

Amrik Singh vs State Of Punjab on 4 February, 1993

Equivalent citations: 1994 SCC, SUPL. (1) 320

Author: N.P Singh

Bench: N.P Singh

PETITIONER:

AMRIK SINGH

Vs.

RESPONDENT:

STATE OF PUNJAB

DATE OF JUDGMENT 04/02/1993

BENCH:

REDDY, K. JAYACHANDRA (J)

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REDDY, K. JAYACHANDRA (J)

SINGH N.P. (J)

CITATION:

1994 SCC Supl. (1) 320

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. There are four appellants, namely, Amrik Singh (A-1), Ajaib Singh (A-2), Jit Singh (A-4) and Kewal Singh (A-6). They along with four others were tried for offences punishable under Sections 148, 302, 325, 324, 352 read with Section 149 IPC. The trial court convicted all of them. The trial court acquitted them of the murder charge but convicted Amrik Singh (A-1) under Section 325 IPC and sentenced him to undergo RI for two years and to pay a fine of Rs 500. Ajaib Singh (A-2) is convicted under Section 324 IPC and sentenced to undergo RI for one year and to pay a fine of Rs 250. Jit Singh (A-4) is convicted under Section 325 IPC and sentenced to undergo RI for two years and to pay a fine of Rs 500. Kewal Singh (A-6) is convicted under Section 326 IPC and sentenced to

undergo RI for 7 years and to pay a fine of Rs 1000. The appeal preferred by them was dismissed by the High Court. Hence this appeal. The case relates to an occurrence which took place on June 2, 1979 at about 8 p.m. in Village Kotla in Faridkot District. The accused, the material witnesses and the deceased, Amarjit Singh, belonged to the same village. According to the prosecution, there was enmity between the prosecution party and the accused party. On the day of occurrence at about 8 p.m. Mukhtiar Singh (PW

11) and his brother Pritam Singh (PW 12) were present in their house situated on the circular path of Village Kotla. Kewal Singh, Ajaib Singh and Amrik Singh accused came there armed with gandasas and dang and started abusing PW II and PW 12. Pritam Singh armed with a sela and Mukhtiar Singh armed with a dang came out and protested as to why the accused were abusing them. Then a quarrel ensued and it is stated that in the meantime the other accused also joined them armed with various weapons and Ajaib Singh exhorted his companions to attack the deceased. So saying, he opened the attack and dealt a gandasa blow from the reverse side on the head of Mukhtiar Singh. Amrik Singh gave a gandasa blow from the sharp side on the left shoulder of Pritam Singh (PW

12). Jit Singh inflicted a gandasa blow from its sharp side on the left shoulder of Pritam Singh and Kewal Singh struck a gandasa blow from its sharp side on the head of Amarjit Singh, deceased. During the same occurrence, it is alleged that Madan Singh (A-5) dealt a blow on PW 13 and Kewal Singh (A-6) gave a gandasa blow from its sharp side on his head. Ajaib Singh and Jit Singh gave one gandasa blow each to Sadhu Singh (PW 15) and the accused are alleged to have dealt some more blows on these witnesses. The further case is that during the course of the same occurrence, PW 11 and PW 12, by way of self-defence caused injuries to Ajaib Singh, Darshan Singh and Amrik Singh. The accused after causing the injuries left the place with their weapons. PW 11 and PW 12 along with other injured persons including deceased Amarjit Singh were shifted to Civil Dispensary, Baghapurana. They were examined by the doctor. As the condition of the deceased and others was serious, they were referred to C.M.C. & Hospital, Ludhiana. The deceased Amarjit Singh was examined by PW 18 and was treated but he died on June 5, 1979 at 10.30 p.m. The other injured persons were also treated and X-rayed. The injured accused were also examined by the doctor and on Amrik Singh (A-1) there were 12 injuries including some incised wounds. Ajaib Singh had 7 injuries including incised wounds and Darshan Singh accused also had 7 injuries. Inquest was held on the dead body of Amarjit Singh and the same was sent for postmortem. PW 19, Dr Parmodh Kumar, who conducted the postmortem found a lacerated wound on the scalp and incised wounds on the front area of the head. He also found that the blood was clotted. He opined that the injuries were sufficient in the ordinary course of nature to cause death. After completion of the investigation, the charge-sheet was filed. The plea of the accused has been that the deceased and his companions were aggressors and inflicted injuries on the accused persons and they in exercise of their right of self-defence inflicted injuries on the deceased as well as the PWs. The trial court after due consideration of the evidence held that the time and place of the occurrence and the participation of both sides in the occurrence is not in dispute and that the circumstances would indicate that it was a case of free fight and therefore each of the appellants would be liable for his individual acts.

