

IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS, 6<sup>th</sup> COURT,  
BURDWAN, PURBA BARDHAMAN  
PRESENT : SMT. SANCHARI DUTTA  
JUDICIAL MAGISTRATE, 6TH COURT,  
BURDWAN, PURBA BARDHAMAN

**G.R. CASE NO. 5127/2022**

**T.R No. 82/2024**

**(Arising out of Ausgram P.S. Case No. 292/2022 dated 07.10.2022)**

**Under Sections 447/506/323/34 of the Indian Penal Code, 1860**

STATE

..... Complainant

VS.

1. Mosaraf Mondal
2. Mohammad Mondal
3. Rana Midda @ Atiyar Midda

..... Accused persons

***Date of Judgment: 13.07.2026***

### **J U D G M E N T**

The instant case has been registered on the basis of a complaint petition lodged by Abdur Rahim Mondal, S/O- Abdur Rahaman Mondal of village Ukta, P.S. Ausgram, Dist. Purba Bardhaman, before the Ld. C.J.M., Purba Bardhaman. A complaint petition vide Ausgram P.S. Case No. 292/2022, dated 07.10.2022, U/S 447/325/506/34 of the Indian Penal Code, 1860 commenced. After proper investigation, the police submitted charge sheet no. 279/2022 dated 31.10.2022 against the accused persons namely, Mosaraf Mondal, Mohammad Mondal and Rana Midda @ Atiyar Midda under Sections 447/506/323/34 of the Indian Penal Code, 1860.

### **THE PROSECUTION CASE**

The complainant stated that on 06.10.2022 at about 19:00 hours, the accused persons were abusing the complainant with slang languages in front of the house of the complainant. On protest, they assaulted him and threw a brick towards the complainant and his nephew for which they received injuries. On hue and cry, local people rushed to

the spot and then the accused persons fled away. The injured person got treated at Guskara PHC.

Under such predicament, the complainant has instituted the instant case.

This case was transferred to this Court for trial. Charges under Sections 447/506/323/34 of the Indian Penal Code, 1860 were framed against the accused persons. After the substance of accusation were read over to the accused persons, they pleaded not guilty and claimed to be tried. The prosecution produced only three witnesses to validate their case.

The accused persons were examined U/Sec. 313 of Cr.P.C. and they chose not to adduce any defense witnesses in their favour. Now it is the time to enter into the evidence on record.

**DOCUMENTARY EVIDENCES FURNISHED**

| Sl No. | Particulars of documents                                                   | Date of admission | Marked as |
|--------|----------------------------------------------------------------------------|-------------------|-----------|
| 1.     | The signature of the complainant along with the complaint dated 07.10.2022 | 08.07.2026        | Exhibit-1 |

**ORAL EVIDENCES ADDUCED**

**P.W. 1:**

The PW-1 is **Abdul Rahim Mondal** i.e. the complainant in the instant case. During his examination-in-chief, the PW. 1 stated that he filed this case in Ausgram P.S against Musaraf Mondal and 2 others. He stated that he had no allegation against the accused persons. He also stated that he had filed this case because of certain misunderstanding.

During cross-examination of the PW.-1 he stated that he could not say what was written in the complaint.

**P.W. 2:**

The PW-2 is **Armin Mondal**. During her examination-in-chief, the PW. 2 surprisingly stated that she did not know who had filed this case. She also stated that she did not remember about this case.

The cross-examination of the PW. 2 was declined.

**P.W. 3:**

The PW-3 is **Ibrahim Mondal**. During his examination-in-chief, the PW. 3 stated that he knew the complainant. He also stated that the complainant had filed this

case against Musaraf Mondal and 2 others. He further stated that the complainant had filed this case because of certain misunderstanding.

The cross-examination of the PW. 3 was declined.

Thus, from the oral evidences of the prosecution witness, nothing comes on record to establish the guilt of the accused persons.

### **THE POINTS OF DETERMINATION**

1. Whether prosecution has been able to prove their case beyond reasonable doubt by producing cogent evidence?
2. Whether the accused persons are liable to be convicted or not?

### **DECISION WITH REASONS**

Both the points of determination are taken for discussion for sake of convenience and ease of discourse.

After surveying the oral and documentary evidences and the materials available on record, it can be transpired by this Court that the prosecution has examined only three witnesses in this case. The complainant did not utter a single word in favour of the prosecution which could ascertain the guilt of the accused persons. The complainant complained about being assaulted by the accused persons but in the deposition, there was nothing to corroborate the same. The independent witnesses who appeared on dock to testify did not incriminate the accused persons. That apart, the complainant also stated that he did not have any allegation against the accused persons. After taking the deposition of the witness into contemplation, this Court opines that there is no sufficient ground to prove the allegation, as stated, against the accused persons. There is truancy of any material which is inclined towards the incriminating nature of the accused person in the record to ascertain the guilt of the accused persons beyond reasonable doubt.

Our country abides by the principles of an adversarial system. One of the key ingredients of such adversarial system is the presumption of innocence of the accused. That implies the cardinal importance of the Indian Criminal Justice System which says every accused is presumed to be innocent unless proved to be guilty beyond any reasonable doubt. The burden of manifesting the guilt of the accused is upon the prosecution solely. It is extracted from the latin maxim, ***“eiincunbit probation qui dicit, non qui negat.”*** This demonstrates that the burden of proof is upon of person who asserts and not on the person who denies.

After examining the deposition of PW 1, PW 2 and PW 3, it appears to this Court that there is no sufficient ground to prove the allegation against the accused persons. The prosecution has not been able to fix the liability upon the accused persons beyond reasonable doubt. Moreover, facts of offense as stated in the FIR cannot in any way be held as infliction of hurt or house trespass or criminal intimidation coupled with common intention by the accused persons. Thus, there is nothing on record to prove even the contents of the complaint petition.

Therefore, in view of the above discourse and the submission of the Ld. Lawyers, there remains no scope of doubt in the mind of this Court that the prosecution has not been able to establish the essential ingredients of hurt or house trespass or criminal intimidation coupled with common intention by the accused persons upon the complainant which are sine qua non to warrant conviction under sections charged herein. The prosecution witnesses at their deposition clearly mentioned that she did not remember anything about such complaint. Therefore the prosecution failed to prove the allegation under the sections charged herein against the accused persons. Therefore, the ingredients of the offenses punishable under Sections 447/506/323/34 of the Indian Penal Code is not established by any credible evidence. That apart, the prosecution has failed to examine the Investigating Officer of this case. Thus, the link evidence is clearly wanting. Non-examination of the Investigating Officer is fatal to the prosecution case. In such circumstances, this Court has no other way but to hold the accused persons innocent and accordingly acquit the accused persons from the accusation of this case.

Hence, it is,

### **ORDERED**

that the accused persons namely, Mosaraf Mondal, Mohammad Mondal and Rana Midda @ Atiyar Midda are found not guilty of the offences punishable under Sections 447/506/323/34 of the Indian Penal Code, 1860 and they are hereby acquitted from the instant case u/s. 248 (1) of Cr. P.C.

The bail bond of the above mentioned accused persons shall remain in force for a period of 06 (six) months from the date of this Judgment, as per the provision of section 437A of Cr.P.C.

Dictated & Corrected by me.

Judicial Magistrate 6th Court,  
Bardhaman, Purba Bardhaman.

Judicial Magistrate 6th Court,  
Bardhaman, Purba Bardhaman.  
(JO Code- WB01471)