

FORM --- A

IN THE COURT OF JUDICIAL MAGISTRATE NABADWIP, NADIA
--- PRESENT --- Smt. Sneha Basu (JO Code No. WB-01437) Judicial Magistrate Nabadwip, Nadia
GR Case No. 141 of 2015
CNR No. WBND06 000173 2015
Case under Section 341/323/34 of Indian Penal Code.
Delivery date of Judgment: 23 rd day of June, 2026
--- Details of the FIR/Crime and Police Station --- The instant case has been initiated in connection with Nabadwip Police Station Case No. 143 of 2015 dated 26.03.2015.

COMPLAINANT	---	STATE OF WEST BENGAL
REPRESENTED BY	---	Sri Nabendu Mondal, Ld. A.P.P
Name of accused person	---	1. Bhabesh Ghosh 2. Chandu Ghosh 3. Rupa Ghosh
Represented by	---	Ld. Advocate for the accused persons, namely, Bholanath Chakraborty

FORM --- B

Date of Offence	---	26.03.2015
Date of FIR	---	26.03.2015
Date of Charge-Sheet	---	26.06.2013
Date of Framing of Charge/Plea	---	12.02.2019
Date of commencement of evidence	---	17.08.2019
Date on which judgment is reserved	---	Not Applicable
Date of the judgment	---	23.06.2026
Date of the sentencing order, if any	---	Not Applicable

--- ACCUSED DETAILS ---

Rank of the accused	Name of Accused	Date of Arrest	Date of release Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428 CrPC.
01.	Bhabesh Ghosh	Voluntarily surrendered	14.05.2015	Section 341/323/34 of IPC.	Acquitted	Not applicable	Not applicable

02.	Chandu Ghosh	Voluntarily surrendered	14.05.2015	Section 341/323/34 of IPC.	Acquitted	Not applicable	Not applicable
03.	Rupa Ghosh	Voluntarily surrendered	14.05.2015	Section 341/323/34 of IPC.	Acquitted	Not applicable	Not applicable

FORM -:- C

-:- LIST OF PROSECUTION/DEFENCE/COURT WITNESSES-:-

A. PROSECUTION :-

Rank	Name	Nature of evidence
PW-1	Tarak Ghosh	Complainant
PW-2	Krishna Ghosh	Complainant
PW-3	Kabita Ghosh	Local witness
PW-4	Sampa Ghosh	Local witness

B. DEFENCE WITNESSES, IF ANY :-

Rank	Name	Nature of evidence
Nil	Nil	Nil

C. COURT WITNESSES, IF ANY :-

Rank	Name	Nature of evidence
Nil	Nil	Nil

-:- LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS -:-

(A). PROSECUTION :-

Sl. No.	Exhibit Number	Description
01.	Ext. 1	Signature of PW 1 on the Written Complaint

(B). DEFENCE :-

Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

(C). COURT EXHIBITS :-

Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

(D). MATERIAL OBJECTS :-

Sl. No.	Material Object Number	Description
Nil	Nil	Nil

Facts of the Case:-

1. The prosecution case, in brief, is that on 26.03.2015 at about 10:00 A.M., while a boundary wall was being constructed at the house of the father-in-law of the complainant, the accused persons objected to such construction and restrained the same. It is alleged that thereafter the accused persons assaulted the family members of the complainant, including Shampa Ghosh and Kabita Ghosh, by throwing bricks and causing injuries. On the basis of the written complaint lodged by the complainant, the present case was instituted against the accused persons.

On the basis of the said complaint, Nabadwip Police Station Case No. 143 of 2015 was registered. The matter was thereafter investigated by the concerned Investigating Officer and upon completion of investigation, Charge Sheet No. 248 of 2015 was submitted under Sections 323/341/34 of the Indian Penal Code, 1860 against the accused persons.

In the meantime, the accused persons surrendered before this Court and were enlarged on bail, and they remained on bail throughout the period of trial. During the pendency of the case, accused person namely Jagmaya Ghosh had died and as such he was Filed Forever.

Plea:-

2. The case record was subsequently transferred to this Court after cognizance of the alleged offences had been taken. Thereafter, on 12.02.2019, the particulars of the offences punishable under Sections 341/323/34 of the Indian Penal Code, 1860 were stated to the accused, to which he pleaded not guilty and claimed to be tried.

Evidence on record:-

3. PW1, Tarak Ghosh, the de facto complainant, deposed that on the date of occurrence his father-in-law was constructing a boundary wall and the accused persons obstructed the same. He further stated that the accused persons assaulted his wife Shampa Ghosh and his sister-in-law Kabita Ghosh with bricks and that they were treated at Pratapnagar Hospital. However, in cross-examination, PW1 admitted that he and his wife did not reside at his father-in-law's house and that upon receiving information regarding the dispute, he came to the place of occurrence at about 10:30 A.M. He further admitted that after reaching the place he did not witness any incident taking place. He also admitted the existence of a pending counter case between the parties arising out of the same incident and acknowledged the existence of a dispute regarding the boundary wall.

PW2, Krishna Ghosh, did not support the prosecution case. He stated that he knew the accused persons as his neighbours but did not know anything about the incident. He further stated that the police had never interrogated him regarding the case.

PW3, Kabita Ghosh, deposed that while a boundary wall was being constructed at her parental house, the accused persons objected to the same and assaulted her mother, herself and her sister. She further stated that she received treatment at Nabadwip S.G. Hospital. However, in cross-examination, she admitted that there existed a long-standing property dispute between her father and the accused persons. She further admitted that although several persons had assembled at the place of occurrence, she could not state their names. She also stated that she did not disclose the names of the assailants to the doctor and that the police had not interrogated her regarding the incident.

PW4, Shampa Ghosh, deposed that on receiving information from neighbours she and her sister reached the place of occurrence and thereafter a case was filed. In cross-examination, she admitted that she was not present at the time when the occurrence initially took place and had reached the spot subsequently. She also admitted that the accused persons had instituted a case against them regarding the same incident.

Examination u/s. 313 Code of Criminal Procedure, 1973:-

4. The accused persons were examined u/s. 313 Code of Criminal Procedure, 1973 to which the accused person claimed to be not guilty and innocent and refused to adduce any evidence on their behalf.

Points for consideration :-

1. Whether the prosecution has been able to establish the allegations against the accused persons beyond reasonable doubt?
2. Whether the accused person is liable to be convicted for the offences punishable under Sections 341/323/34 of the Indian Penal Code, 1860?

Decision with reasons:-

5. It is a settled principle of criminal jurisprudence that the burden lies upon the prosecution to prove the case against the accused beyond all reasonable doubt. The accused is presumed to be innocent unless such presumption is displaced by cogent and reliable evidence adduced by the prosecution. This principle finds statutory recognition in Sections 101 and 102 of the Indian Evidence Act, 1872, which provide that the burden of proof lies upon the person who asserts a fact and upon the party who would fail if no evidence were adduced on either side. The said principle has substantially been retained under the Bharatiya Sakshya

Adhiniyam, 2023, particularly under Sections 104 and 105, which reiterate that the burden of proving the existence of a fact lies upon the person who asserts it.

In this regard, this Court places reliance upon the decision of the Hon'ble Supreme Court in *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 : AIR 1984 SC 1622, wherein the Hon'ble Apex Court held that before the guilt of an accused can be said to be fully established, the circumstances from which the conclusion of guilt is to be drawn must be fully proved, the facts so established must be consistent only with the hypothesis of the guilt of the accused, the circumstances must be of a conclusive nature and tendency, they must exclude every possible hypothesis except that of the guilt of the accused, and there must be a complete chain of evidence leaving no reasonable ground for a conclusion consistent with the innocence of the accused. The Hon'ble Supreme Court has also reiterated this principle in *Kali Ram v. State of Himachal Pradesh*, (1973) 2 SCC 808 : AIR 1973 SC 2773, wherein it was held that if two views are reasonably possible on the evidence on record, the one favourable to the accused must be adopted. Similarly, in *V.D. Jhingan v. State of Uttar Pradesh*, AIR 1966 SC 1762, the Hon'ble Supreme Court held that it is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt and the accused is entitled to the benefit of every reasonable doubt. In order to convict the accused in the present case, the prosecution is required to prove all the essential ingredients of the offences under which the accused has been charged. Unless the prosecution succeeds in establishing the guilt of the accused beyond reasonable doubt through cogent and reliable evidence, no conviction can be sustained in the eye of law.

