

PREFACE

Form A

IN THE COURT OF JUDICIAL MAGISTRATE (1st CLASS), BONGAON, NORTH 24 PARGANAS Reg. 302/26 Present: - Dr. Sourav Subba, W.B.J.S. Judicial Magistrate, (1st Class), Bongaon, North 24 Parganas JO Code (UID No)-WB01041 Date of the Judgment: 16.02.2026 G. R Case No. 1810 of 2013 T. R No. 114 of 2026 CNR No. WBNP 07-000644-2026 [Bagdha P. S. Case No. 579 of 2019 dated 24.10.2019 punishable under Sec. 341/324/34 of the <i>Indian Penal Code, 1860 (Act No. 45 of 1860)</i>]	
COMPLAINANT	State of West Bengal
REPRESENTED BY	Md. Alfazur Rahaman, Ld. A.P.P.
ACCUSED	1) Nityananda Sarkar @ Kabi, S/O Lt. Amulya Sarkar, Male, Age- ; 2) Sarbananda Sarkar S/O Lt. Amulya Sarkar, Male, Age- ; and 3) Buro Biswas, S/O Raiyat Biswas, Male, Age- , all are the residents of vill.- Kumarkhola, P.O. & P. S. Bagdah, Dist. North 24 Parganas
REPRESENTED BY	Mr. Pritam Sarkar

FORM B

Date of Offence	19.08.2013
Date of FIR	24.10.2019
Date of Charge sheet	30.09.2013
Date of Framing of Charges	10.02.2026
Date of commencement of Evidence	10.02.2026
Date on which Judgment is reserved	N/A
Date of the Judgment	16.02.2026
Date of the Sentencing Order, if any	N/A

Accused details: -

Rank of Accused	Name of the Accused	Date of arrest	Date release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Sec. 428, Cr.P.C.
A-1	Nityananda Sarkar @ Kabi	N/A	03.09.2013	under Sec. 341/324/34 of the Indian Penal Code, 1860	Acquitted	N/A	N/A
A-2	Sarbananda Sarkar	N/A	03.09.2013	under Sec. 341/324/34 of the Indian Penal Code, 1860	Acquitted	N/A	N/A
A-3	Buro Biswas	N/A	03.09.2013	under Sec. 341/324/34 of the Indian Penal Code, 1860	Acquitted	N/A	N/A

Form C

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution Witnesses: -

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Shilpi Bala	(De-facto complainant)
PW-2	Rabin Ch. Bala	(Husband)
PW-3	Sagar bala	(Son cum victim)

B. Defense Witnesses, if any: -

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW 1		
DW 2		

C. Court Witnesses, if any: -

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW 1		
CW 2		

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit No. P1/PW1	Sign. Of PW-1 on written F.I.R.
2,	Exhibit P-2/PW-2	

B. Defense:

Sr. No.	Exhibit Number	Description
1	Exhibit D-1 /DW1	
2	Exhibit D-2 / DW2	

C. Court Exhibits: -

Sr. No.	Exhibit Number	Description
1	Exhibit C-1 /CW1	
2	Exhibit C-2 / CW2	

D. Material Objects: -

Sr. No.	Material Object Number	Description
1	MO 1	
2	MO 2	

JUDGMENT

BRIEF FACTS OF THE CASE: -

1. Facts of the prosecution case in brief is that on 30.08.2013 at about 22:15 hrs. one Smt. Silpi Bala, W/O Rabin Bala, resident of vill.- Kumarkhola, P. O. & P. S. Bagdha, Dist. North 24 Parganas came to Bagdah police station and thereby lodged a written F.I.R. against accused persons namely, 1) Nityananda Sarkar @ Kabi, S/O Lt. Amulya Sarkar, Male, Age- ; 2) Sarbananda Sarkar S/O Lt. Amulya Sarkar, Male, Age- ; and 3) Buro Biswas, S/O Raiyat Biswas, Male, Age- , all are the residents of vill.- Kumarkhola, P.O. & P. S. Bagdah, Dist. North 24 Parganas to the effect that on 19.08.2013 at about 23:30 hrs. when her son was working in front of his house on the roadside that time all the accused persons wrongfully restrained him and thereby also abused him in filthy languages due to previous grudges. When he raised objection, all the accused persons assaulted him with fists and blows and with a wooden stick as a result of which he received injury on his body. On hue and cry local people came to the spot and the accused persons fled away. Later on, he was admitted in local hospital.

