

(2012) 03 GAU CK 0049**Gauhati High Court****Case No:** None

Sachidhar Buragohain, S/O Late
Goipal Buragohain

APPELLANT**Vs**

State of Assam

RESPONDENT**Date of Decision:** March 23, 2012**Hon'ble Judges:** B.D.Agarwal, J**Bench:** Single Bench**Advocate:** For the appellants ... Mr. P Kataki, Mr. D Bagchi, Advocates For the Respondent ... Mr. K Munir, learned Addl. Public Prosecutor, Advocates appearing for Parties

Judgement

1. The appellants have been convicted under Sections 143/ 323/ 436 read with section 149 of the Indian Penal Code vide impugned judgment dated 30.7.2004 passed by the learned Sessions Judge, Dhemaji in Sessions Case No. 51 (DH) of 2003. On their conviction, the appellants have been sentenced to pay fine of Rs. 200/ for the offence under Section 143 IPC, Rs.300/ for the offence under Section 323 IPC and RI for 4 years and fine of Rs.500/ with default sentence of another 3(three) months RI for their conviction under Section 436 read with 149 IPC.

2 Being aggrieved with the conviction and sentence, the convicts have preferred this common appeal. It may be mentioned here that other five accused persons were also convicted under Section 143/323 IPC but they have not preferred appeal against the conviction.

3 Heard Mr. P Kataki, learned counsel for the appellants and Mr. K Munir, learned Addl.P.P. for the State. I have also gone through the impugned judgment and the evidence proffered by the prosecution as well as the defence witnesses giving in the trial court.

4. The prosecution case in a nutshell is that on 24.12.2000, PW1 had sprayed paddy under the sun in the courtyard at noon. The cattle of accused Sashidhar ate some quantity of paddy. Hence, PW1 asked the daughter of Sashidhar to keep their cattles

confined and away from the witness?s courtyard. Daughter of accused Sashidhar went home and reported the incidence to her family members. Thereafter, the appellants and their spouses came to the house of the informant and assaulted them and also directed the informant and his wife to leave the village else their dwelling house will be set on fire. It is the further case of the prosecution that at late night, the accused persons set afire their dwelling house.

5. The FIR was lodged on the next morning. The informant?s wife (PW1) was also examined by the doctor and found multiple injuries in the nature of lacerated wound, abrasion and swelling on different parts of the body. In the opinion of the doctor (PW7), the injuries were fresh and simple in nature. The same doctor had also examined the informant?s husband (PW2) namely, Pona Gohain and noticed pain and tenderness of his illiac joint and the said injury was also simple in nature.

6. Simultaneously, PW6 took up the investigation. He visited the site of offence and seized half burnt paddy stuff as well as split bamboos of the roof of the house (vide Exhibit1). After recording the statement of witnesses, preparing the sketch map of the place of occurrence and collecting the injury reports. Charge sheet was submitted and trial proceeded accordingly.

7. In order to establish the offence, prosecution examined as many as 7 witnessess. PW1 is the informant; PW2 is her husband, PWs 3 is the village headman, PWs 4 and 5 are covillagers, PW6 is the I.O. and PW7 is the doctor.

8. In the crossexamination of the informant, she was given a suggestion that her house caught fire accidentally while preparing country made liquor. However, one of the appellants took a plea in his statement given under Section 313 Cr.P.C. that the informant and her husband had set their house on fire themselves. Besides this, two witnesses were examined by the accused persons to prove that the informant had already removed their household articles prior to the incident of house burning in order to establish that the house was burned by PWs1 and 2 themselves. However, learned Sessions Judge rejected the defense theory and held that the accused persons had set afire the house of the informant with an intention to destroy the dwelling house.

9. Mr. P Kataky, learned counsel for the appellants strenuously argued that the testimony of PWs 1 and 2 are contradictory and not supported by other witnesses and as such, it was not proper for the learned Sessions Judge to record the conviction. Mr. Kataky however submitted that it is unbelievable that at about midnight PWs 1 and 2 could have seen the appellants for committing the offence of mischief by fire.

10. First of all, I would like to examine the offence under Section 143/323 IPC. In this regard, there is no witness, except the informant and her husband (PWs 1 and 2). These witnesses have deposed that all the appellants and female members of their house came and physically manhandled them at random. Since the injuries were

noticed by doctor, there remains little to doubt about the injured version. In fact, coaccused persons have not challenged their conviction under Section 143 and 323 IPC. Hence, I find no difficulty to affirm the conviction of the appellants as well under Section 432 and 323 IPC and the only sentence of fine has been imposed for the aforesaid offence. Hence, I do not find any scope to interfere in the conviction and sentence.

11. Coming to the offence of mischief by fire, PW1 has deposed that the accused Sashi (Sachidhar), Suren, Ghanakanta, Chenu and Konbhai had damaged their dwelling house and had also asked them to leave the place. The witness has further deposed that the accused persons set their house on fire causing damage of property worth Rs. 10,000/ to Rs.12,000/. From the crossexamination, it appears to me that the house was set afire in the night while the informant was sleeping with her husband. Despite that, PW1 claims to have seen the accused persons.

12. PW2 is the husband of PW1. Apart from the story of physical assault during day hours, this witness has implicated the accused Bhaikon, Chenoo, Sarukanta, Suren and Ghanakanta for the offence of mischief by fire. In the crossexamined the PW2 has also admitted that the aforesaid offence was committed at around 2 am. PW2 has reiterated that he had seen accused Suren lighting a match stick.

13. It is true that names of three accused persons namely, Suren, Ghanakanta and Chenoo Buragohain are common in both the depositions. Since both the husband and wife have implicated two more persons, which do not tally with each other, an inference can be drawn PWs1 and 2 had no occasion to see the persons who had actually committed the offence of mischief by fire. I draw this adverse inference because PW3 has also deposed that informant?s husband had disclosed only two names before him for the aforesaid offence. However, PW3 (village headman) has stated before the I.O. that he was told by Pona Boragohain that other family members of Ghanakanta and Sashi Gohain were also involved in the same offence.

14. In my considered opinion, to establish an offence of mischief by fire, it may not be necessary for the prosecution to give eyewitness account, more particularly when the offence is committed at about midnight. In very rare cases, the inmates of the house may be able to see the offender and by the time, fire spreads and engulfs the entire house, the offender will be in a position to run away from the scene. Hence, the offence of mischief by fire and complicity of the accused persons can be established by circumstantial evidence. In the present case, there was an altercation regarding eating of paddy by cattle of the accused persons followed by a ~~◆~~marpit? during the day hours.

15. The above apart, sketch map of the scene shows that house of the accused Sashi Buragohain was very close to the house of the informant and other accused persons are closely related to the said person. At the same time, prosecution witnesses were not given any suggestion that the informant and her husband had enmity with any

other persons to take a view that any third person may also be involved in the offence. On the other hand, a quarrel took place on the same day in between the accused person and PWs1 and 2. All these circumstances definitely points the needle of suspicion against the accuse persons.

16. The learned counsel for the appellants also drew my attention to the testimony of PW4 to submit that the said witness was also not told by the informant as to who had committed the offence of mischief by fire. PW4 had stated before the Court that while returning home from Tezpur town at about 3 am, he met PWs 1 and 2 on the road and on being enquired, they told him that they were going to Bordani police station since ♦someone♦ had burnt their house. PW4 further stated that PWs1 and 2 did not disclose the name of any accused. On the basis of this testimony, the learned counsel for the appellant submitted that the appellants were subsequently implicated for the offence on suspicion.

17. To ascertain the veracity of PW4 I also consulted the statement given before the I.O. under Section 161 of the Cr.P.C. wherein he had stated that he heard on the next day that the informant?s house was burned down by Ghana Kanta and Sashidhar and their family members. In other words, PW4 did not say before the I.O. that the informant and her husband had stated before him ♦someone♦ had set afire their dwelling house. Hence, his statement before the Court that he was told by the informant that ♦someone♦ had burned down their thatched house may be due to slip of tongue or fade of memory since oral evidence was given after more than 3 years or intentionally with oblique motive. It also appears to me that PW4 has improved his version in the Court to favour the accused persons. Be that as it may, from the testimony of PW4, the prosecution story regarding damage of dwelling house of the informant at midnight stands corroborated.

18. The other corroborative evidence against the appellants is that the FIR was lodged promptly wherein also the names of the appellants were incorporated. In fact, the learned counsel for the appellant also did not challenge the prosecution case that house of the informant was destroyed by fire. The learned counsel argued that the house was not used for the dwelling purpose. Even for a moment, it is presumed that the damaged house was not used for dwelling purpose, it will not take out of the offence from the rigour of Section 436 IPC which includes destruction of any builing which ordinarily used as a place of worship or for dwelling purpose or for custody of property. In seizure list, the I.O. had seized half burnt paddy, which shows that at least the house was used for keeping property.

19. For the foregoing reasons, I hold that there are sufficient evidences to affirm the impugned judgment. I would also like to add here that the appellants have been convicted under Section 436 with the aid of Section 149 IPC. Hence, little variation in the names of the appellants by PWs 1, 2 and 3 would not affect the prosecution case.

20. Coming to the quantum of sentence, I am not persuaded to interfere with the sentence of fine imposed upon the appellant under Section 143 and 323 IPC. For the offence under Section 436 IPC, the appellants have been sentenced to undergo RI for 4 years with fine of Rs.500/ each. The learned counsel submitted that from the sketch map, it appears that the main dwelling house of informant was not set on fire. Hence, the sentence should be reduced.

21. I accept the request of the learned counsel for the appellant to reduce the sentence to one year for their offence under Section 436 IPC. However, the amount of fine is enhanced to Rs.5000/(Five Thousand) each. In default of payment of fine, the appellants shall undergo further RI for 3 months. Needless to mention here that the period of custody, already undergone by the appellants during investigation and during the pendency of the appeal, shall be set off under Section 428 of the Code of Criminal Procedure. The appellants are directed to surrender in the Court immediately to serve out the remaining part of the sentence.

22. The appellants are given two months time to deposit the amount of fine in the Court of learned Sessions Judge, Dhemaji. If the fine amount is paid, a sum of Rs.20,000/ shall be paid to the informant after obtaining receipt and rest amount of fine shall be deposited in the Treasury

23. With the above modifications in the sentence, the appeal stands dismissed.