

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS**

**North Lakhimpur, Lakhimpur**

**PRESENT: Ms. Sparsita Garg, M.A, LL.M, AJS**

Judicial Magistrate First Class,

Lakhimpur, North Lakhimpur

**G.R. Case No.111/2012**

**State**

**Versus**

**Gogoi Orang**

**( Under sections 447/435/323/34 IPC )**

Offence explained on : 22.05.2017

Evidence recorded on : 23.08.2018, 01.11.2018, 19.12.2018,  
24.06.2019

Statements recorded on : 05.04.2021

Arguments heard on : 05.04.2021

Judgment delivered on : 22.04.2021

Advocate for the Prosecution : Mr. Jangki Doley

Advocate for the Accused : Mr. Prashanta Buragohain

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

**1.** Accused Gogoi Orang stood for trial for commission of offence u/s 447/435/323/34 IPC.

**2.** The case of the prosecution in brief is that the while the

informant Sri Guna Kharia was sleeping in a nearby house, the accused persons came and broke down the hand-pump shed and thereafter set fire on the store house and burnt it. The house along with the paddy was reduced to ashes. The informant apprehended that if he had resisted the accused persons then they would have burnt him alive. On the next morning he inquired about the incident. At this the accused persons threatened to burn him alive. The informant further alleged that earlier also the accused persons damaged his dwelling house making him homeless. Hence this case.

**3.** On receipt of the ejahar, Incharge of Khelmati T.O.P. forwarded the ejahar to North Lakhimpur Police Station and thereafter Officer-in-Charge of North Lakhimpur Police Station registered the case as North Lakhimpur P.S. case no.49/2012 u/s 447/435/323/506/34 IPC. Thereafter Investigating Officer launched investigation of the case and submitted chargesheet u/s 447/435/323/34 of the Indian Penal Code against the accused namely Deba Kharia Gogoi Orang.

**4.** Thereafter, cognizance has been taken and summons have been issued to the accused persons. Accused Deba Kharia expired during the stage of appearance for which the case stood abated against him. On appearance of accused Gogoi Orang, necessary documents required u/s 207 Cr.P.C have been furnished to him. On perusal of the materials on record substance of accusation u/s 447/435/323/34 IPC is read over and explained to the accused Gogoi Orang to which he pleaded not guilty and claimed to be tried.

**5.** Prosecution in support of its case has examined only four (4) witnesses.

**6.** Accused is examined under section 313 Cr.P.C., wherein he denied the allegations levelled against him. Accused denied adducing evidence in defence.

**7.** I have heard the arguments advanced by the learned counsel

for the accused and Ld. A.P.P. Perused the materials available in the case record. Upon hearing both the parties and on perusal of the record, following points for determination are formulated for proper adjudication of this case.

**POINTS FOR DETERMINATION:**

**Point No 1:** Whether the accused persons in furtherance of common intention on 24.01.2012 at 10:00 p.m., at Bogolijan, criminally trespassed into the property of the informant/victim Sri Guna Kharia, by unlawfully entering into his with intent to commit an offence, and thereby committed an offence punishable u/s 447/34 of IPC?

**Point No 2:** Whether the accused in furtherance of common intention on the same date, time and place, committed mischief by setting fire in the rice barn of the informant/victim Sri Guna Kharia and caused damage to his rice, wood etc. amounting to more than Rs.10/- and thereby committed an offence punishable u/s 435 of IPC?

**Point No 3:** Whether the accused on 25.01.2012 in the morning at Bogolijan, voluntarily caused hurt to the informant/victim Sri Guna Kharia, and thereby committed an offence punishable u/s 323 of IPC?

**DISCUSSIONS, DECISIONS AND REASONS THEREOF:**

**8.** Now let me try to decide the above points by appreciating the evidence available in the case record. I have carefully considered the evidence available in the instant case. The accused is facing trial for commission of offence u/s 447/435/323/34 IPC. **P.W-1 Moni Kahriya** stated that the informant is her father. The incident occurred eight years back. There was an altercation between the accused persons and her father and the accused persons burnt the grains store in the house. On the next date Gogoi Orang and his wife assaulted her father with a bamboo stick and he received injuries on his hand and leg. For this incident her

father lodged this ejahar.

In her cross examination P.W-1 she admitted that she has not seen the occurrence. Further she stated that she did not give any statement before the police. Thus, it appears that the witness has no personal knowledge about the incident. Moreover, her evidence cannot be relied upon as she herself admitted of having not given any previous statement before the investigating officer. Thus her whole evidence appears to be a contradictory statement.

**9. P.W-2 Pallabi Gorh** is an independent witness who stated that in the year 2012 the house of accused Debo Khoriya was burnt down. P.W-2 stated that she does not know anything about the incident.

Her evidence goes to show that the house of he accused was burnt down and not the house of the informant. Thus, her evidence is of no help to the prosecution.

**10. P.W-3 Dr. Banani Sarma** is the medical officer of this case who examined the victim Guna Kharia and found lacerated wound measuring 1cm x 1cm, swollen right thumb with restricted movement and tenderness over right cheek. The defence nowhere denied the evidence of the medical officer. However, the prosecution could not examine the informant cum victim who is the right person to describe as to how he received those injuries.

**11. P.W-4 Dharmeswar Das** is the investigating officer of this case. He described the steps taken by him during investigation. During his investigating he visited the place of occurrence, examined the witnesses, and prepared two seizure lists. The investigating officer also collected the burnt grains and half burnt bamboo post which he duly seized. The investigation officer proved the sketch map marked as Exhibit-2, seizure list marked as Exhibit 3 and chargesheet marked as Exhibit-4.

The evidence of the investigation officer can at best support the

prosecution case but his evidence alone cannot prove the guilt of the accused. Considering the evidence in entirety it appears that the prosecution could not prove the guilt of the accused beyond all reasonable doubts. The prosecution has failed to examine the victim cum informant of the present case and the independent witness rather shattered the prosecution case. It is found that during trial of this case accused Debo Khoriya has expired and the case stood abated against him. In the result accused Gogoi Orang deserves to get the benefit of doubt and is accordingly acquitted.

### **ORDER**

**17.** In view of the above discussions, I am of the considered opinion that, prosecution has failed to establish the case against accused namely Gogoi Orang. Accordingly, accused is acquitted of the charge u/s 447/435/323/34 IPC levelled against him in this instant case.

**18.** Set the accused at liberty forthwith.

**19.** The bail bond for the accused is extended for a further period of six (6) months.

**20.** The case is disposed of on contest accordingly.

Given under my hand and seal on this 22<sup>rd</sup> day of April, 2021 at North Lakhimpur, Lakhimpur.

(Ms. Sparsita Garg)  
Judicial Magistrate First Class  
Lakhimpur, North Lakhimpur

**APPENDIX****A. WITNESSES OF PROSECUTION:**

- |           |                  |
|-----------|------------------|
| 1. P.W-1: | Moni Kahriya     |
| 2. P.W-2: | Pallabi Gorh     |
| 3. P.W-3: | Dr. Banani Sarma |
| 4. P.W-4: | Dharmeswar Das   |

**B. EXHIBITS OF PROSECUTION:**

- |                         |   |
|-------------------------|---|
| 1. Exhibit-1 :          | Injury Report                                 |
| 2. Exhibit 1(1) & (2) : | Signatures of the P.W-3 in the injury report. |
| 3. Exhibit-2 :          | Sketch Map                                    |
| 4. Exhibit 2(1) :       | Signature of P.W-4 in the sketch map.         |
| 5. Exhibit-3 :          | Seizure list                                  |
| 6. Exhibit 3(1) :       | Signature of P.W-4 in the seizure list.       |
| 7. Exhibit-4 :          | Charge Sheet                                  |
| 8. Exhibit 4 (1) :      | Signature of SI Pramod Kakoti.                |

**C. WITNESS OF DEFENCE: NIL****D. EXHIBITS OF DEFENCE: NIL**

(Ms. Sparsita Garg)  
Judicial Magistrate First Class  
Lakhimpur, North Lakhimpur