the fact that the very dispute between the parties which was brought before the special Tribunal constituted under the Act had been decided between them beforehand by a regular Court.

It seems to me that where it is the intention of the Legislature to allow matters already decided between the parties by a regular Court to be re-opened and adjudicated upon by a special Tribunal constituted under an Act of this kind this intention must be clearly expressed in the Act, as was done in the case of Act 70 of 1951. I do not think that it was even contemplated when the Punjab Restitution of Mortgaged Lands Act of 1938, was enacted that the Collector should be allowed to adjudicate upon and extinguish mortgages which had already been the subject of litigation between the parties in the regular Courts, and which had been declared to be no longer subsisting as being more than sixty years old. I am, therefore, of the opinion that the Collector in this case has no jurisdiction to decide the defendant's petition and extinguish the mortgage and that, therefore, the plaintiffs' claim for possession of the land in dispute was rightly decreed. I accordingly dismiss the appeal with costs.

APPELLATE CRIMINAL

Before Dulat, and Bishan Narain, JJ.

KARTAR SINGH AND OTHERS,—*Appellants.*

versus

STATE,—*Respondent.*

Criminal Appeal No. 622 of 1954

1955

October, 18th

Code of Criminal Procedure (V of 1898)—Section 59(1)—Right of a private person to arrest any person committing a non-bailable and cognizable offence when arises—The phrase "in his view" in section 59(1), meaning of—Person committing the offence running away immediately, whether can be arrested by the person who has seen him committing the offence.

Held, that a private person has no right to effect arrest under section 59(1) of the Code of Criminal Procedure unless the offence is committed in the view of such a person. It would be extremely dangerous to allow a private person to arrest another person under section 59(1) of the Criminal Procedure Code on the basis of his mere opinion, however, definite it may be, that the offender had committed a non-bailable and cognizable offence. It would be dangerous to allow a private person to arrest an alleged offender on the basis of his opinion even if it is based on unimpeachable evidence as it would be open to serious misuse. When a man is found committing a non-bailable and cognizable offence and then tries to escape, the whole is to be treated as one single transaction and any person who either sees him committing the offence or finds him running away immediately after the commission of the offence would be entitled to arrest him under section 59, Criminal Procedure Code.

Kalia v. *Kalu Chowkidar* (1), and *Sheo Balak* v. *Emperor* (2), relied upon.

Appeal from the order of Shri Manohar Singh, Additional Sessions Judge, Amritsar, dated the 3rd November, 1954, convicting the appellants.

BHAGAT SINGH CHAWLA, for Appellants.

K. S. CHAWLA, Assistant Advocate-General, for Respondent.

JUDGMENT

Bishan Narain, J.

BISHAN NARAIN, J. The three appellants before us were tried under section 452, Indian Penal Code, for having committed criminal trespass in the house of Kartar Singh (P.W. 14) on the night between the 12th and 13th of January, 1954 with the intention of committing theft of his cattle after having made preparation for causing hurt to the inmates of the house and under section 302|34, Indian Penal Code, for having murdered Waryam Singh and also under section 323/34 and section 324/34, Indian Penal Code, for having caused hurt to Jogindar Singh and Sundar Singh. The Additional Sessions Judge, Amritsar, convicted all the accused

(1) I.L.R. 27 Cal. 366
(2) A.I.R. 1948 All. 103

persons under section 452, Indian Penal Code, and sentenced them to two years' rigorous imprisonment each. He also convicted them under section 323/34, Indian Penal Code, awarding a sentence of four months' rigorous imprisonment each, but the sentences under both the counts were ordered to run concurrently. He, however, acquitted them of all the other charges framed against them. The appellants have appealed to this Court against their convictions and sentences while the State has appealed against the order of acquittal of the accused persons under sections 302/34 and 324/34, Indian Penal Code. It will be convenient to decide both the appeals (Criminal Appeals Nos. 622 of 1954 and 81 of 1955) by this judgment.

The prosecution case is that Kartar Singh, P.W. 14, is the owner of a haveli. On the night between the 12th and 13th of January, 1954, he was sleeping in a room with his two sons and other members of the family while his son Anokh Singh was sleeping in the verandah keeping guard on the cattle tethered in the courtyard. At about 11 p.m. he woke up on hearing the barking of a dog and found the appellants along with Darshan Singh standing near the cattle in the courtyard. He raised an alarm and all the family members came out. Darshan Singh fired from his pistol. Joginder Singh, one of the appellants before us, gave a *dang* blow on the head of Joginder Singh (P.W. 16), son of Kartar Singh. The culprits then ran away. The family members excepting the injured person and other persons living in the locality, all numbering about 60 or 70, pursued the intruders. Waryam Singh and his son Piara Singh were among them. They overtook the culprits about 200 *karams* from Kartar Singh's house. I may state here that it was moon-lit night. Darshan Singh and Joginder Singh were

