



HIGH COURT FORM NO. 9(J)2

**HEADING OF JUDGMENT OF SESSIONS CASE
DISTRICT- DARJEELING.
IN THE ADDITIONAL SESSIONS JUDGE,
3RD COURT, DARJEELING.**

PRESENT : Akhilesh Kumar Pandey
Additional Sessions Judge,
3rd Court, Darjeeling (In-Charge)

J.O. Code: WB00784
Date of Judgment: 19th March, 2026.
Sessions Case No. 12 of 2020
Reg. No. 13 of 2020
CNR No. WBDJ-010004792020

(Arising out of Jorebunglow PS case No. 13 of 2020 dated 26.02.2020
under Sections 341/186/333/353/307 of IPC.)

State of West Bengal

-Vs-

Abhishek @ Abishek Subba Accused.

Charge : 341/186/333/353/307 of IPC

This case coming up for final hearing on 12.03.2026 in presence of

Shri Rakesh Dhaniwal

Learned Public Prosecutor in-charge

Sri Ningdoma Bhutia

Learned Advocate for accused

And having stood for consideration to this day, the Court delivered the
following

PART 1

FORM B

Date of Offence	26.02.2020
Date of FIR	26.02.2020
Date of charge sheet	31.08.2020
Date of Supplementary charge sheet	NO
Date of framing charge	11.08.2022
Date of commencement of evidence	28.09.2022
Date of judgment	19.03.2026
Date of sentencing order, if any	Nil

DETAILS OF ACCUSED

Rank of the Accused	Name of Accused	Date of arrest	Date of released on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of section 428. Cr.P.C
(1)	Abhishek @ Abishek Subba	27.02.20	29.04.20	341/186/ 333/353/ 307 IPC	Acquitted	Nil	Nil

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	Sri Ashok Biswakarma	Police personnel being the de-facto complainant
PW-2	Sri Binay Kumar Tamang	Police personnel
PW-3	Sri Bhanu Chhetri	Police personnel
PW-4	Sri Diwas Thapa	Police personnel
PW-5	Smt Bindhya Subba	Mother of accused Abhishek Subba
PW-6	Sri Abishek Katwal	Police personnel
PW-7	Smt Rohita Subba	Independent witness
PW-8	Sri Sabin Tamang	Police personnel/ victim of the offence
PW-9	Sri Philip Rai	Police personnel/ victim of the offence
PW-10	Smt. Nilima Subba	Independent witness
PW-11	Sri Pradip Roy	Investigating Officer of the case

C. COURT EXHIBITS:

Sr. No.	Exhibit Number	Description
01	Exhibit-1	The written complaint
02	Exhibit-1/1	The endorsement on the written complaint
03	Exhibit-2	The seizure list dated 26.02.2020
04	Exhibit-2	The signature of PW-2 on the seizure list dated 26.02.2020.
05	Exhibit-2/1	The signature of PW-3 on the seizure list dated 26.02.2020.
06	Exhibit-3	The formal FIR
07	Exhibit-3/2	The signature of PW-9 on the seizure list dated 26.02.2020
08	Exhibit-4	The rough sketch map of the PO along with index
	Marked X for identification	The medical Examination report dated 26.02.2020.

J U D G M E N T

In this present case the accused, namely Abhishek Subba stood trial for offence punishable u/s 341/186/333/353/307 of IPC and on considering the evidence of the prosecution witnesses the Court passes the following judgment as hereunder:-

The fact of the case of the prosecution in short is that one ASI Ashok Biswakarma of Jorebunglow PS submitted a written complaint before the Officer in charge of Jorebunglow PS stating the fact to the effect that on 26.02.2020 at about 13.55 hours while he along with his force were performing evening mobile van duty under Jorebunglow PS area at that point of time he received telephonic information from duty Officer SI Binay Kumar Tamang that one Abhishek Subba assaulted his wife Indira Rai at SK Road near Sagar Saw Mill, Ghoom and after receiving such information he immediately rushed to the spot but found nothing and then he and his force went to the house of Abhishek Subba at Khashmal Busty, ward no. 2 of Jurebunglow. Then he and his force arrived at the house of Abhishek Subba and found some young persons assembling there and seeing them Abhishek Subba came forward and without any provocation or intimidation Abhishek Subba assaulted his force with sharp cutting weapon with intention to kill them. It is further alleged that Abhishek Subba assaulted his staff CVF 1172 Sabin Tamang and CVF Philip Rai by iron rods and they sustained grievous injuries on their persons. The injured persons were taken to District Hospital, Darjeeling for treatment and the offending weapon was also seized. The complainant prayed for taking necessary legal action against the accused Abhishek Subba under the law.

On the basis of the written complaint of the complainant Jorebunglow PS case No. 13 of 2020 dated 26.02.2020 under Sections 341/186/333/353/307 of IPC was started against the sole accused Abhishek Subba and investigation was taken up.

After completion of the investigation charge-sheet was submitted in this case by the police u/s 341/186/333/353/307 of the IPC against the sole accused Abhishek Subba.

Cognizance was taken and after compliance of the legal formalities the case was committed to the Court of the Ld. Sessions Judge and from there the same was transferred to this Ld. Court for disposal.

After receipt of the case record and in course of trial on the basis of the materials available in the charge-sheet and the case diary against the accused, charge was made out against the accused u/s 341/186/333/353/307 of IPC. The contents of charges so made out, was read over and explained to the accused to which he plead not guilty and claimed to be tried.

The accused is also examined u/s 313 of Cr.P.C. where he plead innocence and claimed to be falsely implicated in this case. He also declined to adduce any evidence in his defence. From the trend of cross examination of the prosecution witnesses the defence of the accused is complete denial of the prosecution case.

Prosecution in course of trial examined as many as eleven of its witnesses.

Now, the point of determination before this Court.

POINT FOR DETERMINATION

Now, the point for determination before this Court is that whether the prosecution has been able to prove the charges against the accused beyond all reasonable doubts.

DECISION WITH REASONS

In order to prove the charges against the accused prosecution examined as many as eleven of its witnesses and the documents that have been produced in the evidence of the prosecution witnesses are marked as Exhibit-1, Exhibit-1/1, Exhibit-2, Exhibit-2, Exhibit-2/1, Exhibit-3, Exhibit-3/2, Exhibit-4.

PW-1 ASI Ashok Biswakarma stated in his evidence that on 26.02.2020 he was posted at Jorebunglow PS and on the day while he was on patrolling duty received information from police station accused was assaulting his wife Indira Rai. On getting such information he along with two civic volunteers went there at the house of accused and one friend of

accused was also there and then he asked accused and accused chased him and when accused tried to flee away he was caught being armed with iron rod by him and two civic volunteers. Then Abhishek assaulted civic volunteer by a bamfak on his head.

Witness PW-1 further stated in his evidence that accused was armed with iron rod and when he snatched that iron rod accused assaulted civic volunteer no. 1205 by a Bamfak (a sharp cutting weapon) on his head and another civic volunteer no. 1172 Sabin Tamang sustained injuries and became senseless and accused also threatened the police that accused would kill them and then accused was arrested and brought to the PS and he lodged the written complaint marked Exhibit-1 against the accused at police station.

PW-2 SI Binoy Kumar Tamang stated in his evidence that on 26.02.2020 he was posted at Jorebunglow PS as SI of police. On that day he had GD duty from 6.00 PM and at that time one woman came to the PS and informed him that her husband assaulted her. Then he informed the said fact to OC of the PS and then as per instruction of OC he informed the said fact to ASI Ashok Biswakarma who was on patrolling duty and on that day at about 9.00 PM SI of police Pradip Rai seized one iron rod and one Bamfak (a sharp cutting weapon). He prepared the seizure list and he put his signature on the seizure list dated 26.02.2020 marked Exhibit-2. This witness identified the accused present in the Court.

