

Form A

IN THE COURT OF THE SESSIONS JUDGE,
BIRBHUM AT SURI.

Present : Smt Arti Sharma Roy
Sessions Judge, Birbhum at Suri
(JO Code-WB00149)

[Date of the Judgment: 10.04.2026]

[Sessions Case No. 211 of 2024]

Sessions Trial No. 02 (11) 2024

CNR No. WBBB01-002337-2024

(Details of FIR- Chandrapur P.S. Case No. 01 of 2023 dated 11.01.2023)

Complainant	STATE OF WEST BENGAL
REPRESENTED BY	Sri Malay Mukherjee, Ld. P.P. Birbhum.
ACCUSED	1. Kanai Bagdi
REPRESENTED BY	Miss Reshmi Malakar. Advocate

FORM B

Date of Offence	10.01.2023
Date of FIR	11.01.2023
Date of Charge-Sheet	28.02.2023
Date of framing charges	20.11.2024
Date of commencement of trial	05.02.2025
Date on which Judgment is reserved	10.04.2026
Date of the Judgment	10.04.2026
Date of the Sentencing Order, if any	10.04.2026

Accused details:

Rank of the Accused	Name of Accused	Date of Surrender / arrest	Date of release on bail	Offences charged with	Whether acquitted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr.P.C.
1.	Kanai Bagdi	27.02.2023	27.02.2023	u/s 325/307/506 of IPC	Convicted	Simple imprisonment for two months for the offence u/s.323 of IPC.	-

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)
PW-1	Bhairab Dhibar	<i>Defacto</i> Complainant
PW-2	Puspa Dhibar	Injured witness
PW-3	Tapan Dhibar	Other witness
PW-4	Chandana Dhibar	Eye witness
PW-5	Dipak Dhibar	Other witness
PW-6	Dr. Chinmoy Mondal	Medical Expert witness
PW-7	Mir Nure Alam	Police Witness

B. Defence witnesses, if any:

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW-1	Nil	Nil

C. Court witnesses, if any:

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW-1	Nil	Nil

LIST OF PROSECUTION/DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit – P-1	Written Complaint.
2	Exhibit – P-1/1	Receiving endorsement on Exhibit-P1.
3	Exhibit – P-2	Seizure list dt. 11.01.2023.
4	Exhibit – P-2/1	Signature of PW-1 on Exhibit-P2.
5	Exhibit – P-2/2	Signature of PW-3 on Exhibit-P2.
6	Exhibit – P-2/3	Signature of PW-5 on Exhibit-P2.
7	Exhibit – P-3	Medical Report dt. 10.01.2023.
8	Exhibit – P-4	Medical Report dt. 11.01.2023.
9	Exhibit – P-5	Formal FIR.
10	Exhibit – P-6 & P6/1	Rough sketch map with index.

B. Defence:

Sr. No.	Exhibit Number	Description
1	Nil	

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	Nil	

D. Material Objects:

Sr. No.	Exhibit Number	Description
1	NIL	

J U D G E M E N T

1. This accused has faced trial for charges under Sections 325/307/506 of the Indian Penal Code.

◆ PROSECUTION CASE

2. One Bhairab Dhibar (PW-1) lodged a complaint on 11.01.2023 alleging that on 10.01.2023 at about 04:45pm finding him out of his house the accused under intoxicated condition tried to throttle him with *gamchha* (bath napkin) and also hit him on his head with bamboo stick with an intention to kill him causing bleeding injury. The accused also pelted stone at the house of Tapan

Contd...p/4

Dhibar (big uncle of PW-1) and used filthy languages. During this incident when Puspa Dhibar, mother of Tapan Dhibar, an elderly lady came out of their house to raise protest the accused also caught hold her with neck and dashed on ground. He also assaulted her physically with bamboo stick resulting in her hand fracture. PW-1 alleged that the accused was in habit to abuse his family members and also threatened them with dire consequences at mere seeing.

3. On basis of this written complaint Chandrapur P.S started instant case bearing Chandrapur P.S. Case No. 01 of 2023 dated 11.01.2023 under Sections 323/325/307/506 I.P.C against the accused person. Investigation was taken up and on completion of the same the I.O submitted charge sheet against the accused person u/s 341/323/325/307/506 I.P.C before the Court of Ld. A.C.J.M, Suri who took cognizance of the offence and committed the case to the file of this Court.

4. It appears from the case record that on consideration of hearing of both sides and also from documents on record, charge was made out against the accused person namely Kanai Bagdi u/s. 325/307/506 of the I.P.C. Contents of charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

5. On completion of prosecution evidence the accused was examined u/s 313 Cr.P.C. No evidence is adduced from the side of the defence but from trend of cross-examinations of the prosecution witnesses as well as the answers given by the accused person u/s 313 of the Cr.P.C it appears that the defence case is that of complete denial and false accusation.

◆ **POINTS FOR CONSIDERATION**

6(a). Whether the accused person committed grievous hurt to Bhairab Dhibar and Puspa Dhibar with bamboo stick causing serious injury to them with an intention to commit murder and also threatened them with dire consequences raising alarm to them and thereby the accused committed the offence punishable under Sections 325/307/506 of IPC ?

6(b). Whether prosecution has been able to prove the charge labeled against the accused beyond all reasonable doubts ?

◆ **DECISIONS WITH REASONS**

7. In order to substantiate this case, prosecution has examined seven witnesses in all. It has also relied on the documents more fully described in Form C under the heading “List of Prosecution Exhibits”.

8. On the other hand, defence did not render any evidence.

◆ **PROSECUTION EVIDENCE**

9. **P.W.1:** Bhairab Dhibar, *defacto* complainant of this case, has stated in his evidence that incident took place on 10.01.2023 at about 04:30-04:45pm after his return from cultivation field. When he was about to enter his home after removing the cultivation tools from his bicycle the accused came at the spot in drunken condition carrying a lathi in his hand. He blew lathi at his bicycle. On his protest the accused blew the lathi on his head. He received injury and felt unconscious. He was treated at Rajnagar BPHC. He further stated that the accused also pelted stone at his big uncle’s house as they raised protest against his misdeed. He also physically assaulted his grandmother Puspa Dhibar (PW-2) resulting her fracture injury. Over this incident he lodged a written complaint which he proved as Exhibit-P1 and his signature on the seizure list dt. 11.01.2023 as Exhibit-P2/1.

In his cross-examination he stated that incident took place during day light. His family members namely Tapan Dhibar, Dipak Dhibar, Chandana Dhibar were present near the place of occurrence. He also stated that Bamdeb Saha and other co-villagers were also present there. He handed over his bath napkin (gamcha) to the police. He stated that he received bleeding head injury.

10. **P.W.2:** Puspa Dhibar has stated in her evidence that incident took place one year back in front of their house. The accused has his house near their house. She deposed that the incident took place probably in the month of ‘Magh. She was present inside her house when Bhairab returned after grazing his goat. The accused suddenly attacked him with lathi causing injury his head injury. He has to be treated at hospital. The accused also blew lathi at front door of his son’s house. When she restrained the accused from doing so he attacked her with lathi causing fracture injury on her right wrist. She was

treated for her injury. She told that the accused was agitated over a drainage dispute.

It is her evidence during cross examination that the accused hit Bhairab with a lathi ordinarily used by most of the co-villagers for different purpose. She also stated that on the relevant day the accused mistook them as the culprit for throwing foul water through the drain which crosses along in front side of his house. That the incident took place at about 04:00pm. Many co-villagers have witnessed this incident. She has stated that history of assault and the name of assailant was stated before her attending physician.

11. P.W.3: Tapan Dhibar has stated in his evidence that incident took place on 23.01.2023. He got telephonic information of his mother's injury caused by the accused. He rushed to his house. He heard from his mother that the accused physically assaulted Bhairab (PW-1) and he had also attacked his front door with lathi. When his mother raised objection the accused assaulted his mother with lathi causing her hand injury. He further stated that his mother and Bhairab were taken to Rajnagar BPHC for their treatment. During investigation of this case he showed the broken door bolt to the police. He proved his signature on the seizure list as Exhibit-P2/2.

He admitted in his cross-examination that he did not witness the incident and that the accused resided in same locality.

12. P.W.4: Chandana Dhibar has stated in her evidence that incident took place in the month of 'Pous' at about 03:00pm. She was present inside her house. She heard an unusual sound and came out of her house to see that Bhairab was assaulted by the accused Kanai Bagdi. Bhairab fell on ground due to such assault. She further stated that Bhairab had returned his home from field when accused attacked him without any provocation. Bhairab was treated at hospital. The accused also assaulted her *kaki sasuri* (aunt-in-law) resulting injury in her right hand.

She has deposed in her cross-examination that she came out of her house hearing loud noise of Bhairab. He fell just out of their house. He received injury on left side of his head. Her *kaki Sasuri* (aunt in law) received fracture on her left wrist. She also deposed that she being a rustic, illiterate woman could not say the date, month & year of the incident. She could not say name of her neighbours. She answered candidly that she was ocular witness to the incident of assault on her son.

13. P.W.5: Dipak Dhibar has stated in his evidence that he was not present at the relevant time. He returned to his home from outside and found the accused pelting stone on his elder brother Tapan's front gate. He also heard that the accused had physically assaulted Bhairab and his mother. Due to physical assault both Bhairab and his mother received injuries and had to be treated at Rajnagar BPHC. Bhairab received head injury and his mother received fracture in her wrist.

He admitted in his cross-examination that he did not witness the incident and that the accused resided in same locality.

14. P.W.6: Dr. Chinmoy Mondal, Medical Officer of Rajnagar BPHC, has deposed that on 10.01.2023 he medically examined one Bhairab Dhibar who was presented with allegation of physical assault with bamboo stick followed by small injury over left temporal region of scalp and small injury on dorsem of left hand. He proved the medical report regarding treatment of Bhairab Dhibar as Exhibit-P3. He also proved another medical report prepared by Dr. Mafroja Khanum who was posted as Tantipara PHC under Rajnagar BPHC as Exhibit-P4. He deposed that Dr. Mafroja Khanum was availing maternity leave. As per Exhibit-P4 Dr. Mafroja Khanum had examined Puspa Dhibar who was presented with history of assault by stick on right hand and forearm and also throat by hand.

As medical expert he opined in his cross-examination that head injury of Bhairab Dhibar and injury suffered by Puspa Dhibar might cause due to fall on hard surface.

15. P.W.7: SI Mir Nure Alam is the Investigating Officer of this case. His evidence is purely formal. He proved the formal FIR (Exhibit-P5) and written endorsement on the written complaint (Exhibit-P1/1). He deposed that after being entrusted to investigate this case he visited the PO, prepared rough sketch map with index (Exhibit-P6 & P6/1); seized incriminating *gamcha* (bath napkin) under a seizure list (Exhibit-P2); collected medical reports from Rajnagar BPHC (Exhibit-P3 & P4); held raid to apprehend the accused but failed; recorded statement of the available witnesses u/s.161 Cr.P.C and on completion of investigation he submitted charge sheet against the accused person namely Kanai Bagdi.

He has stated in his cross-examination that the seized *gamcha* was not produced before him, that such type of seized *gamcha* is available in open market. He did not seize blood stained controlled earth from the PO. He denied the suggestion that he had focused his investigation on interrogation of the relatives of the complainant only.

◆ **ARGUMENT OF BOTH SIDES**

16. It is submitted by Ld. PP for the State that the case of prosecution has been duly proved by the injured persons (PW-1 and PW-2) as well eye witness, PW-4. Both the injured in their testimonies have duly corroborated the prosecution's story. The oral and medical evidence prove the physical assault by the accused on PW-1 and PW-2 and the only irresistible conclusion that can be drawn from the prosecution evidence is the conviction of the accused.

17. It is argued by Ld. Counsel for accused that the only witnesses examined by the prosecution qua the incident are complainant Bhairab Dhibar/PW-1 and his Aunt/PW-2, both of whom are interested witnesses being close family relation. No independent public witness has been examined to support the case of the prosecution. As per the testimony of PW-1 and PW-2, the incident alleged took place in broad day light out side the house of PW-1 and there were co-villagers admittedly an eye witness to the incident. Still, no co-villager has been made a witness in the present case for the reasons best known to the prosecution. The deposition of PW-1 is total improvement over his original complaint Ex.P1. While, in his original complaint, PW-1 had stated that while he was going out of his house the accused made attempt to throttle him with *gamchha* (bath napkin), however, in his deposition as PW-1, he stated that he was attacked with lathi when he was returning home on his bicycle from field. Accordingly, the entire basis of the incident has been changed by the complainant. In addition, in the original complaint Ex. P1, he did not mention about blowing lathi at his bicycle by the accused. PW-1 even testified that Bamdeb Saha and other co-villagers were also present at the spot at the time of incident, however, none of the said independent witness / neighbour has been made a witness in the present case. In addition to this, it is submitted that the injuries sustained by the injured persons are simple in

nature and are not covered under section 325/307 of IPC i.e. grievous hurt/attempt to commit murder. Hence the accused is not guilty of the charge under sec 325/307/506 I P C and accordingly, he is entitled to be acquitted.

18. I have heard the submissions made on behalf of both the parties and carefully perused the record.

◆ **FINDING**

19. It has been decided by Hon'ble Apex Court in plethora of decisions that the testimony of an injured witness of the offence stands on a very higher footing unless and until impeached by some clinching evidence. On perusal of evidence of both the injured that are complainant / PW-1 and injured / PW-2 I find that they have duly supported the case of the prosecution regarding assault by the accused on them with lathi. Their testimonies are not only in consonance with each other but also in consonance with their Medico Legal Certificate, marked as Ext. P-3 and Ext. P-4. Certain minor contradictions regarding the manner in which the incident had started have been pointed out by Ld. Defence Counsel, however, these contradictions are minor in nature and do not go to the root of the matter and are not sufficient to hold that PW-1 or PW-2 are untrustworthy witnesses. Both these witnesses have passed the test of cross-examination with flying colors. No contradictions on material aspects in their testimonies is observed. Merely because no independent public witnesses have been examined by the IO (PW-7), it is not sufficient to doubt the consistent testimonies of two injured persons which are duly supported by their Medico Legal Certificates. While appreciating the evidence of injured complainant / PW-1 and the elderly injured / PW-2 I keep in mind that there is a tendency amongst the truthful witnesses also to back up a good case by some exaggerated version. In present case also I have discarded the exaggerated version but barring this there is no falsehood detected to discard entire version of injured i.e. PW-1 and PW-2. PW-4 is an ocular witness to the incident of assault. Her presence at house and thereafter at the place of occurrence which was just in front of her house cannot be doubted. I am of further view that PW-1, 2 & 4 did not have any reason to omit the real culprit and falsely implicate the accused Kanai Bagdi. They have deposed about the manner in which the incident of assault occurred. PW-1 and PW-2, are the injured witnesses and they are the best witness to describe the manner which

they have testified successfully. I further found that neither there is any inordinate delay in reporting the matter to the police by the complainant/PW-1 who had received physical injury and had to be treated on the very date of incident, nor conducting the Medico Legal Certificate of the injured persons. The defence plea of false accusation out of an old dispute of drainage also does not inspire the confidence as no evidence in this regard has been produced on record and the suggestions in this regard given to PW-1 and PW-2 has been denied by them.

20. MLC (Ext. P3) of injured Bhairab Dhibar records the following injuries found on his person.

- (i) Small injury over left temporal region of scalp,
- (ii) Small injury on dorsem of left hand.

Nature of injuries sustained by Bhairab Dhibar has been opined to be simple in nature by the Medical Expert, PW-6. There was history of assault with bamboo stick. Time of medical examination was 5.45 PM on 10/01/2023.

As regards injured Puspha Dhibar, her MLC Ext.P4 records following injuries

- (I) Swelling on right side of dorsal aspect of hand,
- (ii) Scratch mark on right side fore arm dorsal aspect near wrist of 04 mm-05 mm.

Nature of injuries was kept under observation. There was alleged history of physical assault by neighbour with bamboo stick at her home. Time of medical examination was 11.30AM on 11/01/2023.

I am of opinion that though the documentary evidence (MLC) are proved as Exhibit-P3 and P4, I am of considered view that the nature of injuries opined to be simple is sufficiently proved by the oral evidence of PW-1 & 2. Exhibit-P3 & P4 come to further corroborate the injury on person of PW-1 and PW-2 respectively.

21. In the present case, the facts that have been proved on record suggest that the incident that had resulted in the injuries to the complainant Bhairab Dhibar and elderly injured, Pushpa Dhibar had occurred on the spur of the moment. It was neither a pre-planned quarrel nor the accused was alleged to be armed with deadly weapons during the incident. In fact, as admitted by the

injured Pushpa Dhibar the accused mistook them as culprit for throwing foul water in the drain which run along in front of his house. The accused who is a neighbour, picked up physical altercation over drainage dispute which blew out of proportion and resulted in injuries to PW-1 and PW-2. The nature and intensity of the injuries sustained by PW-1 and PW-2 as reflected by their MLCs are insufficient to give a finding that they were caused with an intention or knowledge and under such circumstances that if, the injuries had caused death of the injured persons, the accused would be guilty of attempt to commit murder. Thus, the accused is liable for acquittal for offence under section 307 of IPC. However, since simple injuries have been caused to PW-1 and PW-2, an elderly lady of 70 years due to beatings given to them by the accused, he is liable for conviction for offence under section 323 of Indian Penal Code. He is accordingly, convicted for the minor offence under Section 323 of IPC.

22. As per the argument that there is no recovery of weapon of offence is concerned it is not a fit reason to relief the accused of the charge under Section 323 of Indian Penal Code against him. If non production of the weapon is made a ground of acquittal then all the offender will save themselves by ensuring the destruction of the weapon immediately after the incident. Now delineating the salient features of the prosecution case I find these are the following un-rebutted inference upon appreciation of evidence discussed above:-

PW-1 & PW-2 are ocular witnesses. Their presence at the place and time of occurrence is proved beyond doubt. Identification of the accused is also unchallenged. Physical injuries of PW-1 & 2 are substantiated by their oral evidence and it find support from the documentary evidence viz, Exhibit-P1 & Exhibit-P2. PW-1 & 2 have corroborated themselves in material particulars.

PW-4 is an eye witness. There is nothing in his testimony to create a dent in the prosecution case and there is sufficient material on record to convict the accused for the offence under Section 323 of Indian Penal Code.

23. There is complete lack of evidence to prove the charge under Section 506 of Indian Penal Code as there is no oral evidence available on this score.

24. Hence, it is

ORDERED

that the accused person namely Kanai Bagdi is found guilty for committing the offence u/s. 323 Indian Penal Code and he is convicted under provision of Section 235(2) of Cr.P.C.

He is found not guilty for committing the offences u/s. 325/307/506 of Indian Penal Code.

Let the convict Kanai Bagdi be heard on question of sentence today at 04:00pm in presence of both sides. His bail bond stands cancelled. He is taken into custody.

Seized alat, if any, be destroyed on completion of the statutory period of six months.

Note in relevant register and upload in CIS.

Dictated & corrected by me,
Sd/- Smt. Arti Sharma Roy
Sessions Judge, Birbhum.

Sd/- Smt. Arti Sharma Roy
Sessions Judge, Birbhum.
(JO Code-WBB00149)