

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.A 416 of 2017

Surajit Bhunia

Vs.

The State of West Bengal & Ors.

For the Appellant:	Mr. Malay Bhattacharya, Adv., Mr. Pradip Paul, Adv., Mr. Subhrajyoti Ghosh. Adv.
For the Respondents:	Mr. Sourav Chatterjee, Adv., Ms. Aniruddha Bhattacharya, Adv.
For the State:	Mr. Ranabir Roy Chowdhury, Adv., Mr. Mainak Gupta, Adv.

Heard on: 13 December, 2021.

Judgment on: 21 February, 2022.

BIBEK CHAUDHURI, J. : –

1. This is an appeal against the judgment and order of acquittal passed by the learned Additional Sessions Judge, 1st Court at Contai in Criminal Appeal No.2 of 2016 reversing the judgment and order of conviction and sentence passed by the learned Judicial Magistrate, 1st Court at Contai in GR (E) Case No.79 of 2004 under Sections 148/323/34 of the Indian Penal Code.

2. The defacto complainant of G.R (E) Case No.79 of 2004 is the appellant before this Court.

3. The defacto complainant, namely, Surajit Bhunia lodged a complaint before the learned Sub-divisional Judicial Magistrate at Contai on 25th February, 2004 against six accused persons/private respondents stating, inter alia, that he was a member of the managing committee of Mokrapur Nilkanta Siksha Sadan during the year 2004. Sometimes in the last quarter of 2003, Test Examination of the students of Class-X to qualify for the Madhyamik Examination of 2004 was conducted by the school and as per the result, five students failed in the said test examination. As they were not qualified to appear in Madhyamik Examination of 2004, the said students filed an application under Article 226 of the Constitution. Over the said issue a meeting of the Managing Committee was convened on 13th February, 2004 in the evening. In the said meeting the defacto complainant and accused No.5 being the teacher representative of the managing committee were present along with other members. The accused No.6 brought accused No.1-5 who assembled on the veranda of the school at the time of commencement of the meeting. In course of the meeting the accused No.6 made some derogatory remarks. Over the said issue he was asked to tender his apology. At this the accused No.6 demanded that no meeting would be held as per the resolution of the President and the Secretary of the Managing Committee. When the informant protested against such unruly act and behaviour of accused No.6 he asked the informant to leave the meeting. The informant

and witness No.2 came out of the meeting room to ask accused No.6 the date when he intended to hold the said meeting. At this the accused No.6 became excited and pushed him holding his neck. He also ordered the other accused persons to kill the informant. Then accused No.3 assaulted the informant with the help of a *lathi* on his head causing bleeding injury on the back side of his head. The defacto complainant immediately sat down on the ground holding his injured head by his hands. Immediately thereafter accused No.6 kicked him on his chest. The informant had Rs.6000/- in the pocket of his shirt. The accused persons also assaulted him with the help of fists, blows and kicks. When his brother came to save the informant, the accused No.1 assaulted him with the help of a *lathi* on the left side of his head. Accused No.2 also assaulted him with the help of iron rod on his back. Other accused persons also assaulted the brother of the informant by fists, blows and kicks. The witnesses who were present there saved the informant and his brother from the hands of the accused persons. They were admitted to the hospital for medical treatment and subsequently referred to Contai Sub-divisional Hospital for better treatment.

4. The said complaint was lodged on 25th February, 2004. The learned Sub-divisional Judicial Magistrate, Contai sent the said complaint to the concerned P.S under Section 156(3) of the Code of Criminal Procedure as a direction to treat the same as FIR against the accused persons.

5. On the basis of the said complaint police registered Potashpur P.S Case No.11 of 2004 dated 22nd March, 2004 under Sections

147/148/323/325/307/379/34 of the Indian Penal Code against the accused persons. The investigation culminated in filing charge-sheet against the accused persons/private respondents.

6. The learned Judicial Magistrate, 1st Court at Contai conducted trial of the case and on conclusion of trial held the accused persons guilty for committing offence under Sections 148/323/34 of the Indian Penal Code. They were convicted and sentenced to suffer simple imprisonment for one year with fine and default clause for commission of offence punishable under Section 148 of the Indian Penal Code. They were also sentenced to suffer imprisonment for six months with fine and default clause for the offence committed under Sections 323/34 of the Indian Penal Code.

7. The respondents being aggrieved against the said judgment and order of conviction filed Criminal Appeal No.2 of 2016 in the 1st Court of the learned Additional Sessions Judge at Contai. In appeal, the judgment and order of conviction and sentence passed by the learned Judicial Magistrate, 1st Court at Contai was, however, reversed and the accused persons were acquitted from the charge.

8. Hence the instant appeal filed by the defacto complainant of G.R (E) Case No.79 of 2004.

9. During trial of the case prosecution examined as many as 17 witnesses. Amongst them the defacto complainant deposed as PW1. PW2 Sambhu Bhuniya is the brother of the defacto complainant. Both of them were injured on 13th February, 2004. PW3 Ardhendu Sk. Mondal, PW4 Bholanath Jana, PW5 Gour Hari Jana, PW7 Dibakar Bhunia, PW8 Subal

Ch. Jana are the local witnesses who claimed that they saw the incident of assault perpetrated upon PW1 and PW2 by the accused persons. They also claimed that they saved the injured persons from the hands of the accused persons and brought them to Patashpur P.S. It would not out of place to mention that PW6 Dhananjay Jana and PW9 Nishikanta Das did not support the prosecution case. While PW6 was declared hostile by the prosecution, PW9 stated that he does not know anything about the incident. PW10 Subal Chandra Bhuniya was the Secretary of the Managing Committee of the said school at the relevant point of time. PW12 Dr. Asish Ranjan Kuar and PW13 Dr. Sudhangshu Sekhar Patra are the Medical Officers who treated the injured persons on 13th February, 2004 and subsequently. During trial PW13 Dr. Sudhangshu Sekhar Patra was examined twice as also PW15. PW14 is a retired Sub-inspector of police. He was posted at Patashpur P.S on 22nd March, 2004. On that date he received the complaint under Section 156(3) of the Code of Criminal Procedure and registered Patashpur P.S Case No.11 of 2004 against the accused persons. PW16 is S.I Dulal Chakraborty who conducted investigation of the case. PW17 Dr. Pulak Deb was posted at Bangur Institute of Neuro Sciences as Assistant Professor on 27.02.2004 and 02.04.2004. On 27.02.2004 he medically examined Surajit Bhunia and Sambhu Bhuniya in the hospital. Again on 2.4.2004 he examined the above named patients in the hospital. PW16 Dr. Bhabani Prasad Bhattacharya is a Radiologist attached to Ultrasono Diagnostic Center at Tamluk. The accused persons/respondents were examined under Section

313 of the Code of Criminal Procedure. They pleaded innocence during their examination under Section 313. They also pleaded that they were falsely implicated in the case due to political rivalry.

10. On conclusion of trial, it was held by the learned Magistrate that the prosecution was able to prove by adducing satisfactory evidence that on 13th February, 2004 in the evening there was a meeting of the Managing Committee of Mokrapur Nilkantha Siksha Sadan High School. PW3 Ardhendu Sekhar Mondal further deposed that he was present in the said meeting because his daughter failed in the test examination in 2003 which was held by the school to qualify the candidates who would appear in the Madhyamik Examination of 2004. Accused Jagadish Giri did not deny his presence in the said meeting. Therefore, it was held by the learned Magistrate that the factum of holding a Managing Committee Meeting of the said school on 13th February, 2004 was proved by the prosecution.

11. The learned Magistrate further held that PW10 Subal Chandra Bhuniya was the Secretary of the Managing Committee of the said school at the relevant point of time. According to the learned Magistrate he was the disinterested witness. It is stated by him that on 13th February, 2004 the Managing Committee Meeting started at about 5 pm and it ended at 7 pm. After the said meeting fighting took place between the accused persons and PW1 and PW2 in the school ground.

12. The learned trial judge on careful consideration of the ocular testimony of PW1 and PW2 along with the evidence of the Medical Officers

came to the conclusion that the accused persons assaulted PW1 and PW2 on 13.02.2004 at the school premises after conclusion of Managing Committee Meeting. It is also held by the learned Magistrate that the prosecution was able to explain the delay in lodging the complaint. The incident took place on 13th February, 2004. Both PW1 and PW2 sustained injury in the said incident. They were under medical treatment. The informant lodged the complaint 12 days after the incident when he recovered from his illness. It also appears from the evidence that both PW1 and PW2 were admitted to Contai Sub-Divisional Hospital for ten days. They were discharged from the hospital on 23rd February, 2004. The written complaint was filed one day after the discharge of the PW2 from the hospital.

