



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.364 of 2005
CNR No.ODHC010243832005

In the matter of an application under Section 397 read with Section 401 of Cr.P.C.

Sarbeswar Khandei ***Petitioner***
-versus-

State of Orissa ***Opposite Party***

For Petitioner : Mr. P. R. Barik, Advocate

For Opposite Party : Mr. C. R. Swain, AGA

CORAM:
JUSTICE V. NARASINGH

DATE OF FINAL HEARING : 06.05.2026

DATE OF JUDGMENT : 05.08.2026

V. Narasingh, J. Heard learned counsel for the
Petitioner and learned counsel for the State.

1. This Criminal Revision has been filed assailing the Judgment dated 31.03.2005 passed by the learned Addl. District and Sessions Judge, (Fast Track Court), Baripada, Mayurbhanj in



Criminal Appeal No.65/78 of 2004, modifying the order of conviction and sentence dated 10.11.2004 passed by the learned Assistant Sessions Judge, Udala, Mayurbhanj in S.T. Case No.12/90 of 2003 arising out of G.R. Case No. 227 of 2002 relating to Khunta P.S. Case No.75 of 2002 qua the Petitioner, whereby he was convicted for commission of offence under Section 324 of the IPC and was directed to undergo R.I. for a period of two years and to pay a fine of Rs.1000/- (Rupees One Thousand only), in default, to undergo R.I. for a period of three months and with a further direction that the period of U.T.P, if any, be set off against the substantive sentence.

2. The brief facts of the prosecution are that on 31.08.2002 at about 8:00 P.M., while Chandra Sekhar Mohanty, the informant (P.W.2), was driving his scooter towards Kanheibandh market with pillion rider Krushna Dalei (P.W.6), he came



across the Petitioner, who had previously worked as a retained labourer in his house. The informant stopped his scooter when the Petitioner, who had suddenly raised his hands, asked him to do so. All of a sudden, the Petitioner brought out a *Bhujali* concealed in his umbrella and struck the informant with it, injuring his right thumb and right palm, causing bleeding injuries. The pillion rider (P.W.6) and some passersby rescued the informant. The accused fled the spot, throwing away his *Bhujali* and umbrella. It was alleged that the accused struck the informant with a *Bhujali* due to previous enmity, as he had been driven out of the job of retained labourer. Thereafter, an FIR was lodged and after completion of investigation a charge sheet was filed under Section 307 of IPC.

3. To drive home the charge, the prosecution examined 8 witnesses, of whom P.W.2, is the informant and the injured, P.W.6 is the pillion



rider, P.W.8 is the medical officer, who examined the informant, P.Ws. 1, 3, 4 and 5 are independent witnesses and P.W.7 is the Investigating Officer.

Several documents were exhibited and marked as Exts.1 to 4/1 as well as one *Bhujali* and one Umbrella was admitted as M.Os I and II, respectively.

Two defense witnesses were adduced on behalf of the defense. The plea of the defence was one of false implication.

4. On consideration of the materials on record, the Trial Court convicted and sentenced the Petitioner under Section 307 of IPC and directed him to undergo R.I. for a period of four years and to pay a fine of Rs.2000/- (Rupees Two Thousand only), in default, to undergo R.I. for a further period of two months and further directed that the period of U.T.P. to be set off as per Section 428 of Cr.P.C.



On appeal being preferred, the Appellate Court altered the conviction to one under Section 324 of IPC, taking into account the site of the injury and the background in which the allegations have been levelled as well as keeping in view the defense evidence, the Petitioner was directed to undergo R.I. for a period of two years and to pay a fine of Rs.1000/- (Rupees One Thousand only), in default, to undergo R.I. for a period of three months.

5. At the outset, learned counsel for the Petitioner, Mr. Barik submits that he does not want to assail the conviction on merits.

It is further submitted by the learned counsel for the Petitioner referring to the custody certificate that since the Petitioner has been incarcerated for about 32 days, the punishment may be confined to the period undergone. It is also submitted that the incident happened on



31.08.2002, more than two decades ago and directing the Petitioner to undergo the sentence after lapse of such period would not serve the purpose.

6. Learned counsel for the State opposes such prayer and submits that the presumption of innocence is no longer available. Hence, the submissions made by the learned counsel for the State have to be understood in the said line.

7. To appreciate the rival contentions for such limited purpose, this Court evaluated the appreciation of evidence by the Appellate Court in altering the conviction to Section 324 of IPC.

8. On going through the same, this Court does not find any infirmity in the approach of the Appellate Court in altering the conviction to Section 324 of IPC, taking into account the evidence of the injured as well as the mitigating



circumstances borne out from the defense witnesses.

9. Considering the same, while not interfering with the order of conviction under Section 324 of IPC as imposed by the Appellate Court, this Court feels that the interest of justice would be subserved, if the period of punishment is confined to the period of incarceration already undergone, more so since there is nothing on record to indicate that during the currency of bail the Petitioner has misused the trust reposed in him.

10. Learned counsel for the State, on the other hand, submits that considering the facts and circumstances of the case, the prayer of leniency would amount to misplaced sympathy causing injustice to the cause of the injured. And, hence ought not to be entertained.

11. Taking into account the rival submissions, the age of the Petitioner being 76 years and his



subsequent conduct, this Court confines the sentence to the period of incarceration already undergone. In the peculiar facts of the case at hand, the imposition of fine is set-aside.

12. The Criminal Revision, along with pending I.As, accordingly stand disposed of.

**(V. Narasingh)
Judge**

*Orissa High Court, Cuttack,
Dated the 5th August, 2026/Jina
06.08.2026/uploaded*

Signature Not Verified

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