

**HEADING OF JUDGMENT IN SESSION CASE**

**IN THE COURT OF ADDITIONAL SESSION JUDGE BILASIPARA**

**Present:- Smti S. Bhuyan, AJS**

**Additional Session Judge, Bilasipara**

**Session Case No- 80 of 2016**

**u/s 120(B)/436/34 IPC**

**STATE**

**Versus**

**Abdul Rashid**

**Accused person**

(Committed by Smt. Panchali Shyam, then Ld. SDJM (M), Bilasipara in GR(BLP) case No- 61/04 u/s 436/120(B)/34 I.P.C.)

**Advocate appeared:-**

For the state:- Mr. T. Kr. Bhattacharya, Addl. P.P

For the accused:- Mr. Shanti Uddin Sk. , Advocate.

Date of institution of the case :- 03-05-04

Date of commitment :- 05-05-16

Date of Framing charge :- 24-05-16

Date of prosecution evidence :- 15-02-17, 05-06-17, 08-08-17

Statement of accused recorded on :- 11-04-18

Date of Argument :- 19-05-18, 01-06-18

Judgment delivered :- 13-06-18

## **JUDGMENT**

### **Prosecution Case**

1. Prosecution case in brief is that on 02-05-04 at about 11.30 pm accused Abdul Rashid set on fire the cowshed and hay stack of informant. After some time of the incident accused Abdul Rashid was apprehended and on the next day i.e on 03-05-04 at about 06.00 am one meeting was held wherein accused Abdul Rashid made statement that accused Amzad Ali by giving him Rs. 2000 instigated him to set on fire the cowshed and hay stack of informant. On the said incident property worth of Rs. 28,000/- of informant damaged. To this fact, Motior Rahman lodged the ejahar before O/C Bilasipara PS.

### **Investigation**

2. Officer-in-charge of Bilasipara police station receiving ejahar from informant Motior Rahman registered a police case vide Bilasipara police case No. 61/04 under section 120(B)/436/34 I.P.C. and SI J. Basumatary was entrusted to conduct the investigation of the case and after completion of investigation IO submitted charge sheet against the accused person named herein above u/s 436/120(B)/34 I.P.C.

### **Committal**

3. On receipt of the charge sheet, then Ld. SDJM (M), Bilasipara, took cognizance and after furnishing necessary copies to accused persons committed the case before the Learned. Sessions Judge, Dhubri for trial and Ld. Sessions Judge, Dhubri made over the case to this court for trial.

### **Charge**

4. My then Ld. Predecessor after hearing learned counsel for both sides and perusal of material on record framed charge u/s 436/120(B)/34 I.P.C. against the accused Abdul Rashid and when charges are read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

### **Trial**

5. Earlier Ld. Committal court committed the case before Hon'ble Session Judge, Dhubri and Session Case No. 136/11 was registered wherein accused Amzad Ali Seikh and Harun Seikh faced the trial and case against accused Abdul Rashid was filed. When present accused person Abdul Rashid appeared before the Ld. Committal court, Ld. Committal court vide order dated 05-05-16 again committed

the case. Accordingly new session case was registered and case is made over to this court for trial. According prosecution adduced 5 number of witness and exhibited one number of document and both the prosecution and accused relied on the evidence of remaining witness who had already deposed their evidence in Session Case No. 136/11. PW-1 Abdul Rahman, PW-2 Mahammad Ali, PW-3 Muzammel, PW-4 Mahar Ali, PW-5 Abdul Baten Ali, PW-6 Motior Rahman, PW-7 SI Jayanta Basumatary. Exhibited documents- Ejahar, Seizure list and charge sheet. After closure of the prosecution evidence, statement of the accused person recorded u/s 313 Cr.P.C. Accused plea is total denial, however declined to adduced evidence in support of the plea of denial.

6. **POINTS FOR DETERMINATION:-**

- i. Whether accused on 02-05-04 at about 11.30 pm at Haldibari under Bilasipara PS in furtherance of common intention committed mischief by set on fire on the property of complainant?
- ii. Whether accused on 02-05-04 at about 11.30 pm at Haldibari under Bilasipara PS in furtherance of common intention did criminal conspiracy to cause damage or wrongful loss to the property of complainant and set on fire on the property of complainant?

**ARGUMENT**

7. I have heard learned counsel for both sides. It has been argued by Ld. defence counsel that there is no eye witness in this case and informant of the case did not witness the incident. He further submitted that ejahar was lodged against the present accused person merely on suspicion and as whole prosecution case is based on suspicion accused Abdul Rashid is innocent and entitled for acquittal.

**PROSECUTION EVIDENCE**

8. Evidence of PW-1 Abdul Rahman is that he knows the complainant and accused Abdul Rashid. He deposed incident was took place at about 11.30 pm while he was sleeping. Hearing hue and cry in the house of Motior Rahman he rushed to the place of occurrence and saw fire in the cowshed of the complainant and by the time he reached to the place of occurrence the fire had

already been extinguished. **In cross** he stated he does not know how fire was caught in the cowshed.

9. PW-2 Mahammad Ali deposed he knows complainant and accused. On the day of incident while he was sleeping he suddenly heard hue and cry in the house of Motior Rahman and rushed to the place of occurrence and saw fire in the cowshed of complainant. **In cross** he stated he saw many people gathered at the place of occurrence. He stated he does not know who set the fire in the cowshed of the complainant.

10. PW-3 Muzammel deposed he is younger brother of complainant Motior Rahman. He deposed about 10 years back at night after 12 o' clock incident was took place. At that time he was sleeping at his house and heard hue and cry in the house of his deceased brother. Hearing the same he came out and saw flame of fire in the cowshed of his brother complainant. Thereafter fire was doused by water and sand. After dousing of fire while he returned to his home he heard that one person was caught who is suspected to be culprit of fire incident. Accordingly he went to see the crowd and found one Abdul Rashid who was suspected by villagers. He deposed on the next day one village mel was held and in the said mel statement of accused was recorded. He deposed he did not write the statement of accused and he does not know what statement accused made in the mel as he was not present along with accused while statement of accused was recorded. He deposed during investigation police seized one burnt cycle wherein he put his signature vide Ext 1(1). **In cross** he stated he did not make any discussion with the people who were gathered at the place of occurrence and except noticing fire, he did not hear any other things with regard to the hand of any person in commission of the offence. He stated he does not know why public suspected accused as offender. He stated in the mel, Gaon Panchayat President Sofior Rahman and Secretary Basir were also present but he is not aware of the decision arrived at the said mel. He denied that he deposed false that village people gheraod accused and suspecting him to be offender in this case.

11. PW-4 Mahar Ali deposed he knows the complainant and accused Abdul Rashid. He deposed in the year 2004 someone set fire in the cowshed of the complainant. He deposed hearing hue and cry he went to the place of occurrence and saw fire engulfing the cowshed and they by pouring water doused the fire. He deposed at the time of incident about 100/150 villagers gathered at the place of occurrence. He further deposed he does not know who set fire on the cowshed of complainant. Defence declined to cross examine PW4.

12. Evidence of PW-5 Abdul Baten Ali is that he knows complainant and accused. He deposed he heard hat fire caught at informant's hay stack at about 01.00 – 01.30 am but he does not know who had set on fire. **In cross** he stated he does not know who had set on fire at informant's hay stack and he did not hear the name of offender from other person.

**DISCUSSION, DECISION & REASON THERE OF:-**

13. Prosecution allegation leveled against the accused as per ejahar is that on 02-05-04 at about 11.30 pm accused Abdul Rashid at the instigation of accused Amzad Ali and by taking Rs. 2000/- from him committed mischief by setting fire on the cowshed and haystack of informant Motior Rahman and causing damaged to the property of complainant. In this case prosecution examined 5 number of witnesses and both prosecution and accused relied on the evidence of remaining witness who had already deposed their evidence in Session Case No. 136/11
14. Evidence of informant PW-6 Motior Rahman is that in the year 2004 at about 11.30 pm he was at his home and his cowshed and haystack were set on fire. Hue and cry took place and villagers arrived at the place of occurrence and doused the fire. He deposed on the next morning village people caught accused Abdul Rashid and one salish was held and in the said salish accused Abdul Rashid stated that one Harun Rashid was also with him and they were hired by Amjad Master on the payment of Rs. 2,000/-. He deposed they handed over accused persons to police and there was damage of worth of Rs. 50,000/-. **In cross** he stated accused Rashid was found on the road and he was caught there and salish was held in his house.
15. Evidence of PW-6 Motior Rahman reveals that he did not witness accused setting fire on his cowshed and haystack. Villager did not held accused while he was setting fire of informant's cowshed and hay stack. According to him on next day villager caught accused Abdul Rashid and one salisha was held at his house where accused confessed commission of crime. PW-6 not disclosed who were other people present at the salisha and who were other people before whom accused made confession. From the evidence of PW- 3 it is also reveal that accused Abdul Rashid was not seen by him setting fire in the cowshed of informant. His evidence reveal that accused Abdul Rashid was caught by the villagers only on suspicion and on the next day of incident village mel was held and in the said village mel accused made statement before the village people but he does not know what statement was made by accused and who had recorded the statement of accused.

16. In Ratan Gaud Vs State of Bihar, it was held by Hon'ble Apex Court that usually and as a matter of caution, court requires some material corroboration to an extra judicial confession. Corroboration which connects the accused with the crime in question. It was held by Hon'ble Apex Court in Vijay Shekhar Vs State of Haryana (2015) 12SCC 644 extra judicial confession is a weak piece of evidence and courts are to view the same with great care and caution.
17. The plea of extra judicial confession stated by PW-6 and taken by prosecution appeared to be very weak piece of evidence and same is not corroborated by other P.W.s and other piece of prosecution evidence PW-2, PW-4 and PW-5 did not made any statement about holding of salisha. PW-3 did not stated that PW-6 was present in the mel. PW-3 does not disclosed exactly what words/sentence made by the accused. Thus, evidence of PW-6 that accused made confession before the salisha that he set on fire his cowshed and hay stack is not believable and acceptable piece of evidence. It is reveal that from PW-6's evidence salisha was held at his house. Thus, they is every possibility that pressure put on accused to confessed his guilty. It is not established at all that accused made voluntary confession. PW-6 not stated PW-3 was present at salisha and PW-3 stated he was present at salisha but do not know what statement made by the accused at village salisha. Therefore, accused made any confession at village salisha is not proved beyond all reasonable doubt and this piece of evidence of PW-6 is in sufficient to take accused guilty.
18. Other PWs i.e PW-1, PW-2, PW-4 and PW-5 except stating that they saw fire in the cowshed of informant and fire was doused by villagers, they did not implicate the accused that it is the accused Abdul Rashid who set on fire the cowshed and haystack of informant Motior Rahman. Their evidence reveals that they did not see the incident and they have no knowledge how fire was caught in the cowshed and haystack of informant. They did not support and corroborated the informant and PW-3 statement holding of salisha and accused making of statement in salisha. Nothing come out from their evidence on record that accused Abdul Rashid caused mischief to the property of informant by setting fire in the cowshed and haystack of informant.
19. In view of the aforesaid discussion and after evaluation of evidence on record, I have come to my judicious finding that prosecution miserably failed to bring home charge u/s 436/120(B)/34 I.P.C against the accused Abdul Rashid and therefore he is acquitted from the charge of section 436/120(B)/34 of I.P.C and set at liberty.

20. Bail bond of accused person will remain stands for next six (6) months u/s 437(A) Cr.P.C.
21. Send back the GR case record to the learned committal Court with a copy of the judgment.
22. Given under hand and seal of this Court on this 13<sup>th</sup> day of June, 2018 at Bilasipara.

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Typed by,

Swmkhwr Brahma, Stenographer Gr. III.

**APPENDIX**

## PROSECUTION WITNESS:-

PW-1 Abdul Rahman,  
PW-2 Mahammad Ali,  
PW-3 Muzammel,  
PW-4 Mahar Ali,  
PW-5 Abdul Baten Ali.  
PW-6 Motior Rahman,  
PW-7 SI Jayanta Basumatary

## PROSECUTION EXHIBIT:-

Ejahaar, Seizure list and Charge sheet

DEFENCE WITNESS :- NIL  
DEFENCE EXHIBITS :- NIL  
COURT WITNESS :- NIL  
COURT EXHIBITS :- NIL

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara