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**G.R No-790 of 2016**  
**(State of Assam Vs Sri Manoj Saikia)**

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

**G. R. Case No. 790 of 2016**

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

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

State of Assam

-Vs-

Sri Manoj Saikia

S/O:- Sri Jogeswar Saikia

R/O- Solal Gaon

P/S:- Sootea

Dist:- Biswanath

Accused Person.....

**Advocate appeared:**

Mr. N. K. Mishra, Addl. P.P..... For the State

Mr. A. K. Paul, Ld. Advocate.....For the accused person

Evidence recorded on	:- 21.04.2018, 18.06.2018 & 25.06.2018
Date of Statement of defence	:- 06.08.2021
Argument heard on	:- 17.08.2021
Judgment delivered on	:- 23.08.2021

**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 Smt. Anamika Gogoi, lodged an ejahar before the O/C of Tezpur PS alleging inter alia that on 29.04.2017 she got married with the accused and out of the said wedlock she gave birth of a female child on 12.11.2010 named Miss Mugdha Saikia. She further stated that at the time of her marriage, she was engaged in Phd course. She also stated that after marriage when she went to Guwahati to pursue her course and she gave her salary to her ill-father but the accused does not like it and started harassing her mentally. It is also alleged that when she gave birth

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of her second child (Chronic Ectopic Pregnancy) the Pelvic tube was lifted at that time. She also alleged that her husband along with his family members tortured her both mentally and physically as because she did not give birth of a male child. She further deposed that her husband abused her using filthy languages and also told her to give permission to the accused for his second marriage. She also alleged that her husband also caused her head injury by beating her on her head for which she took treatment at GNRC Hospital, Guwahati. She further stated that at the time of her marriage she was posted at Nagaon and thereafter, in the month of May, 2012 she was transferred at Tezpur. It is also alleged that after 7 to 15 days her husband visited to Tezpur to meet her.

**"INVESTIGATION"**

2. On receipt of the ejahar, the O/C of Tezpur PS registered a case vide Tezpur PS Case No-432 of 2016 u/s-498(A) of IPC 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 only the informant-cum-victim in support of this case. Considering the testimony of the informant-cum-victim, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused person was examined u/s-313 Cr.P.C and his pleas of denial are recorded in

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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 the accused person being the husband of the informant subjected her to cruelty and harassed her physically or mentally with a view to coercing her to meet any unlawful demand for dowry or is on account of failure by her to meet such demand 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 the informant-cum-victim and for the sake of proper appreciation of evidence on record let us reproduce the evidences on record.
8. PW-1, Smt. Anamika Gogoi being the informant-cum-victim of this case deposed that accused Manuj Saikia is her husband. She also deposed that on 29.04.2017 she got married with the accused as per Hindu rites and rituals and thereafter, both were started living their conjugal life as husband and wife at her matrimonial house. She further deposed that just after two months of their marriage, she was residing at Nagaon for the purpose of her service and her husband was posted at Morigaon and resided at his police quarter. Sometime her husband used to visit her house at Nagaon. She deposed that at the time of marriage she was doing her Phd course for which her in-laws did not like her. She also deposed that her husband also does not like her to continue her Phd course and so that he started beating her on her finger and also gave fist blows on her. She further deposed that her father is kidney patient and therefore, she sometimes gave money to her father for his treatment but her husband does not like her to give money to her father for which her husband physically assaulted her. She further deposed that in the year 2010 she gave birth of a

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female child. Moreover, she deposed that in the year 2011 during evening time, the accused stabbed her on the back side of her head with wrench and also kicked her back and due to that she became senseless. Thereafter, she informed the matter to her parents for which her brother came to meet her and took her for treatment at Nagaon Nursing Home. She further deposed that on that day accused physically assaulted her and thereafter, left her. After that, she wants to take divorce from her husband as she cannot survive the physical torture. For the sake of her married life she tolerated the harassment meted out her and gave a chance to her husband. She further deposed that her husband showing his good behavior for few but after that her husband again started harassing her for small issues. She deposed that during that period she again became pregnant and the doctor advised her for operation within one month. But her in-laws including her husband did not allow her for said operation. Thereafter, she herself managed for the operation. She also deposed that in the year 2012 she was again transferred to Tezpur Govt. Girls and thereafter, her husband took her to Tezpur and since from then her husband never enquired about her and her minor daughter. She further deposed that her husband after 2 months again visited at her place and asked about her ATM card and when she refused to give the ATM, her husband physically assaulted her and also alleged her that she had maintained illicit relationship with others. She also deposed that her husband informed her that he has an illicit relationship with another lady and to make her believe, her husband bring the said lady to her rented house and started mentally torturing her and thereafter, she informed the matter to her in-laws and then the accused physically assaulted her on her head and back for which she sustained injuries on her person. Thereafter, she took treatment at GNRC, Guwahati in the month of April, 2013. She further deposed that after one month when she went to the house of accused situated at Sootea, then her in-laws told her to give permission to the accused for his second marriage and also told her to take mutual divorce from her husband. Thereafter, her husband had maintained

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living together relationship with another woman at Nagaon which she caught red handed in his room. Moreover, she deposed that on 27.12.2015 at about 4:30 PM, the accused physically assaulted her at the Nagaon Market and also tried to harm her reputation in front of his elder sister and his driver. She deposed that in the year 2016 during the festival of Magh Bihu her husband abused using filthy languages and also physically assaulted her with the instigation of his mother. She further deposed that her father-in-law told her to give permission to the accused for second marriage, so that she along with her daughter permanently left her matrimonial house. She deposed that after selling land her father-in-law deposited some amount in the name of his granddaughter but on the next day her husband came to her house along with mutual divorce petition. She further deposed that on 08.03.2016 her husband again went to her house and asked her to put her signature on the mutual divorce paper and also physically assaulted her. Thereafter, she lodged the ejarah against the accused person. She identified her ejarah as Ext-1 and Ext-1(1) is her signature. She also identified her statement recorded before the court as Ext-2 and Ext-2(1), Ext-2(2), Ext-2(3) & Ext-2(4) are her signatures.

9. PW-1 in her cross-examination testified that she got her job in the year 2016 at Govt. Boys School, Nagaon. Her office time starts from 9:30 AM to 3 PM. She deposed that before getting the job she was studying PHD at Guwahati University which she started in the year 2004. She also deposed that after joining her service she took time to complete her PHD course. First she took one year time for completion of her PHD course and later extended the time. She denied the fact that the accused and her family members did not allow her to continue her Phd course. She also deposed that she has not written in her ejarah that accused and his family member does not like that she continued her Phd course and when she went to attend her classes they started beating her on her hand and head. She deposed that she took leave for 20 days at the time of her marriage. She denied the fact that she has deposed falsely that after marriage she stayed for a period of two months at the house of her husband at

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Sootea. She further deposed that at the relevant time her husband was posted at Morigaon and after two years of marriage, her husband was transferred to Nagaon. At Nagaon she along with her husband stayed in a rented house of one Deep Kakoty. She further deposed that she gave birth of a female child at the rented house of one Prabin Baruah. She denied the fact that she has not stated before the police that in the month of November, 2011 the accused person physically assaulted her with wrench and also kicked her back while she was in the kitchen room and due to that she became senseless and thereafter, she informed the matter to her father and her sister and her brother in the next morning admitted her at Nagaon Nursing Home. She deposed that she wants to take divorce from her husband as she cannot bear the torture and later they compromised the matter and gave a chance to the accused. She also denied the fact she has not stated before the police that "she became pregnant for the second time and after medically examination, doctor advised her for operation but her husband and her in-laws did not allow her for said operation for which she herself managed for the said operation. She also deposed that in the year 2016 her husband was posted at Nagaon and sometimes he used to visit her rented house situated at Tezpur but he did not stay for whole night. She further deposed that she sometimes visited at her husband's house at Nagaon and holds for the whole night and also sometimes used to stay at the house of elder sister of the accused. She denied the fact that she has not submitted her medical documents before the police. She further denied the suggestion that her husband never physically assaulted her. She denied the suggestion that she has falsely given allegations against the accused in connection with physical assault made by accused on 08.03.2016 and 09.03.2016 so that she herself has never medically examined and also police not received any medical documents from her. She denied the fact that the accused did not tell her that he has an illicit relationship with another lady. She denied the fact that she has not stated before the police that "the accused informed her that he has an illicit relationship with another lady and to make her believe, her husband bring the

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said woman to her rented house and started mentally torturing her and thereafter, she informed the matter to her in-laws and then the accused physically assaulted her on her head and back for which she sustained injuries on her person. Thereafter, she took treatment at GNRC, Guwahati in the month of April, 2013. She further denied the suggestion that she has not stated before the police that when she went to the house of accused situated at Sootea, then her in-laws told her to give permission to the accused for his second marriage and also told her to take mutual divorce. Thereafter, her husband had maintained living together relationship with another woman at Nagaon which she caught red handed. She also denied the fact that she has not stated before the police that on 27.12.2015 at about 4:30 PM, the accused physically assaulted her at the Nagaon Market and also tried to harm her reputation. She deposed that on 08.03.2016 one K.V. Srikanth stayed at KRC Hotel, Tezpur, which had shown by her. She denied the fact that her husband did not receive her phone call as she was with said K.V. Srikanth. She also denied the fact that her husband after checking her mobile phone came to know that she stayed at Hotel KRC Palace on 08.03.2016. She further deposed that still she has made communication with said K.V. Srikanth through WhatsApp, E-mail etc. She further deposed that she shared her family problem with said K.V. Srikanth like her husband maintained illicit relationship with another woman. She deposed that she could not remember the mobile number of K.V. Srikanth. She also deposed that she cannot say whether 9957563025 number belongs to said K.V. Srikanth or not. She also deposed that on 07.03.2016 she asked her husband over phone that why he does not want to come to her house on 08.03.2016. She denied the fact that on 08.03.2016 in the morning her husband went to her house. She denied the fact that she has not stated before the police that "in the year 2016 during the festival of Magh Bihu her husband used obscene words towards her and also physically assaulted her with the instigation of his mother and her father-in-law told her to give permission to the accused for second marriage, so that she along with her daughter permanently left her matrimonial

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house.” She further deposed that in the year 2015 she booked flat in Tezpur Town but the same is still not handing over to her. She denied the fact that her father-in-law transferred Rs.1,55,000/- to her account for purchasing the said flat. She also denied the fact that her in-laws does not want to deteriorate the relationship between her and her husband. She deposed that she knows K.V. Srikanth the professor of Guwahati University and he is her teacher. She also deposed that she along with five other persons went for training at I.I.T. for the purpose of her job since from 04.01.2016 to 09.01.2016. She also deposed that 9854328146 is her mobile number and 7035134619 is the number of her husband and sometimes her husband gave his phone number to her daughter. She also deposed that in the year 2016 K.V. Srikanth sent a message to her and her husband through WhatsApp stating that he has he does not want to continue the communication with them. She further deposed that she has already filed a divorce case against her husband. She also deposed that she has mentioned in her divorce case that on 08.03.2016 at morning time her husband went to her rented house along with mutual divorce petition and asked to put her signature on the said petition but at the relevant time she was not at home. She deposed that on the said date at about 6 PM she returned towards her home. She denied the fact that on 08.03.2016 till the evening she was with K.V. Srikanth at K.R.C. Palace. She deposed that she was treated at Nagaon Kapili Nursing Home while she became second time actopic pregnant. She further deposed that she could not say who has donated blood to her at Kapili Nursing Home Nagaon. She denied that her husband had donated blood to her. She further denied the fact that her husband paid all her medical expenses. She also deposed that while she went to GNRC to check her head problem then the doctor of the said hospital told her that she has migraine problem. She denied the fact that her husband had not physically assaulted her so that she did not suffer any head pain. She also deposed that in the year 2012 she along with her husband and her daughter went to Shillong. She identified some photos of Shillong as Ext-A. She further deposed that in the 2014 she along with her



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husband went to the house of her husband's friend. She also deposed that on 23.12.2014 to 24.12.2014 she along with her husband and her daughter went to the house of the sister of her husband to celebrate the festival of "Annaprashan". She also identified some pictures of her husband and her daughter clicked together as Ext-B. She also identified a picture which was clicked together including her in-laws at Halflong Railway Station. She also identified those photos as Ext-C. She denied the fact that she has falsely filed a dowry case against her husband. She deposed that her husband has also filed one "Restitution of Conjugal Rights" against her at Nagaon Court.

**DISCUSSION, DECISION AND REASONS FOR SUCH DECISION**

10. 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
11. 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

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- clause (a) conveys the idea that accused has knowledge that his conduct would result in the consequences envisaged in clause (a).
12. 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.
  13. Thus, it would be seen that if the prosecution seeks to prove a charge for the offence u/s 498A of 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). This case as per the contention of ejarah allegedly comes under the purview of clause (b) of Section-498(A) of IPC.
  14. 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 grave, can never take the place of proof.
  15. 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.
  16. Hence, in the upcoming discussions, it needs to be looked upon whether the prosecution side able to adduce any legal, reliable and unimpeachable evidence

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before court upon which the accused person of this case may be convicted. In this case prosecution side examined only the informant cum victim of this case as PW-1. Undoubtedly, an accused may held guilty of commission of offence on sole testimony but prior acting on the sole testimony the court has to satisfy first that the evidence adduced by sole evidence is unimpeachable and there is no reason of disbelieving his/her evidence.

17. In this case prosecution sets in motion against the accused person over an incident as alleged by the informant-cum-victim that after marriage when she went to Guwahati for her Phd course she gave her salary to her ill-father but the accused did not like it and started abusing her filthy languages and also mentally harassed her. It is also alleged that at the time of birth of her second child (Chronic Ectopic Pregnancy) the Pelvic tube was lifted and thereafter, her husband along with family members tortured her both mentally and physically as because she did not give birth of a male child. She also alleged that her husband also caused her head injury by beating her on her head for which she took treatment at GNRC Hospital, Guwahati. Hence, the prime accusations appear to be abusing the informant-cum-victim coupled with physical assault by the accused. The ejahar has been lodged by the informant and she also pleaded some other facts regarding her physical torture by the accused person. She also pleaded that in the year 2011 during evening time, the accused stabbed her on the back side of her head with wrench and kicked her back and due to that she became senseless. There is no specific date of incident stated by informant in her ejahar as well as her evidence-in-chief. The fact of physical assault with wrench and giving kicked on her back by the accused had not been pleaded by the informant-cum-victim in her ejahar. Informant also claimed that she informed the matter to her parents for which her brother came to meet her and took her for treatment at Nagaon Nursing Home. If really the incident as claimed by her took place she must have lodged ejahar immediately after the incident. However, no any medical report of Nagaon Nursing Home has been furnished by the PW-1 to reflect the injury of the victim. PW-1 also deposed

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that in the year 2012 she was transferred at Tezpur Govt. Girls and thereafter, her husband took her to Tezpur and since from then her husband never enquired about her and her minor daughter. She further deposed that her husband after 2 months again visited at her place i.e. Tezpur and asked about her ATM card and when she refused to give ATM, her husband physically assaulted her and also alleged her that she had maintained illicit relationship with others. The fact of demanding her ATM Card and her physical assault by the accused when she refused to give the same had not been pleaded by the informant in her ejahar. Furthermore, there is no specific date of incident as stated by the informant in her ejahar as well as in her evidence-in-chief.

18. The informant-cum-victim also deposed that her husband informed her that he has an illicit relationship with another woman and to make her believe her husband bring the said lady to her rented house and started mentally torturing her and thereafter, she informed the matter to her in-laws and then accused physically assaulted her on her head and back for which she sustained injuries on her person. Furthermore, she claimed that her husband had maintained living together relationship with another woman at Nagaon which she caught red handed in his room. In this case, if any incident of like maintaining illicit relationship with another woman by her husband and thereafter, she caught her husband with said woman at his room and started mentally torturing her happened with the informant and the informant being the sole eye witness to those facts must have mentioned and identified the name of the said woman in her ejahar as well as in her evidence and those facts which she had not stated appears to be 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 statement which she had made before the police and before the magistrate after the incident. She also deposed before the court that on 27.12.2015 at about 4:30 PM, the accused physically assaulted her at the Nagaon Market and also tried to harm her reputation in front of his elder sister and his driver. The fact as deposed by

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the informant-cum-victim had not been pleaded in her ejahar (Ext-1). If really accused physically assaulted her at Nagaon Market and also tried to harm her reputation then she must have lodged a case against the accused. However, there is no endeavor made on the part of the informant-cum-victim to lodge the ejahar. Considering the nature of the dispute, the victim ought to have been lodge ejahar before Nagaon P.S immediately after the incident but in this case she had failed to lodge the ejahar immediately after the incident as stated by the informant in her evidence. The informant-cum-victim nowhere in her ejahar pleaded such facts, whereas she in her evidence specifically pleaded such fact which makes her evidence to be contradictory in nature.

19. Now, coming to the other part of the evidence of the informant-cum-victim, it disclosed that she had claimed that in the year 2016 during the festival of Magh Bihu her husband abused using filthy languages and also physically assaulted her with the instigation of his mother. She further deposed that her father-in-law told her to give permission to the accused for second marriage, so that she along with her daughter permanently left her matrimonial house. She also deposed that after selling land her father-in-law deposited some amount in the name of his grand-daughter but on the next day her husband came to her house along with mutual divorce petition. The incident of her physical assault using filthy languages by the accused on the occasion of Magh Bihu had not been specifically pleaded by informant-cum-victim in her ejahar. The informant has lodged the ejahar without pleading all the aforesaid facts in her ejahar. The ejahar not being a substantive piece of evidence provides a scope of corroboration or contradiction with its author considering the same to be as her earlier statement.

20. The settled propositions of law never claimed the ejahar to be a substantive piece of evidence. In "**Ram Kumar Pande vs The State Of Madhya Pradesh AIR 1975 SC 1206,**" the Hon'ble Supreme Court observed that an FIR is not a substantive piece of evidence and it can only be used to corroborate the statement of the maker u/s-157 of Indian Evidence Act or to

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contradict it u/s-145 of Indian Evidence Act. It can only be used for corroboration and contradiction purposes that to when FIR was lodged by a person having direct knowledge about the occurrence. In this case, informant herself admitted that she had lodged the ejahar. If so, then the contradictions disclosed from her evidence, makes her version to be contradictory.

21. She further deposed that on 08.03.2016 her husband again went to her house and asked her to put her signature on the mutual divorce paper and further physically assaulted her. However, the informant-cum-victim in her cross-examination part categorically testified that as she wanted to take divorce from her husband but later she compromised the matter and gave a chance to the accused. It is become crystal clear that informant herself failed to corroborate the version of the ejahar. The informant had not expressly supported and corroborated the same in her evidence. She had not deposed anything specifically about the same and in the forgoing discussion we have already noticed that PW-1 being the informant contradicted most of the material facts of the prosecution story and those contradictions are being material in nature cannot be straight way brushed aside, rather the contradictions and material omissions discloses from her evidence makes her evidence to be contradictory and untrustworthy in nature. Although the ejahar is not a substantive piece of evidence, but it is settled proposition of law that it may be used for corroboration and the informant herself failed corroborate with the versions of ejahar, rather her evidence appears to be contradictory, that makes her evidence contradictory and doubtful in nature.
22. The informant-cum-victim admitted on her cross-examination part that she has made communication with K.V. Srikanth through WhatsApp, E-mail etc and also shared her family problem with said K.V. Srikanth like her husband maintained illicit relationship with another woman. The informant-cum-victim introduced a new fact in her cross-examination part. The evidence offered by the informant appears to be contradictory in nature and some of the fact deposed before this court regarding communication with one K.V. Srikanth, sharing her family

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problem with him, booking flat etc are new facts to the case of the prosecution. Shockingly, PW-1 as informant failed to plead anything about those facts in her ejahar. The contradictions are with regard to the material facts those cannot be overlooked. As such contradictions and omissions reveals from her evidence makes the story of the prosecution weaker and doubtful.

23. 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 ---

"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.

24. In order to constitute "cruelty" under clause (a), 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.
25. 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 Sri Anamika Gogoi was subjected to torture or cruelty. Even, if the medical officer who examined the victim not examined in this case. But one medical report found enclosed with the case record and the report not unveiled any short of injuries from the body of the victim as she claimed in her evidence-in-chief as well as in her ejahar. Hence, it seen that informant appears to be contradictory with her own version regarding causing injuries on her head and back by the accused person. Even the verbal testimony of the 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

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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.

26. 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 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”.

27. In **Smt. Raj Rani v. State (Delhi Administration; AIR 2000 SC 3559)**

the apex Court held that-----

“while considering the case of cruelty in the context to the provisions of Section 498-A IPC, the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.”

28. Further, in another case **Girdhar Shankar Tawade v. State of Maharashtra, AIR 2002 SC 2078**, the Supreme Court held that---

"cruelty" has to be understood having a specific statutory meaning provided in Section 498-A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

29. 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



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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".

30. 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 clause "a" of Section 498(A) IPC. Moreover, the prosecution side failed to prove what sorts of overt acts that can be attributed by the accused person of this case to victim Sri Anamika Gogoi, which may force the victim to commit suicide. Furthermore, the state of affairs as narrated by victim not specifically pleaded by her in her ejahar. The sole testimony of the victim does not inspire any confidence in the mind of court upon which the accused may held guilty of commission of alleged offence.
31. In the light of settled propositions of law as decided in various cases of Hon'ble Apex Court, this court finds that the continuous state of affairs of torture that comes under clause "a" of Section-498(A) of IPC may term cruelty but such state of affairs happening since from the year 2011 must be continuous and proved by un-impeachable evidence. In this case from the forgoing discussion what we have observed that the evidence of informant-cum-victim (PW-1) not only appears to be contradictory but in the same time it fails to draw confidence of its truthfulness. The evidence of PW-1 found to be full with lot of shortcomings and failed to prove the essential ingredients of offence punishable under section-498(A) of IPC.
32. 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.

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33. 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.
34. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 23<sup>rd</sup> day of August, 2021 at Tezpur.

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

