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

CRR-843 of 2014

DATE OF DECISION: 10.10.2017.

Sahdev

... Petitioner.

Versus

State of Haryana and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Ms. Suman Sagar, Advocate
for the petitioner.

Mr. Munish Dev Sharma, AAG, Haryana.

Mr. Rose Gupta, Advocate
for respondents No.2,3,5 & 6.

SHEKHER DHAWAN, J.

1. Present revision petition by complainant-injured, Sehdev is against judgment dated 03.01.2014 passed by learned Additional Sessions Judge, Hisar whereby though the judgment of conviction dated 24.11.2009 of learned Judicial Magistrate Ist Class, Hisar was maintained yet the order of sentence dated 25.11.2009 was modified and the accused persons were ordered to be released on probation under the Probation of Offenders Act (for short, "the Act") besides allowing compensation.

2. Facts relevant for the purpose of decision of this petition; that the alleged occurrence had taken place on 04.04.2004. Complainant/injured Sahdev had sustained injuries and he was shifted to Soni Hospital, Hisar in injured condition. Initially, the doctor declared him to be unfit to make statement, however, on 05.04.2004, the injured was

declared fit to make the statement and the Investigating Officer recorded his statement. As per complainant-injured Sahdev, on 04.04.2004, he along with his brother Makhan, was returning from the fields and when they reached near the fields of Om Parkash, he (Om Parkash) came on the spot having a *gandasi* in his hands and threatened to teach a lesson to the complainant for irrigating their fields and gave a *gandasi* blow on his left hand, which resulted in avulsion of nail of his little finger. His thumb and index finger were also injured. Meanwhile, Mahabir, brother of Om Parkash, came at the spot carrying a stick and he gave stick blows on his right hand. Thereafter, accused - Balli, Jagdish and Lili came at the spot carrying sticks in their hands. Balli gave a lathi blow on the left side of his (complainant) chest, whereas Jagdish and Lili gave stick blows on his head and back. The complainant raised alarm, upon which several persons gathered and accused fled away from the spot along with their weapons.

3. On this plea, the investigation commenced. During investigation, accused were arrested and weapons used in the commission of offence were recovered. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charges against the accused, recording of statements of the prosecution witnesses as well as examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and defence version on record, the trial Court held the accused guilty and convicted and sentenced them in the following manner:-

Name of the convict.	Under Section	Sentence	In default
1. Jagdish 2. Lilu	Section 323 of Indian Penal Code (for short, "I.P.C.")	to undergo simple Imprisonment for a period of three months each.	
3. Om Parkash	Section 324 I.P.C.	to undergo simple Imprisonment for a period of six months and to pay a fine of Rs.1,000/-.	To further undergo simple imprisonment for a period of 15 days.
4. Mahabir 5. Balli	Section 325 I.P.C.	to undergo simple Imprisonment for a period of one year and to pay a fine of Rs.1,000/- each.	To further undergo simple imprisonment for a period of 15 days each.

5. Aggrieved of passing of the judgment of conviction and the order of sentence, the accused persons (private respondents herein) preferred the first appeal before the Court of Session. While considering the appeal, the appellate Court, maintained the judgment of conviction but modified the order of sentence and the accused persons were ordered to be released on probation on their furnishing probation bonds in the sum of Rs.20,000/- each with one surety of the like amount to the satisfaction of learned trial Court and they were also directed to pay compensation to complainant/injured, Sehdev.

6. Dissatisfied with the aforesaid order passed by learned Additional Sessions Judge, the petitioner has preferred the instant petition.

7. Learned counsel for the petitioner contended that the injured had sustained grievous injuries including injuries caused by *gandasi* blow and the co-accused had given stick blows on various parts of his body of the complainant. The ocular version is duly supported by medical evidence

and other oral and documentary evidence available on the file, but the first appellate Court modified the order of sentence thereby ordering release of the private respondents on probation, whereas they should have been sentenced to undergo imprisonment as ordered by learned Magistrate.

8. Learned counsel representing the respondents contended that learned Additional Sessions Judge, Hisar, has rightly modified the order of sentence, keeping in view the entire circumstances and there is no ground for acceptance of the present revision petition.

9. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that learned Additional Sessions Judge while deciding the appeal filed by the convicts, dismissed the appeal against judgment of conviction. However, the order of sentence was modified to the effect that the accused persons were ordered to be released on probation on their furnishing probation bonds in the sum of Rs.20,000/- each with one surety of the like amount to the satisfaction of learned trial Court and they were also directed to pay the following amount of compensation to be paid to complainant/injured, Sehdev:-

Name of convicts	Amount of compensation payable by them
Mahabair and Balli	Rs.7,000/- each
Om Parkash	Rs.5,000/-
Lilu	Rs.3,000/-

10. There is absolutely no illegality in the order passed by learned Additional Sessions Judge because the offences alleged against the accused and conviction having been recorded is under Sections 323, 324, 325 IPC. As per view taken by Hon`ble Supreme Court in **Hari Kishan**

and States of Haryana Vs. Sukhbir Singh, 1988(2) R.C.R. (Criminal) 394 and by this Court in **State of Punjab Vs. Kuldip Singh and others, 2007(2) R.C.R. (Criminal) 670** and **Ram Kumar Vs. State of Haryana, 2000 (1) R.C.R. (Criminal) 771**, accused persons involved in such like cases, who are not previous convicts and not habitual offenders, can be extended the benefit of probation under the Act. Learned first Appellate Court had rightly decided the appeal while modifying the order of sentence and passed order of release of the accused-persons on probation on furnishing probation bonds in the sum of Rs.20,000/- each with one surety in the like amount besides allowing compensation in favour of the complainant-petitioner. There is absolutely no infirmity in the well reasoned judgment of learned Additional Sessions Judge and the present revision petition is without any merit.

11. Resultantly, the present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

10.10.2017
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