

							purpose of section 428 of IPC
A-1	Md. Din Mahammad			U/S 448/352 /294/50	Accused person namely	The accused/convicted person	N/A
A-2	Md. Rasikal Haque			6/34 of IPC	Md. Din Mahammad is convicted	Md. Din Mahammad is directed to pay compensation of Rs. 1500/- (One Thousand Five Hundred) only to the victim Imam Tapser Ali of the	
A-3	Md. Majnur Haque				u/s 448/352 of IPC. The co-accused persons namely Md. Rasikal Haque and Md. Majnur Haque are acquitted	Mad is directed to pay compensation of Rs. 1500/- (One Thousand Five Hundred) only to the victim Imam Tapser Ali of the	

					from the instant case	case as per section 5 of The Probation of Offenders Act, 1958.	
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APPENDIX-13

Date of offence	04/04/2018
Date of FIR	05/04/2018
Date of charge-sheet	30/04/2018
Date of O.E.	26/08/2019
Date of commencement of evidence	13/11/2019
Date on which judgment is reserved	N/A
Date of judgment	27/09/2022
Date of the Sentencing Order, if any	N/A

(J U D G M E N T)

- 1.** The prosecution case sets into motion by filing a FIR by the informant, Md. Ajjur Rahman lodged one FIR against the accused persons namely Md. Din Mahammad Ali, Md. Rasikul Ali, Md. Najrul Haque, Md. Majnur Haque and Musstt. San Bhanu Bibi alleging that on 4-4-2018 at 7.00 PM, the accused Din Mahammad Ali entered into the house of Imam Tapser Ali and caused injury to him by assaulting him. It is further alleged that when a village Bichar was called, the accused persons chased the villagers with an intention to assault, scolded in filthy language and threatened to kill the Imam. Hence, informant lodged this case.
- 2.** The Officer-in-charge, Mukalmua Police station, on receipt of the Ejahar registered Mukalmua P.S. Case No. 119/18, under section 448/323/294/506/34 of IPC and endorsed the concerned I/O for investigation. After completion of the investigation, the concerned I/O submitted charge sheet against the accused persons, Md. Din Mahammad, Md. Rasikal Haque and Md. Majnur Haque, Under Section 448/352/294/506/34 of IPC.
- 3.** In due course, the accused persons appeared before the Court and the copies of relevant documents were furnished to them as per section 207 of Cr.P.C. Particulars of offence u/s 448/352/294/506/34 of IPC were read over and explained to

the accused persons to which they pleaded not guilty and claimed to be tried.

4. The prosecution, in support of its case, examined seven (07) witnesses including the IO and MO.
5. The statements of the accused persons under section 313 of Cr.P.C. are recorded wherein they took the plea of innocence and false implication. Defence side examined no witnesses.
6. I have heard the arguments advanced by the Learned Counsels for both sides.

7. POINTS FOR DETERMINATION:-

- (i) *Whether the accused persons, Md. Din Mahammad, Md. Rasikal Haque and Md. Majnur Haque, in furtherance of their common intention, on 4-4-2018 at 7.00 PM, at No. 3 Bhelamari, under the jurisdiction of Mukalmua P.S., criminally trespassed into the dwelling house of Imam Tapser Ali with an intent to commit offence or to intimidate or insult or annoy any person in possession of the property and thereby committed offence punishable U/S 448/34 I.P.C.?*
- (ii) *Whether the accused persons, Md. Din Mahammad, Md. Rasikal Haque and Md. Majnur Haque, in furtherance of their common intention, on same day, time and place, assaulted Imam Tapser*

Ali and thereby committed an offence punishable under section 352/34 IPC.?

