

IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS, 2nd COURT,
BARRACKPORE, NORTH 24 PARGANAS
PRESENT SMT. SAYANTANI DE TARAFDER
JO Code- WB01493
[GR Case No. **4489/2023**]
[CIS Reg. **3867/2023**
T.R. No. 829/23
CNR NO- WBNP150050642023
(Arising out of Belghoria P.S. Case No. 276/2023 dated 26.05.2023)
Under Sections 341/323/354/34 of the Indian Penal Code
Date of Judgment- 12.06.2026

Complainant	STATE OF WEST BENGAL
REPRESENTED BY	Ld. APP Mr. Satyabrata Nag
ACCUSED	1. Sushanta Paul (A1). 2. Piu Paul (A2). 3. Piya Debnath (A3). 4. Indrani Debnath Goswami (A4). 5. Souvik Goswami (A5).
REPRESENTED BY	Ld. Advocate.

Date of Offence	:	26.05.2023
Date of FIR	:	26.05.2023
Date of Charge Sheet	:	18.06.2023
Date of substance of accusation (Charge)	:	26.12.2023
Date of commencement of Evidence	:	04.12.2024
The date on which judgment is reserved	:	12.06.2026
Date of Judgment	:	12.06.2026
Date of sentencing order, if any	:	NA

FORM B

Accused Details :

The rank of the Accused	Name of the 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, Cr.P.C.
A1 to A5	1.Sushanta Paul (A1). 2.Piu Paul (A2). 3.Piya Debnath (A3). 4.Indrani Debnath Goswami (A4). 5.Souvik Goswami (A5).	27.05.2023	27.05.2023 and 10.10.2023	<u>341/323/354/34 IPC</u>	Acquitted	N/A	N/A

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.	Tuhina Sarkar	De facto complainant
PW2	Rikta Pal	Sister of the de facto complainant
PW3	Mitali Pal	Sister of the de facto

		complainant
PW4	Sheuli Chowdhury	Sister of the de facto complainant
PW5	Dr. Bibekananda Biswas	Medical witness
PW6	Prabhakar Mondal	Police witness

Fact of the Case-

1. This instant case has been registered on the basis of the complaint lodged by Tuhina Sarkar, W/O-Swapan Sarkar of 41/1/A, Old Nimta Road under PS-Belghoria, Dist. North 24 Parganas before Belghoria PS. On the basis of the said complaint, Belghoria P.S. Case No. 276/2023 dated 26.05.2023 under Sections **341/323/354/34** of the Indian Penal Code was started. After proper investigation, police submitted charge Sheet no. 299 dated 18.06.2023 against the accused persons namely, Sushanta Paul, Piu Paul, Piya Debnath, Indrani Debnath Goswami and Souvik Goswami under Sections **341/323/354/34** of the Indian Penal Code.
2. The Prosecution case in brief is that on 26.05.2023 at around 4.50 PM to 5.00 PM when the defacto complainant was at her paternal house, then the accused person had attacked her and also assaulted her and abused her by using filthy language. As a result, the prosecution case was started.
3. This case was transferred to this Court for trial Charge under Sections **341/323/354/34** of the Indian Penal Code was framed against the accused persons and the substance of accusation was read over to the accused persons to which they pleaded not guilty and claimed to be tried. Prosecution produces six witnesses in support of its case.
4. The accused persons were examined U/Sec 313 of Cr.P.C and they did not adduce any defense witness. Now it is the time to enter into the evidence on record.

5. Documentary Evidence

Sl No.	Particulars of documents	Date of admission	Marked as
1	The written complaint dated 26.05.2023	27.01.2026	Exhibit – P1
2	Statement of the defacto complainant recorded u/s 164 Cr.P.C dated 16.06.2023	27.01.2026	Exhibit P2

3	Formal FIR prepared and signed by the RO	11.05.2026	Exhibit P3
4	Endorsement of RO upon the complaint	11.05.2026	Exhibit P1/2
5	Rough Sketch map along with index prepared by the I/O (PW6) during investigation	11.05.2026	Exhibit P4 series

6. Oral evidence:

(a) P.W-1 is Tuhina Sarkar, i.e the defacto complainant of this case. She stated during her examination in chief that she had lodged a complaint before Belghoria PS. against Susanta Pal, Piu Pal, Priya Debnath, Indrani Goswami and Souvik Goswami. The alleged incident took place on 26.05.2023 at around 4.30 pm to 5.00 pm at her paternal House. She went to her paternal house for the purpose of observing Jamai Sasthi. On the date of the alleged incident the accused persons had suddenly came to their house and intentionally attacked them. The accused persons had assaulted her with fist and blows and abused her by using filthy languages and pulled her by my hair and then pushed me because of which my left hand got swallowed. She got treated at Sagar Dutta Hospital. Then she lodged the complaint before Belghoria PS.

During Cross-examination she had admitted that in the statement recorded u/s 164 Cr.P.C I had not mentioned that she got treated at Sagar Dutta Hospital due to the assault as alleged by her. The witness further admitted that she had not mentioned in written complaint that Souvick Goswami assaulted her by pulling her hair and slapped her on her face and assaulted her with iron rod along with broom stick and one hand of her got injured which she had not mentioned in the written complaint. She has three sisters and two brothers and her parents were not alive at the date of the alleged incident. Prior to the alleged incident, her paternal house was not got partitioned. Her three sisters had informed the matter before the PS and none of them resided at the said house. Her brothers are in possession of her paternal house. Her elder brothers had invited her husband as well as the husbands of my sisters on the occasion of Jamai Sasthi. The get of our entrance to my paternal house remains open. She knows all the neighbours of mine. None of the neighbours had come inside our house on the date of the alleged incident. Then she had also asserted that none of our neighbours had narrated the alleged incident before the police or any other authority. She along with her other sisters want our respective shares in our paternal house. Then she further admitted that

she had filed this case against the accused persons to get the partition of my ancestral property and to create a pressure upon them.

(b) P.W-2 is Rikta Pal, during her examination in chief she stated that her sister is the defacto complainant of this case who had lodged a complaint before Belghoria PS against Susanta Pal, Piu Pal, Priya Debnath, Indrani Goswami and Souvik Goswami. The alleged incident took place on 26.05.2023 at around 4.30 pm to 5.00 pm at her paternal House. The defacto complainant was roaming around at the courtyard, then the accused persons had abused her by using filthy language and attacked the complainant alleging that she had broken a lock. Her sister had not broken the said lock. Because of the said reason her sister had lodged this case.

During Cross-examination she stated that she went to the PS and heard that one case had been lodged against them. Then they came to the Court and her sister had filed this case thereafter.

She knows the matter about which her sister had lodged this case. After perusal of the Exhibit P1 it appears that her sister had not mentioned there that at the time of the alleged incident she along with another sister was present at the time of the alleged incident. She failed to state what is the exact content of the alleged complaint signed by her sister. She will not gift my share of property to her brother. The witness admitted that that they went to our paternal house to grab the property by breaking lock, the accused persons had lodged a case against us prior lodging of this case. The witness further admitted that her sister had lodged this case against the accused persons due to the previous grudge of lodging of this case and for the purpose of taking safeguard of the said case lodged by the accused.

(c) P.W-3 is Mitali Pal, during her examination in chief she stated that her sister is the defacto complainant of this case who had lodged a complaint before Belghoria PS against Susanta Pal, Piu Pal, Priya Debnath, Indrani Debnath and Souvik Goswami. The alleged incident took place on 26.05.2023 at around 4.30 pm to 5.00 pm at her paternal House. The accused persons had entered into the house and started abusing defacto complainant by using filthy language and when she had protested against the same then the accused person had started assaulting the complainant with shoe and when we tried to prevent the accused, then they were touched by the hand of the accused. Because of the said reason her sister had lodged this case.

During Cross-examination the witness admitted that the accused persons are her brothers, sister in laws and relatives because of which she could identified them. Prior to the alleged incident, her paternal house was not got partitioned. At present also the said house had not yet partitioned. At present the accused persons used to reside at the said house. They have their own matrimonial house. She had not yet decided whether she will gift his share of the said property to my brother or not. In the said house 6 rooms are there and we used to stay at the room of our parents. Her parents were alive at that time. The way to ingress and

egress of the said room was different from the entrance of my paternal house. One entrance gate was locked among the two entrance gates. The accused had alleged that she had broken the said lock. The witness admitted that due to the said allegation of breaking of lock, the accused persons had lodged a case against us prior lodging of this case. The witness further affirmed that her sister had lodged this case against the accused persons due to the previous grudge of lodging of this case and for the purpose of taking safeguard of the said case lodged by the accused.

(d) P.W-4 is Sheuli Chowdhury, during her examination in chief she had stated that her sister is the defacto complainant of this case who had lodged a complaint before Belghoria PS against Susanta Pal, Piu Pal, Priya Debnath, Indrani Goswami Debnath and Souvik Goswami.

