

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

**CRR No.3401 of 2013 (O&M)
Decided on: 29.08.2017**

Sintu and another		Petitioners
	Versus	
State of Haryana and another		Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Loveleen Dhaliwal, Advocate for the petitioners.

Mr. Naveen Kaushik, Addl. A.G., Haryana.

Mr. R.K. Malik, Advocate for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting-aside the judgment of conviction dated 07.12.2011 and order of sentence dated 10.12.2011 passed by the trial Court, convicting the petitioners/accused under Sections 323, 326, 341, 427 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') and the judgment dated 21.10.2013 passed by the Appellate Court whereby the revision filed by the petitioners against the order of conviction and sentence dated 07.12.2011 and 10.12.2011 was dismissed.

The prosecution case as per the FIR is that the complainant – Naresh Kumar son of Santa Ram got the FIR No.40 dated 31.03.2005 for offence punishable under Sections 323, 326, 341, 427 read with Section 34 IPC registered against the petitioners/accused with the allegation that on 29.03.2005 at about 11:00 PM, when he was coming towards his village from Kaithal on his four-wheeler bearing registration No.HR-10-A-1060 driven by Ranbir son of Bhim Singh, on reaching near village Sajuma they saw a tractor-trolley parked in the

middle of the road. On seeing that they slowed down the speed of their four-wheeler and stopped near the tractor-trolley. When the complainant tried to get down from the four-wheeler, the petitioners/accused gave *lalkara* and on hearing the same, the driver of the four-wheeler fled away from the spot due to fear. Thereafter, petitioner No.2 – Bintu caught hold of the complainant and petitioner No.1 – Sintu bite him on his back. Both the petitioners also caused several injuries to the complainant and petitioner No.2 – Bintu seized the complainant by his throat and as a result of which his tongue came out from his mouth and petitioner No.1 – Sintu bit on the tongue and the complainant became unconscious. He was brought to the hospital by one Balbir Singh and got him admitted. Thereafter, the police from Police Station Kalayat came and recorded the statement of the complainant and lodged the FIR.

After completion of investigation, charges were framed against the petitioners under Sections 323, 326, 341, 427 read with Section 34 IPC to which they did not plead guilty and claimed trial.

In order to prove its case, the prosecution recorded the statements of the complainant PW1 – Naresh Kumar, who deposed on the same set of version as given in the FIR. PW2 – HC Balwan Singh stated that on receiving the information, he reached the government hospital and submitted an application Ex.PW2/A for recording statement of the complainant – Naresh Kumar but the doctor has informed him that the patient has been referred to Post Graduate Institute of Medical Education and Research, Chandigarh (in short 'PGI'). Thereafter, he reached PGI, Chandigarh and moved another

application Ex.PW2/B before the Medical Officer for recording the statement of the injured on which the doctor informed him that the patient has been sent back to Government Hospital, Kaithal. He again came back to Government Hospital, Kaithal and submitted one another application Ex.PW2/C before the Medical Officer, Kaithal for recording the statement of the complainant on which the doctor opined that the complainant is fit to make the statement. On receiving a written complaint Ex.PA from the complainant, the information was sent to the Police for recording the FIR on which a formal FIR Ex.PW2/E was recorded. He has further stated that thereafter, he reached the place of occurrence and prepared a site plan Ex.PW2/G and vide recovery memo Ex.PW2/H took in possession the accidental four-wheeler bearing No.HR-10-A-1060 and tractor-trolley Swaraj 855. The recovery memo was signed by Constable Om Parkash and the mechanical examination of the accidental vehicles were got done and on obtaining the mechanic report, statement of the Mechanic under Section 161 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') was recorded. Thereafter, on 06.04.2005, this witness reached Government Hospital, Kaithal and moved an application Ex.PW2/L before the Medical Officer for obtaining his opinion regarding the injuries sustained by the complainant and the doctor opined that injury No.2 is grievous in nature and, thereafter, Section 325 IPC was added in the FIR. He has further stated that on 19.04.2005 as per order of the Deputy Commissioner, Kaithal, an application Ex.PW2/N was filed before the SMO, Government Hospital, Kaithal for getting the re-medical examination of the complainant – Naresh Kumar and on receiving the

medical board report, offence punishable under Section 326 IPC was added and Section 325 IPC was deleted. In the cross-examination, this witness has stated *“injured – Naresh Kumar son of Santa Ram as per Ex.PW2/C was in a position to make the statement as the doctor has given me this opinion in writing but despite this Naresh Kumar did not give his statement and submitted a written application.”* He has further stated in his cross-examination that both the vehicles were entangled with each other on account of the accident when he visited the spot and further admitted that accused – Bintu also received injuries and his MLR was also obtained and in this connection, the information from Government Hospital, Kaithal was also received and he recorded the statement of the petitioner – Bintu. He has further stated that the Deputy Commissioner has not given any order in writing for re-medical examination of the complainant. However, he has denied the suggestion given by the accused persons that Bintu in his statement has reported that on 29.03.2005, he along with his brother after selling the paddy crops was coming back from Kaithal to his village Sajuma on truck bearing No.HR-08-C-0362 and in the meantime, Naresh, Ranbir, Balbir and Santa with intention to cause injuries came on their four-wheeler bearing No.HR-10-A-1060 and directly hit the tractor-trolley and caused injuries to Bintu with their respective weapons and while leaving the spot, they snatched an amount of Rs.35,000/- which they earned after selling their crops and a golden ring.

PW3 – Balbir Singh deposed that on 29.03.2005 he was coming from his fields when he heard the sound of *bachao bacho* and he saw that two boys were giving beatings to a boy, who had fallen

down on earth and one of the two boys seized his throat and his tongue was out and one of the accused bit his tongue and on seeing him they ran away and thereafter, he got the injured – Naresh admitted in the hospital. In cross-examination, he has admitted that he had contested the election of Block Samiti and one Ram Chander has won the election. However, he denied that the accused persons were supporters of Ram Chander and, therefore, he has falsely implicated them. This witness further denied the defence raised by the accused persons that the accused were coming back after selling their produce and the complainant along with others by causing the accident with their four-wheeler took away the sale produce. PW3 – Balbir Singh is the formal witness who proved the FIR Ex.PW2/E.

PW5 – Dr. R.P. Goel, SMO, Civil Hospital, Kaithal proved the MLR of Naresh in which injury No.2 was reported as lacerated wound on frontal part of the tongue and part of the tongue was missing. In cross-examination, this witness stated *“injured – Naresh son of Santa Ram came to hospital at his own and told his name, father's name and village name himself. When the patient came in the hospital his vitals were maintained. The patient's condition was normal during his duty on that day.”* He has further admitted that no fresh bleeding was present at the time of medical examination and possibility of injuries on the person of the injured in an accident cannot be ruled out. This witness further stated that he has given the opinion regarding injury No.2 after obtaining the opinion of General Surgeon. This witness also proved other injuries sustained by Naresh Kumar and stated that injury No.1 was a contusion on right side of neck, injury

No.3 was contusion on nose, injury No.4 was a contusion on knee, injury No.5 was a contusion on left forearm, injury No.6 was a contusion on left leg, injury No.7 was a contusion on upper side of back and injury No.8 was a contusion on back. All injuries were caused by a blunt weapon. He further stated that he did not refer the patient to PGI. This witness proved MLR dated 31.03.2005 as Ex.PW5/A, according to which Naresh Kumar himself appeared before this witness.

PW7 – Baljit Singh, EHC, the motor mechanic stated that he had inspected mechanically examined both the vehicles and has produced on record the mechanical report vide Ex.PW7/A and Ex.PW7/B.

PW8 – EASI, Balwant Singh is a formal witness regarding recovery of driving licence and PW9 – HC Joginder Singh is also a formal witness regarding recovery of registration certificate of tractor bearing No.HR-08-C-0362.

PW10 – Dr. R.D. Chawla, Medical Officer, Civil Hospital, Kaithal stated that on 13.04.2005, the complainant – Naresh was medico legally examined by the Board of 03 doctors including himself, Dr. H. Mazumdar and Dr. D.C. Thukral and reported that injury No.2 on the body of Naresh was a lacerated wound on the tongue and part of the tongue was missing, repair of mucosa to mucosa was done at PGI as per the records and tip of the tongue i.e. interior part was absent. This witness also proved the other injuries on the body of the injured and stated that injury No.2 is grievous in nature. In cross-examination, he has further stated that on 31.03.2005, the patient – Naresh Kumar came to hospital himself. He has further stated that name and address of the

injured were informed by Balbir Singh (uncle of the patient) in MLR Ex.PW10/A. However, he has stated that he cannot tell the size of the part missing from the tongue and only tip of the tongue was missing. This witness also stated that injuries shown in the MLR Ex.PW10/A dated 13.04.2005 may be possible in the road side accident and has also stated that there is no record on judicial file to show that the patient was referred to PGI, Chandigarh.

PW11 – Constable Om Parkash is also a formal witnesses who vide recovery memo took in possession both the vehicles.

PW12 – Dr. D.C. Thukral stated that he has given his opinion Ex.PW12/A that on 31.03.2005 Naresh son of Santa Ram was fit to make statement. In cross-examination, he has stated that the patient was well-oriented and was in a position to make the statement and the patient was himself in a speaking condition.

PW13 – Dr. H. Mazumdar stated that he was part of the Medical Board which conducted the re-medical examination of the complainant on 13.02.2005 and reported that injury No.2 was a lacerated wound on the tongue with part of the tongue missing and as per record, it was repaired at PGI, Chandigarh. In cross-examination, he has admitted that at the time of re-medical examination, the patient was talking normally and he could not tell the exact size of the tongue missing. He has also stated that the injuries on the person of Naresh Kumar being caused in an accident though remote but cannot be ruled out entirely.

PW14 – Jiwan Kumar, Medical Record Clerk has deposed that he has brought the OPD card of PGI, Chandigarh and produced the

same on record as Ex.PW14/A and file Ex.PW14/B. In cross-examination, this witness admitted that the patient was admitted in hospital on 30.03.2005 and was discharged on the same day i.e. 30.03.2005.

Thereafter, the statements of the accused under Section 313 Cr.P.C. were recorded and they denied the evidence put to them and pleaded false implication.

In defence evidence, the petitioners/accused produced DW1 – Ram Chander, who stated that he had contested the election of Block Samiti in the year 2005 and Balbir Singh son of Kali Ram and one Ragi Ram son of a Patwari contested the election and he won the election. He has further stated that the petitioners/accused had supported him in the election and the complainant – Naresh Kumar along with his accomplices caused injuries to the petitioners on 29.03.2005.

DW2 – Dr. Yashpal, Medical Officer, Government Hospital, Kaithal proved the MLR dated 30.03.2005 of Narender Pal @ Bintu in which two injuries i.e. abrasion on right scapular region and left knee and one lacerated wound at the lateral side of left leg was noticed. The injuries were found to be simple in nature and the weapon used was blunt. This witness also stated that he has proved the MLR Ex.DW2/A and on the very same day, he has sent an information to the police under his signatures Ex.DW2/B and the police moved an application regarding fitness of the injured on the same day in which he gave his opinion which bears his signatures as Ex.DW2/C that the injured is fit to make the statement. In cross-examination, he has stated

that possibility of injuries being self-inflicted is ruled out.

DW3 – Bintu @ Narender Pal proved the defence version given by him.

DW4 – Ram Lal, Gram Sachiv submitted the records relating to the election of Block Samiti pertaining to the year 2005.

The trial Court vide its impugned judgment convicted and sentenced the petitioners and the revision filed against the said judgment was dismissed by the Appellate Court and, thereafter, the present revision petition has been filed and sentence of the petitioners/accused was suspended vide order dated 18.11.2013.

It is submitted on behalf of the petitioners that there is a delay of 36 hours in registration of the FIR and as per the prosecution version, the incident relates to 29.03.2005 at about 11:00 PM and the FIR was registered in the evening of 31.03.2005 and this delay is not properly explained.

It is further submitted that the complainant was admitted in the hospital after a delay of 10 hours which shows that there was no serious injuries. With reference to the statement of PW5 – Dr. R.P. Goel who medico legally examined the complainant, it is submitted that the complainant – Naresh Kumar came to the hospital himself, informed his name, father's name and village name and the patient when came in hospital, his vitals were maintained and his condition was normal on that day. Thus, it is submitted that the injuries sustained by the complainant were not so serious and that is why his medical was conducted after about 10 hours otherwise, he would have been admitted immediately in the hospital. It is also submitted that PW10 – Dr. R.D.

Chawla, Member of the Board who re-examined the complainant with regard to injury No.2 has not denied that possibility of injuries shown in the MLR of Naresh i.e. Ex.PW10/A can be received in a road side accident. It is further submitted that PW12 – Dr. D.C. Thukral has also stated that while giving his opinion regarding fitness of Naresh Kumar to make the statement i.e. vide Ex.PW12/A, the patient was well-oriented and was in a position to make the statement being in a speaking condition and the injuries sustained by the injured were not grievous. Counsel for the petitioners has referred to the statement of PW13 – Dr. H. Mazumdar who in his cross-examination has not specifically denied that the possibility of the injuries sustained by Naresh in an accident cannot be ruled out entirely. It is, thus, submitted by counsel for the petitioners that the injuries sustained by Naresh is not proved to be a grievous injury and, in fact, it was an injury sustained by him in a road side accident.

It is further contended on behalf of the petitioners that the Courts below have not taken into consideration the defence version set up by the petitioners that, in fact, there was an accident of two vehicles between one tractor driven by one of the petitioner/accused and the four-wheeler on which the complainant – Naresh was coming along with his accomplices. Counsel for the petitioners has submitted that though sufficient evidence has come on record to prove that both the vehicles met with an accident as is clear from the statement of investigating officer PW2 – HC Balwan Singh that the vehicles were found parked on road side entangled with each other in an accident. Counsel for the petitioners has also relied upon the statement of PW7 –

EHC, Baljit Singh who has submitted his mechanical report in respect of both the vehicles and as per the report, both the vehicles were found involved in an accident. Therefore, it is submitted on behalf of the petitioners that, in fact, it is a case of road side accident which was converted into an FIR under Section 326 IPC in order to falsely implicate the petitioners.

It is further contended by counsel for the petitioners that PW3 – Balbir Singh is a highly interested witness as he has admitted that the injured – Naresh was his nephew and Balbir Singh has lost the election of Block Samiti against Ram Chander to whom the petitioners have supported in election. Counsel for the petitioners has referred to the statement of PW3 – Balbir Singh, recorded in the cross-examination, wherein he has clearly admitted the fact of contesting and losing the election of Block Samiti against Ram Chander coupled with the statement of Ram Chander who appeared as DW1 to prove that he and Balbir Singh had contested the election and he had won the same and the petitioners had supported him during election. Thus, it is submitted that the political rivalry and false implication of the petitioners in a road side accident is apparent on record. It is also submitted on behalf of the petitioners that there are material contradictions in the statement of prosecution witnesses. The version given by PW1 – Naresh that he was accompanied by Balbir Singh to the hospital is not reflected in the MLR as is clear from the statement of PW5 – Dr. R.P. Goel who deposed that the complainant came on his own and was conscious, well-oriented and in a position to speak. It is also submitted that the complainant stated that the eye-witness – Balbir

Singh i.e. PW3 reached the spot after the incident whereas PW3 – Balbir Singh stated that he had seen the accused –Bintu biting the tongue of the complainant. The version given by Balbir Singh that when he took the complainant to the hospital there was continuous bleeding from his mouth is not proved from the medical evidence as PW5 – Dr. R.P. Goel in his statement has stated that no fresh bleeding was present at the time of medical examination. He further stated that the version given by PW3 – Balbir Singh that the complainant remained unconscious till the evening of 31.03.2005 is apparently false as PW5, PW10 and PW13 have clearly deposed that the complainant was conscious at the time when he reached the hospital. Thus, it is submitted that presence of PW3 – Balbir Singh at the place of occurrence is highly doubtful and he is the witness who has been introduced later on just to settle his political vendetta as he has lost the election with one Ram Chander to whom the petitioners have supported.

It is also submitted that the injuries sustained by the complainant especially injury No.2 cannot be termed as grievous injury as it is not proved how much part of the tongue was missing, therefore, offence under Section 326 IPC is not made out. It is also submitted that since the complainant was conscious and was able to speak properly when he reached the hospital, in view of the statement of PW5 – Dr. R.P. Goel, the injuries on his tongue cannot be termed as grievous hurt as per Section 326 IPC.

Counsel for the petitioners has further submitted that no doctor from PGI, Chandigarh has appeared as a prosecution witness to

prove the treatment given to the complainant/injured in order to say that it is a case of human bite. He has further submitted that the Courts below while relying upon the documents Exs.PW14/A and PW14/B has wrongly assumed that the doctor opined that it is a case of human tongue bite whereas it is in the opinion given by the patient which was noticed by the doctor at the time of giving treatment. It is further submitted that in the absence of the doctor who treated the injured at PGI, Chandigarh, it cannot be held that it is a case of human bite. In support of his contentions, counsel for the petitioner has relied upon the judgment ***“Vakil vs State of Haryana”, 1998(4) RCR (Criminal) 165*** where the doctor who treated the injured was not examined by the prosecution, the accused were deprived of their available right of cross-examination of the said witness to prove their innocence and, therefore, the conviction of the accused person is not sustainable. Since, the OPD Card Ex.PW14/A and the treatment file Ex.PW14/B is not proved by the doctor who treated the injured – Naresh Kumar, the petitioners have been deprived of their right to cross-examine the aforesaid witnesses, therefore, in the absence of such evidence and on evaluation the other medical evidence i.e. statements of PW5, PW10 and PW13, it is not specifically proved that it is a case of a human bite and rather the possibility of sustaining such injuries by way of road side accident is not ruled out. The prosecution has failed to prove that injury No.2 sustained by the complainant was, in fact, a case of human bite.

It is also argued that the injuries sustained by the petitioner – Bintu as per his MLR Ex.DW2/A is not explained by the prosecution despite the fact that DW2 – Dr. Yashpal, Medical Officer, has sent a

ruqa Ex.DW2/B to the Police Station for registration of the case and he has given his opinion on the application submitted by the police Ex.DW2/C and, therefore, the prosecution has failed to prove the injuries sustained by the petitioners.

It is also argued that as per the FIR, one Ranbir Singh who was shown as driver of the four-wheeler has not been examined as a witness. It is also submitted on behalf of the petitioners that essential ingredients of Section 326 IPC are missing as the grievous hurt has not been caused by any weapon and, in fact, no weapon was used. Accordingly, it is prayed that the impugned judgment may be set-aside.

On the other hand, counsel for the State has supported the impugned judgments and prayed for dismissal of the present revision petition.

After hearing counsel for the parties, I find that injury No.2 sustained by the complainant is proved as a grievous injury from the MLR, treatment record and the statement of three doctors who have stated that the complainant suffered injury on his tongue and tip of the tongue was missing. It is also proved on record that the complainant was referred to PGI, Chandigarh and as per treatment card Ex.PW14/B he was treated for the tongue which was chopped off from the tip.

However, from the medical evidence led by the prosecution relating to the treatment at PGI is not sufficient to prove that in fact it was an outcome of human bite as per OPD slip and the treatment card produced by PW14 – Jiwan Kumar, a Record Keeper at PGI as Exs.PW14/A and PW14/B and the same only depicts that it is a case of alleged history of human bite. During the cross-examination of

PW5, PW10 and PW13, it has come on record that no record of PGI is available on judicial file and, therefore, the documents Ex.PW14/A and Ex.PW14/B which are heavily relied upon by the Courts below came on record during the statement of PW14, a record keeper from PGI. A perusal of the statement of PW14 shows that an objection was raised by the learned defence counsel while examination-in-chief of PW14 was recorded by the trial Court that these documents are objected on the ground of mode of proof. Admittedly while passing the impugned judgments or prior thereto, the trial Court did not pass any order removing the objection qua mode of proof of these documents i.e. Exs.PW14/A and PW14/B. Therefore, the information given by injured and recorded by the doctor at PGI as “*Alleged history of human bite*” (emphasis laid), is only an information given by injured person and both the Courts below have wrongly interpreted that it is opinion of the doctor. The version of the complainant that in fact it is a case of human bite by the accused – Bintu is not proved as the doctor who treated Naresh Kumar – complainant at PGI was not examined by the prosecution and, therefore, the appellant – accused were deprived of their right to cross-examine this witness in order to hold that it was a case of human bite. There is another aspect to hold that injury No.2 is not proved to be an injury arising out of the human bite and the same is doubtful in view of the statements of the doctors i.e. PW5, PW10 and PW13 who have not specifically stated that it is a case of human bite and rather have not denied the suggestion that the possibility of sustaining, such injury in a road side accident cannot be ruled out. It is also stated that the complainant was conscious and was in a position to

speak as he himself informed his name, father's name and his village name when the MLR was conducted, therefore, though the injury No.2 is proved to be a grievous injury yet it is not proved that it is an injury caused by human bite by accused/appellant – Bintu.

A perusal of both the judgments passed by the Courts below, however, would show that the defence taken by the petitioners that it was a case of road side accident has not been properly appreciated. There are vital discrepancies in the statements of PW1 – Naresh Kumar and PW3 – Balbir Singh and both the Courts below have not considered the fact that PW3 is a highly interested witness being relative of PW1 and having lost the election to one Ram Chander – DW3 who has proved that the petitioners were his supporters. The deposition of this witness is otherwise not reliable as the version given by him that he has reached the spot before the incident is not corroborated by PW1 – Naresh Kumar himself and another version given by him that the complainant was unconscious till 31.03.2005 is also not proved from the medical evidence led by the prosecution itself i.e. PW5, who stated that the patient was normal at the time of medical examination. The presence of PW3 – Balbir Singh is not reflected in MLR Ex.PW5/A or hospital records, therefore, much reliance cannot be placed on statement of PW3 – Balbir Singh.

Perusal of the judgments passed by both the Courts below further shows that the defence set up by the petitioners that the petitioner – Sintu also suffered injuries and the same have not been explained despite the fact that the doctor has sent a ruqa/information to the police, the police obtained his opinion about the injuries but no

action was taken. This fact has not been explained by the prosecution or PW1 – Naresh Kumar. The Appellate Court has brushed-aside this fact just by observing that since the injuries were simple injuries, the prosecution is not required to give any explanation, however, in my opinion the prosecution has failed to explain the injuries sustained by him as no action was taken on the information sent by the Medical Officer regarding the injuries sustained by the petitioners specially in view of the defence taken by the appellants that it is a case of road side accident. There is another aspect of the case. From the statement of the Investigating Officer, PW2 – HC Balwan Singh, it is proved that both the vehicles on which the petitioners as well as the accused were travelling met with an accident with each other and at the time of inspection both the vehicles were found entangled with each other and, thus, the possibility of receiving the injuries in the accident cannot be ruled out.

The statement of PW7 – EHC Baljeet Singh who submitted his mechanical report with regard to both the vehicles also proved that both the vehicles were found involved in an accident and this part of evidence also proved that the complainant might have received injuries in a road side accident as it is held by the Hon'ble Supreme Court of India that where two views are possible, one which lead to acquittal be accepted. Reliance is placed on the judgment “*State of Haryana vs Inder Singh and others*”, 2002 (9) SCC 537.

Keeping in view authoritative enunciation of law laid down by this Court in *Vakil's case (supra)* and in the light of the observations made hereinbefore, the present revision petition is allowed

and the judgment of conviction dated 07.12.2011 and order of sentence dated 10.12.2011 passed by the trial Court and the judgment dated 21.10.2013 passed by the Appellate Court are set-aside and the petitioners are acquitted of the charges framed against them.

29.08.2017
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No