

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 564 of 2010

Biswatosh Mondal & Ors.

-Versus-

The State of West Bengal

For the Appellant : **Mr. Q.A.M Firoz,
Ms. Torsa Min Bahar,
Ms. Shreya Srivastava,
Mr. Shibotash Naskar,
Mr. Debjit Ghosh.**

For the State : **Mr. Sanjay Bardhan,
Mr. Pravas Bhattacharya.**

Hearing concluded on : **12.06.2025**

Judgment On : **20.06.2025**

Prasenjit Biswas, J:-

1. The impugned judgment and order of conviction passed by the learned Additional Sessions Judge, Fast Track Court-II, Baruipur, South 24 Parganas dated 11th May, 2010 in S.T. Case No. 10(4)2009, S.C. No. 45(3)/2007 is assailed in this appeal on behalf of the appellants/convicts.

- 2.** By passing the impugned judgment and order these appellants are found guilty for commission of offence punishable under Section(s) 448/323/34 of the Indian Penal Code and sentenced to suffer simple imprisonment for six months each for the offences punishable under Section 448 of the Indian Penal Code and they are also sentenced to suffer simple imprisonment for another one year each for the offence punishable under Section 323/34 of the Indian Penal Code. But the accused persons namely, Sukumar Mondal and Dipankar Naskar are found not guilty to the charge under Sections 448/307/354/334 of the Indian Penal code and they are accordingly acquitted from the case.
- 3.** Being aggrieved and dissatisfied with the impugned judgment and order of conviction passed by the learned Trial Court, the present appellants have preferred this instant appeal.
- 4.** During pendency of this appeal the appellant-convict no. 1, Biswatosh Mondal was expired on 18.04.2024 and the appeal stood abated against him.
- 5.** In short campus the story of the prosecution is that:

“One Binoy Bhusan Dey, husband of the victim lodged a written complaint before Kolkata Leather Complex Police Station stating interalia, that they are the tenants under Gopal Mondal having residence at Bamanghata. On 05.07.2005 at about 9.30/10A.M. the accused persons committed criminal trespass by entering into his tenanted room and dragged his wife after covering her throat with cloth from the tenanted room to the house of the accused Biswatosh Mondal. The accused persons closed the gate with lock and bind the victim at

the jackfruit tree with rope and thereafter she was assaulted by Biswatosh Mondal and his wife Anima Mondal with bamboo stick on her person. The other accused persons who were present at the spot told Biswatosh and his wife to murder the victim. It is further stated that at the relevant point of time this de-facto complainant was not present at the spot and he stayed at fishery. It is said that the accused Biswatosh Mondal and his wife Anima Mondal also outraged the modesty of his wife by tearing her wearing apparels. Thereafter, Gopal Mondal and his children informed the incident to Nemai Naskar at Bamanghata Bazar and thereafter, the owner of the fishery namely, Nemai Naskar along with others went to the house of the Biswatosh Mondal and rescued the victim when she was tied up with jackfruit tree and took the victim at Bamanghata Bazar and handed over her to this de-facto complainant. It is said that if Nemai Naskar did not rescue the victim then Biswatosh Mondal and his wife would kill her”

6. Over the complaint made by the de-facto complainant a case was started by the Kolkata Leather Complex Police Station Case being no. 55 dated 05.07.2005 under Sections 448/354/325/307/32 of the Indian Penal Code against the accused persons. After completion of investigation charge-sheet was submitted by the prosecution agency against the accused persons under sections 448/354/325/307/34 of the Indian Penal Code.
7. The learned Trial Court framed charge against all the accused persons under sections 448/307/34/354 of the Indian Penal Code on 21.04.2009 which was read over and explained to the accused persons and in reply they pleaded not guilty and claimed to be tried.

8. In order to prove the substance of the case as made out in the written complaint the prosecution has cited 12 witnesses in this case. Documents were marked as exhibits on its behalf. Neither any oral nor documentary evidences whatsoever has been adduced on the side of the accused persons in order to prove the defence case.
9. Ms. Torsa Min Bahar, learned Advocate appearing on behalf of the appellants said that there are irregularities and illegalities in the statements made by the witnesses in this case and it would be appeared after proper assessment of evidences on record. It is further said that the prosecution has completely failed to bring home the charges levelled against the appellants. It is said by the learned Advocate that no paper has been seized/produced before the Court in support of tenancy by the de-facto complainant and his wife (victim) under Gopal Mondal, inhabitant of Bamanghata and no reasonable and cogent explanation has been given by the prosecution as to why the victim and her husband used to reside as tenants under Gopal Mondal, though it is said by them that this de-facto complainant is the owner of a residence located at Kolkata where their sons have been residing. The learned counsel further submitted that although it is the case of the prosecution that the victim had been dragged by the accused persons after covering her cloth on her throat from her rented room to the house of the accused Biswanath Mondal but the Investigating Officer did not seize the cloth and no reasonable explanation has been given on the side of the prosecution for non-seizing of the cloth/wearing apparels of the victim on the alleged date of incident and said cloth is very much important and vital in this case. So, adverse inference may be drawn in favour of the prosecution.

- 10.** Learned Counsel further said that PW10 namely, Jyostna Mondal, a neighbour has stated in his evidence that there was monetary dispute in between accused persons and the de-facto complainant and the victim and as such, out of rancour the de-facto complainant lodged the written complaint by alleging false alleged incident against these accused persons in order to avoid the repayment of loan which was given by the accused Biswatosh Mondal to him. The attention of this Court is drawn by the learned Advocate to the deposition of PW2 (victim) that she was taken to Hatishala Hospital and thereafter shifted to R.G. Kar Medical College and Hospital for treatment by her two sons. In cross-examination, this witness stated that they have their own house at Dumdum where their two sons were residing with their family. So, the sudden presence of their sons at place of occurrence as stated by PW2 is hardly to believe. It is said by the learned Advocate that the prosecution has hopelessly failed to bring home the charge levelled against the accused persons and there are apparent contradictions and omissions in the depositions of prosecution witnesses. So, it is prayed that the impugned judgment and order of conviction passed by the learned Trial court may be set aside.
- 11.** Mr. Sanjay Bardhan, learned Advocate for the State said that the oral testimony of the de-facto complainant (PW1) was corroborated by the other witnesses in order to prove the contents of the written complaint. It is said by the learned Advocate that PW2 (victim), PW3 (Nemai Naskar) have also supported the testimony of PW1/de-facto complainant in verbatim. Learned Advocate further said that PW7 and PW8 who are the independent witnesses to the incident also corroborated the statement made by the de-facto

complainant (PW1) in regard to the fact that these accused persons committed serious trespass by entering into his rented room and dragged her wife by covering her throat and took her to the house of the accused Biswanath Mondal and thereafter she was assaulted by all the accused persons after binding her with a jackfruit tree with rope and for the reason the victim sustained injuries on her person and she was taken to hospital for treatment. It is said by the learned Advocate that the injury report (Exhibit 3) also supports the fact that these accused persons assaulted the victim with intention to murder her. The attention of this Court is drawn by the learned Advocate for the State to the exhibits 3 and 5 as well as to the depositions made by PW1, PW2, PW3 and PW8. The attention of this Court is further drawn by the learned Advocate to the deposition of PW6 (doctor) who treated the victim and also to PW11, another doctor in respect of treatment of the victim. So, it is said by the learned Advocate that the oral testimony as well as the documentary evidences available on record indicate that the prosecution has successfully proved the charge levelled against these accused persons. As per submission of the learned Advocate the present appeal is devoid of any merit and as such, it may be rejected outright and the impugned judgment and order of conviction passed by the learned Trial Court may be affirmed.

- 12.** I have considered the rival submissions advanced by both the parties and have gone through all the materials on record.
- 13.** PW1, Binoy Bhusan Dey (husband of the victim/de-facto complainant) in his evidence has stated that at the time of hearing of incident he was at his working place at fishery of Haripotha and his wife (victim) used to live in the house of PW8 (Gopal Mondal) as a tenant. This witness said that the incident

took place on 05.07.2005 at about 9/10 A.M. and on that date the accused persons namely, Biswatosh Mondal, Anima Mondal, Tara Rani Sardar taking the advantage of his absence entered into that rented house and dragged his wife from his house to the house of Biswatosh Mondal by binding cloth on her throat. It is further said by the witness that the victim was tied up at the jackfruit tree with rope and thereafter, she was assaulted by Biswatosh Mondal, Anima Mondal, Tara Rani Sardar, Dipankar Naskar, Sukumar Sardar with bamboo sticks and wooden sticks. It is said by this witness that he heard that incident. This PW1 was not present on the spot at the relevant point of time when the alleged incident took place. Moreover, it is said by this witness in the written complaint that the accused Biswatosh Mondal and the victim forcibly entered into his rental house. So, the statement made by this PW1 that the accused persons namely, Biswatosh Mondal, Anima Mondal along with Tara Rani Sardar entered in his house which is contrary, to the statement made in the written complaint by this PW1.

- 14.** This PW1 has said that family members of PW8 (Gopal Mondal) informed the matter to Bamanghata Bazar and thereafter, owner of the fishery namely, Nemai Naskar (PW3) rescued the victim from the clutches of the accused persons. But PW3 (Nemai Naskar) in his deposition stated that he got information from Gopal Mondal (PW8) that the wife of the de-facto complainant was assaulted by the accused persons.
- 15.** This PW1 has stated in his evidence that at first the victim was taken to Hatishala Primary Health Centre for her treatment and from there she was taken to R.G. Kar Medical College and Hospital by his two sons namely, Bijan Dey and Srijan Dey but the said Bijan Dey and Srijan Dey are not cited to the

witness of the prosecution. PW1 further said in his evidence that on getting information he found his wife (victim) at Bamanghata Bazar with bleeding injury on her person but the medical document (Exhibit 3) does not disclose any type of bleeding injury. Exhibit 2/2 which is the seizure list was made in the presence of the witnesses Gopal Mondal and Binoy Bhusan Dey. The said Gopal Mondal is the landlord of the rented house in which this PW1/de-facto complainant and his wife used to reside and Binoy Bhusan Dey himself is the husband of the victim and the de-facto complainant of this case. So, it can be said that those witnesses to the seizure are interested witnesses. This PW1 in his deposition has stated that all the accused persons dragged the victim from the house of the accused Biswanath Mondal by binding cloth on her throat. But no cloth was seized by the Investigating Officer during course of investigation.

- 16.** It is said by the de-facto complainant (PW1) that he took his wife (victim) to Hatishala Health Centre and from there the victim was brought to R.G. Kar Hospital by their two sons and stated in cross-examination that both of his sons were residing in his own house with their family at Dumdum Nager Bazar (Khudiram Colony), but the victim (PW2) in his evidence has stated that she was brought by her two sons. This PW2 stated in the same line of PW1 that they have their own house at DumDum consisting of two storied building where their two sons were residing with the family. PW1 and PW2 failed to state anything regarding sudden presence of their sons at the place of occurrence. PW1 stated that the victim was at first taken by him to Hatishala Primary Health Centre for her treatment and from there she was taken to R.G. Kar Medical College and Hospital. But the victim (PW2) in her cross-

examination said that she stated to the police that she was taken to Jirangacha Hospital but at the time of examination-in-chief she told that she was taken to Hatishala Primary Health Centre.

17. PW1 and PW2 has stated in their evidences that at the relevant point of time they were tenants under PW8, Gopal Mondal of Bamangatha. PW2, in his evidence has stated that she had no document to show that he was tenant under PW8 at the material point of time. Investigating Officer did not collect any document regarding this tenancy of the de-facto complainant and the victim under PW8 during course of investigation. PW2/victim in cross-examination has stated that before going to deposition before the Court she narrated the incident to Nemaï Naskar (PW3) and Gopal Mondal (PW8). In cross-examination, this PW2 stated that she is an illiterate lady and did not know the name of English Calendar month. But in examination-in-chief, this PW2 said that the incident took place on 5th day of July. So, the fact that this victim did not know the name of English calendar month is not true as it appears from her cross-examination.
18. PW3, Nemaï Naskar, employer of PW1 (de-facto complainant) said that he was not present at the time of incident and he got information from PW8 that the accused Binoy Bhusan Dey and his wife (victim) was assaulted by the accused Biswatosh Mondal and the present convict-appellants after binding her with the jackfruit tree at the house of the accused Biswatosh Mondal. So, this witness did not see the incident and he heard it from PW8, Gopal Mondal. This PW3 further said in his deposition that he also heard when he reached to the place of occurrence that the accused persons uttered the word by saying “murder the victim” but the persons who uttered such words have not been

specifically mentioned by this witness. It is admitted by this PW3 that the distance between the place of occurrence and his residence is about two kilometres.

- 19.** PW4, Sulata Mondal (wife of PW8) and PW5, Minoti Jana inhabitants of Bamanghata as well as the neighbour of PW8 were declared hostile by the prosecution and cross-examined them. But nothing has come out from such cross-examinations which may help the prosecution to prove its story.
- 20.** PW7, Mampi Sarkar, another neighbour of the landlord Gopal Mondal (PW8) has stated in his evidence that at the time of incident the victim was busy for cooking food at veranda at the tenanted room and she was standing in the courtyard in front of the veranda of the said rented room which is contrary to the statement made by this witness before the police recorded under Section 161 Cr.P.C. This PW7 said that she found the accused Anima Mondal after wrapping the cloth of wife of the de-facto complainant around her throat dragged her by continuous beating. This witness further said that she also found the accused Biswatosh Mondal, Anima Mondal, Tara Rani Sardar took the victim forcibly from the veranda and dragged and beat her continuously. But, the statement made by this witness regarding biting the victim continuously was not mentioned either by PW1 (de-facto complainant) and PW2 (victim). This PW7 stated in his evidence that she cannot say the name of the neighbours residing in the locality of Gopal Mondal, the landlord of the de-facto complainant and the victim as because he did not mix up any of the neighbours of that locality. But in cross-examination, this PW7 stated that she knew the accused Biswatosh Mondal, Anima Mondal, Tara Rani Sardar as neighbours prior to the incident. This PW7 failed to identify all the accused

persons except Biswatosh Mondal, Anima Mondal. This PW7 said that she heard subsequently that all the accused persons assaulted the wife of the de-facto complainant (PW1) after binding her into the tree.

21. PW8, Gopal Mondal is the landlord under whom PW1 (de-facto complainant] and the victim were the tenants. This PW8 said that he heard from Nemai Naskar (PW3) that the victim was assaulted by all the accused persons. So, what he said about the incident is purely hearsay evidence. In cross-examination, this PW8 said that he did not hand over any papers to police in support of tenancy of the de-facto complainant and the victim at the relevant point of time. PW8 further said at the time of giving deposition that the accused Anima Mondal dragged the victim by keeping 'achal' of her saree (wearing apparels) after covering the same around her throat. But astonishingly the said wearing apparel (saree) of the victim was not seized by the Investigating Officer.
22. PW10, Jyostna Mondal, the neighbour of the victim clearly stated that she did not know anything regarding incident. This PW10 further said that she heard earlier that there was monetary dispute in between the accused persons and the de-facto complainant (PW1) and his wife (victim).
23. PW6, Dr. Abhijit Purkait who treated the victim proved the injury report which is marked as exhibit 3 in this case. This PW6 said that the injuries mentioned therein, whether it was simple or grievous could not be ascertained without x-ray and other investigations. In cross-examination, this PW6 stated that this type of injuries mentioned in exhibit 3 may be caused due to falling on rough, hard and blunt substance and the said injury report the names of the assailant had not been mentioned. This PW6 admitted in cross-examination

that the bruise and abrasion as mentioned in the exhibit 3 is simple in nature.

- 24.** PW11, Dr. Gour Gopal Poddar who treated the victim stated that he did not mention in his report (exhibit 5) regarding the injury sustained by the victim. As per opinion of this witness the injury sustained by the victim is simple in nature. I have already said that PW1 stated in his evidence that he found his wife (victim) at Bamanghata Bazar with bleeding injury on her person. Neither exhibit 3, nor exhibit 5 has disclosed anything about the bleeding injury on the person of the victim. Moreover, PW6 and PW11, the doctors who treated the victim also did not state anything that the victim was admitted into the hospital with bleeding injury.
- 25.** PW12, Ashok Taru Mukherjee, S.I. of Police and Investigating Officer of the case said that after completion of the investigation he submitted charge-sheet against the accused persons. It is said by this witness that one nylon rope and one broken bamboo stick were seized by him by preparing seizure list in presence of PW8 and PW1. I have already said that PW2 (victim) said that all the accused persons dragged her from the rented house by covering her cloth on her throat to the house of the accused Biswatosh Mondal but the said cloth was not seized by the Investigating Officer and no explanation was given for non-seizing the cloth in this case. In cross-examination, this witness said that the date of birth of the informant and the thumb impression and signature of the complainant in column No. 14 in formal FIR has been kept blank. This witness failed to give any explanation regarding keeping blank of the aforesaid columns in the formal FIR. It is admitted by this witness that he

did not seize any rent receipt from the landlord (PW8) under whom PW1 and PW2 were tenant. It is also admitted by this witness that he did not collect any x-ray report of the victim to ascertain the gravity of injury sustained by her. This PW12 stated that he did not make any investigation as to how and by whom the victim was taken to Jirangacha Primary Health Centre. Moreover, this witness admitted that he did not collect any paper to show that PW3 (Nemai Naskar) was the owner of veri (fishery) at the relevant point of time. This PW12 said that PW3 (Nemai Naskar) did not make any statement before him at the time of interrogation that the accused persons uttered the words "murder the victim".

26. Although, it is said by PW1 and PW2 that at first the victim was taken to primary health centre and thereafter, she was shifted to R.G. Kar Medical College and Hospital but no witness corroborated this statement made by PW1 and PW2. Moreover, this PW12 said that he did not examine any Doctor of Jirangacha Primary Health Centre and R.G. Kar Medical College and Hospital and recorded their statement. This PW12 further said that PW7 did not make any statement before him that at the time of incident victim was engaged of cooking at the veranda of her tenanted house. It is said by this witness that PW7 did not make any statement before him that he heard subsequently that all the accused persons after binding the victim into one tree caused hurt to her with bamboo stick.

27. So, it is apparent from the above statements made by this witnesses that there are contradictions and omissions in the evidences led by the prosecution. As per statement of PW10 there is a monetary dispute in between the appellants and the victim and her husband. It is said by PW1

that the accused Biswatosh Mondal took loan from him but he did not pay the same. So, there is a previous monetary dispute in between the parties and as such, there is a chance of false implication of these appellants with the present case. On proper appreciation of evidences which were brought on record by the prosecution as well as after considering the medical documents it appears that the prosecution has hopelessly failed to prove the charge levelled against these accused persons without any shadow of doubt.

- 28.** In view of the above facts and circumstances and discussion made above I am of the opinion that the prosecution has hopelessly failed to prove the charge levelled against the appellants and as such, the impugned judgment and order of conviction passed by the learned Trial Court dated 11th May, 2010 in connection with S.T. Case No. 10(4)/2009, S.C. No. 45(3)/2007 is liable to set aside.
- 29.** Accordingly, the present appeal be and the same is hereby **allowed**.
- 30.** The impugned judgment and order passed by the learned Trial Court dated 11th May, 2010 passed in connection with S.T. Case No. 10(4)/2009 and S.C. Case No. 45(3)/2007 is hereby set aside.
- 31.** These accused persons are on bail. They are released from bail bonds and be set at liberty, if not wanted in connection with other case.
- 32.** Let a copy of this order along with T.C.R. be sent down to the Trial Court immediately.
- 33.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)

