

1 Form No.(M) 34*

IN THE COURT OF THE JUDICIAL MAGISTRATE, 2ND COURT,
MALDA

Present: Sri Alex Saha, (J.O Code: WB01549)
Judicial Magistrate, 2nd Court, Malda

Date of Delivery of Judgment: 14/07/2026

GR Case no. 5028 of 2024
CNR No. WBML02-006425-2024
CIS No. 5028/2024
T.R. No. 239/2025

Arising out of: Baishnabnagar PS Case No. 696/2024 dated 18.07.2024 u/s
308/323/34/498A of IPC and 3/4 of D.P Act against six accused persons

Prosecutor	State of West Bengal
Represented by	Mr. Debojyoti Paul, Ld. Asst. Public Prosecutor
Accused Persons	1. Tutul Sk 2. Akbar Sk @ Ekbar Sk 3. Jarina Bibi
Represented by	Ld. Defence Counsel, Ismail Sk

Form No. M(35)*

Date of Offence	15.04.2024
Date of complaint/FIR	18.07.2024
Date of Prosecution report/Charge Sheet	20.08.2024
Date on which charges framed/ date of Plea	30.06.2026
Date of commencement of evidence	03.07.2026
Date of examination of accused u/s 313 of Cr.P.C	13.07.2026
Date of Judgment	14.07.2026
Date of Sentencing Order, if any	NA

Accused Details:

Rank	Name of Accused	Date of Arrest/Surrender	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.PC

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1.	Tutul Sk	30.07.2024	30.07.2024	498A/323/34 of IPC, R/W Section 4 of DP Act	Acquitted	N/A	N/A
2	Akbar Sk @Ekbar	30.07.2024	30.07.2024	498A/323/34 of IPC, R/W Section 4 of DP Act	Acquitted	N/A	N/A
3	Jarina bibi	30.07.2024	30.07.2024	498A/323/34 of IPC, R/W Section 4 of DP Act	Acquitted	N/A	N/A

Appendix

Form No. M(36)

As per the amendment made in the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985 vide Notification No. 2301-G dated 15th July, 2015.

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	Rubi Khatun	Complainant cum victim
PW-2	Dalim Sk	Independent Witness

B. Defence Witnesses, if any:

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW-1	N/A	N/A

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr No.	Exhibit Number	Description
1.	Exhibit-P-1/P.W-1	Signature of complainant on written complaint

B. Defence:

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

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW1	N/A

D. Material objects:

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Sr. No.	Material Object Number	Description
1	MO 1	N/A

JUDGMENT

The Case of the Prosecution shorn of unnecessary details

1. On 6 month ago complainant was married to the SI no. 1 accused (Tutul Sk) and since after marriage she was victimized to torture both physically and mentally over the demand of dowry. Last on 15.04.2024 at about 11:00 am the accused persons assaulted the complainant with fist and blow tried to kill her by strangulation as a result she received injury and drove away from her house. At present she is living at her paternal house.
2. Subsequent to such incident the defacto complainant narrated the entire ordeal by way of written complaint. On the basis of his complaint, one Baishnabnagar PS case No. 696 of 2024 under Sections 308/323/498A/34 of IPC and R/W Section 3/4 of D.P. Act was initiated against the accused persons on 18.07.2024 and police commenced investigation. The police after concluding investigation filed charge-sheet being No. 688/2024 against the accused persons under Sections 498A/323/34 of IPC, R/W Section 4 of DP Act on 20.08.2024.
3. Cognizance of the offence was taken by the Court of Learned Chief Judicial Magistrate, Malda, in terms of section 190(1)(b) of CrPC and the case was made over to this Court for trial under section 192 of CrPC after furnishing of the copies of the documents to the accused persons as prescribed under section 207 CrPC.

Charge Against the Accused Persons

4. Charge was framed on 30.06.2026 against the accused persons to which they pleaded not guilty by verbally stating individually “Ami Nirdosh” and claimed to be tried. Hence, trial commenced.

Evidence on Record

5. The prosecution adduced the following oral evidence -
- **P.W - 1 –Rubi Khatun** - She stated that she entered into a heated debate and the flaring temper caused her to enter into a free-fight with the accused persons. She failed to specify the role of the individual accused persons in the incident. In the cross-examination, she failed to state the date, time, place of the incident, failed to narrate the contents of the FIR and stated that police did not interrogate her.
 - **P.W – 2 –Dalim Sk** – He stated that there was minor trifle and they engaged into free fight but the specifics of the incident is not known to him. In the cross-examination, he failed to state the date, time, place of the incident and stated that police did not interrogate him.

