

FORM-A

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, 2nd COURT, DINHATA, COOCH BEHAR PRESENT : NILANJANA BANERJEE WB01192 A.C.J.M., 2nd COURT, DINHATA, COOCH BEHAR <u>DATE OF JUDGMENT:-05.06.2026</u> <u>GR CASE NO. 273 OF 2018</u> (Sitai P.S. Case No. 72 of 2018 dated 07.06.2018 under sections 448/323/325/34 of IPC.)	
COMPLAINANT	STATE OF WEST BENGAL
REPRESENTED BY	Ld. A.P.P., Mriganka Sengupta
ACCUSED	1. Dinesh Ch. Barman, S/o-Ramesh Ch. Barman, 2. Adhir Ch. Barman, S/o-Ramesh Ch. Barman, 3. Tilak Barman, S/o-Ramesh Ch. Barman, 4. Ramesh Ch. Barman, S/o-Nishikanta Barman All of Chamta, P.S. Sitai, Dist-Cooch Behar.
REPRESENTED BY	Ld. Defense Counsel, Swapan Kr. Patwary

FORM-B

Date of offence	03.06.2018
Date of FIR	07.06.2018
Date of Charge-Sheet	30.06.2018
Date of Framing of Charges	16.01.2022
Date of commencement of Evidence	05.07.2023
Date on which Judgment is reserved	N/A
Date of Judgment	05.06.2026
Date of the Sentencing Order, if any	N/A

Accused details:

Rank of the accused	Name of Accused	Date of arrest	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 of Cr.P.C
1.	Dinesh Ch. Barman	Surrendered on 10.06.2018	Released on bail on 10.06.2018	U/S 448/323/325/34 of IPC	Acquitted	NIL	N/A
2.	Adhir Ch. Barman						
3.	Tilak Barman						
4.	Ramesh Ch. Barman	Surrendered on 21.06.2018	Released on bail on 21.06.2018				

FORM-C

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	Anita Barman	Defacto complainant.
PW-2	Narayan Barman	Neighbour of the defacto complainant.
PW-3	Subal Chandra Barman	Neighbour of the defacto complainant.
PW-4	Ukil Barman	Husband of the defacto complainant.
PW-5	Jamini Roy Sarkar	Independent witness.

B. Defence Witnesses, if any:

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

C. Court Witnesses, if any:

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

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS:

A. Prosecution Exhibits:

Sl. No.	Exhibit Number	Description
1.	Exhibit-1	Signature of the PW-1 on the written complaint.

B. Defence Exhibits:

Sl. No.	Exhibit Number	Description

C. Court Exhibits:

Sl. No.	Exhibit Number	Description

D. Material Objects:

Sl. No.	Exhibit Number	Description

J U D G M E N T

This case has arisen on a FIR filed by one Anita Barman before the I/C, Sitai P.S. on 07.06.2018.

On basis of that FIR, I/C, Sitai P.S. filed Case No. 72 of 2018 dated 07.06.2018 under sections 448/323/325/34 of IPC against the accused persons namely, Dinesh Ch. Barman, Adhir Ch. Barman, Tilak Barman, Khirobala Barman and Ramesh Ch. Barman.

After investigation police has submitted charge-sheet u/s 448/323/325/34 of I.P.C against the accused persons namely Dinesh Ch. Barman, Adhir Ch. Barman, Tilak Barman, Khirobala Barman and Ramesh Ch. Barman.

On perusal of charge-sheet and other relevant documents, this Court has framed charge under Section 448/323/325/34 IPC against the accused persons namely Dinesh Ch. Barman, Adhir Ch. Barman, Tilak Barman, Khirobala Barman and Ramesh Ch. Barman who are facing trial.

Contents of charge has been read over and explained to the accused persons, wherein they pleaded not guilty and claimed to be tried.

The case is filed forever against the accused Khirobala Barman.

Prosecution case in brief is that:

The accused persons were neighbours of the defacto complainant. There was a long pending dispute between the defacto complainant and the accused persons regarding land. The accused persons had damaged the trees of the defacto complainant planted on her land

and had cut one of the trees. The husband and brother-in-law of the defacto complainant when protested, on 03.06.2018 at about 9:00 P.M. the accused persons had beaten them in front of the house of the defacto complainant. The brother-in-law of the defacto complainant got broken bone on his back portion. The accused persons had beaten her husband also. The the accused persons had locked her brother-in-law in a room and put fire from outside. Hearing the hue and cry the local people rushed to the spot and the accused persons fled away. Thereafter, the victims were admitted at Sitai hospital with the help of local people and subsequently the doctor asked them to go to Bangalore for better treatment. As the defacto complainant was busy with the treatment of the victim, there was delay in filing the FIR.

