

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1446 of 2025**

Arising Out of PS. Case No.-364 Year-2022 Thana- ITARHI District- Buxar

1. Ravindra Tiwari @ Ravindra Nath Tiwari S/o Jagdish Tiwari R/o Vill.- Bairee, P.S.- Itadhi, Distt.- Buxar
2. Bullu Tiwari S/o Rajnarayan Tiwari R/o Vill.- Bairee, P.S.- Itadhi, Distt.- Buxar

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Ravi Shankar Pathak, Advocate Mr. Ashwani Kumar, <i>Amicus Curiae</i>
For the Respondent/s	:	Mr. Zeyaul Hoda, APP

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT**

Date : 18-11-2025

Heard learned *Amicus Curiae* as also the learned counsel appearing for the appellants and learned A.P.P. for the State.

2. The present appeal is directed against the judgment of conviction dated 20.03.2025 and order of sentence dated 21.03.2025 passed by the learned District & Additional Sessions Judge-III-cum-Special Judge M.P./M.L.A., Buxar in S. Tr. No. 116 of 2023, C.I.S. No. 116 of 2023, arising out of Itarhi P.S. Case No. 364 of 2022, whereby and whereunder the concerned Court has convicted the appellants for the offence punishable under Section 325/34 of I.P.C. and awarded the sentence of R.I. for three years and fine of Rs. 10,000/- (Ten



Thousand) each. In default of payment of fine they have been directed to undergo further S.I. for three months and the period undergone by the appellants in custody shall be set off.

3. Prosecution story, in brief, is that on 24.12.2022 at about 5:30 AM, informant Shriman Narayan Tiwari proceeded towards Kali Mandir to see the wheat field. Meanwhile, appellants and other co-accused hid themselves behind the straw. When the informant reached there, appellants and others, armed with Iron rod, hockey stick, bamboo stick and Iron chain surrounded him and started assaulting him. The appellant No. 2/Bullu Tiwari assaulted the informant with Iron rod on his legs, waist and right arm and appellant No. 1/Ravindra Tiwari is said to be the order giver. Co-accused Brij Kishore Tiwari wrapped the iron chain around the neck of informant and started dragging him. It is further alleged that co-accused Pawan Tiwari assaulted the informant with bamboo stick. It is alleged that both legs of the informant got fractured below the knee. During the said incident, the accused persons also snatched chain weighing 1 *bhar* from the neck of the informant and took out Rs. 7000/- from his pocket.

4. On the basis of written statement of the informant, Itarhi P.S. Case No. 364 of 2022 was registered



under Sections 341, 323, 325, 307, 379, 504, 506, 147, 149 of I.P.C. Routine investigation followed. Statement of witnesses came to be recorded and charge sheet has been submitted against the appellants under Sections 149, 323, 341, 325, 307, 504, 506 of I.P.C. whereas investigation in respect of other accused continued and cognizance was taken under Sections 147, 149, 323, 341, 325, 307, 504, 506 of the IPC. Thereafter, the case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the appellants under Sections 307/149, 147, 323, 341, 325, 504, 506 of I.P.C. Charges were read over and explained to the appellants to which they pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of the accused persons, prosecution has examined all together six witnesses- P.W. 1, Deomuni Gond, P.W. 2, Vijay Shankar Tiwari, P.W. 3, Rakesh Raj, P.W. 4, Shyam Sundar Tiwari, P.W. 5, Sriman Narayan Tiwari (Informant) and P.W. 6, Rikesh Kumar Singh/I.O.

6. Prosecution has relied upon following documentary evidence on record:-

Ext-P/1- Primary injury report

Ext-P1/1- Supplementary injury report



Ext-P/2- Signature of Dr. Raj Kishore on the report

of the informant Sriman Narayan Tiwari,

Ext-P/3- Written statement of F.I.R.

Ext-P/4- Charge Sheet No. 18/23 dated 12.02.23

Ext-P/5- Formal F.I.R.

Ext-P/6- Endorsement of S.H.O. on written statement of FIR.

Prosecution has also produced X-ray Plate No. 587367 as material exhibit-I.

