

Maken Basumatary and Another Vs. The State of Assam

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Court : Guwahati

Decided On : Nov-27-2015

Judge : The Honourable Mrs. Justice Rumi Kumari Phukan

Appeal No. : Criminal Appeal No. 72 of 2012

Appellant : Maken Basumatary and Another

Respondent : The State of Assam

Advocate for Pet/Ap. : Mr. K. Baruah

Judgement :

ORDER

1. I have heard Mr. K. Baruah, learned counsel for the appellants and Mr. D. Das, learned Addl. P.P., Assam.

2. This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 is directed against the Judgment and order dated 21.03.2012 passed by the learned Additional Sessions Judge, Kamrup at Guwahati in Sessions Case No.41(K)/2011 under Sections 447/436/427/506 R/W Section 34 I.P.C. whereby the accused-appellants have been convicted and sentenced to undergo S.I. for a term of 1(one) months for the offence under Section 447/34 I.P.C. and also sentenced to undergo rigorous imprisonment for a term of 5(five) years and to pay a fine of Rs.1,000/-, in default, simple imprisonment for a further term of 2(two) months for the offence

under Section 436/34 IPC. Further, the accused appellants have been sentenced to undergo S.I. for a term of 3(three) months for the offence under Section 427/34 I.P.C. and also sentenced to undergo S.I. for a term of (3) months for the offence under Section 427/34 I.P.C.

3. The brief facts for disposal of the case is that on 18.11.2010 at about 2.30 P.M., the informant, namely Shri Dhiren Boro of Village Bondapara Odulpara under Boko P.S. lodged an F.I.R. before the O/C of Boko P.S. alleging that on 17.11.2010 at about 7.30 P.M., both the accused-appellants, namely Sri Meken Basumatary and Bhadreswar Boro being accompanied with several other miscreants committed trespass into his premises and had burn down the cow shed and heap of paddy by putting fire on it and also pelted stone, etc. towards his house causing damage to their house and, thereafter, fled away.

4. On the basis of the FIR, the police started investigation vide Boko P.S. Case No.304/2010 under Section 143/447/436/Page 3 of 7 Criminal Appeal No.72 of 2012 336/379 I.P.C. and, upon completion of the investigation, submitted charge-sheet under Section under Section 447/436/335/427/34 I.P.C. against both the accused appellants.

5. The case was committed in due course of trial to the Court of Sessions and the Court of Additional Sessions Judge framed charge under Sections 447/436/427/506/34 I.P.C. against both the accused appellants and, on being explained, they pleaded not guilty.

6. In course of trial, the prosecution examined as many as five(5) witnesses in support of the case and the defence also adduced three(3) witnesses denying their involvement by taking the plea of alebi. The Trial Court below after completion of the trial convicted and sentenced the accused appellants as aforesaid.

7. Being aggrieved with the aforesaid judgment and order, the appellants have preferred this appeal assailing certain infirmities in the prosecution case that the learned Court below has failed to appreciate the evidence on record on its proper perspective of law and had arrived at an erroneous findings.

8. On the other hand, the learned Public Prosecutor has urged before the Court that there is sufficient evidence on record to prove the complicity of the accused with the offence alleged and there is nothing to disbelieve the evidence of eye witnesses to the occurrence and the Court below has rightly convicted the accused appellants.

9. I have heard and considered the rival submission of learned counsel for both the parties and appreciated the evidence on record. There are few many witnesses for the prosecution and, out of Page 4 of 7 Criminal Appeal No.72 of 2012 which, P.W. 1 (Shri Dhiren Boro) and P.W. 2 (Miss Sushila Basumatary), wife of P.W. 1 are the eye witnesses to the occurrence who have stated that as they have converted to Christianity, there was repercussion in the Society and people demanded that they had to compensate for the same. On the fateful day, the present two appellants accompanied by some other persons came to their compound and pelted stone to their house and had burn down one heap of thatch and one cow shed and some bamboo fencing. Out of fear, they fled away and took shelter in the house of P.W. 3. On return, they found that there was destruction of household goods/articles. On the facts, P.W. 1 filed an FIR vide Ext.1. It has been specifically stated by these two witnesses that the accused persons have burn down only the heap of thatch and the cow shed and damage to other household properties.

10. P.W. 3 Shri Ramesh Boro, P.W. 4 Shri Sidhartha Rava, are neighbours of the informant, and they have supported the evidence of P.Ws. 1 and 2 and have stated that on the fateful night P.W. 1 and his wife went to their house and reported that village people have broken their house and burn down heap of thatch. However, they were not the eye witness to the occurrence. Both of these witnesses went to the place of occurrence and also found that there was a burning heap of thatch and cow shed in the compound of the house of P.W. 1. Similar is the version of I.O. P.W. 5-Sri Monmohan Talukdar, who went to the place of occurrence and found that there was burning of cow shed (no cow at that time) and heap of thatch and destruction of bamboo fencing which was in a broken condition. Accordingly, the I.O. seized some half burnt pieces of thatch, ash and some broken piece of bamboo etc. Findings of F/O and also other witnesses bears

import on the findings that only some portion of household properties were destroyed. However, there is no Page 5 of 7 Criminal Appeal No.72 of 2012 such description of value of property as to how much amount have lost.

11. In support of the claim of the plea of alibi, the defence site examined three(3) witnesses, namely D.W.1 Shri Lachit Hajowari, D.W. 2 Sri Nagen Basumatary and D.W.3 Durjodhan Boro and all of them have testified to the effect that on 17.11.2010, the accused persons were working with them in another place at Dhupdhara while making tent in the house of one Subid Kalita from morning 8 A.M. till the evening at 7.30 to 8.00 P.M. After about 8 P.M., both the accused persons return, but they do not know where they have gone thereafter. They do not know as to why the accused persons were arrested.

Their evidence is, however, not helpful to the defence side though they tried to put the plea of alibi. The evidence of these defence witnesses is that the accused persons were with them upto 7.30/8 P.M., but the incident in the given case has taken place in the evening at around 7.30 P.M. and so it was not impossible on the part of the accused persons to be present in the place of occurrence. Whatever the evidence has been given by the defence witness, it relates to the working by the accused persons in the day hours and they do not have any idea about the incident so happened after 7.30 P.M. nor they have specifically denied the incident alleged as a whole. The evidence of all these defence witnesses is not enough to destroy the credibility of the evidence of the prosecution so far discussed above, which has reasonably proved the complicity of the accused appellants for the offence alleged.

12. From the evidence of eye witnesses as well as the findings of the I.O., it reveals that there was no burning of the dwelling house of the informant, rather it was burning of thatch lying Page 6 of 7 Criminal Appeal No.72 of 2012 outside the house and there is absolutely no evidence to show that the house of the informant was also gutted to fire by the accused persons. So, it is totally a case of mischief by fire to the property of the informant, but not to the dwelling house of the informant, though in their evidence, the informant has stated that the bamboo wall of their house has been destructed, but it is not clear that the bamboo wall of their house

was burn down. The evidence of the I.O. is also fortified that there was damage to the house hold properties of the informant. Accordingly, it can be held that a case is made out under Section 435 I.P.C. rather than under Section 436 I.P.C as has been held by the learned Trial Court below.

13. However, there is nothing to disbelieve the case of the informant about the identification of the accused that they have committed the mischief to their property and committed trespass into their house only on the religious issue that the informant had got converted into Christianity. As usual, due to intolerance of such religious aspect, the incident so happened. There is also no other false implication of the accused persons with the offence. The evidence of P.Ws. 3 and 4 also lend support to the informant that due to such incident of burning, the informant and his family had to run away from his house and took shelter in the house of P.W. 3. Hence, it can be said that it is a incidence of intolerance of the persons of the locality only on the point of religious issue and having no other any criminal intent to cause serious mischief to the house and property of the informant. After causing such mischief, the accused appellants themselves went away from the place of occurrence without doing further mischief to the properties.

14. In the facts and circumstances of the case, it can be held that a lighter punishment will meet the ends of justice. Accordingly, while maintaining the conviction each of the accused appellant is sentenced to R.I. for three months under Section 435 I.P.C., the period to which they have already undergone, and also sentenced to one (1) month under Section 447/427/34 I.P.C. (to which already undergone) maintaining the amount of fine, as imposed by the learned Court below.

15. The appeal is partly allowed with the modification as indicated above.

Return the L.C.R. with a copy of the judgment.

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