

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST  
CLASS, TIHU, NALBARI**

**District :** Nalbari  
**Present :** Siddahrtha Bora , AJS  
JMFC, Tihu, Nalbari

**C.R. Case No. - 05/2019**  
U/S. 323/447/427/506(I)/34 of I.P.C.

**Sadananda Kalita**

S/o – Lt. Kanteswar Kalita  
Vill- Haribhanga (Pachim Bhayara)  
P.S.-Tihu, Nalbari

**Vs.**

**1. Sri Dasarath Barman**

s/o – Lt. Umasaran Barman

**2. Sri Kuladip Barman**

s/o – Dasarath Barman

**3. Bhrikujit Barman**

s/o – Bhrikujit Barman

**4. Hitesh Haloi**

s/o – Haliram Barman

**5. Smti Rina Haloi**

w/o – Haliram Haloi

All are R/O- Haribhanga (Pachim Bhayara)

P.S. – Tihu, Nalbari

Arguments for Prosecution : Smti Hiramoni Goswami,  
Ld. Advocate

Arguments for Defence : Sri Sandeep Talukdar, Ld.  
Advocates

Evidence recorded on : 04-04-2019, 30-04-2019,  
08-07-2019, 29-07-2019

Arguments Heard on : 01-04-2021

Judgment delivered on : 06.05.21

## **JUDGEMENT**

### **Story of the complainant:**

1. The factual matrix of the complaint case initiated by filing of a complaint petition on 09.04.2019 by the complainant Sadananda kalita against the accused persons Dasarath Barman, Kuldip Barman, Bhrikujit Baramn, Hitesh Haloi and Smti Rina Haloi, in brief, is that on 03.04.2019 in the evening around 06.00 pm to 06.30 pm, the accused persons wrongfully entered into his house premises and then assaulted his wife. The accused Dasarath Barman slapped his wife, accused

Rina Haloi pelted stones at his house and Hitesh Haloi assaulted him. The accused persons also threatened him that the accused would set fire his house.

**Cognizance :**

2. The complainant filed the complaint petition U/S. 294(A)/323/447/506/34 of I.P.C.. After receiving the complaint petition, the complainant, at first, was examined under section 200 of Cr.P.C. and then further examined two witnesses under section 202 of Cr.P.C. so as to testify the variability of the case filed by the complainant and finding a prima facie case against the accused persons Dasarath Barman, Rina Haloi, Kulajit Baraman, Bhrikujit Baraman, and Hitesh Haloi issued summons to the accused persons under section U/S. 323/447/427/506(I)/34 of I.P.C.of IPC..

**Appearance of the accused persons :**

3. The accused persons were called upon to enter trial and upon appearance of the accused persons on receipt of summons. After their appearance and upon filing of bail petition by the accused persons and considering the facts and circumstance and nature and gravity of the offence, the accused persons were allowed to go on bail. Since it is the duty of the complainant to furnish copies of the complaint petition

along with the relevant documents in complaint case, accordingly it is found that the accused persons were received the copies of the complaint petition along with the relevant documents.

**Offence Explanation against the accused persons :**

4. Considering the relevant documents attached with the case records and hearing both the parties, particulars of the offences under section U/S. 323/447/427/506(I)/34 of I.P.C. was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

**Witness examined and Documents Exhibited :**

5. In order to bring home the charge, the prosecution side examined three witnesses- PW1- Sadananda kalita PW2- Rita Kalita and PW3- Mrigen Kalita and the defence side did not adduce even a single witness.

**Examination of accused u/s 313 Cr.P.C.**

6. The accused persons have been examined and their statements were recorded u/s 313 Cr.P.C. The

accused persons denied all allegations levelled against him.

7. The defence side did not adduce any evidence.
8. Heard arguments put forwarded by both the learned counsels appearing on behalf of their respective parties.
9. After hearing the intensive arguments put forwarded by both the learned counsels appearing on behalf of their respective parties, and after going through all the evidences on records including the oral and documentary attached with the case records, I have framed the following points for determination.

