

**G.R No-1372 of 2017
(State of Assam Vs Md. Nur Amin Haque)**

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

G. R. Case No. 1372 of 2017

Under section-498(A) of I.P.C

Present:- **Sri N. J. Haque, AJS,
Chief Judicial Magistrate,
Sonitpur, Tezpur**

State of Assam

-Vs-

Md. Nur Amin Haque

S/O:- Md. Abdul Sahid

R/O:- Gutlong Namapara

P/S:- Tezpur

Dist:-Sonitpur, AssamAccused Person

Advocate appeared:

Mr. Niranjan Saikia, Asst. P.P..... For the State

Mr. A. Aziz, Ld. Senior Advocate..... For the accused person

Evidence recorded on :- 04.02.2021

Date of Statement of defence :- 04.02.2021

Argument heard on :- 04.02.2021

Judgment delivered on :- 04.02.2021

J U D G M E N T

History of Prosecution's Case

1. Prosecution's case appears to be in a narrow campus is that one Must. Moriam Nessa, lodged an ejahar before the O/C of Tezpur P.S, alleging inter alia that she got married with accused Md. Nur Amin Haque on 18.08.2015 as per the Islamic rites and ritual and thereafter, both were living as husband and wife and out of the said wedlock one boy child was born to them. It is also stated that at the time of her marriage, her father gifted one cycle and furniture amounting to Rs.20,000/- to her husband. Just after of their marriage, accused person started

**G.R No-1372 of 2017
(State of Assam Vs Md. Nur Amin Haque)**

to perpetrate physical and mental torture upon her by demanding money and asked her to bring the money from her parental house. It is also stated that when she failed to fulfil his demand, the accused has physically assaulted her and also tried to kill her. Thereafter, one village was held in with the said incident wherein both parties comprised the matter with each others in the said meeting. It is stated that around six months back, the accused against demanded money from her and when she raised objection, the accused again physically assaulted her and due to that she sustained injuries and left her to parental house.

"INVESTIGATION"

2. On receipt of the ejahar, Tezpur P.S Case No. 701 of 2017 u/s-498(A)/380 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-498(A) of I.P.C against the above-named accused person.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s-207 of CrPC was furnished to the above named accused person. After hearing both side, charge of offence u/s-498(A) of I.P.C. was read over and explained to the accused person by my Ld. Predecessor in office, on which he pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined the informant -cum- victim. Considering the testimony of the informant, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Examination of accused under section-313 of Cr.P.C is dispensed with as from the evidence of PW-1 nothing implicating disclosed against the accused.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.

**G.R No-1372 of 2017
(State of Assam Vs Md. Nur Amin Haque)**

6. The points for determination in this case are:

- (i) Whether accused Md. Nur Amin Haque, being the husband of the informant named Must. Moriam Nessa subjected to torture her in the form of mental and physical torture on different occasions, accused person mercilessly beat her and ousted her from his house and thereby committed an offence under section-498(A) of I.P.C?

DECISION AND THE REASONS THEREON:

7. The essence of the offence under Section 498A of Penal Code, 1860, lies in the Explanation to section 498A, which defines cruelty as follows; Explanation- For the purposes of this section, "cruelty" means- (a) Any wilful 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. (c) The definition of cruelty, provided in the Explanation, as reproduced above, is replete with the idea of a continuous and wilful conduct on the part of the husband or his relative towards the wife. The offence conceived of is not a single episode but a series of episodes of violent nature which is likely to result in the following consequences. • 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;

8. Thus, the situation, created by conduct of the accused, must be such which the accused knows that it would drive the wife to commit suicide or would cause grave injury or danger to life, limb or health. The injury or danger to health has been qualified by the words mental and physical. The word 'likely' appearing in

G.R No-1372 of 2017
(State of Assam Vs Md. Nur Amin Haque)

clause (a) conveys the idea that accused has knowledge that his conduct would result in the consequences envisaged in clause (a).

9. The second clause speaks of harassment to a wife. The word harassment, I believe, has not been used in its exact dictionary meaning rather used in the understanding of common parlance whereby a wife is continuously tormented with demands of dowry, irrespective of the fact whether such unlawful demand is accompanied by any physical torture.

10. Thus, it would be seen that if the prosecution seeks to prove a charge for the offence u/s 498A IPC, it is required to prove either of the circumstances envisaged in clause (a) or (b). It may be noted here that proof of cruelty would be satisfied by proving either of the circumstances in clause (a) or (b).

11. In the light of the law understood, as above, it would be now necessary to look into the prosecution evidence as to whether the evidence meets the requirement of law.

12. In this case the prosecution has the burden to demonstrate that the accused person imperilled bodily and psychological torture upon the informant Must. Moriam Nessa with intend to accomplish his stresses on different dates during her conjugal life with the accused.

13. Prosecution side to prove the case examined the informant-cum-victim in this case. I have carefully travelled through the testimony of the victim in the backdrop of entire prosecution case and it finds:-

14. PW-1, Must. Moriam Nessa, who in her testimony deposed that around six years back from today she got married with accused and thereafter, started leading conjugal life with the accused around two years. She deposed that she had an altercation with the accused over domestic affairs and due to misunderstanding she lodged ejahar against him. She further stated that after lodging the ejahar she went to the house of accused and presently, she is leading conjugal life with accused happily. She also deposed that she now she does not want to proceed further against the accused. She identified her ejahar as Ext-1 wherein Ext-1(1) to

**G.R No-1372 of 2017
(State of Assam Vs Md. Nur Amin Haque)**

Ext-1(5) are her signatures. PW-1 in her cross examination deposed that she does not have any objection.

15. To sum up the evidences on record, it seen that informant contradicted the entire versions of the prosecution story and that makes entire case of prosecution doubtful in nature.

16. Hence, considering the above said discussions as well as evidences on record, it can be conclusively decided here that the prosecution side failed to establish any one of the circumstances discussed in explanation (a) or (b) of 498(A) IPC.

17. In view of the above, evidence on record, I am of the opinion that prosecution has failed to prove the charge against the accused person beyond reasonable doubt and as such the accused is acquitted from the charge u/s-498(A) of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.

18. Accordingly, the case is disposed of Judgment is prepared and pronounced in open court. Given under my hand and seal of this court on this 04th day of February, 2021.

(Sri N. J. Hoque)
Chief Judicial Magistrate,
Sonitpur: Tezpur

**G.R No-1372 of 2017
(State of Assam Vs Md. Nur Amin Haque)**

ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Must. Moriam Nessa

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 :- FIR

Ext-1(1) to Ext-1(5) :- Signatures of PW-1

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur