

Form A

IN THE COURT OF THE LD. ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, KURSEONG, DARJEELING

Present : TANMOY ROY (ACJM, KURSEONG)

Date of the Judgment : 10.04.2026

Case No. GR. 96 of 2024
CIS No. 326/2024
CNR No. WBDJ05-000526-2024

(Details of FIR /Crime and Police Station)
Kurseong PS Case No. 94/2024, dated 22.08.2024

Complainant	Ujjal Sarkar
REPRESENTED	Ld. APP in Charge Lendup Sherpa
ACCUSED	1. Sribash Saha
REPRESENTED BY	Ld. Adv. Sudip Bannerjee

FORM B

Date of Offence	21.08.2024
Date of FIR	22.08.2024
Date of Charge-sheet	15.11.2024
Date of Framing of Charges/Plea	12.12.2024
Date of commencement of Evidence	21.02.2025
Date on which Judgment is reserved	N.A.
Date of the Judgment	10.04.2026
Date of the Sentencing Order, if any	Acquitted

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.
No. 1	Sribash Saha	20.09.24	20.09.24	281/125(b)/324(4)/106(1) of BNS	Acquitted	N.A.	N.A.

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)
PW 1	Kishor Chettri	Witness
PW 2	Ujjal Sarkar	Defacto Complainant
PW 3	Shankar Sewaria	Witness
PW 4	Nathun @ Mithun Sarkar	Witness
PW 5	Bijay Mukhia	Seizure Witness
PW 6	Md. Hasibul Haque	Seizure Witness
PW 7	Arabinda Ghosh	Witness
PW 8	Padam Biswakarma	Witness
PW 9	Sonamit Lepcha	Witness
PW 10	Bholanath Baruri	Mechanical Expert
PW 11	ASI Biplab Das	IO
PW 12	Arun Roy	Inquest Witness

B. Defence witnesses, if any: None.

C. Defence witnesses, if any: None.

LIST OF PROSECUTION /DEFENCE /COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit P1/PW1	Signature of PW 1 on Written Complaint
2	Exhibit P2/PW2	Signature of PW 1 on Inquest Report
3	Exhibit P3/PW5 in series	Signature of PW 5 in SL dt. 20.09.2024
4	Exhibit P4/PW6 in series	Signature of PW 6 in SL dt. 20.09.2024
5	Exhibit P5/PW10	Mechanical Report dt. 27.09.24
6	Exhibit P6/PW11	Endorsement in the written complaint
7	Exhibit P7/PW11 in Series	Sketch Map and index
8	Exhibit P8/PW12	Report dt. 24.08.2024

B. Defence:

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

C. Court Exhibits: None.

D. Material objects: None.

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

Factual back drop of the case:

The prosecution case arises from written complaint dated 21.08.2024 by Ujjal Sarkar at about 05.00 hrs. his elder brother Tapan Kumar Sarkar was going towards Kurseong with a bike no. WB 74 W – 8978 and when he reached at Rohini Road near Tea Garden one scooty bearing WB 74 BT-6375 was coming

from Kurseong towards Matigara dashed his bike as a result his brother received grievous injury to his person and was taken to NBMCH and later shifted to Neotia Getweel for better treatment. The complainant further alleged that due to rash and negligent driving of the bike being no. WB 74BT-6375 the bike of victim got damaged. In this circumstances, the present complainant filed this present case.

On the basis of the complaint Kurseong P.S. case no.-94/2024 dated 22.08.2024 investigation commenced. After completion of investigation, the I/O of this case filed charge-sheet against the accused person u/s 281/125(b)/324(4)/106(1) of BNS.

After charge-sheet being filed, the Ld. ACJM, Kurseong took cognizance of the same and trial is commenced.

Charge

After the case record being transferred to this court, this court examined the accused person u/s 263 of BNSS he pleaded not guilty and claimed to be tried. After considering the prima-facie materials on record, this court framed formal charge u/s 281/125(b)/324(4)/106(1) of BNS against the accused person.

Commencement of trial and examination of the accused person u/s 351 of

BNSS

After charge is framed, the trial commenced by taking evidence of prosecution witnesses. After completion of evidence, the accused person was examined u/s 351 of BNSS and he pleaded innocence for the second time and claimed that he is not guilty. But he stated he is not going to give any evidences from his side.

Evidences Adduced:

Following evidences/witnesses has been from the prosecution side:-

PW 1	Kishor Chettri	Witness
PW 2	Ujjal Sarkar	Defacto Complainant

PW 3	Shankar Sewaria	Witness
PW 4	Nathun @ Mithun Sarkar	Witness
PW 5	Bijay Mukhia	Seizure Witness
PW 6	Md. Hasibul Haque	Seizure Witness
PW 7	Arabinda Ghosh	Witness
PW 8	Padam Biswakarma	Witness
PW 9	Sonamit Lepcha	Witness
PW 10	Bholanath Baruri	Mechanical Expert
PW 11	ASI Biplab Das	IO
PW 12	Arun Roy	Inquest Witness

Points For Consideration

- 1) Whether the accused person has committed the offense u/s 281/125(b)/324(4)/106(1) of BNS ?
- 2) Whether the prosecution has proved the guilt of the accused person beyond reasonable shadow of doubt?