The alleged incident took place on 26.05.2023 at around 4.30 pm to 5.00 pm at her paternal House. Piu Pal and Susanta Pal had entered into the house and started abusing her sister by using filthy languages. When the complainant had protested against the same, then scuffle took place. Because of the said reason her sister had lodged this case.

During her Cross-examination she stated that she resides at her matrimonial house. Her paternal house had not yet been partitioned. She along with her all sisters want that the said house got partitioned. My brothers reside at the said house. She knows that my sisters had already deposed before the Court in connection with this case and she knows what they had deposed before the Court and she also deposed accordingly. On the date of the alleged incident, she had not called any of my neighbour. The accused used to put lock on the main door and they do not have the key of the same. They have the key of the main gate of the entrance of the house.

(e) P.W-5 is Dr. Bibekananda Biswas, during his examination in chief he stated that on 26.05.2023, he was Posted at Sagar Dutta Hospital as MO I/C, dept of Emergency. he cannot state whether he had examined any patient on that day. If the roaster is being made, he was made in charge.

His Cross-examination was declined.

(f) P.W-6 is Prabhakar Mondal, during his examination in chief he stated that on 26.05.2023 he was posted as ASI of Belghoria PS. On that day LASI Karabi Majumder was the Duty officer of the said PS. He know her handwriting.

On that date FIR being numbered Belghoria PS Case no. 276 dated 26.05.2023 was lodged by the complainant Tuhina Sarkar against Susanta Pal and 4 others accused persons u/s 341/323/506/354/34 IPC. The then LASI Karabi Majumder had received the said complaint and made the endorsement upon the complaint and drafted the Formal FIR. After that the then I/C of the said PS had assigned to him for the purpose of investigation on the same date. Accordingly, he took up the investigation of the said case as per the instruction of the then O/C. He perused the FIR being appointed I/O of this case and he recorded the

statement of witnesses u/s 161 of Cr.P.C and then visited the P.O. as identified by the complainant and prepared rough Sketch map and index. After that he had issued notice u/s 41A to the accused persons. After that the accused persons had taken bail and after that I had tried to collect the injury report of the victim but could not be able to collect the same due to non availability of the same. Then on the basis of investigation as well as perusal of the statement recorded by me of the witnesses prima facie case was made out against the accused persons. Then he completed my investigation and after consultation with my superior authority he filed charge-sheet being no. 299/2023 dated 18.06.2023 u/s 341/323/354/34 IPC against (5) FIR named accused persons.

During his Cross-examination he stated that he had not found any ingredient as to whether the accused persons had criminally intimidated the accused persons or not and disbelieved the same. After perusal of the materials of the written complaint he could not found that whether anyone had wrongfully restrained the complainant or any other person. After perusal of the complaint any ingredient of offence committed u/s 354 cannot be found directly. He knows that offence committed u.s 323 of IPC is a non-cog offence and he knows that for the said offence PR report must be submitted. He had not examined any independent witness and neighbour u/s 161 CrPC. The witness then admitted that in the charge sheet he had mentioned that he had obtained the copy of the statement recorded u/s 164 CrPC from the Court.

7. POINTS OF DETERMINATION

1. Whether the accused persons had wrongfully restrained the defacto complainant on the date of the alleged incident?
2. Whether the accused persons had inflicted hurt upon the defacto complainant?
3. Whether the accused persons inflicted assault or criminal force upon the defacto complainant?
4. Whether prosecution has been able to prove their case beyond reasonable doubt by producing cogent evidence?
5. Whether the accused persons are liable to be convicted or not?

DECISION WITH REASON

1. Whether the accused persons had wrongfully restrained the defacto complainant on the date of the alleged incident?

8. In the instant case, the defacto complainant had alleged that on the date of the alleged incident when she was at her paternal house at that time she was assaulted by the accused persons brutally. At the outset it is important to mention that for the purpose of establishing an offence under **section 339, IPC** , the following ingredients must exist in an act of wrongful restraint, viz:

- 1) *Voluntary obstruction of a person;*

2) *The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed.*

3) *The complainant must have a right to proceed through the way.*

As briefly mentioned above, Section 341 of the Indian Penal Code deals with the punishments that shall be used as remedies for wrongfully restraining an individual from moving towards a direction, place, etc provided the fact that the person has the right to go there. This section states, “*Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may not extend to one month, or with fine which may extend to five hundred rupees, or with both.*” The word restraint means that the individual’s liberty has been compromised against his will and that’s what makes it different.

