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We have therefore come to the conclusion that even if the Trial Court was right in thinking that Padmavathi was a Brahmin girl and not a Shudra, the position in law was, as found by the courts below, *viz.*, it was a valid Hindu marriage and Bhakthavathasalam a legitimate son of Sadagopa with all the rights of a coparcener in regard to the joint family properties and other matters.

No other point was urged in appeal. The appeal is accordingly dismissed with costs.

Appeal dismissed.

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MATHURI AND ORS.

v.

STATE OF PUNJAB

(P.B. GAJENDRAGADKAR AND K.C. DAS GUPTA JJ.)

Indian Penal Code (Act XLV of 1860), ss.149 and 441 and Code of Civil Procedure (Act V of 1900) O.XXI, rr. 24 and 25—Decree for possession—Period of execution warrants expired—Attempt by landlords to take possession—If criminal trespass—"Intention to annoy", meaning of—Resistance by tenants—If unlawful assembly.

The appellants (in the main appeal) along with some others were tried for offences under ss. 148, 302 and 307 read with s. 149 of the Indian Penal Code. The occurrence leading to their trial was as follows. Certain landlords got decrees for possession and armed with warrants for execution of the decrees and with the assistance of police they tried to execute the warrant and dispossess the tenants. The period of execution of the warrants had expired. A large armed mob including the appellants resisted and on the order of the District Magistrate the police opened fire. Ten persons from the mob and two persons from the other side died and a number of persons were injured. The appellants were found lying injured at the scene of occurrence after the mob retired. The Sessions Judge convicted all the appellants of the offences under s. 148 of the Indian Penal Code and under s. 304 part II read with s. 149 and under s. 326/149 s. 324/149 and 532/149 and sentenced them to rigorous imprisonment for

seven years and acquitted all the others. The appellants as well as the State appealed to the High Court without success. Both the parties, thereafter filed the present appeals.

On behalf of the appellants (accused) it was contended that since the date of the execution warrants had expired the attempt of the land lords to take possession of land amounted to criminal trespass and the appellants were entitled in law to resist them and therefore they did not form an unlawful assembly and had no object to commit the offences alleged.

Held, (*i*) The words in sub-r. 3 of r. 24 of the Order 21 of the Code of Civil Procedure clearly show the intention of the legislature that the execution must be completed by the date specified on the process for this purpose. To hold otherwise would be to ignore the force of the words "on or before which it shall be executed". The words "the reason of the delay" occuring in r. 25 can on an ordinary grammatical interpretation be referred to the delay in returning the process to the court. The warrants in the present case by reason of the expiry of the date mentioned therein had ceased to be executable on the date of the occurrence:

Anand Lal Bera v. *The Empress*, I.L.R. 10 Cal. (1884) 18, *Chelli Latchanna* v. *The Emperor*, A.I.R. 1942 Pat. 480, *Nand Lal* v. *Emperor*, A.I.R. 1924 Nag. 68 and *Kishori Lal* v. *Emperor*, A.I.R. 1934 All 1016, referred to.

(*ii*) The mere fact that the natural consequences of the entry was known to be annoyance to the person in possession would not necessarily show that the entry was made "with intent to annoy" within the meaning of s. 441 of the Indian Penal Code. In order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry. The Court has to take into consideration all relevant circumstances including the presence of knowledge that the natural consequences of the entry would be such annoyance, intimidation or insult and including also the probability of something else than the causing of such annoyance etc. being the dominant intention which prompted the entry. Taking all circumstances of the present case the courts below were right in their view that criminal trespass was not committed or apprehended from the acts of the landlords and others who entered the property and rightly rejected the defence plea that the object of those who assembled was to defend the property against trespass.

Emperor v. *Laxman Raghunath* 26 Bom. 558, *Sellamuthu Servaigaran* v. *Pallumuthu Karuppan*, I.L.R. 35 Mad. 186 and *Kesar Singh* v. *Prem Ballabh*, A.I.R. 1950 All. 157, disapproved.

Bhagwant v. *Kedari*, 25 Bom. 202, *Emperor* v. *D'Cunha*, 37 B.L.R. 880, *Nizamuddin* v. *Jinnat Hussain*, A.I.R. 1948 Cal. 130, *Satish Chandra Modak* v. *The King*, A.I.R. 1949 Cal. 107,

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Bata Krishna Ghosh v. *State*, A.I.R. 1957 Cal. 385, *State* v. *Abdul Sakur*, A.I.R 1960 Cal. 189, *Queen Empress* v. *Rayapadaayachi*, 19 Mad. 240 and *Vullappa* v. *Bheema Rao*, I.L.R. 41 Mad. 156, approved.

(*iii*) The appellants were not mere onlookers but joined the unlawful assembly with the common object of committing offences for which they were convicted and sentenced by the courts below. The contention of the State (in its appeal) that offences under s. 302 were committed is rejected. Even though ordinarily this Court will not interfere with sentences passed by the Trial Court, due to the special facts and circumstances of the present case the sentences of the six women appellants and the two male appellants due to their extreme old age are reduced to the period already undergone. The State appeal is rejected.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 93 and 142 of 1962.

Appeal by special leave from the judgment and order dated December 15, 1961 of the Punjab High Court in Criminal Appeals Nos. 417 and 552 of 1961.

R.L. Kohli, for the appellants (in Cr. A. No. 93/1962) and the respondents (in Cr. A. No. 142 of 1962).

H.R. Khanna and *R.N. Sachthey*, for the appellant (in Cr. A. No. 142 of 1962) and the respondent (in Cr. A. No. 93 of 1962).

December 11, 1963. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA J.—On June 7, 1960 a tragic occurrence took place at a village called Mohangarh over the delivery of possession of certain lands in execution of decrees for ejectment obtained by landlords. Twelve persons lost their lives and several others received serious injuries. Among the injured were some members of the police force who had gone there to assist in the delivery of possession. Thirty-nine persons were sent up to the Sessions Court for trial for offences under s. 148, s. 302/149 and s. 307/149 of the Indian Penal Code.

The prosecution case was that though the warrants for delivery of possession in execution

of several decrees in favour of the several decree-holders had been issued as early as April 5, 1960, repeated attempts by Revenue Officers to execute the decrees were unsuccessful. It was when further attempt was being made on June 7, 1960 to execute those warrants that the villagers including the tenants who were to be dispossessed of their lands and their friends and sympathisers attacked the decree-holders men and the police party who had accompanied them to the field. It is said that on behalf of the decree-holders, Rattan Singh and his four companions Dharam Singh, Abhey Ram, Bharat Singh and Nihal Singh entered the field of Prabhu, one of the judgment debtors with two ploughs yoked to two teams of bullocks. Hardly had they gone a short distance into the field when a mob, about 200 strong, consisting of men and women armed with lathis, jailis and gandasas came up shouting "Kill Rattan Singh and do not allow possession to be taken." The Sub-Divisional Magistrate, Sangrur, who was with the party then announced over a loud speaker that he declared the mob an unlawful assembly and called upon it to disperse. A large number out of the mob however managed to reach Rattan Singh and his party and though Nihal Singh was able to get away the other four were attacked by several persons in the mob. On the order of the Sub-Divisional Magistrate, the police made a lathi charge on the mob but the mob counter attacked. In the course of the attack the Assistant Sub-Inspector Gurdial Singh received an injury and some of the rioters tried to carry him away. In an attempt to save the situation Sub-Inspector Sitaram fired two shots from his revolver. The Sub-Divisional Magistrate then ordered the police to fire. A party of four fired two volleys. It was when after this 14 policemen fired the volleys that the mob ran away, leaving ten of their members dead and some injured on their field. Rattan Singh and his three companions also lay injured on the field.

Rattan Singh and Dharam Singh died of their injuries. Some of the policemen also received

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injuries. All the ten appellants are said to have been found lying injured in the field. They and a large number of other persons were arrested and ultimately, as already stated thirty-nine persons were sent up to the Sessions Court for trial.

All the accused pleaded not guilty. Apart from the defence of several of them that they were not at the place of occurrence at all and had received their injuries elsewhere, it was common case of all the accused that there was no unlawful assembly at all. It was pleaded that the tenants in possession came to the field to defend their property against criminal trespass and the object of those who assembled was nothing more than to defend their property against such trespass. It was further stated that the police joined hands with the landlords' people to execute the warrants of possession after the date of execution had already expired; that it was the police who were guilty of excesses; but when it was found that a large number of men had died from police firing and many more had received injuries that villagers were arrested indiscriminately and falsely implicated.

On a consideration of the evidence, the learned Sessions Judge found the prosecution case substantially proved and rejected the plea of the accused of the right of private defence. He held that there was an unlawful assembly with the common object of murdering Rattan Singh and others; that in prosecution of this common object two offences under s. 304 Part II read with s. 149 were committed by members of the assembly by causing the deaths of Rattan Singh and Dharam Singh and that offences under ss. 326, 324 and 323 were also commited in prosecution of the common object. He further found it proved against these 10 appellants that they were members of that assembly and committed rioting having been armed with dangerous weapons. Accordingly, he convicted all of them of the offence under s. 148 of the Indian Penal Code and also two offences under s. 304 Part II read with s. 149, and under

s. 326/149 s. 324/149 and s. 323/149. For each of the offences under s. 304 Part II read with s. 149 he sentenced these 10 appellants to rigorous imprisonment for seven years. Lesser sentences were passed under the other offences and all the sentences were directed to run concurrently.

These 10 accused persons appealed against their conviction and sentence to the High Court of Punjab. The State of Punjab also filed an appeal against them on the ground that they should have been convicted under s. 302 read with s. 149 and not merely under s. 304 Part II read with s. 149.

As regards the other twenty-nine accused the Sessions Judge held that their membership of the unlawful assembly had not been proved beyond doubt and accordingly acquitted them. The State of Punjab appealed to the High Court against this acquittal also.

The High Court agreed with the Sessions Judge's findings and dismissed the appeal of the accused and also the appeal of the State of Punjab.

The ten accused persons have presented this appeal (Cr. A. No. 93 of 1962) by special leave of this Court. The State of Punjab has also filed an appeal by special leave (Cr. Appeal No. 142 of 1962) against the decision of the High Court that offences under s. 302 read with s. 149 had not been proved.

The main contention raised before us in support of the appeal of the ten accused persons is that in law no unlawful assembly was formed inasmuch as Rattan Singh and others who went to the field were guilty of criminal trespass and it would be reasonable to hold that the villagers who had assembled there had only the object of defending their property against such trespass and no object to commit the offences as alleged. In contending that the acts of Rattan Singh and others amounted to criminal trespass Mr. Kohli, learned counsel for the ten accused persons, has stressed the fact that the last date for execution of the warrants for delivery of possession

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was some time in April 1960 so that on June 7, 1960 they were not executable in law.

Though the Sessions Court accepted the contention that the warrants had ceased to be executable before June 7, 1960 and the High Court agreed with it Mr. Khanna, who appeared before us on behalf of the State of Punjab, has challenged the correctness of the proposition. We have no doubt about the correctness of the view taken by the courts below which it may be mentioned is supported by a long line of decisions of all the High Courts in India. (Vide *Anand Lal Bera* v. *The Empress*(1). *Chelli Latchanna and others* v. *Emperor*(2); *Nand Lal* v. *Emperor*(3); *Kishori Lal and another* v. *Emperor*.(4)

An examination of the provisions of rr. 24 and 25 of O. 21 of the Code of Civil Procedure makes the position clear. Rule 24 deals with the issue of process for the execution of decrees and provides in sub-r. 3 that in every such process "a day shall be specified on or before which it shall be executed." Rule 25 then proceeds to say that the officer entrusted with the execution of the process shall endorse thereon the date on and the manner in which it was executed and further that if the latest day specified in the process for the return thereof has been exceeded the reason of the delay or if it was not executed the reason why it was not executed, and shall return the process with such endorsement to the Court. Mr. Khanna has contended that the words "reason of the delay" in rule 25 contemplates a situation where the process has been executed after the date mentioned in it under r. 24. In our opinion, there is no substance in this contention. If r. 25 be read as a whole and in the light of the provision in sub-r. 3 of r. 24 it is quite clear that the "delay" mentioned in r. 25 refers to the delay in returning the process whether after or without execution and not to any delay in execution. The words in sub-r. 3 of r. 24 as quoted above clearly show the

(1) I.L.R. 10 Cal. [1884] p. 18. (2) A.I.R. 1912 Patna p. 480.
(3) A.I.R. 1924 Nagpur p. 68. (4) A.I.R. 1934 Allahabad p. 1016.

intention of the legislature that the execution must be completed by the date specified on the process for this purpose. To hold otherwise would be to ignore the force of the words, "on or before which it shall be executed". It does not stand to reason that after providing in r. 24 that the process must be executed on or before the date specified on it for that purpose, the legislature would proceed to undo the effect of these words "shall be executed" by permitting execution even after that date. There is no justification for reading such intention in the use of the words "the reason of the delay". These words, as we have already stated can on an ordinary grammatical interpretation be referred to the delay in returning the process to the Court. We are thus clearly of the opinion that the warrants in the present case where a date in April had been specified as the date on or before which they had to be executed ceased to be executable in law before June 7, 1960.

The question then is whether when Rattan Singh and others went on the lands of which possession was to be taken under the warrants, they were committing the offence of criminal trespass. The answer to this question depends on whether in entering upon the property these persons acted "with intent to commit an offence or to intimidate, insult or annoy" persons in possession of the property. It is not suggested that the entry was with intent to commit any offence or to intimidate or to insult the persons in possession of the property. It has been strenuously contended however by Mr. Kohli that in entering upon these properties for the purpose of dispossessing those in possession in the purported execution of warrants which had ceased to be executable Rattan Singh and others must be held to have acted "with intent to annoy" these in possession. These persons, it is argued, knew very well that the natural and inevitable consequence of their action was that the persons in possession would be annoyed. It necessarily follows therefore according to the learned counsel that they had the intention to annoy those persons.

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The proposition that every person intends the natural consequences of his act, on which the learned counsel relies, is often a convenient and helpful rule to ascertain the intention of persons when doing a particular act. It is wrong however to accept this proposition as a binding rule which must prevail on all occasions and in all circumstances. The ultimate question for decision being whether an act was done with a particular intention all the circumstances including the natural consequence of the action have to be taken into consideration. It is legitimate to think also that when s. 441 speaks of entering on property "with intent to commit an offence, or to intimidate, insult or annoy" any person in possession of the property it speaks of the main intention in the action and not any subsidiary intention that may also be present. One of the best expositions of the meaning of the word "intent" as used in the Indian Penal Code was given in a decision of the Bombay High Court in 1900 in *Bhagwant* v. *Kedari* (1). Examining the definition of the word "fraudulently" in s. 25 of the Indian Penal Code, *viz.*, "a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". Batty J. observed thus at page 226 of the Report:—

> "The word 'intent' by its etymology, seems to have metaphorical allusion to archery, and implies "aim" and thus connotes not a casual or merely possible result—foreseen perhaps as a not improbable incident, but not desired—but rather connotes the one object for which the effort is made—and thus has reference to what has been called the dominant motive, without which the action would not have been taken."

The fact that these observations were made for the purpose of ascertaining what is meant by the word "fraudulently" does not diminish their general value and correctness. In our opinion, the observations of the learned Judge as regards the meaning of the word "intent" indicates the correct approach

(1) I.L.R. 25 Bombay 202.

to adopt in deciding whether the necessary ingredient of the offence of criminal trespass that the entry was "with intent to commit an offence or to intimidate, insult or annoy" any person in possession of the property has been established. It follows from this that the mere fact that the natural consequence of the entry was known to be annoyance to the person in possession would not necessarily show that the entry was made "with intent to annoy". That fact as to what the natural consequence would be and the presumption of this being known to the person so entering would be only one circumstance to be taken into consideration along with other circumstances for the purpose of deciding the question with what intent the entry was made. Surprisingly enough the Bombay High Court held only a few years later in *Emperor* v. *Laxaman Raghunath* (1) which was a case under s. 448 of the Indian Penal Code that to prove the intention necessary for the purpose of the offence of criminal trespass it is sufficient to show that the man did the act with the knowledge that the probable consequence would be annoyance to the complainant. Fulton J. who delivered the judgment of the Court said that the result of the authorities seem to be that "although there is no presumption that a person intends what is merely a possible result of his action or a result which though reasonably certain is not known to him to be so, still it must be presumed that when a man voluntarily does an act, knowing at the time that in the natural course of events a certain result will follow, he intends to bring that result". It is fair to notice that Fulton J. had been a party to the earlier decision in *Bhagwant* v. *Kedari*(2), though no reference to what was said about the meaning of the word "intent" in that case appears to have been made in the latter case. It is to be noticed that this view of the law in *Laxman Raghunath's* case(1) has not been followed by the Bombay High Court in recent years. In *Emperor* v. *D' Cunha* (3) it was explained that while the question of knowledge

(1) I.L.R. 26 Bombay 558. (2) I.L.R. 25 Bombay 202.
(3) 37 B.L.R. 880.

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as to what would be the natural consequence of the act can be taken into consideration in deciding the intention of the party that is only one of the circumstances that have to be considered.

The view that annoyance is a natural consequence of the act and it is known to the person who does the act that such is the natural consequence is not sufficient to prove that the entry was with intent to annoy has been consistently taken in the Calcutta High Court. See *Nizamuddin* v. *Jinnat Hussain*(1); *Satish Chandra Modak* v. *The King*(2); *Bata Krishna Ghosh* v. *The State*(3); *The State* v. *Abdul Sakur*(4).

