

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

DATE OF DECISION: MAY 09, 2017

1. CRIMINAL REVISION NO.2225 OF 2006 (O&M)

Jai Singh

.....Petitioner

VERSUS

State of Haryana

....Respondent

2. CRIMINAL REVISION NO.2107 OF 2006 (O&M)

Rajinder Kumar

.....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

Present: Mr.S.S.Dinarpur, Advocate &
Mr. Subhash Godara, Advocate,
for the petitioner. (In CrI.Revision No.2225 of 2006).

Mr. Amit Jaiswal, Advocate,
for the petitioner. (In CrI.Revision No.2107 of 2006).

Mr. Ashish Yadav, Addl.A.G., Haryana,
for the State.

AUGUSTINE GEORGE MASI, J. (ORAL)

1. By this order, I propose to dispose of above titled two criminal
revision petitions arising out of the judgment dated 30.08.2006 passed by

Additional Sessions Judge, Ambala, affirming the judgment of conviction

and order of sentence dated 20.09.2004 of Judicial Magistrate Ist Class, Ambala City, whereby both the petitioners were convicted and sentenced as under:-

Offence	Sentence	Fine	In default
326/34 IPC	3 years	₹1,000/-	SI for three years

2. Both the revisions have arisen from an incident, which, according to the prosecution, had taken place on 07.08.2001 at about 08.00 P.M., when complainant-Shri Niwas had gone to ease himself in the jungle after doing his labour work with one Sh.Om Parkash. While he was coming back at about 09.00 P.M. and reached near the field of Shisha Bhaiji on Pilkhani road, petitioner Jai Singh called him and said that he should be taught a lesson for having not followed his dictate for not doing work with Om Parkash. On this petitioner, Rajinder Kumar (in Criminal Revision No.2107 of 2006) caught hold of complainant-Shri Niwas and Jai Singh-petitioner (in Criminal Revision No.2225 of 2006) gave 2/3 sword blows on the back side of the head of the complainant, on which he raised hue and cry. Meanwhile, Ravi Kumar, a cousin brother of the complainant, came to the spot. On seeing him, both the petitioners fled away from the spot. The complainant was initially taken to a private doctor in the village by Ravi Kumar and he also informed his family members. Injured Shri Niwas was referred to Civil Hospital, Naraingarh and thereafter to Civil Hospital, Ambala City, where he was given treatment. On a ruqa sent by the doctor, Head Constable Kulwant Singh reached the Civil Hospital, Ambala City but since the complainant was not found to be fit as per the opinion of the doctor, his statement was recorded on 08.08.2001 at 04.00 P.M., on the basis of which FIR was registered against the petitioners.

that in MLR, Ex.PW5/8, there is over-writing on the date as it appears that initially it was mentioned as 08.08.2001 and later on it was converted to 07.08.2001 and further on the said MLR, the time had been mentioned as 12.10 P.M. He, thus, contends that the said MLR cannot be accepted to be correct and rather it is a manipulation done by the prosecution. That apart, he submits that the FIR has been registered at 4.00 P.M. on 08.08.2001 whereas the occurrence is alleged to have taken place at 09.00 P.M. on 07.08.2001. Thus, there is an unexplained delay on the part of the prosecution in registration of FIR.

4. That apart, he contends that petitioner, Jai Singh, has been wrongly and falsely implicated in the present case. As a matter of fact, he was not at all involved in the commission of offence and has been falsely roped in. Prayer has, thus, been made for acquittal of petitioner, Jai Singh.

5. Another argument, which has been raised by learned counsel for petitioner, Jai Singh, is that complainant-Shri Niwas while appearing as PW1 has not stated that his x-ray was got conducted in Civil Hospital, Ambala, rather it has been stated that the doctor at Civil Hospital, Ambala City had asked him to get his x-ray done from Dr.K.D.Sharma at Ambala Cantt., where his father had accompanied him. Dr.K.D.Sharma had given the x-ray report to his father and that x-ray report was submitted to the doctor at Civil Hospital, Ambala City. He, therefore, contends that the x-ray report and the x-ray films, Exs.P-1 and P-2,, which have been submitted by Dr.S.S.Punia (PW8) cannot be accepted as x-ray has not at all been conducted in the Civil Hospital, Ambala. These are inadmissible in evidence and have no relevance. Rather, these are manipulated documents placed on record, which cannot be relied upon. His further submission is that without

the x-ray report, it cannot be said that a single injury, which has been found on the person of injured Shri Niwas (complainant) is grievous in nature as this opinion has been given while relying upon the report on the x-ray films placed on record. He, therefore, prays that the offence, if any made, would, at the most, fall under Section 324 IPC.

6. Counsel for petitioner, Rajinder Kumar (in Criminal Revision No.2107 of 2006) submits that although it has been stated that Rajinder Kumar had caught hold of Shri Niwas and thereafter Jai Singh had inflicted the injury with the sword but both the eye witnesses, namely, Shri Niwas (PW1) and Ravi Kumar (PW2) have not so stated in their evidence. What has been stated by them is that Rajinder Kumar was alongwith Jai Singh. He, therefore, reiterates the assertion that the petitioners have been falsely implicated in the case. He also asserts that hockey stick, which is stated to have been carried by this petitioner, Rajinder Kumar, has not been recovered and, therefore, he deserves acquittal by setting-aside the impugned judgments.

7. On the other hand, learned counsel for the State has, with reference to statement of PW5 Dr.Bimla Anand, stated that there appears to be a slip of tongue on the part of said doctor while mentioning the time at which the patient Shri Niwas was admitted. As a matter of fact, the occurrence is dated 07.08.2001 at about 09.00 P.M. and thereafter Shri Niwas was taken to a private doctor, from where he was referred to Civil Hospital, Naraingarh and finally he was taken to Civil Hospital, Ambala City and it is in this process that time would have been consumed. Therefore, the time was 12.10 A.M. However, it appears that as there was confusion with regard to the date as it was already after 12.00 midnight

when the admission was made, the date initially was recorded as 07.08.2001, which obviously had to be 08.08.2001 and later on the same has rightly been corrected by Dr.Bimla Anand.

8. As regards the delay in registration of FIR, State counsel submits that statement of PW4 Head Constable Kulwant Singh clarifies the position. According to him, he had received the information from the hospital at about 01.30 A.M. on 08.08.2001. He had approached the doctor for seeking an opinion with regard to the fitness of injured Shri Niwas but he opined him not to be fit for giving statement. It is only after he obtained the fitness from the doctor that statement of Shri Niwas was recorded and on the basis thereof, an FIR was registered. He, thus, contends that delay has been duly and properly explained by the prosecution. As regards the x-ray films and x-ray report, counsel for the State submits that Dr.S.S.Punia has categorically stated that he has radiologically examined Shri Niwas and found fracture on his left parietal region on the scalp. He submitted his report as Ex.PW8/A and the x-ray films as Exs.P1 and P2, which have been signed by him. He submits that no such submission or suggestion has been given to the said doctor that x-ray of Shri Niwas were not done in Civil Hospital, Ambala. He, thus, contends that merely because PW1 Shri Niwas has not stated that his x-ray was done at Civil Hospital, Ambala City, the evidence of Dr.S.S.Punia cannot be over-looked. Reliance has also been placed upon statement of Head Constable Kulwant Singh, who has also stated that the x-ray was done at Civil Hospital, Ambala City and he had collected the report from Civil Hospital, Ambala City. Assertion has also been made that the sword has been recovered at the behest of petitioner, Jai Singh and, therefore, it cannot be said that he has been falsely implicated in

the present case.

9. As regards petitioner, Rajinder Kumar, counsel for the State submits that although in the FIR there is an overt act attributed to him i.e. catching hold of the complainant but in the statement in Court he has been only shown to have accompanied Jai Singh. He also could not dispute the fact that hockey stick has not been recovered during investigation. He, however, prays that both the revision petitions are devoid of merit and deserve to be rejected.

10. I have considered the submissions made by learned counsel for the parties and with their assistance have gone through the impugned judgments and records.

11. In the case of petitioner, Jai Singh, who has been attributed an injury with a sword on the backside of head of complainant, Shri Niwas, the first contention is that there is an inordinate delay in registration of FIR as the alleged incident had taken place at about 09.00 P.M. on 07.08.2001 and the FIR has been registered at 04.00 P.M. on 08.08.2001. This delay would not be fatal as the same has been duly explained by the prosecution as after the incident had taken place, Ravi Kumar (PW2) had taken complainant, Shri Niwas, to a private doctor in the village, who had asked him to take the injured to Civil Hospital, Naraingarh and from there he was referred to Civil Hospital, Ambala City, where he had been admitted at 12.10 A.M. (although in the entry in the MLR, it is mentioned as 12.10 P.M.). A ruqa was sent to the police station, which was received at about 1.30 A.M. On the basis of this intimation, Head Constable Kulwant Singh had reached the hospital and got the opinion of the doctor with regard to the fitness of injured Shri Niwas, who opined that he was not fit for giving the statement. On a further

application submitted by him, the fitness certificate was given and on that basis, statement of Shri Niwas was recorded at 04.00 P.M., which became the basis for registration of the FIR. The delay, thus, has been duly explained by the prosecution and, therefore, it cannot be made the basis for doubting the version of the prosecution, which is based upon the statement of injured Shri Niwas.

12. As regards the discrepancy found in the MLR (Ex.PW5/8) i.e. regarding the date as 08.08.2001, which has been alleged to have been changed to 07.08.2001 (by over-writing) and the time of admission being recorded as 12.10 P.M. and that of examination as 12.15 P.M., it is apparent and explained that the said error has crept in because of the time of 12 midnight having just elapsed, resulting in change in date. It is thereafter that the admission had taken place in the hospital and it is a matter of common knowledge that such minor mistakes do occur while recording the date and time, especially when it is immediately after the midnight. It cannot be treated to be of such a nature, which would lead to disbelieving the prosecution version altogether. The same, therefore, would not cause any dent to the prosecution case in any manner, when seen in conjunction with the intimation from the hospital received in the police station at about 1.30 A.M. on 08.08.2001, as stated above.

13. As regards the contention of counsel for the petitioner that in the FIR, it has been stated that 2/3 sword blows were given on the back of the head of complainant, Shri Niwas, whereas only one injury has been found on his person, there is no doubt that as per the MLR only one injury has been found on the left parietal region of Shri Niwas but that also would not make much difference as when the incident had taken place, it is

difficult for the witness to count the number of blows given with the sword, especially at night. However, the injury, which has been attributed to petitioner, Jai Singh and that too with the sword is further fortified to the extent that weapon of offence i.e. the sword has been recovered at the behest and disclosure of petitioner, Jai Singh. It, therefore, cannot be said that such an incident had not taken place or that the said injury could be an outcome of a fall on a hard surface as has been asserted by counsel for the petitioner. The discrepancies as have been pointed out by the petitioner in the statement of some of the witnesses would also not be of much use to the petitioner.

14. However, the assertion of counsel for petitioner, Jai Singh, with regard to no reference of x-ray being done in Civil Hospital, Ambala, by Shri Niwas (PW1) carries weight as he not only failed to mention this fact but even had proceeded to state that the doctor at Civil Hospital, Ambala, had asked him to get his x-ray done from Dr.K.D.Sharma, Ambala Cantt. and he alongwith his father had gone there to get the x-ray done and had also collected the report from there, which was submitted to the doctor at Civil Hospital, Ambala. This positive statement of the complainant himself cast a doubt on the statement of Dr.S.S.Punia (PW8), who although had asserted that he had himself radiologically examined the complainant and has produced his report as also the x-ray films but since the person, who is injured and whose x-ray films it is alleged to be, has himself not stated at all that his x-ray was done at Civil Hospital, Ambala City, rather has positively asserted that it was done from some other place and that too at the behest of the doctor of the Civil Hospital, Ambala City, would help petitioner-Jai Singh. In the present case,

in the absence of x-ray report, it would be difficult to come to a conclusion that the injury, which had been found to be on the person of Shri Niwas was grievous in nature as according to the MLR, it is an incised wound 1 x 2 x 4 cm. with fresh bleeding present. In the cross-examination of Dr.Bimla Anand (PW5), she has stated that the said injury was caused with a sharp weapon.

15. In view of the above, petitioner, Jai Singh, has to be given the benefit of doubt as regards the nature of injury is concerned and the said injury would be treated as simple in nature. Therefore, conviction of petitioner, Jai Singh, under Section 326 IPC is converted to the one under Section 324 IPC.

16. As regards petitioner, Rajinder Kumar, suffice it to say that no overt act has been attributed to him and in fact he has only been shown to have accompanied Jai Singh and no recovery of hockey stick has been effected from him, which he was allegedly carrying, thus, his presence at the spot appears to be doubtful and, therefore, by giving him benefit of doubt, he deserves acquittal.

17. In view of the above, Criminal Revision No.2225 of 2006 (Jai Singh Vs. State of Haryana) is partly allowed and conviction of petitioner Jai Singh is converted from Section 326 IPC to Section 324 IPC. Since he has already undergone actual sentence of 08 months and 17 days, he is sentenced under Section 324 IPC for the period of sentence already undergone by him. So far as petitioner Rajinder Kumar in Criminal Revision No.2107 of 2006 (Rajinder Kumar Vs. State of Haryana) is concerned, he is granted benefit of doubt and stands acquitted of the charges levelled against him.

18. Both the revision petitions stands disposed of in the above terms.

May 09, 2017
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No