- (iii) *Whether the accused persons, Md. Din Mahammad, Md. Rasikal Haque and Md. Majnur Haque, in furtherance of their common intention, on same day, time and place, committed an obscene act or used obscene words causing annoyance to others and thereby committed an offence u/s 294/34 of I.P.C?*
- (iv) *Whether the accused persons, Md. Din Mahammad, Md. Rasikal Haque and Md. Majnur Haque, in furtherance of their common intention, on same day, time and place, committed criminal intimidation by threatening to kill the Imam in order to cause alarm to him and thereby committed the offence under section 506/34 of IPC ?*

DISCUSSION, DECISION AND REASONS THEREOF:

- 8.** PW-1 (informant), Md. Ajijur Rahman was the Secretary of Houlighat Masjid Committee when the incident occurred. He filed the FIR. Exhibit 1 is the ejahar and exhibit 1(1) is his signature.
- 9.** During cross-examination defence side emphasized that FIR was lodged on 05-04-2018, while the incident occurred on 04-04-2018 at the evening. Case record reveals that at the evening hours the incident occurred and thereafter the victim went to the PHC. Hence, it is found lodging the FIR the next day has not caused any kind of doubt regarding the fact that

the informant tried to embroider the case by delaying in filing the FIR. Filing the FIR, in the next day of the incident, which took place in previous evening, has aroused no doubt favoring the defence side.

10. Now coming to the deposition of PW-1, it is found that, according to PW1 (informant) the incident took place on 04-04-2018 at about 6.30-7.00 pm at Houlighat Masjid. He along with Jamal Ali, Habir, Majnur and other people were in the room of Imam Tapser Ali. A misunderstanding took place between Tapser Ali and Din Mohammad Ali. While discussion was going on Din Mohammad Ali assaulted Topser Ali. On the same day a 'bichar' was held. The accused persons verbally abused them. Thereafter they brought Tapser Ali to Mukalmua PHC. They came to Police station. He filed the ejahar. During the cross-examination of the PW-1, the defence side could not insinuate anything in their favour apart from reason of the quarrel.

11. PW-2 clearly says that the incident took place on 04-04-2018 at about 7.00 pm. After Ajan he was inside the masjid. Jamal Ali came and called him outside and he along with Jamal came inside his room. Jamal sat in his bed and asked him about Din Mohammad at that time Ajijur Rahman also came to his room. Thereafter Din Mohammad entered his room and assaulted him on the back of his neck with blows. At that time Jamal and Ajijur Rahman who is the secretary of

Masjid was present. PW-1 (Md. Ajijur Rahman) also corroborated the same.

12. PW-2 (victim) also says that earlier Din Mohammad requested him to accompany him for collecting donation from people of the neighbouring village for his going to Haj. He was unable to accompany Din Mohammad as his friend Jakir Ali had expired. About 15 days prior to 04-04-2018 Din Mohammad came to Masjid and verbally abused him. Ajijur Rahman called a village bichar regarding the incident. The accused persons attended the village bichar but they left the bichar. The accused persons verbally abused the village people. Police recorded his statement. During his cross-examination, defence side failed to shake his credibility.

13. Regarding the cause of the dispute and the reason behind this incident took place inside the Mosque; it is found answer is lying in the cross-examination of the witnesses itself. PW-1 says in his cross-examination that at the time of incident 20-50 peoples were present. As he was inside the house he had not seen the people who were outside the masjid. During the time of incident Din Mohammad was preparing to attend Hojj and he later performed Hojj. Din Mahammad did not seek any financial assistance from Masjid committee for going to hojj. The other person who went to Hojj sought financial assistance from the Masjid and they helped them. Din Mahammad did not seek any financial assistance from Imam. The members under their masjid have

to seek financial assistance from the masjid for going to hojj. The accused persons belong to the same jamat under their masjid. A discussion took place between the imam and masjid committee regarding the fact that Din Mahammad had not sought any financial assistance from the Masjid and Din Mahammad was called to the meeting and in the meeting Din Mahammad refused to take any financial assistance from the masjid due to which a quarrel took place between Din Mahammad, imam and the masjid committee. The fact regarding the 'bichar' mentioned in the ejahar and the bichar which was held calling Din Mahammad are the same. After the bichar the family of Din Mahammad was boycotted from the jamat of Haoulighat Masjid Committee. Hence, during cross-examination itself the dispute between the parties has been revealed which lead to the happening of the offence. PW-2 Md. Tapser Ali (victim) is the Imam of Masjid. In his cross-examination, PW-2 also stated that Din Mahammad had not accepted any donation from the village people. After the incident Din Mahammad has been boycotted from the village society as Din Mahammad had not accepted donation from village people for going to haj. Hence, the reason of the quarrel is found during cross-examination of PW-1 (informant) and PW-2 (victim).

- 14.** From a close scrutiny of evidences of informant (PW-1) and (Victim) PW-2, the credential of their deposition is found there that Md. Din Mahammad entered into the

room of the Imam in the Masjid and assaulted the victim Md. Tapser Ali (PW-2) who was the Imam at that time.

15. PW-3, Md. Jamal Ali was present as per the evidence of PW-2 (victim) at the time of the incident. However, PW-3 says that he has not seen Din Mahammad assaulting Tapser Ali. According to him, at that time Tapser Ali shouted that Din Mahammad assaulted him. He along with Ajjur Rahman (PW-1), Majnur and Din Mahammad came out from the room of Imam Tapser Ali and went for Namaj. Though PW-3 is not declared hostile, but he confirmed the evidence of PW-1 and PW-2 that he was present along with Md. Ajjur Rahman (PW-1), Md. Majnur and Md. Din Mahammad (accused). At the time of alleged incident he heard himself that Tapser Ali shouted that Din Mahammad assaulted him. Hence, though he has not seen the incident but he supported the presence of the accused at the place of occurrence at the time of incident and he also heard that the victim was shouting that the accused assaulted him. This also favours the prosecution case to inspire confidence regarding the incident took place inside the Masjid.

16. PW-4, Md. Maznur Ali deposed that he heard that a verbal altercation took place between the informant and the accused persons. He does not know anything else about the incident. As hear-say evidence, his evidence does not hold any value in this case for both sides.

17. But PW-5, Md. Altab Ali was also present at that time. He went for Namaz to the mosque. After the Namaz, PW-5 was talking with 4/5 persons inside the room of Jonab. He could not say what was discussed in the room. PW-5 saw with his own eyes that accused Din Mohammad assaulted the Jonab.

18. During cross-examination he says that Jonab takes his dinner at the house of the villagers on everyday basis as per shift. He cannot say that whether Jonab took his dinner at the house of Din Mohammad or not on the relevant day. In the room i.e. the alleged place of occurrence, Din Mohammad, Azizur Hussain, Jonab/victim, Jamal and he were present. Apart from them none was present inside the mosque at that time. He denied defence suggestion that in the mosque at that time discussion was going on regarding the incident in which Jonab could not take his dinner at the house of Din Mohammad. He denied defence suggestion that as the accused did not accept the same, a false case is registered against him. He denied defence suggestion that he has not stated to police in his statement u/s 161 CrPC that alleged incident occurred in the year 2018 at 7.30 PM at inside the room of the Jonab at the mosque of Bhelamari Howlyghat and along with the villagers, he went for Namaz to the mosque, thereafter the namaz, he was talking with 4/5 persons inside the room of Jonab. He denied defence suggestion that he has not stated to police in his statement u/

s 161 CrPC that he saw with his own eyes that accused Din Mohammad assaulted the Jonab.

19. There is nothing in the cross-examination of PW-3, that PW-3 is a related witness or he has some animosity towards the accused tries to falsely frame the accused in this case. Resultantly, there is no ground to disbelieve his testimony.

20. Hence, from the evidence of PW-1, PW-2 and PW-5 it is crystal clear that PW-1 and PW-5 confirmed the fact that they were present when the accused Din Mahammad assaulted Jonab (PW-2) inside his room.

21. PW-7 (I/O), SI Raju Deb stated about the investigation of the case. During cross-examination he stated that the FIR was received on 05-04-2018 at 5.30 PM. The date of incident was on 04-04-2018 at 7.00 PM. The place of occurrence is situated at a distance of 3 kilometer from the police station. No cause of delay in lodging the FIR is mentioned in the FIR. As per the medical report and the PW-6(MO), at 4.15 PM on 05-04-2018, the victim i.e. Md. Tapser Ali was examined. The place of occurrence is situated at a distance 3 kilometer from the Mukalmua Hospital. The Mukalmua Hospital is situated near the Police station. PW-2 (victim) has not stated to him in his statement recorded u/s 161 CrPC that Jamal Ali came and called him out side and he along with Jamal came inside his room, Jamal set in his bed and asked him about Din Mahammad at that time Ajijur