10. **Points for determination :**

1. *Whether the accused persons, on or before 03.04.19 around 06.00 to 06.30 pm at about 03.00 pm in the evening entered illegally into the house of complainant Sadananda kalita with intent to commit an offence and thereby committed an offence punishable under Section 447/34 of IPC ?*
2. *Whether the accused persons, on or before 03.04.19 around 06.00 to 06.30 pm in the evening at the house of the complainant hurt voluntarily hurt the wife of the complainant and*

*that you thereby committed an offence punishable u/s 323/34 of IPC ?*

3. *Whether the accused persons, on or before 03.04.19 around 06.00 to 06.30 pm in the evening at the house of the complainant committed mischief causing loss or damage to the amount more than fifty rupees and thereby committed the offence under section 427/34 of IPC ?*
4. *Whether the accused persons, on or before 03.04.19 around 06.00-06.30 pm at about 03.00 pm in the evening at the house of the complainant threatened Sadananda Kalita with injury and that thereby committed an offence punishable under section 506(I)/34 of IPC?*

### **Discussions, Decisions and Reasons thereof :**

#### **Evidence of Prosecution :**

11. PW1- Sadananda Kalita on 17-12-18, an argument took place between his wife Rita Haloi and the accused Rina Haloi in front of his old house at Bhoira. However, at that time he was at Tihu. Thereafter, his wife lodged a case against the accused Dasarath Barman, Diganta Barman and Rina Haloi and Accused Rina Haloi lodged a case against hiswife. On

03-04-2019, the accused persons namely Dasarath Barman, Kuldip Barman, Bhrikujit Barman, Pakhila Barman, Holiram Haloi, Rina Haloi, Hitesh Haloi Gopal Haloi and Malabika Haloi wrongfully passed into his house campus and Dasarath Barman slapped his wife. Hiresh Haloi assaulted him with iron rod which was kept at his house campus. Accused Gopal Haloi floored his son Mrigen Kalita. The accused persons also threw stones at his house and broke window glasses.

12. Cross-examination It is not a fact that he has not stated in his statement u/s 200 CrPC that the accused Hitesh Haloi assaulted him with iron rod which was kept at his house campus, Gopal Haloi floored his son Mrigen Kalita and that the accused persons threw stones at his house and broke window glasses. He has also not stated in his statement that on which side he got hurt while the accused Hitesh Haloi assaulted him with rod. He has not submitted any medical documents. There are houses of Jagadish Haloi Dipak Haloi near his house. He has no contact with them and has not made them witness in this case. The witnessed in this case are his wife, son and daughter. Accused Rina Haloi lodged a case against his wife that his wife assaulted her with a knife as a result of which she suffered cut injury. He has deposed before this court as a witness few days ago in a case lodged by his wife against accused Rina Haloi in that case accused Rina Haloi got

acquitted. There may be many cases against him in this court during last 5 years. It is not a fact that in order to save his wife from the case lodged by accused Rina Haloi against his wife, he lodged this false case against them. It is not a fact that Dasarath Barman had not slapped him, Hitesh Haloi had not assaulted him with iron rod, Gopal Haloi had not floored his son Mrigen Kalita and the accused persons had not thrown stones at his house and no window glasses were broken.

13. PW-2, Rita Kalita on 03-04-2018, at about 6 pm, the accused persons Dasarath Barman, Pakhila Barman, Bhrijujit Barman Kulajit Barman, Rina Haloi, Malamika Haloi, Hitesh Haloi, Gopal Haloi and Holiram Haloi went to their house and threw stones at their house as a result of which few window glasses broke. Dasarath Haloi slapped him, Hitesh Haloi assaulted her husband with iron rod, Dasarath, Rina, Pakhila Barman, Bhrijujit Barman floored her son Mrigen Kalita.

14. In Cross-examination she testified that she filed this case on 17-12-18 before the court. She has not lodged an ejarah in the P.S. with regard to this incident. It is not a fact that the alleged incident is false and as such they have not lodged an FIR in the P.S. him and her husband lodged two cases against the accused persons. She does not know the contents of

the complaint petition. She has not mentioned in any case that took place on 03-12-2018 the incident for which this case has been filed took place on 03-12-2018. No medical report has been submitted in this case with regard to assaulting her husband with iron rod by Hitesh Haloi. It is not a fact that accused Dasartha does not slap him. It is not a fact that she tried to hit Rina Haloi with stones but Diganta hold him and at that time Rita Haloi assaulted him with stone and to take revenge they filed this case. It is not a fact that she and her family members are involved in illegal activities and those who restrain them they file false case against them.