Evidence on record

1. Delving into the discussion of the merits of this case it is very much important to evaluate the evidence on record. The evidence is discussed in details hereby :

- ➔ PW-1 namely Kishor Chettri deposed in his examination-in-chief that he is a retired police personnel and retired as Assistant Sub-Inspector of Police on 31.08.2024. Prior to his retirement he was posted at Garidhura Outpost under Kurseong Police Station. On the night of 20.08.2024, he along with Shankar Sewria, Padam Biswakarma, and the driver was on mobile van duty at Rohini. During such duty, they received information regarding a motor accident at Rohini factory and proceeded to the spot where they found an injured person lying on the road. He stated that the injured person was taken to Sukna BPHC and thereafter referred to North Bengal Medical College and Hospital, Siliguri. He sent the injured person along with a Home Guard for treatment. He further

stated that the accident took place between a scooty and a motorcycle, but he could not say the number of the offending vehicle and did not see the driver.

➔ During the cross examination of PW 1 he stated that he had no document to show that he was on duty on that night, could not say the name of the person who informed him, and did not witness the incident.

➔ PW-2 namely Ujjal Sarkar deposed in his examination-in-chief that he is a goldsmith by profession. He lodged a complaint at Garidhura Outpost on 21.08.2024 regarding the death of his brother Tapan Sarkar due to a road accident at Rohini Road. He stated that the incident occurred in the early morning while his brother was going towards Kurseong on a Pulsar motorcycle when a NTorq scooty hit him. He was not present at the place of occurrence and came to know about the incident from a police officer. He went to North Bengal Medical College and Hospital and later shifted his brother to Neotia Hospital where he expired on 24.08.2024. He stated that he had seen the offending vehicle bearing no. WB74B1-6375 at Garidhura Outpost but could not say who was driving it. He identified his signature on the complaint, which was marked as Exhibit P-1/PW-2, and also on the inquest report, which was marked as Exhibit P-2/PW-2. He identified the accused persons in Court.

➔ During the cross examination of PW 2 he stated that he had no personal knowledge of the incident, signed the inquest report as per police instruction, and did not know its contents.

➔ PW-3 namely Shankar Sewria deposed in his examination-in-chief that he is in police service. He was posted as a Home Guard at Garidhura Outpost and on 20.08.2024 he along with ASI Kishor Chettri and others was on mobile van duty at Rohini. They received information regarding a motor accident and reached the spot where they found an injured person. The injured was taken to Sukna BPHC and later to North Bengal Medical College and Hospital,

Siliguri. He handed over the injured to family members and returned. He stated that he did not see the driver and could not say the vehicle number.

- ➔ During the cross examination of PW 3 he stated that he could not recollect the number of the offending vehicle.
- ➔ PW-4 namely Nathun @ Mithun Sarkar deposed in his examination-in-chief that he is a motor mechanic. He stated that Ujjal Sarkar is his younger brother and the deceased Tapan Sarkar was his elder brother who died in a motor accident on 21.08.2024. He stated that the deceased was riding a Pulsar motorcycle bearing no. WB74W-8978 when a scooty bearing no. WB74BE-6375 hit him. He was not present at the place of occurrence and came to know about the incident from police. He saw his brother at North Bengal Medical College and later at Neotia Hospital where he remained admitted for three days in an unconscious condition. He stated that he did not know who was driving the scooty.
- ➔ During the cross examination of PW 4 he stated that he had not witnessed the incident and had no personal knowledge.
- ➔ PW-5 namely Bijay Mukhia deposed in his examination-in-chief that he is posted as ASI at Garidhura Outpost. On 20.09.2024 he was present when SI Biplab Das seized the driving licence, helmet, and related documents of the offending vehicle. He identified his signature on the seizure lists dated 20.09.2024, which were marked as Exhibit P-3/PW-5.
- ➔ During the cross examination of PW he stated that the seizure lists were prepared at Garidhura Outpost and that he had no personal knowledge about the incident.
- ➔ PW-6 namely Md. Hasibul Haque deposed in his examination-in-chief that he is posted as Home Guard at Garidhura Outpost. On 20.09.2024 he was present during seizure of documents and articles related to the offending

vehicle. He identified his signature on the seizure lists, which were marked as Exhibit P-4/PW-6.

- ➔ During the cross examination of PW he stated that the seizure lists were prepared at Garidhura Outpost and that he had no personal knowledge of the incident.
- ➔ PW-7 namely Arabinda Ghosh deposed in his examination-in-chief that he is posted as Constable at Garidhura Outpost. On 21.08.2024 he along with others went to Rohini Tea Estate on receiving information of an accident and found one Pulsar motorcycle, one scooty, and an injured person lying on the road. The injured was taken to Sukna BPHC and later referred to North Bengal Medical College and Hospital. He stated that the accident was between a Pulsar motorcycle and N Torq scooty.
- ➔ During the cross examination of PW 7 he stated that he did not witness the incident, had no personal knowledge, and could not say the registration number of the offending vehicle.
- ➔ PW-8 namely Padam Biswakarma deposed in his examination-in-chief that he is posted as Home Guard at Garidhura Outpost. On 21.08.2024 he along with others went to the place of occurrence and found an injured person along with a motorcycle and scooty. The injured was taken to Sukna BPHC and later referred to North Bengal Medical College and Hospital. He stated that the accident took place between a Pulsar motorcycle and N Torq scooty.
- ➔ During the cross examination of PW he stated that he had not witnessed the incident and had no personal knowledge.
- ➔ PW-9 namely Sonamit Lepcha deposed in her examination-in-chief that she is posted as Lady Constable at Garidhura Outpost. On 20.09.2024 she videographed the seizure procedure conducted by ASI Biplab Das wherein the offending scooty and Pulsar motorcycle along with documents were seized.

- ➔ During the cross examination of PW she stated that she had no document to show that she conducted the videography and that the mobile phone used for videography was not seized.
- ➔ PW-10 namely Bholanath Baruri deposed in his examination-in-chief that he is a mechanical expert and on requisition he examined the vehicles bearing nos. WB-74BT-6375 and WB-74W-8978 at Garidhura Outpost and found no mechanical defects. He proved his report, which was marked as Exhibit P-5/PW-10.
- ➔ During the cross examination of PW he stated that the report prepared by him was proper.
- ➔ PW-11 namely ASI Biplab Das deposed in his examination-in-chief that he was the Investigating Officer of the case. He identified the endorsement on the written complaint, which was marked as Exhibit P-6/PW-11. He visited the place of occurrence and prepared sketch map and index, which were marked as Exhibit P-7/PW-11. He recorded statements of witnesses, collected post-mortem report, identified the accused, and submitted charge sheet.
- ➔ During the cross examination of PW 11 he stated that he had no personal knowledge about the incident.
- ➔ PW-12 namely Arun Roy deposed in his examination-in-chief that he prepared the inquest report at Neotia Hospital after examining the dead body. He proved the report, which was marked as Exhibit P-8/PW-12.
- ➔ During the cross examination of PW 12 he stated that he had no personal knowledge about the incident.

Decision with Reasons

1. After careful perusal of the evidence on record and going through the contents of the depositions of the witnesses on record, certain points cropped up in the mind of this Court, which are needed to be mentioned here categorically for effective disposal of this case. These are as follows :-

2. It is important to note here that in this case total twelve prosecution witnesses have been examined and none of them in their evidence have clearly stated that on the date of alleged incident the offending vehicle was driven by the accused in such rash and negligent manner, which caused the alleged accident. The basic ingredients to attract Sec. 281/125(b)/324(4)/106(1) of BNS are absolutely missing in this case in order to held the accused person guilty of the alleged offenses against him.
3. Furthermore, PW 1 at the time of his evidence has failed to state the number of the offending vehicle and who was driving the same.
4. PW 3 and PW 7 at the time of their evidence also failed to state the number of the offending vehicle.
5. PW 2 and 4 at the time of their evidence has failed to state who was driving the offending vehicle on the date of alleged accident.
6. **Sec. 281 of BNS : Rash driving and 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 ten thousand rupees or with both.
7. **Sec. 106(1) of BNS reads as follows :** Whoever causes the death of any person by doing any rash and negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.
8. In **State Vs. Narahari Anant Naik AIR 1969 GOA 87**-- it has been held by the Hon'ble Court that simple lack of care such as will constitute a civil liability is not enough to bring home guilty to an accused person under this section.
9. The requirements of this Sections are that the death or accident of any person must have been caused by the accused doing any rash or negligent act. In other words, there must be proved that the rash and negligent act of the accused was the proximate cause of the death/accident. There must be a direct nexus in between the death/ injury of a person and the rash and negligent act of the accused.
10. In this present case, prosecution no where steadfastly proved before this Court that the death of the victim or the alleged accident was due to the rash and negligent driving of the accused on the date of incident. In absence of such the accused cannot be held guilty of any of the charges

pressed against him. Accordingly, the prosecution case lose its gravity and both the points for consideration are determined against the prosecution.

11. In this present case, in the light of above discussion, I am convinced to say that prosecution by dint of appropriate evidence has been able to establish the charge of Sec. 281/125(b)/324(4)/106(1) of BNS against the accused person.

Hence, it is

O R D E R E D

that the accused persons namely Sribash Saha found not guilty of the offence under Section 281/125(b)/324(4)/106(1) of BNS.

That the accused person is acquitted in terms of Section 271(1) of BNSS.

The accused person be released from his bail bond.

Surety is discharged from his liability.

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

Seized documents, if any, be returned to the accused person.

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

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

The case is disposes off.

Note in register and CIS.

Dictated and corrected by me

ACJM, Kurseong

(Tanmoy Roy)
ACJM, Kurseong
J.O. Code WB01288