REGISTRATION OF CASE & INVESTIGATION: -

2. On the basis of said written F.I.R., Bagdha P. S. Case No. 579 of 2019 dated 24.10.2019 punishable under Sec. 341/324/34 of the *Indian Penal Code, 1860 (Act No. 45 of 1860)* was registered/started. Accordingly, the then Officer-in-charge (O/C) of said P. S. also endorsed Mr. Tarun Biswas, Sub-Inspector (S. I.) of West

Bengal police and posted in said P. S. as an Investigation Officer (I.O.) of this case and he started the investigation into the case.

3. In the meantime, all the accused persons voluntarily surrendered before the court of Ld. Additional Chief Judicial Magistrate, Bongaon and thereby were enlarged on bail on 03.09.2013 by the order of the Ld. Court.

4. During investigation the concerned I.O. visited the P.O (Place of occurrence) and prepared an index and rough sketch map, collected injury report and other relevant materials, recorded statements of available witnesses and F.I.R named accused persons under Sec. 161 of the *Code of Criminal Procedure, 1973 (Act No. II of 1974)*. During investigation it was also found that the above-named accused persons are behind the said incident and accordingly a *prima facie* case under Sec. 341/324/34 of the *Indian Penal Code, 1860* has also been well established against the accused persons. Accordingly, Charge Sheet has also been filed against the accused persons by the concerned I. O. of Bagdah P. S. vide Charge Sheet No. 348/2013 dated 30.09.2013 before the court of Ld. Additional Chief Judicial Magistrate, Bongaon on 20.02.2014. Accordingly, cognizance in the offences was also taken by the Ld. Court.

SUPPLY OF COPY OF POLICE REPORT & OTHER DOCUMENTS: -

5. The copies of police report along with other relevant documents or relevant extract thereof forwarded to the Magistrate with the police report under Sec. 173 of the *Code of Criminal Procedure, 1973* were furnished to the accused persons, free of cost in compliance with the provision of Sec. 207 of the Code of Criminal Procedure. Ultimately, case record was transferred to this court for disposal.

FRAMING OF CHARGE: -

6. That after appearance of all the accused persons before this court the charge was framed against them on 10.02.2026 under Sec. 341/324/34 of the *Indian Penal Code, 1860*. The contents of charge were read over and explained to the accused persons in *Bengali* language to which they each pleaded not guilty by saying “*Aami Nirdosh*” and claimed to be tried. Hence, the trial initiated.

EVIDENCE: -

7. The prosecution's evidence was started on and from 10.02.2026. During course of trial the prosecution adduced in total only 2 witnesses, who were examined-in-chief and cross-examined. The prosecution also produced 1 documentary evidence before the court to prove their case.

(A) THE ORAL EVIDENCE: -

8. The oral evidence adduced by the prosecution in the instant case are as follows: -

- (i) Shilpi Bala (De-facto complainant) as PW-1;
- (ii) Rabin Ch. Bala (Husband) as PW-2:&
- (iii) Sagar bala (Son cum victim) PW-3.

(B) THE DOCUMENTARY EVIDENCE: -

9. The prosecution also produced 1 documentary evidence before the court to prove their case which are as:-

- (i) Sign. Of PW-1 on written F.I.R.Exhibit No. P1/PW1.

EXAMINATION OF ACCUSED PERSONS UNDER SEC. 313 OF THE CODE OF CRIMINAL PROCEDURE: -

10. On closure of prosecution evidence, the accused persons were also examined by the court on 16.02.2026 under Sec. 313 of the Cr. P. C. The questions were read over and explained to them in the language convenient for them to understand to which they pleaded innocence throughout and declined to give any evidence on their behalf.

DEFENSE CASE: -

11. The defense case is simply denial of the case of prosecution. Thus, it is the specific defense of the accused persons that they never committed any offence as alleged by the prosecution.

ARGUMENT: -

12. Accordingly, heard argument from both the Ld. Advocate for defense and Ld. Assistant Public Prosecutor for the state of West Bengal on 16.02.2026.

