



S.C. Case No. 236 of 2023
S.T. Case No. 11 of 2023

FORM A

In the Court of the District & Sessions Judge,
Alipurduar.

Present : Ramesh Kumar Pradhan (J.O. No. WB00667)
Sessions Judge,
Alipurduar.

S.C. Case No. 236 of 2023
S.T. Case No. 11 of 2023
(CNR No. WBJP05-001961-2023)

[Arising out of G.R. Case No. 1323 of 2023, in connection with
Birpara P.S. Case No. 98 of 2023 dated 16/07/2023 under Section
302/324/34 of the Indian Penal Code]

(Details of FIR/Crime and Police Station)

Complainant	State of West Bengal (Defacto –MURAT ORAON)
REPRESENTED BY	ADVOCATE - MR. SUHRID MAJUMDER, Ld. P.P.
ACCUSED	1. ROHAN GOWALA, 2. NITESH GOWALA, 3. SANJAY GOWALA, 4. SAHID GOWALA
REPRESENTED BY	ADVOCATE - MR. ARUN TARAFDAR, Ld. Counsel

FORM B

Date of Offence	15/07/2023
Date of FIR	16/07/2023
Date of Charge sheet / POR	30/09/2023
Date of Framing of Charge / Plea	05/12/2023
Date of commencement of Evidence	13/12/2023
Date on which Judgment is reserved	N.A.
Date of the Judgment	04/06/2026
Date of the Sentencing Order, if any	N.A.

Accused Details:							
Ran k of the Acc use d	Name of the Accused	Date of arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Detention Undergone during Trial (428 Cr. P.C.)
1.	ROHAN GOWALA	17.07.2023	20.12.2023	U/S 302/324/34 of IPC	Acquitted	N.A.	N.A.
2.	NITESH GOWALA,	17.07.2023	20.12.2023	U/S 302/324/34 of IPC	Acquitted	N.A.	N.A.
3.	SANJAY GOWALA,	17.07.2023	20.12.2023	U/S 302/324/34 of IPC	Acquitted	N.A.	N.A.
4.	SAHID GOWALA	17.07.2023	20.12.2023	U/S 302/324/34	Acquitted	N.A.	N.A.

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FORM C
LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

Prosecution :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	SURAJMONI TIRKEY	COMPLAINANT
PW2	RUNA LAKRA	OTHER WITNESS
PW3	AJAY TOPPO	EYE WITNESS
PW4	RAJIB TOPPO	OTHER WITNESS
PW5	RITA GHOSH	EXPERT WITNESS
PW6	KUNDAN KERKETTA	EYE WITNESS
PW7	DAMBAR CHHETRI	EXPERT WITNESS
PW8	DR. DIPAK KUMAR SARKAR	MEDICAL WITNESS
PW9	SAFIUL RAHAMAN	POLICE WITNESS
PW10	CHHATRI ORAON TIRKEY	EYE WITNESS
PW11	ROHIT ORAON TIRKEY	EYE WITNESS
PW12	MURAT ORAON	OTHER WITNESS
PW13	KABITA ORAON TIRKEY	OTHER WITNESS
PW14	SI BALAI SARKAR	POLICE WITNESS
PW15	Dr. TANAY MOHANTA	MEDICAL WITNESS
PW16	ASI PARTHA SARATHI ROUTH	POLICE WITNESS
PW17	PALZAR TSHERING BHUTIA	POLICE WITNESS
PW18	MUSTAQUE ALAM	EXPERT WITNESS

Defence witness, if any :N.A.

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	Nil	Nil

Court Witnesses, if any: N.A.

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	Nil	Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

Prosecution:

Sl. No.	Prosecution Exhibit number	Description
1.	Exbt. P-1	Written complaint.
2.	Exbt. P-1/1	Receipt endorsement on written complaint.
3.	Exbt. P-2	Injury report.
4.	Exbt. P-2/1	Signature of PW-8 on the injury report.
5.	Exbt. P-3	Signature of PW-9 on the dead body challan.



