

**IN THE COURT OF THE JUDICIAL MAGISTRATE,
MUNGPOO, DARJEELING**

Present: Sri Indranil Ghosh,
Judicial Magistrate,
Mungpoo, Darjeeling (IC) (JO Code WB01366).

G.R. Case No. 223 of 2025
CIS Reg. No. 04 of 2026
CNR No. WBDJ130000042026

In the matter of: -

State

Prosecution.

-vs-

Bivor Tamang.

Accused Person.

**(Arising out of Rangli Rangliot PS Case Number 31 of 2025 dated
07.10.2025)**
Under Section 85 of the Bharatiya Nyaya Sanhita, 2023
Date of delivery of Judgment: On this 14th day of July, 2026

J U D G M E N T

Prelude: -

1. The gravamen of this case is under Section 85 of the Bharatiya Nyaya Sanhita, 2023. Before plunging into slaying this controversy, it is absolutely necessary that the chronicles of this case be epitomized. In furtherance of this cause, it may be mentioned that the instant case has its genesis in the written complaint filed by the *de-facto* complainant namely, Angel Malla Tamang with Rangli Rangliot PS. Acting on the said complaint, Rangli Rangliot PS started investigation based on the allegations ventilated in the complaint. The conspectus of the allegation as contemplated in the complaint is continuous physical and mental torture upon the DC at her matrimonial house by the accused. Hence, this case.

Investigation, filing of Charge sheet and supply of copy: -

2. ASI Raju Debnath of Rangli Rangliot Police Station investigated the matter, recorded the statements of the witnesses under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seized some documents, visited the place of occurrence, prepared rough sketch map and index and on completion of investigation *prima facie* materials against the

accused person was found and charge-sheet being number 30 of 2025 dated 21.11.2025 was submitted in this case under Section 85 of the Bharatiya Nyaya Sanhita, 2023 against the accused above-named. Then after submission of charge sheet as a progressing action cognizance of the offence was taken against the accused person for allegedly committing the above-mentioned offences, copy was served under Section 230 of the B.N.S.S. and the case was transferred to this Court for trial.

Charge: -

3. After considering the materials available on record, charge under Section 85 of the Bharatiya Nyaya Sanhita, 2023 was done against the accused person above-named. The substance of allegation was read over and explained to the accused to which he pleaded not guilty of committing those offences and claimed to be tried by this Court. As the offence charged with, was triable by this Court and was within the jurisdictional domain of this Court, the trial of this case was initiated by recording the evidences of the prosecution.

Evidence and Examination under Section 351 of the B.N.S.S.: -

4. The prosecution could adduce two (02) witnesses among seven (07) witnesses who are named in the charge sheet. DC and Jason Malla deposed in full as P.W. 1 and P.W. 2 respectively. During evidence, written complaint, signature of DC on seizure list dated 12.10.2025 and signature of P.W. 2 on seizure list dated 12.10.2025 were marked as Exhibit P/1, Exhibit P/2 and Exhibit P/3 respectively. No other witness was examined on behalf of the prosecution. There is no other documentary evidence available on record. Subsequently, after considering every possible facet and in order to hoist the motto of Section 346 of the B.N.S.S., the prosecution evidence was closed and the accused person's examination under Section 351 of the B.N.S.S. was completed. The accused person embraced the theory of innocence and did not adduce any evidence on his behalf. Thereafter, argument was heard from both sides.

Points for determination: -

5. After exhausting the procedures as penned down above, the case was posted for hearing of arguments. On completion of arguments as per requirement of Section 393 of the B.N.S.S., it is the incumbent duty of this Court to formulate the points for determination and assign reasons for harbouring to any conclusion on those points. After considering every possible facets in this case and considering the materials available the points for determination are arrayed as under: -
 - (i) Whether the prosecution has proved the case against the accused person beyond reasonable doubt?

(ii) Whether the accused person is liable to be convicted for committing offences punishable under Section 85 of the Bharatiya Nyaya Sanhita, 2023?

Decision with Reasons: -

6. Point number 01 and 02: - Both the points being related with each other are taken up together for discussion and adjudication. Ld. Advocate for the accused during the course of argument submitted that the prosecution has miserably failed to prove the charges framed against the accused and for that reason the accused must be acquitted. Ld. A.P.P. representing the prosecution raised cavil against the contention of Ld. Advocate for the accused and prayed for necessary order.
7. It is trite law in our criminal jurisprudence that the accused always has a presumption of innocence in his favour and the rule of evidence which has received judicial sanction is, the prosecution must prove the guilt of the accused, i.e., it must establish all the ingredients of the offence with which he/she is charged. The anvil for testing and interpreting what constitutes 'prove of guilt' in a criminal trial has been formulated by the Hon'ble Apex Court of India.
8. P.W. 1 (DC) merely stated that she got married with the accused in the year 2004, she gave birth to one male child out of the said wedlock, thereafter, dispute cropped up in between the DC and her husband due to some household trivial issues while the accused hurled abusive languages towards her.
9. During cross-examination, she admitted that she lodged the complaint on spur of the moment and as per ill advice of others. It was also elicited from her mouth that the dispute in regard to which she lodged the complaint was a regular household dispute and she has no allegation against the accused at present.
10. P.W. 2 (full-blooded brother of the DC) danced to the same tune of P.W. 1.
11. Keeping in mind all the facets as penned down above, I have no hesitation to decide that the prosecution has failed to prove the case beyond reasonable doubt.
12. This Court is of the opinion that there is no cogent evidence on record to establish that the accused person committed any act which would come within the purview of Section 85 of the Bharatiya Nyaya Sanhita, 2023.
13. Sans unnecessary, it can certainly be stated that the benefit arising out of the lack of evidence should go in favour of the accused person. This

Court has no other alternative but to hold that there is no iota of ingredient to constitute the offence punishable under Section 85 of the Bharatiya Nyaya Sanhita, 2023. Thus, the above points under determination are therefore answered in the negative.

14. Hence, it is hereby

ORDERED

15. that the sole accused person namely, **Bivor Tamang** is found to be not guilty of committing offences punishable under Section 85 of the Bharatiya Nyaya Sanhita, 2023 and he is hereby acquitted under Section 271 (1) of the Bharatiya Nagarik Suraksha Sanhita, 2023.
16. The accused person is on Court bail. Bail bond shall remain in force for the next six months as per the mandate of Section 485 of the Bharatiya Nagarik Suraksha Sanhita, 2023.
17. Seized article, if any, be dealt with as per the provision of law after the completion of period of appeal.
18. The victim/*de-facto* complainant has right to prefer an appeal under Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and if necessary, to avail free legal assistance through the legal services authorities concerned to prefer and prosecute such appeal.
19. As per the dictum of **the Hon'ble High Court, Calcutta** in the case of **Sabitri Bhunya vs. The State of West Bengal and Others**, a copy of this Judgment be sent each to the District Magistrate, Darjeeling and Ld. Secretary, DLSA, Darjeeling at once through electronic mode for due intimation to the victim/*de-facto* complainant (Angel Malla Tamang).
20. Inform all concerned at once.
21. Note in the relevant registers at once.
22. Update the CIS.
23. Let the soft copy of the Judgment be uploaded in the CIS within 48 hours from this day as per Rule 186A of the Cr.R.O. of the Hon'ble High Court, Calcutta.
24. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.
25. Let the case record be sent to the record room after expiry of appeal period as per due provision of law.

Typed by me

Sd/-
Judicial Magistrate,
Mungpoo, Darjeeling (IC).

Sd/-

(INDRANIL GHOSH)
Judicial Magistrate,
Mungpoo, Darjeeling (IC).
(JO Code WB01366)