13. According to my above-mentioned discussions the following points have been raised for determination: -

POINTS FOR DETERMINATION: -

- (i) Whether the accused persons have wrongfully restrained the de-facto complainant and thereby have committed an offence in this case punishable under Sec. 341/34 of the Indian Penal Code, 1860 as alleged by the prosecution or not?*
- (ii) Whether the accused persons have voluntarily caused hurt to the of de facto complainant by dangerous weapons and means and thereby have committed an offence in this case punishable under Sec. 324/34 of the Indian Penal Code, 1860 as alleged by the prosecution or not?*
- (iii) Whether the prosecution has been able to prove its case beyond a reasonable doubt or not?*

DECISION WITH REASON: -

14. Before determination of these points or discussing the instant case on merit and its fate with the appreciation of appropriate evidences I here feel necessary to mention the relevant and substantial provisions of penal law as contained in the *Indian Penal Code, 1860* wherein the present accused persons in the instant case are booked into by the prosecution. These punitive provisions are as follows: -

Sec. 341. Punishment for wrongful restraint. -

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Sec. 324. Voluntarily causing hurt by dangerous weapons or means.-

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Sec. 34. Acts done by several persons in furtherance of common intention. -

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

15. Now, I would like to discuss and determine in detail the above mentioned three points or merit of the instant case on the basis of the oral and documentary evidence as adduced and produced by the prosecution.

(a) Point No. (i)

(i) Whether the accused persons have wrongfully restrained the de-facto complainant and thereby have committed an offence in this case punishable under Sec. 341/34 of the Indian Penal Code, 1860 as alleged by the prosecution or not?

16. As mentioned above the prosecution in the instant case in total adduced only 2 oral evidence who were examined-in-chief and cross-examined and also produced 1 documentary evidence before the court.

17. I also heard the arguments as submitted by both the Ld. Advocates for defense and Ld. Assistant Public Prosecutor for the state. The Ld. A.P.P argued and submitted before the court that it is ostensibly clear and conclusively proved from the content of both the oral and documentary evidences as adduced and produced by the prosecution that the accused persons have committed offences as alleged by the prosecution in the case. Therefore, here the accused persons at this stage cannot escape from their criminal liability in the instant case for the offence committed by them. So, this is the fit case to be convicted under Sec. 341/324/34 of the *Indian Penal Code, 1860*.

18. During the course of argument, the Ld. Advocate for the defense also argued and submitted before the court that in the instant case the accused persons have been falsely implicated in the Charge under Sec. 341/324/34 of the *Indian Penal Code, 1860*, by the prosecution. He furthermore submitted before the court that in the instant case same being a criminal case, the total and absolute manner of burden of proving the *factum* of offence during whole judicial proceeding lies upon the prosecution. Besides then these, here the independent witnesses were though adduced by the prosecution but did not support the case of the prosecution. So, here the case of the prosecution fails in this respect. Hence, the criminal liability of the

accused persons here does not arise in this case. Lastly, he submitted and prayed before the court for the acquittal of the accused persons in the instant case from the allegation as alleged by the prosecution and he furthermore submitted before the court to consider this matter as the court may deem it fit and proper.

19. Thus, I heard the arguments as submitted by both the Ld. Advocate for the defense and Ld. A.P.P for the prosecution at length and also perused the oral and documentary evidences as adduced and produced by the prosecution. Here, the defense did not adduce their witnesses nor produced any documentary evidence. So, whatever the fate of the case would be on the basis of the oral and documentary evidences as adduced and produced from the side of the prosecution. However, here I would like to draw a lineal differentiation or defer from the submission as made by the Ld. defense counsel regarding the burden of proving a criminal case or *onus probandi* in absolute manner lies upon the prosecution. At present, there is a gradual decrease/change over the theory of proving a criminal case in absolute manner by the prosecution. Therefore, in modern times, such a theory no longer exists and proving of a criminal case by the prosecution beyond a reasonable doubt also depends upon the facts and circumstances of each of the cases as per the observation made by our Hon'ble Supreme Court in several cases. In this regard at this stage, I recall a beautiful and landmark judgment pronounced by the Hon'ble Apex Court which was duly reported in the case of ***State of West Bengal Vs. Orilal Jaiswal and Anr. (1994) 1 SCC 73: (AIR 1994 SC 1418)***. In the said solemn judgment the Hon'ble Court has observed as under:

*"We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in the civil proceedings. In a criminal trial however, intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered..... Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in ***Bater v. Bater (1950) 2 All ER 458, 459*** has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter." (Para 14)*

20. Therefore, to determine the instant point or fate of the case I hereby would also like to visit oral and documentary evidence as adduced and produced by the prosecution.

