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IN THE COURT OF JUDICIAL MAGISTRATE 2nd COURT, RAGHUNATHPUR, PURULIA Present: Smt. Sanjukta Bhattacharya (JO Code:WB-01346) [08-07-2026] GR Case No. 203/2024 (CIS No.281/2021) CNR No.: WBPU06-001029-2024 TR No.: 95/2024 Presented on : 29-10-2024 Registered on : 29-10-2024 Decided on : 08-07-2026 Duration : 1 years, 8 months, 10 days The allegation u/s-448,323,354,506 and 34 of Indian Penal Code, 1860 arising out of Kashipur PS Case No. 27/2024 Dated 25-03-2024	
Complainant	STATE OF WEST BENGAL Mayna Mukherjee (De facto complainant)
REPRESENTED BY	Learned Assistant Public Prosecutor Sri Lalit Majee
ACCUSED , PARENTAGE AND PLACE OF RESIDENCE	Kamakshya Prasad Karmakar s/o Late Sahadeb Karmakar, residing at village Bhalagora, PS- Kashipur, District-Purulia.....A-1, Satyajit Das s/o Shibu Das, residing at village Bhalagora, PS- Kashipur,District-Purulia.....A-2, and Krishnapada Das , s/o Shibu Das, residing at village Bhalagora, PS- Kashipur,District-Purulia.....A-3
REPRESENTED BY	Ld. Advocate Smt. Ranu Chakraborty

Date of Offence	24-03-2024
Date of FIR	25-03-2024
Date of Charge sheet	30-04-2020
Date of Framing of Charge	08-07-2025
Date of commencement of Evidence	01-09-2025

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Date on which Judgement is reserved	08-07-2026
Date of the Judgement	08-07-2026
Date of the Sentencing order, if any	Not Applicable

ACCUSED DETAILS

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 of Cr.PC.
A-1	Kamakshya Prasad Karmakar	Surrendered on 01-04-2024	01-04-2024	Sections 448,323,354,506,34 of Indian Penal Code	Acquitted	Not Applicable	Not Applicable
A-2	Satyajit Das	Surrendered	01-04-	Sections 448,323,354,506,34	Acquitted	Not	Not

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		on 01-04-2024	2024	of Indian Penal Code		Applicable	Applicable
A-3	Krishnapada Das	Surrendered on 01-04-2024	01-04- 2024	Sections 448,323,354,506,34 of Indian Penal Code	Acquitted	Not Applicable	Not Applicable

LIST OF WITNESSES:

A. Prosecution witness, if any:

Rank	Name	NATURE OF EVIDENCE
PW-1	Mayna Mukherjee	Defacto Complainant / victim lady
PW-2	Nayan Ganguly	Victim man
PW-3	Dhiren Mukherjee	Related witness
PW-4	Niranjan Mukherjee	Related witness
PW-5	Sugha Mahato	Other witness
PW-6	Dr. Nibaran Roy	Medical Officer

B. Defence witness, if any:

RANK	NAME	NATURE OF THE EVIDENCE

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Not Applicable	Not Applicable	Not Applicable
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C. Court witnesses, if any:

RANK	NAME	NATURE OF THE EVIDENCE
PW-2	Nayan Ganguly	Victim man

LIST OF EXHIBITS

A. Prosecution:

Sr. No.	Exhibit No.	Description
1	Exhibit -1	Signature of PW-1 over FIR Complaint.
2.	Exhibit P-2	Original injury report of patient Mayna Mukherjee
3.	Exhibit P-3	Original injury report of patient Nayna Ganguly

B. Defence:

Sr. No.	Exhibit Number	Description
Not Applicable	Not Applicable	Not Applicable

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
Not Applicable	Not Applicable	Not Applicable

D. Material objects:



Sr. No.	Material object number	Description
Not Applicable	Not Applicable	Not Applicable

JUDGEMENT

1. PROSECUTION CASE:

1.1 The prosecution case in nutshell is that on 25-03-2024 at 13.15 hrs one FIR Complaint was received by O/C Kashipur PS filed by the defacto complainant (hereinafter DC only) lady Mayna Mukherjee d/o Harendranath Mukherjee of village Bhalagora under Kashipur PS, District- Purulia to the effect that, 04-03-2024 at about 16.00 hrs, all the accused committed criminal trespass inside the house of D/C and abused her in filthy language. It is alleged that, D/C raised objection, accused assaulted her as well her “bonpo”/Nayan Ganguly due to their previous grudge. It is the further case of prosecution that, neighbours rushed to the spot ,accused fled away. As a result, D/C lady received injury upon her person and her said “bonpo” was shifted to Kolloli Rural Hospital. Hence, this case.

1.2 Over the complaint one specific case being Kashipur PS Case No.27/2024 dtd. 25-03-2024 u/s-448,323,354,506,34 of Indian Penal Code was registered against all the three accused namely (A-1 to A-3).

2. INVESTIGATION AND FILING OF CHARGE-SHEET:

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2.1. Perusal of the order sheets reveal that, all the accused persons being A-1 to A-3 respectively voluntarily surrendered before the then Court of Learned Additional Chief Judicial Magistrate, Raghunathpur, Purulia on 01-04-2024 and were enlarged on bail on the self-same date.

2.2 After proper investigation, Police submitted charge Sheet no. 23/2024 dated 30-04-2024 against the accused u/s-448,323, 354,506 and 34 of Indian Penal Code.

2.3. The case was taken cognizance by Learned Additional Chief Judicial Magistrate, Raghunathpur as on 20-05-2024 and the record was transferred to this Court for disposal.

3. APPEARANCE AND EXAMINATION OF ACCUSED UNDER SECTION 240 OF CODE OF CRIMINAL PROCEDURE/FRAMING OF CHARGE:

3.1. On perusal of the materials on record it appears that, after the case record been transferred to this Court, all the accused persons were examined under section-240 of Code of Criminal Procedure, vide order dated 08-07-2025 for commission of offence punishable under Sections- **448,323,354, 506 and 34** of Penal Code.

4. COMMENCEMENT OF TRIAL AND EXAMINATION OF ACCUSED u/s-313 OF CRIMINAL PROCEDURE CODE:

4.1. After charge hearing, the trial commenced by taking evidence of only six prosecution witnesses. CSW-1/Mayna Mukherjee was first examined as PW-1 and discharged. Thereafter, after invoking the power under section 311 of Code of Criminal Procedure and for sake of fair



trial, one of the other victims/ Nayan Ganguly adduced evidence as PW-2 and discharged. Thereafter, CSW-3/Dhiren Mukherjee, CSW-2/ Niranjan Mukherjee , CSW-4/Sugha Mahato and CSW-5/ Dr. Nibaran Roy were all examined as PW-3 to PW-6 respectively and cross-examined and discharged. Thereafter, as and when the prosecution failed to adduce evidence of police witness , the evidence on behalf of State stands closed . Subsequently, the present accused persons were examined u/s-313 of Criminal Procedure Code, with statutory warnings and they all pleaded innocence and declined to adduce any evidence on their behalf. The scope of Defense Witness stands closed. Argument is heard.

5. ARGUMENT PRESENTED BY BOTH SIDES:

5.1 ARGUMENT BY PROSECUTION

Learned Assistant Public Prosecutor verbally submitted that, admittedly D/C lady and the accused are adjacent neighbours to each other. He further argued that, the existing prosecution evidence , directly corroborated with the time, place and alleged mode and manner of assault. Learned Counsel submitted that, the injury sustained by the victims, was duly supported by adequate medical evidence forming the chain directly connecting all the accused to the scene of crime. Learned Assistant Public Prosecutor prayed for conviction of all the accused as the prosecution was able to establish the case beyond shadow of reasonable doubts.

5.2 ARGUMENT BY DEFENSE SIDE

Learned defense Counsel had presented his argument at length and inter alia submitted that, PW-3 to PW-5 are indirect witnesses and being interested ones, their evidence is doubtful. Secondly, Learned Counsel also brought to the attention of this Court that, injury report is ambiguous as no trace of injury is reflected in the report of D/C . In this context, Learned Defense Counsel submitted that , injury report of the other alleged victim/ Nayan Ganguly is



directly in contradiction with oral evidence shaking the edifice of the prosecution case. Thereby, Learned Defense Counsel prayed for acquittal of the accused from the charge of this case.

6. POINTS FOR DETERMINATION:

- 1) Whether the accused persons have committed offences u/s-**448/323/354//506/34** of Indian Penal Code?
- 2) Whether the prosecution has proved the guilt of the accused persons beyond reasonable doubt?

7. DECISION WITH REASONS:

7.1 For sake of brevity and convenience, both the points are taken up together for discussion and before arriving at the same, it is first and foremost to meticulously consider the evidence on record. In this case, it is the sole responsibility of the D/C lady to establish and prove the charge against the present accused persons in the form of direct evidence along with corroborating evidence in a continuous link, so that the Court may arrive at a just and proper conclusion in a case. Again, it goes without saying that, after only when the D/C lady has been able to successfully establish its case, then only the burden shifts on the accused to explain its stance and present its defence.

7.2 Coming first to the role of witnesses, it comes their role in a criminal justice system is of paramount importance. It is prudent to note in this regard, in the case of **Swaransingh v. State of Punjab reported in (2000) 5 SCC 668**, the Apex Court in paragraph No.36 observed that-**“A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that witnesses are required, whether it is direct evidence or circumstantial evidence.....”**

Furthermore, the great English philosopher, jurist, and social reformer Jeremy Bentham voiced



his understandings and measured witnesses as the ‘eyes and ears of justice’. Most importantly, the voice of the witness has a catalytic force that can alter the progression of a trial.

7.3 Coming first to the role of witnesses, it comes their role in a criminal justice system is of paramount importance. It is prudent to note in this regard, the great English philosopher, jurist, and social reformer Jeremy Bentham voiced his understandings and measured witnesses as the ‘eyes and ears of justice’. Most importantly, the voice of the witness has a catalytic force that can alter the progression of a trial. Now, scanning the available evidence on record, it comes up from the substance of evidence of PW-1, that he is the D/C lady herself. From her evidence in chief, it can be found that, incident took place on 24-03-2024 at about 4 PM inside her paternal house at Bhalagora. In corroboration with the complaint, the witness further stated, accused trespassed into her house and abused her in filthy language. PW-1 specifically named accused (A-1) as the one who, caught hold of tufts of her hair and other two accused being (A-2 to A-3) as the ones, who dragged her wearing apparel. PW-1 further revealed that, her “bonpo” namely one Nayan Ganguly rushed to the spot and even he was not spared from being assaulted. She even stated that, her “bonpo” sustained swollen pain injury and was admitted at Kolloli Hospital for one day. This is in crux the substance of her evidence.

7.4 The next witness /PW-2/happens to be the victim man “bonpo” and he reiterated the version of his “masi” /PW-1. The witness concerned testified that, incident took place on 24-03-2024 at about 3.30 PM to 04.00 PM just beside his maternal grandmother’s house. The witness alike PW-1 disclosed the name of accused / (A-1) as the one who first started to abuse his “masi”/DC in filthy language, in front of her house and his “masi” stepped outside. The witness further stated, he saw same accused (A-1) was then, pulling tufts of hair of his “masi” and as



and when this witness protested, accused physically assaulted him by means of an iron bangle over his head. However, he failed to specify the name of particular assailant, who attacked and due to whose overt act, injury was sustained. PW-2 went on to acknowledge his hospitalisation for one day. The other two immediate witnesses are PW-3/ Dhiren Mukherjee and PW-4/ Niranjan Mukherjee respectively, both comes across as maternal uncles in relation to D/C. Firstly, PW-3/ Dhiren Mukherjee adduced that, incident took place in the year 2024 and matter took place at about 9.30 AM to 10.00 AM in front of village Kalimandir. The witness stated he witnessed the incident, all the three accused physically assaulting Mayna Mukherjee by means of fists and blows as well by means of lathi. However, instead of referring “bonpo” as the rescuer, PW-3 mentioned, it was one “mejoboudi” of D/C/ victim lady, who in particular, dragged Mayna out of scene. Secondly, PW-4 disclosed in his examination in chief that, incident took place on 24-03-2024, at evening at 4 PM in front of house of D/C and he was 400(four hundred) feet away from the scene. The witness further stated that, and witnessed all the three accused being A-1 to A-3 respectively, assaulting Mayna by means of fists and blows. The last private witness examined in this case, is one Sugha Mahato, who comes across as one co-villager in relation to D/C who merely reiterated the same version of PW-4 about one instance of assault that took place at 4 PM on 24-03-2024 inside the house of D/C lady and all the accused assaulted D/C lady.

7.5 The last witness examined by the prosecution in this case, is the medical officer, who merely stated, on 24-03-2024 he treated at Kashipur BPHC, both patients namely Mayna Mukherjee and Nayna Ganguly respectively. The medical witness acknowledged that, on physical examination, he did not find any injury in the person of D/C/Mayna Mukherjee. The witness however acknowledged that on the same, in respect of the other patient/ Nayan



Ganguly , he noted down the patient complaining of tenderness in mid parietal region and further noted history of assault by both accused namely (A-1) and (A-3) respectively. PW-6 went on to reveal in his examination in chief , on physical examination he found swelling and tenderness over mid parietal region of patient Nayan Ganguly and in the injury report duly prepared by him, in course of official duties referred to multiple scratch marks over neck and right arm . PW-6 even rendered in his examination in chief that, nature of injury was simple in nature and he had advised for CT Scan of brain. However , apart from the said prosecution witnesses ,no other witnesses including the investigating officer was examined by the prosecution .

7.6 Going by the factual matrix, it comes up that, the dispute arose on a single date incident as and when the accused wrongfully trespassed into the property of D/C which was later followed by outraging of female modesty of D/C lady as well assault in the person of both D/C and her “bonpo” leading to hospitalisation of the latter. Now , on perusal of the materials on record , it transpires incident took place on 24-03-2024 and FIR was registered on 25-03-2024 but upon perusal of FIR , it appears there has been delay of one day and the delay ground cited over there, is owing to D/C lady being busy with medical treatment of the other victim. The present position that stands is delay which had been substantiated is bereft of raising any strong ground of embellishments in accrual of a bonafide cause of action. The succeeding paragraphs of the judgment , will delve into the aspect how far the prosecution been able to establish the ingredients of the sections against which the accused are charged , in terms of factual scenario.



7.7. Coming to the sections against which accused are charged with, the first section here comes is **Section 448 of Indian Penal Code**. Now the impetus of the said section owes its origin to the offence of criminal trespass, which is defined under **Section-441 of Indian Penal Code**, which reads as under: "Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass". Now, the offence of house trespass is defined under **Section-448** of Indian Penal Code, 1860 as follows: **Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.** The house trespass is defined in **Section-442** of the Code wherein it has been stated that whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as human dwelling or any building used as a place of worship, or as a place for the custody of property, is said to commit "**house-trespass**". In order to prove the guilt of accused, now, firstly the prosecution has to prove that, the accused person entered in the property, which was in possession of the DC lady. Now it is to be noted that for fulfilling the essential ingredients of house trespass, it is not essential that D/C lady shall be owner of the said property. In plethora of judicial decisions, it had been upheld from time to time that, this statutory provision had been designed to protect possession as distinguished from title in the sense that the question in whom title to the land or property vests is alien to the alleged offence in question. Now, at the time of careful analysis of evidence , it comes up Place of Occurrence (hereinafter referred to as only "PO") is infact the paternal house of D/C lady as she had admitted in her examination in chief held on 01-09-2025 that, her present address/ matrimonial house is situated at Dhanbad,



Jharkhand . Referring to the topography of PO , the concerned witness stated that, in the eastern side of her paternal house , there lies Adra Kashipur Road and at regular intervals , villagers pass by . Be it noted in this case, rough sketch map and index was not admitted into documentary evidence as the investigating officer failed to turn up, despite being afforded several reasonable chances . Now , in this circumstance ,it is the consistent oral evidence of all prosecution witnesses that be relied to identify the PO. In the version of prosecution witnesses , a contradictory picture resurfaces. Save and apart , PW-5 , who along with D/C mentioned about instance taking place inside the house of D/C , on the other hand, PW-2 adduced in his evidence , incident took place beside his maternal grandfather's house ,PW-4 merely mentioned the incident took place in front of house of D/C and PW-3 went to the extent of revealing incident occurred in front of village Kalimandir , on the relevant date . In this context, be it mentioned that,when witnesses are examined in the court after a considerable lapse of time, it is neither unnatural nor unexpected that there can be some minor variations in the statements of the prosecution witnesses. In the case of **Sucha Singh Vs. State of Punjab, (2003) 7 SCC 643,** Court held that, normal contradictions appearing in the testimony of a witness do not corrode the credibility of a party's case but material contradictions do so. Considering the inconsistent oral evidence of prosecution witnesses , alleged PO cannot be pinpointed to ascertain without any doubts, same took place inside the four corners of household property to come under the ambit of offence of house trespass. Even nothing in the evidence on record, is forthcoming regarding any previous enmity in between both sides and nothing comes up to infer that if at all there been house trespass, there has been requisite mens rea on the part of accused to enter inside the household property and immediately , insult and annoy the D/C. **Thus , without any slightest qualms, the prosecution failed to establish section 448 of Indian Penal Code.**



7.8 Proceeding further, it comes up that, the accused persons are charged under **354 of Penal Code**, which emanates from Section 354 of Indian Penal Code. To legally apply Section 354 of Indian Penal Code (assault with intent to outrage a woman's modesty), the law requires proof that the person used force with a clear sexual intent or knowledge. Page Nos 11 to 14 in the case of **Manirul Haque@ Mantu vs State of West Bengal (arising out of CRR 2193 of 2019)**, Hon'ble Court referred relied in decisions of Apex Court as well other High Courts in considering the ingredients of Section 354 of the Indian Penal Code . 18. The Hon'ble Apex Court in Tarkeshwar Sahu (Supra) further observed as follows: "38. Section 354 IPC reads as under: "354. Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both." 39. So far as the offence under Section 354 IPC is concerned, intention to outrage the modesty of the woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence. 40. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. 41. "Modesty" is given as, "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct" (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. 42. The ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. A person slapping on the posterior of a woman in full public glare would amount to outraging her modesty for it was not



only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady. 43. The word “modesty” is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a female on account of her sex. 44. We deem it appropriate to reproduce the cases of various courts indicating circumstances in which the Court convicted the accused under Section 354 IPC. 45. In *State of Kerala v. Hamsa*², it was stated as under: “What the legislature had in mind when it used the word modesty in Sections 354 and 509 of the Penal Code was protection of an attribute which is peculiar to woman, as a virtue which attaches to a female on account of her sex. Modesty is the attribute of female sex and she possesses it irrespective of her age. The two offences were created not only in the interest of the woman concerned, but in the interest of public morality as well. The question of infringing the modesty of a woman would of course depend upon the customs and habits of the people. Acts which are outrageous to morality would be outrageous to modesty of women. No particular yardstick of universal application can be made for measuring the amplitude of modesty of woman, as it may vary from country to country or society to society.” 46. A well known author Kenny in his book *Outlines of Criminal Law* has dealt with the aspect of indecent assault upon a female. The relevant passage reads as under: “In England by the Sexual Offences Act, 1956, an indecent assault upon a female (of any age) is made a misdemeanour and on a charge for indecent assault upon a child or young person under the age of sixteen it is no defence that she (or he) consented to the act of indecency.” 19. In *S.P.S. Rathore Vs. Central Bureau of Investigation and Another* the Hon’ble Supreme Court held as follows: “42. In order to constitute the offence under Section 354 of the IPC, mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be adopted by the court while dealing with a case



alleging outrage of modesty. The essential ingredients of the offence under Section 354 IPC are as under: (i) that the person assaulted must be a woman; (ii) that the accused must have used criminal force on her; and (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty. 43. This Court, in Vidyadharan v. State of Kerala held as under: “10. Intention is not the sole criterion of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight.”

7.9 Again, the question remains whether mere catching hold of tufts of hair by accused upon the person of PW-1 would lead to outraging of female modesty? High courts have ruled that simply pulling a woman's hair during a common fight (without any sexual motive) does not attract Section 354 of Indian Penal Code. Under Section 354 of the said Code, physical injury or visible wounds are not legally required to prove the crime. Pulling hair or grabbing a hand without any sexual intent does not fit this section. . If hair is pulled and physical pain is caused without sexual intent, the police usually file a complaint under Section 323 of said Penal Code (voluntarily causing hurt) or else Section 352 of the said Code (assault or criminal force). As in this context, if the hair was pulled in a general fight, a scuffle, or out of anger without any sexual meaning, it is usually charged as a mere physical assault.

8.0 Had the prosecution case to be relied, then at all the nature of physical scuffle in between

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the accused and the victim lady/PW-1 would in all probability, leave them with bodily pain, scar marks , bruises by means of fists and blows affecting her body, limb or health, concerning serious injury inflicted by three adult male persons . Moreover, the victim lady herself failed to narrate mode and manner of outraging of modesty .Moreover , nothing is forthcoming in record regarding statement of the victim lady being recorded u/s 164 Criminal Procedure Code , which if admitted into evidence , could have strengthened the case. Nothing even comes up that victim lady had sustained any injury and even the medical evidence , being evidence of PW-6 as well the injury report/ Exhibit P-2 corroborates the same. The stoic silence on the part of the prosecution failing to substantiate any unflinching credible evidence, in this regard, marks a dent in the prosecution case. As such, charge under Section 354 of Indian Penal Code does not find place in this instant case.



8.1 Coming next to the ingredients of section 323 of Indian Penal Code, attention can be well drawn first to its academic significance. It appears that, the term “hurt” has been defined under **Section-319 of the Indian Penal Code as “Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.”** In order for an offence to be classified as hurt, it is essential that there is an element of ‘bodily pain’. It can be understood as the direct result of an act causing bodily pain irrespective of the methods used. It is important to take note that, any kind of injury which causes a risk of life resulting in severe body pain making it unable for him/her to follow his/her ordinary pursuits temporarily cannot be regarded as a grievous hurt but falls under the ambit of hurt. Further, Indian Penal Code demarcates a separate offence for hurting voluntarily or intentionally. **Section-321 of the Code states: “Whoever does any act to thereby cause hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said, “voluntarily to cause hurt.”** Now , as stated in preceding paragraphs, only the D/C lady herself addressed the fact , injury was occasioned to her “bonpo” apart from herself. Even , the original injury report admitted into evidence as Exhibit P-3 corroborates the same. As from the oral evidence of PW-2 , it transpires that, injury was over the head of the witness caused by iron bangle leading to swollen pain injury . Now , if the evidence is meticulously scanned as and when the scribe happens to be none other than the self same alleged victim , he is drafting the FIR in his own hand after one day of hospitalisation . Again ,one factual aspect cannot be bypassed that , even after sustaining injury in head , the person’s physical competency to draft FIR evokes doubt and more or less when he himself mentioned injury caused by “lathi” and not by any means of iron bangle. Be it noted that , none other than injured can render a false account of circumstances which had caused him extent of sufferings and order that compelled him to resort to primary medical assistance and hospitalisation . Moreover, the alleged assault , at the time of drafting of



FIR was still fresh in his memory and so is the bodily scars and wounds , then confusing iron bangle with “lathi” is certainly unwelcoming.

8.2 Be it further noted that, iron bangle and lathi are not one and same object and injuries if any caused due to same have different ramifications. An injury to the head caused by an iron bangle (or kada) typically falls under "voluntarily causing hurt" or "causing hurt by dangerous weapons". If the iron bangle is considered a dangerous weapon that is likely to cause death, the offense may instead be charged under Section 324 of Indian Penal Code . Again , another aspect resurfaces that, PW-2 although stated he was assaulted on head by means of iron bangle , but was unable to pinpoint who among the three accused , had actually caused the injury. An injured person does not strictly have a statutory requirement to name their assailant immediately, but a failure or delay in naming the assailant allows the defense to heavily challenge the credibility of the prosecution's case under Section 323 of the Indian Penal Code. From the standpoint of academic significance, the testimony of an injured witness is accorded very high evidentiary value, but it is not immune to skepticism if vital details are omitted. It is pertinent to mention that, a medical injury report alone is usually not sufficient to convict an accused as it is a corroborative piece of evidence and is not a sine qua non for conviction under Section 323 of Penal Code **(State of M.P. v. Dharkole @ Govind Singh, (2004) 13 SCC 308, para 9).** The consistent ocular testimony of the complainant and independent witnesses, which remained unshaken in cross- examination, is sufficient to bring home the guilt of the accused. At the same time , it cannot be disregarded that, it is a well settled judicial principle that, a detailed medical injury report is not a mandatory prerequisite to prove a Section 323 of Penal Code and if the witness testimony inspires absolute confidence, any hesitation or failure to identify the assailant at the earliest opportunity completely breaks that confidence.

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8.3 Appreciating the evidence on record, it is safe to vouch that, a discrepancy where an injured person's name is cited as an assailant in an injury report but fails to do so in oral court testimony is a contradiction. However, the name of alleged assailants is silent in the oral evidence of PW-1. Prosecution failed to explain the discrepancy by pointing out the victim's medical condition or the circumstances of the attack or whether it was too dark to recognize faces during the assault. Strangely, no other independent witness, in this case corroborated the alleged instance of assault inflicted on PW-2/ Nayan Ganguly, rather witnesses being PW-3, PW-4 and PW-5 respectively as tutored parrots, were only conscious of the fact on narrating alleged assault inflicted only on Mayna Mukherjee.



8.4 Appreciating the available evidence on record , it transpires that, PW-1 to PW-5 are all private witnesses including the victim / D/C lady herself . As mentioned in the earlier paragraphs of the judgment , the name of PW-2 as alleged rescuer is not uttered by other immediate three private witnesses . Scanning further , it comes up PW-3 who claimed himself as a relative to D/C and in his examination in chief admitted to witness personally alleged occurrence , later in his cross examination readily admitted that, he usually leave his house at 6 AM and return back in the evening and on the relevant date , was not physically present at the spot. PW-3 even went to the extent of disclosing in his examination in chief that, D/C accompanied him to Court on that date and she was carrying his summons ; and furthermore the witness/ PW-3 discussed with D/C lady what to depose before Court. Even , evidence of PW-3 attributes a similar picture as this witness not only claim himself as the the relative to D/C but also a neighbour whose house is barely at a distance of four hundred feet away from the spot. Now, in his examination in chief although PW-4 narrated about occurrence of physical assault , but alike PW-3 faltered during trial and acknowledged the factum of D/C lady again accompanying him to Court on the date when he was summoned to depose. PW-4 even avowed that , entire alleged matter was hearsay and he was not present at the spot , time and place . In this juncture, it is pertinent to note that , at on self same dates of adducing evidence , the witnesses are put in dilemma of what to say and what not to say . Attention can be well drawn to role of an interested witness in this regard, who has a direct, personal, or financial stake in the outcome of a case and whose testimony is admissible but under careful scrutiny. In this juncture , it is apt to mention , as per settled principle there are ifour categories of witnesses--a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the



wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorisation of a witness, the issue really is one of appreciation of the evidence of a witness. The Supreme Court in the case of **Jodhan v. State of M.P., reported in (2015) 11 SCC 52** has held as under : “. The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible”. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought to be rejected. That apart, when a witness has a motive or makes false implication, the court before relying upon his testimony should seek corroboration in regard to material particulars. Thus , situation being such , evidence to be read as a whole and not merely picking up one line from evidence and drawing up inference . In this case beforehand , both these witnesses happen to a related interested witness as being tutored by D/C as what to depose.

8.5 Embarking further, it reveals that PW-5 happens to be a chance witness as the witness claimed to be inside the house of D/C. Now his sudden entry on one hand at the spot , at the spot categories him as a chance witness to this case. As per well settled rule, evidence of a chance witness can be out rightly rejected for being tainted with suspicion. Now, the factual matrix of the case hold even the chance witness happens to be a co-villager of the D/C side and nothing comes up in evidence , regarding his frequenting the house of D/C on account of close relations. Nevertheless on that date, the physical presence of PW-5 at the scene , inside the house of D/C can be looked down otherwise and the contention of him being an interested witness sustains. Thus , coming back to the case beforehand after examining role and nature of witnesses , it can be found , nothing is forthcoming in the record that, whether in the course of trial chapter nor in the course of examination of accused u/s 313 of Code of Criminal Procedure, the defense side,



though been granted the scope, failed to substantiate present case emanated was only to justify personal vengeance out of previous grudge pending in between the parties; but simultaneously it can be inferred that, overall appreciating the evidence on record , in absence of unflinching cogent ,material evidence , it is highly unsafe to rope the accused for commission of offence under Section 323 of Penal Code .**Without any qualms , I do find prosecution side failed to establish the charge under section 323 of Indian Penal Code.**

