

**G.R No-4238 of 2017
(State of Assam Vs Md. Rafiqul Islam)**

“INVESTIGATION”

2. On receipt of the Ejahar, Tezpur P.S Case No. 2233 of 2017, u/s-498(A) 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

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 Cr.P.C was furnished to the above named accused person. After hearing both side, charge of offence u/s-498(A) of I.P.C. were 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.

TRIAL & STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined as many as three numbers of witnesses including the informant-cum-victim in support of this case. Considering the testimonies of the witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused person is examined u/s-313 Cr.P.C and their pleas of denial are recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the background of indications obtainable before this court by prosecution side.
6. **The points for determination in this case :-**

Whether accused Md. Rafiqul Islam on 25.05.2010 at night being the husband of the informant named Must. Wahida Khaton subjected her to cruelty and harassed her with a view to coercing her to meet unlawful demand of dowry and thereby committed an offence under section-498(A) of I.P.C?

EVIDENCES OF PROSECUTION SIDE:-

7. In this case prosecution side to prove the disputations of the ejahar examined three numbers of witnesses including informant and for the sake of proper appreciation of evidences on record let us reproduce the evidences on record.
8. PW-1, Must. Wahida Khatoon being the informant-cum-victim of this case deposed that she married the accused Md. Rafiqul Islam on 25.05.2010 as per Islamic rites and rituals and thereafter, started their conjugal life as husband and wife. She also deposed that the accused gave gold ornaments to her at the time of her marriage and after marriage, the accused took away the gold ornaments from her. She also deposed that when she asked the accused about the said gold ornaments, the accused person physically assaulted her. She deposed that having patience and with a dream of better future, she continued her marital life with the accused. She also deposed that after two days of their marriage, the accused demanded Rs.5000/- from her and also told her to bring the said money from her parental house. But her family member did not manage the said amount for the accused and thereafter, accused started physical and mental torture upon her. She further deposed that one day accused poured kerosene upon her body due to non fulfilling his demands but he did not put fire on her. She also deposed that thereafter, she informed the matter to her brother Feroz and later, her brother Feroz and one villager named Mannan called a village meeting in connection with the said incident. But the accused did not listen to anyone again started beating her with lathi and also dragged her by pulling her hair and gave fist blows upon her. She further deposed that thereafter, the accused arranged a rented house for her to live wherein he again physically assaulted her. She further deposed that one day accused chased her with dao but she somehow managed to flee away from the said rented house and took shelter at the house of one named Safia Begum and from there she took shelter at her parental house. Thereafter, she lodged the ejahar. She identified her ejahar as Ext-1 wherein she put her signature as Ext-1(1).
9. PW-1 in her cross-examination denied that the accused never demanded Rs. 5000/- from her. She further denied that the accused did not take away her gold ornaments from her after the marriage. She also denied the fact that the accused did not pour

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kerosene upon her body. She deposed that she resided at her matrimonial house for about 4-5 years. She deposed that a handicapped boy was born to them and now, the said child is residing with the accused person. She denied the fact that the accused person did not torture her both mentally and physically.

10. PW-2, Md. Sahjahan Ali deposed that he knows the informant and the accused person of this case and both are husband and wife in relation. He deposed that he does not know as to why the case has been lodged.
11. PW-3, Must. Maleka Khatoon deposed before this court that she knows the informant and the accused person as they are husband and wife. She also deposed that she does not know what happened between the informant and the accused. She also deposed that the informant got married with another person after settling the dispute with the accused person and now the handicapped child of informant is living with the accused.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

12. The essence of the offence under Section-498(A) of Indian Penal Code, 1860, lies in the Explanation to section 498(A), 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; or
13. 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

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

14. 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.
15. 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).
16. 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. The Hon'ble Supreme Court in **Babu Singh VS. State of Punjab 1964 (1) CrL. LJ 566 (SC)** has observed that in a criminal trial the presumption of innocence is a principal of cardinal importance and so the guilt of the accused must in every case be proved beyond a reasonable doubt. Probabilities, however, strong and suspicious, however gave, can never take the place of proof.
17. In **Sarwan Singh Ratan Singh V/S State of Punjab, AIR 1957 S.C 637**, the Hon'ble Supreme Court has observed that there may be an element of truth in the prosecution story against the accused considered as a whole the prosecution story against accused "may be true" but between "may be true" and "must be true" there is inevitably a long distance to travel and whole of the distance must be covered, by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted.
18. Hence, in the upcoming discussions, it needs to be looked upon whether the prosecution side able to adduce any legal, reliable and unimpeachable evidence before court upon which the accused person of this case may be convicted. In this case prosecution side

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examined as many as three numbers of witnesses out of which PW-1 is the informant-cum-victim of this case and PW-2 & PW-3 are the co-villagers of accused.

19. The criminal law sets in motion against the accused person over an incident as alleged by the informant-cum-victim that on 25.05.2010 as per Islamic rites and ritual and thereafter, she started her conjugal life peacefully with the accused person and out of the said wedlock one handicapped child was born to them. It is also alleged that just after their marriage, the accused started abusing her with filthy languages and also harassed her both mentally and physically. She also stated that she took loan of Rs.10,000/- from Bandhan Goot for her husband but her husband was not satisfied and again tortured her both mentally and physically. Hence, the prime accusations appear to be abusing the informant-cum-victim coupled with physical assault in demand of dowry and driving her from her matrimonial house by the accused person. The ejahar has been lodged by the informant herself and she also pleaded some other facts regarding her physical tortured by the accused person in demand of dowry. There is no specific demand of dowry stated by the informant in her ejahar. She simply pleaded that the accused person has demanded dowry and drove her out from her matrimonial house after inflicting the physical torture.
20. The prosecution side has got the burden of prove to establish the aforesaid contentions by adducing credible evidences. This court has meticulously perused the evidences on record and prior to entering into the evidences presented by the independent witnesses, this court thinks it fit and proper to appreciate the evidence presented by the informant-cum-victim for shaping the point for determination in accordance with law. The informant-cum-victim as PW-1 categorically stated in her evidence that the accused demanded Rs.5,000/- from her and as she could not bring the said amount, she was being assaulted by the accused with lathi. The fact of demanding Rs.5,000/- and her physical assault with lathi by the accused had not been pleaded by the informant-cum-victim in her ejahar. She also deposed certain facts regarding her physical assault and also causing her injury and pouring kerosene upon her. The informant has lodged the ejahar without pleading all the aforesaid facts in her ejahar. The ejahar not being a

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substantive piece of evidence provides a scope of corroboration or contradiction of the earlier statement with the testimony made before the court.

21. In this case if any incident of like demanding Rs.5,000/- by the accused, physical assault with lathi by the accused, causing injuries upon the body of the victim and pouring kerosene upon her body, happened with the informant and the informant being the sole eye witness to those facts must have pleaded in her ejahar. She although had deposed those facts in her evidence but downright failed to plead those facts in her ejahar and the facts which she had not stated in her ejahar appears to the material omissions on her part with her earlier statement and those material omissions articulates her evidence to be full of exaggerations turning down her testimony to be contradictory with her earlier statement which she had made before the police station after the incident.
22. The victim (PW-1) in her evidence admitted that after seven months of her marriage, her husband demanded dowry from her and as she failed to bring the same the accused physically assaulted her but she in her cross-examination clearly testified that after 4-5 months the accused started assaulting her due to non-fulfillment of his demand. PW-1 in her evidence-in-chief pleaded many facts like sustaining injury after having physical assault and chasing her with dao by the accused person of this case. But, surprisingly, she has not supported the fact of sustaining injuries in her ejahar vide Ext-1. She further failed to support the fact that the accused person tried to kill her by pouring kerosene. As such it is seen that except the fact of demanding money from her, she failed to depose and support anything against the accused person of this case. The informant also failed to clarify the exact amount demanded from her by the accused in her ejahar.
23. The neighbors of the victim and the accused examined in this case as PW-2 and PW-3 who testified that they don't know about the incident. PW-3 also testified that the informant (PW-1) now got married with another person and the handicapped child of informant is living with the accused. It is a case of matrimonial dispute in respect of accusation of inflicting physical assault demanding dowry and the people who resides in the same village of the accused do not corroborate with the version of the informant, where she has claimed that she was physically assaulted followed by demand of dowry. The evidences presented by PW-2 and PW-3 are being independent in nature failed to

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corroborate the version of the victim rather their evidences creates lots of reasonable doubt upon the version of the informant.

24. Now, coming to the fact of demanding Rs.5,000/- coupled with the physical torture as claimed by the informant, this court has already perused the evidences presented by the independent witnesses i.e. PW-2 deposed that he does not know as to why the instant case has been lodged. The evidence of PW-2 appears to be hearsay in nature. In this case PW-2 failed to depose anything in respect of demand of dowry as the informant claimed in her ejahar as well as in her evidence. PW-3 also failed to depose anything regarding the demand of dowry as claimed by the victim. Hence, it is seen that PW-2 and PW-3 are appears to be fully contradictory with each other's versions in respect actual demand of dowry.
25. The independent witness PW-2 & PW-3 failed to depose of support that accused person inflicted physical torture upon the informant demanding money. What sort of physical torture actually inflicted upon the informant such fact not clarified by victim before this court.
26. To sum up the evidences on record, it is seen that the evidences presented by the other witnesses including the informant-cum-victim and two independent witnesses i.e. PW-2 & PW-3, this court has already noticed that their versions appear to be contradictory with each other regarding the actual form of demand of dowry, sustaining physical injuries and other collateral facts alleged by the prosecution against the accused. From the aforesaid discussion, this court finds that causing physical and mental torture to be turning it as cruelty the associated facts or relevant fact which suggests the probability of existence of cruelty is found to be missing.
27. Now coming to the settled provisions of law as well judgment of several Hon'ble High Court it seen that a single judge of this Court in **Jiwan Lal V/s State of Himachal Pradesh, reported in Latest HLJ 2012 (HP) Vol. 1. 231** has held that ---

"to constitute 'cruelty', under clause (b), there has to be harassment to coerce her or any person related to her to meet any unlawful demand and case has to be made out that there is a failure to meet such demand. The Single Judge has held as under: "Cruelty" has not been defined in the Indian Penal Code but the above explanations added to the Section spells out the ingredients

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of the offence of "cruelty" which are cruelty and harassment. The elements of cruelty so far as clause (a) is concerned can be classified as follows:-(i) any 'wilful' misconduct which is of such a nature as is likely to drive the woman to commit suicide; or (ii) any 'wilful' conduct which is likely to cause grave injury to the woman; or (iii) any 'wilful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

28. In order to constitute "cruelty" under clause (b), there has to be a harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there is a failure by her or any person related to her to meet such demand.

29. In the case of **Sakharam & anr. V. State of Maharashtra, (2003)12 SCC 368**; the Hon'ble Apex Court held that---

"mere omnibus statement regarding demand of money does not ipso facto make out a case under Section 498(A) IPC, the prosecution is required to prove the overt acts attributed by the accused appellant beyond all reasonable doubts."

30. As the facts from which cruelty is to be inferred are to be alleged and proved. It is not sufficient to merely say that victim Must. Wahida Khatoon was subjected to torture or cruelty. No any medical report, etc., has been furnished to reflect the injury of the victim. Even the verbal testimony of victim is not at all clear what was the injury inflicted upon the victim. The specific acts of omission or commission by the alleged offender has to be specifically proved. In absence of proof of such acts of omission or commission, the Court is not in a position to decide whether the conduct of accused amount to cruelty within the meaning of Section 498(A) of IPC.

31. So the vague and exaggerated version of the victim cannot be accepted as a true version of the occurrence unless it is proved by other reliable facts and circumstances.

32. In **Shobha Rani v. Medhukar Reddi**—the Supreme Court remarked that-----

"under Section 498A of IPC a new dimension has been given to the concept of cruelty. Explanation to Section 498 A of IPC provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide or likely to cause grave injury or danger to life, limb or health (whether mental or physical of the

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woman), and 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 would constitute cruelty. In this case it was held that evidence as to harassment to the wife to meet any unlawful demand for money is necessary to constitute cruelty in criminal law. This is the requirement of the offence of cruelty defined under Section 498(A) of IPC”.

33. Now coming to the present case in hand as we have discussed earlier that the crucial witnesses of prosecution side appears to be contradictory with each other’s versions regarding the actual demand allegedly put forward by the accused persons of this case. Hence, in absence of any specific proof of demanding money from the part of accused persons of this case it is very difficult to hold the accused persons guilty of alleged offence.

34. Taking note of the above judgments amongst others Supreme Court in **Manju Ram Kalita v. State of Assam 2009 (2) S.L.J. (S.C.)** 1036 observed that---

"cruelty" for the purpose of Section 498-A Indian Penal Code is to be established in the context of S. 498-A IPC as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as "cruelty"."

35. In the light of aforesaid ratio, the court is duty bound to appreciate whether the victim was being tortured continuously/persistently or at least in close proximity of time of lodging the ejarah. There is no utterance from the victim, regarding any torture of continuous in nature inflicted upon her. Further the victim herself failed to depose any fact to prove the nature and grievousness of the conduct of accused that may drive the victim to commit suicide.

36. After bestowing my thoughtful consideration to the pleadings as well as evidence available on record, I have no hesitation to conclude that there is/was no evidence adduced on record by the prosecution specifically proving cruelty in terms of Section-

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498(A) IPC. Moreover, the prosecution side failed to prove what sorts of overt acts that can be attributed to the accused persons of this case demanding any sort of money from the victim Must. Wahida Khatoun.

37. Therefore in the light of all the above said discussions and evidences on record, this court finds that prosecution side failed to adduce any cogent, clear, direct and trustworthy evidences to prove any of the circumstances explained in clause (a) & clause (b) of Section-498A of I.P.C.
38. Hence, it can be safely concluded here that prosecution side failed bring home the charge under section-498(A) of I.P.C against the accused persons beyond any shadow of doubt. As such the accused persons are acquitted from the charges under section-498(A) of I.P.C and sets at liberty. Bail bonds are extended for six months in view of section-437A of Cr.P.C.
39. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 19th day of February, 2021 at Tezpur.

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

ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Must. Wahida Khatoon, Informant

PW-2:- Md. Md. Sahjahan Ali

PW-3:- Must. Maleka Khatoon

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 :- FIR

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

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

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