



							purpose of section 428 of IPC
A-1	Sri Hemen Thakuria			U/S 294/506 /34 of IPC	Convicted	Sri Hemen Thakuria and Sri Khagen Thakuria are directed to pay compensation of Rs. 2000/- (two thousand) only each, totaling Rs. 4000/- (four thousand) only	N/A
A-2	Sri Khagen Thakuria						

						to the informan t of the case as per section 5 of The Probatio n of Offender s Act, 1958.	
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## APPENDIX-13

Date of offence	18/10/2018
Date of FIR	18/10/2018
Date of charge-sheet	30/11/2018
Date of O.E.	14/08/2019
Date of commencement of evidence	12/09/2019
Date on which judgment is reserved	14/09/2022
Date of judgment	14/09/2022
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, Smti Madhabi Thakuria stating that on 18/10/2018 at night, when they were sleeping at her house, due to previous grudge the accused persons namely Sri Hemen Thakuria and Sri Khagen Thakuria came in drunken condition in front of their house and scolded them in filthy language and broke wine bottles in their courtyard. The accused persons also threatened them to kill them by cutting. Hence, informant lodged this case.
- 2.** The Officer-in-charge, Mukalmua Police station, on receipt of the Ejahar registered Mukalmua P.S. Case No. 360/2018, under section 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, Sri Hemen Thakuria and Sri Khagen Thakuria under Section 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 CrPC. Particulars of offence U/S 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 six (06) witnesses. The Learned Assistant Public Prosecutor prayed to close the PW evidence. The PW evidence is closed as per the submission of the Ld. APP.
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, Sri Hemen Thakuria and Sri Khagen Thakuria, in furtherance of their common intention, on 18/10/2018 at night, at Adabari, under the jurisdiction of Mukalmua P.S. committed an obscene act causing annoyance to others and thereby committed an offence punishable under section 294/34 of I.P.C.?*
- (ii) *Whether on the same day, time and place the accused persons, Sri Hemen Thakuria and Sri Khagen Thakuria, in furtherance of their common intention, threatened to break the house of the informant Smti Madhabi Thakuria and thereby committed an offence u/s 506/34 of I.P.C?*

**DISCUSSION, DECISION AND REASONS THEREOF:**

- 8.** PW-1, Smti Madhabi Thakuria is the informant of this case. She exhibited the ejahar as Exhibit 1. As per the ejahar i.e., Exhibit 1 on 18/10/2018 at night, when they were sleeping at her house, due to previous grudge the accused persons namely Sri Hemen Thakuria and Sri Khagen Thakuria came in drunken condition in front of their house and scolded them in filthy language and broke wine bottles in their courtyard. The accused persons also threatened them to kill them by cutting. Hence, she lodged this case.
- 9.** In her evidence PW-1 says that she filed this case against accused Khagen Thakuria and Hemen Thakuria. The incident took place on 18/10/18 at about 2 – 2:30 am. She was sleeping at that time. The accused persons came in one car and stopped in front of their house and verbally abused them with obscene language in drunken condition and broke the liquor bottles in front of their gate. The accused raised 'hulla' and threatened them to come out. Neighboring people including Sabita Thakuria, Jitu Thakuria, Ramani Thakuria came to the P.O and chased the accused persons away. Later police came to the P.O and seized the broken bottles. She filed the ejahar on the following morning. Police recorded her statement. Ext 1 is the ejahar and Ext 1(1) is her signature. Ext 2 is the seizure list and Ext 2(1) is her signature.

**10.** During cross-examination PW-1 says that Hemen Thakuria drives a car of other person and he stopped the vehicle in front of their house. Khagen Thakuria has a tempo. Durga Puja was going on near their house at that night. Theater was going on at that night near their house. She has not stated before police the words with which the accused persons verbally abused them. She has also not stated before police that the accused persons verbally abused them by taking their names. They were sleeping at that time and woke up hearing the obscene words of the accused persons. There was previous enmity with the accused persons. They filed ejahar against the accused persons regarding the earlier incident but police did not register their ejahar. The accused persons are their relatives. She has not seen the accused persons taking liquor. She has not seen the broken bottles in court on the day of his deposition. The accused persons have not threatened them after the incident. There were no other persons at the time of incident. She denied defence suggestion that this case was filed due to previous grudge and enmity She denied defence suggestion that the accused persons did not come in one car and stopped in front of their house and verbally abused them with obscene language in drunken condition and did not break the liquor bottles in front of their gate and did not raise 'hulla' and threatened them.

- 11.** PW-2, Sri Biren Thakuria, husband of the informant (PW-1) was also present at that time. He corroborated the evidence of PW-1 that he was sleeping along with his family members. He heard the sound of one vehicle hitting the tin fencing of his boundary. He had not gone outside. After about 1 hour, he heard that Hemen and Khagen were verbally abusing in front of their house. The accused persons told him to open the gate. He had not opened the gate. The accused verbally abused him and tried to hit him by poking broken bottles through the fencing. The accused persons threatened to set his house on fire. His wife filed ejahar on the next morning. Police came to the P.O. and seized the broken bottles. Ext. 2 is the seizure list and Ext. 2(2) is his signature. Police recorded his statement.
- 12.** During cross-examination PW-2 says that he has not seen the persons who were verbally abusing in front of the gate of his house. The broken bottles were of glass. He has not seen the broken glass bottles in court on the day of his deposition.
- 13.** PW-3, Sri Ramaniknata Thakuria is the younger brother of PW-2, Sri Biren Thakuria. He stated that on the day of the incident at about 2.00 am Biren Thakuria rang him and told him that Hamen and Khagen parked a four wheeler near the gate of his house and pushing the gate. He also told him that accused persons are also abusing him and he could not come out from his house. He told him to come there. He



reside in the same campus with Biren Thakuria but in separate house. Thereafter he came out to the courtyard and saw the accused persons abusing Biren Thakuria from outside the gate. Thereafter Khagen tried to pull him thinking him to be Biren Thakuria. After realizing that its not Biren, he did not pull him and went back ward near the car. Thereafter Hamen came near the gate and used obscene words and tried to pull him thinking him to be Biren Thakuria. Hamen told him thinking him to be Biren Thakuria that his three brothers have already left from there why he is not leaving. They seemed to be in drunken condition at that time. Hamen had an empty bottle made of glass in his hand. Then Khagen came near him and pulled Hamen saying that he is not Biren Thakuria. Then Hamen broken the bottle near the gate. Hearing the sound of breaking of bottle his wife Sabita Thakuria came out and took him inside the house. Police recorded his statement.

- 14.** Wife of PW-3, Smti Sabita Thakuria is examined as PW-5. During her examination she says that she knows the informant. She is her sister-in-law and wife of Sri Biren Thakuria. Sri Biren Thakuria is elder brother of her husband. They live in the same compound. She knows both the accused persons present in the dock. They are her neighbors. The incident occurred on 18-10-2018 at about 2.30 AM. Both the accused came in a car and stopped the car in front of their house. They scolded Biren Thakuria in filthy language. They hit and kicked the grill of the gate. They shouted "marim

katim, ulai aah" (come will cut you) to Biren Thakuria. Biren Thakuria called her husband over phone. Her husband and she went to the place of occurrence. The accused Hemen Thakuria broke a liquor bottle and tried to assault her husband with the bottle. As the gate was locked, they could not get inside. Thereafter they left. Police visited the place of occurrence and recorded her statement.

**15.** PW-4, Sri Biju Thakuria stated that he came out of his house hearing hulla and saw Hamen and Khagen there. Hamen was abusing Biren Thakuria using obscene words. Hamen was in drunken condition. He saw Hamen breaking a bottle made of glass in front of the gate of Biren Thakuria. He, Anjan Thakuria and Sunil Thakuria ( his brothers) told Khagen Thakuria to take Hamen with him to the house and thereafter they left from there leaving their four wheeler. Thereafter Hamen Thakuria went to the Durga Puja Pandal of Bagheswari Mandir and assaulted the Pujari Jogen Sarma. Police recorded his statement.

**16.** From the evidence of PW-1 to PW-5 it is seen that they have corroborated the evidence of PW-1. No vital contradiction is found in their statements. All the witnesses have seen the accused persons in front of the gate of the informant (PW-1). PW-4 is not related with PW-1, PW-2, PW-3 and PW-5, hence, his evidence is treated to be evidence of independent witness. He clearly says that he saw Hamen

breaking a bottle made of glass in front of the gate of Biren Thakuria.

**17.** PW-6, SI Raju Deb is the I/O of this case. During his evidence he stated about the investigation of the case. It is found that FIR was lodged on 18-10-2018. It is also found that the I/O (PW-6) visited the place of occurrence and prepared the sketch map. **Exhibit P-3/PW-6** is the sketch map and **Exhibit P-3(1)/PW-6** is his signature. He seized some pieces of broken glass of wine bottles on 18-10-2018 at place of occurrence at about 1.30 PM vide MR no. 200/2018 in presence of witnesses namely Sri Biren Thakuria and Smti Madhabi Thakuria. **Exhibit P-2/PW-6** is the seizure list and **Exhibit P-2(1)/PW-6** is his signature. He recorded the statements of the seizure witnesses and also witnesses namely Sri Biran Thakuria, Sri Ramanikanta Thakuria, Sri Jiten Thakuria and Smti. Sabita Thakuria. He visited the houses of the accused persons several times and found them absent. He also made various endeavour to apprehend the accused persons. Hence, after finding prima facie material against the accused persons he submitted charge sheet no. 275 dated 30-11-2018 u/s 294/506/34 of IPC against the accused persons. **Exhibit P-4/PW-6** is the charge sheet and **Exhibit P-4(1)/PW-6** is his signature. **MO-1 i.e.** MR No. 200/2018 is seized vide seizure list i.e. Exhibit P-2.

**18.** During cross-examination PW-6 (I/O) stated that no verification was done, no expert opinion called for regarding

the MO-1. The bottle cap and the level found with the broken glasses reveals that the broken glasses are of wine bottle.

**19.** During cross-examination of PW-6, the defence side has pulled out that there are few contradictions between the evidence of the witnesses recorded u/s 161 Cr.P.C. and the evidence recorded in court. PW-1 (informant) has not stated to him in her statement recorded u/s 161 CrPC that there was Durga Puja going near their house at that time. PW-1 (informant) has not stated to him in her statement recorded u/s 161 CrPC that the words with which the accused persons verbally abused them by taking their names. PW-2 has not stated to him in his statement recorded u/s 161 CrPC that the obscene and intimidating words used by the accused persons. PW-5 has not stated to him in her statement recorded u/s 161 CrPC that the accused Hemen Thakuria broke a liquor bottle and tried to assault her husband with the bottle and as the gate was locked they could not get inside. PW-5 has not stated to him in her statement recorded u/s 161 CrPC that Biren Thakuria called her husband over phone and her husband and she went to the place of occurrence. PW-5 has not stated to him in her statement recorded u/s 161 CrPC the obscene words uttered by the accused.

**20.** However, aforesaid contradictions are not vital contradictions which can demolish the whole prosecution case. The evidence adduced by the prosecution side are plausible and it is found that prosecution side able to adduce

cogent evidence to corner the accused persons that on the day of the occurrence, accused persons came in front of the house of the informant, used obscene language, criminally intimidated the informant and also broke wine bottles in their courtyard.

**21.** However, not a single witness has stated before this court what are the words uttered by the accused persons. Hence, in my considered opinion the ingredient of section 294 IPC could not be attracted in this case.

**22.** The essential ingredients of section 506 IPC are:

(1). The accused 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 with intent 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.

**23.** It is discussed that from the evidence of PW-2 it is seen that the accused persons threatened to set his house on fire. From the evidence of PW-3 it is seen that Sri Biren Thakuria rang him and told him that the accused persons are abusing him and he could not come out from his house. From the evidence of PW-5 it is seen that both the accused persons were shouting "marim katim, ulai aah" (come will cut you) to Sri Biren Thakuria. Hence, I am of the considered opinion that

the accused persons criminally intimidated the informant and her family members.

**24.** The material object i.e., some pieces of broken glasses of wine bottles seized by the I/O (PW-6) vide seizure list i.e., Exhibit P-2/PW-6. The evidence of PW-1 and PW-2, the seizure witnesses in whose presence the broken glass of the wine bottles were seized and PW-3, PW-4 and PW-5 saw that the accused persons broke the wine bottle clearly shows that the accused persons broke the wine bottle inside the courtyard of the informant. Moreover, it is found that the accused persons in state of intoxication appears in the public place i.e., the road in front of the house of the informant and in the place which is a trespass and attempted to come inside the courtyard of the informant which is a trespass in him to enter and there conducts himself in such a manner as to cause annoyance to the informant and other people residing inside the campus. Hence, the accused persons have committed offence u/s 510 of IPC.