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6.	Exbt. P-3/1	Signature of PW-16 on the dead body challan.
7.	Exbt. P-4	Signature of PW-9 on the seizure list.
8.	Exbt. P-4/1	Seizure list dated 16/07/2023
9.	Exbt. P-4/2	Signature of PW-16 on the seizure list dated 16/07/2023.
10.	Exbt. P-5	Formal FIR.
11.	Exbt. P-5/1	Signature of SI Benedict M. Lepcha on the formal FIR.
12.	Exbt. P-6	Rough sketch map with index.
13.	Exbt. P-6/1 (Collectively)	Signature of PW-14 on the rough sketch map with index.
14.	Exbt. P-7	Seizure list dated 16/07/2023.
15.	Exbt. P-7/1	Signature of PW-14 on the seizure list dated 16/07/2023.
16.	Exbt. P-8	Leading to discovery statement of Rohan Gowala.
17.	Exbt. P-9	Seizure list dated 21/07/2023.
18.	Exbt. P-9/1	Signature of PW-14 on the seizure list dated 21/07/2023.
19.	Exbt. P-9/2	Signature of accused Rohan Gowala on the seizure list dated 21/07/2023.
20.	Exbt. P-10	Relevant portion of leading to recovery statement of Nitesh Gowala.
21.	Exbt. P-11	Relevant portion of leading to recovery statement of Sanjay Gowala.
22.	Exbt. P-12	Relevant portion of leading to recovery statement of Sahid Gowala.
23.	Exbt. P-13	Post mortem report of Munna Oraon.
24.	Exbt. P-13/1	Signature of PW-15 on the postmortem report.
25.	Exbt. P-14	Inquest report.
26.	Exbt. P-14/1	Signature of PW-16 on the inquest report.
27.	Exbt. P-15	Statement of Kundan Kerketta.
28.	Exbt. P-15/1	Signature of PW-18 on the statement of Kundan Kerketta.
29.	Exbt. P-16	Statement of Surojmoni Oraon Tirkey.
30.	Exbt. P-16/1	Signature of PW-18 on the statement of Surojmoni Oraon Tirkey.
31.	Exbt. P-17	Statement of Chhatri Oraon Tirkey.
32.	Exbt. P-17/1	Signature of PW-18 on the statement of Chhatri Oraon Tirkey.
33.	Exbt. P-18	Statement of Rahit Oraon Tirkey.
34.	Exbt. P-18/1	Signature of PW-18 on the statement of Rahit Oraon Tirkey.

Defence :

Sl. No.	Defence Exhibit number	Description
1.	Exbt. A	Statement of Kundan Kerketta i.e. PW-6 recorded under Section 164 Cr.PC.

C. Court Exhibits : N.A

Sl. No.	Court Exhibit number	Description
1.		
2.		



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D. Material objects : N.A		
Sl. No.	Material Exhibit number	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

J U D G M E N T

1. The present accused stands trial for alleged commission of offence punishable under Section 302/324/34 of the Indian Penal Code.
2. The present case is started on the basis of the written complaint lodged by one Murat Oraon Tirkey before Birpara P.S on 16-07-2023 to the effect that on 15-07-2023 at around 9:00 PM, accused Rohan Gowala assaulted one Chhatri Oraon, who is the brother of the complainant, by a sharp cutting weapon and he received grievous injury in his person. After that, the complainant along with his brother Munna and villagers had been to the house of Rohan Gowala for claiming compensation, and when they left from the house of Rohan Gowala, all of a sudden accused persons, namely, Rohan Gowala, Nitesh Gowala, Sanjay Gowala and Sahid Gowala along with one minor boy Rupam Kharia attacked the complainant's brother Munna with sharp cutting weapon and he received severe injury on his person and taken to Birpara State General Hospital where the doctor declared declared him brought dead.
3. On the basis of the said written complaint the Officer-in-Charge of Birpara Police Station registered a case being **Birpara PS Case No. 98 of 2023, dated 16.07.2023 under Sec. 302/324/34** of the **Indian Penal Code**. The Officer-in-Charge of Birpara Police Station duly filled in the formal First Information Report and endorsed the case to **SI Balai Sarkar** for investigation. The Investigating Officer took up the investigation of the case. On completion of the investigation, he submitted the charge sheet against the present accused persons along



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with one CCL Rupam Kharia for the offences punishable under **Section 302/324/34** of the **Indian Penal Code**.

