.A. No. 190 of 1968, C.M. No. 150-C-I of 1986 in R.F.A. No. 221 of 1968, C.M. No. 139-C-I of 1986 in R.F.A. No. 226 of 1968, C.M. No. 140-C-I of 1986 in R.F.A. No. 234 of 1968, C.M. No. 151-C-I of 1986 in R.F.A. No. 304 of 1968, C.M. No. 137-C-I of 1986 in R.F.A. No. 342 of 1968, C.M. No. 138-C-I of 1986 in R.F.A. No. 353 of 1968, C.M. No. 887-C-I of 1986 in R.F.A. No. 449 of 1973, C.M. No. 85-C-I of 1986 in R.F.A. No. 501 of 1973, C.M. No. 194-C-I of 1986 in R.F.A. No. 532 of 1973, C.M. No. 87-C-I of 1986 in R.F.A.

No. 664 of 1973, C.M. No. 1642-C-I of 1985 in R.F.A. No. 668 of 1973, C.M. No. 708-C-I of 1986 in R.F.A. No. 766 of 1975, C.M. No. 69-C-I of 1986 in R.F.A. No. 319 of 1976, C.M. No. 195-C-I of 1986, in R.F.A. No. 385 of 1976, C.M. No. 81-C-I of 1986 in R.F.A. No. 387 of 1976, C.M. No. 1376-C-I of 1986 in R.F.A. No. 390 of 1976, C.M. No. 82-C-I of 1986 in R.F.A. No. 431 of 1976, C.M. No. 84-C-I of 1986 in R.F.A. No. 436 of 1976, C.M. No. 83-C-I of 1986 in R.F.A. No. 488 of 1976, C.M. No. 65-C-I of 1986 in R.F.A. No. 514 of 1976, C.M. No. 99-C-I of 1986 in X-Objection No. 63-C-I of 76 in R.F.A. No. 563 of 1976, C.M. No. 1405 of 1986 in X-Objection No. 38-C-I of 1979 in R.F.A. No. 1249 of 78, C.M. No. 1402-C-I of 1986 in R.F.A. No. 1974 of 1978. C.M. No. 946-C-I of 1985 in R.F.A. No. 2401 of 1980, C.M. No. 947-C-I of 1985 in R.F.A. No. 2402 of 1980, C.M. No. 948-C-I of 1985 in R.F.A. No. 2405 of 1980, C.M. No. 949-C-I of 1985 in R.F.A. No. 2411 of 1980 and C.M. No. 950-C-I of 1985, in R.F.A. No. 2413 of 1980, as they arise out of the same question of facts. In all these cases compensation was enhanced but the enhancement was made upto the extent of court-fee paid in appeals and the cross-objections were also allowed to the extent the court fee had been paid. Earlier, in a similar situation C.M. No. 1512 of 1985 in L.P.A. No. 235 of 1982 had been referred to a Full Bench of this Court. As a result thereof, all these petitions were directed to be heard after the decision of C.M. No. 1512 of 1985 in L.P.A. No. 235 of 1982. The said Civil Miscellaneous came up for hearing and was decided on 17th of May 1988. The Full Bench, of which I was a member, after discussing the law on the subject held as under:—

“We have, therefore, absolutely no doubt that the claimant shall not be permitted to claim amendment of the memorandum after the appeal had been finally disposed of, nor can we permit the appellants pay notional court-fees and present appeals in the hope that they can make claims for larger amounts. Thus though before the appeal is taken up for hearing or the judgment is delivered, the party may ask for variation of the memorandum of grounds or increasing the claim and if there are justifiable reasons the Court may permit the same and allow the deficit court-fee to be paid, once the appeal is disposed of, he cannot claim to amend the memorandum of grounds claiming a larger relief than what he claimed originally.”

