

HIGH COURT OF MADHYA PRADESH**BENCH GWALIOR****SINGLE BENCH:****HON'BLE SHRI JUSTICE G.S. AHLUWALIA****Criminal Appeal No.213/2004****.....Appellants: Subhash & Ors.****Versus****.....Respondent : State of M.P.**-----
Shri Ashok Kumar Jain, Counsel for the appellants.Smt. Sangeeta Pachauri, Public Prosecutor for the respondent/State.

Date of hearing : 19/04/2018

Date of Judgment : 01/05/2018

Whether approved for reporting : Yes

J U D G M E N T**(01/05/2018)**

This criminal appeal has been filed under Section 374 of Cr.P.C. against the judgment dated 20.2.2004 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, Guna in S.T.No.78/1993 by which the appellants have been convicted and sentenced as under:-

Appellant No.1 Subhash

Section	Act	Imprisonment	Detail of fine/if deposited	Imprisonment in lieu of fine
147	IPC	6 months RI	Nil	Nil
447	IPC	1 month RI	Nil	Nil
3(1)(iv)	SC/ST Act	1 Year RI	2000/-	Nil
3(1)(v)	SC/ST Act	1 Year RI	2000/-	Nil
148	IPC	1 Year RI	Nil	Nil

27	Arms Act	3 Years RI	1000/-	Nil
324	IPC	1 Year RI for causing injury to Ramprasad	Nil	Nil
324	IPC	1 Year RI for causing injury to Madan (PW-3)	Nil	Nil
324	IPC	1 Year RI for causing injury to Prem (PW-12)	Nil	Nil

Appellants No.2 Soma, No.3 Gajanand No.6 Ramkishan:

Section	Act	Imprisonment	Detail of fine/if deposited	Imprisonment in lieu of fine
147	IPC	6 months RI	Nil	Nil
447	IPC	1 month RI	Nil	Nil

Appellant No.4 Ramkishan S/o Shri Puran

Section	Act	Imprisonment	Detail of fine/if deposited	Imprisonment in lieu of fine
147	IPC	6 months RI	Nil	Nil
447	IPC	1 month RI	Nil	Nil
3(1)(iv)	SC/ST Act	1 Year RI	2000/-	Nil
3(1)(v)	SC/ST Act	1 Year RI	2000/-	Nil

The appellant No. 5, Onkar has expired during the pendency of this appeal.

2. The necessary facts for the disposal of the present appeal in short are that on 21.11.1992 the appellants formed an unlawful assembly and in furtherance of common object and with an intention to kill the injured Ram Prasad (PW-1), Madan Lal (PW-3) and Prem (PW-12) so as to forcibly take possession of the land belonging to the injured persons, fired gunshot

causing injury to Ram Prasad, Madan and Prem. The appellant No.1 Subhash and appellant No.4 Ramkishan do not belong to Scheduled Caste or Scheduled Tribe whereas the remaining appellants belong to Scheduled Caste or Scheduled Tribe. The co-accused Kajod died during the pendency of the trial and accordingly, the trial proceeding was dropped against him, whereas the co-accused Amra is still absconding from 21.11.1992.

3. The injured Ram Prasad (PW-1) lodged a report on the allegation that he along with co-injured Madan Lal and Prem were getting their land cultivated with the help of tractor belonging to one Om Prakash and at that time, the appellants and other co-accused persons came on the spot and all of them were armed with lathi and *Farsa*. The appellant No.1 Subhash was having 12 bore gun. They stopped the complainant and the injured persons from cultivating the land which was allotted to them by the Government and was in their possession and started assaulting them. Appellant No.1 Subhash fired gunshot from his 12 bore gun, as a result of which the injured Ram Prasad, Prem and Madan Lal sustained injuries. On the complaint of the informant Ram Prasad, the police registered the FIR in Crime No.208/1992 for offence under Sections 307, 147, 148, 149 of IPC and the injured Prem, Madan Lal and Ram Prasad were sent for medical treatment. During investigation the medical documents of the injured Prem, Madan Lal and Ram Prasad were seized. Similarly, the discharge tickets of the accused Gajanand and Soma were seized. The x-ray report as well as the x-ray plates of the injured Madan Lal, Prem and Ram Prasad were seized. The appellants No.1 Subhash, No.2 Soma and No.3 Gajanand and co-accused Kajod were arrested. The spot map was prepared. The revenue records pertaining to the agricultural lands were seized. Thereafter, the remaining accused persons were arrested and after concluding the

investigation, the police filed the charge sheet for offence under Sections 147, 148, 149, 447, 307 of IPC, under Section 25/27 of Arms Act and under Sections 3(1)(iv) and 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act.

4. The Trial Court by order dated 4.10.1997 framed charge under Sections 147, 148, 307 read with Section 149, 307, 447 of IPC and under Sections 3(1)(iv) and 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act and under Section 27 of Arms Act against the appellants.

5. The appellants abjured their guilt and pleaded not guilty.

6. The prosecution, in order to prove its case, examined Ram Prasad (PW-1), Dr.R.K. Jain (PW-2), Madan (PW-3), Soma (PW-4), Jai Narayan Sharma (PW-5), Dr. H.D. Sharma (PW-6), Daulat Ram (PW-7), Prem Narayan (PW-8), Om Prakash (PW-9), Ripu Daman Singh (PW-10), Mishrilal (PW-11), Prem (PW-12), Baldev Singh (PW-13), Prem Narayan Ojha (PW-14), Prakash Narayan (PW-15), Anil Kumar Singhal (PW-16), Narendra Singh (PW-17) and Madan Singh (PW-18).

7. The appellants examined Kana (DW-1), Pooran Singh (DW-2) and Subhash Sharma appellant No.1 as DW-3.

8. The Trial Court by judgment and sentence dated 20.2.2004 acquitted the appellants No. 2,3,5 and 6 for offence under Section 307,307/149, 148 of I.P.C. as well as under Section 3(1)(iv), 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under Section 27 of Arms Act. Similarly, acquitted the appellant no.1 for offence under Section 307 or in the alternative 307/149, 148 of I.P.C. and acquitted the appellant no. 4 for offence under Section 307 or in the alternative 307/149, 148 of I.P.C. and under Section 27 of Arms Act and convicted the appellants for the offence as mentioned above. The acquittal of the appellants for different offences as mentioned in detail in this para, has not been

challenged.

9. The appellant No.5 Onkar has expired during the pendency of this appeal and accordingly, the appeal was dismissed, as having abated, by order dated 21.2.2011.

10. It is submitted by the Counsel for the appellants that land dispute was going on between the parties. The appellant no.1 Subhash Sharma was in possession of the lands in question, and the complainant party was trying to take possession of the same by show of force. It is well established principle of law that even an encroacher/trespasser cannot be dispossessed without following the due procedure of law and even if it is found that the complainant party was given lease of the land in dispute, than in view of the admissions made by the witnesses, that the appellant no.1 Subhash Sharma was cultivating the land and the possession was delivered on the complaint made to the Collector, and in absence of any document or order of the Collector to that effect, clearly shows that the appellant no.1 Subhash Sharma was in possession of the land in dispute and in fact the complainant party was trying to dispossess the appellant no.1 by show of force. The appellants had also sustained various injuries, which have not been explained by the prosecution, thus it is clear that the very genesis of the incident has been suppressed. It is submitted that under these circumstances, no offence under Section 3(1)(iv) and 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is made out. There is nothing on record to suggest that the gun was ever used by the appellant no.1, and if it is proved that the gun shot was fired by the appellant no. 1, then it would be clear that the said act was in exercise of right of self defence.

11. Per contra, it is submitted by the Counsel for the State that the guilt of the appellants have been proved beyond reasonable doubt and the conviction of the appellants doesnot

call for interference.

12. Heard the learned Counsel for the parties.

13. Ram Prasad (PW-1) has stated that he was allotted land by the Government and he is in cultivating possession of the same for the last 10 to 20 years. He further stated that the accused persons are known to him. The incident took place about about 5 to 6 years back. At about 10:00 AM, the accused persons were cultivating his land and when it was objected by him, then the accused persons assaulted them by means of gun and lathi. The appellant No.1 Subhash was having a gun, whereas the absconding accused Amra was having a country made pistol. The gunshot was fired by Subhash causing injury on his chest, leg and hands and in the same incident, Madan and Prem had also sustained injuries. Om Prakash, Baldev Singh and Ripudaman Singh had intervened in the matter and after the accused persons went away on a jeep, the injured persons were brought to the police station by Omprakash and others, where he lodged the FIR which is Ex.P/1. This witness, Madan and Prem were referred to hospital, Guna where they were treated and x-ray was done. All the three persons remained admitted in the hospital for 7 to 8 days. Even in the hospital, the appellant No.1 Subhash had extended a threat to them and even till today he is threatening to this witness. In cross-examination, this witness could not narrate the details of the land but it was stated that the lease of the land was given about 20 to 25 years back and he is cultivating the possession of the same from the time of his predecessors. He further denied that the possession of the land was not delivered by the Government after taking the same from the appellant No.1 Subhash. This witness has stated that the land of Ramkishan is not situated at nearby place but Ramkishan is the employee of appellant No.1 Subhash and was cultivating the land. He further admitted that a report was

lodged against Subhash Sharma for forcibly taking possession of the land and a criminal case was registered against him. About 7 to 8 cases were registered against Subhash Sharma with regard to taking forcible possession of the land. About 5 to 6 years back, the possession of the land was delivered. However, the land in dispute is in possession of this witness from his birth. The possession was delivered after demarcating the same. However, this witness denied for want of knowledge that the accused persons had also sustained injuries and he denied the suggestion that the complainant had assaulted the accused persons and others as a result of which the accused party had also sustained injuries. However, he admitted that he is facing criminal trial. Appellant No.1 Subhash Sharma had fired a gunshot from a distance of about 100 steps. Two or three persons were having country made pistols and they had also fired. The pellets had struck him. The pellets of gunshot has struck him but the pellets of the country made pistol did not struck him. He further admitted that they had snatched the gun from the appellant No.1 Subhash. About 4 to 5 gunshots were fired. The other co-accused persons had taken away their country made pistols. He further stated that he had never become unconscious, however, there was an excessive bleeding from the injuries. About 10 to 12 pellets were removed from his body and some more pellets are still in his body. He further denied the suggestion that they snatched the gun from Subhash and the complainant party themselves, fired the gunshot, as a result of which they had sustained the gunshot injuries. He further denied that after the incident, they went to the house of appellant No.1 Subhash and the belongings of appellant No.1 Subhash were looted.

14. Madan (PW-3) has also supported the prosecution case. He further stated that the incident took place about 10:00 AM on the property dispute. The appellant No.1 Subhash was

getting the land cultivated and when it was objected by this witness, Ram Prasad and Prem, they were abused by the appellant No.1 Subhash. The appellant No.1 Subhash fired a gunshot whereas a country made pistol was fired by Amra as a result of which Ramprasad and Madan had sustained injuries. The injuries were caused by gunshot fired by appellant No.1 Subhash. Girdhari had snatched the gun. Om Prakash and Ripudaman Singh took these witnesses, Ramprasad and Prem to the hospital where the FIR was lodged and the injured persons were sent for medical examination. This witness had sustained injuries on his legs because of gunshot fired by appellant No.1 Subhash. Land of this witness is adjoining to the land of Ramprasad. This witness has further stated that the appellant No.1 was never in possession of the land belonging to this witness. It was denied that about 18 to 19 years back, the appellant No.1 had forcibly taken possession of the land belonging to this witness. He further admitted that when they reached on the spot, the tractor of appellant No.1 Subhash was cultivating the land. Earlier also, they had made complaints to the Collector with regard to forcible possession of the land by the appellant No.1 and the possession of the land was given to this witness after getting it demarcated. It is further stated that the other co-accused persons had come along with the appellant No.1 Subhash for cultivating the land. The gunshot was fired by Subhash from a distance of about 100 steps. When they were going towards Subhash for having a talk with him, the appellant No.1 Subhash had fired gunshot. Immediately after the gunshot was fired, the injured witness fell on the ground and this witness fell unconscious. The persons who were working in the adjoining fields came on the spot after hearing the gunshot noise. The field of Om Prakash is adjoining to the field of this witness and Om Prakash was having a double barrel gun, whereas the gun of Subhash was a

single barrel. The gunshot had struck on the chest of Ram Prasad. However, he could not explain the reason as to why that fact was not mentioned in his case dairy statement Ex.D/1. It is further stated that he was standing in front of Subhash when he suffered gunshot injury. He denied that this witness and the complainant party had assaulted the accused. He further denied that the complainant party had tried to take forcible possession of the land. He further denied that they had caused injury to Subhash. He further denied that Onkar Singh had also sustained the injury but admitted that for the same incident the complainant party is also facing trial including this witness.