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armed with a pistol and a *dang* respectively while the other two accused were armed with a spear each. The pursuit party was armed with *dangs*, spears, *kirpans* and *kulharis*. Darshan Singh fired without hitting anybody. Waryam Singh was armed with a *kulhari* and was ahead of the pursuit party. When he got near the culprits Kartar Singh appellant gave a spear blow in the abdomen of Waryam Singh who fell down on receiving this injury. In the meanwhile the other two appellants gave blows with their weapons to Sundar Singh, another member of the pursuit party. The villagers then fell upon Darshan Singh and killed him on the spot. Kartar Singh appellant was captured but the other two escaped. After investigation the three appellants were tried and convicted as stated above.

The appellants pleaded not guilty and alleged that they had been falsely implicated on account of enmity. They, however, produced no evidence in defence.

Taking the appeal of the convicts, the prosecution case is supported by the evidence of Kartar Singh and his sons particularly Anokh Singh, P.W. 15, who was sleeping in the verandah and woke up on the barking of a dog. Jogindar Singh P.W. who was hit on the head with a *dang* has also supported the prosecution case. The night being moon-lit it is only natural that the inmates should have seen the appellants. There is no reason for these persons to implicate the appellants falsely. The fact that the appellants were armed and entered the *haveli* about 11 p.m. and were found standing near the cattle shows and proves that they had entered the *haveli* with a view to commit theft of cattle.

It was argued on behalf of the appellants that they had entered only a courtyard and, therefore, they cannot be said to have entered a building and therefore, they were not guilty under section 452, Indian Penal Code. There is, however, no doubt that the building in the present case was used as a human dwelling. Kartar Singh, (P.W. 14), the complainant has described his *haveli* in the following words—

> "My residential house is situated in the outskirts of village Thathian. I also tether my cattle in that house and reside there with family. Its enclosure wall is about three feet high. I, Tarlok Singh, Jogindar Singh and Anokh Singh P.Ws. who are my sons and other members of my family reside in that house."

This description is supported by the plan produced in the case. Kartar Singh (P.W. 14) was not cross-examined regarding this matter. I, therefore, hold that the courtyard which the appellants entered was in the circumstances a building and therefore, they were rightly convicted under section 452, Indian Penal Code. The sentence of two years' rigorous imprisonment cannot be considered to be excessive when one remembers that one of the offenders was armed with a pistol and two of them were armed with spears.

As regards the conviction of the appellants under section 323/34, Indian Penal Code, for causing hurt to Jogindar Singh (P.W 16) in the courtyard, the case is proved beyond reasonable doubt against the appellants by the evidence on the record including the statement of Jogindar Singh himself. In fact no argument was advanced before us attacking their conviction under section 323/34,

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Indian Penal Code. I, therefore, maintain the conviction and the sentence under this charge. The result is that Criminal Appeal No. 622 of 1954, fails and I would dismiss it.

Bishan Narain, J.

Now, I shall deal with the appeal (Criminal Appeal No. 81 of 1955), filed by the State. The learned Additional Sessions Judge found that under section 59(1), Criminal Procedure Code, Waryam Singh deceased and Sundar Singh were not authorised to arrest the culprits as the offence under section 452, Indian Penal Code, had not been committed in their presence or within their sight and therefore, the appellants had a right of private defence of their bodies and as the victims, Waryam Singh and Sundar Singh, were armed with *kulhari* and stick respectively, the appellants cannot be said to have exceeded their right of private defence. It is on these findings that the appellants were acquitted under section 302/34 and section 324/34, Indian Penal Code. The learned counsel for the State has questioned the correctness of this position and according to him Waryam Singh and Sundar Singh had a right to arrest the accused in the circumstances of the case and for this purpose he has relied on *Sheo Balak* v. *Emperor*, (1). It is clear from the evidence in the present case that the villagers on hearing the alarm of their neighbour Kartar Singh and his family members came out and saw the culprits running away after they had left the *haveli* of Kartar Singh. It is common ground that the appellants had not in fact committed any theft and were not carrying any stolen cattle or other goods with them. It follows that the offence under section 452, Indian Penal Code, was not committed in their presence or within their sight. They pursued the culprits as their neighbour Kartar Singh and his sons etc. had stated that the accused had committed the

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offence and were themselves pursuing the culprits. The question arises whether section 59(1), Criminal Procedure Code, authorises a private person to arrest the alleged accused persons. Section 59(1) reads:—

> "Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station."

The question arises whether the phrase "in his view" should be construed as "in his presence or sight" or as "in his opinion". A person may be certain in his mind that the accused who is running away had committed a non-bailable and cognizable offence because of the statement of his neighbour which he believes and because of what he himself sees immediately after the commission of the offence, and yet, as far as I can see, he has no right to arrest the alleged culprits. It was held in *Kalia* v. *Kalu Chowkidar* (1), by a Division Bench of that Court that a private person under section 59(1), Criminal Procedure Code, has no right to effect arrest unless the offence was committed in the view of such a person, and this decision has been followed since then by the High Courts in India whenever this question has arisen. With due respect I agree with these decisions as it appears to me that it would be extremely dangerous to allow a private person to arrest another person under section 59(1) of the Criminal Procedure Code on the basis of his mere opinion,

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however definite it may be, that the offender had committed a non-bailable and cognizable offence. It would be dangerous to allow a private person to arrest an alleged offender on the basis of his opinion even if it is based on unimpeachable evidence as it would be open to serious misuse. All the decisions are to the effect that the legislature did not intend to allow a private person to arrest another person on the basis of his opinion only. There is, however, another aspect of the matter. When the commission of a particular offence is completed, does the offender continue in the commission of his offence when he is running away? It was held in *Sheo Balak* v. *Emperor* (1), by a Division Bench of that Court that "when a man is found committing a non-bailable and cognizable offence and then tries to escape, the whole is to be treated as one single transaction and any person who either sees him committing the offence or finds him running away immediately after the commission of the offence would be entitled to arrest him under section 59, Criminal Procedure Code." There is much to commend for this view as otherwise a private person would hardly ever be in a position to render assistance to a victim of an offence by arresting the offender and this state of law obviously makes the escape of the offender easy. Now, the decision of the Allahabad High Court is based on English law where under common law it was held in *Rex* v. *George Howarth*, (2).

> "The conviction was lawful, for, as he was seen in the out-house, and was taken on fresh pursuit before he had left the neighbourhood, it was the same as if he had been taken in the out-house, or in running away from it, that it was all one transaction."

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(2) 1 Moody's Crown Cases 207

On the basis of a statute it was observed in *Downing* v. *Capel* (1), by Keating, J—

> "The intention of the statute evidently is, that the criminal should be apprehended immediately on the commission of the offence. It is sufficient if the person apprehended has been seen in a position which justified the belief that he had committed the offence;
> . . . . . ."

In the English statute it was provided that "any person found committing an offence..... may be immediately apprehended without a warrant by any person." It appears to me, therefore, that the view taken in the Allahabad case does not run counter to section 59(1), Criminal Procedure Code. It is, however, not necessary to decide this point in the present case as whether Waryam Singh and Sundar Singh had a right to arrest the appellants or not it is clear that the pursuing party consisting of 60 to 70 persons were fully armed with *kulharis* and *kirpans* etc. They were all brandishing their weapons. Waryam Singh was ahead of the party and was armed with a *kulhari*. On reaching the appellants the pursuit party surrounded them. Darshan Singh was attacked and was injured with sharp-edged weapons and was killed on the spot. Kartar Singh was found to have received eight injuries when he was arrested. In the circumstances it cannot be said that the appellant Kartar Singh did not have reasonable apprehension that he was likely to be killed by the members of the pursuit party. He was, therefore, justified in defending himself. He gave only one blow with his spear which unfortunately proved fatal. In the circumstances it cannot be said that the appellants exceeded their

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right of private defence. The same remarks apply to those appellants who injured Sundar Singh. I am, therefore, of the opinion in agreement with the finding of the trial Court that the appellants were entitled to acquittal under the charges framed against them under sections 302/34 and 324/34, Indian Penal Code. I would, therefore, dismiss this appeal also.

The result is that I would dismiss both Criminal Appeals Nos. 622 of 1954 and 81 of 1955.

Dulat, J.

DULAT, J. I agree.

APPELLATE CIVIL

Before Khosla, J.

DASONDHA SINGH AND OTHERS,—*Plaintiffs-Appellants.*

versus

THE PUNJAB STATE,—*Defendant-Respondent.*

Regular Second Appeal No. 268 of 1955

1955

October, 20th

Police Act (V of 1861)—Section 15—Notification posting punitive police published in the Official Gazette—Notification providing the proclamation to be further notified by being posted on the Court House, Post Offices, Police Stations and Patwarkhanas—No postings of proclamation on Post Offices and Patwarkhanas, whether makes the levy illegal—Provisions of section 15, whether directory or mandatory.

Held, that section 15 gives the State Government no option in the matter of one manner of notification. The proclamation has to be notified in the Official Gazette but with regard to any other means the State Government is given full liberty and if the State Government so chooses it may content itself with publication in the Official Gazette alone. Therefore, that part of section 15 which requires the State Government to notify the proclamation "in such other manner as the State Government shall direct" is clearly not mandatory and failure to comply with