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**(2010) 03 P&H CK 0322**  
**In the Punjab And Haryana At Chandigarh**

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|-----------------------------------------|------------|
| Pawan Kumar and Bharat @ Bharat Bhushan | APPELLANT  |
| Vs                                      |            |
| State of Haryana                        | RESPONDENT |

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**Date of Decision :** 31-03-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 320, 323, 325, 326, 34

**Citation :** (2010) 03 P&H CK 0322

**Hon'ble Judges :** A.N. Jindal, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

A.N. Jindal, J.—The case relates to the injuries suffered by the complainant Sunil Kumar (herein referred as "the complainant") at the hands of the accused, as a result of which, he lost his left eye.

2. This judgment of mine shall dispose of the aforesaid two Revision petition Nos. 385 & 386 of 2000, preferred by Pawan Kumar and Bharat @ Bharat Bhushan petitioners-accused (herein referred as "the accused") against the judgment dated 08.03.2000, passed by Addl. Sessions Judge, Narnaul, partly allowing their appeals against the judgment dated 23/25.07.1994 convicting and sentencing them to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1000/- each u/s 323/34 IPC and rigorous imprisonment for a period of 3 years and to pay a fine of Rs. 3,000/- each u/s 325/34 IPC. However, in appeal the sentence u/s 325/34 IPC was reduced to two years and the sentence u/s 323/34 IPC was reduced to six months.

3. On 20.05.1990 at about 10/11:00 a.m. when the people of their Mohalla Sarai, near Chokhari temple, Narnaul were busy in filling the earth, the accused Bharat @ Bharat Bhushan came there and asked the complainant to help them in filling the earth whereupon altercation took place between them. However, the matter was pacified with the intervention of the persons, present at the spot. Accused Bharat Bhushan left the place while threatening the complainant to

teach him a lesson lateron. Thereafter, in execution of the said threat, on the same day at about 6:00 p.m., when the complainant was sitting near Chokhari temple, the accused Bharat Bhushan armed with hockey and accused Pawan Kumar armed with iron rod attacked the complainant and caused injuries on his head. Accused Bharat Bhushan also caused one injury on his head and other on his forehead near his left eye. The complainant raised hue and cry which attracted Ravi Shankar, Ashok Kumar and Seeta Ram, who rescued and shifted him to Civil Hospital, Narnaul from where he was referred to P.G.I.M.S. Rohtak. Thereafter he was taken to S.M.S. Hospital, Jaipur, for treatment. On the basis of aforesaid statement made by the complainant, FIR was registered. The Investigating Officer visited the spot; prepared the rough site plan of the place of occurrence, recorded the statements of the witnesses and got recovered the hockey and iron rod after arresting the accused. Ultimately, they were challaned.

4. Both the accused were charged for the offences under Sections 323 & 325/34 IPC to which they pleaded not guilty and opted to contest.

5. In order to substantiate the charges, the prosecution examined 9 witnesses amongst them Sunil Kumar complainant-injured (PW6), Ashok Kumar (PW7) and Ravi Shankar (PW8) are the eye witnesses to the occurrence. Besides, their testimonies stand corroborated by Dr. A.K. Chakkar, Civil Hospital, Narnaul. Investigating Officer has also proved the investigation conducted by him from time to time.

6. When examined u/s 313 Cr.P.C., both the accused denied all the incriminating circumstances appearing against them and pleaded their false implication in the case. However, no evidence was led in defence.

7. On appreciation of evidence, the trial ended in conviction.

8. Arguments heard. Record perused. No merit could be found in the contentions raised by learned Counsel for the accused-petitioners that the complainant-injured, Ashok Kumar, friend of complainant, Ravi Shankar and Mohan Lal, relatives of the complainant, being the interested witnesses, cannot be placed reliance, because complainant having suffered injuries as a result of which he lost his left eye, cannot be said to be a false witness so as to involve false persons in place of real culprits. Similarly, Ashok Kumar (PW7), who in all probabilities was present at the spot, has fully corroborated the testimony of the complainant. He has withstood the test of reliability and trustworthiness. No doubt, PW8 Ravi Shankar and PW9 Mohan Lal, being the brother and father of the injured respectively, could not be abruptly placed reliance. However, the only safeguard before placing reliance upon them is to scrutinize their statements with greater care and caution but both the Courts below while placing reliance upon the testimonies of these two witnesses has threadbare appreciated their evidence and observed that they were present and had seen the accused causing injuries to the complainant. Their further oral evidence stands corroborated by medico legal report Ex.PW1/A, proved by Dr. A.K. Chakkar (PW1). He has

categorically stated that the complainant Sunil Kumar suffered four injuries out of which one is on the right occipital region, second is on the left side of the eye lid extending upto the lateral angle of forehead, third is on the left eye ball and forth is on the left zygomatic region. He has also stated that after the receipt of the report, medical officer opined that there was no possibility of the vision in the left eye. Further testimonies of these witnesses stand corroborated from the FIR Ex.PW4/A. The witnesses have also duly explained as to which injury was caused by which of the accused. There is no inordinate delay in lodging the FIR and there was no enmity against the accused for implicating them falsely in the case while leaving the real culprit. There was no reason to doubt the testimony of the complainant particularly when the other witnesses have also supported the fact. Non-examination of radiologist is not fatal in this case as it is not the case where the nature of the injury could not be ascertained without x-ray examination. Matter to be determined is "whether the complainant has lost eye sight or not?" which has been stated by the complainant, witnesses facing the ordeal and also stand corroborated by the doctor. The non-examination of ophthalmic is immaterial in the given circumstances of the case particularly when in the MLREx.PW1/A, PW1 Dr. A.K. Chakkar, has clearly reflected that injured had sustained injury on the left eye ball and he had also sustained the lacerated wound on the left side of the lateral angle of forehead. The doctor has also affirmed the fact vide his report Ex.PW1/B that the injuries could be the result of hockey stick and iron rod.

9. The counsel for the petitioners, while pleading for Pawan Kumar, has tried to persuade this Court while arguing that since the injuries attributed to Pawan Kumar are simple in nature, therefore, he could not be said to have shared the common intention with Bharat Bhushan accused. In this regard, it may be observed that both the accused were armed with deadly weapons. Besides, Bharat Bhushan had used a stick blow while causing injuries on his occipital region and zygomatic region. Pawan Kumar had also gave iron blow on his head and near his eye. Therefore, I reach the inescapable conclusion that Pawan Kumar definitely had shared the common intention with Bharat Bhushan accused, while selecting the vital part of the body of complainant for causing injuries to him and depriving him of his eye sight. No doubt, permanent privation of the sight of either eye is a grievous hurt as defined u/s 320 Clause (2) of Indian Penal Code, punishable u/s 326 IPC but the conditions precedent for punishing grievous hurt under this Section are as under:

If the injuries are caused by

- (i) instrument for shooting;
- (ii) Stabbing or cutting; or
- (iii) any instrument, which used as a weapon of offence likely to cause death; or
- (iv) by means of fire; or

(v) any heated substance; poison or any corrosive substance; or

(vi) by means of any explosive substance which is deleterious to the human body; or

(vii) by means of any animal.

10. In the instant case, since the weapon of offence used by the accused was stick (hockey) i.e. a blunt weapon being not a weapon for shooting, cutting or stabbing and also that the offence was not likely to cause death, therefore, the trial Court was right in convicting the accused u/s 325 IPC.

11. Now coming to the quantum of sentence, the accused appeared to have been dwindled having nursed grudge during day time, came in a pre-planned manner, armed with deadly weapons and struck on the vital part of the body of the complainant Sunil Kumar, repeated injuries, resulting into loss of his vision of his left eye, as such, it would not be in the fitness of things to slash the substantive sentence, awarded to them. Rather they were already awarded the lesser sentence than what they deserved. The Appellate Court has already reduced the sentence from three years to two years u/s 325 IPC, as such no further reduction is required.

12. Resultantly, finding no merit in the aforesaid two petitions, the same are dismissed.