

P.R No-431 of 2019
(State of Assam Vs Md. Ikramul Hussain & Ors)

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

P. R. Case No. 431 of 2019

Under section-498(A)/34 of I.P.C

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

State of Assam

-Vs-

1. Must. Sahila Khatoon
2. Md. Ikramul Hussain
3. Must. Ejoliman Nehar

All are R/O:- Kariyani Nepali

P/S:- Tezpur

Dist:-Sonitpur, AssamAccused Persons

Advocate appeared:

Mrs. Gitali Das, Asst. P.P..... For the State

Mr. Hari Prasad Sedai, Ld. Senior Advocate..... For the accused persons

Evidence recorded on	:- 11.02.2021
Date of Statement of defence	:- 11.02.2021
Argument heard on	:- 11.02.2021
Judgment delivered on	:- 11.02.2021

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 Md. Basiruddin, lodged an ejahar before the O/C of Tezpur P.S, alleging inter alia that his sister named Must. Rahima Khatoon got married with Md. Anowar Hussain, who is the son of accused Must. Sahila Khatoon and the brother of accused persons, namely, Md. Ikramul Hussain and Must. Ejoliman Nehar around 8 years back and thereafter, both were leading their conjugal life peacefully and out of the

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said wedlock two children were born to them. It is also stated that on 14.08.2018 at about 9 PM, all three accused persons have physically assaulted the sister of informant and her husband Anowar Hussain and also drove them out from their house by alleging them that their characters are not good. It is also alleged that the accused persons also threatened them of dire consequences for their lives.

"INVESTIGATION"

2. On receipt of the ejahar, Tezpur P.S Case No. 1707 of 2018 u/s-498(A)/323 of I.P.C R/W Section-4 of D.P Act 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 persons.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused persons appeared before the court and they were allowed to go on bail. Copies u/s-207 of CrPC was furnished to the above named accused persons. After hearing both side, charge of offence u/s-498(A)/34 of I.P.C. was read over and explained to the accused persons on which they pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

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

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.

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6. The points for determination in this case are:

- (i) Whether on or before 14.08.2018 at about 9 PM at a place called Kariyani Bengali, accused persons namely, Must. Sahila Khatoon, Md. Ikramul Hussain and Must. Ejoliman Nehar being the in-laws of the informant's sister named Must. Rahima Khatoon in furtherance of their common intention subjected the sister of informant to mental as well as physical torture upon her after marriage and also drove the victim from her matrimonial house and thereby committed an offence under section-498(A)/34 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

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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).

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 persons imperilled bodily and psychological torture upon the informant's sister Must. Rahima Khatoon with intend to accomplish their stresses on different dates during her conjugal life with her husband, who is son and brother of the accused persons.

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

14. PW-1, Md. Basiruddin, who in his testimony deposed that he knows the accused persons of this case. He also deposed that his sister Rahima Khatoon got married with one Anowar Hussain around 7-8 years back. He further deposed that the accused persons are the mother-in-law, sister-in-law and brother-in-law of his sister. He testified that one year back hearing about some quarrel from sister, he lodged the ejarah against the accused persons on miss-understanding. He admitted that now, his sister is leading her conjugal life with the accused persons at their

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house. He further testified that he does not want to proceed further against the accused persons. He identified his ejahar as Ext-1 wherein Ext-1(1) and Ext-1(2) is his signatures. PW-1 in his cross-examination admitted that he does not have any objection against the accused persons.

15. PW-2, Must Rahima Khatoon, who in her testimony deposed that the informant is her elder brother and the accused persons are known to her, they are her mother-in-law, sister-in-law and brother-in-law. She also deposed that one year back she had a domestic quarrel with the accused persons and due to that her brother lodged the ejahar against the accused persons. She admitted that now, she is leading her conjugal life with the accused persons at their house and therefore, she does not want to proceed further against the accused persons. PW-2 in her cross-examination testified that she does not have any objection against the accused persons.

16. Hence, it apparently appears before this court that PW-1 being the informant filed this case against the accused persons due to misunderstanding as there was domestic quarrel took place between his sister and the accused persons, who are his sister's in-laws and subsequently the matter was amicably settled between them. PW-1 categorically deposed that presently his is leading her conjugal life with the accused persons and he does not want to proceed with the case against the accused persons. Another witnesses i.e. PW-2 being the victim of this case also not deposed anything against the accused persons and she is leading her conjugal life with the accused persons presently at their house. Both the witnesses have admitted in their cross-examination that they don't have any objection against the accused persons.

17. To sum up the testimonies of both the witnesses, it reveals before this court that both witnesses themselves appears to be contradictory with the entire contentions of the ejahar and that makes their evidences doubtful and untrustworthy.

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18. 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.

19. In view of the above, evidence on record, I am of the opinion that prosecution has failed to prove the charge against the accused persons beyond reasonable doubt and as such the accused persons are acquitted from the charge u/s-498(A)/34 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.

20. 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 11th day of February, 2021.

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

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ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Md. Basiruddin, Informant

PW-2:- Must. Rahima Khatoon, Victim

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 :- FIR

Ext-1(1-2) :- Signatures of PW-1

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur