

FORM- A
IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE,1st COURT
DAKSHIN DINAJPUR AT
BALURGHAT

Present: Mr. Ansuman Chattopadhyay
 Addl. District & Sessions Judge,1st Court
 Dakshin Dinajpur at Balurghat
 JO Code :-WB00-820.

Date of Judgment: **Thursday, the 30th day of July, 2026**

SESSIONS CASE NO.88 OF 2023
Sessions Trial No. 50 OF 2024
Computer Regn. No. 88 of 2023
CNR:-WBDD01-000792-2023

Details of Crime/FIR/Police Station : Kumarganj P.S.Case No.75 of 2022 Dt.
04.03.2022 under sec.436/34 of the Indian
Penal Code.

Complainant	State of West Bengal
Represented by	Shri Debasish Ghosh Dastidar Ld Addl. Public Prosecutor.
Accused Person	1. Abdul Karim 2. Alamgir Miah 3. Ruhul Amin
Represented by	Shri Arighna Sarkar & Sudip Chatterjee Ld Defence Counsels

FORM -B

Date of Offence	28/02/2022
Date of FIR/Complaint	04/03/2022
Date of Charge-sheet	27/03/2022
Date of Framing of Charge	07/06/2024
Date of commencement of Evidence	20/12/2024
Date on which Judgment is reserved	04/07/2026
Date of the Judgment	30/07/2026
Date of the Sentencing Order, if any	N.A

Accused Details:

Rank of the Accused	Name of the Accused	Date of arrest	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428 of Cr.P.C.
(A-1)	Abdul Karim		Under sec.436/ 34 of the Indian Penal Code	Acquitted	N.A	N.A
(A-2)	Alamgir Miah		Under sec.436/ 34 of the Indian Penal Code	Acquitted	N.A	N.A
(A-3)	Rubul Amin		Under sec.436/ 34 of the Indian Penal Code	Acquitted	N.A	N.A

FORM-- C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

Rank	Name	NATURE OF EVIDENCE
P.W.1	Obaidur Islam	Defacto complainant
P.W-2	Dwijen Mandal	Independent witness
PW-3	Jakir Mia	Co-villager
P.W-4	Lutfar Rahaman	Independent witness
P.W-5	Munmun Khatun Bibi	Wife of the defacto complainant
P.W-6	Moktarul Mia	Co-villager
P.W-7	S.I Sanjib Bhadra	Investigating Officer

B. Defence Witnesses, if any: NA

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

C. Court Witnesses, if any: NA

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Exhibit No.	Items Exhibited
Exhibit-1/1	Signature of P.W-1 Written Complaint

Exhibit-1/2	Endorsement on the written complaint
Exhibit-2/1	Signature of P.W-3 on seizure list dt.05/03/2022
Exhibit-2/2	Signature of P.W-3 on seizure list dt.05/03/2022
Exhibit-2/3	Signature of witness on the seizure list
Exhibit-3	Formal F.I.R
Exhibit-4 & 4/1	Rough sketch map with index

B. Defence: NA

Sr. No.	Exhibit Number	Description
1		

C. Court Exhibits: NA

Sr. No.	Exhibit Number	Description
1		

D. Material Objects: NA

Sr. No.	Material Object Number	Description

J U D G M E N T

1) The instant prosecution case, devoid of any unnecessary details, was initiated on 04/03/2022 by way of a written complaint lodged by the defacto complainant, namely, Obaidur Islam, addressed to the Inspector in Charge, Kumarganj P.S. By way of the said written complaint, the defacto complainant stated to own and run one animal farm, situated on plot no. 1187 of mouja Jhara, admeasuring 11 decimals, more fully described in the schedule of the said written complaint. He has further claimed that he also resided in the said farm and dealt in livestock like, cows and cattle.

2) It has been alleged that on 28/02/2022, at about 11.00 p.m, after having dinner, he was retired to bed in the said farm along with his employee, one Jakir Mia. Suddenly, he sensed that his said farm has been set on fire. Immediately, the defacto complainant and said Jakir Mia came out of their room and found that the aforementioned three accused persons were fleeing away from the said place after having set the entire area on fire, due to their prior animosity with the defacto complainant. Thereafter, the defacto complainant and his aforesaid employee rescued the livestock/ animals and brought them out to a safe place. Upon hearing their hue and cry, neighbouring persons came running to the PO and helped the defacto complainant to douse the fire. It has been mentioned that the fire finally was brought under control at about 2.00 a.m that night.

