

ASSAULT, ATTACK AND BLOODSHED IN AMKA ON 27 MARCH 1947

PRELUDE

The relations between Zamindars and Ryots (Peasants) of Amka were highly strained since early 1946. A number of suits were filed by ryots under section 59 of the UP Tenancy Act (Act XVII of 1939) to have their status as tenants declared in respect of plots number 227 and 228 of village Amka. These plots belong to one of the zamindars Shri Chawal Singh; Zamindars defence to these suits was that the ryots had no right whatsoever to the land and that they had never cultivated the said land. The land was their khudkasht and they had raised the crops standing thereon.

The Ryots had instituted about 30 suits against the zamindars in the revenue courts. These cases were pending at various stages of hearing in different courts. The Ryots had submitted representations to various political leaders of that time including Mahatma Gandhi highlighting atrocities committed by Zamindars against them.

The anger on both sides culminated on the morning of 27 March 1947 when 8 persons were killed and 11 injured in a battle between 8 Zamindars and 30 to 40 persons supporting the Ryots.

CLARIFICATION

This write up is not the verbatim reproduction of the case. The text has been edited and repetitive matter removed. Efforts have been made to include in this article as much information and facts as possible.

It is requested that if any family member or any other person has any kind of material information about the bloodshed that took place in Amka on the morning of 27 March 1947 and on subsequent criminal cases, it may kindly shared with Administrator of the website.

EVENTS DURING BATTLE

The entire occurrence has been very well documented in the proceeding of legal cases, which was dealt with by the Sessions Court, Bulandshahr. After examining every witness of both parties and after considering all relevant facts and keeping in view the circumstance prevailing at the time of fight, the Sessions Judge acquitted all the 12 accused. Against the verdict of the Sessions Court, an appeal was filed in the Allahabad High Court. The High Court also upheld the decision of the Sessions Court.

The entire narrative of the case described in this write up is based on the findings and decisions of the Sessions Court and the Allahabad High Court.

IN THE COURT OF SESSIONS JUDGE BULANDSHAHR.
SESSIONS JUDGE SHRI SHYAM BIHARI LAL.
CRIMINAL CASE NUMBER 46 OF 1947

As per the Criminal Sessions Trial Court No. 46 of 1947 of Shri Shyam Behari Lal, Sessions Judge, the following were the accused in the case:-

1. Shri Inderjit Singh, Thakur, s/o Shri Narayan Singh of Amka aged 47 years.
2. Shri Inderpal Singh, Thakur, s/o Shri Prahlad Singh of Amka aged 20 years.
3. Shri Raghubir Singh, Thakur s/o Shri Risal Singh of Amka aged 70- years.
4. Shri Udai Pratap Singh, Thakur s/o Shri Risal Singh of Amka aged 35 years
5. Shri Devendra Singh, Thakur s/o Shri Raghubir Singh of Amka aged 36 years
6. Shri Rajendra Singh, Thakur, s/o Shri Raghubir Singh of Amka aged 31 years
7. Shri Amar Singh, Thakur, s/o Shri Narpal Singh of Amka aged 38 years
8. Subedar Bani Singh, Thakur s/o Shri Chandra Bhan Singh of Amka aged 57 Yrs.
9. Shri Jiwan Singh, Gujjar s/o Shri Albal Singh of Badpura aged 56 years
10. Shri Aap Singh, Gujjar s/o Shri Jiwan of Badhpura aged 18 years
11. Shri Bhikari, Chamar, s/o Shri Lal Singh of Amka aged 18 years.
12. Shri Bhonta, Thakur, s/o Sri Ram Singh of Amka aged 65 years

Offence committed on 27.3.1947.

Accused committed for trial by Kr. R.P.Singh, Magistrate, first class Bulandshahar on November 11, 1947.

For the crown: Kunwar Persad, Public Prosecutor assisted by Shri Gurbachan Singh Counsel

For the Prisoners: Shri A Hoon Bar-at-law and Shri Udaibir Singh for no 1,2, 4, 9 and 12. Shri Basant Lal for 7, 8, and Shri Dwarka Parsad and Shri Beni Singh for 3, 5 and 6.

Prisoners pleaded not guilty, claimed to be tried.

According to tenants:

1. Booti and Birbal both belonging to village Badpura were in possession of plot numbers 227, 228, and they also cultivated these plots. Both these persons were killed in the battle.
2. Zamindars started damaging the crop. Therefore, an application was filed on 17 March 1947 in the revenue court for its being put into the custody of supurdars and for appraising its market price.

3. All persons who called themselves tenants filed declaratory suits about 30 in number against the zamindars.
4. On 17 March 1947, an application was made in the Revenue Court for issuing a commission and getting the rabi crop attached. However, unfortunately, no orders were passed on that application.
5. On the morning of 27 March 1947 at about 8 or 8.30 AM, the tenants came to know that a portion of crop standing on the fields of Booti and Birbal had been cut on 26 March 1947 and that the remaining crop was being cut by the zamindars on the following day i.e. 27 March. Booti, Birbal, Mukhtar, Dallp, Ram Dayal, Harsukh went to the field to stop the zamindars from cutting the crop. When Harsukh and others reached the fields of Booti and Birbal, they saw that Sunhari Gujar, Shyama Teli and Jiwan were cutting sarson, which was grown on the fields of Booti and Birbal. They also saw Sarvshri Bani Singh, Amar Singh, Inderjit Singh, Raghubir Singh, Devendra Singh, Udai Pratap Singh, Inderpal Singh, Rajendra Singh, Birjvir Singh, Narendra Singh, Aptap Singh standing there.
6. Subedar Bani Singh had a pistol and Amar Singh, Udai Pratap Singh, Devendra Singh and Brijvir Singh were armed with guns. Inderjit Singh, Raghubir Singh and Jiwan Singh were armed with spears while other persons were armed with lathis. There were other persons also. The number was 30 to 35.
7. Booti and Birbal said to Zamindars who were cutting the crop that litigation is pending between you and us and we have prayed for issuing a commission. You can get the crop cut if the court gives you the crop. Thereupon Subedar Bani Singh, Shri Raghubir Singh and Shri Amar Singh said that they did not care anything about the commission and that they would settle the question of issuing a commission then and there. Booti and Birbal replied that since the zamindars had cut the crop, they would remove it because they had been in possession of the crop. Then Booti and Birbal bent down to take the crop. Accused and their companions suddenly attacked Booti, Birbal, and other tenants with pistol, guns, spears and lathis. Eight persons of the tenants side were killed and eleven were wounded.
8. The names of eight persons killed are Mukhtar, Booti, Birbal, Dalip, Ram Dayal, Zaharin, Pershadi and Badlu. Those injured were Harsukh, Chidda s/o Samnan, Chidda s/o Narrottam, Jagram, Itwari, Gyasa, Horam Nathoo, Bhodandi, Smt.Lado and Chetu.
9. Chajjan, Chowkidar made a report at Dadri Police Station at about 10.00 AM. On receiving the complaint from Chajjan, Shri Mohammad Sayed, the

Station Officer accompanied by Second Officer Mahipal Singh and Circle Inspector reached the spot at about 11.00 AM. SO prepared an inquest report and sent the bodies to mortuary. He also saw all the injured persons, recorded statement of eight, and sent them to Sikandrabad Hospital. He found on the spot three lathis lying on plot number 227 and 228. They also recovered eight fired cartridge cases of gun, two live cartridges and four fired cartridges cases of revolver.

10. The SO arrested Shri Raghubir Singh, Shri Inderjit Singh, Shri Devendra Singh and Shri Udai Pratap Singh accused on the same day. Shri Rajendra Singh accused himself appeared at the police station on 29 March and deposited a gun.
11. In hospital, the condition of Harsukh, Gyasi and Chidda s/o Samman became serious. Shri Syed Khurshed Hussain, Tehsildar, who was examined as court witness, recorded their dying declarations.
12. Shri Mohd. Sayed submitted a charge sheet against all the twelve accused persons after completing the investigations.

All accused pleaded not guilty and claimed to be tried. The version of the accused was as under:

They (accused) claimed that months before the occurrence, some people used to go to the village and tell the riyaya that the Zamindari was going to be abolished and that the person who would get his name recorded in the land records will become its owner. In the beginning of October, Babu Ram, Kananga was asking for a bribe and the accused made a complaint against him. In collusion with the riyaya, he got an entry made in the remarks column of the Khasras for Kharif 1354 on 31 October 1946 to the effect that they (riyaya) were in possession of the certain plots, which really belonged to the accused and were in their possession. Based on this collusive entry, the riyaya, about 30 in number, filed declaratory suits against the zamindars but all such suits were dismissed.

On the morning of 27 March 1947, at about 7.30 AM, Shri Inderjit Singh was at his fields, which is to the east of the disputed plots number 227 and 228. These plots belong to Shri Chawal Singh who was not present in the village on that day. Shri Inderjit Singh saw riyaya people standing there and cutting sarson. He went towards them. Shri Inderpal went behind him from his own field to plot No. 227 and 228. Shri Inderjit Singh asked them as to why they were cutting crop in the absence of its owner. Birbal abused him and told him that he shall cut the crop of those fields and that the public had become owner of the land. He also said that they (riyaya) would destroy those Thakurs and Zamindars.

Shri Inderjit Singh asked Birbal not to abuse him. Birbal did not desist. He advanced towards Shri Inderjit Singh and began to beat him and Shri Inderpal Singh with Lathis. In self-defence, Shri Inderjit and Shri Inderpal Singh also used their lathis. In the meantime, Shri Udai Pratap Singh reached there. On seeing that Shri Inderjit Singh and Shri Inderpal Singh were being beaten, he picked up a lathi from there and used it. His Lathi fell down from his hands and he ran away to the village abadi. On hearing this noise, Shri Raghubir Singh, Shri Devendra Singh, Shri Rajendra Singh, Shri Bani Singh and Shri Amar Singh reached there one after the other. When they reached near Shri Inderpal Singh and Shri Inderjit Singh, they asked in a loud tone as to why the other party was beating them and as to why it was cutting sarson. On seeing them, Booti, Birbal and all other persons, about 35 to 40 in number belonging to the riyaya party advanced towards Bani Singh and Others. The later still asked them to go away. However, the riyaya party attacked them with Darantis and Lathis. Then Shri Bani Singh and Shri Amar Singh fired in the air in order to frighten their riyaya but they continued to attack. Harsukh dealt a lathi blow at Shri Amar Singh and snatched his gun. Shri Raghubir Singh fired a shot at Harsukh. Then Shri Amar Singh recovered his gun from Harsukh. The riyaya party even then continued to attack the accused with lathis and darantis. When being compelled, Shri Bani Singh, Shri Amar Singh and Shri Raghubir Singh fired their guns in self-defense. The riyaya continued to attack until they fell down. No accused had any spears.

According to the prosecution, these plots had been in the possession of Birbal and Booti for a long time and that the sarson crop standing on the plots was sown by them and belonged to them. According to the accused, these fields were never in possession of Birbal and Booti or any other tenant or riyaya. These fields had been in the khudkasht of Shri Chawal Singh for a long time and Shri Chawal Singh had raised the crop, which were standing in these plots at the time of incident. The accused alleged that it was the party of Birbal and Booti who were cutting the sarson crop and that they asked the party to desist but that party attacked them and therefore, they in self defence used fire arms. On the other hand, prosecution case is that the accused were getting sarson crop cut by Jiwan Singh, Sunhari and Shyama Teli. Since the crop belonged to them, they asked the accused not to cut the crop. The accused did not listen to them. Then Booti and Birbal said that in case the Zamindars had cut the crop, they would remove it. As Booti and Birbal bent forward to take the sarson crop, the accused attacked them with guns, pistols, spears and lathis.

The Honorable Judge observed that it was necessary to find out if the accused were in possession of plots numbers 227 and 228 and had raised the sarson crop or Booti and Birbal were in possession and had raised the sarson crop. There were about 30 persons in this village including most of the prosecution witnesses who claimed various plots as their tenants. On the other hand, the case of the accused is that none of them

was a tenant and that all the plots were the khudkasht of the Zamindars and has been in their possession. The prosecution witnesses who claimed to be tenants of many plots in the village admitted that they do not have any lease or quabuliat in respect of their plots. Harsukh says that when he was a small child his house caught fire and all papers were burnt and thus there is no writing to show that he is a tenant of the plot. He does not know what papers were burnt. He also does not know if the house of any other tenant was burnt.

None of the prosecution witnesses has any receipts for payment of rent. They said that they had taken the land on batai and they asked for the receipt but no receipts were given to them. No complaint was made about not giving of receipts. None of the prosecution witnesses has got any canal slip or any receipt for the payment of canal dues. Some prosecution witnesses say that they used to pay canal dues to the zamindars but have no receipts. Shri Chawal Singh says he sowed tobacco on plots 227 and 228 in previous years and paid excise duty. The prosecution witnesses did not know if the tobacco was ever sown in these plots. They also admitted that before 1 October 1946, their names were not entered in any revenue paper to show that they were tenants of any plots or that any plot was in their possession. Now the question is how the names of Birbal and Booti have been entered over certain plots on 31 October, 1946.

On 30 October 1946, most of the prosecution witnesses sent a complaint to the Collector of Bulandshahr. Copies of this complaint were sent to His Excellency the Viceroy, Hon'ble Pt. Jawahar Lal Nehru, Hon'ble Pt. Govind Ballabh Pant, The Superintendent of Police of Bulandshahr and Tehsildar, Sikandarbad, District Bulandshahr. In this complaint, they stated that they had been cultivating land in village Amka since long. However, according to new rules the landlords have refused to give land to them for cultivation. This shows that on 30 October 1946, they were not in possession of these plots. Then they go on to say that, they made inquiries from the village Patwari who told them that their plots or fields were given to their ancestors and not to them. This shows that prosecution witnesses had no personal knowledge that the plots were the tenancy plots of their ancestors,

In the said complaint, they further say that landlords had reaped all the crop forcibly and beaten them and their families and caused them a total loss of Rs. 6000/-. No report was made in this regard and no legal proceedings were taken against any zamindar including Shri Chawal Singh. In the end, they say that necessary action might be taken to remedy matters and to let the complainants have the lands in question for cultivation. This shows that the complainants have no possession of these plots.

In this complaint, it is also stated that landlords threatened the complainant and came out with guns and said that they would be shot dead if they complained to higher authorities. But before the court Harsukh admitted that before 27 March 1947, there never was any quarrel about any land between tenants and zamindars. Chidda s/o Samman also admitted that he had put his thumb impression on this application. He does not know who scribed it and that he put his thump impression at the instance of Booti and Birbal. Jagram also admitted that he put his thump impression at the instance of Narottam. He does not know its content. Similarly, Mangal, Rajpal, Khima admitted to have put their thump impressions on the application at the instance of someone and they do not know its contents.

The hon'ble Judge observed that he has no hesitation in saying that the allegations made in the complaint against the zamindars were not true. Most of the persons who came to the witness box who also thumb marked said that complainant do not know its contents, But this complaint clearly shows that on 30 October 1946, Booti and Birbal were not in possession of plot no 227 and 228.

A strange thing happened on 31 October 1946. The names of Booti and Birbal were recorded in the remarks column of the Khasra as being in possession of plots no. 227 and 228. Not only this, over 20 holdings comprising various plots, the names of various riyaya including those who have been killed and those who have been injured in the present occurrence, were recorded in the remarks column of Khasra as being in the possession of various plots.

The change was brought about in this manner. On 1 October 1946, Subedar Bani Singh, Shri Raghbir Singh and Shri Chawal Singh made an application to the Collector complaining against Babu Ram Sharma, the then Supervisor Kanungo. It was to the effect that he was exciting their riyaya. Ramanand Patwari and Babu Ram Kanungo went to the village Amka. Babu Ram recorded the statements of about 23 riyaya people to the effect that they were tenants of certain plots and on the basis of these statements and without any further inquiry, ordered the Patwari to make the entries in the Khasra and the Patwari did so.

Ramanand Patwari said that plots no 227 and 228 belong to Shri Chawal Singh and he is the exclusive owner. The plots were khudkasht of Shri Chawal Singh; it was on 31 October 1946 that he recorded the names of certain persons as being in possession as tenants. He admitted that in 1353 F, the zamindars of those plots were in possession of those plots as their khudkashat and not these persons. He further said that he had verified the Jamabandi for 1353 F and confirmed that the zamindars were in exclusive possession and that canal slips were issued in their names.

Ramanand said that he made entries about the possession of the riyaya at the instance of Kanungo and not after the partial (verification), He said Kanungo did not record the statements of any other person except the 23 tenants. He did not interrogate any of the zamindar and did not record the statement of any of them.

Babu Ram Sharma was the Kanungo who ordered the disputed entries to be made on 31 October 1946. He says that he had received instructions from the then Superintendent Kanungo to the effect that if any person gives a statement in writing to the effect that he was a tenant of a certain plot then an entry about his possession should be made in the remarks column of the Khasra. No order of the Superintendent was produced before the Judge. Babu Ram also admitted that he ordered Ramanand Patwari on 30 October 1946 to take charge of Amka and that he did not send the statements of 23 persons to the Tehsil. Babu Ram admitted that before 31 October 1946, the possession of any of the plaintiffs of 30 revenue cases including those of Birbal and Booti is not entered anywhere in any paper before that date. Babu Ram made the entry of the possession of Birbal and Booti in the remarks column against plot no 227 and 228 and against all other plots in Kharif 1354F with black ink. Entry in black ink shows that this entry had continued from previous years, which is not a fact. The entries should have been made in red ink because they were new. He also admitted that the Zamindars in this case complained against him and he was transferred on 15 January 1947. Beyond taking statements of 23 tenants, he did not make any further enquires and that before 31 October 1946, nothing came to his knowledge that relations between zamindars and tenants were not good.

