

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE :::: BILASIPARA
:::: DHUBRI**

Present:- Shri J. Borah, AJS
Additional Sessions Judge,
Bilasipara.

Session Case No- 14 of 2019
u/s 448/436/34 Indian Penal Code

State of Assam

-Vs-

- 1. Bokter Ali**
- 2. Nabin Ali @ Nabin Uddin**
- 3. Sattar Ali @ Abdul Sattar**
- 4. Gafur Ali @ Abdul Gafur**
- 5. Sofiqul Islam**

..... **accused persons**

Date of framing charge	:-	30-08-2019
Date of recording evidence	:-	27-09-2019 22-10-2019 18-11-2019 20-02-2020 07-10-2020
Date of Argument	:-	21-11-2020
Date of Judgment	:-	23-11-2020

Advocates Appeared in the case:

For the State of Assam	:-	Mr. T. Kr. Bhattacharya, Ld. Addl. P.P for the State of Assam.
For the defence	:-	Mr. Tofazal Hoque, Ld. Advocate for the defence.

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J U D G M E N T

1. The prosecution case, in brief, is that Nasiruddin, the informant lodged an ezahar with the Nayahat police out post on 27-08-2016 informing that the informant has been living on his ancestral land constructing there house. On 27-08-2016 at about 07.00 A.M the accused namely Bokter Ali, Nabin Ali, Alkash Ali, Gafur Ali, Samsul Hoque, Sofiquil Islam and Sattar Ali entered into his house with stick and other sharp weapon and set fire on his house. As a result many properties were damaged.

So, the informant prayed for taking necessary action against the accused.

2. The Nayahat police out post received the ezahar vide GDE no. 587 dated 27-08-2016 and forwarded the same to the Bilasipara police station. The Bilasipara police received the ezahar and registered as Bilasipara police station case no. 847/2016 under section 143/448/436 Indian Penal code. The case was investigated and having found prima facie under section 143/448/436 Indian Penal Code against the accused Bokter Ali, Nabin Ali @ Nabin Uddin, Sattar Ali @ Abdul Sattar, Gafur Ali @ Abdul Gafur and Sofiquil Islam, laid the chargesheet before the court for trial.

3. The accused Bokter Ali, Nabin Ali @ Nabin Uddin, Sattar Ali @ Abdul Sattar, Gafur Ali @ Abdul Gafur, Sofiquil Islam appeared in the court of the Sub-Divisional Judicial Magistrate (M), Bilasipara and they were furnished copy. Learned Sub-Divisional Judicial Magistrate (M) having found the case under section 143/448/436 Indian Penal Code which is triable exclusively by the court of Sessions, committed to this court for trial.

4. The accused Bokter Ali, Nabin Ali @ Nabin Uddin, Sattar Ali @ Abdul Sattar, Gafur Ali @ Abdul Gafur, Sofiquil Islam, hereinafter called the accused persons appeared in this case. Charge was framed u/s 448/436/34 Indian Penal Code, I.P.C in short, against the accused persons. The charge was read over and explained to the accused persons to which all of them pleaded not guilty and claimed to be tried.

5. The prosecution, in order to prove the charge against the accused persons, examined 7 (seven) witnesses namely-

1. Nasir Uddin P.W-1
2. Mazahar Ali P.W-2

3. Jamiran Bibi	P.W-3
4. Najina Khatun	P.W-4
5. Manowara Bibi	P.W-5
6. Fulbar Rahman	P.W-6
7. Dipak Kr. Sarkar	P.W-7

6. The accused persons were examined under section 313 Cr.P.C and their statements were recorded where all of them denied all allegations levelled against them in the evidence adduced by the prosecution witnesses and also declined to adduce evidence in defence.

7. Heard argument for both sides.

8. **POINTS FOR DETERMINATION**

- i. Whether accused persons, in furtherance of common intention, on 27-08-2016 at about 07.00 A.M, at village Boalkamuri Part Ii under Bilasipara police station, committed house trespass by entering into the dwelling house of informant Nasir Uddin in order to commit mischief by set ablaze the dwelling house of Nasir Uddin and thereby committed offence u/s 448/34 I.P.C?
- ii. Whether accused persons, in furtherance of common intention, on 27-08-2016 at about 07.00 A.M, at village Boalkamuri Part Ii under Bilasipara police station, committed mischief by setting ablaze the dwelling house of informant Nasir Uddin with intent to cause the destruction of informant's house which was ordinarily used as a human dwelling and thereby committed offence u/s 436/34 I.P.C?

DECISION AND REASONS THERE OF

9. In this prosecution case P.W-1 Nasir Uddin is the informant, P.W-2 Mazahar Ali, P.W-3 Jamiran Bibi, P.W-4 Najina Khatun, P.W-5 Manowara Bibi and P.W-6 Fulbar Rahman are independent witnesses. P.W-7 Dipak Kr. Sarkar is the investigating officer.

10. Now let see the evidence on record for just and proper decision.

P.W-1 Nasir Uddin has stated in his evidence that he is the informant in this case. He lodged the ezahar against the accused persons. The occurrence took place 2 (two) years ago (from the date of adducing his evidence on 27-09-2019). The occurrence took place in the morning. Many

persons went running towards his house. He saw the persons and went away out of fear. After 2/2 ½ hours, he returned to his house and found his house was gutted. He did not know how his house was set ablazed. He then lodged the ezahar, Ext-1 is the said ezahar, Ext-1(1) is his signature.

In his cross P.W-1 has stated that he lodged the ezahar against the accused out of suspicion. He did not know who set fire on his house. He failed to identify the persons who went running towards his house.

11. P.W-2 Mazahar Ali has stated in his evidence that he knows the informant and the accused persons. He got to know that the house of Nasiruddin was set ablazed, but he did not know who did it.

Cross examination of P.W-2 was declined.

12. P.W-3 Jamiran Bibi has stated in her evidence that she knows the informant and the accused persons. She knew that the house of Nasiruddin was set ablazed, but she did not know who did it.

Cross examination of P.W-3 was declined by the defence.

13. P.W-4 Najina Khatun has stated in her evidence that she knows the informant as well as the accused persons. There was fire on the house of Nasiruddin, but she did not know who set fire on his house.

Cross examination of P.W-4 was declined by the defence.

14. P.W-5 Manowara Bibi has stated in his evidence that she knows the informant and the accused persons. There was fire on the house of Nasiruddin but she did not know who set ablazed the house of Nasiruddin.

Cross examination of P.W-5 was declined.

15. P.W-6 Fulbar Rahman has stated in his evidence that he knows the informant Nasiruddin and the accused persons. He did not know about the occurrence as he was not at his house. He heard that there was fire on the house of Nasiruddin.

Cross examination of P.W-6 was declined by the defence.

16. Thus, minute scrutiny of evidence of P.W-1 to P.W-6 shows that P.W-1 Nasir Uddin who is the informant in this case has stated that on the day of occurrence at about 07.00 A.M many persons went running towards his house. He ran away from his house out of fear. He could not identify the persons who went to his house. So, he did not know who ablazed his house. He suspected the accused and filed ezahar Ext-1 against the accused. He only suspected the accused persons.

In his ezahar Ext-1 P.W-1 scribed that the accused persons went to his house and set ablazed his house. But in his evidence adduced before the court shows that he only suspected the accused persons to set fire on his house. So, there found contradiction between the earlier statement in the ezahar and the evidence adduced before this court. This contradiction is vital and this may shroud the prosecution case with doubt.

17. The other witnesses namely P.W-2 to P.W-6 only heard that there was fire on the house of the informant. But they did not know who set fire on the house of Nasir Uddin. In such a position, the evidence of P.W-2 to P.W-6 is found no effective measure.

18. P.W-7 Dipak Kr. Sarkar is the investigating officer. He went to the place of occurrence and drew a sketch map Ext-2. He seized some articles such as burnt tin and papers and made a seizure list Ext-3. After end of the investigation he prepared charge sheet against the accused persons, Ext-4. The evidence of P.W-7, thus, will not meliorate the prosecution case. His evidence is mere formal evidence.

19. Taking all into consideration, it leads to conclusion that the prosecution evidence is not sufficient and reliable to establish that the accused persons entered into the house of Nasir Uddin and set fire on his house. The prosecution evidence is thereby found dearth of merit.

20. The prosecution has failed to prove it's case under section 448/436/34 I.P.C against the accused persons beyond all reasonable doubt.

21. Held, the accused persons are not guilty u/s 448/436/34 I.P.C

22. Accordingly, the accused persons are acquitted and set at liberty.

The bail bond of accused persons stand cancelled and their bailor(s) is discharged from all liabilities.

The case is disposed of.

Given under my hand and seal by this court on this 23rd day of November, 2020 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Addl. Sessions Judge, Bilasipara

Transcribed & typed by,

S. Brahma, Stenographer Gr. III.

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APPENDIX

PROSECUTION WITNESSES :-

P.W-1 Nasir Uddin
P.W-2 Mazahar Ali
P.W-3 Jamiran Bibi
P.W-4 Najina Khatun
P.W-5 Manowara Bibi
P.W-6 Fulbar Rahman
P.W-7 Dipak Kr. Sarkar

PROSECUTION EXHIBITS :-

Ext-1 Ezahar,
Ext-2 Sketch Map,
Ext-3 Seizure list &
Ext-4 Charge sheet.

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

(Shri J. Borah)

Addl. Sessions Judge, Bilasipara