



Crl. Appeal No. 27(3) of 2023

ASSV010006842023



IN THE COURT OF SESSIONS JUDGE, SIVASAGAR

Present :- Smti M.C. Bordoloi, MA, LLB (AJS),
Sessions Judge,
Sivasagar.

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1. Sri Sujit Pator,
S/O Sri Dilip Pator,
R/O Panbesa Dhupaboria Gaon,
PS & Dist. Sivasagar, Assam.
:----- convict/Appellant

Versus

1. State of Assam.
2. Sri Bharat Satnami,
S/O Late Kania Satnami,
R/O Panbesa Dhupaboria Gaon,
PS & Dist. Sivasagar, Assam.
:----- OP-Respondent

Date of Hearing : 21.07.2024

Date of Judgment : 05.08.2024

Advocates Appeared:

Surajit Boiragi, Advocate for the Appellant.

Dhiraj Dutta, PP for the Respondent No.1.

Udipta Lal Baruah, Advocate for the Respondent No.2

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JUDGMENT

1. Challenge in this appeal u/s 374 Cr.P.C. read with Sec. 389 Cr.P.C. is made to the judgment and order dated 31.7.2023 passed by learned Assistant Sessions Judge in Session Case No.107(S-S)/2019.

2. Upon receipt of the memo of appeal in this court, same was admitted for hearing having found that the appeal was filed within time with payment of requisite court fees. The operation of the impugned judgment and order dated 31.7.2023 passed by learned Assistant Sessions Judge in Session Case No.107(S-S)/2019, u/s 326/307 IPC was accordingly stayed by my learned predecessor-in-chair. The case record was requisitioned from the learned trial court and notices were issued to the Respondents.

3. The Respondents appeared through his engaged counsel and contested the appeal.

4. Perused the LCR received on requisition. On perusal of the record of Session Case No.107(S-S)/2019, it is found that vide the impugned judgment and order dated 31.7.2023, the learned trial court had convicted the accused-appellant Sujit Pator u/s 307/326 IPC and sentenced him to suffer RI for a period of 6 years and to pay a fine of Rs. 5,000 with the default stipulation of 3 months simple imprisonment for his conviction u/s 307 IPC and had further sentenced him to suffer RI for 6 years and to pay a fine of Rs.

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5,000 with the default stipulation of 3 months for his conviction u/s 326 IPC directing the sentences to run concurrently and to pay the fine amount to the victim.

5. Being highly aggrieved and dissatisfied with the above judgment of conviction and sentence passed as indicated above thereunder, the accused-appellant has preferred the instant appeal on the following grounds amongst others:

GROUND S :

- (i) That the learned trial court had failed to appreciate the evidence on record in its proper perspective and has come to an erroneous finding of guilt of the appellant-petitioner u/s 326/307 IPC.
- (ii) That the learned trial court had wrongly relied on the evidence of PW-1/victim to record a finding of guilt of the accused despite the fact that PW-1/victim and PW-2/informant had narrated two different version in their evidence before court.
- (iii) That the learned court below misread the evidence and based its decision on sentiments rather than proven facts to return a finding of guilt.
- (iv) That the learned court below ignoring the fact that the victim's evidence lacked corroboration passed the erroneous judgment of conviction and sentencing him accordingly as indicated above without according an opportunity of being heard on the point of sentence thereby causing hardship and prejudice to the appellant for which the impugned judgment and order is liable to be set aside.

6. The facts leading to the instant appeal in brief is narrated herein under:-


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One Bharat Satnami lodged an ejahar with the Sivasagar PS stating interalia that his daughter Gita Pator entered into marriage with the accused Sujit Pator following a romantic involvement and that on 26.03.2019 at about 10 am, his daughter came to his house on the same day at about 8.30 pm accused came to their house was talking with his daughter outside the house and after sometime having heard the cry of help from his daughter, he went outside to find his daughter burning and to learn that accused had set his daughter ablaze by pouring kerosene on her and went away therefrom.

7. Upon receipt of the ejahar a case vide Sivasagar PS 225/2019 u/s 326/307 IPC was registered and investigation was commenced culminating in the submission of chargesheet u/s 326/307 IPC against accused-appellant Sujit Pator.

8. The learned court of Sub Divisional Judicial Magistrate Sivasagar furnished copies of the relevant documents of the case to the accused after securing his appearance in court and finding that the offence was exclusively triable by the court of Session committed the case record to the instant court, wherefrom the case transferred to the court of learned Assistant Sessions Judge for disposal. The learned Assistant Sessions Judge framed charge u/s 326/307 IPC and proceeded with the trial of the case when the accused claimed to be tried. The prosecution side examined as

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many as 9 Nos. of witnesses in the case and thereafter learned court recorded the statement of the accused u/s 313 CrPC and having heard the arguments forwarded by the learned counsels of both sides, passed the judgment and order of conviction against the appellant which is impugned herein.

9. **Arguments**

I have heard the arguments advanced by the learned counsels of both sides.

9. (i) Learned counsel for the appellant reiterating the grounds stated in the memo of appeal submits that learned trial court failed to appreciate the evidence on record in the proper perspective and returned an erroneous finding of guilt against the appellant which is liable to be set aside.

Learned counsel relying on the judgment of **Sanjeeb Kumar vs. State of Bihar reported in 2009 16 SCC 487** and on the judgment of **KrishneGowda and ors. vs State of Karnataka reported in 2017 SCC Online SC 284** submits that in a criminal case prosecution is required to prove the case beyond all reasonable doubt while the defence of the accused has to be tested from the touchstone of the probability alone. The burden of proof lies on the prosecution in all criminal trials which is required to be discharged, to arrive at a finding of guilt, though the onus may shift to the accused in given circumstances and the evidence on record has to be appreciated to find out whether the defence set up


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by the accused is probable or not. Learned counsel also relied on the judgment of **Reena Hazarika vs State of Assam reported in 2018 SCC Online SC 2281** to bulwark his submission. Learned counsel further submits that learned trial court failed to appreciate the fact that the evidence of the witnesses could not stand the test of cross examination and that there had been considerable improvement in the testimony of the witnesses. Learned counsel submits that the learned trial court also failed to consider the explanation given by the accused-appellant in his statement u/s 313 CrPC and has passed an erroneous judgment which is liable to be set aside.

9. (ii) Per contra learned counsel for the respondent side submits that as per medical legal report the victim sustained deep burns on face, neck, back and both upper limbs quantified at 35% and being opined as grievous injury, the same cannot be ignored and accused be left at large extending the benefit of doubt.

10. I have considered the submissions of the learned counsels of both sides and also have gone through record meticulously. I have carefully perused the evidence available on record and also perused the trial court judgment.

11. **Point for determination**

The point for determination that has arisen in the instant appeal is as follows :-

Whether the judgment and order dated 31.07.2023 passed by the learned trial court in Session Case No.



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107(S-S)/19 is sustainable in law and facts or whether it is liable to be set aside?

12. My decision on the aforesaid point for determination along with reasons is given herein under.

DISCUSSION, DECISION AND REASONS THERE FOR :

13. Perusal of the record of Session Case No. 107(S-S)/19 discloses that PW-1 on the fateful day at about 9.30 pm the accused entered from the back side of the parental house and asked PW-1 about her decision to accompany him to her matrimonial home whereupon her father asked her to stay back at their house for the night and her mother questioned him about his behavior. PW-1 also stated that accused got enraged and give a blow to her father and when she went to defend such attack, accused hit her on her hand, following which her parents rushed out to told her cousins for help and in such circumstances finding the victim alone drag her to the back side of the house and set her ablaze by pouring kerosene over her.


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14. When put to cross examination, PW-1 denied the defence suggestion that at the relevant time of the alleged occurrence accused-appellant was with the parents of the victim having a discussion there and that accused tried to save her by pouring water from filter kept nearby and thereafter accused picked her up laid her on the bed.

15. PW-2 the informant's father and PW-7 the informant's



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mother in their evidence stated that when accused came to the house and fought with the victim they were sleeping and when the accused tried to burn their daughter and flee away from their house then informant shouted and hearing her cries they came out along with other neighbours and thereafter doused the fire.

16. During cross examination PW-2 disclosed that on the relevant day his victim daughter had called the accused-appellant to take her back and when he, his wife and the accused were in their dining room and he and his wife trying to reason out with the accused, he heard his daughter's cry of alarm whereupon accused rushed out to the spot and poured water over the victim and wrapped her in a cloth and brought her to the kitchen and laid her on the floor and thereafter the accused fled from the place of occurrence out of fear.

17. PW-7 disclosed that when her victim daughter shouted "morilu o" accused poured water from the filter located outside.

18. The other witnesses being PW-3, PW-4, PW-5 and PW-6 denied having any personal knowledge as regards how the victim got burnt.

19. Perusal of the aforesaid evidence discloses that the evidence abounds to the fact that on the relevant day the accused had come to the house of the informant and that he


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had come so to take back his wife to his society. At such time the victim, her parents, the accused were present in the house of the informant and that the the victim got burnt in the back side of the house of the informant, and sustained 35% burn injuries for which she had to undergo treatment for a long period.

20. Now in the light of the above undisputed facts, the evidence is required to be scrutinized.

21. Victim in her evidence stated that when her parents went out to seek help from her cousins, the accused finding her alone set fire to her. But the informant's father and the mother of the victim examined as PW-2 and PW-7 respectively disclosed in their respective evidence that at the relevant point of time the accused-appellant were with them having a discussion and that the accused rushed out having heard the victim's cry for help and poured water on the victim to douse the fire. Both PW-2 and PW-7 had implicated the accused in their examination-in-chief but in their respective cross-examination they divulged the aforesaid fact of the accused being present with them. If the accused was in the company of the parents of the victim at the relevant time, he could not have been the person to have lit the fire on the victim's person. Further it is in the evidence of both the PWs that accused had poured water on the victim to douse the fire. PW-1/victim disclosed her ignorance as to who had poured water over her when she was burning and for this fact


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the testimony of PW-2 and PW-7 cannot be doubted. PW-1/victim sustaining burns would not have been in a position to see and identify as to who was pouring water over her to save her rather the onlookers would be the best person to testify about the said fact. The onlookers being the victim's parent disclosed that the accused had poured water on the victim. Had the accused intended to set fire to the victim or kill her, he would not have poured water over her. The fact of running of the accused from the scene of occurrence is not sufficient to fix culpability on the accused when evidence on record do not indicate that he had been present with the victim at the relevant time to have committed the offence. The accused's act of running away may be his reaction fearing onslaught from the agitated people, as such persons would not have been ready to listen to him when they would see a person burning. Infact the evidence on record is not sufficient to hold that prosecution case has been proved beyond all reasonable doubt. In the above circumstances, I am constrained to hold that the conviction of the accused cannot be sustained and the judgment of the learned court below warrants interference and is liable to be set aside.

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22. **In the light of the foregoing discussion, point for determination stands answered in the affirmative.**

23. **ORDER**

In the result, the appeal is allowed on contest with cost.



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The impugned judgment and order of conviction dated 31.07.2023 passed by learned Assistant Sessions Judge, Sivasagar against accused Sujit Pator in Session Case No. 107(S-S)/2019 is hereby set aside.

Accused Sujit Pator is acquitted of the charge u/s 326/307 IPC in the instant case and set at liberty forthwith.

Copy of order be sent to learned Superintendent of Jail, Sivasagar for compliance.

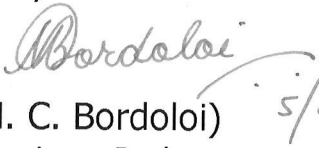
Send back the case record of Session Case No. 107(S-S)/2019 to the court of learned Assistant Sessions Judge, Sivasagar along with a copy of the judgment.

Accordingly, the instant appeal is disposed of on contest.

Given under the hand & Seal of this Court on this the, 05th day of August, 2024 at Sivasagar


(M. C. Bordoloi),
Sessions Judge,
Sivasagar.
Sessions Judge
Sivasagar

Dictated and corrected
by me


(M. C. Bordoloi)
Sessions Judge,
Sivasagar.
Sessions Judge
Sivasagar