

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

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 539 of 2017

Sambhu Das @ Shambhu Das & Ors.

Versus

The State of West Bengal & Another

For the Petitioner : Mr. Amarta Ghose, Adv.
Mr. Sujon Chatterjee, Adv.
Mr. Rohan Bavishi, Adv.

For the State : Ms. Faria Hossain, Ld. APP
Ms. Suparna Chatterjee, Adv.

Heard on : 29.01.2026

Judgment on : 06.02.2026

Ajay Kumar Gupta, J.:-

1. The instant Criminal Revisional application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') has been preferred by three convicts, namely, Sambhu Das @ Shambhu Das, Pintu Mukherjee and Prasanta Pakray @ Prasanta Pakraz @ Shibu, challenging the correctness, legality and propriety of the impugned judgment dated 15.12.2016 passed by the Learned Additional Sessions Judge, Fast Track 2nd Court, Sealdah, South 24-Parganas in Criminal Appeal No. 28 of 2016 whereby and whereunder the Learned Judge affirmed the judgment dated 17.05.2016 passed by the Learned Judicial Magistrate, 6th Court, Sealdah, South 24-Parganas in connection with GR Case No. 2370 of 2005/T.R. No. 321 of 2006 arising out of Narkeldanga P.S. Case No. 451 of 2005 dated 31.12.2005 under Sections 341/323/114 of the Indian Penal Code (in short 'I.P.C.').
2. By the said judgment, the learned Trial Court convicted the above three accused persons under Section 323 of the I.P.C. and sentenced them to suffer simple imprisonment for six months and to pay a fine of Rs. 1,000/- each; in default, to suffer further imprisonment of one month.

FACTS OF THE CASE:-

3. The brief facts, leading to filing of this instant Criminal Revisional application, are that an FIR being Narkeldanga P.S. Case No. 451 of 2005 dated 31.12.2005 under Sections 341/323/114 of the I.P.C was registered when a written complaint was lodged by the de-facto complainant/victim/opposite party no. 2, Jogindar Chowdhury, to the effect that on 30.12.2005 at about 9:30 pm, the accused persons came to his shop and demanded a packet of cigarette, however, the victim made them wait for some time as he was occupied. However, the accused persons became furious and started abusing him in filthy language, and when he raised a protest, suddenly the accused persons caught hold of his shirt, wrongfully restrained him and assaulted the victim with fists and blows. As a result, the victim sustained injuries on his person. He was removed to N.R.S. Hospital for treatment.
4. Upon completion of investigation, a charge sheet, being No. 4 of 2006 dated 15.01.2006, has been submitted against the accused persons for commission of offence punishable under Sections 341/323/114 of the IPC. Subsequently, the accused persons faced trial after pleading not guilty and claiming to be tried.
5. The prosecution has examined PWs. 1 to 6 and exhibited several documents. Exhibit nos. 1 to 3 were the Signature of the de facto

complainant taken at the time of making the FIR, the Injury Report and the formal FIR. Subsequently, after the conclusion of evidence, the accused persons were examined under Section 313 of the Cr.P.C., where they pleaded innocence. However, they did not adduce any defence witness. The learned Trial Court, after considering and analysing the evidence, especially oral and documentary evidence, finally concluded that the accused persons are found guilty of offences punishable under Section 323 of I.P.C. and convicted as aforesaid.

- 6.** Being aggrieved by and dissatisfied with the said judgment, the accused persons preferred an appeal before the Appellate Court. However, the learned Judge, without considering the contention of the appellants, affirmed the judgment of the learned Trial Court, though the judgment was contrary to the law and was not based on the substantive evidence.
- 7.** Feeling aggrieved with the said judgment, all three convicts have filed this Revisional application.
- 8.** At the very outset, it is appropriate to mention that two of the three accused persons, namely, Pintu Mukherjee, expired on 21.10.2024, and Sambhu Das @ Shambhu Das expired on 29.06.2018 during pendency of this application. Accordingly, their cases have been

abated. At present, only one convict, namely, Prasanta Pakray @ Prasanta Pakraz @ Shibu, contests the case.

SUBMISSION ON BEHALF OF THE PETITIONER: -

9. Learned counsel appearing on behalf of the present petitioner vehemently argued and submitted as follows:
 - a. The Trial Court and the Appellate Court erred in law as well as fact while deciding that the present petitioner has committed an offence punishable under Section 323 of I.P.C. without any valid evidence.
 - b. The Trial Court as well as the Sessions Court failed to assess that there was no common intention among themselves while committing the alleged offence of assault.
 - c. From the FIR itself, it does not reflect the overt act committed and solely attributed to the present petitioner. Everywhere the injured has deposed that all the three accused persons have assaulted him with fists and blows, and this allegation is general, vague and omnibus. In such a general and omnibus allegation, all the accused persons cannot be convicted and punished accordingly without proving their common intentions. For proving the offence under Section 323 of I.P.C., the prosecution must prove the ingredients of the offence against the present petitioner, but the Trial Court did not consider it. The names of the accused persons

who allegedly assaulted the victim are not reflected in any of the exhibited documents, including the exhibited medical document.

- d.** PW 2/the Doctor has mentioned the names of the accused persons during examination in Court for the first time, but the same is not corroborated in the medical documents. In fact, the doctor himself has also admitted that such an injury could have been suffered due to a fall on the ground.
- e.** The prosecution also could not prove the place of occurrence to be the shop of the victim. The deposition of the prosecution witnesses does not corroborate the actual place of occurrence. Therefore, when the place of occurrence is not fully proved, the entire case would be washed out by the prosecution witnesses, who are claiming to be eye and injured witnesses.
- f.** The victim himself did not specify either in the FIR or in the evidence as to who had particularly assaulted him; he only told in general that all the accused persons assaulted him. Though none of the local witnesses supported his version. PW 4 has not supported the prosecution witness and flatly refused to say anything against the present petitioner, though the prosecution did not declare him or pray before the Trial Court to declare him as a hostile witness. All these facts have created doubt about the original incident. There are several contradictions and

inconsistencies in the evidence of the PW 1 and PWs 2, 3, and 5. Accordingly, the conviction and sentence are unsustainable and same is liable to be set aside.

SUBMISSION ON BEHALF OF THE STATE: -

10. On the other hand, learned counsel appearing on behalf of the State submitted that the prosecution was able to prove the case in positive by substantive evidence against the present petitioner. The PW 1 who is the injured himself narrated the entire incident which occurred on the date of incident and specifically deposed that all the three accused persons have assaulted him with fists and blows and due to such assault, he suffered injuries and was treated in the NRS Hospital, and the doctor supported the same so they were rightly convicted under Section 323 of IPC and sentenced them as aforesaid. They are liable to suffer such a sentence. Accordingly, the instant Revisional application is liable to be dismissed.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:-

11. This court has carefully heard the arguments and submissions of the learned counsels for the parties and upon careful perusal of the entire evidence, this Court finds that the allegation of the de facto complainant against the petitioner and other accused persons is that they came to his shop and demanded a packet of cigarettes, but they were asked to wait by the victim/de facto complainant for some time

as he was busy then. But, the accused persons became furious and started abusing the victim in filthy languages and when he raised a protest, suddenly the accused persons caught hold of his shirt, wrongfully restrained him and assaulted the victim with fists and blows and broke his spectacles. As a result, the victim sustained injuries on his person and, accordingly, he was taken to N.R.S. Hospital for treatment. It was further alleged that they took away the money, which he had in his pocket.

- 12.** P.W. 1 also deposed that he went to the NRS Hospital for his treatment, and after receiving treatment, he went to Narkeldanga P.S. in the same night and lodged a complaint against the accused persons. In the complaint, he has stated he was taken to NRS Hospital for treatment, but did not state the name of the person who took him to the hospital. No specific role is attributed to the present petitioner. A general allegation has been made against the present petitioner for assaulting him with fists and blows, along with other persons. Rather, on the other hand, P.W. 1 stated in his cross-examination that the accused Pintu had pulled him outside his shop by dragging him by his shirt collar, after which they all assaulted him. Whereas in the FIR he had stated that all accused persons caught hold of him by his shirt and assaulted him with fists and blows. There are no specific allegations against the present petitioner.

The P.W. 1 has, however, stated that they all came to his shop and asked for cigarettes.

- 13.** P.W. 1 has further stated in his cross-examination that he knew Shambhu and Pintu but was not acquainted with Shibu, the present petitioner. However, how he specifies the name of Shibu in his written complaint is a vital question, and has not been explained by the prosecution. No broken spectacles were seized and produced before the Trial Court.
- 14.** P.Ws. 3 and 4 were independent witnesses. They did not support the prosecution case positively. Even then, the prosecution did not request that they be declared as hostile witnesses.
- 15.** P.W. 5, the son of the victim, stated a different version of the incident. He claims to have been present at the place of occurrence at the time. According to him, on the night of 30.12.2005, at 9 PM, in his shop, namely Gouri Bhandar, situated at 136/2, Narkeldanga Main Road, Kolkata-700011, the accused persons were asking for cigarettes and cold drinks on credit. He has named all three accused persons in his deposition. He claims to have known all the accused persons. His father refused to give those items on credit then they started assaulting him. He has further stated that while the accused persons were assaulting the victim, a crowd gathered thereat, rescued the victim and took him to the hospital for treatment.

- 16.** Therefore, versions of P.W. 1 and P.W. 5 are found contradictory and inconsistent to each other regarding manner of incident.
- 17.** There are several contradictions regarding the place of occurrence. P.W. 1 stated he has business of stationery goods at 136/H/2, Narkeldanga Main Road and the incident took place therein. During examination in chief, PW 1 stated he resides at 136/3, Narkeldanga Main Road, and his shop is situated at the same address. Whereas P.W. 5 stated that the shop is situated at 136/2, Narkeldanga Main Road, where the incident took place. No specific place of occurrence has been narrated by the prosecution witnesses. The deposition of the prosecution witnesses does not corroborate the place of occurrence. Therefore, when the place of occurrence is not fully proved, the entire case is blotted out by the prosecution witnesses, who claim to be eye-witnesses.
- 18.** All these inconsistencies and vital contradictions create doubt about the allegation of assault by the present petitioner. There is no specific averment made either P.Ws. 1, 2, 3 or 5 as to what role he played while assaulting the victim. The injury suffered by the victim cannot be ruled out upon considering the evidence of the doctor that such type of injuries can be sustained as a consequence of falling on the ground.

19. In the light of the above discussion, this Court is not fully convinced that the prosecution evidence leads to the conclusion that the present petitioner, namely, Prasanta Pakray @ Prasanta Pakraz @ Shibu is guilty of an offence punishable under Section 323, or Section 323 read with Section 34 of IPC. No person can prove the common intention of the alleged accused. If there is no common intention, the petitioner is not liable for offence punishable under Section 323 of I.P.C. because there is no specific averment or role attributed against the present petitioner while assaulting the victim.
20. The allegations levelled against the present petitioner are vague, non-specific and omnibus, and do not specify a role attributed to him so as to satisfy the essential ingredients of section 323 of the IPC. Courts require specific details regarding date, time, place, manner of assault and evidence of injury for conviction.
21. In the above backdrop, this Court finds both the Trial Court and the Appellate Court have erred in convicting the petitioner under Section 323 of I.P.C. Therefore, both the decisions of the Trial Court and the Appellate Court deserve to be set aside.
22. Accordingly, **CRR 539 of 2017** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.
23. The Judgment dated 15.12.2016 passed by the Learned Additional Sessions Judge, Fast Track 2nd Court, Sealdah, South 24-Parganas

and the judgment dated 17.05.2016 passed by the Learned Judicial Magistrate, 6th Court, Sealdah, South 24-Parganas are hereby set aside. Present petitioner, namely, Prasanta Pakray @ Prasanta Pakraz @ Shibu, is acquitted of the offence as alleged, and he is released from his bail bonds.

- 24.** Trial Court Records, if any, are to be returned to the learned court below.
- 25.** Let a copy of this Judgment and Order be sent to the Learned Courts below for information.
- 26.** Interim order, if any, stands vacated.
- 27.** All parties will act on the server copies of this Judgment and Order uploaded on the official website of this Hon'ble High Court.
- 28.** Urgent photostat certified copy of this Judgment and Order, if applied for, is to be given as expeditiously to the parties on compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J)