

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SONITPUR,
TEZPUR**

Present : **Smti Chitrali Goswami, A.J.S**

Judicial Magistrate First Class,
Sonitpur, Tezpur

GR case no: 3193/2016

under Section - 498(A) of Indian Penal Code

State

vs

Abbas Ali

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| Advocate for the Prosecution | Mr AK Sahani |
| Advocate for the Defence | Sankar Deb Nath |
| Date of recording evidence | 24.06.2019, 19.09.2019, 23.12.2019. |
| Date of hearing argument | 05.02.2021. |
| Date of judgment | 12.02.2021. |

JUDGMENT

1. The prosecution case in a nutshell is that the instant case was initiated on the lodging of an ejahar dated 19.09.2016 by informant Smti Anowara Begum. She alleged in the ejahar that her marriage was solemnized with Abbas Ali according to Islamic rites on 07.11.12. Soon after their marriage her husband used to mentally and physically harass her for meeting his unlawful demands for dowry. Thereafter, on 11.07.16 her husband again assaulted her causing dislocation of her teeth. Currently she is residing with her parents with her son aged three years. Hence the case.

2. On receipt of the ejahar, Rangapara P.S. Case No.116/16 dated 19.09.2016 under Section – 498(A) of the Indian Penal Code was registered and investigated by SI Gyanadhar Deori. On completion of the investigation, the I/O of the case submitted charge-sheet vide charge sheet no. 87/2016 dated 29.09.2016 against the accused person namely, Md Abbash Ali under Section – 498(A) of Indian Penal Code by SI Gyanadhar Deori.

3. On receipt of charge sheet, cognizance of offence under Section – 498(A) of Indian Penal Code was taken as per the provision prescribed under Section 190(1) (b) of Code of Criminal Procedure.

4. On their appearance, necessary copies were furnished to accused person as mandated under Section 207 Code of Criminal Procedure. Finding sufficient prima facie materials against the accused person, charge under Section - 498(A) of Indian Penal Code was framed by my Learned predecessor in office against the accused person Md Abbas Ali which was read over and explained to him to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution side to prove its case examined four witnesses including informant of this case. Thereafter, the statement of defence of the accused person under Section 313 Code of Criminal Procedure was recorded by stating the incriminating materials against him. His plea was of total denial. Defence, however, did not adduce any evidence.

6. I have heard the arguments of both sides at length and gone through the case record and evidences thoroughly.

7. **Points for determination:**

1. Whether the accused person being the husband of the informant, subjected the informant to cruelty, and thereby committed an offence punishable under Section - 498(A) of the Indian Penal Code?

DISCUSSIONS

8. In her examination-in-chief, PW1/informant Anowara Khatoon deposed that the accused is her husband. She has lodged this case in 2016. Her marriage took place with the accused in 2012. Soon after their marriage the accused used to beat her in a state of intoxication. His tortures increased after the birth of their son. The accused applied current wire to her hand. She has been residing in her parents place for the last three years. Unable to bear the tortures of the accused she lodged this instant case.

9. In her cross-examination, PW1 deposed that she got married to the accused according to Islamic rites. They used to live happily after their marriage. She lodged this case regarding an incident that took in 2016. She has not written the ejahar and cannot recall by whom it was written. It is not a fact that no such incident occurred as alleged by her. It is not a fact that she has not written in her ejahar or stated before the I/O that the accused used to beat her in a state of intoxication. She cannot recall when her child was born. It is not a fact that she has not written in her ejahar or stated before the I/O that the accused applied current wire in her hand. PW1 deposed that she sustained injuries due to the assault. The I/O took her for medical examination but there are no medical documents in the case record. It is not a fact she conspired with her mother to harass the accused and lodged the false case and that no such incident took place in 2016. It is not a fact that the accused did not demand dowry from her and she left for her parents place on her own.

10. In her examination-in-chief, PW2 Aimon Begum deposed that she knows both the informant and the accused who are husband and wife. Their marriage took place 7-8 years ago. The accused used to beat his wife after the birth of their child. The accused applied current shock to his wife. Thereafter, the informant's mother lodged this case. The accused broke the teeth of his wife and fled away. The informant was taken to Mirdha hospital and she was informed by the informant's mother.

On reaching the hospital PW2 saw that blood was oozing out from the informant's mouth. The police took her for medical and she was operated. She does not know the cause the reason for the assault.

