

W.B. Form No. 3886.
H.C. Criminal Form No. M(17)

HEADING OF JUDGMENT OF APPELLATE COURT

**In the Court of the Additional Sessions Judge, Fast Track, 3rd Court,
Diamond Harbour**

**Present : Sri Sachindra Mohan Bhowmick,
Additional Sessions Judge,
Fast Track , 3rd Court, Diamond Harbour**

JO Code: WB01078

Date of Judgment: 06.03.2026

CRIMINAL APPEAL NO. 02 of 2022

CNR No. WBSP100022252022



[Appeal against the judgment of conviction and order of sentence dated 13.07.2022 as passed by Ld. Judicial Magistrate, 1st Court at Diamond Harbour in connection with GR Case No. 74 of 2014]

1. Raju Halder @ Bajju @ Sanjit

.....Appellant

Vs

1. Tapasi Naskar

2. The State of West Bengal

.....Respondents

For the Appellant: Ld. Advocate, Subrata Das

For the Respondent No.1: Ld. Advocate, Nozimuddin Laskar

For the Respondent No. 2: Ld. PP in-charge, Kinkar Das

Date of Hearing: 06.02.2026

JUDGMENT

INTRODUCTION

1. The present application is one under section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) preferred by the applicant, **Raju Halder @ Bajju @ Sanjit** against the respondent no.1, **Tapasi Naskar**, (the defacto complainant) and respondent no. 2, **The State of West Bengal** assailing the judgment of conviction and order of sentence 13.07.2022 as passed by Ld. Judicial Magistrate, 1st Court at Diamond Harbour (hereinafter referred to as the Ld. Trial Court) in connection with GR Case No. 74 of 2014.

THE FACTUAL BACKDROP

2. The factual backdrop of the case leading to the filing of present criminal appeal, shorn of unnecessary details, is that the defacto complainant filed an application under section 156(3) Cr.P.C. before the court of Ld. ACJM, Diamond Harbour alleging that on 08.12.2013 at 11:30 PM, when her husband was returning home from the adjacent village after finishing his work of cooking, the accused persons wrongfully restrained him over the road and abused him in filthy languages to which her husband and the witnesses mentioned in the written complaint raised protest and the accused persons assaulted her husband by fists, blows and kicks. Further allegation of the defacto complainant is that accused, Raju dealt a blow to her husband with a "sabal" pointing towards his head but the blow fell on his left shoulder and he suffered fracture injury. The persons present there being the witnesses referred to in the written complaint rescued the victim and brought him to Mathurapur Hospital. The victim was thereafter treated at Naiyarhat Hospital. The accused persons allegedly took away the utensils of the defacto complainant which he was carrying during the

alleged incident. The defacto complainant asserted that the accused Bappa Halder kidnapped her elder daughter and kept her confined in some unknown place and she protested to such illegal act of the accused. It is contended that out of such grudge, the accused persons attacked the husband of the complainant on the alleged date and time.

3. Upon consideration of the aforesaid petition of complaint, a direction was issued upon the local police station by the court of Ld. ACJM, Diamond Harbour to register the same as FIR and on being so directed and after registering a formal FIR thereon, the police started Mandirbazar PS case no. 10 dated 05.01.2014 under sections 147/148/447/323/326/379/506 IPC and the investigation was commenced.

4. The investigation was culminated in the submission of charge sheet against the accused persons vide Charge Sheet No. 46/14 dt. 13.02.2014 *prima facie* revealing evidence against the accused persons for alleged commission of offence under sections 447/323/326/506/34 IPC.

5. After taking cognizance of the offence, the Ld. ACJM, Diamond Harbour transferred the case record to the court of Ld. J.M., 1st Court, Diamond Harbour for disposal. On consideration of materials on record, the Ld. Trial court found sufficient materials to frame charge against the accused persons for commission of offence under sections 447/326/34 IPC and accordingly the charge was framed. The accused persons pleaded not guilty and faced the trial. On completion of trial, Ld. Trial Court held the accused person, Raja Halder @ Bajju guilty of the offence under section 326 IPC and convicted him under section 248(2) Cr.P.C. The convict was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2000/-, in default to suffer simple imprisonment for another one month. The rest of the accused persons namely Prithwis Halder, Bappa

Halder, Gayatri Halder and Shukla Halder were found not guilty of the offences charged against and they were acquitted and set at liberty.

6. Being aggrieved and dissatisfied with the impugned judgment of conviction and order of sentence, the convict (hereinafter referred to as appellant) preferred the instant appeal against the informant/private respondent no. 1, Tapashi Naskar the respondent no 2, the State of West Bengal.

ARGUMENT

7. Ld. Counsel for the appellants canvassed his argument by pointing out that the delay in lodging complaint was not properly explained by the prosecution. He contends that there was delay of 28 days from the date of alleged incident before the FIR was formally registered at the police station and no suitable explanation was put forward by the prosecution and such inordinate and unwarranted delay left an unexplained hole in the prosecution story. He contends that the Ld. Trial Court did not consider the aspect that delay creates opportunity for exaggerated and concocted story and passed the judgment mechanically without applying its judicial mind regarding the facts and circumstances of the case. He would further advance his argument by contending that the Ld. Trial Court did not consider that apart from the formal witnesses all other prosecution witnesses are relatives of the defacto complainant and based on the evidence adduced by the relative witnesses, the conviction passed against the accused persons was bad in law and liable to be set aside. The Ld. Counsel further pointed out that the place of occurrence also shifts dramatically in the testimonies of the prosecution witnesses and in such scenario, the impugned judgment and order ought not have been passed by the Ld. Trial Court. The next point of argument forwarded by the Ld. Counsel is that reliance placed by the Ld. Trial court upon the injury report and x-ray report of the victim was mislaid and not in accordance

with law. He submits further no injury of grievous nature was sustained by the victim and no case of offence under section 326 IPC was made out against the accused person. He contended further that the Ld. Trial Court erroneously based the order of conviction against the accused person ignoring the fact that no offending weapon could be seized by the investigating authority in the entire course of investigation. He would point out that the examination of the accused persons under section 313 Cr.P.C. was recorded mechanically with the incriminating materials having not been placed to the accused persons and they were debarred from making any proper reply to them. He would impress upon the court that the Ld. Trial court failed to examine and scrutinize the evidence led by the prosecution in its proper perspective and ought to have discarded the prosecution version of the case which suffers from numbers of contradictions and omissions. On the above contentions, it is submitted by the Ld. Counsel for the appellant that the instant appeal be allowed and impugned judgment and order be set aside.

8. On the other hand, Ld. PP in-charge for the respondent no. 2 supported the findings arrived at by the Ld. Trial Court in the impugned judgment of conviction and order of sentence and submitted that all the necessary aspects have been taken into consideration and the Ld. Trial Court appreciated the evidence on record in proper perspective and the impugned judgment does not suffer from any infirmity, illegality or impropriety. He further submitted that the involvement of the accused person/convict with the alleged crime on the given date and time has been clearly established from the evidence adduced by the prosecution witnesses and the documentary evidence and the Ld. Trial Court was very much justified in finding the accused person guilty of the offence alleged and convicting him to suffer imprisonment.

9. The Ld. Counsel representing the respondent no. 1 also supported the impugned judgment and order passed by the Ld. Trial court and contended that the same was delivered on proper application of judicial mind. He submitted that there had been no illegality and impropriety in the conviction of the accused person inasmuch as the charge framed against the accused person has been clearly established by the prosecution and there remains no scope of interference in the impugned judgment of conviction. He would advance his argument by submitting that there was no illegality in the impugned judgment to base the conviction of the accused person on the basis of evidence of relative witnesses as they were found trustworthy and consistent with the alleged crime. He also stressed on the point that some amount of delay that might have been caused in lodging complaint was not fatal being properly explained and expounded.

10. Now, let us examine the impugned judgment of conviction and order of sentence of the Ld. Trial court to decide if the same was delivered in consistence with the settled principles of law or if there was any scope for interference by this court.

11. For the purpose of effective adjudication of the instant appeal, the following points are framed for consideration of this court.

POINTS FOR CONSIDERATION

1. Whether the Ld. Trial Court was justified in holding the accused person guilty of the offence u/s 326 IPC ?
2. Whether the prosecution was able to prove its case against the accused person beyond shadows of reasonable doubts ?
3. Whether the impugned judgment of conviction and order of sentence is sustainable in the eye of law ?

DECISION WITH REASONS

12. The instant case has its genesis at the written complaint which came to be filed at the instance of the private respondent no.1, the defacto complainant with the allegation against the appellant/accused person and others, of inflicting grievous hurt upon her husband with an iron made 'sabal' in furtherance of their common intention. In its attempt to prove the charge, the prosecution examined as many as five witnesses in its favour. The particulars of the witnesses and their characters are as under:

PW-1 – Tapashi Naskar, the defacto complainant of the case,

PW-2 – Sankar Naskar, the husband of defacto complainant and the victim.

PW-3 – Ranjit Naskar, the brother-in-law of defacto complainant,

PW-4 – Dr, Shyamal Prasad Halder, Medical Officer of Naiyarhat Rural Hospital,

PW-5 – ASI Ajoy Kr. Naskar, the investigating officer of the case.

13. At the outset, it was pointed out by the Ld. Advocate representing the appellant herein that the written complaint has neither been tendered in evidence nor it was marked exhibited in course of recording of evidence before the Ld. Trial court and thus the entire trial is vitiated and the written complaint being not brought on record, the prosecution case cannot be said to have been corroborated by the oral evidence adduced on behalf of the prosecution. Perusal of the trial court record reveals that the defacto complainant narrated the alleged incident as set forth in the written complaint in her examination-in-chief while being examined as PW-1 but the very written complaint, the fundamental genesis of the case, was neither tendered in evidence nor it was marked as exhibited to be admitted in evidence. The contents of the written complaint were also not proved by the complainant by testifying herself as the same has been reduced to writing by the scribe as stated by her. Based on the established

principles governing the admission of documents in evidence as enshrined in the Indian Evidence Act, the contents of the written complaint must be proved by its author by examining him in the witness box and formally exhibited before the same can be relied upon. Relying on an unexhibited, unproved document is a procedural irregularity that leaves the evidence vulnerable to being rejected. That is what has actually happened before the Ld. Trial court. The Hon'ble Calcutta High Court has been pleased to observe in the case of **Smt. Subra Mitra vs. Sri Dipankar Saha and Anr, (2012) 3 CCrLR (Cal) 850** that the written complaint is the genesis of the case of the appellant and it is the basic foundation of trial and non exhibiting the same will vitiate the entire proceeding. The Ld. Trial court seems to have overlooked this important omission or the procedural irregularity while appreciating the evidence and recorded the judgment of conviction and order of sentence of the convict/appellant which discernibly suffers from non application of judicial mind to the facts and circumstances of the case.

14. One of the grounds on which the impugned judgment was challenged by the appellant herein is that there has been inordinate delay in lodging of complaint which remains unexplained from the end of prosecution. Both the written complaint and the formal FIR clarify that the alleged incident occurred on 08.12.2013 at about 11:30 PM when the husband of the defacto complainant was allegedly assaulted by the accused persons on his way back to home after finishing his work of cooking at the nearby village and accused/appellant hit him on his head with a 'sabol' resulting in fracture injury being sustained by the victim in his left shoulder. The defacto complainant approached the court with the application under section 156(3) Cr.P.C. on 16.12.2013 and the FIR came to be registered with the police station only on 05.01.2014. Therefore, the delay of 28 days had been caused in lodging the report which in the facts and circumstances of the case does not appear to be natural and reasonable. The complainant

claimed in her examination-in-chief to have approached the local Mandirbazar PS on the next date of incident but no explanation has been offered by the complainant for not lodging any complaint against the accused persons with the PS. The written complaint as well as the ocular evidence of the defacto complainant are silent about any GD entry being registered with the PS regarding the alleged incident. In fact, not a single cause has she assigned about such delayed registration of the FIR either in the written complaint or in her evidence. The complainant has not specified in her written complaint that the concerned police authority of Mandir Bazar PS had actually refused to register an FIR on her complaint and to take any effective action in that regard before approaching the court of Ld. ACJM, Diamond Harbour with the application under section 156(3) CrPC. The law is trite in respect of inordinate and unexplained delay in lodging complaint being that the prosecution must come up with proper explanation of such delay since the delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even fabrications. Delay defeats the chance of unsoiled and untarnished version of the case to be presented at the earliest instance and that is why, if there is such delay either by the informant or the police then the court would always view the allegations with suspicion and ask for a satisfactory explanation and if the court is not satisfied it would be fatal for the prosecution's case. The Hon'ble Apex Court in the case in re: **Manoj Kumar Sharma and others vs. State of Chhattisgarh and others reported in (2016) 9 SCC 1** observed that delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. In the case in hand, an inordinate and unexplained delay in lodging the report not only affects the case badly but compels this court to view the complaint with suspicion and raise doubt about its trustworthiness. The Ld. Trial Court does not appear to have

taken into consideration that important aspect while deciding the case against the accused person/appellant.

15. In a criminal case, the prosecution must prove the time and place of alleged incident in order to succeed. This is crucial for establishing the presence of the accused person at the scene and the context of the offence. So far the place of occurrence is concerned, there has been different versions put forward by the different witnesses. As per the rough sketch map and index, collectively referred to as Exhibit- 3 in the trial court record, the place of occurrence of the alleged incident is the house of Sankar Naskar (the husband of defacto complainant). However, the allegation disclosed in the written complaint is that the accused persons assaulted the husband of the defacto complainant in front of their house. While both the PW-1 and PW-2 maintained in their testimonies that the alleged incident occurred in front of their house, the PW-3 claimed in his examination-in-chief that the accused persons entered into the house of the husband of complainant and assaulted him. If one of the two different versions is to be believed as true, the other must be wrong. The apparent shifting of place of crime casts serious doubt on the reliability of the prosecution's case. Furthermore, with regard to the date and time of alleged incident, we have on record two inconsistent versions of two vital witnesses of the case. The defacto complainant being PW-1 deposed that the alleged incident occurred on 22nd day of Agrahayan, 1420 BS at 8:30 PM but the victim himself being the husband of defacto complainant testified the same to have occurred on 22nd day of Falgun, 1420 BS at 11:30 PM. Again, the PW-3 claimed in his evidence that after the alleged assault the victim fell unconscious and he regained his sense at the Hospital but contrary to that, the victim himself being PW-2 admitted in cross-examination that he did not fall unconscious. The Ld. Trial Court did not ponder over such glaring inconsistencies while adjudicating upon the issues involved and the reliance placed upon manifestly inconsistent

testimony of the witnesses by the Ld. Trial court in holding the accused guilty seems to be grossly misplaced and against the settled principles of law.

16. In convicting the accused person u/s 326 IPC, the Ld. Trial Court relied heavily upon the the injury report of the victim, marked as Exhibit-1 in the trial court record. The said report goes to suggest that the on examination by the medical officer of Naiyarhat BPHC on 09.12.2013, one lacerated injury about 1/2"x 1/4" skin depth was found over the left shoulder of the patient who was treated with injection and medicines only. No finding of fracture injury sustained by the victim was noted nor any advice for further examination through x-ray or otherwise seems to have been given by the medical officer treated him. The prosecution examined the medical officer as PW-4 in this case who clarified in his deposition that the injury sustained by the victim was simple in nature. He further deposed that the age of the injury was not mentioned in the report. During cross-examination, the witness further clarified that if one falls on a hard surface he may suffer injury as suffered by the victim patient. He also stated that after examination, the patient was discharged and he did not find any abnormality. The prosecution has no occasion to refer to the offending weapon to the medical witness during his examination in open court to ascertain if such kind of injury was actually possible by the alleged offending weapon; i.e. iron made 'sabol' since no seizure of the offending weapon was effected during examination. Therefore, it is surprising as to how the Ld. Trial court evaluated the injury report of the victim which clearly specifies the nature of injury sustained by the victim as simple to come to a conclusion that the victim suffered grievous hurt on his left shoulder as a result of alleged assault by the convict/appellant eith dangerous weapon or means. Ld. Trial court also placed reliance upon one x-ray report (marked herein as Exhibit-4 with objection) claimed to be of the victim, Sankar Naskar. Ld. Counsel for the appellant vehemently

argued that such so-called x-ray report of the victim has no evidentiary value as the same was not admitted in evidence in accordance with law. A careful consideration of Exhibit-4 would reveal that one x-ray report sans the x-ray imaging plate was placed on record by the prosecution and only marked as exhibit with objection raised by the Ld. Defence counsel. The prosecution did not make any attempt to prove the said report in evidence by calling upon the concerned doctor in the witness box. It is trite law that mere marking of a document as exhibit does not amount to its proof or does not dispense with the requirement of proving the same in accordance with law. The onus is upon the prosecution to get it admitted in evidence and more so when the defence has raised specific objection against it questioning its genuineness. Without the same being proved in evidence, no reliance can logically be placed upon such so called x-ray report of the victim and no finding can be based against the accused relying upon such document, to say the least. Propriety and genuineness of the medical documents gain more importance in the circumstances where no seizure of alleged offending weapon could be effected during the course of investigation. Ld. Trial court also failed to appreciate that the victim was allegedly taken to Mathurapur Hospital first and primary treatment was given to him but no medical document regarding the treatment of victim at Mathurapur Hospital has been placed on record by the prosecution. Had that been brought on record, the court would have got an opportunity to evaluate the document in finding out the truth behind the alleged incident. The Ld. Trial court did not consider all these material contradictions and important omissions while appreciating the medical documents of the victim and his assessment with regard to the injury report and evidence of Medical officer is incomplete and erroneous.

17. The Ld. Trial Court considered the evidence of PW-1, PW-2 and PW-3 as convincing and reliable while finding the accused/appellant guilty of the offence alleged but seems to have ignored the fact that their

testimonies were tainted with many inherent contradictions and discrepancies. All three of them being family members, their testimonies are to be evaluated at par with the evidence of a related witness. On the point of appreciation of evidence of related witnesses the law has been well settled in catena of cases decided by the Hon'ble Apex Court and also the Hon'ble Calcutta High Court that evidence of a relative witness is to be examined with great caution and diligence. In this regard, the decision in the case of **Illangovan v. State of Tamilnadu** as reported in **2021 (1) AICLR 471 (SC)** and the decision in the case of **Kasem Molla and others v. State of West Bengal** as reported in **(2018) 4 CCrLR (Cal) 45** may be relied upon as a guiding principle. This court has already observed that the evidences adduced by the private witnesses suffer from several contradictions and discrepancies with regard to time and place of alleged assault upon the victim. The credibility of their testimonies has been deeply shaken by the penetrating cross-examination from the adversary and with all the exaggerations and embellishments cannot form the basis of any conviction.

18. On careful consideration of the evidence of material witnesses and the written complaint, one thing has come to light that a family dispute was in existence in between the family of defacto complainant and the accused persons. One of the FIR named accused Bappa Halder had allegedly enticed the daughter of the defacto complainant and kept her confined to which the defacto complainant raised protest. PW-3 also clarified in cross-examination that the main dispute relates to the daughter of Sankar (husband of defacto complainant) and at present she is married to accused Bappa Halder. He also admitted that they did not accept the marriage of daughter of Sankar with said accused Bappa Halder and the dispute has been there for last five years. It is the trite proposition of law that enmity is a double-edged sword. It can be a ground for false implication and it can also be a ground for assault. Therefore a duty is cast upon the court to

examine the testimony of inimical witnesses with due caution and diligence. (**Ramashish Rai vs Jagdish Singh, (2005) 10 SCC 498**). In the facts and circumstances as discussed above, the possibility of false implication of the accused persons cannot be entirely brushed aside and the prudence demands that no conviction ought to have based upon such tainted version of the prosecution witnesses.

19. Another glaring irregularity the impugned judgment suffers from is that the examination of accused persons under section 313 Cr.P.C. by the Ld. Trial Court was also not in consonance with the actual spirit of the law. A very casual approach appears to have been taken by the Ld. Trial court and instead of putting specific and distinct questions to each of the accused persons, they were asked to answer similar questions in a bulk which did not enable the accused persons to explain the incriminating materials against them properly. Most importantly, none of the exhibited documents in the prosecution evidence was referred to the accused persons and they were debarred from offering any explanation against those incriminating documents appearing in evidence against them and such omission practically made the examination of the accused persons under section 313 Cr. P. C. defective and seriously caused prejudiced to the accused persons. Conviction based on the failure of the accused to explain what he was never asked to explain is bad in law. The impugned judgment suffers a setback on that score also.

20. In summing up, the impugned judgment of conviction and order of sentence as decided by the Ld. Trial Court is found to have suffered from serious impropriety and non application of judicial mind in appreciation of evidence in its proper perspective and therefore, unsustainable in the eye of law. The charge against the accused person could not be said to have been proved beyond all reasonable doubts with impeachable and clinching evidence and the accused person ought not to have been held

guilty of the offence. In the above premises, the impugned judgment of conviction and order of sentence is liable to be interfered with and accordingly set aside in exercise of the appellate jurisdiction of this court.

21. Therefore, the all the points framed for consideration are accordingly answered in the negative, decided and disposed of in favour of the appellant and against the respondents.

22. In the result, the present appeal succeeds.

23. Hence, it is

ORDERED

that the instant appeal being Criminal Appeal No. 02 of 2022 be and the same is hereby allowed on contest against the respondents but without any order as to costs. The impugned judgment of conviction and order of sentence 13.07.2022 as passed by Ld. Judicial Magistrate, 1st Court at Diamond Harbour in connection with GR Case No. 74 of 2014 is hereby set aside.

The appellant/accused person is found not guilty to the charge under sections 326 IPC and hereby acquitted from this case in terms of section 386(b)(i) Cr P.C.

The appellant/accused person is discharged from his bail bond and set at liberty at once.

The bail bond furnished by appellant in this case be treated as the bail bond furnished in compliance with the provision of section 437A CrPC and shall remain in force for a period of six months from the date of this judgment.

There being no seizure in this case, the court finds nothing to add on the score.

Let a copy of this judgment along with the Trial Court Record be sent down to the Court of Ld. Judicial Magistrate, 1st Court at Diamond Harbour for information and necessary action.

Let a copy of this judgment be forwarded to the Ld. Secretary, District Legal Services Authority, Alipore and the District Magistrate, South 24 parganas for informing the respondent no.1 about the fate of this case and also about his right to prefer appeal against the instant judgment and entitlement to receive free legal aid for the said purpose.

Typed and printed by me:

Sd/-
ADJ, FTC- III
Diamond Harbour,
South 24 Parganas

Sd/-
ADJ, FTC- III
Diamond Harbour,
South 24 Parganas