

FORM A
IN THE COURT OF JUDICIAL MAGISTRATE, KALNA, PURBA
BARDHAMAN

Present: Debojit Das (J.O. Code: WB01370)

Judicial Magistrate, Kalna Purba Bardhaman

GR 191 of 10 (Reg. No. 128 of 20)

T.R. no. 49 of 20

Date of Judgment: 4.6.2026

Details of FIR/Crime and Police Station

Complainant	State of West Bengal
Represented by	Ld. APP, Rupam Majumder
Accused	Basu Bag and four others
Represented by	

FORM B

Date of offence	14.4.10
Date of FIR	14.4.10
Date of Charge sheet	19.8.10
Date of framing of Charges	8.5.23
Date of commencement of Evidence	2.6.23
Date on which judgment is reserved	N.A.
Date of the judgment	4.6.26
Date of the sentencing order, if any	N.A.

Accused Details

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for the purpose of Section 428 CrPC
1.	Basu Bag and three others			u/S 448, 323 and 34 IPC	Acquitted	N.A	N.A

FORM C

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES Prosecution

RANK	NAME	NATURE OF EVIDENCE (E Y E WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
P.W-1	Bibekananda Ghorui	Informant/victim

Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
D.W-1	N.A	N.A

Court witness, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
C.W-1	N.A	N.A

LIST OF PROSECUTION/DEFENCE EXHIBITS/COURTS EXHIBITS

Prosecution

Sr. No.	Exhibit No.	Description
1.	NA	NA

Defence

Sr. No.	Exhibit No.	Description
1.	N.A	N.A

Court Exhibit

Sr. No.	Exhibit No.	Description
1.	N.A	N.A

Material Objects

Sr. No.	Material Object No.	Description
1.	NA	NA

J U D G M E N T

Facts of the Case

1. As per the charge sheet, on 14.4.10 at about 18:25 hours, a written complaint was lodged at Kalna Police Station by the informant, namely Vivekananda Barui. In the complaint, it was alleged that on 14.4.2010 at about 15 hrs. the accused persons namely Basu Bag and five others entered his house armed with bamboo stick and stole his gold chain from his wife's neck and as he tried to rescue her, they assaulted him.

FIR and Investigation

2. Pursuant to the informant's complaint, FIR was registered, and an investigation was conducted by the Investigating Officer (I.O.). Upon conclusion of the investigation, a charge sheet (No. 190) was submitted under Sections 448, 323 and 34 IPC against the **five** accused. Cognizance of the offences was taken by the competent Court, and the case was subsequently transferred to this Court for adjudication.

Framing of Charge

3. This Court framed charges against the accused under Sections 448, 323 and 34 IPC. The charges were read over and explained to the accused. The accused pleaded "Not Guilty" and claimed to be tried. CS accused no. 2 passed away and the case is abated in respect of the deceased accused.

Evidence on Record

4. During the trial, the prosecution examined the informant/victim namely Bibekananda Barui as PW1. This Court, mindful of the constitutional mandate under Article 21 of the Constitution of India guaranteeing a speedy trial, after evaluating the evidence already on record, closed prosecution evidence.

Examination of the Accused under Section 313 Cr.P.C.

5. The statements of the accused were recorded under Section 313 of the Cr.P.C., wherein the accused categorically denied all allegations levelled against the accused. The accused declined to adduce any evidence in defence, resting the case on the denial of the prosecution's claims.

Points for Determination

6. The sole point for consideration before this Court is:
 - a) Whether the accused are guilty of committing offences punishable under

Sections 448, 323 and 34 IPC?

7. This Court has carefully considered the submissions of the learned counsel for both the prosecution and the defence and has meticulously perused the evidence on record. The analysis and findings are delineated below.

Evaluation of Prosecution Evidence

8. PW1 Bibekananda Barui deposed that he is the de-facto complainant of this case against 4 to 5 persons. He deposed that two accused are present in the Court. He further deposed that the incident occurred 10 years ago relating to a trivial issue in the morning, and that he does not recollect the incident of dispute. The defence declined cross-examination.

Decision with Reasons

9. In a criminal trial, the burden lies entirely upon the prosecution to establish the guilt of the accused beyond reasonable doubt. The prosecution is required to prove the occurrence, the participation of the accused persons and all essential ingredients of the offences charged through substantive and reliable evidence. Unless such burden is discharged, the accused are entitled to the benefit of doubt.
10. In the present case, the prosecution examined only one witness, namely PW1 Bibekananda Barui, who is the informant and the alleged victim of the occurrence. No other witness was examined in support of the prosecution case.
11. A careful scrutiny of the testimony of PW1 reveals that he has not supported the prosecution case in any material respect. Though he stated that he is the de-facto complainant and that the case was lodged against 4 to 5 persons, he did not depose regarding the specific incident alleged in the FIR. On the contrary, he categorically stated that the incident occurred about ten years ago relating to a trivial issue and that he does not recollect the incident of dispute.
12. Thus, the sole prosecution witness failed to narrate the occurrence, failed to attribute any overt act to any of the accused persons and failed to state that the accused persons had entered his house, assaulted him or acted in furtherance of any common intention. His evidence contains no incriminating material whatsoever against the accused persons.
13. It is true that PW1 admitted that he was the de-facto complainant. However,

mere proof that a complaint was lodged does not establish the truth of the allegations contained therein. The FIR is not substantive evidence and can only be used for limited purposes recognised by law. The allegations contained in the FIR must be proved by substantive evidence adduced during trial. In the present case, such proof is completely absent.

14. The prosecution case, as disclosed in the FIR, alleged house trespass and assault by a group of persons. However, no evidence has been led before the Court to establish the alleged entry into the house, the alleged assault, the alleged use of bamboo sticks or the participation of any of the accused persons. There is also no evidence establishing any common intention among the accused.
15. The prosecution has thus failed to establish the chain of events alleged in the FIR. The occurrence itself remains unproved. The identity and participation of the accused persons remain unproved. The role of each accused remains unproved.
16. The essential ingredients of Section 448 IPC have not been established as there is no evidence showing that any of the accused persons committed house trespass by entering into the possession of the complainant with the requisite criminal intent.
17. Likewise, the ingredients of Section 323 IPC remain wholly unproved. No witness has deposed that any hurt was caused by any of the accused persons to the complainant or any other person.
18. Once the substantive allegations themselves remain unproved, the question of common intention under Section 34 IPC does not arise for consideration.
19. It is also noteworthy that the alleged occurrence pertains to the year 2010, whereas the evidence of PW1 was recorded after a long lapse of time. While mere lapse of time is not by itself a ground for acquittal, the fact remains that the sole witness has expressly stated that he does not recollect the incident. Consequently, there is no substantive evidence before the Court on the basis of which the allegations can be held to have been proved.
20. Criminal conviction cannot rest upon suspicion, assumptions or the mere existence of allegations in the FIR. The prosecution must establish its case through legally admissible evidence. In the present case, the prosecution has failed to place any reliable incriminating evidence on record against the accused persons.
21. Upon a cumulative assessment of the entire evidence, this Court finds that

the prosecution has failed to prove either the occurrence as alleged or the participation of the accused persons therein. The evidence falls far short of the standard required for recording a conviction in a criminal case.

22. Accordingly, this Court holds that the prosecution has failed to prove beyond reasonable doubt that the accused persons, in furtherance of their common intention, committed offences punishable under Sections 448 and 323 read with Section 34 of the Indian Penal Code. The point for determination is therefore answered in the negative.

Hence, it is

ORDERED

that all remaining four charge-sheeted accused are found **not guilty** of the offences under Sections 448, 323 r/w 34 IPC. **They are** hereby acquitted under Section **255 (1)** of the CrPC.

The bail bonds of the accused shall remain in force for a period of six months.

A soft copy of this judgment shall be uploaded to the Case Information System (CIS), and a certified copy shall be forwarded to the District Magistrate, Purba Bardhaman, and the Secretary, District Legal Services Authority (DLSA), Purba Bardhaman, for due intimation to the victim and for necessary action.

Typed and corrected by me.

Judicial Magistrate,
Kalna, Purba Bardhaman
JO WB1370