
(2019) 05 GAU CK 0003
In the Gauhati High Court
Case No : Criminal Appeal No. 58 Of 2015

Haren Borah And 7 Ors

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 143, 147, 149, 232, 323, 324, 325, 436, 448
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 05 GAU CK 0003

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : G.P. Bhowmik, R. Hazarika, A. Thakuria, D. Das

Final Decision : Allowed

Judgement

1. Heard Mr. G.P. Bhowmik, learned senior counsel appearing for and on behalf of the appellants/convicts as well as Mr. D. Das, learned Addl. P.P., Assam, representing the State/respondent. None is present for and on behalf of the respondent No.2.

2. The prosecution case in brief is that: one Phulu Marar filed an ejahar on 01.01.2005, stating inter alia that in her absence the accused namely Barun Borah along with Haren Borah, Munni Borah, Bu Wakhet, Bhaity Wakhet, Lathu Neog, Dipak Sonar and Farse Newar entered her house and assaulted her son Suresh with lathi and also gave fists and blows. As a result of the attack by Barun, Suresh sustained cut injury on the left side of the cheek. On hearing the hue and cry, their neighbor Paresh Choudhury came to the place of occurrence but he too was assaulted by the accused and sustained injury. Thereafter the accused Barun set fire to the thatched house and the paddy and left the place.

3. Pursuant to the ejahar, the Margherita P.S. Case No.1/2005, u/s.143/448/325/324/436 IPC was registered and during the course of investigation, the Investigating Officer visited the place of occurrence, seized the burnt materials,

prepared the sketch map and recorded the statement of the witnesses and the injured person was sent for medical treatment. After completion of the investigation the police submitted charge sheet against the accused persons namely, Chandra Kanta Borah @ Barun Borah, Haren Borah, Munni Borah, Bu Wakhet, Lakhyajit Wakhet @ Bhaity, Ananta Neog @ Lathu Neog, Dipak Sonar, Farse Newar and Purna Bahadur Chetry (juvenile), by showing Haren Borah, Munni Borah, Bu Wakhet and Lakhyajit Wakhet @ Bhaity as absconders.

4. The learned Judicial Magistrate, 1st Class, Margherita after perusal of the case, committed the same for trial before the Court of learned Sessions Judge, Margherita, as the offences were exclusively triable by the Court of Sessions and accordingly the Sessions Case No.17(M)/2006 was registered.

5. On appearance of the accused, the learned Sessions Court framed the charges u/s.147/232/149/436/149 IPC and the charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. During the trial, the prosecution examined as many as 15 witnesses including the I.O. On conclusion of the prosecution evidence, the accused persons were examined u/s.313 CrPC and in their statement, they denied the charges. The defence also examined two witnesses in support of their case.

7. After hearing the arguments of the parties, the learned trial Court by its judgment and order dated 25.07.2007, sentenced the accused u/s.147 IPC to pay a fine of Rs.500/- each in default to suffer R.I. for one month, u/s.323 IPC to pay a fine of Rs.500/- each and in default R.I. for one month and u/s.436 IPC, R.I. for three years and to pay of fine of Rs.1000/- and in default to undergo R.I. for three months.

8. Feeling aggrieved by the said order of conviction, the accused persons preferred an appeal before the High Court vide Crl. Appeal No.218/2007 and this Court vide order dated 26.02.2013, remanded the case for recording evidence of certain witnesses and decide the matter afresh. Accordingly, the learned trial Court in compliance of the aforesaid order dated 26.02.2013, proceeded to dispose of the case and through the order dated 22.08.2014, again convicted the accused persons u/s.147/323/436 IPC and sentenced them (i) u/s.147 to pay fine of Rs.1000/- in default R.I. for one month, (ii) u/s.323 IPC, to pay fine of Rs.1000/- in default R.I. for one month and (iii) u/s.436 IPC, to suffer R.I. for three years and to pay of fine of Rs.3000/- and in default to undergo R.I. for three months.

9. As against the aforesaid order of conviction and sentence, the appellants/convicts have preferred present appeal on the grounds, among others that the impugned judgment and order is bad in law as well as in facts, that the prosecution failed to adduce any materials evidence or proof to fasten criminal liability against the convicts, that the approach of the trial Court is not based on sound principle of criminal justice, etc and prays for setting aside and quashing of the impugned judgment of conviction and sentence.

10. I have heard Mr. G.P. Bhowmik, learned senior counsel appearing for and on behalf of the appellants/convicts as well as Mr. D. Das, the learned Addl. P.P., Assam, appearing for the State respondent.

11. I have along gone through the evidence on record as well as the documents annexed with the case record.

12. The informant Phulu Marar as PW.1 has stated in her evidence that about one and half years back, on her return home, she saw her house was burnt. She also found Shanti Kal, Paresh and Suresh in injured condition. She was informed that accused Bu Wakheth, Haren, Munni and Munni's brother and other entered her house and assaulted them. Suresh was taken to the house of Munni and there too he was assaulted. It was Barun who set the house on fire. She immediately informed the incident to the village headman, who in turn informed the police. On the following day of the incident she lodged the ejahar and the injured was treated in the hospital. Denying all the suggestion of the defence side she has also submitted that the matter has been settled between the parties and she is not interested to proceed with the case.

13. The son of the informant Suresh @ Suren Marar as PW.2 has stated in his evidence that on the date of occurrence, accused Barun, Haren, Munni, Lathu, Farchy, Dipak, Bu and Bhaity came to his house armed with dao and lathi and assaulted him. The accused Barun also assaulted him and cause injury to his left eye. Their house was set on fire by the accused persons and he was taken to the house of Barun. At that time Paresh came to the place of occurrence for his rescue but he too was assaulted by the accused persons.

14. Supporting the case of the informant, Smt. Swapna Kal as PW.3 and Smt Santi Kal as PW-4 has stated in their evidence that at the relevant time while they were in their house then the accused Bu Wakheth came to the house of Suresh and quarreled with them. He left the place and returned with accused Barun, Haren, Munni, Lathu and Dipak entered the house and assaulted Suresh. It was accused Barun who set the house on fire and took Suresh to his house. The half portion of the house of Suresh was burnt and after the incident while PW-1 arrived, she reported the matter. In her cross-examination PW-3 has stated that her house is about 100 feet away from the house of PW-2/ Suresh and she went to the place of occurrence to see the matter and could identify the accused persons as it was not so dark. Similarly PW-4 has also stated that she herself saw the occurrence being the neighbor and apart from their houses, there was no other houses nearby the house of the informant.

15. PW-5, Moyna Kol, PW-6 Kartick Kal and PW-8, Smt. Lakhi Kal all of them have given similar evidence that on the day of occurrence they saw the residential house of the PW-2 was burnt but they have no knowledge about the occurrence. PW-8 was reported by PW-3 that the accused persons have burnt the house.

17. PW.7 Ganesh Kal stated in his evidence that his mother Shanti Kal informed

him about the incident and when he reached at the place of occurrence, he saw the burning house of Suresh Marar. Police seized the burnt paddy in his presence and he put his signature in the seizure list and Ext.2(1) is his signature in the seizure list. He was also told that Barun and Bu had also assaulted Paresh.

18. PW-9, Urmila Rajput and PW-10, Paresh Rajput both are husband and wife and neighbor of PW-1 and 2 who have stated that on the day of occurrence hearing hue and cry in the house of PW-2 when they went there and debar the accused persons from making hulla, then the accused persons Bu assaulted both of them and then they went to the Gaon Burah to inform the matter and on return they found the house of the informant was burnt and Suresh was in injured condition and he reported that he was assaulted by accused Barun. All of them took medical treatment for their injury. The photograph of the burnt house was taken by the police vide M Ext-1. Defence could not exploit their evidence in their cross-examination.

19. PW-11, Bishnu Kumar arrived at the place of occurrence seeing the house of the informant burning and they along with other people doused the fire. He has stated about the photograph of burnt house of the informant vide M-Ext-1. The concerned Gaon Burah, Ratneswar Dey as PW-12 has also supported the fact that he was informed by the informant and her son and several other people that the house of the informant was burnt down and also PW-2 was assaulted by the accused Bu Wakhet and some other persons. He failed to remember the name. He informed the police over phone and then police arrived.

20. The Medical Officer, Dr. B Sonwal/PW-3 has testified that on 02.01.2005 on police requisition he examined Suresh Mura/PW-2 and Paresh Thakuria @ Rajput/PW-10 and found lacerated infected wound over left lower part of the orbit size $\frac{1}{2} \times \frac{1}{2}$ cm and multiple semi lunar abrasion over both side of the neck of injured Suresh. He also found multiple skin abrasion over both checks with inflammation of Paresh Thakuria @ Rajput caused by blunt weapon. Ext-3 and 4 are his medical report.

21. Finally the Investigating Officer appearing as PW-14, Prafulla Saikia and PW-15, Bhadrakanta Gogoi have also supported the facts that on being informed by the concerned Gaon Burah, Rateneswar Dey/PW-12 over phone that house of Suresh Mara has been burnt he gave the GDE No.12 dated 01.01.2015 vide Ext-5. He went for investigation. PW-14 seized the burnt portion of the house from the place of occurrence through Ext-2 and sent two injured persons Suresh and Paresh for medical treatment. PW-15 stated about receipt of written FIR from the informant and he recorded the statement of witnesses and took photograph of the burnt house vide M Ext-1 and arrested all the accused persons and filed the charge-sheet against them. No omission or contradiction of any witness has been proved through the IO.

22. On careful scrutiny of the evidence itself reveals that the PW-2 was attack and assault initially by the accused Bu @ Bhati and all the accused persons were

also along with him and all the accused persons dragged him to the house of accused Barun but somehow he fled away. The other witnesses PW-3 and PW-4 as well as PW-9 and PW-10 have also supported the case of the informant that they found the accused persons entering in the house of the PW-2 and hearing hulla all of them arrived at the place of occurrence and could identify all the accused persons. PW-3 and PW-4 have seen the accused Barun while setting fire to the house of PW-2 and PW-9 and PW-10 has also found the accused persons in the house of PW-2 and protested the conduct of the accused and they immediately went to inform the Gaonburah and on return they found the house of PW-2 is burning.

It may be mentioned here that after remanding the case the Investigating officer and the informant was examined as DW-1 and DW-2 respectively. The DW-1 has deposed in his evidence that they got the information of the matter of the incident on 01.01.2005 and accordingly GDE No 12 was made and on the next day the FIR was filed by the informant, on 02.01.2005. Although, DW-2 has submitted that there was some overwriting in the FIR but it was not made by him.

The defence has tried to project that the FIR was written prior to day of occurrence so the entire case is doubtful but in view of the evidence of the IO there remains nothing that the matter was informed immediately and FIR was also filed on the very next day and in view of the matter some overlapping in the date of FIR without any initial by anybody, cannot be doubtful as regards the date of occurrence. We found no substance in the challenge made by the defence side.

23. From the scrutiny of the evidence, it can be found that in fact, there was two sets of incident. At the first, all accused persons went to the house of the PW-2 and assaulted him and also dragged him to the house of Barun and thereafter the house of PW-2 was found burning. Although the PW-2 has stated that all the accused persons set fire to their house but according to PW-3 and PW-4 who were the eye witnesses to the occurrence they have stated that after dragging PW-2, the accused Barun set fire to the house of PW-2. The said PW-1 also stated that she was reported by this PW-3 and PW-4 that the accused Barun had set fire to their house. That being the position while the PW-2 was in the house of accused Barun, his statement that all the accused set fire to his house appears to be an exaggeration of the facts and not supported by the relevant witnesses. On the other hand other witnesses PW-9 and PW-10 who also happens to present at the time of occurrence, has not stated about the burning of house by all accused persons save and except about the assault made by all accused persons to PW-2. In the given circumstances all the accused persons cannot be implicated with the act of house burning save and except the accused Barun. But all the accused persons found to have inflicted injury to the PW-2.

24. Thus, from the evidence on record, it is found that the PW-2 was assaulted by all the accused persons on the fateful day and the Gaonburah was also

informed immediately who in turn informed the police about the incident and police also arrived at the place of occurrence and took photograph of the burnt house on the day of occurrence itself and on the very next day the FIR was filed. The evidence of the material witnesses remained unshaken throughout the cross-examination and defence failed to hammer the prosecution case so as to discredit their evidence. Nothing emerges to suggest any sort of hostile relation between the parties towards false implication of the accused persons. The evidence on record sufficiently implicated that all the accused persons went to the house of the informant with common object to assault to PW-2 and accused Barun took lead in the occurrence and he set fire to the house of the informant/ PW-1 and PW-2. The informant in her cross-examination stated that they have amicably settled the matter and is not interested to pursue with the case which has obviously weakened the prosecution case. The learned counsel for the appellant has also submitted that the parties have already buried their grievances and resided peacefully in the society and has urged for setting aside the order being the offence is of 14 years back.

25. I have considered the submission of the learned counsel for the appellant. Going by the photograph of the burnt house of the informant it is also seen that only a little bit of thatch was burnt without destroying the property. In that manner, it can be held that no serious mischief was committed.

26. Taking note of all above, the conviction and sentence of fine of all accused persons u/s 147/323 of IPC is upheld. But the conviction u/s 436 is maintained only as regards the accused Barun. Apart from accused Barun all other accused persons are acquitted from the charge u/s 436 of IPC. While maintaining the conviction of accused Barun u/s 436 of IPC, he is sentenced to the period already undergone by him.

27. The appeal is partly allowed as indicated above. All the accused persons are directed to pay the fine amount before the trial Court within a period of 2 (two) months from today, in default to undergo the sentence as imposed. Return the LCR along with a copy of the judgment.