

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, TEZPUR**G.R Case No. 1727/2016****U/S- 498(A) of I.P.C.**

State Prosecutor

-vs-

Md. Ekramul Hussain
 S/O:- Md. Omar Ali
 R/O:- Khagarijan
 P/S:-Thelamara
 Dist:- Sonitpur, Assam

..... Accused person

Present

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

For the Prosecution :- Mr. A. K. Sahani, Ld. A.P.P.
 For the Defence :- Mrs. Anjali Das & Ors, Ld. Advocates.
 Charge framed on :- 09/06/2017.
 Date of Evidence :- 24/07/2017, 09.07.2018, 01.10.2018 & 29.11.2018
 Date of Argument :- 13/05/2019
 Date of Judgment :- 27/05/2019

JUDGMENT

1. The factual matrix of the prosecution case as revealed from the FIR is that the informant- Must. Safiya Khatoon lodged an FIR, stating, inter-alia that on 05.05.2016 at about 9 AM, her husband without any reason had a fight with her and assaulted her with a stick and caused her injury. It has been stated that her husband also threatened her to kill and drove her out from her matrimonial house along with her minor girl child. Finding no option she took shelter in her father's house. It has been further stated that after their marriage, the accused

started to harass her mentally as well as physically by demanding dowry from her. Hence, this prosecution case.

2. On receipt of the FIR, the O/C, Thelamara PS registered the same as Thelamara PS Case No-37/16, u/s-498(A)/34 of IPC and investigation was done by the investigating officer. On completion of the investigation, the investigating officer of this case submitted Final Form against the accused person, namely, Md. Ekramul Hussain u/s-498(A) of I.P.C vide Final Form No. 27/16 dated 25.05.2016.

3. On submission of the Final Form, My Ld. Predecessor has taken cognizance of offence u/s-498(A) of I.P.C against the accused person and summons was issued against him. On appearance of the accused person, copy was furnished to him and both the sides were heard on the point of charge and on consideration of all, the charge of offence u/s-498(A) of IPC was framed against the accused person by my Ld. Predecessor and the same was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

4. In the course of trial, the prosecution side examined as many as five witnesses including the informant, medical officer and the investigating officer in support of this case. The accused person was examined under section 313 CrPC; the defence plea was of total denial, defence chose not to adduce any evidence in support of their case.

5. **Points for determination:**

a) Whether the accused person after marriage being the husband of the informant Must. Safiya Khatoon 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. The Ld. Counsel for the accused submitted that the prosecution has failed to prove the case against the

accused beyond reasonable doubt; as such the accused person needs to be acquitted. On the other hand, the Ld. APP submitted that prosecution has successfully established the offence against the accused person beyond all reasonable doubt and he needs to be convicted.

APPRECIATION OF THE EVIDENCE

6. Now let me discuss the materials on record to arrive at a definite finding as regards the point for determination as framed above.

7. In the present case, out of the five witnesses examined by the prosecution, P.W-3 is the one who is the elder brother of the accused and as per his version, the informant left her matrimonial house along with the child by her own and the accused and his family members had never demanded dowry from the informant. It is very natural that the said witness would not depose any incriminating against the accused being his brother. So, the prosecution story rest upon the evidence of P.W-1, P.W-2, P.W-4 and P.W-5.

8. P.W-1 is the informant who deposed that she got married with the accused three years ago as per Muslim rites and rituals and started her conjugal life with the accused in her in laws house. She gave birth to a girl child who is 2 years old. She deposed that after few days of her marriage, the accused used to beat her without any reason. She stated that her husband used to beat her by demanding dowry and asking her to bring the same from her father's house and drove her out of the house. She is presently living in her father's house along with the child.

9. During cross-examination, P.W-1 deposed that she knows what is written in the FIR as it was being read over to her after which she put her signature. She stated that her husband had lodged a case against her, her father and mother with the allegation of stealing things from his house and the case is pending. She stated that as the accused drove her out of the house by beating her, she along with the child came to her father's house. She also stated that her husband was not in house when she came to her father's house. She denied the suggestion that the accused went to bring her along with some people and that she lodged

the instant case as the accused had filed another case against them. She denied the suggestion that she had not stated before police that the accused drove her out by beating her and had not demanded any dowry.

10. P.W-2 deposed that the informant and the accused got married 3-4 years ago as per Muslim rituals but after six months of their marriage, there was fight between the informant and the accused. He deposed that the informant after coming home told him that the accused demanded money from her and also demanded her to buy cow. He stated that the father of the informant is his maternal uncle. He stated that the father of the informant gave Rs. 2000/- to the accused but failed to provide the cow for which the accused had beaten the informant. He also stated that as per the informant, the accused did not give her food to eat.

11. During cross-examination, P.W-2 stated that his house is situated 10-12 km away from the house of the informant and he heard about the incident from the informant. He denied the suggestion that he did not state before the police that after six months of marriage, the accused used to beat the informant. He also denied the suggestion that he did not state before the police that the accused demanded money and cow from the informant, that the informant's father gave Rs. 2000/- to the accused and as he failed to provide the cow, the accused had beaten the informant.

12. Now, from the introspection of the above evidence it appears that P.W-2 is the one to whom the informant has narrated the whole incident and if that is so the evidence of P.W-1 and P.W-2 must be corroborative in nature but it is not so as the P.W-1 who is the victim has not even stated that the accused also demanded cow from her and that her father gave Rs. 2000/- to the accused and as they failed to provide the cow, the accused had beaten her.

13. In "**Sarala vs. State 1990 CrLJ 407**", it was held that "it is not every harassment or every type of cruelty that would attract section- 498(A) of IPC, it must be established that beating and harassment was with a view to force the wife to commit suicide or to fulfill illegal demands of husband and in-laws.

14. In the present case, the informant herself has failed to bring out specific dowry demands and also failed to establish beyond reasonable doubt that beating and harassment was with a view to force her to commit suicide or to fulfill illegal demands. P.W-1 stated in her cross-examination that as the accused drove her out of the house by beating her, she along with the child came to her father's house which means that when she left for her father's house, the accused was present but at the same time, she also stated that her husband was not in house when she came to her father's house which clearly indicates that the evidence of P.W-1 is untrustworthy and unbelievable. Moreover, there are material contradictions in the statement of P.W-2 as brought on record by the defence and which are affirmed by the Investigating officer too.

15. In the light of the above discussion, in my considered opinion, the prosecution has failed to prove the case against the accused person.

ORDER

16. Hence, considering the above discussions, the accused person, namely, Md. Ekramul Hussain is found not guilty of the alleged offence u/s-498(A) I.P.C and he is **acquitted accordingly**.

17. 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 Cr.P.C.

18. Pronounced by me in this open Court, on this the 27th day of May, 2019 and given under my hand and seal of this court.

JUHI GOGOI

JMFC, TEZPUR

A P P E N D I X

PROSECUTION WITNESSES

P.W-1 :- Must. Safiya Khatoon, the informant
P.W-2 :- Md. Jainal Abedin,
P.W-3 :- Md. Insan Ali,
P.W-4 :- Dr. Pranjal Borah, the M.O
P.W-5 :- ASI Arun Gogoi, the I.O

PROSECUTION EXHIBITS.

Exhibit-1 :- FIR
Exhibit-1(1) :- Signature of the informant
Exhibit-2 :- Medical Report
Exhibit-2(1) :- Signature of P.W-4
Exhibit-3 :- Sketch Map
Exhibit-3(1) :- Signature of P.W-5
Exhibit-4 :- Charge Sheet
Exhibit-4(1) :- Signature of P.W-5

DEFENCE WITNESSES

NONE.

DEFENCE EXHIBITS

NIL.

**JUHI GOGOI
JMFC, TEZPUR**

Ms. Juhi Gogoi
JMFC, Tezpur, Sonitpur

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