

IN THE COURT OF JUDICIAL MAGISTRATE, 3rd COURT, BISHNUPUR, BANKURA
Present: Ms. Aliviya Bhattacharya (J.O Code: WB01364)
Judicial Magistrate, 3rd Court, Bishnupur, Bankura (I.C)

Date of Judgment: 16.04.2026

NGR 1074/2021 (Reg. No. 05/2021)
T R No. 1272/2021

WBBK06-000458-2021

Complainant	State of West Bengal
Represented by	Ld. APP, Suparna Koley
Accused	Kartick Kundu Swapan Dutta @ Naru
Represented by	Ld. Adv. Mahadeb Dey

Date of offence	19-03-2021
Date of prosecution report	01-05-2021
Date of plea	27-08-2024
Date of commencement of Evidence	13-05-2025
Date on which judgment is reserved	16.04.2026
Date of the judgment	16.04.2026
Date of the sentencing order, if any	N.A

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.	Kartick Kundu	N.A	25.05.2021	Section 323 IPC	Acquitted	N.A	N.A
2.	Swapan Dutta @ Naru	N.A	25.05.2021	Section 323 IPC	Acquitted	N.A	N.A

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

1 | Page

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
P.W-1	Debyani Kundu	Independent witness
P.W-2	Asit Kumar Kundu	Complainant

B. Defense 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

C. 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/ DEFENSE EXHIBITS/ COURT EXHIBITS

A. Prosecution

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

B. Defense

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

C. Court Exhibit

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

D. Material Objects

Sr. No.	Material Object No.	Description
1.	N.A	N.A

JUDGMENT

Preface

1. The instant case is under **Section 323 IPC** instituted on the basis of the prosecution report submitted by the S.I. Jagannath Garai, Bishnupur PS that the de-facto complainant namely **Asit**

Kumar Kundu before the I/C, Bishnupur P.S, Bankura against the accused persons namely **Kartick Kundu and Swapan Dutta @ Naru**.

Fact of the case

2. The brief fact of the case as alleged by the informant is that on 19.03.2021 in between 17.05 hrs. that he assaulted by Kartick Kundu and Swapan Dutta @ Naru due to previous grudge. Subsequently, Asit Kundu was treated at Bishnupur Dist. Hospital. Hence, the instant trial.

Plea

3. The plea was taken under S. 323 IPC and the substance of accusation under S. 323 IPC was read over and explained to the accused persons to which they pleaded 'Not guilty' and claimed to be tried.

Examination of the accused under section 313 Cr.PC

4. The accused persons have been examined u/s 313 Cr.PC and on being asked, the accused persons refused to adduce defense witnesses.

Points for Consideration

5. Point No. 1: Are the accused persons guilty of the offences punishable under S. 323 IPC?
6. Point No. 2: Is the prosecution able to prove its case beyond the shadow of reasonable doubt?

ARGUMENTS ON BEHALF OF THE ACCUSED PERSONS

7. The Ld. Advocate for the accused persons started the argument and stated that the prosecution evidence did not reveal anything incriminating against the accused persons. Accordingly, he prays for the acquittal of the accused persons in this case.

ARGUMENTS ON BEHALF OF THE PROSECUTION

8. The Ld. APP argued on behalf of the prosecution stated that the de-facto complainant has filed this case against the accused persons under S. 323 IPC, and has contested the same and thus prays that the accused should be punished as per law.

Decision with Reasons

9. This is a case under **S. 323 IPC** filed by the de-facto complainant against the accused persons. Now, this Court is to analyze, assess and to take into account of the total evidence and materials on record to have a clear decision of the case.

10. This Court perused the materials on record. On perusal, it appears that the de-facto complainant alleged in written FIR on 19.03.2021 in between 17.05 hrs. that he assaulted by Kartick Kundu and Swapan Dutta @ Naru due to previous grudge. Subsequently, Asit Kundu was treated at Bishnupur Dist. Hospital. Hence, the instant trial. Now, let's look into the evidence adduced by the prosecution.

11. The **P.W-1, Debyani Kundu**, the de-facto complainant stated in her deposition that there was some hot altercation and tussle between the accused and her husband which compelled her to lodge the complaint. During cross-examination she stated that her husband was an accused in a case filed by Mina Dutta. She further stated in her cross-examination that their dispute was owing to misunderstanding which has been resolved now and she has no grievances against the accused persons. The expression 'tussle' is not clear enough to prove the charge of hurt under S. 323 IPC as the expression does not indicate who hurt whom and in what manner.

12. The **P.W-2, Asit Kumar Kundu** deposed before this court deposed that there was some hot altercation and tussle between the accused and himself which compelled his wife to lodge the complaint. He identified the accused persons in Court. During cross-examination he stated that their dispute was owing to misunderstanding which has been resolved now and he has no grievances

against the accused persons.

13. On the conjoint consideration of the evidence of the prosecution, it appears that none of these witnesses gave a clear, direct and unequivocal incriminating evidence against the accused persons. The P.W-2 who is the victim himself is the star witness of this case. However, he refrained from adducing any cogent and substantial evidence.

14. Section 101 of the Indian Evidence Act, 1872 provides for the burden of proof. It reads as under:

-
“whoever desires any Court to give judgment as to any legal right and liability dependent on existence of facts which he asserts that those facts exist, must prove the existence of such facts. When a person is bound to prove the existence of any fact it is said that the burden of proving those facts lies on that person”.

In the instant case, the case of the prosecution set the wheels of this case into motion. It is upon the prosecution to prove the facts alleged by the de-facto complainant in the FIR as per the aforementioned section and as such, the burden of proof regarding the alleged offence also lies upon the prosecution. However, there is nothing concrete on the record to suggest that the alleged incident actually took place. There is no substantial evidence as may be derived from the oral testimony of the P.Ws. It is apparent from the evidence that the witness has failed to prove the alleged incident and the evidence of P.Ws are cryptic and do not point out the guilt of the accused person. It is the duty of the prosecution to prove the charge against the accused person beyond all reasonable doubt by producing cogent and convincing evidence. In the light of above discussion and the reason I am of the opinion that the prosecution has failed to prove the case against the accused person beyond reasonable doubt. Resultantly, the accused person is entitled to be acquitted of the charges under S. 323 IPC. All the points are thus answered in the negative. In the result prosecution case fails and the accused persons merit acquittal.

Hence, it is

ORDERED

That the accused persons namely **Kartick Kundu and Swapan Dutta @ Naru** are found not guilty of committing the offense punishable under S. 323 IPC and they are hereby acquitted u/s 255(1) Cr.P.C in respect of offense alleged to be committed under S. 323 IPC.

The accused persons are on Court bail.

They are hereby discharged forthwith from their bail bonds and set at liberty.

The concerned sureties also be discharged from their obligations.

The instant case is accordingly disposed of.

Bench Clerk II is directed to note in T.R.

Let a copy of this judgment be sent to the DM, Bankura and the Chairman, SDLSC, Bishnupur at once.

Let this judgment be uploaded in CIS portal at once.

Seized alamati, if any be disposed of after the expiry of appeal period.

Typed & Corrected by me.

**Judicial Magistrate, 3rd Court
Bishnupur, Bankura**

**Judicial Magistrate, 3rd Court
Bishnupur, Bankura**