

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

G. R Case No: 2646/11

U/s 498-A IPC

State

Vs

Sri Gobin Nath

S/o Chandra Kanta Nath,

R/o Moilagaon, P.S.- Tezpur

.....Accused person

Present: Bijaya Khakhlary

J.M.F.C. ,Tezpur, Sonitpur

Advocates appeared:

For the State: Mr. J. Dey

For the accused: Mr. P.K. Sharma

Evidence recorded on: 09.10.2013, 17.01.2014, 10.03.2014, 25.04.2014,
03.06.2014, 03.09.2014, 03.03.2015

Argument Heard On: 23.04.2015

Judgment delivered on: 18.05.2015

JUDGMENT

1. The informant Sri Jadav Nath had lodged an ejahar before the Bihaguri O.P. on 07.12.2011 stating inter alia that the accused is his brother in-law. That his sister Rupali Devi informed him over telephone that the accused had tortured her physically since the previous day in demand of dowry and to bring money from her parental house and had confined her in a room and had threatened her to cause her death and therefore she asked him to rescue her and take her back . It is stated that when he sent his sister in-law to the house of the accused, the accused assaulted Rupali Devi in front of her.

2. The ejahar was received and registered as Tezpur PS case No. 1359/11 u/s 498-A IPC.

3. The I/O after due investigation of the case submitted charge sheet u/s 498-A IPC.

4. Copy of the relevant documents were furnished to the accused person.

5. On perusal of the case record sufficient material u/s 498-A IPC was found against the accused person and accordingly a formal charge was framed under the above section which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

6. The prosecution has examined eight witnesses . The statement of the accused u/s 313 CrPC is recorded. The defence side adduced no evidence and pleaded for total denial.

POINTS FOR DETERMINATION:

i). Whether the accused person, being the husband of Smt. Rupali Devi subjected her to cruelty in demand of dowry on 07.12.2011 and prior to that day and thereby committed offence u/s 498-A IPC?

7. I have heard the oral arguments put forward by both the Counsels. I have also gone through the entire evidence available on record. My discussion and reasons for the decision are discussed below.

8. DISCUSSION, DECISION AND REASONS THEREOF:

9. PW1, Sri Jadav Nath who is the informant deposed that his sister Rupali Devi got married to the accused four years back. He stated that whenever his sister Rupali wished to come to her parental house, the accused used to ask for money. On the day of incident two days prior to PW1's marriage when Rupali Devi wanted to come to her parental house the accused resisted her and assaulted her. When his sister Rupali Devi informed him about it telephonically, PW1 asked his sister in-law Kalpana Devi to go to her house, and accordingly when Kalpana Devi went to the house of the accused, the accused assaulted Rupali Devi in front of Kalpana Devi. Then Rupali Devi asked him over telephone to bring her from there or else the accused would cause her death. Then he hired a vehicle and went to police station, lodged an ejarahar and brought his sister back home with the help of police. He stated that at that time Rupali Devi was pregnant of seven months.

10. In cross examination PW1 denied the suggestion that he did not state before police that after two days of the day of incident he had marriage and he invited his sister and then the accused asked for money and assaulted his sister. He denied the suggestion that he did not state before police that his sister asked him over telephone to take her back or else the accused would cause her death. He denied the suggestion that he had not stated before police about the amount of money demanded by the accused.

11. PW2, Smt. Rupali Devi who is the victim deposed that since after seven months of the marriage the accused started to assault her in demand of money. She stated that the accused used to abuse her even on flimsy grounds and he never allowed her to visit her parents' house, and when her family members used to visit her, the accused used to rebuke them. During her pregnancy of five months, one day when she was talking with her cousin over mobile phone, the accused slapped her in doubt. She stated that though she brought two/three times Rs.5,000/- or Rs.10,000/- from her parental house, but the accused demanded more money. She stated that with the money which she brought from her father, the accused started a *murgi* farm .