“As already pointed out, it is also not possible for us to give It was further held as under:—

such relief because if this Court were to hold that they are

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entitled for amendment even after disposal of the appeal and grant such relief, then in no land acquisition appeal, the appellant will pay the court-fee and he will await the determination of the compensation first and then pray that he may be permitted to pay court-fee and get the compensation as per determination of the Court. He shall have to make a *bona fide* claim in the appeal and pay Court-fee thereon in order to get a relief. If for any reason, the market value determined is more and he is entitled to claim the same compensation as given to a third party, he shall file an appeal against that order, satisfy the appellate Court that he is entitled for an amendment of the claim, ask for an amendment, which relief would be given to him by the appellate Court by permitting him to amend both the lower Court grounds as also the grounds before the appellate Court. But we have no doubt that we cannot invoke the principles enunciated by the Supreme Court in this case though that judgment also related to the same acquisition, but in respect of a different party. As pointed out earlier, the Supreme Court was sitting in appeal over the Bench judgment and sitting in appeal, they could give any direction to the High Court in respect of the appeal, which is the subject-matter before them. In fact they allowed the appeal in that case.”

(Reference to the Supreme Court judgment is to the case *Bhag Singh and another v. Union Territory of Chandigarh* (1). Ultimately, the Full Bench dismissed the Civil Miscellaneous, with no orders as to costs but directed the Government to take notice of the situation and grant the compensation as prayed for by them after re-determining the same in accordance with the judgment of the case and pay the same as an *ex-gratia* payment and not to drive the parties to file an appeal before the Supreme Court, and this judgment was restricted to the facts of the acquisition made in pursuance of the notification dated October 9, 1974, for the establishment of the military cantonment at Bhatinda.

(2) So far as the maintainability of Civil Miscellaneous No. 1512 of 1985 in L.P.A. No. 235 of 1982 (*supra*) is concerned, the Full Bench held the same to be not maintainable in view of the reasons mentioned above. Almost a similar view was taken earlier in *Nand Ram*

(1) A.I.R. 1985 S.C. 1576.

and others v. The State of Haryana (2), Civil Misc. No. 692-C-I of 1984 in R.F.A. No. 1389 of 1982 decided on 11th February, 1985 by I. S. Tiwana, J. and the said civil miscellaneous was dismissed. The matter was taken by Nand Ram and others by filing special leave petition before the Supreme Court and after granting leave the civil appeal filed by Nand Ram and others was heard and it was observed that amendment of the memorandum of the appeal to enable the appellants to claim appropriate compensation on the basis of compensation awarded to those whose similarly situated lands were acquired under the identical notification should have been granted by the High Court on the principle that the State cannot refuse to pay in respect of the lands acquired under the same notification compensation at the reasonable market value reflected in the compensation awarded to the land owners whose similarly situated lands had been acquired under the same notification for the same purpose by the notification of the same date. Appeal of Nand Ram and others was thus, allowed and they were held entitled to claim compensation as prayed. In the present case R.F.A. Nos. 185, 188, 190, 221, 226, 234, 304, 342 and 353 of 1968 and some other R.F.As were decided by M. R. Sharma, J. as he then was by one order dated May 12, 1978 and compensation at the rate of Rs. 7 per square yard upto the extent of court-fee paid in appeals was allowed apart from allowing solatium and statutory interest on the enhanced compensation alongwith costs. In the various civil miscellaneous petitions referred to above, filed in 1986 in the above noted R.F.As a prayer is made to allow the amendment of the grounds of appeal so as to enable the appellants-petitioners to claim compensation at the above said rate by affixing deficiency in court-fee. In accordance with the judgment, in *Nand Ram and others* (supra) by the Supreme Court, the necessary amendment is allowed and the grounds of appeal in the respective R.F.As be considered to have been amended and the appellants petitioners are allowed to pay the deficiency in Court-fee, within three months from today to enable them to claim the full compensation awarded alongwith solatium and interest as noted above.

(3) R.F.As Nos. 449, 501, 532, 664 and 668 of 1973 were decided by a common judgment, in R.F.A. No. 247 of 1974 on May 16, 1979 allowing compensation at the rate of Rs. 10 per square yard but this compensation was made subject to the claim made and court-fee paid by the land owners, therefore, the benefit of the enhanced compensation could not be claimed by the appellants-petitioners due to deficiency in the requisite court-fee for the enhanced amount. In Civil

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Miscellaneous petitions mentioned above in the said R.F.As of 1973 a prayer is made to allow the amendment of the grounds of appeal and claim the enhanced amount, solatium and interest as granted in R.F.A. No. 247 of 1974. These civil miscellaneous petitions are also accepted and the amendment is allowed and the grounds of appeal in the respective R.F.As be considered to have been amended allowing deficiency in court-fee to be paid within three months from today so as to enable the petitioners to claim enhanced compensation, solatium and interest as alleged.

(4) R.F.A. Nos. 766 of 1975 was decided,—*vide* orders in R.F.A. No. 228 of 1978 on April 16, 1979 whereby the claim in appeal was limited to the court-fee paid. In Civil Miscellaneous petitions mentioned above filed in the said R.F.A. a prayer is made to allow the amendment of the grounds of appeal and claim the enhanced amount. This civil miscellaneous is also allowed and the grounds of appeal in R.F.A. No. 766 of 1975 be considered to have been amended so as to enable the petitioner to make up the deficiency in court fee good, within three months for claiming enhanced compensation, solatium and interest.

(5) R.F.A. Nos. 319, 385, 387, 390, 431, 436, 488, 514 with cross objection in R.F.A. No. 563 of 1976 were decided by a common judgment delivered in R.F.A. No. 251 of 1976 on May 21, 1979. Various civil miscellaneous petitions in the above R.F.As were filed and the prayer in these civil miscellaneous petitions is also to seek permission to amend the grounds for claiming enhanced compensation along with solatium and interest by paying deficient court-fee. These civil miscellaneous petitions are allowed and the three months time is granted for paying the deficient court-fee and the grounds of appeals in the respective R.F.As be considered to have been amended.

(6) R.F.A. No. 1249 of 1978 alongwith cross objection was decided along with R.F.A. No. 1278 of 1978 on 21st March, 1980. Civil miscellaneous filed in the above said R.F.A. for permission to amend the grounds of appeal is allowed and the grounds of appeal in the R.F.A. be considered to have been amended so as to enable the appellant-petitioner to claim enhanced compensation, solatium and interest by payment of deficient court-fee and the appellant-petitioner is allowed three months time to pay deficient court-fee.

(7) R.F.A. No. 1974 of 1978 was decided on 13th November, 1979 wherein mistake occurred in the amount of compensation. This

mistake was corrected,—*vide* order dated 17th December, 1979. The compensation was enhanced to a higher rate of Rs. 317.50 per marla but this claim was limited to the amount of court-fee paid in the memorandum of appeal. The Civil Miscellaneous filed in this R.F.A. is also allowed and the appellants-petitioners are allowed to pay deficient court fee, within three months so as to enable them to claim compensation at the said rate, solatium and interest on the enhanced compensation.

(8) R.F.A. Nos. 2401, 2402, 2405, 2411 and R.F.A. No. 2413 of 1980 were decided by a common judgment in R.F.A. No. 1842 of 1980 on November 27, 1981 and again the enhanced compensation was limited to the extent of claim made and the court-fee paid thereon. On the same reasoning civil miscellaneous filed in these R.F.As are allowed and the petitioners are given three months time from today to enable the appellant-petitioner to pay deficient court-fee so as to claim enhanced compensation at the said rate, solatium and interest on the enhanced compensation.

(9) All these civil miscellaneous applications are disposed of accordingly.

S.C.K.

Before : V. Ramaswami, C.J. & G. R. Majithia, J.
SUSHIL KUMAR JAIN AND OTHERS.—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS.—*Respondents.*

Civil Writ Petition No. 8804 of 1987

4th October, 1989

Constitution of India, 1950—Arts. 14 & 16—Conversion of temporary post into a permanent one from a retrospective date—Power of the State Government to do so—Guarantee of equality violated—Order of State Government void.

Held, that it is not understood on what basis the State Government had thought of converting the second post into a permanent from a retrospective date more particularly when it had the effect of divesting certain Government Officers of their vested rights. The State could not at its own sweet will fix any artificial date for converting a temporary post into a permanent one. The action would