

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

**CRR No.1359 of 2007
Date of decision : 21.10.2015**

Rajesh**..... Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE AJAY TEWARI*********

Present: Mr. A.S.Gulati , Advocate
for Mr. A.S.Sullar, Advocate for the petitioner.

Mr.S.S.Pannu, DAG, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This revision has been filed against concurrent conviction of the petitioner under Sections 323 and 325 IPC. The sentence awarded to the petitioner is as under:-

Under Section	Sentence awarded	In default
323 IPC	One year R.I. and a fine of Rs.500/-	S.I. for one month
325 IPC	One year R.I. and a fine of Rs.500/-	S.I. for one month

Both the sentences were ordered to run concurrently.

Learned counsel for the petitioner has raised a very limited prayer. His argument is that he does not press this revision on merits as regards conviction under section 323 IPC but as per him the conviction under Section 325 IPC is un-sustainable and if this argument is accepted then the petitioner would have a

right to claim probation. As regards the injury to which Section 325 IPC has been attracted learned counsel has referred to the statement of the first doctor who conducted the physical examination of the victim i.e. PW2 who stated that on 22.04.1996 the victim came to him and he reported the following three injuries:-

1. There was a lacerated wound 3 cm in length on the left parietal region of the scalp. The wound was present 1 cm away from midline. Stitching done.
2. An abrasion 1cm in diameter with call formation on the right dorsal region on the chest at right interior angle of scapula.
3. Patient complained of pain right wrist joint. On palpation no swelling, no area of tenderness felt around right wrist joint. Movements of the wrist joint were normal. No bruise or other mark of injury was seen at and around right wrist joint.

The doctor further stated that he found that no tenderness or loss of mobility or swelling on the arm but the victim insisted that he should be referred to the hospital for x-ray examination and consequently PW2 referred him for x-ray examination. However, for unexplained reasons the victim did not go to get his x-ray conducted till 1st of May, 1996(after 9 days) which, as per learned counsel, casts a doubt on the allegation that the injury was caused by the petitioner. Learned DAG has argued that the reason why the victim did not go for X-ray for 8/9 days could be because he was suffering the ill effects of the other injuries. However, he has also fairly accepted that since there is no such explanation given by the victim in his examination-in-chief, this argument is also hypothetical. To my mind this unexplained inaction of the victim in not getting the X-ray conducted for a period of 8/9 days after having insisted that he should be referred for X-ray does cast a reasonable doubt as to the cause of the injury. In the

circumstances the conviction of the petitioner under Section 325 IPC has to be set aside. Once that is behind us, the conviction which remains is under Section 323 IPC. Keeping in view the admitted fact that the petitioner had clean antecedents I do not deem it appropriate to deny him the benefit of the Probation of Offenders Act. It is directed that he be released on probation of good conduct on his furnishing personal bonds in the sum of Rs. 10,000/- with one surety in the like amount to keep peace and be of good behaviour for a period of two years and to receive the sentence as and when called upon to do so during the said period of two years. The requisite bonds will be furnished before the trial Court within a period of one month from the date of receipt of a certified copy of this order failing which he shall undergo sentence imposed upon him by the trial Court.

Resultantly the petition stands disposed of in the above terms.

Since the main case has been decided, the Criminal Misc.Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

October 21 , 2015
sunita