8.6 It comes up the accused are also charged under **Section 506 of Penal Code.** Now in this case the alleged abusive threatening words hurled by the accused side, stated by D/C lady in the four corners of FIR complaint had not been stated by either of the prosecution witnesses in their evidence and as such the same stands not corroborated by any of the prosecution witnesses. It must be established that, the accused had an intention to cause an alarm to the victim lady as well as D/C. Mere expression of words without any intention to cause alarm would not suffice. Further, mere vague and bald allegations that the accused threatened the victim with dire consequences is not sufficient to attract the provisions under Section 506 of the Penal Code. Mere abuse cannot partake the nature of criminal intimidation. **Thus , prosecution failed to establish ingredients of section 506 of Penal Code.**

8.7 Before parting, I am of the considered view that, in view of settled principle of law, a criminal case stands proved on its own legs when the available evidence unerringly form the direct chain connecting the accused to the scene of crime and it is the solemn duty of prosecution to establish the same beyond all shadow of reasonable doubts. Now, going by the case law as put forth by the defense side , it can be found same is though unconnected with the factual context but it cannot be outweighed the principle of burden of proof in criminal case



been echoed in this case. Reverting back to the academic realm, it is well settled that, factual chain of circumstances is broken and the version of the prosecution has not been established as was required of it. In the absence of complete chain, the guilt of the accused cannot be inferred and suspicion howsoever grave it may be, cannot take place of proof as that would be miscarriage of justice, which must be avoided. A reasonable doubt is not an imaginary, petty or more probable doubt but doubt becomes a fair doubt and it is based upon reasons and common sense vis-a-vis the testimony on record. It is axiomatic when the evidence for the defacto complainant is insufficient and lopsided failing to prove the existence of a fact conclusively, then it would amount to a case where prosecution failed to prove its own case beyond reasonable doubt. Nonetheless, the access to path of justice cannot under any circumstance be twisted/moulded on the strength of any imaginary/fictitious cause of action as the settled Maxim goes –“Equity does not aid a party at fault.”.

8.8 Therefore , in the light of the oral as well as documentary evidence available on record as well taking into account the submission made by Learned Advocate representing both the sides and the substance of examination of accused recorded under section 313 of Code of Criminal Procedure, I am of the considered view, the prosecution has miserably failed to establish the ingredients of the offences punishable under **sections 448,323,354,506, 34 of Indian Penal Code** beyond all shadow of reasonable doubt and the accused are all entitled to benefit of doubt. In these circumstances, this Court has no other way but to hold the accused persons innocent and accordingly acquit them all from the charges of this case.

Hence, it is,



ORDERED

that the accused persons **(A-1) Kamakshya Prasad Karmakar, (A-2) Satyajit Das , and (A-3) Krishnapada Das respectively** found **“not guilty”** of having committed offences punishable under **sections 448,323,354,506 and 34 of Indian Penal Code** and they are hereby acquitted in accordance with the provisions being laid down under section-248(1) of the Criminal Procedure Code. Sureties are hereby discharged from the respective bail bonds.

The victim/ defacto complainant lady may prefer as per Section-372 of Cr.P.C. and if necessary, avail free legal assistance through District Legal Service Authority, Raghunathpur, Purulia.

Copy of this judgment be intimated to Sub-Divisional District Magistrate, Raghunathpur, Purulia as well to SDLSA, Raghunathpur.

Seized alamats, if any, be disposed of after the statutory period of appeal.

Thus, the case is disposed off.

Note in relevant register.

Let a copy of this judgment be uploaded in CIS at once.

Dictated and Corrected by me,

Dictated and Corrected by me,

Sd/-

Sd/-

Judicial Magistrate

Judicial Magistrate

2nd Court,Raghunathpur,Purulia

2nd Court, Raghunathpur,Purulia