15. PW-3- Mrigen Kalita on 03-04-2019 , at about 6.00-6.30 pm, the accused persons came to their house and Hitesh Haloi assaulted his father with iron rod, Dasarath slapped his mother/Rita Kalita kulajit and Bhrikujit Barman floored him. The accused persons threw bricks and stones their house as result of which few window panes broke down.

16. Cross-examination a case has also been registered at police station with regard this incident. Hitesh took away the iron rod and he informed police about it. Police interrogated him. The rod with which Hitesh assaulted his father was brought by Hitesh from his house. He does not know whether his father and

mother has been medically examined or not. It is not a fact that Hitesh assaulted his father with iron rod, Dasarath slapped his mother and kulajit and Dasarath floored him are false. He has not deposed falsely that a case has been registered at P.S. He does not know whether theft cases are pending before the court. It is not a fact that he deposed falsely.

17. After going through carefully the entire evidence on record mentioned above including oral and documentary, let us see whether the offence committed by the accused persons falls under the purview of section 447/352/294/506(I)/34 of I.P.C. To decide the first point for determination I have gone through the provision laid down under section 447 of IPC. To prove the offence under section 447 of IPC, the prosecution must first prove the criminal trespass by the accused persons. As per section 441 IPC, to prove criminal trespass, the following must be proved –

(i) First the accused persons entered into or upon property in the possession of another.

(ii) Second, If such entry is lawful, then unlawfully remaining upon such property.

(iii) Third, such entry or unlawful remaining must be with intent to -

(a) to commit an offence

(b) to intimidate, insult, or annoy any person in possession of the property.

18. In the instant case, to check out whether the accused persons entered into or upon the property in the possession of the complainant, we need to examine two things- first, whether the accused persons entered into the premises of the complainant and secondly, after entering into the property of the complainant, the accused persons committed any offence. Perusal of the evidence adduced by PW1 it appears that as mentioned in the complaint, the accused persons also deposed in his evidence that On 03-04-2019, the accused persons namely Dasarath Barman, Kuldip Barman, Bhrikujit Barman, Pakhila Barman, Holiram Haloi, Rina Haloi, Hitesh Haloi Gopal Haloi and Malabika Haloi wrongfully trespassed into his house campus. Perusal of the cross-examination, it also appears that the evidence adduced by PW1 in this regard remains un-rebutted. PW2 and PW3 also adduced the same in their evidence that the accused persons went to their house at the time of occurrence and his evidence in this regard is also remained un-rebutted.

19. Now, coming back to the ingredients of the offence under section 447 of Cr.P.C., it is evident that the first condition of the offence is fulfilled in the instant case. But, entering into someone property is not resulted into commission of the offence under section 447 of IPC. . The accused persons must remained

illegally there and then committed an offence under section 447 of IPC, it is then the commission of the offence under this section 447 can be established.

20. To check out this, the other points for determination no. 2, 3 and 4 shall be decided first. Let us proceed to decide the second point for determination i.e **Whether the accused persons, on or before 03.04.19 around 06.00-06.30 pm at about 03.00 pm in the evening at the house of the complainant hurt voluntarily hurt the wife of the complainant and *that you thereby committed an offence punishable u/s 323/34 of IPC?*** It is necessary to peruse the said penal sections in its entirety. For sack of convenience I pick up the point no.2 for discussion and so the section 323 of IPC is reproduced verbatim as below -

*"323. Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by **section 334**, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."*

21. The definition of hurt is provided under section 319 of IPC . The same is also reproduced verbatim below –

**“Section 319 in The Indian Penal Code. 319.**

Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.”

