

Form No. (M) 34

FORM A

IN THE COURT OF THE JUDICIAL MAGISTRATE, DINHATA, DIST. COOCH BEHAR	
Present: Sri Pratyay Pal, Judicial Magistrate, Dinhata, Cooch Behar JO Code WB01376	
Date of delivery of Judgment: <u>The 24th day of June, 2026</u>	
<u>GR 736 of 2009</u> <u>Reg No. GR 736 of 2015</u> <u>CNR WBCB 07-004372-2018</u> <u>T.R. No. 365 of 2010</u>	
<u>Dinhata P.S. Case No. 654 of 2009 dated 01.12.2009 under Section 279/304 of IPC</u>	
COMPLAINANT	State of West Bengal
REPRESENTED BY	Ld. APP in-charge Anowarul Haque
ACCUSED	1) Bijay Ray South, S/O Dipak Ray South, Resident of Putimari, P.S. Dinhata, Dist. Cooch Behar.
REPRESENTED BY	Ld. Advocate Masud Hassan

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FORM B

Date of Offence	28.11.2009
Date of FIR	01.12.2009
Date of Chargesheet	31.03.2010
Date of Framing of Charges	16.09.2011 (Plea)
Date of commencement of Evidence	30.03.2017
Date on which Judgment is reserved	14.05.2026
Date of Judgment	24.06.2026
Date of the Sentencing Order, if any	Not applicable

Accused details:

Rank of the 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 purpose of Section 428, Cr.P.C.
1.	Bijay Ray South	14.12.2009	14.12.2009	Section 279/304A of IPC	Acquitted	N.A.	N.A.

JUDGMENT

1. This case arose out of a written complaint filed by one Mangal Chandra Barman before the I/C Dinhata P.S. with allegation that on 28.11.2009 at about 6:30 a.m. his niece Anju Adhikary was standing in front of her house beside the road at the west side. At that time one Tata Indica being no. WB 74 H 8884 dashed her after coming with speed and in a rash and negligent manner. His niece fell down and the nearby people gathered and apprehended the driver. They also took his niece to Dinhata hospital where she was declared brought dead. The accident resulted due to rash and negligent driving of the vehicle by the accused. Hence the written complaint. Hence, this complaint.

2. On the basis of written complainant Dinhata P.S. Case No. 654 of 2009 dated 01.12.2009 under Section 279/304 of IPC was registered. Investigation of the case was taken up and after completion of investigation, Charge Sheet no. 137 of 2010 dated 31.03.2010 was submitted against the above named

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accused person under Section 279/304A of IPC. Cognizance of the case was taken and it was transferred to this Court for disposal on 26.08.2010. The accused person was examined under Section 251 of Cr.P.C. on 16.09.2011. Substance of accusation was read over and explained to the accused person under Section 279/304A of IPC to which he pleaded not guilty and claimed to be tried.

3. Accordingly, trial of the accused person commenced. During trial the following witnesses are adduced from the side of prosecution:

- P.W.1 - Mangal Chandra Barman,
- P.W.2 - Sabita Adhikary,
- P.W.3 - Jogesh Barman,
- P.W.4 - Shanti Barman,
- P.W.5 - Shyamal Sharma,
- P.W.6 - Sadananda Barman,
- P.W.7 - Pulin Chandra Barman,
- P.W.8 - Chinmay Adhikary,
- P.W.9 - Dr. Amal Basak,
- P.W.10 - Ajit Kumar Chowdhury.

4. The following document are marked as Exhibits:

- Exhibit 1/1 - Signature of the P.W.1 on the written complaint,
- Exhibit P1/1/P.W.10- Endorsement of I/C Dinhata P.S. on the written complaint,
- Exhibit 2/1 - Signature of the P.W.7 on the seizure list dated 01.12.2009,
- Exhibit 2/2 - Signature of the P.W.8 on the seizure list dated 01.12.2009,
- Exhibit P3/P.W.9- Carbon copy of post mortem report,
- Exhibit P4/P.W.10- Formal FIR,
- Exhibit P5/P.W.10- Rough sketch map with index,
- Exhibit P6/P.W.10- Seizure list dated 14.12.2009,
- Exhibit P7/P.W.10- Carbon copy of seizure list dated 01.12.2009,
- Exhibit P8/P.W.10- Mechanical Expert report,
- Exhibit P9/P.W.10- Carbon copy of inquest report.

5. After closure of the prosecution evidence on 29.11.2025, the accused person was examined under Section 313 Cr.P.C on 19.12.2025. As he declined to adduce any evidence the D.W was closed, then argument was heard on 14.05.2026 and the case was fixed for judgment.

POINTS FOR DETERMINATION

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

1. Whether the accused person is guilty of offences under Section 279/304A of IPC?
2. Has the prosecution been able to prove its case beyond all reasonable doubts?

DECISION WITH REASONS

7. Both points are taken up together for convenience and to avoid unwanted repetition.

8. Ld. APP in charge argued that the witnesses from the side of the prosecution have been able to identify the offending vehicle and they also narrated about death of the minor girl due to driving of the offending vehicle at a high speed. There is no denial about death of minor girl. The evidences of the witnesses also narrated about the reason of such death. The available medical evidences supports the nature of the injury which is caused due to the impact of speeding vehicle. On the other hand, the Ld. Advocate for the accused submitted that apart from the mother of the victim none of the witnesses are

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the eye witness and as such their deposition regarding the incident is hearsay in nature as none of them narrated how they acquire knowledge of the incident. The father of the victim admitted that he heard about the incident from her wife but there is contradictory version of him and his wife regarding movement of the victim minor girl at the time of incident. It is further argued that the prosecution failed to adduce oral evidences of the witnesses who were mentioned in the UD case initiated on death of the minor victim. There is also evidence regarding presence of fog during the period of the year when the incident occurred. The vehicle was seized on a different date than the date of incident and the accused was not arrested on the day of incident even when there is evidence that the vehicle was apprehended by the nearby people. The seizure list brought on evidence by one of the IO goes to show a complete different scenario in seizing of the alleged offending vehicle. Ld. Advocate for the accused concluded that death of a minor girl is a very unfortunate incident but that does not ipso facto prove the guilt the accused as there is no evidence as to negligence of the accused as the reason of occurrence of death of the minor girl.

9. It is well settled principle of law that initially, the burden of proof lies upon the prosecution in order to prove its case and if there is any doubt, the accused person will get the benefit of that doubt. In the light of this principle, the evidences from the side of the prosecution have to be scrutinized to find the ingredients of the alleged offence. But before going into the deposition of witnesses the relevant provision of law is required to be discussed to see the ingredients required to be proved in this case.

Section 279 :-Rash driving or riding on a public way.

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 304A :-Causing death by negligence.

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

10. From the provisions it is derived that, the prosecution must prove in this case the following ingredients-

(a) that the accused was driving the alleged offending vehicle i.e. the Tata Indica bearing no. WB 74H 8884;

(b) that it was a public way on which he was driving;

(c) that he was driving in a rash and negligent manner;

(d) that death was caused due to such rash and negligent driving.

11. Now, in order to get the ingredients mentioned above it will be convenient to look into the available relevant oral and documentary evidences from the side of the prosecution. The P.W.1 is the de facto complainant who stated that on 28.11.2009 at about 6:30 a.m. in front of his house the incident occurred. They were all in their compound and one Tata Indigo was going from south to north at a very high speed and that hit his niece and she fell on the ground. She was taken to Dinhata Hospital and after few moments of being admitted she expired. The car no. WB 74H 8884. After the accident the car was trying to flee the spot but local people stopped the car. In his cross-examination he admitted that during the month when the incident occurred there was fog and cold weather. There remains fog till

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about 10 a.m. to 11 a.m. during that part of the year. P.W.2 i.e. the mother of the victim stated that the incident occurred on 28.11.2009 at 6:00 to 6:30 in front of her house. She was behind the victim and she was walking. One Tata Indica Car came and hit her child and slung her on the road. The child was senseless and they took the child by a van at Dinhata Hospital where doctor pronounced her dead. The vehicle no. was WB 74H 8884. P.W.3 stated about hearing of one accident involving daughter of P.W.2 and taking the child in his van upto number 1 gate and death of the child subsequently. In his cross-examination he stated that he did not witness the incident. P.W.4 is the mother of the P.W.2 who stated that one vehicle came and met with an accident with Anju Adhikary i.e. the daughter of P.W.2, 5/6 years ago in Agrahayan in the early morning. The accident took place in front of their house. The vehicle was traveling in a very high speed and hit the child. The child fell unconscious and they took the child to Dinhata hospital and after half hour of treatment she died. In her cross-examination she stated that the vehicle was Maruti Car and there was a metallic road adjacent to her compound. Vehicles, including big vehicle passed through the road. P.W.5 stated that at about 6 years ago at early morning he was sleeping when his daughter informed him that daughter of P.W.2 had met with an accident. He went and saw that the P.W.2 was going towards the house of van owner i.e. P.W.3. The child was taken to hospital. Later he heard that the child had expired. He also heard that the vehicle was going through the road and brother of P.W.2 was on the road side with the child when the car hit the child. In his cross-examination he admitted that he did not witness the incident and failed to state who narrated the incident to him. P.W.6 stated that the incident took place at 10:00 a.m. in front of house of P.W.1 on the road. The niece of P.W.1 met with an accident. The car was moving at a high speed and hit his niece. In his cross-examination he disclosed that the driver was alone in the vehicle. His house is at a distance of 200 meters from the house of P.W.1. He also disclosed that the road is Kachha road. The road was vacant and the vehicle was driven at a speed but they could not say the speed of the car. He also stated that he knew the accused as he is his neighbour. He also disclosed the P.W.1 is his nephew. P.W.7 stated that the incident took place on 28.11.2009 in front of his house on the road. The accused was driving Tata Indica being no. WB 74H 8884 at a speed and hit his niece and she fell down. They brought her to Dinhata hospital where she expired. In his cross-examination he disclosed that the road is not pitched but metal road. His niece was 2 years 2 months old and she was on the side of the road. P.W.8 is the father of the victim who stated that the incident took place 9/10 years ago at about 8:00 a.m. He received call about the accident. He was told that the child was walking on the side when vehicle Tata Indica coming from the opposite side hit the child. His wife informed him about the incident. In his cross-examination he admitted that he was not present on the spot. He also disclosed that vehicle can pass through that road which is situated in front of his matrimonial house. He heard that the vehicle was coming from northern side and going towards southern side. One guardian was with the child. The guardian was not holding the hand of the child. His child was going to the opposite side of the road where her uncle was standing. The uncle was aged 35 to 40 years and he was standing on the opposite without holding the child. The eldest uncle of the child was at the house and at that point of time the elders were busy in their work. P.W.9 is the Medical Officer who conducted postmortem of the victim and he found on abrasion on the left cheek measuring 2 inch X 2 inch. On dissection of chest both the lungs were found ruptured. No other injury was found in the body. In his opinion the death of deceased was due to shock and hemorrhage of the lung injury and was ante mortem and accidental in nature. P.W.10 is the I/O who stated about, receiving of complainant, preparation of formal FIR, preparation of rough sketch map with index, examination of

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available witnesses U/S-161 of Cr.P.C., preparation of seizure list dated 14.12.2009, collection of Mechanical Expert Report, carbon copy of the inquest report and finally on being retired from service making over the C.D before I/C Dinhata P.S.

12. From the rough sketch map with index i.e. Exhibit P5/P.W.10 this Court finds that the P.W.10 has mentioned the P.O. as a metal road in front of the house of the de facto complainant. The same has not been specifically disputed by the defence in the cross examination of P.W.10. That apart from the evidence of P.W.1, P.W.2, P.W.4, P.W.5, P.W.6 P.W.7 and P.W.8 it is found that all of them stated that the incident occurred on road. Though the nature of the road is stated differently by the P.W.6 but the cross-examination of P.W.4 and P.W.8 makes it very much clear that vehicles pass through that road. Nothing could be brought from the mouth of these witnesses to contradict that fact that place of occurrence is not a road. So, it is proved that the incident occurred on a public way.

