

**IN THE COURT OF SESSIONS JUDGE AT BARPETA.**

**Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS,  
Sessions Judge,  
Barpeta.**

**JUDGMENT IN SSESSION CASE NO. 94 OF 2019  
(G.R. Case 686/2014)  
Barpeta Road P.S. Case No. 101 of 2014**

**State of Assam**

**-versus-**

**1) Based Ali,  
S/O, Abu Bakkar Siddique,**

**2) Ismail Ali,  
S/O, Akbar Ali,**

**3) Billal Hussain,  
S/O, Akbar Ali,**

**4) Atowar Rahman,  
S/O Lt. Abdul Gafur,**

**All are resident of Bilashipara Gaon,  
P.S. Barpeta Road,  
District – Barpeta.**

**..... Accused.**

**APPEARANCES :**

**For the State : Mr. Lalit Ch. Nath, learned Public  
Prosecutor., Barpeta.**

**For the Accused : Mr. Abdul Kalam Azad, learned  
Counsel, Barpeta.**

**CHARGE FRAMED UNDER SECTIONS 436/143/34 OF THE INDIAN  
PENAL CODE**

**Date of Charge : 25.06.2019 & 19.09.2019,  
Date of Prosecution evidence : 14.11.2019; 04.12.2019;  
17.12.2019 & 03.01.2020,**

**Date of Statement recorded  
under Section 313 CrPC : 04.01.2020,  
Date of Argument : 30.01.2020,  
Date of Judgment : 11.02.2020.**

## J U D G M E N T

**1).** The prosecution case, in brief, is that Barpeta Road P.S. Case No 101 of 2014 under Sections 109/143/448/436 of IPC was registered on the basis of a F.I.R. (Ext.1) lodged by Sarbat Ali (P.W.1).

In the aforesaid **F.I.R.** (Exhibit-1) dated 02.02.2014, the informant Sarbat Ali (P.W.1), alleged *interalia*, that on 02.02.2014 at about 11:25 AM, accused person Atowar Rahman along with others set fire to the house of Sajahan Ali. It is alleged in the FIR that Sajahan Ali had made his house in the land of the informant and the alleged incident was seen by his wife namely Ramisa Khatun, his son namely Asar Uddin and others. As a result, approximate properties worth Rs.2,00,000/- were damaged in the said incident.

On receipt of the aforesaid FIR by the Officer-In-charge, Barpeta Road Police Station, the same was registered as **Barpeta Road P.S. Case No. 101/2014 under Sections 109/143/448/436 of the Indian Penal Code, as said above.**

During the course of investigation, the Police arrested the accused and seized some burnt articles. Police, on completion of investigation, filed charge sheet in the case against the accused namely Atowar Rahman, Billal Hussain, Ismail Ali and Based Ali under **Sections 109/143/448/436 IPC** vide **charge sheet No.478/2014 dated 31.10.2014.**

**2).** In due course, learned Chief Judicial Magistrate, Barpeta summoned the accused. Copy was furnished to them by the then learned Chief Judicial Magistrate, Barpeta, who, thereafter, committed the case to this court, the same being exclusively triable by the court of Sessions.

**3).** Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, charges were framed against the accused under **Sections 436/143/34 IPC by the undersigned.** The charges were read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried. It may be mentioned here that earlier this case

was processing against all accused except Atowar Rahman. On 05.09.2019, learned Chief Judicial Magistrate committed the case in respect of said Atowar Rahman and charge was framed against him in Sessions Case No. 214/2019. Upon the prayer of both sides, both these cases have been merged vide order dated 22.10.2019.

**4).** During the course of trial, **06 [six]** number of witnesses including the informant were examined, on behalf of the prosecution side, to prove the charge under Sections **436/143/34** IPC.

On closing of prosecution evidence, statement of the above named accused was recorded under Section 313 of CrPC. The accused denied all the alleged incriminating materials against them. They claimed themselves to be innocent. They denied to adduce evidence in their defence.

**5).** I have heard **Mr. Lalit Ch. Nath**, learned Public Prosecutor, Barpeta as well as **Mr. Abdul Kalam Azad**, learned Defence Counsel for the accused, who is facing trial for commission of offence **under Sections 436/143/34 IPC.**

**6).** Now the points for determination before this court are as follows --

**(1) Whether the accused on 02-02-2014 at about 11.25 AM within the jurisdiction of Barpeta Road P.S., District Barpeta, committed mischief by fire to the house of Sahjahan Ali, intending to cause, intending to cause destruction of the house, which was used as dwelling house, in furtherance of your common intention and thereby committed an offence punishable under Section 436/34 of the Indian Penal Code ?**

**(2) Whether the accused on the same date, time and place as mentioned above, were a member of an unlawful assembly, the common object of which was to set on fire the dwelling house of above named informant, in furtherance of your common intention and thereby committed an offence punishable under Section 143/34 of the Indian Penal Code ?**

## **DISCUSSION, DECISIONS AND REASONS THEREOF :-**

**7).** To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

**Sarbat Ali (P.W.1)** who is the informant of this case, has deposed in his evidence that he knows all the accused persons of this case. Incident took place about 2 years ago.

P.W.1 stated that he went to his house from market at about 7.00AM on the relevant day. All the accused persons put the house of his son Shahjahan on fire. Accused persons put the house of his son on fire by throwing fire wood. He did not go near them out of fear.

P.W.1 further stated that there was hue and cry and many persons came. The house of his son burnt completely. No cash money was there. All the furnitures burnt. The goods worth Rs. 60,000/- to 70,000/- burnt away in the fire. Then, he lodged the FIR before police. Ext. 1 is the FIR and Ext. 1(1) and 1(2) are his signatures. The FIR was written as per his dictation. Police examined him.

**In his cross-examination,** P.W.1 stated that he did not go through the contents of the FIR. Fire broke out at about 8.30-9.00 AM.

P.W.1 denied that he did not state before police that fire broke out at about 8.30-9.00 AM. Around 100-150 persons came after the fire broke out. The house of his son where fire broke out is a miyadi land.

He (P.W.1) had not mentioned the Dag No and patta No in Ext. 1.

P.W.1 denied that he did not state before police that he did not know as to who put house on fire; that he goods worth Rs. 60,000/- to 70,000/- burnt away in the fire; that he had lodged false case against the accused persons; that nothing was burnt by the accused persons.

**8).** **Ramisa Khatun (P.W.-2)** has stated that informant is her husband and she knows all the accused persons of this case. Incident took place about 6-7 years ago. She was at her house.

P.W.2 stated that at about 8.00 A.M. to 10.00 A.M., all the accused persons set the house of her related son-in-law on fire. She had seen the accused putting the house of said Shahjahan on fire. She resisted the accused but they did not stop. Many people gathered. The house was completely burnt.

P.W.2 further stated that accused fled away on the arrival of public. Only six nos of cement pillar on the house remained intact but the house got burnt completely. Police examined her.

**In her cross-examination**, P.W.2 deposed that the land of burnt house was miyadi patta land and nobody was there. Her husband was at market.

P.W.2 denied that she did not state before police that at about 8.00 AM to 10.00 AM, all the accused persons set the house of her related son-in-law on fire. She had seen the accused putting the house of said Shahjahan on fire. She resisted the accused but they did not stop. Many people gathered. The house was completely burnt.

P.W.2 stated that accused fled away on the arrival of public. Only six nos of cement pillar on the house remained intact but the house got burnt completely.

She denied that she stated before police that she did not know as to who put the house on fire. Accused reside near her house.

She denied that they had lodged this case against the accused persons out of suspicion; that she deposed falsely before the Court.

**9).** **Hasmat Ali (P.W.3)** has deposed that he knows the informant and all the accused persons of this case. Incident took place about 4-5 years ago. He was at the house of informant at about 9.00-9.30 AM. He heard hue and cry and saw one house was found burning. He can not say who set the house on fire. He do not know whose house was set on fire.

**In his cross-examination**, P.W.3 stated that he do not know who set the house on fire. He do not have any personal knowledge about the incident.

**10).** **Assuruddin (P.W.4)** deposed that informant is his father. He knows all the accused persons of this case. Incident took place about 2-3 years ago. He was at his house at the time of incident.

Incident took place at about 10.00 AM. Accused and all together 10-12 persons came to his house. Prior to that their house was set on fire. But, he did not see directly as to who put their house on fire. Out house was burnt totally. Then, his father lodged this case. Police came and examined him.

**In his cross-examination for Atowar Rahman and Bashed Ali,** P.W.4 stated that he did not know who set their house on fire. Later on, many people assembled.

In his cross-examination for Ismail and Billal Hussain, P.W.4 stated that his own house was set on fire. He do not remember the date of incident.

P.W.4 denied that he did not state before police that accused and all together 10-12 persons came to his house. Prior to that their house was set on fire.

P.W.4 also denied that accused did not set their house on fire; that he had deposed falsely before the court for the sake of his informant father.

**11).** **Habiza Khatun (PW.5)** deposed that informant is her father-in-law. She knows all the accused persons of this case and they are from her village. Incident took place about 2 years ago. She was at her house at the time of incident.

Incident took place at about 09.00 AM. Accused persons came to their house running and set their house on fire. People came when she made hue and cry. Then accused fled away from the scene. Informant was not present at his house at the time of incident. Her husband was present.

**In her cross-examination,** P.W.5 stated that the house which was on fire belong to Shahjahan Ali. Nobody was there in the house. Kurpan, Khaleq, Hussain and Sadek used to reside near the burnt house. She could not say whether they saw the incident or not. She was cooking rice at the time of incident and she came out to drink water. Then, she saw people rushing to the house on fire. Accused also came.

P.W.5 denied that she did not state before police that incident took place at about 09.00 AM. Accused persons came to their house running and set their house on fire. People came when she made hue and cry.

P.W.5 further denied that she deposed falsely today for the sake of her informant father-in-law.

**12).** **Kandarpa Talukdar (P.W.6)** deposed that on 02-02-2014, he was working at Barpeta Road PS as ASI of the said police station. On that day, O.C. Barpeta Road P.S. entrusted him to do primary investigation of the case in connection with FIR lodged by informant Sarbat Ali.

P.W.6 examined the informant in the thana itself. He visited the place of incident and drew the sketch map of the place of the incident. Ext. 2 is the sketch map and Ext. 2 (1) is his signature. He examined the witnesses and recorded the statement of the witnesses. He seized the ashes of the burnt house vide seizure list Ext. 3. and Ext. 3(1) is his signature. He did not find accused persons though he tried to arrest them. They avoided arrest and fled away. After completion of primary investigation, he handed over the case diary to O.C. Barpeta Road PS. He examined witnesses Ramisa Khatun, Habiza Khatun, Asaruddin and Hashmat Ali. S.I. Bidhan Sing Basumatary of Barpeta Road PS submitted charge-sheet against the accused persons u/s 448/109/143/436 IPC being charge-sheet no. 176/2014 dated 31-10-2014. Ext. 4 is the charge-sheet and Ext. 4(1) is the signature of S.I. Bidhan Sing Basumatary.

**In his cross-examination,** P.W.6 stated that he did not examine the writer of the FIR. There were no nearby house at the place of incident. He did not examine witnesses who were far away from the place of incident.

Witness Sarbat Ali (PW-1) did not state before him that he incurred loss of Rs. 60,000/- as a result of fire.

Witness Ramisa Khatun (PW-2) did not state before him that accused persons set the house of her related son-in-law on fire; that she saw the accused putting the house of said Shahjahan on fire; that she resisted the accused but they did not stop.

Witness Habiza Khatun (PW-5) did not state before him that accused came running and set their house on fire. But she stated that accused ran away from the place of fire on her arrival.

**13).** From the perusal of evidence of the victim, it is seen that accused belongs from the same village of the informant (P.W.1). Prosecution witness No.2 is the wife of the informant, Prosecution witness No.4 is the son of the informant and Prosecution witness No.5 is the daughter-in-law of the informant. All the above witnesses are vital witnesses. P.W.2 had seen the alleged incident and tried to resist the accused but they did not stop. P.W.5 also deposed in her evidence that accused persons came to their house on running and set fire on their house.

It is interesting to mention here that the I.O. (P.W.6) of this case clearly stated in his cross-examination that P.W.2 and P.W.5 did not state before him as stated above in their evidence. On the otherhand, P.W.5 sated in her cross-examination that accused ran away from the place of fire on her arrival. It does not meant that accused set the house on fire. Thus, there are major contradictions in the evidence of vital witnesses, who have made improvement with regard to their statement made before Police.

P.W.4 who was present at his house along with P.W.2 and P.W.5 clearly stated in his cross-examination that he do not know who set the house on fire.

The informant (P.W.1) did not mention in his FIR that his wife resisted the accused to set fire on the house. P.W.1 also contradicted himself by deposing in his evidence that approximate properties worth Rs.60,000/- to 70,000/- were damaged in the said alleged incident whereas he deposed in the FIR that approximate properties worth Rs.2,00,000/- were damaged.

Moreover, P.W.3 namely Hasmat Ali who is the independent witness of this case deposed that he did not know who set the house on fire. P.W.3 did not state anything against accused person though FIR (Ext.-1) disclose that he saw the accused persons setting the house of Shahjahan on fire.



**14).** Thus, there is no sufficient material on record to hold that the accused committed mischief by fire to the house of the informant to commit any offence. I.O. has even failed to seized the remains of the burnt house to believe the Prosecution story.

Further, the I.O. (P.W.6) of this case did not examine the witnesses who were far away from the place of incident. He also failed to examine the owner of the house namely Sahjahan Ali to believe the Prosecution story.

It is cardinal principal of criminal Law that prosecution case has to stand on its own leg. The alleged offence have not been proved against the accused beyond all reasonable doubt by the prosecution side.

**15).** On scrutiny of the evidence on record, it is seen that no case has been made out against the accused Atowar Rahman, Billal Hussain, Ismail Ali and Based Ali to warrant their conviction under **Sections 436/143/34 of IPC** beyond all reasonable doubt, for which, I am of the opinion that the accused are entitled to get acquittal, on benefit of doubt, which I accordingly do.

**16).** In the result, **accused Atowar Rahman, Billal Hussain, Ismail Ali and Based Ali are acquitted** of the charge under Sections **436/143/34 of IPC**, levelled against them, on benefit of doubt.

Bail bonds of accused Billal Hussain, Ismail Ali and Based Ali are stand discharged. This case is disposed of on contest alongwith Sessions Case No.214/2019.

**17).** Given under my hand and seal of this Court on this **11<sup>th</sup> day of February, 2020.**

**Dictated & corrected by me**

Sd/-

**Sessions Judge, Barpeta**

**A P P E N D I X**

(A) **Prosecution witnesses:**

<b>P.W.1</b>	<b>= Sarbat Ali, the informant,</b>
<b>P.W.2</b>	<b>= Ramisa Khatun,</b>
<b>P.W.3</b>	<b>= Hasmat Ali,</b>
<b>P.W.4</b>	<b>= Assaruddin,</b>
<b>P.W.5</b>	<b>= Habiza Khatun,</b>
<b>P.W.6</b>	<b>= Kandarpa Talukdar, the I.O.</b>

(B) **Prosecution Exhibits:**

<b>Ext.1</b>	<b>= FIR,</b>
<b>Ext.1(1) &amp; 1(2)</b>	<b>= Signature of the informant,</b>
<b>Ext.2</b>	<b>= Sketch map,</b>
<b>Ext.2(1)</b>	<b>= Signature of Kandarpa Talukdar,</b>
<b>Ext.3</b>	<b>= Seizure list,</b>
<b>Ext.3(1)</b>	<b>= Signature of Kandarpa Talukdar,</b>
<b>Ext.4</b>	<b>= Charge sheet,</b>
<b>Ext.4(1)</b>	<b>= Signature of the I.O.</b>

(C) **Defence witnesses:** Nil.

(D) **Defence Exhibits:** Nil.

(E) **Court witnesses:** Nil

(F) **Court Exhibits:** Nil.

Sd/-  
Sessions Judge, Barpeta.