7. The defence has also examined two witnesses, namely D.W. 1 Basudeo Pandey and D.W. 2 Sitwanti Devi. The defence has also relied upon following documentary evidence on record:-

Ext-A- Cognizance order dated 09.11.2023 in Itadhi P.S. Case No. 372 of 2022

Ext-B- Formal F.I.R. of Itadhi P.S. Case No. 372 of 2022

Ext-C- Fardbeyan of Itadhi P.S. Case No. 372 of 2022

Ext-D- True Copy of Khatian of Khata No. 143/153

Ext-E- Certified copy of Khata No. 124/125

8. Defence of appellants as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section-313 Cr.P.C. is that of total denial of the charges.

9. After hearing the parties, the learned trial court convicted the appellants and sentenced them as indicated in the



opening paragraph of the judgment.

10. Following submissions have been made on behalf of learned counsel for the appellants:-

Learned counsel for the appellants submitted that brother-in-law of the informant, namely, Santosh Upadhyay who had written the FIR has not been examined in this case. He further submits that there are some contradictions in the evidence of prosecution witnesses. All the witnesses have stated that there was land dispute between the parties for which a case is running before the concerned court and the present case has been lodged by the informant on account of said reason. Learned counsel further submits that in para 7 of cross examination the informant has stated that khatian is in the name of appellant's father Jagdish Tiwari and he has changed the name in khatian fraudulently. There was no intention to kill the informant. There is no eye witness of the alleged occurrence and injury report has been prepared after 22 days of the occurrence. Radiologist has not been examined. From perusal of the FIR, it is clear that there are other accused persons who were involved in the said occurrence but I.O. has submitted charge sheet against the appellants only. He further submits that prosecution has not brought the weapons used in the occurrence



by the appellants and concerned court observed that prosecution has failed to prove the charge under Sections 147, 307/149, 504, 506 of the IPC against the appellants and the appellants have been found guilty under Section 325/34 of the IPC. It is the onus upon the prosecution to prove the case beyond reasonable doubt. The prosecution has not reasonably proved the place of occurrence, cause of incident and injury sustained by the informant. Prosecution has miserably failed to prove the case beyond reasonable doubt. During cross examination I.O. has stated that informant stated to him that he was going to his house from the field but he had not told as to who and where accused assaulted the informant. In this way, there are several contradictions and inconsistencies in the evidence of prosecution witnesses. Hence, the impugned judgment of conviction and order of sentence passed by the concerned court are neither sustainable nor tenable in the eye of law and same is liable to be set aside.

11. Learned A.P.P. for the State has submitted that the informant is an injured witness as such, place of occurrence cannot be disbelieved as he has sustained injury and his injury has also been examined by P.W. 3, who is the doctor and the medical evidence has also corroborated the injury of



informant/P.W. 5. Learned APP further submits that PW-6/I.O. has also inspected the place of occurrence and he has recorded the statement of witnesses and he has also supported the prosecution-story and submitted the charge-sheet against the appellants and concerned Court, after recording all the materials available on record, has convicted the appellants under Section-325/34 of I.P.C. Hence, the judgment of conviction and order of sentence passed by the concerned Court is justified and legal and no interference is needed.

12. The question which arises for consideration is:

“Whether offence under Section-325/34 of I.P.C. is made out in the light of given facts and circumstances of the case or not?”

13. I have perused the impugned judgment and order of the trial Court and the trial court record and I have given my thoughtful consideration to the submissions advanced on behalf of the parties, as noted above.

14. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.

15. P.W. 1 Deomuni Gond has stated in his examination-in-chief that on 24.12.2022, at around 5:30 AM when he reached to the Kali Asthan, he saw seven to eight people were hidden near the straw. Among them, he identified



Bullu Tiwari, Kishore Tiwari, Pawan Tiwari, and Ravindra Tiwari. He could not identify the others. Bullu Tiwari was holding rod, Kishore Tiwari was holding chain, Pawan Tiwari was holding bamboo stick and Ravindra Tiwari was holding a crutch. Shriman Narayan Tiwari was coming from his home to plough the field. Bullu Tiwari began hitting Shriman Narayan Tiwari with a rod. Pawan Tiwari and Kishore Tiwari wrapped iron chain around neck of Shriman Narayan Tiwari and began to tighten it. Ravindra Tiwari was threatening to kill him. Shriman Narayan Tiwari suffered injuries on both legs, arms, neck, and back. When Shyam Sundar Tiwari, Vijay Tiwari, and Shekhar Tiwari arrived at the place of occurrence, the accused persons fled away. Shyam Sundar Tiwari, Vijay Tiwari, Shekhar Tiwari all took Shriman Narayan Tiwari to the hospital. In paragraph 7 of his cross-examination, he stated that he first saw five to six injuries on Shriman Narayan Tiwari's body. He has further stated in paragraph 9 that he took Shriman Narayan Tiwari to the hospital. In para-10 he has stated that Shriman Narayan Tiwari suffered injuries all over his neck. In para 16 he has stated that Shriman Narayan Tiwari was injured on his right leg below the knee. In para-18 he has stated that Shyam Sundar Tiwari, Shekhar Tiwari and Vijay Tiwari arrived at the place of



occurrence after the incident. In para- 19 he has stated that there is a land dispute between two parties.

During examination-in-chief PW-1 was projecting himself as an eye witness of the occurrence but in para-7 of cross examination of I.O. it is found that PW-1 has not made any statement before the I.O. that Bullu Tiwary/appellant was holding rod, Braj Kishore Tiwary was holding chain, Pawan Tiwary was holding bamboo stick and Ravindra Tiwary/appellant was holding Baisakhi. PW-5/ informant, who is injured witness, has stated in para 9 of cross examination that Deomuni Gond/PW-1 came at the place of occurrence after the alleged incident. Keeping in view the statement of PW-5/informant and PW-6/I.O., PW-1 is not an eye witness of the occurrence and his statement is of no use.

16. P.W. 2 Vijay Shankar Tiwari has stated in his examination-in-chief that on the date of incident in the morning, he was walking in his barn when he heard a commotion. On hearing the commotion, he ran to Kali Asthan. On reaching there, he saw Ravindra Tiwari, Bullu Tiwari, Brijkishore Tiwari, Pawan Tiwari, Abhishek Tiwari, and Vikas Tiwari. Bullu Tiwari was holding a rod, Brij Kishore Tiwari was holding an iron chain, Pawan Tiwari was holding a bamboo stick and Ravindra



Tiwari was holding a hockey stick. The above-mentioned accused were assaulting Shriman Narayan Tiwari. Bullu Tiwari was hitting Shriman Narayan Tiwari with a rod. Brij Kishore Tiwari was tightening Iron chain around neck of Shriman Narayan Tiwari. Pawan Tiwari was hitting Shriman Narayan Tiwari with a stick. Shriman Narayan Tiwari suffered injuries to both legs, waist, and hands, and his neck was bruised by the chain. Meanwhile, Shyamsundar Tiwari and Dev Muni Gond arrived from the East. By then, the accused had pushed Shriman Narayan Tiwari and fled away. In his cross-examination, he has stated that he cannot say how many blows were inflicted on the informant's body.

During examination-in-chief PW-2 was also projecting himself as an eye witness of the occurrence but the I.O. in para-8 of his cross examination has stated that PW-2 Vijay Shankar Tiwary has not stated before the I.O. that Bullu Tiwary/appellant was holding rod, Braj Kishore Tiwary was holding chain, Pawan Tiwary was holding bamboo stick and Ravindra Tiwary/appellant was holding hockey. PW-5/ informant, who is injured witness, has stated in para 9 of cross examination that Vijayshankar Tiwary (PW-2) came at the place of occurrence after the alleged incident. Keeping in view the



statement of PW-5/informant and PW-6/I.O., PW-2 is not an eye witness of the occurrence and his statement is of no significance.

17. Prosecution Witness No. 3, Dr. Rakesh Raj, stated in his examination-in-chief that on 24.12.2022, he was working as a Medical Officer at the PHC, Itarhi. On that day, he examined and treated the wounds of Shriman Narayan Tiwari and found the following injuries on his body:-

- I. Lacerated wound on right leg, size- 2" x 1"
- II. Lacerated wound on left leg, size- 2.5" x 1"
- III. Complain of pain and swelling on right palm.
- IV. Abrasion of right side of neck size 2" x 1".
- V. complain of pain in both hand.

Injury no. 1, 2 & 3 patient referred to S.D.H. Buxar for X-ray both leg and right palm and for better treatment.

Opinion-Reserved.

Injury no. 4 & 5- Opinion- Simple, caused by hard and blunt substance.

Age of injury- Within two hour

In respect of reserve injuries, he has stated that X-ray report shows bony fracture in right third metacarpal bone, injury caused by H.B.S., Nature of 3rd injury is grievous in nature, rest injury are simple. He has identified X-ray plate no. F87367 which was marked as "Material Object I." He has identified the Primary Injury Report to be typed and signed by him, which was marked as Exhibit-P-1/PW-3. The report dated 24.12.2022 of Shriman Narayan Tiwari was prepared by Sadar Hospital Buxar by Dr. Rajkishore Consultant Radiologist. He has



identified the supplementary injury report and his signature on the same. In para- 3 he has stated that he did not perform the X-rays himself. In paragraph 6, he has stated that there is no such injury which is dangerous to life. In paragraph 7, he has stated that on the basis of X-ray, injuries no. 1 and 2 are simple.

PW-3 is an expert witness and his evidence on the point of nature of injury, number of injury cannot be disbelieved. In this way, he has supported the story of prosecution.

18. P.W. 4, Shyam Sundar Tiwari, stated in his examination-in-chief that the incident occurred on 24.12.2022, at around 5:30 AM. He was on way to the Kali Temple. When he reached the Kali Temple, he saw Bullu Tiwari, Brijkishore Tiwari, Ravindra Tiwari and Pawan Tiwari assaulting Shriman Narayan Tiwari. Bullu Tiwari/appellant no. 2 was holding iron rod in his hand and was hitting Shriman Narayan with it. Brijkishore Tiwari wrapped a chain around neck of Shriman Narayan Tiwari. Pawan Tiwari was assaulting Shriman Narayan with a bamboo stick and Ravindra Tiwari/appellant no. 1 was shouting to kill him. On commotion, Shriman's nephew, Shyam Narayan Tiwari, arrived, but till then all the accused had fled away. They took the injured Shriman Narayan Tiwari to Itarhi PHC for treatment. He was treated there. In his cross-



examination, he has stated that there is a case numbered as 657/22, 911/11 between Shriman and the accused and a case under Section-144 Cr.P.C. is going on between Shriman and the accused. He has further stated that when he went to the place of occurrence, Shriman's nephew Shyam Narayan Tiwari came after him, followed by Vijay Tiwari, Shekhar Tiwari and others. They took Shriman Narayan Tiwari to the PHC, Itarhi. By that time, Shriman was conscious. In para 11 he has stated that he cannot tell how many times the chain was put around Shriman Narayan's neck.

During examination-in-chief PW-4 was also projecting himself as an eye witness of the occurrence but PW-5/ informant, who is injured witness, has stated in para 9 of cross examination that Shyam Sundar Tiwary (PW-4) and others came at the place of occurrence after the alleged incident. Keeping in view the statement of PW-5/informant, PW-4 is not an eye witness of the occurrence and his statement does not carry authenticity and hence, his statement is of no significance.

19. P.W.5 Shriman Narayan Tiwari is the informant of this case. He has stated in his examination-in-chief that on 24.12.2022, at around 5:30 AM he was going to his field to see the wheat crop. When he reached Kali Asthan, he saw a stack of



straw. Ravindra Tiwari/appellant no. 1, Bullu Tiwari/appellant no. 2, Brijkishore Tiwari and Pawan Tiwari were already waiting there in ambush. Bullu Tiwari was holding iron rod, Brijkishore Tiwari was holding iron chain and Pawan Tiwari was holding bamboo stick. Ravindra Tiwari/appellant no. 1 exhorted to kill the informant upon which Bullu Tiwari/appellant no. 2 started assaulting the informant with the rod, which hit his arms, legs, and back, breaking his arm and injuring his leg. Brijkishore Tiwari wrapped an iron chain around the neck of informant, thrashed him on the ground and tightened the chain. Pawan Tiwari began hitting him with a bamboo stick. Hearing the commotion, Shyam Sundar, Shyam Narayan, Vijay Shankar Tiwari and Deomuni Gond came and took the informant to his door. He was taken to Itarhi police station, where he got the application written by his brother-in-law, Santosh Upadhyay, (marked as Exhibit P-3/PW-5). From the police station he went to Itarhi Hospital for treatment and from there to Buxar Sadar Hospital. His injuries were also X-rayed at Buxar Sadar Hospital. His statement was taken by the Inspector. In paragraph 3 of his cross-examination, he has stated that he could not tell the location of the incident site or the plot, but could describe its boundaries. In paragraph 6, he stated that



a case numbered P.S. Case No. 657/22 is pending between him and the accused. Proceeding of Section 144 Cr.P.C. has also been initiated regarding the land of incident site. In paragraph 9, he has stated that after the incident, Shyamsundar Tiwari, Vijayshankar Tiwari, Deomuni Gond, Shyam Narayan Tiwari, etc., arrived at the place of occurrence.

PW-5/informant is injured of the case. During course of adducing evidence, he has supported the story of prosecution regarding manner of occurrence, place of occurrence and time of occurrence and his presence at the place of occurrence cannot be disbelieved as he is sufferer of the alleged occurrence. In this way, he is reliable witness and his evidence cannot be discarded.

20. P.W. 6 Rikesh Kumar Singh has stated in his examination-in-chief that on 24.12.2022, he was working as a Sub-Inspector at the Itarhi Police Station. On that day, the Station House Officer (SHO) assigned him the responsibility of investigating Itarhi Police Station Case No. 364/2022. Upon taking charge of investigation, he recorded the re-statement of the informant Shriman Narayan Tiwari and proceeded to the scene of incident located in the village of Barrie, approximately three kilometers northeast of the Itarhi Police Station near the



Kali Temple. He prepared a site map of the scene. After inspection of the spot, he recorded the statements of witnesses Shyam Sundar Tiwari and Vijayshankar Tiwari. On 03.01.2023, statements of witnesses Deomuni Gond and Nand Kumar Tiwari were recorded by him. On 03.01.2023, accused Ravindra Tiwari and accused Bullu Tiwari were duly arrested and produced before the Court. The defence statements of the accused were taken in the jail on 11.01.2023. On 12.02.2023, he submitted charge sheet No. 18/2023 against both the accused Ravindra Tiwari and Bullu Tiwari under sections 147, 149, 323, 341, 325, 307, 504, 506 of IPC and investigation against the remaining FIR accused continued. He has identified the charge-sheet to be in his pen and signature (marked as Exhibit-P-4/PW-6). He has stated that formal FIR is in the handwriting of Police Station Clerk Dayaram Singh Yadav and it is signed by the then Police Station Head Rahul, Sub-Inspector, which he identifies (marked as Exhibit-P-5/PW-6). He has further stated that endorsement on the application dated 24.12.2023 by Shriman Tiwari is in the handwriting and signature of the then SHO Itarhi, Rahul (Sub Inspector), which he identifies (marked as Exhibit-P-6/PW-6). In his cross-examination, he has stated that Vijay Shankar Tiwari had told him that the accused pushed Shriman Tiwari and



ran away.

From perusal of evidence of PW-6/I.O., it is evident that he identified the place of occurrence, recorded the re-statement of informant as well as other prosecution witnesses, obtained injury report and supplementary injury report of informant and mentioned the same in the case diary. In this way, he has supported and corroborated the story of prosecution.

21. D.W. 1 Vasudev Pandey has stated that informant has filed a false case. In para 6 of cross examination he has stated that Shyam Sundar Tiwary (PW-4) is cousin brother of the informant and prior to the present case, one case is pending between Shyam Sundar and DW-1. DW-1 has denied the prosecution case through his evidence. From perusal of evidence of DW-1, the statement of DW-1 cannot be taken into account as he has reason to adduce the evidence before the court as prior to the present case, one case is pending between Shyam Sundar and DW-1.

22. D.W. 2 Sitwanti Devi has stated that informant has filed false case against the family of DW-2. DW-2 in her cross examination has stated that she has adduced the evidence as Ravindra Tiwary/appellant no. 1 is her brother-in-law



(*Bhaisur*). She has stated that informant and other witnesses made indecent behaviour and Bullu/appellant no. 2 and other came to save her. She has reason to adduce the evidence before the court that she is relative witness of appellant no. 1/Ravindra Tiwary.

23. On all counts from the analysis of prosecution witnesses, it is evident that PW-5/informant is injured of the case. During course of adducing evidence, he has supported the story of prosecution regarding manner of occurrence, place of occurrence and time of occurrence and his presence at the place of occurrence cannot be disbelieved as he is sufferer of the alleged occurrence. In this way, he is reliable witness and his evidence cannot be discarded. PW-6/I.O. has identified the place of occurrence, recorded the re-statement of informant as well as other prosecution witnesses, obtained injury report and supplementary injury report of informant. In this way, he has supported the story of prosecution. PW-3 is doctor and he examined the injury of informant. He is an expert witness and his evidence on the point of nature of injury, number of injury cannot be disbelieved. In this way, he has supported the story of prosecution.

24. Thus, from the analysis of evidence of



prosecution witnesses adduced during trial, it is crystal clear that judgment of conviction passed by the concerned court is justified and legal and no interference is needed. Hence, the impugned judgment of conviction is upheld.

25. It is necessary to cite para-10 of decision rendered by Hon'ble Supreme Court in the case of ***State of M.P. vs. Bablu, reported in (2014) 9 SCC 281*** which reads as under:-

“10. It is well settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. One should keep in mind the social interest and consciousness of the society while considering the determinative factor of sentence commensurate with the gravity and nature of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, the solemn duty of the court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages any criminal and as a result of the same society suffers.”

26. However, it has been pointed out by the learned counsel for the appellants that the appellants have already



suffered three months and three days in jail custody and he has submitted that though there is a land dispute between the parties and the case is of the year 2022, the appellant No.1/Ravindra Tiwari @ Ravindra Nath Tiwari is aged 65 years and is a senior citizen and appellant No. 2/ Bullu Tiwari is 45 years of age and they have already suffered a lot while facing the trial for more than three years.

27. So far as order of sentence in respect of appellants Ravindra Tiwary @ Ravindra Nath Tiwari and Bullu Tiwary is concerned, from perusal of record it is evident that appellant No.1 /Ravindra Tiwari @ Ravindra Nath Tiwari is aged 65 years and is a senior citizen and appellant No. 2/Bullu Tiwari is 45 years of age and they have already suffered a lot while facing the trial for more than three years. Hence, to put the appellants in jail for remaining period is too harsh as appellant no. 1 is aged about 65 years. The court is of the view that if sentence of the appellants is reduced to the period already undergone that would meet the ends of justice. Accordingly, the sentence of the appellants is reduced to the period already undergone.

28. With the aforesaid modification in sentence, the instant appeal stands dismissed.



29. The interlocutory application(s), if any, shall also stand disposed of.

30. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

31. The records of this case be also returned to the concerned trial court forthwith.

32. Before parting with the judgment, I appreciate the legal assistance rendered by Mr. Ashwani Kumar, learned *Amicus Curiae*. Patna High Court Legal Services Committee is directed to pay a sum of Rs. 5000/- (five thousand) to Mr. Ashwani Kumar, learned *Amicus Curiae*, as consolidated fee for the legal assistance rendered by him within a period of four weeks from the date of receipt of this order.

(Alok Kumar Pandey, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	04.12.2025
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