The complaint of zamindars against Babu Ram Kanungo was entrusted to Shri Amba Prasad, Naib Tehsildar, Sikandrabad for enquiry. He concluded that Babu Ram was in collusion with the riyaya against zamindars and suggested that he should be transferred and Collector did transfer him.

When Babu Ram had ordered the names of Birbal and Booti and other riyaya to be entered in the remarks column of the Khasra, then Birbal and Booti and 29 other persons brought declaratory suits against their zamindars. In all the 30 suits, a common ground was taken that the plaintiffs has been cultivating their plots for 50 years. All those 30 suits were dismissed after the present occurrence on 27.3.1947. Appeals in all these suits are pending before the Commissioner. The Honorable Judge observed that he has no hesitation in saying that Birbal and Booti were never in possession of plots numbers 227 and 228, that Shri Chawal Singh, the Zamindar, had been in possession of those plots, and the wheat and sarson crops were raised by him and not by Booti and Birbal.

On behalf of the prosecution, it is said that some sarson was also cut on 26 March 1947. However, Hasukh PW admits that he did not see the crop being cut on 26 March

as on that day he was at Bulandshahr. No one informed him on 26 March either at Bulandshahr or at Amka that crop had been cut. He came to know about this fact on the morning of 27 March 1947. Had any crop been cut by the zamindars on 26 March then certainly Harsukh would have been informed about it in the evening of 26 March 1947 when he returned from Bulandshahr to Amka. Harsukh says that Zaharin had told him that sarson had been cut on 26. But Zaharin is dead. Harsukh did not inquire from Zaharin in whose presence it had been cut. He does not know up to now in whose presence it had been cut. It is an admitted fact that on 26 March, the plaintiffs of only a few cases came to Bulandshahr and the other plaintiffs were at Amka. Had the crop been cut on 26 March 1947, the fracas (marpeet) would have taken place on that day itself.

According to prosecution case, the Zamindar accused were getting the sarson crop on plots no. 227 and 288 cut by Jiwan, Sunehari and Shyama. When the party of Birbal and Booti protested, zamindars fired guns and pistols at them and injured them with spears and lathis. On the other hand the case of accused is that Booti, Birbal and other men of their party were cutting the sarson and when they were asked by Shri Inderjit Singh and Shi Inderpal Singh not to cut sarson they beat these two persons. Subsequently when Shri Raghbir Singh, Shri Devendra Singh Shri Rajendra Singh, Shri Amar Singh and Subedar Bani Singh reached there and asked Birbal and Booti to desist, the latter attacked them and then these accused used their firearms and lathis in self-defence. Now it is to find out which version of these two parties is correct.

Chajjan, Chowkidar made an FIR at 10.00 AM, on the same day, shortly after the occurrence. According to FIR, riyaya had gone to the field of zamindars at 8 or 9 AM to forcibly cut the sarson. Sarvshri Inderjit Singh, Inderpal Singh, Raghbir Singh, Amar Singh, Devendra Singh, Udai Pratap Singh and Subedar Bani Singh asked them not to do so but in vain. Chowkidar named about 14 or 15 persons of the tenant party in the FIR and says that plaintiffs attacked the zamindars, whereupon the zamindars used their firearms with the result some of them have been killed and some have been injured.

Prosecution said that Chajjan, the chaukidar, was not an eyewitness of the occurrence and that he is siding with the zamindars. Chajjan lives in the same mohalla in which all other prosecution witnesses live. Chajjan says that he saw the occurrence while he was standing at a well to the north east of the plots numbers 227 and 228. Harsukh did not state this fact before the police. He did not state this fact even in his dying declaration. This case also came before the predecessor of the honorable judge also, he did not say that Chajjan was against the tenants and was not present there. Harsukh admitted that he along with Chajjan, Chidda, Itwari and Gyasa P.W's had taken some land from Ladaiti to cultivate. If so, it cannot be said that Chajjan was siding with the zamindars.

Chetu and Chidda s/o Narottam also did not state either before the police or before the Committing Magistrate that Chajjan was not there or that he had become hostile. The very fact that Chajjan had named Sarvshri Inderjit Singh, Inderpal Singh, Raghubir Singh, Amar Singh, Devendra Singh, Udai Pratap Singh, Subedar Bani Singh and Bhonta show that he was not sympathizing with the zamindars and that he stated there whatever he had seen.

Chajjan, Chowkidar said that fighting was going on very hotly from both sides and that none of the zamindars had any spears. Shri Raghubir Singh and Shri Amar Singh had guns and the remaining zamindars had lathis. None of the injured has received any punctured or incised wound. He could not see as to who fell down and as to who beat whom. He also does not know which party first dealt the blow and started the fight. According to Honorable Judge, it seems that Chajjan was present at the well and saw the occurrence from a distance.

Before the police, Chetu PW, stated that he was cutting sarson in the field of Booti along with his other companions. At that very time Subedar Bani Singh, Sarvshri Amar Singh, Devendra Singh, Chawal Singh, Rajendra Singh, Udai Pratap Singh came armed with pistol and guns. Shri Inderjit Singh armed with a spear and Shri Inderpal Singh armed with a lathi. They asked us not to cut sarson but we did not comply with their request. His companions, who live in Amka attacked Thakurs. Harsukh and Chetu deny that they made these statements before the Daroga. They now say that Daroga is in collusion with the accused. Chetu says that when the Daroga recorded his statement, he read over to him before the Committing Magistrate, and then he inferred that he had colluded with the zamindars. Before the Committing Magistrate, also he told that the Daroga had colluded with the zamindars. He is not aware whether Magistrate had noted this fact or not.

The entire statement made before the Committing Magistrate was read over to Chetu. After hearing it, he says that he was not questioned there about this statement made before the police and that he did not deny it there. His statement made before the police was not read over to him and that he did not tell the Magistrate that the Daroga was in collusion with the zamindars and had written his statement wrongly. He also did not complain to any authority that the Daroga had written his statement wrongly. Chetu did not mention this fact to any one before the Honorable Judge examined him.

Chidda son of Narottam PW also says that Daroga recorded his statement wrongly and was in collusion with zamindars. Daroga did not read over his statement to him that that till now no one read over to him his statement recorded by the police. He further said that after he had been examined by the Magistrate he again came to Bulandshahr and Rambal's statement read over to him by the Magistrate. Rambal told him that the Daroga had written wrong statement of all of them. Chidda enquired from Rambal which

portion of his statement was wrong and Rambal replied that in case his statement was wrong then, Chidda's statement would also be wrong. After that, Chidda did not enquire what wrong statement the Daroga had recorded. The only mistake, which Rambal told him, was that the Daroga did not write the names of some of the accused given by him. From it is clear that this witness has no basis for saying that Daroga is in collusion with the accused.

Nathoo PW also said that the Daroga had written a wrong statement. But, he admitted that before today he did not make this complaint against the Daroga to anyone else. He had heard the statement of Rambal who told him that Daroga had not recorded whatever he had stated before him. Because Rambal's statement was not written correctly, therefore he thought that his statement too would not have been recorded corrected by the Daroga.

Shri Mohd. Sayed, the Station Officer who investigated this case said that in the statement of witnesses he wrote only what witnesses stated before him and nothing else. He said that it is wrong to say that he did not write what the witnesses stated before him. He wrote nothing that was not stated by them. Shri Mahipal Singh, the Second Officer as well as the Circle Inspector had gone with Mr, Sayed to the spot. The Superintendent of Police and the SDM also reached the spot same day. Shri Mohd.Sayed had talked to injured people. In these circumstances, the Honorable Judge did not think that Shri Sayed would have tempered with the statements, which he recorded.

This shows that tenants had gone to cut sarson and the zamindars were not getting sarson cut. On 26 March 1947, the learned counsel of Birbal and Booti and others had told them they could cut sarson if they had sown it. The next morning sorson was cut. Therefore, it was the party of tenants, which was cutting sarson. On behalf of prosecution, it is said that Jiwan, Sunheri and Shyama were cutting sarson. As regards Jiwan, most of the prosecution witnesses say that he had a spear with him and that he caused injuries with his spear to men of the tenant's party. But the PME (Post Mortem Examination) reports and injury report show that not a single person out of 8 dead and 11 injured had received any incised or punctured wounds. Therefore, it is very unlikely that Jiwan was cutting sarson.

The next question is as to how many persons formed the tenant's party and how many persons formed the party of zamindar. Out of tenant's party, eight were killed and eleven were injured. Therefore, this party was at least 19 strong. Harsukh says that Rajpoal, Mangal, Khimma, Bhawani, Hardas, Narottam, Niddha, Shripal and Kaley were also there. This means that there were at least 28 persons in the tenant's party. In his dying declaration recorded by Shri Syed Khurshed Husssain, the Tehsildar, Harsukh has given names of 24 persons who he says had gone to remove sarson. They went

together. Before the Honorable Judge, prosecution witnesses tried to show that not all persons went there together. They said that some witnesses reached the place of marpit from his home, some from fields and some from the pathways. Nevertheless, all of them heard the initial talk, which took place between the leaders of the two parties. This shows that all of them went together and did not reach there one by one and the attempt on the part of prosecution to show that they did not gather is wrong.

Harsukh says that when he made the statement before Tehsildar, he was unconscious. The Honorable Judge did not believe that Harsukh was unconscious when he made the statement specially when there is a certificate of Dr. Dubey to the effect that at that time Harsukh was in his proper senses. This shows that the number of persons of tenant's party was not less than 28.

Now the question is how many persons were on the side of the accused. Harsukh says that besides the present accused 10 or 12 other persons were there. But he cannot name any of them. Horam says there were 30 or 35 persons on the side of zamindars. Chidda also gives the same number. Chetu says that 16 or 17 other persons were standing at a distance of 2 or 3 paces from him but he does not recognize any of them and does not know if they belong to his village or not. Gyasa gives their number as 15 or 16 but he too did not recognize any of them. Jagram says that the total number of zamindar's party was 30 to 35. He could recognize only first nine accused and no one else. All these persons were at a distance of 2 or 3 paces from them. Chidda gives the number as 15 or 16. Nathoo, Mangal and Khima give their number as 30 or 35. But none of these witnesses could recognize any one of them.

Some of the prosecution witnesses said that they could not recognize these persons owing to thick smoke caused by the firing of guns. But they must have seen and recognized these persons before the marpit began. The empty cartridges were examined by Superintendent In charge of the scientific section and he says that these cartridges were smokeless. Even then, none of the prosecution witnesses could recognize even a single individual of the zamindar's side. The Honorable Judge writes in the judgment that he is not prepared to believe that beyond the first eight accused there was any one else on the side of the zamindars.

The next question was about the arms, which the accused were carrying. Harsukh says that he could not recognize those who were armed with spears. In cross-examination, he says that Shri Inderpal Singh and two others had spears. He further said that Chidda son of Samman and Gyasa received spear wounds. However, their injury reports show that neither of them received any punctured or incised wound.

None of the prosecution witnesses says that Shri Inderjit Singh, Shri Raghbir Singh and Shri Jiwan had spears and they used it.

Gyasa says that Jiwan thrice thrust him with his spear. Jagram also says that Jiwan gave Gyasa a spear thrust. Other witnesses also said that Jiwan had a spear and used it. However, the PME and injury reports show that not a single person on the tenants side received either an incise wound or a spear wound. Therefore, this part of the prosecution case that any one of the accused persons are armed with a spear is wrong and cannot be believed even for a moment.

Harsukh says that Shri Raghbir Singh had a lathi. But before the police he said that Shri Raghbir Singh had a gun. Chidda does not remember what weapon Shri Raghbir Singh had. Other witnesses say that Shri Raghbir Singh had a spear. The Honorable Judge writes in his judgment that he has already mentioned on this point that no one of the accused had a spear and that Prosecution witnesses on this point cannot be believed. Shri Raghbir Singh himself admits that he had a gun with him and that he used it. The Honorable Judge further writes that he has no doubt that Shi Raghbir Singh was armed with a gun and not with a spear. This shows that the statements recorded by Mr. Sayed are correct.

Now the Honorable Judge deals with the main occurrence. Harsukh says that Birbal and Booti said to persons on the day of occurrence who were cutting sarson that litigation was pending between them and that they (Booti and Birbal) had prayed for issuing a commission and that the other party was putting obstacles in issuing the commission. The other party could get the crop if the court gave the crop to them. Subedar Bani Singh and Shri Raghbir Singh said they did not know anything about the commission and that they would settle the question of issuing a commission there and then. Then Booti and Birbal said that though the other party had cut the crop they would remove it because they had been in possession of the crop. When Booti and Birbal bent upon to take the crop, accused and their companions suddenly attacked Booti and Birbal with guns, pistol, lathis and spears. The accused also attacked other tenants namely Mukhtar, Dalip, Ram Dayal, Zahria, Pershadi, Chidda s/o Samman, Chidda s/o Narottam, Horam, Itwari, Jagram, Natthoo, Gyasa, Bhodandi, Smt.Lado and Harsukh. Eight persons died and eleven received injuries. Every prosecution witness repeats this story.

The Judge has already mentioned that it was the party of Booti and Birbal, which was cutting the sarson. Theirs was a concerted action. Apart from it if the party of Booti and Birbal went to cut Sarson then at that time, the accused could not have been present at the field. Shri Sayed, SO says that the sarson of the entire plots numbers 227 and 228 had been cut. Had the zamindars been present on the spot then firing would have been resorted to as soon as Birbal, Booti, and their men attempted to cut sarson and sarson would not have been cut. This part of the prosecution case as to how the fighting began cannot be believed.

As per site plan, both plot numbers 227 and 228 formed one field. To the east, south and west of these plots are admittedly, the plots of Shri Chawal Singh and to their north is the pathway. According to Harsukh, marpit took place in the south of the disputed plot. Also according to prosecution witnesses, firing was resorted to by the accused as soon as Booti and Birbal bent forward to take the sons crop. Therefore, it would be seen that dead bodies would have been found lying in this sarson field. But is not so. Shri Sayed and Shri Mahipal Singh say that the dead bodies and injured persons were found lying in another plot of Shri Chawal Singh, which is to the southeast of the disputed plot. In this field, there were sugar cane stumps at that time. Some of the prosecution witnesses said that when firing was resorted to by the accused, the men of Birbal and Booti party folded their hands and entreated the accused not to beat them. The men of Birbal's party were receding backward all the time firing was being done. It is for this reason that they fell down in the sugar cane field and not in the disputed field. I (Judge) am not prepared to believe this.

Harsukh says that on 27 March 1947, only sarson was cut. Had the tenant's party cut the sarson crop, then it would have used only one or two laborers. If so, why at least 24 persons went to cut the sarson? Out of the persons who went to cut the sarson, except Booti and Birbal, no one had any concern with this sarson. It is also an admitted fact that no one of these persons ran away even when firing was resorted to and that they went away only after eight persons had been killed and eleven injured. There is not the least doubt that the intention of Booti and Birbal and their companions was to cut and remove sarson by show of and if need be by use of criminal force.

Harsukh says that the persons who received gunshots fell there. He continued to fold his hands before the zamindars. For about six minute, guns were being fired and even after guns were being fired Hasukh continue to fold his hands. He did not run away from there. During all this time with folding hands, he was entreating Chaudhry Saheb not to beat him and men of his party. He did not see any men of his party running away from there. The only conclusion is that 25 to 30 persons of his side did not runaway because they were fighting with the accused and they wanted to take away the crop. He admits that had his party allowed the zamindars to take the crop, no marpit would have taken place, as they wanted nothing else.

Horam PW described the occurrence almost in the same manner in which Harsukh described it. He said that he had no quarrel with the zamindars and he had no concern with Birbal's field. Then it is strange as to why he went with Birbal to remove sarson. He says that when he reached the field and heard the talk then he came to know that fight was going to take place. He did not run away from there because time was so short. He too did not back because he folded his hands and asked them not to fight. However, Thakurs did not reply to his entreaties. Shri Inderpal Singh gave him a lathi blow, and he fell down and became unconscious. Before the Magistrate, he had stated that he

remembered all those things, which he had stated before him three months after the occurrence. He also said that he had stated whatever he had deposed before him that day for the first time that day and did not share them with anyone. He said before the police that Booti had taken to his field those who had been killed and those who had been injured in order to get sarson collected. The Thakur zamindars reached there and asked tenants not to do so. When tenants did not accede to their request, Subedar Bani Singh Shri Amar Singh and Shri Raghubir Singh told them that they would shoot them. Thereupon Booti, Birbal, Mukhtar attacked them with lathis and Shri Inderpal dealt lathi blows upon him and he fell down and became unconscious and did not know what happened subsequently.

Dalip is the real brother of Horam. He does not know if he has filed any suit against the zamindars. But exhibit no. 26 shows that Dalip and Horam had filed suits against the zamindars. He also saw with his own eyes that spears were being used. Horam did not see who was injured with whose spears. Subsequently, he came to know that Chidda s/o Samman had received spear wounds. However, the injury report of Chidda s/o Samman does not show that he received any spear wound. Then he says that as soon as he reached the fields, he received a lathi blow, fell down and became unconscious. If so, he (Horam) could not have seen the occurrence at all. Then he says that he regained conscious after 3 or 4 days. But the Darogha recorded his statement on 27th March 1947. Mr. Sayed says that the persons whose statement, he recorded on 27 March were in their proper senses. It is only three persons who were unable to give him any statement on that day. However, Horam is not one of them.

Chidda s/o Samman had also filed a suit against the zamindars. He also says that spears were used by the zamindars. Jiwan gave him three spear thrusts. He does not know who caused spear wound to others. Nevertheless, as observed by the Judge none of the eight killed and eleven injured received any incised and punctured wounds. Therefore, this statement cannot be believed. Chidda further said that he and other tenants of Amka had taken land in Gujarpur because they had no land in Amka. The Tehsildar recorded his dying declaration as well. In it, he says that Shri Chawal Singh gave him three spear thrusts. Other witnesses say that Shri Chawal Singh was not present in the village on that day.

Chetu is another material witness. He says that Shri Chawal Singh was present there. Then he says that it was for the first time that when he was examined before the Magistrate, he came to know that his brother had filed a suit against the zamindars. He and his brother lived together and cultivated land jointly and still his brother did not tell him that he had filed a revenue suit. He also saw spears being used. Three of the accused used spears but he does not know whether they used spears ten times or one hundred times. He says Chidda was injured with a spear. The Honorable Judge already observed that it is not a fact. None of his companions told

him that he had received any spear wound. He did not run away from the scene of marpit although he was at a distance of 2 or 3 paces from the place where firing was taking place.

Chetu stated before the police that on the morning of occurrence he along with other companions was cutting sarson in the field of Booti. At that time, the eight accused went there and asked Birbal and his companions not to cut sarson. But they did not comply with this request and Birbal and his companions attacked Thakurs. He did not see any accused being beaten although a number of them have received injuries.

Gyasa PW is the next material witness. He was going to Kailash Pur to work for wages. When he saw persons collected in the field of Birbal, he went there. He also described the occurrence in similar manner as other witnesses. He says that Jiwan gave him a spear thrust and Shri Chawal Singh gave him a Lathi blow. Shri Chawal Singh was not present there and this witness did not receive any spear wound. The strangest thing is that this witness had not heard until he was examined before the Judge that 30 suits had been filed against the zamindars. He does not know the number of his plots. Nor can he give their boundaries or area because he does not know these things. He admits to have taken land from Ladaiti but does not know who else has taken land jointly with him. Ladaiti had filed a suit against him and also filed a written statement. But he does not know who his vakils were in that case. By chance, his vakils were standing in courtroom when he was being examined. The witness after seeing them said that he did not know if they were his vakils. Then he says that during the time guns were being fired three tenants also used their lathis against the zamindars. At that time, there was a distance of 1 or 2 paces between men on each side.

Jagram PW is another witness. He stated before the Committing Magistrate that Birbal and Booti had gone to remove the crop and were attacked. He did not run away because he had no opportunity to escape. He says that the men of zamindars party were standing in the field adjoining the disputed plots and to their southeast. They were standing in the field of sugar canes. The sugarcane was cut and stumps were standing there. According to the prosecution case, Birbal and his companions were in the wheat field when they were attacked and injured. But the dead bodies of all the persons who had been killed were found in the sugar cane field. Had the zamindars killed Birbal and Booti and his companions when the latter were in the wheat field, their dead bodies would have been found in the wheat field. But this is not the case. Witness admits that 20 or 22 persons of the party of Birbal and Booti had at the time of occurrence gone outside the field of Booti and Birbal. He further admits that the eight persons who had been killed and eleven who have been injured were at a distance of two to four paces from the zamindars when they received injuries this shows that the men of tenants party did go near the zamindars. This witness says that tenants were entreating the zamindars and zamindars were receding from the wheat field into the sugar cane field.

The Judge put the same question again to him and then he said that the tenants receded back entreating the zamindars and the zamindars also reached that field. But this is not borne out by the fact that according to this witness Thakurs were facing east and the tenants were facing south. If the tenants were facing south and if they were receding back they so would have gone towards the North of the wheat field and the Thakurs would have gone to the sugar cane field and the distance between the two would have widened. and guns could not have been fired from a distance of three paces.

Chidda s/o Narrottam PW also described the occurrence in the same manner in which others have described. He also does not know that 30 revenue suits have been filed against the zamindars although his father Narrottam is admittedly a Pairokar in all those suits. In his cross-examination, he says that his father had filed a suit in respect of field where he was going on the day of occurrence. He also saw Jiwan thrusting a spear in Gyasa's body and Shri Inderjit Singh and Shri Raghubir Singh thrusting a spear into the bodies of persons who are dead. But PME and injury reports show that there was not a single incised or punctured wound. He also says that none of the tenant's party ran away because no one could get an opportunity to do so. He admits that all those who died were laying in the field of Shri Chawal Singh at a distance of 15 to 20 paces from the field of Booti. He says that even after receiving gunshot wounds with the hands folded and entreating, the tenants receded backwards until they reached Shri Chawal Singh's field. All other remaining persons who had been killed and all the eleven persons who had been injured also did the same. He also says that when the zamindar's party was standing in Shri Chawal Singh's field, the tenant's party put them under pressure and then a lathi fight ensued and guns were also fired at that time. This shows that the people of tenant's party were the aggressors and the accused fired their guns in self-defense.

Before Committing Magistrate, Nathoo PW said he heard a noise and thought that a fighting was taking place between the Thakurs and the Birbal and Booti. He then left his house with a stick, which was not a lathi. If so, he must have reached the place of marpit at a very late stage and could not have heard the talk between Birbal /Booti and the Thakurs, which he says he did. Then he also says that Chidda and Gyasa received spear wounds. This is wrong.

Mangal PW was going to Kailashpur on the day of occurrence at about 8.00 or 8.30 AM. He saw people collected in the field of Booti. He went there. According to him, Shri Inderjit Singh and Shri Raghubir Singh had spears. This cannot be believed. He did not receive any injuries although he was at a distance of five or six paces. He ran away from there only after eight people had been killed and 11 injured. He was going to Kailashpur to cut the crop but he was not having any daranti. He also entreated with the zamindars with folded hands. He did not receive any injuries. He did not leave the field

after the first shot was fired but he left only after all the nineteen persons had fallen down. After the occurrence, he went to Kailashpur. His brother Zaharia was killed but he did not make a report at the police station, which is at distance of only two miles from Amka. No report was made because they knew that they were aggressors. This witness says that all eleven injured were unconscious. However, the Daroga recorded on the spot the statement of eight out of eleven injured persons.

Khimma PW was not injured. He says that Shri Raghubir Singh and Shri Inderjit Singh were armed with spears. He has filed a suit against Shri Inderjit Singh but does not know the reason of filing the revenue suit. He was standing at a distance of two paces from the armed zamindars but was not injured. He is the real brother of Badlay who was killed but did not make any FIR. He remained there until eight were killed and eleven injured and did not run away from there when the first bullet was fired. Before the Police, he said that on the day of occurrence Booti had taken him and others to the field to remove sarson crop, which zamindars had cut. When they began to remove it, Thakurs reached there. Subedar Bani Singh and others asked the tenants not to remove the crop and then Booti said that the field belonged to him, that he had sowed and cultivated it, and that the zamindars could not cut it. Then Subedar Bani Singh asked the tenants to run away and Shri Amar Singh fired in the air. Thereafter a lathi fight ensued. He also said that Shri Chawal Singh was not present. This shows that Birbal's party was the aggressor.

Rambal PW reached the field before the marpit began and remained there until the end. Booti and Birbal are his real uncle's sons. He also did not go to police station to lodge a report despite two of his brother's and uncle Mukhtar had been killed. He apprehended that he too might be killed. Then he was put a very pertinent question as to why he did not run away from there during the course of marpit and if he stayed there why he did not try to help his brother. He replied that he had no knowledge of fighting. This shows he is not an eyewitness. Then he says that he does not know if the Superintendent of Police went to his village on the day of occurrence as on that day he was not in the village. He had gone to a relative in another village. Before the Daroga, he said that his brothers Booti and Birbal had taken him and other tenants to get his wheat and sarson cut. According to him, Shri Inderjit Singh, Shri Raghubir Singh and Jiwan had spears. This is wrong.

Itwari is the last witness. Just before the occurrence, he was going to his field. However, he does not know if it was the same field in respect of which he had filed a revenue suit. He also said he had many other fields in Amka. He has eight fields and Shri Amar Singh is the zamindar of all of them. He admitted that he has filed a suit in respect of all these eight fields. Before the police, he said that he and 19 other persons had gone to Booti's field to cut sarson. Subedar Bani Singh and other Thakurs zamindars asked them not to cut it and asked to runaway but Booti, Birbal and Dalip

told them that they would not go away even if they were killed. According to this witness, there was indiscriminate fighting. He also says that Shri Inderjit Singh, Shri Raghbir Singh and Jiwan had spears.

Chajjan PW says that on the zamindars asking the tenants not to cut the crop, the crop was not cut but the tenants become ready to fight. He does not know which party first dealt the blow and started the fight. But Shri Inderjit Singh and Shri Inderpal Singh were struck before other zamindars reached there. On the other hand, theory of the first eight accused is that on the day of occurrence at about 8.00 AM, Shri Inderjit Singh was at his field, which is to the east of the disputed plots numbers 227 and 228. When his attention was attracted towards those plots, which belonged to Shri Chawal Singh, he saw some riyaya people standing there and cutting sarson crop. He went towards them and Shri Inderpal Singh went behind him from his field and asked the riyaya people as to why they are cutting crop in the absence of its owner. Birbal abused him and told him that they would cut the crop of that field that day and that the public had become the owner of the land. In addition, they said that they would destroy the zamindars. Shri Inderjit Singh asked him not to abuse. Thereafter Birbal abused and advanced towards Shri Inderjit Singh. He began to beat Shri Inderjit Singh and Shri Inderpal Singh with lathis. In order to save themselves, they also used their lathis. Shri Udai Pratap reached there in the meantime and he used his lathi. His lathi fell down from his hand and he ran away to the village. This according to the accused this is the first part of the occurrence.

Then, Sarvshri Raghbir Singh, Devendra Singh, Rajendra Singh, Bani Singh and Amar Singh reached there and asked in a loud tone as to why the riyaya was beating Shri Inderjit Singh and Shri Inderpal Singh and as to why they were cutting sarson. On seeing these accused Booti, Birbal and other persons about 35 to 40 in number advanced towards them. Subedar Bani Singh and other accused asked them to go away. But the riyaya party attacked them. Then Subedar Bani Singh and Shri Amar Singh fired in the air in order to frighten the riyaya but they continued to attack. Harsukh had advanced and dealt a lathi blow at Shri Amar Singh and snatched away his gun. Then Raghbir Singh fired a shot at Harsukh. Then Amar Singh recovered his gun from Harsukh but the riyaya party continued to attack the accused with lathis. Subedar Bani Singh, Shri Amar Singh and Shri Raghbir Singh fired their guns in order to save themselves and other accused. These riyaya people continue to attack until they fell down. No one from among the accused had a spear. The accused were standing in the sugar cane field, which is to the South East of plot numbers 227 and 228. This is the second part of the occurrence.

The accused have produced Panna Lal and Badri Prasad as Defence Witnesses. Both these witnesses belong to village Dhoom that is not far away from Amka. Both these witnesses support the defence theory. Panna Lal pays Rs. 100/- as land revenue of his

share and Rs. 325/- as land revenue in his capacity of a lambardar. He is a commission agent for food grains and carries on this business at Dadri. The only thing against him is that Hari Dutt, his distant cousin, is a Mukhtar-Am of Shri Raghubir Singh accused. It was suggested this witness is a tenant of Shri Raghubir Singh and I have no reason to disbelieve him on this point. The only point against Badri Prasad is that Ch. Pancham Singh of Dhoom had given him some of his land and Pancham Singh is distantly related to the accused.

Chajjan, Chowkidar also says that Shri Inderjit Singh and Shri Inderpal Singh were beaten before any other zamindar was beaten. The Judge think that this fact is borne out by the circumstances of this case as well, Harsukh admits that there are field of Shri Inderjit Singh and Shri Inderpal Singh to the east of plot numbers 227 and 228 and are separated from it by 1 or 2 fields. Therefore, the probability is that when Booti and his party went to cut the sarson crop the attention of Shri Inderjit Singh and Shri Inderpal Singh were first attracted to that field and they were the first among the accused to reach there. Shri Inderjit Singh received no less than 9 injuries and Shri Inderpal Singh received 11 injuries. Other accused have received one or two injuries each. The injuries of Shri Inderjit Singh and Shri Inderpal Singh cannot be self-inflicted because they were admittedly arrested on the same day. I (Judge) am not prepared to believe that if Subedar Bani Singh, Shri Amar Singh and Shri Raghubir Singh were there with their revolver and guns, they would have allowed the people of riyaya party to cause so many injuries to Shri Inderjit Singh and Shri Inderpal Singh. Apart from this, it was not for the first time before the Committing Magistrate that the accused put forward their version of the case. On 29 March 1947, Shri Rajendra Singh went to the police Station, Dadri and made a report in writing. He also gave a gun to the police. This report gives the defence version of the occurrence. This means that in defence case put forward before me now is not an afterthought.

As regards, the second part of the occurrence as given by the accused, I think that it has been amply borne out not only by the defense witnesses but also by the cross examination of all prosecution witnesses. There is no doubt that the action of the riyaya was a concerted one. None of the prosecution witnesses could explain the injuries received by the zamindar accused. This means that the riyaya did also use lathis and causes injuries to the accused. There is no evidence on the side of the prosecution to show that they caused those injuries in self-defence.

On the previous day, the Vakils of the Riyaya had told them that they could cut the crop if they had sown it. In the morning of 27 March, at least 24 persons and probably more who had no concern with plots numbers 227 and 228 went to cut sarson crop. These fields were the khudkasht of Shri Chawal Singh who was not present in the village on that day. In the eye of the law, the crop belonged to Shri Chawal Singh. Booti, Birbal, and their companions had no right to cut the crop. On the side of the accused, there

were at first three persons namely Shri Inderjit Singh, Shri Inderpal Singh and Shri Udai Pratap Singh and subsequently, S/Shri Raghbir Singh, Devendra Singh, Rajendra Singh, Amar Singh and Subedar Bani Singh reached there. The allegation of the prosecution that there was about 35 to 40 person on the side of the accused is false. None of the prosecution witnesses could name a single person apart from the accused. They do not know which village those persons belonged. Thus, the number of riyaya was at least thrice the number of zamindar accused. The prosecution witnesses themselves admit in their statement before the police that they had gone to Booti's field to remove sarson. Some of them had stated that Booti had said that he would take away sarson even if he were killed. This shows that they wanted to cut and remove sarson by show and use of criminal force. In these circumstances, accused 1 to 8 had a right of self-defence of property. It is almost certain that it was the riyaya party, which first attacked the zamindars. Some of the PW's admitted before police that at first the zamindars had fired in the air. However, the riyaya people did not go away from there. The defense evidence shows that at this stage the riyaya party shouted that the zamindars had no ammunition and began to attack them and it was then that the zamindars fired their guns and pistol. The prosecution witnesses say that they were entreating the zamindars with folded hand and receding back. But one of these witnesses had stated before the police that it was the people of riyaya who put pressure upon the zamindar accused. All the dead bodies were found in the sugar cane field and not in the wheat field. The riyaya people were in the wheat field. The zamindars were in the sugarcane fields. How the dead bodies came to be in the sugar cane field. This could only be if the riyaya went to the zamindar accused and attacked them.

Almost every prosecution witness admitted that he remained there until the end of the fighting and did not run away even when shots had begun to be fired. This shows the determination of the riyaya to stand to the last. Also almost all the prosecution witnesses' say that the distance between the people of the two parties was 2 to 4 paces. In the circumstances, there is not the least doubt that the first eight accused had right of private defense of property as well as their persons. Considering the circumstances and all relevant facts of the case, the Honorable Sessions Judge acquitted all 12 persons.

JUDGEMENT OF THE ALLAHABAD HIGH COURT ON
THE CRIMINAL APPEAL NUMBER 765
DATED 31 MAY 1950

Against the judgment acquitting all the accused by the Sessions Court, Bulandshahr, Uttar Pradesh Government filed an appeal in the Allahabad High Court under section 417 of the Cr.P.C. They were charged under sections 302/149, 207/149 and 148 of IPC. Honorable judge Shi Brij Mohan Lall and Justice P. N. Sapru heard it.

Respondent numbers 1 to 8 are Thakurs by caste and are resident of village Amka in the district of Bulandshahr. They are the zamindars of the said village. Respondent numbers 11 and 12 are also residents of the same village and are the servants of zamindars. Respondents' number 9 and 10 are Gujars by caste and belong to village Badhpura. In other words, they belong neither to the caste nor to the village of the remaining respondents and are prima facie completely unconnected with them.

Relations between zamindars and the Ryots of the village Amka were highly strained. The Ryots under section 59 of the UP Tenancy Act (Act XVII of 1939) had instituted a number of suits to have their status as tenets declared in respect of a number of plots

The zamindars defence to these suits was that the ryots had no right whatsoever to the land; that they had never cultivated the said land; that the land was their (zamindars) khudkasht and that they had raised the crops standing thereon. Ryots acting in a concerted manner had gone to the spot as a body. The number of zamindar at the scene of occurrence was not more than eight as per learned Sessions Judge. In my view, opinion of the learned judge is correct, as one striking feature of the case is the inability of the tenants to name or point out any one except the eight accused persons as those present on the spot.

Prosecution story is that over a year and half there had been litigation between zamindar and the tenants in regard to plot numbers 227 and 228; that in point of fact 30 suits had been instituted by tenants against the zamindars in the revenue court.; that the plots in dispute had been in the cultivation of Booti and Birbal; that when the zamindars started damaging crops, an application was made on the 1 March 1947 by tenants in the revenue court for its being put in to the custody of superdars and for appraising its market price; that no orders were passed on that application till the date of the incident; that on the morning of 27th March on their coming to know that a part of the crop standing in the fields of Booti and Birbal had already been cut on the 26 March and that the remaining crop was being cut by the zamindars, Booti , Birbal Mukhtar, Dalai, Ramdyal, Zaharia and Harsuskh went to the fields to stop the zamindars from cutting the crop; that they saw Sunheri Gujar, Jiwan Gujar and Shyama Teli cutting

Sarson from fields of Booti and Birbal; that Subedar Bani Singh, Shri Amar Singh Shri Inderjit Singh, Shri Raghubir Singh, Shri Devendra Singh and Shri Udai Pratap Singh, Shri Inderpal Singh, Shri Rajendra Singh, Shri Brijbir Singh, Shri Narendra Singh, Shri Aptap Singh alias Bapsi and Bapsi's brother were standing there armed with lathis , guns, spears and pistols; that the sarson crop was being cut under their instructions; that Booti and Birbal appealed to the persons who were cutting sarson to desist from doing so until the court before which the matter was pending had decided the matter; that thereupon Shri Bani Singh, Shri Raghubir Singh and Shri Amar Singh said that they did not care anything about that commission; that they were determined to settle the matter without waiting for any more.

Respondent number 1 to 8 admitted having taken part in the affair. According to them plots numbers 227 and 228 were the Khudkasht of Shri Chawal Singh, who was absent from the village on that day. It is also their case that the crops had been sown by Shri Chawal Singh and that the Ryots had come unlawfully to cut the crop. Shri Inderjit Singh objected to their cutting the crop in the absence of the owner. Thereupon, the ryots first abused and then attacked him and Shri Inderpal Singh, who also happened to be there. These two persons also used lathis in their self-defense. Meanwhile, Shri Udai Pratap Singh arrived. He also used lathi but soon after managed to run away from the place of occurrence. He carried the news of the occurrence to his friends and thereupon the remaining five respondents against whom the appeal is presented arrived on the scene of occurrence. They first remonstrated with the ryots, but the latter attacked them with lathis. Shri Amar Singh and Subedar Bani Singh are said to have fired shots in the air to scare away the ryots. The ryots instead of running away attacked the new arrivals and Harsukh snatched the gun from the hands of Shri Amar Singh. The zamindar party managed to take back the gun. Finding that the ryots were becoming more and more aggressive and were continuing the attack the zamindar party fired gunshots. In short, their plea was one of the rights of private defence.

In order to appreciate whether there was or was not a right of private defence of person and property, it is necessary first to determine as to who sowed the crop. If the crop was really the property of the ryots their action in going to the spot to protect it was by no means unlawful. On the other hand, if Shri Chawal Singh owned the crop, the ryots had no right to take possession of that crop. Booti who claimed ownership of the crop had no Patta nor does Qubuliat in respect of plots number 227 and 228 on which the crop in question was growing. He possessed no receipt for rent in respect of that land. Nor did he possess any receipt to prove the payment of canal dues. Ramanand, Patwari says that till 1353 Fasli, Shri Chawal Singh was reported as the zamindar and the khudkasht holder of these two plots. Even in 1352 Fasli, the plots in question were recorded as the khudkasht of Shri Chawal Singh. He goes on to add that even in 1354 Fasli, "I did

not see Birbal and Booti or any other tenant to be in possession of the plot which he now claims to be his”.

The year 1354 Fasli began from 1 July 1946 and expired on 30 June 1947. On the 30 October 1946, a large number of ryots of this village including Booti addressed a petition to the District Magistrate of Bulandshahr, in which they complained that the zamindars were not giving the land for cultivation. Copies of this petition forwarded to His Excellency the Viceroy of India, Honorable Pandit Jawahar Lal Nehru, Qaide Azam Jinnah, Honorable Pandit Govind Ballabh Pant and several other persons. This petition is a proof positive of the fact that till 30 October 1946, the ryots including Booti were not in possession of the land which they now claim.. The next day on 31 October 1946, their names came to be recorded in the remarks column of the Khasra. It is on this entry that the prosecution relied as proving Boosti's possession.

The circumstances in which these entries were made have been brought on the record. Babu Ram Kanungo, was responsible for these entries. He was the person against whom the zamindars had sent a petition of complaint to the District Magistrate on 1 October 1946, charging him with having demanded illegal gratification from them. The District Magistrate entrusted the enquiry to the Naib Tehsildar who investigated the matter, recorded findings against this Kanungo, and recommended his transfer. The District Magistrate accepted this recommendation but it took several months to get him transferred from this circle.

The Kanungo was naturally annoyed with the zamindars because they had sent a complaint against him. What he did was that he visited this village on 31.10.1946 and put questions to ryots as to which plots were in their possession. It is alleged that 23 tenants including Booti made statement to him in writing claiming possession over the land over which only a day before they had admitted the absence of their possession. Based on these statements, the Kanungo ordered the Patwari to enter the names of these tenants in remark column of Khasra. He did not question the zamindars. He did not refer the matter to the higher authorities. He could not produce in court the statement that the ryots are alleged to have made, which he had recorded. He was questioned as to whether he could cite any rule or law in support of the step he had taken. He could cite none. Ordinarily, fresh entries are recorded in red ink but this Kanungo got these fresh entries made in Black in order to suggest that the possession existed from before. These entries of possession are therefore, worthless and do not lend support to the suggestion that the ryots were in possession of the land in question.

Apart from this, Chajjan states in the course of his cross-examination that Thakur Chawal Singh had been cultivating the plots in respect of which there was a dispute and Booti and Birbal never cultivated them.

In view of these facts, the Honorable Judge was of the opinion that the findings recorded by the Sessions Judge in his careful and able judgment is perfectly correct and that the crop in dispute had been raised by Shri Chawal Singh and not by Booti.

The next question is who went to cut the crop, whether ryots had gone to cut the sarson or respondents as alleged by prosecution? Itwari throws much light on this question during investigation. Referring to the zamindars party, he stated that they "prevented us from cutting the sarson saying 'run away otherwise we will kill you'". This is sufficient to indicate that the object of ryots visit was to cut the Sarson crop. During his deposition, Itwari denied having made that statement but his denial carries no weight. The investigating officer in the presence of Circle Inspector recorded the statement and it is difficult to believe that he prepared wrong records of the witnesses' statements.

Harsukh did not state during the investigation that the zamindars party was getting the crop cut. Nor did he say that in his dying declaration. This story, viz that the zamindars were getting the crop cut was for the first time put forward in the Committing Magistrate's Court.

In the petition before the revenue court, Booti had made a grievance that the Kharif crop had been taken away by the zamindars. It was therefore, natural on his part to try to secure the standing Rabi Crop on which he had set his heart. It is also proved by Harsukh's statement made during investigation that on the morning of the occurrence, the ryots had assembled in Booti's chaupal and taken a vow to secure the crop at any cost. When such was their frame of mind, it was natural that they should have gone to cut the crop and take possession of it.

There is evidence that scythes were used in the fight. The presence of scythes was but natural because the crop was being cut. If a scythe was used it would have caused incised wounds. But on a perusal of the medical evidence it appears that there was not a single incised wound on the ryots side. Shri Inderjit Singh had an incised wound. This leads to the conclusion that a scythes was used by the ryots party which; in turn leads to the conclusion that it was the ryots party that was cutting the crop. The possession of scythes by them proves that they had gone to cut the crop.

Another very significant feature of this case is that a women Smt Lado received injuries on the side of the Ryots. The presence of a woman in their party is consistent only with the theory that she and perhaps other women had gone to cut the crop. The prosecution has not been able to explain to what other purpose Smt. Lado could have a member of the ryots party. All these circumstances lead me to the conclusion that ryots had gone to cut the crop and had cut some of it. It is not correct to say that zamindars were getting the crop cut. In other words, I affirm the findings of the learned Sessions Judge on this point as well. Coming to the occurrence one has to find out as to how the

assault began and whom the first was to take the initiative. The most illuminating document on this point is the FIR itself. Chajjan Chaukidar made an FIR at 10.00 AM on the date of occurrence at the police station Dadri. It is at a distance of two miles from the place of occurrence. The substance of the report is that the ryots had gone forcibly to uproot the sarson; that the zamindars protested but the ryots did not listen to them and attacked them with lathis. Thereupon the zamindars fired their guns. This document, which is the foundation of the prosecution case substantially, supports the defence version.

Two days later, Shri Rajendra Singh also made a report in the police station, which also contains substantially the plea of private defense. The prosecution wanted to get rid of the FIR by suggesting that Chajjan Chaukidar was not an eyewitness of the occurrence and that he made the report on the hearsay information. Chajjan was examined as a prosecution witness but he said in categorical terms that he was an eyewitness of the occurrence and had seen the whole incident standing at distance of one field i.e. 40 or 50 paces. Thus, he frustrated the device by which the prosecution wanted to wriggle out of the most damaging statement contained in the FIR. Thereupon the prosecution treated him as hostile and secured permission to cross-examine him. The prosecution pointed out that the Chaukidar has made a mistake inasmuch as he had described that two persons of the name of Chhidda were among the deceased. In fact, none of them had died. Moreover, he had stated in the FIR that two or four persons had received injuries. These minor mistakes do not prove that Chajjan was not an eyewitness. He had seen the occurrence from a distance of 40 to 50 paces and there was nothing surprising if he made a mistake in giving the names of the persons killed. The number of the dead mentioned by him was perfectly right. As regards the injured person, he could know only those who had actually fallen down. He could not know of those who had runaway after receiving the injuries.

Chajjan had taken a lease of land from Smt Ladaiti in Gujarpur village and Badlu was a co-lease with him. As such, his sympathies if at all must be with the diseased and not with zamindars. Therefore, the honorable judge is of the opinion that Chajjan made a substantially correct account of the occurrence and that he is the witness of truth.

During investigation, Horam also stated that ryots attacked the zamindars with lathis. In other words, he supports Chajjan Chaukidar and corroborates the defence version that the aggression began from the side of the ryots.

The prosecution suggestion that the zamindars opened fire as soon as some of the ryots bent over the sarson crop in order to remove it, is further negated by the fact that no blood was found near the heap of sarson. Had the zamindars opened fire all of the sudden they would have at once gained superiority over the ryots and would not have suffered injuries, which they did. One finds from the medical report that Shri

Inderjit Singh received as many as nine injuries of which one was grievous. Shri Inderpal Singh received 11 injuries, Shri Rajendra Singh 4, Shri Amar Singh and Shri Bani Singh 2 each, Shri Raghbir Singh, and Devendra Singh one each. The circumstances that Shri Inderjit Singh and Shri Inderpal Singh received large number of injuries is consistent only with the defence story that in the beginning Shri Inderjit Singh and Shri Inderpal Singh were alone and they had to face a mob which had got an upper hand against them. It was when Shri Udai Pratap Singh conveyed the information to other zamindars that the latter arrived. The zamindars though armed with firearms did not begin to shoot at once. In order to disperse the crowd they could have fired at them from a distance, but at the risk of their safety, they refrained from doing so and went right up to the place where the ryots were standing. They argued with them but when the latter refused to listen to them, they fired shots in the air. This conduct on their part is a further proof of the fact that they were reluctant to open fire and in the end resorted to it only when they were compelled to do so. The prosecution witnesses did not admit the theory of the firing in the air but Hasukh had stated during investigation "upon this the Thakurs discharged blank gun-fires in order to frighten us"

Prosecution witnesses have now perjured themselves denying the fact that gunshots were fired in the air. Another point on which the prosecution witnesses have perjured themselves is that they alleged that the zamindars party used spears against them. Not one spear injury was found on the person of any member of the ryots party.

Because of the above, the honorable Judge upholds the learned Sessions Judge's findings on this point as well. In the opinion of the High Court defence version is correct that the ryots attacked Shri Inderjit Singh and Shri Inderpal Singh, that Shri Udai Pratap Singh carried the news to other zamindars, they arrived, tried to argue with the ryots, the latter became aggressive and instead of listening to the advice attacked them. One of them snatched the gun although it was taken back from him. The zamindars fired shots in the air but the ryots were not to be deterred and they intensified their attack and there upon the zamindars fired shots at them.

Next point to be considered is whether based on the above facts, the zamindars had or had not a right of private defence. The ryots had gone to remove by force the sarson crop, which was not owned by them. On doing so, they used force. Their act amount to an offense of dacoity. It was suggested at one stage that they were asserting a right in good faith. The Honorable Judge did not accept this contention. The fact that the crop was owned by the zamindars and not by them was known to them and if they still wanted to take possession of it, the assertion of claim by them was not bonafide. It was an assertion of a false claim, which was the first step in their dishonest scheme of claiming the land at the time of abolition of the zamindari.

The zamindars had every right to defend the crop and when in doing so they found that the ryots had become aggressive and had begun to attack them with lathis, they acquired under the law the right of private defence, which extend up to causing of death of the members of the hostile mob. Under section 100 of IPC, the right of private defence of body extends to the causing of the death in cases where an apprehension of grievous hurt is created in the mind of the person excusing the right. When a hostile mob, the strength of which according to the prosecution version itself was between 30 and 40 was armed with lathis and was attacking the zamindar's party, a reasonable apprehension did spring up in their minds that grievous hurt would be caused to them.

They were within lathi range of each other. The apprehension of grievous hurt was therefore, genuine and reasonable. The zamindars could have therefore, exercise the right extended to the causing of death of the opponents.

The learned government Advocate very vehemently contended that the right of private defence had been exceeded in the present case. He placed the reliance on paragraph 4 of section 99 of IPC which says: "The right of private defence in no case extends to inflicting more harm than it is necessary to inflict for the purpose of defence."

The Government Advocate suggested that the killing of one or two members of the mob would have been sufficient and that it was not necessary to kill as many as eight persons. On this point, no hard and fast rule can be laid down. Everyone is governed by its own circumstances. Had the zamindars stopped firing after firing one or two shots, the infuriated mob would have killed the zamindars, and would have carried the away the crop. The right of private defence existed as long as the apprehension of grievous hurt continued. In the circumstances of the present case, the right did not in the opinion of the Honorable Judge; cease to exist as long as the hostile crowd did not take to its heels.

Had the zamindars continued firing at the ryots even after they had turned their backs upon them it would certainly have been argued that they had exceeded their right of private defence. However, no such thing happened. On a perusal of the medical report one finds that out of as many as 96 injuries which the members of the crowd received at the hands of zamindars, one of possibly two were on the back and the rest were on the chest and other front portion of the bodies of the injured persons. This means that firing continued so long as the crowd remained facing the zamindars. A crowd which had come with the avowed object of securing the sarson crop at any cost and which had from the very beginning adopted a very aggressive attitude could not have remained inactive while standing face to face with the zamindars.

There could have been only two things either they should continue to attack or turn their backs and run away. I am not prepared to believe that there was a third alternative as suggested by some of the prosecution witnesses i.e. they remained standing with folded hands. If they were standing with folded hands how injuries could be caused to the members of the zamindars party. The honorable judge therefore concluded that the

mob became aggressive and was only so long as the mob retained its aggressive attitude and continued to attack that the zamindars continued to fire. They did not exceed their right of private defense. The moment the mob turned its back the firing ceased.

Placed as the zamindars were, they had either to fire in order to save themselves or to submit to death at the hands of the hostile crowd. It is not necessary for an accused person to prove his right of private defence to the hilt. The accused is entitled to be acquitted if upon consideration of evidence as a whole, a reasonable doubt is created in the mind of the court whether the accused is or is not entitled to the benefit of the said exception. The honorable judge opined that zamindars were certainly entitled to an acquittal and the Sessions Court has come to the right conclusion in acquitting them of the offences with which they were charged.

It is true that eight lives have been lost in this case but unfortunately, the deceased themselves were the aggressors. They had put forward a false claim and wanted to enforce that claim by sheer force. Persons who take law into their own hands have to thank themselves if they meet with disaster. However deplorable this tragedy may be the respondents have not incurred any legal liability in the matter.

For the above reasons, the honorable judge dismissed the appeal. Respondents are on bail. Their bail bonds are cancelled. They need not surrender.

JUDGMENT BY HONORABLE P N SAPRU, JUDGE

I agree. With great reluctance, I have concluded that there is no alternative in this case but to dismiss the appeal, which, I do not say unreasonably, the Provincial Government had filed. As many as eight lives were lost in this ghastly tragedy. Out of 30 or 40 persons who were attacking the respondents, in addition to the eight killed as many as eleven received injuries. The main question is whether the respondents exceeded the right of private defense of their person and property. The difficulty that I feel with prosecution case is that the story which the prosecution made itself responsible before the court of Sessions is not corroborated by any circumstantial or documentary evidence on which any reliance can be placed. Chowkidar Chhajjan lodged FIR at Dadri Police Station at about 2 miles from the scene of occurrence within an hour or so of the incident. Nothing has been pointed out which would indicate that the report was a false document that had been dictated to the Chowkidar at the instance of the zamindars. I am clear in my mind that the Chaukidar was an eyewitness of the occurrence from a distance of 40 or 50 paces. It is true that the report he made is a brief document but contains enough to indicate the tenants were aggressors and zamindars were compelled to resort to firing as the tenants with lathis were attacking them.

The honorable judge concurred with the decision given by honorable Judge Brij Mohan Lall.