9. The vital element that is necessary to inspect Section 341 of the Indian Penal Code is the keyword ‘obstruction’. Obstruction is necessary for it to be considered as an offense and it should be directly attributed to the person accused. The person who has been accused of committing this offense must know or have a reason for causing the obstruction or for restraining the person from moving.

10. The main reasons that are considered before constituting an act as an offense of wrongfully restraining someone should be that the act of restraining someone must be voluntary and that the act of restraining someone must be in good faith as mentioned above. Therefore, if an obstruction is made in good faith, the accused is said to have committed no crime.

11. In the case of **Debi Prosad v. Jaynarayan 53 Cal WN 822** and in **Paritosh v. Sipra CrLJ 1299(Cal)**, the Hon’ble High Court at Calcutta observed that *The offence of wrongful restraint is committed when a person is prevented from proceeding in any direction in which he has a right to proceed.* From this observation, it can be said that “right to proceed” is an essential ingredient in order to establish commission of the offence of wrongful restraint.

12. Now there appears nothing in this record wherefrom any ingredients of offence committed u/s 341 IPC can be established. The defacto complainant herself did not even mention during her examination in chief that in which manner the accused persons had restrained her or stopped her from making any kind of movement toward any specific direction towards which he is right to move. There is no evidence that the complainant was obstructed from proceeding in any direction in which she had a legal right to proceed. Moreover, the Investigating Officer specifically admitted that no ingredient of wrongful restraint could be gathered from the complaint. However, mere allegation which is devoid of any corroboration by any other witnesses for the prosecution or any further description does not qualify to be sufficient to hold the accused persons liable for causing alleged wrongful restraint to the victim. In other words, that the victim had either any legal right or wish to proceed along the

road where the alleged incident took place cannot be inferred from such inadequate statement by the victim. Thus the ingredients of the offence of wrongful restraint are found to be absent.

Therefore, it appears that the prosecution had failed to establish that the accused persons had committed any offence u/s 341 of IPC.

2. Whether the accused persons had inflicted hurt upon the defacto complainant?

13. It is alleged by the complainant in the FIR that the accused persons had physically assaulted her on the date of the alleged incident and also abused her by using filthy language. No details of the alleged assault were mentioned in the complaint by the defacto complainant. Whereas in the statement recorded by the defacto complainant she stated that her younger brother kicked her and she fell down and her hand got swollen and after that all the accused persons had assaulted her. At the time of deposing before the Court the complainant had deposed that on the date of the alleged incident the accused persons had assaulted her and abused her and also pulled her by her hair and pushed her because of which her left hand got swollen. Per contra PW2 stated that on the date of the alleged incident the accused had assaulted the complainant with a shoe. Therefore, it appears that the evidence adduced by the complainant and the other witness as well as the statement of the complainant recorded u/s 164 Cr.P.C do not corroborate fully with one another along with the complaint lodged by the complainant before the PS. Neither the witnesses could specifically have mentioned about the details of the alleged assault by the accused persons upon the defacto complainant. Therefore, from the abovementioned discrepancies in the statements made by the witnesses, it could be stated that those severe discrepancies create a serious doubt in the mind of the Court regarding the credibility of the witnesses adduced by the prosecution as an evidence before the Court. In this context of grossly erroneous testimony adduced by one of the most significant witnesses for the prosecution, the observation by the Hon'ble Supreme Court in the case of ***State of Rajasthan v. Smt. Kalki and Another; (1981) 2 SCC 752***, needs to be mentioned, wherein it was observed that *"in the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like. Unless, therefore, the discrepancies are —material discrepancies so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses"*.

14. Now it is needed to be discussed as to whether the accused persons had committed hurt upon the defacto complainant voluntarily or not. In this context it is needed to be mentioned that in ***Hanif Usmanbhai Kalva v. State of Gujarat (Criminal Misc. Application No. 3120 of 2014)***, the court has discussed the essential ingredients which constitute the offence under section 323 IPC. These areas under:

1. "The accused caused hurt to another person;

2. He caused such hurt voluntarily;

3. S. 334 does not protect his act.

15. From the perusal of the deposition of PW4, she clearly stated that one scuffle took place among the accused persons and the defacto complainant on the date of the alleged assault. Now even if for the sake of argument it is presumed that the defacto complainant was hurt during the said scuffle, but the said hurt cannot be considered as a voluntary act of the accused persons. Now, in this context the evidence of the defacto complainant should be discussed in details.

16. PW-1 alleged before the Court that:

(a) she was pulled by her hair;

(b) she was slapped;

(c) she sustained injury to her hand;

(d) she was treated at Sagar Dutta Hospital.