Defence has not adduced any evidence but from the answers of the questions u/sec. 313 Cr.P.C and the cross-examinations, the defence case appears to be nothing but the denial of the prosecution allegations.

POINTS FOR DECISIONS.

1. Whether the accused persons committed house trespass into the house of the defacto complainant and had committed any hurt upon the defacto complainant's husband and brother-in-law and threatened them ?
2. Whether the prosecution has proved its case beyond all reasonable doubts?

DECISION WITH REASONS

Ld. A.P.P has submitted that the evidence is sufficient and the accused should be convicted.

On the other hand, learned advocate for the defence has argued that the accused persons are falsely implicated in this case. The allegation of house trespass, committing hurt upon the victims or threatening them is totally false and fabricated one. Learned defence Counsel has further argued that there is no evidence on record that the accused persons have committed such offences upon the victims. Accused should be released from this case.

Considered the submissions of both sides.

Now, let me see, how far the prosecution has proved its case.

In this case on behalf of prosecution as many as five (05) witnesses have been examined and cross-examined and discharged.

P.W. 1, in examination-in-chief stated that the incident took place in 2018 at 9:00 P.M. The accused Dinesh Ch. Barman was cutting trees from her land and at that time she along with her husband protested. Then the accused Dinesh Ch. Barman had beaten them with lathi. The PW-1 entered to the room of her brother-in-law. Hearing her hue and cry, the villagers informed police. When her brother-in-law protested, the accused persons had

beaten him.

In cross-examination PW-1 stated that she could not tell the name of the doctor where she was treated. At the time of the alleged incident the PW-1, her husband and brother-in-law were present. She could not tell the exact date of the incident.

PW-2 and PW-3 deposed that Anita Barman was their neighbour. They did not know anything about the incident but they heard that there was a dispute regarding land among them.

PW-4 in examination-in-chief stated that Anita Barman was his wife. She filed this case against Dinesh Barman, Adhir Barman, Tilak Barman, Ramesh Barman, Khirobala Barman. Khirobala Barman died. The witness identified the accused persons. The incident took place in 2018 at about 4:00/5:00 P.M. at his land. The accused persons went to cut tree from his land. He along with his cousin Jamini Roy Sarkar went to protest and the accused persons had beaten them with bamboo stick. Hearing hue and cry local people came to the spot and the accused persons fled away.

In cross-examination PW-4 stated that the accused Dinesh Barman filed a case against him and other persons and the case was filed prior to this case. Police did not interrogate him. There was a dispute regarding land between them and the accused persons. He or his wife did not file any document of land regarding their ownership to the police.

PW-5 in examination-in-chief stated that he knew Anita Barman. She filed this case against Dinesh Barman, Adhir Barman, Tilak Barman, Ramesh Barman, Khirobala Barman. Khirobala Barman died. The witness identified the accused persons. The incident took place 7 years ago at about 4:00/5:00 P.M. at his land. The accused persons went to cut bamboo tree from his land. He along with his cousin Ukil went to protest and the accused persons had beaten them with bamboo stick. At about 9:00 P.M. on the same date the accused persons went to their house and they raised hue and cry local people came to the spot and the accused persons fled away.

In cross-examination PW-5 stated that the accused Dinesh Barman filed a case against him and other persons and the case was filed prior to this case. Police did not interrogate him. The distance between his house and Ukil Barman was one bigha. There were houses of Gajen Barman, Shibben Barman, Sanjay Barman and others near the house of Dinesh Barman. 50/60 people assembled on the spot at the time of the alleged incident. There was a dispute regarding land between them and the accused persons. The witness voluntarily said that the disputed land was his ancestral property. He or any of his relatives did not file any document of land regarding their ownership to the police.

Prosecution failed to adduce evidence of Investigating Officer in the case.

Charge in the case has been framed under section 448/323/325/506/34 of IPC. Now we have to see whether prosecution is able to prove the ingredients of the above said sections against the accused persons.

Whether prosecution was able to prove the charge under section 323/325 of IPC against the accused persons:-

The essential ingredients of the offence u/s 325 of IPC are :-

1. The accused must have caused bodily pain, disease or infirmity to the victim,
2. The injury inflicted must amount to grievous hurt as defined u/s 320 of IPC,
3. The act must have been done voluntarily, meaning with the knowledge or intention to cause such grievous hurt.