15. Soma (PW-4) has stated that about 5 years back a dispute had taken between the complainant party and the accused. After hearing the noise, he went to the spot where the appellant No.4 Ram Kishan was cultivating the land. The villagers were objecting to it on the ground that the land belongs to them but the appellant No.1 Subhash claimed that he is owner of the land and, therefore, he would cultivate the same and also extended threat that he would fire. Thereafter, five gunshots were fired by the appellant No.1 Subhash causing injury to Ram Prasad, Prem and Madan. He took the injured persons to the police station. In cross-examination, he submitted that earlier he had made a police report against Subhash for encroaching upon his land and he admitted that since Subhash has not left the land of this witness, therefore, there was an enmity between the parties. This witness further denied for want of knowledge that the appellant No.1 Subhash has been acquitted in all those cases. He further admitted that the appellant No.1 has filed a civil suit against this witness that he is trying to forcibly take possession of the land and Subhash is in possession of the said land for about 18 to 20 years and the injured persons had gone with an intention to take

possession of the same and on this issue, the dispute had taken place between the parties. Neither the possession of the land was given to Subhash by the Tahsil Office nor by the Collector Office. At the time of incident, he was cultivating his land. He further admitted that he is also facing trial for causing injury to Subhash. When he reached on the spot, the injured Madan, Prem and Ram Prasad were lying unconscious. When the evidence of this witness was being recorded, it has been mentioned by the Trial Court that a hot talk took place between the Public Prosecutor as well as the defence counsel, therefore, the statement of this witness was deferred. The cross-examination of this witness was done on the next date of hearing. He denied that they had assaulted the appellant No.1 Subhash.

16. Om Prakash (PW-9) has stated that the incident took place in the year 1992 and it was 9:00 AM and on the question of cultivating the land, the dispute arose between the complainant and the accused party. The appellant No.1 Subhash was trying to cultivate the land and the injured persons had objected to it, as a result of which the appellant No.1 Subhash fired gunshots for 4-5 times as a result of which Madan, Ram Prasad and Prem had suffered gunshot injuries. In cross-examination, he admitted that his family members had always remained the Sarpanch, however, he admitted that in the election which were held recently, the wife of this witness had lost. He admitted that all the accused persons were known to this witness. He further denied that the land in dispute was earlier lying in a barren condition which was improved by appellant No.1 Subhash. The dispute had arisen between the accused and the complainant party on the question of cultivating the land. The gunshot was fired by appellant No.1 Subhash. He further denied that 8 to 10 cases were registered between this witness and the appellant No.1 Subhash and

further denied that he had deposed against Subhash in 8 to 10 cases. He further denied that on the report of appellant No.1 Subhash, this witness was ever convicted. He further admitted that for the first time, he is deposing against Subhash. He further stated that the disputed land belongs to the Adiwasis. He had not seen any injury on the body of Subhash. He had not seen any injury on the body of the other accused persons. Certain omissions were pointed out from his case diary statements.

17. Ripu Daman Singh (PW-10) has stated that when he reached on the spot, the dispute was already going on and after he reached there, the gunshot was fired causing injury to Madanlal, Prem and Ram Prasad. He further stated that for the last 20 years the dispute is going on between the appellant No.1 Subhash and the Adiwasis. He further stated that Kajod, Soma and Ramkishan had 12 bore country made pistol. He further stated that he had lodged a report of theft of his motor against Moolchand Ojha in which Ramkishan was also an accused but he was acquitted. He also admitted that the persons from both the parties had sustained the injuries but he took the injured persons Ram Prasad, Prem and Madan Lal to the police station. He further admitted that Subhash had also sustained some injuries on his head.

18. Mishrilal (P.W.11) has stated that the accused persons were trying to stop the complainant party from cultivating the land, although the complainant party had informed that they have been allotted land by the State Govt. The incident took place over the question of land. This witness was cross examined, but he denied the suggestion that on a single day, the S.H.O. had registered 22 criminal cases against Subhash sharma. He further admitted that he had appeared as a witness against Subhash Sharma in other cases also. He further admitted that on the report of Subhash Sharma, he is

also facing trials. This witness admitted that the gun was handed over by this witness to the Police Daroga. He further admitted that the land on which the dispute took place is still in cultivating possession of the appellant no.1 Subhash Sharma, however, could not clarify that whether the appellant no.1 Subhash Sharma has got the possession by virtue of an order of the Court, or he is forcibly cultivating the same. He further denied that he had seen the accused Kajod, Subhash, Gajanand, Soma and Omprakash in an injured condition.

19. Prem (PW-12) is one of the injured and he has also stated that the Government had given the land in dispute on lease to this injured person and the gunshot was fired by Subhash. After sustaining the injury he has fallen unconscious, therefore, he does not know as to what happened thereafter. He was sent for medical examination by the police. In cross-examination, he admitted that he does not have any land and he earns his livelihood by fishing. The Government had handed over the possession of the land after getting it demarcated. However, the appellant No.1 continued to cultivate the said land after forcibly taking possession of the same from the injured persons. Total five gunshots were fired, out of which one hit to this witness and thereafter, he fell unconscious. He was taken to the police station in an unconscious condition where he regained consciousness. This witness has further stated that he had sustained the injury because of only one gunshot.

20. Baldev Singh (PW-13) has stated that he saw that the appellant No.1 Subhash and other accused persons were cultivating the land belonging to Adiwasis and when he asked Subhash that the land belongs to the complainant party, then he replied that he would not leave the land and gunshots were fired by Subhash causing injuries to Ram Prasad, Madan and Prem. Police had prepared the spot map which is Ex.P/19. The empty shells of cartridges, blood stained and plain earth were

seized by seizure memo Ex.P/20. In cross-examination, he further stated that a dispute is already going on between the accused and the Adiwasis and the appellant is still forcibly cultivating the said disputed land. He further denied that he was called by the villagers at the time of incident. However, he admitted that he had tried to convince appellant No.1 Subhash that he should not quarrel with the Adiwasis. All the accused persons were identified by this witness in the Court.

21. Prem Narayan (P.W.14) is the Arms Clerk working in the office of District Magistrate, and has proved the sanction for prosecution, Ex. P.21.

22. Prakash Narayan (PW-15) is the Patwari. This witness has stated that he is the Patwari of Village Parsi Kheda from 1996-1997. Tursa Bai, widow of Nathulal Adiwasi, is owner of land bearing survey No.1/1/2 area 1.663 hectare. He has brought the original Khasra and Khatauni which is Ex.P/22 and its photocopy is Ex.P/22(C). The name of Turso Bai was already mentioned in the Khasra of Samvat 2052 to 2056, which is Ex.P/23 and its photocopy is Ex.P/23(C). Name of Soma S/o Mangilal was recorded as Bhumiswami of land bearing survey No.4/2 area 4.181 hectare in the revenue record and he had brought the original record of Khatauni, which is Ex.P/24 and its photocopy is Ex.P/24(C). Name of Soma is entered in the said land in a capacity of Bhumiswami, which is Ex.P/25 and its photocopy is Ex.P/25(C). The land bearing survey No.2/2 area 3.481 hectare is recorded in the name of Ratanlal S/o Maggu. Land situated in Village Chak Parsi Kheda, is registered in the names of Ratan Lal and Naina S/o Maggu Sehar, whose names are entered in Khatauni Ex.P/26 and its photocopy is Ex.P/26(C) and the names of Ratan Lal and Naina were recorded in the revenue records Ex.P/27 and its photocopy is Ex.P/27(C). Ratan Lal had already sold his share out of this land. The land bearing survey No.1/1/3 area 1.045 hectare was

recorded in the name of Sahodara Bai, widow of Bhagirath as "Bhudandhari" in the revenue record, whose entry is in the khatauni Ex.P/28 and its photocopy is Ex.P/28(C). Khasra entry is Ex.P/29 and its photocopy is Ex.P/29(C). There is a land in the name of Chetya S/o Pachhya in village Chak Parsi Kheda bearing survey No.1/1 area 1.663 hectare and the said land is recorded as "Bhudandhari" whose entry in the revenue record is Ex.P/30 and its photocopy is Ex.P/30(C). Khasra entry is Ex.P/31 and its photocopy is Ex.P/31(C). There is a land in the name of Kamariya S/o Halka bearing survey No.1/1/12 area 1.672 hectare and the said land is recorded as "Bhudandhari" whose entry in the revenue record is Ex.P/32 and its photocopy is Ex.P/32(C). Khasra entry is Ex.P/33 and its photocopy is Ex.P/33(C). There is no land in the name of Ram Prasad S/o Ratan Lal in the revenue record and the same was recorded in the name of his father Ratan Lal Adiwasi whose entry is Ex.P/26 out of which survey No.2/2 area 2.645 is recorded in the names of Ratan Lal and Naina. The land bearing survey No.1/1/8 area 1.045 is recorded as "Bhudandhari" in the name of Madan whose khasra panchshala entry is Ex.34 and its photocopy is Ex.P/34(C). Khatauni entry is Ex.P/35 and its photocopy is Ex.P/35(C). There is no entry of land in the revenue record in the name of Prem, but the same is in the name of Jagannath, father of Prem and this property is a joint property in the names of Jagannath, Narayan, Madhav etc. bearing survey No.11 area 1.306 hectare, survey No.28/3 area 1.338 hectare, survey No.35/1 area 1.254 hectare, survey No.11/67 area 0.523 hectare, survey No.33/68 area 7.784 hectare and the lands are recorded in the revenue record as Ex.P/36 and its photocopy is P/36(C). Khasra entry is Ex.P/37 and its photocopy is Ex.P/37(C). Prem S/o Jagannath belongs to Dheemar caste. The land bearing survey No.1/1/4 area 2.090 hectare is recorded as "Bhudandhari" in the name of

Mishrilal S/o Bhawar Lal and its khatauni entry is Ex.P/38 and its photocopy is Ex.P/38(C). Khasra entry is Ex.P/39 and its photocopy is Ex.P/39(C). Revenue record of the year 1992-93 was kept in the Office of Collectorate, Guna. In cross-examination, this witness has stated that he could tell the details of land. After perusing the revenue records, this witness has stated that the survey No.1/2/2 area 3.135 hectare is recorded in the name of Surbhi as "Bhudandharak" which is entered in the Khatauni of Samvat 2056. The land bearing survey No.1/1/14 area 3.135 hectare is recorded as "Bhudandhari" in the name of Rajendra Kumar. The land bearing survey No.1/2/1 area 3.135 hectare and survey No.2/1 area 3.135 hectare are recorded as Bhudandhari and Bhumiswami in the name of accused Subhash Chand in *Kist Bandi Khatauni*. The lands bearing survey No.3 area 0.724 hectare and survey No.4/1 area 1.348 hectare are recorded as "Bhumiswami" in revenue records in the name of Sunil Kumar. The lands bearing survey No.1/2/3 area 3.135 hectare is recorded as "Bhudandhari" in the name of Jitendra Singh. The land bearing survey No.1/1/7 area 1.663 hectare is recorded as "Bhudandhari" in the name of Lakhan Lal. The land bearing survey No.1/1/15 area 1.045 hectare is recorded as "Bhudandhari" in the name of Ramkishan. The land of accused Subhash is situated adjacent to the land of Soma, whose survey No.4/1 area 1.348 hectare is recorded in the name of Sunil Kumar brother of accused Subhash. The land bearing survey No.2/1 is recorded in the revenue record of village Chak Parsi Kheda in the name of accused Subhash. It is true that he visits in the village every year and he had seen the land of accused Subhash and his family and he had also seen the land of other residents of the village. He is also the Patwari of village Ajroda. It is true that after perusing the record he can tell whether the boundary of village Ajroda and Chak Parsi

Kheda is same and the land of family of accused Subhash is adjoining to the boundary and the lands belonging to Om Prakash and other are situated near that land. He denied that he cannot say about the land of Subhash whether it was situated near the land of Om Prakash. The lands of Adiwasis are also adjoining to the land of accused Subhash. As per the revenue record, there is no land in the name of Prem. He admitted that the lands bearing survey Nos.11, 28/3, 35/1, 11/67, 33/68 are not situated near the land of accused Subhash. He has no knowledge about the fact that what is the distance of the land of accused Subhash from the aforesaid lands. The land bearing survey Nos.1 to 11 is far about 30-32 Jareeb (1 Jareeb = 75 feet) from the land of Subhash Sharma and his family. This witness has admitted that the land bearing survey No.2/2 of Ratan Lal and Naina is situated near Parvati river. The land of Om Prakash is situated on the boundary, which is adjoining to the boundary of Village Chak Parsi Kheda. It is not clear from the map that whether the land bearing survey No.1/1/15 is of Ramkishan or not because the marks of map have become fade because it was written by pencil. The land of Mishrilal bearing survey No.1/1/4 is far from the land of accused Subhash. There is no land in the name of Ram Prasad. He had no information about this fact that whether the land of Mishrilal situated near Kamariya community is adjoining or not. On the complaint of Adiwasis, as per order of Collector, this witness had gone to the spot for enquiry in village Chak Parsi Kheda and he did not know about the distance between the lands of Kamariya and the accused Subhash. He also did not know about the distance between the lands of accused Subhash and Madan. The land belonging to Sahodara is situated on the boundary whereas the land of Tursa is far from the land of accused Subhash. Tursaba, Soma, Ratanlal, Naina, Sahodara, Chetya, Kamariya, Ram Prasad, Madan, Prem,

Mishrilal are cultivating their lands. The land of Soma is some less. Subhash and his family members are cultivating their own lands. The maps of the land, which were got numbered like Survey No.(1), (2) and (4), have not been supplied to this witness at the time of taking charge. He does not know that whether the maps are in the custody of the Former-patwaris.

23. Madan Singh (PW-18) is the Patwari. This witness has stated that he was posted on the post of Patwari of Halka No.17, village Chak Parsi Kheda, Tahsil Aron from the year 1992-93. Kamarya S/o Halka caste Sehar is the owner of land bearing survey No.1/1/12 area 1.672 hectare situated in village Chak Parsi Kheda. There is entry of the same in the revenue record, Khatauni of Samvat 2047, which is Ex.P/42 and its photocopy is Ex.P/42(C). The land bearing survey No.1/1/2 area 1.663 hectare is of the ownership of Turso Bai R/o Chak Parsi Kheda and there is entry of the same in the revenue record, Khatauni of Samvat 2047 which is Ex.P/43 and its photocopy is Ex.P/43(C). In Samvat 2047, Turso Bai had sown the crop of wheat and sown the crop of gram in 48 and that land is Bhu-daan land. After demarcation of land, this land was found in possession of Subhash Sharma. The land bearing survey No.1/1 area 1.663 hectare is recorded in the name of Chetya S/o Pachya Sehar. This land is Bhu-daan land. In Samvat 2047, Chetya had sown the crop of gram and sown the crop of wheat in 48. After demarcation of land on 12.7.1992, this land was found in possession of Subhash Sharma. The same is entered in the revenue record, which is Ex.P/44 and its photocopy is Ex.P/44(C). Portion A to A was signed by this witness. Soma S/o Mangilal caste Sehar is recorded as "Bhumiswami" of the land bearing survey No.4/2 area 4.81 hectare situated in village Chak Parsi Kheda. On this land in Samvat 2047, Soma had sown the crop of wheat and sown the crop of gram in 48. After demarcation of land on 12.7.1992,

this land was found in possession of Subhash Sharma. The same is entered in the Khatauni revenue record, which is Ex.P/45 and its photocopy is Ex.P/45(C). Portion A to A was signed by this witness. The names of Ratan Lal and Nena S/o Mangu Caste Sehar are recorded as "Bhumiswami" of the land bearing survey No.2/2 area 3.481 hectare situated in village Chak Parsi Kheda. In Samvat 2047, the Bhumiswami of this land had sown the crop of Jwar and sown the crop of wheat and gram in 48. The same is entered in the Khatauni revenue record, which is Ex.P/46 and its photocopy is Ex.P/46(C). Portion A to A was signed by this witness. After demarcation of land on 12.7.1992, this land was found in possession of Subhash Sharma. The land bearing survey No.1/1/3 area 1.043 hectare is recorded in the revenue record of Samvat 2047-48 in the name of Sahodara Bai Wd/o Bhagirath Sehar. In Samvat 2047, the crops of paddy (Dhana) and gram were sown and the crop of wheat was sown in 48. After demarcation of land on 12.7.1992, this land was found in possession of Subhash Sharma. The same is entered in the Khatauni of Samvat 2047, which is Ex.P/47 and its photocopy is Ex.P/47(C). Portion A to A was signed by this witness. All the copies of Khasra and Panchnama of the shareholders, so prepared, were given by this witness, the photocopy of which are produced in this case and photocopy of Aks was also given. Entry in the Khatauni is made according to Kharsa.

24. Dr. H.D. Sharma (PW-6) was posted as Assistant Surgeon Medical Officer and he had medically examined the injured witness Prem and found the following injuries:-

"Two oval shaped lacerated wound on the backside of right leg, lacerated wound 0.25 cm. on the lower half, with black edges and bleeding present. X-ray was advised."

MLC report is Ex.P/13.

He had also medically examined the injured witness

Madan Lal and found the following injuries:-

- “1. Four oval shaped lacerated wound present on lateral aspect of right leg in the middle portion, .25 cm. Diameter with black edges and bleeding present.
2. Five oval shaped lacerated wound present on ankle and foot over medial aspect, 0.25 cm. black edges and bleeding present.
3. One oval shaped lacerated wound present on the back side of the right leg in middle portion, 0.25 cm. with black edges. Bleeding present.
4. Lacerated wound oval shaped, right lower thigh, 2 lower lacerated wound; 1. One on medial aspect and one posterior aspect with black edges. Bleeding present. X-ray advised.”

MLC report is Ex.P/14.

He had also medically examined the injured witness Ram Prasad and found the following injuries:-

- “1. One oval lacerated wound over membrum sterni, 0.5 cm. Diameter with edges blank and bleeding present.
2. Two oval lacerated wound, left arm lateral aspect, middle, 0.5 cm. Diameter with black edges and bleeding present.
3. One oval lacerated wound, left arm at antero-medial aspect, 0.5 cm. with black edges and bleeding present.
4. Lacerated wound oval, left forearm posterior aspect, 0.25 cm. with black edges and bleeding present.
5. Three oval lacerated wound, left side of lower half chest, 0.5 cm. Diameter, edges bland and bleeding present.
6. Three lacerated wound oval shaped, left thigh lower anterior aspect, edges blank and bleeding present.”

MLC report is Ex.P/15.

25. This witness has further stated that he had examined Subhash Sharma, Soma, Gajanand and Kajodiya and had found the following injuries:-

Subhash Sharma:

1. Lacerated wound... parieto-frontal region, right head, 10 cm X 0.50 cm scalp deep, bleeding present.
2. Lacerated wound, left frontal region of head, 6 X .25 cm. scalp deep, bleeding present.
3. Incised wound over head on the parietal region, 8 X .25 cm. scalp deep, bleeding present.
4. Incised wound over occipital region, 8 X .25 cm. scalp deep, bleeding present.
5. Incised wound over occipital region, 4 X .25 cm. scalp deep, bleeding present.
6. Incised wound over the middle of lip 4 X .25 cm. skin deep bleeding present.
7. Bruise right and left knee joint anterior aspect, 3 X 2 cm. and 4 X 2 cm.
8. Abrasion over right elbow 6 cm.
9. Bruise over left forearm 2, 3, 4 X 2, 5 X 2 cm., swelling present, crepitus fracture present.
- 10 and 11. Hands were paining, but no injury was found."

Soma:-

1. Lacerated wound over web space of left middle & ring finger, 2 X 0.25 cm, skin deep bleeding present.
2. Swelling present over the left hand on posterior aspect.
3. Bruise present over left arm lateral aspect, 4.2 cm.
4. Bruise present over right arm lateral aspect, 6 X 2 cm.
5. Bruise present over right region, 15 X 3 cm."

Gajanand:-

1. Lacerated wound over parieto frontal region of head, 6 X 0.25 cm scalp deep bleeding present."

Kajodiya:-

1. Lacerated wound, occipital region, scalp upper central region, 5 X 0.25 cm, scalp deep bleeding present.
2. Lacerated wound, right parietal region, 3 X 0.25 cm., scalp deep bleeding present.
3. Bruise present over left occipital

region, 3 X 15 cm., x-ray was advised."

The M.L.C. Report of Subhash Sharma, Soma, Gajanand and Kajodia are Ex. D.

26. Dr. R.K. Jain (P.W.2) had taken the X-rays of the injured Madanlal, Prem, Ramprasad and had found radio-opaque objects. The x-ray report of Madanlal is Ex. P.2 and the X-ray plates are Ex. P.3,P.4 and P.5. The x-ray report of Prem is Ex. P. 6 and X-ray plate is Ex. P.7. The X-ray report of Ramprasad is Ex. P.8 and X-ray plates are Ex. P.9,P.10,P.11 and P.12.

27. Jai Narayan Sharma (P.W. 5) had recorded the F.I.R. This witness has stated that he had recorded the F.I.R. Ex. P. 1 as per the information given by Ramprasad.

28. Daulatram (P.W.7) has stated that he had admitted Subhash Sharma, Soma, Gajanand and Kajod in the hospital and in the hospital itself, they were arrested vide arrest memo Ex. P.18 and the accused persons were handcuffed.

29. Premnarayan (P.W.8) is the independent witness of arrest of accused Amra but has not supported the prosecution case and was declared hostile.

30. As already observed, Dr. H.D. Sharma (P.W.6) have found several injuries on the body of the appellants. The appellant no.1 had sustained atleast 9 visible injuries out of which 6 were either on his head or lips. Similarly, other appellants had also sustained multiple injuries, and the prosecution has failed to explain the presence of serious injuries on the body of the appellants. Most of the witnesses have even denied that the appellants had sustained any injury. Daulatram (P.W.7) has stated that he had admitted the accused Subhash Sharma, Kajod, Soma and Gajanand in the Hospital and had arrested them in the Hospital itself. Thus, it is clear that the police itself had admitted the four accused persons, namely Subhash Sharma, Soma, Gajanand and Kajod in the hospital and the witnesses have also admitted that they

are also facing trial for causing injuries to the accused persons.

31. The Supreme Court in the case of **State of M.P. Vs. Gopi** reported in **1993 Supp (1) SCC 514** has held as under :

“6.....The other material fact which the High Court took into consideration was that Chunwada PW 1, Beta PW 2, Ram Vishal PW 3 and Halku PW 4 who were the eye-witnesses, denied any knowledge about the injuries suffered by respondent-accused Gajju. The injury on the person of Gajju being grievous and suffered in the same occurrence, should have been explained by the prosecution. This aspect of prosecution case further casts doubt on the veracity of the eye-witness.”

32. The Supreme Court in the case of **Dashrath Singh Vs. State of U.P.** Reported in **(2004) 7 SCC 408** has held as under :

“**17.** In *Bhaba Nanda Sarma v. State of Assam* [(1977) 4 SCC 396] a three-Judge Bench of this Court made the following pertinent observations: (SCC pp. 399-400, para 2)

“The prosecution is not obliged to explain the injuries on the person of an accused in all cases and in all circumstances. This is not the law. It all depends upon the facts and circumstances of each case whether the prosecution case becomes reasonably doubtful for its failure to explain the injuries on the accused. In the instant case the Sessions Judge was not justified in doubting the truth of the version given by the eyewitnesses — three of whom were wholly independent witnesses. Gopi Nath was surely present on the scene of the occurrence as he himself had received the injuries in the same transaction. The High Court has rightly believed the testimony of the eyewitnesses.”

18. The law on the subject has been succinctly clarified by R.C. Lahoti, J. (as he then was) speaking for a three-Judge Bench in *Takhaji Hiraji v. Thakore Kubersing Chamansingh* [(2001) 6 SCC 145]. After referring to the three-Judge Bench decisions of this Court, it was observed: (SCC pp. 154-55, paras 17-18)

"17. ... the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.

18. The High Court was therefore not right in overthrowing the entire prosecution case for non-explanation of the injuries sustained by the accused persons."

19. The injuries of serious nature received by the accused in the course of the same occurrence would indicate that there was a fight between both the parties. In such a situation, the question as to the genesis of the fight, that is to say, the events leading to the fight and which party initiated the first attack assumes great importance in reaching the ultimate decision. It is here that the need to explain the injuries of serious nature received by the accused in the course of same occurrence arises. When explanation is given, the correctness of the explanation is liable to

be tested. If there is an omission to explain, it may lead to the inference that the prosecution has suppressed some of the relevant details concerning the incident. The Court has then to consider whether such omission casts a reasonable doubt on the entire prosecution story or it will have any effect on the other reliable evidence available having bearing on the origin of the incident. Ultimately, the factum of non-explanation of injuries is one circumstance which has to be kept in view while appreciating the evidence of prosecution witnesses. In case the prosecution version is sought to be proved by partisan or interested witnesses, the non-explanation of serious injuries may prima facie make a dent on the credibility of their evidence. So also where the defence version accords with probabilities to such an extent that it is difficult to predicate which version is true, then, the factum of non-explanation of the injuries assumes greater importance. Much depends on the quality of the evidence adduced by the prosecution and it is from that angle, the weight to be attached to the aspect of non-explanation of the injuries should be considered. The decisions abovesited would make it clear that there cannot be a mechanical or isolated approach in examining the question whether the prosecution case is vitiated by reason of non-explanation of injuries. In other words, the non-explanation of injuries of the accused is one of the factors that could be taken into account in evaluating the prosecution evidence and the intrinsic worth of the defence version."

33. The Supreme Court in the case of **Mano Dutt Vs. State of U.P.** reported in **(2012) 4 SCC 79** has held as under :

"38. The question, raised before this Court for its consideration, is with respect to the effect of non-explanation of injuries sustained by the accused persons. In this regard, this Court has taken a consistent view that the normal rule is that whenever the accused sustains injury in the same occurrence in which the complainant suffered the injury, the prosecution should explain the injury upon the accused. But, it is not a rule without exception that if the

prosecution fails to give explanation, the prosecution case must fail.

39. Before the non-explanation of the injuries on the person of the accused, by the prosecution witnesses, may be held to affect the prosecution case, the Court has to be satisfied of the existence of two conditions:

(i) that the injuries on the person of the accused were also of a serious nature; and
(ii) that such injuries must have been caused at the time of the occurrence in question."

34. The Supreme Court in the case of **Balwan Singh Vs. State of Haryana** reported in **(2005) 11 SCC 245** has held as under :

"**12.** The question then arises whether the failure of the prosecution to explain the injuries suffered by the accused is not fatal to the case of the prosecution. It is true that in all cases failure of the prosecution to explain injuries to the accused may not be fatal, and that the consequence of failure to explain such injuries depends upon the facts and circumstances of the case, the nature of the occurrence and the nature of the injuries suffered by the accused."

35. The Supreme Court in the case of **Ravishwar Manjhi Vs. State of Jharkhand** reported in **(2008) 16 SCC 561** has held as under :

"**9.** The injuries being grievous in nature, the prosecution owed a duty to explain the same. It is unfortunate that the High Court did not take serious notice of the nature of injuries suffered by the appellants, relying on the decision of this Court in *Ayodhya Ram v. State of Bihar* wherein only minor injuries were suffered by the accused persons."

36. The Supreme Court in the case of **Takhaji Hiraji VS. Thakore Kubersing Chamansing** reported in **(2001) 6 SCC 145** has held as under :

"**17.** The first question which arises for consideration is what is the effect of non-

explanation of injuries sustained by the accused persons. In *Rajender Singh v. State of Bihar*, *Ram Sunder Yadav v. State of Bihar* and *Vijayee Singh v. State of U.P.*, all three-Judge Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case."

37. Thus, it is clear that it is not required that in each and every case, the prosecution must explain the injuries sustained by the accused persons, but where the injuries sustained by the accused persons are serious in nature and multiple injuries have been caused to the accused persons in the same transaction and the prosecution witnesses have expressed their ignorance about such injuries and the prosecution witnesses are facing trial for causing such injuries, then it can be inferred that the prosecution has suppressed the very genesis of the incident and therefore, the benefit of doubt may be given to

the accused persons.

38. Further, the prosecution witnesses are not consistent with regard to their possession over the land in question. The witnesses have admitted that the appellant no.1 Subhash Sharma was also cultivating the said lands and the possession was delivered to the complainant party only after the intervention of the Collector, however, no such order or proceedings have been brought on record, to show that the possession of the land was ever handed over to the complainant party by the Collector. Thus, it is possible, that the appellant no.1 Subhash Sharma, might be in possession of the land in questions, and after the lands were given in lease to the complainant party, then the injured persons might be trying to forcibly take possession of the said lands. The centripetal question for determination would be that whether even an encroacher can be dispossessed without following the due process of law or not? The question is no more *res integra*. The Supreme Court in the case of **Rame Gowda Vs. M. Varadappa Naidu** reported in **(2004) 1 SCC 769** has held as under :

“6. The law in India, as it has developed, accords with the jurisprudential thought as propounded by Salmond. In *Midnapur Zamindary Co. Ltd. v. Kumar Naresh Narayan Roy* Sir John Edge summed up the Indian law by stating that in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a court.

7. The thought has prevailed incessantly, till date, the last and latest one in the chain of decisions being *Ramesh Chand Ardawatiya v. Anil Panjwani*. In between, to quote a few out of several, in *Lallu Yeshwant Singh v. Rao Jagdish Singh* this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the

general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to court and obtain an order for possession before he could eject the lessee. The Court quoted with approval the law as stated by a Full Bench of the Allahabad High Court in *Yar Mohd. v. Lakshmi Das* (AIR at p. 4):

“Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause.” (AIR p. 5, para 13)

In the oft-quoted case of *Nair Service Society Ltd. v. K.C. Alexander* this Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. *When the facts disclose no title in either party, possession alone decides.* The Court quoted Loft’s maxim — “*Possessio contra omnes valet praeter eum cui ius sit possessionis* (he that hath possession hath right against all but him that hath the very right)” and said: (AIR p. 1175, para 20)

“A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff’s and thus be able to raise a presumption prior in time.”

In *M.C. Chockalingam v. V. Manickavasagam* this Court held that the law forbids forcible dispossession, even with the best of title. In *Krishna Ram Mahale v. Shobha Venkat Rao* it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In *Nagar Palika, Jind v. Jagat Singh* this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the

question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.

8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injunctioning even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which

would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram v. Delhi Admn.*, *Puran Singh v. State of Punjab* and *Ram Rattan v. State of U.P.* The authorities need not be multiplied. In *Munshi Ram* case it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh* case the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Court laid down the following

tests which may be adopted as a working rule for determining the attributes of "settled possession" (SCC p. 527, para 12):

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.

10. In the cases of *Munshi Ram* and *Puran Singh* the Court has approved the statement of law made in *Horam v. R.* wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter may be dispossessed by the true owner only by having recourse to the due process of law for reacquiring possession over his property."

39. Thus, it is clear that a trespasser cannot be evicted or dispossessed without following due process of law. Even for the sake of argument that the appellant no.1 Subhash Sharma was

cultivating the them forcibly as an encroacher, then still he could be dispossessed only by due process of law and the Indian law respects the possession.

