

SC 39 of 2022
CIS 36 of 2022

FORM-A

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, 3rd COURT, DARJEELING
Present : Sri Madan Mohan Mishra [JO Code WB00727] Additional Sessions Judge, 3 rd Court, Darjeeling
Date of judgment: 30 th day of July, 2025
Sessions Case No. 39 of 2022
CNR No. WBDJ010009952022
CIS No. 36 of 2022

(Details of FIR/Crime and Police Station) Jorebunglow PS case No. 51 of 2021 dated 25.06.2021	
Complainant	State of West Bengal
REPRESENTED BY	Sri Rakesh Dhaniwal
ACCUSED	Prakash Rai @ Phuchukay
REPRESENTED BY	Shri Rishav Agarwal

FORM-B

Date of Offence	24.06.2021
Date of FIR	25.06.2021
Date of charge sheet	31.03.2022
Date of Supplementary charge sheet	NO
Date of framing charge	18.11.2022
Date of commencement of evidence	14.12.2022
Date of judgment	30.07.2025
Date of sentencing order, if any	Nil

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Accused details

Rank of Accused	Name of Accused	Date of Arrest	Date of release on bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for the purpose of Section 428 CrPC
A1	Prakash Rai	29.06.2021	20.09.2021	Charge u/s 341/325/307 IPC	Acquitted	Nil	Nil

FORM-C

List of Prosecution/Defence/court Witnesses

A. Prosecution :

Rank	Name	NATURE OF WITNESS (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Dr. Pallab Chandra Roy	Medical Officer who examined the two victims of the offence at Sonada PHC.
PW-2	Sri Sonam Sherpa	One of the victims of the offence
PW-3	Sri Suren Tamang	One of the victims of the offence
PW-4	Smt. Binita Tamang	Mother of victim PW-3
PW-5	Sri Uma Shankar Gupta	Other witness.
PW-6	Sri John Lepcha	Police Constable
PW-7	Sri Anand Shrestha	Seizure witness
PW-8	Sri Pawan Mothey	Other witness
PW-9	Dr. Abhishek Roy Barman	Medical Officer who examined the victim of the offence PW-3 at Darjeeling District Hospital.
PW-10	SI of police Phurba Pakhrin	The Investigating Officer of the case.

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B. Defence Witness, if any :

Rank	Name	NATURE OF WITNESS (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW	Nil	

C. Court Witness, if any :

Rank	Name	NATURE OF WITNESS(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW	Nil	

List of Prosecution/Defence/Court Exhibits

A. Prosecution :

Sr. No.	Exhibit Number	Description
01	Exhibit-1	The injury report dated 24.06.2021 of victim Suren Tamang
02	Exhibit-1/1	The signature of PW-1 on the injury report dated 24.06.2021
03	Exhibit-2/1	The signature of PW-2 on the written complaint.
04	Exhibit-2/2	The receiving endorsement on the written complaint.
05	Exhibit-2/3	The receiving endorsement on the written complaint.
06	Exhibit-3	The seizure list dated 28.06.2021
07	Exhibit-3/1	The signature of PW-2 on the seizure list dated 28.06.2021
08	Exhibit-3/2	The signature of PW-7 on the seizure list dated 28.06.2021.
09	Exhibit -4	The statement of PW-2 recorded u/s 164 CrPC.
10	Exhibit-5	The statement of PW-3 recorded u/s 164 CrPC.
11	Exhibit-6	The medical treatment sheet of victim Suren Tamang containing 27 pages
12	Exhibit -7	The formal FIR.
13	Exhibit-8	The rough sketch map of place of occurrence along with index.

B. Defence :

Sr. No.	Exhibit Number	Description

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C. Court Exhibit :

Sr. No.	Exhibit Number	Description

D. Material Objects :

Sr. No.	Exhibit Number	Description

Sd/-
Additional Sessions Judge,
3rd Court, Darjeeling

JUDGMENT

This is a Sessions Trial corresponding to GR case No. 146 of 2021 in connection with Jorebunglow PS case No. 51 of 2021 dated 25.06.2021 under Section 341/325/307 of IPC.

The present case finds its genesis from lodging of a written complaint by one of the victim of the offence Sonam Sherpa at Jorebunglow PS on 25.06.2021 at about 13.15 hours disclosing that in the night of 24.06.2021 at around 7.30 while he along with his friend Suren Tamang was returning home after buying some articles from DB road they met accused Prakash Rai @ Phuchukay on the way and there was a heated argument in between Prakash Rai @ Phuchukay and Suren Tamang. Prakash Rai assaulted Suren Tamang with a GI pipe from behind with intention to kill him. As a result Suren Tamang sustained grievous injury on his head and he was taken to hospital in a critical condition. When he tried to rescue Suren Tamang the accused also assaulted him with the same pipe and he also received grievous injury.

On the basis of the written complaint Jorebunglow PS case No. 51 of 2021 dated 25.06.2021 under Section 341/325/307 of IPC was started against the accused.

The investigating officer in course of investigation recorded the statement of the witnesses u/s 161 CrPC, arrested the accused, caused recording of the statement of the two victims of the offence under section 164 CrPC, seized one GI pipe, collected medical examination reports of the victims and on completion of investigation submitted charge-sheet against the accused for the offence punishable

under section 341/325/307 of IPC.

Upon hearing prosecution and defence and considering the case record and the documents submitted therewith charge is framed by this Court against the accused on 18.11.2022 for the offence punishable u/s 341/325/307 of the IPC.

POINTS FOR CONSIDERATION

In the instant case, the prosecution is under obligation to prove beyond reasonable doubt that on 24.06.2021 at about 7.30 PM at D. B. Road near Shaheed Bedi, Sonada accused wrongfully restrained the two victims Suren Tamang and Sonam Sherpa and caused grievous hurt to them by means of a GI pipe with such intention and knowledge that if the death of victim Suren Tamang is caused by such injury accused would be guilty of committing his murder.

Defence case as it appears from the trend of cross-examination of prosecution witnesses and statement of accused u/s 313 CrPC is denial of prosecution case.

DECISION WITH REASONS

Witness PW-3 Sri Suren Tamang one of the victims of the offence stated in his testimony that accused is his co-villager. The occurrence took place in June 2021. On the day of occurrence in the evening at about 7.00 to 7.30 while he was proceeding to his house and reached D. B. road, Sonada he saw a quarrel going on in between the accused and Sonam Sherpa and when he tried to pacify the quarrel someone struck him from behind on his head and he fell unconscious and gained sense at Darjeeling District Hospital where he was admitted for four months for treatment of his head injury.

It comes out during cross-examination of the witness by prosecution on being declared hostile that on the day of occurrence in the evening at 7.30 he along with Sonam Sherpa met accused Prakash Rai on DB Road and at the time a quarrel took place in between him and Prakash.

Witness PW-2 Sonam Sherpa stated in his testimony that on 24.06.2021 in the evening around 7.00-7.30 there was a quarrel in his village Daragaon. In the incident PW-3 Suren Tamang suffered injury on his head. While intervening the quarrel he also suffered a simple injury on his forehead.

It comes out during cross-examination of the witness by prosecution on being declared hostile that on the day of occurrence in the evening at around 7.30 he along with Suren Tamang met accused Prakash Rai on DB Road and at the time a quarrel took place in between him and Prakash.

Witness PW-4 Smt. Binita Tamang stated in her testimony that accused used to visit her house along with her son Suren Tamang. One night in 2021 two boys

came at her house and told her that her son Suren Tamang has been assaulted and removed to Sonada Hospital. She along with her neighbour Mamata Tamang went to Sonada Hospital to see her son. She saw her son Suren with injury on his head and at the time Suren told her that accused Prakash Rai assaulted him by means of iron rod on his head and caused the injury.

Witness PW-1 Dr. Pallab Chandra Roy stated in his testimony that on 24.06.2021 he examined Suren Tamang and Sonam Sherpa at Sonada PHC. At the time of examination, Suren was found semi-conscious, disoriented and was not co-operative. One cut injury 5 X 2 cm. at left parietal area and another 4 X 2 Cm. cut injury on left parietal area along with a swelling at left temporal area was noted. On examination of Sonam Sherpa one cut mark measuring 5 X 2 cm. over his forehead with active bleeding was noted. Both were referred to Darjeeling District Hospital for better treatment.

Witness PW-9 Dr. Avisek Roy Burman stated in his testimony that on 24.06.2021 patient Suren Tamang was admitted in the male Surgical ward of District hospital, Darjeeling and he provided treatment to him. At the time of examination of the patient it was detected that the patient was assaulted at D. B. road on 24.06.2021 at 8.20 PM. Multiple sharp cutting injury over the scalp of the patient was noted. On CT Scan of the brain hematoma with fracture was detected. The patient was discharged from the hospital on 12.07.2021. He proved the medical treatment sheets exhibit-6.

Witness PW-10 SI of Police Phurba Pakhrin stated in his testimony that in course of his investigation he arrested the accused on 28.06.2021 and seized one GI pipe measuring 1 ft 7 and ½ inches being shown and brought out by the accused from near the place of occurrence at D. B. road, Sonada in presence of witnesses under a seizure list exhibit-3.

This is the sum and substance of the entire evidence led by prosecution to bring home the charge against the accused.

Learned Prosecutor submitted that it is not denied that two victims of the offence PW-2 Sonam Sherpa and PW-3 Suren Tamang were removed to Sonada BPHC on 24.06.2021 with injuries on their person. From the testimony of doctor PW-1 Dr. Pallab Chandra Roy and the two injury reports of the victims dated 24.06.2021 Exhibit-1 and 1/1 it is proved that at the time of examination victim PW-3 Suren Tamang was found semi-conscious, disoriented and was not co-operative at the time. One cut injury 5 X 2 cm. at left parietal area and another 4 X 2 cm. cut injury on left parietal area along with a swelling at left temporal area was

noted. On examination of Sonam Sherpa one cut mark measuring 5 X 2 cm. over his forehead with active bleeding was noted. As could be seen from the medical treatment sheets Exhibit-6 proved by PW-9 Dr. Avishek Roy Barman, victim PW-3 Suren Tamang was admitted at Darjeeling District Hospital on 24.06.2021 for the treatment of multiple sharp cut injury over his scalp and discharged on 12.07.2021. So, it is proved beyond doubt that victim Suren Tamang suffered grievous hurt in the night of 24.06.2021 and victim PW-2 Sonam Sherpa also suffered hurt on the day and time.

Ld. Prosecutor further submitted that witness PW-2 Sonam Sherpa, one of the victims of the offence soon after the occurrence being taken to Sonada BPHC stated before the doctor that on 24.06.2021 at about 8.00 PM accused Prakash Rai @ Phuchukay assaulted him by means of an iron rod. While examined on dock, the witness turned hostile and during the cross-examination of the witness by prosecution it comes out that there was a quarrel in between another victim Suren Tamang and accused Prakash Rai on the day, time and place.

Another victim of the offence PW-3 Suren Tamang also turned hostile but during his cross-examination by prosecution it comes out that on the day, time and place he along with PW-2 Sonam Sherpa met accused Prakash Rai and a quarrel began in between him and accused Prakash Rai.

Witness PW-4 Binita Tamang, the mother of victim PW-3 Suren Tamang, stated that in the night of the day of occurrence she heard from her son Suren at Sonada BPHC that he was assaulted by accused Prakash Rai.

The offending weapon used in the commission of offence of assault by accused, the GI pipe, has been seized near the place of occurrence leading to the statement of the accused during his police custody.

Taking together the testimonies of witnesses, two victims of the offence PW-2 and PW-3 and PW-4, the mother of victim PW-3, and the seizure of the offending weapon it can be safely held that it was the accused Prakash Rai who assaulted two victims PW-2 and PW-3 and caused injuries to them on the day, time and place.

Per contra, learned advocate representing accused submitted that neither of the victims PW-2 or PW-3 identified the accused as their assailant and categorically stated that they did not see the person who assaulted them.

PW-4 Binita Tamang stated that she heard from her son PW-3 Suren Tamang at Sonada BPHC that accused Prakash Rai assaulted him with iron rod on his head and caused the injury but witness PW-3 Suren Tamang himself stated that after the occurrence he fell unconscious and regained his sense at Darjeeling District

Hospital.

The ocular and medical evidence are inconsistent on the score of nature of weapon used in the commission of offence.

It was raining on the day of occurrence as comes out during the cross-examination of PW-4 Binita Tamang and alleged occurrence took place in the night at around 8.00 PM.

Even if it is presumed that there was a quarrel in between the two victims PW-2 and PW-3 and accused as argued by learned prosecutor, when PW-2 and PW-3 have not named the accused, a prior acquaintance of them, as their assailant, it can not be said with certainty that it is accused who caused the injury on the person of two victims PW-2 and PW-3. Our criminal jurisprudence provides that when two views are possible, the view favourable to accused be accepted. Accused is entitled to get the benefit of doubt.

Having considered the rival submissions of the parties in the light of the evidence led by prosecution to bring home the charge against accused for the offence punishable u/s 341/325/307 IPC it is found that two victims PW-2 and PW-3 and accused are persons of same locality having prior acquaintance. Apart from the two victims PW-2 and PW-3 no other witness has been examined by prosecution who saw the occurrence taking place.

It is not denied that the two victims of the offence PW-2 and PW-3 suffered serious injuries in course of a quarrel between them and accused in a raining night at around 8.00. The two victims of the offence PW-2 and PW-3 have not identified accused, a prior acquaintance of them, as their assailant.

Victim PW-3 Suren Tamang soon after the occurrence was removed to Sonada BPHC and then to Darjeeling District Hospital. The doctor PW-1 who examined PW-3 Suren Tamang at Sonada BPHC stated that at the time of examination victim PW-3 Suren Tamang was found semi-conscious, disoriented and was not co-operative. PW-3 Suren Tamang himself stated that after the occurrence he fell unconscious and regained his sense at Darjeeling District Hospital. The statement of PW-4 that she heard from her son PW-3 at Sonada BPHC that accused assaulted him could not be relied.

While stating the history of assault before the doctor at Sonada BPHC the weapon used in the commission of assault has been referred as IRON ROD. In the written complaint lodged on the next day of occurrence it has been referred as GI PIPE and one GI PIPE has been allegedly seized by the investigating officer not supported by the alleged seizure witnesses. The doctor PW-1 who examined PW-3

Suren Tamang at Sonada BPHC soon after the occurrence noted one cut injury 5 X 2 cm. at left parietal area and another 4 X 2 cm. cut injury on left parietal area and the doctor PW-9 who examined victim PW-3 at Darjeeling District Hospital noted multiple sharp cut injury over his scalp. The contradictions appearing centering the nature of the weapon used for commission of assault as disclosed before the doctor at Sonada BPHC and in the written complaint not referred by either of the two victims of the offence PW-2 and PW-3 during their examination on dock and the nature of the injuries noted by two doctors PW-1 and PW-9 over the head of PW-3 Suren Tamang being sharp cut injuries are material contradictions.

Though the two victims of the offence PW-2 and PW-3 suffered serious injuries in course of a quarrel between them and the accused in a raining night at around 8.00. As the two victims of the offence PW-2 and PW-3 have not identified accused, a prior acquaintance of them, as their assailant there remains a doubt as to manner of occurrence projected by prosecution.

In the light of evidence brought before this court by prosecution I am of the view that prosecution has failed to discharge its obligation to prove the charge brought against the accused beyond reasonable doubt and accused is entitled to get the benefit of doubt.

Hence, it is ordered

that the accused is found not guilty of offence punishable under Section 341/325/307 of IPC and he is acquitted from the said charges u/s 235(1) CrPC.

Accused is permitted to remain on same bail bond for six months from the date of this judgment as provided under Section 437A CrPC.

Seized GI pipe be destroyed after expiry of the period of appeal.

Let a copy of the judgment be sent to the Office of Secretary, District Legal Services Authority, Darjeeling with a request to apprise the de-facto complainant one of the victim of the offence PW-2 with this judgment and his right to appeal against the judgment.

Dictated and corrected by me

Sd/-

Additional Sessions Judge
3rd Court, Darjeeling

Sd/-

Additional Sessions Judge
3rd Court, Darjeeling