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6. It is also pertinent to mention here that during the course of trial, except the signature of complainant on the written complaint as Exhibit-P-1/P.W-1, no other documentary evidences were produced by the prosecution in terms of Rule 157 of the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985.

Argument of the Accused

7. The case in defence of the accused persons is as follows:

- The case does not have merits and the allegations labelled are false.
- Prosecution has failed to prove the ingredients of the offences with which the accused persons are charged and has failed to prove the charges beyond reasonable doubt.

8. At the stage of examination u/s 313 of CrPC, the accused persons pleaded that they are innocent and that they have been falsely implicated in the present case. However, they declined to tender any evidence in their defence.

Points for consideration: -

9. In view of the offences alleged against the accused persons and carefully perusing the record this Court is of the opinion that in order to adjudicate the dispute in hand, the following points are for determination:

- Whether the accused persons are guilty of the offences punishable u/s 498A/323/34 of IPC, R/W Section 4 of DP Act of IPC?
- Whether the prosecution has been able to prove the offences u/s 498A/323/34 of IPC, R/W Section 4 of DP Act of IPC against the accused persons beyond the shadow of all reasonable doubt?

Decision with reasons

10. Detailed arguments were led by prosecution as well as the accused persons and the same was considered with due circumspection. To come to a decision, it is necessary to first determine the standard of proof that the prosecution needs to uphold. It is a well settled position by plethora of judicial pronouncements that while civil cases may be proved by a mere preponderance of evidence, in criminal cases the prosecution must prove the charge “*beyond reasonable doubt*”. In criminal jurisprudence the accused always has a presumption of innocence going in his favor and the rule of evidence which has received judicial sanction is; the complainant/prosecution must prove the guilt of the accused, i.e., it must establish all the ingredients of the offence with which the accused persons are charged.

11. In order to address such question, with promptitude, it is very much apposite to mention that no doubt whether a civil or criminal case, the occlusion for testing of ‘proved’, ‘disproved’ and ‘not proved’ as enshrined under section 3 of the Indian Evidence Act, is more or less same. This

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particular point can be articulated with augmentation by quoting from the judgment of Lord Denning, J., in *Miller vs. Minister of Pensions (1947) 2 All ER 372*. Speaking of the degree of proof required in a criminal case before felony of an accused persons is said to be evinced, **Lord Denning, J.** stated:- *"That degree is well settled. It need not reach certainty but it must reach a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favor which can be dismissed with the sentence "of course, it is possible but not in the least probable", the case is proved beyond reasonable doubt."*

12. As regards the degree of cogency required to be discharged, it can be said that a fact is said to be "proved" when, if considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists. It is clinched position by plethora of judicial pronouncements that while civil cases may be proved by a mere preponderance of evidence, in criminal cases the prosecution must prove the charge "beyond reasonable doubt".

13. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, AIR 1964 SC 1563*, it was observed by the Hon'ble Supreme Court that: *"It is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt."* In the light of these guiding principles, the present case has to be considered.

14. Perused the FIR, the charge-sheet, the deposition and the examination of the accused persons u/s 313 Cr.P.C. Considered the arguments of the prosecution and the Ld. Advocate for the accused persons. The first matter to be noticed by this Court is the considerable delay in the lodging of the FIR. It was the duty of the prosecution to explain the delay through the witnesses but none of the witnesses deposed about the reasons for the delay. It is trite law that unexplained delay in the lodging of the FIR is fatal to the case of the prosecution as it introduces the chance of after-thoughts. In *Satpal Singh v State of Haryana (2010) 8 SCC 714*, it was held *"This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a colored version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultation, also creeps in, casting a serious doubt on its veracity."* The averments of the FIR reveal that the offences alleged therein are of attempt to culpable homicide not amounting to murder, causing cruelty to wife, voluntarily causing hurt, criminal intimidation, giving and demanding of dowry. In-order to establish a strong case for the prosecution, it was essential that

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the investigation corroborated the occurrence of the said offences. But surprisingly, when the charge-sheet was submitted, the offences alleged were toned down to all offences except attempt to culpable homicide not amounting to murder and demanding of dowry. Further, the initial complaint was with respect to six accused persons but only three of them were charge-sheeted. Complainant had the option to resort to a protest petition against the charge-sheet but the same was not done. This inaction diluted the case of the prosecution at the very outset of the case. Further,

15. Added to this, when the complainant herself came to depose, she did not corroborate the contents of the FIR and instead stated that there was free fight between her and the accused persons. In case of free-fight, it is not possible for this Court to determine as to who was the aggressor and who was the victim. The individual role of the accused persons was also not stated by the P.W-1. Her deposition shows a stark contrast to the contents of the FIR and so, the Court failed to find anything incriminating against the accused persons from the deposition of P.W-1. The cross-examination further erodes away any chance of the guilt of the accused persons as she failed to confirm that she received injury as well as the date, time and place of the incident. It was essential that she established the ingredients of the offences alleged but she substituted the incidents with that of free fight. These discrepancies raise reasonable doubt in the mind of the Court regarding the incident and the culpability of the accused persons.

16. The independent witness also failed to corroborate the case of the prosecution and diluted the case further by stating that on similar lines to that of complainant. They also corroborated the case of the complainant that there was a free fight and that police did not interrogate them. These witnesses were not declared hostile by the prosecution. Prosecution also needed to bring before this Court the medical documents which would have shown that the victim received injuries arising out of the incident but no medical witness was prayed to be examined by the prosecution. Hurt of any kind could not be shown by the prosecution. Even the I.O was not prayed by the prosecution to be examined. It was necessary as the witnesses stated that police did not interrogate them showing the lack of proper investigation. It was the duty of the prosecution to bring the necessary evidences but that was not done. In **Takhaji Hiraji v Thakore Kubersing Chamansing, 2001 SCC (Cri) 1070**, it was held by the Hon'ble Court that "if the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable, the Court can safely act upon it uninfluenced by the factum of non-examination of other witnesses." The complete lack of materials in the instant case leads this Court to act upon the testimonies of the witnesses and to avoid any further delay in the trial of this case, the prosecution's evidence was closed by following the guidelines of Hon'ble Apex Court as laid down in **Satish Mehera Vs. Delhi Administration and another, (1996) 9 SCC 766**. Thus, it can be said with certainty that the prosecution failed to produce any specific incriminating evidence to establish the guilt of the accused persons. Hence, the accused persons are entitled to be exonerated on all counts from the charges leveled against them.

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Conclusion

17. Considering the above discussed evidence on record, this court upholds that the prosecution has miserably failed to prove its allegation against the accused persons. It has failed to conclusively prove the essential ingredients of the offences charged against the accused persons. Thus, the points to be determined are answered in negative.

18. The allegations under Sections 498A of IPC against the accused persons stands not proved.

19. In the light of above discussion, this Court is of the considered view that the prosecution has miserably failed to prove its allegations against the accused persons beyond the shadow of reasonable doubt. Hence, this court finds it fit and proper to acquit the accused persons from this case.

Hence, it is,

ORDERED

That the accused persons namely Tutul Sk, Akbar Sk @ Ekbar and Jarina Bibi are hereby adjudged acquitted u/s 248(1) of Cr.P.C from the charges u/s 498A/323/34 of IPC, R/W Section 4 of DP Act of IPC levied against them. They are also released from their respective bail-bonds and the sureties concerned are discharged.

The accused persons on Court bail be discharged forthwith from their respective bail bonds and be set at liberty.

Being aggrieved by pronouncement of this judgment the defacto complainant is at liberty to prefer an appeal under proviso to Section 372 CrPC and if necessary, he may avail free legal assistance through the Legal Service Authority concerned to prefer and prosecute such appeal.

In compliance with the solemn guidelines laid down by the Hon'ble Calcutta High Court in the case of *Sabitri Bhunya v. State of WB, (CRA 266 of 2020 with C.R.A.N 01 of 2020)* let a copy of this judgment be forwarded to the District Magistrate, Malda and to the Ld. Secretary, D.L.S.A, Malda for due intimation to the victim/defacto complainant.

The case is thus disposed off. The case record be consigned to the DRR following the modalities of law.

Note in concerned register and update the CIS.

BC-II to do the needful.

Typed and corrected by me:

Judicial Magistrate,
2nd Court, Malda
(UID : WB01549)

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