

MACC No.04 of 2025
Reg. No. 04 of 2025
CNR. No.WBDJ01000705-2025
Present: Shri Akhilesh Kumar Pandey
JO Code WB00 784

Order No.02
Dated: 02.02.2026

Petitioner files hazira.
SR not yet received upon the Ops.
Awaiting receipt of SR.
Case is adjourned.
To **21.03.2026** for SR.

Additional District Judge,
1st Court, Darjeeling.

Additional District Judge,
1st Court, Darjeeling.

MACC 4 of 2016 (13 of 2016)

Order No. 67.

Dated : 29.09.2023.

The parties are present by hazira.

The O.P. No. 2 files a petition stating *inter alia* that the Insurance Policy Certificate issued against the offending vehicle covers third party liability, whereas the deceased was the owner and for which, the Insurance Company has no liability towards compensation. Hence, the petition praying for expunge of the O.P. No. 2 from the case.

Copy served.

Heard the both sides.

It appears that whether the Insurance Policy covers third party only or also the owner is a question of evidence. The evidence of the case still going on. Accordingly, I find no merit of the instant petition.

Hence, the instant petition for expunge filed by the O.P. No. 2 is considered and rejected.

The claimants file affidavit in chief of P.W-2.

Copy served.

The witness Nabin Sharma is accordingly, examined and cross examined in full and discharged as P.W-2.

Let PW stands closed on submission of the Ld. Lawyer for the claimants.

To 09.**10.2023** for OPW i/d argument.

D/C

Additional District Judge,
1st Court, Darjeeling.

Additional District Judge,
1st Court, Darjeeling.

Criminal Revision 05 of 2017(08 of 2017)

Order No. 59

Dated : 29.09.2023.

The petitioner takes no step.

No requisite.

None appeared for him on repeated call till 1: 15 pm.

It appears that LCR is already received by the Court.

To 30.09.2023 for Judgment.

D/C

Additional District & Sessions Judge,
1st Court, Darjeeling.

Additional District & Sessions Judge,
1st Court, Darjeeling.

Criminal Revision 04 of 2017(07 of 2017)

Order No. 57

Dated : 29.09.2023.

The petitioner takes no step.

No requisite.

None appeared for him on repeated call till 1: 15 pm.

It appears that LCR is already received by the Court.

To **30.09.2023** for Judgment.

D/C

Additional District & Sessions Judge,
1st Court, Darjeeling.

Additional District & Sessions Judge,
1st Court, Darjeeling.

Shri Uttam Bhattachary
Additional District Judge,
1st Court, Darjeeling.

Mat Suit 132 of 2023(130 of 2023)

Order No.05

Dated : 29.09.2023.

The petitioner is present by hazira.

He files the requisite of summons for the respondent in both way with process fee.

Office to issue the same at once.

It appears that due to inadvertent mistake, a petition which was filed in Mat Suit 131 of 2023 on 20.09.2023 has wrongly been tagged with the suit.

The office to put up the instant petition dated 20.09.2023 with the Mat Suit 131 of 2023 at once.

To 04.11.2023 for S/R & A/D.

Office to be more vigil and cautious in not repeating the same in future.

Office to comply.

D/C

Additional District Judge,
1st Court, Darjeeling.

Additional District Judge,
1st Court, Darjeeling.

Mat Suit 131 of 2023 (129 of 2023)

Order No.04

Dated : 29.09.2023.

The petitioner is present by hazira.

It is reported by the office that on 20.09.2023 the petitioner filed a petition for withdrawing the suit but , the same was, due to inadvertent mistake tagged with Mat Suit 132 of 2023.

The petition is accordingly, put up in the suit today.

Heard the Ld. Lawyer.

It is stated in the petition that there is some defect in the petition for which, the petitioner intends to withdraw the suit.

Since the petitioner intends to withdraw the suit, I find no reason not to allow the same.

Hence, the instant petition dated 20.09.2023 filed by the petitioner and put up on this day is considered and allowed.

Let the instant suit is dismissed being withdrawn.

D/C

Additional District Judge,
1st Court, Darjeeling.

Additional District Judge,
1st Court, Darjeeling.

Shri Uttam Bhattacharya,
Additional District Judge,
1st Court, Darjeeling.

Mat Suit 94 of 2020(02 of 2021)

Order No.26

Dated : 29.09.2023.

The fixed date being declared holiday, the record is put up today.

The petitioner takes no step.

None appeared on call.

It appears from the record that by an order dated 30.08.2022, the petition was amended.

In the conspicuous, the petitioner is directed to put requisite afresh for the respondent No. 1 on the next date positively.

To **16. 10. 2023** for requisite.

D/C

Additional District Judge,
1st Court, Darjeeling.

Additional District Judge,
1st Court, Darjeeling.

Shri Uttam Bhattacharya,
Additional District Judge,
1st Court, Darjeeling.

Misc Case 04 of 2022 (14 of 2022)

Order No.12

Dated : 29.09.2023.

The fixed date being declared holiday, the record is put up today.

The parties take no step.

No W.O by the O.P.

No affidavit of assets and liabilities by the parties.

To **18.10.2023** for W.O by the O.P. & for filing affidavit of assets and liabilities by the parties.

D/C

Additional District Judge,
1st Court, Darjeeling.

Additional District Judge,
1st Court, Darjeeling.

Mat Suit 19 of 2021(46 of 2021)

Order No.27.

Dated : 29.09.2023.

The fixed date being declared holiday, the record is put up today.

The parties take no step.

Let the suit be stayed till disposal of Misc Case 04 of 2022.

To **18. 10. 2023** for awaiting order.

D/C

Additional District Judge,
1st Court, Darjeeling.

Additional District Judge,
1st Court, Darjeeling.

Shri Uttam Bhattacharya
Additional District Judge,
1st Court, Darjeeling.

Mat Suit 134 of 2021 (152 of 2021)

Order No. 21

Dated : 29.09.2023.

Both the parties are absent by petition.

Heard.

Both the time petitions are considered and allowed.

To 13.10.2023 for reconciliation I/d dismissed.

The parties to remain present on the next date positively.

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D/C

Additional District Judge,
1st Court, Darjeeling.

Additional District Judge,
1st Court, Darjeeling.

Shri Uttam Bhattacharya
Additional District Judge,
1st Court, Darjeeling.

Mat Suit 100 of 2022 (101 of 2022)

Order No. 13

Dated : 29.09.2023.

The petitioner is present by hazira.

Seen the return.

The service of summons upon the respondent is found satisfactory.

None appeared for her on call.

Let the suit is fixed for ex-parte hearing against the respondent.

To **07.10.2023** for ex-parte hearing of the suit. .

D/C

Additional District Judge,
1st Court, Darjeeling.

Additional District Judge,
1st Court, Darjeeling.

Mat Suit 127 of 2023 (125 of 2023)

Order No. 05.

Dated : 29.09.2023.

The petitioner is present by hazira.

She files the requisite of summons for the respondent in both way with process fees.

Office to issue the same at once.

To **06.11.2023** for S/R and A/D

Office to comply.

D/C

Additional District Judge,

Additional District Judge,

1st Court, Darjeeling.

1st Court, Darjeeling.

Mat Suit 55 of 2021 (79 of 2021)

Order No.26.

Dated : 29.09.2023.

The petitioner is present by hazira.

She files the requisite of summons for the respondent in both way with process fee.

Office to issue the same at once.

To **06.11.2023** for S/R & A/D.

Office to comply.

D/C

Additional District Judge,
1st Court, Darjeeling.

Additional District Judge,
1st Court, Darjeeling.

Spl. GR 01 of 2022 (21 of 2022)

Order No.17

Dated 29.09.2023.

The Ld. Spl. P.P is present.

Both the accused are present by hazira.

Copy is ready and supplied to the accused persons.

Perused the petition dated 20.09.2023 and the other materials on record.

Heard the both sides.

It appears from the photocopy of birth certificate so annexed with the petition that the accused No. 02 viz, Vishal Singh was 15 years old on the date of occurrence of the alleged offence.

Hence, the instant petition praying for transfer the case in respect of the accused No. 02 Vishal Singh to JJB, Darjeeling is considered and stands allowed.

Let the case record is split up and sent to the JJB, Darjeeling for inquiry and disposal.

The accused No. 02 viz, Vishal Singh who is on bail is directed to appear before the JJB, Darjeeling on 06.10.2023.

To **13. 10.2023** for charge.

Accused No. 01 to remain present on the next date positively i/d W/A.

D/C

Judge , Spl. Court,
Under SC & ST (POA) Act,
Darjeeling.

Judge, Special Court,
under SC & ST (POA) Act,
Darjeeling.

Shri UttamBhattacharya,
Judge, Special Court under SC & ST (POA) Act,
Darjeeling.

Spl. GR 06 of 2020 (07 of 2020)

Order No.15.

Dated 29.09.2023.

The Ld. Spl. P.P is present.

Both the accused persons are absent by petition on the ground of their illness.

Heard.

The case is adjourned.

T0 **07.10.2023** for Charge.

Both the accused to remain present on the next date positively i/d W/A.

D/C

Judge , Spl. Court,
Under SC & ST (POA) Act,
Darjeeling.

Judge, Special Court,
under SC & ST (POA) Act,
Darjeeling.

Spl. GR 08 of 2018 (08 of 2018)

Order No.66.

Dated 29.09.2023.

The Ld. Spl. P.P is present.

All the 04 accused are represented u/s 317 of Cr.P.C.

No witness.

The case is adjourned.

To date (**30.09.2023**).

D/C

Judge , Spl. Court,
Under SC & ST (POA) Act,

Judge, Special Court,
under SC & ST (POA) Act,
Darjeeling.

Shri UttamBhattacharya,
Judge, Special Court under SC & ST (POA) Act,
Darjeeling.

Spl. GR 27 of 2022 (45 of 2022)

Order No.14 .

Dated 29.09.2023.

The Ld. Spl. P.P is present.

The accused No. 1 & 2 are present by hazira.

The accused No. 3 to 8 are absent by petition.

No S/R for accused No. 9.

Issue summons upon the accused No. 9 afresh.

To 09.11.2023 for appearance & S/R for accused No. 9.

D/C

Judge , Spl. Court,
Under SC & ST (POA) Act,

Judge, Special Court,
under SC & ST (POA) Act,
Darjeeling.

Shri UttamBhattacharya,
Judge, Special Court under SC & ST (POA) Act,
Darjeeling.

Spl. GR 94 of 2021 (94 of 2021)

Order No.26

Dated 29.09.2023.

The Ld. Spl. P.P is present.

The accused No. 2,3 & 8 are present by hazira.

The accused No. 1 & 7 are absent by petition.

No S/R for the rest.

Issue summons afresh upon the accused No. 4 to 6, 9 & 10.

To **04.11.2023** for appearance & S/R for accused No. 4 to 6 9 & 10.

Office to comply.

D/C

Judge , Spl. Court,
Under SC & ST (POA) Act,

Judge, Special Court,
under SC & ST (POA) Act,
Darjeeling.

S. T No. 16(9) 2023.

Spl. GR Case No. 10 of 2019(12 of 2019)

Order No.30.

Dated: 29.09.2023.

All the 03 accused are present by hazira.

The Ld. defence lawyer for them is present.

The Ld. Spl. P.P is present.

Perused the CD and the other materials on record.

The charge u/s **323/354/34** of I.P.C and u/s **3(1) (r) (s)** of SC & ST (POA) Act is framed against the accused persons in separate sheet, which is kept with the record.. The contents of the charge are read over and explained to the accused persons in their language, to which they pleaded not guilty by saying 'kasur chaina' and claimed to be tried.

Issue summons upon CSPW-1.

To **03.11.2023** for evidence of CSPW-1.

The prosecution to take step accordingly.

D/C

Judge, Spl. Court under SC & ST
(POA) Act, Darjeeling.

Judge, Special Court under SC & ST
(POA) Act, Darjeeling.

Sessions Case No. 31 of 2021 (31 of 2021)

Order No. 17

Dated 29.09.2023.

The Ld. P.P -in-Charge is present.

The sole accused is absent by petition on the ground of his sudden illness. The photocopy of medical certificate dated 28.09.2023 & train ticket are annexed thereto.

Heard.

The time petition is considered and allowed.

To **09.10.2023** for examination of the accused u/s 313 of Cr.P.C.

The accused to remain present on the next date positively i/d W/A.

No further time shall be entertained.

D/C

Additional Sessions Judge,
1st Court, Darjeeling

Additional Sessions Judge,
1st Court, Darjeeling.

IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE,
1st COURT, DARJEELING.

Sessions Case No. 20 of 2022 (20 of 2022)

Order No. 40

Dated 29.09.2023.

The record is put up.

It is brought to the notice of the Court by the office that in the Judgment dated 19.09.2023, the CNR Number has been stated as WBDT01-000652-2022 instead of WBDJ01-000652-2022 .

It appears that it was typographical mistake, which was done bona falsely.

The same accordingly, stands rectified.

Let a copy of this order be sent to the District Magistrate, Darjeeling and to the Secretary, DLSA, Darjeeling in continuation of earlier letters issued by this Court in this case, for their information.

Office to do needful.

D/C

Additional District & Sessions Judge,
1st Court, Darjeeling

Sd/-
Additional District & Sessions Judge,
1st Court, Darjeeling.

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Memo No. 456

Dated: 29.09.2023.

In continuation of letter bearing Memo No. 434 & 435 dated 20.09.2023.

Copy of order dated 29.09.2023 passed in ST 1 (8) of 2022 forwarded to:

1) The District Magistrate, Darjeeling.

2) The Secretary, District Legal Services Authority, Darjeeling for information and necessary action.

Additional District & Sessions Judge,
1st Court, Darjeeling.

Shri Uttam Bhattacharya,
Additional District Judge,
1st Court, Darjeeling.

Mat Suit 114 of 2021(132 of 2021)

Order No. 21

Dated 29.09.2023.

The petitioner is present by hazira.

She files her affidavit in chief.

The petitioner viz, Mrs. Anuradha Pradhan is accordingly, examined and discharged as P.W-1.

Heard the argument of the Ld. Lawyer for the petitioner at length.

The record is accordingly taken up for passing order.

It is sated in the petition that the petitioner gets married with the respondent on 24.04.2004 according to Hindu rites and ceremonies near Habron English School, P.O & P.S – Bagdogra, District – Darjeeling. After marriage they started residing together as husband and wife at the aforementioned address. In the wedlock, one son viz, Tanish Pradhan was born to the petitioner on 04.10.2005.

It is stated further that after birth of their child, marital discord between them was developed due to differences of opinions, temperament and taste. They got involved in quarrel very frequently even on trifle issue. It is alleged that the respondent gradually started disassociating him from the petitioner in all the matters. Since 07.01.2018, the petitioner was completely deserted by the respondent without any reason, and the petitioner has now been residing at her father's house at Saureni Busty, District-Darjeeling.

It is averred that the petitioner on numerous occasions requested the respondent to settle the dispute amicably and to restore their conjugal life but of no result as the respondent disagreed to the proposal. He was so adamant that he refused to lead conjugal life with the petitioner. The family members and well wishers of the petitioner tried to pacify the dispute but the respondent paid no heed. In this way, the petitioner has been subjected to desertion by the respondent. Hence, the suit praying for divorce on the ground of desertion.

It appears from the record that that the respondent though appeared in the suit but he subsequently, did not care to turn up. So, he does not contest the suit. The suit is accordingly, heard ex-parte today when the petitioner is examined as P.W-1.

After having consultancy with the instant petition as well as with the oral evidence so led in the suit firstly, I find that the parties get married on 24.04.2004 according to Hindu rites and ceremonies and after marriage, they started residing together as husband and wife near Habron English School, P.O & P.S – Bagdogra,

Contd...P/2

District-Darjeeling, which is within the jurisdiction of this Court. It is evident that the marital affairs between the parties gets deteriorated gradually due to difference of opinion and taste, which is ultimately made the petitioner subject to desertion by the respondent since 07.01.2018. It appears from the record that the suit was filed on 22.10.2021. It is evident that the petitioner and her inmates though tried to pacify the dispute but , it is not evident that during this interregnum, the respondent made any sincere attempt to restore the conjugal life. It is , therefore, found that the petitioner has been deserted by the respondent for a continuous period of more than two years immediately preceding the filing of the suit. Viewed thus, I find no reason not to believe such unchallenged case of the petitioner. In my considered view, the petitioner has been able to substantiate her case and she is, therefore, entitled to the relief , as prayed for.

Hence, it is

ORDERED

that the instant Mat Suit 114 of 2021 be and the same is thus considered and allowed ex-parte against the respondent without cost.

It is hereby declared that the marriage between the spouses/the petitioner Mrs. Anuradha Pradhan and the respondent Mr. Prakash Pradhan, which was solemnized on 24.04.2004 under the Hindu Marriage Act, 1955 is dissolved from this day of order.

Let a copy of this order be supplied to the parties at free of cost.

D/C

Additional District Judge,
1st Court, Darjeeling.

Additional Dist. Judge,
1st Court, Darjeeling.

District: Darjeeling

IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE,
1 ST COURT, DARJEELING

Present :- Sri Uttam Bhattacharya (WB00897)

Additional District & Sessions Judge

1 st Court, Darjeeling

S.T. Case No. 01 (08) / 2022

S.C. No.20 / 2022

CIS Registration No. 20 / 2022

CNR No. WBDJ01-000652-2022

[Jorebunglow P.S. Case no.14/22 dt. 25.04.2022 u/s 341/325/354/376/307 of IPC
[GR-98/2022]

State

- Vs -

.....Complainant

Suren Manger @ Munu

..... Accused Person

Section of Law: u/s 376/307/341 of IPC

[Judgment delivered on – 19.09.2023]

J U D G M E N T

1.

Briefly stated, the prosecution case is that the VG (PW1) on 25.04.2022 lodged a written complaint with Jorebunglow P.S. to the effect that on 25.04.2022 at around 06:45 am while the PW1 was going to Mim Himul and she reached at Dhar Khola, the accused all on a sudden attacked her; assaulted her; and tried to strangulate her as a result of which she became unconscious. When she regained her sense, she found herself with severe injury on her person and her wearing apparels were in torn condition. She was rescued by the tea garden labors, whom she narrated the incident. Hence, the complaint.-2-

2.

Accordingly, a police case was started with Jorebunglow P.S. being Jorebunglow

P.S.

case

no.14

of

2022

dated

25.04.2022

u/s

341/325/354/376/307 of IPC against the accused after treating the said written complaint as FIR.

3.

On completion of investigation, the police submitted charge sheet being charge sheet no.28 of 2022 dated 24.06.2022 u/s 341/325/354/376/307 of IPC against the accused. The cognizance thereof was duly taken by the Id Chief Judicial Magistrate, Darjeeling and the case was committed to the Court of Id Sessions Judge, Darjeeling. The case was subsequently transferred to this Court for trial and disposal.

4.

On 29.08.2022 charge u/s 376/307/341 of IPC was framed against the accused. The contents of the charge were read over and explained to him in his language, to which he pleaded not guilty and claimed to be tried.

5.

To substantiate the case, the prosecution has examined as many as total eighteen witnesses including the VG in the case. The prosecution has tendered the relevant documents, which are proved and marked as exhibits in the case. Whereas, the accused was examined u/s 313 of CrPC. His defence was completely denial of the prosecution case. He declined to adduce any evidence.

6.

WITNESSES EXAMINED –

PW1 - The VG, the complainant.

PW2 - Shri Arbind Rai, Garden-in-charge of Tea Garden.

PW3 - Shri Rojer Rai, the President of local 'samaj'.

PW4 - Smt. Ranju Rai, worker of tea garden.

PW5 - Shri Prasang Tamang, Staff at Tea Garden dispensary.

PW6 - Shri Upendra Rai, seizure witness.

PW7 - Shri Yogen Gurung, seizure witness.

PW8 - Ritesh Pradhan, photographer.

PW9 - Biren Manger (I), employer of the accused.-3-

PW10 - Biren Manger (II), brother of the accused (declared hostile).

PW11 - SI Bandana Pradhan, recorded statement of VG u/s 161 of CrPC.

PW12 - Dr. Abhishek Barman, examined the accused.

PW13 - Dr. C. L. Sherpa, examined the VG.

PW14 - Shri Gautam Adhikari, seizure witness.

PW15 - seizure witness.

PW16 - Shakil Ahmed, Assistant Teacher, Adarsh High School.

PW17 - Shri Bimal rai, Clerk, Adarsh High School.

PW18 - Sandeep Gorai, the IO.

7.

DOCUMENTS EXHIBITED –

Exbt.P1 - Statement of the PW1 u/s 164 of CrPC by the PW1.

Exbt.P2 - Written complaint by the PW1.

Exbt.P2/1 – Written endorsement on the written complaint by the PW18.

Exbt.P3 - Signature of the PW1 on consent form for medical examination by the PW1.

Exbt.P4 - Signature of the PW6 on the seizure list dt. 25.04.22 by the PW6.

Exbt.P4/1 - Signature of the PW7 on the seizure list dt. 25.04.22 by the PW7.

Exbt.P4/2 – Seizure list dt. 25.04.22 by the PW18.

Exbt.P5 - Certificate u/s 65B of Evidence Act by the PW8.

Exbt.P6 - Medical examination report of the accused by the PW12.

Exbt.P7 - Medical examination report of the VG by the PW13.

Exbt.P8 - Signature of the PW14 on the seizure list dt. 01.05.22 by the PW14.

Exbt.P8/1 - Signature of the PW15 on the seizure list dt. 01.05.22 by the PW15.

Exbt.P8/2 – Seizure list dt. 01.05.22 by the PW18.

Exbt.P9 - Signature of the PW16 on the seizure list dt. 24.05.22 by the PW16.

Exbt.P9/1 - Signature of the PW17 on the seizure list dt. 24.05.22 by the PW17.

Exbt.P9/2 – Seizure list dt. 24.05.22 by the PW18.

Exbt.P10 - Formal FIR by the PW18.

