

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. **1767/16**]
[CIS Reg.**1767/16**]
T.R. No.524/17
(Arising out of New Barrackpore P.S. Case No.82/16 dated 18.3.16)
Under Sections 341/323/506 of IPC
Date of Judgment-02.6.26

Complainant	STATE OF WEST BENGAL
REPRESENTED BY	Ld. APP Mr. Satyabrata Nag
ACCUSED	1. Gopal Bhowmick (A1)
REPRESENTED BY	Ld. Advocate.

Date of Offence	:	15.3.16
Date of FIR	:	18.3.16
Date of Charge Sheet	:	30.4.16
Date of substance of accusation (Charge)	:	10.8.16
Date of commencement of Evidence	:	2.6.26
The date on which judgment is reserved	:	2.6.26
Date of Judgment	:	2.6.26
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	1.Gopal Bhowmick (A1)	NA	22.3.16	341/323/506 of IPC	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	Amit Mondal	De facto complainant

Fact of the Case-

This instant case has been registered on the basis of the complaint lodged by Amit Mondal S/O- Lt. Jatin Mondal of Bhatpara, Noapara under PS-New Barrackpore, Dist. North 24 Parganas before I/C, New Barrackpore PS. On the basis of the said complaint, New Barrackpore P.S. Case No.82/16 dated 18.3.16 under Sections 325/506/379/34 of IPC was started. After proper investigation, police submitted charge Sheet no. 79/16 dated 30.4.16 against the accused person namely, Gopal Bhowmick under Sections 341/323/506/504/34 of IPC.

The Prosecution case in brief is that on 15.3.16 at around 14.00 hrs the accused person restrained the complainant, assaulted him and threatened him with dire consequences. As a result of which he sustained grievous injury and on the basis of these incidents, the prosecution case was started.

This case was transferred to this Court for trial Charge under Sections 341/323/506 of IPC was framed against the accused person and the substance of accusation was read over to the accused

person to which they pleaded not guilty and claimed to be tried. Prosecution produces 01 witness in support of its case.

The accused person was 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.

Documentary Evidence

Sl No.	Particulars of documents	Date of admission	Marked as
1	Signature of the defacto complainant, PW-1 namely Amit Mondal, S/O- Lt. Jatin Mondal upon the complaint dt.17.3.16	2.6.26	Exhibit – P1

Oral evidence:

P.W. 1: P.W.1 is Amit Mondal, i.e the defacto complainant of this case. During his examination in chief stated that he had lodged this case against the accused person. He cannot remember what exactly happened on the date of the alleged incident. Due to some misunderstanding with the accused person he had lodged the case.

During cross-examination, he further stated that at present the dispute between him and the accused person have been resolved amicably and he does not have any allegation against the accused person at present. Then he mentioned that he does not want to proceed with this case further.

POINTS OF DETERMINATION

1. Whether prosecution has been able to prove their case beyond reasonable doubt by producing cogent evidence?
2. Whether the accused person are liable to be convicted or not?

DECISION WITH REASON

Both the points of determination are taken up together for the sake of convenience.

After scrutinizing the material on record it appears to this Court that prosecution has failed to prove the accusations against the accused person. Prosecution has examined only 1 witnesses. After perusal of the deposition of the witness it appears to this Court that there is no sufficient ground to prove the allegation against the accused person. There is no material of incriminating nature on record to ascertain the guilt of the accused person beyond reasonable doubt. After perusal the deposition of PW1, it appears to this Court that there is no sufficient ground to prove the allegation against the accused person.

After perusal of the deposition of the witness (PW1) it appears to this Court that he was unable to state any details of the alleged incident or any particulars of incident, happened with him during his reexamination. Moreover, as per the contents of the FIR the defacto complainant was assaulted by the accused person. However, this Court finds not a single piece of proof in support of claim of any bodily injury as alleged therein. Thus, the prosecution has not been able to fix liability upon the accused person beyond reasonable doubt. Moreover, facts of offence as stated in the FIR appears to be of vague nature which cannot in any way be held as infliction of assault in absence of any allegation of specific nature or tentative time or period during which a person is treated as such.

Thus there appears to be gross discrepancy between the allegations levelled in the FIR and the oral testimonies of all the witnesses. Thus, there is nothing on record to prove even the contents of the complaint petition. Besides, mere allegation of physical assault without any insight into the details of the same is not adequate to hold the accused person liable of the offence alleged against them.

Thus there is no sufficient ground to prove the allegation against the accused person. The prosecution has failed to produce any further cogent and trustworthy witness who may have even proved any criminality.

In the instant case, upon analysis of the materials on record taking into consideration the factum of absence of any substantial evidence corroborating the case for the prosecution, it appears that, there is no probability of the case ending in conviction.

In the case of **Satish Mehra vs. Delhi Administration & Anrs**, 1996(9) SCC 766, the **Hon'ble Supreme Court** held that “ *in case where there is no prospect of the case ending in conviction, the valuable time of the court should not be wasted for holding a trial for the purpose of formally completing the procedure to pronounce the conclusion on the future date*” .

PW1, i.e the defacto complainant had failed to remember what had happened on the date of the alleged incident. 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*”. Therefore, there arise doubt regarding the credibility of the witness and the evidence adduced by her as PW1 and thus cannot be considered as a cogent evidence.

The prosecution had failed to adduce evidence of any independent witness who were allegedly present at the time of the alleged incident. In this context the observation made in the case of **Harijana Thirupala And Ors. v. Public Prosecutor, High Court of A.P., Hyderabad**, is pertinent to be mentioned. It was held that “*the trial court took a right view that non-examination of independent witnesses seriously impaired credibility of the prosecution case*”.

The witness did not utter a single word about the incident that whether the accused person had caused hurt to the victim or wrongfully restrained him, wherefrom it appears that prosecution has failed to establish that the accused person had committed any offence either u/s 506/341 IPC or section 323 IPC.

Thus in view of the above discussion, there is no sufficient ground to prove the allegations against the accused person as no evidence could be brought before this Court by the Prosecution regarding the alleged incident. The ingredients of the offence punishable under section 341/323/506 of IPC is not established by any credible evidence. In such circumstances, this court has no other way but to hold the accused person innocent and accordingly acquit the accused person from the accusation of this case.

Hence, it is,

ORDERED

that the accused person namely Gopal Bhowmick is found not guilty of the offence punishable under Sections 341/323/506 of IPC and he is hereby acquitted from the instant case u/s 255 (1) of Cr. P.C.

The bail bonds of the above mentioned accused person 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.

The record shows that nothing was seized in this case.

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.

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).

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

The case is disposed of on contest.

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
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