40. The next question that whether a trespasser has a right of private defence to protect his possession or not, is also no more *res integra*. The Supreme Court in the case of **Subramani Vs. State of T.N.** reported in **(2002) 7 SCC 210** has held as under :

“**26.** Mr Balakrishnan then submitted that it is not clear as to who started the assault. The prosecution chose to suppress the genesis and the origin of the occurrence and presented a distorted version before the court. The prosecution feigned ignorance about the injuries suffered by the appellants. It is well settled that the onus which rests on the accused person under Section 105 of the Evidence Act to establish his plea of private defence is not as onerous as the unshifting burden which lies on the prosecution to establish every ingredient of the offence with which the accused is charged, beyond reasonable doubt. In the instant case, though the appellants had suffered injuries on vital parts of the body, even though simple, the prosecution failed to give any explanation for such injuries. We are not persuaded to accept the submission of learned counsel for the State that the injuries being simple, the prosecution was not obliged to give any explanation for the same. Having regard to the facts of the case the omission on the part of the prosecution to explain the injuries on the person of the accused may give rise to the inference that the prosecution is guilty of suppressing the genesis and the origin of the occurrence and had thus not presented the true version. It may well be that the prosecution witnesses were lying on a material point and, therefore, render themselves unreliable, or it may be that the defence version explaining the injuries on the person of the accused is probably the true version of the occurrence which certainly throws a serious doubt on the prosecution

case. In these circumstances and having regard to the findings recorded by the High Court, we are satisfied that the appellants were fully justified in defending their possession as well as their person, having regard to the fact that they were assaulted by the members of the prosecution party who were the aggressors and who had trespassed upon the land which had been in continuous possession of the appellants for over 50 years. They had not exceeded their right of private defence of property and person because the facts and circumstances justify their entertaining a reasonable apprehension that grievous hurt may be caused to them, if not death, by the assailants.

27. It was then submitted by Mr Balakrishnan that the appellants could have taken recourse to move the authorities, in the facts and circumstances of the case. His submission is that they did not at all have the right of private defence. This submission must be rejected in view of the clear finding recorded by the High Court that the appellants had acted in exercise of their right of private defence, but exceeded that right. Unfortunately the High Court did not consider which of the appellants, if any, exceeded the right of private defence. Moreover the right of private defence must be liberally construed. It was observed in *Munshi Ram v. Delhi Admn.*: (AIR p. 706, para 18)

“Law does not require a person whose property is forcibly tried to be occupied by trespassers to run away and seek the protection of the authorities. The right of private defence serves a social purpose and that right should be liberally construed. Such a right not only will be a restraining influence on bad characters but it will encourage the right spirit in a free citizen. There is nothing more degrading to the human spirit than to run away in the face of peril.”

41. Thus, it is clear that the prosecution has failed to explain the serious injuries sustained by the appellants during the same transaction. There is dispute between the parties, over

the question of possession of the lands in question. According to the witnesses themselves, the appellant No.1 Subhash Sharma was in possession of the lands and the possession was handed over to the complainant party only by the orders of the Collector. As already pointed out, no order of the Collector or any proceedings have been placed on record, to show that the complainant party was put in possession of the lands in dispute. On the contrary, the appellants have relied upon the various judgments passed by the Trial Courts to show that the appellant Subhash Sharma was never found to have encroached upon the land. Judgment dated 11-10-1994, Ex. D/6 as well as Judgment dated 20-10-1994, Ex. D.10 which was passed in proceedings under Section 145 of Cr.P.C. and the possession of the land was directed to be handover to the appellant Subhash Sharma have been placed on record. By Judgments dated 29-7-1998 passed in different criminal cases and which are marked as Ex. D.12, D.13, D.13, D.14, D.15, D.16, D.17, the appellant Subhash Sharma was acquitted of the charge of encroaching upon the lands of the complainant party and others. Under these circumstances, it is probable, that the complainant party might have forcibly tried to stop the appellants from cultivating the lands and under this circumstance, it can be safely held that the appellants were entitled to exercise their right of private defence. Although the appellants have not taken a specific defence in this regard, but it is well established principle of law that even without taking a specific defence, the accused can establish, from the material available on record, the availability of his right of private defence. The Supreme Court in the case of **Munshi Ram Vs. Delhi Administration** reported in **(1968) 2 SCR 455** has held as under :

“5. It is true that appellants in their statement under Section 342 CrPC had not

taken the plea of private defence, but necessary basis for that plea had been laid in the cross-examination of the prosecution witnesses as well as by adducing defence evidence. It is well settled that even if an accused does not plead self defence, it is open to the court to consider such a plea if the same arises from the material on record — see *In re Jogali Bhaigo Naiks*. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record.”

42. In the present case, the 12 bore gun was seized from the spot vide seizure memo Ex. P.20. A memorandum of Amra, Ex. P.41 was recorded by Narendra Singh (P.W.17) but there is nothing on record to show that whether the said pistol was seized from his possession or not? Even otherwise, Amra is still absconding and has not been tried, therefore, nothing more is being considered in this regard. However, a very important admission was made by Narendra Singh (P.W.17). Narendra Singh is a Head Constable. In his cross examination, he has admitted that the appellant Subhash Sharma was having an enmity with S.H.O. Rajendra Sharma, and on a single day, as many as 22 criminal cases were registered against Subhash Sharma, although the suggestion of enmity between Rajendra Sharma and Subhash Sharma has been denied by A.K. Singhal (P.W.16).

43. The 12 bore gun was not seized from the possession of the appellant Subhash Sharma and it was seized from the spot itself. Further as the prosecution has suppressed the very genesis of the incident, as there was a dispute with regard to possession over the land in dispute and in view of the admission of Mishrilal (P.W.11) that Subhash Sharma is still in possession of the land on which the fight had taken place, coupled with the fact that there is nothing on record to suggest

that any due process of law was adopted by the complainant party to evict/dispossess the appellant Subhash Sharma but on the contrary, from the various judgments passed by Trial Courts in different cases, it is clear that the appellant Subhash Sharma has been acquitted of the charge of forcibly taking possession of the lands belonging to the complainant party, further, the prosecution has miserably failed in explaining the injuries sustained by the appellants, it is clear that even the allegation of firing gun shots by Subhash Sharma appears to be doubtful. Under these circumstances, this Court is of the considered opinion that the prosecution has failed to prove the guilt of the appellants for all the charges levelled against them. Accordingly, the appellant No.1 Subhash is acquitted of the charge under Section 147,148, 447, 324 (three counts) of I.P.C., 3(1)(iv), 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and under Section 27 Arms Act. The appellants No. 2, 3 and 6 namely are acquitted of the charge under Sections 147, 447 of I.P.C. and the appellant No. 4 Ramkishan is acquitted of the charge under Section 147,447 of I.P.C. and under Section 3(1)(iv) and 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

44. Accordingly, the judgment and sentence dated 20-2-2004 passed by Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Guna in Special Trial No. 78/1993 is hereby set aside.

45. The appellants are on bail. Their bail bonds and surety bonds stand discharged. The appellants are no more required in the present case.

46. The appeal succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
Judge
01/05/2018