13. The learned Magistrate undoubtedly found certain contradictions and omissions in the evidence of the witnesses, but according to him, the said contradictions are absolutely minor in nature and the accused persons cannot get any benefit out of such contradictions and omissions.

14. Thus, the learned Magistrate held the accused persons guilty for committing offence under Section 148/323/34 of the Indian Penal Code and convicted and sentenced them accordingly.

15. In appeal, the judgment and order of conviction and sentence was reversed by the learned Additional Sessions Judge, 1st Court at Contai on the following grounds:

- i) Delay in lodging the complaint.
- ii) Contradictions in the evidence of the eye-witnesses.

- iii) Place of occurrence remain doubtful and it was not proved by the witnesses with absolute certainty.
- iv) The sketch map prepared by the Investigating Officer of the place of the occurrence is silent about the fact as to who identified the same.
- v) There is existence of counter case filed against the informant and his brother by accused Kalipada Punda and the witnesses on behalf of the prosecution failed to explain the injuries received by the accused in course of the same transaction.
- vi) The charge relates to the assault on PW1 Surajit Bhunia accused persons were not charged for committing assault to PW2 Sambhu Bhuniya.
- vii) The witnesses on behalf of the prosecution are interested witnesses and there is possibility of false implication of the accused persons.

16. Thus, the learned Additional Sessions Judge allowed the appeal, reversing the order of conviction and sentence and acquitted the accused persons.

17. Learned Advocate for the private respondents at the outset has challenged the maintainability of the appeal. It is submitted by him that the right to appeal is not a natural right of the appellant. It is the statutory right and an appeal lies only when statute provides for the provision to file appeal. According to the learned Advocate for the

respondents the Criminal Appeal No.2 of 2016 which was filed by the respondents assailing the order of conviction and sentence before the learned Additional Sessions Judge, 1st Court at Contai against the order of conviction passed by the learned Judicial Magistrate, 1st Court at Contai was under the provision of Section 374(3) of the Code of Criminal Procedure. Against the said judgment passed by the learned Additional Sessions Judge the appellant being the injured and victim of the case had the statutory right to prefer an appeal before this Court under the proviso of Section 372 of the Code of Criminal Procedure. But the instant appeal was filed under the provision of Section 378(4) of the Code of Criminal Procedure. The said provision is not applicable under the facts and circumstances of the case. Therefore, the instant appeal is not maintainable.

18. This court is not in a position to accept such argument advanced by the learned Advocate for the respondents at the time of final hearing of the appeal. It is found from the record that the appellant initially filed an application for special leave to appeal which was registered as CRM SPL No.69 of 2017. The said application was disposed of by a Coordinate Bench of this Court on 6th July, 2017 granting leave to the defacto complainant to prefer the appeal against the order of acquittal dated 12th April, 2017 passed by the learned Additional Sessions Judge, 1st Court at Contai.

19. Upon such order having passing by a Coordinate Bench of this Court the appellant filed the memorandum of appeal. The memorandum

of appeal was accepted and the appeal was admitted for hearing by an order dated 22nd August, 2017. Both the orders mentioned above have reached finality. The accused persons did not challenge the said orders before the Hon'ble Supreme Court. In view of such circumstances, the claim of the respondents that the appeal is not maintainable, does not hold any substance. Thus, this Court is of the view that the instant appeal is maintainable in accordance with law.

20. Learned Advocate for the respondents filed a server copy of the order passed in CRR No.1641 of 2017 dated 16th May, 2017 wherein an application under Section 401 read with Section 482 of the Code of Criminal Procedure filed by the present appellant was dismissed holding, inter alia, that the order passed by the learned Additional Sessions Judge, 1st Court at Contai in a Criminal Appeal No.2 of 2016 is appealable at the behest of the petitioner who is a victim under the proviso of Section 372 of the Code of Criminal Procedure. Thus, it is submitted by the learned Advocate for the respondents that the appellant knew before filing of an application for special leave to appeal under Section 378(4) of the Code of Criminal Procedure that he was required to present a memorandum of appeal under the proviso of Section 372 of the Code of Criminal Procedure. Therefore, the instant appeal is not maintainable.

21. It is not disputed that the rules of procedure are tools of dispensation of justice and substantial justice cannot be denied on improper applicability of procedural law. It is already recorded that the same Court which held that the instant appeal shall lie in accordance

with the proviso of Section 372 of the Code of Criminal Procedure, subsequently, allowed the application for special leave to appeal. On such leave having been granted, the appellant preferred the memorandum of appeal. Since the memorandum of appeal filed by the appellant was admitted by this Court for hearing, the respondents cannot raise technical objection regarding maintainability of the appeal.

22. In view of the above discussion, I hold that the instant appeal is maintainable.

23. The learned court of appeal held that the prosecution failed to explain delay in lodging complaint. Law is trite on this point that unexplained delay in lodging the FIR is fatal for the prosecution. Because law enjoins an obligation upon the defacto complainant to lodge complaint before the police at the earliest opportunity after the incident. In the instant matter the alleged incident took place on 13th February, 2004. It is not in dispute that both the informant and his brother were discharged from the hospital on 23rd February, 2004. Subsequently, on 25th February, 2004 they filed a complaint before the learned S.D.J.M, Contai. In the said complaint the informant stated that both he and his brother were hospitalised on being assaulted by the accused persons till 23rd February, 2004. Immediately after their discharge the informant lodged this complaint before the learned S.D.J.M, Contai.

24. On 25th February, 2004 the learned S.D.J.M, Contai transmitted the petition of complaint to Patashpur P.S directing the Offiecer-in-Charge to treat the same as FIR and register a specific case. Police received the

complaint on 22nd March, 2004 and registered Patashpur P.S Case No.11 of 2004 and took up the case for investigation. The learned Additional Sessions Judge held that there was unexplained delay of about 40 days in lodging the complaint by the defacto complainant. However, on fact there was delay of 12 days in lodging the complaint from the date of incident. The informant explained the delay in his petition of complaint. The medical papers exhibited during trial also suggest that the defacto complainant was discharged from the hospital on 23rd February, 2004. Between the date of incident and the date of discharge, the police did not take any step by recording statement of the defacto complainant to cause investigation of this case. Thus, there was practically delay of 12 days in lodging the complaint and the appellant satisfactorily explained the delay. The learned S.D.J.M also passed order on the date of filing of the complaint directing the Officer-in-Charge of Patashpur P.S to treat the petition of complaint as FIR and start a specific case against the accused persons. After the said order being passed by the learned S.D.J.M and the petition of complaint is dispatched, the defacto complainant has no obligation to explain the delay in registering the case by the Officer-in-Charge of Patashpur P.S. It is found from the record that the Officer-in-Charge of Patashpur P.S received the complaint on 22.03.2004 that is after about 28 days from the date of dispatching the FIR on the strength of the order passed by the learned S.D.J.M, Contai. Therefore, so far as the informant is concerned, he was under obligation to explain the delay in lodging the complaint up to the date when he filed the complaint before

the learned S.D.J.M, Contai. The informant satisfactorily explained the same. Therefore, a bald observation made by the learned Additional Sessions Judge that there was delay in lodging the complaint does not hold any ground under the facts and circumstances of this case.

25. According to the learned Additional Sessions Judge the witnesses on behalf of the prosecution failed to establish the place of occurrence where the alleged incident took place. So far as the place of occurrence is concerned it is found from the evidence of appellant that during the meeting respondent No.6, teacher-in-charge abused PW1 and his elder brother Sambhu Bhunia with filthy language. Then the accused No.6 left the meeting PW1 followed him. When PW1 asked accused No.6 about the next date of meeting, he pushed him holding his neck. Other accused persons had assembled on the varanda of the school. Under the instruction of accused No.6, Narayan Giri assaulted him on his head by a piece of wood. Accused Umapada Panda also assaulted him by a piece of wood from his behind on the back side of his head and PW1 sustained injury on his head. He raised hue and cry. Accused No.6 also snatched away sum of Rs.6000/- from his pocket. Other accused persons were also assaulted him by fists, blows and kicks. The accused persons also assaulted his brother Sambhu Bhunia when he came to save PW1. He also sustained bleeding injury on his head.

26. PW2 Sambhu Bhunia another injured also stated that the place of occurrence was on the varanda of the school.

27. So far as the names of the assailants, the evidence of PW1 and PW2, the two injured persons corroborates with each other. There is absolutely no contradiction between the evidence of PW1 and PW2. It is urged vigorously by the learned Advocate for the appellant that PW5 Gourhari Jana stated in his evidence that the incident took place on the adjacent ground of the school. Placing reliance on the above evidence of PW5 the learned Additional Sessions Judge in appeal held that the witnesses on behalf of the prosecution failed to prove the place of occurrence of the alleged incident. As the place of occurrence shifted from varanda of the school to the school ground, the prosecution case becomes doubtful. The learned Additional Sessions Judge, 1st Court at Contai failed to appreciate the evidence of the witnesses. It was stated by the PW1 during trial that on being assaulted by Narayan and Umapada with the help of lathi or wooden batam he fell down on the ground lying with face on the ground. He could not see if his brother was behind him or not. It is also stated by him that in order to save himself he tried to catch hold of the earth of the ground. From conjoint reading of the evidence of PW1 and PW5 it is ascertained that the incident of assault took place on the varanda of the school and it spreaded subsequently on the ground in front of the school. Therefore, there is no discrepancy between the evidence of PW1 and PW5 with regard to the place of occurrence.

28. Learned Judge in appeal disbelieved the case of the prosecution on the ground that over the selfsame incident accused Kalipada Panda filed a counter case against the defacto complainant and his brother and

witnesses on the allegation that some of the accused persons were also assaulted by them. The defacto complainant and the witnesses on behalf of the prosecution failed to explain the injury received by the accused persons during the course of incident. The learned Judge failed to consider the decision of the Hon'ble Supreme Court in **Dhananjay Shanker Shetty vs. State of Maharashtra** reported in **(2002) 6 SCC 16** where the Supreme Court held that non-explanation of injuries of the accused persons assumes significance when there are material circumstances which make the prosecution case doubtful. It is well settled that merely because the prosecution has failed to explain injuries on the accused persons, ipso facto, the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by eye-witnesses, including injured ones as well, and their evidence is corroborated by medical evidence as well as objective finding of the Investigating Officer. The decision of the Hon'ble Supreme Court in **Amar Malla vs. State of Tripura, (2002) 7 SCC 91** and **Ram Avtar vs. State of U.P, (2003) SCC (Cr) 1404** may also be relied on in this regard. The learned Judge in the Court of Appeal failed to consider that the accused persons did not state anything about receiving injury in course of incident during their examination under Section 313 of the Cr.P.C. The learned Judge also failed to consider that the accused persons did not adduce any evidence in support of their defence that they were assaulted by the defacto complainant and the witnesses.

29. There is also no reason to discard the evidence of PW3 on the ground that he was an interested witness in view of the fact that his daughter failed in the test examination of 2003 and he had grudge against accused Jagadish Giri who was the teacher-in-charge at the relevant point of time. His presence near the scene of occurrence is very natural because he was interested to know the outcome of the meeting which was held on 13th February, 2004. The learned Judge had also no reason to discard the evidence of witness No.4, 8 and 10 on the ground that they are chance witnesses. On the contrary, this court is of the opinion that presence of witnesses No.4, 8 and 10 was very natural on the date and time of occurrence.

30. From the evidence of PW12 Dr. Asish Ranjan Kuar who was posted as Block Medical Officer of Health at Patashpur BHPC on 13th February, 2004 it is ascertained that he medically examined PW1 and PW2 on the date of occurrence at about 8.35 pm. In the injury report he recorded the history of injury to the effect that PW2 was assaulted by, Kalipada Panda, Umapada Panda, Kanai Prodhan and others and PW1 was assaulted by Narayan, Umapada and others. Therefore, the earliest version of the witnesses before the Medical Officer corroborates with their ocular testimony.

31. Last but not the least, I am also not in a position to accept the reason assigned by the learned Judge, 1st Court of Appeal that the witnesses on behalf of the prosecution could not explain how they could identify the accused persons when the incident took place at about

7/7.30 pm and there was no electricity in the said locality. Such reasoning falls flat because the witnesses stated that accused Jagadish Giri came out from the meeting room with a chargeable light and the witnesses could identify the accused persons in the said light. No cross examination was made to the effect that accused Jagidish had no chargeable light in his hand at the time of occurrence.

