

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. 74 of 2017
CNR No. WBND06 000767 2017
Case under Section 323/325/506/34 of Indian Penal Code.
Delivery date of Judgment: 2 nd 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. 78 of 2017 dated 19.12.2017.

COMPLAINANT	-:-	STATE OF WEST BENGAL
REPRESENTED BY	-:-	Sri Nabendu Mondal, Ld. A.P.P
Name of accused persons	-:-	1) Shambhu Biswas 2) Gour Biswas 3) Sohag Biswas 4) Minu Biswas 5) Badal Biswas
Represented by	-:-	Ld. Advocate for the accused persons, namely, Arijit Bhattacharya

FORM -:- B

Date of Offence	-:-	18.02.2017
Date of FIR	-:-	19.02.2017
Date of Charge-Sheet	-:-	19.03.2017
Date of Framing of Charge	-:-	20.07.2018
Date of commencement of evidence	-:-	12.03.2019
Date on which judgment is reserved	-:-	Not Applicable
Date of the judgment	-:-	02.06.2026
Date of the sentencing order, if any	-:-	Not Applicable

-:- ACCUSED DETAILS -:-

Rank of the accused	Name of Accused	Date of Arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428 CrPC.
01.	Shambhu Biswas	27.02.2017	24.03.2017	Section 323/325/506/34 of IPC.	Acquitted	Not applicable	Not applicable

02.	Gour Biswas	Voluntarily surrendered	24.03.2017	Section 323/325/506/34 of IPC.	Acquitted	Not applicable	Not applicable
03.	Sohag Biswas	Voluntarily surrendered	24.03.2017	Section 323/325/506/34 of IPC.	Acquitted	Not applicable	Not applicable
04.	Minu Biswas	Voluntarily surrendered	24.03.2017	Section 323/325/506/34 of IPC.	Acquitted	Not applicable	Not applicable
05.	Badal Biswas	Voluntarily surrendered	24.03.2017	Section 323/325/506/34 of IPC.	Acquitted	Not applicable	Not applicable

FORM --- C

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

A. PROSECUTION :-

Rank	Name	Nature of evidence
PW-1	Shefali Mondal	Complainant
PW-2	Amal Roy	Local witness
PW-3	Ashananda Mondal	Local witness
PW-4	Gopal Mondal	Local witness
PW-5	Biswajit Pramanick	Local witness
PW-6	Narayan Chandra Biswas	Local witness
PW-7	Dr. Tanmoy Halder	Medical 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
02.	Ext. 1/1	Written Complaint
03.	Ext. 1/2	Signature of PW 6 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 facts of the present case, in brief, are that the defacto complainant, namely, Smt. Shetali Mondal, lodged a written complaint alleging that on 18.02.2017 at about 5:00 p.m. at Kanainagar, Bhaluka Battala, the accused persons, owing to a long-standing dispute regarding undivided family property, abused and assaulted her husband Biswajit Mondal. It was alleged that the accused persons assaulted him by fists and blows and caused injuries upon his person. According to the complaint, upon hearing hue and cry, Biswajit Pramanik came to the spot, rescued the injured and took him to Bishnupur Hospital. Thereafter, the injured was shifted to Shaktinagar Hospital where he underwent treatment.

On the basis of the said complaint, Nabadwip Police Station Case No. 78 of 2017 was registered. The matter was thereafter investigated by the concerned Investigating Officer and upon completion of investigation, Charge Sheet No. 19.03.2017 was submitted under Sections 325/323/34/506 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.

Charge:-

2. The case record was thereafter transferred to this Court after taking cognizance of the offences. Subsequently, on 20.07.2018, charge was framed against the accused persons under Sections 325/323/34/506 of the Indian Penal Code, 1860, to which the accused persons pleaded not guilty and claimed to be tried.

Evidence on record:-

3. PW-1, Smt. Shetali Mondal, is the defacto complainant of the present case. She deposed that on 18.02.2017 at about 5:00 p.m. at Kanainagar, Bhaluka Battala, the accused persons abused her husband in filthy language and assaulted him by fists and blows. According to her, her Jamaibabu, namely Biswajit Pramanik, rescued her husband from the hands of the accused persons and took him to Bishnupur Hospital. She further stated that thereafter her husband was shifted to Shaktinagar Hospital where he remained admitted for

treatment. She attributed the occurrence to a property dispute relating to the undivided property of her mother-in-law. She identified her signature on the written complaint which was marked as Exhibit-1. However, during cross-examination, PW-1 admitted that the accused persons are the maternal uncles and aunt of her husband. She further admitted that at the time of occurrence she was inside the house and did not witness the incident herself. She categorically stated that she heard about the occurrence from her husband and thereafter lodged the complaint. She also admitted the existence of a long-standing property dispute between her family and the accused persons. Several omissions in the written complaint regarding the circumstances in which she came to know about the incident, her visit to the hospital and other surrounding facts were also brought on record during her cross-examination.