However, during cross-examination she admitted that several of these facts were not mentioned either in the written complaint or in her statement recorded under Section 164 Cr.P.C. The alleged use of iron rod, broomstick, pulling of hair, slapping and specific injury to hand do not find place in the earliest version. The FIR is not expected to be an encyclopedia. Nevertheless, when significant allegations constituting the very foundation of the offences are absent from the earliest version and are introduced subsequently during trial, such omissions assume importance and adversely affect the credibility of the witness.

16. In the instant case, even if, for the sake of argument, even if it is assumed that hurt was caused by the so-called physical assault inflicted upon the defacto complainant, such action appears to be without any prior intention, knowledge or pre-meditation as no evidence, direct or circumstantial, has come before this Court to establish any intention or knowledge on the part of the accused person that such action, if any, by them is likely to cause "hurt" within the definition of Section 319 of the IPC. A thorough analysis of the deposition of the alleged incident only give rise to a possible altercation that a scuffle could have taken place between the son of the defacto complaint the accused persons regarding the dispute related to some previous grudge arising out of some previous incident. Needless to say that a person cannot be presumed to have any prior intention to cause hurt within the meaning of section 319 or section 323 of IPC to any person during a sudden scuffle.

17. The important points for establishing an offence under section 319 are:

i) Firstly, the bodily pain caused should be physical . In other words, such pain should not be emotional or mental.

ii) Secondly. Infirmary includes temporary mental impairment, hysteria or terror.

iii) Thirdly, communicating diseases is also a cause of 'hurt'.

18. Therefore, it appears before the Court such kind of contradiction in FIR and evidence should be taken into consideration at the time of holding a person guilt of certain act. Moreover, from perusal of the evidence of all the witnesses of the prosecution it appears before the Court that the accused persons were known to the defacto complainant and there also found some prior dispute between the accused persons and the defacto complainant because of which another case was already lodged by the accused persons previously and therefore it can be concluded that there might be a scuffle took place between the parties and the same does not amount to voluntarily causing hurt.

19. In the case of **Jagdish Prasad v. State, AIR 1979 SCC 1510**, it was held that “*In order to sustain a conviction under this section prosecution must prove that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in the section. Nothing short of that will suffice.*”

20. During evidence, the PW1 stated that she got treated at Sagar Dutta Hospital but she had not mentioned the same at the time of recording of her statement u/s 164 Cr.P.C and neither the prosecution could bring the said medical document of the treatment of the defacto complainant before the Court as evidence to establish that the complainant had suffered from any injury after the alleged assault and got treated anywhere due to the said injury. Now, if a person would have sustained any bodily injury, they would therefore definitely take medical help to get relief from the said injury. Therefore, if a person had received any bodily injury the said person will not suppress such medical document from the Court.

21. In the instant case, the accused persons are undoubtedly entitled to benefit of doubt. Thus, from the evidence on record, it cannot be concluded that the accused persons caused the alleged injury to the victim. Thus, the accused persons cannot be held liable either u/s 323. In the instant case, as already discussed and concluded above, the prosecution has utterly failed to prove even the existence of any hurt within the meaning of section 319 of IPC so as to fix liability upon the accused persons u/s 323 of IPC. Therefore, in absence of any proof of “Hurt” upon the victim, question as to whether such hurt was caused by any dangerous weapons or means loses its significance as well as relevance all together.

Thus this point is decided in favour of the accused persons.

3. Whether the accused persons inflicted assault or criminal force upon the defacto complainant with an intention to outrage her modesty?

22. Either in the complaint or during evidence, the defacto complainant had not made any

whisper as to whether the accused persons through any act had tried to outrage her modesty in any way. Moreover, during entire trial, none of the witnesses had made any whisper about any alleged act of the accused persons through which it can be established that the accused persons on the date of the alleged incident had tried to outrage the modesty of the defacto complainant in any way. The words “outrage her modesty” when read in concurrence with “intending to or knowing it to be likely that he will” indicates that the modesty of the woman concerned should be based on the intention or the knowledge of the accused and not on the reaction of the woman.

23. In this context the evidence of the Investigating Officer assumes considerable significance.

PW-6 admitted:

- (i) that he did not find any material regarding criminal intimidation;
- (ii) that he could not find any ingredient of wrongful restraint from the complaint;
- (iii) that no direct ingredient of Section 354 IPC appeared from the complaint;
- (iv) that no independent witness was examined during investigation.

These admissions strike at the very foundation of the prosecution case.

Similarly, to attract Section 354 IPC, prosecution must prove assault or criminal force with intention to outrage modesty or knowledge that modesty is likely to be outraged. Mere allegation of a quarrel or scuffle is insufficient.

24. In **Narender Kumar v. State (NCT of Delhi), (2012) 7 SCC 171**, the Supreme Court reiterated that the essential ingredients constituting the offence must be clearly established from evidence. In the present case, neither the complaint nor the evidence discloses facts sufficient to establish the ingredients of Section 354 IPC beyond reasonable doubt.

Therefore, in absence of such cogent evidence adduced by the prosecution, it could be stated that the prosecution had failed to establish the fact that the accused persons had committed any offence u/s 354 of IPC.

Therefore, the prosecution failed to prove this point against the accused persons.

4. Whether prosecution has been able to prove their case beyond reasonable doubt by producing cogent evidence?

5. Whether the accused persons are liable to be convicted or not?

25. Both the points are discussed together for the sake of convenience and brevity.

26. After scrutinizing the material on record it appears to this Court that prosecution has failed to prove the accusations against the accused persons. Prosecution has examined six witnesses but none of them could adduce any evidence against the accused persons from

which it can be concluded that the accused persons are liable to be convicted. The cardinal principle of criminal jurisprudence is that the prosecution must establish its case beyond all reasonable doubt and the burden never shifts upon the accused. In Kali Ram, the Hon'ble Supreme Court held that if two views are possible on the evidence adduced in a case, the view favourable to the accused must be adopted and the accused is entitled to the benefit of reasonable doubt.

27. In this case during evidence, PW-1 admitted:

- (a) the entrance gate remained open;
- (b) she knew all neighbours;
- (c) none of the neighbours came inside the house;
- (d) no neighbour narrated the incident before police.

28. The Investigating Officer (PW-6) admitted that he did not examine any neighbour or independent witness during investigation. It is true that conviction can be based upon the testimony of related witnesses alone if their evidence is trustworthy. The Supreme Court has repeatedly held that evidence of a related witness cannot be discarded solely because of relationship. However, where all witnesses are interested witnesses involved in an admitted property dispute and where no independent witness is examined despite availability, the evidence requires greater scrutiny and caution. PW-1 alleged that she suffered injury and was treated at Sagar Dutta Hospital. However, PW-5, the doctor, stated that he could not say whether he had examined any patient on the relevant date. No injury report has been exhibited by the prosecution during trial. PW-6 admitted that despite efforts he could not collect the injury report. Thus, there is absolutely no medical corroboration of the alleged injury. Though medical evidence is not always indispensable, when serious allegations of assault are made and medical documents are claimed to exist but are not produced, an adverse inference regarding the prosecution version becomes permissible.

29. Moreover, during cross examination, PW-6 admitted that:

- (a) he found no material regarding criminal intimidation;
- (b) he could not find from the complaint any ingredient of wrongful restraint;
- (c) no direct ingredient of Section 354 IPC appeared from the complaint;
- (d) no independent witness was examined.

These admissions emanate from the Investigating Officer himself and substantially weaken the prosecution case. The evidence on record unmistakably reveals a serious property dispute between the parties.

30. PW-1 categorically admitted in cross-examination that:

- (i) the paternal house had not been partitioned;

- (ii) she and her sisters wanted their respective shares in the paternal property;
- (iii) her brothers were in possession of the said house; and
- (iv) she had filed the present case to get partition of the ancestral property and to create pressure upon the accused persons.

31. Moreover, PW-2 and PW-3 further admitted that before institution of the present case, the accused persons had already lodged a criminal case against them alleging breaking of lock of the paternal house. PW-2 specifically admitted that the present case was lodged due to previous grudge arising out of the earlier case and for safeguarding themselves from the said case. PW-3 made substantially similar admissions. These admissions are not minor discrepancies but constitute substantive evidence indicating existence of a strong motive for institution of a counter-case. The defence suggestion that the present prosecution is a retaliatory proceeding arising out of a property dispute therefore receives substantial support from the evidence of prosecution witnesses themselves.

32. It has also come to the notice of this Court while going through the evidence and other materials on record that there is no substantial corroboration either between the testimonies of the witnesses and the statements in the FIR or between the testimonies of the witnesses inter se. The testimony of PW-2, PW-3 and PW-4 does not fully corroborate PW-1. PW-2 merely stated that the complainant was abused and attacked over an allegation of breaking a lock. PW-3 stated that the complainant was assaulted with a shoe. PW-4 merely stated that a scuffle took place between the parties.

Thus, this Court could not find any consistent version regarding:

- (i) who assaulted;
- (ii) how the assault took place;
- (iii) the nature of force used;
- (iv) the role of individual accused persons.

33. The Court is conscious that minor contradictions are natural and do not necessarily discredit a witness. The Hon'ble Supreme Court in Teja Ram observed that insignificant discrepancies should not outweigh the core of the prosecution case. However, the contradictions in the present case do not relate to peripheral matters but concern the very manner of occurrence and participation of accused persons. Therefore, they assume significance.

34. The evidence on record reveals:

- (a) admitted property dispute between the parties;
- (b) admitted previous case lodged by the accused side;

- (c) admissions suggesting that the present case was instituted to exert pressure in the property dispute;
- (d) absence of independent witnesses;
- (e) absence of proved medical evidence;
- (f) material omissions and contradictions;
- (g) admissions of the Investigating Officer regarding lack of ingredients of Sections 341 and 354 IPC.

35. The entire prosecution case rests upon the testimony of PW-1 and her sisters PW-2, PW-3 and PW-4. No independent witness from the locality has been examined. The prosecution has also failed to produce any independent witness. PW-1 admitted that the entrance gate remained open and that she knew all the neighbours. She further admitted that no neighbour came forward to support the occurrence. PW-6 admitted that he did not examine any neighbour or independent witness during investigation. The Court is conscious of the settled law that conviction can be based upon the testimony of a solitary or related witness if found wholly reliable. In **Namdeo v. State of Maharashtra, (2007) 14 SCC 150**, the Supreme Court held that there is no legal bar in acting upon the testimony of a related witness. However, the same judgment also emphasizes that the Court must carefully scrutinize such evidence. In the present case, all eyewitnesses are closely related, are interested in the outcome of the property dispute and have admitted hostility towards the accused persons. Therefore, their evidence requires strict scrutiny. Upon such scrutiny, this Court finds that the evidence does not inspire the degree of confidence necessary for recording a conviction. PW-1 alleged that the accused persons assaulted her, pulled her hair and caused injury to her hand. However, during cross-examination she admitted that several material facts narrated before the Court were not mentioned either in her written complaint or in her statement under Section 164 Cr.P.C. She further admitted that she did not mention in her statement under Section 164 Cr.P.C. that she received treatment at Sagar Dutta Hospital. It further appears from the evidence of PW-1 that there exists a long-standing dispute regarding partition of the paternal property. PW-1 admitted that she and her sisters wanted their respective shares in the paternal house. Most importantly, PW-1 admitted:

"It is a fact that I had filed this case against the accused persons to get the partition of my ancestral property and to create pressure upon them."

This admission strikes at the root of the prosecution case and furnishes a strong motive for false implication.

36. PW-2 admitted that prior to the present case, the accused persons had already lodged a case against them alleging breaking of lock. She further admitted:

"It is a fact that my sister had lodged this case against the accused persons due to the previous grudge of lodging of this case and for the purpose of taking safeguard of the said case lodged by the accused."

37. These admissions furnish a strong foundation to the defence plea that the present prosecution is a counterblast to earlier litigation and a product of an ongoing property dispute. It is true that existence of enmity by itself is not a ground to discard prosecution evidence. However, where admitted hostility exists, the Court is required to scrutinize the evidence with greater caution because enmity is a double-edged weapon; it may furnish motive for commission of offence as well as motive for false implication. The next significant aspect concerns material omissions in the earliest version of the prosecution case. PW-1 admitted that several allegations deposed by her before the Court were not mentioned either in her written complaint or in her statement recorded under Section 164 Cr.P.C. The allegations regarding pulling of hair, slapping, assault by iron rod, assault by broomstick and the nature of injury allegedly suffered by her do not find place in the earliest version. Material omissions affecting the core of the prosecution story amount to contradictions and adversely affect the credibility of the witness. In **Vijay @ Chinee v. State of Madhya Pradesh, (2010) 8 SCC 191**, the Hon'ble Supreme Court held that omissions going to the root of the prosecution case cannot be ignored and materially affect the reliability of testimony.