**25.** The essential ingredients of section 510 of IPC are:

- (1). The accused was in a state of intoxication;
- (2). The accused appeared in a public place or committed trespass in such state of intoxication;
- (3). He conducted himself in such a manner that he thereby caused annoyance to some person.

**26.** In the present case at hand, there is no suggestion from the defence side that the accused persons were not in drunken state.

**27.** Accordingly, I held that the accused persons namely Sri Hemen Thakuria and Sri Khagen Thakuria have committed offence u/s 506/510/34 of IPC.

### **CONCLUSION/DECISION:**

1. The accused persons namely Sri Hemen Thakuria and Sri Khagen Thakuria are found guilty of offence u/s 506/510/34 of IPC and they are convicted u/s 506/510/34 of IPC.

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

2. Convicted accused persons namely Sri Hemen Thakuria and Sri Khagen Thakuria are heard. They stated that they are innocent. They work as a driver. Their family is totally dependent upon them as they are the only bread earners of their family. So, they requested the court to consider their case leniently.

3. I heard Ld. Defence Counsel as well Ld. A.P.P. The convicts pleaded mercy and pray for considering leniently.

4. Learned APP prays taking into consideration nature of the offence committed by the accused persons, the accused persons to be punished.

5. Learned Defence Counsel made submission that the financial condition of the accused persons are very weak so counsel prays for leniency.

6. After hearing Ld. Counsel for both sides and accused on the point of sentence, going through the material on record and considering the nature of the offence which accused persons have committed, I am of the opinion that this is a fit case to consider accused persons leniently.

7. Hence, the accused persons who are found guilty of committing offence punishable u/s 506/510/34 of IPC and as no previous conviction is proved against them 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 convicts after due admonition. Accordingly, the accused persons/convicted persons are released on due admonition u/s 3 of The Probation of Offenders Act, 1958.

8. The accused/convicted persons are further directed to pay compensation of Rs. 2000/- (two thousand) only each, totaling Rs. 4000/- (four thousand) only to the informant of the case as per section 5 of The Probation of Offenders Act, 1958.

9. The convicted/accused persons are told that they have 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.



10. Convicted accused persons are further informed that they are entitled free legal aid to prefer appeal before the Hon'ble Session court.
11. Let furnish free copy of Judgment to convicted accused persons.
12. 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 14<sup>th</sup> 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**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Smti. Madhabi Thakuria	Informant
PW-2	Sri Biren Thakuria	Other witness
PW-3	Sri Ramaniknata Thakuria	Other witness
PW-4	Sri Biju Thakuria	Other witness
PW-5	Smti. Sabita Thakuria	Other witness
PW-6	SI Raju Deb	Police witness

**B. Defence witnesses, if any: NOT APPLICABLE**

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

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

**LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

**A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exhibit 1	Ejahaar
2.	Exhibit 1(1)	Signature of PW-1 (informant), Smti Madhabi Thakuria
3.	Exhibit 2	Seizure list
4.	Exhibit 2(1)	Signature of PW-1 (informant), Smti Madhabi Thakuria
5.	Exhibit 2(2)	Signature of PW-2, Sri Biren Thakuria

6.	Exhibit P-2/PW-6	Seizure list
7.	Exhibit P-2(1)/PW-6	Signature of PW-6 (IO), SI Raju Deb
8.	Exhibit P-3/PW-6	Sketch map
9.	Exhibit P-3(1)/PW-6	Signature of PW-6 (IO), SI Raju Deb
10.	Exhibit P-4/PW-6	Charge sheet
11.	Exhibit P-4(1)/PW-6	Signature of PW-6 (IO), SI Raju Deb

**B. Defence: NOT APPLICABLE**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
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**C. Court Exhibits: NOT APPLICABLE**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
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**D. Material Objects:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	MO-1	MR No. 200/2018 i.e., some pieces of broken

		glass of wine bottles
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Sri Jayanta Kumar Saikia  
Addl. Chief Judicial Magistrate  
Nalbari