



Form No. (M) 34

IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE, FAST TRACK COURT, BALURGHAT, DAKSHIN DINAJPUR Present : Sri Anil Kumar Kushwaha, Additional District & Sessions Judge, Fast Track Court, Balurghat, Dakshin Dinajpur. (J.O Code WB00945) Date of delivery of judgment:- 08th day of December, 2025 <u>Sessions Case No.192 of 2022</u> <u>Computer Regn. No.192 of 2022</u> <u>CNR No.WBDD01-002233-2022</u> arising out of Kumarganj P.S. Case No.185/22 dated 10.09.2021 <u>Charge under Section – 341/376(g)/511/307/379/506/34 of IPC.</u>	
COMPLAINANT	STATE OF WEST BENGAL
REPRESENTED BY	Mr.Sajal Ghosh, Ld. PP-in-Charge
ACCUSED	1. Kurban Mandal S/o Hasen Mandal, 2. Malek Mandal S/o Late Tajimuddin Mandal, 3. Mobarak Mandal @ Mobarak Ali Mandal S/o Hossain Mandal @ Hossain Ali Mandal, 4. Montajul Mandal S/o Malek Mandal, 5. Habibur Mandal S/o Abdul Khalek Mandal, All resident of Vill. Uchna (Sulantapara), P.S. Kumarganj, District – Dakshin Dinajpur.
REPRESENTED BY	Mr.Ujjwal Kumar Dey, Ld. Advocate for accused persons



Form No. (M) 35

Date of Offence	08.09.2021
Date of FIR	10.09.2021
Date of Charge-Sheet	10.11.2021 (as received by Ld.CJM)
Date of Framing of Charges	18.01.2023
Date of Commencement of Evidence	06.02.2023
Date on which Judgment is reserved	25.11.2025
Date of the Judgment	08.12.2025
Date of the Sentencing Order, if any	

Accused details:-

Rank of Accd	Name of Accused	Date of Arrest/ Surrender	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 Cr.P.C.
1	Kurban Mandal	14.12.2021	14.12.2021	Section 341/376 (g)/ 379/307 /506/34 of IPC	Acquitted	Nil	Nil
2	Malek Mandal	14.12.2021	14.12.2021		Acquitted	Nil	Nil
3	Mobarak Mandal @ Mobarak Ali Mandal	01.10.2021	27.10.2021		Acquitted	Nil	Nil
4	Montajul Mandal	14.12.2021	14.12.2021		Acquitted	Nil	Nil
5	Habibur Mandal	14.12.2021	14.12.2021		Acquitted	Nil	Nil



J U D G M E N T

1.0 BRIEF FACT OF THE CASE

1.1 The factual matrix of the prosecution case in nutshell is that on 08.09.2021, the complainant had been to Balurghat for some personal work after engaging labours to close the drain cut by the accused persons on the embankment of the pond. The complainant asked his daughter Shiuli Mondal over telephone to visit the embankment of the pond to see about the completion of the work by labours. The daughter of the complainant attended her online class there as the network speed was good. The daughter of the complainant was accompanied by his grand-daughter aged about 09 years. At 10.30 am, the accused persons suddenly went to the embankment of the pond and again cut the drain. The daughter of the complainant raised protest but the accused persons, firstly, snatched her mobile phone from her hand and thereafter, closed her mouth by their hand and dragged her in the nearby papaya garden, pulled her on the ground and kicked her in her abdomen forcibly, assaulted her with fists and tried to rape her. The grand-daughter of the complainant raised hue and cry but the accused persons tried to kill his daughter by pulling orna in her neck. The accused persons fled away hearing the cry of grand-daughter. The daughter of the complainant fell ill and she was taken to Barahar Hospital, then to Balurghat hospital and then referred to Malda Medical College and Hospital. Hence this case.

1.2 On the basis of the written complaint, a case being Kumarganj P.S. Case No.185/21 dated 10.09.2021 was started u/s 341/323/376/511/307/506/34 IPC.

1.3 The IO of this case, took up the investigation as per endorsement. During the course of investigation of this case, the IO visited the PO and prepared rough sketch map of the PO with its explanatory index, examined witnesses and recorded their statements u/s.161 of Criminal Procedure Code, collected injury reports and after completion of investigation submitted charge sheet against the FIR named accused persons u/s 341/376(g)/511/379/307/506/34 IPC.



2.0 COGNIZANCE AND CHARGES

2.1 After submission of the charge-sheet by the IO and after compliance of the provision of section 207 Cr.P.C, the Ld. Chief Judicial Magistrate, Dakshin Dinajpur at Balurghat committed the case to the Court of the Sessions against the accused persons along with case record in G.R case No.1256 of 2021. Thereafter, cognizance was taken and the case was assigned to this Court for Trial.

2.2 On consideration of materials on record, charge was framed against the three charge sheeted accused persons for commission of the offences u/s 341/323/307/506/34 IPC.

2.3 The accused persons were explained about the contents of the charge and they both pleaded not guilty and claimed to be tried. Accordingly, after framing of the charge the case was posted for evidence of the prosecution witnesses by inviting the prosecution to produce all his charge sheeted witnesses in order to prove his case.

3.0 EVIDENCE OF PROSECUTION WITNESSES

The list of prosecution witnesses already examined and material exhibits, have already been shown in the list provided below in the format.

4.0 STATEMENT OF THE ACCUSED AND DEFENCE EVIDENCE

4.1 After conclusion of prosecution evidence, the incriminating materials and circumstances were put to the accused persons at the time of recording their statements u/s. 313 Cr.P.C and their answers were recorded in separate sheets. They stated that they are innocent and have been falsely implicated but they declined to lead any evidence in their defence.



5.0 ARGUMENTS AND RIVAL CONTENTIONS

5.1 Ld P.P-in-charge contended that the prosecution has been able to prove its case against the accused persons successfully beyond reasonable doubt and the evidence of the prosecution witnesses is clear and convincing which inspires confidence into the case of the prosecution and the accused persons are liable to be held guilty and convicted for the offences charged against them and be punished accordingly.

5.2 Per contra, Ld. Defence Counsel has argued that the prosecution has failed to prove its case against the accused persons beyond reasonable doubt and the prosecution story suffers from contradictions and embellishment. The contradictions are of such a nature which puts the prosecution case in the shadow of doubts. The Ld. Defence Counsel prays for acquittal of the prosecution case from all the charges. The Ld. Defence Counsel contends that the prosecution has failed to examine the Investigating Officer in this case and prays for acquittal of the accused persons from this case.

6.0 POINTS FOR CONSIDERATION

6.1. Point No.1 – Whether the accused persons with common intention wrofully restrained the complainant’s husband, assaulted him, criminally intimidated him and voluntarily caused grievous hurt to him n?

Point No.2 - Whether the accused persons assaulted the complainant’s husband with a view to kill them with common intention by pulling the head of her husband on the stone and if by that act the accused persons had caused the death of complainant they would have been guilty of murder ?

Point No.3 - Whether the accused persons committed offences punishable u/s 341/323/307/506/34 IPC ?



7.0 DECISION WITH REASONS

7.1 The Investigating Officer has submitted charge sheet against the accused persons for commission of the offences punishable u/s 341/325/376/511/307/506/34 IPC and in order to prove its case, the prosecution has examined as many as 10 witnesses as mentioned in the table below and has produced the documents in order to prove the case.

7.2 In **Mousam Singha Roy & others Vs State of West Bengal as reported in 2003(3) SCC 1358**, it has been held by Hon'ble Apex Court that the burden of proof in a criminal case never shifts, and it is always the burden of prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. The law does not permit the courts to punish the accused on the basis of moral conviction or on suspicion alone.

7.3 Let me discuss as to how far the prosecution has been able to prove his case by taking up all the three points together being interlinked with each other for discussion for the sake of brevity of this case and in order to avoid repetitions.

