

**IN THE COURT OF THE ADDL. SESSIONS JUDGE-2 (FTC),**  
**TINSUKIA**

**Sessions case No. 73(T)2018**

U/S 436/506 IPC

Present : Md. Abdul Hakim, M.A.,LL.B.,  
Addl. Sessions Judge-2(FTC),  
Tinsukia.

The State of Assam

-Vs-

**(1) Sri Durgesh Balmiki.**

-----Accused

Appearance :

For the State : Sri R.C Das, Ld. A.P.P,  
For the accused Sri S.K Thakur. Adv.

Date of evidence : 29.11.18, 17.01.19, 28.02.19,  
20.07.19.

Date of argument: **29.07.2019**

Date of judgment: **31.07.2019**

**J U D G M E N T**

1. The Prosecution story, as it reveals from the Ejahar that on 15.04.18 at about 5:30 AM at the locality of Hijuguri Kaptanchuk Gaon under Tinsukia, Sri Joginder Das the son in law of the informant, had committed mischief by setting on fire the dwelling house of the informant with an intention to cause destruction of the house, which was witnessed by some witnesses. As a result all the household articles were destroyed into ashes. It is stated that on the previous

night of the incident the accused in drunken condition had tried to assault the family members of the informant with dao and threatened them to cause harm by setting fire into his house. Finding no way the family members including the children of the informant took shelter in the neighbouring houses. On the next morning the accused had set on fire the house of the informant.

2. Receiving the FIR, Tinsukia P.S. registered a case no. 431/2018 and caused investigation. On completion of the investigation, above named accused person was charge sheeted and forwarded to face the trial.

3. On appearance before the court by the accused person, namely, Durgesh Balmiki copy was furnished to him u/s 207 Cr.P.C. Thereafter, the GR case no. 691/18 was committed to the Court of Session by the Chief Judicial Magistrate, Tinsukia. The GR case no. 691/18 was registered as session's case no. 73(T)/18 and transferred to this court for trial. Thereafter, considering the materials on record and after hearing both sides, charges u/s 436/506 IPC had been framed against the accused person particulars of which on being read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

4. During trial, prosecution examined eight nos. (8) witnesses. As there is implicating material against the accused person, he is examined u/s 313 Cr.P.C. I have heard argument put forth by the Id. Counsels of both the sides as well as gone through the entire evidence available on record.

**5. Points for determination :-**

- 1.** Whether the accused on 15.04.18 at about 5:30 AM at the locality of Hijuguri Kaptanchuk Gaon under Tinsukia PS in the district of Tinsukia, Assam had committed mischief by setting afire the dwelling house of the informant with an intention to cause

destruction of the house and thereby committed an offence punishable **U/s. 436 IPC?**

2. Whether the accused prior to the incident had tried to assault on the family members of the informant with a dao and threatened them to cause harm by setting fire into his house and thereby committed an offence punishable **U/s. 506 of the IPC?**

**DISCUSSION, DECISION AND REASONS THEREOF:**

6. PW-1, Smt. Sri Joginder Das has deposed that he is the informant of this case. He lodged the ejahar against his son in law, Sri Durgesh Balmiki. The incident took place on 14.04.18( in the month of Baisakh). On that day at night his son in law after consuming liquor started quarrel and attempted to assault his daughter, him and his wife. The entire members of the houses took shelter in another neighbour's house for safety. At his house, his son in law was in his house. In the morning he saw smoke coming out from his house. They all tried to extinguish the fire. On the next day, he lodged ejahar at the Hijuguri O.P. Ext. 1 is the ejahar, Ext. 1(1) is his signature. Police came after one hour and recorded his statement.

7. In Cross-examination the PW.1 has stated that he studied up to class VIII. The ejahar has been written in English, as such, he does not understand the contents of the ejahar. He did not see how the fire started and who set the fire. He has taken Electricity connection from his neighbours house in a unauthorized manner illegally. He has set the wires for the Electricity connection in his house himself and the wire is a very poor quality. He does not know the nitty gritty of setting up an Electricity connection and he have no experience as an electrician. The accused is his own son in law. His daughter was married to the accused in the year 2010 and thereafter they went to U.P. Since last two years his

daughter is residing with them. They were not agreed to the marriage of their daughter with the accused. The accused wanted to take his daughter alongwith him to U.P. His daughter has three children. The two children were with the accused on the day of occurrence. The accused himself took out his two children out of the burning house. He denies the suggestion that he has lodged this false case just to prevent his daughter from going to U.P with the accused.

8. P.W.2, Smt. Usha Das has deposed that the informant is her father. Accused is her husband. The incident took place on 14.04.18( in the month of Baisakh). At the time of incident she was at his home with her parents and three children. At night quarrel took place at night with the accused/husband. Then she went to the house of Bapon to stay for the night. Later, in the morning hearing hulla she woke up and saw fire broke out in her house. Later the villagers put off the fire by pouring water. But she does not know how her house was set on fire. Later police came. She went to the police station. Police recorded her statement.

9. Her cross examination is declined by the defence.

10. P.W.3, Smt. Pratima Mazumdar she has deposed that she knows the informant. She does not know the accused person. The incident took place around seven months back (on 1<sup>st</sup> of Baisakh) in the morning time at 6 AM. While she went out from the house and saw the house of Jogindra Das was burning. Then she alongwith the people gathered raised alarm. Then the public put off the fire. She does not know how the house was burnt. Police came at around 2 P.M. Police called her to the P.S and recorded her statement there.

11. Her cross examination is declined by the defence.

12. P.W.4, Smt. Shanti Sah has deposed that she knows the informant. She does not know the accused person. The incident took place on 1<sup>st</sup> of Baisakh in the morning time at 5:30-6 AM. She

was at home at the time of incident. After awaking from sleep when she opened the door, she saw the house of Jogindra Das was burning. Then she alongwith the people gathered there raised alarm. Then the public put off the fire. She does not know how the house was burnt. Police came after about 1½ hour later of the incident. Police recorded her statement.

13. Her cross examination is declined by the defence.

14. P.W.5, Smt. Sanju Das has deposed that she knows the informant who is her brother in law. She knows the accused person also. The incident took place around one year back at the time of Bihu. The date of occurrence was a Sunday and she was sleeping. After awaking from sleep at 7 AM, she saw Public shouted outside her house "Aag Laga Aag Laga". Hearing the sound she came out. She saw that the house of her brother in law was burning. Then the public put off the fire. She saw the incident standing. Police came at 12 noon. She does not know how the house was burnt. Police recorded her statement.

15. In Cross-examination she has deposed that she does not remember whether she made statement before the police that - after awaking from sleeping at 7 AM, some public shouted "Aag Laga Aag Laga".

16. P.W. 6, Ajay Kr. Das has deposed that he knows both the informant and the accused. The occurrence took place on 1<sup>st</sup> day of Bohag, last year in the morning. At that time, he was sleeping in his home. The accused Durgesh shouted "aag lag giya, aag lag giya, bacchao bacchao, etc." On hearing his shouting, he woke up and came out of his house. Then he saw that the house of Juginder Das was burning inside. He saw flame outside. The people who gathered in the spot, tried to put off the fire and then extinguished. He does not know as to how it was burnt. Police called him to the P.S and recorded his statement.

17. His cross examination is declined by the defence.

18. PW.7, Smt. Priya Gupta has deposed that she knows both the accused Durgesh and the complainant. The complainant is the father in law of accused Durgesh Balmiki. The daughter of the complainant's only daughter eloped with the accused Durgesh to Delhi about 6-7 years back. After two three years later complainant's daughter Usha returned to her father's home with the accused. Thereafter they started to reside with the complainant but after some days quarrels took place amongst them. Before one year she has seen their house burned to ashes in the evening morning when she was brushing her teeth near her tubewell since her room was very near to their house. Then she also started to pour water to extinguish the fire alongwith other persons. Then she has seen some neighbouring women were beating the accused and the complainant alongwith his wife and daughter(accused's wife) were weeping. She came to know from the people who were present there that the accused threw burning "biri" to the kerosene. She alongwith some neighbouring people she went to the police station and police recorded her statement.

19. In Cross-examination she stated that she did not see the incident on her own eyes and she cannot say how the incident took place. When the accused wanted to take her wife to her matrimonial home, the victim refused to go with him. It is a fact that the complainant has lodged a false case against the accused.

20. P.W.8, Sri Parag Jyoti Borah has deposed that on 15.04.18 he was posted as I/C at Hijuguri Out Post under Tinsukia P.S. On that day he received a telephonic information from an unknown person and the same was entered in GDE no. 247 dated 15.05.18 the Hijuguri O.P vide Ext. 2. Ext. 2(1) is his signature on the said G.D Entry. On receiving the message he rushed to the place of occurrence. Thereafter he visited the P.O

and drew up one sketch map and taken a photograph. Ext. 3 is the sketch map, Ext. 3(1) is his signature. He recorded the statements of the witnesses, namely, Sri Jogindra Das and Smt. Usha Das at the P.O. The accused was apprehended at the P.O and brought to the Out Post. He was examined and recorded his statement. On the same day Sri Jogindra Das lodged an Ejahar. After entering the G.D entry, being no. 251 dated 15.04.18, the ejahar was dispatched to the OC, Tinsukia P.S. Said entry is exhibited as Ext. 4. Ext. 4(1) is his signature. The ejahar is exhibited as Ext. 1. Ext. 1(1) is the signature of Sri Jogindra Das. Ext. 1(2) is his signature on the Ext. 1, Ext. 1(3) is the signature of the then I/C, OC, Tinsukia P.S Sri Ajoy Das. At the P.S he examined the informant and recorded his statement. He also recorded the witnesses namely, Sri Sanju Das, Sri Bijoy Das, Sri Ajoy Das, Smt. Pratima Mazumdar, Smt. Shanti Sah and Smt. Priya Gupta. The accused was forwarded to the judicial custody and on completion of the investigation, he submitted the charge-sheet against the accused Durgesh Balmiki U/s. 436/506 IPC. Ext. 5 is the charge-sheet, Ext. 5(1) is his signature.