38. PW-3 also made a substantially similar admission. The evidence of PW-2, PW-3 and PW-4 is not wholly consistent with that of PW-1. PW-2 merely speaks of abuse and attack. PW-3 states that assault was made with a shoe. PW-4 ultimately speaks about a scuffle between the parties. There are material discrepancies regarding the manner of occurrence and the specific overt acts allegedly committed by the accused persons. The Hon'ble Supreme Court has consistently held that testimony of related witnesses cannot be discarded merely on the ground of relationship. At the same time, where such evidence suffers from material contradictions and lacks independent corroboration, the Court must scrutinize it with greater care. In the present case, all eyewitnesses are admittedly sisters of the complainant and are interested in the property dispute. No independent neighbour has supported the prosecution case though PW-1 admitted that the locality was populated and the gate remained open. The Investigating Officer (PW-6) also admitted that he did not examine any independent witness or neighbour under Section 161 Cr.P.C. The prosecution has also failed to prove the medical evidence. PW-5, the doctor, categorically stated that he could not say whether he examined any patient on the relevant date. No injury report has been exhibited. PW-6 admitted that despite efforts he could not collect any injury report. Consequently, the allegation of hurt remains uncorroborated by medical evidence. The evidence of the Investigating Officer further weakens the prosecution case. Thus, the

foundational ingredients of Sections 341 and 354 IPC remain unproved. Even regarding Section 323 IPC, there is no reliable medical corroboration and the ocular version suffers from omissions and contradictions. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt and the accused is entitled to the benefit of every reasonable doubt. In *Kali Ram v. State of Himachal Pradesh*, (1973) 2 SCC 808, the Hon'ble Supreme Court held that if two views are possible, the one favourable to the accused must be adopted and the burden never shifts from the prosecution. In view of the above circumstances, this Court finds that the prosecution has failed to establish the charges beyond reasonable doubt. The possibility of false implication arising out of the family property dispute cannot be ruled out.

39. The Prosecution has failed to chalk out any unambiguous picture containing the essential ingredients of the offence under section 341 or section 323 or section 354 of Indian Penal Code so as to establish the guilt of the accused. In this context the observation made by the **Hon'ble Supreme Court of India** in the case of **Vijayee Singh And Ors vs State Of Uttar Pradesh , 1990 SCR (2) 573** should be laid down. In that case, the Hon'ble Apex Court was pleased to quote that *"In Phipson on Evidence, 13th edn. page 44, a passage reads as follows: The burden is upon the prosecution of proving a defendant's guilt beyond reasonable doubt before he is convicted. Even where the evidential burden shifts to the defendant the burden of establishing proof beyond reasonable doubt remains upon the prosecution and never changes. If on the whole case the jury have such a doubt the defendant is entitled to be acquitted"*.

40. The witness did not utter a single word about the incident that whether the accused persons had caused hurt to the defacto complainant or wrongfully restrained her whether they had attempted to outrage the modesty of the defacto complainant in any manner, wherefrom it appears that prosecution has failed to establish that the accused persons had committed any offence either u/s 341 IPC or section 323 IPC or section 354 IPC.

41. Thus, in view of the above discussion, there is no sufficient ground to prove the allegations against the accused persons as no evidence could be brought before this Court by the Prosecution regarding the alleged incident. The ingredients of the offence punishable under section 341/323/354/34 of I.P.C is not established by any credible evidence. In such circumstances, this court has no other way but to hold the accused persons innocent and accordingly acquit the accused persons from the accusation of this case.

42. Hence, it is,

ORDERED

43. that the accused persons namely Sushanta Paul, Piu Paul, Piya Debnath, Indrani Debnath Goswami and Souvik Goswami are found not guilty of the offence punishable under Sections **341/323/354/34** of the Indian Penal Code and they are hereby acquitted from the instant case u/s 248 (1) of Cr. P.C.

44. The bail bonds of the above mentioned accused persons shall remain in force for a period of 06 (six) months from the date of this Judgment as per the provision of section 437A of Cr.P.C.

45. The record shows that nothing was seized in this case.

46. Victim has a right to prefer an appeal against this judgment under section 372 CrPC, if necessary they may avail free legal aid from the appropriate legal services authority to institute and prosecute such appeal.

47. In compliance to the solemn order dated 29.3.22 passed by the Hon'ble Division Bench in CRA 266 of 2020 with CRA 01 of 2020 (Sabitri Bhunya Vs The State of West Bengal and others).

48. Let a copy of this judgment be sent to District Magistrate, North 24 Parganas and SDLSA, Barrackpore for due intimation to the victim as defined under section 2 (wa) of the Code of Criminal Procedure.

49. The case is disposed of on contest.

50. Note in Trial Register as well as in Case Information System.

Dictated & Corrected by me.

(Sayantani De Tarafder)
Judicial Magistrate 2nd Court,
Barrackpore, North 24 Parganas

(Sayantani De Tarafder)
Judicial Magistrate 2nd Court,
Barrackpore, North 24 Parganas
JO Code- WB01493