6. It has been argued on behalf of the prosecution that the evidence of PW3 and PW4 clearly establishes that the accused persons obstructed the construction of the boundary wall and assaulted the members of the complainant's family. It is therefore submitted that the accused persons be convicted accordingly. Per contra, it has been argued on behalf of the defence that the case arose out of a long-standing property dispute between the parties and that both sides have instituted criminal proceedings against each other. It is further argued that the prosecution has failed to examine any independent witness despite the admitted presence of numerous local persons at the place of occurrence. Accordingly, it is submitted that the accused persons are entitled to acquittal.

7. The evidence of PW1, the de facto complainant, does not inspire confidence insofar as the occurrence itself is concerned. Though in his examination-in-chief he narrated the prosecution case, he admitted in cross-examination that he came to the place of occurrence only after receiving information regarding the dispute and that after reaching the place he did not witness any incident taking place. His evidence therefore cannot be treated as direct evidence regarding the alleged assault.

PW2 has not supported the prosecution case at all. He expressly stated that he did not know anything regarding the incident. His evidence therefore does not advance the prosecution case in any manner.

The prosecution case substantially rests upon the testimony of PW3. Though PW3 has supported the allegations made in the complaint, her evidence requires cautious scrutiny. PW3 admittedly belongs to the family of the complainant and is directly interested in the outcome of the case. She further admitted the existence of a long-standing property dispute between her family and the accused persons. Significantly, despite her admission that several persons had assembled at the place of occurrence, no independent witness has been examined by the prosecution. No doctor has been examined and no medical document proving the alleged injuries has been brought on record.

8. The evidence of PW4 is also of limited assistance to the prosecution. She admitted that she was not present at the inception of the occurrence and had reached the place after receiving information from neighbours. Her testimony, therefore, does not furnish complete direct corroboration of the prosecution version. She also admitted that a counter case had been filed by the accused persons concerning the same incident. The evidence on record thus reveals that the incident arose out of an admitted and long-standing property dispute between the parties and that criminal proceedings were instituted by both sides. In such circumstances, independent corroboration assumes considerable importance. However, despite the admitted presence of several local persons at the place of occurrence, none has been examined. The prosecution has also failed to adduce reliable medical evidence regarding the alleged injuries. In view of the aforesaid circumstances, this Court is of the considered opinion that the prosecution has failed to establish the charge against the accused persons beyond reasonable doubt. The benefit of such doubt must necessarily go in favour of the accused.

9. Accordingly, this Court is of the considered view that the prosecution has failed to establish the charges against the accused persons beyond reasonable doubt. Both the points for determination are therefore answered **in the negative and against the prosecution**. Consequently, the accused persons cannot be held guilty of the offences punishable under **Sections 341/323/34 of the Indian Penal Code, 1860**.

Hence, it is,

ORDERED

10. that the accused persons namely Bhabesh Ghosh, Chandu Ghosh and Rupa Ghosh, is found not guilty for the offense described u/s. 323/341/34 of the Indian Penal Code, 1860 and accordingly is acquitted u/s. 255(1) of the Code of Criminal Procedure, 1973.

The accused person shall remain in the same bonds and shall be released from their respective bail bonds after a period of six months in terms of Section 437A of the Code of Criminal

Procedure. The sureties are discharged from their respective liabilities accordingly. Note in Relevant Registers and update CIS accordingly.

The victim has a right to prefer an appeal under the proviso to Section 372 of the Code of Criminal Procedure against this judgment and if required may seek free legal assistance from the appropriate Legal Services Authority for instituting such appeal.

Let a copy of this judgment be forwarded to the District Magistrate, Nadia and the Chairman, D.L.S.A., Nadia for due intimation to the victim.

Dictated & Corrected by me

Sd/-

**Judicial Magistrate,
Nabadwip, Nadia**

Sd/-

**Judicial Magistrate
Nabadwip, Nadia**