PW-3 Bhanu Chettri stated in his evidence that on 26.02.2020 he was posted at Jorebunglow PS as constable of police. He stated that knows ASI Ashok Biswakarma and on 26.02.2020 he was on Centry duty at the PS and Ashok Biswakarma brought one iron rod and one Bamfak and prepared a seizure list and he put his signature on the seizure list (Exbt. 2/1). He further stated that one quarrel took place between Abhishek Subba and civic volunteer. He identified his signature on the seizure list dated 26.02.2020 marked Exhibit-2/1. He also identified the accused Abhishek Subba present in Court.

PW-4 Diwas Thapa stated in his evidence that he knows ASI Ashok Biswakarma and also Abhishek Subba. He further stated that on

26.02.2020 while he was on duty and he went to the house of the accused and their officer sent Sabin Tamang who was with them inside the house of accused and after sometime he heard hue and cry and thereafter he and others went to the house of Abhishek Subba and when he reached the house of accused one jostling took place between accused and themselves and they tried to separate them. He further stated that accused assaulted one of the police personnel Philip Rai by iron rod on his head and he sustained bleeding injury. Sabin Tamang also sustained injury and both Philip Rai and Sabin Tamang were admitted at the hospital. He stated that their officer seized the said iron rod and they arrested the accused and brought him to the PS and from PS they went to hospital where stitches were done at the wound of Philip Rai. Sabin Tamang was also admitted at the hospital. He was interrogated by the IO in connection with the matter.

PW-5 Bindhya Subba stated in her evidence that she does not know Ashok Biswakarma. She stated that accused Abhishek Subba is her son and at the time of the incident she was at her house at Siliguri for treatment and at about 8.30 PM on 26.02.2020 her son telephoned her and informed her that he was arrested and on the next day she came to Jorebunglow PS where police interrogated her.

PW-6 Abishek Katwal stated in his evidence that he knows Ashok Biswakarma and he also knows Abhishek Subba. On 26.02.2020 while he was on mobile van duty they received one complaint regarding a quarrel between a couple and accordingly their officer ASI Ashok Biswakarma asked him to go there and he went to Khasmahal busty. He stated that ASI Ashok Biswakarma asked Sabin Tamang who was with him to bring accused from the house and Sabin Tamang went inside his house. He further stated in his evidence that from outside he heard some discussions took place and noticed jostling between accused and Sabin Tamang and then he went inside accused's house and when they tried to hold accused, accused assaulted Philip Rai and another Civic volunteer by iron rod on their heads and blood started oozing out from the head of Philip Rai and

then they caught accused and accused was brought to the PS. Philip Rai and Sabin Tamang were taken to hospital.

PW-7 Rohita Subba stated in her evidence that she does not know Ashok Biswakarma and she knows Abhishek Subba. She has not seen the quarrel in the house of accused on the day of the incident and subsequently she came to learn that accused was arrested by the police and she was interrogated by IO.

PW-8 Sabin Tamang stated in his evidence that he knows Ashok Biswakarma and he also knows accused Abhishek Subba. He further stated that on 26.02.2020 at about 7.05 PM they went to the house of accused whether he was at home or not and accused was found inside his house and then one jostling took place and during that jostling accused assaulted him and Philip. Philip sustained injury and he also received injury due to such assault. Thereafter at about 7.20 PM to 7.25 PM they brought accused at the Police station and they went to Eden hospital.

PW-9 Philip Rai stated in his evidence that he knows Ashok Biswakarma and also Abhishek Subba. He further stated that on 26.02.2020 they had mobile van duty with ASI Ashok Biswakarma and while they were performing duty Ashok Biswakarma received one telephonic call and ASI Ashok Biswakarma told them to go to the house of accused and apprehend the accused as quarrel took place there. When they reached at accused's shop situated at SK Road and accused was not found there and then they went to the house of accused and their officer told Sabin Tamang to go inside the house of accused only to find out whether he was at his house or not and then hue and cry took place. Then he along with ASI Ashok Biswakarma went inside and found the quarrel took place between Abhishek and Sabin. He further stated in his evidence that when he entered inside accused's house, accused assaulted him on his head and he fell down and became unconscious and when he regained his sense he found himself at the hospital. Two stitches were done at his wound. One iron rod and one Bamfak were seized after preparing a seizure list and he put his signature on the seizure list marked Exhibit-3/2.

PW-10 Nilima Subba stated in her evidence that she knows Ashok Biswakarma and also accused Abhishek. She further stated that on the day of incident the wife of Abhishek came to their shop and enquired about the vehicle by which her daughter used to go to school and then Abhishek also came to her shop and quarrel took place between Abhishek and his wife. She asked them not to quarrel at her shop and she separated them and then they went away from her shop.

PW-11 SI of police Pradip Roy stated in his evidence that on 26.02.2020 he was posted at Jorebunglow PS and in course of investigation of the case he drew the formal FIR (Exhibit-3), examined the available witnesses and recorded their statements u/s 161 CrPC, prepared the rough sketch map of the PO along with index (Exhibit-4). He re-seized one Bamfak and one iron rod under a proper seizure list dated 26.02.2020 prepared and signed by him (Exhibit-2). He forwarded the accused to Court and he collected the medical injury report of Philip Rai from Darjeeling District Hospital. From the injury report of Philip Rai it could be seen that he suffered cut injury over scalp. On completion of investigation he submitted the charge sheet against accused for commission of offence punishable u/s 341/186/333/353/307 of IPC.

I have heard argument from the Ld. PP in charge for the prosecution as well as the Ld. Advocate for the accused and have gone through the evidence of the witnesses examined for the prosecution as well as the documents and the materials exhibited in evidence.

The case of the prosecution in a nutshell is that on 26.02.2020 at about 13.55 hours the complainant along with force were on evening mobile duty and during the mobile duty he got a telephonic information from duty officer SI Binay Tamang that a person Abhishek Subba assaulted his wife at Ghoom and after receiving the information he rushed to the spot but could not found anything. Then he along with force went to the house of the accused and there they were assaulted by the accused with iron rod and one Bamfak causing grievous sharp cut head injury and anyhow they managed to detain the accused and collected the weapon of offence and seized the same on the spot by preparing a seizure

list and on the basis of the complaint of the complainant the present case was initiated against the accused.

Out of the eleven witnesses examined in this case all witnesses examined are the police personnel. As per the complaint of the complainant that he received information on RT that one Abhishek Subba assaulted his wife Indira Rai at Ghoom. This wife of the accused has not been examined by the prosecution in course of investigation nor she has been cited as witness in this case.

As per the written complaint of the complainant he was on evening mobile duty and he received telephonic information from duty officer SI Binay Kumar Tamang. This Binay Kumar Tamang is examined by the prosecution as PW-2 wherein he has stated that on 26.02.2020 he was on GD duty from 6.00 PM and at that time one woman came to police station and informed that her husband assaulted her, so at 6.00 PM the victim came to the police station and informed that her husband assaulted her so as to when the incident took place is not stated by her.

The complainant in the written complaint stated that however they managed to detain the accused and collected the weapon of offence from him and seized it. Now on perusal of the seizure list prepared by ASI Ashok Biswakarma the place of seizure in the seizure list is shown at Ghoom, Khasmahal Busty, Ward No. 2, PS- Jorebunglow.

PW-3 the witness examined by the prosecution in his evidence he stated that on 26.02.2020 he was posted at Jorebunglow and he know that ASI Ashok Biswakarma brought one iron rod and one bamfak at the PS and prepared one seizure list and he signed on the said seizure list.

As per the evidence of this witness the seizure list was prepared at the police station and not at the PO.

PW-4 in his evidence stated that on 26.02.2020 while he was on duty and he went to the house of the accused and their officer sent Sabin Tamang who was with them inside the house of accused and after sometime he heard hue and cry and thereafter he and others went to the house of Abhishek Subba and when he reached the house of accused one jostling took place between accused and themselves and they tried to

separate them. He further stated that accused assaulted one of the police personnel Philip Rai by iron rod on his head and he sustained bleeding injury. Sabin Tamang also sustained injury and both Philip Rai and Sabin Tamang were admitted at the hospital. He stated that their officer seized the said iron rod and they arrested the accused and brought him to the PS.

This witness nowhere in his evidence stated that ASI Ashok Biswakarma was on evening mobile duty on 26.02.2020 and he was with him on duty so the presence of the complainant ASI Ashok Biswakarma on the place of incident on 26.02.2020 alleged by him is contradicted by PW-4.

PW-6 also claimed himself that he was on evening mobile duty with ASI Ashok Biswakarma whereas the complainant himself in his written complaint as well as in his evidence has not stated the name of this PW-6 to be present with him in evening mobile duty.

PW-4 also examined by the prosecution has not stated the name of PW-6 to be present with them when they went to the house of the accused.

PW-7 is examined by the prosecution in her evidence stated that she has not seen any quarrel in the house of the accused on the day of the incident but subsequently she came to know that the accused was arrested by the police.

This witness in her cross examination stated that she can not say why the accused was taken to the police station.

PW-8 also in his evidence stated that he knows Ashok Biswakarma but he has not stated in his evidence that he accompanied Ashok Biswakarma who was on evening mobile duty on 26.02.2020 to the house of the accused Abhishek Subba.

Both PW-6 and PW-8 in their evidence has not corroborated the fact of seizure of the weapon of the offence at the place of seizure by preparing seizure list by ASI Ashok Biswakarma.

What has been stated by PW-9 that on 26.02.2020 they had mobile van duty with ASI Ashok Biswakarma and while they were performing duty Ashok Biswakarma received one telephonic call and ASI Ashok

Biswakarma told them to go to the house of accused and apprehend the accused as quarrel took place there. When they reached at accused's shop situated at SK Road and accused was not found there and then they went to the house of accused and their officer told Sabin Tamang to go inside the house of accused only to find out whether he was at his house or not and then hue and cry took place. Then he along with ASI Ashok Biswakarma went inside and found the quarrel took place between Abhishek and Sabin. He further stated in his evidence that when he entered inside accused's house, accused assaulted him on his head and he fell down and became unconscious and when he regained his sense he found himself at the hospital.

This witness in his evidence stated that one iron rod and one bamfak was seized and he signed on the seizure list dated 26.02.2020 and proved his signature on the seizure list.

In the cross examination he stated that he put his signature on the seizure list at the police station and that he signed on the seizure list as per instruction of his superior officers and he can not say the time when he put his signature on the seizure list.

PW-10 also in his evidence has not stated anything about the incident regarding the quarrel of the complainant with the accused.

Such an incident took place and not a single independent witness examined in this case to corroborate the prosecution story. Seizure list not sufficiently proved from the evidence of the prosecution witnesses. Seized alamsats not produced in Court during trial and the presence of the witnesses examined by the prosecution at the time of the incident on the spot also not sufficiently proved from the evidence of the witnesses examined. The evidence of the witnesses examined appears not trustworthy to rely upon the same and in the absence of any corroborating evidence to the evidence of the prosecution witnesses examined the evidence of the prosecution witnesses are not reliable to act upon the same and to hold the accused guilty of the offences charged.

In view of the evidence and the discussions made herein above, it is very much clear that the prosecution has not been able to prove the

charges against the accused Abhishek Subba beyond all reasonable doubt and extending the benefit of doubt in favour of the accused, the accused is entitled to be acquitted of the charge.

In the result the prosecution case fails.

Hence, it is

ORDERED

that the accused, namely Abhishek @ Abishek Subba is found not guilty of the offence and is acquitted u/s 235(1) of Cr.P.C for the offence punishable u/s 341/186/333/353/307 of the I.P.C.

In view of the provisions u/s 437A of CrPC, the accused on bail to continue to remain on same bail bond for the period of next six months.

Seized alat, if any, be destroyed after the expiry of the period of appeal.

Dict. & Corr. By

Sd/-

Judge

Sd/-

Additional Sessions Judge,
3rd Court, Darjeeling
(In Charge)