The same view was taken by the Madras High Court in 1896 in the case of *Queen Empress* v. *Rayapadaayachi*(5). As a different view was taken by that High Court in 1912 in *Sellamuthu Servaigaran* v. *Pallumuthu Karuppan*(6) the matter was examined by a Full Bench of the High Court in *Vullappa* v. *Bheema Row*(7) in 1917. The full Bench held that the correct view had been taken in *Queen Empress* v. *Rayapadaayachi*(5) (supra) and that the legislature did not intend in s. 441 that doing the act with the knowledge of its consequence should be punishable. Kumaraswami Sastriyar J. stressed the fact that wherever the Penal Code wanted to make a man liable for knowledge of consequences it expressly said so as in ss. 118 to 120, 153, 154, 217, 293 etc. The learned Judge agreed with an observation of Sir William Mark by (Elements of Law, para 222) in that a consequence would follow or a knowledge "that it is likely to follow without any desire that it should follow is an attitude of mind which is distinct from intention.....". The Madras High Court has thereafter adhered to this view of the law.

The Allahabad High Court took a similar view of this matter in *Emperor* v. *Motilal*(8). Mr. Kohli

(1) A.I.R. 1948 Cal. 130.
(2) A.I.R. 1949 Cal. 107.
(3) A.I.R. 1957 Cal. 385.
(4) A.I.R. 1960 Cal. 189.
(5) 9 Mad. 240.
(6) I.L.R. 35 Mad. 186.
(7) I.L.R. 41 Mad. 156.
(8) I.L.R. 47 All. 855.

has relied on a decision of the Allahabad High Court in *Kesar Singh* v. *Prem Ballabh* (1) in which the learned Judge (Desai J.) held that where the probable consequence of the act of the accused was to cause annoyance to the complainant it will be presumed that they committed the trespass with that intention and as that intention was not rebutted the accused was rightly convicted under s. 447.

We think, with respect, that this statement of law as also the similar statements in *Laxaman Raghunath's* Case(2) and in *Sellamuthu Servaigaran's* Case (3) is not quite accurate. The correct position in law may, in our opinion, be stated thus: In order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering; that in deciding whether the aim of the entry was the causing of such annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something else than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry.

Applying these principles to the facts of the present case, we are satisfied that the courts below are right in holding that Rattan Singh and others have not been shown to have had the intention to annoy. It may be true that they knew that annoyance would result. Armed as they were with the warrants of execution it is reasonable to think however that the intention which prompted and dominated their action was to execute the warrants. We think

(1) A.I.R. 1950 All. 157. (2) I.L.R. 26 Bombay 558.
(3) I.L.R. 35 Mad. 186.

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also that the courts below were right in their view that Rattan Singh and others could not be reasonably expected to know that the warrants had ceased to be executable in law. Taking all the circumstances into consideration we have come to the conclusion that the courts below were right in their view that criminal trespass was not committed or apprehended from the acts of Rattan Singh and others who entered the property and rightly rejected the defence plea that the object of those who assembled was to defend the property against trespass.

There was therefore no difficulty in holding that the assembly of the villagers was an unlawful assembly with the common object of killing Rattan Singh and others who wanted to dispossess them.

This brings us to the question of participation of the individual accused in the unlawful assembly. As it is clearly a question of fact this court would ordinarily refuse to investigate the same. Mr. Kohli however complains that the High Court's findings on this question is vitiated by serious error in reading the evidence. Evidence has been given, the correctness of which can no longer be disputed, that these 10 accused persons were found lying injured at the place of occurrence when the rest of the mob finally dispersed. The defence suggestion was that even so it may well be that they had come to the place of occurrence only out of curiosity to see how the thing developed. One of the reasons given by the High Court for rejecting this argument was that it "was also proved from the statements of Iqbal Singh, a non-official (P.W. 9), Munshi Singh, Head Constable (P.W. 22), Kaul Singh, Assistant Sub-Inspector (P.W. 24) and Ranjit Singh, Head Constable (P.W. 26) that jellis, gandasas, and lathis were recovered from their possession." If this had really been proved the High Court's remarks that there could be "little doubt about their being in the mob and participation in the assault" would be fully justified. It has however been pointed out by Mr. Kohli that the evidence of these witnesses does not really establish the recovery

of any weapons from the possession of these appellants. All that the evidence shows is that such weapons were found lying in the field near the injured persons and were taken into possession. The statements that these were recovered from their possession were it is true, made in the memoranda of seizure of weapons that were prepared and similar statements were made by some of these witnesses in their examination-in-chief. In cross-examination however they all admitted that there was no recovery from the person of any of these appellants. It appears clear that when the mob dispersed after the police firing, leaving some of the persons in the mob dead and some injured some weapons were also left in the field. Some of these were stained with blood. It is not unlikely that these had belonged either to some out of the men who were lying dead or injured. What is clear however is that the weapons had not been proved to have been recovered from the possession of any of these appellants. It is unfortunate that the learned Judges who heard the appeal in the High Court did not examine the evidence with the care it deserved.

In view of the serious error made by the learned Judges we have found it necessary to examine the evidence for ourselves to decide whether or not the oral testimony as regards the participation of these appellants in the unlawful assembly should be accepted or not. We have come to the conclusion that this evidence should be accepted. One circumstance that cannot be overlooked is that the place where these appellants were found lying injured were well away from the inhabited portion of the village. It is hardly likely that villagers who came out of their houses only out of curiosity would venture so far forth into the fields. It is also to be noticed that of these ten appellants some were the tenants judgment-debtors and the rest close relations of them.

We are satisfied, on a consideration of all the circumstances, that these appellants were not mere onlookers but joined the unlawful assembly with the common object as alleged by the prosecution.

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That offence under s. 304 Part II and sections 326, 324 and 323 I.P.C. were committed by some members, out of these who had assembled in pursuance of the common object of all is clearly shown by the evidence and is not disputed before us.

We are unable to agree with the contention raised on behalf of the State in the State's appeal that offences under s. 302 of the Indian Penal Code were committed by causing the death of Rattan Singh and Dharam Singh. Our conclusion therefore is that the appellants have been rightly convicted under s. 304 Part II read with s. 149, s. 326/149, s. 324/149 and s. 323/149 of the Indian Penal Code.

The last submission made before us on behalf of the 10 appellants is that in consideration of all the circumstances of the case the sentences passed on the appellants are too severe. The question of sentence is in the discretion of the Trial Court and would not ordinarily be disturbed by the High Court in appeal if it has been exercised judicially. There is still less reason ordinarily for this Court to interfere with sentences passed by the Trial Court and confirmed by the High Court.

It is difficult to say however that in the present case the discretion on the question of sentence has been exercised judicially. It cannot be overlooked that of these ten appellants six are women and four men. No specific part has been allotted to these women. It is reasonable to think in all the circumstances of the case that they did not take a leading part in the occurrence but came into the field when their menfolk came out—partly to save their fields and partly to save their menfolk. Neither the Trial Court nor the High Court appears to have taken any notice of these circumstances and passed the same sentence on the men as well as the women. In the peculiar circumstances of this case we think that interference on the question of sentences passed against the women is called for. It appears that they have served out more than two years and nine months of the sentence imposed on them and had

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been in custody for about 10 months before that. On a consideration of all the circumstances of the case we reduce the sentence on these women-appellants under s. 304 Part II read with s. 149, s 326 149 and s. 148 to the period of imprisonment already undergone.

Of the four male appellants Surjan was aged 70 at the time of the trial and Gokul 66. Surjan is thus about 73 years old now and Gokul just less than 70. In consideration of their age we think that the interests of justice will be served if their sentences are also reduced to the period of imprisonment already undergone. We reduce their sentences accordingly. Let these accused persons be set at liberty, if not required in connection with some other proceedings. We see no reason to interfere with the sentences passed on the other two male appellants.

The appeal by the accused persons is thus dismissed except as regards the modification in sentences of eight of them. The appeal preferred by the State of Punjab is dismissed.

Appeals dismissed.

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RAM SARUP

v.

THE UNION OF INDIA AND ANOTHER

(B.P. SINHA, C.J., K.N. WANCHOO, RAGHUBAR DAYAL, N. RAJAGOPALA AYYANGAR AND J.R. MUDHOLKAR, JJ.)

Army Act (XLVI of 1950), ss. 125, 126 and 164—Scope of——Constitution of India, 1950, Art. 33—Effect on fundamental rights—s. 125 of Army Act if violative of Art. 14 of the Constitution.

The General Court Martial sentenced the petitioner, a sepoy, to death under s. 69 of the Army Act read with s. 302 of the Indian