

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

**CRR No.3239 of 2017 (O&M)
Date of Decision : 01.11.2017**

Ashok @ Ashu and others

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Devender Punia, Advocate
for the petitioners.

Mr. Tanuj Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

SUDIP AHLUWALIA, J. (ORAL)

CRM No.28811 of 2017

Allowed as prayed for.

CRR No.3239 of 2017 (O&M)

The instant petition is directed against the impugned judgment passed by the Ld. Additional Sessions Judge, Gurugram on 29th August, 2017 in Criminal Appeal No.35 dated 23rd March, 2016.

2. Vide the impugned judgment, the Court of Sessions had modified the earlier judgment of conviction passed by the Ld. Judicial Magistrate 1st Class, Gurugram in the criminal trial arising

out of FIR No.526 dated 13th December, 2008.

3. It may be mentioned that all the three petitioners, namely Ashok @ Ashu, Hemant @ Hemu and Lata were initially convicted of the offences under Sections 323 and 326 read with Section 34 of the Indian Penal Code (for short, 'the IPC') and were awarded simple imprisonment for 02 years for the offence under Section 326 IPC alone apart from imposition of a cumulative amount of compensation of Rs.50,000/- payable to the complainant/victim.

4. The petitioners thereafter preferred an appeal against such judgment of conviction which was partially allowed by the Ld. Court of Sessions vide the impugned judgment. The conviction under Section 326 IPC was set aside and replaced with conviction under Section 325 IPC and consequently the sentence awarded was reduced from 02 years to 1½ years, while the order for payment of compensation amounting to Rs.50,000/- (cumulative) was upheld.

5. Ld. Counsel for the petitioners has sought to assail the decisions of both the Ld. Courts below by drawing attention to the following aspects :-

- i) That according to the Medical Officer, Government Hospital, Gurugram, who initially examined the victim-

Kulbir after the alleged occurrence which took place on the night of 4th December, 2002, he had found the injury on the victim's right eye as being "C.L.W. (Contused Lacerated Wound) over right eye in upper eye lid medial side with redness of right eye size of "C.L.W. 3 cm x 0.5 cm", on account of which opinion of the Eye-Surgeon was advised. It was further noted by the said doctor deposed as PW-6 that the kind of weapon used for causing that injury was "blunt".

- ii) That from the very nature of injury as noted by the Medical Officer there is absolutely no indication of any "*datar*" (which is a sharp edged weapon) having been used, which allegedly was supplied by petitioner No.3-Lata to her son i.e. petitioner No.1-Ashok @ Ashu, who thereafter assaulted the victim.

6. To some extent there appears to be substance in this contention and *prima facie*, even description of the injury as noted initially by the Medical Officer (PW-6) as "grievous" would appear to be doubtful. This Court has however gone through the discharge summary of the complainant/victim following his treatment for the aforesaid injury which is Ex.PW9/A, in which the

observation has been made as under :-

“PRE OP : on examination right eye lid laceration with full thickness corneal perforation extending from 8 'O' clock to 4 'O' clock was noticed. Hyphema was present in anterior chamber. Lens was not visible in its usual place. Corneal oedema was also present with sever sub conjunctival haemorrhage. There was evidence of posterior dislocation of lens in vitreous cavity and vitreous haemorrhage. On scan and fracture of orbital bones (CT findings).”

(Emphasis added)

7. In view of the fracture of orbital bones as detected on examination of the victim's right eye, clearly the offence of having caused grievous hurt punishable under Section 325 of the IPC would appear to be attracted.

8. However, it is also seen from the deposition of the concerned doctor, who treated the victim, namely Dr. Sanjay Verma (PW-9), that there is a direct admission in his cross-examination to the effect that “the injury was not by any sharp cutting weapon”. The witness thereafter himself stated that the injury was caused by some blunt “iron rod”. Such discrepancy in the description of the weapon allegedly used to assault the victim

would tend to cause a serious doubt about the involvement of petitioner No.3-Lata in the alleged occurrence, who is claimed to have supplied her son i.e. petitioner No.1-Ashok @ Ashu a “*datar*” at the relevant time, whereas the injury in question was found to have been caused by some iron rod.

9. Furthermore, petitioner No.2-Hemant @ Hemu is alleged to have hit the complainant-victim in his legs and other parts of his body after he had fallen down on being hit by petitioner No.1-Ashok @ Ashu with the concerned weapon of offence. However, the MLR of the victim (Ex.PW-6/B) does not disclose any other injury on any part of his body except for the “CLW in right eye in upper eye lid”.

10. The scenario therefore boils down to a picture in which all the three petitioners were allegedly present at the time of occurrence and possibly with a common intention to teach a lesson to the complainant-Kulbir (PW-2) following the alleged dispute/verbal altercation he had with accused-Ashok @ Ashu earlier in the day on the issue of missing of the stepney of his auto-rickshaw. But in any case neither usage of “*datar*” allegedly passed on by petitioner No.3-Lata to petitioner No.1-Ashok @ Ashu in the concerned occurrence, nor physical assault by

petitioner No.2-Hemant @ Hemu on other parts of the victim's body in the concerned occurrence are satisfactorily proved from the medical evidence on record. At the most these petitioners would appear to be liable for having been involved in the assault on the victim in pursuance of a common intention, but in no circumstances punishment for the offence under Section 325 IPC can be directly attributed to them since their active involvement as alleged by the complainant himself is not established.

11. From the custody certificates placed on record on behalf of the respondent-State, it transpires that petitioners No.2 and 3, namely Hemant @ Hemu and Lata have undergone actual custody period in excess of 02 months till date. Therefore, the sentence awarded to them is directed to be reduced to the term “already undergone”.

12. However, the conviction and sentence awarded to petitioner No.1-Ashok @ Ashu is upheld as also payment of the cumulative compensation awarded by both the Courts below.

13. Disposed off.

November 01, 2017

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No