21. In this respect I perused the deposition made by the prosecution witnesses. Perusing the deposition, it appears to me that out of total 7 Charge sheeted witnesses, only 2 were adduced by the prosecution. Here, the *de-facto* complainant cum victim in the case was examined as PW-1 and her husband as PW-2 and there are no independent witnesses in the case. However, very unfortunately they both did not support and corroborate the case of the prosecution. Besides than these, there are no others independent witnesses to corroborate the case of prosecution. Furthermore, they could not say the exact date, month and year of incident and also the *factum* and manner of commission of offences. Therefore, he did not say anything about the *factum* of wrongful restrained in the case. Most importantly the witness failed to depose and ascertained the particular P.O where the accused persons wrongfully restrained victim in the case. The offence of wrongful restrain can only be proved by oral evidence and not by any documentary evidence and which are lacking in the case. Here despite repeated summons remaining charge sheeted witnesses did not turn up before the court including the I.O and doctor in the case. The case is very old filed in the year 2016 and which is more than 5 years. Bongaon is near to Indo-Bangladesh international boarder and a highly sensitive and crime prone zone/area occurring several kinds and nature of crimes every day. This is increasing tendency and not decreasing. On the other hand, my court is single court of Judicial Magistrate for entire sub-division and already overburdened with more than 13 thousand pending cases. The Constitution of India in its Art. 39-A r/w Art. 21 enshrines the very object and purpose of equal justice and free legal aid to common litigants which also includes speedy delivery of justice at door steps. In such premise, if I do not take abrupt initiatives for reducing the number of pending cases more particularly cases of 10 years and old without compromising with the merits of the case, I think sooner or later there will be a serious problem in coming future and it may collapse over its own weight. Hence, ultimately for the speedy justice and disposal of unsurmountable numbers of backlog of cases pending before my court and before the subordinate judiciary in the state of West Bengal in general and considering the guidelines given by the Hon'ble Apex Court in the case of ***Raj Deo Sharma vs. State of Bihar*, AIR 1998 SC 3281; 1998 AIR SCW 3208** and also as per submission made by the Ld. A.P.P that he does not want to adduce further witnesses in the case, the prosecution evidence was closed.

22. In the case of ***Nizamuddin Ansari v. State of Jharkhand*, AIR Online 2019 Jha. 1300** the Hon'ble Jharkhand High Court while assessing the presence of commission of offence under Sec. 341 of I.P.C. was pleased to hold that in the case

of wrongful restraint informant must take name of accused as member of the unlawful assembly and in case of prosecution failing to establish participation of accused in the alleged occurrence, accused is entitled to benefit of doubt.

23. Accordingly, I hold the considered view that the contention and allegation of the prosecution that the accused persons have wrongfully restrained the *de-facto* complainant in this case and thereby has committed an offence punishable under Sec. 341/34 of the *Indian Penal Code, 1860* as alleged by the prosecution has not been proved by the prosecution.

(b) Point No. (ii): -

(ii) Whether the accused persons have voluntarily caused hurt to the de facto complainant by dangerous weapons and means and thereby have committed an offence in this case punishable under Sec. 324/34 of the Indian Penal Code, 1860 as alleged by the prosecution or not?

24. Now, for the point No. (ii) *i. e.* whether the accused persons have voluntarily caused hurt to the *de-facto* complainant by dangerous weapons and means in this case and thereby have committed an offence punishable under Sec. 324/34 of the *Indian Penal Code, 1860* as alleged by the prosecution or not? Here, as because issue No. (i) *i.e.* commission of offence of wrongful restrained to the *de-facto* complainant cum victim by the accused persons in the case is not proved by the prosecution. Thus, voluntarily causing hurt to her by dangerous weapons and means by the accused persons in the case also does not leg to stand. Besides than these, there is also absence of any sufficient oral and documentary evidence regarding the commission of this offence. The concerned I.O. of the case did not seize the said particular dangerous weapon used by the accused persons from the P.O. during investigation and produced the same before the court in the case. Accordingly, this point also fails here and so not proved by the prosecution.

(c) Point No. (iii): -

(iii) Whether the prosecution has been able to prove its case beyond a reasonable doubt or not?

25. Lastly, here, as because both the above points No. (i) & (ii) regarding the commission of above alleged offences by the accused persons have not been proved by the prosecution in the case. Therefore, it is also hereby conclusively proved that the prosecution has not been able to prove its case in the instant case beyond a

reasonable doubt against the accused persons.

26. The Hon'ble Apex Court in the case of ***Babu Singh v. State of Punjab, 1964(1) Cri. L.J. 566*** while determining the standard of proof to be proved by the prosecution in any criminal case has laid down some fundamental principles of measurement which is still a guiding factor at present day despite elapse of many years of pronouncement of said landmark judgment. The Hon'ble Court laid down as:

“In a criminal trial, the presumption of innocence is a principle of cardinal importance and so, the guilt of the accused must in every case be proved beyond a reasonable doubt. Probabilities however strong and suspicion however grave can never take the place of proof.” (Para 21)

27. Similarly, in an aged old case of ***Saraswati Prasad v. Rex, AIR, 1949 Allahabad 412*** the Hon'ble Allahabad High Court has observed as:

“It is true that the burden of establishing any special issue raised by the accused rests upon him, but there is always the burden of the general issue as to the guilt of accused person which always rests upon the prosecution. When the burden of the issue is on the prosecution the case must be proved beyond a reasonable doubt; when, however, the burden of an issue is upon the accused, he is not in general called on to prove it beyond a reasonable doubt, or in default to incur a verdict of guilty; it is sufficient if he succeeds in proving a prima facie case, for then the burden of such issue is shifted to the prosecution which has still to discharge its original and major onus that never shifts, that is, that of establishing on the whole case, the guilt of the accused beyond a reasonable doubt: A.I.R.(20) 1933 Cal. 800, Rel. on.” (Para 6)

28. Hence, considering all the aspects and circumstances of the case and also considering aforesaid discussions and judicial decisions it appears that in the instant case the prosecution has miserably been failed to prove its case beyond a reasonable doubt against the accused persons. In result the prosecution case fails and the accused persons are entitled to get an acquittal.

29. Hence it is,

O R D E R E D

That the accused persons namely, 1) Nityananda Sarkar @ Kabi, S/O Lt. Amulya Sarkar, Male, Age- ; 2) Sarbananda Sarkar S/O Lt. Amulya Sarkar, Male, Age- ; and 3) Buro Biswas, S/O Raiyat Biswas, Male, Age- , all are the residents of vill.- Kumarkhola, P.O. & P. S. Bagdah, Dist. North 24 Parganas are found ***not guilty*** in

this case for the offences punishable under Sec. 341/324/34 of the *Indian Penal Code, 1860* and they are hereby ***acquitted*** under Sec. 248(1) of the Code of Criminal Procedure.

30. The accused persons are set free from the charge and they are also released from their bail bonds.

31. The concerned surety/sureties is/are also discharged from his/their liability.

32. The surety amount be exhausted and inform Surety accordingly.

33. The case is disposed of in contested form.

34. Note in the Germane Register/Trial Register.

35. Let the soft copy of this judgment be uploaded in the CIS within 48 hours from this day as per Rule 186A of the Cr. R. O. of the Hon'ble High Court at Calcutta.

36. The victim/victims in the case is/are in liberty to prefer an appeal before the Ld. Appellate Court as per provision of Sec. 372 of the Cr. P. C. against the order of acquittal of the accused person/persons. If necessary, victim/victims can also avail the free legal aid/assistance through the legal services authorities concerned to prefer and prosecute such appeal.

37. Let, a copy of this judgment be sent to DLSA, North 24 Parganas and D. M. North 24 Parganas at once in compliance with the direction of the Hon'ble High Court at Calcutta vide Hon'ble Court's order dated 29.03.2022 in c/w CRA 266 of 2020 with CRAN 1 of 2020.

B.C- II to do needful.

Typed by me

Dr. Sourav Subba
Judicial Magistrate, (1st Class),
Bongaon, North 24 Parganas
JO Code (UID No)-WB01041

Dr. Sourav Subba
Judicial Magistrate, (1st Class),
Bongaon, North 24 Parganas
JO Code (UID No)-WB01041