3) The defacto complainant also averred that due to the said fire, his entire farm was gutted and due to the damage and destruction caused to his property and its water pipelines and other articles of the farm including beddings and utensils he sustained a huge financial loss aggregating to Rs.6,56,000/-. In his written complaint, he had also provided an itemwise breakup of the said financial loss.

4) On receipt of the said written complaint, the concerned P.S authorities initiated Kumarganj P.S Case No. 75/2022 dt. 04/03/2022 for offence under section 436/34 of the Indian Penal Code. Upon completion of investigation, concerned IO submitted charge sheet against all the three FIR named accused persons for the said offence.

5) Subsequently, the case was committed by the Ld. Chief Judicial Magistrate, Dakshin Dinajpur at Balurghat to the Court of Ld. Sessions Judge, wherefrom it was again transferred to this Court for trial and disposal in accordance with law.

6) All the three accused persons entered their appearance before this court. On consideration of C.D and the case record, formal charge was framed against them for the offence under sec.436/34 of the I.P.C. The said charge was read over and explained to the accused persons individually in Bengali, in reply to which they pleaded not guilty and claimed to be tried. The trial was proceeded with accordingly.

7) Defence case, as it transpires from the cross-examination of the prosecution witnesses, examination of the accused persons under sec.313 Cr.P.C and the argument advanced by Ld. Defence Counsel, was that of plea of absolute innocence, false implication and denial of the prosecution story.

8) POINTS FOR DETERMINATION :-

- i) Whether or not on 28/02/2022, at about 11.00 p.m, at Jhara mouja under the jurisdiction of Kumarganj P.S, in furtherance of their common intention, the accused persons had caused mischief by setting fire to the farm of the defacto complainant, namely, Obaidur Islam, causing him financial damage worth of Rs.6,56,000/-, thereby committing offence under sec. 436/34 of the Indian Penal Code?
- ii) Whether or not the said charge/allegation against the accused persons has been established by the prosecution beyond shadows of all reasonable doubt ?

9) EVIDENCE ON RECORD

In order to establish its case, the prosecution had produced the following witnesses:--

- i) Defacto complainant, Obaidur Islam.....P.W-1
- ii) Dwijen Mondal.....P.W-2
- iii) Jakir Mia.....P.W-3
- iv) Lutfar Rahaman.....P.W-4
- v) Munmun Khatun Bibi.....P.W-5
- vi) Moktarul Mia.....P.W-6
- vii) SI Sanjib Bhadra.....P.W-7

10) All the aforesaid seven witnesses were duly cross examined in fullon behalf of the accused persons.

11) EXHIBITED DOCUMENTS

Apart from the aforementioned verbal evidence of witnesses, prosecution had also banked upon the following documents which were proved and marked as Exhibits during trial of this case :-

- i) Signature of P.W-1 on Written Complaint.....Exhibit-1/1
- ii) Signature of P.W-3 on seizure List dt.05/03/2022.....Exhibit-2/1
- iii) Signature of P.W-3 on the seizure list dt.05/03/2022....Exhibit-2/2
- iv) Signature of witness on seizure List.....Exhibit-2/3
- v) Formal FIR.....Exhibit-3

- vi) Endorsement on the written complaint.....Exhibit-1/2
- vii) Rough sketch map with index.....Exhibit-4

DECISION WITH REASONS

12) For the purpose of convenience and brevity and to avoid undue repetition, both the aforementioned points are taken up together for discussion simultaneously in the light of the evidence adduced by the prosecution witnesses.

13) Prior to evaluating the merits of the case, let us minutely scrutinise the evidence as adduced individually by each of the witnesses.

14) In his examination in chief as P.W-1, the defacto complainant, Obaidur Islam identified the accused persons in open court and claimed to have lodged the complaint of this case. He asserted that the incident took place on 28/02/2022 at about 11.00 p.m. He mentioned that he, along with one Jakir Mia, was at a little distance from the P.O. He further added to have two poultry farms and one cowshed in his said farm and stated that some haystack was also garnered lying there. This witness asserted that the accused persons set the said farm on fire. He testified to have seen the entire occurrence from a little distance. He averred that upon hearing his cries for help, the villagers rushed to the said place and the fire was extinguished and animals were rescued. The witness contended to have sustained a loss of haystacks, pipelines and food packets used for the poultry. The witness claimed that his farm was situated in Jhara mouja under plot no. 1187. He mentioned to have lodged the written complaint about 2/3 days after the date of the incident and his said delay in filing the FIR was caused since he was taking stock of the loss sustained in the said fire. As per his deposition, the signature of the witness on the written complaint was marked as Exhibit-1/1. He stated to have been duly examined by the IO of this case.

15) When subjected to cross examination, the P.W-1 contradicted himself by claiming the incident to have been taken place on 05/02/2022. He further mentioned that his wife, sons, brothers, mother and brother's wife - all stayed with him at his house. He further stated that the local Gram Panchayat office was situated at a distance of 2.5 k.m from the PO. The witness admitted not to have handed over any document relating to the farm or any trade license to the IO. He also acknowledged the fact that in his written complaint, he did not mention about the existence of any poultry farm on his said land. The witness averred that he had not suffered any loss regarding his livestock. The P.W-1 further mentioned that the police officials seized some pipeline articles from the PO. This witness deposed that he knew Lutfar, Dwijen, Jakir, Sadin were amongst those who had their houses at a distance of 500 to 1000 meters from his house. He added that his poultry farm was

having a boundary of net with a main gate which remained closed under lock and key. He also specified to have had 26/27 cattle at the farm. The witness averred that there was no electricity over the PO by way of street light to illuminate the poultry farm. The witness negated the suggestion that he did not have any such poultry farm as claimed by him or that no pipeline or bedding or furniture were burnt in the aforesaid fire or that he had incorrectly exaggerated the amount of damage caused to his farm only for the purpose of getting an insurance coverage. The witness claimed to have seen the accused persons running away from the PO but, admittedly did not see them setting the fire. The P.W-1 also deposed to the effect that on the very date of incident, police officials were informed and visited the PO. He has admitted that no member of his family had intimated police personnel and it was so done by one Civic Volunteer.

16) P.W-2, Dwijen Mandal stated in exact terms about the case incident as mentioned by the PW-1. Inadvertently, he also claimed to have his own signature on the written complaint, which signature (actually belonging to the defacto-complainant) was marked as Exhibit-1/1 (as per the evidence of PW 1). As per the deposition of P.W-2, his signature on the seizure lists dt. 05/03/2022 were marked as Exhibit-2/1 & 2/2. The instant witness also identified the accused persons in open court.

17) While facing cross examination, P.W-2 stated his house to be situated at a distance of 500 meter from the P.O. He admitted that he was not an eyewitness in the case incident and only visited the PO on the next day. The witness also denied any knowledge about the contents of the seizure list on which his signatures were procured by the police officials. He also could not throw any light on the articles that were specifically seized by the police officials. The witness had no clue as to who had set fire on the farm. P.W-2 further mentioned that he knew Jakir Mia, who occasionally used to work in the said farm during daytime. Curiously enough, in a deviation from the FIR, this witness talked about two separate premises, one of which was burnt to the extent of two-third while the other was burnt to the extent of three fourth. He denied the suggestion that no such farm was set on fire by the accused persons.

18) The key witness of the instant case, projected in the written complaint as an eyewitness, namely, Jakir Mia was produced as P.W-3 herein, who expressed his acquaintance with the defacto complainant and also claimed that he used to work at his farm. The witness further asserted that one night about three and half years back, an incident of fire had taken place in which the said farm was set ablaze. However, P.W-3 did not know as to how the said fire had broken out. He too identified the accused persons in open court.

19) In his cross examination, P.W-3, Jakir Mia clarified that he used to work at the said farm during day time only. He mentioned that the accused persons were known to him as co-villagers and specified that his own house was situated at a distance of half a kilometer from the said farm. In contradiction to the averments made in the FIR, P.W-3 had clearly and unambiguously stated that he did not witness the case incident with his own eyes.

20) P.W-4, Lutfar Rahaman, stated in his evidence in chief to have known the defacto complainant as well as the accused persons, since all of them were his co-villagers. The witness stated to have heard that the cattle-farm of Obaidur had caught fire about 4 years back, but he did not have any knowledge as to how and by whom the farm was set on fire. The witness identified his own signature on a seizure list dated 05/03/2022, which signature was marked as Exhibit-2/3 in this case.

21) During his cross-examination, P.W-4 denied any knowledge about the contents of the said seizure list and reiterated to have known the accused persons as they were his co-villagers.

