

**In the court of Sub Divisional Judicial Magistrate ,( Mufassil)**  
**Biswanath Chariali, Sonitpur.**

**Gr Case No.81/2012**

*u/s 498A IPC*

**State**

**Vs**

**Shri Daben Dulal**

**Shri Madhab Dulal..... Accused**

Present:- Mrs Audri Bhattacharyya.

SDJM(M).-Biswanath Chariali, Sonitpur.

Appearances:-

For the prosecution: Shri B.C. Sarma, Addl. P.P.

For the accused: Shri Jogeswar Bordoloi.( Advocate)

Date of recording evidence: 04-09-2013, ,12-11-2013,23-04-2014.

Date of hearing argument : 27-05-2014.

Date of Judgment : 27-05-2014.

**JUDGMENT**

Prosecution case in brief is that Ejahar was lodged by the informant Smti Leena Dulal on 03-02-2012 alleging inter alia that she was married to Shri Madhab Dulal on 18-01-2008 according to social rites and one daughter was born out of their wed-lock. Thereafter her husband started assaulting her and also asked the her to bring money and other articles from her fathers house . As the brother of her husband

used to instigate him against the informant, she resided with her husband at Kumar Pukhuri Goan after the birth of their daughter. But on 15-08-2011 at about 12 o'clock in the afternoon the husband of the informant assaulted her badly and the informant left her husband's residence and hence the ejahar was lodged. The brother of the accused named Shri Daben Dulal instigated her husband to quarrel with her.

On receipt of the Ejahar, O.C. Behali P.S. registered a case being No. 31/2012 u/s 498(A) of the IPC and Assigned . A.S.I. Shri Jadab Ch Das to investigate into the matter. Accordingly the I.O. taking up the duty of investigation visited the place of occurrence, examined the witnesses, collected Medical examination report of the victim, produced the girl for recording her statement u/s/ 164 Cr..P.C. in the Learned Court and on conclusion of the investigation submitted chargesheet against the accused persons namely Shri Daben Dulal and Shri Madhab Dulal.

On taking cognizance, summons were issued to the accused and on receipt of summons the accused persons appeared before the Court and was furnished with copies of relevant documents.

Heard both sides pertaining to framing of charge. Considering the materials on case record and the case diary and upon hearing both the sides, prima facie materials were found against the accused persons u/s 498 A of IPC. A formal charge was framed against the accused persons and the same on being read over and explained, the accused persons pleaded not guilty and claimed to be tried.

Prosecution had examined 5 witness including the informant/victim. On closure of prosecution witness the statement of the accused person u/s 313 Cr.P.C. was recorded. From the cross examination of the

prosecution witness and the examination of the accused it appears that the accused person's plea is of total denial. The accused person did not adduce any evidence. Heard argument .

**Points for determination**

***Whether the accused persons subjected the informant to cruelty, and also melted out physical and mental harassment to fulfil the demand of dowry?***

**Decision, Discussion and Reason thereof:**

The evidence on record along with the other materials available are gone through to arrive at a decision on the points for determination.

Out of the five prosecution witnesses , PW1 is the informant . She deposed in her chief that one month after her marriage with accused Shri Madhab Dulal, she went to Gujrat with her husband and resided there for six months. A girl child was born to her on 20-11-2008 and thereafter the brother of her husband Shri Daben Dulal made them to reside separately in the main house. Her husband had no income and so her father helped him financially to plant tea plants over the land belonging to her father in law. Her husband looked after the tea garden by taking help from her father but as the income from the said tea garden was not enough , her father told Shri Madhab Dulal to look after another tea garden belonging to her father and maintain his family out of the said income. But her husband refused to work under her father.

She also deposed that her brother in law tortured her both mentally and physically and did not allow them to stay in the main house. As a

result her father constructed a small house for herself and her husband at Komar Pukhuri. He came up and threatened her demanding half of the land wherein tea plants were planted. She proved the Ejahar as Exhibit 1 and her signature over the same as Exhibit 1(1). She exhibited her statement recorded before the Hon'ble Court as Exhibit 2 and her signature as Exhibit 2(1).

PW2 Shri Gopal Sarma is the father of the informant and in his chief he deposed that a few days after the marriage of his daughter with the accused Shri Madhab Dulal, the accused used to torture her by demanding money and also demanded property.

PW3 Smti Jamuna Sharma is the mother of the informant and in her chief she deposed that the informant was tortured by Shri Daben Dulal and her father in law and her mother in law. Shri Madhab Dulal the husband of the informant was not present at that time. They had constructed a house for their daughter and son in law at Kamar Pukhuri. At present their daughter is residing with her husband and so they are not interested to proceed with the case.

PW4 Shri Diganta Sharma is the brother of the informant and he deposed that due to the torture by relatives of Madhab Dulal, the informant resided with her husband at Kamar Pukhuri but her brother in law drove her out of the house. So the informant came to reside in her father's house. At present his sister / the informant is residing with her husband Shri Madhab Dulal. So they are not interested in proceeding with the case. If the litigation continues there may be disharmony in between the husband and the wife. The house of the informant and the tea garden is situated over the land of the father in law of the informant.

Going through the evidence of the prosecution witnesses , it is seen that the informant PW1 is silent as to demand of dowry by her husband Shri Madhab Dulal or his relatives. She deposed that her husband took help from her father for opening a tea garden. Though she deposed that the brother of her husband tortured her , yet the said depositions falls short of evidence to hold that there was any demand of dowry or articles. PW2 , the father of the informant though deposed that the accused tortured the informant demanding money, the same is not supported by the evidence of the informant/ victim woman herself , who is silent in this aspect. PW3 and PW4 , the mother and brother of the informant is also silent with regard to demand of dowry by the accused persons . The evidence only reflects that the brother in law of the informant had some altercation of words with the informant regarding the 3 bighas of land belonging to the father of the accused persons over which the informant and accused Madhab Dulal planted tea plants taking help from the father of the petitioner.

Now it is well settled legal proposition that to bring home the charge u/s/ 498(A) of I.P.C. Prosecution must prove that the husband or the relatives of the husband of the woman subjected her to cruelty , as contemplated in section 498 A IPC.

" Cruelty" as contemplated in section 498 A IPC 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.

In the present case the cruelty and demand of dowry as alleged by the informant in her evidence falls short of evidence to be proved . The assault is not supported by medical examination report. . From the evidence on record it is clear that the proposition of cruelty as contemplated u/s 498A of IPC is not attracted in this case .

Moreover the victim woman and the accused Shri Madhab Dulal are residing together with their daughter in harmony. So PW3 and PW4 deposed that they are not interested to proceed further in the case against the accused persons as it may harm the conjugal life of the informant.

As such the prosecution has failed to prove the case u/s 498 A of IPC against the accused persons beyond all reasonable doubt. In result, the accused persons are found to be not guilty and are acquitted and set at liberty forthwith. The bailbond for accused stands extended till expiry of period of appeal.

Judgment is pronounced in open Court and is given under my hand and seal on this the 27<sup>th</sup> day of May, 2014.

Mrs Audri Bhattacharyya.

SDJM(M).

-Biswanath Chariali, Sonitpur.