PW-2, Anil Roy, did not support the prosecution case. He stated before the Court that he did not know the defacto complainant, did not know against whom the present case had been filed and had no knowledge whatsoever regarding the alleged occurrence. He also stated that police never interrogated him in connection with the present case. His testimony, therefore, does not advance the prosecution case in any manner.

PW-3, Ashananda Mondal, stated that the defacto complainant was his neighbour and that he knew the accused persons as they were also residents of the same locality. He deposed regarding the existence of a property dispute between the parties and stated that because of such dispute tensions existed between them. However, he also stated that he did not remember the details of the case. During cross-examination he admitted that he had only heard about the incident and had not witnessed the occurrence. He further admitted that he was never interrogated by the Investigating Officer.

PW-4, Gopal Mondal, also stated that he knew both the complainant and the accused persons as neighbours. According to him, on the relevant date he had seen the parties engaged in a heated altercation. He further stated that the accused persons were related to the complainant side. However, he was unable to furnish details of the occurrence and stated that he did not remember the particulars of the incident. During cross-examination he admitted that he had no personal knowledge regarding the alleged assault and that he had never been interrogated by the Investigating Officer.

PW-5, Biswajit Pramanik, is a witness of considerable importance in the prosecution case, as PW-1 had claimed that it was this witness who rescued the injured and took him to the hospital. PW-5 deposed that he knew the complainant and that on the date of occurrence he had accompanied Biswajit Mondal to inspect land situated at Bhaluka. According to him, while they were present there, the accused persons arrived and assaulted Biswajit Mondal. He further stated that he rescued the injured and admitted him to the hospital. Beyond these facts, however, he claimed not to know much regarding the incident. During cross-examination, PW-5 admitted that he could not identify the persons who allegedly assaulted Biswajit Mondal. He was unable to state the holding number, dag number or other particulars

of the place of occurrence and further stated that he had never been interrogated by the Investigating Officer. Thus, although PW-5 speaks about an assault, he fails to identify the assailants before the Court.

PW-6, Narayan Chandra Biswas, was examined as the scribe of the written complaint. He stated that he wrote the complaint on the instruction and dictation of the complainant and thereafter read over the contents to her. According to him, after understanding the contents, the complainant put her signature thereon. The complaint and his signature thereon were marked as Exhibit-1/1 and Exhibit-1/2 respectively. During cross-examination, PW-6 admitted that he had previously worked in the police department and that after retirement he occasionally drafted complaints in police stations. He further admitted that he had no personal knowledge regarding the alleged occurrence. His evidence is therefore purely formal in nature.

PW-7, Dr. Janmoy Halder, was the Medical Officer who examined the injured Biswajit Mondal at Bishnupur BPHC on 18.02.2017. He deposed that the patient was brought to the hospital at about 5:15 p.m. with a history of physical assault. Upon examination, he found all vital parameters to be stable. He noticed right eye conjunctival congestion but found no other external injury upon the body of the patient. The patient complained of pain in his head, right shoulder and right eye. The witness proved the injury report which was marked as Exhibit-2 and identified his signature and seal thereon. During cross-examination, PW-7 admitted that the patient had not disclosed before him the names of the persons who allegedly assaulted him. He further admitted that such an injury could be caused if a person struck against a hard substance. He also stated that he was not an eye specialist.

The prosecution has also relied upon two documentary exhibits. Exhibit-1 is the written complaint lodged by PW-1, which sets the criminal law into motion and contains the allegations forming the foundation of the prosecution case. The said document was duly proved by PW-1 as well as by PW-6, the scribe thereof. Exhibit-2 is the injury report of Biswajit Mondal proved by PW-7, Dr. Janmoy Halder. The report records right eye conjunctival congestion and complaints of pain in the head, right shoulder and right eye, though no other external injury was found. While the said documents corroborate the factum of lodging of the complaint and the medical examination of the alleged victim, neither of them independently establishes the identity of the assailants or the involvement of the accused persons in the alleged occurrence.

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 persons 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 persons are liable to be convicted for the offences punishable under Sections 325/323/506/34 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, and 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, and 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, and 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 that the accused is entitled to the benefit of every reasonable doubt. Thus, 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, and 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. Learned Assistant Public Prosecutor argued that the evidence on record, particularly the testimony of PW-1, PW-5 and the medical evidence adduced through PW-7, sufficiently establishes that Biswajit Mondal was assaulted on the relevant date. It was submitted that

minor inconsistencies are natural and do not affect the core prosecution case. Learned APP therefore prayed for conviction of the accused persons.

On the other hand, learned defence counsel argued that the prosecution has utterly failed to establish the charges beyond reasonable doubt. It was contended that PW-1 is admittedly not an eyewitness and that her evidence is based entirely upon what she heard from others. It was further argued that PW-2 did not support the prosecution, PW-3 and PW-4 are hearsay witnesses, and PW-5 failed to identify the alleged assailants. It was also submitted that the injured himself was never examined before the Court. Learned defence counsel further argued that the medical evidence discloses only a minor injury and does not connect the accused persons with the alleged occurrence. Accordingly, acquittal was prayed for.

7. I have carefully considered the entire evidence on record, the documentary exhibits and the submissions advanced on behalf of both sides. It is a settled principle of criminal jurisprudence that the prosecution must establish its case beyond reasonable doubt by leading cogent, reliable and convincing evidence. The burden always rests upon the prosecution and never shifts upon the accused. Unless the evidence adduced inspires confidence and points unerringly towards the guilt of the accused persons, a conviction cannot be sustained.

8. Upon scrutiny of the evidence of PW-1, it appears that although she is the defacto complainant and has implicated the accused persons in the written complaint, she admittedly did not witness the occurrence. During cross-examination she categorically stated that she was inside her house at the relevant time and that she came to know about the incident from her husband. Thus, her testimony regarding the actual occurrence and the participation of the accused persons is not based upon her own perception but upon information received from others. Furthermore, PW-1 admitted the existence of a long-standing property dispute between the parties. While such dispute may furnish a motive for the occurrence, it also necessitates cautious appreciation of the evidence, particularly when the principal witness is not an eyewitness.

9. The Court further finds it significant that the alleged injured person, namely Biswajit Mondal, has not been examined by the prosecution. In a case of alleged assault, the injured witness is ordinarily the most natural and material witness to the occurrence. The evidence of such a witness assumes great importance not only with regard to the manner of occurrence but also regarding the identity of the assailants. In the present case, despite the prosecution alleging that Biswajit Mondal sustained injuries and underwent medical treatment, he has not entered the witness box. No explanation for such non-examination is forthcoming from the prosecution. Consequently, the Court is deprived of the testimony of the most material witness available in the case.

10. The evidence of the remaining witnesses also does not materially advance the prosecution case. PW-2 did not support the prosecution at all and professed complete ignorance regarding the incident. PW-3 admitted that he had merely heard about the occurrence and had not witnessed it. PW-4 spoke only of a heated altercation between the

parties and admitted that he had no personal knowledge regarding the alleged assault. PW-5, who according to the prosecution rescued the injured and took him to the hospital, undoubtedly stated that an assault took place. However, his evidence suffers from a serious infirmity inasmuch as he failed to identify the persons who allegedly assaulted Biswajit Mondal. The inability of a witness claiming to be present at the relevant time to identify the assailants substantially weakens the prosecution version and creates a serious doubt regarding the identity of the perpetrators.

11. The medical evidence adduced through PW-7 also does not conclusively support the prosecution case. The injury report reveals that the alleged victim was examined shortly after the occurrence and that right eye conjunctival congestion was found. However, no other external injury was detected by the doctor. PW-7 further admitted during cross-examination that the patient did not disclose the names of the assailants and that the injury noted by him could also occur if a person struck against a hard object. Therefore, while the medical evidence may establish that the patient had some physical discomfort and minor injury, it does not establish either the identity of the assailants or the manner in which such injury was sustained.

12. The documentary evidence is also of limited assistance to the prosecution. Exhibit-1 merely contains the allegations made by the complainant and cannot by itself prove the truth of its contents. Exhibit-2 proves the medical examination of the alleged victim but does not connect the accused persons with the injury. Upon a cumulative assessment of the oral and documentary evidence, this Court finds that there is no reliable eyewitness account identifying the accused persons as the assailants. The evidence on record remains largely hearsay in nature and lacks substantive corroboration from the injured witness himself. The material deficiencies in the prosecution case create a reasonable doubt regarding the involvement of the accused persons. In criminal law, such doubt must necessarily operate to the benefit of the accused. Accordingly, this Court is of the considered view that the prosecution has failed to establish the charges against the accused persons beyond reasonable doubt.

13. 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 323/325/506/34 of the Indian Penal Code, 1860.**

Hence, it is,

ORDERED

10. that the accused persons namely Sambhu Biswas, Gour Biswas, Badal Biswas, Sohag Biswas and Minu Biswas, are found not guilty for the offense described u/s. 323/325/506/34

of the Indian Penal Code, 1860 and accordingly are acquitted u/s. 248(1) of the Code of Criminal Procedure, 1973.

The accused persons 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**