

**In the Court of the Additional District & Sessions Judge
Fast Track Court, Ranaghat, Nadia**

**Present: Gautam Kumar Nag
Additional District & Sessions Judge,
Fast Track Court, Ranaghat, Nadia.
J.O. Code: WB01033**

**Case number: Criminal Appeal no. 5/22
CIS number: 10/2022
CNR number: WBND120006642022**

- 1. Samaresh Biswas**
- 2. Abhijit Biswas**
- 3. Tapas Biswas**
- 4. Mrityunjoy Biswas**
- 5. Bharat Biswas**
- 6. Mahadeb @ Bholu Biswas**

..... Appellants

Versus

State of West Bengal

..... Respondent

Ld. Advocate For Appellant – Sri. Tamal Sarkar
Ld. Advocate For Respondent - Sri. Milan Sarkar

Judgment dated this 25th day of March 2026

J U D G M E N T

1) This instant Criminal appeal is directed against the judgment and order of sentence dated 03/11/21 passed by the Ld. Additional Chief Judicial Magistrate, Ranaghat Nadia in connection with Ranaghat P.S. case no. 320/2006 dated 06.07.2006 vide GR No. 766/2006 u/s 341/354/323/34 of IPC where the convict / appellant no. 1 is sentenced to suffer simple imprisonment for one year and fine of Rs1000/- and in default will suffer a further simple imprisonment for one month and

convicts / appellant nos. 2 to 6 are sentenced to suffer simple imprisonment for 6 months each.

2) It is the case of the appellants/convicts that this case was before IC Ranaghat PS on the allegation that on 05.07.2006 at about 2.30 / 3 p.m the accused Samaresh Biswas entered the house of the defacto complainant with ill-motive and give a bad proposal to his elder sister victim lady who refused his proposal and then accused Samaresh Biswas embraced victim lady to commit rape and being heard such hue and cry her father came to the spot and raised his voice and then accused Samaresh Biswas bit him and give death threat and left the spot and on the same day at 6 p.m Samaresh Biswas, Abhijit Biswas, Tapas Biswas, Mrityunjoy Biswas, Bharat Biswas and Mahadeb @ Bholu Biswas came to the house of the father of the victim lady's father and found her father was alone at the house and then the accused persons using wooden stick, iron rod had assaulted her father on his chest and back for which he suffered bleeding injury and received medical treatment at Ranaghat SD hospital and thereafter this case was filed and after investigation charge sheet was submitted and the charge as framed by the Ld. Magistrate was very much defective, non specific and during trial prosecution had examined fourteen witnesses and thereafter Ld. Court had convicted the accused persons and being aggrieved and dissatisfied by said impugned judgment of conviction this appeal has been preferred on the grounds that the order of conviction dated 03/11/21 passed by Ld. ACJM, Ranaghat is bad in law and that the mandatory provisions had not been complied with, without framing proper charge with specific particulars of the offence, date, time, place the conviction is not permissible, the ingredients of offences as allegedly framed without considering the law, without cogent and reliable evidence on record conviction has been passed, the said order is bad in law and liable to be set aside and that the examination of the accused u/s 313 Cr. PC was very much defective and the Ld. Trial court relied the inadmissible documents and

convicted the accused persons and thus prayed before this court to set aside the order for conviction.

3) It is seen from the T.C.R. that on 05/7/2006 at 2:30 to 3 pm that the appellant/ convict Samaresh Biswas had trespassed into the house of the defacto complainant and gave indecent proposal to victim lady who did not accept the same and then this convict embraced victim lady with intention to commit rape upon her and then the victim lady raised alarm and then his father came and this convict assaulted her father and then at 6 pm this convict along with other convicts came and assaulted the father of the defacto complainant for which he sustained bleeding injuries and received medical treatment from Ranaghat SD Hospital.

4) The trial of the accused persons/ appellants took place before the Ld. Court below and the Ld. Court below held the appellant no. 1 is sentenced to suffer simple imprisonment for one year and fine of Rs.1000/- and in default will suffer a further simple imprisonment for one month and appellant nos. 2 to 6 are sentenced to suffer simple imprisonment for 6 months each.

5) Being aggrieved by and dissatisfied with the judgment and order dated 03/11/21 passed by the Ld. ACJM, Ranaghat, Nadia in connection with GR case no. 766/2006 arising out of Ranaghat P.S. case No. 320/2006, dated 06/7/06 u/s 341/354/323/325/34 of IPC the appellants/convicts have preferred this criminal appeal.

6) It is the contention of the appellants that the impugned judgment passed by the Ld. Court below is improper, illegal and not in accordance with the law because such judgment has been passed by the Ld. Court below without properly considering the evidence, both oral and documentary, on record. It has been contended that the Ld. Court below ought to have considered the propriety and possibility of the story of the complaint and also to have the contradictory

evidences of the prosecution witnesses. It has been contended that the Ld. Court below did not weight the evidences on record keeping in mind the relevant provisions of Evidence Act but the Ld. Court below swayed by the contention of the Ld. A.P.P. in charge made at the time of the argument. It is the contention of the appellants that the Ld. Court below ought to have pondered upon the fact that the complainant lodged the complaint and relied on the injury report and the I.O. had not seized offending weapon and there was no mens rea or motive behind the incident and accordingly Ld. Lawyer for the appellants/convicts prays for set aside the impugned judgment/ order.

7) The Ld. P.P. in charge had submitted that the accused persons/appellants was tried by the Ld. Court below after framing charges u/s 341/323/325/354 IPC against accused Samaresh Biswas and charges u/s 341/323/325/34 IPC against the remaining accused persons and after full trial the Ld. Court below rightly found the accused persons as guilty of the offences as charged. Ld. P.P. in charge has contended that the Ld. Court below after scanning the evidences properly convicted the accused persons and he prays for affirm the said order.

POINT FOR CONSIDERATION

Now, the points for consideration is whether the impugned judgment and order is illegal, improper and not in accordance with law and whether the same is liable to be interfered with this Criminal Appeal.

DECISION WITH REASONS

8) The epitome of the case of prosecution was that on 05/7/2006 at 2:30 to 3 pm the appellant/ convict Samaresh Biswas had trespassed into the house of the defacto complainant and gave indecent proposal to victim lady who did not accept the same and then this convict embraced victim lady with intention to commit rape upon her and then

the victim lady raised alarm and then his father came and this convict assaulted her father and then at 6 pm this convict along with other convicts came and assaulted the father of the defacto complainant for which he sustained bleeding injuries and received medical treatment from Ranaghat SD Hospital.

9) On the gravity of the written complaint the investigation started to play resulting the submission of charge sheet against the accused persons u/s 341/354/323/325/34 IPC and then trial commenced on framing of charge against the accused persons u/s 341/323/325/354 IPC against accused Samaresh Biswas and charges u/s 341/323/325/34 IPC against the remaining accused persons to which they pleaded not guilty and claimed to be tried.

10) The prosecuting agency in order to take home the charge examined fourteen witnesses defacto complainant as P.W. 1, Bacharam Biswas as P.W. 2, father of defacto complainant as P.W. 3, mother of P.W. 3 as P.W. 4, wife of P.W. 3 as P.W. 5, victim lady as P.W. 6, Sibani Biswas as P.W. 7, Joydeb Biswas as P.W. 8, Shyamsundar Biswas as P.W. 9, Uttam Biswas as P.W. 10, Rabindranath Biswas as P.W. 11, Shyamal Mondal as P.W. 12, DSP Mrinal Kanti Mondal as P.W. 13 and one Brindaban Biswas with no prosecution witness number. The list of exhibited documents are written complaint (exhibit 1), Formal FIR (exhibit 2), rough sketch map with index (exhibit 3) and record of in patient of the injured (exhibit 4).

11) Now, let me, assess the evidence on record vis-à-vis the impugned judgment and find out as to whether the conviction of appellants deserves to be confirmed or is liable to be set aside.

12) I have gone through the evidences of prosecution as adduced before Ld. Trial Court.

13) The conjoint reading of the evidences on record would go to show that the appellants/convicts on the fateful day had assaulted P.W. 3 prior to that the appellant no. 1 had outraged the modesty of P.W. 6. The Ld. Lawyer for the appellants at the time of argument submitted that the incident occurred on 05/7/06 whereas the complaint was lodged on 06/7/06 and there was no delay explained from the side of the prosecution and hence there was ample doubt about the happening of the incident.

14) The Ld. Trial Judge has referred a citation **State of Himachal Pradesh vs Gian Chand (2007) 6 SCC 71** where it was held that delay in lodging FIR cannot be used as a ritualistic formula for doubting the prosecution case and if the prosecution fails to satisfy the delay and there is a possibility of embellishment in the prosecution version on account of delay and the delay would be fatal to the prosecution.

15) The initial step that sets the criminal law in motion is the First Information Report. Although it has no evidential value, it can be used to corroborate or contradict the informant's allegations. The case's credibility is questioned as a result of the delay, and the accused may escape punishment, which would ultimately be unfair to the victim. Such a delay may raise a suspicion about the real facts of the case and may be used to embellish and create a concocted story. However, if the delay is justified and a satisfactory explanation is not provided for the delay it may render the prosecution case doubtful.

16) In **Thulia Kali v. State of Tamil Nadu, 1973 AIR 501, 1972 SCR (3) 622** our Hon'ble Apex Court emphasised the significance of filing a timely FIR in cases involving Cognizable offences. In a criminal case the first information report is a crucial and priceless evidence piece for validating the oral testimony provided at trial, it was noted. The purpose is to collect information as soon as possible regarding the crime's circumstance, the names of the real offenders and the role

they played, in addition to the names of any eye witnesses present when the incident happened. Therefore, if there is a delay, it must have a plausible justification.

17) In this present case this court finds from the evidences of P.W. 1, P.W. 2 and P.W. 3 that the witness P.W. 3 had sustained injuries on 05/7/06 due to the assault by the accused persons and was taken to Ranaghat SD Hospital for medical treatment by his son who is the defacto complainant. On perusal of exhibit 4 it appears that its the medical document of the injured P.W. 3 who was admitted on the hospital on 05/7/06 and discharged on 11/7/06. P.W. 1 in his evidence stated that he took his father to the hospital which means Ld. Trial Court had rightly observed that P.W. 1 was pre-occupied with making arrangements for the injured on 05/7/06. Thus it appears that there was just one day delay in lodging FIR and there were sufficient reasons for P.W. 1 regarding not informing the P.S. on 05/7/06 and hence this delay in lodging FIR is not delay at all. In this regard I would like to refer the observation of Hon'ble Apex Court as reported in **(2007)2 Supreme Court Cases (Cri) 610**. It has been observed: - "*Criminal Procedure Code 1973 - S.154- FIR-Delay-Held, delay in lodging FIR will not be fatal in every case if the ocular version of eye witnesses is reliable and trustworthy.....*".

18) The Ld. Lawyer for the appellants at the time of argument submitted that the evidence of P.W. 1 was hearsay in nature as he had heard about the incident from the victim P.W. 6. It appears from the impugned judgment Ld. Trial Court had mentioned observations of Privy Council in **Subramaniam vs Public Prosecutor (1956) 1 SCR 965** and **Teber vs Regindm (1952) N 2 ALL ER 44**.

19) The general rule under the Indian Evidence Act is that any evidence that is hearsay is not admissible. Section 60 of the Indian Evidence Act specifically addresses this issue. It states that oral evidence in the form of hearsay, i.e., a statement made by someone

other than the witness who is testifying, is not ordinarily admissible. The reason behind this rule is to ensure that evidence presented in court is reliable, trustworthy and subject to cross-examination. Of course there are certain exceptions like which may be considered reliable in certain circumstances.

20) In this present case it appears that the victim P.W. 6 had been examined and the victim narrated the incident of modesty upon her was made immediately after the occurrence of it. Thus, the Ld. Trial Court rightly observed that the evidence of P.W. 1 though hearsay in nature yet still it sound guarantees of trustworthiness and offers to help prove the material fact.

21) The Ld. Lawyer for the appellants at the time of argument submitted that the appellants sincerely and honestly answered all the questions put by the Ld. Trial court u/s 313 Cr. PC but the Ld. Trial court failed to appreciate the true version of the statement of the accused and the examination u/s 313 Cr. PC as recorded by the Ld. Trial Court is very much defective in nature. On perusal of the TCR this court is of the view that the examination of the accused u/s 313 Cr. PC had been properly recorded by the Ld. Trial Court and the accused persons remained silent by explaining the situations even on those questions where there were incriminating circumstances and explanation of the accused was required. So, this court is not of the same view of the Ld. Lawyer for the appellants that the examination of the accused u/s 313 Cr. PC was not properly done or there was defective in recording of the statement u/s 313 Cr. PC by the Ld. Trial Court.

22) The Hon'ble Apex Court has enunciated the principle for determining outrage of modesty, First, the conduct of the accused should be one which a reasonable man will think to be an act intended to or was known to be likely to outrage the modesty of the woman. Secondly, it was held if the action of the offender was one which could

be perceived to be capable of shocking the sense of decency of a woman. The Ld. Trial Court had referred citations **State of Punjab vs Major Singh (1967 AIR 63, 1966 SCR (2) 286)** and **Mrs. Rupan Deol Bajaj and another vs Kanwar Pal Singh Gill and another (1996 AIR 309)**.

23) In this present case it appears the act of Samaresh Biswas catching hold of the victim lady by his hand, pressing her mouth, dragging her to the jute field and forcing her to the ground amounting to outraging of her modesty. The fact of the case is simple that Samaresh Biswas arrived at the house of the victim lady when no one was present and then catching hold of the hand of the victim and suddenly pressing her mouth and dragging her to the jute field, sitting down beside the victim and then holding her hand and mouth with forcing the victim to the ground which continued for 10 minutes and holding the victim lady in such a manner that she could not rescue herself nor she could shout and her sound only appeared to be humming and then P.W. 3 arrived and the victim lady was set free and the Ld. Trial Court had rightly observed that all suggests that the act committed by Samaresh Biswas was suggestive of nothing but outraging of modesty of the victim lady P.W. 6.

24) It is true that no offence u/s 354 IPC could be said to have been committed unless the culpable intention of the offender in committing the act is proved. Intention or knowledge is one of the ingredients of any offence and it has got to be proved like other ingredients for convicting a person and it is true that it cannot be proved by direct evidence at the same time and it is to be inferred for the attending circumstances of a case.

25) There is nothing in the cross examination of the victim lady P.W. 6 to disbelieve her oral evidence. Thus the conduct of the accused Samaresh Biswas during the alleged incident and thereafter showed his intention. The accused Samaresh Biswas caught hold of the hand of

the victim lady and suddenly pressing her mouth and dragging her to the jute field, sitting down beside the victim and then holding her hand and mouth with forcing the victim to the ground which continued for 10 minutes all these activities suggests the intention and motive of the accused Samaresh Biswas to outrage the modesty of the victim lady P.W. 6. Regarding this act nothing had been explained by the accused Samaresh Biswas during his examination u/s 313 Cr. PC. No plea had been taken as well regarding this at the time of trial. Thus, this court is of the same view that all the ingredients of section 354 IPC has been fulfilled and the Ld. Trial Court rightly observed that the offence u/s 354 IPC has been made out against the accused Samaresh Biswas and rightly hold that the accused Samaresh Biswas was held guilty of the offence charged punishable u/s 354 IPC.

26) It appears from the impugned judgment that the Ld. Trial Court has elaborately discussed section 323 and 325 IPC along with sections 319, 320 and 321 of IPC.

27) Now, from the entire TCR and careful reading of the impugned judgment it appears that P.W. 1 returned home and then P.W. 6 had narrated the entire incident to P.W. 1 and then at 6:30 pm another incident of assault took place and the accused persons again assaulted P.W. 3. The injured P.W 3 totally narrated the entire incident in his oral evidence. P.W. 4 corroborated the entire incident of assault with that of P.W. 3. The daughter of the injured who deposed as P.W. 6 corroborated the incident of assault. The independent witness P.W. 7 supported the version of the prosecution case.

28) Thus, the witness P.W. 3 was injured. Ld. Trial court has elaborately discussed the facts of the case and the corroboration of all the witnesses in details. This court also perused the oral evidences of the witnesses and the conclusion is corroboration rather than contradictions. The witnesses also stated the manner of assault in their oral evidences like the injured sustained injury on the right shoulder

and knee. The oral evidences supported the medical document which has been marked as exhibit 4. On careful perusal of exhibit 4 this court finds that the injured was admitted on 05/7/06 till 11/7/06 and multiple injuries had been noted and when a person got admitted from 05/7/06 till 11/7/06 and multiple injuries had been mentioned in exhibit 4 so surely these injuries had been sustained so the medical document support the oral evidences of the witnesses. Thus, the Ld. Trial Court had rightly hold that the accused Abhijit Biswas and Mahadeb @ Bhola Biswas had committed offence of voluntarily causing hurt.

29) A question can now come as most of the witnesses are connected with the same family so definitely they would depose against the accused. In this context I will like to say that evidence provided by family members is considered admissible but is subject to heightened scrutiny by the courts. While such witnesses are often presumed to be biased (or "interested") due to their relationship, their testimony cannot be rejected solely on that basis if it is otherwise reliable, consistent, and corroborated. The Ld. Trial Court has rightly observed the citations **Dilip Singh vs State of Punjab AIR 1995 SC 364** and **Hari Obul Reddi and others vs The State of Andhra Pradesh AIE 1981 SC 1982**.

30) It appears from the impugned judgment that charge was framed against the accused persons u/s 341/323/325/34 IPC and on perusal of exhibit 4 this court is of the same view that the injuries as sustained by P.W. 3 will fall under the ambit of section 319 IPC and thus the Ld. Trial court by rightly altered the charge as per the provision of section 216 Cr. PC and the injury can be classified as simple in nature. Thus, the Ld. Trial Court rightly observed that accused Abhijit Biswas and Mahadeb @ Bhola Biswas had committed offence u/s 323 IPC.

31) It appears from the impugned judgment regarding the question as exhibit 4 has been marked u/s 294 Cr. PC. Now, the question is whether the defense side had raised any objection before the Ld. Trial

court or not. If not objected that the document has been admitted by the defense side. Section 294 Cr. PC shows that such document whose genuineness is not disputed may be led in evidence in enquiry, trial or other proceedings under the provisions of Cr. PC without proof of signature of the person by whom it purports to be signed and this provision dispenses with the formal proof of a document when the genuineness of which is not disputed by the other side. The Ld. Trial Court discussed in details about section 294 Cr. PC and this court agrees with the same view as facts admitted need not be proved as per section 58 of the Indian Evidence Act.

32) Now, section 34 of Indian Penal Code states that - 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”. In order to attract section 34 of IPC it has to be established that there was a plan or meeting of minds of all the accused persons to commit the offence, pre-arranged or on the spur of moment but before commission of offence. From the evidence of the witnesses it is crystal clear that all the accused persons played the role in the commission of the offence. Prosecution witness stated that all the accused persons jointly entered into the house and the accused persons also pushed some of the witnesses. Thus, it is clear that the common intention of the accused persons were to use criminal force upon the injured P.W. 3. Hence, all the accused persons are jointly liable for commission of the offence u/s 323 IPC.

33) In the case in hand what is found from the evidence of prosecution witnesses particularly that they simply placed the actual incident occurred on the fateful date when the appellants assaulted the victim resulting his injuries. The vital witnesses all came together with clear hands and narrated the incident before the Trial Court. They were cross examined to testify the veracity of the incident, but of no

fruitful result in favour of the appellants. All these facts strengthens the evidence and evidence of injured and the victim lady had been corroborated by the other witnesses and the chain of circumstances also corroborate the case of prosecution.

34) The medical evidence also came into the light to support the allegation of prosecution and the conjoint circumspection of the evidence of prosecution witnesses would simply suggest the guilt of the appellants. So, the incident of assault upon the P.W. 3 and his receiving injury after the assault by the appellants/convicts cannot be denied.

35) The medical evidence adduced by prosecution has great corroborative value. It proves that the injuries could have been caused in the manner alleged so that the prosecution case being consistent with matters verifiable by medical science, there is no reason why the eye-witnesses should not be believed. The use, which the defence can make of medical evidence, is to prove by it that the injuries could not possibly have been caused in the manner alleged by the prosecution and if it can do so, it discredits the eyewitnesses.

36) Their Lordships of the Supreme Court in **Solanki Chimanbhai Ukabhai v. State of Gujarat, (AIR 1983 SC 484: 1983 Cr. L. 822)** observed:- "Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use, which the defence can make of the medical evidence, is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. Unless, however, the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye witnesses, the testimony of the eye witnesses cannot be thrown out. "

37) In view of the above discussions, I am of the opinion that exhibit 4 emerge as supportive documents of prosecution case and this document carry great evidential value in support of the prosecution case.

38) So, it is clear that the evidence on record is sufficient to attract the ingredients of the offence punishable u/s 354 of IPC against the convict Samaresh Biswas and u/s 323 of IPC against the convicts Abhijit Biswas, Tapas Biswas, Mrityunjoy Biswas, Bharat Biswas and Mahadev @ Bholu Biswas and Ld. Trial Court rightly held the appellant/convict guilty.

39) On careful circumspection of evidence on record, I find that Ld. Trial Court meticulously discussed those evidence on record and then came to the finding about the guilt of the appellants and thereafter Ld. Trial Court passed the order of conviction and after proper consideration of the entire judgment, I am of the further view that Ld. Trial Court rightly passed the order of conviction u/s 354 of IPC against the convict Samaresh Biswas and u/s 323 of IPC for the convicts Abhijit Biswas, Tapas Biswas, Mrityunjoy Biswas, Bharat Biswas and Mahadev @ Bholu Biswas and Ld. Trial Court rightly held the appellants/convicts guilty. So, it is clear that there is no ground for interference with the said impugned judgment but there is scope interference regarding the quantum of sentence as awarded by Ld. Trial court as considering the long pendency of the case and the so much mental agony suffered by the appellants are required to modified partly. This Court concedes with the observation of the Ld. Court below as made in the body of the Final Order excepting the quantum of conviction as awarded to the appellants/convicts under section 354/323/34 of IPC and interference of this court in this regard is required.

As a result, the Criminal Appeal fails to succeed.

C.F. paid is found correct.

Hence it is

ORDERED

That the instant Criminal Appeal be and the same is dismissed on contest but without cost. The impugned judgment dated 03/11/21 passed by the Ld. Additional Chief Judicial Magistrate, Ranaghat Nadia in connection with GR No. 766/2006 is hereby affirmed and the quantum of sentence as awarded by the Ld. Trial Court under section 354 of IPC against the convict Samaresh Biswas is hereby affirmed but the quantum of sentence as awarded by the Ld. Trial Court under section 323 of IPC against the convicts Abhijit Biswas, Tapas Biswas, Mrityunjoy Biswas, Bharat Biswas and Mahadev @ Bhola Biswas is modified partly.

The quantum of sentence of appellants/convicts Abhijit Biswas, Tapas Biswas, Mrityunjoy Biswas, Bharat Biswas and Mahadev @ Bhola Biswas as awarded by the impugned judgment and order dated 03/11/21 u/s 323 of IPC hereby is modified by this order and is only sentenced to pay fine of Rs.1,000/- (one thousand only) each i.d. the convicts will undergo SI for one month instead of simple imprisonment for 6 months each.

All the convicts are directed to appear before the Ld. court below on 04/5/26.

Stay order, if any, stands vacated.

Ld. Court below is directed to direct the appellants/convicts to deposit the fine amount before the judicial cashier attached to Ranaghat Court, Criminal Section within 30 days from the date of appearance before the Ld. Court below in case for those convicts where only fine is imposed and in failure on the part of the convicts to comply with the direction of this Court, Ld. Trial Court is at liberty to take recourse of the provision of law.

Let a copy of this judgment along with T.C.R. be sent to the Court of Ld. Additional Chief Judicial Magistrate, Ranaghat, Nadia for information at once.

Dictated and corrected
by me:

(Gautam Kumar Nag)
Additional District & Sessions
Judge, Fast Track Court,
Ranaghat, Nadia