

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR 4107-2017(O&M)
Date of decision: 06.12.2017

Dr.Karan Singh

.....Petitioner

versus

State of Haryana

.....Respondent

CRR 4289-2017(O&M)

Bhupender Singh and another

.....Petitioners

versus

Hoshiar Singh and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.N.S.Shekhawat, Advocate for the petitioner
in CRR 4107-2017
Mr.Manish Mehta, Advocate for the petitioner
in CRR 4289-2017
Mr.Pawan Garg, Assistant Advocate General, Haryana
Mr.Navmohit Singh, Advocate for respondent no.2
in CRR 4107-2017 and for respondent no.1
in CRR 4289-2017

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ? yes*
2. *To be referred to the Reporters or not ? yes*
3. *Whether the judgment should be reported in the Digest? yes*

Kuldip Singh, J.

This order shall dispose of two connected Revision Petition nos.4107-2017 and 4289-2017, arising out of the same judgments of the Courts below.

Facts of the case are that on 14.10.2007 at about 4.00 PM complainant Hoshiar Singh was sorting his wheat. Accused Dharmender and Surender unloaded the sticks from their camel cart in the plot of

Hoshiar Singh. When complainant asked for the reason, accused Dharmender gave a lathi blow on the wrist of right hand of complainant. Surender gave a lathi blow on the right shoulder. Mangatu Ram and Bhupender also came there and gave lathi blow on his back. Bhupender gave a lathi blow on the right hand of the complainant. On the alarm being raised by the complainant, Sube Singh and Birender rescued him. Complainant was removed to CHC Mahendergarh. On the basis of his statement, FIR no.326 dated 1.11.2007 under Sections 323, 325/34 IPC was registered at Police Station Mahendergarh.

It is alleged that said accused Nos.1 and 2 Bhupender and Surender, in collusion with accused No.3, namely, Dr.Karan Singh got prepared false MLRs and X-rays reports nos.681 and 682 showing fracture on chest/ribs of accused no.1 and fracture on hand of accused no.2, whereas complainant had not caused any such injuries. This was done to make out a cross case. Complainant, therefore, presented an application dated 3.11.2007 before trial Court for re-medical and radiological examination of accused nos.1 and 2 from the Board of Doctors. The same was dismissed by the trial Court on 5.11.2007 but allowed by the Sessions Court on 6.12.2007. Consequently, trial Court directed the CMO, Narnaul to constitute a medical board for re-medical and radiological examination of accused nos.1 and 2 and also directed the SHO, Police Station Mahendergarh to produce the said accused before the board. It is further alleged that accused nos.1 and 2 did not appear and kept avoiding Courts order. Complainant then presented application before the Court and then on 12.9.2008 again an order was passed and doctors in CT scan report Nos.599 and 600 dated 3.10.2008 opined that accused persons neither sustained any

fracture nor any callus formation was found. Therefore, the complainant presented criminal complaint before the trial Court.

After recording the preliminary evidence, the trial Court summoned all the accused to face trial under Sections 167, 197, 203, 219, 466, 468, 469, 120-B IPC. After recording pre-charge evidence, the accused was charge sheeted for the offences under Sections 167, 197, 203, 219, 466, 468, 469, 120-B IPC. Thereafter, Narender Kumar, Radiographer (CW1), Dr.Dinesh Podar (CW2) and Dr.Ashwini Rohila (CW3) were recalled for cross-examination.

In the statement under Section 313 Cr.P.C., accused denied all the allegations and pleaded false implication. Accused did not lead any evidence in defence.

After hearing the prosecution and the learned defence counsel and going through the evidence, learned Judicial Magistrate First Class, Mahendergarh vide judgment of conviction dated 6.5.2015 and order of sentence dated 7.5.2015 convicted the petitioners under Sections 167 and 469 read with Section 109 IPC and sentenced them to undergo Simple Imprisonment for six months under Section 167 IPC and Simple Imprisonment for six months under Section 469 IPC.

Aggrieved by the said judgment, Dr.Karan Singh filed an appeal, whereas Bhupender Singh and Surender filed separate appeal. Both the appeals were dismissed by the learned Sessions Judge, Narnaul vide judgment dated 25.10.2017. Against the said judgment, both the parties have filed separate revisions.

It is to be noted that qua accused Bhupender Singh and Surender revision has been pressed only on the point of quantum of

sentence. However, qua Dr.Karan Singh revision was initially pressed on the point of quantum of sentence but with the change of counsel, revision was pressed on merits.

I have heard learned counsel for the parties and have also carefully gone through the record.

Learned counsel for the petitioner Dr.Karan Singh has stated that Dr.Karan Singh petitioner was a government doctor. No sanction under Section 197 Cr.P.C. was obtained to prosecute him.

I am of the view that allegations against the petitioner Dr.Karan Singh are of fabrication of record. It has nothing to do with his official duty. The act was done by him under the colour of duty. Therefore, both the Courts below have rightly held that sanction under Section 197 Cr.P.C. is not required.

Learned counsel for the petitioner Dr.Karan Singh has further vehemently argued that in this case vital documents were not produced. It is stated that original x-ray films were not produced either before the Court or before the doctors, who gave the final opinion. Therefore, report of the doctor that there was no fracture, cannot be relied upon. It is further argued that ASI Varinder Singh, who had taken the original x-ray film nos.681 and 682 dated 15.10.2007 before Dr.Ashwani Rohilla and Dr.Dinesh Podar, was not examined. Evidence of Dr.Narender Kumar Radiographer (CW2) shows that he brought the original MLR of Bhupender Singh and Surender dated 14.10.2007 and stated that these are correct according to the original. Though these were marked as CW2/A and CW2/B but these since were proved, therefore, these are taken to have been exhibited. Mere use of word marked will not make these MLRs inadmissible in evidence. Similarly, it is

also stated that he has brought original x-ray report No.681 of Surender and 682 of Bhupender Singh. These reports were duly proved. According to him, these are correct according to original. During cross-examination, learned defence counsel did not insist that the original x-ray films should have also been produced. Therefore, exhibition of x-ray report and MLR is sufficient proof of the contents recorded therein without the original x-ray films being produced.

Statement of Dr.Ashwini Rohilla, SMO Kanina shows that on the orders of the Court, he along with Dr. Dinesh Podar examined the re-medical report no.599 dated 3.10.2008 and after comparing x-ray films dated 20.12.2007 done at Civil Hospital, Narnaul with the x-ray film no.681 and 682 dated 15.10.2007, it was opined that there was no fracture line seen and there is no callus formation. He also stated that they also re-medically examined Bhupender Singh vide MLR dated 20.12.2007 as per order of the Sub Divisional Judicial Magistrate, Mahendergarh and then gave their opinion on the basis of the x-ray film no.6983 dated 20.12.2007 and x-ray no.600 dated 3.10.2008 at PGI Rohtak and found that there was no fracture line and there was no callus formation. He further stated that as per order dated 20.8.2012 of the Sub Divisional Judicial Magistrate, Mahendergarh, the original x-ray film nos.681 and 682 dated 15.6.2007 of Bhupender Singh and Surender were brought by ASI Varinder Singh. During cross-examination, suggestion was put that in case of hairline fracture, there is no callus formation. During cross-examination of Dr.Ashwani Rohilla, the defence counsel never insisted that original x-ray films should be produced so that same could be put to the witness to state that there was no fracture.

Rather case put to the witness was that in case of hairline fracture, there is

no callus formation. Therefore, it was suggested that it was hairline fracture and that in the subsequent x-ray report same did not appear. Same is the case of examination and cross-examination of Dr.Dinesh Podar.

Original x-ray reports (EX.C11 and C12) of Surender and Bhupender Singh, respectively shows that in the report qua Surender, it is reported that there is a fracture on the right hand of second metacarpal and in case of Bhupender Singh it is reported that on the x-ray of chest, fractures of 4th and 5th rib on left side seen. It is nowhere reported in the x-ray report that these fractures are hairline fractures. Rather words used are the fracture.

Now, opinion of the doctor shows that on the order of the Sub Divisional Judicial Magistrate, x-ray film no.681 and 682 of Surender and Bhupender Singh respectively were shown to Dr.Dinesh Podar and Dr.Ashwani Rohilla and that after examination of those x-ray films, he found that there is no bone injury in both the films. Report of the doctor is Ex.CW3/C. Therefore, the expert opinion of Dr.Ashwini Rohilla and Dr.Dinesh Podar cannot be discarded merely on the ground that original x-ray film nos.681 and 682 were not produced during evidence. In fact when these doctors were examined and they made the statement, accused never asked these doctors to get these films produced for the apparent reason that his case was that it was a hairline fracture in which there was no callus formation. Therefore, merely on the ground that original x-ray films were not produced, no benefit can be extended to the petitioner Dr.Karan Singh.

Further reports Ex.C10 and CW3/B shows that digital x-ray of right side chest AP view of Bhupender was done and it was compared with x-ray film no.6893 dated 20.12.2007, done at Civil Hospital, Narnaul and no fracture of callus formation was seen. Though, it was stated that final

opinion will be given after reviewing x-ray done immediately after injury. Similarly, digital x-ray of right side hand of Surender was done and similar opinion Ex.C9/CW/A was given that there is no fracture line seen no callus formation seen and it was also stated that final opinion will be given after viewing x-ray done immediately after injury.

I am of the view that when the Board of Doctors examined the original x-ray no.681 and 682 dated 15.10.2007, then they did not find any fracture. It goes to show that reports Ex.C11 and Ex.C12 made by accused petitioner Dr.Karan Singh are incorrect and against the record. Further digital x-ray was done as discussed above and no fracture line and callus formation was seen. The said opinion was given on 3.10.2008. The opinion Ex.CW3/C was given by the same Board of Doctors on 24.9.2012, in which, they had even examined the original x-ray films to give said opinion. It goes to conclusively prove that the x-ray report given by Dr.Karan Singh regarding fracture on the right hand second metacarpal of Surender and 4th and 5th rib of chest of Bhupender Singh is incorrect and false report.

Section 167 IPC lays down as under:-

Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 469 IPC lays down as under:-

Forgery for purpose of harming reputation.—Whoever

commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Learned counsel for the petitioner has argued that said x-ray reports do not constitute forgery.

Forgery defined in Section 463 IPC as under:-

Forgery.—Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Making a false document is laid down in Section 464 IPC. In this case, in the original x-ray films no fracture was seen. However, accused Dr.Karan Singh in connivance with accused Bhupender Singh and Surender made a false report that fractures are seen. Therefore, it amounts to dishonestly and fraudulently preparing false documents to cause damage or injury to the present complainant-respondent. Apparently, this was done by Dr.Karan Singh on the abetment of accused Surender and Bhupender Singh. Therefore, liability of Bhupender Singh and Surender was correctly determined with the help of Section 109 IPC.

Therefore, from the above noted discussion and examination of the original record, I do not find any illegality or infirmity in the findings recorded by both the Courts below.

Faced with these circumstances, learned counsel for the

petitioners have pleaded for leniency.

In this case, maximum sentence awarded is Simple Imprisonment for six months.

Considering the act of Dr.Karan Singh petitioner in preparing incorrect x-ray reports to show fracture at the instance of the other petitioners, namely, Bhupender and Surender, I am of the view that it is a case where no leniency should be shown. The sentence awarded by the lower Court is already on the lighter side. There is no ground to reduce the sentence. Hence, both the revision petitions are dismissed.

A copy of the order be placed on the connected case file.

06.12.2017

gk

(Kuldip Singh)

Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes