

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL
MAGISTRATE(M), GOHPUR**

PRESENT: SRI KAUSHIK KUMAR SHARMA

S.D.J.M(M), GOHPUR

GR: 809/13

U/S 498A of IPC

STATE OF ASSAM.....PROSECUTION

v.

Sri Upen Das.....ACCUSED

Ld. Advocates: For Prosecution.....Smti Bornali Chetia, Ld.APP

For Defence...Sri Sanjit Das , Ld. Advocate.

Evidence Recorded on: 01.12.14, 19.1.15, 18.3.15

Argument heard on: 20.4.15

Judgment delivered on: 06.5.15.

J U D G M E N T

1. The prosecution's case , in nutshell, is that, the accused, Sri Upen Das, had been demanding dowry properties from the informant/wife Smti Kiran Hazarika Das, and has been torturing her physically and mentally. On 20.11.13, at about 8 PM, the accused had assaulted the informant with a three battery torch on various parts of her body, on the ground that she could not bring Rs.20000/- cash and T.V, godrej etc from her father's house. It is also mentioned in the FIR that the accused had assaulted her with an axe on her forehead, causing her grave injury.
2. The informant, had lodged the FIR on 21.11.13 at Hawajan police outpost. The police had registered Gohpur P.S Case No.

247/13 u/s 498A of IPC . After investigation, the police had submitted charge sheet u/s 498A of IPC against the accused.

3. During investigation, the accused was arrested and was remanded to judicial custody. He remained in judicial custody from 10.12.13 till 10.01.14 before he was released on bail.
4. On appearance before Court, charge u/s 498A of IPC was framed against the accused, which on being read out to him, he pleaded not guilty and claimed to be tried.
5. The prosecution had examined 6 witnesses, including the M.O. and I.O. After the closure of the prosecution's evidence, the accused was examined u/s 313 Cr PC, where he had denied commission of any offence. The defence side adduced no evidence. Heard arguments.

POINTS FOR DETERMINATION:

- a) Whether the accused, Sri Upen Das, had subjected his wife/ informant, Smti Kiran Hazarika Das, to cruelty, by coercing her to meet unlawful demand for dowry as well as by physically and mentally torturing her, as alleged?

DISCUSSION AND DECISION BASED ON REASON:

6. PW1, Smti Kiran Hazarika Das, in her examination in chief has stated that she is the informant and the accused is her husband, with whom, her marriage was solemnized on 03.3.06. She stated that her marriage was solemnized as per social rites and customs. On 24.12.07, a boy child was born out of their marital wedlock. She stated that after the birth of her son, her husband had started to seek dowry money from her. She stated that her husband had told her to bring Rs.20000/- from her father. When she had failed to bring the said amount, her husband/accused

had beaten her. He used to beat her over trivial issue. Her husband had beaten her as she could not bring godrej, Dunlop, TV, etc at the time of her marriage as dowry. She also stated that when she had to undergo caesarian operation, her mother in law, father in law and other relatives looked down upon her. Her husband had defamed her. On 20.11.13, her husband had beaten her , over the issue of money. Her husband had assaulted her with three battery torch on her head, pressed her neck and pushed her from behind with his knees. She also stated that her husband had inflicted a blow with an axe. She also stated that, at that time, her cousin sister, Smti Bulumai Das, had tried to save her, but her husband had chased her to assault. She also stated that her son, Gyandip Das, had pleaded his father(accused) not to beat her mother, by holding his legs. But her husband had pushed her son away. On that day of assault, none of her neighbours had come to save her. The incident had occurred at about 8pm, and the present age of her son is 7 years. On the next day, she called her father over phone. The uncle of the accused, Sri Suren Das, and sister-in-law(wife of her brother-in-law), Smti Barnali Baruah Das, had told her father to take her(PW1) with him. She came back with her father, and lodged a written FIR at Hawajan police outpost. She stated that on that day, she got medical treatment at Dipholu hospital, through police. She also stated that prior to that incident, the V.D.P(village defence party), had brought about dispute settlements between her and her husband, four to five times. An women organization had also brought about a settlement between them once. She has been staying at her mother's house since then(since the said incident of assault). Prior to that the accused used to address her using foul language. The accused never spoke with her properly. She also stated that her husband had

suspected her. He had suspected her of having illicit affair with her brothers, and stated that her son was begotten by her father or by her brother. She also stated that the accused had damaged her articles , given at the time of her marriage, and had sold her ornaments. She stated that Ext 1 is his FIR and Ext 1(1) is his signature.

7. In her cross examination, she stated that the FIR was being written by the gaonbura(village headman), in his house. She stated that she knows what has been written on the FIR. The FIR was being written as stated by her. The marriage was fixed by both the families. She stated that her son was born after about one year of their marriage. She stated that the accused used to demand dowry from her and beat her after two years of their marriage. She stated that her family members knew about the quarrel. After two years of their marriage, she and her husband was told to live separately. After staying separately, people such as Banamali Das, Akonmani Das, Ganesh Das etc, lived nearby the house of her husband. At some distance away , the house of Hari Das is situated, and if any incident occurs in the house of the accused, the noise is heard from the house of Hari Das. After the incident on 20.11.13, she cried and stayed at the house of the accused, that night.
8. She stated that police had inquired her at the Hawajan Police Outpost. She stated that police did not go to the house of accused. Police did not seize the torch and the axe. She stated that she came back in the evening from the Dipholu hospital. She was advised by Doctor to undergo CT scan of her brain.
9. She also stated, in her cross examination, that when her husband had told that the child in her womb is illegitimate, a neighbouring woman, Smti Sandhya Das had laughed at her, and then, unable to bear it, she had slapped her. Over that matter, she had beaten

her(Sandhya Das), by holding her hairs. Many public meetings had taken place over the quarrel between her and her husband. She denied the suggestion that she had been quarreling with her husband over trivial issues after marriage, and that is why, she was kept separately. She denied the suggestion that on the day of occurrence, there was a quarrel with a neighbour , and she had tried to chase that neighbour. She denied the suggestion that when she tried to chase that neighbour, her husband had prevented her from doing it, and then, she had sustained injury due to collision with the door. She denied the suggestion that the accused did not demand dowry from her and did not assault her. She denied the suggestion that she had deposed falsely.

10. PW2, Sri Lokeswar Hazarika, in his examination in chief has stated that the informant is his daughter and the accsued is his daughter in law. He stated that on the day of occurrence, on 20th , in 2013, at about 8 PM, a quarrel erupted between his daughter and the accused. This fact was made known to him by his daughter , next morning, at about 6 AM, over phone. On the next day, on 21st , when he came to the house of the accsued, he saw that the condition of his daughter is bad. There was a blood mark, on her forehead. There was bandage on her forehead. The accsued was not there and he also could not find the Gaonbura(village headman) and the VDP (member). Thereafter, he went to the house of her father in law, where the sister in law of his daughter had told him to take his daughter with him as there is no one to look after her there. The accused's uncle had also told him to take her with him. He stated that his daughter had informed him that his husband had assaulted her with axe and torch. His daughter told him that send does not want to stay there. Thereafter, they came to the police station. The Police took his daughter from medical treatment. FIR was being lodged. He

also stated that after the birth of a child, quarrel used to take place between her and the accused. He came 2-3 times and brought about settlement between them, with the help of VDP. The accused used to stay separately from his parents. He knew about the torture committed by the accused on his daughter. He also stated that he used to know about the tortures, when his daughter used to come to his house.

11. In reply to examination by Court, PW1 had stated that perhaps, the accused had sought money from his daughter. The accused did not ask him for money.
12. In his cross examination, he stated that the marriage was duly fixed, and 8 years had passed by since the marriage of his daughter. He does not remember the date of the marriage. Police had inquired him at the police station. Quarrel used to take place between his daughter and the accused. He had assembled village people for settlement, twice. He stated that he does not know, the reason for quarrel between them. He also stated that Bulumai Das is a cousin sister of his daughter, who had stayed with his daughter for about a week. He stated that the accused did not ask for money from him. His daughter, at times, talked about money. The accused had sought dowry articles from his daughter, but did not seek dowry articles from him. On the day, when he had gone to the house of the accused, he was not present. He stated that he does not know, where the accused had gone. He denied the suggestion that he had deposed falsely in the Court, in favour of his daughter.
13. PW3, Smti Bulumai Das, in her examination in chief has stated that the informant is her sister. She was in her (informant's) house. There was heat-up situation between the accused and her sister, over money matter. Her sister had called the accused to have food, and after having food, the accused had retired to the

bed. But he came out and assaulted her sister with a three battery torch on her head. She had gone to save her sister, when the accsued was assaulting her sister, but the accsued had pushed her away with force. The 7/8 year old boy of her sister fell on the feet of his father, asking him not to beat his mother, but the accsued had also pushed him away. Thereafter, the accused had struck on the forehead of her sister with an axe. The blow fell near her eyes, and her sister fell down. Out of fear she and the son of her sister came out of the house. But the accused had drove them inside the house. The incident had taken place at the night and that the body of her sister was soaked with blood. But the accused did not call the doctor. On the next day, the accused had called a doctor and went away somewhere. Blood was coming out of the body of her sister. She had called the father of the informant(sister).

14. She stated that the father of the informant, brother, Phukan Hazarika and Babul Das , had come to the house of the accsued to bring about a settlement, but could not settle as the accsued was not there. The father of the informant had met the father in law and sister in law of the informant and told them that he was taking away his daughter with him. Hence, the informant, herself and the son of the informant came back. A FIR was lodged at the Hawajan police outpost.
15. In her cross examination, she has stated that the informant is the daughter on her aunty. The informant is her elder sister. Their marriage between the informant and the accused had taken place 8/9 years ago. After marriage, she used to visit their house(of accused). At the time of the incident, she had stayed in their house for about 15 days. She stayed with her sister as the latter was fearful. She does not remember the date and time of the incident. The accused was present at the time of the incident and

she was present after the incident. She stated that the informant did not quarrel with her neighbour on the day of occurrence and prior to that date. She stated that the accused carries out business in fish. He used to go out , during the time when she was there in his house. She does not know, why he used to go out. On the next day of the incident, at about 3 PM, people came from the house of the informant. The accused was not present, when they came out of the house. The axe blow fell on the left side of the forehead. She stated that there are houses nearby the house of the accused. She stated that her sister was examined in hospital. She does not remember which hospital. Her sister stayed in the hospital for about 1 ½ hours. The police did not seize the torch or the axe. She stated that police did not inquire from her. She stated that she does not know, whether the police had gone to the place of occurrence or not. She denied the suggestion that the accsued did not demand any dowry and did not beat her sister. She denied the suggestion that she had deposed falsely in the interest of her sister.

16. PW4, Sri Babul Das, in his examination in chief has stated that about ½ years ago, the father of the informant, Sri Lokeswar Hazarika, and her brother, Phukan Hazarika, had met him and had told him that the accsued had inflicted cut injury on the informant with an axe, and had sought his company to bring her back. He had accompanied them to the house of the accsued. When he went there he saw cut injury on the forehead of the informant. He saw blood soaked clothes. He did not find the accsued or the VDP of the village. The uncle of the accused, Sti Suren Das, had told them to take away the informant, otherwise she would face trouble. Then, they brought the informant back. He stated that he does not know, why the quarrel had taken

place. The informant was being treated by a doctor, at Dipholu Satra, and thereafter, the case was being lodged.

17. In his cross examination, he has stated that the father of the informant is his friend. The quarrel took place at the night. He came to know about the incident on the next day. He does not remember the date. He stated that prior to the incident, he never had visited the house of the accused, after marriage. He stated that they reached the house of the accused at about 11/11:30AM. There are houses of people near the house of the accused. They had discussed the matter with an old man of the village, Sri Punaram Das. They reached the Hawajaan outpost at about 2:30/3 PM. He stated that the sister of the informant, brother, he, himself and a young girl of the village were there with them. The FIR was being written by somebody else near the police station. The FIR was got written by the brother of the informant. He stated that the informant was being stitched at Dipholu Satra, before they went to the police station. He does not know, whether the police had taken her to hospital for treatment. He stated that the accused does business in fish. The accused was not present at the time, when they reached his house, and he was also not there, when they took away the informant. He stated that he does not know, why the quarrel had taken place. The police had inquired from him at the police station. He does not know, whether the police had gone to the place of occurrence. He denied the suggestion that he had deposed falsely as he was related to the informant.

18. PW5, Dr. Ratna Kr. Nath, the M.O. in his examination in chief has stated that on 21.11.13, while he was on duty at Kalabari Model hospital, at about 3:30 PM, he had examined Smti Kiran Hazarika, 23 years old, w/o Sri Upen Das. He found swelling on the frontal region of the middle part of the head. The injury was simple,

caused by blunt weapon. The injury was not fresh. Ext 2 is his medico-legal report and Ext 2(1) is his signature.

19. In his cross examination, he stated that the injury may occur due to collision against a door etc. He also stated that he did not mention the name of the police personnel who had escorted the patient.
20. PW6, Sri Ajit Bora, the I.O., in his examination in chief has stated that on 21.11.13, Smti Kiran Hazarika had lodged FIR at Hawajaan OP. Gohpur P.S Case no. 247/13, u/s 498A of IPC dtd. 22.11.13 was registered. On receipt of the FIR, Hawajaan OP GDE no. 308 dtd.21.11.13, was registered. He got the responsibility to carry out preliminary investigation. He had surveyed the place of occurrence on 21.11.13. Ext 3 is the sketch map and Ext 3(1) is his signature. He inquired the witnesses. The injured was taken to Kalabari Model hospital for her medical treatment. He collected the medical report on 12.12.13. Charge sheet u/s 498A of IPC was framed against the accused. Ext 4 is the Charge sheet and Ext 4(1) is the signature of I/C Sri Laksheswar Handique, S.I., which he could identify.
21. In his cross examination, he stated that he started the investigation on 21.11.13 at about 4 PM. The FIR was lodged at 3:30PM, and he took statements of four witnesses, and took statements of two witnesses at the place of occurrence. He stated that to the east of the place of occurrence, lies the house of Sri Akhil Mandal; to its north, lies the backyard of Biren Das; to its south, lies the house of Akhil Mandal and to its west, lies the house of Khagen Das. He stated that there are houses of people near the place of occurrence. He stated that he had taken the statements of Khagen Das and Banabali Das at the place of occurrence, and their statements were forwarded to the Court. He stated that PW1 had stated before him that the accused had

assaulted her with three battery torch, but she did not state that he had grabbed her neck and pressed her down with his knee. He stated that PW1 did not state before him that the accused, had gave cut blow with an axe, but she stated that the back side of the axe was struck. He stated that PW1 did not state before him that the accused used to hurl abuses at her using bad language. PW1 did not state before him that the accused used to suspect her. He stated that he had taken the statements of PW2 on 21.11.13 at 3:45 PM. He took the statement of PW3, on 21.11.13 at 3:50 PM, at Hawajaan OP. The injured was sent for medical treatment on 21.11.13 at about 3:45 PM. He stated that he could not find the axe and the torch and hence, he did not seize those items. He did not find the blood soaked clothes of the informant and hence, he could not seize it. He denied the suggestion that he did not conduct the investigation, properly, and did not visit the place of occurrence and submitted false charge sheet. He denied the suggestion that he did not take the statements of neighbouring people and had conducted the investigation in a partisan manner. He denied the suggestion that the accused did not commit any offence.

APPRECIATION OF EVIDENCE:

22. PW1, the informant, in her evidence as well as in her FIR, had alleged that the accused had demanded Rs.20000/- from her and told her to bring the money from her father's house, and when she could not bring it, her husband had beaten her. But, PW2, the father of the informant, stated, in his evidence that perhaps, the accused had demanded money from her. He also stated that the accused did not demand money from him.
23. Thus, the assertion of PW1, about the demand if Rs.20000/- has not been supported by her own father. In fact, from the evidence

of PW2, it appears that he is unaware of any such demand. This raises reasonable doubt on the veracity of the said assertion of PW1. Had there been such a demand and consequent beating/torture due to her inability to bring the money, it would be quite natural for her to tell about it to her father. PW2 had also stated that he knew about the torture on his daughter and that he came to know about it when his daughter used to come to his house. So, if there was such demand, then, she would tell her father about it. Further, PW3, only stated that there was heat-up situation between the informant and the accused over money matter. But , merely, from this statement of PW3, it cannot be said that the accused had demanded money from PW1. Likewise, PW4 has stated that he did not know about the reason of the quarrel between the two on the day of occurrence.

24. Thus, the allegation of demand of Rs.20000/- is not proved, beyond reasonable doubt.
25. Further, the assertion that the accused used to beat her as she could not bring Godrej, Dunlop, TV etc at the time of her marriage, is not established by the prosecution, beyond reasonable doubt. The marriage between them had taken on 3.3.2006, and the case was lodged in the year 2013. Thus, almost 7 years had passed since their marriage. There is nothing in the evidence of PW1 or PW2, as to why they did not brought the matter to the police earlier. PW2, gave a bald and general statement that the accused had sought dowry articles from his daughter, but he also stated that he did not seek those articles from him. Hence, I am of the view that the prosecution's version that the accused, used to beat his wife/informant on the ground that she could not bring dowry articles at the time of her marriage, is not proved.

26. Now, coming to the incident that took place on 20.11.13, it appears that the assertion of PW1 that she was being given blow with an axe on her head, is an exaggeration. Likewise, the evidence of PW2, that he saw blood stain on the forehead of his daughter, on the next day, i.e on 21.11.13, and she was bandaged, is not believable. Similarly, the evidence of PW3, about cut blow with an axe, does not inspire confidence. The reason is that on 21.11.13, when the M.O. had examined PW1, he only found a swelling on the forehead of PW1. The M.O. has stated that the injury was simple and caused by blunt weapon. This evidence of the M.O. contradicts the evidence of PW1, PW2, PW3 and PW4, about injury caused due to the blow with an axe. Had there been any cut injury, especially, when the alleged injury had taken place on 20.11.13 in the night, the M.O. would have noticed it, when PW1 was brought before him on 21.11.13 at 3:30 PM, for her medical examination. Thus, the evidence of PW1, PW2 and PW3 appears to me an exaggeration and result of after-thought, and hence, unsafe to be relied upon.
27. It appears to me that there was indeed a quarrel between the informant and the accused on 20.11.13, but the solitary incident, where simple injury was caused to the informant, cannot be said to have posed grave danger to the life, limb or health of the informant. Hence, the solitary incident on 20.11.13, cannot be termed as cruelty, as defined u/s 498 A of IPC.
28. Further, there is no evidence on record, to show that the informant wanted to commit suicide, because of the alleged torture.
29. Thus, the ingredients of Sec 498A of IPC, are not proved, beyond reasonable doubt.

30. Hence, in the light of the above, I am of the considered view, that prosecution has failed to prove the guilt of the accused person u/s 498 A of IPC, beyond reasonable doubt, and is acquitted from the charge u/s 498A of IPC.
31. The judgment is pronounced in the open court on this 06th of May, 2015. The judgment is prepared under my hand and seal of this Court .
32. The bail bonds shall remain operative till 6 months from the date of this order and shall stand cancelled after the expiry of 6 months.
33. The case is, accordingly, disposed of.

(K.K. Sharma)

S.D.J.M Gohpur.

ANNEXURE

LIST OF DOCUMENTS EXHIBITED BY THE PROSECUTION

EXT.1: FIR

EXT 2: Medical report

EXT.3: Sketch map.

EXT 4: Charge sheet.

S.D.J.M, Gohpur.