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

CRR No.4620 of 2016 (O&M)

Date of Decision: 27.07.2017

Abhey Singh and others

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. R.S. Tacoria, Advocate,
for the petitioners.

Mr. Vikas Malik, DAG, Haryana.

Mr. R.S. Mamli, Advocate,
for the complainant.

SUDIP AHLUWALIA J. (ORAL)

In this Revisional Application, the petitioners have challenged the judgment dated 29.11.2016 passed by the Ld. Additional Sessions Judge, Sirsa in Criminal Appeal Nos.142 of 2013 & 3 of 2015. Prior to that, the Court of Ld. Chief Judicial Magistrate, Sirsa had convicted the present petitioners of the offences under Sections 452, 323, 324 & 506/34 of the Indian Penal Code (in short 'IPC') and sentenced them to undergo R.I. for a maximum period of one year with fine in relation to the offence under Section 324 IPC, and for equal or lesser terms for the other offences. The judgment of conviction and sentence was challenged on behalf of both sides i.e. the convicts as well as the victim/complainant Bhoop Singh. The prayer of the complainant in his cross-appeal was for enhancement of the sentences, as according to him, the Ld. Courts below had erred in

concluding that no offence under Section 326 of the IPC was made out. Both the cross-appeals were dismissed by the Ld. Lower Appellate Court and the judgment of the Trial Court was, accordingly, upheld.

2. It may be mentioned that the victim/complainant has separately filed his Revisional Application i.e. **CRR No.236 of 2017** to challenge both the impugned judgments from his side in which he seeks enhancement of sentence against all the petitioners/convicts.

3. Having heard both sides, this Court proceeds on to put the following observations on record in disposing of the present matter :-

(i) The record shows that the Petitioner Rohtash along with others, was originally named in the FIR, but the Police for some reasons did not send up his name in the challan even though the most serious injury suffered by the victim was directly attributed to him in the FIR. He was, therefore, summoned only by the Trial Court at a later stage under Section 319 of the Cr.P.C. after evidence against him was forthcoming. The Ld. Trial Court has also found him guilty of having caused the most serious injury suffered by the victim;

(ii) In order to determine whether the sentence imposed by the Ld. Trial Court was appropriate and whether there was any error in assessing the injury sustained by the victim, this Court had, on the last date, directed personal appearance of the victim to show whether his injury meets up to the parameter of 'permanent disfiguration' within the meaning of 'grievous injury' as defined in the IPC. This direction

was also in the backdrop of the assertion raised on behalf of the complainant's side that both the Ld. Courts below had wrongly acquitted the accused persons of the offence under Section 326 IPC;

(iii) The complainant/victim has appeared before this Court.

His injury is seen first hand. It is found that there is a scar/protrusion towards the back side of his right ear, which is only faintly visible. It clearly does not meet up to the description of 'permanent disfiguration of the head or the face' as laid down in the Statute. To that extent, therefore, the findings of both the Ld. Courts below acquitting the petitioners of the offence under Section 326 of the IPC does appear to be in order;

(iv) Consequently, they have been convicted of the major offences under Sections 452 and 324 along with the minor offences under Section 323/34 of the IPC. In the given facts and circumstances, the sentence of R.I. for one year for each of the major offences does not appear to be inadequate considering that there is no history of any past conviction of any of the petitioners;

(v) However, the Petitioner Rohtash would appear to be placed on a slightly different footing from rest of the three convicts. As already noted earlier, in spite of being directly named for having caused the most serious injury in the original FIR, he somehow managed to get his name cleared from investigation till the law again caught up him, later on

during trial. The other three convicts are all young men of relatively tender ages, but he was already 47 years old at the time of the alleged occurrence. Since even from the findings of the Ld. Courts below, the most serious injury caused to the complainant has been ascribed to the Petitioner Rohtash, this Court is of the view that the sentence awarded to him needs to be sustained. However, the remaining three Petitioners, who have already served sentence of about eight months till date, would appear entitled to the benefit of Probation under Section 360(1) of the Cr.P.C. They may, therefore, be released on probation subject to their furnishing bonds for their good behaviour for a period of one year from the date of their actual release, to the satisfaction of the Ld. Trial Court. The prayer on behalf of the Petitioner-Rohtash is rejected and he shall serve out his complete sentence.

4. Disposed off .

27.07.2017

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes
2. Whether reportable: No