13. Now, the oral evidence of P.W.1, P.W.4, P.W.6 and P.W.7 reflect about driving of the offending vehicle in a high speed. But neither of them were present at the time of the incident. The P.W.1 sated that all the family members were inside the compound. He did not disclose any positive statement that he had seen the vehicle hit the victim. The P.W.4, P.W.6 and P.W.7 also did not make any statement claiming witnessing the incident but went on to describe the incident. There is no explanation as to from whom they got the knowledge of manner of occurrence of the incident. The P.W.6 stated a completely different time frame of the incident. So, their narration of high speed driving of the vehicle can not be relied in absence of the source of their knowledge of the incident. On the other hand the P.W.3, P.W.5 and P.W.8 admitted about hearing about the incident and not witnessing the incident. The P.W.3 narrated positively about taking the victim towards hospital by van. Apart from that he had no first hand knowledge of the incident. The P.W.5 disclosed hearing about the incident from his daughter as he was sleeping prior to that. Though he narrated the manner of occurrence of incident but he failed to recollect who narrated him the same. There is nothing on record to show from whom the daughter of P.W.5 came to know about the incident. On the contrary the P.W.8 admitted about hearing of the incident from the P.W.2 i.e. his wife. So among all the witnesses produced by the prosecution only P.W.2 is appearing to be an eye witness. Surprisingly enough she and the P.W.8 never made a positive statement about high speed driving of the Tata Indica vehicle. The P.W.2 stated that she was behind her daughter and was walking and one Tata Indica came and hit the child. The P.W.8 in his examination-in-chief stated that he was told that his child was walking on the side when the vehicle Tata Indica coming from opposite side hit the child. But the cross-examination of the P.W.8 give away an entire different scenario when he went on to disclose that one guardian was with the child but the guardian was not holding hands and his child was going to the opposite side of the road where her uncle was standing. This version has not been disclosed by the P.W.2 herself but the P.W.8 claimed to have got knowledge of the incident from the P.W.2. The P.W.2 did not disclose about presence of any uncle of the victim at the other side of the road. The P.W.1 and P.W.7 are appearing to be the uncles of the victim but neither of them stated about witnessing the incident or being present with the victim at the time of the incident, during their respective evidences. The evidence of P.W.1 disclosed about general condition of weather of that area during the time of year when the incident occurred and on that point the existence of fog till 10/11 a.m. has been revealed. So, the overall evidence bring out a circumstance where a child of 2 years 2 months old was on the road without her hand being hold by any guardian and there was attempt by her to cross the road to go towards her uncle in an early morning time where there is every chance of existence of fog.

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14. In this case though the Mechanical Expert was not examined as witness from the side of the prosecution but during the evidence of P.W.10 he produced the report prepared by Mechanical Expert and identified the signature of the Mechanical Expert Bhola Nath Saha. There was no objection on the part of the defence while admitting the document in evidence. So, this Court is inclined to look into the same for obtaining the picture of the condition of the offending vehicle. The Exhibit P8/P.W.10 reflects that, there was no mention of any scratch or bump on any part of the vehicle and the vehicle was in road worthy condition. So, the Exhibit P8/P.W.10 is not indicating about any huge impact. Now, the victim of this case is 2 years 2 months old child and the evidence of P.W.9 along with the Exhibit P3/P.W.9 reflects about one abrasion on the left cheek measuring 2 inch x 2 inch with ruptured both lungs. The Exhibit P9/P.W.10 i.e. the surathal report reflects about trace of bleeding from nose and mouth, abrasion injury mark on left cheek and left side of the belly and tire mark on right toe. So, there is some discrepancies regarding external injury of the minor victim. Now, it is to be considered if a car dash a child of 2 years 2 months in a high speed it is bound to cause severe external injuries on several body parts. But here the Exhibit P2/P.W.9 and P9/P.W.10 do not disclose such multiple external injuries. Moreover, the Exhibit P9/P.W.10 state about tire mark on the right toe. So, there is no scenario of impact with a high speed vehicle otherwise a child of 2 years 2 months old like the victim would have knocked down and thrown away at a distance due to such impact.

15. Though the conjoint reading of the medical evidence, inquest report and oral evidences from the side of prosecution especially oral evidence of P.W.2, leaves no doubt in the mind of the Court that the death of the victim was due to the impact with a Tata Indica vehicle but the above discussed circumstance revealed from medical evidence as well as the oral evidences of the witnesses are not proving any high speed driving by the driver of the Tata Indica vehicle which resulted in accident and caused the death of the daughter of P.W.2 rather there is trace of scenario where a minor girl of *only 2 years 2 months of age was unattended while crossing a road by which vehicle pass.

16. Now, this Court finds that the P.W.1 identified the accused as the driver of vehicle no. WB74H 8884 and stated that after accident the car was trying to flee but local people stopped the car. The P.W.2 also identified the accused as the driver of the vehicle WB74H 8884. The P.W.4 identified the accused as driver but she told that the car was a Maruti car. The P.W.7 stated that the accused was driving the car being no. WB74H 8884. The P.W.6 identified the accused as the driver and stated that the driver was alone in the vehicle but as mentioned earlier that there was no positive evidence to witness the incident by him and he disclosed that the accused is known to him as he is his neighbour. It is also found from his cross-examination that he is relative of the P.W.1 and his house is situated at a distance of 200 meters from the house of P.W.1. The P.W.8 disclosed about his knowledge about residence of the driver near his matrimonial house. So, there is every possibility that the witnesses who are family member of the P.W.1 also knew the accused as neighbour of P.W.6. The Exhibit P6/P.W.10 reflects that the Tata Indica vehicle was seized by the P.W.10 on 14.12.2009 at 12:45 hrs. at Dinhata P.S. from the accused when he produced the same. But the P.W.1 stated about apprehension of the vehicle by local people. The P.W.2 stated about seizure of the vehicle by police near the house. The order sheet reflects that the accused was produced before Court after arrest on 14.12.2009 but the incident occurred on 28.11.2009 as reflected from the Exhibit P4/P.W.10. So, there is no proper explanation or material as to the events after apprehension of the vehicle by the local people. It is pertinent to mention here that there is no evidence of any such local people who apprehended the vehicle as stated by the P.W.1. As it is already established that the P.W.2 appeared to be only eye witness of the incident and P.W.1 and

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P.W.7 did not depose in the manner of witnessing the incident by themselves, their identification of the accused as the driver of the offending vehicle can not be hold without any iota of doubt. Even the oral evidence of P.W.2 is appearing to be contradictory with other oral and documentary evidences o the prosecution on various aspect and as such her identification of the accused as the driver is also not helping the case of the prosecution to prove the fact beyond reasonable doubt.

17. Thus, considering the entire prosecution evidence, this Court is of the considered opinion that apart from the unfortunate death of the victim due to accident the other factors like rash and negligent driving of the offending vehicle by the accused which resulted in the accident, are completely missing and consequently the ingredients of Section 279/304A of IPC are not fulfilled by the prosecution. Accordingly, it can be concluded that the prosecution has miserably failed to prove the charges against the accused person beyond reasonable doubt by adducing valid and cogent evidence on the basis of which the accused person can be held guilty. Therefore, this Court is left with no other alternative, but to acquit the accused person of the charges labeled against him.

18. Hence, it is

O R D E R E D

that the accused person namely Bijay Ray South is found not guilty of the offence under Section 279/304A 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 respective bail bond.

Surety is discharged from his liabilities.

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

Let a copy of this order be sent to District Magistrate, Cooch Behar as per direction of Hon'ble Calcutta High Court in the case of Sabitri Bhunya vs The State of WB and Others.

Copy of order be also sent to Chairman, SDLSC, Dinhata as per direction of Hon'ble Court in above referred case.

The victim as defined in Section 2(wa) of Cr.P.C. has the rights to prefer an appeal under proviso to Section 372 of Cr.P.C and if necessary, to avail free legal assistance through the legal services authorities concerned to prefer and prosecute such appeal.

The case is disposes off.

Note in register and CIS.

D/C by me

Sd/-

(Pratyay Pal)
Judicial Magistrate, Dinhata

Sd/-

(Pratyay Pal)
Judicial Magistrate, Dinhata.

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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)
P.W.1	Mangal Chandra Barman	De facto complainant
P.W.2	Sabita Adhikary	Eye witness (mother of the victim
P.W.3	Jogesh Barman	Other witness
P.W.4	Shanti Barman	Other witness
P.W.5	Shyamal Sharma	Other witness
P.W.6	Sadananda Barman	Other witness
P.W.7	Pulin Chandra Barman	Other witness
P.W.8	Chinmay Adhikary	Other witness (father of the victim)
P.W.9	Dr. Amal Basak	Medical Witness
P.W.10	Ajit Kumar Chowdhury	Investigating Officer

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 1/1	Signature of the P.W.1 on the written complaint
2.	Exhibit P1/1/P.W.10	Endorsement of I/C Dinhata P.S. on the written complaint
3.	Exhibit 2/1	Signature of the P.W.7 on the seizure list dated 01.12.2009
4.	Exhibit 2/2	Signature of the P.W.8 on the seizure list dated 01.12.2009
5.	Exhibit P3/P.W.9	Carbon copy of post mortem report
6.	Exhibit P4/P.W.10	Formal FIR
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10.	Exhibit P8/P.W.10	Mechanical Expert report
11.	Exhibit P9/P.W.10	Carbon copy of inquest report

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.

Sd/-
(Pratyay Pal)
Judicial Magistrate, Dinhata.