22) P.W-5, wife of the defacto complainant, Munmun Khatun Bibi deposed that his husband Obaidur had lodged the written complaint of this case against Karim and his brothers whose names she failed to recollect. She identified all the accused persons in open court and contended that the case incident took place one night in the year 2021, at about 12 to 12:30 a.m. The witness further mentioned to have heard that their cattle and poultry farm had caught fire and upon reaching there, she found the said farm to be burning. She also added that upon hearing their hue and cry, co-villagers also arrived there and the fire was put off by them together. The witness asserted to have learnt that accused Karim had set the said farm on fire and specified that due to the said fire they sustained a huge loss to the tune of Rs. 7.00 to 8.00 lacs due to damage of articles as well as livestock.

23) While facing cross examination, P.W-5 stated that their farm was situated in front of Jhara Primary School and distance between the said farm and their house was less than one kilometer. She mentioned that at the relevant point of time, she was present at her house only. The witness failed to recollect the names of the co-villagers who gathered at the PO and helped them in putting off the fire. She stated to have heard from her husband that accused Karim had set fire to their farm. She mentioned that during her interrogation by the IO, she had duly disclosed to have learnt from her husband that accused persons set their farm on fire. The witness failed to tell the particulars of the subject or the date of their purchase of the same. She further averred that about 3 to 4 cattle had died in the said fire and admitted to have not mentioned before the IO about the quantum of loss suffered by them in the said fire. P.W-5 refuted the suggestions that herself or her husband never had any

cattle or poultry farm or that the said farm was never set on fire or that they did not suffer any loss of livestock in the said fire or that the accused persons were in no way involved in the case incident or that her husband had initiated this case falsely only to obtain some compensation from the insurance company.

24) P.W-6, Moktarul Mia, in his examination in chief, claimed to have known the defacto complainant of this case and the accused persons as they were all his co-villagers. This witness stated to have heard that about 2/3 years back, the cattle and poultry farm of Obaidur had caught fire. He did not know as to how said property caught fire or who had set the same on fire. The witness contended to have never been interrogated by the IO about the alleged case incident. Since P.W-6 did not venture to support the prosecution case, Ld. Advocate for the accused persons did not find the necessity to cross-examine the said witness.

25) Finally, the I.O of this case, namely, S.I of Police Sanjib Bhadra stated in his evidence in chief on 04/03/2022, during his tenure at Kumarganj P.S in the said capacity, one Obaidur Islam approached the Police Station with his written complaint. He added that on the basis of the said written complaint, the formal FIR was registered and specific police case bearing no. 75/2022 was initiated on 04/03/2022. Based on his deposition, the formal FIR and the endorsement made by the concerned I/C on the written complaint were marked as Exhibits-3 & ½ respectively. The witness stated that he was entrusted with the investigation of this case and on taking over investigation, he interrogated the defacto complainant as well as the scribe of the written complaint, visited the PO, prepared sketch map thereof along with index, collected some articles from the PO under preparation of a seizure list, interrogated the available witnesses, recorded their statements under sec.161 Cr.P.C, arrested the accused, Abdul Karim Mia, before finally submitting his charge sheet bearing no.87/2022 on 27/03/2022 against all three FIR named accused persons. On the basis of his evidence, rough sketch map of the PO along with index thereof and the seizure list prepared by this witness were marked as Exhibits-4 series and 2 respectively.

26) When cross examined, the witness stated that the FIR of this case was lodged on 04/03/2022 at about 20:15 hours, while the alleged case incident had taken place on 28/02/2022. He mentioned to have examined the defacto complainant and the scribe on 04/03/2022 itself, while P.W-5 Munmun Khatun Bibi was interrogated by him on 16/03/2022. The witness acknowledged the fact that P.W-5 never disclosed before him that her husband intimated her that the accused Karim had actually set fire to their farm. The witness admittedly did not collect any document regarding the case plot of the farm as mentioned in the written complaint. He also admitted to have never seized any Trade Licence in respect of the said farm

from the defacto complainant. The witness also stated that the wife of the defacto complainant, namely, Munmun Khatun never stated before him about the death of any livestock in the said fire. Finally, P.W-7 negated the suggestion to have not conducted the investigation of this case properly or that he has submitted charge sheet falsely against the accused persons on the basis of mere table work.

27) In the course of hearing argument, Ld.P.P in Charge harped upon the huge loss sustained by the defacto complainant as projected in the written complaint(FIR) and also banked upon the depositions of P.W-1, P-5 and P.W-7 thereby claiming that the allegations against the accused persons have been duly established by the said verbal evidence coupled with the seizure list marked Exhibit-2.