4. On submission of the charge sheet, Ld. Addl. Chief Judicial Magistrate, Alipurduar took the cognizance of the case and after observing all the formalities he committed the case before this Court for further course of law. It appears from the case record that Ld. ACJM vide order dated 12.10.2023 forwarded the CCL before Ld. J.J.B. Jalpaiguri to face trial.

5. On 05-12-2023 this court on considering the *prima facie* materials on record pleased to frame charge for the offence punishable under **Section 302/324/34** of the **Indian Penal Code** against the accused persons. The contents of the respective charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. To substantiate the case all total **eighteen** charge-sheeted witnesses were examined from the side of the prosecution during trial amongst them.

PW-1 Surajmoni Tirkey is the defacto complainant;

PW-2 Runa Lakra is the neighbour of the victim;

PW-3 Ajay Toppo is the neighbour of the victim;

PW-4 Rajib Toppo is the neighbour of the victim;

PW-5 Rita Ghosh is the Head Teacher of SSK;

PW-6 Kundan Kerketta is the neighbour;

PW-7 Dambar Chhetri is the scribe;

PW-8 Dr. Dipak Kumar Sarkar is the Medical Officer of Birpara State General Hospital;

PW-9 Safiul Rahaman is the Constable of Police;

PW-10 Chhatri Oraon Tirkey is the victim.

PW-11 Rohit Oraon Tirkey is the brother of the victim;

PW-12 Murat Oraon is also the brother of the victim;



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PW-13 Kabita Oraon Tirkey is also the brother of the victim;

PW-14 SI Balai Ch. Sarkar, is I/O of this case;

PW-15 Dr. Tanay Mohanta is the former Associate Professor of MJM Medical College & Hospital;

PW-16 ASI Partha Sarathi Routh is the ASI of Police.

PW-17 Inspector Palzar Tshering Bhutia is the Recording Officer of this Case;

PW-18 Mustaque Alam is the Judicial Magistrate, who recorded the statement of the witnesses.

7. Besides that the following documents are exhibited from the side of the prosecution such as :

Exbt. P-1 is the written complaint;

Exbt. P-1/1 is receipt endorsement on written complaint;

Exbt. P-2 is the injury report;

Exbt. P-2/1 is the signature of PW-8 on the injury report;

Exbt. P-3 is the signature of PW-9 on the dead body challan;

Exbt. P-3/1 is the signature of PW-16 on the dead body challan;

Exbt. P-4 is the signature of PW-9 on the seizure list;

Exbt. P-4/1 is the seizure list dated 16/07/2023;

Exbt. P-4/2 is the signature of PW-16 on the seizure list dated 16/07/2023;

Exbt. P-5 is the formal FIR;

Exbt. P-5/1 is the signature of SI Benedict M. Lepcha on the formal FIR;

Exbt. P-6 is the rough sketch map with index;

Exbt. P-6/1 (Collectively) is the signature of PW-14 on the rough sketch map with index;

Exbt. P-7 is the seizure list dated 16/07/2023;

Exbt. P-7/1 is the signature of PW-14 on the seizure list dated 16/07/2023;



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Exbt. P-8 is the leading to discovery statement of Rohan Gowala;

Exbt. P-9 is the seizure list dated 21/07/2023;

Exbt. P-9/1 is the signature of PW-14 on the seizure list dated 21/07/2023;

Exbt. P-9/2 is the signature of accused Rohan Gowala on the seizure list dated 21/07/2023;

Exbt. P-10 is the relevant portion of leading to recovery statement of Nitesh Gowala;

Exbt. P-11 is the relevant portion of leading to recovery statement of Sanjay Gowala;

Exbt. P-12 is the relevant portion of leading to recovery statement of Sahid Gowala;

Exbt. P-13 is the post mortem report of Munna Oraon;

Exbt. P-13/1 is the signature of PW-15 on the postmortem report.