Rahman also came to his room, thereafter Din Mahammad entered his room and assaulted him on the back of his neck with blows. PW-2 (victim) has not stated to him in his statement recorded u/s 161 CrPC that at that time Jamal and Ajijur Rahman were present. PW-2 (victim) has not stated to him in his statement recorded u/s 161 CrPC that earlier Din Mahammad requested him to accompany him for collecting donation from people of the neighboring village for his going to Haj and he was unable to accompany Din Mahammad as his friend Jakir Ali expired. PW-2 (victim) has not stated to him in his statement recorded u/s 161 CrPC that about 15 days prior to 4-4-2018 Din Mahammad came to the Masjid and verbally abused him and Ajijur Rahman called a village Vichar regarding the incident but the accused persons left the Vichar and verbally abused the village people. PW-5 has not stated to him in his statement recorded u/s 161 CrPC that the alleged incident occurred in the year 2018 at 7.30 PM at inside the room of the Jonab at the mosque of Bhelamari Howlyghat and along with the villagers, he went for Namaz to the mosque, thereafter the namaz he was talking with 4/ 5 persons inside the room of Jonab. PW-5 has not stated to him in his statement recorded u/s 161 CrPC that he saw with his own eyes that the accused Din Mahammad assaulted the Jonab. He denied defence suggestion that he has not investigated the case properly.

- 22.** Though PW-5 has not stated to I/O (PW-7) in his statement recorded u/s 161 CrPC that he saw with his own eyes that the accused Din Mahammad assaulted the Jonab, but, apart from it there is no vital contradiction found in the evidences of the PWs.
- 23.** PW-6, Dr. Indrajit Bharali is the M/O of this case. According to him on examination of the patient Md. Tapser Ali on 05-04-2018 he found: i) chest pain, ii) pain in the back of chest iii) headache iv) pain in the nape of neck. No visible injury noted. Age of injury 3 hours. X-ray of chest was advised. However no report was submitted. Hence, from the evidence of M/O (PW-6), Dr. Indrajit Bharali it is found that the victim Md. Tapser Ali complaint pain in the chest, back of chest, headache, pain in the nape of neck where he was assaulted by the accused Din Mahammad as per his evidence recorded as PW-2. Defence declined to cross-examine the MO. There is no explanation comes from defence side regarding what caused the pain to the victim and whether the medical report is believable or not.
- 24.** Section 352 IPC says whoever assaults or uses criminal force to any person otherwise than or grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. Explanation- Grave and sudden provocation will not mitigate the punishment for an offence

under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or if the provocation is given by anything done in the lawful exercise of the right of private defence. Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

25. Now coming back to the case at hand it is found that from the evidence of MO (PW-6), it is clear that though there is no visible injury found in the person of the victim (PW-2) but the victim complains pain in the nape of neck apart from other parts on his person. He is examined in the next day of the incident. According to victim (PW-2), accused Din Mahmmad assaulted him on the back of his neck with blows. PW-1(informant) and PW-5 were present and they saw when accused Din Mahammad assaulted the victim (PW-2). PW-3 though has not seen it but he confirms that accused Din Mahammad was there when the victim shouted that accused assaulted him. There is nothing on record that there is grave and provocation on the part of the victim (PW-2) due to which accused assaulted him. Hence, the prosecution side adduces cogent and plausible evidence that the accused Din Mahmmad assaulted the victim (PW-2).

26. The accused persons are facing trial u/s 448/352/294/506/34 of IPC.

- 27.** The essential ingredients of section 448 IPC are:
- (1) The complainant was in possession of the property;
 - (2) Property consisted of a building, tent or vessel used as a human dwelling or a building used as a place of worship or for custody of property;
 - (3) The accused entered into or upon such building, tent or vessel;
 - (4) Having entered lawfully into such building, tent or vessel the accused remains there unlawfully;
 - (5) His intention was to commit an offence, or intimidate, insult or annoy the person in possession.
- 28.** From the evidence of PW-1, PW-2, PW-3 and PW-5 it is found that on 04-04-2018 at 7.00 PM, the accused Md. Din Mahammad Ali entered into the room of Imam Tapser Ali inside the Mosue at Howlightat, which is a place of worship as per section 448 of IPC and assaulted him. It is also found that at the relevant time Md. Din Mahammad assaulted and caused injury to Md. Tapser Ali. The evidence of PW-1, PW-2 and PW-5 corroborated each other. Hence, from the evidence on record I found that the accused Md. Din Mahammad committed offence u/s 448/352 of IPC.
- 29.** Though the accused persons Md. Rasikal Haque and Md. Majnur Haque are facing trial in this case, but no incriminating material is found in the evidences adduced by the prosecution side against them. Not a single witness has stated that the accused persons Md. Rasikal Haque and Md.

Majnur Haque were present at that time. There is nothing on record that in furtherance of common intention the offence is committed. Regarding involvement of the accused persons Md. Rasikal Haque and Md. Majnur Haque no incriminating material is found and they are acquitted.

30. All the accused persons namely Md. Din Mahammad, Md. Rasikal Haque and Md. Majnur Haque are also facing trial u/s 294/506 of IPC. However, from the evidence of PW-1, PW-2, PW-3 and PW-5 no ingredients of section 294/506 of IPC are gathered against the accused persons.

CONCLUSION/DECISION:

1. The prosecution side was able to adduce cogent and trustworthy evidence against the accused person namely Md. Din Mahammad u/s 448/352 of IPC and he is convicted u/s 448/352 of IPC. No evidence is found against the accused persons namely Md. Din Mahammad, Md. Rasikal Haque and Md. Majnur Haque, Under Section 294/506 of IPC.

2. As no evidence is found against the accused persons namely Md. Rasikal Haque and Md. Majnur Haque. Hence, they are acquitted from the instant case.

3. I have considered the nature of the offence committed by the accused and whether he can get the benefit of The Probation of Offenders Act, 1958.

4. Convicted accused Md. Din Mahammad is heard.
5. Convicted accused Md. Din Mahammad has stated that he is an old aged person and is innocent and requested the court to consider his case leniently.
6. I heard Ld. Defence Counsel as well Ld. A.P.P. The convict pleaded mercy and prays for considering leniently.
7. Learned APP prays taking into consideration nature of the offence committed by the accused person, the accused person to be punished.
8. Learned Defence Counsel made submission that the accused person is a senior citizen, hence, he is to be released.
9. After hearing Ld. Counsels for both sides and accused person, going through the material on record and considering the nature of the offence which accused person has committed, I am of the opinion that this is a fit case to consider accused person leniently.
10. Hence, the accused person Md. Din Mahammad who is found guilty of committing offence punishable u/s 448/352 of IPC and as no previous conviction is proved against him and having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient to release the convict after due admonition. Accordingly, the accused person/convicted person Md. Din Mahammad is released on due admonition u/s 3 of The Probation of Offenders Act, 1958.

11. The accused/convicted person Md. Din Mahammad is further directed to pay compensation of Rs. 1500/- (One Thousand Five Hundred) only to the victim Md. Tapser Ali of the case as per section 5 of The Probation of Offenders Act, 1958.

12. The convicted/accused person is told that he has right to appeal against the judgment and order of this court before Hon'ble Appellate court through the jail authority or independently of their own.

13. Convicted accused person is further informed that he is entitled free legal aid to prefer appeal before the Hon'ble Session court.

14. Let furnish free copy of Judgment to convicted accused person.

15. Send copy of judgment to Learned District Magistrate Nalbari u/s 365 Cr.P.C.

Given under my hand and seal of this court on this 27th day of September, 2022 at Nalbari.

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari

APPENDIX-14**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES****A. Prosecution witness**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Md. Ajijur Rahman	Informant
PW-2	Md. Tapser Ali	Victim
PW-3	Md. Jamal Ali	Other witness
PW-4	Md. Maznur Ali	Other witness
PW-5	Md. Altab Ali	Eye witness
PW-6	Dr. Indrajit Bharali	Medical witness
PW-7	SI Raju Deb	Police witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. Court witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE
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		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit 1	Ejahaar
2.	Exhibit 2/PW-6	Injury report
3.	Exhibit P-3/PW-7	Sketch map
4.	Exhibit P-4/PW-7	Charge sheet

B. Defence: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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D. Material Objects: Not applicable

Sr. No.	Exhibit Number	Description
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Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari