

**Miscellaneous Forms as Form No. (M) 34.**

**IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS  
JUDGE,1st COURT, DAKSHIN DINAJPUR  
BALURGHAT**

**Present:** - Santosh Kumar Pathak  
Addl. Dist.& Sess.Judge,1st Court  
Dakshin Dinajpur at Balurghat.  
(J.O.W.B. 00830).

**Date of Delivery of Judgment: The 28<sup>th</sup> day of June, 2024.  
Sessions Case No. 29 of 2022  
T.R. No. 17 of 2022  
Registration No. 29 of 2022  
CNR No. WBDD01-000299-2022**

**(Details of FIR/Crime and Police Station)**

Hili P.S. Case No. 138 of 2020 Dated 29.10.2020 under Sections  
341/307379//506 of Indian Penal Code .

<b>Complainant</b>	<b>State of West Bengal</b>
Represented by	Sri Sajal Ghosh Learned Additional Public Prosecutor.
Accused Person	<b>Bipul Dey @ Mintu</b> <b>resident of:</b> Vill: Dharanda, P.S: Hili, Dist: Dakshin Dinajpur.
Represented by	Sri Ujwal Kumar Dey Learned Advocate for the accused person.

**Miscellaneous Forms as Form No. (M) 35.**

Date of Offence	<b>28.10.2020</b>
Date of FIR/Complaint	<b>29.10.2020</b>
Date of Charge-sheet	<b>31.12.2020</b>
Date of Framing of Charge	<b>09.12.2022</b>
Date of commencement of Evidence	<b>06.06.2023</b>
Date on which Judgment is reserved	NA
Date of the Judgment	<b>28.06.2024</b>
Date of the Sentencing Order, if any	NA

**Accused Details:**

Rank of the Accused	Name of the Accused	Date of arrest	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428 of Cr.P.C.
(A-1)	<b>Bipul Dey @Mintu</b>		Under Section <b>4341/30 7/379/ 506</b> of Indian Penal Code	Acquitted.	NA	NA

**Miscellaneous Forms as 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)

**B. Defence Witnesses, if any:**

<b>Rank</b>	<b>Name</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>

**C. Court Witnesses, if any:**

<b>Rank</b>	<b>Name</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>

**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS****A. Prosecution:**

<b>Exhibit Number</b>	<b>Description</b>
Exhibit -1	Written Complaint
Exhibit-1/1	Signature of PW-2 on complaint
Exhibit-2	Injury Report

**B. Defence:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1		
2		

**C. Court Exhibits:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1		
2		

**D. Material Objects:**

<b>Sr. No.</b>	<b>Material Object Number</b>	<b>Description</b>

## **J U D G M E N T**

1. Factual matrix of the prosecution case as unraveled from the written complaint is that on 28.10.2020 at about 9 a.m. while the defacto compliant went to Hili market for purchasing something, right at that time accused persons out of his previous grudge started abusing him with filthy languages and on protest he started assaulting the complainant by fists and blows over his face and dashed him down the floor of the market and started kicking him incessantly and throttled his neck to terminate his life but somehow the complainant/victim got rescued. Furthermore, during the commission of incident the accused also snatched away one gold chain from the neck of the victim. In consequence of the above incident the victim lodged the present complaint before the jurisdictional police station.

2. On receipt of the written complaint, Officerin Charge of Hili P.S. started Hili P.S.Case No.138 of 2020 dt. 29.10.2020 u/s.341/307/379/506 of the IPC and endorsed the case to A. S.I Dipak Goswami for holding investigation who on conclusion of investigation submitted charge sheet against the present accused person for alleged commission of offences under sections 341/307/379/506 of Indian Penal Code.

3. After observing all formalities under Section 207 Cr P C the present case was committed to the court of Ld. Sessions Judge, Dakshin Dinajpur under Section 209 of the Cr P C and Ld. Sessions Judge, in turn transferred the case to this court for trial and disposal. Accordingly, charge was framed against the present accused persons for commission of offences under Sections 341/307/379/506 IPC while he pleaded not guilty and claimed to be tried. Hence, the instant trial was initiated.

4. After closure of prosecution evidence, the accused person was examined under Section 313 Cr P C wherein he pleaded absolute innocence and false implication in the case.

## **EVIDENCE ON RECORD**

5. In order to prove its case, the prosecution cited 11 witnesses and prosecution examined the following witnesses :-

P.W.1	Ramkrishna Das
P.W-2	Partha Saha
PW-3	Ratan Dutta
P.W-4	Dulal Saha
P.W-5	Dr.Kalidas Mohanta

6. During oral testimonies of the witness, following documents were tendered and marked as exhibits in favour of the prosecution.

1	Exhibit -1	Written Complaint
2	Exhibit-1/1	Signature of PW-2 on complaint
3	Exhibit-2	Injury Report

7. **POINTS FOR DETERMINATION**

*A. Has the prosecution been able to prove the charge that the accused person throttled the neck of the victim with such intention and under such circumstances that if by that act he had caused death of the victim lady he would have been guilty of murder?*

*B. Whether accused snatched away the gold chain of the victim without her consent with dishonest intention or not ?*

**DECISION WITH REASONS**

8. Both the points are taken up together for the sake of convenience and brevity of discussion as they are interlinked to each other. In order to substantiate the charges, the prosecution has examined the *de-facto* complainant cum victim as PW-1 who deposed that the alleged incident took place on 28.10.2020 at about 9 a.m. At that time he went to Hili Market for marketing and when he was standing in front of a meat shop, then the accused suddenly hit him on the back portion of his head. Due to such assault he fell down on the ground. He was wearing a gold chain at that time, which he found missing after the incident. Thereafter he went to hospital for medical treatment and subsequently on the next date he lodged a complaint before jurisdictional police station. During his cross examination this witness further deposed that usually more or less 300 people remain present during market time at that market. That apart, he further stated that he did not hand over to police any document to ascertain the ownership of his gold chain

9. Partha Saha, Law Clerk is examined as P.W-2 who is the scribe of the written complaint and he proved the written complaint but during cross examination he stated that he has no personal knowledge about the incident. P.W-3 & 4 both are hearsay witnesses and they have merely deposed that they have heard about the incident of dispute between the complainant and accused but they have not seen anything. Their cross examination were declined by defence counsel. P.W-5 Dr. Kalidas Mohanta is the Medical Officer who medically examined the victim on the alleged date of incident and he proved the Injury report which is marked as Exhibit-2 wherein he opined the no active bleeding from nose and merely one abrasion injury was found.

10. *section 307 IPC codifies that Whoever does any act with such intention or knowledge, and under any circumstances that, if he by that act caused death, he would be guilty of murder.” and the essential ingredients to prove an offence under [Section 379](#) IPC are 1. Accused had taken the movable property dishonestly.2. Property was taken out of the possession of complainant.3. Property was taken out without consent of complainant.4. The property was moved to such taking.*

13. Succinctly put, the prosecution has to bring home the charge against the accused person in terms of the ingredients of the offences alleged against him.

14. On meticulous scanning of the oral evidence on record, it is transparently clear that by no stretch of imagination it can be said that the complainant was at all physically assaulted by the present accused or any of his belonging was taken away by the accused without her consent or with any such dishonest intention. Though in his evidence he deposed that usually more or less 300 people remains present in the said market at market time, but surprisingly enough none turned up to corroborate the version of alleged victim and his sole testimony is not worthy of credence on the ground that he himself in his written complaint stated that accused abused him out of previous grudge. Thereby their previous enmity may lead to false implication or exaggerated accusation. Thereby the evidence of complainant cum victim remains not only uncorroborated but also inconsistent with the allegation raised by him. At the same time, in respect of alleged offence under section 307 IPC the victim did not utter a single word. Rest of the prosecution witnesses could not throw any light upon the incident as alleged.

15. Considering the facts and circumstances of this case as reflected from the evidence on record, it appears that prosecution has miserably failed to prove the charges against the accused persons as the *de-facto* complainant/victim has brought the contents of the FIR

within the ambit of suspicion and on close scanning of entire evidence on record it is difficult to find any such alleged incrimination against the present accused person. Even there is not a single iota of evidence which could have substantiated the allegation as charged against the accused person.

**16.** Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered before coming to any conclusion and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of acquittal. In view of the above facts and circumstances, this Court *finds and holds* that in absence of cogent oral and documentary evidence, the prosecution has failed to prove the charges against the accused person as alleged beyond all reasonable shadow of doubt and the benefit of doubt goes in favour of the accused person. Hence the prosecution case fails. As a result, the accused person is liable to be acquitted from the charges.

Hence, it is,

**Ordered**

that the accused person namely Bipul Dey @ Mintu is found not guilty for commission of offences punishable u/ss. 341/307/379/506 of Indian Penal Code and accordingly he is hereby acquitted from the charges under Section 235(1) Cr.P.C and he be set at liberty.

The bail bonds furnished by the accused persons during investigation/trial be treated as bonds u/s. 437A Cr.P.C and such bond made in force for a period of six months from the date of this order.

Seized alamats, if any, be disposed of in accordance with law after expiry of the period of appeal, if no appeal is preferred.

**Dict. & Corr. by me.**

**Additional Dist.& Sess.Judge  
1<sup>st</sup> Court, Dakshin Dinajpur**

**Additional Dist.& Sess.Judge  
1<sup>st</sup> Court, Dakshin Dinajpur**

**IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE, 1<sup>st</sup> COURT,  
DAKSHIN DINAJPUR  
BALURGHAT**

**Present: - Santosh Kumar Pathak**

Addl. Dist.& Sess.Judge, 1<sup>st</sup> Court  
Dakshin Dinajpur at Balurghat.  
(J.O.W.B. 00830).

**Sessions Case No. 29 of 2022**  
**T.R. No. 17 of 2022**  
**Registration No. 29 of 2022**  
**CNR No. WBDD01-000299-2022**

ORDER NO. 12 DT. 28.06.2024

Today is fixed for examination of the accused under section 313 Cr.P.C. Accordingly accused is examined u/s.313 Cr.P.C while he again pleaded his innocence and false implication. Accordingly **argument of both sides is heard in full and Judgment will be delivered at 4:30 p.m** today.

Dict. & Corr. by me.

Additional Dist.& Sess.Judge  
1<sup>st</sup> Court, Dakshin Dinajpur

Additional Dist.& Sess.Judge  
1<sup>st</sup> Court, Dakshin Dinajpur

Later DT. 28.06.2024

It is now 4:30 p.m. Sole accused on court bail is present by filing hazira. Ld.Advocate for the accused and Ld.P.P in Charge is present. Judgment is ready in four separate sheet containing page no.1 to page no.7. Let the same be kept with case record. Accordingly, the operative portion of the judgment is pronounced in open court and it is,

**Ordered**

that the accused person namely Bipul Dey @ Mintu is found not guilty for commission of offences punishable u/ss. 341/307/379/506 of Indian Penal Code and accordingly he is hereby acquitted from the charges under Section235(1) Cr.P.C and he be set at liberty.

The bail bonds furnished by the accused persons during investigation/trial be treated as bonds u/s. 437A Cr.P.C and such bond made in force for a period of six months from the date of this order.

Seized alamats, if any, be disposed of in accordance with law after expiry of the period of appeal, if no appeal is preferred.

Dict. & Corr. by me.

Additional Dist.& Sess.Judge  
1<sup>st</sup> Court, Dakshin Dinajpur

Additional Dist.& Sess.Judge  
1<sup>st</sup> Court, Dakshin Dinajpur

**Sessions Case No. 145 of 2022**

T.R. No. 13 of 2023

Registration No. 145 of 2022

CNR No. WBDD01-001755-2022