

Form No. (M) 34

FORM A

IN THE COURT OF THE JUDICIAL MAGISTRATE, 1st CLASS, KALIMPONG. Present: Miss Pema Yangdu Sherpa, Judicial Magistrate, 1st Class, Kalimpong. JO Code WB 01512 Date of delivery of Judgment: <u>The 10th day of April, 2023</u> <u>G.R Case No. 216 of 2022</u> <u>CIS No. GR 154/2022</u> <u>CNR WBDJ08-000885-2022</u> <u>T.R. No. 182 dated 10.10.2022</u> <u>Kalimpong P.S. Case No. 193 of 2022 dated 14.07.2022 under Section 341/323/354/506 of Indian Penal Code.</u>	
COMPLAINANT	State of West Bengal
REPRESENTED BY	Ld. APP Sri Sanjay Chaurasia
ACCUSED	1. Sunil Kumar Agarwal S/o: Late Prem Prakash Agarwal of Rishi Road near Kanchan Cinema Hall, P.S. and District: Kalimpong
REPRESENTED BY	(1) Ld. Advocate Sri Masood Sultan (2) Ld. Advocate Smt. Yamuna Chettri

Form No. (M) 35

FORM B

Date of Offence	12.07.2022
Date of FIR	14.07.2022
Date of Chargesheet	31.08.2022
Date of Framing of Charge	02.12.2022
Date of commencement of Evidence	22.02.2023
Date on which Judgment is reserved	10.04.2023.

G.R. Case No. 216/2022
Regn. No. 154/2022

Date of Judgment	10.04.2023
Date of the Sentencing Order, if any	Not applicable

Accused details:

Rank of the Accused	Name of the 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 purpose of Section 428, Cr.P.C.
1.	Sunil Kumar Agarwal	N.A.	N.A.	Section 341/323/354/506 of IPC	Acquitted	N.A.	N.A.

JUDGMENT

1. This case arose out of a written complaint filed by the complainant, Tshering Laden Bhutia before the Inspector-in-Charge, Kalimpong Police station, District: Kalimpong on the ground that on 12.07.2022 at around 19:30 hrs the accused namely Sunil Kumar Agarwal abused her, dashed her and tried to outrage her modesty. Hence, the written complaint.

2. On the basis of that Kalimpong P.S. Case No. 193 of 2022 dated 14.07.2022 was registered under Section 341/323/354/506 of the Indian Penal Code (in short IPC). Investigation of the case was taken up and after completion of investigation, Charge Sheet no. 314 of 2022 dated 31.08.2022 was submitted against the accused person namely, Sunil Agarwal u/s 341/323/354/506 of I.P.C. Cognizance of the case was taken and it was transferred to this Court for disposal on 10.10.2022. Charge was framed against the accused person u/s 341/323/354/506 of I.P.C. on 02.12.2022. The contents of charge were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. Accordingly, trial of the accused person commenced. During trial the prosecution adduced the following evidences:

G.R. Case No. 216/2022
Regn. No. 154/2022

PW1 - Tshering Laden Bhutia

The signature of PW1 on the written complaint dated 14.07.2022 is marked as Exhibit P-1/PW 01.

Dawa Tshering Bhutia deposed as PW 02 and was examined in full and discharged.

Mukesh Mittal deposed as PW03 and was examined in full and discharged.

PW4 - Samir Lepcha

The receiving endorsement of SI Ongchuk Bhutia on the written complaint is marked as Exhibit P-1/1/PW 04. The formal FIR is marked as Exhibit P2 and the signature of SI Ongchuk Bhutia on the formal FIR is marked as Exhibit P2/1. The rough sketch map and index of the PO is marked as Exhibit P3 and Exhibit P3/1 respectively. Apart from that no witnesses were present for examination and prosecution evidence was closed on 04.04.2023.

4. After closure of the prosecution evidence on 04.04.2023, the accused person is examined under Section 313 of the Code of Criminal Procedure (in short Cr.P.C). He declined to adduce any evidence from his side. So, defence evidence was closed and argument was heard from both sides and the case was fixed for judgment.

POINTS FOR DETERMINATION

5. On the basis of facts and circumstances of this case the following points are to be considered:

1. Whether the accused person has committed the offence as labeled against him?
2. Whether the prosecution has been able to prove its case beyond all shadow of reasonable doubts?

DECISION WITH REASONS

6. All the points are taken up together for the sake of brevity and to avoid undue repetition.

Heard argument from both sides.

7. PW1, Tshering Laden Bhutia is the defacto complainant in this case and during his evidence he deposed that on 12.07.2022 at 10th Mile, Kalimpong, she and her husband

had a hot altercation and misunderstanding with the accused person which compelled her to lodge a complaint against the accused person. PW1 also identified the accused namely Sunil Agarwal in open court and she further deposed that she does not know as who wrote the complaint for her. During the cross-examination, PW1 deposed that she does not know the contents of the written complaint as it was not read over to her and also deposed that she had a small altercation with the accused person.