32. For the reasons recorded above, I am not able to concur with the findings made by the learned Additional Sessions Judge, 1st Court at Contai in Criminal Appeal No.2 of 2016. The material evidence on record in the form of deposition and the documentary evidence, specially the medical examination reports of the injured persons, namely, Surajit Bhunia and Sambhu Bhunia are proved through cogent evidence. They correlate and connect the material particulars regarding the commission of assault purported by the private respondents upon the injured. There is no reason to denounce the evidentiary value of the depositions adduced by the witnesses and the expert's report, viz, medical document. It is needless to say that there are certain contradictions in the evidence of the witnesses who saw the incident but those contradictions are not worthy enough to dislodge the credibility of the testimony of the witnesses. Therefore, in my considered view the learned Judge in 1st Appellate Court erred in appreciation of fact placed before the court by way of ocular testimony as well as the documentary evidence. Improper appreciation of evidence led him to apply the judicial precedents in wrong perspective. Therefore, the judgment and order of acquittal passed by the learned

Additional Sessions Judge, 1st Court at Contai in Criminal Appeal No.2 of 2016 is liable to be set aside and the order of conviction passed by the learned Judicial Magistrate, 1st Court at Contai be restored.

33. However, it is a point of concern that the learned Magistrate convicted the accused persons under Sections 148/323/34 of the Indian Penal Code.

34. Section 148 is a penal provision for rioting, armed with deadly weapon. The precondition to attract Section 148 is commission of offence of rioting which is defined in Section 146 of the Indian Penal Code as hereunder:-

Rioting.—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Unlawful assembly is defined in Section 141 of the Indian Penal Code. The concept of an unlawful assembly has two elements:- (i) The assembly should consist of at least 5 persons : and (ii) They should have a common object to commit an offence or at the any one of the objectives enumerated therein. For recording a conclusion, that a person is guilty of the offence under Section 148 of the Indian Penal Code, it must first be proved that such person is a member of unlawful assembly consisting of not less than five persons irrespective of the fact whether the entity of each one of the five persons is proved or not. If that fact is proved, the next step of judicial inquiry is whether the common object of the unlawful

assembly is one of the five enumerated objectives specified under Section 141 of the Indian Penal Code.

35. From the four corners of the evidence I do not find that the accused persons formed unlawful assembly under the instruction of accused Jagadish Giri with deadly weapons. There is no evidence to the effect that any of the witnesses saw the accused persons forming and assembling with deadly weapons. The injured persons were assaulted by lathi and wooden batam. The said two blunt objectives cannot be held to be deadly weapons by the manner in which the said lathi or wooden batam was used by the accused persons.

36. Therefore, I am of the view that the learned Magistrate was wrong in convicting the accused persons/respondents under Section 148 of the Indian Penal Code.

37. However, the evidence on record irresistibly proves that the private respondents committed offence under Section 323/34 of the Indian Penal Code and they were rightly convicted.

38. Now comes the question of sentence. For the offence punishable under Section 323/34 of the Indian Penal Code the learned Magistrate, 1st Court at Contai imposed simple imprisonment for six months each and a fine of Rs.1000/- each.

39. The incident took place in 2004. The respondents are facing trial for almost 18 years. During this period they spent many sleepless nights. It is the solemn duty of the court to strike a proper balance, while awarding sentence between the gravity and nature of the crime, role of the accused

persons and the exploitation of the society that a wrongdoer should be adequately punished by the court of law. Justice must be done tempered with mercy. Litigation is going on for last 18 years, this Court is of the view that sentence of adequate fine shall be the just and proper punishment under the facts and circumstances of the case.

40. For the reasons stated above the instant appeal is allowed.

41. The judgment and order of acquittal passed by the learned Additional Sessions Judge, 1st Court at Contai in Criminal Appeal No.2 of 2016 is set aside.

42. The order of conviction passed by the learned Magistrate, 1st Court at Contai in GR (E) Case No.79 of 2004 under Section 323/34 of the Indian Penal Code is set aside.

43. The private respondents No.2-7 are sentenced to pay fine of Rs.1000/- each, in default to suffer simple imprisonment for three months each for the offence under Section 323 read with Section 34 of the Indian Penal Code.

44. The respondents No.2-7 are directed to surrender before the trial court to suffer sentence within three weeks from the date of communication of this order.

45. The instant appeal is thus, disposed of, on contest.

46. Let a copy of this judgment be sent to the court below along with the lower court record.

(Bibek Chaudhuri, J.)