7.4 The prosecution has proved the written complaint as Exhibit-P1 basing upon which the instant case was started. On perusal of the written complaint, it transpires that the dispute originated amongst the accused persons and the complainant over the issue of a drain beside the pond of the complainant. The complainant alleged that the accused persons are forcibly trying to dug out a drain upon his landed property and over this issue several criminal as well as civil cases are sub-judice duly instituted by both sides. Allegedly, the instant dispute also arose on 08.09.2021 after the labourers engaged by the complainant closed the said drain in dispute. Allegedly the accused persons came and they tried to open the said drain to which the daughter of the complainant namely Sewli Mondal (PW5) protested but the accused persons did not pay any heed to her protest. The complainant was not present at home on the alleged date of the incident and he had instructed his daughter over the telephone to visit his pond and its embankment. The daughter of the complainant went there alongwith his



grand-daughter Muskan Mondal (PW3) alongwith her mobile phone for attending her online class due to good connectivity and availability of network.

7.5 First of all, let me discuss, how far the prosecution has been able to prove the ingredients of Section 341 and 379 of IPC. The victim cum injured Sewli Mondal (PW5) stated during the course of her evidence that on 08.09.2021 at about 10.30 am she went to the bank of the tank belonging to them alongwith her niece Muskan Mondal and waiting for her online class by the side of drain. The accused persons came there and started cutting the drain again without paying any heed to the protest. The accused Kurban Mondal snatched away the mobile phone from her hand. PW3 Muskan Mondal, eye witness to the occurrence stated that at 10.30 am while she and her maternal aunt were doing online class on the bank of the pond, the accused persons tried to cut the drain near the pond. Her aunt raised protest but they did not pay any heed and after completion of their work, the accused persons snatched away the mobile phone of her aunt. Another eye witness Rupsana Bibi (PW4) did not utter a single word in regard to the theft of mobile phone of Sewli Mondal. She stated that on 08.09.2021 at 10.30 am her niece Sewli and her grand daughter Muskan were doing thier online class on the bank of the pond and she was going to cut the grasses, heard the hue and cry of Muskan, went to the spot and saw the accused persons there. She did not say that the mobile was snatched by them or they had mobile phone of Sewli in their hands. PW2 Chhelowara Bibi stated that accused Kurban Mondal snatched away the mobile phone from her daughter. She failed to say as to how she learnt about the alleged occurrence though she was not present at the spot. The IO of this case SI Sanjib Bhadra (PW10) stated during the couse of his evidence that she arrested the accused Mobarak Ali Mondal, arranged for his potency test and forwarded him to the court but he did not try to collect the cash memo of the stolen mobile phone from the victim and also did not try to recover and seize the stolen mobile phone by praying for Police Custody of the arrested accused. None of the prosecution witnesses could say the brand name of the mobile phone. The complainant also failed to elaborate about the classification of the stolen mobile phone.



7.7 In view of the above discussion, I find that the prosecution has failed to prove the ingredients of the alleged offence to secure conviction of the accused persons u/s 341 and 379 IPC.

7.8 Now let me discuss the materials brought on record by the prosecution witnesses in regard to the alleged offence u/s 307 IPC and 506 IPC.

7.9 It is the case of the prosecution that the accused persons assaulted Sewli Mondal closed her mouth, took her away in the papaya garden, assaulted her with fists and blows on her chest and back and caught hold her throat with her “dopatta” (a long scarf). The victim Sewli Mondal (PW5) during her evidence stated that accused Malek Mondal caught hold her throat by dopatta (a long scarf) and accused Mobarak, Montajul and Habibur kicked on her chest and other parts of her body. She was taken to Barahar Hospital by her elder brother Murshid Hossain Molla by motorcycle. She narrated the whole incident to the doctor and to the doctor of Balurghat hospital after being shifted there. The prosecution examined the doctor Sanghamitra Roy of Barahar Hospital (also known as Kumarganj Rural Hospital) as PW8 who medically treated the victim cum injured on 08.09.2021 in the emergency ward. The doctor (PW8) stated that the patient stated before that she was assaulted by Korman Mondal, Malek Ali Mondal and Mobarak Mondal and 04 others by hand and they entangled a dopatta (a long scarf) around her neck to cause strangulation. She also gave the history of punch over chest and back. However, the doctor during examination of the patient did not find any cut injury or bruise mark over her neck. During cross-examination, she admitted that she examined the patient at 4.50 pm. She admitted that she did not note any abnormality of the patient during her observation. The IO SI Sanjib Bhadra (PW10) admitted during his cross-examination that it takes about 15-20 minutes by motorcycle to reach Kumarganj Barahar Hospital from Sulantapara. Therefore, why did the injured Sewli Mondal (PW5) went to Barahar Hospital (Kumarganj Rural Hospital) at 4.50 pm when the alleged incident took place at 10.30 am and when it takes hardly 15-20 minutes to reach the hospital by motorcycle ? Moreover on perusal of the evidence of Dr. Sanghamitra Roy (PW8), it transpires that the doctor stated that on examination she did not find any cut injury or bruise mark over the neck. She found her blood oxygen label normal, chest finding was also normal. So if the alleged injured Sewli Mondal



was assaulted by fists, blows and kicks, strangled by dopatta by the accused persons allegedly five innumbers, then, where is the mark of injury ?

7.10 Another doctor Jagabandhu Murmu examined Sewli Mondal at Balurghat District Hospital on 08.09.2021 at 8.20 pm and he found abrasion over right forearm. During his cross-examination the doctor admitted that the colour of abrasion changes from time to time. He did not mention the colour of abrasion in his injury report. He further admitted that such type of injury may occur by fall or if dashed against any hard substance. The victim Sewli Mondal (PW5) stated before the Ld. Magistrate at the time of her statement u/s 164 CrPC that it was detected at Barahar Hospital that one of her chest bone was fractured. The doctor of Barahar Hospital had suggested for X-ray of chest and the victim Sewli Mondal (PW6) had admitted during her cross-examination that she was admitted at Malda Medical College and Hospital for one day and was admitted to a Nursing Home at Purnia for 03 days in ICU. But the IO SI Sanjib Bhadra (PW10) admitted during his cross-examination that he did not seize any original medical paper of private Nursing Home either from the complainant or from victim Sewli Mondal. The IO (PW10) also failed to collect the x-ray report of chest of injured Sewli Mondal in order to ascertain any injury on her person and aslo to ascertain the claim of Sewli Mondal that one of her chest bone was fractured as alleged by her.

7.11 In **Amit Rana @ Koka Vs State of Haryana as reported in 2024 SCC On Line SC 1763**, the Hon'ble Apex Court held that " section 307 IPC, makes it clear that to attract the said offence the victim need not suffer any kind of bodily injury. The offence to commit murder punishable under Section 307 IPC is constituted by the concurrence of *mens rea* followed by *actus reus*, to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a "sine qua non". In other words, if a man commits an act with such intention or knowledge and under such circumstances that if death had been caused, the offence would have amounted to murder or the act itself is of such a nature as would have caused death in the usual course of an event, but something beyond his control prevented that result, his act would constitute the offence punishable as an attempt to murder under Section 307 IPC."



Here in this case, nothing material brought on record in order to prove that the accused persons caused any bodily injury to the victim as alleged or had mes rea or any intention to cause the death of the complainant's daughter as alleged in the written complaint.

7.12 Therefore in view of the above discussion, I find that the ingredients of “**attempt to murder**” as defined in Sec. 307 IPC is also missing here in this case.

7.13 **The Hon’ble Apex Court** referring to the judgement of **Manik Taneja and another VS State of Karnataka and other reported in (2015) 7 SCC 423** on the aspect of ingredients of Sec. 506 IPC held that “ A reading of the definition of “criminal intimidation” would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened, or to the person in whom the threatened person is interest and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.”

“It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of “criminal intimidation”. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant.”

7.14 The prosecution witnesses also failed to corroborate amongst themselves that the accused persons threatened the complainant and his daughter Sewli Mondal with dire consequences either in the written complaint or during the course of evidence. Thus the ingredients of the alleged offence of criminal intimidation u/s 506 IPC is also missing herein this case.



7.15 Let me now discuss how far the prosecution has been able to prove the ingredients of attempt to commit rape by the accused persons as alleged in order to establish the offence under Sec. 376/511 of IPC.

7.16 Accordingly to the complainant Mofajjal Hossain Mondal (PW1) he had been for some personal work at Balurghat and was not present either at his house or at the alleged PO. His daughter Sewli Mondal (PW5) went to the bank of the pond and informed him over mobile phone that the labours engaged by him have closed the drain and thereafter she remained at the bank of the pond to continue her online class. She was accompanied by her 09 year old niece Muskan Mondal (PW3). One Rupsana Bibi (PW4) was going to cut the grasses and witnessed the occurrence hearing the hue and cry.

7.17 The dispute cropped up after the complainant closed the drain which is the only source of flow of water in the irrigation field situated nearby the drain. The complainant (PW1) admitted that there are 03 other ponds situated contiguous to the pond in question. Admittedly, local people use the said ponds for bathing and other daily works except irrigation. There is no outlet for passing the water from irrigation fields in their locality. PW5 Sewli Mondal admitted that she can not recognize the labours who worked in the said drain. Whereas PW6 LASI Taramani Kujur admitted during her cross-examination that the victim Sewli Mondal (whose statement u/s 161 CrPC was recorded by her) that the victim stated before her that the drain was dug out by the para-people. At the time of recording the said statement, she did not find the names of Korban Mondal, Momtajul Mondal and Habibur Mondal. The Dr. Sanghamitra Roy (PW8) who examined the victim Sewli Mondal on the alleged date of the incident found during the examination that Sewli Mondal had no cut injury or buise mark on her neck. Chest finding was also normal. She also admitted that the papaya garden belonged to them. The height of the tree is about 3 to 3 1/2 ft. She further admitted that Papaya trees would be damaged if any person or aminal enter in the papaya garden. Admitted the IO did not seize any broken papaya tree from the papaya garden of the complainant. It is also not clear as to whether Rupasana Bibi was cutting grasses at the time of the alleged incident or she was going to cut grasses in the field. It is very absurd to believe that in the broad day light in the morning



when most of the villagers go to their field and when Rupsana Bibi was cutting and collecting grasses in the papaya garden, the accused persons attacked the victim and forcibly took her inside the papaya garden in presence of witness Muskan Mondal (09 years). Admittedly there are several criminal and civil cases pending in between the complainant and the accused persons before the civil court, criminal court and SDO court. It is also admitted by the complainant during his cross-examination that Selina Bibi wife of Rajjak Ali Mondal has instituted a counter case against the complainant, Chhelora Bibi, Khurshid Mondal and Sewli Mondal (PW5) and the said counter case is pending in the court of Ld. Judicial Magistrate.

7.18 The victim Sewli Mondal (PW5) stated that all the allcused persons came to the bank of the pond from the northern side wall and cut down the drain again and did not pay any heed to her protest. Accused Kurban snatched her mobile phone, closed her mouth with his hands and pushed her and she fell down on the ground. Accused Malekh Mondal caught hold her neck with her dopatta (long scarf) from back side. All the five accused persons dragged her to the papaya garden crossing the drain, accused Mobarak Mondal pulled her nighty from her body and touched her whole body parts and tried to remove her panty and they tried to commit rape upon her. Her niece Muskan (PW3) started crying loudly and hearing the same, her aunt (PW4), who was cutting grasses in the papaya garden came there and the accused persons fled away. PW4 Rupsana Bibi stated that she was going to cut grasses, heard hue and cry of Muskan (PW3), she reached there and saw the accused persons caught hold the hands of Sewli, someone sitting on the upper portion of the leg (uru) of Sewli and they fled away when they saw her. She further admitted that about 15-20 para people assembled there. But the IO did not try to collect the names of the said para people. The IO neither examined them nor cited them as witness. The victim was produced before the doctor by the IO for her medical examination but she refused for her medical examination in order to find whether there was any attempt by the accused persons as alleged. How can it be believed that the accused persons on the one hand, forcibly tried to pull out the panty of the victim and on the other hand, she did not get any injury mark or even a scratch mark.



7.19 Most peculiar to find that the IO SI Sanjib Bhadra (PW10) interrogated the victim Sewli Mondal on 16.09.2021 but why didn't he seize the torn nighty and panty of the victim on 16.09.2021 and instead what is the reason for the seizure on 23.09.2021. It is admitted by the IO during his cross-examination that he did not seize anything from the alleged PO. He also did not consult with the General Diary book to find out as to whether any GDE was lodged by the victim or the complainant about the alleged incident prior to the lodging the instant complaint. He also did not try to ascertain as to who own the land upon which the disputed drain is situated. The IO further admitted that Muskan Mondal (PW3) did not state him that Mobarak Mondal sat on the upper portion of the leg (uru) of her aunt Sewli Mondal and Montajur Mondal and Habibur Mondal caught hold the hand of her aunt and Mobarak Mondal pulled the wearing apparel (nighty) of her aunt. He further admitted that Muskan Mondal did not state him that Kurban Mondal closed the mouth of her aunt, pulled her down on the ground and Malekh Mondal caught hold her throat with doppatta. It transpires from the material evidences on record that there has been huge exaggeration of facts by the prosecution witnesses making the evidences wholly unreliable.

7.20 Therefore, on perusal of the evidence brought on record by the prosecution and the provision of the law discussed above, I find that the prosecution has not been able to prove the previous meeting of the mind by the accused persons in committing the alleged crime. There is no reason brought on record by the prosecution for committing the alleged crime by the accused persons. Moreover vital witnesses oral as well as documentary have not been collected or produced by the IO or the prosecution side.

7.21 On perusal of the decision of the Hon'ble Apex Court passed in **Satye Singh and another Vs state of Uttarakhand [2022 LiveLaw (SC) 169]**, it has been held that "Sec. 106 of Evidence Act is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused." The burden lies upon the prosecution to prove his case but the prosecution has miserably failed in discharging his duty to prove the allegation as it transpires from the evidence as adduced by the prosecution witnesses.



7.22 Sec. 34 IPC has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Sec.34 if such criminal act is done in furtherance of a common intention of the persons who join in committing crime. Direct proof of common intention is seldom available and therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances.

7.23 In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it prearranged or in the spur of moment, but it must necessarily be before the commission of the crime. The true concept of Section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself.

7.24 It has been observed by **the Hon'ble Apex Court in Ashok Kumar Vs State of Punjab as reported in AIR 1977 SC 109** that "the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar but must have been actuated by one and the same common intention in order to attract the provision."

Under the provision of section 34, the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention.

7.25 It is an admitted position of law that unexplained delay of 02 days in lodging of an FIR at the police station renders the FIR wholly unreliable. Such delay has to be explained by the prosecution witnesses satisfactorily. The delay in lodging the FIR



corrodes the credibility of the prosecution story. The Hon'ble Apex Court in several cases held that delay in lodging the FIR creates a doubt, if the said delay is not properly explained.

7.26 It has been observed by **the Hon'ble Apex Court in Meharaj Singh and others Vs State of UP as reported in (1994) 5 SCC 188** that :

“12. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On accused of delay, the FIR not only get bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally to look for certain external checks.”

7.27 Such delay of 02 days in lodging the FIR by the complainant seriously casts doubt in the mind. Such unexplained delay in lodging of the complainant clearly goes to show that the written complaint has been manipulated and the truth suppressed.

7.28 In the present case, no overt act could be proved by the prosecution, no motive and intention to cause death has been brought on record. There no such evidence brought on record by the prosecution witnesses to arrive at any conclusion that there was an attempt from the side of the accused persons to kill the complainant or criminal intimidation on the part of the accused persons. The circumstances as explained by the victim and other witnesses does not bring confidence in the mind that there was any attempt of committing rape as alleged and thus the prosecution has failed to prove any such ingredients of the alleged offences beyond reasonable doubt. There are several civil and criminal cases are pending in between the parties to this case arising of the said drain in question in regard to the drain situated beside the pond of the complainant. There is every probability in absence of material



evidence that out the said dispute relating to outlet and drain, this case has been instituted. Therefore, the preponderance of probability leans in favour of the accused persons.

8.0 CONCLUSION

8.1 In view of the deliberation made above, I have no hesitation to hold that the prosecution has failed to prove any of the charges labeled against the accused persons beyond reasonable doubt and the accused persons are entitled to be exonerated from the charges labeled against them u/s 341/376(g)/511/307/379/506/34 IPC.