PW2, Dawa Tshering Bhutia deposed that he is the husband of the defacto complainant and his wife had filed this case against Sunil Agarwal whom he identified in open court. PW2 deposed that the incident took place on 12.07.2022 at about 7:30 p.m. at 10th Mile, Kalimpong over some petty matters and he and his wife had a hot altercation and misunderstanding with the accused person. During the cross-examination of PW2, he deposed that the matter has been settled between them and he does not have any allegations against the accused person.

PW3, Mukesh Mittal deposed that he knows both the defacto complainant and the accused person and he also deposed that he does not know anything about this case.

PW4, Samir Lepcha deposed that on 14.07.2022, SI Ongchuk Lepcha was in charge of Kalimpong police station and on that day, he received one written complaint from one Tshering Laden Bhutia and started Kalimpong P.S. Case No.193/22 dated 14.07.2022 u/s 341/323/354/506 of IPC and endorsed this case to him for investigation. PW4 deposed that during the investigation he visited the PO and prepared rough sketch map and index of the PO, examined available witnesses u/s 161 of Cr.P.C. and on completion of the investigation, he submitted chargesheet no. 314/22 dated 31.08.2022 u/s 341/323/354/506 of IPC against Sunil Agarwal.

From the testimonies of PW1 and PW2, it appears that they had some misunderstanding and altercation with the accused person. The testimonies of PW1 and PW2 could not prove the contents of the written complaint wherein PW1 had stated in the written complaint that the accused person had abused her and her husband and the accused person also touched her, pushed her down and tried to outrage her modesty before her husband and that the accused person touched her inappropriately and used filthy languages and that he has been doing and continuing with this behavior in several occasions in the past. There has been no whisper about any of these allegations in the deposition of the defacto complainant as well as her husband. The oral testimonies of PW1 and PW2 who are husband and wife do not seem reliable as they have not mentioned any of the allegations made by them on the day of the incident as well as the allegations about the behavior of the accused person in the past too. The testimony of PW3 is of no help to the case of the prosecution as he deposed that he does not know

anything about this incident. The ingredients of the offence as alleged in the chargesheet have not been made out and the story of the complainant appears to be a concocted one. Therefore, it can be said that the prosecution has miserably failed to prove its case beyond all reasonable doubts. Further, it is a settled proposition of criminal law that in order to successfully bring home the guilt of the accused, prosecution is supposed to stand on its own legs and it cannot derive any benefits whatsoever from the weakness, if any, in the defence of the accused. Accused is entitled to the benefit of every reasonable doubt in the prosecution story and any such reason doubt in the prosecution case entitles the accused to acquittal.

8. Therefore, in view of the above discussion and regard being had to all the materials on record, this Court has no hesitation to hold that the prosecution has miserably failed to establish its case against the accused beyond all reasonable doubt and the accused person namely Sunil Kumar Agarwal is accordingly entitled to get an order of acquittal.

9. Hence, it is

ORDERED

that the accused person above named is found not guilty of the offences under Section 341/323/354/506 of IPC.

That the accused person is acquitted in terms of Section 255(1) of Cr.P.C.

The accused person be released from his bail bond.

Sureties are discharged from their liabilities.

Seized amount if any, be disposed of after the expiry of period of appeal.

In view of Sec. 437-A Cr.P.C. the accused person having presented a petition to permit him to remain on the terms and conditions of the previous bail bonds, the prayer is allowed. He is permitted to remain on self-same bond for the next six months with direction upon him to appear before the Appellate Court as and when any appeal is filed against this judgment within such period.

The judgment is pronounced and delivered in Open Court on this 10th day of April, 2023. BC-II is to upload the judgment and order in C.I.S. at once.

Typed and corrected

by me

Sd/-

Sd/-

(Pema Yangdu Sherpa)
J. M. 1st Class, Kalimpong

(Pema Yangdu Sherpa)
J. M. 1st Class, Kalimpong

Form (M) 36

APPENDIX
Form C

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS OTHER WITNESS)
PW1	Tshering Laden Bhutia	Complainant
PW2	Dawa Tshering Bhutia	Witness
PW3	Mukesh Mittal	Witness
PW4	Samir Lepcha	I.O.

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS OTHER WITNESS)
N.A.	N.A.	N.A.

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS OTHER WITNESS)
N.A.	N.A.	N.A.

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit P1/PW1	Signature of the witness on the written complaint dated 14.07.2022
2.	Exhibit P1/1/PW4	Receiving endorsement of SI Ongchuck Bhutia on the written complaint
3.	Exhibit P2/PW4	Formal FIR
4.	Exhibit P2/1/PW4	Signature of SI Ongchuck Bhutia on the formal FIR
5.	Exhibit P3/PW4	Rough sketch map
6.	Exhibit P3/1/PW4	Index of the PO

B. Defence:

Sr. No.	Exhibit Number	Description
N.A.	N.A.	N.A.

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
N.A.	N.A.	N.A.

D. Material Objects:

Sr. No.	Material Object Number	Description
N.A.	N.A.	N.A.

Typed and corrected

by me

Sd/-

(Pema Yangdu Sherpa)

J. M. 1st Class, Kalimpong

Sd/-

(Pema Yangdu Sherpa)

J. M. 1st Class, Kalimpong