Exbt. P-14 is the inquest report;

Exbt. P-14/1 is the signature of PW-16 on the inquest report;

Exbt. P-15 is the statement of Kundan Kerketta;

Exbt. P-15/1 is the signature of PW-18 on the statement of Kundan Kerketta;

Exbt. P-16 is the statement of Surojmoni Oraon Tirkey;

Exbt. P-16/1 is the signature of PW-18 on the statement of Surojmoni Oraon Tirkey;

Exbt. P-17 is the statement of Chhatri Oraon Tirkey;

Exbt. P-17/1 is the signature of PW-18 on the statement of Chhatri Oraon Tirkey;

Exbt. P-18 is the statement of Rahit Oraon Tirkey;

Exbt. P-18/1 is the signature of PW-18 on the statement of Rahit Oraon Tirkey.

8. During cross-examination, one statement of Kundan Kerketta recorded under Sec. 164 Cr.PC. is exhibited by the defence as **Exbt. A.**



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9. No witness is examined from the side of the Defence.
10. The accused persons pleaded innocent and false implication at the time of their examination under Section 351 of BNSS.
11. Now, it is to determine as to whether the prosecution has been able to bring home the charges brought against the present accused persons that they intentionally caused hurt to Chhatri Oraon Tirkey with a sharp cutting weapon and committed murder of deceased Munna Oraon and if so, what will be the quantum of punishment.

DECISION WITH REASONS

12. All the points are taken up together for the sake of it's convenient and brevity.
13. As per the case of the prosecution, on the alleged date and time at first there was altercation in between brother of the complainant namely Chhatri and accused Rohan Gowala and that time said accused assaulted his brother Chhetri with sharp cutting weapon as a result his said brother had sustained grievous injury near to his eye and after the said incident when deceased Munna along with other villagers and victim brother Chhatri had been to the house of the accused seeking for compensation for medical treatment, at that time all the accused persons attacked his deceased brother Munna with sharp cutting weapon and then his brother was taken to Birpara hospital where doctor declared his brother as brought dead.
14. At the time of oral testimony **PW-1** has said that incident was taken place on 15/07/2023 at around 9:00 PM, that time accused persons assaulted his brother Chhatri (PW-10), that time they were at the house of their uncle in the same village. On hearing the screaming



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when he rushed in front of their house at Khudia Line, he found his brother (PW-10) that multiple injury in his eye brow and head. After that he along with his villagers went to the house of the accused Rohan asking for the treatment of his brother, but that time accused Rohan assaulted him and others. He pushed him from his house. In the meantime deceased brother Munna came there and his said brother received stabbed injury. He along with his sister Kabita saw his deceased brother Munna with stab injury and that time his sister Kabita became unconscious. He brought her to their house. His relatives took his brother Munna to Birpara Hospital where his brother declared brought dead. He gave his statement stating all the facts before the Magistrate who recorded his statement.

15. At the time of cross-examination, this witness has said that he did not see the actual incident of assault upon his brother Chhatri (PW-10). He also did not see who actually assaulted his deceased brother Munna.
16. **PW-2** has said that he did not know who killed deceased Munna and he also did not know where the incident took place.
17. **PW-3** has also said that he knew deceased Munna but he did not know who killed deceased. This witness has said that about four months ago, at night around 9:00 PM, while he was at the shop of Rajib at Beltali Dimdima, that time he noticed scuffle in between accused Rohan Gowala and Chhatri Oraon (PW-10) and later, he came to know that deceased was murdered.
18. **PW-4** has said that he has a shop at Beltali, Dimdima. On 8:30 PM, he after closing his shop went to his home and that time he came to know that there was fighting in between accused Rohan Gowala and Chhatri Oraon (PW-10). He heard that the family members of Chhatri Oraon had been to the house of accused Rohan Gowala



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asking for compensation for the treatment of Chhatri Oraon and that time there was altercation in between accused Rohan Gowala and the family members of Chhatri and in that incident Munna was murdered but he did not know from whom he heard about the said incident.

19. **PW-5** has said that she issued one certificate in favour of Rupam Kharia in respect to his date of birth as per his school certificate.
20. **PW-6** has said that deceased Munna died in the month of June, 2023. Before the death of Munna, there was fighting in between accused Rohan, Ajay with Chhatri (PW-1) at night, at around 9:00 AM in front of the shop of one Kabir in regard to their money. They tried to specify them and after that, he along with other villagers went to the house of accuse Rohan for monetary compensation and that time they were assaulted by the accused persons. This witness has said that accused Nitesh killed Munna by knife. He gave his statement before the magistrate who recorded his statement.
21. At the time of cross examination the said witness has admitted that at the time of fighting between accused, Rohan and Chhatri, he was at his house. He has said that he cannot say who assaulted Munna. He also said that police also did not examine him.
22. **PW-7**, who is a scribe, has said that on 16-07-2023 complainant (PW-12), came and requested him to write the complaint and as per the version and dictation of complainant, he wrote the complaint and read over the same to the complainant, and then the complainant being satisfied put his thumb impression on the complaint. He identified the complaint has written by him as **Exbt. P-1**.
23. **PW-8**, who is a doctor, has said that on 15-07-2023 he examined PW-10 and found lacerated cut injury on the forehead. He



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provided necessary treatment and accordingly prepared the injury report (**Exbt. P-2**). The witness has said that the patient did not state before him regarding the history of assault and the name of the assailant. According to him, such type of injury may be sustained due to fall on the hard surface.

24. **PW-9** has said that on 16-07-2023, he along with PW-16 had been to Dimdima for conducting inquest and after inquest, as per the direction of PW-16 he took the dead body to Coochbehar MJN Hospital for postmortem and identified his signature on the dead body challan (**Exbt. P-3**). After post-mortem, he received the viscera, wearing apparels of the deceased and the same, he handed over to the PW-16, who then seized the same under the list and identified the signature therein (**Exbt. P-4**).

25. **PW-10**, who is one of the victim of this case, has said that the incident was taken place in the year 2023. He cannot recollect the exact date of incident. In that day at around 8:00 PM while he along with his friend Irfan were sharing their wages in front of the shop of one Rajib, that time accused Rohan came and asked him for money for buying alcohol, and when he refused to give money accused pushed him, as a result, he was falling on the ground. That time he tried to catch hold Ajay as a result, the *genji* of Ajay got torn. He told Ajay that he would buy a new *genji* for him. Then he was returning home and all of a sudden accused Rohan assaulted him with stick on his face; as a result, he sustained bleeding injury, and then villagers took him to his house, and then he informed the matter to his brother and other family members. After that, his sister Manasi, Kabita, brother Rohit, deceased Munna and some other villagers were going to the house of accused asking for medical expenses for his treatment. That time he was at his home and then 2-3 ladies of his village came and informed him accused Rohan stabbed his brother Munna and other accused persons, were also there. Then he rushed to the house of Rohan and found his



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brother Munna with stab injury on his belly, and then his brother was taken to Birpara Hospital, where his brother succumbed to injury. This witness has further said that after 4–5 days of the incident, police took accused Rohan to his house and recovered a knife from the house of Rohan and prepared the document where he put his thumb impression. He narrated the incident to the police and also gave his statement before the magistrate who then recorded his statement.

26. **PW-11** has said that deceased Munna is his brother. He did not know who killed his deceased brother Munna. This witness has said that initially accused Rohan assaulted his brother Chhatri (PW-10) and then he along with Manisha, Munna, Surajmuni (PW-1), Albis and some other villagers had been to the house of accused Rohan to demand money for the treatment of Chhatri and that time accused persons assaulted his brother Munna and his sisters. But he did not know who assaulted his brother Munna. He also did not know how his brother Munna received injury. This witness has said that he was at the outside of the house of Rohan, and when he came to know about the injury of Munna, he rushed inside the house and found his brother lying in the courtyard with bleeding injury, and then vehicle was arranged and took his brother to Birpara Hospital. He narrated the incident to the police and also gave his statement before the magistrate.

27. **PW-12**, who is the complainant of this case, has said that accused persons murdered his brother Munna. This witness has said that at that relevant time, at around 8:00 PM, there was fighting in between his brother Chhatri Oraon and accused Rohan Gowala and that time accused Rohan was asked to go to his house but after sometime at around 9:00 PM, accused Rohan Gowala again came and assaulted his brother Chhatri Oraon with a knife and caused cut injury on his face. After that, he along with Kabita (PW-13), Rohit (PW-11), Munna Oraon, Kundan Oraon (PW-6) and others went to the house of Rohan Gowala asking for the expenses for the medical treatment of



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Chhatri Oraon. On that time accused Rohan, with his family members, refused to give money for medical expenses, and then while they were coming out from the house of accused Rohan, that time, his brother Munna Oraon assaulted by knife. He did not see who exactly assaulted his brother Munna Oraon. His brother had sustained stab injury over his right side of chest. Then they called the vehicle and took his brother in the hospital where his brother succumbed to injury. He lodged the complaint. This witness has said that police had visited their house and prepared the document where he put his thumb impression, but he did not know as to why police took his thumb impression.

28. **PW-13** has said that deceased Munna is her brother. Her said brother was killed at the house of accused Rohan. Her deceased brother had sustained stab injury but she did not know who caused the said injury. This witness has said that at the time of incident, there was several persons at the house of accused Rohan. This witness has said that since accused Rohan had assaulted her brother Chhatri, she along with Rohit (PW-11), deceased Munna, Banshi, Manisha, Chhatri (PW-10), Kundan (PW-6) and others had been to the house of said accused asking for compensation of medical treatment of PW-10. That time accused persons were there at the house of accused Rohan. Her brother Munna had received stab injury on the right side of chest.

29. **PW-14**, who is the I.O. of this case, has said that PW-17 on the basis of the complaint made by PW-12 registered the present case and filled up the formal FIR (**Exbt. P-5**) and endorsed the case to him for investigation. He accordingly took up the investigation. During his investigation he visited the P.O. and prepared the rough sketch map with indices of the P.O. (**Exbt. P-6**) and also examined the witnesses and recorded their statements. He seized blood stain soil from the P.O. under the seizure list (**Exbt. P-7**). He also arrested the accused persons and took them in PC and during PC period, as per the leading statement of the accused Rohan, he recovered and seized knife from in



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front of the house of accused Nitesh Gowala and seized the same under the seizure list (**Exbt. P-9**) and then he sent the said seized knife along with blood stain soil for chemical examination before RFSL and then on completion of investigation, he submitted the charge sheet against the accused persons.

30. **PW-15**, who is the doctor, has said that on 16-07-2023, he conducted post-mortem over the dead body of deceased Munna Oraon and found stabbed injury over the person. According to him, the cause of death of deceased was due to effects of injury, which is ante-mortem and homicidal in nature and accordingly, he prepared the post-mortem report (**Exbt. P-13**).

31. **PW-16** has said that on 16-07-2023, as per the direction of his officer, he had been to Birpara Hospital along with PW-9 and he conducted inquest over the dead body of deceased Munna Oraon in connection with UD case number 38/2023 dated, 16-07-2023 and prepared the inquest report (**Exbt. P-14**). After inquest he sent the dead body to MJN Hospital for post-mortem through his constable and prepared the dead body challan (**Exbt. P-3/1**). After post-mortem, he received container of viscera and wearing apparels of deceased and he seized the same under the seizure list (**Exbt. P-4/1**) and later he handed over the same to the IO of this case.

32. **PW-17** has said that on 16-07-2023, as per the complaint made by the PW-12, he registered the present case and filled up the formal FIR and identified his endorsement on the written complaint (**Exbt. P-1/1**).

33. **PW-18**, who is the Judicial Magistrate, has said that on 26-07-2023 as per the order of Ld. ACJM, he recorded the statements of witnesses, namely, Kundan Kerketta (PW-6), Surajmoni Oraon (PW1),



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Chhatri Oraon (PW-10) and Rohit Oraon (PW-11) such as **Exbt. P-15**, **Exbt. P-16**, **Exbt. P-17** and **Exbt. P-18** respectively.

34. As per the oral testimony of PW-10, who is the victim of this case, on the alleged date and time of incident when he was sharing their wages with his friend Irfan, accused Rohan came and asked him for the money and on refusal, said accused pushed him but he saved himself from falling by holding a person named Ajay in the consequences wearing apparels of Ajay got torn and he assured him to provide new *ganji* for him and then while he was returning said accused came and assaulted him with stick as a result he suffered bleeding injury and then villagers took him to his home and after that his brother and sisters and some other villagers went to the house of the accused and while he was at his home 2-3 ladies of his village came and informed him that accused Rohan stabbed his brother Munna and then he rushed to the spot and found his brother with bleeding injury. According to this witness, he has given his statement before the Magistrate. As per oral testimony of PW-18, he recorded the statement of this witness (PW-10) i.e. **Exbt. P-17**. On going through the document of **Exbt. P-17** i.e. the statement of PW-10 recorded under Section 164 of Cr.PC, I find contradictions in his statement. As per his statement made before the Magistrate he has said that accused Rohan assaulted him with *Chhuri*, whereas in his oral testimony he has said before the Court that accused Rohan assaulted him with lathi.

35. As per PW-10, his friend Irfan and another person named Ajay were there at the time of the alleged incident of assault. On going through the evidence on record, it appears that the prosecution has failed to examine Irfan in this case to substantiate the alleged allegation. It also appears that the I.O. of this case has failed to examine Irfan during his investigation. The person named Ajay is found to be examined in this case as PW-3. According to this witness, on the alleged date and time while he was at the shop of Rajib, he noticed



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scuffle in between PW-10 and accused Rohan. After that, he returned home. This witness has not said that accused Rohan assaulted PW-10 or while accused Rohan pushed PW-10 that time PW-10 caught hold of him and his wearing apparels got torn. Here also I find contradictions with the oral testimony of PW-10 with the testimony of PW-3.

36. Further from the oral testimony of PW-8 who is said to have medically examined PW-10, it appears that PW-10 has not state anything regarding the alleged incident of assault and the name of assailant before the said doctor.

37. On going through the oral testimony of PW-12, who is the complainant of this case, as well as PW1, who is found to be his sister, PW-11, who is said to be the brother of deceased, PW-13, sister of deceased, that their brother Chhatri Oraon (PW-10) had sustained injuries on being assaulted by accused Rohan and then when they along with other villagers had been to the house of accused Rohan for seeking compensation for the medical treatment of their brother Chhatri, that time accused persons assaulted them and their deceased brother Munna sustained stab injury, who was then taken to hospital but doctor declared their brother as brought dead.

38. On going through the oral testimony of these witnesses, these witnesses have found to depose in uniform manner. According to all these witnesses, they cannot say who assaulted their deceased brother Munna. As per oral testimony of PW-1, he did not see the actual incident of assault upon his brother Chhatri Oraon (PW-10) and deceased brother Munna. According to PW-11, he did not know who killed his brother Munna. He also cannot say who assaulted Munna. PW-12, who is the complainant of this case, has also said that he did not see exactly who assaulted his deceased brother Munna. PW-13 has also said that she did not know who caused the injury over the person of deceased Munna.



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39. According to PW-6, there was fighting of PW-10 along with accused Rohan and one Ajay on the alleged date and time in front of the house of one Kabir and he along with others tried to pacify them and after that he along with other villagers went to the house of accused Rohan asking for monetary compensation and that time accused persons assaulted them. According to this witness, accused Nitesh killed Munna by knife. However, at the time of cross-examination, this witness has said that he cannot say who assaulted Munna and according to him, police did not examine him. According to this witness, he has given his statement before the Magistrate. On going through the statement of this witness recorded by PW-18 under Section 164 Cr.PC. i.e. **Exbt. P-15**, it appears that this witness has not said before the PW-18 as to who assaulted deceased Munna.

40. Further, on going through the oral testimony of PW-6, I find contradictions in his oral testimony with the oral testimony of PW-10 who is one of the victim of this case. Since, as per this witness, there was a fighting of PW-10 with accused Rohan and one Ajay but as per oral testimony of PW-10, he did not say any such things against the person named Ajay. As per PW-10, when he was falling down on being pushed by accused Rohan, he caught hold Ajay, as a result wearing apparels of Ajay got torn. Further, as per PW-10, the alleged incident occurred in front of one shop of Rajib, whereas according to PW-6, the alleged incident of assault was occurred in front of the shop of one Kabir. It also appears that the person named Kabir was not examined in this case.

41. As per oral testimony of Rajib i.e. PW-4, on the alleged date and time he after closing his shop went to his home and then came to know that there was fighting in between accused Rohan and PW-10 and the family members of PW-10 had gone to the house of accused for asking compensation and that time there was altercation in between



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accused Rohan and the family members of PW-10 and in that instance deceased Munna was murdered. According to him, he heard about the incident but he cannot say from whom he heard about the incident. From this witness, it appears that he has not witnessed the alleged incident.