28) On his part, to counter the said argument, Ld. Defence Advocate emphasized on the loopholes, lacunae and inconsistencies in the depositions of witnesses produced by the prosecution.

29) Considered the argument as advanced by Ld. Advocates for both the adversarial parties concerned and carefully perused the materials on record including the testimonies of the witnesses and the exhibited documents.

30) At the very inception, I am constrained to hold that there is an unexplained delay of about four days in lodging the FIR. No effort has been visibly made on the part of the prosecution to clarify the said delay. PW1 made a feeble attempt to defend the said delay by stating that he was busy in computing the loss sustained, for which the said delay was caused. But on an objective analysis, the said explanation does not appear to be convincing, as it was open to the defacto-complainant to come up with his complaint any sooner with a rough estimate of the loss so suffered.

31) The testimonials of the witnesses also suffer from serious variances on pivotal aspects of the case. None of the independent witnesses had effectively supported the prosecution version of events. The evidence in chief of the PW 2 was a true copy of the deposition of PW 1 – word by word and sentence by sentence, so much so, that it gives an impression of a typographical error in recording the same by the Court itself. The PW 2 even claimed that the signature (of the PW 1) on the written complaint belonged to him and the same was again marked as Exhibit 1/1 in the same way as it was marked as per the evidence of the PW 1. In his cross-examination, the said witness unequivocally admitted not to have seen the incident of fire and visited the place only on the next day. He had no specific knowledge about the contents of the seizure list on which the police personnel procured his signature. He had also pleaded ignorance about the person/s who might have set the farm on fire. PW 4 and PW 6 also followed suit by denying any knowledge or clue regarding

who and in what manner had set the farm on fire. The said witnesses were also ignorant about the contents of the seizure list bearing their signatures.

32) The wife of the defacto-complainant, as PW 5, in contradiction to the FIR and the evidence of PW1, had stated that the alleged case incident took place in the year 2021, 3 or 4 cattle had died in the said fire and that the loss sustained amounted to Rs. 7.00 to 8.00 lacs. She admittedly did not see the accused persons at the PO and heard about them from her husband only. For the said reasons, the evidence of the PW 5 does not inspire confidence.

33) The worst setback for and blow to the merits of the prosecution case came from the evidence of PW 3, Jakir Mia who had been asserted in the FIR to have been with the defacto-complainant when, together they saw the accused persons setting the farm ablaze. In his deposition, the witness had emphatically denied to have seen the case incident while it took place. He also contended to have known the accused persons as they were his co-villagers and never deposed to have seen them at the PO as the miscreants causing the mischief.

34) The PW 1 himself was also not very consistent regarding the date of incident. In his examination in chief, he claimed the incident to have taken place on 28-02-2022 but during his cross-examination, had departed from the same by asserting the date to be 05-02-2022.

35) In view of above, it is apparent that involvement of the accused persons in the case incident of fire at the farm of the defacto-complainant could not be established by way of clinching evidence.

36) Due the aforementioned irreconcilable anomalies, contradictions and differences in the evidences on the key aspects of the case, coupled with the non-chalant and perfunctory manner of depositions of the independent witnesses (PW 2, PW 4 and PW6) and upon sifting through the virtually uncorroborated evidence of the PW 1, I am constrained to hold that the prosecution endeavour to prove the case failed to transcend the barrier of “reasonable doubts” and as such, the accused persons are entitled to a benefit of doubt.

37) The ingredients of the alleged offence had not been established with convincing proof and the contents of the FIR also could not be transformed into cogent evidence.

38) In the result, the prosecution case fails and the accused persons deserve to be acquitted.

39) Hence it is,

ORDERED

that all the three accused persons, namely, *Abdul Karim, Alamgir Mia and Ruhul Amin are found not guilty of the offence punishable under Section 436/34 of the Indian Penal Code and they are hereby acquitted under Section 235(1) of the CrPC.*

Accused persons are set at liberty forthwith and be released at once of their respective bail bonds, if any.

Seized alamats, if any, be disposed of in accordance with law after expiry of the period of appeal, if no appeal is preferred.

Dict. & Corr. by me.

**Addl. Sessions Judge,
Ist Court, Balurghat,
Dakshin Dinajpur.**

**Addl. Sessions Judge,
Ist Court, Balurghat,
Dakshin Dinajpur.**