2. So far as the attack on the deceased is concerned, the trial court held that the doctor could not give a satisfactory answer whether the two injuries on his head individually were sufficient in the

ordinary course of nature to cause death and, when the lacerated injury which proved to be fatal was not attributed to any one of the appellants and, therefore, the other injury which were attributed to Kewal Singh cannot by itself be sufficient in the ordinary course of nature to cause death and in that view of the matter convicted Kewal Singh under Section 326 IPC and sentenced him to undergo RI for 7 years.

3. So far as the other three appellants are concerned, they are convicted for their individual acts for causing injuries to Pritam Singh and Sadhu Singh. The remaining four accused were also convicted under Section 323 IPC but they were released on probation of good conduct. The High Court, however, confirmed the convictions and sentences.

4. In this appeal Mr U.R. Lalit, learned senior counsel, submits that this is a clear case where the accused were entitled to right of self-defence and the evidence sufficiently indicates that the prosecution party was the aggressor and at any rate the version put forward by the defence looks more probable and in these circumstances of the case, all the accused should have been given benefit of doubt. He also submits that Kewal Singh (A-6) is alleged to have inflicted only one incised injury whereas the evidence is that apart from him Amrik Singh (A-1) is said to have inflicted an incised injury but the medical evidence says that there is only one incised injury and in such a situation Kewal Singh alone cannot be held responsible for the said incised injury and consequently he cannot be convicted for inflicting that injury. We see no force in this submission. The evidence of Mukhtiar Singh (PW-11) is corroborated by the first information report given by him in which he categorically mentioned that it is only Kewal Singh who inflicted the incised injury and there is no mention of participation by Amrik Singh. It is only during the trial that the witness has improved but that by itself is not a ground to hold that Kewal Singh had not inflicted the incised injury. The other submission is that Jit Singh (A-

4) was not in the company of other accused but he only joined them later, therefore, he cannot be held to have participated in the free fight and it could be that in exercise of right of private defence, namely, to save the co-accused from being attacked by the deceased party, he inflicted injuries. So far as his case is concerned that he must be given the benefit of right of self-defence, we are unable to accept this contention. The whole occurrence started at the spur of moment and all the accused joined and there was a verbal quarrel which resulted in fighting and all of them participated. Therefore, the case of Jit Singh cannot be separated.

5. Both the courts have rightly held that the time and place of occurrence and the presence of all the accused as well as the PWs and the deceased are not in dispute. It was contended before both the courts below that the accused were entitled to right of self-defence. This submission was examined by the courts below and having regard to the facts and circumstances particularly, that the occurrence took place near the house of the accused, this plea has been rejected and we see no ground to come to a different conclusion. The High Court, further held that this is a case of free fight. In coming to such a conclusion, the High Court has taken into consideration the fact that the accused as well as the deceased and PWs appeared at the place of occurrence armed with weapons and the quarrel took place immediately. This is a question of fact which does not warrant any interference. The question as to who commenced it first may not be much relevant and it has also

been held in a number of cases that the participants should be liable for their individual acts. In this view of the matter, we have to examine the plea of each of the accused. We may, however, mention that in a case of free fight, the question of unlawful assembly is not ruled out.

But in arriving at the common object of the unlawful assembly in a free fight it cannot be held with certainty that if one of the individuals inflicts a serious injury then it would be a common object of all members of the unlawful assembly. Mere formation of an assembly with a view to fight will be unlawful assembly but in the instant case having regard to the convictions that have been awarded we do not want to express any opinion whether there was an unlawful assembly as such. We also do not have any material as to what happened to the case which was filed by the accused by way of complaint. In this view of the matter, we would examine only the individual acts in respect of which convictions are recorded. Kewal Singh (A-6) attacked the deceased and inflicted an injury with a sharp-edged weapon. The High Court has held that he could not be held responsible for the other injury which was inflicted by a blunt weapon and which proved to be fatal. In this view of the matter, Kewal Singh was convicted under Section 326 IPC. Having regard to the circumstances under which free fight is said to have taken place, we think the sentence of seven years RI is rather severe. Coming to the other appellants, namely, Amrik Singh, Ajaib Singh and Jit Singh, they are convicted under Sections 325 and 324 IPC. Amrik Singh and Ajaib Singh accused also received a number of injuries. Accordingly, their sentences are to be reduced. In the result, we confirm the conviction of Amrik Singh (A-1) under Section 325 IPC but reduce the sentence to one year RI but the sentence of fine with default clause is confirmed. Ajaib Singh (A-2) is convicted under Section 324 IPC which is confirmed but sentence is reduced to six months' RI but the sentence of fine with default clause is confirmed. The conviction of Jit Singh (A-4) under Section 325 IPC is confirmed but the sentence is reduced to one year RI but the sentence of fine with default clause is confirmed. Now coming to the case of Kewal Singh (A-6), his conviction under Section 326 IPC is confirmed but his sentence of seven years' RI is reduced to three years RI but the fine of Rs 1000 with default clause is confirmed. Subject to the above modifications, this appeal is dismissed.