

**P.R No-924 of 2020
(State of Assam Vs Md. Gajimuddin Sheikh)**

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

P. R. Case No. 924 of 2020

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

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

State of Assam

-Vs-

Md. Gajimuddin Sheikh

S/O:- Late Tafazul Sheikh

R/O:- La-bari

P/S:- Dhekiajuli

Dist:-Sonitpur, AssamAccused Person

Advocate appeared:

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

Mr. P. Biswas, Ld. Advocate..... For the accused person

Evidence recorded on :- 08.02.2021

Date of Statement of defence :- 08.02.2021

Argument heard on :- 08.02.2021

Judgment delivered on :- 08.02.2021

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 Must. Mirjina Khatoon, lodged an ejarah before the O/C of Dhekiajuli P.S through Rakashmari Police Outpost alleging inter alia that she got married with the accused around 12 years back and thereafter, they were leading their conjugal life peacefully. It is also alleged that on 20.09.2020, the accused along with his second wife Must. Joytara Khatoon physically assaulted her and also drove her out from her matrimonial house.

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"INVESTIGATION"

2. On receipt of the ejahar, Dhekiajuli P.S Case No. 595 of 2020 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 & TRIAL

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 CrPC was furnished to the above named accused person. After hearing both side, charge of offence u/s-498(A) of I.P.C. was read over and explained to the accused person on which he pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined the informant-cum-victim of this case. Considering the testimony of the informant, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused is examined u/s-313 Cr.P.C and his pleas of denial were 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 backdrop of evidences presented before this court by prosecution side.

6. **The points for determination in this case are:**

- (i) Whether on 20.09.2020 accused Md. Gajimuddin Sheikh being the husband of the informant named Must. Mirgina Khatoon subjected her to mental as well as physical torture upon her after marriage and also drove her out from her matrimonial house and thereby committed an offence under section-498(A) of I.P.C?

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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 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

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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 person imperilled bodily and psychological torture upon the informant Must. Mirgina Khatoon with intend to accomplish his stresses on different dates during her conjugal life with the accused.

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

14. PW-1, Must. Mirgina Khatoon, who in her testimony deposed that accused is her husband. She also deposed that she got married with the accused around 12 years back and she led conjugal life with the accused peacefully for about 10 years and out of the said wedlock two children were begotten. She also deposed that in the year 2020, she had a domestic quarrel with the accused and due to misunderstanding she lodged the ejahar against her husband. She admitted that she does not want to proceed further against the accused. She identified her ejahar as Ext-1 and Ext-1(1) is her signature. She admitted that now she is leading her conjugal life with her husband. She in her cross-examination testified that she does not have any objection if the accused gets acquittal from this case.

15. To sum up the evidences on record, it seen that informant contradicted the entire versions of the prosecution story and that makes entire case of prosecution doubtful in nature.

16. 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.

17. In view of the above, evidence on record, I am of the opinion that prosecution has failed to prove the charge against the accused person beyond reasonable

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doubt and as such the accused is acquitted from the charge u/s-498(A) of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.

18. 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 08th day of February, 2021.

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

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ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Must. Mirgina Khatoon, Informant-cum-Victim

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 :- FIR

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

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur