

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1195 of 2010

SURINDER KAUR

..... APPELLANT

VERSUS

STATE OF HARYANA

..... RESPONDENT

W I T H

**CRIMINAL APPEAL NOS.1187 OF 2010,
1197 OF 2010, 1198 OF 2010, 1185 OF 2010
A N D**

CRIMINAL APPEAL NO.1188 OF 2010

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. These appeals have been filed by Surinder Kaur, Ravinder Kaur, Jasbir Kaur, Balwinder Kaur, Amar Nath and Sukhwinder Kaur against the common judgment dated 26th March, 2009 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal Nos. 689-SB, 708-SB, 780-SB, 711-SB, 807-SB and 752-SB, and of 2006 respectively arising out of the conviction and sentence recorded by the Special Judge, Ambala holding all the appellants guilty under Section 120-B of the Indian Penal Code (for short the “IPC”) and

sentencing them to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.200/- each, and in default of payment of fine to undergo imprisonment for 15 days. Except Amar Nath, all others have been found guilty under Sections 218, 466 and 474 IPC and under Section 13(1) (d) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the Act and sentenced by the trial Court as follows :

U/s 218 IPC Rigorous Imprisonment for a period of one year and to pay a fine of Rs.200/- each, and in default of payment of fine to undergo imprisonment for 15 days.

U/s 466 IPC Rigorous Imprisonment for a period of two years and to pay a fine of Rs.200/- each, and in default of payment of fine to undergo imprisonment for 15 days.

U/s 474 IPC Rigorous Imprisonment for a period of two years and to pay a fine of Rs.200/- each, and in default of payment of fine to undergo imprisonment for 15 days.

*U/s 13(2) of the
PC Act, 1988 Rigorous Imprisonment for a period of two years and to pay a fine of Rs.200/- each and in default of payment of fine to undergo imprisonment for 15 days.*

All the sentences were ordered to run concurrently."

2. The High Court confirmed the above conviction and sentence with the modification that sentence has been reduced to one year instead of two years while maintaining the sentence of fine.

3. FIR No.20 dated 18th December, 1997 was registered at Vigilance Bureau, Ambala with the allegation that on 29th August, 1996, Gurdev Singh, Sant Ram etc. of Village Kurbanpur were attacked by Amar Nath etc. of the said village. The appellant Dr. Ravinder Kaur created false evidence of Amar Nath being admitted to Community Health Centre at *Chaurmastpur* prior to the occurrence. Appellants Jasbir Kaur, Surinder Kaur, Balwinder Kaur, Sukhwinder Kaur who were staff nurses/Pharmacist also made false entries/overwriting/cuttings in the record of the hospital. An enquiry was conducted and these facts were established. After investigation, the accused were sent up for trial.

4. The prosecution examined 16 witnesses and produced FSL Report (Ex. P-E) about the hand writing of the accused in the record of the hospital. The accused pleaded innocence and submitted that Dr. K.S. Rana (PW 11) was inimical to Dr. Ravinder Kaur on account of which the accused were falsely implicated. The defence examined Prem Prakash Sharma

(DW 1), Vikash Sharma (DW 2) and Record Keeper Ajay Rao (DW 3).

5. It may be necessary to give a very brief resume of the evidence on record. Mohan Lal (PW 1) is an employee in the office of Civil Surgeon, Ambala from whom record of the hospital relevant to the present case was taken over on 18th February, 1997 by the Vigilance Department. The said record comprised of admission register (Ex. P 1), OPD register, daily patients report book, MLR of Sant Ram etc. (injured in the incident on 29th August, 1996) , bed head tickets of Amar Nath etc. Siri Kishan (PW 2) from Police Station, SVB Ambala deposed about the handing over of some record to Shri Mohinder Singh Malik-Deputy Superintendent of Police. Ved Kumar (PW 3) from Community Health Centre, *Chaurmastpur* proved the handing over of copies of posting orders of the accused who were public servants. Ranjit Kaur (PW 4) deposed about the duties of making entries in the OPD register (Ex. P2) and about interpolations in the record. Karan Singh Dalal (PW 5) proved the order of sanction. Kuldeep Kumar (PW 6) proved the letter written by the Vigilance Department. Assistant Sub Inspector Rajinder Kumar (PW 7) proved the FIR. Head Constable Krishan Kumar (PW 8) proved the FIR dated 31st August, 1996 at the

instance of Sant Ram in which Amar Nath was an accused. Khem Chand (PW9) proved sanction orders in respect of some of the appellants. A.K. Tyagi (PW 10) proved the taking of the specimen handwritings of some of the accused and the fact that Jasbir Kaur had declined to give her specimen handwriting as recorded in the judicial orders.

6. Dr. K.S. Rana (PW11) who was Medical Officer at CHC, *Chaurmastpur* deposed that on 4th September, 1996 he went to Civil Hospital, Ambala and learnt that wrong entries were made about the admission of a patient who was involved in a fight about which a complaint was learnt to have been made and he saw appellant Dr. Ravinder Kaur and staff nurses Sukhwinder Kaur and Surinder Kaur making some entries. He took the register and other record wherein he found some pages were torn and a false entry had been made at Sl. No.283 in the name of Amar Nath. He also noticed other over writings. He brought this to the knowledge of the Chief Medical Officer, Ambala.

7. DSP Pala Ram (PW12) deposed about the investigation conducted by him. Dr. M.K. Majithia (PW 13) proved his enquiry report on complaint dated 4th September, 1996 regarding false and wrong entries (Ex. PN). DSP Mohinder

Singh Malik (PW 14) proved the investigation conducted by him. Superintendent of Police Rajinder Singh (PW 15) proved the investigation conducted by him. Ranjit Singh (PW 16) deposed that Amar Nath was involved in a fight on 29th August, 1996 but he got wrong entry made of his being in hospital at the relevant time. He was party to the complaint made to the Chief Medical Officer.

8. Prem Parkash Sharma (DW 1) produced the attendance register of the staff dated 29th August, 1996 showing Balwinder Kaur accused to be present. On that day Surinder Kaur was on leave. Sukhwinder Kaur was also on duty. Vikram Sharma (DW 2) produced the file pertaining to inquiry against Dr. K.S Rana. Ajay Rao (DW 3) produced the file of a case in which Dr. K.S. Rana appeared as a witness.

9. The prosecution mainly relied upon evidence of registers Exhibits P1 and P2, FSL Report (Exhibit PE) and evidence of Ranjit Kaur (PW 4), DR. K.S. Rana (PW 11), Dr. M.K. Majithia (PW 13) and Ranjit Singh (PW 16).

10. According to the opinion in the FSL Report (Ex. PE), admission slip and bed head ticket of Amar Nath were in the hand writing of Dr. Ravinder Kaur; entry at Serial No.7360 in OPD register was in the handwriting of Balwinder Kaur;

certain pages in which over writings were made were in the handwriting of Surinder Kaur and other over-writings/cutting in handwriting of other official co-accused. According to the prosecution, the purpose of tearing of some pages of the register was to cover up the false entry of admission of Amar Nath.

11. The trial Court held that complaint against Dr. K.S. Rana by Dr. Ravinder Kaur was made on 3rd October, 1996 while the incident in question had taken place on 29th August, 1996. It was further held that Jasbir Kaur made the entry in the bed head ticket to the effect that the accused was not on his bed from 5.00 PM to 8.00 PM after learning that Amar Nath was involved in a quarrel which took place at 5.30/6.00 PM.

12. The High Court dealt with the contentions of the appellants as follows :

"The submission made by Mr. Bipan Ghai that Dr. Ravinder Kaur has simply prepared OPD Slip and is not guilty of any other act is concerned, the said submission is without any substance. There is a categoric finding of the learned Trial Court that Dr. Ravinder Kaur, in connivance with other accused has forged the record of the Community Health Centre to save Amar Nath from legal punishment. The testimony of Dr. K.S. Rana clinches the issue. He has categorically stated when he went to Community Health Centre he found that Dr. Ravinder Kaur was giving dictation to Sukhwinder Kaur and Surinder Kaur accused to make entries in

the register, Exhibit P-1. He further stated that page Nos.121 to 124 were missing and Dr. Ravinder Kaur was giving dictation to re-write page Nos.121 to 124 so as to insert the name of Amar Nath as having been admitted in the Community Health Centre. So, without the active connivance of Dr. Ravinder Kaur, there cannot be change in the record of the Community Health Centre. There is a cutting against entry No.7360 whereby Amar Nath has been shown to have been admitted. The bed head ticket prepared shows his admission. After coming to know that a complaint had been made regarding bed head ticket, they mentioned that Amar Nath had left the Centre at 5-00 PM on the day of occurrence. Dr. K.S. Rana, being a Gazetted Officer, would be the last person to depose against his co-doctor and other accused. The stand taken by the accused that page Nos.121 to 124 were torn by the child of Jasbir Kaur accused is simply to avoid legal proceedings.

So far as submission that Dr. K.S. Rana was the custodian of the record and he would have manipulated the record to take revenge from Dr. Ravinder Kaur is concerned, the said contention has been repelled by the trial Court. Otherwise also, the said argument does not appeal to reason. From the trend of cross Criminal examination of Dr. K.S. Rana and other PWs, it is revealed that in fact they have tried to help the accused. Since the record has been manipulated and that fact is apparent on the fact of it, so the learned trial Court has rightly convicted the accused. The learned trial Court has observed that the complaint against Dr. Rana was made afterwards and, on that count, much importance cannot be given to it. Even if the complaint had been made by Dr. Ravinder Kaur prior to the occurrence, in that case also, it cannot be believed that Dr. K.S. Rana would go to the extent of falsely implicating Dr. Ravinder Kaur. Otherwise, there is no allegation against Dr. Rana for falsely implicating Sukhwinder Kaur and Surinder Kaur. Mere fact that the names of Sukhwinder Kaur and Surinder Kaur do not find mention in the FIR and the inquiry report by Dr. M.K. Majithia, no doubt is created in the prosecution version. Both these accused have facilitated in tampering with the record. The recording of statement is only meant to set the law in motion.

The appellants cannot have any benefit of the authority in case **P.S. Rajya** (supra), in view of statement of Dr. Rana. No similar facts were in the said authority. Dr. Rana on 4.9.1996, found accused Sukhwinder Kaur and Surinder Kaur writing the dictation from Dr. Ravinder Kaur.

So far as contention of counsel for the appellants that Balwinder Kaur accused has no concern with the offence, the said submission is without any substance. The report of the expert clearly shows that Balwinder Kaur made entry to forge the record. Mere fact that Exhibit PE has not been put to the accused does not given any benefit to Balwinder Kaur more so, when she has been questioned in her statement under Section 313 Cr.P.C. that the record had been tampered with. Mere fact that Balwinder Kaur was on leave does not absolve her from her liability, more so when she has stated that she came to the Community Health Centre.

The contention of the counsel for the appellants that Jasbir Kaur, as per report, has simply made entries of Amar Nath leaving the Centre does not make her criminally liable is concerned, the said submission is without any substance. She was a conspirator in forging the record to show Amar Nath as having been admitted in the Centre. Mere fact that Amar Nath has been later acquitted does not affect the merits of the case.

From the perusal of the judgment now placed on the file, it is revealed that Amar Nath has been acquitted simply as the witnesses have resiled from their previous statements. The learned Trial Court has rightly held that it is very unfortunate that the doctor, Nurses and other staff have joined together to tamper with the record by showing Amar Nath as admitted in the Centre so as to enable him to take the plea of alibi.

The submission made by the counsel for the appellants that there is no demand and acceptance of illegal gratification and, on that count, the ingredients of offences under Sections 7 and 13(2) of the Act are not made out is concerned, the same is without any substance. The tampering of record

could not be without extraneous consideration. So, in these circumstances, the accused have been rightly convicted under Sections 120-B IPC and 7 and 13(2) of the Act also.”

13. We have heard learned counsel for the parties.

14. The main contention advanced on behalf of the appellants is that evidence of Dr. K.S. Rana (PW 11) was not trustworthy. The incident took place on 29th August, 1996 and any manipulation in the record was made on or around the said date. Version of Dr. K.S. Rana that on 4th September, 1996 when he went to the hospital he saw the accused Dr. Ravinder Kaur and nurses making false entries or manipulating the record was not probable and thus could not be relied upon. It was next submitted that evidence of Dr. M.K. Majithia who proved his enquiry report (Ex. PN) is hearsay evidence. Unless the persons on whose version the enquiry report was given were examined as witnesses and were allowed to be cross-examined, report based on the said version cannot be accepted as the basis for conviction. It was also submitted that FSL Report, as to handwritings of the accused has at best corroborative value could not by itself be the sole basis for conviction as science of hand writing is not perfect. Reliance has been placed on the Judgment of this Court in **Bhawan Kaur versus Maharaj Krishan Sharma**

& Ors¹. Evidence of Ranjit Singh (PW 16), Vice Sarpanch of village as to involvement of the doctor and of the staff in making false evidence of Amar Nath is also hearsay evidence or based on inference and is not direct evidence.

15. Opposing the above submissions, learned counsel for the State submitted that the record of the hospital which has been produced as Ex. P1 and P2 clearly establishes that entries of admission of Amar Nath to the hospital was by way of manipulation and the persons making the said entries and the other interpolation clearly had the guilty mind. An attempt has clearly been made to help Amar Nath accused for extraneous consideration for which Dr. Ravinder Kaur could not escape responsibility. Thus even if evidence of Dr. K.S. Rana and the enquiry report were kept out of consideration, it is clearly established that Dr. Ravinder Kaur who issued the false prescription was responsible for making of false record with a view to help Amar Nath. Even if there is no direct evidence that the other staff members who made entries had the guilty mind, the circumstantial evidence with regard to the role of Dr. Ravinder Kaur was of clinching nature which stood corroborated by other evidence.

¹ (1973) 4 SCC 46

16. We have given our deep consideration to the submissions made and perused the record. We find that the following circumstances are clear beyond any doubt.

(i) An occurrence had taken place on 29th August, 1996 in which Amar Nath was seen to have participated by Vice Sarpanch of the village Ranjit Singh (PW 16) at 5.30/6.00 PM.

(ii) Record of entry of Amar Nath showing his admission in PHC, Chaurmastpur at 2.00 PM is a clearly result of manipulation and is false.

(iii) Dr. Ravinder Kaur issued the admission slip which was not in routine but by manipulating record only to help the accused Amar Nath and allegation to that effect was made by villagers by way of a complaint.

17. The above clinching circumstances leave no doubt as to the involvement of Dr. Ravinder Kaur in creating false evidence to help Amar Nath. As far as other members of the staff are concerned, in the absence of clinching evidence, even if their handwriting is established, their culpability is not established beyond reasonable doubt, though suspicion may arise. The standard of proof required in a criminal trial is not of mere preponderance of probabilities but of proof beyond doubt. Applying the above standard, other appellants are entitled to benefit of doubt. We also find that there is no evidence of taking of pecuniary advantage by Dr. Ravinder Kaur which is necessary for charge under Section 13(1)(d). Presumption under Section 20 has been wrongly invoked as

the same does not apply in respect of the said clause. Thus, her conviction and sentence under the Prevention of Corruption Act cannot be sustained.

18. Accordingly, while we uphold the conviction of Ravinder Kaur (except for charge under Section 13(2) of the Prevention of Corruption Act, 1988) and Amar Nath, we acquit other accused, giving them benefit of doubt.

19. Having regard to the entirety of facts and circumstances, we consider it appropriate to reduce the sentence of imprisonment awarded to Ravinder Kaur and Amar Nath to the period already undergone, while upholding the sentence of fine.

20. The appeals are disposed of accordingly.

.....J.
[V. GOPALA GOWDA]

NEW DELHI
September 18, 2014

.....J.
[ADARSH KUMAR GOEL]

ITEM NO.1A-For Judgment

COURT NO.14

SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1195/2010

SURINDER KAUR

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

WITH

Crl.A. No. 1187/2010

Crl.A. No. 1197/2010

Crl.A. No. 1198/2010

Crl.A. No. 1185/2010

Crl.A. No. 1188/2010

Date : 18/09/2014 These appeals were called on for
JUDGMENT today.

For Appellant(s)

Mr. Rishi Malhotra,Adv.

Mr. Prem Malhotra,Adv.

Mr. R.K. Kapoor, Adv.

Ms. Shiwani Mahipal, Adv.

Ms. Shweta Kapoor, Adv.

Ms. Rekha Giri, Adv.

Mr. R. Kapoor, Adv.

Mr. Anis Ahmed Khan,Adv.

Mr. Sudhir Walia, Adv.

Ms. Niharika Ahluwalia, Adv.

Dr. Abhishek Atrey,Adv.

Dr. Kailash Chand,Adv.

For Respondent(s)

Mr. Manjit Singh, AAG

Mrs. Nupur Choudhary, Adv.

Mrs. Vivekta Singh, Adv.

Mr. Kamal Mohan Gupta,Adv.

Hon'ble Mr. Justice Adarsh Kumar Goel pronounced the judgment of the Bench comprising Hon'ble Mr. Justice V.Vopala Gowda and His Lordship.

The appeals are disposed of in terms of the signed order.

(VINOD KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed Non-Reportable judgment is placed on the file)