21. In Cross-Examination he has stated that he received a telephonic information from an unknown person at 8:30 AM. He arrived at the P.O at 8:50 AM and apprehended the accused from his house i.e. at the P.O. He have recorded the statements of all the witnesses at Police station on the day of occurrence itself. All the witnesses were accompanied by the complainant at police station. He denies the suggestion that he has submitted the charge-sheet in spite the fact that there is no material against the accused. None of the witnesses stated before him that they have seen the accused setting fire in the house of the complainant.

22. With regard to the point for determination Id. Defence counsel has pointed out (i) that no PW's have stated that the accused has set the house of the informant on fire. Although the complainant

has lodged the FIR against the accused person but during his examination in chief the complainant has not alleged that the accused has set on fire his house. (ii) That due to the loose electricity wiring the house might be on fire. (iii) That there is no circumstantial evidence to prove the guilt of the accused. (iv) That the accused saved the life of his two children by pulling out them from the inside the gutted house and which proved the innocence of the accused person. Hence the Ld. Defence counsel prays to acquit the accused from the charges.

23. In reply Id. Addl. P.P has denied the points of the defence side.

24. Upon hearing both sides I have gone through the material on record and found that prosecution has examined eight witnesses including the I/O. The complainant PW 1 has deposed that he lodged the FIR. He has alleged that on the previous night of the alleged incident the accused had tried to assault him and his daughter and wife. Then they took shelter at the home of the neighbour. On the next day morning he found his house is gutted. But in course of his cross-examination he states that he did not see how the fire started and who set the fire. But no independent or the neighbouring witnesses have corroborated the threatening of the accused to the complainant and his family members on the previous night and hence it cast a doubt about the allegation.

25. The Complainant has also himself has stated in his cross-examination that he has taken Electricity connection from his neighbours house in a unauthorized manner illegally. He has set the wires for the Electricity connection in his house himself and the wire is a very poor quality. He does not know the nitty gritty of setting up an Electricity connection and he have no experience as an electrician. He also states that during the time of the fire at house the accused brought out his two children from the inside of the house. In course of the statement recorded u/s 313 Cr.P.C the accused has stated in his defence that at the time of fire he went to toilet by locking the doors of his house and when he returned he saw the fire and pulled

out his children from the inside of the house. From the deposition of the complainant and the statement of the accused u/s 313 Cr.P.C it is proved that at the time of the fire the accused had saved the life of his two children. Had the accused set the house on fire then he would have not gone to save his children. As the complainant has stated that he has set the wires for the Electricity connection in his house himself and the wire is a very poor quality it can be presumed that the fire at home of the complainant might have caused by the electricity short circuit. Apart from this it can be presumed that had the accused intended to set the house of the complainant on fire then he would have committed the offence at the time of alleged threat. He would not have waited till the morning. In view of this fact and circumstances it cast a doubt that the house of the informant was set on fire by the accused.

26. From the evidence on record it reveals that no PW's have seen that the accused has set the house of the informant on fire. There is not an iota of evidence against the accused that the home of the informant was set on fire by the accused.

27. From the evidence on record of the instant case it transpire that the prosecution has failed to establish the fact which is consistent with the hypothesis of the guilt of the accused. The chain of circumstances in the instant case is not complete. Hence it cast a doubt about the authenticity of the prosecution story.

28. In view of the all facts and circumstances and taking into account of material evidence of record I am of the considered opinion that prosecution has failed to prove the material ingredients of the offence U/s. 436/506 IPC against the accused person namely, Sri Durgesh Balmiki beyond all reasonable doubt. Hence the accused person is acquitted on benefit of doubt and set at liberty.

29. The bail bond of the accused is extended U/s. 437(A) of the Cr.P.C.

30. Send a copy of the Judgment to the Deputy Commissioner of Tinsukia.

31. Given under my hand and seal of this court on this the 31<sup>st</sup> day of July, 2019.

Dictated & corrected by me :

(Md. Abdul Hakim)  
Addl. Sessions Judge-2(FTC),  
Tinsukia.

(Md. Abdul Hakim)  
Addl. Sessions Judge-2(FTC),  
Tinsukia.

Transcribed by

P.D Phukan, (Steno).

**A N N E X U R E**

**PROSECUTION WITNESSES:**

PW.1, Sri Joginder Das,  
PW.2, Smt. Usha Das,  
PW.3, Smt. Pratima Mazumdar,  
PW.4, Smt. Shanti Sah,  
PW.5, Smt. Sanju Das,  
PW.6, Sri Ajoy Kumar Das,  
PW.7, Smt. Priya Gupta,  
PW.8, Sri Parag Jyoti Borah.

**PROSECUTION DOCUMENTS :**

Ext. 1 is the Ejahar,  
Ext. 2 is the Extract copy of G.D entry no. 247 dated  
15.05.18,  
Ext. 3 is the Sketch map,  
Ext. 4 is the Extract copy of G.D entry no. 251 dated  
15.04.18,  
Ext. 5 is the Charge-sheet.

(Md. Abdul Hakim)  
Addl. Sessions Judge-2(FTC),  
Tinsukia