Exbt.P11 - Sketch map & index by the PW18.

Exbt.MO1 – (2) pen drives (collectively) by the PW8.

POINT FOR DETERMINATION

8.

Whether the prosecution has been able to prove the charge as slapped against the accused in the case beyond all reasonable doubt.

DECISION WITH REASON

9.

The ld PP-in-charge has invited my attention to the depositions of the-4- PWs and placed his contentions which may be summarized as hereinbelow –

(1)

that the VG has been cited as PW1 in the case and she has fully supported the prosecution case on dock;

(2) that the other PWs have dully corroborated the PW1 in the case;

(3) that the defence has not denied the presence of the accused at the PO at the relevant time: so, it is proved that the accused was present at the PO at the

relevant time;

(4) that the injury upon the PW1 is proved in the case;

(5) that the oral and documentary evidence so led in the case are sufficient to rope the accused with the offences with which he is charged; according to him, the prosecution has been able to prove the case against the accused beyond all reasonable doubt.

10.

Per contra, the ld defence Counsel has advanced his argument with great gusto and thrust upon the points, which may be summarized as hereinbelow-

(1)

that the PW13/the treating doctor has not affirmed the story of alleged rape; the medico-legal report led in the case does not indicate the commission of the alleged rape;

(2)

that there is no FSL report of collected vaginal swab of the VG; so, the alleged rape is not proved in the case;

(3)

that the VG/PW1 is not consistent in narrating the alleged incident; PO is not ascertained in the case; the evidence of the PW1 is full of self-contradictions and it gets no corroboration from the other PWs; so, the PW1 is not trustworthy in the case and no reliance should, therefore, be put upon her testimony;

(4)

that there is no eye witness to the alleged incident though it occurred in the morning when the workers were working in the tea garden; so, the prosecution story is not believable;

(5)

that the oral and documentary evidence so brought forward in the case are not at all sufficient to bring home the charge; according to the ld Counsel, the prosecution has failed to prove the charge against the accused beyond all reasonable doubt, and the accused, thus, deserves an order of acquittal.-5-

11.

I have given my careful attention to the rival contentions of the ld Counsel for the respective parties and meticulously gone through the oral and documentary evidence so led in the case. Let me now allow to consider whether the prosecution has been able to prove the charge against the accused beyond all reasonable doubt.

Gist of the allegations

12.

For befitting of discussion let us have a re-look upon the allegations as frescoed and projected in Exbt.P2. It is alleged therein that on 25.04.2022 at around 06:45 am while the PW1 reached at the PO, the accused attacked her; assaulted her; and tried to strangle her as a result of which the PW1 became senseless. When she regained her sense, she found her with injury on her person and her wearing apparels were in torn condition. The labors of the local tea garden rescued her, and she narrated the incident to them. These much are the allegations as made out in Exbt.P2, which put the instant case in motion.

Analysis & findings

13.

The PW1 is the VG. She is the author of Exbt.P2. She is, therefore, very vital witness in the case. I perused her testimony very carefully and cautiously. She has deposed that on 25.04.2022 at around 06:30 am she went near Adarsh High School to buy milk. At that time the accused was standing near the toilet, which was just below the said school. The accused asked her where she was going and she replied that she was going to purchase milk. The accused then asked her whether she was married and she replied in affirmative. The accused asked her further why she left her husband, to which she said that she left her husband as he was alcoholic. The accused then asked her why she had no baby, to which she did not reply and started walking away.-6-

14.

She has deposed that she got frightened and she telephoned her aunt, friends and her sister Srijana but none of them picked up her call. She has deposed that while she was walking away, the accused ran to her and caught her both hands. She requested him to let her go but, the accused demanded for physical relation with her. The accused then put his hand on her breast and neck, and he threatened to kill her. She tried to restrain the accused but could not succeed. As the accused was pressing her throat forcibly, she became unconscious.

15.

She has stated further that when she regained her sense, she found herself in bush and her cloths were opened; she was bleeding; and she found injuries on all over her body. She managed to come out from the said place by crawling and reached near the tea garden. She started crying for help. Hearing her shriek, the workers, who were working in the tea garden came forward and rescued her and took her at the dispensary attached with the tea garden. She has deposed that the accused tried to kill her and he committed

rape upon her. She has proved her written complaint, her statement u/s 164 of CrPC and her signature on the consent form for medical examination and they are marked as Exbt.P2, P1 and P3 respectively.

16.

In cross examination, she has stated that she got married at the age of 17 and she stayed with her husband for two years and now she has not been residing with her husband. There was no house around the PO as it was a jungle. She used that pathway regularly to buy milk from a milk shop at Mim tea garden as there was no other pathway to reach at that milk shop from her house.

17.

She has stated further that she was first, taken at the dispensary of the tea garden, where she told the person, who treated her that she was strangulated and she became unconscious. She stated this fact also to the-7-treating doctor at District Hospital, Darjeeling. She has deposed that her throat was hurt when the accused strangulated her at the PO, which was at a distance of 10/15 minutes from her house. She has deposed that she was alone at the relevant time. She has denied the fact that she does not know who committed rape upon her, or that the said pathway is a crowded area.

18.

The close perusal of the statement of the PW1 made u/s 164 of CrPC (Exbt.P1), reveals that she has narrated the alleged incident in the same tune with variation to the effect that – when she regained her sense she found herself below the place she was prior to her becoming unconscious, and it was the accused, who actually threw her in bush; she found herself completely naked and it was the accused, who removed her cloths; she suffered bleeding injury on her nose and mouth, scratch on her body and pain in lower abdomen area; out of fear that the accused may return she somehow managed to take her at the garden area, and managed to call the workers of the tea garden, who took her at the dispensary of the tea garden.

19.

In her statement u/s 161 of CrPC, she has narrated the alleged incident with variation to the effect that – when she refused the proposal of the accused to have physical relation with him and tried to move away from him, the accused put his hand on her breast and touched her private parts; when she tried to save herself, the accused bit on her hand and strangulated her with hands for which, she became unconscious; when she regained her sense, she hound herself far away from the main road in a jungle, and her wearing cloths were crumpled and open; she found injury on her person; she

was bleeding from her mouth and nose; felt pain around her stomach and abdomen area; she felt that the accused threw her into the drain; out of fear that the accused might come back, she somehow managed to take her near her colleagues, who used to work in the tea garden with her, wherefrom she was taken to hospital; and the accused raped her.-8-

20.

It is, therefore, found that the PW1 became unconscious in the alleged incident and she did not witness the alleged rape upon her by the accused. To be precise, she did not witness the accused committing rape upon her. In her statement u/s 164 of CrPC, she has stated that she was thrown in bush by the accused and she was undressed completely by the accused. She has, however, not uttered these facts in her statement u/s 161 of CrPC and on dock. According to her in her statement u/s 164 of CrPC, she, upon her regaining sense, found herself completely naked, which fact has, however, not been asserted and affirmed by her in her statement u/s 161 of CrPC and on dock. She has instead, stated that she was with her cloths, though her cloths were crumpled and open and in torn condition. She has stated in Exbt.P2 that her wearing clothes were in torn condition. Neither in Exbt.P2 nor on dock the PW1 has asserted the fact that she was thrown in a bush by the accused, though she has stated it in her statement u/s 164 of CrPC. She has though stated in Exbt.P2 that she told the alleged incident to the workers of the tea garden, who came to rescue her but, this fact has not been affirmed by her neither in her statement u/s 164 of CrPC nor on dock nor in her statement u/s 161 of CrPC. Consequently, it is found that the PW1 was not intact and consistent in narrating the alleged incident in the case. She is, found to have been taking her stand in the case so incongruously, disharmoniously and puzzlingly, her trustworthiness resultantly, remains at stake. In the conspicuous, the Court should be more cautious and should not readily jump to any conclusion without pondering upon the circumstances emerging from the testimony of the other witnesses and obviously! from the clinical examination report of the PW1 in order to come to a definite conclusion regards to the commission of the alleged incident.

21.

The PW5 is the staff attached with the dispensary of the tea garden.

He has stated that he knows the PW1, and on 25.04.2022 the PW1 was brought at the dispensary by the workers and the PW1 was in injured-9-condition and she was referred to District Hospital, Darjeeling. Nothing more is forthcoming from his evidence. It is, thus, found that the PW5 has not affirmed the assertion made by the PW1 to the effect that she told him that

she was strangled by the accused and she resultantly, became unconscious.

22.

The PW13 is the treating doctor attached with District Hospital, Darjeeling. She has stated that on 25.04.2022 she examined the PW1 in the hospital with the history of injury to the effect that on 25.04.2022 at around 06:30 am the accused pressed the neck of the PW1 and she became senseless and she did not know what happened to her thereafter, and she cannot state whether she was hit on her face or body.

23.

On examination, the PW13 found – redness on right eye; marks of bruise in front of neck; and superficial abrasion marks on both legs and arms. She however, found no mark of injury on the private parts. She found hymen was not intact as the PW1 was married for two years. The PW13 has stated that urine test was negative. She has proved the medical examination report as Exbt.P7.

24.

In cross examination, she has stated that there were no foreign particles in the private parts of the PW1. She collected vaginal swab and the report of examination of vaginal swab was negative. She has deposed that superficial injury on the neck cannot cause unconsciousness. She has, however, denied the fact that bruise marks on the neck are possible if someone falls on rough surface.

25.

I perused Exbt.7. It appears therefrom that on examination, no injury on breast and in private parts of the PW1 was found by the PW13. It appears further that the PW1 has though stated to the PW13 that the accused pressed-10-her neck for which she became unconscious but, has not stated to the PW13 that she was hit on her face and body. Thus, Exbt.7 only suggests that the accused pressed the neck of the PW1, who, however, did not witness the accused hitting on her face or body.

26.

It is, therefore, found from the testimony of the PW13 and from Exbt.7 that the clinical examination does not indicate the presence of any sort of injury on or any foreign particles in the private parts of the PW1. The PW13 has not asserted that she was told by the PW1 that she (PW1) was raped by the accused. Rather, it is evident from the deposition of the PW13 that the PW1 was unaware as to what happened to her, to be precise, whether she was hit on her face or body after she became unconscious. In fact, the PW1 has

only uttered before the PW13 that the accused pressed her neck and she became unconscious. Nothing more or less regards to history of injury has been stated by the PW1 to the PW13 though it is not evident that the PW1 was not in a state of mind and health to state the alleged incident with more delineation to the PW13. Abstinence from delineating the alleged incident with more details, instead of confining herself to state the alleged incident only to the extent that the accused pressed her neck, to the treating doctor (PW13) causes a great fatal to the prosecution in establishing its story, more so when there is no explanation offered by the prosecution as to what prevented the PW1 from stating the alleged incident with little more delineation to the PW13. The clinical examination report of the PW1 (Exbt.P7) does, therefore, not indicate the commission of the alleged rape upon the PW1. To put it otherwise, medico-legal evidence so led in the case does not establish the commission of the alleged rape upon the PW1.

27.

The PW4 is the worker of the tea garden. According to him, on the alleged date and time he heard that a girl was shouting from the jungle. He with others went to the PO and found that girl as PW1, who is known to him.-11- On being asked, the PW1 told them that she was raped by the accused. At that time 9/10 workers were present. They then informed the incident to the garden-in-charge (PW2).

28.

The PW2 has stated that on 25.04.2022 at around 08:00 am he received an information from the workers that one girl (PW1) was crying for help. He rushed to the spot and saw the PW1 with injury. The PW1 told him that while she was going to buy milk, the accused tried to molest her. He has stated further that the PO is not a jungle; it is a part of tea garden; and the workers of the tea garden are frequent over the PO from 6'o clock in the morning.

29.

The PW3 is the president of the local 'samaj'. He too on being informed by the workers of the tea garden, rushed at the PO and found that the PW1 was already rescued and taken at the road by the workers. He found the PW1 with bleeding injury. When he asked her how she suffered injury, the PW1 told him that the accused was responsible for her injury.

30.

It is, therefore, found that the PW2 and 3 both were informed about the alleged incident by the workers of the tea garden. The PW4 is one of those workers, who informed the alleged incident to the PW2 and 3. According to

the PW4, the PW1 told them that she was raped by the accused. However, the PW2 and 3 have not stated that they were informed by the workers that the PW1 was raped by the accused. It is instead, found that the PW1 on being asked by the PW2 and 3, told that the accused tried to molest her and he was responsible for her injury.

31.

It is, thus, found that the PW1 had though scope but she had not stated to the PW2 and 3 that she was raped by the accused. Nor it is evident that the PW2 and 3 were told by the workers that the PW1 told them that she-12- was raped by the accused. When the PW1 on being asked at the PO, was in a state of mind and health to state that the accused tried to molest her, then what prevented her further to state that she was sexually abused by the accused. To put it otherwise, when she felt no hesitation to state the workers that she was raped then what prevented her to state it to the PW2 and 3, when they asked her about the alleged incident. It is not evident that she was not in a position to divulge the alleged incident with little more delineation at the PO. Resultantly, it is found that the PW1 has not stated to the PW2, 3, 5 and 13 that she was raped by the accused. In the conspicuous, the assertion of the PW4 that the PW1 told them that she was raped by the accused fails to give any mileage to the prosecution towards the proof of the commission of the alleged rape.

32.

Furthermore, one should not be lost sight by the fact that none of the PW2 to 4 has stated that they saw the PW1 naked or with torn cloths. Had the PW1 been with torn cloths it would must have been noticed by them and it would must have been stated by them on dock. They have, however, not asserted and affirmed the assertion of the PW1 that she was naked, or that her wearing clothes were open, or that her wearing apparels were in torn condition in the alleged incident. So, it is not proved that that the PW1 found herself naked on regaining her sense, or that her the wearing cloths get torn in the incident, as alleged.

33.

The PW9 has stated that the accused was his helper. The alleged incident occurred 6/7 months ago. The accused committed rape upon the PW1 and the accused also tried to kill her. In cross examination, he has, however, stated that he heard about the alleged incident from someone whom he failed to recollect. It is, thus, found that the evidence of the PW9 is hearsay and no confidence could safely be put upon his assertions.-13-

34.

The PW6, 7 and 14 to 17 are the witnesses to the seizure. Their evidence is formal in nature. The PW8 has photographed the reconstruction of the crime by the police at the dictation of the accused. There is, however, no other independent witness to said reconstruction of crime scene by the police. The evidence of the PW8 thus, remains formal in nature. The PW10 is the brother of the accused. He has turned hostile in the case. Nothing fruitful is forthcoming from his evidence.

35.

The PW11 is the police officer, who recorded the statement of the PW1 u/s 161 of CrPC. The PW12 is the doctor, who examined the accused and affirmed that the accused is sexually capable (Exbt.P6). The PW18 is the IO and he has stated that he has sent the vaginal swab to FSL and he has not received the FSL report yet. He has stated further that the PO is a part of tea garden and the labours usually remain present in and around the PO during the morning. The rest part of his evidence is formal in nature.

36.

No more witness has been cited by the prosecution in the case. It is, thus, evident that the PO is a part of the tea garden and by 6'o clock the workers usually come to their work in the tea garden. The alleged incident occurred at around 06:30 am. Thus, it could safely be hold that by the time of occurrence of the alleged incident the workers of the tea garden already assembled in and around the PO. In fact, darting of the workers to the PO upon hearing the shriek of the PW1 strongly establishes the fact that the garden workers by the time already started their work in the garden, and they were near the PO. Having said so, had there been such open conversation between the PW1 and the accused at the PO as uttered by the PW1 on dock, it would in all probability must have attracted the attention of the workers, who were near the PO. The workers must have heard the conversation, which was made in open area and not whisperingly and close proximity considering the fact that the accused was near the toilet, which was just below the School,-14- where the PW1 was. However, except the PW4, none others amongst those workers are cited on dock by the prosecution. Their evidence is withheld in the case. There is, consequently, no witness available before the Court who saw the accused in the alleged incident. The PW4 has not asserted that he saw the accused at the PO at the relevant time. There is, therefore, no witness witnessing the accused even for a moment in the whole picturesque of the alleged incident. The entire story of the prosecution regards to the presence of the accused at the PO thus, remains in dicey.

37.

The prosecution is not permitted to rest its case simply on the plea that the defence since has put no suggestion to the witnesses to the effect that the accused was not present at the PO, the presence of the accused at the PO stands established. The prosecution must come up with some sort of evidence sufficient to convince the presence of the accused at the PO. Unfortunately, the prosecution has not come up with any sort of evidence to prove the presence of the accused at the PO. The prosecution has offered no explanation as to why the evidence of the workers, who might have seen the accused at the PO is withheld in the case. Those workers could have been the best witnesses to prove the presence of the accused at the PO at the relevant time. With reason best known to it, the prosecution has not cited them in the case. With due deference, I, thus, find no force to contention of the ld PP-in-charge that the presence of the accused at the PO is proved beyond all reasonable doubt.

38.

It is already found above that the medico-legal evidence does not indicate the commission of the alleged rape. The PW1 is not intact and consistent in the case. It is also found above that the other PWs have not indicated the commission of the alleged rape. There is, therefore, no iota of evidence to suggest the commission of the alleged rape. Mere alleging a fact does not prove the fact itself in absence of some more effective and cogent-15-evidence, which is lacking badly in the case. Viewed thus, there is no iota of ingredients to constitute the charge u/s 376 of IPC. In my view, the charge u/s 376 of IPC is not proved in the case.

39.

It is alleged that the accused pressed the neck of the PW1 thereby trying to kill her. Though it is not established that the accused was present at the PO at the relevant time but, let us assume that he was present at the PO at the relevant time as uttered by the PW1. It is, however, not evident that the accused was armed with any weapon. Nor it has been asserted by the PW1 that she was attacked by the accused with any weapon but bare hands. According to the PW1, the accused pressed her neck so forcefully she became unconscious. Honestly speaking, I fail to feel had the accused any intention to kill the PW1 why he would have then left the PW1 in state of unconsciousness instead of doing further act ensuring her death. It is hard to believe that the accused came with bare hands to kill the PW1 at the PO in the morning knowing very well that by the time the workers already come to their work in the tea garden. It is, therefore, not evident that the accused had any intention to kill the PW1.

40.

It is evident from the testimony of the PW13 that the injury found by her on the PW1 cannot cause unconsciousness, let alone murder. Thus, pressing neck without any further act and leaving the PW1 the moment she became senseless, do not suggest the presence of any knowledge that by that act the PW1 could be murdered. It has rather been asserted by the PW1 that the accused pressed her neck to force her to have sexual intercourse with him. On examination by the PW13, only redness in the eye, bruise in front of neck and abrasion on both legs and arms in the PW1 were detected. The kind of injuries does, thus, not suggest that it could cause murder of the victim. It is consequently, not evident that the accused had knowledge that the kind of injuries the PW1 suffered, could take away her life. So, in either way there is-16- no iota of evidence to suggest that the accused had attempted to kill the PW1, as alleged.

41.

According to the PW1, when she regained her sense, she found herself in bush. In the eventuality, suffering injury on her person by falling in bush cannot be ruled out absolutely in the case. There is, therefore, no iota of ingredients to constitute the charge u/s 307 of IPC. In my view, the charge u/s 307 of IPC is not established in the case.

42.

There is no witness available before the Court, who saw the accused in the alleged crime. The PW1 is found to have been zigzagging in the case. She is not intact and consistent on her stand. The stand she took in the case is full of incongruousness. Frankly speaking, her evidence fails to inspire confidence in the mind of the Court. It needs strong corroboration, which is unfortunately, missing entirely in the case. Viewed thus, it is not established in the case that the accused wrongfully restrained the PW1 at the PO. There is, thus, no iota of ingredients to constitute the charge u/s 341 of IPC. In my view, the charge u/s 341 of IPC is not proved in the case.

Conclusion

43.

The upshot of the discussion as made above ushers me to the only conclusion that the prosecution has failed to bring home the necessary evidence to show the commission of the alleged incident. There is no iota of ingredients to constitute the offence with which the accused was charged in the case. Suspicion may be so high but the same cannot replace the legal proof. In my considered view, the prosecution has, therefore, miserably failed to prove the charge u/s 376/307/341 of IPC against the accused beyond all

reasonable doubt. The accused, thus, deserves an order of acquittal, as rightly argued by the Id defence Counsel.-17-44.

Hence, it is

O R D E R E D

that the accused person, namely, Suren Manger @ Munu is found not guilty for the commission of offences u/s 376/307/341 of IPC and he is accordingly acquitted u/s 235(1) of CrPC from the charge u/s 376/307/341 of IPC.

The accused person stands released from judicial custody at once.

Seized articles if any, be disposed of in accordance with law.

Let a copy of the judgment be sent to the District Magistrate, Darjeeling and to the Secretary, District Legal Services Authority, Darjeeling with a request to apprise the VG / the PW1 to the case with this judgement and her right to appeal and if necessary, with free legal aid.

Dictated & Corrected by me

.....

.....

(Uttam Bhattacharya)

(U. Bhattacharya)

Additional District & Sessions Judge,

Additional District & Sessions Judge,

1st Court, Darjeeling

1st Court, Darjeeling-18-

Form B

Date of offence : 25.04.2022

Date of FIR : 25.04.2022

Date of chargesheet : 30.06.2022

Date of framing of charge : 29.08.2022

Date of commencement of evidence : 11.11.2022

Date of which Judgement is reserved: 16.09.2023

Date of Judgement 16.09.2023

:

Date of the Sentencing Order, if any :

Not applicable (Acquittal)

Accused details

Rank of

the

accused

1

1

Name of Accused Date of arrest/
surrender

2 3

Suren Manger @

Munu

Whether acquitted or
convicted

6

Acquitted

25.04.2022

Sentence

imposed

7

Nil

Date of
release on

bail

4

Offences charged with

5

In custody

u/s 376/307/341 of IPC

(released on

acquittal on

16.09.2023)

Period of detention during TRIAL for
purpose of Section 428 of CrPC

8

Nil

.....

(Uttam Bhattacharya)

Additional District & Sessions Judge,
1st Court, Darjeeling