**Thus,** after a plain reading of both the section, it is evident that to bring home an accused under this offence, the prosecution must prove the following ingredients –

1. Accused voluntarily caused bodily pain, disease or infirmity to the victim.
2. The accused did so with intention to causing hurt or with the knowledge that he would thereby cause hurt to the victim

22. As mentioned in the complainant petition, PW1 also adduced in his evidence that after entering into their house all the accused persons, the accused Dasarath slapped his wife Rita Kalita and the accused Hitesh Haloi assaulted him with an iron rod after picking it up from their verandah as a result of which he received many injuries on his body. The accused Gopal Haloi also floored his son Mrigen kalita. Rebuttal evidence of PW1 reveals out that the defence side brings contradiction of his some evidence adduced at the time of initial deposition and during evidence. A careful scrutiny of the same reveals out that PW1 did not adduce the evidence at the time of his initial evidence as regards to the assault by the accused Hitesh Haloi with iron rod. The defence side also tries

to shake the credit evidence of PW1 as regards to production of medical evidence in connection with assault by iron rod. A person is definitely gotten injured severely when he is assaulted by iron rod in a fit of anger. As such some visible mark of injury will also be seen on his body. But no any such evidence is adduced or produced any medical evidence for supporting by the complainant. This raises a shadow of doubt as to the allegation of hurt voluntarily by the accused person.

23. At the time of rebuttal evidence, PW1 admitted that the accused Rita Haloi lodged a case against his wife. He further admitted that few days before his evidence in the instant case, he deposed before this Court in a case lodged by his wife against the accused Rina Haloi in which Rina Haloi got acquitted. He further admitted that during last five years many cases have been pending against him in this Court. Thus, from the rebuttal evidence of PW1, it clears out that the defence side could establish enmity in between the complainant and the accused persons as a result of which there are multiplicity of cases in between both the parties. As such the evidence adduced by PW1 is not free from fallacious, suspicion and exaggeration.

24. PW2 is the victim of this case and wife of the complainant. Although in her evidence she adduced

some incriminating materials against the accused persons such as assaulting her iron rod and flooring her son Mrigen kalita by the accused persons but from the rebuttal evidence, it is evident that she did not lodge any FIR against the accused persons as to the allegation leveled in the complaint petition. The occurrence took place on 03.04.2018 and the complaint petition is lodged on 09.04.2018. PW2 gets enough time to lodge ejahar against the accused person. Besides, there is no any explanation in the complaint petition for delay of lodging the complaint petition. More so she is even not sure as to the date of occurrence. As such I find her evidence not trustworthy to establish the allegation leveled against the accused persons.

25. As stated by PW1 and PW2, PW3, Mrigen kalita also adduced in his evidence that the accused Hitesh Haloi assaulted his wife with iron rod, Dasarath slapped his mother Rita kalita and other two accused floored him. I find corroboration in this regard. But some statements adduced at the time of rebuttal evidence creates in my mind some shadow of doubt. That his mother and father were taken for medical examination or not is not known to PW3. Being present at the place of occurrence and also became a victim, PW3 should not adduce such evidence in his rebuttal evidence. Further his statements that a case has been registered

at the police station in connection with the occurrence of this case also pushes me to think suspiciously about the allegation as because no such ejahar for the occurrence of this case has been lodged by PW1 and PW2 is admitted already by them in their evidence.

26. Besides, there are the houses of Jagadish Haloi and Dipak Haloi nearby the place of occurrence. But their evidence is not adduced before this Court. Since the witness PW1, PW2 and PW3 are family members, as such non- production of independent evidence to establish the case of complaint, creates some doubt as to the allegation in the complaint petition.

27. Thus, from appraisal of the evidence of PW1, PW2 and PW3, it is crystal clear that non-production of any medical evidence and the iron rod alleged to be used by the accused persons at the time of occurrence, not adducing any independent evidence, not lodging any Fir as well as no explanation of delay in filing the complaint petition plus enmity in between the accused persons and the complainant, let me creates shadow of doubts in my mind as to the allegation against the accused persons. Therefore, the point for determination no.2 is decided negatively and in favour of the accused persons.

