Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL APPELLATE JURISDICTION

Present :
The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Reetobroto Kumar Mitra

CRA (DB) 60 of 2023

Rahul Tamang and Anr.
Vs.
State of West Bengal and Anr.

For the Appellants	:	Mr. Pratap Khati Mr. Bickey Sharma
For the State	:	Mr. Jagriti Mishra, AAAG Mr. Bijay Bikram Das Mr. Supritam Nag
Heard on	:	28.09.2026, 05.10.2026 and 06.10.2026
Judgment on	:	06.10.2026

Rajasekhar Mantha, J.:

1. The subject appeal is directed against judgment and/or order dated 18th November, 2022 passed by the Additional Sessions Judge, 1st Court, Darjeeling in connection with Sessions Case No.17 of 2022 arising out of Rangli Rangliot Police Station Case No.48 of 2021 dated 26th December, 2021 under Sections 436/307/34/354 of the Indian Penal Code.

2. The appellant No.1, Rahul Tamang, was sentenced to suffer rigorous imprisonment for 5 years and a fine of Rs.20,000/-, in default

of paying the fine, he was sentenced to suffer rigorous imprisonment for 3 months under Section 436 of the Indian Penal Code. He was also sentenced to suffer rigorous imprisonment for 5 years and a fine of Rs.20,000/-, in default of paying the fine, he was sentenced to suffer rigorous imprisonment for 3 months under Section 307 of the Indian Penal Code. He was further sentenced to suffer rigorous imprisonment for 2 years under Section 354 of the Indian Penal Code.

3. The appellant No.2, Rishu Gurug @ Gurung, was sentenced to suffer rigorous imprisonment for 5 years and fine of Rs.20,000/-, in default of paying the fine he was sentenced to suffer rigorous imprisonment for 3 months under Sections 436/34 of the Indian Penal Code. He was also sentenced to suffer rigorous imprisonment for 5 years and fine of Rs.20,000/-, in default he was sentenced to suffer rigorous imprisonment for 3 months under Sections 307/34 of the Indian Penal Code. All the aforesaid sentences of the appellants are run concurrently.

THE PROSECUTION CASE:

4. On 26th December, 2021 the de facto complainant, **PW-1, Kritika Thapa** filed a complaint to the Rangli Rangliot Police Station at about 3:40 pm alleging that on the previous day evening around about 6:30 pm the appellant No.1, Rahul Tamang came to her stationery shop and asked for some articles. Upon being told that the articles were not available, he misbehaved and physically assaulted her. He also threatened the de facto complainant with dire consequences. He was

consoled and sent back her by the complainant. He later came to her house with a weapon. On the intervention of the neighbours of the house, he went back. Later in the night at around 1:30 am, the early morning on 26th December, 2021, the appellant No.1 arrived at the place of occurrence and set fire to the shop room and tried to kill the de facto complainant and her family members. The fire was doused with the help of neighbour. Properties of three houses including the house of the appellants were damaged. The de facto compliant from the CCTV footage came to learn that the fire was caused by the two appellants.

5. Based on the said complaint FIR No.48/21 dated 26th December, 2021 was registered against the two appellants by the Rangli Rangliot Police Station at Darjeeling. Investigation commenced and the statement of the PW-1 was recorded under Section 164 of the Code of Criminal Procedure.

6. Investigation was completed after seizure of certain burnt portions lying at the place of occurrence. The CCTV footage from the house of a neighbour namely **Anil Pradhan (PW-8)** was also seized in a pen drive. After investigation was completed, charge sheet was submitted.

TRIAL AND THE EVIDENCE ON RECORD:

7. Charges were framed against the appellant No.1, Rahul Tamang under Section 354 of the IPC and both the appellants under Sections 436/307/34 of the IPC.

8. **PW-1, Kritika** was the de facto complainant herself. She narrated the entire prosecution case. There is a noticeable difference in the evidence of PW-1 with her complaint and her statement under Section 164 of the CrPC. In the complaint, she stated that she was physically assaulted by the appellants and that she came to know from the CCTV footage of PW-8 that the appellant No.1 set fire to a house.

9. There is a clear improvement in her statement under Section 164 of the Code of Criminal Procedure where she mentioned for the first time that the appellant No.1 was intoxicated when she came to her shop on 25th December, 2021. She further improved her complaint by stating that the appellant threatened her with the words "you do not know who I am" and that he pointed out his private parts and he will show it to her. She called her father and brother, who had stopped the appellant No.1.

10. There is no mention of any assault on PW-1 by the appellant No.1 in the statement under Section 164 of the CrPC. She also stated that she saw her house burnt and that the appellant No.1 was running away along with appellant No.2.

11. However, in course of her evidence before the Trial Court she said that she saw the appellant No.1 setting fire to her house. She did not mention in her evidence before the Trial Court that when the appellant No.1 came back for the second time later that evening with a weapon, she did not take him seriously.

12. She did not depose in her evidence what she stated before the Magistrate under Section 164 of the CrPC that when the appellant no. 1 arrived for the second time with a weapon he was stopped by her father and brother. She tried to paint a good picture in cross-examination that she has a cordial relationship with the accused person.

13. **PW-2**, **Sushan Thapa**, was the father of the appellant no. 1. He was not present when the first incident occurred as regards the commission of offence under Section 354 of the IPC by the appellant. He deposed that he came to the P.O. when he heard some commotion along with his son and that he saw one of the appellants threatening him. There was a small fight between the appellant no. 1 and PW-2 and his son. The matter was settled and the appellant was taken to his rented house. When the appellant returned on the second time in the evening on the 25th of December, 2021, along with a weapon, PW-2 got hold of him and tried to pacify him and took him back to his house and locked it from outside. The appellant thus started to break the window panes of his house and threatened to burn the house of PW-2.

14. Around 1.30 a.m. later in the early hours of 26th December, 2021, the appellant no. 1 is alleged to have set fire to his house. He, however, admitted that he only saw the appellant no. 1, running away from the house and the appellant no. 2 sitting on his scooty. The fire was extinguished by the family assisted by neighbours. He admitted that he assaulted the appellant no. 1 when he came back with weapons on the

second occasion that evening. He admitted that he had not seen the appellant no. 1 setting fire to his house. He only told the police who arrived at the P.O. that a small fight had taken place between PW-2 and appellant no. 1. He denied having told the police that the appellant was pacified and taken back to his house and the said house was locked from outside. He admitted that the appellant no. 1 and his mother were originally residents of Jammu and had come to settle down in Darjeeling. He also admitted that the residents of the village did not like outsiders settling in their area or setting up a business thereat.

15. On the suggestion of the defence that there was a property dispute with the appellants' family, he denied the same. The defence also suggested to him that the complaint by PW-1 was a concocted one and to unleash a vendetta against the appellant and his family.

16. **PW-3, Shri Gautam Thapa,** who was sleeping that night, could not have stated that the appellant no. 1 set fire to the house of the victim. he admitted that the appellant no. 1 had opened a shop at Gail Bhanjyang, an area in the vicinity of Darjeeling town.

17. **PW-4, Shri Raju Bihani** and **PW-5, Shri Ramesh Ram** were not eye-witnesses to the incident and only saw the burning of the shop.

18. **PW-6, Shri Bimal Rai**, interestingly is a resident of Gail Bhanjyang, a distance of 10 minutes from the P.O.. The prosecution has not been able to establish as to how he was present at the P.O. or heard people shouting after seeing the fire in the house of PW-2. In fact, PW-3

had deposed that people often lit up firewood in winter to keep themselves warm.

19. **PW-7, Shri Shyam Chettri, PW-8, Shri Anil Pradhan** and **PW-9, Mani Subba**, seized the pen drive containing the CCTV footage of the alleged incident. The CCTV was located in the house of PW-8, who gave up such footage at the request of the police. PW-8 confirmed that during winter, every household bonfire lit up to keep them warm.

20. **PW-11, S.I. Nishi Kanta Roy,** was the Investigating Officer who narrated the steps taken by him in course of investigation. The appellants were examined under Section 313 of the Cr. P.C. and denied all the circumstances presented to them from the evidence led by the prosecution.

ANALYSIS OF THE COURT

21. This Court has carefully considered the evidence that has come on record and the arguments of the counsel for the State and the appellants. Several discrepancies are noted in the prosecution case.

22. Insofar as the allegation of offence under Section 354 of the IPC committed by the appellant no. 1, this Court notes that only the evidence of PW-1 was the basis of the conviction of appellant no. 1. As already stated hereinabove, there are several discrepancies and inconsistencies between the complaint, the statement recorded under Section 164 of the Cr. P.C. and the evidence of PW-1 deposed in Court.

Apart from PW-1, there is no other corroboration from any other witness of the incident.

23. In the light of the contradictions and inconsistencies between the complaint, the statement under Section 164 of the Cr. P.C. of the evidence deposed by PW-1, this Court is of the view that the evidence of PW-1 cannot be relied upon. The charge under Section 354 of the Indian Penal Code, must be held as not proved.

24. Insofar as the charge under Section 436 of the IPC, this Court firstly notes that none of the prosecution witnesses actually deposed that they saw PW-1 setting fire to the shop room or the house of PW-1 and PW-2. Two of them have stated that they saw the appellant no. 1 running away from the house. PW-1 herself stated that she saw from the CCTV footage, seized from the house of PW-8 that the appellant, set fire to her house and ran away riding pillion on the scooty which was being driven by PW-2.

25. This Court has examined the said CCTV footage seized by the Investigating Officer. Such CCTV footage does not indicate even remotely that the appellant no. 1 has set fire to the house of PW-1 and PW-2. There is admitted evidence of the house and shop room of PW-1 and PW-2 being on fire and that the same was doused by the PW-1, PW-2 and their family members with the help of local villagers. There is no clear evidence to indicate that any of the appellants have actually committed the act of arson. In the light of the above, it must be held

that there is no clear evidence to implicate either of the appellants under Section 436 of the IPC.

26. As regards the charge under Section 307, this Court once again refers to the inconsistencies in the evidence of the PW-1. Such evidence does not clearly establish that the appellant no. 1 had at all assaulted the victim. The evidence that Rahul had come for the second time along with a weapon to inflict harm and injury on PW-1 and PW-2, is watered down by the evidence of PW-2. The latter admitted in course of trial that he had assaulted the appellant no. 1 and took him to his house and locked such house from outside

27. There is absolutely no evidence whatsoever except for a stand alone and contradictory statement under Section 164 of the Cr. P. C. that the appellants had come to the place of occurrence for the second time in the evening of 25th December, 2021 with a weapon. The allegation of assault by the appellant no. 1 on PW-1 mentioned in the written complaint is not reiterated either in the statement recorded under Section 164 of the Cr. P. C. or the evidence deposed by PW-1 in Court.

28. There are admittedly no injuries suffered by PW-1, 2 and any of the family members. No injury report has been exhibited in the trial court. There is no mention of any injury on PW-1 or 2 by PW-2 in his deposition before the Court. No weapon has been seized by the police. Having regard to the above even the charge under Section 307 of the

Indian Penal Code has not even been remotely established by the prosecution.

29. Insofar as the allegation of the appellants being inebriated on the said day or for that matter being a drug addict, the prosecution has not brought any forensic evidence before this Court. The blood samples of the appellant no. 1 could easily have been procured by the prosecution and sent for chemical analysis to reveal traces of any alcohol or narcotics substance.

30. In the light of the aforesaid discussions, this Court is of the view that the prosecution has miserably failed to prove any of the charges against the appellants.

31. It is in this context that the defense put forth by the appellants in course of cross examination to prosecution witnesses that they opposed any outsider from setting up of a shop or business in their area and that there was a land dispute between the PW-1 and 2 and the appellants, cannot be brushed aside or ignored.

32. For the reasons stated herein above, the impugned judgment and order of conviction dated 18th November, 2022 passed by the trial court is set aside.

33. The appellants shall be set at free forthwith. If the appellants or any of them are on bail, such bail bonds shall be discharged or cancelled forthwith.

34. The appellants, shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the Trial Court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

35. Accordingly, CRA (DB) 60 of 2023 is allowed and disposed of. Consequently, all connected pending applications, if any, are also disposed of.

36. Lower Court records along with copy of this judgment be sent down at once to the learned Trial Court for necessary compliance.

37. Urgent Photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.

(Rajasekhar Mantha, J.)

I agree.

(Reetobroto Kumar Mitra, J.)