42. On going through the evidence on record, it appears that beside PW-6 no other villagers who are said to have been to the house of accused Rohan along with complainant and his brothers and sisters for claiming compensation regarding medical treatment of PW-10, are examined in this case in support of the case of the prosecution to substantiate the alleged incident, when as per the case of the prosecution as well as oral testimonies of witnesses the other villagers had also been to the house of the accused Rohan along with complainant and his brothers and sisters.
43. On going through the oral testimony of PW-14, who is the I.O. of this case, during his investigation, he arrested the accused persons as well as accused Rohan Gowala and during PC period and as per the leading statement of accused Rohan, he recovered and seized the alleged knife used by the accused in commission of murder of deceased Munna and then he sent the same for chemical examination before RFSL.
44. On going through the document and seizure i.e. Exbt. P-9, it appears that complainant (PW-12) and victim (PW-10) are the seizure witnesses of the said alleged knife. At the time of oral testimony PW-10 has said that after 4-5 days of incident police took accused Rohan to his house and recovered knife from the house of Rohan and he put his thumb impression on the document. Whereas, according to PW-14, who is the I.O. of this case, he recovered the knife as per the statement of the accused from in front of the house of accused Nitesh. Here also I find contradictions in the testimony of PW-10 and PW-14 regarding the



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alleged seizure of knife. Further, PW-12, who is the complainant as well as the seizure witnesses has said that the police officer had visited his house and obtained his thumb impression on the documents and he did not know why the police took his thumb impression. This witness has not said anything regarding recovery and seizure of alleged knife as per the instance of accused Rohan. Further, on going through the evidence on record, it also appears that prosecution has failed to produce the said knife before the Court at the time of trial.

45. At the time of argument, Ld. Prosecution argued that since the deceased was found with injury while coming out from the house of the accused persons, hence, the burden lying upon the accused persons to prove as to how the deceased had sustained injuries at their house. He further argued that the guilty man cannot be escaped mainly on the benefit of doubt when the burden of proof lies on the accused and he fails to prove such burden.

46. On the other hands, Ld. Lawyer for the defence argued that there were two queues as per the alleged instance and as per the case of the prosecution and the prosecution has failed to prove the case by substantive evidence. The prosecution has also failed to prove about the seizure and recovery of the alleged knife and since there is no direct evidence against any of the accused persons, accused persons are entitled to get acquittal from this case.

47. On going through the case of the prosecution and evidence on record, it is found that there is no any concrete evidence against the accused persons regarding commission of the offence. As per the case of the prosecution, there are two P.Os. in this case. On going through the oral testimony of PW-14, it is found that he only visited one P.O. during investigation and he did not visit another P.O. From such evidence on record, it is also found that the prosecution has also failed to specify the actual P.O. in this case. On going through the



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investigation conducted by the I.O. of this case and the evidence on record, it also appears that the I.O. of this case has also failed to investigate the case in proper manner.

48. Considering all such evidence on record and facts and circumstances of this case and discussion made herein above, I find no other alternative but to hold that the prosecution has failed to establish initial burden of prove regarding the alleged charges brought against the accused persons and accordingly, I hold that the prosecution has failed to bring home the charges brought against the accused persons beyond all reasonable doubt and hence, the accused persons are entitled to get acquitted from this case on benefit of doubt.

49. Hence, it is,

ORDERED

that the accused persons namely, Rohan Gowala, Nitesh Gowala, Sanjay Gowala and Sahid Gowala are found **not guilty** for the offence punishable under Section 302/324/34 of the Indian Penal Code and thus, the accused persons are acquitted in terms of Section 235(1) of Cr.PC. They are accordingly discharged from their bond and set at liberty.

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

The case is, thus, disposed of.

The judgment is delivered on this the 04th day of June, 2026, in open Court in Alipurduar.

Dictated & Corrected by me :

(Ramesh Kumar Pradhan)
Sessions Judge, Alipurduar

(Ramesh Kumar Pradhan)
Sessions Judge, Alipurduar