

FORM-A

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, DINHATA, COOCH BEHAR PRESENT : Smt. Tanima Das (J.O. Code: WB 00951) A.C.J.M., DINHATA, COOCH BEHAR DATE OF JUDGMENT:- 16.08.2024. GR CASE NO. 315 of 2022 Reg. no. 315 of 2022 (T.R. no. 109/23) (Dinhata P.S. Case No. 283 of 2022 dated 08.06.22 under sections 447/323/354/506/34 of Indian Penal Code.	
COMPLAINANT	STATE OF WEST BENGAL
REPRESENTED BY	Learned A.P.P., Subhabrata Barman.
ACCUSED	1. Pranab Kumar Biswas @ Pronab, s/o- Lt. Binoy Biswas and 2. Bakul Biswas, w/o- Pranab Kr. Biswas, all of Ward no. 4, Netaji Road, P.S.- Dinhata, Coochbehar.
REPRESENTED BY	Learned Defense Counsel, Jannatul Naim.

FORM-B

Date of offence	08.06.2022
Date of F.I.R.	08.06.2022
Date of Charge-Sheet	27.08.2022
Date of Framing of Charges	17.07.2023
Date of commencement of Evidence	09.10.2023
Date on which Judgment is reserved	08.08.2024
Date of Judgment	16.08.2024
Date of the Sentencing Order, if any	N/A

Accused details:

<i>Rank of the accused</i>	<i>Name of Accused</i>	<i>Date of arrest</i>	<i>Date of release on Bail</i>	<i>Offences charged with</i>	<i>Whether acquitted or convicted</i>	<i>Sentence imposed</i>	<i>Period of Detention Undergone during Trial for purpose of Section 428 of Cr.P.C</i>
<i>1.</i>	<i>Pranab Kumar Biswas</i>	<i>Surrendered on 28.06.2022</i>	<i>28.06.2022</i>	<i>U/S 447/323/354/506/34 of Indian Penal Code</i>	<i>Convicted</i>	<i>Convicted u/s 323 IPC and released u/s 3 of the Probation of Offenders Act and sentenced to pay compensation of Rs. 10,000/- to the victims u/s 5 of the Probation of the Offenders Act which could be recovered if not paid in accordance with law i.e. the legal provision as laid down in the CrPC</i>	<i>N/A</i>
<i>2.</i>	<i>Bakul Biswas</i>	<i>Do</i>	<i>Do</i>	<i>Do</i>	<i>Do</i>	<i>Do</i>	<i>N/A</i>

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES :

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
P.W. -1	Rivash Pandit	Defacto complainant.
P.W. -2	Prasanto Sarkar	independent witness
P.W. -3	Subol Ghosh	Independent witness
P.W. -4	Sampa Deb Pandit	Victim of this case/defacto complainant’s wife
P.W. -5	Buli Deb	Mother in law of the defacto complainant
P.W. -6	S.I. Bimal Singh	Investigating officer

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS :

A. Prosecution Exhibits:

Sl. No.	Exhibit Number	Description
1.	Exhibit-1	The Written Complaint
2.	Exhibit-2	Receiving endorsement on the Written complaint
3.	Exhibit 3	The Formal F.I.R.
4.	Exhibit 4	Sketch map with index

B. Defence Exhibits:

Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

C. Court Exhibits:

Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects:

Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

J U D G M E N T**PROSECUTION CASE :****Point no. 1.**

The prosecution case in short is that, on 08.06.22 at about 19.41 hours one Rivash Pandit, s/o- Lt. Rabindra Nath Pandit of Dinhata Ward no. 4, P.S.-Dinhata, Coochbehar came at Police station and lodged a written complaint against 1. Pranab Kr. Biswas, s/o- Binoy Biswas and 2. Bakul Biswas, w/o- Pranab Kr. Biswas, both of Ward no. 4, P.S.- Dinhata, to the effect that on 08.06.22 at around 09.00 hours, the accused persons started hurling obscene languages towards the defacto complainant and his family members and on being raised objection by the defacto complainant, accused person Pranab Kr. Biswas pelted piece of brick upon him, however he managed to save himself. Then both the accused persons being armed with sticks, attacked the defacto complainant and assaulted him. When the defacto complainant's wife namely Sampa Deb Pandit tried to rescue him, the accused persons assaulted her and outraged her female modesty. Then, the accused persons also assaulted the defacto complainant's old aged mother-in-law namely Buli Deb. Hearing the hue and cry, the local people rushed to the spot and rescued all of them. As a result of the said assault, all of them received swelling injuries and took treatment at Dinhata Sub-divisional Hospital later on.

On the basis of the written complaint, Dinhata police station had registered Dinhata P.S. case no. 283/22 dated 08.06.22 under sections 447/323/354/506/34 of **Indian Penal Code** against the accused persons. Thereafter, on completion of the investigation, a charge sheet being no. 391/22 dated 27.08.22 under sections 447/323/354/506/34 of **Indian Penal Code** has been submitted against the accused persons.

The charge-sheet is received on 09.09.22 and cognizance is taken, thereafter copy supply to the accused persons on 22.02.23 under section 207 of **Code of Criminal Procedure**. The case record is transferred to this Court for trial and disposal on that date only.

On 17.07.23 the accused persons had appeared before this court and the content of charge under sections 447/323/354/506/34 of **Indian**

Penal Code are read over, explained and asked to the accused persons to which they pleaded not guilty and claimed to be tried and accordingly the case record is fixed up for trial.

On the other hand, the defense case as it appears from the trend of cross-examination as well as examination of the accused persons **under Sec. 313 of Criminal Procedure Code** which is given to them with necessary statutory warning, is of simple denial of the prosecution case and that the accused persons have been falsely implicated in the instant case.

However, the accused person Bakul Biswas had stated while her examination **under Sec. 313 of Criminal Procedure Code** that one oral altercation took place in between them i.e. her husband and herself along with the defacto complainant and his family i.e. comprising of the defacto complainant and his wife and mother-in-law namely Sampa Deb and Buli Deb respectively and they had not ran after the residence of the defacto complainant. She had further stated that on 08.06.22 at 10.00 am, when she came to her residence, she found that at her residence plenty of items were thrown and her husband/accused Pronob Kumar Biswas had protested to the same. At this, Sampa Deb came with 'battam' in her hand which was kept besides her residence and Rivash Pandit had caught hold of her husband very tightly. Sampa Deb hit her husband at his leg and he sustained swelling leg injury. Ananta Debnath rescued him and many other people gathered at the place of occurrence. When the police station was informed about the incident, they came and the defacto complainant along with his family fled away and her husband was admitted at Dinhata Sub-divisional Hospital.

The accused person/Pronob Kr. Biswas while his examination **under Sec. 313 of Criminal Procedure Code** had stated that one oral altercation took place in between them i.e. his wife and himself along with the defacto complainant and his family i.e. comprising of the defacto complainant and his wife and mother-in-law namely Sampa Deb

and Buli Deb respectively, and they had not ran after the residence of the defacto complainant. He had further stated that on 08.06.22 at 10.00 am, when he came to his residence, he found that at his residence plenty of items were thrown and he raised protest of the same and at this Sampa Deb came with 'battam' in her hand which was kept besides her residence and Rivash Pandit had caught hold of him very tightly. Sampa Deb hit him at his leg and he sustained swelling leg injury. Ananta Debnath rescued him and many other people gathered at the place of occurrence and the lady i.e. Sampa Deb left the place of occurrence. When his wife i.e. Bakul Biswas came, both of them i.e. Sampa Deb and Bakul Biswas, had dashed and pushed each other and his wife sustained cut injury on her forehead. He had informed about the incident to the police, they came and the defacto complainant along with his family fled away and he was admitted at Dinhata Sub-divisional Hospital and then he had given complaint in writing at Dinhata police station on 08.06.22.

Both the accused persons while they were examined under section 313 of Code of Criminal Procedure with necessary statutory warning, had declined to give any defence witness in support of their respective rival contentions.

Considering the rival contentions advanced by both the contesting parties, the court has to decide the following :

ISSUES / POINTS FOR CONSIDERATION :
Point no. 2.

- ➔ 1) Whether the accused persons had been guilty of committing the offence of criminal trespass by entering into the land of defacto complainant/Rivash Pandit on 08.06.22 at about 09.00 hours at Ward no. 4, Netaji Road, Dinhata Police station or, not ?
- ➔ 2) Whether the accused persons had been guilty of committing the offence of voluntarily causing hurt by assaulting the defacto

complainant and his family members on 08.06.22 at about 09.00 hours at Ward no. 4, Netaji Road, Dinhata Police station or, not ?

- ➔ 3) Whether the accused persons had been guilty of committing the offence of assaulting defacto complainant's wife/Sampa Deb and outraging her female modesty on 08.06.22 at about 09.00 hours at Ward no. 4, Netaji Road, Dinhata Police station or, not ?
- ➔ 4) Whether the accused persons had been guilty of committing the offence of criminal intimidation by threatening the defacto complainant on 08.06.22 at about 09.00 hours at Ward no. 4, Netaji Road, Dinhata Police station or, not ?
- ➔ 5) Whether the prosecution had been able to prove the case against the accused persons beyond all sorts of reasonable doubts or, not ?

ARGUMENT ADVANCED BY BOTH SIDES :

Point No. 3.

The Learned Assistant Public Prosecutor had made his own submission as per the oral and documentary piece of evidence brought on record and submitted that in this case investigating officer (S.I. Bimal Singh) had submitted charge-sheet against two accused persons namely Pranab Kr. Biswas and his wife Bakul Biswas under **sections 447/323/354/506/34 of Indian Penal Code** after due investigation into the case and during trial the prosecution had examined the defacto complainant/ Rivash Pandit, his wife and mother-in-law namely Sampa Deb and Buli Deb, all of them being victims of this case and one independent eye witness i.e. **PW2-Prasanto Sarkar** and another independent witness i.e. **PW3-Subol Ghosh** along with the investigating officer of this case, to prove the case against the accused persons by bringing home the charges brought against them. The prosecution had exhibited the written complaint which was properly substantiated and corroborated by the prosecution witnesses and other connected papers i.e.

the First Information Report (Formal F.I.R.) along with Rough sketch map and index and Receiving endorsement on the written complaint marked as exhibits from the side of prosecution and the prosecution could establish **Section 323** of **the Indian Penal Code** against both the accused persons and he is not pressing **Section 447** and **Section 354** of the **Indian Penal Code** against the two accused persons. Although, the prosecution did not bring any medical paper to establish the injury of the victims in connection with this case but in order to convict the accused persons it is not a sine-qua-non which is settled through a catena of judicial pronouncements. The Ld. Assistant Public Prosecutor had further mentioned that the three victims were treated in the O.P.D. of Dinhata Sub-divisional Hospital and after primary treatment they were released and they were not admitted at the hospital. Thus, the prosecution evidence is devoid of any injury report, bed head ticket, daily clinical notes and treatment sheet. He had further mentioned that from the oral testimonials of the prosecution witnesses, it is crystal clear that over the self same incident one counter case is pending between the parties and there is statement made by the two accused persons to that effect while they are examined **under section 313** of **Code of Criminal Procedure** which makes admission of the occurrence of the incident in question and only establishes the prosecution case. The counter case is pending and with proper adjudication of the evidences brought during trial the necessary judgment will be passed in connection with that case which in no way hampers in establishment of this case. The Ld. Assistant Public Prosecutor had kept his submission at rest as per the aforementioned contention.

The Learned Defence Counsel had argued that **P.W. 1**, Rivash Pandit/ the defacto complainant had stated in his deposition that he was attacked by brick or, by “Bisesh kichu die”. He did not receive the hit of brick as his wife had restrained the same from the backside. When his wife and mother-in-law came to the spot, the accused persons also assaulted them and outraged their modesty and they were admitted at the

hospital for receiving treatment. In the cross-examination, he had admitted the fact that the incident lasted for 30 minutes and 10-12 persons were present at the time of the incident. Out of them, Subol Ghosh and Prasanto Sarkar who were the eye witnesses did not mention brick or 'lathi' in their deposition. **P.W. 2**, Prasanto Sarkar went to the place of occurrence after hearing hue and cry. He had stated that the incident lasted for 10 minutes. He had stopped the dispute. But in his cross-examination he had stated that he does not know how blood oozed out from the person of Rivash Pandit's wife. **P.W. 3**, Subol Ghosh is also an eye witness of the incident. He had stated that the incident occurred in the winter season. Pushing and pulling took place in between both the parties. He did not state anywhere that fighting took place with 'lathi' and brick. He had further stated that the incident occurred 20-22 days ago. **P.W. 4**, Sampa Deb, the victim of this case, had stated that at the time of the incident she ran down and tried to stop the tussle. She did not state anywhere that they were assaulted with 'lathi' or brick.

Thus, the prosecution could not establish its case beyond all sorts of reasonable doubts and the accused persons are liable to be acquitted.

DECISION WITH REASONS :

Point No. 4.

The prosecution had examined six charge sheeted witnesses namely **Rivash Pandit, Prasanta Sarkar, Subol Ghosh, Sampa Deb, Buli Deb** and **S.I. Bimal Singh** and from the prosecution side the following documents are marked as **Exhibits :**

- **Exhibit 1** :- The Written Complaint as submitted by the Defacto complainant Rivash Pandit,
- **Exhibit 2** :- Receiving endorsement of the recording officer on the written complaint,
- **Exhibit 3** :- The Formal FIR as prepared by the recording officer,,

- **Exhibit 4** :- Rough Sketch map and index as prepared by the investigating officer,

In criminal trial, it is settled principle of law, that prosecution has to prove its case against the accused persons beyond all sorts of reasonable doubts.

SCANNING OF EVIDENCE OF P.W.- 1 namely Rivash Pandit (defacto complainant/ victim of this case) :-
Point No. 5.

The **P.W.-1** had deposed on oath on dock that he had lodged the F.I.R. of the instant case at Dinhata police station. The F.I.R./written complaint was written by one Mohoribabu namely Biswanath as per his instruction in front of him. He had put his signature on the written complaint after reading over and understanding the contents of it. He had exhibited the written complaint as **Exhibit 1. The incident occurred on 08.06.22 on a Wednesday at about 09.00 A.M. in front of his house. There was one chocolate wrapper lying in front of his house and he had thrown the same into drain by means of his legs. Without any reason, accused person Pranab Kr. Biswas started abusing him with filthy languages and Pranab Kr. Biswas along with his wife namely Bakul Biswas chased him at his house.** The accused persons are present before court on dock (identified). Thereafter, one verbal altercation took place between them and then they had attacked him with brick and something else. The brick did not hit his body as his wife Sampa Deb Pandit had stopped it from behind. When his wife and mother-in-law came at the place of occurrence, the accused persons assaulted them, outraged their female modesty and dashed and pushed them. His mother-in-law sustained injury on her leg. His mother-in-law was assaulted with a 'lathi' for which she had sustained injury on her leg and knee. When his wife tried to stop the accused persons, she too sustained cut injury on her hand. All three of them got admitted at Dinhata Sub-divisional Hospital. Accused persons had assaulted him with bamboo for which he sustained

injuries on his hand, leg and knee and he had to receive treatment. There is one partition in between the house of accused persons and his house otherwise, the houses are adjacent to each other.

In course of **cross-examination** he had denied the suggestion that there is a dispute regarding boundary in between them. There is one road which goes by the side of their house and the road is congested place and many people use to ply through that road. The accused persons had also lodged a case against them regarding the self same incident and the said case is pending before court. He had denied the suggestion that on 08.06.22 at about 09.00 am, on a Wednesday, the accused persons did not come in their house or that, they did not try to assault him with brick or that, when his wife and mother-in-law came, the accused persons did not assault them or that, the accused persons did not push or pull them or that, they did not assault his mother-in-law with 'lathi' or that, his mother-in-law did not sustain injury on her hand, person and leg or that, three of them did not receive treatment at hospital or that, he had lodged false case to get rid from the case filed by the accused persons against them. It is further mentioned by him that the incident lasted for half an hour. Almost 10-12 people had gathered at the place of occurrence. Subol Ghosh, Prasanto Sarkar, Arjun Das, Bishu Saha, Kartick Saha and Bapan Saha all are the eye witnesses of the incident. He had denied the suggestion that accused Pranab Kr. Biswas is a retired primary school teacher.

SCANNING OF EVIDENCE OF P.W.- 2 namely Prasanto Sarkar (independent eye-witness) :-
Point No. 6.

The P.W-2 had stated on oath on dock that he knew Rivash Pandit, the defacto complainant of this case. His electric shop is situated near the the house of Rivash Pandit. On 08.06.22 at about 9.00 am, the incident occurred in front of the house of Rivash Pandit. Hearing the hue and cry, he came out from his shop and saw that accused persons Bakul

Biswas and her husband (whose name he does not know) both of them were abusing Rivash Pandit. The accused persons assaulted Rivash Pandit with brick or something like that. Rivash Pandit's wife and mother-in-law came at the place of occurrence. He along with others went there and mitigated the situation. Rivash Pandit, his wife and mother-in-law all of them sustained pain in their persons due to the incident and were treated at hospital.

In course of **cross-examination** he had stated that there is a congested road near the house of Rivash Pandit and many people use to ply through that road. The incident lasted for 10 minutes. He had heard the noise and also seen the same from his shop. Then, he went to the place of occurrence and stopped them. He saw that blood was oozing out from the hand of Rivash Pandit's wife when he reached the place of occurrence. He cannot say elaborately how the blood oozed out. He had denied the suggestion that on 08.06.22, he did not go to the house of Rivash Pandit after hearing hue and cry or that, he did not see Rivash Pandit was being abused by the accused persons or that, the accused persons did not assault Rivash Pandit with brick or something like that or that, he did not see that blood was oozing out from the hand of Rivash Pandit's wife or that, he is deposing falsely as he has friendly relation with Rivash Pandit.

SCANNING OF EVIDENCE OF P.W.- 3 namely Subol Ghosh (independent witness of this case) :-
Point No. 7.

The P.W-3 had stated on oath on dock that he knew Rivash Pandit, Sampa Deb and Buli Deb. The accused persons/ Biswas Babu and his wife are present before court on dock (identified). The incident occurred on 08th day of a month. It was winter at that time. The incident occurred 20-22 days ago. He does not remember it properly. Rivash Pandit tried to throw a chocolate wrapper into drain. For which the incident occurred in between them. His shop is adjacent to the place of

occurrence. He went there to stop the quarrel but one scuffle took place in between both the sides.

In course of cross-examination he had stated that Rivash Pandit lives near to him. He had denied the suggestion that tussle did not take place in between them or that, he is deposing falsely.

SCANNING OF EVIDENCE OF P.W.- 4 namely Sampa Deb Pandit (one of the victims of this case/wife of the defacto complainant) :-

Point No. 8.

The P.W-4 had stated on oath on dock that Rivash Pandit is her husband. On 08.06.23 the incident occurred. One year has not passed yet. Later on, she stated that on 08.06.22 the incident occurred. The incident occurred at about 09.00-09.15 A.M. Her husband was working in the morning. He threw a chocolate wrapper into drain. At that time Pranab Biswas came there on a bicycle. Seeing this, Pranab Biswas started abusing her husband and assaulted her husband in front of the gate of her house. Witnessing the same, she came down and tried to stop the tussle. At that time Pranab Biswas pushed her. Pranab's wife Bakul Biswas came out from house and pushed and pulled her. The accused persons being Pranab Biswas and Bakul Biswas are present before court on dock (identified). Thereafter, her mother came there and her mother was also pushed and pulled. Her mother fell down and sustained cut/scratch injury on her knee. She took her mother to hospital for treatment.

In course of **cross-examination** she had stated that Pranab Biswas's house is adjacent to their house. Regarding the self same incident, the accused persons had also lodged a case against them and the said case is still pending before court. She had denied the suggestion that on 08.06.22 at about 09.00-09.15 A.M., Pranab Biswas did not abuse her husband regarding throwing of chocolate wrapper into drain or that, Pranab Biswas did not assault her husband or that, the accused persons did not push and pull her and her mother when they tried to mitigate the

tussle or that, her mother did not sustain cut injury on her knee or that, her mother was not treated at the hospital. She had forgotten on which date Durga Puja was celebrated last year. She had further denied the suggestion that this case is lodged falsely to get rid from the case being filed by Pranab Biswas.

SCANNING OF EVIDENCE OF P.W.- 5 namely Buli Deb (mother-in-law of the defacto complainant/ another victim of this case) :-

Point No. 9.

The P.W-5 had stated on oath on dock that Rivash Pandit, the defacto complainant of this case is her son-in-law who had lodged this case. She cannot remember the date. *The incident occurred one year ago. It was 08th day of a month but she cannot remember the month. At about 09.00-09.15 A.M., Rivash Pandit had come down when he was brushing his teeth. He saw that one chocolate wrapper was there in front of their house. Her son-in-law threw that wrapper into drain. The neighbour, Pulak Biswas saw it and came there and started quarreling.* Accused Pulak Biswas is present before court on dock (identified). *The accused person is their neighbour.* Bamboo, brick and many other things were there in front of their house-gate. *The accused person started assaulting her son-in-law with a bamboo. Seeing the incident, her daughter Sampa Deb rushed there. Her son-in-law and Pulak Biswas started fighting. Her daughter separated them. When the fighting did not end, she rushed there too.* She has pain on her knee. *Pulak Biswas pushed her for which she fell down there. Blood oozed out from her hand and leg. Pain of her knee increased. Thereafter, many people came there and separated all of them. She was treated at the hospital. She was not admitted in the hospital. She was released with medicines.*

In course of **cross-examination** she had stated that she was on the 2nd floor at the time of the incident. She has been residing at her daughter's house since last 10 years. Rivash Pandit is a 'Ghar Jamai'. *There is a road in front of her house. The road is a congested one.*

Regarding the self same incident Pranab Biswas had lodged a case against them. She had denied the suggestion that she is deposing falsely as per the instruction of her son-in-law/Rivash Pandit or that, nothing happened on the date as stated by her or that, she is deposing falsely on behalf of her son-in-law as Pranab Biswas had lodged a case against her son-in-law and daughter. Almost 10-12 people had gathered at the time of the incident but she cannot say their names. There are houses of Bhaban Paul, Bapi Barman, Bapi's elder brother, Babuni Barman and the house of elder brother of the accused person surrounding the house of her son-in-law.

SCANNING OF EVIDENCE OF P.W.- 6 namely S.I. Bimal Singh (investigating officer of this case) :-
Point No. 10.

The P.W-6 had stated on oath on dock that on 08.06.22 he was posted at Dinhata police station as Sub-inspector. At that time the then officer-in-charge was S.I. Debasish Roy. He knew the hand writing and signature of S.I. Debasish Roy in official course. On that day Rivash Pandit had lodged a complaint at Dinhata police station. The written complaint bears the receiving endorsement of S.I. Debasish Roy which was duly exhibited by him as **Exhibit 2**. He had further mentioned that S.I. Debasish Roy had filled up the formal FIR which was exhibited by him as **Exhibit 3**. He had further deposed that he was endorsed by S.I. Debasish Roy for conducting the investigation of this case. After getting the charge of investigation, he had visited the place of occurrence and prepared the rough sketch map with index (in one page). He had exhibited the rough sketch map with index as **Exhibit 4**. He had recorded statement of witnesses namely Subol Ghosh, Prasanto Sarkar, Sampa Deb Pandit and Buli Deb **under section 161 CrPC** and had interrogated the defacto complainant who had received treatment at the emergency ward but he was not admitted at the hospital. He had tried to serve notice against the accused persons **under section 41A Cr.P.C.** but could not serve it. Later on, he came to know that the accused persons had

surrendered before court and were granted bail. After completion of investigation, he had submitted charge sheet being no. **391/22**, dated **27.08.22 under section 447/323/354/506/34 of Indian Penal Code** upon instruction of his superior officer.

In course of his **cross-examination** he had stated that he had not interrogated Mantu Sarkar, Bhaben Barman and Tinku Saha as mentioned 'B', 'C' and 'E' in the index, respectively. He had denied the suggestion that he had submitted charge sheet without proper investigation

Point no. 11.

*Before coming into the discussion of the facts of the case, by adjudicating the oral and documentary piece of evidence brought on record, I would like to discuss the provisions that is **Section 447/323/354/506/34 of Indian Penal Code.***

Section 441 of Indian Penal Code – Criminal trespass - Whoever enters into or upon property in the possession of another with intent to commit and offence or to intimidate, insult or annoy any person in possession of such property,

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence.

Is said to commit “criminal trespass”.

Criminal trespass :Meaning.- This section defines criminal trespass. The offence of criminal trespass is directed towards protection of possession and not ownership. It consists of two limbs; first, entry into or upon the property in the possession of another with the intention to commit an offence, and secondly, remaining in possession having lawfully entered into the property with the intention of intimidating, insulting or annoying any person in possession of such property, or with the intention of committing an offence.

Ingredients.- Thus to constitute trespass under section 441, IPC-

(1) *There must be an unauthorised entry into or upon another's property against the will of the person in possession; or*

(2) *An authorised entry lawfully obtained but unlawfully remaining therein; an*

(3) *Such entry or unlawful stay must be with an intention-*

(a) *to commit an offence, or*

(b) *to intimidate, insult or annoy the person in possession of the property.*

Intent to annoy any person in possession.- The offence of criminal trespass is committed if a person enters upon property in possession of another with the intent to commit an offence or to intimidate or insult or annoy any person in possession of that property. The test for determining whether the entry over property in the possession of another person was made with the intent to annoy, is whether causing of annoyance was the aim of the entry, that is, the dominant intention which prompted the entry.

Section 447 of Indian Penal Code – Punishment for criminal trespass -
Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.

Section 319 of Indian Penal Code defines Hurt – *To constitute hurt (battery under English Law) it is necessary to cause*

i) *Bodily pain*

ii) *Disease, or*

iii) *Infirmity to another*

Hurt Ingredients.

(I) *Bodily pain.- To cause hurt there need not be any direct physical contact. Where the direct result of an act is the causing of bodily pain it is hurt whatever be the means employed to cause it. For instance, if a*

person deliberately sets out to cause shock to someone with a weak heart and succeeds in doing so, he is said to have caused hurt.

Hurt is constituted by causing bodily pain and not mental pain, for example, giving alarming news may cause pain but no hurt. Bodily pain is necessary to constitute hurt. It need not be the direct application of force to body.

When the injury is not serious and there was no intention to cause death, nor had the accused knowledge that it was likely to cause death, or grievous hurt, the accused would be guilty of causing hurt only, even though death is caused. Thus in the absence of an intention to cause death, or grievous bodily hurt, where a person died as a result of two kicks on the abdomen, the accused was held guilty of causing hurt only. Likewise, where a husband caused hurt by giving a blow to his wife with a stick, he was held liable for hurt. Dragging a person by the hair or fisting him falls under this section.

Section 323 of Indian Penal Code – Punishment for voluntarily causing hurt – *Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

Section 354 of Indian Penal Code – Assault or criminal force to woman with intent to outrage her modesty – *Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].*

COMMENTS

Ingredients

What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty in her sex. The culpable intention of the

accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman, and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in I.P.C, Raju Panduring Mahale V. State of Maharashtra, AIR 2004 SC 1677.

Section 503 of Indian Penal Code – Criminal intimidation. - Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

(1) *Criminal intimidation-Meaning-* Criminal intimidation is closely analogous to extortion. In extortion, the immediate purpose is obtaining money or money's worth; in criminal intimidation, the immediate purpose is to induce the person threatened to do, or to abstain from doing, something which he was not legally bound to do or to omit.

Ingredients.- Thus Section has the following essentials-

(1) *Threatening a person with any injury:*

(i) *to his person, reputation, or property, or*

(ii) to the person or reputation of anyone in whom that person is interested;

(2) Threat must be with intent:

(a) to cause alarm to that person or,

(b) to cause the person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat, or

(c) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

Section 506 of Indian Penal Code – Punishment for Criminal intimidation.- *Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*

If threat be to cause death or grievous hurt, etc.- *and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or *[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.*

Examination of the accused person u/s 313 Cr.P.C :-

Accused is examined in every enquiry or trial by enabling him to explain personally to circumstances appearing in evidence against him. **Section 313 of Criminal Procedure Code, 1973** envisages power of the trial court to examine the accused to explain evidence adduced against him. We all know it is fundamental principle of justice no one should be condemned unheard, to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction.

Object of examination of accused :-

A) The section itself declares the object in explicit language that it is “ for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him.” The object of **section 313 of Criminal Procedure Code**, is to cast a duty upon the courts to question the accused properly and fairly, so that it is brought home to the accused in clear words the exact case that the accused have to meet and thereby an opportunity is given to the accused to explain any such point. The examination of the accused is not intended to be an idle formality it has to be carried out in the interest of justice and fair play to the accused.

B) The purpose of **section 313 of Cr.P.C** is set out in its opening words “for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him”, so that it is right of accused to explain to court what are circumstances of the event appearing in evidence against him. If lower court fail to give opportunity to him, he is entitle to ask appellate court to place him in the same position as he would have been in, had he been asked. It is true accused is having right to maintain silence, he is not compelled to speak during investigation and subsequent there on. At the same time it is duty of court to give an opportunity to speak or explain his case and against the evidence put forth by prosecution during trial. It was held by Honorable Supreme Court in decision reported in **AIR 2013 SC 3150 Raj Kumar Singh @ Raju @Batya vs State Of Rajasthan** in para No 25 that “ In a criminal trial, the purpose of examining the accused person **under Section 313 Cr.P.C.**, is to meet the requirement of the principles of natural justice i.e. audi alterum partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter

how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination **under Section 313 Cr.P.C.**, cannot be used against him and have to be excluded from consideration.

- The significant aspect to be noted is that the provision in Section 313 is one intended to secure to the accused an opportunity to explain the evidence against him and therefore to benefit the accused and not to operate as to his detriment. It cannot be used to fill up the gaps in the prosecution case.
- The burden is on the prosecution to establish its case and no adverse inference can be raised against the accused for her failure to explain her utterance.
- The object of **Section 313 Cr.P.C** is to given an opportunity to the accused to explain any circumstance against him in the evidence. When there is no incriminating circumstance against him in the evidence, there should not be any question **under Section 313 Cr.P.C** calling before accused to explain circumstances not appearing against him.
- The object of examination of the accused **under Section 313, Cr.P.C** is to afford him an opportunity to explain the circumstances appearing against him as well as to put forward his defence. The accused has the freedom to maintain silence during his examination. But where he makes statement supporting the prosecution's case, it can be used against him [**Ramnaresh v. State of Chhattisgarh, AIR 2012 SC 1357: (2012) 4 SCC 257: (2012) 2 SCC (Cri) 382**].
- Statement of accused recorded **under Section 313, CrPC** is not to be treated as evidence.

- Although a statement of an accused **under Section 313** can be taken into consideration in an inquiry or trial it is not strictly evidence in the case. The accused can give evidence on his own behalf under Section 315.
- Statement **under Section 313** is not a substantive piece of evidence and it can be used only for corroboration [**Mohan v. State of M.P., 2005 CrLJ 79 (MP)**].
- If an accused person, in his examination **under Section 313, Cr.P.C** confesses to the commission of the offence, charged with, the Court may, relying upon such confession, proceed to convict the accused and that is only if the accused does not confess and or/chooses to explain the circumstances appearing in the evidence against him as sets up his own version of the occurrence claiming to the effect that he had committed no offence, the statement of the accused during the course of examination **under Section 313, Cr.P.C** can be considered in its entirety along with other pieces of evidence on record [**Sri Mith Kalita v. State of Assam, 2006 CrLJ 2570 (2575) (Gau)**].
- If he says anything he does it voluntarily knowing that under the law he could have stood mute.

In the instant case, the prosecution wants to rely upon the following circumstances :-

Point no. 12.

- ◆ That on **08.06.22** at about **19.41** hours, one Rivash Pandit (defacto complainant of this case), s/o- Lt. Rabindranath Pandit of Ward no. 4, Netaji Road, P.S.- Dinhata, Dist.- Coochbehar came at police station and submitted written complaint which is noted vide G.D. entry no. **479** dated **08.06.22** and thereafter Dinhata P.S. case no. **283/22** dated **08.06.22** under **section 447/323/354/506/34** of

Indian Penal Code was started and S.I. Bimal Singh was entrusted with the investigation of this case.

- ◆ The written complaint was lodged against no. 1. Pranab Kr. Biswas, s/o- Binoy Biswas and no. 2. wife of accused Sl. no. 1, wife of Pranab Kr. Biswas both of ward no. 4, P.S.- Dinhata, Coochbehar.
- ◆ The contention of the written complaint (**Exhibit 1**) in brief is that on **08.06.22** around **09.00** hours both of them delivered filthy languages towards the defacto complainant. On being raised objection by the defacto complainant, accused Pranab Kr. Biswas started pelting piece of brick upon the defacto complainant, however, he managed to save himself.
- ◆ Then both the accused persons armed with sticks attacked him and assaulted him. While his wife/Sampa Deb tried to rescue him, she had also been assaulted by the accused persons and her female modesty was outraged. Later, his old aged mother-in-law/Buli Deb tried to rescue them and she had also been assaulted by the accused persons.
- ◆ Hue and cry took place and the local people rushed to the spot and rescued all of them.
- ◆ As a result all of them received swelling injuries and took treatment from Dinhata Sub-divisional Hospital.
- ◆ The recording officer of this case S.I. Debashish Roy had duly filled up the formal F.I.R. (**Exhibit 3**) and endorsed the investigation of this case to S.I. Bimal Singh of Dinhata police station (as per receiving endorsement i.e. **Exhibit 2**).
- ◆ S.I. Bimal Singh investigated the case and during his investigation he had visited the place of occurrence, prepared rough sketch map and index of the place of occurrence (i.e. **Exhibit 4**) and recorded statement of witnesses namely Subol Ghosh, Prasanto Sarkar,

Sampa Deb Pandit and Buli Deb under **section 161 of Code of Criminal Procedure** and had interrogated the defacto complainant who had received treatment at the Emergency ward and was not admitted at the Dinhata Sub-divisional Hospital. He had tried to serve notice against the accused persons under **section 41 A of Code of Criminal Procedure** but could not serve it. Later on, he came to know that the accused persons had surrendered before court and were granted bail.

- ◆ Finally, after completion of investigation he had submitted charge-sheet being no. **391/22**, dated **27.08.22** under **section 447/323/354/506/34 of Indian Penal Code** upon taking instruction of his superior officer.

Point no. 13.

In this case the prosecution had examined six charge-sheeted witnesses i.e. the defacto complainant/ Rivash Pandit (**P.W1**), independent eye-witness/Prasanto Sarkar (**P.W2**), independent witness/Subol Ghosh (**P.W3**), wife of the defacto complainant/victim of this case-Sampa Deb Pandit (**P.W4**), mother-in-law of the defacto complainant/ victim of this case- Buli Deb (**P.W5**) and lastly the investigating officer of this case/ S.I. Bimal Singh (**P.W6**).

According to **P.W1**, Rivash Pandit, he had lodged the F.I.R. of the instant case at Dinhata police station which was written by one Mohoribabu namely Biswanath as per his instruction in front of him and he had put his signature on the written complaint after reading over and understanding the contents of the same which was duly exhibited by him as **Exhibit 1**. The incident occurred on **08.06.22** on a Wednesday at about **09.00 A.M** in front of his house. There was one chocolate wrapper lying in front of his house and he had thrown the same into drain by means of his legs. At this, good for nothing, without any reason, accused person Pranab Kr. Biswas started abusing him with filthy languages and he

along with his wife namely Bakul Biswas chased him at his house. He had duly identified the accused persons on dock. He had further deposed, that one verbal altercation took place with them and then they had attacked him with brick and something else. The brick did not hit his body as his wife Sampa Deb Pandit had stopped it from behind. When his wife and mother-in-law came at the place of occurrence, the accused persons assaulted them, outraged their female modesty and dashed and pushed them. His mother-in-law sustained injury on her leg. His mother-in-law was assaulted with a 'lathi' for which she had sustained injury on her leg and knee. When his wife tried to stop the accused persons, she too sustained cut injury on her hand. All of them were treated at Dinhata Sub-divisional Hospital and the accused persons had assaulted him with bamboo for which he sustained injuries on his hand, leg and knee and received treatment. There is one partition in between the house of accused persons and his house otherwise, the houses are adjacent to each other. During **cross-examination** he had denied the suggestion that there is a dispute regarding boundary in between them. There is one road which goes by the side of their house and the road is congested place and many people use to ply through that road. The accused persons had also lodged a case against them regarding the self same incident and the said case is pending before court. He had further denied the suggestion that he had lodged false case to get rid from the case filed by the accused persons against them. The incident lasted for half an hour. Almost 10-12 people had gathered at the place of occurrence. Subol Ghosh, Prasanto Sarkar, Arjun Das, Bishu Saha, Kartick Saha and Bapan Saha all are the eye witnesses of the incident.

According to **P.W2**, Prasanto Sarkar (independent eye-witness of this case), he knew Rivash Pandit, the defacto complainant of this case. His electric shop is situated near the the house of Rivash Pandit. On **08.06.22** at about **9.00 am**, the incident occurred in front of the house of Rivash Pandit. Hearing the hue and cry, he came out from his shop and saw that accused persons Bakul Biswas and her husband (whose name he

does not know) both of them were abusing Rivash Pandit. The accused persons assaulted Rivash Pandit with brick or something like that. Rivash Pandit's wife and mother-in-law came at the place of occurrence. He along with others went there and mitigated the situation. Rivash Pandit, his wife and mother-in-law all of them sustained pain in their persons due to the incident and were treated at hospital. In **cross-examination** he had stated that there is a congested road near the house of Rivash Pandit and many people use to ply through that road. The incident lasted for 10 minutes. He had heard the noise and also seen the same from his shop. Then, he went to the place of occurrence and stopped them. He saw that blood was oozing out from the hand of Rivash Pandit's wife when he reached the place of occurrence. He had denied the suggestion put to him by the Defence Counsel that he is deposing falsely as he has friendly relation with Rivash Pandit.

According to **P.W3**, Subol Ghosh (independent witness of this case), he knew Rivash Pandit, Sampa Deb and Buli Deb. He had duly identified the accused persons during his oral testimonial and stated that the incident occurred on 08th day of a month. It was winter at that time. The incident occurred 20-22 days ago. He does not remember it properly. Rivash Pandit tried to throw a chocolate wrapper into drain. For which the incident occurred in between them. His shop is adjacent to the place of occurrence. He went there to stop the quarrel but one scuffle took place in between both the sides. In his **cross-examination** he had stated that Rivash Pandit lives near to him.

According to **P.W4**, Sampa Deb Pandit (one of the victims of this case/wife of the defacto complainant), Rivash Pandit is her husband. On 08.06.23 the incident occurred. One year has not passed yet. Later on, she stated that on 08.06.22 the incident occurred at about 09.00-09.15 A.M. Her husband was working in the morning. He threw a chocolate wrapper into drain. At that time Pranab Biswas came there on a bicycle. Seeing this, Pranab Biswas started abusing her husband and assaulted her

husband in front of the gate of her house. Witnessing the same, she came down and tried to stop the tussle. At that time Pranab Biswas pushed her. Pranab's wife Bakul Biswas came out from house and pushed and pulled her. She had duly identified the accused persons on dock. Thereafter, her mother came there and her mother was also pushed and pulled. Her mother fell down and sustained cut/scratch injury on her knee. She took her mother to hospital for treatment. In her **cross-examination** she had stated that Pranab Biswas's house is adjacent to their house. Regarding the self same incident, the accused persons had also lodged a case against them and the said case is still pending before court. She had denied the suggestion put to her that this case is lodged falsely to get rid from the case being filed by Pranab Biswas.

According to **P.W5**, Buli Deb (mother-in-law of the defacto complainant/ another victim of this case), Rivash Pandit, the defacto complainant of this case is her son-in-law who had lodged this case. The incident occurred one year ago. It was 08th day of a month but she cannot remember the month. At about 09.00-09.15 A.M., Rivash Pandit had come down when he was brushing his teeth. He saw that one chocolate wrapper was there in front of their house. Her son-in-law threw that wrapper into drain. The neighbour, Pulak Biswas saw it and came there and started quarreling. She had duly identified the accused person. The accused person is their neighbour. Bamboo, brick and many other things were there in front of their house-gate. The accused person started assaulting her son-in-law with a bamboo. Seeing the incident, her daughter Sampa Deb rushed there. Her son-in-law and Pulak Biswas started fighting. Her daughter separated them. When the fighting did not end, she rushed there too. She has pain on her knee. Pulak Biswas pushed her for which she fell down there. Blood oozed out from her hand and leg. Pain of her knee increased. Thereafter, many people came there and separated all of them. She was treated at the hospital. She was not admitted in the hospital. She was released with medicines. In her **cross-examination** she had mentioned that she was on the 2nd floor at the time

of the incident. She has been residing at her daughter's house since last 10 years. Rivash Pandit is a 'Ghar Jamai'. There is a road in front of her house. The road is a congested one. Regarding the self same incident Pranab Biswas had lodged a case against them. She had denied the suggestion that she is deposing falsely on behalf of her son-in-law as Pranab Biswas had lodged a case against her son-in-law and daughter. She had further mentioned that almost 10-12 people had gathered at the time of the incident but she cannot say their names.

According to **P.W6**, S.I. Bimal Singh (investigating officer of this case), on 08.06.22 he was posted at Dinhata police station as Sub-inspector. At that time the then officer-in-charge was S.I. Debasish Roy whose hand writing and signature he knew in official course. On that day Rivash Pandit had lodged a complaint at Dinhata police station. The written complaint bears the receiving endorsement of S.I. Debasish Roy which was duly exhibited by him as **Exhibit 2**. He had further mentioned that S.I. Debasish Roy had filled up the formal FIR which was exhibited by him as **Exhibit 3**. He had further deposed that he was endorsed by S.I. Debasish Roy for conducting the investigation of this case. After getting the charge of investigation, he had visited the place of occurrence and prepared the rough sketch map with index (in one page). He had exhibited the rough sketch map with index as **Exhibit 4**. He had recorded statement of witnesses namely Subol Ghosh, Prasanto Sarkar, Sampa Deb Pandit and Buli Deb **under section 161 CrPC** and had interrogated the defacto complainant who had received treatment at the emergency ward but he was not admitted. He had tried to serve notice against the accused persons **under section 41A Cr.P.C.** but could not serve it. Later on, he came to know that the accused persons had surrendered before court and were granted bail. After completion of investigation, he had submitted charge sheet being no. 391/22, dated 27.08.22 **under section 447/323/354/506/34 of Indian Penal Code** upon instruction of his superior officer. In course of his **cross-examination** he had stated that he had not interrogated Mantu Sarkar, Bhaben Barman and Tinku Saha as

mentioned 'B', 'C' and 'E' in the index, respectively and had denied the suggestion put to him that he had submitted charge sheet without proper investigation.

Point no. 14.

Definition of hurt in Indian Penal Code.

Section 319 of the Indian Penal Code defines the offence of hurt as infliction of "*bodily pain, disease or infirmity.*" **Section 321** of the code defines Voluntarily causing hurt, stating that "*Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said, voluntarily to cause hurt.*" **Section 323 IPC** prescribes the punishment for voluntarily causing hurt, as imprisonment up to one year, or with fine up to one thousand rupees, or with both.

Nature and scope of offence under Section 323 of I.P.C.

Voluntarily causing hurt is categorized as a non-serious or less severe offence. It falls under the broader category of "offences against human body" in the I.P.C. It involves the voluntary causing of hurt to another person. The term "hurt" encompasses bodily pain, disease, or infirmity caused by direct physical contact. The act of causing hurt can include actions such as striking, hitting, pushing, or any other form of physical contact that results in bodily harm. In terms of its nature, it is considered relatively less serious compared to other sections that deal with more severe injuries or acts of violence. The section primarily addresses situations where the harm caused is not of a grave or grievous nature, but still involves physical pain or injury. While the offence is not considered as grave as [offences](#) like causing grievous hurt or using dangerous weapons, it still holds legal significance. It reflects the importance of safeguarding individuals from intentional acts that cause bodily harm, irrespective of the severity of the hurt caused.

The section applies to cases where the act causing hurt is done voluntarily, indicating a deliberate intention to cause harm or being aware that the action is likely to cause hurt. Its scope includes acts such as striking, hitting, punching, or any other form of physical contact that leads to bodily harm. The severity of the hurt caused is not a determining factor for the application of this section. Even causing simple hurt or minor injuries can fall under its purview. Furthermore, it does not require a specific degree of hurt to be proved. It is sufficient to establish the act of causing bodily pain, disease, or infirmity. The absence of grave and sudden provocation is another aspect considered while determining liability under this section. It's important to note that it is a relatively less severe offence compared to other sections that deal with more serious injuries or acts of violence. For offences involving more grievous harm, other sections such as Section 324 (voluntarily causing hurt by dangerous weapons or means) or Section 325 (voluntarily causing grievous hurt) may be applica

Punishment for voluntarily causing hurt under Section 323 I.P.C.

It provides the punishment for voluntarily causing hurt, stating that, *“Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”*

Essential ingredients of offence under section 323 I.P.C.

- Voluntary Act: The act of causing hurt must be voluntary, indicating that the person intentionally and consciously performed the act. The accused must have the intention to cause hurt or must be aware that their actions are likely to cause hurt.
- Cause of Hurt: The act must result in causing bodily pain, disease, or infirmity to another person. The term “hurt” includes both physical and mental harm inflicted upon the victim.

- Physical Contact: There must be direct physical contact between the accused and the victim. The act causing hurt may involve actions such as striking, hitting, punching, pushing, or any other form of physical contact that causes bodily harm.
- Absence of Grave and Sudden Provocation: The act of causing hurt should not be justified by a grave and sudden provocation. If the accused can establish that there was a grave and sudden provocation for their actions, it may be considered as a defence.

Landmark judgments on Section 323 I.P.C.

- ***Shanti Lal Meena v. State of Rajasthan*** (2015): In this case, the Supreme Court of India held that mere slapping, without causing any physical injury, would not amount to an offence under [Section 323](#). The court emphasized the requirement of bodily harm for the application of the section.
- ***Babu Lal v. State of Rajasthan*** (1996): The Supreme Court, in this case, ruled that in order to establish the offence under this section, it is not necessary to prove the specific degree of hurt caused. Even causing simple hurt or minor injuries would be sufficient to invoke the section.
- ***Pawan Kumar v. State of Haryana*** (2017): The Supreme Court held that this offence requires a direct physical act resulting in hurt, and the intention to cause hurt should be established beyond a reasonable doubt. The court reiterated that a mere verbal threat or abusive language would not fall under this section.
- ***State of Punjab v. Iqbal Singh*** (1991): In this case, the Supreme Court clarified that a medical opinion is not necessary to establish the offence under Section 323 I.P.C. The court emphasized that the injury can be proved through other evidence, such as eyewitness testimony and the victim's statement.

Conclusion

The specific circumstances of each case and the evidence presented may influence the application and interpretation of these elements. Legal professionals, including lawyers and judges, play a crucial role in examining the evidence and applying the law correctly to determine the guilt or innocence of the accused under this section.

Is an injury report mandatory for conviction under section 323?

Under Indian law, an injury report is not a mandatory requirement for conviction under Section 323 of the Indian Penal Code, which deals with voluntarily causing hurt. However, it is generally a good idea to have an injury report in cases involving an alleged crime, as it can provide valuable evidence for the prosecution. In some cases, the absence of an injury report may make it more difficult for the prosecution to prove its case beyond a reasonable doubt. It is always best to consult with a lawyer to determine the best course of action in a given situation.

(See: Production of injury report is not a Sine Qua Non for establishing offence under section 323 of IPC. Live Law News Network update 2021-07-27 06:25 GMT.)

The **Probation of Offenders Act** is a reformatory measure and its object is to reclaim amateur **offenders** who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attaches to convicts often render the remedy worse than the disease and the very purpose of punishment stands in the danger of being frustrated. In recalcitrant cases, punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime. But the novice who strays into the path of crime ought, in the interest of society, be treated as being socially sick. Crimes are not

always rooted in criminal tendencies and their origin may lie in psychological factors induced by hunger, want and poverty. The **Probation of Offenders act** recognises the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the **offender** can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a convict who, after a jail term, is apt to think that he has no more to lose or fear may breed a litter of crime. The object of the **Probation of Offenders Act** is to nip that attitude in the bud. Winifred A. Elkin describes **probation** as a system which provides a means of re-education without the necessity of breaking up the **offender's** normal life and removing him from the natural surroundings of his home. Edwin E. Sutherland raises it to a status of a convicted **offender**.² The **probationary** system in our country is sometimes described as a boon of political freedom but that does less than justice to true history. The Dharmashastras did not ordain similar punishment for similar offences irrespective of the antecedents and the physical and mental condition of the **offender**.³ Dr. P. K. Sen has pointed out in his Tagore Law Lectures on "Penology Old and New" (1943) (p.110) that the directions given by the ancient law-givers in the matter of punishment compare favourably with the advanced modern systems as regards the relevance of the objective circumstances attendant on the commission of the crime and the subjective limitations of **offenders**. **Probationary** laws were passed by several erstwhile provinces prior to Independence but their provisions were seldom enforced-in **practice**. Section 562, Code of Criminal Procedure, also contains a provision enabling the court to release certain **offenders** on **probation** of good conduct instead of sentencing them at once.

In [Isher Das v. The State of Punjab](#)(2) the trial court released on **Probation** an **offender** who was convicted under section 7(1) of the Prevention of Food Adulteration **Act**, 1954. The High Court set aside that order and sentenced the accused to imprisonment for six months and a fine of Rs. 1000/-. In default of the payment of fine the accused was

ordered to undergo imprisonment for a further period of a month and a half. Setting aside the order of the High Court this Court restored that of the Magistrate with the observation that though adulteration of food was a menace to public health, the application of the **Probation of Offenders act** could not be excluded in cases of persons found guilty of food adulteration.

Section 3. Power of court to release certain offenders after admonition. :

When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

Section 4. Power of court to release certain offenders on probation of good conduct. :

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of

good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

Section 5. Power of court to require released offenders to pay compensation and costs. :

(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

Section 9. Procedure in case of offender failing to observe conditions of bond. :

(1) If the court which passes an order under section 4 in respect of an offender or any court which could have dealt with the offender in respect of his original offence has reason to believe, on the report of a probation officer or otherwise, that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to him and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.

(2) The court before which an offender is so brought or appears may either remand him to custody until the case is concluded or it may

grant him bail, with or without surety, to appear on the date which it may fix for hearing.

(3) If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith—

(a) sentence him for the original offence; or

(b) where the failure is for the first time, then, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.

(4) If a penalty imposed under clause (b) of sub-section (3) is not paid within such period as the court may fix, the court may sentence the offender for the original offence.

The provision is thus applicable where a person is found guilty of having committed an offence but the penalty for the offence committed does not extend to life imprisonment or death. The Court at its discretion may release such a convict on probation of good conduct, on his furnishing a bond as provided in the section. It needs no reiteration here that while invoking the provision, the circumstances of the case, the character of the offender and the nature of the offence have to be taken into consideration.

The Supreme Court in **Jagat Pal Singh and Others vs. State of Haryana** extended the benefit of probation while upholding the conviction of the convicts under Section 323, 452 and 506 of the IPC and released them on executing a bond before the Magistrate for maintaining good behaviour and peace for the period of six months.

In **Sitaram Paswan and Another vs. State of Bihar**, the Supreme Court observed that for exercising the power which is discretionary, the Court has to consider the circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take realistic view of the gravity of the offence, the impact which the offence had on

the victim. The benefit available to the Accused under Section 4 of the Probation Act is subject to the limitation embodied in the provisions and the word “may” clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation Act, having regard to the nature of the offence and the character of the offender and overall circumstances. The power under Section 4 of the Probation Act vests with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Court while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the Accused, the power can be exercised by the Court even at the Appellate or Revisional stage or also by the Supreme Court while hearing Appeals under Article 136 of the Constitution of India.

The Hon’ble Apex Court have given due consideration to the submissions put forth before them, as also the documents on record. The Hon’ble Apex Court have also taken note of the social background of the Revisionist, the gravity and impact of the offence and the fact that he is a first offender with no criminal antecedents. The conduct of the Revisionist who remained on bail during the course of trial and post the trial is also noted. After his conviction, he was enlarged on bail but he made no attempts to flee. There were no adverse reports against him from any quarter during the trial or when he was on bail, post the conviction. The mitigating circumstances such as the dependence of his aged parents, unemployed wife and minor child are also taken into consideration as also the fact that he has repaid almost 50% of the amount defalcated by him and he undertakes to repay the remaining amount. The Learned Additional Public Prosecutor has also not placed any evidence before this Court to establish that the Revisionist is a recidivist. Perusal of the Learned Trial Court records also reveals no such antecedents.

In light of the above facts and circumstances, The Hon'ble Apex Court was of the considered view that the discretion vested on this Court can be exercised in favour of the Revisionist.

As the State Government is yet to frame Rules under the Act as envisaged under Section 17 of the Probation of Offenders Act, 1958, the Station House Officer (SHO), Jorethang Police Station, is appointed as the Probation Officer, in terms of Section 13 of the Probation Act. The Probation Officer as per Section 14 of the Probation Act shall advise and assist the Revisionist in the payment of compensation as ordered by this Court and submit a monthly report before the Learned Trial Court of Judicial Magistrate, Jorethang, Sikkim, on this aspect.

The conviction of the Revisionist under Section 408 of the IPC is upheld. However, the Revisionist shall be released on probation under Section 4 of the Probation Act, upon furnishing a personal bond in the sum of ₹ 50,000/- (Rupees fifty thousand) only and two sureties in the sum of ₹ 25,000/- (Rupees twenty five thousand) only, each, to the satisfaction of the Learned Trial Court. The Revisionist shall maintain peace and good behaviour for a period of one year from today and shall not repeat the offence. Should he fail to maintain the peace or not be of good behaviour or repeat the offence and should he fail to pay the compensation as undertaken by him, he shall serve out the sentence imposed by the Learned Trial Court.

Mahatma Gandhi once said, "Hate the crime not the criminal". This means that we need to eliminate crime and eliminating criminals is not the way to do it. While it is true that punishment gives a sense of satisfaction to the victims and to the society in general, it has been observed that in most of the cases punishment, specially imprisonment, does not actually reform the criminal. In most cases, once a person comes out of a prison, he gets back to his old ways of being in conflict with the law. This is true even more with young criminals, whose

minds are not fully mature. They get influenced in the wrong way because of their interaction with hardened criminals in jails.

One way to counter this problem is to provide opportunities and guidance to young and first time offenders instead of committing them to jails. The idea behind such treatment is that, normally, human beings do not resort to crime unless they are forced due exceptional circumstances. If we want to reduce crime, we should make sure that chance criminals are given an opportunity to get reformed instead of turning into hardened criminals. This is the aim behind Probation of Offender's Act, 1958. It allows the court to take into account the nature of the crime, the age of the offender, and the circumstances of the crime, and instead of committing the offender to jail, release him under supervision and guidance of a probation officer. This ensures that the offender is integrated back into the society. The act is based on the reformatory approach, which is adopted in many countries of the world. For example, in USA, almost 60% of the offenders are released on probation.