8.2 Hence, it is

ORDERED

that the accused persons namely **1) Kurban Mandal** S/o Hasen Mandal, **2) Malek Mandal** S/o Late Tajimuddin Mandal, **3) Mobarak Mandal @ Mobarak Ali Mandal** S/o Hossain Mandal @ Hossain Ali Mandal, **4) Montajul Mandal** S/o Malek Mandal, **5) Habibur Mandal** S/o Abdul Khalek Mandal all resident of Vill. Uchna (Sulantapara), P.S. Kumarganj, District – Dakshin Dinajpur are hereby acquitted from the charges u/s 341/376(g)/511/307/379/506/34 of IPC as per provision laid down in the section 235(1) CrPC.

8.3 The bail bonds of the accused persons be treated as bail bonds u/s 437-A Cr.P.C and be extended up to 06 months.

8.4 Let the seized alamats, if any, be confiscated after the period of expiry of the appeal, if any.

8.5 The defacto complainant has the right to prefer an appeal under the proviso to Sec. 372 Cr.P.C and if necessary, to avail free legal assistance through the legal services authorities concerned to prefer and prosecute such appeal against the judgement of acquittal of the accused persons.



8.6 Let a copy of this judgement be sent to the Ld. Secretary, D.L.S.A., Dakshin Dinajpur and the District Magistrate, Dakshin Dinajpur for intimating the same to the defacto complainant as per direction of the Hon'ble High Court.

8.7 Note in TR and upload the judgement in the CIS at once.

Dict. & corr. by me.

JUDGE

(ANIL KUMAR KUSHWAHA)
Addl. Dist. & Sessions Judge,
Fast Track Court,
Balurghat, Dakshin Dinajpur.
JO Code WB00945



Form No. (M) 36

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)
PW-1	Moffajjal Hossain Mondal	Defecto complainant
PW-2	Chhelowara Bibi	Wife of defecto complainant
PW-3	Muskan Mondal	Eye witness + relative
PW-4	Rupsana Bibi	Eye witness + relative
PW-5	Shiuli Mondal	Victim
PW-6	LASI Taramoni Kujur	Police Officer
PW-7	Dr. Jagabandhu Murmu	Medical Officer
PW-8	Dr. Sanghamitra Roy	Medical Officer
PW-9	Dr. Pankaj Ghosh	Medical Officer
PW-10	SI Sanjib Bhadra	Investigating Officer



LIST OF PROSECUTION/ DEFENCE/COURT EXHIBITS

A. Prosecution :-

Sl. No	Exhibit No.	Description
1.	Ext.P-1	Written complaint
2.	Ext.P-1/1	Signature of PW1 on the written complaint
3.	Ext.P-1/2	Receiving endorsement and signature of RO on the written complaint
4.	Ext.P-2/1	03 signatures of PW5 on the Statement U/s 164 CrPC
5.	Ext.P-3	Seizure list dated 23.09.2021
6.	Ext.P-3/1	Signature of PW5 on the Seizure list dated 23.09.2021
7.	Ext.P-4/1	Signature of PW5 on the carbon copy of label dated 23.09.2021
8.	Ext.P-5	Injury report dated 08.09.2021
9.	Ext.P-5/1	Signature of PW7 on the Injury report dated 08.09.2021
10.	Ext.P-6	Another Injury report dated 08.09.2021
11.	Ext.P-6/1	Signature of PW8 on the another Injury report dated 08.09.2021
12.	Ext.P-7	Reply of PW9 on the requisition dated 16.09.2021
13.	Ext. P-8	Formal FIR
14.	Ext.P-8/1	Signature of the RO on the Formal FIR
15.	Ext. P-9	Rough Sketch map
16.	Ext. P-9/1	Index of the rough sketch map
17.	Ext. P-10	Original label dated 23.09.2021
18.	Ext. P-11	Requisition of IO dated 01.10.2021

**Additional Dist. & Sessions Judge,
Fast Track Court,
Balurghat, Dakshin Dinajpur**