Section 320 of IPC is defined as:-

“Section 320. Grievous hurt.

The following kinds of hurt only are designated as "grievous"-

First. Emasculation.

Secondly. - Permanent privation of the sight of either eye.

Thirdly- Permanent privation of the hearing of either ear.

Fourthly. - Privation of any member or joint.

Fifthly. -Destruction or permanent impairing of the powers of any member or joint.

Sixthly. - Permanent disfiguration of the head or face.

Seventhly. - Fracture or dislocation of a bone or tooth.

Eighthly. - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

It is clear that to prove an offence under section 325 of IPC, first it has to be established that an offence under section 320 of IPC has been committed upon the victim.

Section 323 of IPC provides for punishment for voluntarily causing hurt. The definition of hurt as mentioned in the IPC is as “Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.”

The essential ingredients of the offence u/s 323 of IPC are :-

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

In the FIR the defacto complainant alleged that the accused persons had beaten her husband and brother-in-law and bone of her brother-in-law was broken. She further alleged that the accused persons tried to burn her brother-in-law and locked him and put fire from outside. According to the defacto complainant the said victims were admitted at Sitai hospital. No medical document in respect of treatment of her husband or brother-in-law has been proved or produced before the court. The defacto complainant in her evidence never stated that bone of her brother-in-law was broken or that the accused persons tried to burn her brother-in-law and locked him and put fire from outside. Both the PW-1, PW-4 (husband of the defacto complainant) and PW-5 (brother-in-law of the defacto complainant) in the evidence stated that the accused persons had beaten the PW-4 and PW-5 but they

never alleged breaking of any bone or admission at hospital. The time of the alleged incident also differed in the FIR and in the evidence of the witnesses. The PW-5 in cross-examination stated that 50/60 assembled on the spot at the time of the alleged incident but the independent witnesses could not tell anything about the above said incident, though they were neighbours of the defacto complainant. Moreover, the content of the FIR was not proved in the present case.

Therefore, this Court of the view that the prosecution could not prove any of the ingredients to charge the accused persons under sections 323/325 of IPC.

Whether prosecution was able to prove the charge under section 448/506 of IPC against the accused persons:-

section 448 of IPC provides for punishment for house-trespass. Section 442 of IPC defines house trespass as “Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

Explanation-The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.”

To commit the offence of house trespass, criminal trespass is necessary. Criminal trespass in IPC is defined under section 441 as “Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

Or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".”

Section 506, IPC provides that :- “Punishment for criminal intimidation

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.....”.

The essential ingredients of the offence u/s 506 of 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 formal 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.

In the FIR the defacto complainant alleged that the accused persons had entered in their land and also at the house of her brother-in-law. No document of ownership or possession of the concerned land or house has been produced before the Court. From the FIR and the evidence of prosecution witnesses it revealed that

there was dispute regarding land between the accused persons and the defacto complainant and her family members. There is no seizure list in respect of offending lathi or bamboo stick. No independent witnesses stated about the alleged incident. The PW-1, PW-4 and PW-5 did not state in their evidence that the accused persons had ever abused or threatened them.

The prosecution could not file any piece of evidence from which it can be established that the accused persons had committed any house trespass or threatened the victims.

On careful analysis of the evidences and materials on record and the discussion made in the foregoing paragraphs, I do not find any incriminating material against the accused persons. Prosecution has miserably failed to prove any allegation against the accused.

In result, prosecution case fails.

Hence, it is

ORDERED

that the accused persons namely Dinesh Ch. Barman, Adhir Ch. Barman, Tilak Barman and Ramesh Ch. Barman are found not guilty for commission of offence punishable under Sections 448/323/325/34 of I.P.C and they are acquitted from this case under the provision of Section 248 (1) of Cr.P.C. and set at liberty at once.

The accused persons be released from their bail bonds.

The seized article be disposed of according to law.

Copy of the Judgment be sent to the District Magistrate, Cooch Behar as well as Ld. Secretary, District Legal Service Authority, Cooch Behar so as to intimate the Victim/complainant about his/her right to appeal as well as to apprise his/her that he/she can seek legal assistance if he/she so desires through District Legal Service Authority, Cooch Behar.

Note in the Trial Register and CIS.

Dictated & corrected by Me:

Addl. Chief Judicial Magistrate,
2nd Court, Dinhata,
Cooch Behar

Addl. Chief Judicial Magistrate,
2nd Court, Dinhata,
Cooch Behar