**Decision : The point for determination no.2 is decided negatively and in favour of the accused persons.**

28. *In the point for determination no.3, it is to be decided whether the accused persons, on or before 03.04.19 around 06.00 to 06.30 pm in the evening at the house of the complainant committed mischief causing loss or damage to the amount more than fifty rupees and that thereby committed an offence under section 427/34 of IPC. . The section 427 of IPC reads as follows –*

*“427. Mischief causing damage to the amount of fifty rupees.—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*

The definition of “mischief” is incorporated under section 425 of IPC which reads as follows –

*“425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or*

*diminishes its value or utility, or affects it injuriously, commits "mischief".*"

Thus, from a bare reading of the section 427 of IPC, it is crystal clear that to convict a person under this section, the prosecution must establish the following ingredients –

1. The accused committed mischief.
2. Such mischief caused loss or damage amounting to not less than Rs. 50

29. From a through evidence adduced by PW1 to PW3, it is evident that the accused persons threw bricks and stones to the house of the complainant as a result of which few window panes were broken. Although the allegation leveled against the accused person in this regard in the complaint petition is supported by the evidence of PWs but establishment of enmity in between the accused persons and the complainant that is established by the defence side through admission of PWs in their rebuttal evidence as well as non-lodging of FIR in the police station as regards to the occurrence of this case plus non-explanation of delay in filing this instant case, creates shadow of doubts in my mind as to the allegation against the accused person by the complainant.. Therefore, the point for determination no.3 is decided negatively and in favour of the accused persons.

**Decision : The point for determination no.3**  
**is decided negatively and in favour of the**  
**accused persons.**

30. In the last point for determination, it is to be decided that Whether the accused persons, on or before 03.04.19 around 06.00 to 06.30 pm in the evening at the house of the complainant *threatened sadananda Kalita with injury and that thereby committed an offence punishable under section 506(I)/34 of IPC. To convict a person for an offence under section 506 of IPC, the prosecution must prove –*
1. The accused person threatened someone with injury to his person , reputation or property or to the person, reputation or property of another in whom the former was interested.
  2. The accused did so to cause alarm to the victim of offence.
  3. The accused did so to cause the victim to perform any act which he was not legally bound to do.
31. Now, let us proceed to appraise the entire evidence on record to check whether the aforementioned ingredients of the alleged offences could be established by the prosecution or not. PW1 as mentioned in his complaint petition does not adduce

any evidence as regards to the threatening by the accused persons. PW2 does not also adduce any such evidence in her evidence. Similarly PW3 who is one of the victim of this case also does not adduce any evidence as regards to the threatening by the accused persons to set fire their house in future. As such the allegation leveled against the accused persons as regards to the commission of the offence under section 506(I)/34 of IPC could not be established by the complainant. Therefore, the point for determination no.3 is decided negatively and in favour of the accused person.

**Decision : The point for determination no.4 is decided negatively and in favour of the accused person .**

32. Now from the decisions made in the point for determination no.2,3 and 4, it is evident that there is no any offence that the accused persons alleged to be committed on the day occurrence. Therefore, on the basis of finding in the point for determination no. 2,3 and 4, **the point for determination no.1 is decided negative and in favour the accused person.**

**Decision : The point for determination no.1 is decided negatively and in favour of the accused persons.**

33. Thus, on consideration of the entire aspect of the matter and after due appreciation of the evidence of the prosecution witnesses, this court finds that prosecution has failed to prove all the ingredients of the offence u/s 447/352/294/506/34 IPC against the accused persons beyond all reasonable doubts .
34. Accordingly, the accused persons, are acquitted from the charge u/s 447/323/427/506(I)/34 IPC leveled against him on benefit of doubts and set at liberty forthwith.
35. Bail bond remain extended for another 6 (six) months as per section 437(A) of the Cr.P.C.
36. The case stands disposed of on contest.

Judgment is pronounced and delivered in open court under seal of this Court with my signature on this 06<sup>th</sup> May 2021.

**(Siddhartha Bora)**

Signature

Judicial Magistrate First Class

**APPENDIX**

**1. PROSECUTION WITNESSES :**

PW 1 – Sadananda kalita

PW 2 – Rita Kalita

PW3 – Mrigen Kalita

**2. Evidence by the Defence Side :**

Nil

**3. List of Exhibits :**

Ext.1 - the complaint petition

**( Siddhartha Bora )**

Signature

Judicial Magistrate First Class