12. In cross examination PW2 stated that in her matrimonial house there are her husband and his mother only. She denied the suggestion that she had not stated before police that during her pregnancy of five months, one day when she was talking with her cousin over mobile phone, the accused slapped her in doubt. She denied the suggestion that she had not stated before police that when her family members used to visit her, the accused used to rebuke them. She stated that she could not remember on which day she brought Rs.5,000/- or Rs.10,000/- from her parental house. She denied the suggestion that she had stated before police that the accused repaid the amount taken for starting *murgi* farm. She stated that the police got her medically examined for the tortures. She denied the suggestion that she had not stated either in her statement under section 164 Cr.P.C. or before police what was the amount demanded by the accused. She stated that the accused wanted to take her back but she stated that she would not go till his mother is alive.

13. PW3, Sri Pranjal Nath deposed that the accused is his sister in-law. He stated that he heard that the accused used to torture PW2 physically and mentally. He stated that on the day of incident he was taken to the house of the accused by Jadav Nath along with Anil Nath and police and Jadav Nath took away his sister, beside this he did not know anything . At this stage, the accused was declared hostile by the prosecution.

14. PW4, Smt. Kalpana Devi deposed that PW1 informed her telephonically that a quarrel had taken place between the accused and PW2

regarding some money and PW1 asked her to bring back PW2 with permission of her mother in-law. She stated that when she went to meet PW2, she was sleeping as the accused had beaten her the previous night. She stated that PW2 asked her to take her back or else the accused would cause her death. She stated that on the day of incident the accused altercated with his mother and PW2 and then slapped PW2 thrice due to which PW2's earring fell from her ears.

15. In cross examination PW4 denied the suggestion that she had not stated before police that PW1 informed her telephonically that a quarrel had taken place between the accused and PW2 regarding some money and PW1 asked her to bring back PW2 with permission of her mother in-law. She denied the suggestion that she did not state before police that when she went to meet PW2, she was sleeping as the accused had beaten her the previous night.

16. PW5, Sri Bhaskar Mannash deposed that the accused stays in front of his house. He state that he saw good relation between the accused and PW2 and he has also seen them working together in field. He stated that on the day of incident in the morning time, PW2 called him near and told him that the accused used to torture her. On being asked the accused denied. He stated that he saw police coming to PW2's house and taking her away to her parental house. He stated that he had not seen any quarrel between PW2 and the accused. In cross examination PW5 stated that when police called him he saw PW2 in good health.

17. PW6, Sri Basanta Nath deposed that he stays near the house of the accused. He stated that he had no knowledge about the incident. He has been declared hostile by the prosecution. He stated that police had not recorded his statement u/s 161 Cr.P.C.

18. PW7, Sri Rimon Basumatary deposed that he heard from his friend Pranjal Nath that one girl from Hugrajuli has been married to a person of their village and he used to beat his wife brutally. He stated that he saw police coming to their house. In cross examination he stated that he did not know that girl.

19. PW1 though stated in his evidence before Court that after two days of the day of incident he had marriage and he invited his sister(PW2) and then the accused asked for money and assaulted his sister, and that PW2 asked him over telephone to take her back or else the accused would cause her death, but the investigating officer(PW8) has confirmed that the said witness had not stated so before him in his statement u/s 161 Cr.P.C. Similarly PW2 has stated in her evidence before Court that during her pregnancy of five months, one day when she was talking with her cousin over mobile phone, the accused slapped her in doubt but the investigating officer(PW8) has confirmed that the said fact was not stated before him in her statement u/s 161 Cr.P.C. Another important witness PW4 though deposed before Court during trial that when she went to meet PW2, she was sleeping as the accused had beaten her the previous night, but the investigating officer has confirmed that she had not stated so before him. Surprisingly PW2, the victim herself had not stated about this fact.

20. Again PW1 has stated that when PW2 informed him telephonically that the accused assaulted her, PW1 asked PW4 to go to her house, and accordingly when PW4 went to the house of the accused, but the accused assaulted PW2 in front of PW4. PW4 has stated that PW1 informed her telephonically that a quarrel had taken place between the accused and PW2 regarding some money and PW1 asked her to bring back PW2 with permission of her mother in-law. PW4 also stated that the accused slapped PW2 thrice due to which PW2's earring fell from her ears. But surprisingly the victim (PW2) has not stated anything about these facts.

21. PW2 stated that the police got her medically examined for the tortures. On perusal of medical report, exhibit-3 it is seen that PW2 was examined on 8.12.2011 at Bihaguri PHC and no any superficial injury sign was found on her body. Medical report has not supported PW2 as regard physical torture.

22. The Learned defence counsel argued that to bring home the charge u/s 498-A IPC there must be available on record some material and cogent evidence that the complainant was subjected to cruelty as defined in

explanation (a) and (b) of section 498-A IPC . In support of his contention the Learned Counsel relied upon the case of ***Girdhar Shankar Tawade Vs. State of Maharashtra AIR 2002 SC 2078***. He also argued that offence must be proved beyond reasonable doubt and any doubt must go in favour of the accused, in support of this the Learned Counsel cited the case of ***Dhanu @ Dhananjay Debnath and others vs. State of Tripura (1999) 1 GLR 421***

23. I have carefully gone through the abovementioned case Laws. As per explanation (a) of section-498-A IPC, cruelty involves three specific situations which are i) to drive the woman to commit suicide or ii) to cause grave injury or iii) danger to life, limb or health, both mental and physical. In explanation (b) there is absence of physical injury but harassment of the woman 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.

24. In the present case, from the evidence of witnesses including the victim(PW2) it is apparent that there was no such kind of mental and physical torture so as to amount to cruelty under explanation(a). Medical evidence too has not supported any such kind of torture. PW3 and PW6 are declared hostile, they have not at all supported the prosecution case. PW5 an independent witness who is a neighbor of the accused, has stated that he saw good relation between the accused and PW2 and it appears from his evidence that on 07.12.2011 when PW1 rescued PW2 from the accused with the help of police there was no any injury on her body which is also evident from medical evidence. PW7 though is an independent witness he did not have any specific knowledge about the incident.

25. As regard harassment to PW2 in demand of dowry is concerned, though PW2 stated in her evidence that she brought two three times Rs.5,000/- or Rs.10,000/- from her parental house, the other witnesses have not supported this fact. PW1 has just stated that the accused used to ask for money, but whether any money was given or not is not known from his evidence. Similarly PW4 has stated that there was quarrel between the accused and PW2

regarding some money, but from her evidence it is not known whether or not there was any demand of money. From the evidence of PW2 it is apparent that with the said money the accused started a *murgj* fram . Though PW2 has denied that she had stated before police that the accused repaid the amount taken for *murgj* farm, but the investigating officer(PW8) confirmed that she stated before him that the accused repaid the amount taken for *murgj* farm. If the amount taken for *murgj* farm was repaid later on, it can not be considered as dowry. Again in her cross examination PW2 herself has admitted that the accused wanted to take her back but she told him that she would not go with him till her mother in-law is alive, and so, it is doubtful whether she left the house of the accused of her own or due torture in demand of money. Thus, that PW2 was harassed by the accused in demand of dowry is not established.

26. Under the above facts and circumstances, I am of the opinion that the Prosecution has failed to establish the case u/s 498-A IPC. Hence the accused person is acquitted from the charge u/s 498-A IPC and set at liberty.

27. Bail bond and affidavit furnished by the bailer is extended for a period of six months from today.

Given under my hand and seal of this Court on the 18th day of May, 2015 at Tezpur, Sonitpur.

Smti Bijaya Khakhlary
JMFC, Tezpur

APPENDIX

Prosecution witnesses:

PW1— Sri Jadav Nath(informant)

PW2— Smt. Rupali Devi(victim)

PW3—Sri Pranjali Nath

PW4—Smt. Kalpana Devi

PW5—Sri Bhaskar Mannash

PW6—Sri Basanta Nath

PW7—Sri Rimon Basumatary

PW8—Sri Surendra Kr. Baruah(I.O.)

Exhibits for the prosecution

Ext.1.....ejahar

Ext.2.....statement of victim recorded u/s 164 Cr.P.C.

Ext.3.....medical report

Ext.4.....charge sheet

Defence witness :

Nil

Exhibits for defence

Nil

Smti Bijaya Khakhlar

JMFC, Tezpur