11. In her cross-examination, PW2 deposed that the house of the accused and the informant are close to her place. She was not present at the time of marriage of the accused and the informant. Earlier she didn't know that the accused used to demand dowry and beat the informant. She cannot remember the time and date of the incident. It is not a fact that she has not stated before the I/O that the accused applied current shock to the informant. It is not a fact that the accused never used to beat the informant and has deposed falsely as she shares a cordial relation with the informant's family and has not witnessed any incident.

12. In her examination-in-chief, PW3 Amela Khatoon deposed that the informant is her daughter and the accused is her son-in-law. There took place a social marriage between the informant and the accused in 2012 and a child was born after one year of the marriage. Thereafter, there used to take place altercations between the parties and the accused applied current shock to her daughter. The accused demanded a bike from the informant. Her daughter informed her. She saw that her daughter had suffered injuries on her shoulder. She was not allowed to take her daughter for medical treatment or bring along with her. Then PW3 went to the PS and went to her daughter's place along with the police. The accused fled away. After the police had left the accused again assaulted her daughter and dislocated her teeth. The elder brother of the accused took the informant to the doctor. Thereafter, the informant lodged this case. Presently her daughter is residing with her.

13. In her cross-examination, PW3 deposed that it is not a fact that she has not stated before the I/O that the accused applied current shock to her daughter. She bought her daughter from the hospital. It is not a fact that the accused threw her daughter out from her matrimonial home and it was she herself who bought her.

14. In his examination-in-chief, PW4 Md Raju Ali deposed that he knows both the informant and the accused. The incident took place in 2012 when there took place a verbal altercation between the parties. The accused was carrying his son aged one year at the time of the incident. The informant told the accused to give back her son as she will not stay with him any further. As she tried to take back her son she fell down on her own and sustained injury on her mouth. The accused then kicked the informant. On seeing the fight between the parties, PW4 along with few people came to stop the fight. PW1 was bleeding from her mouth and was taken to EMM hospital, Tezpur. Presently the informant is staying at her parents place. PW1/informant refused to come back even when the accused himself went to her place to bring her back.

15. In his cross-examination, PW4 deposed that he and the accused live separately even though they are brothers at a distance of ½ kilometres. It is a fact that the informant used to often stay at her parents place and did not perform her duties as a wife properly. PW1/informant used to quarrel on petty issues. The accused never tortured his wife. It is a fact that the injury sustained by the informant was on her own falling down and not due to the accused beating her. It is a fact that the accused never threw her out of the matrimonial home and wanted to bring her back. It is a fact that the accused went to EMM hospital to bring the informant back. But she stated that she will come back later on.

Decisions and reasons thereof:-

Point for determination no (i)

16. From perusal of evidence on record it transpires that only PW1/informant and her mother have supported the prosecution case. PW2 who resides close to the accused and informant deposed that earlier she didn't know that the accused used to demand dowry and beat the informant. She cannot remember the time

and date of the incident. As regards the mention of injury by the informant no medical records are available to justify the accusations alleged against the accused. PW4 deposed that when PW1 tried to take back her son she fell down on her own and sustained injury on her mouth. PW4 deposed that it was PW1 who used to quarrel on petty issues. The accused never tortured his wife. It is a fact that the accused never threw her out of the matrimonial home and wanted to bring her back. It is a fact that the accused went to EMM hospital to bring the informant back. But she stated that she will come back later on.

17. As such the prosecution side has failed to prove that the accused person namely, Md Abbas Ali has committed the said offence of cruelty under Section – 498(A) of the Indian Penal Code against the informant beyond reasonable doubt.

ORDER

In light of the aforesaid discussion, I hold the accused person namely, Md Abbas Ali is not guilty of offence under Section – 498(A) of the Indian Penal Code. Hence, he is acquitted from the charge leveled against him. The accused person is set at liberty forthwith.

His bail bond is extended for a period of 6(six) months from the date of this order i.e. 12.02.2021 as per as Section 437(A) Code of Criminal Procedure.

The judgment is delivered in the open Court in presence of the accused person and his engaged Counsel.

Given under my hand and the seal of this court on this 12th day of February, 2021.

Typed by me,

(Smti. Chitrali Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur.

(Smti Chitrali Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur

APPENDIX

Prosecution witnesses :

PW1- Anowara Khatoon

PW2- Aimon Begum

PW3- Amela Khatoon

PW4- Md Raju Ali

Prosecution Exhibits:

Nil

Defence witness:

Nil

Defence Exhibit:

Nil

Court Exhibit:

Nil

(Smti Chitrali Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur