

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

**C.R Case No. 433/2012**

Under Section- 498(A)/406 of I.P.C.

Smt. Rekha Bhattacharjee  
W/O: Sri Jaganath Das  
R/O: Ward No-1, Dhekiajuli  
P.S: Dhekiajuli  
District: Sonitpur

..... Complainant

-vs-

Sri Jaganath Das  
S/O: Sri Ganesh Das  
R/O: Putoni Hiloidari Gaon  
P.S: Nagaon Sadar  
District: Nagaon

..... Accused person

**Present**

**JUHI GOGOI, B. Sc, LL.M, A.J.S.**  
**JUDICIAL MAGISTRATE FIRST CLASS,**  
**Tezpur::Sonitpur**

For the Complainant :- Mr. Tapan Ghosh, Ld. Counsel  
For the Defence :- Mr. Imtiaz Ansari, Ld. Counsel  
Charge framed on :- 10.08.2015.  
Date of Evidence :- 15.06.2015, 07.06.2016, 29.09.2016 & 24.01.2019  
Date of Argument :- 23.04.2019  
Date of Judgment :- 07.05.2019

**JUDGMENT**

1. The prosecution in this case had its genesis with the lodging of the complaint petition by the complainant Smt. Rekha Bhattacharjee wherein she has alleged that on 26.04.2011 she got married with the accused Sri Jaganath Das as per the Hindu

rites and ritual and thereafter, both were living as husband and wife. Just after three months of their marriage, when she had suffering from appendix pain, the accused took her in a hospital and all the expenses were borne by the accused and her in-laws. She stated that when she went back to her matrimonial house, the accused demanded her all the expenses of her treatment and asked her to bring the same from her parental house and when she denied to give the demanded money, the accused with the instigation of his parents started to harass her mentally as well as physically. She further stated that the accused came in an intoxicated state and without any reason started to assault her. She also stated that at the time of Durga Puja, during the first year of their marriage, her mother had called her and her husband to visit her parental the house to see worship but the accused refused to go and when she wanted to be her parental house, the accused had assaulted her and later when the accused brought her to her parental house to see Pooja, the accused again started to harass her and when her mother raised objection, she was also abused by the accused in slang words. After celebrating Durga puja, she again went back to her matrimonial house. After going back to her matrimonial house, she came to know that she was pregnant. My husband and his relatives also tried to abort the child in her womb in her matrimonial house. She further stated that the accused person and his relatives wanted to kill her child by giving thymine since it was a girl child in her matrimonial house and thereafter, also started to harass her physically. After getting release from the hospital after birth of her child, she stayed in the house of the accused person for one night and then she came back to her mother's house at Dhekiajuli along with her mother. Thereafter the accused person stopped contacting with her. Hence, the case.

2. After receiving the complaint petition, complainant Smt. Rekha Bhattacharjee was examined u/s- 200 of CrPC and two CW's namely, Mrs. Sila Bhattacharjee and Mr. Rupam Bhattacharjee were examined u/s- 202 of CrPC and after finding a prima-facie case against the accused person, namely, Sri Jaganath Das, my Ld. Predecessor took cognizance against him u/s-406/498(A) of IPC and summons was issued against the accused person.

3. The accused person after receiving summons appeared before the court and was allowed to go on bail and after hearing both sides, the charge u/s- 406/498(A) of

IPC were framed which were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

4. In this case, the complainant has adduced evidence of as many as three witnesses to prove the case against the accused person and after closing of complainant side evidence, the statement of the accused person u/s- 313 of CrPC were recorded; the defence plea was of total denial, defence sought to adduce evidence and examined the accused as DW-1 in support of their case.

5. **Points for determination:**

- a. **Whether the accused person being the husband of the complainant- Smt. Rekha Bhattacharjee since after marriage, entrusted with her "Stridhan articles" given to her at the time of marriage, which are kept in his, dishonestly misappropriates the same and thereby committed an offence punishable u/S-406 of I.P.C?**
- b. **Whether the accused person after marriage, being the husband of the complainant- Smt. Rekha Bhattacharjee had subjected her to cruelty by demanding dowry and torturing her physically and mentally and thereby committed an offence punishable under section 498(A) of IPC?**

**ARGUMENT**

I have heard arguments from both sides at length and perused the case record in its entirety. The Ld. Counsel for the accused person submitted that the complainant side has not been able to prove the case against the accused person as no any independent witnesses has been examined and the case has been settled between them outside court; as such the accused person needs to be acquitted. On the other hand, the Ld. Counsel for the complainant submitted that the case has been amicably settled between both the parties as they have filed for mutual divorce.

**DISCUSSION, DECISION AND REASONS THEREOF:-**

6. After introspection of the testimonies of the complainant side witnesses, it is seen that the complainant herself admitted in her evidence that the accused took her to E.M.M. Hospital for her operation and all the expenses were borne by her in-laws. It is stated by the complainant that the accused assaulted her and tortured her mentally by demanding money which he had spent in her treatment. She also stated that the accused also demanded dowry but in her cross examination she has clearly stated that in her complaint petition i.e. Exhibit "A" she had not mentioned that her husband demanded the expenses of the operation. As such her statement is an afterthought and marked by embellishment.

During her cross examination, PW-1 also stated that she had not informed about the demands by her husband to her family members. Also, **PW-1 clearly admitted during her cross-examination that she had not examined herself by a doctor for the assault sustained by her which creates a doubt as to the sustaining of injuries by her as a result of the assault made by the accused.** Had it been true, she must have went to the doctor for treatment.

7. PW-2, Mrs. Sila Bhattacharjee, who is the mother of the complainant has stated that her daughter was admitted in EMM Hospital and it was the accused who had borne all the expenses of the hospital. Moreover, the complainant side has not adduced the evidence of any independent witnesses.

8. The essence of the offence under section 498(A) of IPC lies in the explanation of Section 498(A) of IPC which defines cruelty as follows:-

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

9. Thus, as per Clause "a" the situation created by the conduct of the accused person must be such which the accused knows that it would drive the wife to commit suicide or to cause grave injury or danger to her life, limb or health. The word likely appearing in Clause "a" conveys the idea that the accused has knowledge that his conduct would result in the consequences envisaged therein.

10. In the present case, from the perusal of the complainant side evidence, it is seen that there is **no mention of specific dowry demand** on the part of the accused. Moreover, there is no any evidence on record to show that the conduct of the accused was of such a nature which forced the complainant to commit suicide and there is no any medical documents to show that the complainant sustained injuries. On the other hand, the accused Jaganath Das who has been examined as DW-1 has stated in his evidence that after the birth of their child, the mother of the complainant took her and since then the complainant is staying in her paternal house. He also stated that he went to bring his wife back many a time but his wife could not come with him. He had also lodged one case in which the Court has ordered his wife to stay with him but she refused the same. DW-1 also stated that after marriage he had taken good care of his wife and had not tortured her in any way. He also stated that both of them has filed a mutual divorce vide T.S (M) Case No. 02 of 2019. DW-1 also stated that he had returned all the "Stridhan articles" to his wife and they have mutually settled the matter.

11. **It is pertinent to mention herein that the cross examination of the DW-1 has been declined by the complainant side, which means that the evidence of PW-1 remains unrebutted and in absence of any rebuttal, the same is considered to be true.** Moreover, on perusal of the case record, it is seen that on 24.01.2019 the complainant Smt. Rekha Bhattacharjee has filed a Petition bearing No. 347/19 in which she stated that she and the accused person have jointly filed a divorce application, hence, she has no grievances against the accused person in the instant case and she does not want to proceed with the case against him.

12. In the instant case charge u/s-406/498(A) of IPC has already been framed against the accused person and as the offences are non-compoundable in nature, this Court has kept the petition for taking into consideration at the time of delivering

judgment. Now, considering all the above aspects and also the fact that a mutual settlement has been arrived at between the parties and complainant side has totally failed to prove the case against the accused person, the accused deserves to be acquitted.

13. In the light of above discussions and reasons, I am of the opinion that the complainant has failed to prove the case against the accused person beyond reasonable doubt under section-406/498(A) of IPC and hence the accused person deserves to be acquitted of the offences leveled against him.

**ORDER**

14. Situated thus, the accused person, namely, Sri Jaganath is hereby acquitted from this case and thereby set at liberty forthwith.

15. The bail-bond executed in favour of the accused person is extended for a further period of six months from this date as per Section- 437(A) of CrPC.

16. Pronounced by me in this open Court, on this the 07<sup>th</sup> day of May, 2019 and given under my hand and seal of this court.

**JUHI GOGOI**  
**JMFC, TEZPUR**

Dictated and corrected by me:-

**(Smt. Juhi Gogoi)**  
**Judicial Magistrate First Class,**  
**Sonitpur: Tezpur**

***Dictation taken and transcribed by me:***

***Sri Janmoni Deka (Steno)***

**A P P E N D I X**

**COMPLAINANT SIDE WITNESSES**

1. PW 1 :- Smt. Rekha Bhattacharjee, the Complainant
2. PW 2 :- Mrs. Sila Bhattacharjee,
3. PW 3 :- Mr. Rupam Bhattacharjee,

**COMPLAINANT SIDE EXHIBITS**

1. Exhibit A :- Complaint Petition
2. Exhibit A (1-7) :- Signatures of the Complainant

**DEFENCE WITNESSES**

1. DW 1 :- Sri Jaganath Das

**DEFENCE EXHIBITS**

Nil.

**JUHI GOGOI  
JMFC, TEZPUR**