The object of probation has been laid down in the judgment of **Justice Horwill** in **In re B. Titus** - S. 562 is intended to be used to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of mature years who for the first time may have committed crimes through ignorance or inadvertence or the bad influence of others and who, but for such lapses, might be expected to make good citizens. In such cases, a term of imprisonment may have the very opposite effect to that for which it was intended. Such persons would be sufficiently punished by the shame of having committed a crime and by the mental agony and disgrace that a trial in a criminal court would involve.

It must, however, be kept in mind that reformation does not always work. Some crimes are so abhorrent and some criminals are so

unrepentant that it is best to punish them so that the price of committing the crime keeps them from committing it again. For some of them, there is no hope for reform, and it is best to protect the society from them by locking them away for life.

Offenses in which benefit of probation can and cannot be granted:

Section 4, as described above, gives a general direction to the court for deciding when and when not to give the benefit of probation. The words, "if the court is of the opinion" basically give discretionary power to the court in this respect. **Section 6**, however, tries to impress upon the court to lean in favor of giving benefit in cases of young and immature adults. When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so. For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4, the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

Thus, even though no mathematical rule is given, the general intention of the legislature is to give the benefit of probation as much as possible. In **Jugal Kishore Prasad vs State of Bihar 1972**, the Supreme Court observed that the object of the Probation of Offenders Act, "is in accordance with the present trend in the field of penology, according to which efforts should be made to bring about correction and reformation of the individual offenders and not to resort to

retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu."

In absence of a precise formula to determine when and when not the benefit of probation can be given, we have to look at SC court judgments to understand what kind of offenses are eligible for this benefit. SC has accepted the applicability of probation for many kinds of offences. For example, in **Isherdas v. State of Punjab**, the Supreme Court held that the Probation of Offenders Act was applicable to the offenses under the Prevention of Food Adulteration Act, 1954.

In case of **Mohamad Aziz Mohamed Nasir vs State Of Maharashtra, AIR 1976**, the appellant was below 21 years of age. The appellant was at one time a well known child film actor and won several awards for acting in films. Subsequently he fell in bad company and took to evil ways. SC held that even if the point relating to Section 6 is not raised before the High Court, the court was bound to take notice of the provisions of the section and give its benefit to the applicant. It further held that Section 6 lays down an injunction not to impose a sentence of imprisonment on a person who is under 21 years of age and if found guilty of having committed an offence punishable with imprisonment other than that for which it is satisfied that it would not be desirable to deal with him under Section 3 or Section 4. This inhibition on the power of the court to impose a sentence of imprisonment applies not only at the state of trial but also at the stage of High Court or any other court when the case comes before it in appeal or revision.

However, in **Uttam Singh vs Delhi Administration, 1971**, the appellant was of 36 yrs of age and was caught with 3 sets of playing cards and obscene photographs. SC refused to allow him the benefit of release on probation having regards to his age and nature of crime.

There have been cases where the court has let of even rapists on probation and there have been cases where even minor offenses have not been given the benefit of probation. It can be said that this benefit is given on case to case basis after looking at the peculiarities of the case. It is not possible to categorize the offences in this respect.

Section 360 of CrPC and Section 4 of Probation of Offenders Act:

As per Section 19, in the states where Probation of Offenders Act is enacted, Section 360 of CrPC shall cease to apply. Thus, it is clear that Section 4 of Probation of Offenders Act has overriding effect.

Section 360 of CrPC - Order to release on probation of good conduct or after admonition :--(1)When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, Character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behavior.

Point no. 15 :

From the exhibited Written Complaint (i.e. **Exhibit 1**) it transpires that it is contended in the written complaint that the accused persons Pranab Kr. Biswas and his wife/Bakul Biswas out of grudge since long

time were filing various complaints against the defacto complainant and his family members in different government offices (which were annexed in photo copy along with this complaint) just to harass them without any reason. On **08.06.22** at about **9.00 A.M.**, the accused persons started hurling obscene languages against the defacto complainant and his family members. When the defacto complainant raised objection, accused Pranab Kr. Biswas and his wife came there and accused Pranab Kr. Biswas pelted brick towards the defacto complainant with intention to kill him. Thereafter, he had dodged the hit and the brick fell just near from his ear. Both the accused persons together assaulted the defacto complainant with bamboo stick. When, the defacto complainant's wife/Sampa Deb Pandit tried to rescue him, accused person Pranab Kr. Biswas assaulted her too, torn up her wearing apparels and outraged her female modesty. Thereafter, accused no. 2/Bakul Biswas pushed and pulled defacto complainant's old aged mother by catching hold of her hair for which she fell down on the ground. Hearing their hue and cry, the local people came there and rescued them. Due to the assault, they sustained pain and swelling all over their persons and as his wife was pushed and pulled by catching hold of her hair, she sustained serious pain on her head. All of them had received primary treatment at Dinhata Sub-divisional Hospital, with the help of the neighbouring people. Presently, his wife and mother are ill.

The **P.W. 1**, had deposed that on 08.06.22 on a Wednesday, at about 09.00 A.M. the incident occurred in front of his house. There was one chocolate wrapper lying in front of his house and he had thrown the same into drain by means of his legs. At this, for good for nothing without any reason, accused person Pranab Biswas started abusing him with filthy languages and he along with his wife namely Bakul Biswas chased him at his house. One verbal altercation took place with them and then they attacked him with brick and something else. The brick did not hit his body as his wife Sampa Deb had stopped it from behind. When his wife and mother-in-law came at the place of occurrence, the accused

persons assaulted them and outraged their female modesty and dashed and pushed them. His mother-in-law sustained injury on her knee and she was assaulted with 'lathi' for which she sustained injury on her leg and knee. When his wife tried to stop the accused persons, she too sustained cut injury on her hand. All of them were treated at Dinhata Sub-divisional Hospital and the accused persons had assaulted him with bamboo for which he sustained injury on his hand, leg and knee and received treatment.

It was taken down in the cross-examination by the defence counsel that the incident lasted for half an hour and that the accused persons had lodged a case against them regarding the self same incident and the said case is pending before court.

The **PW2**, Prasanto Sarkar, independent eye-witness of the case had corroborated the contents of the F.I.R. as well as the oral testimonial of **PW1** by deposing on oath on dock that on 08.06.22 at about 09.00 A.M, the incident occurred in front of the house of Rivash Pandit. Hearing the hue and cry, he came out from his shop and saw that accused persons Bakul Biswas and her husband both of them were abusing Rivash Pandit and the accused persons were assaulting Rivash Pandit with brick or something like that. Rivash Pandit's wife and mother-in-law came at the place of occurrence and he along with others went there and mitigated the situation. Rivash Pandit, his wife and mother-in-law, all of them sustained pain in their persons due to the incident and were treated at the hospital. In his cross-examination also it was taken down that the incident lasted for 10 minutes and that he had heard the noise and also seen the same from his shop. Then, he went to the place of occurrence and stopped them. It was also deposed in his cross-examination that he saw that blood was oozing out from the hand of Rivash Pandit's wife when he reached the place of occurrence.

The **PW3**, Subol Ghosh (independent witness) had identified the accused persons on dock and stated that the incident occurred on the 08th

day of a month and Rivash Pandit tried to throw a chocolate wrapper in to a drain for which the incident occurred in between both the sides and his shop is adjacent to the place of occurrence and he went there to stop the quarrel but one scuffle took place in between both the sides.

The **PW4**- Sampa Deb Pandit (one of the victims of the case/ wife of the defacto complainant) had corroborated the prosecution story and deposed on oath on dock that on 08.06.22 the incident occurred at about 09.00-09.15 A.M. when her husband was throwing a chocolate wrapper into drain. Seeing the same, Pranab Biswas started abusing her husband and assaulted her husband in front of the gate of her house. Witnessing the same, she came down and tried to stop the tussle. At that time Pranab Biswas pushed her. Pranab's wife Bakul Biswas came out from house and pushed and pulled her. She had duly identified both the accused persons on dock. Thereafter, her mother came there and her mother was also pushed and pulled. Her mother fell down and sustained cut/scratch injury on her knee. She took her mother to hospital for treatment. It was also taken down in her cross-examination that regarding the self same incident, the accused persons had lodged a case against them and the said case is still pending before court.

The **PW5**- Buli Deb (mother-in-law of the defacto complainant/ another victim of this case) had deposed that the incident occurred one year ago and it was 08th day of a month but she cannot remember the month. The incident took place at about 09.00-09.15 A.M., Rivash Pandit had come down when he was brushing his teeth and he saw that one chocolate wrapper was there in front of their house and her son-in-law threw that wrapper into drain. The neighbour Pulak Biswas saw it and came there and started quarreling. She had duly identified the accused persons on dock and had stated that the accused persons are her neighbours. She had further stated that bamboo, brick and many other things were there in front of their house and the accused persons started assaulting her son-in-law with bamboo. Seeing the incident, her daughter

Sampa Deb rushed there. Her son-in-law and Pulak Biswas started fighting. When the fighting did not end, she rushed there too and Pulak Biswas pushed her for which she fell down and blood oozed out from her hand and neck. Pain of her knee increased. Thereafter, many people came there and separated all of them. She was treated at the hospital but not admitted there and released with medicines. It was also taken down in her cross-examination that regarding the self same incident Pranab Biswas had lodged a case against them.

Although, she had named accused Pranab Kr. Biswas as Pulak Biswas but she had identified the accused person on dock who was present on court bail on that day as per materials on record and her utterance of wrong name i.e. Pulak Biswas who is actually Pranab Kr. Biswas is not challenged by the Ld. Defence Counsel in his case or in his argument. Thus, this is not hitting the prosecution case towards establishing the prosecution case against the accused persons beyond all sorts of reasonable doubts.

Lastly, the investigating officer of this case had exhibited the rough sketch map and index prepared by him which he had done in course of his investigation and those were exhibited as **Exhibit 4**. From the **Exhibit 4**, it transpires that the place of occurrence is in front of the house of the defacto complainant which is adjacent to the road running from Dinhata Chowpathi to Thanapara. He had further exhibited the formal F.I.R, filled up by the recording officer of this case along with his receiving endorsement on the written complaint as **Exhibit 3** and **Exhibit 2**, whose handwriting he knew in official course. He had further stated that he had recorded the statement of witnesses Subol Ghosh, Prasanto Sarkar, Sampa Deb Pandit and Buli Deb under **section 161 of Code of Criminal Procedure** and had interrogated the defacto complainant who had received treatment at the Emergency ward but he was not admitted. Finally, after completion of investigation, he had submitted charge-sheet

being no. 391/22 dated 27.08.22 under **section 447/323/354/506/34 of the Indian Penal Code.**

As there is no specification of filthy languages used by the accused persons upon the victims and the defacto complainant thereon that date at that place at the time of occurrence of the incident, the **section 506 of Indian Penal Code** is not established beyond reasonable doubt.

Section 354 of the Indian Penal Code is also not established properly against the accused persons beyond reasonable doubt as there is not statement recorded of the victim ladies under **section 164 of Code of Criminal Procedure** from the prosecution side in order to substantiate the allegation in a full proof manner and also there is no seizure of any torn up wearing apparels which were worn by the two ladies/victims namely Sampa Deb and Buli Deb on the date of the occurrence of the incident which will bring home the charges of outraging of female modesty against the accused persons.

Again **Section 447 of the Indian Penal Code** is also not established by the prosecution against the accused persons beyond all sorts of reasonable doubt as it is revealed from the oral testimonials as well as the exhibited rough sketch map.

However, the prosecution has been able to prove the case that on 08.06.22 at about 09.00 A.M., at Ward no. 4, Netaji Road, P.S.- Dinhata, both the *accused persons Pranab Kr. Biswas and his wife- Bakul Biswas had assaulted the defacto complainant and his family members and by such assault the defacto complainant as well as his wife and mother-in-law had sustained pain and injury all over their persons and had to take treatment from hospital. All the three witnesses i.e. the defacto complainant and both the victims had more or less substantiated and corroborated the prosecution case regarding the assault done upon them by both the accused persons and their such depositions were properly corroborated by two independent witnesses out of whom one is an eye-*

*witness of the incident. Although, not a single scrap of medical paper had come up in support of the physical assault inflicted upon the defacto complainant, his wife and mother-in-law but production of injury report is not a sine-qua-non for establishing offence under **section 323 of the Indian Penal Code** as held by the Honorable Apex Court in a very recent judicial pronouncement and this very principle is also established through a catena of judicial pronouncement.*

It has come up from the oral testimonials of the prosecution witnesses as well as from the examination of the accused persons under **section 313 of Code of Criminal Procedure** that over the self same incident there is a counter case filed by the accused persons against the defacto complainant and his family and which is pending in course. But regarding this very fact, this Court would like to go with the argument advanced by the Ld. Assistant Public Prosecutor that the counter case only establishes the admission of the occurrence of the incident and establishes the prosecution case more profoundly. The counter case will also be decided on merit as per the materials which will up during trial which is pending in legal forum and after proper adjudication the fate of the same will also be decided. But pending of the counter case will no way create any kind of hindrance in the adjudication of this case.

In this case, it is evident from the materials which had come up during trial that the inception of the incident was regarding one very trifling/simple matter that the defacto complainant on the date of the incident had thrown a chocolate wrapper in the drain over which the two accused persons became so arrogant and without any reason assaulted the defacto complainant with bamboo and brick and the bricks by which the accused person Pranab Kr. Biswas tried to hit the defacto complainant, was safeguarded by his wife Sampa Deb Pandit and the accused persons both of them then assaulted Sampa Deb Pandit and she sustained bleeding injuries on her hand. Another victim, i.e. the mother-in-law of the defacto complainant entered into the arena hearing the hue and cry

who was also attacked by the accused persons and accused person Pranab Kr. Biswas pushed her and she fell down on the ground and sustained pain all over her body along with her knees. These, blows given by the accused persons could have caused more serious injuries to the victims becoming fatal in nature. The two victims apart from the defacto complainant in this case are female persons and accused person Pranab Kr. Biswas had not taken that fact also into consideration while doing these activities. The brick/stone which he had thrown targeting the defacto complainant had not hit him which if had reached its target would have caused more serious kind of injury to the defacto complainant. Although, the accused persons had pleaded in their examination **under section 313 of Code of Criminal Procedure** regarding some facts of the counter case i.e. in other words the alleged assault done upon them by the defacto complainant and his family, no such materials with regard to that case is produced from the side of the defence in this case to make the picture of this case more clear revealing the stand of the accused persons and it is also found that they had declined to give any defence witness in this case to prove their side of the story. Furthermore, it is also not the case of the defence that the injuries sustained by the victims of this case were self inflicted in nature. No such kind of suggestion was put to any of the prosecution witnesses by the Defence counsel during the trial of this case.

It is latches on the part of the investigating officer that during his investigation he had not seized any such bamboo, stone/brick and also latches on the part of the prosecution that the O.P.D. tickets if any, were not brought up during trial an injured victim is the best witness regarding the incident in question that such a witness is least likely to exculpate the real offender and falsely implicate an innocent person. The manner of assault upon the victim as narrated by them stands fully corroborated by one eye witness and another independent witness in this case. In the present case there is unimpeachable evidence on record to substantiate the incident of assault upon the victims.

Now, in this case it is found that one of the accused persons is senior citizen i.e. accused Pranab Kumar Biswas and his wife Bakul Biswas is also at the verge of becoming a senior citizen. Thus, both of them are aged persons who are first time offenders with no past criminal antecedents. There were no adverse reports against them from any quarter during the trial or, when they were on bail, during the pendency of this case. The ingredients of simple hurt or, in other words voluntarily causing hurt falling under the purview of **section 323 of Indian Penal Code** is proved as per the evidence on record and I find that both of them are guilty of having committed so. The accused persons are convicted under the above mentioned section and as such the Court proceeds to hear their plea on sentence.

The order of conviction is explained to the convicts and they were asked to state their comments on sentencing. The convicts plead their innocence upon such hearing.

Again, being a Court of law, the humanitarian aspect is also taken into account and although it is a forum where criminal cases are tried for, it is not the intention of the legal forum to have punitive and deterrent effect upon the mind of the society and that of the convicts. It is also taken into account that the convicts are quite aged persons one of whom is a senior citizen and the other is a female who is also on the verge of becoming a superannuated person and this Court does not intend to become harsh enough upon both the convicts but is only intending to give a warning against the fault done by them, after this judgment in order to reform them from their arrogant attitude and to control their emotions while doing activities in the society at large, I am of the opinion that they should be given the **benefit of section 3 of the Probation of the Offenders Act**.

Be it mentioned here that as **Sections 447/354/506/34 of the Indian Penal Code** were not properly proved in this case by the prosecution and only **Section 323 of the Indian Penal Code** is only

proved by the prosecution against the accused persons, **Section 3 of the Probation of Offenders Act** is taken into consideration while passing the sentence leaving **Section 4 of the Probation of Offenders Act**, keeping in mind the very contentions of both the sections as mentioned in that particular Act.

Hence, it is,

ORDERED

that the convicts namely **Pranab Kr. Biswas @ Pronab** and **Bakul Biswas** are found guilty of the offence punishable **under section 323 of Indian Penal Code** but no order of conviction is passed against them. They are released on admonition under section 3 of the Probation of the Offenders Act and they are given caution/warning/reprimand by this Court that they do not engage in any criminal behaviour or, activity henceforth.

However, keeping in mind the physical pain and agony by which the defacto complainant and the victims namely Rivash Pandit and his wife and mother-in-law namely Sampa Deb Pandit and Buli Deb, had gone through, this Court is directing the convicts to pay compensation of Rs. 10,000/- towards the victims for the loss and injury caused to the victims and the defacto complainant under **section 5 of the Probation of the Offenders Act** which could be recovered if not paid in accordance with law i.e. the legal provision as laid down in the Code of Criminal Procedure.

Let a copy of this judgment be supplied to the convicts at once and if applied for, a copy of the same be given to the convicts free of cost according to **section 363 (1) of Code of Criminal Procedure.**

Let a copy of this judgment be sent to the **District Magistrate, Coochbehar** as provided **under section 365 of Code of Criminal Procedure.**

Later the convicts are asked if they are intending to take the benefit of free legal aid service to which they declined.

(Dictated & Corrected by me.)

Sd. Tanim Das
A.C.J.M., Dinhata

Sd. Tanim Das
A.C.J.M., Dinhata