

DISTRICT: SONITPUR

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

G.R. Case No. 2222/2012

U/Ss. 498-A/323 IPC

SH. BICHYUT KALITA

S/O LATE KIRAN KALITA

VILL: KALITA GAON, NO. 1

P.S. TEZPUR

DISTRICT: SONITPUR

ASSAM

- ACCUSED

VERSUS

STATE OF ASSAM

-PROSECUTOR

PRESENT: JAYASHREE BORA, AJS

JUDICIAL MAGISTRATE FIRST CLASS

SONITPUR, TEZPUR

ADVOCATES APPEARED

FOR THE PROSECUTION: Sh. Ashok Sharma, APP

FOR THE ACCUSED: Md. F. Haque, Md. A. Haque, Sh. B. Tamuli,
Smt. H. Begum, Smt. T. Biswakarma, S. Ali

CHARGE FRAMED ON: 28/04/15

EVIDENCE RECORDED ON: 25/03/15, 28/04/15

ARGUMENT HEARD ON: 28/04/15

JUDGMENT DELIVERED ON: 11/05/15

JUDGMENT

1. The prosecution in this case was launched by lodging of the *ejahar* by the victim against the accused at Bihoguri O.P. under Tezpur P.S. on 05/09/12 alleging that since the last three years the accused had been maintaining an illicit relationship with one Madhu Das on account of which the accused used to quarrel with the victim and physically abuse her, without any rhyme or reason. It was further alleged that on 05/09/12 at around 6 AM, the accused assaulted her and her son Dipjyoti Kalita by means of a bamboo *lathi* as a result of which she sustained injuries on her head and her son sustained injuries on various parts of his body.
2. On receipt of the FIR, the police registered Tezpur P.S. case No. 1286/12 under sections 498-A IPC and conducted investigation into the matter. On completion of investigation, the police laid charge sheet against the accused under section 498-A IPC.
3. In due course, the accused entered his appearance in response to the process issued. Copies of relevant documents were furnished to the accused in accordance with Sec. 207 CrPC. Formal charge u/ss. 498-A/323 IPC was framed against the accused and the same was read over and explained to the him to which he pleaded not guilty and claimed to be tried.
4. During trial, the prosecution examined two witnesses and closed its evidence. On the closure of prosecution evidence the statement of the accused u/s. 313 CrPC was recorded. Defence did not adduce any evidence.
5. Upon hearing both the parties and perusal of the records, the points for determination have been formulated as follows-
 - (i) Whether the accused, being the husband of the victim Ranu Kalita, subjected her to cruelty and thereby committed an offence punishable under Sec. 498-A IPC?

(ii) Whether the accused, on 05/09/12, at around 6 AM, voluntarily caused hurt to the victims namely Ranu Kalita and Dipjyoti Kalita and thereby committed an offence punishable u/s. 323 IPC?

Discussion, Decision and Reasons for Decision

6. I have gone through the evidence on record and heard the learned counsels on both sides and I shall now discuss and decide the point formulated.

7. Testifying as PW1, the victim/informant identified the accused standing in the dock as her husband and stated that around two and half years ago from the date of her deposition, the accused rebuked her and pushed and shoved her on account of which she lodged a case against the accused at the police station. She identified Exhibit 1 as the ejahar and Exhibit 1(1) as her signature.

8. In her cross examination PW1 stated that she and her husband have been residing together as husband and wife for the past ten to twelve years. After the incident, they compromised the matter and have been residing peacefully. She does not want to proceed with the case and she would have no objection if the accused is acquitted.

9. In his examination in chief PW2 stated that the complainant is his mother and the accused his father. Around two and half years ago from the date of his deposition, at around 12 noon, there was a verbal altercation between his parents followed by pushing and shoving. When he tried to intervene, he sustained injuries on his head. In connection with that incident, his mother lodged an ejahar at Bihoguri out post.

10. In his cross examination PW2 stated that his mother lodged the case on account of misunderstanding. Presently the three of them reside together. He would have no objection if the accused is acquitted.

11. Scanning the evidence on record it is manifest that that there is no substantial evidence establishing that the accused committed any act within the meaning of "cruelty" u/s. 498-A IPC. The testimony of PW1 does not contain any allegation against the accused regarding inflicting physical or mental torture. There is not even a whisper in her deposition indicating that the accused put forth any unlawful demands from her or treated her with cruelty. Further, charge u/s. 323 IPC also remains unsubstantiated for the want of cogent evidence. In such circumstances the irresistible conclusion is that the prosecution has failed to prove beyond reasonable doubt that the accused committed any offence punishable u/ss. 498-A/323 IPC.

12. In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused Sh. Bichyut Kalita has committed the offence punishable u/ss. 498-A/323 IPC. As such the accused is acquitted of the charge u/ss. 498-A/323 IPC.

The bail bonds of the accused and his surety shall remain in force for six months from today in compliance with Sec. 437-A, CrPC.

Case is disposed of on contest.

The judgment is typed and prepared by me.

Given under my hand and the seal of this court on this 11th day of May, 2015 at Tezpur.

Jayashree Bora
Judicial Magistrate First Class
Sonitpur, Tezpur

APPENDIX

PROSECUTION EXHIBITS:

Exhibit 1: *Ejhar*

DEFENCE EXHIBITS:

NONE

PROSECUTION WITNESS:

PW1- Smt. Ranu Kalita

PW2- Sh. Dipjyoti Kalita

DEFENCE WITNESS:

NONE

Jayashree Bora
Judicial Magistrate First Class
Sonitpur, Tezpur